**NO. 24 OF 2019**

# THE DATA PROTECTION ACT

SUBSIDIARY LEGISLATION

*List of Subsidiary Legislation*


*Page*

1. The Data Protection (Civil Registration) Regulations..... 3
2. The Data Protection (Complaints Handling Procedure and Enforcement) Regulations..... 23
3. The Data Protection (General) Regulations..... 35
4. The Data Protection (Registration of Data Controllers and Data Processors) Regulations..... 67

# THE DATA PROTECTION (CIVIL REGISTRATION) REGULATIONS

ARRANGEMENT OF SECTIONS

PART I – PRELIMINARY

1. Citation.
2. Interpretation.
3. Scope of the Regulations.

PART II – DATA PROTECTION PRINCIPLES

4. Lawful processing of personal data.
5. Privacy in processing personal data.
6. Consent.
7. Manner of giving consent.
8. Collection of personal data.
9. Limitation in processing of personal data.

PART III – RIGHTS OF A DATA SUBJECT

10. Access to personal data.
11. Rectification of personal data.
12. Objection to processing of personal data.
13. Data portability request.
14. Exercise of data subject rights by others.
15. Processing of Personal data relating to a child.

PART IV – OBLIGATION OF THE CIVIL REGISTRATION ENTITY

16. Duty to notify.
17. Retention of personal data.
18. Notification of breach of personal data.
19. Data protection impact assessment.
20. Responsibilities of Data Protection Officer.
21. Sharing of personal information with public agencies.
22. Automated individual decision making.
23. Internal complaints handling procedure.

PART V – SECURITY SAFEGUARDS

24. Data protection by design or default.
25. Security safeguards of personal data.
26. Database security.
27. Monitoring by the Data Commissioner.
28. Data security procedure.
29. Database systems and a risk assessment.
30. Physical protection and secure surroundings.
31. Data security in manpower management.
32. Access permission management.
33. Monitoring and documenting access.
34. Documentation of security incidents.
35. Network security.
36. Periodical audits.
37. Data backup and restoration.
38. Transfer of personal data outside Kenya.

PART VII – GENERAL PROVISIONS

39. Reports to the Data Commissioner.

40. Outsourcing.

SCHEDULES

REQUEST FOR RESTRICTION OR OBJECTION TO THE PROCESSING OF PERSONAL DATA

DATA PROTECTION IMPACT ASSESSMENT

# THE DATA PROTECTION (CIVIL REGISTRATION) REGULATIONS

[Legal Notice 196 of 2020]

PART I – PRELIMINARY

## 1. Citation.

These Regulations may be cited as the Data Protection (Civil Registration) Regulations.

## 2. Interpretation.

In these Regulations, unless the context otherwise requires—

"Act" means the Data Protection Act (Cap. 411C);

"authorized officer" means an officer of the civil registration entity who is expressly permitted by the civil registration entity to access the civil registration entity's database and database system;

"child" has the meaning assigned to it under the Children Act (Cap. 141);

"civil registration" means the continuous, permanent, compulsory and universal recording of the occurrence and characteristics of vital events to the population including registration of births, adoption, marriage and death as provided under the existing laws;

"civil registration entity" means a public agency responsible for administering laws under regulation 3, and includes—

(a) the National Registration Bureau;
(b) the Civil Registration Service;
(c) the Registrar of Marriages;
(d) the Department of Immigration;
(e) the Registrar responsible for Children Affairs;
(f) the Department of Refugee Affairs; and
(g) the Principal Secretary responsible for the National Integrated Identity Management System database.

"database" includes personal data stored by the civil registration entity;

"database system" means a software serving the database;

"data controller" means the Principal Secretary for the time being responsible for civil registration;

"Data Commissioner" has the meaning assigned to it under the Act.

## 3. Scope of the Regulations.

These Regulations shall apply to a civil registration entity involved in the processing of personal data relating to—

(a) registration of births;
(b) registration of adoptions;
(c) registration of persons;
(d) issuance of passport;
(e) registration of marriages;
(f) registration of deaths; or
(g) issuance of any document of identity.

PART II – DATA PROTECTION PRINCIPLES

### 4. Lawful processing of personal data.

The processing of personal data is lawful, if undertaken pursuant to the Act and in accordance to the provisions of the following laws—

(a) the Registration of Persons Act (Cap 107);

(b) the Births and Deaths Registration Act (Cap. 149);

(c) the Kenya Citizenship and Immigration Act (Cap. 170);

(d) the Marriage Act (Cap. 150);

(e) the Children Act (Cap. 141);

(f) the Refugee Act (Cap. 173); or

(g) any other law relating to the issuance of identity document.

### 5. Privacy in processing personal data.

A civil registration entity shall take all practical measures to ensure—

(a) access to the data in its system is only by authorized officers;

(b) the database system has adequate technical and procedural safeguards for processing personal data;

(c) the data subject is provided with the necessary information relating to the processing their personal data;

(d) the personal data being processed is verified; and

(e) compliance to the code of conduct relating to confidentiality, privacy and security guidelines as specified by the Data Commissioner from time to time.

### 6. Consent.

(1) A civil registration entity shall seek consent from a data subject for processing of personal data at the time the personal data is collected.

(2) A civil registration entity shall, before processing personal data, inform the data subject.

(a) the type of personal data to be processed;

(b) the magnitude of personal data to be processed;

(c) the reasons for the processing the required personal data; and

(d) whether the personal data processed shall be shared with third parties.

(3) A civil registration entity shall obtain consent from the data subject while ensuring that—

(a) the data subject is informed in a language they understand;

(b) the data subject voluntarily gives consent;

(c) consent is specific; and

(d) the data subject has capacity to understand and communicate their consent.

(4) A civil registration entity shall obtain the consent in physical or electronic form.

### 7. Manner of giving consent.

(1) Consent shall be given either orally or in writing and may include a handwritten signature, an oral statement, or use of an electronic medium to signify agreement.

(2) A civil registration entity shall not presume that a data subject has given consent on the basis that the data subject did not object to a proposal to handle personal data in a particular manner.

(3) Consent shall not be implied, where the intention of the data subject is ambiguous or there is reasonable doubt as to the intention of the data subject.

(4) Subject to section 32(2) and (3) of the Act, the data subject shall be informed of the implications of providing, withholding or withdrawing consent by the civil registration entity.

### 8. Collection of personal data.

(1) A civil registration entity shall have regard to the following during the data collection—

(a) collect personal data which it is permitted to collect by the data subject;

(b) undertake steps to ensure the quality of personal data; and

(c) undertake processes to secure personal data.

(2) Where a civil registration entity intends to use personal data for a new purpose, it shall ensure that the new purpose is compatible with the initial purpose.

(3) Where the new purpose is not compatible with the initial purpose, the civil registration entity shall seek fresh consent from the data subject.

(4) Subject to section 32(2) and (3) of the Act, the data subject shall be informed of the implications of providing, withholding or withdrawing consent for the new purpose by the civil registration entity.

### 9. Limitation in processing of personal data.

(1) A data subject may request a civil registration entity to restrict the processing of their personal data, pursuant to section 34 of the Act.

(2) A request envisaged under paragraph (1) shall be in Form 1 set out in the First Schedule.

(3) A civil registration entity shall upon receiving the request envisaged under paragraph (2)—

(a) consider the restriction request;

(b) respond in writing to the data subject within fourteen days from the date of receiving the restriction request;

(c) indicate on its system that the processing of personal data has been restricted; and

(d) notify any relevant third party where personal data subject to such restriction may have been shared.

(4) Where a civil registration entity declines to comply with a request for restriction in processing, it shall within seven days notify the data subject of such decline giving reasons for the decision.

(5) Where the application for restriction in limitation of processing of the data is declined, the data subject may appeal to the Data Commissioner.

## PART III – RIGHTS OF A DATA SUBJECT

### 10. Access to personal data.

(1) A data subject shall make a request to access their personal data in Form 2 set out in the First Schedule.

(2) A civil registration entity shall—

(a) on request, provide access to a data subject to their personal data in its possession; and

(b) put in place electronic or manual mechanisms to enable data subjects to access their personal data.

### 11. Rectification of personal data.

(1) Pursuant to section 40 of the Act, a data subject may request a civil registration entity to rectify their personal data, which is inaccurate, outdated, incomplete or misleading.

(2) A request for rectification envisaged under paragraph (1) shall be made in Form 1 set out in the First Schedule.

(3) An application for rectification of personal data shall be supported by the necessary documents, relevant to the rectification being sought.

(4) A rectification request shall include sufficient detail to enable the civil registration entity to identify—

(a) the data subject making the request;

(b) the personal data requested;

(c) the rectification requested by the data subject;

(d) the information useful to warrant the rectification; and

(e) the justification for rectification of the personal data.

(5) A civil registration entity shall within thirty days rectify an entry of personal data in the database where the civil registration entity is satisfied that a rectification is necessary.

(6) A civil registration entity shall in writing notify the data subject of its objection to rectify the personal data where such data is required as envisaged under section 40 (3) and provide reasons thereto.

(7) Where rectification of personal data has been denied by the civil registration entity, the data subject may lodge a complaint with the Data Commissioner where dissatisfied with the decision.

(8) In case of any change in personal data in possession of the civil registration entity, the data subject shall notify the civil registration entity to update their personal data.

### 12. Objection to processing of personal data.

A data subject who objects to the processing of personal data pursuant to section 26(c) of the Act, shall apply to the civil registration entity in Form 1 set out in the First Schedule.

### 13. Data portability request.

A civil registration entity shall, upon request in writing by the data subject, provide the data subject with their personal data in a structured, commonly used and machine readable format within thirty days from the date of receipt of the request and upon payment of the required fees.

### 14. Exercise of data subject rights by others.

(1) Subject to section 27 of the Act, where a person duly authorized by the data subject seeks to exercise the rights of a data subject on their behalf, the person exercising that right shall take into consideration the best interests of the data subject.

(2) Where there is doubt as to the existence of a relationship between the duly authorized person and the data subject, the civil registration entity shall halt the request of exercising a right on behalf of the data subject until evidence to the contrary is adduced.

(3) Where the right is being exercised on behalf of a minor, the persons exercising that right may produce ─

(a) a birth certificate;

(b) an adoption certificate;

(c) a court Order; or

(d) any other relevant document.

### 15. Processing of Personal data relating to a child.

(1) When processing personal data of a child, the civil registration entity shall ensure that—

(a) consent is given by the child's parent or guardian;

(b) processing is done lawfully and safeguards the best interest of the child;

(c) where required, that the child is present;

(d) unauthorized access to personal data relating to a child is prohibited;

(e) it has design systems and processes that safeguard the best interest of the child; and

(f) the risks and consequences of the processing are identified, and appropriate safeguards are put in place.

PART IV – OBLIGATION OF THE CIVIL REGISTRATION ENTITY

### 16. Duty to notify.

(1) The information given by the civil registration entity pursuant to section 29 of the Act shall be simple, clear and in an understandable language.

(2) In giving the information envisaged under paragraph (1), a civil registration entity may use physical or electronic formats, verbal means or any other technology.

### 17. Retention of personal data.

(1) A civil registration entity shall retain processed personal data in perpetuity and in accordance with the enabling written laws.

(2) Where a civil registration entity processes personal data for a specific reason and does not require retention of the personal data in perpetuity, personal data shall be deleted, anonymised or pseudonymised.

(3) A civil registration entity shall formulate administrative mechanisms that describe the categories of personal data that shall be deleted, erased, anonymised or pseudonymised.

### 18. Notification of breach of personal data.

(1) Pursuant to section 43 of the Act, a civil registration entity shall in writing notify the Data Commissioner and communicate to the data subject of breach to personal data.

(2) Where a data subject suspects that their personal data has been breached, the data subject may, within fourteen days from the date of such suspicion, notify the respective civil registration entity and the Data Commissioner of such personal data breach in writing.

(3) The provisions of regulation 23 shall apply to this regulation with necessary modifications.

### 19. Data protection impact assessment.

(1) Where a data protection impact assessment may be required in accordance with section 31 of the Act, a civil registration entity shall conduct the data protection impact assessment guided by Form 1 set out in the Second Schedule.

(2) The data impact assessment report prepared pursuant to paragraph (1) shall, with the approval of the Data Commissioner, be published in the manner determined by the Data Commissioner.

### 20. Responsibilities of Data Protection Officer.

(1) Subject to section 24(7) of the Act, the responsibilities of the Data Protection Officer includes to—

(a) monitor and evaluate the efficiency of the data systems in the organization; and

(b) keep written records of the processing activities of the civil registration entity.

(2) The records specified under paragraph (1)(b) shall be in writing or electronic form and shall include the following information—

(a) the name and contact details of the civil registration entity;

(b) the purpose for processing the data;

(c) a description of the categories of the data subjects and of the categories of the personal data;

(d) the categories of recipients to whom personal data have or shall be disclosed to, including to those outside Kenya;

(e) any transfers of personal data outside Kenya including the identification of the third party or an organization outside Kenya to which the data is to be transferred;

(f) a description of the technical and security measures that have been utilized to alleviate data-related risks;

(g) number of staff trained on the data protection; and

(h) data protection impact assessment undertaken, if any.

### 21. Sharing of personal information with public agencies.

(1) Subject to section 25 of the Act, a civil registration entity may make personal data collected by it, available to a public agency, upon request.

(2) A request for personal data envisaged under paragraph (1) shall be—

(a) made by an authorized officer of the requesting public agency;

(b) in writing, specifying—

(i) the purpose for which personal data is required;

(ii) the duration for which personal data shall be kept; and

(iii) proof of the safeguards put in place to secure personal data from unlawful disclosure.

(3) Personal data collected by a public agency, pursuant to this regulation shall—

(a) be adequate, relevant, and limited to what is necessary in relation to the purposes for which it is requested; and

(b) not be processed in a manner that is incompatible with the purpose for which it was requested.

### 22. Automated individual decision making.

(1) A civil registration entity making automated decisions shall—

(a) inform the data subject when engaging in the automated processing;

(b) provide meaningful information about the logic involved;

(c) explain the significance and envisaged consequences of the processing;

(d) ensure the prevention of errors, bias and discrimination;

(e) use appropriate mathematical or statistical procedures;

(f) put appropriate technical and organizational measures in place, so that it can correct inaccuracies and minimize the risk of errors;

(g) secure personal data in a way that is proportionate to the risk to the interests and rights of the data subject, and that prevents discriminatory effects; and

(h) ensure that data subjects can—

(i) obtain human intervention; and

(ii) express their point of view.

### 23. Internal complaints handling procedure.

(1) Where a data subject is aggrieved by the processing of their personal data, the data subject may lodge a complaint with the civil registration entity.

(2) A complaint made under paragraph (1) may be made orally or in writing.

(3) A civil registration entity shall reduce an oral complaint into writing and shall be executed by the complainant.

(4) A complaint by a data subject may provide—

(a) the full name of the data subject lodging the complaint;

(b) contact details of the data subject;

(c) details of the complaint;

(d) period over which the suspected wrongdoing occurred; or

(e) documentary evidence in support of the complaint where available.

(5) The civil registration entity shall investigate the complaint and notify the data subject of the investigation outcome in writing within seven days from the date of completion of the investigation and any action taken where the complaint has been upheld.

(6) The civil registration entity shall inform the data subject of the right to appeal to the Data Commissioner, where the data subject is dissatisfied with the decision of the civil registration entity.

