

AN OVERVIEW OF THE DATA PROTECTION ACT 2017

Presented By:

Mrs. R. Goburdhun and Mrs. W. Khadun

Data Protection Officer/ Senior Data Protection Officer

20 September 2018

Agenda

Aims of the Data Protection Act 2017 (DPA)

Benefits of the Act

Mapping between DPA and GDPR

The Data Protection Office

Functions of the Data Protection Office (DPO)

Definitions

Registration

Obligations on Controllers and Processors

Processing operations likely to results in high risk

Transfer of personal data

Rights of data subjects

Offences and penalties

Certification

Aims of the DPA

(came into force on 15 January 2018)

- ▷ To strengthen the control and personal autonomy of data subjects (individuals) over their personal data.
- ▷ In line with the European Union's General Data Protection Regulation (GDPR).
- ▷ To simplify the regulatory environment for business in our digital economy.
- ▷ To promote the safe transfer of personal data to and from foreign jurisdictions

Benefits of the Act

- ▷ Increased accountability of controllers
 - Implement better processes
 - Better organisations
 - Better productivity
 - Strengthen customer trust
 - Gain confidence and trust

- ▷ Enhanced data subjects' rights of individuals for greater control over their personal data.

- ▷ Improve the digital legal landscape to respond to the new EU requirements for adequacy, thereby attracting foreign investors.

- ▷ Minimised risk of data breaches

Mapping between DPA and GDPR

DPA (Section)

GDPR (Article)

6 - Investigation of complaints
Amicable settlement of disputes and conduct of hearings has been included.

40 - Codes of conduct (2)(k)

21- Principles relating to processing of personal data

5 - Principles relating to processing of personal data

22 - Duties of controller

24 - Responsibility of the controller

23 – Collection of personal data

13 - Information to be provided where personal data are collected from the data subject

24 - Conditions for consent

7 - Conditions for consent

25 - Notification of personal data breach

33 - Notification of a personal data breach to the supervisory authority

26 - Communication of personal data breach to data subject

34 - Communication of a personal data breach to the data subject

DPA (Section)

GDPR (Article)

28 - Lawful processing

6 - Lawfulness of processing

29 - Special categories of personal data

9 - Processing of special categories of personal data

30 - Personal data of child

8 - Conditions applicable to child's consent in relation to information society services

31 - Security of processing

**28 - Processor
29 - Processing under the authority of the controller or processor
32 - Security of processing**

33 - Record of processing operations

30 - Records of processing activities

34 - Data protection impact assessment

35 - Data protection impact assessment

35. Prior authorisation and consultation

36 - Prior consultation

DPA (Section)

GDPR (Article)

