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OBJECTS AND REASONS

This Bill would

- (a) regulate the collection, keeping, processing, use and dissemination of personal data;
- (b) protect the privacy of individuals in relation to their personal data; and
- (c) provide for related matters.

Arrangement of Sections

PART I
PRELIMINARY

1. Short title
2. Interpretation
3. Application of Act

PART II

DATA PROTECTION PRINCIPLES

4. Data protection principles
5. Interpretation of the first data protection principle
6. Conditions for processing personal data in accordance with the first data protection principle
7. Conditions for processing sensitive personal data in accordance with the first data protection principle
8. Application of the second data protection principle
9. Application of the fourth data protection principle
10. Application of the sixth data protection principle
11. Application of the seventh data protection principle

12. Application of the eighth data protection principle

PART III

DATA PROTECTION COMMISSIONER

13. Establishment of the office of Commissioner
14. Functions of Commissioner

PART IV

RIGHTS OF DATA SUBJECTS AND OTHERS

15. Right of access to personal data
16. [Provisions supplementary to section 15
17. Application of section 15 where data controller is a credit reference agency
18. [Unstructured personal data held by public authorities
19. Right to prevent processing likely to cause damage or distress
20. Right to prevent processing for purposes of direct marketing
21. Rights in relation to automated decision-taking
22. Compensation for failure to comply with certain requirements
23. Rectification, blocking, erasure and destruction

PART V

REGISTRATION OF DATA CONTROLLERS

- 24. Register of Data Controllers
- 25. Data controllers must be registered
- 26. Notification of changes

PART VI

EXEMPTIONS

- 27. References to subject information and non-disclosure provisions
- 28. National Security
- 29. Crime and taxation
- 30. Health, education and social work
- 31. Regulatory activity
- 32. Journalism, literature and art
- 33. Research, history and statistics
- 34. Manual data held by public authorities
- 35. Information available to the public by or under enactment
- 36. Disclosures required by law or made in connection with legal proceedings etc.

- 37. Parliamentary privilege
- 38. Legal professional privilege
- 39. Domestic purposes
- 40. Confidential references given by the data controller
- 41. Armed forces
- 42. Judicial appointments and honours
- 43. Appointments to public service etc.
- 44. Corporate finance
- 45. Negotiations with data subject
- 46. Examinations
- 47. Powers to make further exemptions by Order

PART VII
ENFORCEMENT

- 48. Enforcement notice
- 49. Cancellation of enforcement notice
- 50. Request for assessment
- 51. Information notice
- 52. Special information notice

- 53. Determination by Commissioner as to the purposes of journalism or artistic or literary purposes
- 54. Restriction on enforcement in case of processing for the purposes of journalism or for artistic or literary purposes
- 55. Failure to comply with notice
- 56. Service of notice by Commissioner
- 57. Warrants
- 58. Execution of warrants
- 59. Matters exempt from inspection and seizure
- 60. Return of warrants
- 61. Obstruction of execution of a warrant

PART VIII

DATA PROTECTION TRIBUNAL

- 62. Establishment of the Data Protection Tribunal
- 63. Right of appeal
- 64. Determination of appeals

PART IX

MISCELLANEOUS

- 65. Unlawful obtaining etc. of personal data

- 66. Disclosure of information
- 67. Liability of directors, etc.
- 68. Act binds Crown
- 69. Regulations
- 70. Commencement

SCHEDULE

Data Protection Tribunal

BARBADOS

A Bill entitled

An Act to

- (a) regulate the collection, keeping, processing, use and dissemination of personal data;
- (b) protect the privacy of individuals in relation to their personal data; and
- (c) provide for related matters.

ENACTED by the Parliament of Barbados as follows:

PART I
PRELIMINARY

Short title

1. This Act may be cited as the *Data Protection Act, 2018*.

Interpretation

2. In this Act

“accessible public record” means any record that is kept by a public authority and to which members of the public are given access;

“accessible record” means

- (a) a health record;
- (b) an educational record; or
- (c) an accessible public record;

“Commissioner” means the Data Protection Commissioner appointed pursuant to section 13;

“credit reference agency” means a person who carries on a business comprising the furnishing of persons with information relevant to the financial standing of individuals, being information collected by the agency for that purpose;

“data” means information that

- (a) is being processed by means of equipment operating automatically in response to instructions given for that purpose;
- (b) is recorded with the intention that it should be processed by means of such equipment;
- (c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system;

- (d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record; or
- (e) does not fall within paragraph (a), (b), (c) or (d) but is recorded information held by a public authority;

“data controller” means

- (a) a person who alone, jointly or in common with others determines the purposes for which, and the manner in which, any personal data are or are to be processed; or
- (b) where personal data are processed only for the purpose for which the data are required by or under an enactment to be processed, the person on whom the obligation to process the data is imposed by or under the enactment.

“data processor” means any person, other than an employee of a data controller, who processes personal data on behalf of the data controller;

“data protection principles” means the principles set out in section 4(2);

“data subject” means an individual who is the subject of personal data;

“health care professional” includes a person who is registered under

- (a) the *Medical Professions Act* (Act 2011-1);
- (b) the *Dental Registration Act*, Cap. 367;
- (c) the *Nurses Act*, Cap. 372 or enrolled under that Act;
- (d) the *Pharmacy Act*, Cap. 372D; and
- (e) the *Paramedical Professions Act*, Cap. 372C;

“health record” means any record which

- (a) consists of information relating to the physical or mental condition of an individual; and

(b) has been made by or on behalf of a health care professional in connection with the care of the individual;

“personal data” means data which relate to an individual who can be identified

(a) from that data; or

(b) from that data together with other information which is in the possession of or is likely to come into the possession of the data controller;

“process” in relation to information or data, means to obtain, record or hold the information or data or carry out any operation or set of operations on the information or data, including

(a) organization, adaptation or alteration of the information or data;

(b) retrieval, consultation or use of the information or data;

(c) disclosure of the information or data by transmission, dissemination or otherwise making available; or

(d) alignment, combination, blocking, erasure or destruction of the information or data;

“public authority” means a public office or a ministry, department, agency, unit or other authority of Government including a statutory body;

“Register” means the Register of Data Controllers required to be kept pursuant to section 24;

“relevant filing system” means any set of information relating to individuals to the extent that although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the set is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that the specific information relating to a particular individual is readily accessible;

“sensitive personal data” means personal data consisting of information on a data subject’s

- (a) racial or ethnic origin;
- (b) political opinions;
- (c) religious beliefs or other beliefs of a similar nature;
- (d) membership of a political body;
- (e) physical or mental health or condition;
- (f) sexual orientation or sexual life;
- (g) financial record [or position];
- (h) criminal record; or
- (i) proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.

Application of Act

3.(1) Except as otherwise provided herein, this Act applies to a data controller in respect of any data where

- (a) the data controller is established in Barbados and the data are processed in the context of the business of that establishment; or
 - (b) the data controller is not established in Barbados but uses equipment in Barbados for processing data otherwise than for the purpose of transit through Barbados.
- (2) A data controller falling within subsection (1)(b) shall nominate for the purposes of this Act a representative established in Barbados.
- (3) For the purposes of subsections (1) and (2), each of the following is to be treated as established in Barbados:
- (a) an individual who is ordinarily resident in Barbados;

- (b) a body, association or other entity incorporated, organised, registered or otherwise formed under the laws of Barbados; and
- (c) any person who does not fall within paragraph (a) or (b) but maintains in Barbados an office, branch or agency through which he carries on any activity related to data processing.

PART II

DATA PROTECTION PRINCIPLES

Data protection principles

4.(1) A data controller shall, in relation to all personal data he processes, comply with the data protection principles set out in subsection (2).

(2) The data protection principles referred to in subsection (1) are as follows:

- (a) personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions set out in
 - (i) section 6; and
 - (ii) in the case of sensitive personal data, section 7,is met (hereinafter referred to as the first data protection principle);
- (b) personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes (hereinafter referred to as the second data protection principle);
- (c) personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed (hereinafter referred to as the third data protection principle);

- (d) personal data shall be accurate and, where necessary, kept up-to-date (hereinafter referred to as the fourth data protection principle);
 - (e) personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes (hereinafter referred to as the fifth data protection principle);
 - (f) personal data shall be processed in accordance with the rights of data subjects under this Act (hereinafter referred to as the sixth data protection principle);
 - (g) appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to personal data (hereinafter referred to as the seventh data protection principle); and
 - (h) personal data shall not be transferred to a country or territory outside Barbados unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of their personal data (hereinafter referred to as the eighth data protection principle).
- (3) A person who fails to comply with the data protection principles commits an offence and is liable on summary conviction to a fine of \$100 000 or to imprisonment for [2] years or to both.

Interpretation of the first data protection principle

5.(1) In determining for the purposes of the first data protection principle whether personal data are processed fairly, regard is to be had to the method by which they are obtained, including in particular whether any person from whom they are obtained is deceived or misled as to the purpose or purposes for which they are to be processed.

