

**BOJ's Comments on the Bill entitled The National Identification and Registration Act, 2020**

<b>Comment No.</b>	<b>Clause</b>	<b>Comments/Query/Recommendation</b>
<b>General Observations</b>		
	<b>Objects</b>	
<b>1</b>	<b>3(g)</b> Page 5	<p>Item (g) refers to the objective of preventing identity theft and other instances of fraud with respect to identity information.  <u>Recommendation</u>  Suggest this be revised to minimising identity theft and other instances of fraud as there is no guarantee that this legislation and the proposed framework can absolutely prevent these crimes from occurring.</p> <p>NB. This issue also impacts clause 5(3)(g) in the bill.</p>
	<b>Application</b>	
<b>2</b>	<b>4(2) &amp; (3)</b> Page 4	<p>Subclause (2) implies that the persons described therein are not eligible for inclusion in the National Identification Database. If that is correct,</p> <ul style="list-style-type: none"> <li>i. what information would such a person be entitled to receive considering that there would have been no eligibility for inclusion? and</li> <li>ii. how will the law treat with an individual who becomes a person described in subclause (2) (and information with respect to such individual after enrolment? (i.e. subsequent appointments).</li> </ul> <p>This should be clarified.</p>
<b>3</b>	<b>4(4)</b> Page 5	What will happen where the person is no longer a resident? Should this be addressed or would the registration merely expire and not be renewed?
<b>Part II</b>		
	<b>The National Identification &amp; Registration Authority</b>	
<b>4</b>	<b>5(2)</b> Page 5	Will the Registrar General's Department continue to undertake the function of registering Trusts?

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5	<b>5(3)(g)</b> Page 6	<p>i. It is suggested that the subject of inter-agency co-operation is a separate and substantial subject that should be recognized as a separate function of the NIRA.</p> <p><u>Recommendation</u> – It is therefore suggested that an additional subclause be included referring to the cooperation objectives of the NIRA.</p> <p>ii. Will the NIRA be able to cooperate with other public bodies such as financial regulatory bodies like BOJ to assist with confirming whether the identification of an enrolled individual has been verified? The issue is not clarified by clause 8 or clause 24 or 25 (in the context of clause 25(5)).</p> <p>iii. Will persons with AML/CFT obligations such as financial institutions or designated nonfinancial institutions (DNFIs under POCA or TPA) or Employers, who need to confirm or verify identification information, be able to access any information from the NIRA regarding verification of an enrolled individual's identity? If so, what will be the mechanism to do so? Clause 24 does not provide the clarity being sought, and there is doubt on this being possible in the context of sub-clause 25(5).</p>
6	<b>Board of Management</b>	
6	<b>6(1)(a)&amp;(g)</b>	While the matter of policies seems to fall within the remit of a board, for consideration is whether procedures would be for management.
7	<b>6 (1) (a)(vi)</b> Page 8	Suggested that “collection,” be inserted before the word “custody”.
8	<b>Co-operation between the Authority and public bodies</b>	
8	<b>8(1)</b> Page10	Would “collaborate” be more appropriate than “co-operate”?

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<b>9</b>	<b>8(2)</b> Page 10	<p>The parameters of cooperation that can be accommodated pursuant to this clause have not been reflected and therefore the matters on which cooperation may be established are not clear. Clarity involves:</p> <ul style="list-style-type: none"> <li>i. addressing the issue raised above in relation to 5(3)(g) of the bill;</li> <li>ii. clarifying the matters that can be covered by the Authority cooperating with other public bodies;</li> <li>iii. clarifying the kind of cooperation a public body would be expected to be providing to the Authority;</li> <li>iv. clarifying whether this cooperation is limited by any existing statutory confidentiality obligations to which other public bodies may be subject; and</li> <li>v. extension of statutory indemnity or protections to other public bodies who cooperate with the Authority</li> </ul>
	<b>National databases</b>	
<b>10</b>	<b>9</b>	<p>General observation – this clause should be reviewed to provide for stronger measures to ensure proper use of the information collected and for protection of such information.</p>
	<b>Enrolment</b>	
<b>11</b>	<b>10(3)(b)</b> Page 14	<p>Consideration to be given to deletion of the words “in so far as it is reasonably possible for that identity information to be verified.” Given the objective of the legislation and the contents of subclause (a), our understanding is that the authority must not enter the identity information if it is not reasonably possible for that identity information to be verified.</p> <p><u>Recommendation</u> Delete the words “in so far as it is reasonably possible for that identity information to be verified”</p>
<b>12</b>	<b>Section 10 (4)(a)(i)</b> Page 15	<p>Please consider inserting the word “legal” before the word “guardian”.</p> <p><u>Rationale</u> The term “guardian” as defined in the Child Care and Protection Act includes any person who has been recognised by a Court of law as having care and control of a minor child. In the context of human trafficking of minors, it would be useful to narrow the scope to those persons (other than parents) who have been legally identified by a court order or statute, e.g. the Maintenance Act as having the legal right to custody and the obligation to care for the child.</p>
<b>13</b>	<b>10(4)(b)</b> Page 15	<p>Typo: In the fourth and subsequent lines “and the information required to be provided... to that applicant” should go back to the margin as this applies to both (4)(a) and (b).</p>