PART V – SECURITY SAFEGUARDS

### 24. Data protection by design or default.

(1) A civil registration entity shall embed data privacy features directly into the design of the database to ensure protection of personal data.

(2) A civil registration entity's operational and technical systems shall incorporate—

(a) data protection principles;

(b) enforceability mechanisms of the data subject's rights;

(c) risk management mechanisms for data protection and for information security;

(d) cyber security measures;

(e) access security;

(f) physical security; and

(g) de-identification measures.

(3) A civil registration entity shall take reasonable steps to—

(a) protect personal data it holds from misuse, interference and loss, and unauthorized access, modification or disclosure; and

(b) protect personal data at all stages of the personal data lifecycle.

### 25. Security safeguards of personal data.

A civil registration entity shall put in place security safeguards to ensure that personal data held by them is accessed by authorized persons which include—

(a) technical safeguards for encryption of personal data at rest or in transit;

(b) personnel safeguards through the vetting of personnel involved in the processing of personal data; and

(c) procedural safeguards which may include restricted access control to data Centre or system holding or carrying personal data.

### 26. Database security.

A civil registration entity shall implement restriction of unauthorized access, configuration to prevent distributed denial of service attack or user overload and continuous database backup to enhance database security.

### 27. Monitoring by the Data Commissioner.

The Data Commissioner may on a periodic basis conduct monitoring and evaluation of security safeguards employed by a civil registration entity.

### 28. Data security procedure.

(1) A civil registration entity shall formulate a written data security procedure for its entity.

(2) The procedure specified under paragraph (1) shall be binding upon the authorized officer and shall include—

(a) instructions concerning physical protection of the database sites and their surroundings;

(b) access authorizations to the database and database systems;

(c) description of the means intended to protect the database systems and the manner of their operation for this purpose;

(d) instructions to authorized officer of the database and database systems regarding the protection of data stored in the database;

(e) the risks to which the data in the database is exposed in the course of the civil registration entity's ongoing activities;

(f) the manner of dealing with information security incidents, according to the severity of the incident;

(g) instructions concerning the management and usage of portable devices;

(h) instructions with respect to conducting periodical audits to ensure that appropriate security measures, in accordance with the Procedure and these Regulations exist; and

(i) instructions regarding backup of personal the data.

(3) The civil registration entity shall, on an annual basis, assess the need to update the security procedure.

(4) Despite paragraph (3), the civil registration entity shall assess whether the security procedure requires to be updated in the following instances—

(a) material modifications in the database systems; or

(b) new technological risks relating to the database systems are known.

(5) A civil registration entity that controls several databases may develop a data security procedure in accordance with these Regulations in a single document that concerns all databases it controls.

**29. Database systems and a risk assessment.**

(1) A civil registration entity shall maintain an up-to-date document of the database structure, and an up-to-date inventory of the database systems, including—

(a) infrastructure and hardware systems, types of communication and data security components;

(b) the software systems used to operate, administer and maintain the database, to support, monitor and secure its activity;

(c) software and interfaces used for communication to and from the database systems;

(d) a diagram of the network in which the database is operating, including a description of the connections between the different system components and the physical location of components; and

(e) the dates in which the document and the inventory were last updated.

(2) The up-to-date database structure document and inventory shall be secured in such a manner that only authorized users who require them for the performance of their role shall be provided access.

(3) The civil registration entity shall be responsible to conduct a data security risk assessment.

(4) The civil registration entity shall consider—

(a) the findings of the risk assessment provided; and

(b) the need to update the database definitions document or the data security procedure as a result, and act to amend the shortcomings found in the course of the assessment, if any.

(5) The risk assessment specified under paragraph 4(a) shall carried out on a periodical basis.

(6) The civil registration entity is responsible to conduct, at least once every eighteen months, access tests to the database systems in order to test their vulnerability to external and internal threats.

(7) The civil registration entity shall consider the results of the access tests and amend the faults found, if any.

### 30. Physical protection and secure surroundings.

(1) A civil registration entity shall ensure that the database and database systems are maintained in a secure place, preventing unauthorized access, and which is suitable to the nature of the database activity and the sensitivity of information therein.

(2) A civil registration entity shall take measures to monitor and document the entry to and exit from sites in which the database or database systems are located, including the setting and removing of equipment in and from the database systems.

### 31. Data security in manpower management.

(1) A civil registration entity shall not grant access to information stored in the database and shall not change the scope of authorization granted, unless the civil registration entity has undertaken reasonable measures, to screen and place authorized officers, to ensure that the unauthorized user is not granted access to the personal data stored in the database.

(2) The measures specified under paragraph (1) shall be taken in accordance with the sensitivity of the information in the database and the scope of access permissions attached to the role proposed to the relevant person.

(3) Prior to authorized officers gaining access to the database or before a change in the scope of their authorizations, the civil registration entity shall train authorized officer on the obligations embodied in the Act and these Regulations.

### 32. Access permission management.

(1) A civil registration entity shall determine access permission of authorized users to the database and database systems in accordance with the authorized officer's responsibilities.

(2) Access permission shall be granted to the extent required for performing the role.

(3) A civil registration entity shall keep an up-to-date record of authorized user's roles, user permission granted to these roles and the authorized users performing such roles.

(4) Immediately following the termination of an authorized user's role, a civil registration entity shall revoke the permission of an authorized user who has ceased working in their role, and change the passwords to the database and database systems to which the authorized user could have known.

### 33. Monitoring and documenting access.

(1) An automatic recording mechanism shall be incorporated in the database system to enable monitoring access to the database systems including on—

(a) user identity;

(b) date and time of access attempt;

(c) system component to which access was attempted; and

(d) access type, its scope, and whether access was granted or denied.

(2) The monitoring mechanism shall—

(a) not enable disabling or modifying its operation; and

(b) in the event of disabling or modifying, send alerts to the authorized officer or any other relevant person.

### 34. Documentation of security incidents.

(1) A civil registration entity shall document cases in which a data security incident was discovered, raising concern regarding a breach of personal data integrity, unauthorized use thereof or deviation from authorization.

(2) The documentation specified under paragraph (1) shall, as far as is practicable, be stored in electronic form.

(3) In the data security procedure, a civil registration entity shall prescribe instructions with respect to handling information security incidents, depending on the event severity and the information sensitivity level, including—

(a) revoking authorizations and other necessary immediate measures; and

(b) reporting security incidents, to the Data Commissioner and the actions taken in response to the security incidents.

### 35. Network security.

(1) A civil registration entity shall not connect the database systems to the internet or to another public network without installing the appropriate safeguards against unauthorized access or against software that may damage or disrupt computers or computer material.

(2) The transfer of personal data from the database through a public network or the internet shall be conducted by commonly used encryption methods.

### 36. Periodical audits.

(1) The civil registration entity shall conduct, at least once in twenty-four months, an internal or external audit by an auditor adequately trained in the field of data security who is not the civil registration entity's data protection officer, in order to ensure it complies with the provisions of the Act and these Regulations.

(2) The auditor shall report on the adherence of the security measures to the data security procedure and to these Regulations, identify shortcomings and recommend the necessary measures to correct the situation.

(3) A civil registration entity shall review the audit reports specified under sub-regulation (2) and assess the need to update the database definitions document or the data security procedure, accordingly.

(4) A civil registration entity that controls several databases may comply with the duty prescribed in this regulation by performing a single audit for all the databases it controls.

### 37. Data backup and restoration.

(1) The civil registration entity shall retain the backup copy of the data and of the security procedures in a manner that ensures the integrity of the personal data and the ability to restore the information in case of loss or destruction.

(2) The civil registration entity shall formulate—

(a) procedures for routine periodical backup in accordance with these Regulations; and

(b) procedures to ensure restoration of the data.

(3) In documenting security incidents pursuant to regulation 34, data restoring processes shall also be documented, including the identity of the person who performed the data restoration and the details of the personal data restored.

### 38. Transfer of personal data outside Kenya.

(1) A civil registration entity shall not transfer personal data collected for civil registration purposes out of Kenya, except with the written approval of the Data Commissioner.

(2) A person who contravenes Paragraph (1) shall, on conviction, be liable to a penalty specified under section 73 of the Act.

## PART VII – GENERAL PROVISIONS

### 39. Reports to the Data Commissioner.

A civil registration entity shall, on annual basis, submit a compliance report to the Data Commissioner.

**40. Outsourcing.**

(1) A civil registration entity entering into an agreement with an external service provider in order to receive a service which involves granting external service provider access to the database shall—

(a) assess, prior to entering an agreement with the external service provider, the data security risks involved in the engagement;

(b) expressly agree with the external service provider on the following, taking into account the risks mentioned under paragraph (a)—

(i) the data the external service provider may process and the permitted purposes of its use as required by the agreement between the parties;

(ii) the database systems that the external service provider may access;

(iii) the type of processing or activities the external service provider may perform;

(iv) the agreement duration, the manner of returning the data to the civil registration entity at the end of the agreement, its destruction at the disposal of the external service provider and of reporting accordingly to the civil registration entity;

(v) the manner data security obligations which apply to the processor of the database according to these Regulations are implemented, and additional data security instructions set by the civil registration entity, if any;

(vi) the external service provider shall have his authorized users sign an undertaking to protect the information confidentiality, to use the data only according to the agreement and to implement the data security measures prescribed in the agreement; and

(vii) where a civil registration entity permitted the external service provider to provide the service through another entity, it shall be the duty of the civil registration entity to include in the agreement with the other entity all the matters detailed in these Regulations.

(2) The external service provider shall report to the civil registration entity, at least quarterly, the manner the obligations by these Regulations and the agreement are implemented, as well as to notify the civil registration entity any security incident.

(3) The civil registration entity shall take measures to monitor and supervise the compliance of the external service provider with the provisions of the agreement and these Regulations, as appropriate, taking into account any risks.

(4) A civil registration entity that controls several databases and enters into an agreement with an external service provider that includes access to the databases by the external service provider, may enter into a single agreement concerning all databases.

---

FIRST SCHEDULE

[r.9 (2), (r.11(2), r.12]

REQUEST FOR RESTRICTION OR OBJECTION TO THE PROCESSING OF PERSONAL DATA

FORM 1

*Note:*

*(i) Affidavits or other documentary evidence in support of the objection may be attached.*

*(ii) If the space provided for in this Form is inadequate, submit information as an Annexure to this Form and sign each page.*

*(iii) Where an objection is initiated by a person other than the data subject, the initiator must attach proof of authority to act on behalf of the data subject.*

A. SECTION: NATURE OF REQUEST

Mark the appropriate box with an "x". Request for:

RESTRICTION # OBJECTION #

B. DETAILS OF THE DATA SUBJECT

.....

Surname Middle name First name

Birth Certificate/ Notification/ National Identity Card/ Passport number: .....

Postal address: .....

Contact number(s): .....

E-mail address: .....

C. DETAILS OF PERSON INITIATING THE OBJECTION (where the data subject is a minor or incapacitated)

.....

Surname Middle name First name

National Identity Card/ Passport number:

Postal address: .....

Contact number(s):

e-mail address:

REASONS FOR RESTRICTION # OBJECTION #

(Please provide detailed reasons for the restriction or objection)

**(a)** .....

**(b)** .....

**(c)** .....

**(d)** .....

**(f)** .....

**(g)** .....

SECTION 5: DECLARATION

Please note that any attempt to gain access to personal information through misrepresentation may result in prosecution.

# I confirm that I have read and understood the terms of this request form and certify that the information given in this application is true.

DOCUMENT CHECKLIST: I HAVE PROVIDED:

**(a)** A duly completed request form.

**(b)** Attached document(s), including proof of authorization (if applicable).

**(c)** Signed and dated the request form.

Signature _____ Date _____

FORM 2 (r. 10 (1))

**REQUEST FOR ACCESS TO PERSONAL DATA**

*Note:*

*5. Affidavits or other documentary evidence as applicable in support of the request may be attached.*

*6. If the space provided for in this Form is inadequate, submit information as an Annexure to this Form and sign each page.*

*7. Where a request for rectification is made by a person other than the data subject, the person making the request must attach proof of authority to act on behalf of the data subject.*

*8. On receipt of a duly filled form, you will receive a response within three working days*

Fill as appropriate

Full Name: _____

Birth Certificate/ Notification/ _____

Identity Card/ Passport No: _____

*Telephone/Mobile No: _____

*Email address: _____

SECTION 2: PERSON INITIATING THIS REQUEST.

Full Name: _____

Birth Certificate/ Notification _____

Identity Card/ Passport number: _____

Mobile No. / Email address: _____

SECTION 3: PROPOSED CHANGE (S)

| | **Personal Information currently on file to be corrected e.g. name, residential status, and mobile number, email address.** | **The proposed change** | **Reason for the proposed change** |
|---|---|---|---|
| 1. | | | |
| 2. | | | |
| 3. | | | |
| 4. | | | |

5.
6.
7.

SECTION 4: DECLARATION

Please note that any attempt to gain access to personal information through misrepresentation may result in prosecution.

# I confirm that I have read and understood the terms of this request form and certify that the information given in this application is true.

Signature: Date:

DOCUMENT CHECKLIST:

*I have provided:*

*(d) A duly completed request form.*

*(e) Attached document(s), including proof of authorization (if applicable).*

*(f) Signed and dated the request form.*

---

SECOND SCHEDULE

[r. 19(1)]

DATA PROTECTION IMPACT ASSESSMENT

FORM 2

Part 1 - Description of the processing operations.

1. Project Name

2. Project Outline: What and why
Explain broadly what the project aims to achieve and what type of processing it involves

3. Describe the Information Flow—
Describe the collection, use and deletion of personal data here. It may in a flow diagram or another format of explaining data flows—
(a) where you are getting the data from;
(b) where the data will be stored;
(c) where data could be transferred to; and
(d) how many individuals are likely to be affected by the project.

Part 2 - An assessment of the necessity and proportionality of the processing operations in relation to the purpose.

