

PRESENTATION TO THE
JOINT SELECT COMMITTEE
CONSIDERING A BILL SHORTLY ENTITLED
“THE
NATIONAL IDENTIFICATION
AND REGISTRATION ACT, 2020”

By the Office of the Prime Minister



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PART I—PRELIMINARY

CLAUSE 2 – INTERPRETATION

In this Act –

“Authority” means the National Identification and Registration Authority established under Section 5

“Civil Registration” means the inclusion of information in –

- (a) a civil status register under the Registration (Births and Deaths) Act
- (b) the Adopted Children Register under the Children (Adoption of) Act; or
- (c) another register required to be kept by the Registrar-General under any other law

“Civil Registration Databases” means the databases pursuant to Section 9 (1)(b)

“Enrolled Individual” means an individual whose identity information is stored in the National Identification Databases

“Enrolment” means the collection of identity information for storage in the National Identification Databases

“Identity Information” means the biographic, biometric or numerical information that may be collected under Section 11 in respect of an individual

“Inspectorate” means the National Databases Inspectorate established by Section 27

“National Databases” means the databases established under Section 9 (1)

“National Identification Card” or “Card” means a card issued under Section 16

“National Identification Databases” means the databases in which all the identity information collected under this Act by the Authority is stored

“National Identification Number” means a National Identification Number assigned under Section 15

“National Identification System” means –

- (a) the National Identification Databases established under Section 9

- (b) the National Identification Numbers;
- (c) The National Identification Cards; and
- (d) the processes, automated retrieval and storage, procedures, plans, networks, services, measures and interconnected and other associated elements for the enrolment of individuals, the verification of their identity and the authentication of National Identification Numbers and National Identification Cards

EXPLANATION:

Clause 2 defines key words contained within the National Identification and Registration Act (hereinafter referred to as 'the Act') to give them meaning beyond the ordinary definition of said words.

JUSTIFICATION

These words have been defined to aid in the understanding of the Bill and its practical application to, and impact on, the lives of the citizenry and persons ordinarily resident in Jamaica.

CLAUSE 3 – OBJECTS

The objects of this Act are to –

- (a) establish a National Identification and Registration Authority having responsibility for civil registration and the National Identification System;
- (b) provide for the enrolment of citizens of, and individuals who are ordinarily resident in, Jamaica, in the National Identification Databases;
- (c) establish databases, to be known as the National Identification Databases, consisting of all identity information collected by the National Identification and Registration Authority in respect of enrolled individuals;
- (d) establish databases, to be known as the Civil Registration Databases, consisting of all information collected for civil registration by the Registrar-General;
- (e) provide for the characteristics, assignment and use of a unique National Identification Number to be assigned to each enrolled individual;
- (f) provide for the issue of a National Identification Card to each enrolled individual;

- (g) prevent identity theft and other instances of fraud with respect to identity information; and
- (h) provide for the discharge of the statutory functions of the Registrar-General by an office established within the Authority, under the management and control of the Authority.

EXPLANATION: Clause 3 sets out the objects of the Act which outlines the underlying purposes of the legislation. It sets out several functions that should reasonably guide the interpretation of the provisions contained within the statute.

JUSTIFICATION

The *Robinson* judgment was instrumental in the recrafting of the functions of the Authority. The Authority is now solely charged with the management of identity information of citizens and persons ordinarily resident in Jamaica, in the manner specified under the Bill and in accordance with certain principles and standards such as those stated in the Data Protection Act. The Authority also seeks to prevent identity fraud by the implementation of this System while promoting an enabling environment for the achievement of Vision 2030.

PART II—THE NATIONAL IDENTIFICATION AND REGISTRATION AUTHORITY

CLAUSE 5 – THE NATIONAL IDENTIFICATION AND REGISTRATION AUTHORITY

- (1) There is hereby established a National Identification and Registration Authority, which shall be a body corporate to which the provisions of section 28 of the Interpretation Act shall apply.
- (2) There is hereby established within the Authority an office to be known as the Office of the Registrar-General which, under the management and control of the Authority, shall be responsible for carrying out the functions of the Registrar-General under –
 - (a) the Registration (Births and Deaths) Act;
 - (b) the Children (Adoption of) Act;
 - (c) the Marriage Act;

- (d) the Muslim Marriage Act;
- (e) the Hindu Marriage Act,
- and any other law.

(3) The functions of the Authority are to –

- (a) administer the National Identification System;
- (b) through the office established under subsection (2), carry out the functions of the Registrar-General as described in subsection (2);
- (c) develop appropriate systems and protocols for the security, secrecy, and necessary safeguards for the protection and confidentiality, of the information stored in the National Databases;
- (d) develop policies, procedures and protocols for the collection, processing, storage, authentication and verification of information in the National Databases, consistent with data protection best practices and in conformity with the Data Protection Act;
- (e) provide information and advice, and make proposals, to the Minister, on matters relating to the Authority;
- (f) monitor and promote compliance with this Act and regulations made under this Act and to develop public education programmes with a view to promoting such compliance;
- (g) develop policies and protocols for the prevention of identity theft and other instances of fraud with respect to identity information, and co-operate with other “anti-fraud organisations” (as defined by section 24(2) of the Data Protection Act) with regard thereto; and
- (h) perform such other functions which, in the opinion of the Board, are necessary for the efficient discharge of the Authority’s functions.

(4) In performing its functions, the Authority shall have the power to –

- (a) institute measures for the promotion of compliance with this Act;
- (b) design and develop systems and procedures which allow for the public to access its services, including the establishment of enrolment centres and such other facilities as are necessary to facilitate enrolment, and to collaborate with public bodies and private sector entities for that purpose;
- (c) introduce cost recovery measures for services provided;

- (d) establish procedures and develop, implement and monitor plans and programmes, relating to the administration of the National Identification System;
 - (e) conduct seminars and provide appropriate training programmes and consulting services, and gather and disseminate information relating to the National Identification System; and
 - (f) do anything or enter into any arrangement which, in the opinion of the Authority, is necessary to ensure the proper performance of its functions.
- (5) The Authority shall comply with directions issued to it by the Inspectorate in respect of any matter regarding the Authority's operations, or regarding compliance with this Act or with any other law concerning the protection or confidentiality of identity information.
- (6) The Authority shall manage its human, material and financial resources in keeping with modern standards and practices of sound financial management and good corporate governance.
- (7) In the performance of its functions, the Authority shall have regard to the needs of "persons with disabilities" within the meaning of section 2 of the Disabilities Act.
- (8) The provisions of the First Schedule shall have effect with respect to the constitution of the Authority and otherwise with respect thereto.
- (9) A person commits an offence if the person wilfully obstructs the Authority in the performance of its functions and shall be liable on conviction therefor before a Parish Court, to a fine not exceeding three million dollars.

EXPLANATION:

Clause 5 establishes and articulates the scope of the powers of the National Identification and Registration Authority. This entity will have its own legal existence and be able to sue in its own name. The Office of the Registrar General is preserved within the Authority, to manage the civil registry aspect of the NIRA. Additionally, this Clause states that the operations of the Authority are subject to directions provided by the Inspectorate regarding their operation or compliance. Persons who wilfully obstruct NIRA in carrying out its function will be subject to a three million dollars fine in the Parish Court.

JUSTIFICATION

Pursuant to the Robinson judgement, the Authority's functions have been honed to focus squarely on the institution of a national identity regime solely for the authentication and verification of the identities of citizens and persons ordinarily resident in Jamaica. The Authority is also now mandated to treat with any identity information in a manner which does not infringe but follows the standards and principles encapsulated in the Data Protection regime. In keeping with the object of the Bill to prevent identity fraud, the Authority may also co-operate and work with other anti-corruption and anti-crime agencies. The penalty for the offences under this clause were set at that level to deter persons from obstructing the work of the Authority and so reduce the risk of the lack of trust in the NIDS.

