



Isle of Man

Ellan Vannin

AT 8 of 2015

FREEDOM OF INFORMATION ACT 2015



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FREEDOM OF INFORMATION ACT 2015

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AN ACT to make provision for the disclosure of information held by public authorities; and for connected purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

PART 1 – INTRODUCTORY

1 Short title

The short title of this Act is the Freedom of Information Act 2015.

2 Commencement

- (1) This Act (other than this section and section 1) comes into operation on such day or days as the Council of Ministers by order appoints and different days may be appointed for different provisions and for different purposes.
- (2) An order under subsection (1) may make such consequential, incidental, supplemental, transitional and saving provisions as the Council of Ministers considers necessary or expedient.

3 Purpose

The purpose of this Act is to enable persons who are resident in the Island to obtain access to information held by public authorities in accordance with the principles that —

- (a) the information should be available to the public to promote the public interest; and
- (b) exceptions to the right of access are necessary to maintain a balance with rights to privacy, effective government, and value for the taxpayer.

4 Application

- (1) This Act applies in relation to information created on or after 11 October 2011.
- (2) This Act operates in addition to, and not in substitution for, the Code of Practice on Access to Government Information approved and issued by the Council of Ministers.
- (3) This Act does not affect the operation of the *Public Records Act 1999* and does not provide a right of access to information covered by that Act other than in accordance with that Act.
- (4) The Council of Ministers may by order amend subsection (1) to provide for an earlier date.

5 Interpretation

- (1) In this Act —
 - “**absolutely exempt information**” has the meaning given by section 11(3);
 - “**ADR process**” has the meaning given by section 44(1);
 - “**advice panel**” means the panel prepared and maintained under section 57;
 - “**any other state**” includes references to a territory of the United Kingdom outside the United Kingdom and the Crown Dependencies;
 - “**applicant**” means a person who makes a request for information;
 - “**code of practice**” means the code of practice issued under section 60;
 - “**company**” includes any body corporate;
 - “**decision notice**” means a notice given under section 42(5)(b);
 - “**enforcement notice**” means a notice given under section 46(1);
 - “**held**” has the meaning given by section 8(2);
 - “**information**” includes information recorded in any form;
 - “**Information Commissioner**” means the Isle of Man Information Commissioner appointed in accordance with section 52;
 - “**information notice**” means a notice given under section 45(2);
 - “**international court**” means an international court that is not an international organisation and that is established —

- (a) by a resolution of an international organisation of which the United Kingdom is a member; or
- (b) by an international agreement to which the United Kingdom is a party;

“**international organisation**” means an international organisation whose members include any 2 or more States, or any organ of such an organisation;

“**practical refusal reason**” has the meaning given by section 11(3);

“**public authority**” has the meaning given by section 6(1);

“**publication scheme**” means a publication scheme adopted and maintained in accordance with section 59;

“**publicly-owned company**” has the meaning given by section 6(2);

“**qualified exempt information**” has the meaning given by section 11(3);

“**records**” includes not only written documents but also records conveying information by any other means;

“**refusal notice**” means a notice given under section 18;

“**request for information**” means a request for information made under section 9;

“**respond to a request for information**” has the meaning given by section 12(2);

“**review applicant**” has the meaning given by section 42(1);

“**standard processing period**” has the meaning given by section 12(2);

“**State**” includes the government of a State and any organ of its government or administration;

“**working day**” means any day except —

- (a) a Saturday, a Sunday, Christmas Day or Good Friday;
- (b) a bank holiday under the *Bank Holidays Act 1989*; or
- (c) in the case of an educational establishment, any day not falling during term at that establishment as determined in accordance with the establishment’s articles of government or management.

(2) For the purposes of the operation of section 29A of the *Interpretation Act 1976*, a reference to “this Act” in this Act does not include a reference to the code of practice, unless expressly stated otherwise.

6 Meaning of public authority

(1) A “**public authority**” means any of the following that is listed in Schedule 1 —

- (a) a person;

- (b) a body;
 - (c) a publicly-owned company;
 - (d) the holder of any office.
- (2) In this Act, “**publicly-owned company**” means —
- (a) a company in which one or more public authorities owns, whether directly or indirectly, shares or other interests which, when taken together, enable them to exercise more than half the number of votes in a general or other meeting of the company on any matter; or
 - (b) a company to the extent that it performs functions or exercises powers conferred on a public authority under an enactment.
- (3) Subsection (1) is subject to any qualification set out in Schedule 1.

7 **Meaning of public authority: supplementary**

- (1) Schedule 1 has effect for the purposes of defining a “public authority”.
- (2) Schedule 1 may specify that this Act applies only to information of a specified description held by a public authority.
- (3) If it does so, nothing in this Act applies to any other information held by the public authority.
- (4) The Council of Ministers may by order amend Schedule 1.
- (5) The order may —
 - (a) modify any provision of this Act that the Council of Ministers considers necessary or expedient in order to modify the operation of this Act in relation to a person to whom an amendment to Schedule 1 relates; and
 - (b) make such consequential, incidental, supplemental and saving provisions as the Council of Ministers considers necessary or expedient.
- (6) However, an order under subsection (4) may not add the Lieutenant Governor to the list of public authorities.
- (7) Before making an order under subsection (4), the Council of Ministers must consult —
 - (a) every person to whom the order relates, or person appearing to the Council of Ministers to represent such person; and
 - (b) any other person that the Council of Ministers considers appropriate.

PART 2 – ACCESS TO INFORMATION HELD BY PUBLIC AUTHORITIES

8 Right of access to information held by public authorities

- (1) Subject to this Act, every person who is resident in the Island has a legally enforceable right to obtain access, in accordance with this Act, to information held by a public authority.
- (2) In this Act, information is “held” by a public authority if it is held —
 - (a) by the public authority, otherwise than on behalf of another person; or
 - (b) by another person for or on behalf of the public authority.
- (3) Nothing in this Act requires a public authority to —
 - (a) create or derive information from information that it holds;
 - (b) undertake research into, or analysis of, information that it holds; or
 - (c) undertake substantial compilation or collation of information that it holds.
- (4) Nothing in this Act limits the powers of a public authority to lawfully disclose information held by it.

9 Requests for information

- (1) A person who is resident in the Island and who wishes to obtain access to information held by a public authority may request the information.
- (2) The request for information must —
 - (a) be in the form required by the Chief Secretary; and
 - (b) be accompanied by the fee for making a request for information (if any) prescribed by regulations.
- (3) The Chief Secretary must specify a form for the purposes of subsection (2)(a).
- (4) The Chief Secretary may specify different forms for requests to different public authorities.
- (5) The form must —
 - (a) require the applicant to provide the following information —
 - (i) the applicant’s name;
 - (ii) an address for correspondence; and
 - (iii) an adequate description of the information requested; and

- (b) be completed in such a way as to be —
 - (i) legible; and
 - (ii) capable of subsequent reference.
- (6) The form may be transmitted by electronic means.

10 Requests taken to relate to information held at time of request

- (1) A request for information is taken to relate to information held at the time when the request is received.
- (2) Account may be taken of any amendment or deletion made between the time when the request for information is received and the time when it is to be communicated, but only if the amendment or deletion would have been made regardless of the receipt of the request.

11 Grant of requests for information

- (1) A public authority must give the applicant the information requested in the applicant's request for information and must do so in accordance with this Act.
- (2) However, a public authority may refuse to give the applicant the information requested if —
 - (a) the information is absolutely exempt information or qualified exempt information;
 - (b) a practical refusal reason applies and cannot be removed, despite the public authority complying with the duty in section 15 (advice and assistance); or
 - (c) the applicant has not complied with section 14(2) (applicant must give additional information or pay additional fees requested within 28 days).
- (3) In this Act —

“absolutely exempt information” is information covered by a provision of Part 3;

“practical refusal reason” means one or more of the following —

- (a) the public authority does not hold or cannot, after taking reasonable steps to do so, find the information that the applicant has requested;
- (b) complying with the request for information would require the public authority to do one or more of the matters mentioned in section 8(3) (things a public authority is not required to do by the Act);

- (c) the applicant has submitted a request for information that does not comply with section 9 (requests for information);
- (d) the request for information is vexatious, malicious, frivolous, misconceived or lacking in substance;
- (e) both of the following apply —
 - (i) the request for information relates to information that is identical, or substantially similar, to information previously requested by, and supplied to, the applicant; and
 - (ii) a reasonable period of time has not passed between compliance with the previous request and the making of the current request;
- (f) the public authority estimates that the cost of searching for or preparing (or both) the information to give to the applicant would exceed the amount prescribed by regulations made for the purposes of this paragraph; and

“qualified exempt information” is information to which both of the following apply —

- (a) the information is covered by a provision of Part 4; and
- (b) the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

12 Standard processing period for responding to requests

- (1) A public authority must respond to a request for information in accordance with this Act promptly and, in any event, within the standard processing period.
- (2) In this Act —

“standard processing period” means —

- (a) the period of time that —
 - (i) starts on the day on which the public authority receives the request for information; and
 - (ii) ends on the day that is 20 working days later; or
- (b) such other period of time as is prescribed by regulations; and

“respond to a request for information” means taking any step in relation to a request for information with a view to deciding whether to grant or refuse (to any extent) to give the information requested, and includes making that decision.

