

LAWS OF SEYCHELLES

DATA PROTECTION ACT

(NOT YET IN FORCE)

Act 9 of 2003

ARRANGEMENT OF SECTIONS

PART I – PRELIMINARY

Short title

1. This Act may be cited as the Data Protection Act, 2002 and shall come into operation on such date as the Minister may by notice in the Gazette appoint.

Note: This Act was not yet in force as at 6 January 2014.

Interpretation

2. (1) The following provisions shall, unless the context otherwise requires, have effect for the interpretation of this Act.
- (2) "Business" includes a trade or profession.
- (3) "Commissioner" means the Data Protection Commissioner appointed under section 4.
- (4) "Court" means the Supreme Court.
- (5) "Data" means information recorded in a form in which it can be processed by equipment operating automatically in response to instructions given for that purpose.
- (6) "Data equipment" means equipment for the automatic processing of data or for recording information so that it can be automatically processed.
- (7) "Personal data" means, data consisting of information which relates to a living individual who can be identified from that information (or from that and other information in the possession of the data user), including any expression of opinion about the individual but not any indication of the intentions of the data user in respect of that individual.
- (8) "Data material" means any document or other material used in connection with data equipment.
- (9) "Data subject" means an individual who is the subject of personal data.
- (10) "Data user" means a person who holds data, and a person "holds" data if —
- (a) the data form part of a collection of data processed or intended to be processed by or on behalf of that person as mentioned in subsection (5);
- (b) that person (either alone or jointly or in common with other persons) controls the contents and use of the data comprised in the collection, and
- (c) the data are in the form in which they have been or are intended to be processed as mentioned in paragraph (a) or (though not for the time being in that form) in a form into which they have been converted after being so processed and with a view to being further so processed on a subsequent occasion.
- (11) A person carries on a "computer bureau" if he provides other persons with services in respect of data, and a person provides such services if —
- (a) as agent for other persons he causes data held by them to be processed as mentioned in subsection (5) or
- (b) he allows other persons the use of equipment in his possession for the processing as mentioned in that subsection of data held by them.
- (12) "De-registration notice" means a notice under section 15.
- (13) "Prescribed" means prescribed by regulations under section 46.
- (14) "Processing", in relation to data, means amending, augmenting, deleting or re-arranging the data or extracting the information constituting the data and, in the case of personal data, means performing any of those operations by reference to the data subject.
- Provided that this subsection shall not apply to any operation performed only for the purpose of preparing the text of documents.
- (15) "Disclosing", in relation to data, includes disclosing information extracted from the data and where the identification of the individual who is the subject of personal data depends partly on the information constituting the data and partly on other information in the possession of the data user, the data shall not be regarded as disclosed or transferred unless the other information is also disclosed or transferred.
- (16) "Enactment" includes an enactment subsequent to this Act.
- (17) "Enforcement notice" means a notice under section 14.
- (18) "Register" means the register maintained under section 8.
- (19) "Transfer prohibition notice" means a notice under section 16.

Data protection principles

3. (1) Subject to subsection (3), references in this Act to the data protection principles are to the principles set out in Part I of the Schedule and those principles shall be interpreted in accordance with Part II of the Schedule.
- (2) The first seven principles apply to personal data held by data users and the eighth applies both to such data and to personal data in respect of which services are provided by persons carrying on computer bureaux.
- (3) The Minister may, by Order published in the Gazette, modify or supplement those principles for the purpose of providing additional safeguards in relation to personal data consisting of information as to —
- (a) the racial origin of the data subject;
- (b) his political opinions or religious or other beliefs;
- (c) his physical or mental health or his sexual life ; or
- (d) his criminal convictions,
- and references in this Act to the data protection principles include, except where the context otherwise requires, references to any modified or additional principle having effect by virtue of an Order under this subsection.
- (4) An Order under subsection (3) may modify a principle either by modifying the principle itself or by modifying its interpretation; and where an Order under that subsection modifies a principle or provides for an additional principle it may contain provisions for the interpretation of the modified or additional principle.
- (5) An Order under subsection (3) modifying the third data protection principle may, to such extent as the Minister thinks appropriate, exclude or modify in relation to that principle any exemption from the non-disclosure provisions contained in Part IV; and the exemptions from those provisions shall accordingly have effect subject to any Order made by virtue of this subsection.
- (6) An Order under subsection (3) may make different provisions in relation to data consisting of information of different descriptions.

Data Protection Commissioner

4. (1) For the purposes of this Act, there shall be an officer known as the Data Protection Commissioner.
- (2) The Commissioner shall be appointed by the President.
- (3) Subject to subsections (4) and (5), the Commissioner shall hold office for a term of 5 years, but on expiry of such term shall be eligible for re-appointment.