36 - Transfer of personal data outside Mauritius

**46 - Transfers subject to appropriate safeguards
49 - Derogations for specific situations**

37 - Right of access

15 - Right of access by the data subject

38 - Automated individual decision making

22- Automated individual decision-making, including profiling

39 - Rectification, erasure or restriction of processing

**16 - Right to rectification
17 - Right to erasure ('right to be forgotten')
18 - Right to restriction of processing**

40 - Right to object

21 - Right to object

44 – Exceptions and Restrictions

23 - Restrictions

48 - Certification

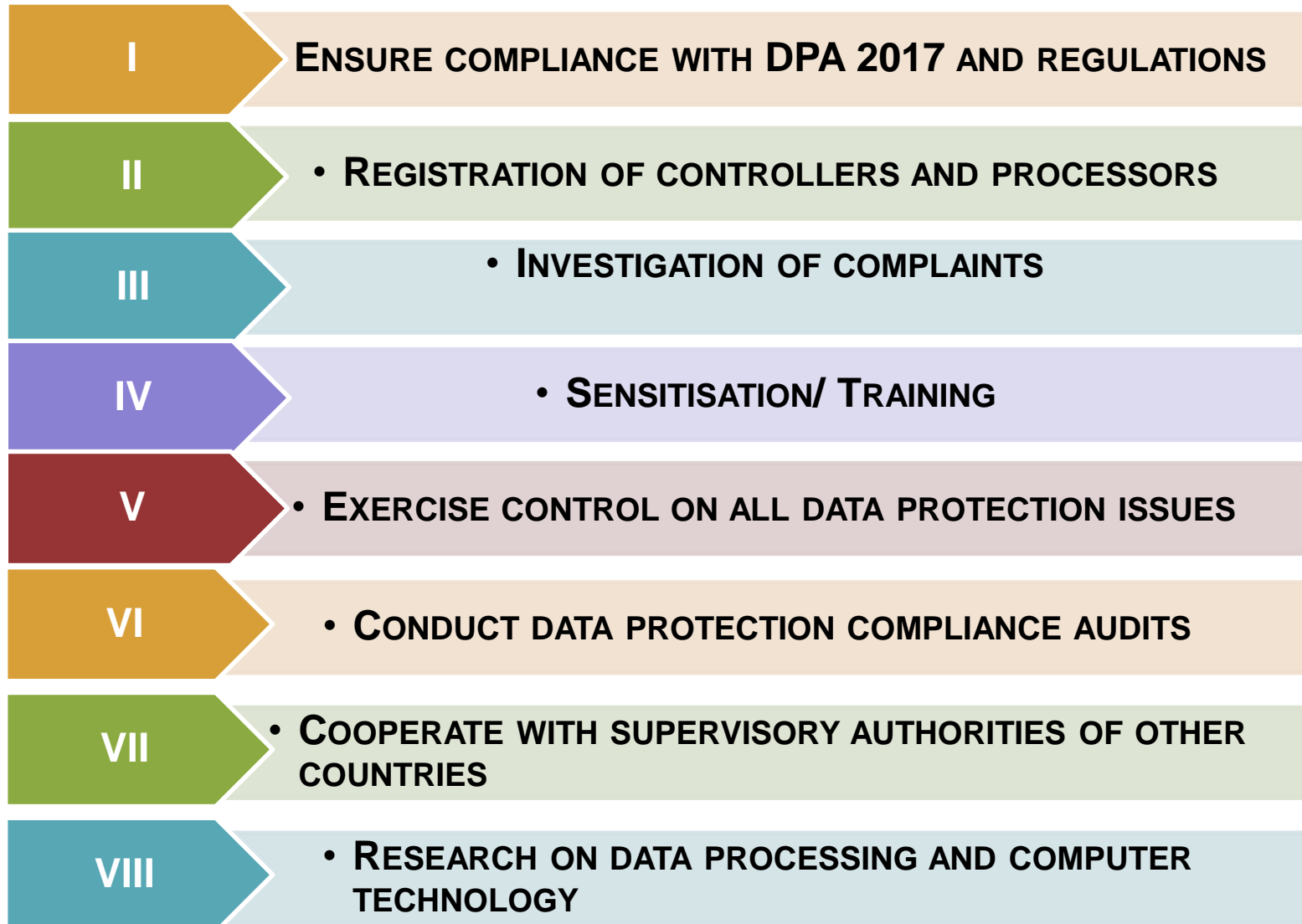
42 - Certification

The Data Protection Office

The Data Protection Office (DPO)

- ▷ Public office which acts with complete **independence** and **impartiality**.
- ▷ Not subject to the control or direction of any other person or authority in the discharge of its functions.
- ▷ Head of the Office is the **Data Protection Commissioner**.

Functions of DPO



Some Definitions

Section 2 - Interpretation

Basic Concepts

Personal data

- any information relating to a data subject.

Data Subject

- an identified or identifiable individual (any data which can identify an individual),
- in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that individual.

Basic Concepts

Processing

- an operation or set of operations performed on personal data or sets of personal data, whether or not by automated means, such as **collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.**

Controller

- a person who or public body which, alone or jointly with others, determines the purposes and means of the processing of personal data and has decision making power with respect to the processing.