CLAUSE 6 – BOARD OF MANAGEMENT

- (1) For the purposes of this Act, there shall be a Board of Management which shall be responsible for overseeing the general administration of the Authority and, in particular, shall –
 - (a) develop policies and procedures for –
 - i. the creation, management, maintenance and operation of the National Identification System;
 - ii. the enrolment of eligible individuals;

- iii. the generation and assignment of a National Identification Number to each enrolled individual;
- iv. the issue of a National Identification Card to each enrolled individual;
- v. the collation and reproduction of information obtained as required under this Act to be collated and reproduced from time to time;
- vi. the safe custody and, where required, disposal of all identity information collected or obtained by the Authority or stored in the Databases;
- vii. the promotion of the use of the National Identification Number and the National Identification Card; and
- viii. on-going research on developments and best practices in civil registration and identity information management;

(b) ensure that the operations of the Authority are in conformity with –

- i. the Data Protection Act;
- ii. the Financial Administration and Audit Act and all applicable financial instructions issued by the Financial Secretary under that Act;
- iii. the Public Bodies Management and Accountability Act; and
- iv. any other law relevant to the management of public bodies or the protection of identity information;

(c) review, evaluate, approve and monitor the implementation, by the Chief Executive Officer, of the Authority's –

- i. corporate policies;
- ii. operational, strategic and other corporate plans; and
- iii. annual budget proposals and submissions;

(d) review, evaluate and approve the financial statements and major expenditure proposals of the Authority;

(e) keep the Minister and Permanent Secretary abreast of matters relating to the administration and management of the Authority, including any need for financial, human, technological and other resources necessary for the achievement of performance targets;

- (f) give directions to the Chief Executive Officer, in respect of the management of the Authority;
- (g) operate in a manner that maximises the effective and efficient operation of the Authority;
- (h) in relation to the operations of the Authority, establish policies on –
 - i. resource management, including a code of conduct and a system of performance-based evaluation;
 - ii. financial management;
 - iii. employee benefits;
 - iv. property management; and
 - v. enterprise risk management;
- (i) approve annual, quarterly and other reports of the Authority, which are required by this Act or any other enactment to be submitted to the Minister or to Parliament;
- (j) monitor the performance of the Authority in respect of its performance targets and service standards;
- (k) require the Chief Executive Officer to provide it with such periodic reports, and such special reports, as the Board considers appropriate in respect of the management of the Authority.

- (2) The provisions of Part II of the First Schedule shall have effect with respect to the constitution of the Board and otherwise with respect thereto.

EXPLANATION:

Clause 6 establishes a Board of Management responsible for governing and overseeing the general administration of the Authority. It outlines the core functions of

the Board and its interrelation with the Chief Executive Officer, the Minister, and the Permanent Secretary of the responsible Ministry.

JUSTIFICATION

In keeping with best practices of corporate governance, the Board is being established via the Bill to monitor and guide the Authority as it administers the System by developing the policies and procedures necessary to carry out the Authority's functions. The Board is among other things, specifically responsible for monitoring the compliance of the Authority with the Data Protection Act and legislation for the protection of identity information.

PART III—THE NATIONAL IDENTIFICATION DATABASES AND THE CIVIL REGISTRATION DATABASES

CLAUSE 9 – NATIONAL DATABASES

- (1) National databases are hereby established, consisting of –
 - (a) the National Identification Databases, in which all the identity information collected by the Authority under this Act in respect of enrolment is stored; and
 - (b) the Civil Registration Databases, in which all the information kept by the Registrar-General for the purposes of civil registration is stored.

- (2) Subject to the provisions of this section, the National Identification Databases shall be used only for any one or more of the following purposes –
 - (a) the enrolment of individuals;
 - (b) the storage of the identity information of enrolled individuals;
 - (c) the generation and issue of a National Identification Number and a National Identification Card to each enrolled individual;
 - (d) the verification of the identity information of enrolled individuals and the authentication of National Identification Numbers and National Identification Cards.

- (3) Subject to the provisions of this section, the Civil Registration Databases shall be used only for the generation and issue of such certificates, and other forms of evidence, of civil registration as the Registrar-General may require for the purposes of the functions specified in section 5(2).
- (4) The identity information stored in the National Identification Databases shall be in encrypted form, that is not legible without decryption, and that is capable of being converted into legible form when required for the purposes of this Act.
- (5) Information stored in the National Databases shall not be altered except in the manner provided by this Act, or regulations made under this Act.
- (6) At any time after an individual is enrolled, that individual may request, in writing to the Authority, the alteration of any identity information with respect to that individual that the individual claims to be incomplete, incorrect, misleading or otherwise in need of alteration
- (7) Within fourteen days after receiving a request under sub-section (6), the Authority shall in writing notify the individual –
- (a) of the action taken by the Authority in respect of the request;
 - (b) in the case of a refusal of the request, of the reasons for the refusal; and
 - (c) that the individual may appeal to the Appeal Tribunal in accordance with this Act.
- (8) A person commits an offence if the person, without lawful authority, wilfully –
- (a) accesses the National Databases;
 - (b) modifies the contents of the National Databases (whether or not the modification is intended to be temporary or permanent); or
 - (c) intercepts, or causes to be intercepted, any function of the National Databases, and shall be liable on conviction therefor before a Circuit Court, to a fine, or imprisonment for a term not exceeding twenty-five years, or both such fine and imprisonment.
- (9) A person commits an offence if the person, without lawful authority, wilfully –

- (a) degrades, or causes the failure of, the National Databases, or interrupts or obstructs the operation of any program or data in the National Databases; or
- (b) causes denial of access to, or impairment of, the function of any program or data in the National Databases.

(10) A person who commits an offence under subsection (9) shall be liable on conviction therefor before –

- (a) a Parish Court, to a fine not exceeding three million dollars; or
- (b) a Circuit Court, to a fine, or imprisonment for a term not exceeding twenty-five years, or both such fine and imprisonment.

(11) In this section –

“access, “data”, and “program” shall be construed in accordance with the Cybercrimes Act;

“intercepting” includes –

- (a) listening to or viewing, by use of technical means; or
- (b) recording a function of any program or data comprised in the National Databases, or acquiring the substance, meaning or purport of any such function.

(12) In relation to an offence specified in subsection (9), the acts alleged to constitute the offence need not be directed at –

- (a) any specifically identifiable program or data, or type of program or data; or
- (b) any program or data held in a specifically identifiable computer

EXPLANATION:

Clause 9 outlines the different databases that fall within the scope and remit of the Act. It makes provisions for the establishment of a National Database consisting of the National Identification and the Civil Registration Databases and it sets out the purposes of each database. It also makes provisions for the encryption of data stored in the National Identification Database and proscribes any alteration of such data beyond that which has already been contemplated by the Act. Within the context of alterations, Clause 9 also empowers an enrolled individual to appeal decisions made by the Authority. It also creates two offences which criminalizes persons who, without

lawful authority, carry out acts that are likely to **affect** the National Databases. These offences are punishable by fine and/or imprisonment.

JUSTIFICATION

This clause seeks to explain the backbone of the NIDS – the National Databases – what they are, their purpose and scope and how they function. The purpose of the National Databases is strictly confined to enrolment, storage and management and verification and authentication of identity information – the National Identification Databases and the civil registration mandate – the Civil Registration Databases. The Authority is mandated to ensure the security and integrity of the System as well as to maintain the accuracy of same. Several offences, referencing the current Jamaican cybercrime regime, are created to address attacks on the security and integrity of the National Databases and conviction may result in significant periods of imprisonment – up to twenty-five years. The threat to the Databases does not have to be targeted in order to be considered an attack. The severity of the penalty reflects the gravity of the offence which would serve to wreak havoc on not only the system but via identity fraud, would have implications on the society, its organs and persons at large.