13 Extended processing period for responding to requests involving qualified exempt information

- (1) This section applies if, in responding to a request for information during the standard processing period, the public authority is considering whether the public authority may refuse to give the applicant the information requested because the information is qualified exempt information.
- (2) If this section applies, the authority must —
 - (a) during the standard processing period, notify the applicant that this section applies;
 - (b) respond to the request for information as soon as is reasonable in the circumstances; and
 - (c) give reasonable notice (both during the standard processing period and afterwards) to the applicant about the progress of the applicant's request for information.
- (3) For the purposes of subsection (2)(b), the period of time that is reasonable in the circumstances is to be determined having regard to —
 - (a) the time required to consult with —
 - (i) a person who may be affected by disclosure of the information; or
 - (ii) a person about whether access to the information would be in the public interest; or
 - (b) whether responding to the request for information would substantially or unreasonably interfere with the day-to-day operations of the public authority.

14 Public authority may request additional information and fees

- (1) A public authority may, by notice —
 - (a) request from an applicant information that —
 - (i) the public authority reasonably requires to identify the information requested; or
 - (ii) if the public authority believes on reasonable grounds that the applicant is not resident in the Island, proves that the applicant is so resident; or
 - (b) require the applicant to pay fees (in addition to a fee (if any) payable under section 9(2)(b)), calculated in accordance with regulations, in order to comply with the request for information.
- (2) The applicant must comply with the notice within 28 days of the date of the notice.

- (3) Any time between the date of the notice given under subsection (1) and the applicant complying with the notice is disregarded for the purposes of determining when the standard processing period ends.

15 Duty to provide advice and assistance

A public authority must give reasonable advice and assistance to persons who wish to make, or who have made, requests for information held by the public authority.

16 Manner of compliance

- (1) A public authority may comply with a request for information by any reasonable means.
- (2) However, if, at the time of making the request for information, the applicant expresses a preference for receiving the information by any one or more of the means mentioned in subsection (3), the public authority must, where reasonably practicable, give effect to that preference.
- (3) The means are —
 - (a) the provision of a copy of the information in permanent form or in another form acceptable to the applicant;
 - (b) the provision of a digest or summary of the information; and
 - (c) the provision to the applicant of a reasonable opportunity to inspect a record containing the information.
- (4) In determining what is reasonably practicable, the public authority may have regard to all the circumstances, including cost.
- (5) If the public authority determines that it is not reasonably practicable to give effect to a preference, it must notify the applicant of the reasons for the determination.

17 Refusal of requests

- (1) A public authority must give an applicant a refusal notice if, in relation to a request for information, a public authority decides, in accordance with section 11(2), to refuse to give the information requested.
- (2) The public authority is not obliged to give a refusal notice in relation to a request for information if —

- (a) the public authority has, in relation to a previous identical or substantially similar request for information, given the applicant a refusal notice; and
- (b) it would in all the circumstances be unreasonable to expect it to serve a further such notice in relation to the current request for information.

18 Content of refusal notice

- (1) Subject to section 19 (confirming or denying existence of particular information), a refusal notice must —
 - (a) specify the reason why the public authority may refuse to give the applicant the information requested in the request for information;
 - (b) if the information is absolutely exempt information or qualified exempt information, state (if not otherwise apparent) why the exemption applies;
 - (c) if the information is absolutely exempt information because of section 20 (information accessible by other means), state the other means by which it is accessible; and
 - (d) contain particulars of —
 - (i) the procedure for complaining to the public authority about the public authority's response to the request for information or applying to the Information Commissioner under section 42; and
 - (ii) the alternative dispute resolution processes available under section 44.
- (2) If the public authority's claim is made in respect of qualified exempt information, the refusal notice must state the public authority's reason for claiming that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs that in disclosure of the information.

19 Confirming or denying existence of particular information

- (1) Nothing in this Act requires a public authority to confirm or deny whether it holds information of the description specified in the request for information if the confirmation or denial would itself be absolutely exempt information or qualified exempt information.
- (2) Subsection (1) does not apply if the only reason for refusing to confirm or deny whether it holds information is that the information is accessible by other means.

- (3) If a public authority refuses to confirm or deny whether it holds information the public authority must give the applicant a refusal notice.
- (4) Sections 18(1)(c) and 18(2) (about the contents of refusal notices) do not apply to a refusal notice given under this section.

PART 3 – ABSOLUTELY EXEMPT INFORMATION

20 Information accessible to applicant by other means

- (1) Information is absolutely exempt information if it is reasonably accessible to the applicant, whether free of charge or on payment, other than by requesting it under section 9(1) (requests for information).
- (2) Without limiting subsection (1), information is taken to be reasonably accessible if —
 - (a) it is available in public libraries or archives;
 - (b) it is available on the internet or from any other reasonably accessible source;
 - (c) it is made available under a publication scheme; or
 - (d) the public authority that holds it, or any other person, is obliged by or under any enactment to supply it to members of the public on request.
- (3) Information is not reasonably accessible merely because it is made available voluntarily by a public authority, otherwise than under a publication scheme (if any).

21 Court information

- (1) Information is absolutely exempt information if it is held by a public authority only by virtue of being contained in a document of the following kind for the purposes of legal proceedings —
 - (a) filed with, or otherwise placed in the custody of, a court;
 - (b) served upon, or by, a public authority.
- (2) Information is absolutely exempt information if it is held by a public authority only by virtue of being contained in a document created by a person of the following kind for the purposes of legal proceedings —
 - (a) a court;
 - (b) a member of the administrative staff of a court.

- (3) Information is absolutely exempt information if it is held by a public authority only by virtue of being contained in a document —
- (a) placed in the custody of; or
 - (b) created by,
- a person conducting an inquiry or arbitration, for the purposes of the inquiry or arbitration.
- (4) In this section —
- “arbitration” means any arbitration to which Part I of the *Arbitration Act 1976* applies;
- “court” includes a tribunal or other body exercising judicial power;
- “inquiry” means an inquiry or a hearing held under a provision contained in, or made under, an enactment; and
- “legal proceedings” includes —
- (a) a cause or matter within the meaning of the *High Court Act 1991*; and
 - (b) an inquest or *post-mortem* examination.

22 Parliamentary privilege and business

- (1) Information is absolutely exempt information if —
- (a) exemption from the obligation to disclose it under this Act is required to avoid an infringement of the privileges of —
 - (i) Tynwald;
 - (ii) the Legislative Council; or
 - (iii) the House of Keys; or
 - (b) its disclosure under this Act would, or would be likely to, in the reasonable opinion of the appropriate person specified in subsection (3), prejudice the effective conduct of parliamentary business.
- (2) A certificate signed by the appropriate person specified in subsection (3) certifying that the exemption is required to avoid —
- (a) in a case to which subsection (1)(a) applies, that infringement of privileges; or
 - (b) in a case to which subsection (1)(b) applies, that prejudice, is conclusive evidence of that fact.
- (3) The appropriate person is —

- (a) the President of Tynwald, in the case of the privileges of Tynwald or the Legislative Council; and
 - (b) the Speaker of the House of Keys, in the case of the privileges of the House of Keys.
- (4) In any proceedings under this Act, a document purporting to be a certificate under subsection (2), or a document purporting to be a certified copy of the certificate, is to be treated as the certificate or copy unless the contrary is proved.
- (5) In relation to statistical information, subsection (1)(b) has effect with the omission of the words “in the reasonable opinion of the appropriate person specified in subsection (3)”.

23 Absolutely exempt communications with the Crown

Information is absolutely exempt information if it relates to communications with —

- (a) the Queen;
- (b) the heir to, or the person who is for the time being second in line of succession to the Throne;
- (c) a person who has subsequently acceded to the Throne or become heir to, or second in line of succession to, the Throne; or
- (d) the Lieutenant Governor.

24 Absolutely exempt information under international agreements about exchange of information

- (1) Information is absolutely exempt information if it is, or relates to, confidential information obtained, provided or dealt with under an international agreement providing for the exchange of information for a purpose mentioned in section 32(3) with any of the following —
- (a) the United Kingdom;
 - (b) any other State;
 - (c) an international organisation; or
 - (d) an international court.
- (2) In this section, information obtained from a State, international organisation or international court is confidential while —
- (a) the terms on which it was obtained, provided or dealt with require the person who holds it to do so in confidence; or
 - (b) the circumstances in which it was obtained, provided or dealt with make it reasonable for the State, organisation or court to expect that it will be held in confidence.

- (3) In this section “international agreement” includes (but is not limited to) an international arrangement for the purposes of Part 9 of the *Income Tax Act 1970*.