Processor

- a person who, or a public body which, processes personal data on behalf of a controller.

Registration of Controllers and Processors

Sections 14 to 20

Registration

Should controllers and processors register with the Data Protection Office? → **YES**

- ▷ “... no person shall act as controller or processor unless he or it is registered with the Commissioner...”, Part III, Section 14
- ▷ *Validity of Registration Certificate: **3 years***
- ▷ *Renewal: **3 months prior to expiry***
- ▷ *Notification of change in particulars within **14 days***



Obligations on controllers and processors

Sections 21 to 33

Obligations on controllers and processors

Principles relating to processing of personal data

Duties of Controller
(Designate a data protection officer)

Collection of personal data

Conditions for consent
(bear burden of proof for consent prior to processing)

Notify personal data breach to this office

Communicate personal data breach to data subject

Duty to destroy personal data

Ensure lawfulness of processing of personal data

Comply with requirements to process special categories of data

Consent for processing personal data for children

Ensure appropriate data security and organizational measures

Keep record of all processing operations

Principles relating to processing of personal data – Section 21



Lawfulness, Fairness and Transparency

Personal data shall be processed lawfully, fairly and in a transparent manner in relation to any data subject



Data Minimisation

Personal data shall be adequate, relevant and not excessive in relation to the purpose;



Purpose Limitation

Personal data shall be collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes



Accuracy

Personal data shall be accurate and where necessary kept up to date.



Storage Limitation

Personal data shall be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed;



Rights of data subject

Personal shall be processed in accordance with the rights of data subjects..

Duties of Controller – Section 22

Every controller must adopt policies and implement appropriate technical and organisational measures so as to ensure and be able to demonstrate that the processing of personal data is performed in accordance with this Act.

Such measures includes:

- implementing appropriate data security and organisational measures;
- keeping of documentation as per section 33;
- Performing data protection impact assessment as per section 34;
- Comply with requirements of prior authorization and consultation as per section 35;
- Designate an officer responsible for data protection.



Duties of Controller – Section 22

Should a controller appoint a data protection officer?

YES according to section 22 2(e).

- ▶ Even though the data protection officer is responsible for assisting the controller or processor in monitoring the internal compliance, the officer is not personally responsible for any non-compliance with the Act by the controller or processor.
- ▶ It will be up to the controller or processor to demonstrate compliance, regardless of how much autonomy the data protection officer is granted.
- ▶ *It is the responsibility of the controller or processor to determine whether they need to have a single or different data protection officer(s) for their subsidiaries. For example, a single data protection officer may be designated for several subsidiaries, taking account of their organisational structure and size.*



Data Protection Officer

Roles

- Inform and advise organisation and its employees about obligations to comply with DPA.
- Monitor compliance with the DPA and other data protection laws.
- Be the contact point for the Data Protection Office and individuals whose data are processed.

A data protection officer can be an existing employee or new employee recruited or an external officer.

Collection of personal data – Section 23

- ▷ Collect personal data for a lawful purpose.
- ▷ Details to be provided to the data subjects
 - The organisation's contact details and where applicable its representative and any data protection officer;
 - Purpose(s) for which you are collecting the data;
 - To whom you intend to disclose the data;
 - Whether the collection is voluntary or mandatory;
 - Right to withdraw consent at any time;
 - Rights of data subjects: Access, Rectification, Erasure, Object to Processing;
 - Automated decision making, and the consequences of such processing;
 - Period for storing the data;
 - Right to lodge a complaint with the Commissioner;
 - To which countries they intend to transfer the data.