(4) The Commissioner may at any time resign his office by writing addressed to the President.

(5) The Commissioner may be removed from office by the President.

Other officers

5. (1) The President shall cause such arrangements to be made as the President considers appropriate for the provision of officers to assist the Commissioner in the exercise of his functions under this Act.

(2) Any function of the Commissioner under this Act may, to the extent authorised by him, be performed by any such officer.

Receipts and expenses

6. (1) All fees and other sums received by the Commissioner in the exercise of his functions under this Act shall be paid by him into the Consolidated Fund.

(2) There shall be paid to the Commissioner out of moneys provided by an Appropriation Act such sum as may be necessary towards his expenses.

Audit of accounts

7. The accounts of the Commissioner shall be audited in accordance with article 158 of the Constitution.

PART II – REGULATION OF DATA USERS AND COMPUTER BUREAUX

Registration of data users and computer bureaux

8. (1) The Commissioner shall maintain a register of data users who hold, and of persons carrying on computer bureaux who provide services in respect of, personal data and shall make an entry in the register in pursuance of each application for registration accepted by the Commissioner under this Part.

(2) Each entry shall state whether it is in respect of —

- (a) a data user;
- (b) a person carrying on a computer bureau, or
- (c) a data user who also carries on such a bureau.

(3) Subject to this section, an entry in respect of a data user shall consist of the following particulars —

- (a) the name and address of the data user;
- (b) a description of the personal data to be held by him and of the purpose or purposes for which the data are to be held or used;
- (c) a description of every source from which he intends or may wish to obtain the data or the information to be contained in the data;
- (d) a description of every person to whom he intends or may wish to disclose the data (otherwise than in a case mentioned in section 41(5)(a), (b) or (c));
- (e) the name of every country outside Seychelles to which he intends or may wish directly or indirectly to transfer the data; and
- (f) one or more addresses for the receipt of requests from data subjects for access to the data.

(4) Subject to this section, an entry in respect of a person carrying on a computer bureau shall consist of that person's name and address.

(5) Subject to this section, an entry in respect of a data user who also carries on a computer bureau shall consist of his name and address and, as respects the personal data to be held by him, the particulars specified in subsection (3)(b) to (f).

(6) In the case of a registered company, the address referred to in subsections (3)(a), (4) and (5) is that of its registered office, and the particulars to be included in the entry shall include the company's number in the register of companies.

(7) In the case of a person (other than a registered company) carrying on a business the address referred to in subsections (3)(a), (4) and (5) is that of his principal place of business.

(8) The Minister may by Order published in the Gazette vary the particulars to be included in entries made in the register.

Prohibition of unregistered holding of personal data

9. (1) A person shall not hold personal data unless an entry in respect of that person as a data user, or as a data user who also carries on a computer bureau, is for the time being contained in the register.

(2) A person in respect of whom such an entry is contained in the register shall not —

- (a) hold personal data of any description other than that specified in the entry;
- (b) hold any such data, or use any such data held by him, for any purpose other than the purpose or purposes described in the entry;
- (c) obtain such data, or information to be contained in such data, to be held by him from any source which is not described in the entry;
- (d) disclose such data held by him to any person who is not described in the entry; or
- (e) directly or indirectly transfer such data held by him

to any country outside Seychelles other than a country named in the entry.

(3) A servant or agent of a person to whom subsection (2) applies shall, as respects personal data held by that person, be subject to the same restrictions on the use, disclosure or transfer of the data as those to which that person is subject under subsection (2)(b), (d) and (e) and as respects personal data to be held by that person, to the same restrictions as those to which he is subject under subsection (2)(c).

(4) A person shall not, in carrying on a computer bureau, provide services in respect of personal data unless an entry in respect of that person as a person carrying on such a bureau is for the time being contained in the register.

(5) Any person who contravenes subsection (1) or knowingly or recklessly contravenes any of the other provisions of this section shall be guilty of an offence.

Application for registration and amendment

10. (1) A person applying for registration shall state whether he wishes to be registered as a data user, as a person carrying on a computer bureau or as a data user who also carries on a computer bureau, and shall furnish the Commissioner, in such form as the Commissioner may require, with the particulars required to be included in the entry to be made in pursuance of the application.

(2) Where a person intends to hold personal data for two or more purposes he may make separate applications for registration in respect of any of those purposes.

(3) A registered person may at any time apply to the Commissioner for the alteration of any particulars included in the entry or entries relating to that person.

(4) Where the alteration would consist of the addition of a purpose for which personal data are to be held, the person may, instead of making an application under subsection (3), make a fresh application for registration in respect of the additional purpose.