25 Absolutely exempt personal information

- (1) Information is absolutely exempt information if it constitutes —
- (a) personal data of which the applicant is the data subject;
 - (b) personal census information; or
 - (c) a deceased person’s health record.
- (2) Information is also absolutely exempt information if —
- (a) it constitutes personal data of which the applicant is not the data subject; and
 - (b) one of the following applies —
 - (i) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the *Data Protection Act 2002*, the disclosure of the information to a member of the public (otherwise than under this Act) would contravene any of the data protection principles;
 - (ii) in a case where the information falls within paragraph (e) of that definition of “data”, the disclosure of the information to a member of the public (otherwise than under this Act) would contravene any of the data protection principles if the exemptions in section 29A of the *Data Protection Act 2002* (manual data held by public authorities) were disregarded;
 - (iii) by virtue of a provision of Part 4 of that Act, the information would be exempt from section 5 of that Act (right of access to personal data) if the applicant were the data subject.
- (3) Subject to subsection (4), words and phrases defined in the *Data Protection Act 2002* have the same meaning in this section as they have in that Act.
- (4) In this section —
- “census information” means any information —
- (a) acquired by a person employed in taking a census under the *Census Act 1929* in the course of the person’s employment; or
 - (b) derived from information covered by paragraph (a);

“health record” (including any related expression) has the meaning given by the *Access to Health Records and Reports Act 1993*; and

“personal census information” means census information that relates to an identifiable person or household.

26 Information provided in confidence

Information is absolutely exempt information if —

- (a) it was obtained by the public authority from another person (including another public authority); and
- (b) the disclosure of the information to the public by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

27 Information the disclosure of which is restricted by law

(1) Information is absolutely exempt information if its disclosure by the public authority holding it —

- (a) is prohibited by or under any statutory provision;
- (b) is incompatible with an EU obligation that applies to the Island; or
- (c) would constitute or be punishable as a contempt of court.

(2) In subsection (1), “EU obligation” has the same meaning as it has in the *European Communities (Isle of Man) Act 1973*.

PART 4 – QUALIFIED EXEMPT INFORMATION

28 National security and defence

(1) Information is qualified exempt information if exemption from section 8(1) (right of access to information held by public authorities) is required to safeguard national security.

(2) A certificate signed by the Chief Minister (or, in the absence of the Chief Minister, by the Minister for Home Affairs) certifying that refusal to supply the information (or information of a specified description that includes that information) is necessary to safeguard national security is conclusive evidence of that fact.

(3) Without limiting the generality of subsection (2), the certificate may —

- (a) identify the information to which it applies by means of a general description; and
- (b) may be expressed to have prospective effect.

- (4) In any proceedings under this Act, a document purporting to be a certificate under subsection (2), or document purporting to be a certified copy of the certificate, is to be treated as the certificate or copy unless the contrary is proved.
- (5) Information is qualified exempt information if its disclosure would, or would be likely to, prejudice —
 - (a) the defence of the British Islands or any of them; or
 - (b) the capability, effectiveness or security of any relevant forces.
- (6) In this section, “relevant forces” means —
 - (a) the armed forces of the Crown; and
 - (b) any forces co-operating with those forces, or any part of any of those forces.

29 International relations

- (1) Information is qualified exempt information if its disclosure would, or would be likely to, prejudice relations between the Island and —
 - (a) the United Kingdom;
 - (b) any other State;
 - (c) an international organisation; or
 - (d) an international court.
- (2) Information is qualified exempt information if its disclosure would, or would be likely to, prejudice —
 - (a) any interests of the Island abroad; or
 - (b) the promotion or protection by the Island of any such interest.
- (3) Information is also qualified exempt information if it is confidential information obtained from —
 - (a) the United Kingdom;
 - (b) any other State;
 - (c) an international organisation; or
 - (d) an international court.
- (4) In this section, information obtained from a State, international organisation or international court is confidential while —
 - (a) the terms on which it was obtained require it to be held in confidence; or

- (b) the circumstances in which it was obtained make it reasonable for the State, organisation or court to expect that it will be so held.

30 Economy and commercial interests

- (1) Information is qualified exempt information if its disclosure would, or would be likely to, prejudice —
 - (a) the economic interests of the Island;
 - (b) the financial interests of the Island; or
 - (c) the ability of the government to manage the national economy.
- (2) Information is qualified exempt information if —
 - (a) it constitutes a trade secret; or
 - (b) its disclosure would, or would be likely to, prejudice the commercial interests of a person (including the public authority holding it).

31 Investigations and legal proceedings

- (1) Information held by a public authority is qualified exempt information if it has at any time been held by the public authority for the purposes of —
 - (a) an investigation that the public authority has a duty to conduct to ascertain whether —
 - (i) a person should be charged with an offence; or
 - (ii) a person charged with an offence is guilty of it;
 - (b) an investigation, conducted by the public authority, that in the circumstances may lead to criminal proceedings being instituted; or
 - (c) any criminal proceedings that the public authority has power to conduct.
- (2) Information is qualified exempt information if —
 - (a) it was obtained or recorded by the public authority for the purposes of its functions relating to —
 - (i) investigations covered by subsection (1);
 - (ii) criminal proceedings that the public authority has power to conduct;
 - (iii) investigations other than investigations covered by subsection (1) that are conducted by the public authority, by virtue of powers conferred by or under any enactment, for a purpose specified in section 32(3) (purposes for which law enforcement exemption available); or

- (iv) civil proceedings that are brought by or on behalf of the public authority, which arise out of investigations mentioned in this subsection or subsection (1); and
- (b) it relates to the obtaining of information from confidential sources.

32 Law enforcement

- (1) Information is qualified exempt information if its disclosure would, or would be likely to, prejudice —
 - (a) the prevention or detection of crime;
 - (b) the apprehension or prosecution of offenders;
 - (c) the administration of justice;
 - (d) the assessment or collection of a tax or duty or of an imposition of a similar nature;
 - (e) the operation of immigration controls; or
 - (f) the maintenance of security and good order in institutions (within the meaning of the *Custody Act 1995*) where persons are lawfully detained.
- (2) Information is qualified exempt information if its disclosure would, or would be likely to, prejudice the exercise by any public authority of its functions for any of the purposes mentioned in subsection (3) or any civil proceedings brought as a result of the exercise of such a function.
- (3) The purposes are —
 - (a) to ascertain whether a person has failed to comply with the law;
 - (b) to ascertain whether a person is responsible for conduct that is improper;
 - (c) to ascertain whether regulatory action under any enactment is justified;
 - (d) to ascertain a person's fitness or competence in relation to —
 - (i) the management of bodies corporate; or
 - (ii) any profession or other activity that the person is, or seeks to become, authorised to carry on;
 - (e) to ascertain the cause of an accident;
 - (f) to protect a charity against misconduct or mismanagement (whether by trustees or other persons) in its administration;
 - (g) to protect the property of a charity from loss or mismanagement;
 - (h) to recover the property of a charity;
 - (i) to secure the health, safety and welfare of persons at work; and

- (j) to protect persons, other than persons at work, against risk to health or safety where that risk arises out of, or in connection with, the actions of persons at work.

33 Audit functions

- (1) Information is qualified exempt information if —
 - (a) it is held by a public authority to which this section applies; and
 - (b) its disclosure would, or would be likely to, prejudice the exercise of any of the public authority's functions in relation to any of the matters referred to in subsection (2).
- (2) This section applies to a public authority that has functions in relation to —
 - (a) the audit of the accounts of other public authorities; or
 - (b) the examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions.

34 Formulation of policy

- (1) Information is qualified exempt information if —
 - (a) the information is held by a public authority that is —
 - (i) a Department; or
 - (ii) the Cabinet Office; and
 - (b) the information relates to —
 - (i) the formulation or development of government policy;
 - (ii) communications between Ministers (including, in particular, the proceedings of the Council of Ministers or of any committee of the Council of Ministers);
 - (iii) the provision of legal advice or any request for such advice; and
 - (iv) the operation of a Ministerial private office.
- (2) Once a decision as to policy has been made, statistical information used to provide an informed background to the taking of the decision is not qualified exempt information by virtue of this section.
- (3) In determining whether the public interest in maintaining this exemption outweighs the public interest in disclosing the information, regard must be had to the public interest in disclosing factual information used to provide an informed background to decision-taking.

- (4) In this section, “Ministerial private office” means any part of the Isle of Man government that provides personal administrative support to a Minister.

35 Conduct of public business

Information is qualified exempt information if its disclosure would, or would be likely –

- (a) to prejudice the work of the Council of Ministers;
- (b) to inhibit –
 - (i) the free and frank provision of advice; or
 - (ii) the free and frank exchange of views for the purposes of deliberation; or
- (c) otherwise to prejudice the effective conduct of public business.

36 Health and safety

Information is qualified exempt information if its disclosure would, or would be likely to –

- (a) endanger the physical or mental health of an individual; or
- (b) endanger the safety of an individual.

37 Research and natural resources

(1) Information is qualified exempt information if –

- (a) the information relates to research being, or to be, carried out by, or on behalf of, a public authority; and
- (b) disclosure before the completion of the research would, or would be likely to, prejudice –
 - (i) the public authority or a person who is, or will be, carrying out the research on behalf of the public authority; or
 - (ii) the subject matter of the research.

(2) Information is qualified exempt information if the disclosure of the information would, or would be likely to, prejudice the well-being of –

- (a) a cultural, heritage or natural resource;
- (b) a species of flora or fauna; or
- (c) a habitat of a species of flora or fauna.