Describe compliance and proportionality measures, in particular:

1. What is your lawful basis for processing?

| | | |
|---|---|---|
| 2. Does the processing actually achieve your purpose? | | |
| 3. Is there another way to achieve the same outcome? | | |
| 4. How will you ensure data quality and data minimization? | | |
| 5. What information will you give individuals? | | |
| 6. How will you help to support their rights? | | |
| 7. What measures do you take to ensure processors comply? | | |
| 8. How do you safeguard any international transfers? | | |

Part 3 - An assessment of the risks to the rights and freedoms of data subjects.

| Assessment Questions | Yes. (Please give explanation) | No. (Please give explanation) |
|---|---|---|
| Explain what practical steps you will take to ensure that you identify and address privacy risks. | | |
| 1. Will the project involve the collection of new identifiable or potentially identifiable data about data subjects? | | |
| 2. Will the project compel data subjects to provide information about themselves, i.e. where they will have little awareness or choice? | | |
| 3. Will identifiable information about the data subjects be shared with other organizations or people who have not previously had routine access to the information? | | |
| 4. Are you using information about data subjects for a purpose it is not currently used for in a new way, i.e. using data collected to provide care for an | | |

evaluation of service development.
5. Where information about data subjects is being used, would this be likely to raise privacy concerns or expectations, i.e. will it include health records, criminal records or other information that people may consider to be sensitive and private and may cause them concern or distress?
6. Will the project require you to contact data subjects in ways, which they may find intrusive, such as telephoning or emailing them without their prior consent?
7. Will the project result in you making decisions in ways which can have a significant impact on data subjects, i.e. will it affect the services a person receives?
8. Does the project involve you using new technology which might be perceived as being privacy intrusive, i.e. using biometrics, facial recognition or automated decision making?
9. Is a service being transferred to a new supplier (re-contracted) and the end of an existing contract?
10. Is processing of identifiable/potentially identifiable data

being moved to a new organization (but with same staff and processes)

Part 4: The measures envisaged addressing the risks and the safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with the Data Protection Act

Identification of risks – Civil Registration Entities should carry out the risk analysis using exactly the same methodology as they do for other project risks. Enter the key risks that have been identified, and the options for avoiding or mitigating those risk into this table.

| Risk description | Options for avoiding or mitigating the identified risk | Residual Privacy Risk after implementation of mitigation (High, medium, or low) | | |
|---|---|---|---|---|
| | | Impact | Likelihood | Exposure |

# THE DATA PROTECTION (COMPLAINTS HANDLING PROCEDURE AND ENFORCEMENT) REGULATIONS

ARRANGEMENT OF SECTIONS

PART I – PRELIMINARY

1. Citation
2. Interpretation
3. Object and purpose of the Regulations

PART II – PROCEDURE FOR LODGING, ADMISSION AND RESPONSE TO COMPLAINTS

4. Lodging of a complaint
5. Register of complaints
6. Admission of complaint
7. Discontinuation of a complaint
8. Withdrawal of a complaint
9. Joint consideration of complaints
10. Language
11. Notification of a complaint to the respondent
12. Joinder of parties
13. Investigations of a complaint
14. Outcome of investigation
15. Negotiation, mediation or conciliation

PART III – ENFORCEMENT PROVISIONS

16. Issuance of enforcement notice
17. Service of an enforcement notice
18. Review of enforcement notice
19. Appeals against enforcement notice
20. Issuance of penalty notice
21. Enforcement of penalty notice

SCHEDULES

FORMS

# THE DATA PROTECTION (COMPLAINTS HANDLING PROCEDURE AND ENFORCEMENT) REGULATIONS

[Legal Notice 264 of 2021]

PART I – PRELIMINARY

## 1. Citation

These Regulations may be cited as the Data Protection (Complaints Handling Procedure and Enforcement) Regulations.

## 2. Interpretation

In these Regulations, unless the context otherwise requires—

"Act" means Data Protection Act (Cap. 411C);

"complainant" means a data subject or a person who has lodged a complaint pursuant to regulation 4;

"Data Commissioner" means the person appointed under section 6 of the Act;

"Office" means the office of the Data Protection Commissioner;

"enforcement notice" means a notice issued by the Data Commissioner under regulation 16;

"penalty" means a penalty imposed by a penalty notice;

"penalty notice" means a notice issued by the Data Commissioner under regulation 20;

"respondent" means a person against whom a complaint is lodged; and

"summons" means an order of the Data Commissioner, in writing, directing a person to appear before the Office.

## 3. Object and purpose of the Regulations

The object and purpose of these Regulations is to—

(a) facilitate a fair, impartial, just, expeditious, proportionate and affordable determination of complaints lodged with the Data Commissioner in accordance with the Act and these Regulations, without undue regard to technicalities of procedure;

(b) provide for issuance of enforcement notices as contemplated under section 58 of the Act;

(c) provide for issuance of issuance of penalty notices as contemplated under section 62 of the Act;

(d) provide for the procedure for hearing and determining of complaints; and

(e) provide for the resolution of complaints lodged with the Data Commissioner by means of alternative dispute resolution mechanisms as specified under section 9(1)(c) of the Act.

PART II – PROCEDURE FOR LODGING, ADMISSION AND RESPONSE TO COMPLAINTS

## 4. Lodging of a complaint

(1) Pursuant to section 56 of the Act, a data subject or any person aggrieved on any matter under the Act may lodge a complaint with the Data Commissioner.

(2) A complaint lodged under subregulation (1) may be lodged in Form DPC 1 set out in the Schedule—

(a) orally, subject to section 56(3) of the Act;

(b) through electronic means, including email, web posting, complaint management information system; or

(c) by any other appropriate means.

(3) A complaint under subregulation (1) may be lodged—

(a) by the complainant in person;

(b) by a person acting on behalf of the complainant;

(c) by any other person authorized by law to act on behalf of a data subject; or

(d) anonymously.

(4) The Data Commissioner shall acknowledge receipt of the complaint within seven days of receipt of the complaint under subregulation (1).

(5) The complaint under subregulation (1) shall be lodged free of charge.

### 5. Register of complaints

(1) The Data Commissioner shall keep and maintain an up to date Register of Complaints.

(2) An entry into the register of complaints shall state the particulars of the complainant and the complaint filed with the Data Commissioner.

(3) The Data Commissioner shall protect the identity of the complainant where the request to protect the identity is sought by the complainant.

### 6. Admission of complaint

(1) The Data Commissioner shall undertake a preliminary review of a complaint, upon receipt of the complaint by the Office.

(2) The Data Commissioner may, upon undertaking a preliminary review of the complaint —

(a) admit the complaint;

(b) where applicable, advise the complainant in writing that the matter is not within the mandate of the Data Commissioner; or

(c) advise the complainant that the matter lies for determination by another body or institution and refer the complainant to that body or institution.

(3) Despite subregulation (2), the Data Commissioner may decline to admit a complaint where the complaint does not raise any issue under the Act.

(4) Upon admission of a complaint, the Data Commissioner may—

(a) conduct an inquiry into the complaint;

(b) conduct investigations;

(c) facilitate mediation, conciliation or negotiation in accordance with the Act and these Regulations; or

(d) use any other mechanisms to resolve the complaint.

(5) Where a complaint is declined for admission under subregulation (3), the complaint may be re-admitted within six months from the date of decline, where the complaint raises new issues for determination under the Act.

(6) A complaint under subregulation (5) shall be lodged in accordance with regulation 4.

### 7. Discontinuation of a complaint

(1) The Data Commissioner may discontinue an existing complaint in Form DPC 2 set out in the Schedule, where—

(a) a complaint does not merit further consideration; or

(b) a complainant refuses, fails or neglects to communicate without justifiable cause.

(2) The Data Commissioner shall provide the reasons for discontinuation on any of the grounds specified under subregulation (1)(a) or (b) and shall, in writing, notify the complainant and respondent within fourteen days from the date the decision to discontinue a complaint is made.

(3) A complainant may, where a complaint has been discontinued pursuant to these Regulations, re-institute a complaint upon providing grounds for the restitution to the Data Commissioner.

### 8. Withdrawal of a complaint

(1) A complaint may be withdrawn at any stage during its consideration but before a determination is made.

(2) A complainant may, at any time during the consideration of a complaint lodged pursuant to regulation 4 and before its determination, withdraw the complaint.

(3) An application for a withdrawal under subregulation (1) shall be in Form DPC 2 set out in the Schedule.

(4) A withdrawn complaint under subregulation (1) may be re-lodged, within six months from the date of withdrawal of such complaint.

(5) A complaint re-lodged under this regulation shall be processed in accordance with the provisions of this Part.

### 9. Joint consideration of complaints

(1) Where two or more complaints are lodged in which similar issues are raised against a respondent, the Data Commissioner may with the consent of the complainants—

(a) consolidate the complaints and make a determination; or

(b) treat one complaint as a test complaint and stay further action on the other complaints pending resolution of the test complaint.

(2) The Data Commissioner shall, with necessary modifications, apply the decision of a test complaint to all the complaints stayed under subregulation (1)(b).

(3) The Data Commissioner shall, in writing, communicate to the complainants and all the parties the decision made under this regulation.

(4) Where complaints are consolidated in accordance with this regulation, the complaint shall be treated as a single complaint and shall be determined in accordance with the provisions of these Regulations.

### 10. Language

(1) Proceedings before the Office shall be conducted in Kiswahili, English or Kenyan Sign Language.

(2) The Office may ensure that a party who cannot speak, hear or understand the language of proceedings receives the services of an interpreter provided for by the Office.

### 11. Notification of a complaint to the respondent

(1) Upon admission of a complaint, the Data Commissioner shall notify the respondent of the complaint lodged against him, in Form DPC 3 set out in the Schedule and shall require the respondent to within twenty-one days—

(a) make representations and provide any relevant material or evidence in support of its representations;

(b) review the complaint with a view of summarily resolving the complaint to the satisfaction of the complainant; or

(c) provide a response with the required information.

(2) Where a respondent does not take any action as contemplated under subregulation (1), the Data Commissioner shall proceed to determine the complaint in accordance with the Act and these Regulations.

(3) The notice referred to under subregulation (1) shall specify options available to resolve a complaint including determining the complaint through alternative dispute resolution mechanisms specified in the Act and these Regulations.

### 12. Joinder of parties

(1) Where it appears to the Data Commissioner, or by an application by either the complainant or the respondent, that it is necessary that a person becomes a party to a complaint, the Data Commissioner may order that person to be enjoined as a party.

(2) A person who has sufficient interest in the outcome of a complaint may apply to the Office for leave to be enjoined in the proceedings prior to the hearing of the complaint.

(3) An application under subregulation (1) shall include—

(a) the names of the parties to which that application relates;

(b) the name and address for service of the person wishing to be enjoined;

(c) the grounds the applicant relies on to be enjoined;

(d) a copy of any relevant document in support of the application; and

(e) the relief sought.

### 13. Investigations of a complaint

(1) In investigating a complaint, the Data Commissioner may, subject to section 57 of the Act—

(a) issue summons in Form DPC 4 set out in the Schedule requiring the attendance of any person at a specified date, time and place for examination;

(b) examine any person in relation to a complaint;

(c) administer an oath or affirmation on any person during the proceedings;

(d) require any person to produce any document or information from a person or institution; and

(e) on obtaining warrants from the court, enter into any establishment or premises and conduct a search and may seize any material relevant to the investigation.

(2) Upon completion of the investigation, the Data Commissioner shall prepare an investigation report.

(3) In conducting investigations under this regulation, the Data Commissioner shall be guided by the provisions of the Fair Administrative Action Act (Cap. 7J).

### 14. Outcome of investigation

(1) The Data Commissioner shall, upon the conclusion of the investigations, make a determination based on the findings of the investigations.

(2) A determination under subregulation (1) shall be in writing and shall state—

(a) the nature of the complaint;

(b) a summary of the relevant facts and evidence adduced;

(c) the decision and the reasons for the decision;

(d) the remedy to which the complainant is entitled; and

(e) any other relevant matter.

(3) The remedies contemplated under subregulation (2)(d) may include—

(a) issuance of an enforcement notice to the respondent in accordance with the Act and these Regulations;

(b) issuance of a penalty notice imposing an administrative fine where a respondent fails to comply with the enforcement notice;

(c) dismissal of the complaint where it lacks merit;

(d) recommendation for prosecution; or

(e) an order for compensation to the data subject by the respondent.

(4) The Data Commissioner shall within seven days from the date of such determination, communicate the decision under subregulation (3) to the parties, in writing.

(5) The decision of the Data Commissioner made under these Regulations shall be—

(a) binding on the parties; and

(b) shall be enforced as an order of the Court.

### 15. Negotiation, mediation or conciliation

(1) Where the complaint is to be determined through negotiations, mediation or conciliation, the provisions of these Regulations shall apply.

(2) Where parties to a complaint agree to negotiation, mediation or conciliation, the Data Commissioner may in consultation with the parties facilitate the process.

(3) During the negotiations, mediation or conciliation, the Data Commissioner may apply such procedures as may, in the interest of the parties, deem appropriate in the circumstances.

(4) At the conclusion of the negotiations, mediation or conciliation process, the parties shall sign a negotiation, mediation or conciliation agreement in the manner specified in Form DPC 5 set out in the Schedule.

(5) A negotiation, mediation or conciliation agreement entered into under this regulation shall be deemed to be a determination of the Data Commissioner, and shall be enforceable as such.

(6) Despite this regulation, a party to dispute who is subject to a negotiation, mediation or conciliation may withdraw from the proceedings at any stage and shall notify the Data Commissioner and other parties of such withdrawal within seven days from the date of making such a decision.

(7) Parties to a dispute shall take all reasonable measures to amicably determine a dispute and act in good faith.

(8) Where the complaint is not determined through negotiation, mediation or conciliation, the Data Commissioner shall proceed to determine the complaint as provided for in the Act and these Regulations.

PART III – ENFORCEMENT PROVISIONS

### 16. Issuance of enforcement notice

(1) The Data Commissioner may pursuant these Regulations or section 58 of the Act issue an enforcement notice.

(2) An enforcement notice shall specify the consequences of failure to comply with the notice including issuance of a penalty notice as provided under section 62(1) of the Act.

### 17. Service of an enforcement notice

(1) An enforcement notice shall be deemed to have been duly served on the concerned person where—

(a) an electronic copy of enforcement notice is sent to the concerned person's last used email address; or

(b) the enforcement notice is posted or physically delivered to the registered offices of the concerned person, in the absence of an electronic address.

(2) The enforcement notice shall take effect from the date of service specified under subregulation (1).

### 18. Review of enforcement notice

(1) A person to whom an enforcement notice is given may apply in Form DPC 6 set out in the Schedule to the Data Commissioner for a review of the enforcement notice.

(2) An application under subregulation (1) may be made—

(a) before the end of the period specified in the enforcement notice; and

(b) on the ground that—

(i) a change of circumstances or new facts have arisen; or

(ii) one or more of the provisions of that notice need not be complied with in order to remedy the failure identified in the notice.

### 19. Appeals against enforcement notice

Subject to sections 58(2)(d) and 64 of the Act, a person may before the lapse of thirty days from the date of service of the enforcement notice, appeal to the High Court against a decision arising out of the enforcement of the notice.

### 20. Issuance of penalty notice

(1) The Data Commissioner shall, where any of the circumstances specified under section 62 of the Act and these Regulations arises, issue a penalty notice for each breach identified in the enforcement notice.

(2) A penalty notice shall contain—

(a) the name and address of the concerned person, to whom it is addressed;

(b) the reasons why the Data Commissioner proposes to impose the penalty and the amount thereof;

(c) an administrative fine imposed as contemplated under section 63 of the Act;

(d) details of how the penalty is to be paid; and

(e) details of the rights of appeal under section 64 of the Act.

(3) The administrative fine levied under subregulation (2)(c) shall consider each individual case and have due regard to factors or reasons outlined under section 62(2) of the Act.

(4) A penalty notice may impose a daily fine of not more than ten thousand shillings for each breach identified until the breach is rectified.

(5) The daily fine imposed under subregulation (4) shall be managed in accordance with section 67 of the Act and the Public Finance Management Act (Cap. 412A).

### 21. Enforcement of penalty notice

The Data Commissioner shall enforce or take action to recover a penalty—

(a) upon the lapse of the period specified in the penalty notice for payment of the penalty;

(b) on the final determination of any appeal against the penalty notice; or

(c) on the lapse of the period given to appeal against the penalty.