(5) A registered person shall make an application under subsection (3) whenever necessary for ensuring that the entry or entries relating to that person contain his current address; and any person who fails to comply with this subsection shall be guilty of an offence.

(6) Any person who, in connection with an application for registration or the alteration of registered particulars, knowingly or recklessly furnishes the Commissioner with information which is false or misleading in a material respect shall be guilty of an offence.

(7) Every application for registration shall be accompanied by the prescribed fee, and every application for the alteration of registered particulars shall be accompanied by such fee, if any, as may be prescribed.

(8) Any application for registration or the alteration of registered particulars may be withdrawn by notice in writing to the Commissioner at any time before the applicant receives a notification in respect of the application under section 11(1).

Acceptance and refusal of applications

11. (1) Subject to this section, the Commissioner shall, as soon as practicable and in any case within the period of 6 months after receiving an application for registration or for the alteration of registered particulars, notify the applicant in writing whether his application has been accepted or refused; and where the Commissioner notifies an applicant that his application has been accepted, the notification shall state —

- (a) the particulars entered in the register, or the alteration made; and

(b) the date on which the particulars were entered or the alteration was made.

(2) The Commissioner shall not refuse an application made in accordance with section 10 unless —

(a) he considers that the particulars proposed for registration or, as the case may be, the particulars that would result from the proposed alteration, will not give sufficient information as to the matters to which they relate;

(b) he is satisfied that the applicant is likely to contravene any of the data protection principles; or

(c) he considers that the information available to him is insufficient to satisfy him that the applicant is unlikely to contravene any of those principles.

(3) Subsection (2)(a) shall not be construed as precluding the acceptance by the Commissioner of particulars expressed in general terms in cases where that is appropriate, and the Commissioner shall accept particulars expressed in such terms in any case in which he is satisfied that more specific particulars would be likely to prejudice the purpose or purposes for which the data are to be held.

(4) Where the Commissioner refuses an application under this section he shall give his reasons and inform the applicant of the right of appeal conferred by section 17.

Duration and renewal of registration

12. (1) No entry shall be retained in the register after the expiration of the initial period of registration except in pursuance of a renewal application made to the Commissioner in accordance with this section.

(2) Subject to subsection (3), the initial period of registration and the period for which an entry is to be retained in pursuance of a renewal application ("the renewal period") shall be a period 5 years beginning with the date on which the entry in question was made or, as the case may be, the date on which that entry would fall to be removed if the application had not been made.

(3) The person making an application for registration or a renewal application may, in his application specify as the initial period of registration or, as the case may be, as the renewal period, a period shorter than five years, being a period consisting of one or more complete years.

(4) Where the Commissioner notifies an applicant for registration that his application has been accepted, the notification shall state the date when the initial period of registration will expire.

(5) Any person who, in connection with a renewal application, knowingly or recklessly furnishes the Commissioner with information which is false or misleading in a material respect shall be guilty of an offence.

(6) Every renewal application shall be accompanied by the prescribed fee and no such application shall be made except in the period of 6 months ending with the expiration of —

(a) the initial period of registration; or

(b) if there have been one or more previous renewal applications, the current renewal period.

(7) Where a person making a renewal application notifies the Commissioner in writing that no alteration of registered particulars is sought, no further particulars may be demanded in support of the application.

(8) Any renewal application may be sent by post, and the Commissioner shall acknowledge its receipt and notify the applicant in writing of the date until which the entry in question will be retained in the register in pursuance of the application.

(9) Without prejudice to the foregoing provisions of this section, the Commissioner may at any time remove an entry from the register at the request of the person to whom the entry relates.

Inspection etc. of registered particulars

13. (1) The Commissioner shall provide facilities for making the information contained in the entries in the register available for inspection (in visible and legible form) by members of the public at all reasonable hours on payment of such fee, if any, as may be prescribed.

(2) The Commissioner shall, on payment of such fee, if any, as may be prescribed, supply any member of the public with a duly certified copy in writing of the particulars contained in the entry made in the register in pursuance of any application for registration.

Enforcement notice

14. (1) If the Commissioner is satisfied that a registered person has contravened or is contravening any of the data protection principles, the Commissioner may serve that person with an enforcement notice requiring him to take, within such time as is specified in the notice, such steps as are so specified for complying with the principle or principles in question.

(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 fifth data protection principle may require the user —

(a) to rectify or erase the data and any other data held by him and containing an expression of opinion which appears to the Commissioner to be based on the inaccurate data; or

(b) in the case of such data as are mentioned in section 29(2), either to take the steps mentioned in paragraph (a) or to take such steps as are specified in the notice for securing compliance with the requirements specified in section 29(2) and, if the Commissioner thinks fit, for supplementing the data with such statements of the true facts relating to the matters dealt with by the data as the Commissioner may approve.

