



ANY REPLY OR SUBSEQUENT REFERENCE
TO THIS COMMUNICATION SHOULD BE
ADDRESSED TO THE **PERMANENT
SECRETARY.**

TELEPHONE: 906-4908-22
FAX: 906-5098

MINISTRY OF NATIONAL SECURITY

NCB TOWERS
2 OXFORD ROAD
KINGSTON 5
JAMAICA

February 10, 2021

Clerk to the Houses
Houses of Parliament
Gordon House
81 Duke Street
Kingston

Attention: Mrs. Anila McCarthy

Reference is made to your letter dated January 5, 2021, requesting the Ministry of National Security to provide its input on the review of "***The National Identification and Registration Act, 2020.***"

Please see attached, in response, the Ministry's written submission in relation to the matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Courtney Williams".

Courtney Williams
Permanent Secretary

**COMMENTS FROM MINISTRY OF NATIONAL SECURITY
ON
THE NATIONAL IDENTIFICATION AND REGISTRATION BILL, 2020**

Background

The proposed National Identification and Registration Act, 2020 *'aims to provide a legal framework for a National Identification System that provides safe, reliable and robust verification and authentication of identity information for citizens of Jamaica and persons ordinarily resident in Jamaica, thereby allowing for the strengthening of identity security, cyber security, and the simplification of bureaucracy...'*.

The Ministry of National Security having conducted a review of the Bill in line with the mandates of the Ministry presents hereunder our comments and recommendations for consideration.

Clause 4: Application

1. The definition of 'ordinarily resident' at clause 4(4)(a) does not accord with the proposed definition in the Immigration Restriction (Commonwealth Citizens) Bill and the Aliens (Amendment) Bill; nor does it accord with the meaning in other jurisdictions or within immigration policy. The Aliens (Amendment) Bill for example proposes that this term be applied to persons who (a) lawfully and continuously reside in Jamaica for three (3) or more years; or (b) Jamaica is the country of his permanent abode even if he is temporarily absent. It is further recommended that the term 'ordinarily resident' should not apply in instances where a person resides in the country for a special or temporary purpose.
2. For the avoidance of doubt, we propose for the purposes of this Act that the term 'ordinarily resident' not be used considering the specific meaning of the term as aforementioned. It is recommended that the term '**resident**' be used in its place with a specific time period requirement of six months or more preceding the date of enrollment.
3. For clause 4(3), the utility of the inclusion of this provision is questioned, considering that in subsection 2 stipulates that these individuals are not eligible for enrolment.

Clause 5 the National Identification and Registration Authority

4. We recommend that Clause 5(4)(f), be reformulated for the Authority to seek ministerial approval before entering into arrangements.
5. Given the largely digital nature of the systems supporting the operationalization of the Act, and the constant evolution of technology, it is proposed that responsibility of the Authority be expanded to include *'on-going research on developments in standards and best practices for cyber security and information security management systems.'* This will provide for sustained focus on the security of the technology systems at the strategic level.
6. Clauses 5 and 6 of the Bill provide for the functions of the National Identification and Registration Authority and the Board of Management. It is noted however that there is an apparent overlap in the functions to be carried out by both bodies, specifically in respect of the development of policies and procedures for which the National Identification and Registration Authority are to be guided by. Additionally, it is observed that a number of prescribed functions of the Board of Management go beyond mere oversight of the general administration of the Authority or governance but rather are akin to the general management of the Authority. It is proposed that the function of the Board and the Authority be streamlined.
7. Relating to the constitution of the Authority, is the Board of Management to be treated as a part of the Authority? If not, it is proposed that Section 5(8), be amended to more precisely refer to 'Part I of the First Schedule' instead of simply 'the First Schedule'. It is noted as well that the First Schedule has not been properly titled.

Clause 9 – National Databases

8. We note that the penalty for the offences mentioned at Section 9(8) does not include the Parish Court jurisdiction but the penalty for offences under Section 9(9) does. Presumably, the omission in Section 9(8) is an oversight as there is no perceivable difference in the seriousness of the offences in both subsections to justify this difference in the applicable penalty. Additionally, we question whether the term function as used in subsections 8 and 9 ascribe the same meaning as provided in the Cyber Crimes Act.