The clause also sets out the rights of the enrolled individual as it relates to his or her data within the National Databases and mandates a response and action from the Authority within a specified period of time. The right of the enrolled individual to know how and why identity information is being collected and treated with is specifically stated, addressing a major concern expressed in the Robinson judgement. The enrolled individual is also, importantly, provided with the tool of appeal and in doing so exercises greater measure of control over his/her identity information.

CLAUSE 10 – ENROLMENT

- (1) An application may be made to the Authority, in such form and manner as may be prescribed, and subject to the provisions of this section, for enrolment of any individual who is eligible as described in section 4.

(2) At the time of an individual's enrolment, the Authority shall, in such form and manner as may be prescribed, inform that individual –

(a) that enrolment is voluntary and that the individual may cancel the enrolment, in accordance with section 14(1)(b); and

(b) in respect of the information collected from that individual for the enrolment –

(i) of the reason for the collection of the information and the purpose for which the information will be used;

(ii) of the fact that steps will be taken to verify the information, and what those steps are;

(iii) that the individual is entitled to access the information, and of the steps required for such access;

(iv) that the individual is entitled to request the alteration of incomplete, incorrect or misleading identity information stored in the National Identification Databases and pertaining to that individual, and of the steps required to make such a request; and

(v) that the individual is entitled to appeal under this Act against any decision, action or omission of the Authority, other than pursuant to an order under section 24, concerning identity information stored in the National Identification Databases and pertaining to that individual, and of the steps required to make such an appeal.

(3) Where an individual has, in accordance with section 11, submitted identity information to the Authority for the purposes of enrolment, the Authority –

(a) shall take all reasonable steps to verify that identity information;

(b) shall not enter in the National Identification Databases any identity information that has not been verified by the Authority in so far as it is reasonably possible for that identity information to be verified;

(c) upon verifying that identity information as required by this subsection, shall enter that identity information in the National Identification Databases; and

(d) upon completion of the enrolment, shall in such form and manner as may be prescribed supply the individual with a copy of the identity information, pertaining to that individual, that has been entered in the National Identification Databases.

(4) An application for the enrolment of an individual who is referred to in subsection (1) may be made on behalf of that individual by –

(a) if the individual is under the age of eighteen years –

(i) the individual's parent or guardian; or

(ii) where the individual is in the custody of a facility for the care of children, the officer in charge of the facility;

(b) in the case of an individual with a “mental disorder” as defined in the Mental Health Act, the nearest relative of the person, determined in accordance with section 3 of the Mental Health Act,

and the information required to be provided under subsection (2) shall be treated as having been provided to the individual if it is provided to that applicant.

(5) Where an individual who is an inmate of a “correctional institution” (as defined in the Corrections Act) wishes to apply for enrolment, the officer in charge of the institution shall facilitate –

(a) the making of the application; and

(b) such access to the inmate as may be reasonably required by the Authority for the purpose of effecting the enrolment.

(6) No fee shall be payable in respect of enrolment, or an application for enrolment.

(7) An individual who –

(a) provides false information or makes a false statement of a material nature with the intention of obstructing or misleading the Authority when –

(i) providing information for an entry to the National Identification Databases;

- (ii) making a modification to an entry to the National Identification Databases;
- (iii) making a confirmation of the content of an entry to the National Identification Databases; or
- (iv) obtaining the issue or re-issue of a National Identification Card;

(b) fraudulently obtains for the use of that individual, or for the use of another individual, a National Identification Card;

(c) knowingly enrolls or attempts to enrol more than once in the National Identification Databases;

(d) falsely alleges the loss or destruction of that individual's National Identification Card and applies for a new card while in possession of a National Identification Card; or

(e) provides false information in order to impersonate an enrolled individual,

commits an offence and shall be liable upon conviction therefor before a Parish Court to a fine not exceeding three million dollars.

- (8) For the purpose of subsection (7), an individual provides false information if at the time of the provision of the information the individual –

EXPLANATION:

Clause 10 makes provisions for enrolment within the National Identification System. It requires that persons eligible for enrolment who are interested in enrolling should tender an application to the authority, free of cost, who should then inform said person of all the considerations relevant to the process of enrolment.

This clause also makes provisions for the verification of information which accompanies the application. The verification process must be completed prior to entering information in the National Identification Database.

Moreover, this clause outlines specific enrolment procedures for particular groups of individuals such as those under the age of 18 years, those with mental disorders, and those who are inmates within correctional institutions.

This clause also creates an offence to carry out fraudulent activities which carries a penalty of a fine not exceeding three million dollars.

JUSTIFICATION

The enrolment requirements and general procedure is outlined in this clause. Importantly, enrolment is voluntary. Persons will not be charged to enrol in the NIDS. The Bill anticipates the needs and circumstances of a variety of clients which the Authority may be required to serve, such as wards of the State, and sets out the manner in which to deal with specific circumstances including security issues which may arise for persons within the Witness Protection Programme, so as to provide service while preserving the rights of the individual and ensuring the safety and security of the identity information provided.

The level of the penalties ascribed to the offences created in this section, also serve to underscore the gravity of the activities which could threaten the integrity of the System, the security of the identity information.

CLAUSE 11 – IDENTITY INFORMATION

- (1) The following identity information may be required by the Authority from an individual for the purpose of enrolling the individual –
 - (a) the following biographic information of the individual –
 - (i) full name (including any names used prior to a change of name by deed poll or marriage);
 - (ii) date of birth;
 - (iii) country of birth;
 - (iv) place of birth;
 - (v) names of mother and father;
 - (vi) whether the individual is male or female;
 - (vii) principal place of residence and any other places of residence;

- (viii) nationality, in the case of an individual who is not a citizen of Jamaica;
 - (ix) period of residence in Jamaica, in the case of an individual who is not a citizen of Jamaica;
 - (x) marital status;
 - (xi) name of spouse (if applicable); and
 - (xii) occupation;
- (b) the following biometric information in respect of the individual –
- (i) facial image;
 - (ii) fingerprints, as defined by the Finger Prints Act; and
 - (iii) manual signature, in the case of an individual who is eighteen years of age or older; and
- (c) the following reference numbers in respect of the individual, where applicable –
- (i) taxpayer registration number;
 - (ii) driver's licence number;
 - (iii) passport number;
 - (iv) National Insurance number;
 - (v) Programme of Advancement Through Health and Education (PATH) number; and
 - (vi) elector registration number.

(2) In any case where an individual is unable to supply any one or more items of identity information listed in subsection (1), the Authority may determine whether the information supplied with the application for enrolment is sufficient to effect the enrolment and if the Authority determines that the information –

- (a) is sufficient, shall proceed to effect the enrolment; or

(b) is insufficient, shall deny the application for enrolment and shall advise the applicant of the reason for the denial.

(3) A person commits an offence if, without lawful authorisation, the person collects identity information from an individual.

(4) A person who commits an offence under subsection (3) shall be liable on conviction therefor before a Parish Court, to a fine not exceeding two million dollars.

EXPLANATION:

Clause 11 outlines the identity information required for an individual to be successfully enrolled in the National Identification System. It articulates three categories of data that the enrollee must supply to NIRA. Namely, biographic information, biometric information and reference numbers. However, should an enrollee not satisfy the requirements for the provision of the specified data, Clause 11 provides for NIRA to determine whether an individual has satisfied the enrolment requirements on a case-by-case basis. If someone is refused enrolment, a reason must be explicitly stated. If a person collects identity information without proper authorisation, they have committed an offence and will be subject to a fine of up to two million dollars as determined by the Parish Court.