- (2) Subject to subsection (3), for the purposes of the first data protection principle, data are to be treated as having been obtained fairly if they consist of information obtained from a person who is
- (a) authorised by or under any enactment to supply them; or
 - (b) required to supply them by or under any enactment or by any convention or other instrument imposing an international obligation on Barbados.
- (3) For the purposes of the first data protection principle personal data are not to be treated as processed fairly unless
- (a) in the case of data obtained from the data subject, the data controller ensures so far as practicable that the data subject has, is provided with, or has readily available to him, the following information:
 - (i) the identity of the data controller;
 - (ii) where a data controller has nominated a representative for the purposes of this Act, the identity of that representative;
 - (iii) the purpose or purposes for which the data are intended to be processed; and
 - (iv) any further information which is necessary, having regard to the specific circumstances in which the data are or are to be processed, to enable processing in respect of the data subject to be fair; and
 - (b) in any other case, the data controller ensures so far as practicable that, before the relevant time or as soon as practicable after that time, the data subject has, is provided with, or has readily available to him, the information specified in sub-paragraphs (i) to (iv) of paragraph (a).
- (4) For the purposes of subsection (3)(b), “the relevant time” means
- (a) the time when the data controller first processes the data; or

- (b) in a case where at that time disclosure to a third party within a reasonable period is envisaged,
 - (i) if the data are in fact disclosed to such a person within that period, the time when the data are first disclosed;
 - (ii) if within that period the data controller becomes, or ought to become aware that the data are unlikely to be disclosed to such a person within that period, the time when the data controller does become, or ought to become, so aware; or
 - (iii) in any other case, the end of that period.

Conditions for processing personal data in accordance with the first data protection principle

6.(1) The conditions referred to in sub-paragraph (i) of section 4(2) (a) are as follows:

- (a) the data subject gives his written consent to the processing; or
- (b) the processing is necessary
 - (i) for the performance of a contract to which the data subject is a party;
 - (ii) for the taking of steps at the request of the data subject with a view to entering into a contract;
 - (iii) for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract;
 - (iv) in order to protect the vital interests of the data subject;
 - (v) for the administration of justice;
 - (vi) for the exercise of any functions of either House of Parliament;

- (vii) for the exercise of any functions conferred on any person by or under any enactment;
- (viii) [for the exercise of any functions of a public authority];
- (ix) for the purposes of legitimate interests pursued by the data controller or by the third party to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject; or
- (x) for the exercise of any other functions of a public nature exercised in the public interest by any person.

(2) The Minister may by Order specify particular circumstances in which [subsection (1)] is or is not to be taken to be satisfied.

Conditions for processing sensitive personal data in accordance with the first data protection principle

7.(1) The conditions referred to in sub-paragraph (ii) of section 4(2)

(a) are as follows:

- (a) the data subject gives his written consent to the processing;
- (b) the processing is necessary for the purposes of exercising or performing any right or obligation which is conferred or imposed by law on the data controller in connection with employment;
- (c) the processing is necessary in order to protect the vital interests of the data subject or another person, in a case where
 - (i) consent cannot be given by or on behalf of the data subject; or
 - (ii) the data controller cannot reasonably be expected to obtain the consent of the data subject;

- (d) the processing is necessary in order to protect the vital interests of another person, in a case where consent by or on behalf of the data subject has been unreasonably withheld;
- (e) the processing
 - (i) is carried out in the course of its legitimate activities by any body or association which
 - (A) is not established or conducted for profit; and
 - (B) exists for political, philosophical, religious or trade union purposes;
 - (ii) is carried out with appropriate safeguards for the rights and freedoms of data subjects;
 - (iii) relates only to individuals who either are members of the body or association or have regular contact with it in connection with its purposes; and
 - (iv) does not involve disclosure of the personal data to a third party without the consent of the data subject;
- (f) the information contained in the personal data has been made public as a result of steps deliberately taken by the data subject;
- (g) the processing is necessary
 - (i) for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings);
 - (ii) for the purpose of obtaining legal advice; or
 - (iii) otherwise for the purposes of establishing, exercising or defending legal rights;
- (h) the processing is necessary for the administration of justice;
- (i) the processing is necessary for the exercise of any functions of either House of Parliament;

- (j) the processing is necessary for the exercise of any functions conferred on any person by or under an enactment;
 - (k) the processing is necessary for the exercise of any functions of the Crown, a Minister of the Crown or a government department;
 - (l) the processing is necessary for medical purposes and is undertaken by
 - (i) a health care professional; or
 - (ii) a person who in the circumstances owes a duty of confidentiality which is equivalent to that which would arise if that person were a health care professional;
 - (m) the processing
 - (i) is of sensitive personal data consisting of information as to racial or ethnic origin;
 - (ii) is necessary for the purpose of identifying or keeping under review the existence or absence of equality of opportunity or treatment between persons of different racial or ethnic origins, with a view to enabling such equality to be promoted or maintained; and
 - (iii) is carried out with appropriate safeguards for the rights and freedoms of data subjects;
 - (n) the processing is carried out in any other circumstances prescribed by the Minister by Order for the purpose of this section.
- (2) In subsection (1)(l) “medical purposes” includes the purposes of preventative medicine, medical diagnosis, medical research, the provision of care and treatment and the management of healthcare services.

Application of the second data protection principle

8.(1) For the purpose of applying the second data protection principle, the purpose for which personal data are obtained may be specified

- (a) in any notice given for the purposes of section 5(3)(a) by the data controller to the data subject; or
- (b) in a notification given to the Commissioner under Part IV.

(2) In determining whether any disclosure of personal data is compatible with the purpose for which the data were obtained, regard is to be had to the purpose for which the personal data are intended to be processed by any person to whom they are disclosed.

Application of the fourth data protection principle

9. The fourth data protection principle is not to be regarded as being contravened by reason of any inaccuracy in personal data which accurately record information obtained by the data controller from the data subject or a third party in a case where

- (a) having regard to the purpose for which the data were obtained and further processed, the data controller has taken reasonable steps to ensure the accuracy of the data; and
- (b) the data subject has notified the data controller of the data subject's view that the data are inaccurate and the data indicate that fact.

Application of the sixth data protection principle

10. A person is to be regarded as contravening the sixth data protection principle only where he contravenes

- (a) section 15 by failing to supply information in accordance with that section;

- (b) section 19 by failing to comply with a notice given under subsection (1) of that section to the extent that the notice is justified or by failing to give a notice under subsection (3) of that section;
- (c) section 20 by failing to comply with a notice given under subsection (1) of that section; or
- (d) section 21 by failing to comply with a notice given under subsection (1) or (3) of that section or by failing to give a notification under subsection (2) of that section or a notice under subsection (4) of that section.

Application of the seventh data protection principle

11.(1) For the purposes of the application of the seventh data protection principle and having regard to the state of technological development and the cost of implementing any measures, the measures must ensure a level of security appropriate to

- (a) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage as are mentioned in the seventh data protection principle; and
 - (b) the nature of the data to be protected.
- (2) The data controller must take reasonable steps to ensure the reliability of any employees of his who have access to the personal data.
- (3) Where processing of personal data is carried out by a data processor on behalf of a data controller, the data controller must in order to comply with the seventh data protection principle
- (a) choose a data processor providing sufficient guarantees in respect of the technical and organisational security measures governing the processing to be carried out; and
 - (b) take reasonable steps to ensure compliance with those measures.

(4) Where processing of personal data is carried out by a data processor on behalf of a data controller, the data controller is not to be regarded as complying with the seventh data protection principle unless

- (a) the processing is carried out under a contract
 - (i) which is made or evidenced in writing; and
 - (ii) under which the data processor is to act only on instructions from the data controller; and
- (b) the contract requires the data processor to comply with obligations equivalent to those imposed on a data controller by the seventh data protection principle.

Application of the eighth data protection principle

12.(1) For the purposes of the application of the eighth data protection principle, an adequate level of protection is one which is adequate in all the circumstances of the case, having regard in particular to

- (a) the nature of the personal data;
- (b) the country or territory of origin of the information contained in the data;
- (c) the country or territory of final destination of that information;
- (d) the purposes for which and period during which the data are intended to be processed;
- (e) the law in force in the country or territory in question;
- (f) the international obligations of that country or territory;
- (g) any relevant codes of conduct or other rules which are enforceable in that country or territory whether generally or by arrangement in particular cases; and
- (h) any security measures taken in respect of the data in that country or territory.

- (2) The eighth data protection principle shall not apply where
- (a) the data subject has given his consent to the transfer;
 - (b) the transfer is necessary for
 - (i) the performance of a contract between the data subject and the data controller;
 - (ii) the taking of steps at the request of the data subject with a view to his entering into a contract with the data controller;
 - (iii) the conclusion of a contract between the data controller and a person other than the data subject which
 - (A) is entered into at the request of the data subject; or
 - (B) is in the interest of the data subject;
 - (iv) the performance of a contract described in sub-paragraph (iii);
 - (v) reasons of substantial public interest;
 - (vi) the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings);
 - (vii) the purpose of obtaining legal advice;
 - (viii) the purposes of establishing, exercising or defending legal rights; or
 - (ix) the protection of the vital interests of the data subject;
 - (c) the transfer is part of the personal data on a public register and any conditions subject to which the register is open to inspection are complied with by any person to whom the data are or may be disclosed after the transfer;
 - (d) the transfer is made on terms which are of a kind approved by the Commissioner as ensuring adequate safeguards for the rights and freedoms of data subjects; or

- (e) the transfer has been authorised by the Commissioner as being made in such a manner as to ensure adequate safeguards for the rights and freedoms of data subjects.
- (3) The Minister may by Order specify
 - (a) circumstances in which a transfer is to be taken for the purposes of subsection (1) to be necessary for reasons of substantial public interest; and
 - (b) circumstances in which a transfer which is not required by or under an enactment is not to be taken for the purpose of subsection (1) to be necessary for reasons of substantial public interest.