<b>Comment No.</b>	<b>Clause</b>	<b>Comments/Query/Recommendation</b>
<b>14</b>	<b>10(7)(c) Page 16</b>	Should it be made clear that this does not include renewals or replacements which are not considered to be a separate enrolment?
<b>15</b>	<b>10(7)(e) Page 16</b>	Typo: In the second and subsequent lines “commits and offence and shall be liable.... Three million dollars” should go back to the margin as this applies to all of (a) to (e).
	<b>Identity Information</b>	
<b>16</b>	<b>11(1)</b>	<p>We suggest that specific reference be made to the nearest relative or legal guardian of the person, as part of the biographic data.</p> <p><u>Rationale</u></p> <p>The inclusion of the “nearest relative or legal guardian” may be relevant in the case of persons who are mentally disabled or wards of the state, particularly if the person does not know the names of his biological or adopted parents.</p>
<b>17</b>	<b>11(1)(a)(v) Page 17</b>	<p>We suggest that the provision should therefore read: “names of the mother and father, if known”.</p> <p>Specific reference should be made to the fact that the term “mother and father” shall include the adopted parents, where an adoption order was made pursuant to the Children (Adoption of) Act, section 9.</p> <p><u>Rationale</u></p> <p>Some persons may not know the name of their biological parents, particularly in cases where the person was abandoned shortly after his or her birth or in the case of adoption. NB: The details of an adopted person’s biological records are not available to public search (see section 25 of the Children (Adoption of) Act). Reference is also made to section 19A of the Registration of Births and Deaths Act, which addresses the circumstances under which a father’s name can be entered on a birth certificate, in the case where the parents are not legally married to each other. As such, some flexibility needs to be introduced in this provision.</p>
<b>18</b>	<b>11(1)(a)(vii) Page</b>	It is suggested that “if applicable” be added.

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19	<b>Section 11 (1)(b)</b> Page 17	<p>It is suggested that appropriate language be inserted which permits the Authority to create rules for alternate biometric data for persons who are physically disabled.</p> <p><u>Rationale</u></p> <p>A physically disabled person may not have fingers. In such cases, alternative methods of biometric data, such as utilising retina scan technology or voice recording/recognition could be considered to be included as options.</p>
20	<b>Section 11 (1)(c)</b> Page 17	<p>Please consider including the reference number of a birth certificate.</p> <p><u>Rationale</u></p> <p>A significant portion of Jamaicans do not have an alternative form of national identification (i.e. these persons do not have a form of photo id which was issued by the Government, but they do have their birth certificate).</p>
21	11(2) Page 18	Should the only option be to refuse enrolment? Should it be open to the Authority to also request additional information that may satisfy as to the individual's identity?
	<b>Verification of identity information</b>	
22	12(2) Page 18	<p>Notwithstanding the “catch all” wording in clause 12(2)(j), it is suggested that consideration be given to including a specific reference to other information contained in the civil status registers as a form of verification.</p> <p><u>Rationale</u></p> <p>As defined in the Registration (Births and Deaths) Act, civil status registers include reference to births, <i>baptisms</i>, marriage and deaths. For some persons, a certificate of baptism may be a useful reference, particularly for the elderly persons in rural communities.</p>
	<b>Cancellation of enrolment</b>	
23	14(2) Page 19	It is suggested that the provision should indicate who will determine the accuracy of the record. Should this specify that the information stored is “determined by the Authority” to be inaccurate.