JUSTIFICATION

This Bill reflects the doctrine of minimalism in the collection of identity information as was highlighted in the Robinson judgement. Only the minimum biographical and biometric data may be collected by the Authority for the purpose of enrolment. Any abrogation of the right to privacy is reasonably justified in a free society as the basis for same which may arise within the context of the NIDS is proportionate to the harm caused by any such abrogation.

CLAUSE 13 –IDENTITY INFORMATION OF PARTICIPANTS IN THE JUSTICE PROTECTION PROGRAMME

Where the Authority receives a notification under the Justice Protection Act as to any matter which may concern the identity of an enrolled individual, the Authority may act

in accordance with such procedures, in respect of enrolled individuals who are participants under the “Justice Protection Programme” (within the meaning of the Justice Protection Act), as are agreed with the “Administrative Centre” (as defined in the Justice Protection Act).

EXPLANATION:

Clause 13 makes provision for the NIRA to act in accordance with the laws and procedures established under the Justice Protection Act regarding participants under the Justice Protection Programme.

JUSTIFICATION

This clause is intended to account for the special circumstances which exist as it relates to persons who are within the justice protection programme in order to ensure that the requisite confidentiality is maintained for the safety and security of the participants in that programme.

CLAUSE 14 –CANCELLATION OF ENROLMENT

- (1) The Authority shall cancel the enrolment of an enrolled individual if –
 - (a) the Authority becomes aware that, having regard to section 4, the individual is not eligible for enrolment for the purposes of this Act; or
 - (b) the individual requests in writing to the Authority, accompanied by the National Identification Card issued to that individual, that the enrolment be cancelled.
- (2) The Authority may cancel the enrolment of an enrolled individual if the identity information stored in the National Identification Databases is inaccurate.
- (3) Where pursuant to subsection (1)(a) or subsection (2), the Authority cancels the enrolment of an individual, the Authority shall in writing notify the individual of the cancellation, stating the reason for the cancellation and informing the individual –
 - (a) that the individual is no longer entitled to use a National Identification Number, and that the National Identification Card issued to the individual must be surrendered in accordance with subsection (6); and

- (b) of the right to appeal under section 26.
- (4) Where, pursuant to subsection (1)(b) or (2) the Authority cancels the enrolment of an individual, the Authority may subsequently enrol the individual if –
- (a) in the case of cancellation pursuant to subsection (1)(b), an application is made for the subsequent enrolment of the individual; or
 - (b) in the case of cancellation pursuant to subsection (2), the Authority is satisfied as to the accuracy of the identity information of the individual provided on an application in accordance with this Act for the subsequent enrolment of the individual.
- (5) Upon the cancellation under this section of the enrolment of an individual, the Authority –
- (a) shall cancel the National Identification Card issued to that individual; and
 - (b) in the case of cancellation –
 - (i) pursuant to subsection (1)(a) or (2), shall ensure that the identity information pertaining to the individual is purged from the National Identification Databases where —
 - (A) the time allowed under this Act for making an appeal against the cancellation has elapsed without an appeal being brought; or
 - (B) an appeal against the cancellation is brought under this Act and the appeal is unsuccessful; or
 - (ii) pursuant to subsection (1)(b), shall
 - (A) not begin or shall cease (as the case may require) to process the identity information provided by the individual for the purposes of enrolment; and
 - (B) notify the individual in writing that the enrolment has been cancelled and that the individual may at any time re-apply for enrolment in accordance with section 10.

- (6) An individual who, pursuant to subsection (3) is given notice that the individual's enrolment has been cancelled –
 - (a) shall no longer use a National Identification Number; and
 - (b) shall surrender to the Authority, within thirty days after receiving the notification, the National Identification Card issued to that individual.
- (7) An individual who, without reasonable excuse, contravenes subsection (6) commits an offence.
- (8) In this section “process” –
 - (a) has the meaning assigned to it by section 2(1) of the Data Protection Act; and
 - (b) for the avoidance of doubt, does not include processing –
 - (i) required for compliance with section 24; or
 - (ii) permitted under section 24(1)(h) of the Data Protection Act.

EXPLANATION:

Clause 14 outlines the context in which the cancellation of the enrolment of an individual may occur. The enrolment may occur in three instances, where an individual is ineligible to enrolment subject to the Diplomatic Immunities and Privileges Act, the enrolled individual requests that their enrolment be cancelled or NIRA cancels the enrolment of the individual due to an inaccuracy. It is the duty of the Authority to notify the individual in writing of the cancellation and the requirements to effect the cancellation as well as their right to appeal. However, the Authority can decide to re-enrol the individual should said individual who requests that they enrolment be cancelled subsequently decide to be included in the system. The NIRA has a duty that upon cancellation the NIC should be invalidated and certain information pertaining to enrollees subject to the Diplomatic Immunities and Privileges Act be purged from the database. Where a person opts out of enrolment the NIRA will not process any of the data for that purpose and notify the individual that said enrolment has been cancelled and they have the option to re-apply. Where an individual contravenes the provisions of this Clause. They have committed an offence.

JUSTIFICATION

Cancellation of enrolment results in the surrender of the NIC and though the NIN is attached to the enrolled individual for life, said individual may not utilise same, nor will

the NIDS be able to act on any requests regarding verification of that NIN. The Authority is also prohibited from continued processing of that individual's identity information except for the reasons stated in section 24 of the Data Protection Act. This Bill is subject to the strict protocols and procedures of the Data Protection Act and the Authority is required to adhere to that regime.

Importantly, in keeping with the fact that persons own their identity, an enrolled individual may choose to opt out of the System and request cancellation of their enrolment. Under this Bill, the Authority is mandated to process that request and cancel the enrolment. Importantly, minors who would have been enrolled by their parents or guardians, have the option to withdraw from the system upon reaching adulthood in keeping with the requirements expressed in the *Robinson* judgement.

CLAUSE 15 –NATIONAL IDENTIFICATION NUMBER

- (1) The Authority shall, in accordance with subsection (2), assign a unique identification number, to be known as a National Identification Number, to every enrolled individual.
- (2) For the purposes of subsection (1), the National Identification Number –
 - (a) shall be a randomly selected number that does not contain any digits that relate to an attribute of the enrolled individual;
 - (b) shall be assigned permanently to the enrolled individual, unless cancelled in accordance with this Act; and
 - (c) shall not be assigned or re-assigned to another individual during the lifetime, or after the death, of the individual to whom it is originally assigned.

EXPLANATION: Clause 15 provides for the assignment of the National Identification Number to every individual who chooses to enrol in the National Identification System. The clause also specifies the characteristics of the NIN and that the NIN is not transferrable to any other individual once assigned.

JUSTIFICATION

This is a very important component of the National Identification System. A number will be assigned to an enrolled individual for life and after death. No number will be reused even after cancellation of the enrolment. This significantly reduces the opportunity for fraud. Any activity surrounding a NIN, will be trackable, even after the death of an enrolled individual, another measure in reducing the opportunity for

fraudulent use of the System and identity fraud. Persons may therefore be assured of the integrity of the System and trust in the ability to utilise same.