38 Qualified exempt communications with the Crown

(1) Information is qualified exempt information if it relates to communications –

- (a) with a member of the Royal Family or the Royal Household (other than a communication covered by section 23 (absolutely exempt communications with the Crown)); and
 - (b) made or received on behalf of —
 - (i) the Sovereign for the time being of the United Kingdom;
 - (ii) the heir to, or the person who is for the time being second in line of succession to the Throne; or
 - (iii) a person who has subsequently acceded to the Throne or become heir to, or second in line of succession to, the Throne.
- (2) Information is qualified exempt information if it relates to the conferring by the Crown of an honour or dignity.
- (3) The definitions of “His Majesty”, “Her Majesty”, “the King”, “the Queen” and “the Crown” in section 3 of the *Interpretation Act 1976* do not apply to this section.

39 Qualified exempt personal information

- (1) Information is qualified exempt information if —
- (a) it constitutes personal data of which the applicant is not the data subject; and
 - (b) under section 8 of the *Data Protection Act 2002* (processing likely to cause damage or distress), the data subject would be entitled to prevent disclosure of the information to a member of the public otherwise than under this Act.
- (2) Words and phrases defined in the *Data Protection Act 2002* have the same meaning in this section as they have in that Act.

40 Legal professional privilege

Information is qualified exempt information if it is information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

41 Information for future publication

Information is qualified exempt information if —

- (a) it is held with a view to its being published, by a public authority or any other person, at some future date (whether determined or not);
- (b) when the request for information is made the information is already being held with that view; and

- (c) it is reasonable in all the circumstances that the information be withheld from disclosure until that future date.

PART 5 – REVIEW AND ENFORCEMENT

42 Review of decisions by the Information Commissioner

- (1) A person (a “**review applicant**”) may apply to the Information Commissioner for a decision on –
 - (a) whether a public authority has responded to a request for information in accordance with the requirements of Part 2 (access to information held by public authorities); or
 - (b) whether a public authority was justified in refusing to give information requested.
- (2) The Information Commissioner must make the decision as soon as practicable.
- (3) However, the Information Commissioner need not make a decision if he or she is satisfied that –
 - (a) the review applicant submitted a request for information that does not comply with section 9 (requests for information);
 - (b) the review applicant has not exhausted any complaints procedure provided by a public authority that is responding to requests for information;
 - (c) the matter could be resolved by conducting an ADR process;
 - (d) there has been undue delay in applying;
 - (e) the application is vexatious, malicious, frivolous, misconceived or lacking in substance; or
 - (f) the application has been withdrawn or abandoned.
- (4) The Information Commissioner must not make a decision if satisfied that the application would require him or her to challenge the conclusiveness of a certificate mentioned in section 22(2) (parliamentary privilege and business) or 28(2) (national security and defence).
- (5) The Information Commissioner must –
 - (a) if subsection (3) or (4) applies, notify the review applicant that no decision will be made and the grounds for not doing so; and
 - (b) in any other case, give notice of the Information Commissioner’s decision (a “**decision notice**”) to the review applicant and the public authority.

- (6) The Information Commissioner must specify in the decision notice —
 - (a) the Information Commissioner’s reasons for the decision;
 - (b) any steps to be taken by the public authority to comply with the requirement or to comply with the request for the information;
 - (c) the period of time within which those steps must be taken; and
 - (d) the right of appeal to the High Court conferred by section 50.
- (7) The period of time mentioned in subsection (6)(c) must not expire before the end of the period of time within which an appeal to the High Court may be brought under section 50 against the notice.
- (8) If an appeal to the High Court is brought, no step that is affected by the appeal need be taken pending the determination or withdrawal of the appeal.

43 Review of decisions originally made by the Information Commissioner

If the public authority that makes a decision in relation to which a person could apply to the Information Commissioner under section 42 (review of decisions by the Information Commissioner) is the Information Commissioner, section 42 applies as if the references to the Information Commissioner were references to the Tynwald Commissioner for Administration (within the meaning of the *Tynwald Commissioner for Administration Act 2011*).

44 Alternative dispute resolution

- (1) The Information Commissioner may, at any time, attempt to resolve a matter that is the subject of an application under section 42 (review of decisions by the Information Commissioner) by negotiation, conciliation, mediation or another form of alternative dispute resolution (an “**ADR process**”).
- (2) If, after an ADR process has been conducted, the Information Commissioner makes a decision under section 42, the Information Commissioner must have regard to the outcome of the ADR process.

45 Information notices

- (1) Subsection (2) applies if the Information Commissioner —
 - (a) has received an application under section 42 (review of decisions by the Information Commissioner); or
 - (b) reasonably requires information —
 - (i) for the purpose of determining whether a public authority has complied, or is complying, with a requirement of Part 2 (access to information held by public authorities); or

- (ii) for the purpose of determining whether the practice of a public authority conforms with the code of practice.
- (2) The Information Commissioner may give the public authority notice (an “**information notice**”) requiring it to give the Information Commissioner such information as is specified in the notice relating to —
 - (a) the application;
 - (b) compliance with the requirements of Part 2; or
 - (c) conformity with the code of practice.
- (3) The information must be given —
 - (a) in the form specified in the notice; and
 - (b) within the period of time specified in the notice.
- (4) An information notice must —
 - (a) state why the information is required by the Information Commissioner; and
 - (b) contain particulars of the right of appeal conferred by section 50.
- (5) The period of time specified under subsection (3)(b) must —
 - (a) not expire before the end of the period of time within which an appeal to the High Court may be brought under section 50 against the notice; and
 - (b) if an appeal is brought, the information need not be given pending the determination or withdrawal of the appeal.
- (6) An authority is not required by this section to give information that is —
 - (a) a communication between an advocate and his or her client in connection with the giving of legal advice to the client with respect to his or her obligations, liabilities or rights under this Act; or
 - (b) a communication between an advocate and his or her client, or between an advocate or his or her client and any other person, made in connection with or in contemplation of proceedings under or arising out of this Act and for the purposes of such proceedings.
- (7) The Information Commissioner may cancel an information notice by notice to the public authority.
- (8) In this section, “information” includes unrecorded information.

46 Enforcement notices

- (1) If the Information Commissioner is satisfied that a public authority has failed to comply with a requirement of Part 2 (access to information held by public authorities), the Information Commissioner may give the

- public authority notice (an “**enforcement notice**”) requiring it to take the steps specified in the notice to comply with the requirement of Part 2.
- (2) The public authority must take the steps within the period of time specified in the notice.
 - (3) An enforcement notice must —
 - (a) state —
 - (i) the provision with which the Information Commissioner is satisfied the public authority has failed to comply; and
 - (ii) why the Information Commissioner is so satisfied; and
 - (b) contain particulars of the right of appeal conferred by section 50.
 - (4) The period of time specified in subsection (2) must —
 - (a) not expire before the end of the period of time within which an appeal to the High Court may be brought under section 50 against the notice; and
 - (b) if an appeal is brought, the notice need not be complied with pending the determination or withdrawal of the appeal.
 - (5) The Information Commissioner may cancel an enforcement notice by notice to the public authority.

47 Exception from duty to comply with certain notices

- (1) A decision notice or enforcement notice ceases to have effect if —
 - (a) the notice —
 - (i) is served on a public authority that is a Department or the Cabinet Office; and
 - (ii) relates to a failure, in respect of one or more requests for information, to comply with section 8 (right of access to information held by public authorities) in respect of absolutely exempt information or qualified exempt information; and
 - (b) the Chief Minister, after consulting the Council of Ministers and the Attorney General, signs a certificate that he or she has, on reasonable grounds formed the view that there was no failure.
- (2) The Chief Minister must —
 - (a) give the certificate to the Information Commissioner not later than the 30th working day following the effective date;
 - (b) lay a copy of it before Tynwald at the next available sitting after signing the certificate; and
 - (c) notify the review applicant of the reasons for the Chief Minister’s opinion as soon as reasonably practicable after signing the certificate.

- (3) The Chief Minister is not obliged to provide information under subsection (2)(c) if it would involve the disclosure of absolutely exempt information or qualified exempt information.
- (4) In this section, “effective date” means —
 - (a) the day on which the notice was given to the public authority; or
 - (b) if an appeal to the High Court under section 50 is brought, the day on which that appeal is determined or withdrawn.

48 Failure to comply with notices

- (1) The Information Commissioner may certify in writing to the High Court that a public authority has failed to comply with —
 - (a) a decision notice (other than a decision notice that ceases to have effect because section 47 (exception from duty to comply with certain notices) applies) by not taking any steps it is required to take under the notice;
 - (b) an information notice; or
 - (c) an enforcement notice (other than an enforcement notice that ceases to have effect because section 47 applies).
- (2) The Information Commissioner must not exercise the power under subsection (1) before the expiry of —
 - (a) the period of time specified in the notice under section 42 (review of decisions by the Information Commissioner), 45 (information notices) or 46 (enforcement notices); or
 - (b) if the failure relates to a decision notice or an enforcement notice, the period of time mentioned in section 47(2)(a) (exception from duty to comply with certain notices).
- (3) The High Court must inquire into the matter and may deal with the public authority as if it had committed a contempt of court after hearing —
 - (a) any witness who may be produced against or on behalf of the public authority; and
 - (b) any statement that may be offered in defence.
- (4) This section does not confer any right of action in civil proceedings in respect of a failure to comply with a duty imposed by or under this Act.
- (5) For the purposes of this section, reasons why a public authority fails to comply with an information notice include, but are not limited to —
 - (a) making a statement that it knows to be false in a material respect; or
 - (b) recklessly making a statement that is false in a material respect.