---

SCHEDULE

[r. 4(2)(a)]

FORMS

FORM DPC 1

**COMPLAINT SUBMISSION FORM**

A. PARTICULARS OF THE COMPLAINANT/REPRESENTATIVE

Full Names

National Identification Card Number/Passport Number

Contact information (Phone number/email address)

B. PARTICULARS OF THE COMPLAINT

Describe your complaint;

Indicate to whom the complaint is against:
When did you become aware of the alleged breach
C. REMEDY SOUGHT
Explain the remedy you are seeking for the alleged breach;
D. Which other steps have you already taken in relation to the Complainant, if any
State any other institution contacted over the complaint, if any.
Signature Date

*Note*

** If the space provided for in this Form is inadequate, submit information as an annex.*

** If you have supporting documents to substantiate your claim, please annex copies to this Form.*

** The information submitted will be treated with the upmost confidentiality.*

FORM DPC 2 (r. 7(1) & 8(3))

**REQUEST TO DISCONTINUE OR WITHDRAW A COMPLAINT**

A. NATURE OF REQUEST
Mark the appropriate the box with an "x".
Request for:
DISCONTINUATION # WITHDRAWAL #
B. PARTICULARS OF THE COMPLAINANT/REPRESENTATIVE
Full names
National
Identification Card
Number/Passport
Number
Contact Information
(Phone Number/
Email Address)
C. NATURE OF THE COMPLAINT
Complaint Number/Reference Number
D. STATE REASON FOR WITHDRAWAL/DISCONTINUATION OF COMPLAINT
Signature Date

*Note:*

**If the space provided for in this Form is inadequate, submit information as an Annexure to this form*

**If you have supporting documents to substantiate your claim, please annex copies to this Form.*

**The information submitted will be treated with the upmost confidentiality.*

FORM DPC (r. 11(1))

**Notification of a complaint to the Respondent**

Details of the Respondent
Full Names
Complaints Register entry number
Email address
Details of the Complainant
Describe your complaint;
Full Names
National Identification Card Number
Contact information
Particulars of the Complaint
Representation to be made to the Data Commissioner by:
Signature Date

FORM DPC 4 (r. 13(1)(a))

**Summons to Enter Appearance**

**OFFICE OF THE DATA PROTECTION COMMISSIONER**

**COMPLAINT NO ..... OF .....**

_____ } Complainant

*AGAINST*

_____ } Respondent

TO: _____
_____ *Person required to attend*
_____

WHEREAS the above-named Complainant has instituted a Complaint against you, the Respondent particulars of which are set out in the copy of Complaint annexed herewith.

YOU ARE HEREBY REQUIRED to attend to the Office of the Data Commissioner on

_____(Date), _____

_____(Venue) At

_____(Time) (am/pm)

Should you fail to attend to the above mentioned summons, you may be liable to an offence under section 57 of the Data Protection Act, 2019.

Dated ..... day of ..... 20 .....

.....

Data Commissioner

FORM DPC 5 (r. 15(4))

**ALTERNATIVE DISPUTE RESOLUTION SETTLEMENT AGREEMENT**

The undersigned parties, on this _____ day of _____, have agreed to the following settlement of their dispute concerning

_____

_____

_____, and hereby memorialize such agreement according to the following terms:

_____

_____

_____,_____

The Settlement Agreement is binding on the parties and is admissible in court for enforcement purposes.

In order to facilitate the above-specified terms of settlement, the parties further agree that on or before the _____day of _____, 20_, they will

Complainant:_____

_____

_____

_____

_____

Respondent:

_____

_____

Complainant:

Signature Date

_____ _____

Respondent

Signature Date

_____ _____

FORM DPC 6 (r. 18(1))

**REVIEW OF ENFORCEMENT NOTICE**

A. PARTICULARS OF THE PERSON ISSUED WITH THE ENFORCEMENT NOTICE

Full Names

Registration Number/ Identification Number

Contact information (Phone number/ email address)

B. REFERENCE NUMBER OF THE ENFORCEMENT NOTICE

C. GROUNDS FOR REVIEW OF THE ENFORCEMENT NOTICE *(tick as appropriate)*

i) Change of circumstances or new facts # have arisen; or

| | |
|---|---|
| (ii) One or more of the provisions of that notice need not be complied with in order to remedy the failure identified in the notice. | # |

*Note:*

**If the space provided for in this Form is inadequate, submit information as an Annex to this Form*

**If you have supporting documents to substantiate your claim, please annex copies to this Form.*

**The information submitted will be treated with the upmost confidentiality.*

# THE DATA PROTECTION (GENERAL) REGULATIONS

ARRANGEMENT OF SECTIONS

PART I – PRELIMINARY

1. Citation
2. Interpretation
3. Exemption

PART II – ENABLING THE RIGHTS OF A DATA SUBJECT

4. Processing on the basis of consent
5. Lawful basis for processing
6. Mode of collection of personal data
7. Restriction to processing
8. Objection to processing
9. Data access request
10. Rectification of personal data
11. Data portability request
12. Right of erasure
13. Exercise of rights by others

PART III – RESTRICTIONS ON THE COMMERCIAL USE OF PERSONAL DATA

14. Interpretation of commercial purposes
15. Permitted commercial use of personal data
16. Features of an opt out message
17. Mechanisms to comply with opt out requirement
18. Request for restriction of further direct marketing

PART IV – OBLIGATIONS OF DATA CONTROLLERS AND DATA PROCESSORS

19. Retention of personal data
20. Requests to deal anonymously or pseudonymously
21. Sharing of personal data
22. Automated individual decision making
23. Data protection policy
24. Contract between data controller and data processor
25. Obligations of a data processor
26. Requirement for specified processing to be done in Kenya

PART V – ELEMENTS TO IMPLEMENT DATA PROTECTION BY DESIGN OR BY DEFAULT

27. Data protection by design or default
28. Elements of data protection by design or default
29. Elements for principle of lawfulness
30. Elements for principle of transparency
31. Elements for principle of purpose limitation
32. Elements for principle of integrity, confidentiality and availability
33. Elements for principle of data minimization
34. Elements for principle of accuracy
35. Elements for principle of storage limitation

36. Elements for principle of fairness

PART VI – NOTIFICATION OF PERSONAL DATA BREACHES

37. Categories of notifiable data breach
38. Notification to Data Commissioner

PART VII – TRANSFER OF PERSONAL DATA OUTSIDE KENYA

39. Interpretation of the Part VII
40. General principles for transfers of personal data out of the country
41. Transfers on the basis of appropriate safeguards
42. Deeming of appropriate safeguards
43. Binding corporate rules
44. Transfers on the basis of an adequacy decision
45. Transfers on the basis of necessity
46. Transfer on basis of consent
47. Subsequent transfers
48. Provisions for the agreement to cross boarder transfer

PART VIII – DATA PROTECTION IMPACT ASSESSMENT

49. Processing activities requiring data protection impact assessment
50. Conduct of data protection impact assessment
51. Prior consultation
52. Consideration of the data protection impact assessment report
53. Audit of compliance with Assessment Report

PART IX – PROVISIONS ON EXEMPTIONS UNDER THE ACT

54. Exemption for national security
55. Exemptions for public interest
56. Permitted general situation
57. Permitted health situation

PART X – GENERAL PROVISIONS

58. Complaints against data controller and data processor

SCHEDULES

REQUEST FOR RESTRICTION OR OBJECTION TO THE PROCESSING OF PERSONAL DATA

NOTIFIABLE DATA BREACH

DATA PROTECTION IMPACT ASSESSMENT TEMPLATE

# THE DATA PROTECTION (GENERAL) REGULATIONS

[Legal Notice 263 of 2021]

PART I – PRELIMINARY

## 1. Citation

These Regulations may be cited as the Data Protection (General) Regulations.

## 2. Interpretation

In these Regulations, unless the context otherwise requires—

Act means the Data Protection Act (Cap 411C);

Data Commissioner means the person appointed as such pursuant to section 6 of the Act; and

Office has the meaning assigned to it under the Act.

## 3. Exemption

These Regulations shall not apply to civil registration entities specified under the Data Protection (Civil Registration) Regulations (L.N. 196/2020).

PART II – ENABLING THE RIGHTS OF A DATA SUBJECT

## 4. Processing on the basis of consent

(1) Where processing is based on consent in accordance with section 32 of the Act, a data controller or data processor shall, in seeking consent prior to the processing, inform the data subject of—

(a) the identity of the data controller or data processor;

(b) the purpose of each of the processing operations for which consent is sought;

(c) the type of personal data that is collected and used;

(d) information about the use of the personal data for automated decision-making, where relevant;

(e) the possible risks of data transfers due to absence of an adequacy decision or appropriate safeguards;

(f) whether the personal data processed shall be shared with third parties;

(g) the right to withdraw consent; and

(h) the implications of providing, withholding or withdrawing consent.

(2) The information under subregulation (1) may be presented to the data subject through a written notice, oral statement, audio or video message.

(3) In obtaining consent from a data subject, a data controller or a data processor shall ensure that the—

(a) data subject has capacity to give consent;

(b) data subject voluntarily gives consent; and

(c) consent is specific to the purpose of processing.

(4) Pursuant to section 32(4) of the Act, consent shall be considered to have been given freely, unless where—

(a) it is presumed on the basis that the data subject did not object to a proposal to processing of their personal data in a particular manner;

(b) it is presented as a non-negotiable part of the terms and conditions for processing;

(c) the data subject is unable to refuse or withdraw their consent without detriment;

(d) the data controller or data processor merges several purposes for processing without seeking specific consent for each purpose; or

(e) the intention of the data subject is ambiguous.

(5) Where the data subject withdraws consent to any part of the processing, the data controller or data processor shall restrict the part of the processing in respect of which consent is withdrawn, subject to section 34 of the Act.

### 5. Lawful basis for processing

(1) A data controller or data processor may process data without consent of a data subject if the processing is necessary for any reason set out in section 30(1) (b) of the Act.

(2) Processing under subregulation (1) shall only rely on one legal basis for processing at a time, which shall be established before the processing.

(3) The legal basis relied on under subregulation (1) shall be demonstrable at all times and where a data controller uses multiple bases for different processing, the data controller shall—

(a) distinguish between the legal bases being used; and

(b) respond to any data subject rights requests.

### 6. Mode of collection of personal data

(1) Pursuant to section 28(2) of the Act, a data controller or data processor may collect personal data indirectly from—

(a) any person other than the data subject;

(b) publications or databases;

(c) surveillance cameras, where an individual is identifiable or reasonably identifiable;

(d) information associated with web browsing; or

(e) biometric technology, including voice or facial recognition.

(2) A data controller or data processor shall, in collecting personal data—

(a) ensure that processing is limited to personal data which the data subject has permitted the data controller or data processor to collect;

(b) undertake steps to ensure that personal data is accurate, not in excessive and up to date;

(c) undertake processes to secure personal data; and

(d) comply with the lawful processing principles set out under Part IV of the Act.

(3) Where a data controller or data processor collects personal data indirectly, the data controller or data processor shall within fourteen days inform the data subject of the collection.

(4) Where a data controller or data processor intends to use personal data for a new purpose, the data controller or data processor shall ensure that the new purpose is compatible with the initial purpose for which the personal data was collected.

(5) Where the new purpose is not compatible with the initial purpose, a data controller or data processor shall seek fresh consent from the data subject in accordance with regulation 4.

### 7. Restriction to processing

(1) Pursuant to section 34 of the Act, a data subject may request a data controller or data processor to restrict the processing of their personal data on grounds that—

(a) the data subject contests the accuracy of their personal data;

(b) the personal data has been unlawfully processed and the data subject opposes the erasure and requests restriction instead;

(c) the data subject no longer needs their personal data but the data controller or data processor requires the personal data to be kept in order to establish, exercise or defend a legal claim; or

(d) a data subject has objected to the processing of their personal data under regulation 8 and a data controller or data processor is considering legitimate grounds that override those of the data subject.

(2) A request for restriction to processing of personal data on any of the grounds provided under section 34 of the Act may be made in Form DPG 1 set out in the First Schedule.

(3) A data controller or data processor shall within fourteen days of the request for restriction pursuant to subregulation (2), and without charging any fee—

(a) admit and implement the request;

(b) indicate on the data controller or data processors system that the processing of the personal data has been restricted; and

(c) notify any relevant third party of the restriction where personal data, subject to such restriction, may have been shared.

(4) A data controller or a data processor may implement a restriction to processing request by—

(a) temporarily moving the personal data to another processing system;

(b) making the personal data unavailable to third parties; or

(c) temporarily removing published data specific to the data subject from its website or other public medium in its control.

(5) A data controller or data processor may decline to comply with a request for restriction in processing, where such request is manifestly unfounded or excessive.

(6) Where a data controller or data processor declines a request on any of the grounds provided under section 34(2) of the Act, the data controller or data processor shall within fourteen days of the refusal, notify the data subject of the refusal, in writing, and shall provide the reasons for the decision.

(7) A data controller or data processor shall not process personal data that has been restricted, except to store the personal data, in accordance with section 34(2)(a) of the Act.

### 8. Objection to processing

(1) Pursuant to section 36 of the Act, a data subject may request a data controller or data processor not to process all or part of their personal data, for a specified purpose or in a specified manner.

(2) A request to object the processing may be made in Form DPG 1 set out in the First schedule.

(3) A data controller or data processor shall, without charging any fee, comply with a request for objection under subregulation (2) within fourteen days of the request.

(4) The right to object to processing applies as an absolute right where the processing is for direct marketing purposes which includes profiling to the extent that it is related to such direct marketing.

(5) Where the data subject objects to processing for direct marketing purposes, the personal data shall not be processed for such purposes.

(6) Where the right to object to processing is not absolute and the request by a data subject has been declined, the data controller or data processor shall inform the data subject of—

(a) the reasons for declining the request for objection; and

(b) the right to lodge a complaint to the Data Commissioner where dissatisfied.

(7) Where a data controller or data processor demonstrates compelling legitimate interest for the processing which overrides the data subject's interests, or for the

establishment, exercise or defence of a legal claim, the data controller or data processor shall inform the data subject of—

(a) the reasons for declining the request for objection; and

(b) the right to lodge a complaint to the Data Commissioner where dissatisfied.

### 9. Data access request

(1) A data subject has a right to obtain from the data controlleror data processor confirmation as to whether or not personal data concerning them is being processed, and, where that is the case, access to the personal data and the information as to—

(a) the purposes of the processing;

(b) the categories of personal data concerned;

(c) the recipients or categories of recipient to whom the personal data have been or will be disclosed, including recipients in other countries or territories;

(d) where possible, the envisaged period for which the personal data may be stored, or, if not possible, the criteria used to determine that period; and

(e) where the personal data is not collected from the data subject, any available information as to the source of collection.

(2) A data subject may request to access their personal data in Form DPG 2 set out in the First Schedule.

(3) A data controller or data processor shall—

(a) on request, provide access to a data subject of their personal data in its possession;

(b) put in place mechanisms to enable a data subject to proactively access or examine their personal data; or

(c) provide the data subject with a copy of their personal data.

(4) A data controller or a data processor shall comply with a request by a data subject to access their personal data within seven days of the of the request.

(5) Where the data subject makes the request by electronic means, and unless otherwise requested by the data subject, the information shall be provided in a commonly used electronic form.

(6) Compliance with a request for access to personal data shall be free of charge.

### 10. Rectification of personal data

(1) Pursuant to section 40 of the Act, a data subject may request a data controller or data processor to rectify their personal data, which is untrue, inaccurate, outdated, incomplete or misleading.

(2) A request for rectification may be made in Form DPG 3 set out in the First Schedule.

(3) An application for rectification of personal data may be supported by such documents as may be relevant to the rectification sought.

(4) A data controller or data processor shall within fourteen days of the request, rectify an entry of personal data in the database where the data controller or data processor is satisfied that a rectification is necessary.

(5) Where a request for rectification is declined, a data controller or data processor shall, in writing, notify a data subject of that refusal within seven days and shall provide reasons for refusal.