CLAUSE 16 –NATIONAL IDENTIFICATION CARD

- (1) The Authority shall, in accordance with this section, issue an identification card, to be known as a National Identification Card, to each enrolled individual.
- (2) A National Identification Card issued under this section is deemed to be a public document for the purposes of section 22 of the Evidence Act.
- (3) The Authority shall keep a record of every National Identification Card issued by the Authority.
- (4) A National Identification Card issued to an enrolled individual shall not be transferred to another individual.
- (5) The issue of a National Identification Card to an individual shall not be treated as conferring any right of citizenship on, or as proof of the domicile of, an individual.
- (6) Subject to subsection (8), the issue of a National Identification Card to an enrolled individual shall not be subject to the imposition of a fee payable by or on behalf of the enrolled individual.
- (7) An enrolled individual to whom a National Identification Card is issued shall have a duty to –
 - (a) ensure the safe custody of the card;
 - (b) as soon as reasonably practicable after becoming aware of any error in the information on the Card, notify the Authority thereof and in writing request the alteration of the information; and
 - (c) promptly notify the Authority, by voluntary declaration in such form and manner as may be prescribed, of any loss, theft, mutilation or destruction of, or damage to, the National Identification Card.
- (8) Where a National Identification Card has been lost, stolen, mutilated, destroyed or damaged, the individual to whom the card was issued may apply to the Authority in such form and manner, accompanied by such fee, as may be prescribed, for replacement of the Card.
- (9) A National Identification Card issued to an individual remains the property of the Authority.

(10) A person commits an offence if the person wilfully tampers with a National Identification Card and shall be liable on conviction therefor before a Parish Court, to a fine not exceeding one million dollars.

(11) A person commits an offence if the person wilfully takes possession of, or retains –

(a) a National Identification Card, knowing that the Card was improperly obtained; or

(b) a card, knowing that the card is a counterfeit National Identification Card,

and shall be liable on conviction therefor before a Parish Court, to a fine not exceeding five hundred thousand dollars

(12) A person who, without reasonable excuse, fails to notify the Authority as required under subsection (7)(c), of the loss, theft, damage, mutilation or destruction of a National Identification Card commits an offence.

EXPLANATION:

Clause 16 provides for the assignment of the National Identification Card to every individual who chooses to enrol in the National Identification System. The card will be deemed a public document which means that it is admissible any tribunal, the Senate, the House of Representatives, and any Committee under same as well as any Court as evidence of an individual's identity. The NIRA also has the right to keep a record of all National Identification Cards issued by the Authority. Clause 16 outlines the benefits and limitations to the issue of the NIC to an individual. The clause also specifies the offences for persons who wilfully tamper with, take possession of or does not notify the Authority on the loss, theft, damage, mutilation or destruction of a NIC.

JUSTIFICATION

The NIC is the tangible public document indicating that an enrolled individual's identity was authenticated by the Authority. It is a secure public document which is admissible as *prima facie* proof of an enrolled individual's identity. Enrolled individuals and anyone seeking to have proof of the identity of an enrolled individual, will be able to be assured that the NIC has only been issued after an in-depth verification process.

Importantly, the NIC as it states, is merely proof of identity. It does not purport to operate as proof of citizenship or residency.

CLAUSE 17 –USE OF NATIONAL IDENTIFICATION CARD

- (1) An enrolled individual who is issued a National Identification Card may use the card for any of the following purposes –
 - (a) as a means of proving that individual's identity;
 - (b) as a means of facilitating transactions between that individual and any other party, where agreed between that individual and the other party.
- (2) A person commits an offence if the person –
 - (a) uses a National Identification Card in order to impersonate an enrolled individual; or
 - (b) permits or induces another person to use a National Identification Card in order to impersonate an enrolled individual,

and shall be liable on conviction therefor before a Parish Court, to a fine not exceeding three million dollars.

EXPLANATION:

Clause 17 allows for every enrolled individual to use the NIC for proving their identity and to facilitate transactions between themselves and other parties. Also, it outlines the offences that arise if an individual uses the NIC to impersonate another individual or induces another person to do same. Anyone who commits that offence will be liable before a Parish Court to a fine that should not exceed three million dollars.

JUSTIFICATION

In keeping with the voluntary nature of the System, the purpose of the NIC is to be the convenient, easily mobile, physical evidence carried by enrolled individuals as proof of their identity. The Bill does not make the NIC a requirement for citizens or persons ordinarily resident in Jamaica, to access Government services. There is therefore no discrimination in treatment or the loss of access as highlighted in the Robinson judgement.

The NIC may only be used to enable transactions between an enrolled individual and other parties where there is an agreement between the enrolled individual and that third party for it to be used in that manner. This is outside the scope of the Authority and solely a matter between the enrolled individual and a third party.

In keeping with its object to fight identity fraud, the Bill also creates offences for impersonating or enabling persons to impersonate an enrolled person by the use of the NIC and the level of the penalty to be imposed is indicative of the gravity of the offence.

CLAUSE 18 –PERIOD OF VALIDITY OF NATIONAL IDENTIFICATION CARD

- (1) A National Identification Card issued to an individual who, at the time of first issue of the National Identification Card is –
 - (a) younger than eighteen years of age, shall be valid for five years from the date of issue, and is renewable for successive periods of five years until the individual attains the age of eighteen years;
 - (b) eighteen years of age or older, but younger than sixty years of age, shall be valid for ten years from the date of issue and shall be renewable for successive periods of ten years until the individual attains the age of sixty years;
 - (c) sixty years of age or older, shall be valid for fifteen years from the date of issue, and is renewable for successive periods of fifteen years during the lifetime of the individual.
- (2) An application for the renewal of a National Identification Card may be made within the period of six months before the date of expiration of the existing National Identification Card, or at any time after the date of expiration of the National Identification Card.
- (3) The Authority shall renew a National Identification Card in such manner as shall be prescribed.
- (4) The Authority may require an individual seeking a renewal of a National Identification Card to surrender to the Authority the existing National Identification Card (whether still current or expired) in exchange for a renewed Card.

EXPLANATION:

Clause 18 outlines the validity period for the NIC. This is determined by the age of the recipient of the NIC. Also, Clause 18 states the duration for renewal of the NIC and does not cap the period for renewal of the NIC. Provision is made for the NIRA to require an enrolled individual to surrender their current or expired NIC to receive the renewed NIC.

JUSTIFICATION

The NIC is not intended to place any additional bureaucratic burden on prospective and enrolled individuals. Therefore, the NIC will be valid for periods of time before they need to be renewed. The validity periods are tailored to suit the different circumstances for a variety of persons and it is thought that a fair way to accommodate all persons is by using bands of age. Different validity periods apply to three different bands of ages, being minors, adults below 60 years of age and senior citizens over the age of 60. At the same time, enrolled individuals may have their cards renewed before they expire or upon re-enrolment. Again in order to preserve the integrity of the system, the Authority may require the surrender of the NIC.

CLAUSE 19—CONTENT OF VALIDITY OF NATIONAL IDENTIFICATION CARD

- (1) The National Identification Card shall be issued in such form and bear such information as shall be prescribed, including –
 - (a) on the front of the card, in relation to the individual to whom it is issued –
 - (i) the National Identification Number assigned to that individual;
 - (ii) the name of the authority that issued the card;
 - (iii) the name, date of birth, facial image and manual signature of the individual;
 - (iv) the nationality of the individual;
 - (b) on the back of the card –
 - (i) the parish or place of enrolment of the individual;
 - (ii) the date of issue of the Card;
 - (iii) the date of expiry of the Card;

- (v) the card control number;
 - (vi) the category of enrolment (that is, whether as a citizen or individual ordinarily resident in Jamaica).
- (2) Subject to section 16(5), a National Identification Card shall, in the absence of evidence to the contrary, be prima facie proof of the particulars which the card bears.
- (3) A person commits an offence if the person, without lawful authority, makes, produces, manufactures, prints, binds, designs, or distributes, any document purporting to be a National Identification Card.
- (4) A person who commits an offence under subsection (3) shall be liable on conviction therefor before a Parish Court, to a fine not exceeding three million dollars or imprisonment for a term not exceeding three years.