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24	<b>14(5)(a)(i)</b> Page 20	<p>i. Will the information be “purged from the active records?</p> <p>ii. If the information will be purged considering that the information might be of value if the individual should reappear or make an application for re-registration, how long after cancellation will the information be purged or destroyed? (It is observed that clause 33(2)(b) speaks to regulations for the disposal of information collected in respect of an individual whose application for enrolment is refused).</p> <p>iii. What happens to the information on the death of an enrolled individual?</p>
25	<b>14(6)</b> Page 21	The period for notification of cancellation should be specified.
26	<b>14(5)(b)</b>	Typo: “(b)” to go back to margin.
27	<b>14(8)(b)(i)</b>	Is the reference to section 24 to this Act (National Identification and Registration Act) or the Data Protection Act which speaks to conditions for processing sensitive personal data?
	<b>National Identification Number</b>	
28	<b>15</b> Page 22	After the death of an enrolled individual, will the NIN be cancelled? It is noted that clause 22 requires the National Identification Card to be surrendered.
	<b>National Identification Card</b>	
29	<b>16(1)</b>	Re: the issue of cards “to each enrolled individual” to be addressed are “children” and persons with “mental disorder” as referred to under subclause 10(4).
30	<b>16(8)</b>	Should it be made clear here that the replacement card will be issued with the same number as the original card... which seems to be the case based on other provisions. If the card has information stored with respect to the individuals are the original cards to be decommissioned?
31	<b>16(11)</b> Page 23	The words “and shall be liable on conviction therefore before a Parish Court, to a fine not exceeding five hundred thousand dollars” should go back to the margin because they are meant to apply to the entire subclause (11).

<b>Comment No.</b>	<b>Clause</b>	<b>Comments/Query/Recommendation</b>
32	<b>16(12)</b> Page 23	It is not clear why not reporting a lost National Identification Card is an offence?
	<b>Period of validity of National Identification Card</b>	
33	<b>18</b> Page 24	Subclause 18(4) reflects that the Authority may require an individual seeking renewal of a National Identification Card to surrender the existing card in exchange for a renewed Card. Will the original cards be cancelled or decommissioned when a new card is issued?
	<b>Content of National Identification Card</b>	
34	<b>19(1)(a)</b> Page 25	Typo: numbering to be corrected – references to (i) and (ii) have been duplicated instead of referring to (iii) and (iv).
35	<b>19(2)</b> Page 25	This subclause reflects that the NIC <i>shall, in the absence of evidence to the contrary, be prima facie proof of the particulars which the card bears.</i> <ul style="list-style-type: none"> <li>i. Does this mean a person is not obliged to rely on the NIC as proof of identity?</li> <li>ii. Why is the caveat “in the absence of evidence to the contrary” included in the provision?</li> </ul>
	<b>Cancellation of National Identification Card</b>	
36	<b>20(4)</b> Page 26	In the absence of stating a fine here, subclause 28 (1) would apply, which creates a maximum fine of one million dollars. Given the nature of the offence, and the risk of identity theft, would it be prudent to insert a specific penalty at subclause 20 (4) of the Bill which is more commensurate with the egregious nature of the offence?
	<b>Use and Security of Information Stored in the National Database</b>	

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<b>37</b>	<b>23</b> Pages 27& 28	<p>It is suggested that a new sub-paragraph (v) be inserted which imposes an obligation on the Authority to create policies and procedures to minimise the risk of breaches of the Cybercrimes Act.</p> <p><u>Rationale</u></p> <p>This particular amendment would support subclause 9(8) of the Bill, and provide additional comfort to members of the public about the cyber-risk management obligations imposed on the Authority.</p>
	<b>Disclosure of identity information</b>	
<b>38</b>	<b>24(5)</b> Page 29	<ul style="list-style-type: none"> <li>i. The subclause should be clear which party is required to destroy the information – i.e whether or not it is the “party in receipt of the information from the Authority”.</li> <li>ii. It would appear that the party in receipt of the information, has the obligation to destroy the information and in that case. If this understanding is correct it is suggested that for clarity the subclause be amended to state explicitly that the Commissioner of Police shall have the obligation to destroy the identity information that was disclosed pursuant to the court order.</li> </ul>
<b>39</b>	<b>24(6)</b> Page 29	Consideration to be given to whether there should be reference to “all levels of appeal”.
<b>40</b>	<b>24(8)</b> Page 30	It is suggested that for clarity, the subclause should state who should give the certificate of destruction to the individual.
<b>41</b>	<b>24(9)</b> Page 30	In the second line should this refer to subclause (6) as well as (5)?
<b>42</b>	<b>24(11)</b> Page 30	<p>This provision presumes the individual will be made aware or become aware that the information has not been destroyed however the bill does not reflect any wording that suggests the individual will be notified that an application under subclause 10 has been granted. It is suggested that the bill should expressly require the Commissioner to notify the individual that -</p> <ul style="list-style-type: none"> <li>i. an application under subclause 10 has been granted; and</li> <li>ii. an application can be made to a Judge or the Court for the matter to be reviewed.</li> </ul>