Clause 10 – Enrolment

9. In light of the fact that subsections 4 and 5 make a distinction between an ‘individual’ and the person who applies on his behalf (applicant), we query whether the use of the term ‘individual’ in subsections 7 and 8 excludes the ‘applicant’ or applies to both categories of person. If it does, we would recommend inserting the words ‘*or applicant*’ after the word ‘*individual*’ in subsections 7 and 8 to ensure that there is no lacuna in terms of application of the offence.
10. We note that subsection 5 provides for an individual who is an inmate at a Correctional Institution (as defined by the Corrections Act) to be allowed to be enrolled. It is noted however that ‘wards’ are not included, as mention is only made of ‘inmates’ who are classified differently under the Corrections Act. In light of this, it is recommended that ‘wards’ be included in this subsection as ‘Correctional Institutions as defined by the Corrections Act are inclusive of Juvenile Correctional Centres and Juvenile Remand Centres.
11. For subsection 5, consideration could be given to **mandatory** enrolment of inmates prior to release as a means to facilitate easier reintegration into society. It would afford an easier gateway to accessing social welfare services for which he is deemed eligible. This is especially for those inmates who have been incarcerated for extended periods and/or do not have strong familial and community based support.
12. What considerations have been given to treating with the homeless population and other groups who are eligible to access services from the Government?

Clause 11 – Identity information

13. Under subsection 1 (c) it is proposed that birth certificate number also be included since the birth certificate is also referenced in clause 12 (2) as a type of document which can be used to facilitate enrolment.

Clause 14 – Cancellation of Enrolment

14. In relation to Section 14(1)(b), upon the cancellation of enrolment, the Bill does not state whether the information previously supplied will be retained, or destroyed. If, by virtue of the public nature of the information collected, it is to be retained or transferred to the Public Records Office for further storage, then the Bill ought to specify same along with the further safeguards to be put in place for its continued security.

Clause 16 – National Identification Card

15. It is proposed for subsection 5 that '*proof of the domicile of, an individual*' be replaced with '*proof of immigration status of an individual*'. This would better reflect the intent of the provision and not introduce a new term that has not been defined within the context of the Act.
16. We consider the penalty outlined in subsections 10 and 11 to be too low considering the egregious nature of the crime being committed.

Clause 17 – Use of National Identification Card

17. In light of the fact that the purposes for which the card may be used are stated in 17(1), consideration should be given to expanding subsection (2) by making the use of the Card for any purposes not stated in subsection (1) the offence. This is particularly important as all the untoward ways the Card may be used might not be contemplated or identifiable at this stage of the process. Additionally, to ensure that the purposes for which the Card can be used remain current, subsection (1) could be amended to empower the Authority to determine whatever other purpose the Card may be used for. This power may be made subject to Ministerial approval, if deemed necessary.
18. The penalty associated with personation seems somewhat low and does not align with other laws with similar offences. It also proposed that given the nature and consequences of the offence that the Circuit Court jurisdiction be introduced.

Clause 18 – Period of Validity of National Identification Card

19. It is noted that subsection 4 states that '*the authority may require an individual...to surrender. the existing National Identification Card (whether still current or expired)...*'.

On the face of it, this is, in part, in conflict with clause 22(b), which makes it obligatory for an individual to surrender a card that has expired. In this regard, it is recommended that the words '*whether still current or expired*' be deleted from Clause 18(4).

Clause 20 – Cancellation of National Identification Card

20. Clause 20(1)(d)(i) refers to the cancellation of the National Identification Card on the account of renunciation or deprivation of Jamaican citizenship. It should be noted that renunciation of citizenship can be executed for another immigration status, for example permanent residency, which would still fulfil the requirement of being ordinarily resident in the case of non-nationals. It would be useful for the legislation to provide for such instances if in such cases an individual would be able to re-apply or amend his identity information.

Clause 22- Obligation to Surrender National Identification Card

21. There is no time period prescribed within which the individual shall surrender the Card. Furthermore, there is no applicable penalty for failing to surrender. In light of these two considerations, the provision lacks any real force to ensure or at the very least promote compliance.

Clause 24 – Disclosure of Identity Information

22. It is proposed that the Director General of MOCA be given the power afforded to the Commissioner of Police under subsection 2. However, for practical application of the provision, it may be more suitable for an officer not below the rank of Superintendent [or an equivalent officer of MOCA] to be given the power to make an application without notice to a judge of the Supreme Court in chambers.

23. Clause 24(1) outlines the specific instances where the authority shall disclose identity information stored in the NID. We propose that the identification of the bodies of unknown deceased persons be included as an additional instance. Whereas subsection 2 outlines situations in which the COP [or DG] may make an application to the judge of the SC for the authority to disclose ID information, the MNS proposes that additional grounds be considered in exceptional circumstances. In such instances, it is proposed that a mechanism be set out to

allow for the COP [or DG] (or respective designate) to access the identity information and to obtain the Court's approval thereafter. In the case that such approval is not granted, all identity information gathered ought to be destroyed. These instances may include:

- a. To facilitate the finding and identification of missing persons or in the case of kidnapping.
- b. Where there is a public emergency.