PART III

DATA PROTECTION COMMISSIONER

Establishment of the office of Commissioner

13. There shall be a public officer, to be called the Data Protection Commissioner, who shall be responsible for the general administration of this Act.

Functions of Commissioner

14. Without prejudice to the generality of subsection (1), the functions of the Commissioner are to

- (a) promote, by education and publicity, an understanding and acceptance of the data protection principles and of the objects of those principles;
- (b) conduct, at his own discretion or where requested to do so by any person, an audit of the personal data processed by the person, for the purpose of ascertaining whether or not the data are processed in accordance with the data protection principles;

- (c) monitor the processing of personal data and, in particular, sensitive personal data, and any other matter affecting the privacy of persons in respect of their personal data, and
 - (i) report to the Minister on the results of that monitoring; and
 - (ii) where appropriate, make recommendations on the need for, or desirability of, taking legislative, administrative or other action to give protection or better protection, to the privacy of persons in respect of their personal data;
- (d) examine any proposed legislation or proposed policy of the Government that
 - (i) the Commissioner considers may affect the privacy of persons in respect of their personal data; or
 - (ii) provides for the collection of personal data by any public authority or the disclosure of personal data by one public authority to another public authority,and report to the Minister the results of that examination;
- (e) receive and invite representations from members of the public on any matter affecting the privacy of persons in respect of their personal data;
- (f) consult and cooperate with other persons concerned with the privacy of persons in respect of their personal data;
- (g) make suggestions to any person in relation to any matter that concerns the need for, or the desirability of, action by that person in the interest of the privacy of persons in respect of their personal data;
- (h) provide, at his own discretion or where requested to do so, advice to any Minister or [agency] on any matter relevant to the operation of this Act;

- (i) inquire generally into any matter, including any law, practice or procedure, whether governmental or non-governmental, or any technical development, where it appears to the Commissioner that the privacy of persons in respect of their personal data is being or may be infringed thereby;
- (j) undertake research into, and monitor developments in, data processing and computer technology to ensure that any adverse effects of such developments on the privacy of persons in respect of their personal data are minimised, and report to the Minister the results of such research and monitoring;
- (k) report to the Minister on the desirability of the acceptance, by Barbados, of any international instrument relating to the privacy of persons in respect of their personal data;
- (l) prepare appropriate codes of practice for the guidance of persons processing personal data;
- (m) investigate complaints from persons concerning abuses in the processing of personal data;
- (n) do anything incidental or conducive to the performance of any of the preceding functions; and
- (o) exercise such other functions as are conferred or imposed on the Commissioner by or under this Act or any other enactment.

PART IV

RIGHTS OF DATA SUBJECTS AND OTHERS

Right of access to personal data

15.(1) Subject to subsections (2) to (9) and sections 16, 17 and 18, a person has the right

- (a) to be informed by a data controller whether personal data of which that person is the data subject are being processed by or on behalf of the data controller;
- (b) where personal data of which that person is the data subject are being processed by or on behalf of the data controller, to request from, and to be given by, the data controller, a description of
 - (i) the personal data of which that person is the data subject;
 - (ii) the purposes for which the personal data are being or are to be processed; and
 - (iii) the recipients or classes of recipients to whom the personal data are or may be disclosed;
- (c) to have communicated to him in an intelligible form
 - (i) information constituting any personal data of which that person is the data subject; and
 - (ii) any information available to the data controller as to the source of that data; and
- (d) where the processing by automatic means of personal data of which that person is the data subject for the purpose of evaluating matters relating to him has constituted, or is likely to constitute, the sole basis for any decision significantly affecting him, to be

informed by the data controller of the logic involved in the decision-taking.

(2) A data controller is not obliged to supply any information under subsection (1) unless he receives

- (a) a written request; and
- (b) such fee as the Minister may prescribe.

(3) A data controller is not obliged to comply with a request under subsection (1) unless he is supplied with such information as he may reasonably require in order to satisfy himself as to the identity of the data subject making the request and to locate the information that the data subject seeks.

(4) Where a data controller cannot comply with a request under subsection (1) without disclosing information relating to a third party who is an individual who can be identified from that information, the data controller is not obliged to comply with the request unless

- (a) the third party consents to the disclosure of the information to the data subject making the request; or
- (b) it is reasonable in all the circumstances to comply with the request without the consent of the third party.

(5) [In subsection (4), the reference to information relating to a third party includes a reference to information identifying that party as the source of the information sought by the request; and that subsection is not to be construed as excusing a data controller from communicating so much of the information sought by the request as can be communicated without disclosing the identity of the third party concerned whether by omission of names or other identifying particulars or otherwise.]

(6) In determining for the purposes of subsection (4)(b) whether it is reasonable in all the circumstances to comply with the request without the consent of the third party, regard shall be had, in particular to

- (a) any duty of confidentiality owed to the third party;

- (b) any steps taken by the data controller with a view to seeking the consent of the third party;
 - (c) whether the third party is capable of consent; and
 - (d) any express refusal of consent by the third party.
- (7) Where a data controller refuses to comply with a request under subsection (1), he shall give written reasons for his refusal.
- (8) A person aggrieved by the decision of the data controller may appeal to the Commissioner.
- (9) Subject to subsection (4), a data controller shall comply with a request under this section within 21 days of the date of receipt of the request.
- (10) A person need not comply with any request or order under this section to the extent that compliance would, by revealing evidence of the commission of any offence, other than an offence under this Act or an offence of perjury, expose him to proceedings for that offence.
- (11) Information disclosed by any person in compliance with any request or order under this section shall not be admissible against him in proceedings for an offence under this Act.

[Provisions supplementary to section 15

16.(1) The obligation imposed by sub-paragraph (i) of section 15(1)(c) must be complied with by supplying the data subject with a copy of the information in a permanent form unless

- (a) the supply of such a copy is not possible or would involve disproportionate effort; or
- (b) the data subject agrees otherwise,

and where any of the information referred to in sub-paragraph (i) of section 15(1)(c) is expressed in terms which are not intelligible without explanation, the copy must be accompanied by an explanation of those terms.

- (2) Where a data controller has previously complied with a request made under section 15 by a person, the data controller is not obliged to comply with a subsequent identical or similar request under that section by that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.
- (3) In determining for the purposes of subsection (2) whether requests under section 15 are made at reasonable intervals, regard shall be had to the nature of the data, the purpose for which the data are processed and the frequency with which the data are altered.
- (4) Section 15(1)(d) is not to be regarded as requiring the provision of information as to the logic involved in any decision-taking if, and to the extent that, the information constitutes a trade secret.
- (5) The information to be supplied pursuant to a request under section 15 must be supplied by reference to the data in question at the time when the request is received, except that it may take account of any amendment or deletion made between that time and the time when the information is supplied, being an amendment or deletion that would have been made regardless of the receipt of the request.
- (6) For the purposes of section 15(4) and (5) a third party can be identified from the information being disclosed if he can be identified from that information, or from that and any other information which, in the reasonable belief of the data controller, is likely to be in, or to come into, the possession of the data subject making the request.]

Application of section 15 where data controller is a credit reference agency

17.(1) Where the data controller is a credit reference agency, section 15 has effect subject to this section.

(2) A person making a request under section 15 may limit his request to personal data relevant to his financial standing, and shall be taken to have so limited his request unless the request shows a contrary intention.

(3) Where the data controller receives a request under section 15 from a person who is the data subject in respect of personal data being processed by or on behalf of the data controller, the obligation to supply information under that section includes an obligation to give the person a statement, in such a form as may be prescribed, of the person's rights under this Act.

[Unstructured personal data held by public authorities

18.(1) A public authority is not obliged to comply with section 15(1) in relation to unstructured personal data unless the request under that section contains a description of the data.

(2) Even where the data are described in the request, a public authority is not obliged to comply with section 15(1) in relation to unstructured personal data where the authority estimates that the cost of complying with the request so far as relating to the data would exceed the prescribed amount.

(3) Subsection (2) does not exempt a public authority from its obligation to comply with section 15(1)(a) in relation to unstructured personal data unless the estimated cost of complying with that paragraph alone in relation to those data would exceed the prescribed amount.

(4) In this section "unstructured personal data" means any personal data falling within paragraph (e) of the definition of "data" in section 2, other than information which is recorded as part of, or with the intention that it should form part of, any set of information relating to individuals to the extent that the set is structured by reference to individuals or by reference to criteria relating to individuals.]

Right to prevent processing likely to cause damage or distress

19.(1) Subject to subsection (2), a data subject is entitled, by a written notice, to require the data controller at the end of a 21 day period to cease, or not to begin,

processing, or processing for a specified purpose or in a specified manner, any personal data in respect of which he is the data subject, on the ground that

- (a) the processing of the data or the data controller's processing for that purpose or in that manner is causing or is likely to cause substantial damage or distress to the data subject or another; and
 - (b) the damage or distress is or would be unwarranted.
- (2) Subsection (1) does not apply
- (a) in a case where any of the conditions in paragraph(a) or (b)(i), (ii), (iii) or (iv) of section 6(1) is satisfied; or
 - (b) in such other cases as the Minister may prescribe by Order.
- (3) The data controller shall, within 21 days of receiving a notice under subsection (1), give the data subject written notice stating
- (a) that he has complied or intends to comply with the data subject's notice;
 - (b) the reasons for his refusal to comply with the data subject's notice; or
 - (c) the reasons for complying with part of the data subject's notice and the extent of that compliance.
- (4) Where a court is satisfied, on the application of a data subject who has given notice under subsection (1), that the data controller in question has failed to comply with the notice, the court may order the data controller to take such steps for complying with the notice as the court sees fit.