Information Notices

▷ Example:

1. [Who we are](#)
2. [Personal Information](#)
3. [Purpose/s of processing](#)
4. [Where we collect personal information from](#)
5. [Who we share your personal information with](#)
6. [How long we keep your personal information](#)
7. [If you choose not to give personal information](#)
8. [What are the automated decisions taking in place](#)
9. [Cookies](#)
10. [How to complain](#)
11. [How to withdraw your consent](#)
12. [Letting us know if your personal information is incorrect](#)
13. [How to get a copy of your personal information](#)
14. [What if you want us to stop using your personal information?](#)

Conditions for Consent - Section 24

- ▷ The controller must be able to supply evidence that consent has been obtained(verifiable).
- ▷ Consent can be withdrawn at any time.
- ▷ When consent is not necessary for a provision of a service, then you should not require consent. It is thus the responsibility of controllers to determine same. Section 28(1)(b) DPA 2017 provides for exceptions regarding consent.

Definition:

Consent means any freely given specific, informed and unambiguous indication of the wishes of a data subject, either by a statement or a clear affirmative action, by which he signifies his agreement to personal data relating to him being processed.



Notification of personal data breach – Section 25

- ▷ As soon as the controller becomes aware that a personal data breach has occurred,
- ▷ the latter must notify the Data Protection Office, without undue delay and, where feasible, not later than 72 hours.
- ▷ Section 25 (3) of the Act provides details on how the notification should be.
 - A **Personal Data Breach Notification form** is available on this office website. Controller/processor should filled in this form and send to this office

Communication of personal data breach to data subject – Section 26

- ▷ Where a personal data breach is likely to result in a high risk to the rights and freedoms of the individual,
- ▷ the controller must communicate that breach to the data subject, without undue delay, in order to allow him / her to take the necessary precautions;
- ▷ E.g. by replacing credit cards if the data subject's card details have been leaked

Duty to destroy personal data -

Section 27

- ▷ Where the purpose for keeping personal data has lapsed, every controller shall destroy the data as soon as is reasonably practicable; and notify any processor holding the data.
- ▷ Retention period has to be defined by the controllers/processors by taking into account other laws.
- ▷ Example: Personal data may be removed from marketing list/database if data subject withdraws consent

Lawful processing – Section 28

- ▷ No person shall process personal data unless the data subject **consents to the processing** for one or more specified purposes.

Or
Exceptions
apply (for
example)

For the performance of a contract to which the data subject is a party

For compliance with any legal obligation to which the controller is subject to

To protect vital interests of data subject

for the purpose of historical, statistical or scientific research amongst others

Special categories of personal data – Section 29

- ▷ Previously known as sensitive personal data under the DPA. It now includes “genetic data” and “biometric data” where processed “to uniquely identify a person”.
- ▷ Personal data which are, by their nature, particularly sensitive in relation to fundamental rights and freedoms merit specific protection as the context of their processing could create significant risks to the fundamental rights and freedoms.



Sexual life



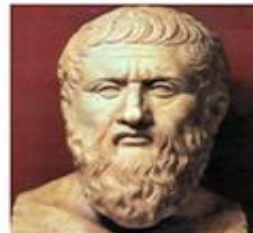
Political views



Religious beliefs



Health status



Philosophical beliefs



Race, nationality

Personal Data of child– Section 30

- ▷ Children have the same rights as adults over their personal data.
- ▷ Children merit specific protection with regard to their personal data.
- ▷ Children are less aware of the risks, consequences and safeguards and their rights in relation to the processing of personal data.
- ▷ Parental consent for children under the age of 16.
- ▷ “Reasonable efforts” by the controller to verify consent.

Some Questions

Questions

- ▷ **According to the Data Protection Act, which personal data category is regarded as special categories (sensitive) of personal data?**
- A) Credit card details
 - B) Trade union membership
 - C) Passport number
 - D) Social security number

Questions

- ▷ ***“A person who or public body which, alone or jointly with others, determines the purposes and means of the processing of personal data and has decision making power with respect to the processing.”***

Which role in data protection is defined?