24. The Ministry proposes that an exemption be provided for orders granted under clause 24(2), in order to not prejudice an ongoing investigation. This is particularly important for complex matters involving organized and transnational crimes. The tipping off provisions in the Proceeds of Crime Act are instructive in this regard.

Clause 25 – Request for Information or for authentication and verification services.

25. Clause 25 makes provision for a person to apply to be an accredited third party for the purposes of this section and that the Authority may verify the identity information of an enrolled individual at the request of an accredited third party with the consent of the individual. Clarity is being sought as to who may apply to be an accredited third party, for what period of time would the accreditation last and what types of background checks would be done on these parties. If these procedures are to be outlined in the regulations, the Ministry is of the view that reference ought to be made to prescribed procedures for accreditation within the clause.

Clause 29 – Powers of Search and Seizure

26. It is proposed that for the purposes of this section, the word premises be defined to include place, receptacle or conveyance. This accords with the proposed amendment in the Criminal Justice (Suppression of Criminal Organizations) (Amendment) Bill, 2021. This inclusion ensures that the various spaces wherein evidence can be stored are captured and provided for.

27. It is further proposed that the limitation described at paragraph 2(d) for the warrant to '*describe in general terms to kinds of items authorized to be seized...*' be deleted since this could be prejudicial to an investigation and is not generally included in other legislation that provide for search warrants. This proposed deletion would provide the police with flexibility in undertaking their investigations.

Clause 30- Secrecy and confidentiality

28. It is proposed that the Circuit Court jurisdiction be introduced to be in line with the penalty of a similar offence under the Data Protection Act (Section 66). In this regard, we suggest that the penalty applicable at the Circuit Court be a fine and a term of imprisonment not exceeding ten years.

Clause 31- Protection from liability

29. For subsection (2), consideration should be given to defining who is '*an officer of the Authority*' for the purposes of the Act. We note that generally in other recent legislation wherein the term '*officer*' is used, it is defined.

Clause 32- Imposition of fees

30. We query whether reference should also be made to '*section 16(6)*' as one of the provisions for exceptions to the imposition of fees.

First Schedule – The National Identification and Registration Authority

31. For part II paragraph 2a it should be amended to reflect that the appointed member should be a national of Jamaica only and residing in Jamaica. This recommendation is being made due to the highly sensitive nature of the matters being dealt with by the board.

32. The MNS proposes that consideration be given to a senior public official in the Ministry with responsibility for labor and social welfare, designated by the Permanent Secretary in that Ministry. Services provided by the Ministry of Labour and Social Security will feature heavily in use of the National ID e.g. PATH

Second Schedule – Appeal Tribunal

33. Paragraph 1(1) is somewhat unclear. What determines whether there is a one panel or two panel tribunal? And in the instance of a two panel tribunal, are there two chairmen? Will one have a casting vote? We propose that one appeal tribunal be established.

34. For paragraph 5, we propose that an additional ground of revocation be introduced for any breach of any provision of the Act, in particular section 30 Secrecy and Confidentiality.

Third Schedule - The National Databases Inspectorate

35. Paragraph 3 and 5(1) are essentially the same provision.

Fourth Schedule - Amendments to Other Enactments

36. We question the proposed amendment at Paragraph 2 '(The Aliens Act) and paragraph 8 (The Immigration Restriction (Commonwealth Citizens) Act) since the purpose of the sections as written in the principal acts are not contemplating the provision of information as intended. It is our considered view that the proposed consequential amendments are misplaced.

37. For the Aliens Act, section 13 provides for a central register for Aliens or foreign nationals not citizens of Jamaica. This requirement does not apply to aliens who are in possession of unconditional landing or permanent resident status. It will be recalled that the Bill makes reference to individuals eligible for enrolment who are citizens of Jamaica and individuals who are ordinarily resident [**Residents**] in Jamaica.

38. For the IRCC Act, the certificate of identity referred in paragraph 8 (Form E) is only issued to persons whose claim to Jamaican citizenship has not been established and they would need to leave the island or leave to re-enter (see section 7 of the principal Act).

39. It is proposed that consideration be given for there to be consequential amendments to be made to the immigration related legislation [Aliens Act, IRCC Act, the Deportation (Commonwealth Citizens) Act] to allow for the Chief Immigration Officer/PICA to provide information on foreign nationals, subject of Deportation or Prohibition orders. Additionally, consideration could be given to consequentially amending the Caribbean Community (Free Movement of Skilled Persons) Act.

*Prepared by
Ministry of National Security
8 February 2021*