(6) A request for rectification shall made free of charge.

### 11. Data portability request

(1) Pursuant to section 38 of the Act, a data subject may apply to port or copy their personal data from one data controller or data processor to another.

(2) A request for data portability may be made in Form DPG 4set out in the First Schedule.

(3) A data controller or data processor shall within thirty days of the request and upon payment of the prescribed fees port personal data to the data subject's choice of recipient.

(4) Where fee is charged under subregulation (2), the fee shall be reasonable and not exceed the cost incurred to actualize the request.

(5) A data controller or data processor who receives personal data that has been ported shall, with respect to such data, comply with the requirement of the Act and these Regulations.

(6) Where a data controller or data processor declines the portability request, a data controller or data processor shall, within seven days, notify the data subject of the decline and the reasons for such decline in writing.

(7) The exercise of the right to data portability by a data subject shall not negate the rights of a data subject provided under the Act.

### 12. Right of erasure

(1) Pursuant to section 40(1)(b) of the Act, a data subject may, request a data controller or data processor to erase or destroy personal data held by the data controller or data processor where—

(a) the personal data is no longer necessary for the purpose which it was collected;

(b) the data subject withdraws their consent that was the lawful basis for retaining the personal data;

(c) the data subject objects to the processing of their data and there is no overriding legitimate interest to continue the processing;

(d) the processing of personal data is for direct marketing purposes and the individual objects to that processing;

(e) the processing of personal data is unlawful including in breach of the lawfulness requirement; or

(f) the erasure is necessary to comply with a legal obligation.

(2) A data subject may request for erasure of their personal data held by a data controller or data processor in Form DPG5 set out in the First Schedule.

(3) A data controller or data processor shall respond to a request for erasure under subregulation (2) within fourteen days of the request.

(4) A right of erasure does not apply if processing is necessary for one of the following reasons—

(a) to exercise the right of freedom of expression and information;

(b) to comply with a legal obligation;

(c) for the performance of a task carried out in the public interest or in the exercise of official authority;

(d) for archiving purposes in the public interest, scientific research, historical research or statistical purposes where erasure is likely to render impossible or seriously impair the achievement of that processing; or

(e) for the establishment, exercise or defence of a legal claim.

(5) A request for erasure shall be free of charge.

### 13. Exercise of rights by others

(1) Subject to section 27 of the Act, where a person duly authorised by a data subject seeks to exercise the rights on their behalf, the data controller or data processor shall act in the best interests of the data subject.

(2) Where the data subject is a child, a data controller or data processor shall ensure that—

(a) a person exercising the right is appropriately identified;

(b) profiling of a child that is related to direct marketing is prohibited; and

(c) the parent or guardian is informed of the inherent risks in processing and the safeguards put in place.

(3) Where a data controller or a data processor is uncertain as to the existence of a relationship between the duly authorised person and the data subject, the data controller or data processor may restrict the request of exercising a right on behalf of the data subject until evidence to the contrary is adduced.

PART III – RESTRICTIONS ON THE COMMERCIAL USE OF PERSONAL DATA

### 14. Interpretation of commercial purposes

(1) For the purposes of section 37(1) of the Act, a data controller or data processor shall be considered to use personal data for commercial purposes where personal data of a data subject is used to advance commercial or economic interests, including inducing another person to buy, rent, lease, join, subscribe to, provide or exchange products, property, information or services, or enabling or effecting, directly or indirectly, a commercial transaction.

(2) A data controller or data processor is considered to use personal data to advance commercial interests where personal data is used for direct marketing through—

(a) sending a catalogue through any medium addressed to a data subject;

(b) displaying an advertisement on an online media site where a data subject is logged on using their personal data; or

(c) sending an electronic message to a data subject about a sale, or other advertising material relating to a sale, using personal data provided by a data subject.

(3) Marketing is not direct where personal data is not used or disclosed to identify or target particular recipients.

### 15. Permitted commercial use of personal data

(1) A data controller or data processor may use personal data, other than sensitive personal data, concerning a data subject for the purpose of direct marketing where—

(a) the data controller or data processor has collected the personal data from the data subject;

(b) a data subject is notified that direct marketing is one of the purposes for which personal data is collected;

(c) the data subject has consented to the use or disclosure of the personal data for the purpose of direct marketing;

(d) the data controller or data processor provides a simplified opt out mechanism for the data subject to request not to receive direct marketing communications; or

(e) the data subject has not made an opt out request.

(2) A data controller or data processor shall not transmit, for the purposes of direct marketing, messages by any means unless the data controller or data processor indicates particulars to which a data subject may send a request to restrict such communications without incurring charges.

(3) A person shall neither transmit, nor instigate the transmission of, a communication for the purposes of direct marketing by means of electronic mail—

(a) where the identity of the person on whose behalf the communication has been sent has been disguised or concealed;

(b) where a valid address to which the recipient of the communication may send a request that such communications cease has not been provided; or

(c) where there is use of automated calling systems without human intervention.

(4) A data controller or data processor who uses personal data for commercial purposes without the consent of the data subject commits an offence and is liable, on conviction, to a fine not exceeding twenty thousand shillings or to a term of imprisonment not exceeding six months, or to both fine and imprisonment.

### 16. Features of an opt out message

(1) An opt out mechanism contemplated under regulation 15(1)(d) shall—

(a) have a visible, clear and easily understood explanation of how to opt out;

(b) include a process for opting out that requires minimal time and effort;

(c) provide a direct and accessible communication channel;

(d) be free of charge or where necessary involve a nominal cost to a data subject; and

(e) be accessible to persons with a disability.

(2) Where a data subject has opted out, a data controller or data processor shall not use or disclose their personal data for the purpose of direct marketing, in accordance with the data subject's request.

### 17. Mechanisms to comply with opt out requirement

(1) In communicating with a data subject on direct marketing, a data controller or data processor shall include a statement which is prominently displayed, or otherwise draws the attention of the data subject to the fact that the data subject may make an opt out request.

(2) A data controller or data processor may, in complying with an opt out requirement—

(a) clearly indicate, in each direct marketing message, that a data subject may opt out of receiving future messages by replying with a single word instruction in the subject line;

(b) ensure that a link is prominently located in the email, which takes a data subject to a subscription control centre;

(c) clearly indicate that a data subject may opt out of future direct marketing by replying to a direct marketing text message with a single word instruction;

(d) inform the recipient of a direct marketing phone call that they can verbally opt out from any future calls; and

(e) include instructions on how to opt out from future direct marketing, in each message.

(3) A data controller or a data processor may use an opt out mechanism that provides a data subject with the opportunity to indicate their direct marketing communication preferences, including the extent to which they wish to opt out.

(4) Despite subregulation (3), a data controller or data processor shall provide a data subject with an option to opt out of all future direct marketing communications as one of outlined preferences.

### 18. Request for restriction of further direct marketing

(1) A data subject may request a data controller or data processor to restrict use or disclosure of their personal data, to a third party, for the purpose of facilitating direct marketing.

(2) No fee shall be charged to a data subject for making or giving effect to a request under this Part.

(3) A data controller or data processor shall restrict use or disclosure of personal data for the purpose of facilitating direct marketing by a third party within seven days of the request.

PART IV – OBLIGATIONS OF DATA CONTROLLERS AND DATA PROCESSORS

### 19. Retention of personal data

(1) Pursuant to section 39 of the Act, a data controller or data processor shall retain personal data processed for a lawful purpose, for as long as may be reasonably necessary for the purpose for which the personal data is processed.

(2) A data controller or data processor shall—

(a) establish personal data retention schedule with appropriate time limits for the periodic review of the need for the continued storage of personal data that is no longer necessary or where the retention period is reached; and

(b) erase, delete anonymise or pseudonymise personal data upon the lapse of the purpose for which the personal data was collected.

(3) A personal data retention schedule established under paragraph (2)(a) shall outline the—

(a) purpose for retention;

(b) the retention period;

(c) provision for periodic audit of the personal data retained; and

(d) actions to be taken after the audit of the personal data retained.

(4) An audit of the retained data under paragraph (3)(c), shall seek to—

(a) review records with a view of identifying personal data that no longer requires to be retained and permanently delete the personal data;

(b) ensure the retained data is accurate and up-to-date;

(c) specify the purpose for retention of personal data;

(d) ensure that the personal data security measures are adequate; and

(e) identify the best cause of action where personal data retention period lapses.

(5) A data controller or data processor shall establish appropriate time limits for the periodic review of the need for the continued storage of personal data for any of the law enforcement purposes.

(6) The personal data storage limitation period and data retention schedule outlined under paragraph (2)(a) may be included as part of the policy envisaged in regulation 23.

### 20. Requests to deal anonymously or pseudonymously

(1) A data subject may request a data controller or data processor to process their personal data anonymously or pseudonymously where the data subject wishes—

(a) not to be identified;

(b) to avoid subsequent contact such as direct marketing from an entity or third parties;

(c) to enhance their privacy on the whereabouts of a data subject;

(d) to access services such as counselling or health services without it becoming known to others;

(e) to express views in a public arena without being personally identified; or

(f) to minimise the risk of identity fraud.

(2) A data controller or data processor may accede to the request where satisfied that the request is based on any of the reasons specified under subregulation (1) and where the request is in the best interests of the data subject.

### 21. Sharing of personal data

(1) Subject to section 25 of the Act, a data controller or data processor may share or exchange personal data collected, upon request, by another data controller, data processor, third party or a data subject.

(2) A data controller or data processor shall determine the purpose and means of sharing personal data from one data controller or data processor to another.

(3) Data sharing outlined under this regulation may include—

(a) providing personal data to a third party by whatever means by the data controller or data processor;

(b) receiving personal data from a data controller or data processor as joint participant in a data sharing arrangement;

(c) exchanging or transmission of personal data;

(d) providing third party with access to personal data on the data controller's information systems;

(e) separate or joint initiatives by data controllers or data processors to pool personal data making the data available to each other or a third-party subject to entering into an agreement, as may be applicable; or

(f) routine data sharing between data controllers on a regular or pre-planned basis.

(4) In carrying out any routine data sharing as contemplated under paragraph (3)(f), a data controller shall enter into agreements prior to data sharing.

(5) For the avoidance of doubt, the sharing of data within the organizational structures of a data controller or data processor is not considered as a data sharing.

(6) A request for sharing personal data under this regulation shall be in writing, and shall specify—

(a) the purpose for which personal data is required;

(b) the duration for which personal data shall be retained; and

(c) proof of the safeguards put in place to secure personal data from unlawful disclosure.

### 22. Automated individual decision making

(1) In this regulation—

"an automated individual decision-making" means a decision made by automated means without any human involvement.

(2) Pursuant to section 35 of the Act, a data controller or data processor shall—

(a) inform a data subject when engaging in processing based on automated individual decision making;

(b) provide meaningful information about the logic involved;

(c) ensure—

(i) specific transparency and fairness requirements are in place;

(ii) rights for a data subject to oppose profiling and specifically profiling for marketing are present; and

(iii) where conditions specified under section 31 of the Act arise, a data protection impact assessment is carried out;

(d) explain the significance and envisaged consequences of the processing;

(e) ensure the prevention of errors;

(f) use appropriate mathematical or statistical procedures;

(g) put appropriate technical and organisational measures in place to correct inaccuracies and minimise the risk of errors;

(h) process personal data in a way that eliminates discriminatory effects and bias; and

(i) ensure that a data subject can obtain human intervention and express their point of view.

### 23. Data protection policy

(1) A data controller or data processor shall develop, publish and regularly update a policy reflecting their personal data handling practices.

(2) A policy under subregulation (1) may include—

(a) the nature of personal data collected and held;

(b) how a data subject may access their personal data and exercise their rights in respect to that personal data;

(c) complaints handling mechanisms;

(d) lawful purpose for processing personal data;

(e) obligations or requirements where personal data is to be transferred outside the country, to third parties, or other data controllers or data processors located outside Kenya and where possible, specify such recipients;

(f) the retention period and schedule contemplated under regulation 19; and

(g) the collection of personal data from children, and the criteria to be applied.

### 24. Contract between data controller and data processor

(1) Subject to section 42(2)(b) of the Act, a data controller shall engage a data processor, through a written contract.

(2) The contract envisaged under subregulation (1) shall include the following particulars —

(a) processing details including—

(i) the subject matter of the processing;

(ii) the duration of the processing;

(iii) the nature and purpose of the processing;

(iv) the type of personal data being processed;

(v) the categories of data subjects; and

(vi) the obligations and rights of the data controller;

(b) instructions of the data controller;

(c) duty on the data processors to obtain a commitment of confidentiality from any person or entity that the data processors allows to process the personal data;

(d) security measures subjecting the data processor to appropriate technical and organizational measures in relation to keeping personal data secure;

(e) provision stipulating that all personal data must be permanently deleted or returned on termination or lapse of the agreement, as decided by the data controller; and

(f) auditing and inspection provisions by the data controller.

### 25. Obligations of a data processor

(1) A data processor shall not engage the services of a third party without the prior authorisation of the data controller.

(2) Where authorisation is given, the data processor shall enter into a contract with the third party.

(3) The contract contemplated under subregulation (1) shall include such particulars as provided for under subregulation 24(2).

(4) A data processor shall remain liable to the data controller for the compliance of any third party that they engage.

### 26. Requirement for specified processing to be done in Kenya

(1) Pursuant to section 50 of the Act, a data controller or data processor who processes personal data for the purposeof strategic interest of the state outlined under subregulation (2) shall—

(a) process such personal data through a server and data centre located in Kenya; or

(b) store at least one serving copy of the concerned personal datain a data centre located in Kenya.

(2) The purpose contemplated under subregulation (1) includes the processing of personal data for the purpose of—

(a) administering of the civil registration and legal identity management systems;

(b) facilitating the conduct of elections for the representation of the people under the Constitution;

(c) overseeing any system for administering public finances by any state organ;

(d) running any system designated as a protected computer system in terms of section 20 of the Computer Misuse and Cybercrime Act (Cap. 79C);

(e) offering any form of early childhood education and basic education under the Basic Education Act (Cap. 211); or

(f) provision of primary or secondary health care for a data subject in the country.

(3) Despite (2), the Cabinet Secretary may require a data controller who processes personal data outside Kenya to comply with subregulation (1), where the data controller—

(a) has been notified that personal data outside Kenya has been breached or its services have been used to violate the Act and has not taken measures to stop or handle the violation; and

(b) resists, obstructs or fails to comply with requests of the Data Commissioner or any other relevant authority in—

(i) cooperating to investigate and handle such violations; or

(ii) neutralising and disabling the effect of cyber security protection measures.

## PART V – ELEMENTS TO IMPLEMENT DATA PROTECTION BY DESIGN OR BY DEFAULT

### 27. Data protection by design or default

A data controller or data processor shall in processing of personal data —

(a) establish the data protection mechanisms set out under the Act and these Regulations are embedded in the processing; and

(b) design technical and organisational measures to safeguard and implement the data protection principles.

### 28. Elements of data protection by design or default

The elements for the protection of personal data by design or by default that are necessary to implement the data protection principles outlined under section 25 of the Act are as set out in this Part.

### 29. Elements for principle of lawfulness

The elements necessary to implement the principle of lawfulness include—

(a) appropriate legal basis or legitimate interests clearly connected to the specific purpose of processing;

(b) processing that is necessary for the purpose;

(c) the data subject being granted the highest degree of autonomy possible with respect to control over their personal data;

(d) a data subject knowing what they consented to and a simplified means to withdraw consent; and

(e) restriction of processing where the legal basis or legitimate interests ceases to apply.