- A) Processor
- B) Third party
- C) Controller
- D) Data Protection Officer

Questions

- ▷ **Which DPA principle for processing states that personal data may only be collected for explicit purposes?**
 - A) Purpose limitation
 - B) Lawfulness, fairness and transparency
 - C) Data minimisation
 - D) Storage limitation

Questions

- ▷ **The illegal collection, storage, modification, disclosure or dissemination of personal data is an offence by Mauritian law. What kind of offence is this?**
- A) a content related offence
 - B) an economic offence
 - C) an intellectual property offence
 - D) a privacy offence

Questions

- ▷ **While performing a backup, a data server disk crashes. Both the data and the backup are lost. The disk contained personal data but no sensitive data. What kind of incident is this?**
- A) personal data breach**
 - B) power failure**
 - C) theft**

Personal data irretrievably lost is regarded as personal data breach

Questions

- ▷ **In what case does the controller need to inform the data subject concerning a breach of his/her personal data?**
- A) When the data breach results in the loss of encrypted personal data.
 - B) After rectification or erasure of personal data, or after restriction of processing.
 - C) When the data breach is likely to result in a high risk to the rights and freedoms of the data subject.

Security of processing – Section 31

- ▷ Appropriate technical and organisational measures must be implemented to prevent unauthorised access to, alteration, disclosure, accidental loss and destruction of personal data.
- ▷ Such measures include:

Pseudonymisation and encryption of personal data

Ensure ongoing confidentiality, integrity, availability, and resilience of processing systems

Ability to restore availability and access to personal data in a timely manner in the event of a physical or technical incident

Process for regularly testing, assessing, and evaluating the effectiveness of TOMs

Security of processing – Section 31 (Cntd)

If the controller is using the services of a processor, the controller is still responsible under the DPA for data protection and so must ensure through a written contract that the processor

acts only on instructions received from the controller and

implements appropriate security measures for protecting any personal data processed

Prior security check – Section 32

- ▷ The Data Protection Commissioner may carry out inspections and assessments of the security measures imposed on the controller or processor.



Record of processing operations – Section 33

The new Act requires the controller and processor to keep records of processing activities under its responsibility.

Such records must include:	Name and contact details of controller or processor or any representative
	Purpose of processing
	Description of categories of data subjects and personal data
	Description of categories of recipients
	Details of transfers to third countries including documenting the transfer mechanism safeguards in place.
	Retention schedules
	Description of technical and organisational security measures.

These records must be made available, on request, to the Data Protection Office.

Data Protection Impact Assessment (DPIA)

– Section 34

A DPIA is a process to help you identify and mitigate the data protection risks of a project.

DPIA is mandatory when the processing is likely to result in a high risk for the rights and freedom of individuals, including some specified types of processing such as:

Use systematic and extensive profiling or automated decision-making to make significant decisions about people

Process special category data on a large scale.

Systematically monitor a publicly accessible place on a large scale.

It is also good practice to do a DPIA for any other major project which requires the processing of personal data.

Prior authorisation and consultation – Section 35

According to Section 35, the controller or processor must seek authorisation and consult the Data Protection Office prior to processing personal data in order to

ensure compliance of the intended processing with the DPA and

in particular to mitigate the risks involved for data subjects (individuals) where the controller or processor cannot provide for the appropriate safeguards required for the transfer of personal data to another country.

Transfer of personal data outside Mauritius – Section 36

A controller or a processor may transfer personal data to another country where –

Proof of appropriate safeguards

Consent from data subject

Contract with data subject

Public interest

Legal claim

Vital interest

Compelling Legitimate interest



Rights of Data Subjects

Sections 37 to 41

Rights of Data Subjects



Right of access – S37

- A data subject has the right to obtain confirmation that his/her personal data is processed and a copy of the data free of charge within one month following a written request.



Automated individual decision making – S38

- A data subject has the right not to be subject to a measure which is based on profiling by means of automated processing.
- Can be carried out by controller if it necessary for contract, authorised by law or based on explicit consent of the data subject.



Rectification –S39

- A data subject has the right to obtain from controller rectification of inaccurate or incomplete personal data concerning him/her.