49 Powers of entry and inspection

Schedule 3 (powers of entry and inspection) has effect.

50 Right of appeal against notices

- (1) The review applicant or public authority may appeal on a point of law to the High Court against a decision notice.
- (2) The public authority may appeal on a point of law to the High Court against an information notice or an enforcement notice.
- (3) An appeal under this section must be made in accordance with rules of court.

51 Public authority may claim late exemption

- (1) This section applies in proceedings under —
 - (a) section 42 (review of decisions by the Information Commissioner);
 - (b) section 43 (review of decisions originally made by the Information Commissioner); and
 - (c) section 50 (right of appeal against notices).
- (2) In proceedings in which this section applies but subject to subsection (3), a public authority is entitled to claim that information requested in the request for information that is the subject of the proceedings is absolutely exempt information or qualified exempt information, whether or not the public authority has made that claim in —
 - (a) a refusal notice issued in relation to the information; or
 - (b) in the case of proceedings under section 50 (right of appeal against notices), in proceedings under section 42 (review of decisions by the Information Commissioner) or 43 (review of decisions originally made by the Information Commissioner).
- (3) The Information Commissioner or the High Court may refuse the public authority's claim if the Information Commissioner or the High Court (as the case may be) is satisfied on reasonable grounds that —
 - (a) the public authority has not responded to the request for information in accordance with the requirements of Part 2 (access to information held by public authorities);
 - (b) the public authority would not have been justified in refusing to give the information requested in reliance on the claim had the claim been made in the refusal notice issued in relation to the information; or
 - (c) there has been undue delay by the public authority in making the claim.

PART 6 – THE INFORMATION COMMISSIONER

52 The Isle of Man Information Commissioner

- (1) The Isle of Man Data Protection Supervisor appointed under section 4 (as in force before the commencement of paragraph 4 of Schedule 4 to this Act) of the *Data Protection Act 2002* is appointed, and is to be known instead, as the Isle of Man Information Commissioner.
- (2) Schedule 2 has effect.

53 Independence

The Information Commissioner is to perform his or her functions and exercise his or her powers independently and, in doing so, is not to be subject to the direction of Tynwald, its Branches or the Council of Ministers.

54 General functions of the Information Commissioner

- (1) It is the duty of the Information Commissioner to perform the Information Commissioner's functions under this Act to promote good practice.
- (2) The Information Commissioner must conform with the code of practice (in addition to the requirements of this Act) in the performance of his or her functions and the exercise of his or her powers.
- (3) The Information Commissioner must provide the public with such information as he or she considers appropriate about —
 - (a) the operation of this Act;
 - (b) good practice;
 - (c) the functions of public authorities under this Act; and
 - (d) the functions of the Information Commissioner.
- (4) The Information Commissioner may —
 - (a) give advice to any person in respect of a matter referred to in subsection (3); and
 - (b) with the consent of a public authority, assess whether the public authority is following good practice.
- (5) In this section, “good practice” means such practice in the performance of the functions of a public authority under this Act as appears to the Information Commissioner to be desirable, and includes (but is not

limited to) compliance with the requirements of this Act and conformity with the code of practice.

55 Recommendations as to good practice

- (1) The Information Commissioner may make recommendations to a public authority if it appears to the Information Commissioner that its practice in relation to its functions under this Act does not conform with the code of practice.
- (2) A recommendation under subsection (1) must —
 - (a) be in writing and specify the provision of the code of practice with which, in the opinion of the Information Commissioner, the public authority's practice does not conform; and
 - (b) specify the steps that the Information Commissioner considers the public authority should take in order to conform.

56 Advice

- (1) The Information Commissioner may seek legal advice and assistance from a legal practitioner on the advice panel for the purposes of the performance of the Information Commissioner's functions under this Act.
- (2) The person has the duties that the Information Commissioner directs.
- (3) The terms and conditions of appointment of such a person, including arrangements for the payment of allowances must be determined by the Information Commissioner in accordance with overall annual financial limits determined by the Treasury.
- (4) This section does not limit paragraph 12 of Schedule 2 (appointment of persons to provide services).

57 Advice panel

- (1) The Chief Secretary must prepare and maintain a panel of legal practitioners (the "**advice panel**") willing to give advice or assistance for the purposes of section 56 (advice).
- (2) Any legal practitioner is entitled to have his or her name on the panel, unless there is good reason for excluding him or her arising out of his or her —
 - (a) conduct when giving or selected to give advice or assistance; or
 - (b) professional conduct generally.
- (3) In this section, "legal practitioner" means an advocate, or a barrister or solicitor.

58 Annual report of the Information Commissioner

- (1) The Information Commissioner must, each year, lay before Tynwald a general report on the exercise of his or her functions under this Act.
- (2) The Information Commissioner may also lay before Tynwald any other reports concerning those functions, as he or she considers appropriate.

PART 7 – PUBLICATION SCHEMES AND CODE OF PRACTICE**59 Publication schemes**

- (1) A public authority may —
 - (a) adopt and maintain a publication scheme relating to the publication of information by the public authority;
 - (b) publish information in accordance with the scheme; and
 - (c) from time to time review the scheme.
- (2) The Council of Ministers may by order require a public authority to adopt and implement a publication scheme.
- (3) An order under subsection (2) may specify provisions that a public authority must or may include in the publication scheme.
- (4) If a public authority adopts a publication scheme, the publication scheme must specify —
 - (a) classes of information that the public authority publishes or intends to publish;
 - (b) the manner in which information of each class is, or intended to be, published; and
 - (c) whether the published information is, or is intended to be, available to the public free of charge or on payment.
- (5) A publication scheme must not —
 - (a) derogate from a right of access under section 8(1);
 - (b) include provisions that are more onerous for the applicant than those under this Act; or
 - (c) specify fees that are higher than those prescribed by regulations.
- (6) The public authority must publish its publication scheme but may do so in such manner as it thinks fit.

60 Code of practice

- (1) The Council of Ministers must issue a code of practice that gives guidance to public authorities as to the practice to be followed in the exercise of their functions under this Act.
- (2) The code must, in particular, make provision in relation to —
 - (a) determination of when information is held by a public authority for the purposes of the definition of “held” in section 5 (interpretation);
 - (b) determination of matters to which a public authority may have regard in determining whether a request for information is vexatious, malicious, frivolous, misconceived or lacking in substance;
 - (c) determination of the public interest when considering requests for information concerning qualified exempt information;
 - (d) provision of advice and assistance by public authorities to persons who propose to make, or have made, requests for information;
 - (e) provision of reasonable notice about the progress of an applicant’s request for information for the purposes of section 13(2)(c);
 - (f) transfer of requests for information by one public authority to another that holds or may hold the information requested (including how the periods of time within which requirements under this Act must be fulfilled are modified for that purpose);
 - (g) consultation with persons to whom information requested relates or with persons whose interests are likely to be affected by the disclosure of such information;
 - (h) inclusion in contracts entered into by public authorities of terms relating to the disclosure of information;
 - (i) provision by public authorities of procedures for dealing with complaints about the handling of requests for information; and
 - (j) information that public authorities are expected to make publicly available routinely.
- (3) Before issuing or revising the code, the Council of Ministers must consult the Information Commissioner.
- (4) The code of practice may authorise or require —
 - (a) provision to be made by, or confer discretionary powers on, the Information Commissioner; or
 - (b) the delegation by a person of functions conferred on that person by or under the code of practice.
- (5) The code of practice must be laid before Tynwald.

61 Compliance with code of practice

A public authority is taken to comply with a requirement imposed by this Act if the public authority conforms with the provisions of the code of practice in relation to the requirement (if any).

PART 8 – SUPPLEMENTAL PROVISIONS

62 No civil proceedings arise for non-compliance

- (1) No right of action arises in civil proceedings by reason only of the failure by a public authority to comply with a request for information.
- (2) Subsection (1) does not affect the powers of the Information Commissioner under section 48 (failure to comply with notices).

63 Record tampering

- (1) A person commits an offence if —
 - (a) a request for information has been made to a public authority;
 - (b) the applicant in relation to the request for information is entitled to be supplied with the information under this Act or the *Data Protection Act 2002*;
 - (c) the person alters, defaces, erases, destroys or conceals information held by the public authority with the intention of preventing the public authority from supplying the information to the applicant; and
 - (d) the person is —
 - (i) a member of the public authority, or of a committee, body or person authorised or required to exercise a function of the public authority in the course of performance of that function; or
 - (ii) an officer or employee of the public authority, or of a committee, body or person referred to in subparagraph (i), including an employee of the Public Services Commission (within the meaning of section 7(1) of the *Public Services Commission Act 2015*) acting under the direction of the public authority, committee, body or person, in the course of his or her duties or employment.
- (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding £5,000.

- (3) Proceedings for an offence under this section may not be instituted except –
- (a) in a case where the public authority mentioned in subsection (1)(d) is the Information Commissioner, with the consent of the Attorney General; and
 - (b) in any other case, by the Information Commissioner or by or with the consent of the Attorney General.