EXPLANATION:

Clause 19 indicates the information that must be stated on the front and back of the NIC. Additionally, it allows for the NIC to serve as proof of an individual's identity unless more compelling information is provided that is contrary to the information provided on the NIC. If a person makes a counterfeit NIC they will be liable to a fine of up to three million dollars in the Parish Court.

JUSTIFICATION

The information to be placed on the NIC must be stated in law. A person wishing to enrol in the System will be aware of exactly what will be placed on the NIC. The NIC, in keeping with its purpose as a means of identification, will be *prima facie* proof of the identity of the enrolled individual. The commitment to the fight against identity fraud and the duty to protect the identity information of enrolled persons, is illustrated by the creation of an offence where a person tries to tamper with or reproduce the NIC and the level of the penalty which may be imposed on conviction.

CLAUSE 20–CANCELLATION OF NATIONAL IDENTIFICATION CARD

- (1) The Authority may cancel a National Identification Card if satisfied that –

- (a) the National Identification Card was issued based on inaccurate or incomplete identity information;
- (b) the Card was issued in error;
- (c) there is a defect in the form of the Card; or
- (d) in respect of the individual to whom the Card was issued –
 - (i) the Minister with responsibility under the Jamaican Nationality Act has –
 - (A) caused a declaration of renunciation of citizenship of Jamaica, made by that individual, to be registered under that Act; or
 - (B) under that Act, deprived that individual of citizenship of Jamaica; or
 - (ii) the Minister with responsibility under the Immigration Restriction (Commonwealth Citizens) Act has, under that Act, revoked the leave of that individual to remain in Jamaica.

- (2) Where the Authority cancels a National Identification Card issued to an individual, the Authority shall, by notice given in the prescribed form, inform the individual of the cancellation and of the individual's right to appeal against the cancellation.
- (3) An individual who, pursuant to subsection (2) is given notice that the individual's National Identification Card has been cancelled shall surrender the Card to the Authority within thirty days after receiving the notification.
- (4) An individual who, without reasonable excuse, fails to surrender a National Identification Card as required under subsection (3) commits an offence.

EXPLANATION:

Clause 20 allows for the cancellation of the NIC where the Authority has issued the NIC in error or the Minister with responsibility for citizenship has revoked the citizenship of the enrollee or, if the enrollee is ordinarily resident, their permission to remain a resident in Jamaica. Where the NIC has been cancelled, the onus is on the Authority to inform the individual of the cancellation of the NIC and that the individual has the right to appeal the decision. The onus is on the individual, once informed of

the cancellation to return the NIC within thirty days. If the person does not return the NIC nor produce a reasonable excuse, they have committed an offence.

JUSTIFICATION

This clause sets out the process for cancellation of a NIC. The Authority must cancel the NIC in specific circumstances and must inform the enrolled individual of that cancellation. The enrolled individual then has the right to appeal the decision to cancel the NIC. This underscores the tenets of transparency and accountability as the Authority interacts with its clients, which run through the Bill and recognises the enrolled individuals' ownership of their identity information.

CLAUSE 21–RE-ISSUE OF CANCELLED OF NATIONAL IDENTIFICATION CARD

The Authority may re-issue a cancelled National Identification Card in any case where the Authority is satisfied that the conditions that required the cancellation have been rectified or no longer exist (as the case requires).

EXPLANATION:

Clause 21 allows for the NIRA to re-issue the NIC if the conditions that caused the NIC to be cancelled are no longer operative.

JUSTIFICATION

As stated before, the System is intended to facilitate and not to frustrate and therefore a NIC may be reissued after being cancelled if required.

CLAUSE 22–OBLIGATION TO SURRENDER NATIONAL IDENTIFICATION CARD

An individual shall surrender to the Authority any National Identification Card in that individual's possession and that –

- (a) does not belong to that individual and –
 - (i) appears to have been lost by another individual;

- (ii) has come into that individual's possession by inadvertence, and without the knowledge or permission of the individual to whom the Card was issued; or
- (iii) was issued in respect of an individual who has died and over whose affairs the first mentioned individual has charge (whether as a personal representative or otherwise);
- (b) has expired;
- (c) has been mutilated or is otherwise unusable;
- (d) belongs to that individual but had previously been reported to the Authority (by or on behalf of that individual) as having been lost or stolen; or
- (e) the individual has reasonable cause to believe has been issued in error.

EXPLANATION:

Clause 22 mandates that a person who finds a lost NIC or retains the NIC in four other specified circumstances must return said card to the NIRA.

JUSTIFICATION

This clause is in keeping with the principle that a NIC is the property of the Authority. Therefore, in order to maintain the integrity of the System, anyone who finds a NIC or who is in possession of a NIC in a variety of circumstances stated in the Bill, are mandated to return the NIC to the Authority.

PART IV—USE AND SECURITY OF INFORMATION **STORED IN THE NATIONAL DATABASES**

CLAUSE 23—SECURITY OF INFORMATION

The Authority shall ensure that the information stored in the National Databases is kept in a secure manner and that the confidentiality of the information is preserved, and shall –

- (a) take all necessary and appropriate measures (including technical and manual security measures) to protect the information from unauthorised access, unauthorised use, unauthorised disclosure, and any loss or distortion;
- (b) ensure that its employees and agents adhere to the measures referred to in paragraph (a) at all times;

- (c) ensure that the identity information of enrolled individuals is accorded the highest level of security;
- (d) implement controls to detect any unauthorised access to, or use of, the information, including controls to detect and protect against –
 - (i) viruses and malware that are internet-based; and
 - (ii) other vulnerabilities;
- (e) implement monitoring processes aimed at identifying unusual events and patterns that could negatively affect the security of the National Databases;
- (f) encrypt all such information containing biometrics or other identity information, enabling decryption only in secured circumstances;
- (g) restrict the categories of its staff and agents, having access to the processes, systems and networks of the National Databases; and
- (h) take all necessary steps to ensure the physical security of the servers of the National Databases, and employ back-up measures that are appropriate to guard against theft, natural disasters and equipment failure.

EXPLANATION:

Clause 23 charges the Authority to preserve the confidentiality of and secure the information kept in the National Databases. It sets out a number of specific actions to be conducted by the Authority in protecting information from varying degrees of unauthorized access, use or disclosure.

JUSTIFICATION

This clause seeks to make it a duty for the Authority to take positive steps to ensure that adequate procedures, practices and processes are in place, in keeping with best practices and the Data Protection regime, to maintain the safety, security and confidentiality of identity information from unauthorised access, use or disclosure. In doing so, one of the main concerns expressed in the *Robinson* judgement of the lack of safeguards for the protection of the identity information of the enrolled person will be addressed.

CLAUSE 25—REQUESTS FOR INFORMATION OR FOR AUTHENTICATION AND VERIFICATION SERVICES

- (1) The Authority may, in such form and manner as may be prescribed –
- (a) authenticate a National Identification Number assigned, or National Identification Card issued, to an individual; or
 - (b) verify the identity information of an enrolled individual,

at the request of that individual or an accredited third party with the consent of that individual.

- (2) A request under subsection (1) shall be made in such form and manner as may be prescribed, and shall be accompanied by such fee as may be prescribed.
- (3) A person may apply to be an accredited third party for the purposes of this section, in such form and manner as may be prescribed.
- (4) The Authority shall retain for such period as may be prescribed a record of each request for authentication or verification under this section, including a statement of the manner in which the request was determined.
- (5) Nothing in subsections (1) to (4) authorises the disclosure of identity information about an individual.
- (6) An individual is entitled to be provided by the Authority, on application made to the Authority in such form and manner as may be prescribed, with the following information –
- (a) a statement of all the information, stored in the National Databases, about that individual; and
 - (b) a record of all the requests for verification of identity information of that individual received from requesting entities, including in respect of each such request –
 - (i) the name of the requesting entity;
 - (ii) the date of the request;
 - (iii) a statement as to whether or not the request was granted; and
 - (iv) if the request was granted –
 - (A) the date on which the request was granted; and
 - (B) whether or not the identity information sought to be verified was verified.