### 30. Elements for principle of transparency

The elements necessary to implement the principle of transparency include—

(a) the use of clear, simple and plain language to communicate with a data subject to enable a data subject to make decisions on the processing of their personal data;

(b) making the information on the processing easily accessible to the data subject;

(c) providing the information on the processing to the data subject at the relevant time and in the appropriate form;

(d) the use of machine-readable language to facilitate and automate readability and clarity;

(e) providing a fair understanding of the expectation with regards to the processing particularly for children or other vulnerable groups; and

(f) providing details of the use and disclosure of the personal data of a data subject.

### 31. Elements for principle of purpose limitation

The elements necessary to implement the principle of purpose limitation include—

(a) specifying the purpose for each processing of personal data;

(b) determining the legitimate purposes for the processing of personal data before designing organisational measures and safeguards;

(c) the purpose for the processing being the determinant for personal data collected;

(d) ensuring a new purpose is compatible with the original purpose for which the data was collected;

(e) regularly reviewing whether the processing is necessary for the purposes for which the data was collected and test the design against purpose limitation; and

(f) the use of technical measures, including hashing and cryptography, to limit the possibility of repurposing personal data.

### 32. Elements for principle of integrity, confidentiality and availability

The elements necessary to implement the principle of integrity, confidentiality and availability include—

(a) having an operative means of managing policies and procedures for information security;

(b) assessing the risks against the security of personal data and putting in place measures to counter identified risks;

(c) processing that is robust to withstand changes, regulatory demands, incidents, and cyber-attacks;

(d) ensuring only authorised personnel have access to the data necessary for their processing tasks;

(e) securing transfers shall be secured against unauthorised access and changes;

(f) securing data storage from use, unauthorised access and alterations;

(g) keeping back-ups and logs to the extent necessary for information security;

(h) using audit trails and event monitoring as a routine security control;

(i) protecting sensitive personal data with adequate measures and, where possible, kept separate from the rest of the personal data;

(j) having in place routines and procedures to detect, handle, report, and learn from data breaches; and

(k) regularly reviewing and testing software to uncover vulnerabilities of the systems supporting the processing.

### 33. Elements for principle of data minimization

The elements necessary to implement the principle of data minimization include—

(a) avoiding the processing of personal data altogether when this is possible for the relevant purpose;

(b) limiting the amount of personal data collected to what is necessary for the purpose;

(c) ability to demonstrate the relevance of the data to the processing in question;

(d) pseudonymising personal data as soon as the data is no longer necessary to have directly identifiable personal data, and storing identification keys separately;

(e) anonymizing or deleting personal data where the data is no longer necessary for the purpose;

(f) making data flows efficient to avoid the creation of more copies or entry points for data collection than is necessary; and

(g) the application of available and suitable technologies for data avoidance and minimization.

### 34. Elements for principle of accuracy

The elements necessary to implement the principle of accuracy include—

(a) ensuring data sources are reliable in terms of data accuracy;

(b) having personal data particulars being accurate as necessary for the specified purposes;

(c) verification of the correctness of personal data with the data subject before and at different stages of the processing depending on the nature of the personal data, in relation to how often it may change;

(d) erasing or rectifying inaccurate data without delay;

(e) mitigating the effect of an accumulated error in the processing chain;

(f) giving data subjects an overview and easy access to personal data in order to control accuracy and rectify as needed;

(g) having personal data accurate at all stages of the processing and carrying out tests for accuracy at critical steps;

(h) updating personal data as necessary for the purpose; and

(i) the use of technological and organisational design features to decrease inaccuracy.

### 35. Elements for principle of storage limitation

The elements necessary to implement the principle of storage limitation include—

(a) having clear internal procedures for deletion and destruction;

(b) determining what data and length of storage of personal data that is necessary for the purpose;

(c) formulating internal retention statements of implementing them;

(d) ensuring that it is not possible to re-identify anonymised data or recover deleted data and testing whether this is possible;

(e) the ability to justify why the period of storage is necessary for the purpose, and disclosing the rationale behind the retention period; and

(f) determining which personal data and length of storage is necessary for back-ups and logs.

### 36. Elements for principle of fairness

The elements necessary to implement the principle of fairness include—

(a) granting the data subjects the highest degree of autonomy with respect to control over their personal data;

(b) enabling a data subject to communicate and exercise their rights;

(c) elimination of any discrimination against a data subject;

(d) guarding against the exploitation of the needs or vulnerabilities of a data subject; and

(e) incorporating human intervention to minimize biases that automated decision-making processes may create.

## PART VI – NOTIFICATION OF PERSONAL DATA BREACHES

### 37. Categories of notifiable data breach

(1) For the purpose of section 43 of the Act, a data breach is taken to result in real risk of harm to a data subject if that data breach relates to—

(a) the data subject's full name or identification number and any of the personal data or classes of personal data relating to the data subject set out in the Second Schedule; or

(b) the following personal data relating to a data subject's account with a data controller or data processor—

(i) the data subject's account identifier, such as an account name or number; and

(ii) any password, security code, access code, response to a security question, biometric data or other data that is used or required to allow access to or use of the individual's account.

(2) A breach of any personal data envisaged under subregulation (1) amounts to notifiable data breach under section 43 of the Act.

(3) The personal data or classes of personal data set out in the Second Schedule excludes —

(a) any personal data that is publicly available; or

(b) any personal data that is disclosed to the extent that is required or permitted under any written law.

(4) The personal data referred to in sub-paragraph (3)(a) shall not be publicly available solely because of any data breach.

### 38. Notification to Data Commissioner

(1) A notification by data controller to the Data Commissioner of a notifiable data breach under section 43 of the Act shall include—

(a) the date on which and the circumstances in which the data controller or data processor first became aware that the data breach had occurred;

(b) a chronological account of the steps taken by the data controller or data processor after the data controller or data processor became aware that the data breach had occurred, including the data controller or data processor's assessment that the data breach is a notifiable data breach;

(c) details on how the notifiable data breach occurred, where applicable;

(d) the number of data subjects or other persons affected by the notifiable data breach;

(e) the personal data or classes of personal data affected by the notifiable data breach;

(f) the potential harm to the affected data subjects as a result of the notifiable data breach;

(g) information on any action by the data controller or data processor, whether taken before or to be taken after the data controller or data processor notifies the Data Commissioner of the occurrence of the notifiable data breach to—

(i) eliminate or mitigate any potential harm to any affected data subject or other person as a result of the notifiable data breach; or

(ii) address or remedy any failure or shortcoming that the data controller or data processor believes to have caused, or enabled or facilitated the occurrence of, the notifiable data breach;

(h) the affected individuals or the public that the notifiable data breach has occurred and how an affected data subject may eliminate or mitigate any potential harm as a result of the notifiable data breach; or

(i) contact information of an authorized representative of the data controller or data processor.

(2) Where the data controller intends not to communicate a notifiable data breach to a data subject affected by such breach, under the conditions set out in section 43(1)(b) of the Act, the notification to the Data Commissioner under subregulation (1) shall additionally specify the grounds for not notifying the affected data subject.

PART VII – TRANSFER OF PERSONAL DATA OUTSIDE KENYA

### 39. Interpretation of the Part VII

In this Part, unless the context otherwise requires—

(a) “data in transit” means personal data transferred through Kenya in the course of onward transportation to a country or territory outside Kenya, without the personal data being accessed or used by, or disclosed to, any entity while in Kenya, except for the purpose of such transportation;

(b) “recipient” means an entity that receives in a country or territory outside Kenya the personal data transferred to the recipient by or on behalf of the transferring entity, but does not include an entity that receives the personal data solely as a network service provider or carrier;

(c) “transferring entity” means an entity that transfers personal data from Kenya to a country or a territory outside Kenya but does not include an entity dealing with data in transit; and

(d) “relevant international organisation” means an international organisation that carries out functions for any of the law enforcement purposes.

### 40. General principles for transfers of personal data out of the country

A data controller or data processor who is a transferring entity shall before transferring personal data out of Kenya ascertain that the transfer is based on—

(a) appropriate data protection safeguards;

(b) an adequacy decision made by the Data Commissioner;

(c) transfer as a necessity; or

(d) consent of the data subject.

### 41. Transfers on the basis of appropriate safeguards

(1) A transfer of personal data to a another country or a relevant international organisation is based on the existence of appropriate safeguards where—

(a) a legal instrument containing appropriate safeguards for the protection of personal data binding the intended recipient that is essentially equivalent to the protection under the Act and these Regulations; or

(b) the data controller, having assessed all the circumstances surrounding transfers of that type of personal data to another country or relevant international organisation, concludes that appropriate safeguards exist to protect the data.

(2) Where a transfer of data takes place in reliance on subregulation (1)—

(a) the transfer shall be documented;

(b) the documentation shall be provided to the Commissioner on request; and

(c) the documentation shall include—

(i) the date and time of the transfer;

(ii) the name of the recipient;

(iii) the justification for the transfer; and

(iv) a description of the personal data transferred.

### 42. Deeming of appropriate safeguards

For the purpose of confirming the existence of appropriate data protection safeguards anticipated under section 49(1) of the Act and these Regulations, any country or a territory is taken to have such safeguards if that country or territory has—

(a) ratified the African Union Convention on Cyber Security and Personal Data Protection;

(b) a reciprocal data protection agreement with Kenya; or

(c) a contractual binding corporate rules among a concerned group of undertakings or enterprises.

### 43. Binding corporate rules

(1) The contractual binding corporate rules contemplated under regulation 41 shall be valid if they—

(a) are legally binding and apply to and are enforced by every member concerned of the group of undertakings, or group of enterprises engaged in a joint economic activity, including their employees;

(b) expressly confer enforceable rights on data subjects with regard to the processing of their personal data; and

(c) fulfil the requirements laid down in subregulation (2).

(2) The binding corporate rules referred to in subregulation (1) shall specify—

(a) the structure and contact details of the group of undertakings, or group of enterprises engaged in a joint economic activity and of each of its members;

(b) the data transfers or set of transfers, including the categories of personal data, the type of processing and its purposes, the type of data subjects affected and the identification of another country or countries in question;

(c) their legally binding nature, both internally and externally;

(d) the application of the general data protection principles;

(e) the rights of data subjects in regard to processing and the means to exercise those rights;

(f) the complaint procedures; and

(g) the mechanisms within the group of undertakings, or group of enterprises engaged in a joint economic activity for ensuring the verification of compliance with the binding corporate rules.

### 44. Transfers on the basis of an adequacy decision

(1) A transfer of personal data to another country or a relevant international organization is based on an adequacy decision where the Data Commissioner makes a decision that—

(a) the other country or a territory or one or more specified sectors within that other country, or

(b) the international organization, ensures an adequate level of protection of personal data.

(2) The Data Commissioner may publish on its website a list of the countries, territories and specified sectors within that other country and relevant international organisation for which the Data Commissioner has made a decision that an adequate level of protection is ensured.

### 45. Transfers on the basis of necessity

(1) Personal data may be transferred to another country or territory on the basis of necessity is such a transfer is necessary for any of the purpose outlined under section 48(c) of the Act.

(2) Prior to making a transfer under subregulation (1), a transferring entity shall ascertain that—

(a) that the transfer is strictly necessary in a specific case outlined under section 48(c) of the Act;

(b) there are no fundamental rights and freedoms of the data subject concerned that override the public interest necessitating the transfer.

(3) This section does not affect the operation of any international agreement in force between Kenya and other countries in the field of judicial co-operation in criminal matters and police co-operation.

### 46. Transfer on basis of consent

(1) In accordance with section 25(g) of the Act, in the absence of an adequacy decision, appropriate safeguards or prerequisites for transfer as a necessity, a transfer or a set of transfers of personal data to another country shall take place only on the condition that the data subject—

(a) has explicitly consented to the proposed transfer; and

(b) has been informed of the possible risks of such transfers.

(2) Without limiting the generality of subregulation (1), a data controller or processor must seek consent from a data subject for the transfer of sensitive personal data, in accordance with section 49 of the Act.

### 47. Subsequent transfers

(1) Where personal data is transferred in accordance with this Part, the entity effecting the transfer shall make it a condition of the transfer, that the data is not to be further transferred to another country or territory without the authorisation of the transferring entity or another competent authority.

(2) A competent authority may give an authorisation under subregulation (1) only where the further transfer is necessary for a law enforcement purpose.

### 48. Provisions for the agreement to cross boarder transfer

A transferring entity may enter into a written agreement with the recipient of personal data, which shall contain provisions relating to—

(a) unlimited access by the transferring entity to ascertain the existence of a robust information system of the recipient for storing the personal data; and

(b) the countries and territories to which the personal data may be transferred under the contract.

PART VIII – DATA PROTECTION IMPACT ASSESSMENT

### 49. Processing activities requiring data protection impact assessment

(1) For the purpose of section 31(1) of the Act, processing operations considered to result in high risks to the rights and freedoms of a data subject include —

(a) automated decision making with legal or similar significant effect that includes the use of profiling or algorithmic means or use of sensitive personal data as an element to determine access to services or that results in legal or similarly significant effects;

(b) use of personal data on a large-scale for a purpose other than that for which the data was initially collected;

(c) processing biometric or genetic data;

(d) where there is a change in any aspect of the processing that may result in higher risk to data subjects;

(e) processing sensitive personal data or data relating to children or vulnerable groups;

(f) combining, linking or cross-referencing separate datasets where the data sets are combined from different sources and where processing is carried out for different purposes;

(g) large scale processing of personal data;

(h) a systematic monitoring of a publicly accessible area on a large scale;

(i) innovative use or application of new technological or organizational solutions; or

(j) where the processing prevents a data subject from exercising a right.

(2) A data processor or data controller shall, prior to processing data under subregulation (1) conduct a data protection impact assessment.

### 50. Conduct of data protection impact assessment

(1) Where a data protection impact assessment is required, a data controller or data processor may conduct the assessment through a template set out in the Third Schedule.

(2) Despite subregulation (1), a format of the data protection impact assessment may be varied by the Data Commissioner through guidance notes as may be issued from time to time.

### 51. Prior consultation

(1) In accordance with section 31(3) of the Act, where a data controller or a data processor is required to consult the Data Commissioner on the data protection impact assessment prior to processing, such consultations shall be done within sixty days from the date of the receipt of the impact statement report.

(2) In making a request under subregulation (1), the data controller or data processor shall provide—

(a) the data protection impact assessment prepared under section 31(1) of the Act; and

(b) where applicable, the respective responsibilities of the data controller or data processors involved in the processing.

(3) Where the Data Commissioner considers that the intended processing is likely to infringe on the Act or these Regulations, the Data Commissioner may issue such advice to the data controller or the data processor, in writing.

### 52. Consideration of the data protection impact assessment report

(1) In conducting a data protection impact assessment, a data controller or a data processor may consult the Office for advice on whether risks identified and mitigation measures suggested are viable in the outlined circumstances.

(2) In reviewing the data protection impact assessment report, the Data Commissioner may make any recommendations to be incorporated prior to commencing the processing operations.

(3) Where a data controller or data processor, upon submitting the data protection impact assessment report to the Data Commissioner, does not receive any communication within sixty days of submission, may commence processing operations and the assessment report shall be taken to have been approved.

(4) A data controller or data processor may publish on its website the data protection impact assessment Report.