Right to prevent processing for purposes of direct marketing

20.(1) A person is entitled at any time, by a written notice to a data controller, to require the data controller at the end of a 21 day period to cease processing for the purposes of direct marketing, personal data in respect of which he is the data subject.

- (2) Where a court is satisfied, on the application of a data subject who has given notice under subsection (1), that the data controller has failed to comply

with the notice, the court may order the data controller to take such steps for complying with the notice as the court sees fit.

(3) For the purposes of this section “direct marketing” means the communication, by whatever means, of any advertising or marketing material which is directed to particular individuals.

Rights in relation to automated decision-taking

21.(1) A person is entitled at any time, by a written notice to a data controller, to require the data controller to ensure that no decision taken by or on behalf of the data controller, which significantly affects the person, is based solely on the processing, by automatic means, of sensitive personal data in respect of which he is the data subject, for the purpose of evaluating matters relating to the him.

(2) A data controller shall give written notice to a data subject of any decision taken by or on behalf of the data controller that is based solely on the processing, by automatic means, of sensitive personal data for the purpose of evaluating any matters relating to the data subject.

(3) A data subject is entitled, within 21 days of receiving notification from the data controller under subsection (2), by a written notice to require the data controller to reconsider the decision or to take a new decision which is not based solely on the type of processing mentioned in subsection (1).

(4) The data controller shall, within 21 days of receiving a notice under subsection (3), give the data subject a written notice specifying the steps that the data controller intends to take to comply with the data subject’s notice.

(5) A notice under subsection (1) does not have effect in relation to an exempt decision; and nothing in subsection (2) applies to an exempt decision.

(6) For the purposes of this section “exempt decision” means any decision

- (a) in respect of which the conditions in subsections (7) and (8) are met;
- or

- (b) which is taken in such other circumstances as the Minister may prescribe by Order.
- (7) The condition in this subsection is that the decision is
- (a) taken in the course of steps taken
 - (i) for the purpose of considering whether to enter into a contract with the data subject;
 - (ii) with a view to entering into such a contract; or
 - (iii) in the course of performing such a contract; or
 - (b) authorised or required by or under any enactment.
- (8) The condition in this subsection is that
- (a) the effect of the decision is to grant a request of the data subject; or
 - (b) steps have been taken to safeguard the legitimate interests of the data subject.
- (9) Where a court is satisfied, on the application of a data subject, that a data controller taking a decision in respect of the data subject has failed to comply with subsection (1) or subsection (2), the court may order the data controller to reconsider the decision or to take a new decision which is not based solely on the type of processing mentioned in subsection (1).

Compensation for failure to comply with certain requirements

22.(1) An individual who suffers damage by reason of any contravention by a data controller of any of the requirements of this Act is entitled to compensation from the data controller for the damage.

(2) An individual who suffers distress by reason of any contravention by a data controller of any of the requirements of this Act is entitled to compensation from the data controller for the distress where

- (a) the individual also suffers damage by reason of the contravention; or

- (b) the contravention relates to the processing of personal data for
 - (i) the purposes of journalism;
 - (ii) artistic purposes; or
 - (iii) literary purposes.
- (3) In proceedings brought against a person by virtue of this section it is a defence to prove that the person had taken such care as in all the circumstances was reasonably required to comply with the requirement concerned.

Rectification, blocking, erasure and destruction

23.(1) Where a court is satisfied on the application of a data subject that personal data of which the applicant is the subject are inaccurate, the court may order the data controller to rectify, block, erase or destroy the data and any other personal data in respect of which he is the data controller and which contain an expression of opinion which appears to the court to be based on the inaccurate data.

(2) Subsection (1) applies whether or not the data accurately record information received or obtained by the data controller from the data subject or a third party but where the data accurately record such information and

- (a) the requirements mentioned in section 9 have been complied with, the court may, instead of making an order under subsection (1), make an order requiring the data to be supplemented by such statement of the true facts relating to the matters dealt with by the data as the court may approve; or
- (b) all or any of the requirements mentioned in section 9 have not been complied with, the court may, instead of making an order under subsection (1), make such order as it thinks fit for securing compliance with the requirements with or without a further order requiring the data to be supplemented by such a statement as is mentioned in paragraph (a).

(3) Where the court

- (a) makes an order under subsection (1); or
- (b) is satisfied on the application of a data subject that personal data of which he was the data subject and which have been rectified, blocked, erased or destroyed were inaccurate,

the court may, where it considers it reasonably practicable, order the data controller to notify third parties to whom the data have been disclosed of the rectification, blocking, erasure or destruction.

(4) Where a court is satisfied on the application of a person that

- (a) he has suffered damage by reason of any contravention by a data controller of any of the requirements of this Act in respect of personal data of which he is the data subject, in circumstances entitling him to compensation under section 22; and
- (b) there is a substantial risk of further contravention in respect of those data in such circumstances,

the court may order the rectification, blocking, erasure or destruction of any of those data.

(5) Where the court makes an order under subsection (4) it may, where it considers it reasonably practicable, order the data controller to notify third parties to whom the data have been disclosed of the rectification, blocking, erasure or destruction.

(6) In determining whether it is reasonably practicable to require such notification as is mentioned in subsection (3) or (5) the court shall have regard, in particular, to the number of persons who would have to be notified.

PART V

REGISTRATION OF DATA CONTROLLERS

Register of Data Controllers

24.(1) The Commissioner shall keep a register, to be called the Register of Data Controllers, in which he shall cause to be entered in relation to each data controller registered pursuant to section 25, the following particulars:

- (a) the name and address and other contact information of the data controller;
 - (b) the date of registration;
 - (c) a description of the personal data processed by or on behalf of the data controller and of the categories of data subject to which they relate;
 - (d) a description of the purposes for which the data is processed;
 - (e) a description of any recipients to whom the data controller intends or may wish to disclose the data; and
 - (f) the names, or a description of, any countries or territories outside Barbados to which the data controller directly or indirectly transfers, or intends or may wish directly or indirectly to transfer, the data.
- (2) The Register shall be open to inspection at the office of the Commissioner.
- (3) The Commissioner shall ensure that the Register is kept accurate and up to date.

Data controllers must be registered

25.(1) A person shall not operate as a data controller unless he is registered in the Register of Data Controllers.

(2) A person who desires to operate as a data controller may, upon application to the Commissioner in the prescribed form and payment of the prescribed fee, obtain a certificate from the Commissioner for the purpose.

(3) A person who operates as a data controller without being registered under subsection (1) commits an offence and is liable on summary conviction to a fine of \$10 000 or to a term of imprisonment of [2 months] or to both.

Notification of changes

26.(1) The data controller shall give written notice to the Commissioner of any changes which may affect the particulars entered in the Register in relation to him.

(2) A data controller who contravenes subsection (1) is commits an offence and is liable on summary conviction to a fine of \$1 000 or to imprisonment for a term of 3 months and the Commissioner may remove that data controller from the Register.

(3) On receiving notification of the data controller under subsection (1) the Commissioner shall make such amendments to the Register as are necessary.

PART VI

EXEMPTIONS

References to subject information and non-disclosure provisions

27.(1) In this Part

- (a) “the subject information provisions” means
 - (i) the first data protection principle to the extent to which it requires compliance with section 5(2); and
 - (ii) section 15;

- (b) “the non-disclosure provisions” means the following provisions to the extent to which they are inconsistent with the disclosure in question:
 - (i) the first data protection principle, except to the extent to which it requires compliance with the conditions in sections 6 and 7;
 - (ii) the second, third, fourth and fifth data protection principles; and
 - (iii) sections 19 and 23(1) to (3).

(2) Except as provided for by this Part, the subject information provisions shall have effect notwithstanding any enactment or rule of law prohibiting or restricting the disclosure, or authorising the withholding of information.

National Security

28. [Personal data is exempt from

- (b) Parts II, IV and V; and
- (c) section 52

where the exemption from those provisions is required for the purpose of safeguarding national security.]

Crime and taxation

29.(1) Personal data processed for

- (a) the prevention or detection of crime;
- (b) the apprehension or prosecution of offenders; or
- (c) the assessment or collection of any tax, duty or other imposition of a similar nature,

are exempt from the first data protection principle (except to the extent to which it requires compliance with the conditions in sections 6 and 7) and from section 15 in any case to the extent to which the application of those provisions to the data is likely to prejudice any of the matters mentioned in paragraphs (a) to (c).

- (2) Personal data which
- (a) are processed for the purpose of discharging statutory functions; and
 - (b) consist of information obtained for such a purpose from a person who had it in his possession for any of the purposes mentioned in subsection (1)(a) to (c)

are exempt from the subject information provisions to the same extent as personal data processed for any of the purposes mentioned in subsection (1)(a) to (c).