- (7) Where an application under subsection (6) requests that the information be provided in printed rather than electronic form, the application shall be accompanied by such fee as may be prescribed therefor.

EXPLANATION:

Clause 25 outlines the scope and manner that authentication and verification services can be provided by the NIRA. Additionally, it allows for persons to be deemed accredited third parties by the Authority. This clause also permits the Authority to retain the data for the request of authentication or verification. However, it restricts the Authority from disclosing the identity information of any enrolled individual. This clause also gives prevents the Authority from verifying the identity of an enrolled person without his or her consent.

JUSTIFICATION

This clause seeks to address another issue raised in the *Robinson* judgment - that enrolled persons would no longer have control over their data once enrolled. This clause therefore seeks to make the processes of authentication and verification transparent, and holds the Authority accountable by stating the scope of these processes and manner in which they are to be conducted. Additionally, enrolled individuals are at liberty to request and receive information on any activity surrounding their identity information as it relates to authentication and verification. Most importantly, the process now requires the enrolled persons to authorise the Authority to provide verification of their identity when same is requested by a third party.

PART V—APPEALS AND OVERSIGHT

CLAUSE 26—APPEAL TRIBUNAL

- (1) There is hereby established an Appeal Tribunal for the purpose of hearing appeals in accordance with this section.
- (2) An enrolled individual (in this section referred to as the appellant) who is aggrieved by a decision of the Authority in respect of any matter concerning the identity information of that individual may within twenty-eight days after the communication of that decision to that individual, or such longer period as the

Appeal Tribunal may allow, appeal by filing with the Appeal Tribunal a notice of appeal in such form as may be prescribed.

- (3) A notice of appeal for the purposes of subsection (2) shall –
 - (a) state clearly the grounds of the appeal;
 - (b) be accompanied by a copy of each supporting document relied on by the appellant; and
 - (c) be served on the Authority and the Inspectorate, respectively, together with a copy of the supporting documents referred to in paragraph (b).
- (4) The Authority shall, within seven days after receiving a notice of appeal under subsection (3), provide the Appeal Tribunal with a statement in writing setting out the reasons for the decision that is the subject of the appeal.
- (5) After receiving a notice of appeal under this section, the Appeal Tribunal –
 - (a) may direct the Authority or appellant, as the case may require, to provide the Appeal Tribunal with such information (excluding identity information) as the Appeal Tribunal considers relevant for determining the appeal; and
 - (b) shall in writing inform each party to the appeal –
 - (i) of the date for the hearing of the appeal;
 - (ii) that the party may appear at the hearing in person with, or by, that party's representative; and
 - (iii) that the party may summon such witnesses as that party considers necessary for the purpose of the hearing.
- (6) On hearing an appeal under this section, the Appeal Tribunal may –
 - (a) dismiss the appeal and confirm the decision of the Authority;
 - (b) allow the appeal and set aside the decision of the Authority;
 - (c) vary the decision of the Authority; or
 - (d) allow the appeal and direct the Authority to arrive at a fresh decision on the matter,

and shall give a written copy of its decision, including the reasons therefor, to the appellant, the Authority and the Inspectorate.

- (7) The provisions of the Second Schedule shall have effect with respect to the constitution of the Appeal Tribunal and otherwise with respect thereto.

EXPLANATION:

Clause 26 establishes an Appeal Tribunal which an enrolled individual may apply to for recourse against the actions of the NIRA. It outlines the application process as well as the hearing procedure.

JUSTIFICATION

This clause seeks to hold the Authority accountable by making its actions open to appeal by enrolled individuals. In this way, enrolled individuals are able to inform the treatment of, and interaction with their identity information by the Authority, and third parties. The appeal process provides an important check on the power of the Authority to make decisions and ensures the preservation of the rights of the enrolled individual to seek and obtain redress.

CLAUSE 27–NATIONAL DATABASES INSPECTORATE

- (1) There is hereby established an office to be known as the National Databases Inspectorate, which shall be a body corporate to which the provisions of section 28 of the Interpretation Act shall apply.
- (2) The functions of the Inspectorate shall be to –
 - (a) monitor compliance with this Act, regulations made under this Act, and all laws concerning the protection or confidentiality of identity information;
 - (b) monitor the performance of the Authority and assess the implementation of best practices in respect of the functions of the Authority;
 - (c) conduct periodic inspections of the Authority's operations, in order to determine whether the Authority's operations are being conducted in accordance with this Act, regulations made under this Act, and all laws concerning the protection or confidentiality of identity information;
 - (d) give to the Board such directions and advice as may be appropriate to ensure that identity information collected by the Authority or stored in the National Identification Databases is subject to the highest practicable levels of security and confidentiality;
 - (e) make such recommendations to the Chief Executive Officer as the Inspectorate considers appropriate for the improvement of the Authority's operational standards; and

- (f) investigate any issue or complaint regarding the conduct or operations of the Authority that comes to the attention of the Inspectorate.
- (3) In discharging its functions, the Inspectorate shall have the power to –
- (a) Require the attendance before it of any officer, or agent, of the Authority, or any sub-contractor of any such agent;
 - (b) call for and examine any information, other than identity information, that the Inspectorate considers relevant;
 - (c) consult or collaborate with any public body, as the Inspectorate considers appropriate;
 - (d) audit the operations of the Authority, including the processes for the collection and storage of identity information, for the purpose of determining whether the information is maintained according to data protection and information privacy principles;
 - (e) issue such directions to the Authority as the Inspectorate considers necessary to rectify or resolve any breach, or potential breach, of this Act, regulations made under this Act or any other law concerning the protection or confidentiality of identity information; and
 - (f) refer any matter concerning any irregularity, misconduct or breach, believed to be carried out by any officer of the Authority or any officer of the Board, to –
 - (i) the Director of Public Prosecutions;
 - (ii) the Integrity Commission;
 - (iii) the Auditor-General;
 - (iv) the person in charge of any agency or department of Government charged with responsibility for the protection of identity information or for cyber security;
 - (v) the Commissioner of Police; or
 - (vi) the Director-General of the Major Organized Crime and Anti-Corruption Agency,

as the Inspectorate considers appropriate

- (4) The Inspectorate shall submit to the Minister within three months after the start of each financial year, a report on its functions in respect of the previous

financial year, and the Minister shall cause the report to be laid on the table of each House of Parliament.

- (5) Notwithstanding anything contained in the Data Protection Act, the Inspectorate shall submit to the Information Commissioner under that Act a report on its functions in respect of a calendar quarter, within one month after the end of that quarter.
- (6) The provisions of the Third Schedule shall have effect as concerns the constitution of the Inspectorate and otherwise with respect thereto.

EXPLANATION:

Clause 27 establishes the National Databases Inspectorate which is a body corporate with the power to sue and be sued in its name and has a legal personality. This Clause outlines the functions and powers of the Inspectorate which is charged with monitoring the compliance of the NIRA in its management of the National Databases. The Inspectorate is mandated to submit a report on the NIRA at the start of each financial year to be tabled in the Houses of Parliament. Also, the Clause makes clear that the operations of the Inspectorate is subject to the powers of the Information Commissioner under the Data Protection Act.