### 53. Audit of compliance with Assessment Report

Pursuant to section 23 of the Act, the Data Commissioner may carry out periodic audits to monitor compliance with the Assessment Report and any recommendations that may have been provided by the Data Commissioner.

PART IX – PROVISIONS ON EXEMPTIONS UNDER THE ACT

### 54. Exemption for national security

(1) For the purposes of section 51(2)(b) of the Act, the processing of personal data by a national security organ referred to in Article 239(1) of the Constitution in furtherance of their mandate constitutes a processing for national security.

(2) Despite subregulation (1), a data controller or data processor who processes personal data for national security and wishes to be exempt on that ground shall apply to the Cabinet Secretary for an exemption.

(3) The Cabinet Secretary shall, upon being satisfied that the grounds supporting the application are sufficient, issue a certificate of exemption.

(4) The Cabinet Secretary may revoke a certificate of exemption issued, at any time, where the grounds on which the certificate was issued no longer apply.

### 55. Exemptions for public interest

For the purposes of section 51(2)(b) of the Act, the processing of personal data is exempted from the Act on the grounds of public interest where such processing exists as a—

(a) permitted general situation; or

(b) permitted health situation.

### 56. Permitted general situation

A permitted general situation referred to under regulation 55(a) relates to the collection, use or disclosure by a data controller or data processor of personal data about data subject including for—

(a) lessening or preventing a serious threat to the life, health or safety of any data subject, or to public health or safety;

(b) taking appropriate action in relation to suspected unlawful activity or serious misconduct;

(c) locating a person reported as missing;

(d) asserting a legal or equitable claim;

(e) conducting an alternative dispute resolution process; or

(f) performing diplomatic or consular duties.

### 57. Permitted health situation

(1) A permitted health situation referred to under regulation 55(b) relates to the collection, use or disclosure by a data controller or data processor of personal data about a data subject, including for—

(a) the collection of health information to provide a health service;

(b) the collection, use, or disclosure of health data is for health research and related purposes;

(c) the use or disclosure of genetic information where necessary and obtained in course of providing a health service;

(d) the disclosure of health information for a secondary purpose to a responsible person for a data subject.

(2) A permitted health situation under subregulation (1) applies where a data controller or data processor discloses health data about a data subject, and—

(a) they provide a health service to the data subject;

(b) the recipient of the personal data is a responsible person for the data subject;

(c) a data subject is either physically or legally incapable of giving consent to the disclosure, or physically cannot communicate consent to the disclosure;

(d) the disclosure is necessary to provide appropriate care or treatment of a data subject, or the disclosure is made for compassionate reasons;

(e) the disclosure is not contrary to any wish expressed by the data subject before the data subject became unable to give or communicate consent of which the carer is aware or of which the carer could reasonably be expected to be aware; and

(f) the disclosure is limited to the extent reasonable and necessary to provide appropriate care or treatment of the individual or to fulfil the purpose of making a disclosure for compassionate reasons.

PART X – GENERAL PROVISIONS

### 58. Complaints against data controller and data processor

A person aggrieved by a decision of a data controller or a data processor under this Regulation or non-compliance with any provision may lodge a complaint with the Data Commissioner in accordance with the Act and regulations on complaints handling made thereunder.

---

FIRST SCHEDULE

[r. 7(2), (r. 8(2)]

REQUEST FOR RESTRICTION OR OBJECTION
TO THE PROCESSING OF PERSONAL DATA

FORM DPG 1

*Note*

*(i) A documentary evidence in support of the objection may be required.*

*(ii) Where the space provided for in this Form is inadequate, submit information as an Annexure*

A. NATURE OF REQUEST

Mark the appropriate box with an "x". Request for:

RESTRICTION # OBJECTION #

B. DETAILS OF THE DATA SUBJECT

Name: .....

Identity Number: .....

Phone number: .....

E-mail address: .....

*(Your details below where initiating the request for a minor or a person who has no capacity)*

Name .....

Relationship with the Data Subject

Contact Information:

C. REASONS FOR THE REQUEST

(Please provide detailed reasons for the restriction or objection)

D. DECLARATION

I certify that the information given in this application is true

| Signature | | Date | |
|---|---|---|---|

DPG 2

[r. 9(2)]

**REQUEST FOR ACCESS TO PERSONAL DATA**

*Note:*

*(i) Documentary evidence in support of this request may be required.*

*(ii) Where the space provided for in this Form is inadequate, submit information as an annexure*

*(iii) All fields marked as * are mandatory*

A. DETAILS OF THE DATA SUBJECT

*(This section is to provide the details of the Data Subject).*

Name*:

Name*:
Identity Number*:
Phone Number*:
e-mail address*:

| | |
|---|---|
| Name*: | |
| Identity Number*: | |
| Phone number*: | |
| e-mail address: | |

*(Provide the following details where making a request on behalf of a minor or a person who has no capacity)*

Name*

| | |
|---|---|
| Relationship with the Data Subject* | |
| Contact Information* | |

B. DETAILS OF THE PERSONAL DATA REQUESTED

*(Describe the personal data requested)*

MODE OF ACCESS

I would like to: *(check all that apply)*

[ ] Inspect the record

[ ] Listen to the record

[ ] Have a copy of the record made available to me in the following format:

[ ] photocopy *(Please note that copying costs will apply)* number of copies required: .....

[ ] electronic

[ ] transcript *(Please note that transcription charges may apply)*

[ ] Other *(specify)* .....

C. Delivery Method

[ ] collection in person

[ ] by mail (provide address where different / in addition to details provided above)

Town/City: .....

[ ] by e-mail (provide email address where different / in addition to details provided above): .....

DECLARATION

Note any attempt to access personal data through misrepresentation may result in prosecution.

# I certify that the information given in this application is true.

| Signature | Date |
|---|---|
| | |

FORM DPG 3

[r. 10(2)]

**REQUEST FOR RECTIFICATION**

Fill as appropriate

*Note:*

*(i) Documentary evidence in support of this request may be required.*

*(ii) Where the space provided for in this Form is inadequate, submit information as an annexure*

*(iii) All fields marked as * are mandatory*

A. DETAILS OF THE DATA SUBJECT

*(This section is to provide the details of the Data Subject).*

Name*:

Identity Number*:

Phone number*:

e-mail address:

*(Provide the following details where making a request on behalf of a minor or a person who has no capacity)*

Name*

Relantionship with the Data Subject*

Contact Information*

Signature

Date

PROPOSED CHANGE(S)

| | Personal data to be corrected e.g. name, residential status, and mobile number, email address. | Proposed change | Reason for the proposed change |
|---|---|---|---|
| 1. | | | |
| 2. | | | |
| 3. | | | |
| 4. | | | |
| 5. | | | |

B. DECLARATION

Note any attempt to rectify personal data through misrepresentation may result in prosecution.

# I confirm that I have read and understood the terms of this request form and certify that the information given in this application is true.

Signature

Date

FORM DPG 4

[r. 11 (2)]

**REQUEST FOR DATA PORTABILITY**

*Note:*

*(iv) Documentary evidence in support of this request may be required.*

*(v) Where the space provided for in this Form is inadequate, submit information as an annexure*

*(vi) All fields marked as * are mandatory*

A. DETAILS OF THE DATA SUBJECT

*(This section is to provide the details of the Data Subject).*

| | |
|---|---|
| Name*: | |
| Identity Number*: | |
| Phone number*: | |
| e-mail address: | |

*(Provide the following details where making a request on behalf of a minor or a person who has no capacity)*

| | |
|---|---|
| Name*: | |
| Relationship with the Data Subject* | |
| Contact Information* | |

B. DETAILS OF THE REQUEST

| | |
|---|---|
| Please transfer a copy of my personal data to * | |
| By either: | |
| • Emailing a copy to them at | |
| • Mailing to: | |
| • Others (Please specify) | |

DECLARATION

Note, any attempt to port personal data through misrepresentation may result in prosecution.

# I certify that the information given in this application is accurate to the best of my knowledge.

| | | | |
|---|---|---|---|
| Signature | | Date | |

FORM DPG 5

[r.12(2)]

**REQUEST FOR ERASURE OF PERSONAL DATA**

Fill as appropriate

*Note:*

*(i) Documentary evidence in support of this request may be required.*

*(ii) Where the space provided for in this Form is inadequate, submit information as an annexure*

*(iii) All fields marked as * are mandatory*

i. DETAILS OF THE DATA SUBJECT

(This section is to provide the details of the Data Subject).

Name*: .....

Identity Number*: .....

Phone number*: .....

e-mail address: .....

*(Provide the following details where making a request on behalf of a minor or a person who has no capacity)*

Name* .....

Relationship with the Data Subject* .....

Contact Information* .....

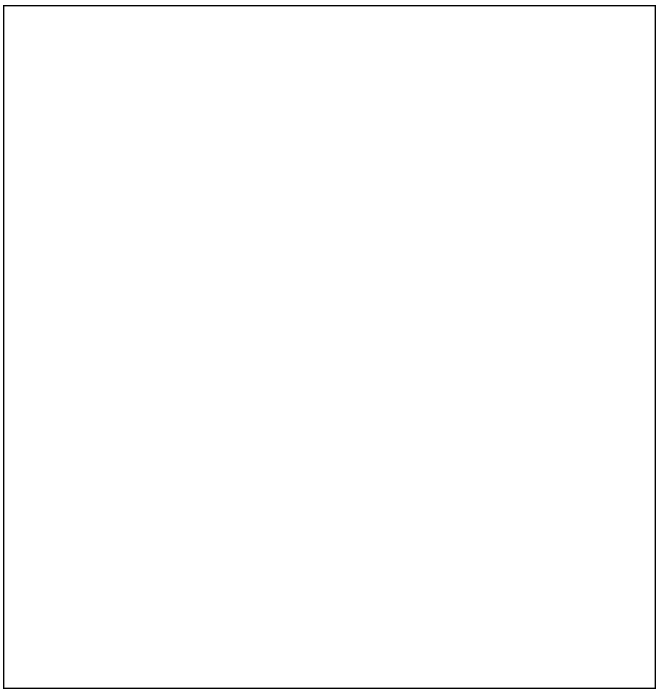
ii. REASON FOR ERASURE REQUEST

(Tick the appropriate box)

| | |
|---|---|
| (a) Your personal data is no longer necessary for the purpose for which it was originally collected; | ☐ |
| (b) You have withdrawn consent that was the lawful basis for retaining the personal data; | ☐ |
| (c) You object to the processing of your personal data and there is no overriding legitimate interest to continue the processing; | ☐ |
| (d) the processing of your personal data has been unlawful | ☐ |
| (e) Required to comply with a legal obligation. | ☐ |

PERSONAL DATA TO BE ERASED

Describe the personal data you wish to have erased.



*iii. Declaration*

Note any attempt to erase personal data through misrepresentation may result in prosecution.

# I confirm that I have read and understood the terms of this request form and certify that the information given in this application is true.

Signature

Date

SECOND SCHEDULE

[r. 37(1), (3)]

NOTIFIABLE DATA BREACH

The following personal data or circumstances amount to a notifiable data breach—

**1.** The amount of any wages, salary, fee, commission, bonus, gratuity, allowance or other remuneration paid or payable to the data subject by any person, whether under a contract of service or a contract for services.

**2.** The income of the data subject from the sale of any goods or property.

**3.** The number of any credit card, charge card or debit card issued to or in the name of the data subject.

**4.** The number assigned to any account the data subject has with any entity that is a bank or finance company.

**5.** Any information that identifies, or is likely to lead to the identification of, the data subject who is a child in conflict with the law or in need of care and protection.

**6.** Any private key of or relating to a data subject that is used or may be used—

(a) to create a secure electronic record or secure electronic signature;

(b) to verify the integrity of a secure electronic record; or

(c) to verify the authenticity or integrity of a secure electronic signature as provided under the Kenya Information and Communications (Electronic Certification and Domain Name Administration) Regulations, 2010 or any other related law.

**7.** The net worth or creditworthiness of a data subject.

**8.** The deposit or withdraw of monies by a data subject with any entity.

**9.** The withdrawal by the individual of moneys deposited with any entity or a payment system.

**10.** The granting by a person of advances, loans and other facilities by which the data subject, being a customer of the entity, has access to funds or financial guarantees.

**11.** The existence, and amount due or outstanding, of any debt —

(a) owed by the data subject to an entity; or

(b) owed by an entity to the data subject.

**12.** The incurring by the entity of any liabilities on behalf of the data subject.

**13.** The payment of any moneys, or transfer of any property, by any person to the individual, including the amount of the moneys paid or the value of the property transferred, as the case may be.

**14.** The data subject's investment in any capital markets products.

**15.** Any term and condition, premium or benefits payable, or any detail relating to the condition of health, from an accident, health, or life policy of which the data subject is the policy owner or a beneficiary.

**16.** The assessment, diagnosis, treatment, prevention or alleviation by a health professional of any of the following affecting the data subject—

(a) any sexually-transmitted diseases;

(b) Human Immunodeficiency Virus Infection;

(c) mental disorder;

(d) substance abuse and addiction.

**17.** The provision of treatment to the individual for or in respect of —

(a) the donation or receipt of a human egg or human sperm; or

(b) any contraceptive operation or procedure or abortion;

**18.** Any of the following—

(a) the donation and removal of any organ from the body of the deceased individual for the purpose of its transplantation into the body of another individual;

(b) the donation and removal of any specified organ from the individual, being a living organ donor, for the purpose of its transplantation into the body of another individual;

(c) the transplantation of any organ mentioned in paragraph (a) or (b) into the body of the individual.

**19.** The suicide or attempted suicide of the individual.

**20.** Domestic abuse, child abuse or sexual abuse involving or alleged to involve the data subject.

**21.** Any of the following—

(a) information that the individual is or had been adopted pursuant to an adoption order made under the Children Act (No. 8 of 2001), or is or had been the subject of an application for an adoption order;

(b) the identity of the natural father or mother of the data subject;

(c) the identity of the adoptive father or mother of the subject;

(d) the identity of any applicant for an adoption order;

(e) the identity of any person whose consent is necessary under that Act for an adoption order to be made, whether or not the court has dispensed with the consent of that person in accordance with that Act.

---

THIRD SCHEDULE

[r. 50(1)]

DATA PROTECTION IMPACT ASSESSMENT TEMPLATE

Name of Data Controller/ Data Processors: .....

Postal Address: .....

Email Address: .....

Telephone Number:

1. Project Name

2. Assess the need for Data Impact Assessment

(Assess whether there is need for DPIA by determining if project involves personal data that is likely to result in high risk, specify risk where appropriate)

3. Project Outline:

*(Explain broadly what the project aims to achieve and what type of processing it involves)*

4. Personal data

*(e.g type of personal data data being processed.)*

5. Describe the Information Flow.

*Describe the collection, use and deletion of personal data here, including; where you are getting the data from; how is the data being collected; where the data will be stored; how long will the data be stored; where data could be transferred to; and, how many individuals are likely to be affected by the project.*

6. Describe how the data processing flow complies with the data protection principles

Part 2 - An assessment of the necessity and proportionality of the processing operations in relation to the purpose.

Require the assessment and provide the parameters of the assessment.

Describe compliance and proportionality, measures, in particular:

The lawful basis for processing

Methods of obtaining of consent.

Whether processing personal data is key to achieving your purpose?

Is there another way to achieve the same outcome without processing personal data?