- (3) Personal data are exempt from the non-disclosure provisions where
- (a) the disclosure is for any of the purposes mentioned in subsection (1)(a) to (c); and
 - (b) the application of those provisions in relation to disclosure is likely to prejudice any of the matters mentioned in subsection (1)(a) to (c).
- (4) Personal data in respect of which the data controller is a public authority and which
- (a) consist of a classification applied to the data subject as a part of a system of risk assessment which is operated by the authority for any of the following purposes:
 - (i) the assessment or collection of any tax, duty or other imposition of a similar nature; or
 - (ii) the prevention or detection of crime or the apprehension or prosecution of offenders, where the offence concerned involves an unlawful claim for payment out of, or an unlawful application of, public funds; and
 - (b) are processed for either of those purposes

are exempt from section 15 to the extent to which the exemption is required in the interests of the operation of the system.

Health, education and social work

30.(1) The Minister may by Order exempt from the subject information provisions, or modify those provisions in relation to, personal data

- (a) consisting of information as to the physical or mental health or condition of a data subject;
- (b) in respect of which the data controller is an educational institution and which consist of information relating to persons who are or have been pupils at the educational institution;
- (c) in respect of which the data controller is a tertiary institution and which consist of information relating to persons who are or have been students at the tertiary institution;
- (d) of such other descriptions as may be specified in the Order, being information processed
 - (i) by public authorities, charities or other entities designated by or under the Order; and
 - (ii) in the course of, or for the purposes of, carrying out social work in relation to the data subject or other individuals.

(2) Notwithstanding subsection (1)(d), Minister shall not confer any exemption or make any modification under subsection (1)(d) except so far as he considers that the application to the data of those provisions (or of those provisions without modification) is likely to prejudice the carrying out of social work.

(3) In subsection (1)

“educational institution” has the meaning assigned to it by section 2 of the *Education Act, Cap. 41*;

“tertiary institution” has the meaning assigned to it by section 2 of the *Education Act*, Cap. 41.

Regulatory activity

31.(1) Personal data processed for the purposes of discharging functions to which this subsection applies are exempt from the subject information provisions to the extent to which the application of those provisions to the data would be likely to prejudice the proper discharge of those functions.

(2) Subsection (1) applies to any relevant function which is designed for the purpose of

- (a) protecting members of the public against
 - (i) financial loss due to dishonesty, malpractice or other seriously improper conduct by, or the unfitness or incompetence of, persons concerned in the provision of banking, insurance, investment or other financial services or in the management of bodies corporate;
 - (ii) financial loss due to the conduct of discharged or undischarged bankrupts; or
 - (iii) dishonesty, malpractice or other seriously improper conduct by, or the unfitness or incompetence of, persons authorised to carry on any profession or other activity;
- (b) protecting charities against misconduct or mismanagement, whether by trustees or other persons in their administration;
- (c) protecting the property of charities from loss or misapplication;
- (d) the recovery of the property of charities;
- (e) securing the health, safety and welfare of persons at work; or

- (f) protecting persons other than persons at work against risk to health or safety arising out of, or in connection with, the actions of persons at work.
- (3) In subsection (2) “relevant function” means
 - (a) any function conferred on any person by or under any enactment;
 - (b) any function of a public authority; or
 - (c) any other function which is of a public nature and is exercised in the public interest.
- (4) Personal data processed for the purpose of discharging any function which is designed for protecting members of the public against
 - (a) maladministration by public authorities;
 - (b) failures in services provided by public authorities; or
 - (c) a failure of a public authority to provide a service which it is a function of the authority to provideare exempt from the subject information provisions in any case to the extent to which the application of those provisions to the data would be likely to prejudice the proper discharge of that function.
- (5) Personal data processed for the purpose of discharging any function which is designed for
 - (a) protecting members of the public against conduct which may adversely affect their interests by persons carrying on a business;
 - (b) regulating agreements or conduct which have as their object or effect the prevention, restriction or distortion of competition in connection with any commercial activity; or
 - (c) regulating conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in a market

are exempt from the subject information provisions to the extent to which the application of those provisions to the data would be likely to prejudice the proper discharge of that function.

Journalism, literature and art

32.(1) Personal data which are processed only for the purposes of journalism or for artistic or literary purposes are exempt from any provision to which this subsection relates where

- (a) the processing is undertaken with a view to the publication by any person of any journalistic, literary or artistic material;
 - (b) the data controller reasonably believes that, having regard in particular to the special importance of the public interest in freedom of expression, publication would be in the public interest; and
 - (c) the data controller reasonably believes that, in all the circumstances, compliance with that provision is incompatible with the purpose of journalism or artistic or literary purposes.
- (2) Subsection (1) relates to the provisions of
- (a) the data protection principles except the seventh data protection principle; and
 - (b) sections 15, 19, 21 and 23(1) to (3).
- (3) In considering for the purposes of subsection (1)(b) whether the belief of a data controller that publication would be in the public interest was or is a reasonable one, regard may be had to his compliance with any code of practice which is relevant to the publication in question and is designated by the Minister by Order for the purposes of this subsection.
- (4) Where at any time (“the relevant time”) in any proceedings against a data controller under section 15, 19(4), 21(9) or 23 or by virtue of section 22, the data

controller claims, or it appears that any personal data to which the proceedings relate are being processed

(a) only for the purposes of journalism or for artistic or literary purposes; and

(b) with a view to the publication by any person of any journalistic, literary or artistic material which, at the time 24 hours immediately before the relevant time, had not previously been published by the data controller,

the proceedings shall be stayed until either of the conditions in subsection (5) is met.

(5) The conditions referred to in subsection (4) are

(a) that a determination of the Commissioner under section 53 with respect to the data in question takes effect; or

(b) in a case where the proceedings were stayed on the making of a claim, that the claim is withdrawn.

(6) For the purposes of this Act “publish”, in relation to journalistic, literary or artistic material, means make available to the public or any section of the public.

Research, history and statistics

33.(1) In this section

“research purposes” includes statistical or historical purposes;

“the relevant conditions”, in relation to processing of personal data, means the conditions that the data

(a) are not processed to support measures or decisions with respect to particular individuals; and

(b) are not processed in such a way that substantial damage or substantial distress is, or is likely to be, caused to any data subject.

- (2) For the purposes of the second data protection principle, the further processing of personal data only for research purposes in compliance with the relevant conditions is not to be regarded as incompatible with the purposes for which they were obtained.
- (3) Personal data which are processed only for research purposes in compliance with the relevant conditions may, notwithstanding the fifth data protection principle, be kept indefinitely.
- (4) Personal data which are processed only for research purposes are exempt from section 15 where
- (a) they are processed in compliance with the relevant conditions; and
 - (b) the results of the research or any resulting statistics are not made available in a form which identifies data subjects.
- (5) For the purposes of subsections (2) to (4) personal data are not to be treated as processed otherwise than for research purposes merely because the data are disclosed
- (a) to any person, for research purposes only;
 - (b) to the data subject or a person acting on his behalf;
 - (c) at the request, or with the consent, of the data subject or a person acting on his behalf; or
 - (d) in circumstances in which the person making the disclosure has reasonable grounds for believing that the disclosure falls within paragraph (a), (b) or (c).

Manual data held by public authorities

34.(1) Personal data which fall within paragraph (e) of the definition of “data” in section 2 are exempt from

- (a) the first, second, third, fifth, seventh and eighth data protection principles;

- (b) the sixth data protection principle except so far as it relates to the rights conferred on data subjects by sections 15 and 23;
 - (c) sections 19 to 21;
 - (d) section 22, except so far as it relates to damage caused by a contravention of section 15 or of the fourth data protection principle and to any distress which is also suffered by reason of that contravention;
 - (e) Part V; and
 - (f) section 65.
- (2) Personal data which fall within paragraph (e) of the definition of “data” in section 2 and relate to appointments or removals, pay, discipline, superannuation or other personnel matters, in relation to service in
- (a) any of the armed forces of the Crown; or
 - (b) any office or employment under the Crown or any public authority,
- are also exempt from the fourth and sixth data protection principles and the remaining provisions of Part IV.

Information available to the public by or under enactment

35. Personal data are exempt from
- (a) the subject information provisions;
 - (b) the fourth data protection principle and section 23(1) to (3); and
 - (c) the non-disclosure provisions

where the data consist of information which the data controller is obliged by or under any enactment to make available to the public, whether by publishing it, by making it available for inspection, or otherwise and whether gratuitously or on payment of a fee.

Disclosures required by law or made in connection with legal proceedings etc.

36.(1) Personal data are exempt from the non-disclosure provisions where the disclosure is required by or under any enactment, by any rule of law or by the order of a court.

(2) Personal data are exempt from the non-disclosure provisions where the disclosure is necessary

(a) for the purpose of, or in connection with, any legal proceedings including prospective legal proceedings; or

(b) for the purpose of obtaining legal advice,

or is otherwise necessary for the purposes of establishing, exercising or defending legal rights.

Parliamentary privilege

37. Personal data are exempt from

(a) the first data protection principle, except to the extent to which it requires compliance with the conditions in sections 6 and 7;

(b) the second, third, fourth and fifth data protection principles;

(c) section 15;

(d) sections 19 and 23(1) to (3),

where the exemption is required for the purpose of avoiding an infringement of the privileges of either House of Parliament.

Legal professional privilege

38. Personal data are exempt from the subject information provisions where the data consist of information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

Domestic purposes

39. Personal data processed by an individual only for the purposes of that individual's personal, family or household affairs including recreational purposes are exempt from the data protection principles and the provisions of Parts IV and V.