JUSTIFICATION

The *Robinson* judgment specifically highlighted the lack of oversight of the Authority by an independent body in the current legislation. This Bill therefore seeks to introduce and establish a robust, independent oversight body with wide powers of inspection, audit and direction – the National Identification Inspectorate. The Inspectorate is only accountable to the Houses of Parliament and provides annual reports to the Parliament. Pursuant to the importance of data protection, quite apart from the existing data protection regime, the Inspectorate will also submit quarterly reports to the Information Commissioner. Importantly, the Inspectorate has the power to, where it finds it necessary, refer matters to several public bodies charged concerned with the detection, prosecution and protection from crime and corruption. Checks and balances are therefore placed on the Authority to ensure that its mandate is carried out with the requisite care to be taken of an enrolled individual's identity information.

PART VI—OFFENCES AND ENFORCEMENT

CLAUSE 28—SPECIAL PROVISIONS IN RESPECT OF OFFENCES

- (1) A person who commits an offence under this Act for which no specific penalty is provided shall be liable on conviction therefor before a Parish Court to a fine not exceeding one million dollars.
- (2) The Minister may by order subject to affirmative resolution amend any monetary penalty provided for in this Act.
- (3) For the avoidance of doubt –
 - (a) in any case where the penalty for an offence triable by a Judge of a Parish Court under this Act consists only of a fine, the Court may, instead of dealing with the offender under section 195 of the Judicature (Parish Courts) Act, deal with the offender in the manner provided for by section 10 of the Criminal Justice (Reform) Act (community service order); and
 - (b) for the purposes of this section, the term “punishable with imprisonment” in section 10 of the Criminal Justice (Reform) Act refers to the term of imprisonment applicable under section 195 of the Judicature (Parish Courts) Act.

EXPLANATION:

Clause 28 sets a general fine of one million dollars for offences in the Bill where a fine is not specified. Also, it allows for the Minister to amend any of the monetary penalties stated in this Bill through an affirmative resolution. This clause also clarifies that none of the offences stipulated under this Bill will be subject to a period of imprisonment. Should an individual be unable to pay the fine, a Parish Court Judge retains the discretion to compel the offender to provide community service instead.

JUSTIFICATION

This clause demonstrates the commitment to enforcing the provisions of the Bill by the imposition of a fine for offences to which no specific penalty was ascribed. Importantly, these offences do not attract a period of imprisonment as they are not intended to deprive persons of their liberty and in fact the Bill seeks to institute alternative

measures such as community service in the event the fine is not paid by the convicted individual.

PART VII—GENERAL

CLAUSE 30—SECRECY AND CONFIDENTIALITY

(1) Every person –

- (a) who has, or who has had, an official duty under this Act; or
- (b) who is, or has been, employed in the administration of this Act; or
- (c) to whom information is communicated under this Act,

shall treat as secret and confidential all information communicated under this Act, and shall not disclose such information except as provided under this Act or as necessary for the due administration of this Act.

(2) A person commits an offence if the person breaches a duty of secrecy or confidentiality imposed by this Act, and shall be liable on conviction therefor before a Parish Court, to a fine not exceeding three million dollars.

EXPLANATION:

Clause 30 binds all persons with official duty, employed or to whom identity information is communicated, under this Bill, to secrecy. A person who breaches the secrecy provision will be liable to a fine of up to three million dollars as determined by a Parish Court judge.

JUSTIFICATION

This clause underscores the importance ascribed to the maintenance of secrecy and confidentiality when dealing with the identity information of enrolled individuals by binding the persons indicated above, to secrecy and an obligation to confidentiality in treating with identity information, during and after their affiliation with the Authority. This clause seeks to provide a guarantee to enrolled individuals that their identity information will be treated with the greatest level of secrecy and confidentiality on pain of fines and imprisonment.

CLAUSE 32–IMPOSITION OF FEES

Except as provided in section 10(6), the Authority may impose fees for services provided by the Authority, and the amount of those fees shall be prescribed.

EXPLANATION:

Clause 32 allows for the Authority to determine and require the payment of fees for the services they provide.

JUSTIFICATION

One of the Authority's functions is to implement cost recovery measures. This clause seeks to enable the institution and charging of fees for services provided.

CLAUSE 36–TRANSITIONAL

- (1) The assets, rights and liabilities of the former department that were, immediately before the appointed day, vested in the former department hereby vest in the Authority.
- (2) Any proceeding or remedy that immediately before the appointed day might have been brought or continued by, or available against, the former department may be brought or continued and are available, by or against the Authority.
- (3) All records and data of the former department pass to the Authority, with effect from the appointed day.
- (4) Where any reference is made to the former department in any law, agreement, instrument or other document, unless the context otherwise requires, such reference shall be read and construed, as of the appointed day, as if it were a reference to the Office.
- (5) Subject to the provisions of this section, on the appointed day, all persons holding permanent appointment to offices under the former department shall be transferred on secondment to the service of the Office for a period of six months or such longer period as the Board may, in special circumstances, approve.

- (6) During the period of a person's secondment to the Office pursuant to subsection (5), the person shall be employed on such terms and conditions as may be approved by the Board, being terms and conditions not less favourable than those enjoyed by that person in that person's office under the former department immediately before the appointed day.
- (7) A person in the public service who is transferred on secondment pursuant to subsection (5) may be deployed in the public service on or before the expiration of the period referred to in subsection (5) on terms and conditions that are not less favourable than those enjoyed by that person in the person's office under the former department immediately before the appointed day.
- (8) All persons, who immediately before the appointed day, held offices under the former department under a contractual arrangement, shall, from that date be deemed to continue to hold under the Office, the like or similar offices on the same or no less favourable terms as they held those like or similar offices under the former department.
- (9) A person who has served in an office under the former department and who would have, but for this Act, been eligible to receive a pension thereunder, shall be paid a pension, where such service, together with the person's service under this Act, amount in the aggregate to not less than seven years.
- (10) The Authority may, where it is satisfied that it is equitable to do so, make regulations to be given retrospective effect for the purpose of conferring a benefit or removing a disability attaching to any person who may have been entitled to a pension in the circumstances provided for in subsection (9).
- (11) In this section –
- “appointed day” means the date appointed under section 1 for the purpose of bringing this section into operation;
- “the former department” means the General Register Office appointed under section 4 of the Registration (Births and Deaths) Act;
- “the Office” means the Office of the Registrar-General established under section 5(2).

EXPLANATION:

Clause 36 sets out provisions to allow for the effective transition from the General Register Office (hereinafter referred to as “the Office”) to the National Identification Authority. This

clause vests within the Authority all the assets, rights, liabilities, any proceedings or remedy and all records and data held by the former department and outlines the conditions concerning the transfer of all persons holding permanent appointments within said department. It also outlines several considerations regarding persons eligible for pensions under the former department.

JUSTIFICATION

The Registrar-General's Department which is currently the Office which is responsible for Civil registration, is to be subsumed within the Authority. The Authority will now take responsibility for civil registration matters via a dedicated office created under the Bill. This clause speaks to the practical considerations such a transition will necessitate as it relates to, among other areas, assets, legal matters and staff of the Registrar-General's Department. As indicated above, the National Identification Databases relating to identity information are intended to be distinct and separate from the Civil Registration Databases.

FIRST SCHEDULE

The First Schedule of the Bill sets out provisions that will have the effect of the constitution of the Authority.

SECOND SCHEDULE

The Second Schedule of the Bill sets out provisions that will have the effect of the constitution of the Appeal Tribunal.

THIRD SCHEDULE

The Third Schedule of the Bill sets out provisions that will have the effect of the constitution of the National Database Inspectorate.

FOURTH SCHEDULE

The Fourth Schedule of the Bill outlines the list of amendments to existing laws and related regulations to provide for the acceptance and use of the national identification card and national identification number.

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