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	<b>Requests for information or for authentication and verification services</b>	
<b>43</b>	<b>25(1)(b)</b> Page 30	It is suggested that the term “accredited third party” be defined.
<b>44</b>	<b>25(5)</b> Page 31	It is not clear how section 25(1) may be complied with without disclosure of identity information?
	<b>The National Identification Inspectorate</b>	
<b>45</b>	<b>27</b> Pages 33-35	<ul style="list-style-type: none"> <li>i. For clarity, consider amending the provision to include wording that the Inspectorate’s duty to examine the operations of the Authority for compliance with laws concerning the protection or confidentiality of identity information (i.e. the Data Protection Act), does not override or impact the jurisdiction of the Information Commissioner under the Data Protection Act.</li> <li>ii. If the Inspectorate identifies an issue with how the Authority is operating why can’t the Inspectorate also refer an identification of non-compliance with the Tribunal? It is noted the Inspectorate can report such issues to 3<sup>rd</sup> entities but it seems the NIRA should have an opportunity for perceived breaches or perceived instances of non-compliance to be addressed by the Tribunal ahead of referral to the DPP etc.</li> </ul>
	<b>Special Provisions in respect of offences</b>	
<b>46</b>	<b>28</b> Page 35	It is suggested that this subsection be revisited as it appears to be incomplete.
	<b>Powers of search warrant</b>	
<b>47</b>	<b>29(3)(b)</b> Page 37	It is suggested that this provision is unclear and should be revisited

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	<b>Secrecy and Confidentiality</b>	
<b>48</b>	<b>30(1)</b> Page 37	<p>Typo: At 30(1)(c) the words “shall treat as secret... under this Act” should be brought back to the margin and be followed by the rest of the clause. Therefore to read:</p> <p>30.—(1) Every person—</p> <ul style="list-style-type: none"> <li>(a) who has, or who has had, an official duty under this Act; or</li> <li>(b) who is, or has been, employed in the administration of this Act; or</li> <li>(c) to whom information is communicated under this Act,</li> </ul> <p>shall treat as secret and confidential all information communicated under this Act, and shall not disclose such information except as provided under this Act or as necessary for the due administration of this Act.</p>
<b>49</b>	<b>30(2)</b> Page 38	Consider whether the penalty for breaching the disclosure obligation under this statute may be considered to be low in the circumstances. Under the Bank of Jamaica Act, although the pecuniary penalty is the same amount, a custodial sentence is also possible.
	<b>Regulations</b>	
<b>50</b>	<b>33(2)</b> Page 38	It is suggested that this subsection should refer to the procedure for the destruction of identity information where enrolment of an individual is cancelled pursuant to section 14 of the Bill.
<b>51</b>	<b>36(1)</b> Page 40	It is noted that a definition of the expression “former department” is stated in section 36 (11). For good order, it is suggested that this be included in section 2 of the Bill.
	<b>Schedules</b>	
<b>52</b>	<b>Schedule</b> Page 42	It is noted that there is a reference to Part II, but a reference to Part I is not seen.
<b>53</b>	<b>Subparagraph 1(7)(g)</b> Page 44	Should the reference to the “Board’s operations” be to the “Authority’s operations”?
<b>54</b>	<b>Subparagraph2(4)</b> Page 45	Typo: The numbering (a) – (f) is missing a reference to (c).

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55	<b>Schedule Part II</b> Page 46	The heading be amended to read “The Board of Management of the Authority”.