Confidential references given by the data controller

40. Personal data are exempt from section 15 where they consist of a reference given or to be given in confidence by the data controller for the purposes of

- (a) the education, training or employment, or prospective education, training or employment, of the data subject;
- (b) the appointment, or prospective appointment, of the data subject to any office; or
- (c) the provision, or prospective provision, by the data subject of any service.

Armed forces

41. Personal data are exempt from the subject information provisions to the extent to which the application of those provisions would be likely to prejudice the combat effectiveness of any of the armed forces of the Crown.

Judicial appointments and honours

42. Personal data processed for the purposes of

- (a) assessing any person's suitability for judicial office or the office of Queen's Counsel; or
- (b) the conferring by the Crown of any honour or dignity,

are exempt from the subject information provisions.

Appointments to public service etc.

43. [The Minister may by Order exempt from the subject information provisions personal data processed for the purposes of assessing any person's suitability for

- (a) employment in the Public Service; or
- (b) any office to which appointments are made by the Governor-General or by a Minister.]

Corporate finance

44.(1) Where personal data are processed for the purposes of, or in connection with, a corporate finance service

- (a) the data are exempt from the subject information provisions to the extent to which either
 - (i) the application of those provisions to the data could affect the price of any instrument which is already in existence or is to be or may be created; or
 - (ii) the data controller reasonably believes that the application of those provisions to the data could affect the price of any such instrument; and
 - (b) to the extent that the data are not exempt from the subject information provisions by virtue of paragraph (a), they are exempt from those provisions where the exemption is required for the purpose of safeguarding an important economic or financial interest of Barbados.
- (2) For the purposes of subsection (1)(b) the Minister may by Order specify
- (a) matters to be taken into account in determining whether exemption from the subject information provisions is required for

the purpose of safeguarding an important economic or financial interest of Barbados; or

(b) circumstances in which exemption from those provisions is, or is not, to be taken to be required for that purpose.

(3) In this section

“corporate finance service” means a service consisting of

(a) underwriting in respect of issues of, or the placing of issues of, any instrument;

(b) advice to undertakings on capital structure, industrial strategy and related matters and advice and service relating to mergers and the purchase of undertakings; or

(c) services relating to such underwriting as is mentioned in paragraph (a);

“price” includes value.

Negotiations with data subject

45. Personal data which consist of records of the intentions of the data controller in relation to any negotiations with the data subject are exempt from the subject information provisions in any case to the extent to which the application of those provisions would be likely to prejudice those negotiations.

Examinations

46.(1) Section 15 shall have effect subject to subsections (2) to (4) in the case of personal data consisting of marks or other information processed by a data controller

(a) for the purpose of determining the results of an academic, professional or other examination or of enabling the results of any such examination to be determined; or

(b) in consequence of the determination of any such results.

(2) [Where the date of receipt of a request mentioned in section 15(9) falls before the day on which the results of the examination are announced, the period mentioned in section 15(9) shall be extended until the end of

(a) 5 months beginning with the date of receipt of the request; or

(b) 21 days beginning with the date of the announcement,

whichever is the earlier.]

(3) Where by virtue of subsection (2), a period longer than 21 days elapses after the date of receipt of the request before the request is complied with, the information to be supplied pursuant to the request shall be supplied both by reference to the data in question at the time when the request is received and, where different, by reference to the data as from time to time held in the period beginning when the request is received and ending when it is complied with.

(4) For the purposes of this section, the results of an examination shall be treated as announced when they are first published or, if not published, when they are first made available or communicated to the candidate in question.

(5) Personal data consisting of information recorded by candidates during an academic, professional or other examination are exempt from section 15.

(6) In this section “examination” includes any process for determining the knowledge, intelligence, skill or ability of a candidate by reference to his performance in any test, work or other activity.

Powers to make further exemptions by Order

47.(1) The Minister may by Order exempt from the subject information provisions personal data consisting of information the disclosure of which is

prohibited or restricted by or under any enactment where and to the extent that he considers it necessary for the safeguarding of

- (a) the interests of the data subject; or
- (b) the rights and freedoms of any other individual,

that the prohibition or restriction ought to prevail over those provisions.

(2) The Minister may by Order exempt from the non-disclosure provisions any disclosures of personal data made in circumstances specified in the Order, where he considers the exemption is necessary for the safeguarding of the interests of the data subject or the rights and freedoms of any other person.

PART VII

ENFORCEMENT

Enforcement notice

48.(1) Where the Commissioner is satisfied that a data controller has contravened or is contravening any of the data protection principles, the Commissioner may serve him with a notice, to be referred to as an “enforcement notice” requiring him, to do either or both of the following:

- (a) to take within such time as may be specified in the notice, or to refrain from taking after such time as may be so specified, such steps as are so specified; or
- (b) to refrain from processing any personal data, or any personal data of a description specified in the notice, or to refrain from processing them for a purpose so specified or in a manner so specified, after such time as may be so specified.

(2) In deciding whether to serve an enforcement notice, the Commissioner shall consider whether the contravention has caused or is likely to cause any person damage or distress.

(3) An enforcement notice in respect of a contravention of the fourth data protection principle which requires the data controller to rectify, block, erase or destroy any inaccurate data may also require the data controller to rectify, block, erase or destroy any other data held by him and containing an expression of opinion which appears to the Commissioner to be based on the inaccurate data.

(4) An enforcement notice in respect of a contravention of the fourth data protection principle, in the case of data which accurately record information received or obtained by the data controller from the data subject or a third party, may require the data controller either

- (a) to rectify, block, erase or destroy any inaccurate data and any other data held by him and containing an expression of opinion which appears to the Commissioner to be based on inaccurate data; or
- (b) to take such steps as are specified in the notice for securing compliance with the requirements specified in section 9 and, where the Commissioner thinks fit, for supplementing the data with such statement of the true facts relating to the matters dealt with by the data as the Commissioner may approve.

(5) Where

- (a) an enforcement notice requires the data controller to rectify, block, erase or destroy any personal data; or
- (b) the Commissioner is satisfied that personal data which have been rectified, blocked, erased or destroyed had been processed in contravention of any of the data protection principles,

an enforcement notice may, where reasonably practicable, require the data controller to notify third parties to whom the data have been disclosed of the rectification, blocking, erasure or destruction.

(6) In determining whether it is reasonably practicable to require the notification specified in subsection 5(b) the Commissioner shall have regard, in particular, to the number of persons who would have to be notified.

- (7) An enforcement notice shall contain
- (a) a statement of the data protection principles which the Commissioner is satisfied have been or are being contravened and his reasons for reaching that conclusion; and
 - (b) particulars of the right of appeal conferred by section 63.
- (8) Subject to subsections (9) and (10), an enforcement notice shall not require any of the provisions of the notice to be complied with before the end of the period within which an appeal can be brought against the notice and, where such an appeal is brought, the notice need not be complied with pending the determination or withdrawal of the appeal.
- (9) Where by reason of special circumstances the Commissioner considers that an enforcement notice should be complied with as a matter of urgency he may include in the notice a statement to that effect and a statement of his reasons for reaching that conclusion.
- (10) Where subsection (9) applies, the notice shall not require the provisions of the notice to be complied with before the end of the period of 7 days beginning with the day on which the notice is served.

Cancellation of enforcement notice

- 49.(1) Where the Commissioner considers that all or any of the provisions of an enforcement notice need not be complied with in order to ensure compliance with the data protection principles to which it relates, he may cancel or vary the enforcement notice by written notice to the person on whom it was served.
- (2) A person on whom an enforcement notice has been served may, at any time after the expiry of the period during which an appeal can be brought against that enforcement notice, apply in writing to the Commissioner for the cancellation or variation of the notice on the ground that, by reason of a change of circumstances, all or any of the provisions of the notice need not be complied with in order to ensure compliance with the data protection principles to which the notice relates.

Request for assessment

50.(1) A request may be made to the Commissioner by or on behalf of any person who is, or believes himself to be, directly affected by any processing of personal data for an assessment as to whether it is likely or unlikely that the processing has been or is being carried out in compliance with this Act.

(2) On receiving a request under this section, the Commissioner shall make an assessment in such manner as appears to him to be appropriate, unless he is not supplied with such information as he may reasonably require to

- (a) satisfy himself as to the identity of the person making the request; and
- (b) enable him to identify the processing in question.

(3) The matters to which the Commissioner may have regard in determining in what manner it is appropriate to make an assessment include

- (a) the extent to which the request appears to him to raise a matter of substance;
- (b) any undue delay in making the request; and
- (c) whether or not the person making the request is entitled to make an application under section 15 in respect of the personal data in question.

(4) Where the Commissioner has received a request under this section he shall notify the person who made the request

- (a) whether he has made an assessment as a result of the request; and
- (b) to the extent that he considers appropriate, having regard in particular to any exemption from section 15 applying in relation to the personal data concerned, of any view formed or action taken as a result of the request.

Information notice

51.(1) Where the Commissioner

- (a) has received a request under section 50 in respect of any processing of personal data; or
- (b) reasonably requires any information for the purpose of determining whether a data controller has complied or is complying with the data protection principles,

he may serve the data controller with a notice, to be referred to as an “information notice”, requiring the data controller to furnish the him with specified information relating to the request or to compliance with the principles.