64 Confidentiality

- (1) A person commits an offence if –
- (a) the person performs functions as –
 - (i) the Information Commissioner;
 - (ii) a member of staff of the Information Commissioner; or
 - (iii) an agent of the Information Commissioner;
 - (b) the person knowingly or recklessly discloses information that –
 - (i) the person obtains in the course of performing the functions;
 - (ii) relates to an identified or identifiable individual or business; and
 - (iii) is not, before or at the time of the disclosure, otherwise publicly available; and
 - (c) the disclosure is not made with lawful authority.
- (2) A disclosure of information is made with lawful authority only if –
- (a) the disclosure is made with the consent of the individual or of the person for the time being carrying on the business;
 - (b) the information was provided for the purpose of its being made available to the public (in whatever manner) under any provision of this Act or the *Data Protection Act 2002*;
 - (c) the disclosure is made for the purposes of, and is necessary for, the discharge of any functions under this Act or the *Data Protection Act 2002*;
 - (d) the disclosure is made for the purposes of any proceedings, whether criminal or civil and whether arising under, or by virtue of, this Act, the *Data Protection Act 2002* or otherwise; or
 - (e) having regard to the rights and freedoms or legitimate interests of any person, the disclosure is necessary in the public interest.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding £5,000.

- (4) Proceedings for an offence under this section may not be instituted except by or with the consent of the Attorney General.

65 Defamation

If information supplied by a public authority to an applicant under this Act was supplied to the public authority by a third person, the publication to the applicant of defamatory matter contained in the information is privileged unless the publication is shown to have been made with malice.

66 Notices

- (1) Notices under this Act must be in writing.
- (2) A notice is to be taken as given in writing if it —
 - (a) is transmitted by electronic means;
 - (b) is received in legible form; and
 - (c) is capable of being used for subsequent reference.

67 Subordinate legislation

- (1) The Council of Ministers may make orders and regulations —
 - (a) in accordance with this Act; or
 - (b) otherwise as are necessary or expedient to give effect to this Act.
- (2) Orders and regulations may contain any consequential, incidental, supplemental, transitional and saving provisions that the Council of Ministers considers appropriate.
- (3) Orders and regulations (other than those covered by subsection (4)) must be laid before Tynwald as soon as practicable after they are made, and if Tynwald at the sitting at which they are laid or at the next following sitting resolves that they are to be annulled, they cease to have effect.
- (4) The following must not come into operation unless they are approved by Tynwald —
 - (a) orders under —
 - (i) section 4(4) (provision for earlier application date of Act);
 - (ii) section 7(4) (amendment of Schedule 1); and
 - (iii) section 59(2) (order to adopt publication scheme);
 - (b) regulations prescribing another period of time for the purposes of the definition of “standard processing period” in section 12(2) (time for deciding request); and

- (c) regulations prescribing fees for the purposes of section 68.

68 Fees

- (1) Without limiting section 67 (subordinate legislation), the Council of Ministers may make regulations prescribing the fees payable —
 - (a) to public authorities in respect of —
 - (i) requests for information; and
 - (ii) giving access to information in accordance with this Act; or
 - (b) in respect of applications to the Information Commissioner under section 42 (review of decisions by the Information Commissioner).
- (2) Regulations may provide for fees by fixing a fee, or a rate, process or formula by which a fee may be calculated.
- (3) Regulations may also provide for different fees for different cases and circumstances.
- (4) Regulations may also provide for the processes for making reasonable estimates of fees and notifying the applicant of the estimates.
- (5) For the purposes of subsection (4), the regulations may provide that, in circumstances prescribed in the regulations, if 2 or more requests for information are made to a public authority by —
 - (a) one person; or
 - (b) different persons who appear to the public authority to be acting together or with a common aim,the estimated cost of complying with any of the requests for information is to be taken to be the estimated total cost of complying with all of them.
- (6) Regulations may also provide —
 - (a) that no fee is payable in cases prescribed by regulations; and
 - (b) that a fee must not exceed the maximum specified in, or determined in accordance with, regulations.
- (7) A public authority may, if it considers it appropriate to do so —
 - (a) waive the whole or any part of a fee; or
 - (b) refund the whole or any part of a fee.
- (8) If provision is made by or under another enactment as to the way to determine a fee, the fee must be determined in that way rather than in accordance with regulations.
- (9) Regulations may specify the destination of the fees paid.

- (10) If no destination is specified, fees received are to be paid into and form part of the General Revenue of the Island.

69 Amendment and repeal of enactments etc.

Schedule 4 has effect.

SCHEDULE 1

[Section 6]

PUBLIC AUTHORITIES

- 1 The Cabinet Office; and
- 2 The Department of Environment, Food and Agriculture.

SCHEDULE 2

[Section 52(2)]

THE ISLE OF MAN INFORMATION COMMISSIONER**1 Selection of a candidate**

The Information Commissioner must be appointed by the Council of Ministers, subject to the approval of Tynwald.

2 Qualifications

A candidate for appointment as the Information Commissioner must be a person whom the Council of Ministers believes has the appropriate qualifications, skills and competence.

3 Tenure of office

- (1) Once the Council of Ministers' selection has been approved by Tynwald, the Information Commissioner's appointment starts on the date agreed by the Council of Ministers and the Information Commissioner.
- (2) The Information Commissioner holds office for a term of up to 5 years, but is —
 - (a) automatically eligible for re-appointment for a second term of up to 5 years on expiry of the term; and
 - (b) eligible for re-appointment for a third term of up to 5 years on expiry of the term if the Council of Ministers is satisfied that it is in the public interest to do so.

4 Terms and conditions

The terms and conditions of employment of the Information Commissioner are to be determined by the Council of Ministers in consultation with the Treasury and the Public Services Commission.

5 Restrictions

- (1) The Information Commissioner must not, except with the approval of the Council of Ministers —
 - (a) enter into any other contract of employment;
 - (b) hold any other office; or
 - (c) carry on any profession, trade or vocation.
- (2) The Council of Ministers may attach conditions to such approval.

6 Resignation and removal

The person holding the office of Information Commissioner —

- (a) may resign by written notice to the Chief Minister; and
- (b) may be removed from office by resolution of Tynwald in accordance with paragraph 7.

7 Procedure for removal

- (1) Tynwald may revoke the appointment of a person to the office of Information Commissioner on a motion tabled in accordance with this paragraph.
- (2) A motion under this paragraph may only be tabled in the name of the Council of Ministers.
- (3) The motion must allege one of the following grounds for revocation, namely that the person holding the office of Information Commissioner —
 - (a) has not carried out the duties of the office in a competent manner;
 - (b) is incapacitated either mentally or physically from carrying out the duties of the office;
 - (c) has neglected to carry out all or any of the duties of the office;
 - (d) has failed to comply with the requirements of paragraph 5(1) (restrictions on other employment and professional activity);
 - (e) has failed to comply with any term or condition of the appointment;
 - (f) has engaged in conduct incompatible with the office of Information Commissioner;
 - (g) has taken leave of absence not provided for by the terms and conditions of the appointment; or
 - (h) has been convicted of an offence (in the Island or elsewhere) and by reason of that conviction shown himself or herself not to be a fit and proper person to continue to hold the office.
- (4) The motion must not be moved unless the person holding the office of Information Commissioner —
 - (a) has been given a copy of a statement in support of the motion setting out details of the evidence relied upon in support of the alleged grounds for revocation; and
 - (b) has been given such reasonable opportunity as the circumstances permit to prepare a written statement in respect of that evidence.
- (5) The Clerk of Tynwald must forward a copy of the statements to each member of Tynwald with the Order Paper for the sitting at which the motion is to be considered.

- (6) Once the motion has been tabled, the Council of Ministers may, by notice, suspend the Information Commissioner from office.
- (7) If the motion —
 - (a) is withdrawn;
 - (b) is lost after debate;
 - (c) is not debated within 3 months of being tabled; or
 - (d) is debated but not voted upon within that time,the Information Commissioner must be restored to office without loss of remuneration or any other benefits.
- (8) In reckoning the period of 3 months referred to in sub-paragraph (7)(c) disregard August and September.

8 When office of Information Commissioner becomes vacant

- (1) The office of Information Commissioner becomes vacant if the term of appointment of the person holding the office expires and is not renewed.
- (2) It also becomes vacant if the person holding the office —
 - (a) dies;
 - (b) gives the Chief Minister written notice of resignation;
 - (c) accepts nomination to become a member of Tynwald;
 - (d) is compulsorily detained as a patient in a hospital (but otherwise than by virtue of Schedule 2A to the *Summary Jurisdiction Act 1989*, Schedule 1A to the *Criminal Jurisdiction Act 1993*, or section 2, 4, 5 or 132 of the *Mental Health Act 1998* (short term detentions));
 - (e) has a receiver appointed in respect of his or her property;
 - (f) becomes bankrupt or makes a composition or arrangement with his or her creditors;
 - (g) is convicted (in the Island or elsewhere) of an offence involving corruption; or
 - (h) is convicted (in the Island or elsewhere) of an offence and sentenced to custody.
- (3) It also becomes vacant if Tynwald revokes the appointment in accordance with paragraph 7.