(4) The Commissioner shall not serve an enforcement notice requiring the person served with notice to take steps for complying with paragraph (a) of the seventh data protection principle in respect of any data subject unless satisfied that the person has contravened section 28 by failing to supply information to which the data subject is entitled and which has been duly requested in accordance with that section.

(5) An enforcement notice shall contain —

(a) a statement of the principle or 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 17.

(6) Subject to subsection (7), the time specified in an enforcement notice for taking the steps which it requires shall not expire before the end of the period within which an appeal can be brought against the notice and, if such an appeal is brought, those steps need not be taken pending the determination or withdrawal of the appeal.

(7) If by reason of special circumstances the Commissioner considers that the steps required by an enforcement notice should be taken as a matter of urgency, he may include a statement to that effect in the notice, and in that event, subsection (6) shall not apply.

(8) The Commissioner may cancel an enforcement notice by written notification to the person on whom it was served.

(9) Any person who fails to comply with an enforcement notice shall be guilty of an offence; but it shall be a defence for the person charged with an offence under this subsection to prove that he exercised all due diligence to comply with the notice in question.

De-registration notice

15. (1) If the Commissioner is satisfied that a registered person has contravened or is contravening any of the data protection principles, the Commissioner may —

(a) serve the person with a de-registration notice stating that the Commissioner proposes, at the expiration of such period as is specified in the notice, to remove from the register all or any of the particulars constituting the entry or any of the entries contained in the register in respect of that person; and

(b) subject to the provisions of this section, remove those particulars from the register at the expiration of that period.

(2) In deciding whether to serve a de-registration notice, the Commissioner shall consider whether the contravention has caused or is likely to cause any person damage or distress, and the Commissioner shall not serve such a notice unless he is satisfied that compliance with the principle or principles in question cannot be adequately secured by the service of an enforcement notice.

(3) A de-registration notice shall contain —

(a) a statement of the principle or principles which the Commissioner is satisfied have been or are being contravened and the reasons for reaching that conclusion; and

(b) particulars of the right of appeal conferred by section 17.

(4) Subject to subsection (5), the period specified in a deregistration notice shall not expire before the end of the period within which an appeal can be brought against the notice and, if such an appeal is brought, the particulars shall not be removed pending the determination or withdrawal of the appeal.

(5) If by reason of special circumstances the Commissioner considers that any particulars should be removed from the register as a matter of urgency, he may include a statement to that effect in the de-registration notice; and in that event subsection (4) shall not apply and the particulars shall be

removed immediately.

(6) The Commissioner may cancel a de-registration notice by written notification to the person on whom it was served.

Transfer prohibition notice

16. (1) If it appears to the Commissioner that a person registered as a data user or as a data user who also carries on a computer bureau proposes to transfer personal data held by him to a place outside Seychelles, the Commissioner may, if satisfied that the transfer is likely to contravene or lead to a contravention of any data protection principle, serve that person with a transfer prohibition notice prohibiting him from transferring the data either absolutely or until he has taken such steps as are specified in the notice for protecting the interests of the data subjects in question.

(2) In deciding whether to serve a transfer prohibition notice, the Commissioner shall consider whether the notice is required for preventing damage or distress to any person and shall have regard to the general desirability of facilitating the free transfer of data between Seychelles and other states.

(3) A transfer prohibition notice shall specify the time when it is to take effect and contain —

(a) a statement of the principle or principles which the Commissioner is satisfied is or are likely to be contravened and his reasons for reaching that conclusion; and

(b) particulars of the right of appeal conferred by section 17.

(4) Subject to subsection (5), the time specified in a transfer prohibition notice pursuant to subsection (3) shall not be before the end of the period within which an appeal can be brought against the notice and, if such an appeal is brought, the notice shall not take effect pending the determination or withdrawal of the appeal.

(5) If by reason of special circumstances the Commissioner considers that the prohibition notice should take effect as a matter of urgency, he may include a statement to that effect in the transfer prohibition notice, and in that event, subsection (4) shall not apply and the notice shall take effect immediately.

(6) The Commissioner may cancel a transfer prohibition notice by written notification to the person on whom it was served.

(7) No transfer prohibition notice shall prohibit the transfer of any data where the transfer of the information constituting the data is required or authorised by or under any enactment or required by any convention or other instrument imposing an international obligation on Seychelles.

(8) Any person who contravenes a transfer prohibition notice shall be guilty of an offence but it shall be a defence for a person charged with an offence under this subsection to prove that he exercised all due diligence to avoid a contravention of the notice in question.