(2) An information notice shall contain

- (a) in a case falling within
 - (i) subsection (1)(a), a statement that the Commissioner has received a request under section 50 in relation to the specified processing; or
 - (ii) subsection (1)(b), a statement that the Commissioner regards the specified information as relevant for the purpose of determining whether the data controller has complied or is complying with the data protection principles and his reasons for regarding it as relevant for that purpose; and
- (b) particulars of the right of appeal conferred by section 63.

(3) The Commissioner may specify in an information notice

- (a) the form in which the information must be furnished; and
- (b) the period within which, or the time and place at which, the information must be furnished.

- (4) Subject to subsection (5), a period specified in an information notice under subsection (3)(b) must not end, and a time so specified must not fall, before the end of the period within which an appeal can be brought against the notice and, where such an appeal is brought, the information need not be furnished pending the determination or withdrawal of the appeal.
- (5) Where by reason of special circumstances the Commissioner considers that the information is required as a matter of urgency, he may include in the notice a statement to that effect and a statement of his reasons for reaching that conclusion; and in that event subsection (4) shall not apply, but the notice shall not require the information to be furnished before the end of the period of 7 days beginning with the day on which the notice is served.
- (6) A person shall not be required by virtue of this section to furnish the Commissioner with any information in respect of
- (a) any communication between a professional legal adviser and his client in connection with the giving of legal advice to the client with respect to his obligations, liabilities or rights under this Act; or
 - (b) any communication between a professional legal adviser and his client, or between such an adviser or his client and any other person, made in connection with or in contemplation of proceedings under or arising out of this Act (including proceedings before the Tribunal) and for the purposes of such proceedings.
- (7) In subsection (6) references to the client of a professional legal adviser includes references to any person representing such a client.
- (8) A person shall not be required by virtue of this section to furnish the Commissioner with any information where the furnishing of that information would, by revealing evidence of the commission of any offence, other than an offence under this Act or an offence of perjury, expose that person to proceedings for that offence.
- (9) Any relevant statement provided by a person in response to a requirement under this section may not be used in evidence against that

person on a prosecution for an offence under this Act, other than an offence under section 55, unless in the proceedings

- (a) in giving evidence the person provides information that is inconsistent with it; and
- (b) evidence relating to it is adduced, or a question relating to it is asked, by that person or on that person's behalf.

(10) The Commissioner may cancel an information notice by written notice to the person on whom it was served.

(11) This section has effect subject to section 54(3).

(12) In subsection (1) "specified information" means information

- (a) specified or described in the information notice; or
- (b) falling within a category which is specified or described in the information notice.

(13) In subsection (9), "relevant statement", in relation to a requirement under this section, means

- (a) an oral statement; or
- (b) a written statement made for the purposes of the requirement.

Special information notice

52.(1) Where the Commissioner

- (a) receives a request under section 50 in respect of any processing of personal data; or
- (b) has reasonable grounds for suspecting that, in a case in which proceedings have been stayed under section 32, the personal data to which the proceedings relate
 - (i) are not being processed only for the purposes of journalism or for artistic or literary purposes; or

- (ii) are not being processed with a view to the publication by any person of any journalistic, literary or artistic material which has not previously been published by the data controller,

he may serve the data controller with a notice, referred to as a “special information notice”, requiring the data controller to furnish him with specified information for the purpose specified in subsection (2).

(2) The purpose referred to in subsection (1) is the purpose of ascertaining whether personal data are being processed

- (a) only for the purposes of journalism or for artistic or literary purposes;
or
- (b) with a view to the publication by any person of any journalistic, literary or artistic material which has not previously been published by the data controller.

(3) A special information notice must contain

- (a) particulars of the right of appeal conferred by section 63; and
- (b) in a case falling within
 - (i) subsection (1)(a), a statement that the Commissioner has received a request under section 50 in relation to the specified processing;
or
 - (ii) subsection (1)(b), a statement of the Commissioner’s grounds for suspecting that the personal data are not being processed as mentioned in that paragraph.

(4) The Commissioner may also specify in the special information notice

- (a) the form in which the information must be furnished; and
- (b) the period within which, or the time and place at which, the information must be furnished.

- (5) Subject to subsection (6), a period specified in a special information notice under subsection (4)(b) must not end, and a time so specified must not fall, before the end of the period within which an appeal can be brought against the notice and, if such an appeal is brought, the information need not be furnished pending the determination or withdrawal of the appeal.
- (6) Where by reason of special circumstances the Commissioner considers that the information is required as a matter of urgency, he may include in the notice a statement to that effect and a statement of his reasons for reaching that conclusion; and in that event subsection (5) shall not apply, but the notice shall not require the information to be furnished before the end of the period of 7 days beginning with the day on which the notice is served.
- (7) A person shall not be required by virtue of this section to furnish the Commissioner with any information in respect of
- (a) any communication between a professional legal adviser and his client in connection with the giving of legal advice to the client with respect to his obligations, liabilities or rights under this Act; or
 - (b) any communication between a professional legal adviser and his client, or between such an adviser or his client and any other person, made in connection with or in contemplation of proceedings under or arising out of this Act, including proceedings before the Tribunal, and for the purposes of such proceedings.
- (8) In subsection (7) a reference to the client of a professional legal adviser include a reference to any person representing such a client.
- (9) A person shall not be required by virtue of this section to furnish the Commissioner with any information where the furnishing of that information would, by revealing evidence of the commission of any offence, other than an offence under this Act or an offence of perjury, expose him to proceedings for that offence.

(10) Any relevant statement provided by a person in response to a requirement under this section may not be used in evidence against that person on a prosecution for any offence under this Act, other than an offence under section 55, unless in the proceedings

- (a) in giving evidence the person provides information inconsistent with it; and
- (b) evidence relating to it is adduced, or a question relating to it is asked, by that person or on that person's behalf.

(11) In subsection (10) "relevant statement", in relation to a requirement under this section, means

- (a) an oral statement; or
- (b) a written statement made for the purposes of the requirement.

(12) The Commissioner may cancel a special information notice by written notice to the person on whom it was served.

(13) In subsection (1) "specified information" means information

- (a) specified, or described, in the special information notice; or
- (b) falling within a category which is specified, or described, in the special information notice.

Determination by Commissioner as to the purposes of journalism or artistic or literary purposes

53.(1) Where at any time it appears to the Commissioner, whether as a result of the service of a special information notice or otherwise, that any personal data are not being processed

- (a) only for the purposes of journalism or for artistic or literary purposes;
- or

- (b) with a view to the publication by any person of any journalistic, literary or artistic material which has not previously been published by the data controller,

he may make a determination in writing to that effect.

(2) Notice of the determination shall be given to the data controller; and the notice must contain particulars of the right of appeal conferred by section 63.

(3) A determination under subsection (1) shall not take effect until the end of the period within which an appeal can be brought and, where an appeal is brought, shall not take effect pending the determination or withdrawal of the appeal.

Restriction on enforcement in case of processing for the purposes of journalism or for artistic or literary purposes

54.(1) [The Commissioner may not serve an enforcement notice on a data controller with respect to the processing of personal data for the purposes of journalism or for artistic or literary purposes unless

- (a) a determination under section 53(1) with respect to those data has taken effect; and
- (b) the court has granted leave for the notice to be served.

(2) The court shall not grant leave for the purposes of subsection (1)(b) unless it is satisfied

- (a) that the Commissioner has reason to suspect a contravention of the data protection principles which is of substantial public importance; and
- (b) except where the case is one of urgency, that the data controller has been given notice, in accordance with rules of court, of the application for leave.

(3) The Commissioner may not serve an information notice on a data controller with respect to the processing of personal data for the purposes of journalism or for artistic or literary purposes unless a determination under section 53(1) with respect to those data has taken effect.]

Failure to comply with notice

55.(1) A person who fails to comply with an enforcement notice, an information notice or a special information notice commits an offence and is liable on summary conviction to pay a fine of \$15 000 or to a term of imprisonment of 6 months.

(2) A person who, in purported compliance with an information notice

(a) makes a statement which he knows to be false in a material respect; or

(b) recklessly makes a statement which is false in a material respect,

commits an offence and is liable on summary conviction to a fine of \$100 000 or to a term of imprisonment of 12 months or to both.

(3) It is a defence for a person charged with an offence under subsection (1) to prove that he exercised all due diligence to comply with the notice in question.

Service of notice by Commissioner

56.(1) Any notice authorised or required by this Act to be served on or given to any person by the Commissioner may where the person is

(a) an individual, be served on him by

(i) delivering it to him;

(ii) sending it to him by post addressed to him at his usual or last known place of residence or business; or

(iii) leaving it for him at that place; or

- (b) a body corporate or partnership, be served on it by
 - (i) sending it by post to the proper officer of the company at its principal office; or
 - (ii) addressing it to the proper officer of the partnership and leaving it at the office of the proper officer.
- (2) This section is without prejudice to any other lawful method of serving or giving a notice.
- (3) [Nothing in subsections (1) and (2) precludes the service of a notice by electronic means.]

Warrants

57.(1) Where a Judge is satisfied by information on oath supplied by the Commissioner that there are reasonable grounds for suspecting that

- (5) a data controller has contravened or is contravening any of the data protection principles; or
- (6) an offence under this Act has been or is being committed, and that evidence of the contravention or of the commission of the offence is to be found on any premises specified by the Commissioner,

the Judge may issue a warrant.