9 Exercise of functions during absence, inability or vacancy and delegation

Section 20 of the *Interpretation Act 1976* (exercise of functions of office during absence, inability to act or vacancy) applies to the office of the Information Commissioner, but section 21 of that Act (power to delegate functions to deputy) does not.

10 General powers

- (1) The Information Commissioner may, with the approval of the Treasury —
 - (a) enter into contracts; and
 - (b) acquire and dispose of land and other property.
- (2) This paragraph does not limit the operation of section 26(3) of the *Interpretation Act 1976* (incidental powers).

11 Staff

- (1) The Information Commissioner may, with the approval of the Treasury as to numbers, appoint staff to assist in carrying out the Information Commissioner's functions.
- (2) The terms and conditions of appointment of such staff, including arrangements for the payment of pensions, allowances or gratuities to, or in respect of, any person who has ceased to be a member of staff of the Information Commissioner must be determined by the Information Commissioner in accordance with overall annual financial limits determined by the Treasury.

12 Appointment of persons to provide services

- (1) The Information Commissioner may, with the approval of the Treasury, appoint any person to provide services by assisting or advising the Information Commissioner in carrying out his or her functions.
- (2) The fees and allowances to be paid to that person must be determined by the Information Commissioner in accordance with overall annual financial limits determined by the Treasury.

13 Delegation of functions

- (1) Any function of the Information Commissioner may be exercised by —
 - (a) a member of the Information Commissioner's staff; or
 - (b) a person providing services to the Information Commissioner under paragraph 12,
authorised by the Information Commissioner for that purpose.
- (2) The Council of Ministers may impose limitations and conditions on the exercise of the Information Commissioner's power to authorise others to discharge functions under sub-paragraph (1).
- (3) Any authorisation given under sub-paragraph (1) does not affect the responsibility of the Information Commissioner for the exercise of the function.

14 Validity of acts

The validity of any act of the Information Commissioner is not affected by any defect in the appointment of the holder of that office, including a disqualification (if any) for holding that appointment.

15 Financial provision

- (1) The following is a charge on the General Revenue —
 - (a) the salary, pension and allowances of the Information Commissioner; and
 - (b) any expenses incurred by the Information Commissioner in the exercise of the Information Commissioner's functions.
- (2) Unless otherwise specified, all fees and sums received by the Information Commissioner in the exercise of his or her functions under this Act or the *Data Protection Act 2002* are to be paid into and form part of the General Revenue of the Island.

16 Accounts and audit

- (1) The Information Commissioner must —
 - (a) keep accounts; and
 - (b) prepare annual accounts in respect of each financial year.
- (2) The accounts of the Information Commissioner are to be audited in accordance with the *Audit Act 2006*.
- (3) The financial year of the Commissioner is —
 - (a) the period of time beginning with the date on which the first Commissioner is appointed and ending with 31 March next following that date; and
 - (b) each successive period of 12 months ending with 31 March.

SCHEDULE 3

[Section 49]

POWERS OF ENTRY AND INSPECTION**PART 1 - ISSUE OF WARRANTS****1 Power to grant warrants**

- (1) If a judge is satisfied by information on oath supplied by the Information Commissioner that there are reasonable grounds for suspecting —
- (a) that a public authority has failed or is failing to comply with —
 - (i) a requirement of Part 2 (access to information held by public authorities);
 - (ii) so much of a decision notice as requires steps to be taken; or
 - (iii) an information notice or an enforcement notice; or
 - (b) that an offence under section 63 (record tampering) has been or is being committed,

and that evidence of such a failure to comply or of the commission of the offence is to be found on any premises specified in the information, the judge may, subject to paragraph 2, grant a warrant to the Information Commissioner.

- (2) A warrant issued under sub-paragraph (1) authorises the Information Commissioner or any of his or her officers or staff at any time within 7 days of the date of the warrant —
- (a) to enter and search the premises;
 - (b) to inspect and seize any documents or other material found there that may be evidence mentioned in that sub-paragraph; and
 - (c) to inspect, examine, operate and test any equipment found there in which information held by the public authority may be recorded.

2 Matters that must be satisfied

- (1) A judge must not issue a warrant under this Schedule unless he or she is satisfied —
- (a) that the Information Commissioner has given 7 days' notice to the occupier of the premises in question demanding access to the premises;
 - (b) that either —

- (i) access was demanded at a reasonable hour and was unreasonably refused; or
 - (ii) although entry to the premises was granted, the occupier unreasonably refused to comply with a request by the Information Commissioner or any of the Information Commissioner's officers or staff to permit the Information Commissioner or the officer or member of staff to do any of the things referred to in paragraph 1(2); and
 - (c) that the occupier, has, after the refusal, been notified by the Information Commissioner of the application for the warrant and has had an opportunity of being heard by the judge on the question of whether or not it should be issued.
- (2) Sub-paragraph (1) does not apply if the judge is satisfied that the case is one of urgency or that compliance with those provisions would defeat the object of the entry.

3 Copies

A judge who issues a warrant under this Schedule must also issue 2 copies of it and certify them clearly as copies.

PART 2 - EXECUTION OF WARRANTS

4 Power to use reasonable force

A person executing a warrant issued under this Schedule may use such reasonable force as is necessary.

5 Warrant to be executed at reasonable hour

A warrant issued under this Schedule must be executed at a reasonable hour unless it appears to the person executing it that there are grounds for suspecting that the evidence in question would not be found if it were so executed.

6 Occupied premises

- (1) If the premises in respect of which a warrant is issued under this Schedule are occupied by a public authority and any officer or employee of the public authority is present when the warrant is executed, he or she must be shown the warrant and supplied with a copy of it; and if no such officer or employee is present a copy of the warrant must be left in a prominent place on the premises.
- (2) If the premises in respect of which a warrant is issued under this Schedule are occupied by a person other than a public authority and the occupier is present when the warrant is executed, the occupier must be

shown the warrant and supplied with a copy of it; and if that person is not present a copy of the warrant must be left in a prominent place on the premises.

7 Receipts for items seized

- (1) A person seizing anything in pursuance of a warrant under this Schedule must give a receipt for it if asked to do so.
- (2) Anything so seized may be retained for so long as is necessary in the circumstances but the person in occupation of the premises in question must be given a copy of anything that is seized if he or she so requests.

PART 3 - MATTERS EXEMPT FROM INSPECTION AND SEIZURE

8 Certain exempt information excluded

The powers of inspection and seizure conferred by a warrant issued under this Schedule are not exercisable in respect of information if —

- (a) a certificate mentioned in section 22(2) (parliamentary privilege and business) or 28(2) (national security and defence) exists in relation to the information; and
- (b) a request for the information has been refused.

9 Communications between advocate and client

- (1) Subject to this paragraph, the powers of inspection and seizure conferred by a warrant issued under this Schedule are not exercisable in respect of —
 - (a) any communication between an advocate and his or her client in connection with the giving of legal advice to the client with respect to his or her obligations, liabilities or rights under this Act; or
 - (b) any communication between an advocate and his or her client, or between an advocate or his or her client and any other person, made in connection with or in contemplation of proceedings under or arising out of this Act and for the purposes of such proceedings.
- (2) Sub-paragraph (1) also applies to —
 - (a) any copy or other record of any such communication as is there mentioned; and
 - (b) any document or article enclosed with or referred to in any such communication if made in connection with the giving of any advice or, as the case may be, in connection with or in

contemplation of and for the purposes of such proceedings as are there mentioned.

- (3) This paragraph does not apply to anything in the possession of any person other than the advocate or his or her client or to anything held with the intention of furthering a criminal purpose.
- (4) In this paragraph references to the advocate of client include references to any person representing the client.

10 Information consisting partly of matters in respect of which powers not exercisable

If the person in occupation of any premises in respect of which a warrant is issued under this Schedule objects to the inspection or seizure under the warrant of any material on the grounds that it consists partly of matters in respect of which those powers are not exercisable, the person in occupation must, if the person executing the warrant so requests, furnish the person executing the warrant with a copy of so much of the material in relation to which the powers are exercisable.

PART 4 – SUPPLEMENTARY

11 Return of warrants

A warrant issued under this Schedule must be returned to the Chief Registrar —

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

and the person by whom the warrant is executed must make an endorsement on it stating what powers have been exercised by the person under the warrant.

12 Offences

- (1) A person commits an offence if that person —
 - (a) intentionally obstructs a person in the execution of a warrant issued under this Schedule; or
 - (b) fails without reasonable excuse to give any person executing the warrant such assistance as he or she reasonably requires for the execution of the warrant.
- (2) A person guilty of an offence under sub-paragraph (1) is liable on summary conviction to a fine not exceeding £5,000.

13 Interpretation of Schedule

In this Schedule —

“**premises**” includes any vessel, vehicle, aircraft or hovercraft, and references to the occupier of any premises include references to the person in charge of any vessel, vehicle, aircraft or hovercraft.

SCHEDULE 4

AMENDMENT AND REPEAL OF ENACTMENTS ETC.