Rights of Data Subjects



Erasure – S39

- Data subject may request that his/her personal data are erased if the continued processing of those data is not justified



Restriction of Processing – S39

- A data subject may request that the processing of his/her personal data is restricted where the accuracy of the data is contested.



Object – S40

- A data subject has the right to object in writing at any time the processing of personal data relating to him/her free of charge.

Exercise of rights – Section 41

- ▷ Where a person is a minor or physically or mentally unfit, a person duly authorised (parents, guardian, legal administrator) can exercise their rights on their behalf under this part.

Unlawful disclosure of personal data – Section 42

Controller

Any controller who, without lawful excuse, discloses personal data in any manner that is incompatible with the purpose for which such data has been collected shall commit an offence.

Processor

Any processor who, without lawful excuse, discloses personal data processed by him without the prior authority of the controller on whose behalf the data are being or have been processed shall commit an offence

Offences and Penalties – Section 43

- ▷ There are various offences and criminal penalties under this Act which, in general if committed, are sanctioned by a court of law.
- ▷ Where no specific penalty is provided, any person who does not comply or contravenes this Act shall, on conviction, be liable to a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding 5 years.

Offences and Penalties – Examples

Offences	Penalties
<p>Section 6: Investigation of Complaints Any person who fails to attend a hearing or to produce a document or other material when required to do so.</p>	<p>Liable to a fine not exceeding 50, 000 rupees and to imprisonment for a term not exceeding 2 years.</p>
<p>Section 7: Power to require information Any person who fails or refuses to comply with a requirement specified in a notice, or who furnishes to the Commissioner any information which he knows to be false or misleading in a material particular.</p>	<p>Liable to a fine not exceeding 50, 000 rupees and to imprisonment for a term not exceeding 2 years.</p>
<p>Section 15: Application for registration Any controller or processor who knowingly supplies any information, during registration, which is false or misleading in a material particular.</p>	<p>Liable to a fine not exceeding 100, 000 rupees and to imprisonment for a term not exceeding 5 years.</p>
<p>Section 17: Change in particulars Any controller or processor who fails to notify a change in particulars.</p>	<p>Liable to a fine not exceeding 50, 000 rupees.</p>
<p>Section 28: Lawful processing Any person who process personal data unlawfully.</p>	<p>Liable to a fine not exceeding 100, 000 rupees and to imprisonment for a term not exceeding 5 years.</p>

Exceptions and Restrictions – S44

- ▷ Processing of personal data by an individual in the course of a purely personal or household activity.
- ▷ For the prevention, investigation, detection or prosecution of an offence, including the execution of a penalty.
- ▷ An objective of general public interest, including an economic or financial interest of the State.
- ▷ The protection of judicial independence and judicial proceedings.
- ▷ The protection of a data subject or the rights and freedoms of others
- ▷ Subject to section 44(4):
 - For the protection of national security, defence or public security
A certificate under the hand of the Prime Minister certifying that the non-application of the provision is required for the purpose of safeguarding national security, defence or public security shall be conclusive evidence of that fact.

Certification – Section 48

- ▷ To enhance transparency and compliance with the Data Protection Act 2017, certification (Section 48) has been introduced to:

- help controllers or processors to demonstrate accountability and compliance with the Act

- build confidence and trust in the organisation with all stakeholders, as well as with the wider public

- allow data subjects to quickly assess the level of data protection of relevant products and services

- give legal certainty for cross-border data transfers

Certification – Section 48

Certification body

- Certification will be issued by the Data Protection Office.

Compulsory and Fee?

- Certification is voluntary and free.

Validity

- Certification is valid for three years and is subject to renewal. Controllers or processors may apply for renewal of the certification before the date of its expiry.

Withdrawal

- Certifications is subject to withdrawal where the conditions for issuing the certification are no longer met.

Thanks!

Any questions?

Contact us:

Website : <http://dataprotection.govmu.org>

Email: dpo@govmu.org

Tel: 4600251