(2) A warrant issued under subsection (1) shall authorise a police officer accompanied by the Commissioner and [such other person skilled in information technology as the police officer may deem necessary for the purpose] or any of his officers or staff at any time within 7 days of the date of the warrant to

- (a) enter the premises;
- (b) search the premises;
- (c) inspect, examine, operate and test any equipment found on the premises which is used or intended to be used for the processing of personal data;

- (d) inspect and seize any documents or other material found on the premises;
 - (e) require any person on the premises to provide
 - (i) an explanation of any document or other material found on the premises;
 - (ii) such other information as may reasonably be required for the purpose of determining whether the data controller has contravened or is contravening the data protection principles.
- (3) A judge shall not issue a warrant in respect of any personal data processed for the purposes of journalism or for artistic or literary purposes unless a determination by the Commissioner under section 53 with respect to those data has taken effect.

Execution of warrants

58.(1) A police officer executing a warrant may use such reasonable force as may be necessary.

(2) Where the person who occupies the premises in respect of which a warrant is issued is present when the warrant is executed, he shall be shown the warrant and supplied with a copy of it; and where the person is not present, a copy of the warrant shall be left in a prominent place on the premises.

(3) A police officer seizing anything in pursuance of a warrant shall make a list of any items seized with the date and time of the seizure and shall give the list to

- (a) the data controller; or
- (b) the occupier of the premises.

Matters exempt from inspection and seizure

59.(1) The powers of inspection and seizure conferred by a warrant shall not be exercisable in respect of personal data which, by virtue of section 28, is exempt from any of the provisions of this Act.

(2) The powers of inspection and seizure conferred by a warrant shall not be exercisable in respect of any communication between

- (a) a professional legal adviser and his client in connection with the giving of legal advice to the client with respect to his obligations, liabilities or rights under this Act; or
- (b) a professional legal adviser and his client, or between such an adviser or his client and any other person, made in connection with or in contemplation of proceedings under or arising out of this Act including proceedings before the Tribunal and for the purposes of those proceedings.

Return of warrants

60. A warrant shall be returned to the court from which it was issued

- (a) after being executed; or
- (b) where not executed within the time authorised for its execution;

and the police officer by whom any such warrant is executed shall make an endorsement on it stating what powers have been exercised by him under the warrant.

Obstruction of execution of a warrant

61. Any person who

- (a) intentionally obstructs a person in the execution of a warrant;

- (b) fails without reasonable excuse to give any police officer executing such a warrant such assistance as he may reasonably require for the execution of the warrant;
- (c) makes a statement in response to a requirement under section 57(2)(e) which that person knows to be false in a material respect; or
- (d) recklessly makes a statement in response to a requirement under section 57(2)(e) which is false in a material respect,

commits an offence and is liable on summary conviction to a fine of \$100 000 or to a term of imprisonment of 2 years or to both.

PART VIII

DATA PROTECTION TRIBUNAL

Establishment of the Data Protection Tribunal

- 62.(1) There is established a tribunal called the Data Protection Tribunal.
- (2) The *Schedule* has the effect as to the constitution of Tribunal and otherwise in relation to the Tribunal.

Right of appeal

- 63.(1) A person on whom an enforcement notice, an information notice or a special information notice has been served may appeal to the Tribunal against the notice.
- (2) A person on whom an enforcement notice has been served may appeal to the Tribunal against the refusal of an application under section 49(2) for cancellation or variation of the notice.
- (3) Where an enforcement notice, an information notice or a special information notice contains a statement by the Commissioner in accordance

with section 48(7), 51(5) or 52(6) then, whether or not the person appeals against the notice, he may appeal against

- (a) the Commissioner's decision to include the statement in the notice; or
- (b) the effect of the inclusion of the statement in respect of any part of the notice.

(4) A data controller in respect of whom a determination has been made under section 53 may appeal to the Tribunal against the determination.

Determination of appeals

64.(1) Where on an appeal under section 63(1) the Tribunal considers

- (a) that the notice against which the appeal is brought is not in accordance with this Act or any regulations made thereunder; or
- (b) to the extent that the notice involved an exercise of discretion by the Commissioner, and it is determined that the Commissioner ought to have exercised his discretion differently,

the Tribunal shall allow the appeal or substitute such other notice or decision as could have been served or made by the Commissioner and in any other case the Tribunal shall dismiss the appeal.

(2) On such an appeal, the Tribunal may review any determination of fact on which the notice in question was based.

(3) Where on an appeal under section 63(2) the Tribunal considers that the enforcement notice ought to be cancelled or varied by reason of a change in circumstances, the Tribunal shall cancel or vary the notice.

(4) On an appeal under section 63(3) the Tribunal may direct

- (a) that the notice in question shall have effect as if it did not contain any such statement as is mentioned in that subsection; or
- (b) that the inclusion of the statement in accordance with section 48(7), 51(5) or 52(6) shall not have effect in relation to any part of the notice,

and may make such modifications in the notice as may be required for giving effect to the direction.

- (7) On an appeal under section 63(4), the Tribunal may cancel the determination of the Commissioner.
- (8) Any party to an appeal to the Tribunal under section 63 may appeal from the decision of the Tribunal on a point of law to the High Court.

PART IX

MISCELLANEOUS

Unlawful obtaining etc. of personal data

65.(1) A person shall not knowingly or recklessly, without the consent of the data controller

- (a) obtain or disclose personal data or the information contained in personal data; or
 - (b) procure the disclosure to another person of the information contained in personal data.
- (2) Subsection (1) does not apply to a person who shows that
- (a) the obtaining, disclosing or procuring
 - (i) was necessary for the purpose of preventing or detecting crime; or
 - (ii) was required or authorised by or under any enactment, by any rule of law or by the order of a court;
 - (b) he acted in the reasonable belief that he had in law, the right to obtain or disclose the data or information or, as the case may be, to procure the disclosure of the information to the other person;

- (c) he acted in the reasonable belief that he would have had the consent of the data controller, if, the data controller had known of the obtaining, disclosing or procuring and the circumstances of it; or
 - (d) in the particular circumstances, the obtaining, disclosing or procuring was justified as being in the public interest.
- (3) A person who, contravenes subsection (1) commits an offence and is liable on summary conviction to pay a fine of \$10 000 or to a term of imprisonment of 6 months or to both.
- (4) A person who sells personal data commits an offence if he obtained the data in contravention of subsection (1) and is liable on summary conviction to pay a fine of \$100 000 or to a term of imprisonment of 3 years or to both.
- (5) A person who offers to sell personal data commits an offence where
 - (a) he has obtained the data in contravention of subsection (1); or
 - (b) he subsequently obtains the data in contravention of subsection (1)and is liable on summary conviction to pay a fine of \$10 000 or to a term of imprisonment of 2 years or to both.
- (6) For the purposes of subsection (5), an advertisement indicating that personal data are or may be for sale is an offer to sell the data.

Disclosure of information

66. No enactment or rule of law prohibiting or restricting the disclosure of information shall preclude a person from furnishing the Commissioner or the Tribunal with any information necessary for the discharge of their functions under this Act.

Liability of directors, etc.

67.(1) Where an offence under this Act has been committed by a body corporate and is proved to have been committed with the consent or connivance of directors or to be attributable to any neglect on the part of any director,

manager, secretary or similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Act binds Crown

68. This Act binds the Crown.

Regulations

69. The Minister may make Regulations for prescribing anything required to be prescribed by this Act and generally for the giving effect to this Act.

Commencement

70. This Act comes into operation on a date to be fixed by proclamation.

SCHEDULE

*(Section 62)**Data Protection Tribunal**Constitution*

Members of the Tribunal

1.(1) The members of the Tribunal shall be appointed by the Minister by instrument in writing from among persons who appear to him to be qualified as having had experience of, and shown capacity in, matters relating to data protection and privacy or such other related discipline.

(2) The Tribunal shall comprise 5 members who shall be appointed by the Minister.

(3) At least one of the members of the Tribunal shall be an attorney-at-law of at least 10 years standing, and he shall be the Chairman of the Tribunal.

(4) The members of the Tribunal shall hold office for such period not exceeding 3 years as the Minister may specify in the instrument of appointment.

(5) The Minister shall appoint a person appearing to him to have the qualifications necessary for appointment under paragraph 1(3) to act temporarily in the place of the Chairman where the Chairman is absent or unable to perform his functions.

Resignation

2. A member of the Tribunal may at any time resign his office by instrument in writing addressed to the Minister and such resignation shall take effect from the date of the receipt by the Minister of that instrument.

Revocation of appointments

3. The Minister shall revoke the appointment of any member of the Tribunal where that member

- (a) fails to carry out any of the functions conferred or imposed on him under this Act;
- (b) becomes of unsound mind or becomes permanently unable to perform his functions by reason of ill health;
- (c) becomes bankrupt or compounds with, or suspends payment to, his creditors;
- (d) is convicted and sentenced to a term of imprisonment or to death; or
- (e) is convicted of any offence involving dishonesty.

Gazetting appointments etc.

4. The appointment, removal or resignation of a member of the Tribunal shall be recorded in the *Official Gazette*.

Protection of the members of the Tribunal

5. No action, suit, prosecution or other proceedings shall be brought or instituted personally against a member of the Tribunal in respect of any act done in good faith in pursuance of their functions under this Act.

Remuneration of the members of the Tribunal

6. There shall be paid to the members of the Tribunal such remuneration and other such allowances as the Minister may determine.