[Section 69]

PART 1 – AMENDMENTS TO CHANGE REFERENCES TO
THE INFORMATION COMMISSIONER**1 Amendment of the Data Protection Act 2002**

- (1) The *Data Protection Act 2002* is amended as follows.
- (2) In the following provisions for “Supervisor” (wherever occurring but other than an occurrence covered by subsection (3), (4) or (7)) substitute **Information Commissioner** –
 - (a) section 14(1);
 - (b) sections 15(1) and (3);
 - (c) sections 16(1), (2)(b), (6) and (7);
 - (d) sections 17(1), (2)(b) and (4);
 - (e) sections 19(2), (3), (4) and (5) (and the heading to the section);
 - (f) sections 20(1), (2) and (3);
 - (g) sections 21(2)(a) and (b);
 - (h) section 28(5)(a);
 - (i) sections 36(1), (2), (3), (4)(b), (5)(b), (6)(a) and (8);
 - (j) sections 37(1) and (2);
 - (k) sections 38(1), (2), (3) and (4);
 - (l) sections 39(1), (2)(a) and (b), (5), (6), (8) and (9);
 - (m) sections 40(1), (3)(a) and (b), (6), (7), (9) and (10);
 - (n) section 41(1) (and the heading to the section);
 - (o) sections 42(1), (2)(a) and (3);
 - (p) section 44(3);
 - (q) sections 45(1) and (5);
 - (r) the cross-heading immediately after the heading to Part 6;
 - (s) sections 47(1), (2), (3), (4), (6), (7), (8) and (9) (in the definition of “good practice”) (and the heading to the section);
 - (t) sections 48(1), (2) and (3);
 - (u) sections 49(1), (2), (3) and (4);
 - (v) section 53 (and the cross-heading preceding section 53);
 - (w) section 54(1);

- (x) section 55(1);
 - (y) section 60(1) (and the heading to the section);
 - (z) section 61(2);
 - (aa) paragraph 13(b) of Schedule 1;
 - (ab) paragraphs 8 and 9 of Schedule 4;
 - (ac) paragraphs 1(1), (2) and (3) of Schedule 8;
 - (ad) paragraphs 2(1)(a), (1)(b)(ii) and (1)(c) of Schedule 8.
- (3) In the following provisions for “Supervisor’s” substitute **Information Commissioner’s** —
- (a) section 40(3)(b);
 - (b) section 44(3)(a);
 - (c) paragraph 2(1)(b)(ii) of Schedule 8.
- (4) In section 62(1) repeal the definition of “**the Supervisor**”.
- (5) In section 62(1) after the definition of “health record” insert —
- Information Commissioner** means the Isle of Man Information Commissioner appointed under section 52 of the *Freedom of Information Act 2015*; **Information Commissioner**.
- (6) In the table in section 63 after the entry relating to “inaccurate (in relation to data)”, insert —

Information Commissioner	section 62(1) Information Commissioner
---------------------------------	-----------------------------------------------

- (1) In section 63 omit the entry relating to “the Supervisor”.

PART 2 – OTHER AMENDMENTS TO THE DATA PROTECTION ACT 2002

2 Amendment of the Data Protection Act 2002

The *Data Protection Act 2002* is amended in accordance with paragraphs 3 to 13.

3 Amendment of section 1

In section 1(1) (basic interpretative provisions) —

- (a) in paragraph (c) of the definition of “data”, omit “or” (second occurring);
- (b) at the end of the definition of “data” add —

Information Commissioner or (e) does not fall within paragraph (a) to (d) but is recorded information held by a public authority; **Information Commissioner**;
- (c) after the definition of “data subject”, insert —

☐ “held” by a public authority, in relation to information covered by paragraph (e) of the definition of “data”, is to be interpreted in accordance with the *Freedom of Information Act 2015*;☐; and

(d) after the definition of “processing”, insert —

☐ “public authority” has the same meaning as in the *Freedom of Information Act 2015*;☐.

4 Amendment of section 4

- (1) Sections 4(1) and (2) (the Supervisor and the Tribunal) are repealed.
- (2) In section 4(6) omit “the Supervisor and”.
- (3) Consequently, for the section heading substitute ☐ The Tribunal ☐.

5 Amendment of section 5

In section 5(1) (right of access to personal data) omit “6 and 7”, substitute ☐6, 7 and 7A ☐.

6 Insertion of new section 7A

After section 7 (application of section 5: credit reference agencies) insert —

☐7A Unstructured personal data held by public authorities

- (1) A public authority is not obliged to comply with section 5(1) in relation to unstructured personal data unless the request under that section contains a description of the data.
- (2) Even if the data are described by the data subject in the request, a public authority is not obliged to comply with section 5(1) in relation to unstructured personal data if the public authority estimates that the cost of complying with the request so far as relating to those data would exceed the limit prescribed under subsection (4).
- (3) Subsection (2) does not exempt the public authority from its obligation to comply with section 5(1)(a) in relation to the unstructured personal data unless the estimated cost of complying with that paragraph alone in relation to those data would exceed the limit prescribed under subsection (4).
- (4) The Council of Ministers may, by regulations, prescribe an amount to be the limit for the purposes subsections (2) and (3).
- (5) Any estimate for the purposes of this section must be made in accordance with regulations under section 68 of the *Freedom of Information Act 2015* (fees).

- (6) In this section “unstructured personal data” means any personal data falling within paragraph (e) of the definition of “data” in section 1(1), other than information that 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. **22**.

7 Insertion of new section 29A

After section 29 (research, history and statistics) insert —

29A Manual data held by public authorities

- (1) Personal data falling within paragraph (e) of the definition of “data” in section 1(1) 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 5 and 12;
 - (c) sections 8 to 10;
 - (d) section 11, except so far as it relates to damage caused by a contravention of section 5 or of the fourth data protection principle and to any distress that is also suffered by reason of that contravention;
 - (e) Part 3; and
 - (f) section 50.
- (2) Personal data that fall within paragraph (e) of the definition of “data” in section 1(1) and relate to appointments or removals, pay, discipline, superannuation or other personnel matters, in relation to —
- (a) service in any office or employment under the Crown or under any public authority; or
 - (b) service in any office or employment, or under any contract for services, in respect of which power to take action, or to determine or approve the action taken, in such matters is vested in the Lieutenant Governor, any Minister or any public authority, are also exempt from the remaining data protection principles and the remaining provisions of Part 2,
- are also exempt from the remaining data protection principles and the remaining provisions of Part 2. **22**.

8 Amendment of section 30

In section 30 (information available to the public by or under statutory provision) after “under any statutory provision” insert **33**(other than the *Freedom of Information Act 2015* or an enactment under that Act) **32**.

9 Amendment of section 50

In section 50(8) (unlawful obtaining etc. of personal data) after “section 24” insert **33** or 29A **32**.

10 Amendment of section 51

In section 51(6) (prohibition of requirement as to production of certain records) insert —

33 (6A) A record is not a relevant record to the extent that it relates, or is to relate, only to personal data falling within paragraph (e) of the definition of “data” in section 1(1). **32**.

11 Repeal of section 54

Section 54 (confidentiality of information) is repealed.

12 Amendment of section 63

(1) In the table in section 63 (index of defined expressions) after the entry relating to “health professional”, insert —

33 held	section 1(1) 32
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(2) In the table in section 63 (index of defined expressions) after the entry relating to “processing (of information or data)”, insert —

33 public authority	section 1(1) 32
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13 Amendment of Schedule 5

- (1) Part 1 of Schedule 5 (The Supervisor and the Tribunal) is repealed.
- (2) In the heading to Schedule 5 “The Supervisor and” is omitted.
- (3) Consequentially, the heading to Part 2 is omitted.

PART 3 – OTHER AMENDMENTS**14 Council of Ministers Act 1990**

After section 6(2) of the *Council of Ministers Act 1990* insert —

33 (2A) Subsection (2) does not affect the operation of the *Freedom of Information Act 2015* in respect of information created on or after 11 October 2011. **32**.

15 Lloyds TSB Act 1997

In section 6(16) of the *Lloyds TSB Act 1997* for “Data Protection Supervisor” substitute **33** Information Commissioner **32**.

16 Halifax International Act 2001

In section 6(19) of the *Halifax International Act 2001* for “Data Protection Supervisor” substitute **33** Information Commissioner **32**.

17 Online Gambling Regulation Act 2001

In sections 4(3)(e), 11(4) and 11(5) of the *Online Gambling Regulation Act 2001* for “Data Protection Supervisor” substitute **33** Information Commissioner **32**.

18 Public Sector Pensions Act 2011

For section 3(3)(c) of the *Public Sector Pensions Act 2011* substitute —

33 (c) the Isle of Man Information Commissioner appointed under section 52 of the *Freedom of Information Act 2015*; **32**.

19 Tynwald Commissioner for Administration Act 2011

For section 3(3)(b)(ii) of the *Tynwald Commissioner for Administration Act 2011* substitute —

33 (ii) the Isle of Man Information Commissioner; **32**.

PART 4 – TRANSITIONAL MATTERS**20 Transitional provision**

Without limiting the provisions of this Schedule, a reference in any enactment or document in force or created before the date on which this Schedule commences to the “Data Protection Supervisor” is to be taken to be a reference to the “Information Commissioner”.

21 Expiry

(1) Paragraphs 1 to 19 cease to have effect on the day following that on which all of those paragraphs are in operation.

- (2) Subparagraph (1) does not affect the continuing validity of the amendments made by paragraphs 1 to 19.