Data quality and data minimization

Notification of the data subjects on the processing activity

Exercising of the rights of the data subjects

The parties are involved in the processing and their specific roles

Measures to ensure compliance by the parties involved, if any
Processing safeguard of the personal data
Safeguard prior to and Cross border transfers, if any

Part 3: The measures envisaged for addressing the risks and the safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with the Data Protection Act

Part 5: Sign Off and Record Outcomes

| ITEM DESCRIPTION | NOTES/INSTRUCTIONS |
|---|---|
| Consultation with Office of the Data Protection Commissioner (where applicable) | |
| This DPIA will be kept under review by: | |

# THE DATA PROTECTION (REGISTRATION OF DATA CONTROLLERS AND DATA PROCESSORS) REGULATIONS

ARRANGEMENT OF REGULATIONS

*Regulation*

1. Citation and commencement
2. Interpretation
3. Scope of Regulations
4. Requirements for registration
5. Application for registration
6. Payment of registration fees by specified public bodies
7. Processing of an application for registration
8. Approval and issuance of certificate of registration
9. Duration of certificate of registration
10. Refusal of registration
11. Renewal of registration
12. Refusal of renewal.
13. Exemption from mandatory registration
14. Register
15. Change of particulars
16. Cancellation or variation of registration
17. Electronic registration
18. Offences

SCHEDULES

REGISTRATION FORM FOR DATA CONTROLLERS AND DATA PROCESSORS

Fees charged by office

THRESHOLDS FOR MANADATOTY REGISTRATION

# THE DATA PROTECTION (REGISTRATION OF DATA CONTROLLERS AND DATA PROCESSORS) REGULATIONS

[Legal Notice 265 of 2021]

## 1. Citation and commencement

(1) These Regulations may be cited as the Data Protection (Registration of Data Controllers and Data Processors) Regulations.

(2) The provisions of these Regulations shall come into effect six months from the date of publication.

## 2. Interpretation

In these Regulations, unless the context otherwise requires—

"Act" means the Data Protection Act (Cap. 411C);

"Data Commissioner" means the person appointed under section 6 of the Act;

"data controller" has the meaning assigned to it under the Act;

"data processor" has the meaning assigned to it under the Act;

"register" has the meaning assigned to it under the Act;

"Office" has the meaning assigned to it under the Act;

"establishment documents" include—

(a) a Statute, Charter or statutory instrument in which a body is established;

(b) registration certificate;

(c) trust deeds in which a trust has been established; and

(d) other instruments by which a body is established including its governing and administrative structure.

## 3. Scope of Regulations

(1) These Regulations provide for the procedure for registration of data controllers and data processors as provided under section 18 of the Act.

(2) These Regulations shall not apply to civil registration entities specified under the Data Protection (Civil Registration) Regulations (sub. leg).

## 4. Requirements for registration

(1) Subject to regulation 13(1), every data controller and data processor shall be required to register in accordance with the provisions of the Act and these Regulations.

(2) For purposes of registration, a person shall register as a—

(a) data controller, where the person determines the purpose and means for processing personal data; or

(b) data processor, where the person processes personal data on behalf of the data controller but excludes employees of the data controller and has—

(i) a contractual relationship with the data controller; and

(ii) no decision making power on the purpose and means of processing personal data.

(3) Despite subregulation (2)(a), a data controller may apply for registration as both a data controller and a data processor with regards to any processing operations and shall be required to pay the requisite fees applicable for both a data controller and a data processor thereto.

(4) Despite subregulation (2)(b), where a data processor processes personal data other than as instructed by the data controller, the data processor shall be considered to be a data controller in respect of that processing activity, for purposes of assessing liability.

### 5. Application for registration

(1) An application for registration of a data controller or data processor shall—

(a) be in Form DPR1 set out in the First Schedule; and

(b) be accompanied by the registration fees specified in the Second Schedule.

(2) An application for registration under subregulation (1) shall be accompanied by—

(a) a copy of the establishment documents;

(b) particulars of the data controllers or data processors including name and contact details;

(c) a description of the purpose for which personal data is processed; and

(d) a description of categories of personal data being processed.

### 6. Payment of registration fees by specified public bodies

(1) A state department or county department shall register and pay the fees on behalf of their respective entities.

(2) The entities referred to under subregulation (1) shall be the public entities at national or county government which—

(a) operates within a state department or county department;

(b) is wholly funded from the Consolidated Fund; and

(c) provides a public service.

(3) The fees paid by the state department or county department under subregulation (1) shall cater for the specified entities registered under the concerned state department or county department.

(4) Despite this regulation, a State Corporation or a County Corporation shall be required to register as a data controller or a data processor in respect of their processing activity, in the manner specified under these Regulations.

### 7. Processing of an application for registration

The Data Commissioner shall undertake a verification process of the details provided in the application for registration.

### 8. Approval and issuance of certificate of registration

Where the Data Commissioner is satisfied that the applicant fulfills the requirements for registration under these Regulations, the Data Commissioner shall, within fourteen days—

(a) issue the applicant with a certificate of registration for the duration specified under regulation 9; and

(b) enter the particulars of the successful applicant in the register.

### 9. Duration of certificate of registration

A certificate of registration issued under regulation 8 (a) shall be valid for a period of twenty-four months from the date of issuance.

### 10. Refusal of registration

(1) Where the Data Commissioner declines to approve an application for registration, the Data Commissioner shall within twenty-one days from the date of such decision—

(a) notify, in writing, the applicant of the refusal; and

(b) provide reasons for such refusal.

(2) The Data Commissioner may decline to grant an application for registration, where the—

(a) particulars provided for inclusion in an entry in the register are insufficient;

(b) appropriate safeguards for the protection of the privacy of the data subject have not been provided by the data controller or a data processor; or

(c) the data controller or data processor is in violation of any provisions of the Act and these Regulations.

(3) A data controller or data processor whose application for registration has been declined under these Regulations may make a fresh application upon complying with the requirements specified in the refusal notice.

(4) An application under subregulation (3) shall be processed as any other application and in the manner specified under these Regulations.

### 11. Renewal of registration

(1) Pursuant to section 20 of the Act, a registered data controller or data processor shall apply for a renewal of registration as a data controller or data processor, after the expiry of the certificate of registration.

(2) An application for renewal of a certificate of registration shall be—

(a) made in Form PR 2 set out in the First Schedule; and

(b) accompanied by the appropriate renewal fee specified in the Second Schedule.

(3) The Data Commissioner shall, upon receipt of the application, and where satisfied that the applicant complies with the requirements for registration, renew the certificate of registration.

(4) Despite subregulation (2), where renewal is for a distinct purpose or categories of data other than that for which the data controller or data processor had been registered for, the Data Commissioner shall undertake a verification process in the manner provided under regulation 7.

### 12. Refusal of renewal.

(1) Where the Data Commissioner declines to renew an application for registration, the Data Commissioner shall within twenty-one days from the date of such decision—

(a) notify, in writing, the applicant of the refusal; and

(b) provide reasons for such refusal.

(2) The provisions of regulation 10 shall, with necessary modifications, apply where refusal to renew notice is to be or has been issued.

### 13. Exemption from mandatory registration

(1) For purposes of this regulation—

“revenue” means the total income of profit-making data controllers or data processors for the year immediately preceding the year of registration;

“turnover” means the utilized annual budget of non-profit making data controllers or data processors for the year immediately preceding the year of registration;

“non-profit making data controller or data processors” means an entity whose core mandate excludes the generation of profit and includes non-governmental organizations, charitable and religious institutions, multi-lateral agencies or civil society organizations.

(2) A data controller or data processor is exempt from mandatory registration under these Regulations where the data controller or data processor—

(a) has an annual turnover of below five million shillings or annual revenue of below five million shillings; and

(b) has less than ten employees.

(3) Despite the provisions of subregulation (2), the data controller and data processor exempt under subregulation (2) shall be required to comply with the provisions of the Part IV and Part VI of the Act.

(4) The exemption provided under subregulation (1) shall not apply to a data controller or data processor whose annual turnover is below five million shillings and processes personal data for the purposes specified under the Third Schedule.

(5) The data controllers and data processors contemplated under subregulation (2), shall be required to undertake mandatory registration in accordance with Part III of the Act and these Regulations.

### 14. Register

(1) Subject to section 21 of the Act, the Data Commissioner shall keep and maintain an up to date register which shall contain—

(a) the names and particulars of registered data controllers and data processors;

(b) categories of personal data being processed by the data controllers and data processors;

(c) the address of the principal places of business of the data controllers and data processors;

(d) where applicable, details of data protection officers; and

(e) any other relevant particular.

(2) The Office shall, once every thirty days, publish on the official website a list of registered data controllers or data processors.

### 15. Change of particulars

(1) Subject to section 19(2) of the Act, a data controller or data processor shall, within fourteen days of the occurrence of any changes in the particulars of a data controller or a data processor, notify the Data Commissioner in writing.

(2) The Data Commissioner shall, on receiving the notification make the necessary changes on the register, where necessary.

(3) The Data Commissioner may prior to making any change on the register, request for any necessary documents or proof thereof.

(4) A data controller or data processor who contravenes this regulation commits an offence and shall, on conviction, be liable to the penalty specified under section 73 of the Act.

### 16. Cancellation or variation of registration

(1) Subject to section 22 of the Act, the Data Commissioner may cancel a certificate of registration or vary the conditions for registration, where–

(a) the data controller or data processor applies for cancellation or variation;

(b) the Data Commissioner establishes that the data controller or data processor provided false or misleading information in relation to any registration particulars; or

(c) the data controller or data processor willfully or negligently, fails to comply with provisions of the Act and any Regulations made thereunder.

(2) The Data Commissioner shall, before cancelling or varying the conditions of registration, be guided by the provisions of the Fair Administrative Actions Act, 2015 (Cap. 7J).

### 17. Electronic registration

An application made under these Regulations shall be submitted through electronic means provided for on the Office website.

### 18. Offences

A data controller or a data processor who—

(a) processes personal data without registering in accordance with these Regulations;

(b) provides false or misleading information for the purpose of registration; or

(c) fails to renew a certificate of registration and continues to process personal data after the expiry of the certificate, commits an offence and shall, upon conviction, be liable to penalty specified under section 73 of the Act.

---

FIRST SCHEDULE

[r. 5(1)(a)]

REGISTRATION FORM FOR DATA CONTROLLERS AND DATA PROCESSORS

FORM DPR 1

SECTION 1 - BASIC DETAILS

Indicate if you are registering as a

Data Controller # Data Processor #

Name:

Postal Address:

Telephone Number:

Email Address:

County:

Country:

Sector:

Legal establishment:

For public body:

(Specify the state department or county department)

SECTION 2 – PERSONAL DATA

Provided the details of the various subsets of personal data being processed and the purpose of processing.

| CATEGORY OF DATA SUBJECTS (E.g. employee, client, students, supplier, shareholder, etc.) | DESCRIPTION OF PERSONAL DATA TO BE PROCESSED (E.g. name, address, Identification number etc.) | PURPOSE OF PROCESSING (E.g. for payroll, invoicing, Know Your Customer (KYC), registration, etc.) |
|---|---|---|

**SECTION 3 - SENSITIVE PERSONAL DATA**

Applicable ( ) Not Applicable ( )

If applicable, please fill in the below details, otherwise please proceed to section 4

| Please select the type(s) of sensitive categories of personal data you process | Specify purpose(s) for processing sensitive personal data: |
|---|---|
| Racial or ethnic origin | |
| Political opinion or adherence | |
| Religious or philosophical beliefs | |
| Marital status and family details | |
| Physical or mental health or condition | |

Sexual orientation, practices or preferences
biometric data

**SECTION 4 - TRANSFER OF DATA OUTSIDE KENYA**

Applicable ( ) Not Applicable ( )

If applicable, please fill in the below details, otherwise please proceed to section 5.

List the country/(ies):

**SECTION 5 - MEASURES FOR PROTECTION OF PERSONAL DATA**

| No. | Identify risks to personal data (E.g. unauthorized access/disclosure, theft, etc.) | Safeguards, security measures and mechanisms implemented to protect personal data (E.g. Access control, visitors' logbook, privacy policy, information security policy, etc.) |
|---|---|---|
| 1 | | |
| 2 | | |
| 3 | | |
| 4 | | |
| 5 | | |

**SECTION 6: NUMBER OF EMPLOYEES (INDICATE BY TICKING)**

Organization with 1-9 employees
Organization with 10-49 employees
Organization with 50-99 employees
Organization with more than 99 employees

**SECTION 7: PREVIOUS YEAR ANNUAL TURNOVER (INDICATE BY TICKING)**

Organization has less than KES 2,000,000 annual turnover
Organization has KES 2,000,000-5,000,000 annual turnover
Organization has KES 5,000,000-10,000,000 annual turnover
Organization has KES 10,000,000-50,000,000 annual turnover
Organization with more than KES 50,000,000 annual turnover

I certify that the particulars provided are correct and complete and hereby apply to be registered as Data Controller or a data Processor.

Signature: _____

Date: _____

Name: _____

FORM DPR 2

[r. 11(2)(a)]

**RENEWAL FORM FOR DATA CONTROLLERS AND DATA PROCESSORS**

Indicate if you are registering as a—

Data Controller # Data Processor #

SECTION 1 – BASIC DETAILS

Name:

Postal Address:

Telephone Number:

Email Address:

Country:

Sector:

Legal Establishment

For public body:

(Specify the state department or county department)

SECTION 2: DISTINCT PURPOSE

Specify whether renewal is for a distinct purpose or categories of data other than that for which the data controller or data processor had been registered for, respectively-

SECOND SCHEDULE

[r. 5(2)(b)]

Fees charged by office

| *Category* | *Description* | *Registration fee in Kshs. per Data Controller/ Processor) (payable Once)* | *Renewal fee in Kshs. per Data Controller/ Processor) (after every 2 years)* |
|---|---|---|---|
| //Micro and Small Data Controllers /Processors// | A data controller/ processor with between 1 and 50 employees and an annual turnover/ revenue of a maximum of Kshs 5 Million | 4,000 | 2,000 |
| //Medium Data Controllers /Processors// | A data controller/ processor with between 51 and 99 employees and an annual turnover/ revenue of between Kshs 5,000,001 and maximum of Kshs 50,000,000 | 16,000 | 9,000 |

| | | | |
|---|---|---|---|
| //Large Data Controllers /Processors// | Data controller/ processor with more than 99 employees and an annual turnover/ revenue of more than Kshs 50 Million | 40,000 | 25,000 |
| *Public entities* | Data controller/ processor offering government functions (Regardless of number of employees or revenue/turnover) | 4,000 | 2,000 |
| *Charities and Religious entities* | Data controller or Data processor offering charity or religious functions (Regardless or revenue/turnover) | 4,000 | 2,000 |

THIRD SCHEDULE

[r. 13(1)(3)]

THRESHOLDS FOR MANADATOTY REGISTRATION

A data controller or data processor processing personal data for the following purposes shall register as a data controller or a data processor as provided for under these regulations —

**1.** Canvassing political support among the electorate.

**2.** Crime prevention prevention and prosecution of offenders (including operating security CCTV system).

**3.** Gambling.

**4.** Operating an educational institution.

**5.** Health administration and provision of patient care.

**6.** Hospitality industry firms but excludes tour guides.

**7.** Property management including the selling of land.

**8.** Provision of financial services.

**9.** Telecommunications network or service providers.

**10.** Businesses that are wholly or mainly in direct marketing.

**11.** Transport services firms (including online passenger hailing applications).

**12.** Businesses that process genetic data.