

Office of the Data Protection Commissioner

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Data Commissioner**

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Content

- Kenya Digital Economic Blue Print
- Data Protection Act
- Mandate & Functions
- Draft Regulations
- Stakeholder Engagement
- Summary of Comments
- Way forward





KENYA'S DIGITAL ECONOMY BLUEPRINT

Policy and Regulatory

Emerging Trends

Data

Cross Cutting

Digital
Government

Digital
Business

Infrastructure

Innovation
driven
Entrepreneur
ship

Digital
Skills
and
values

Digital Economy
Pillar

Government

Citizens

Private Sector

Ecosystem

Integrated Ecosystem

Green ICT

Security

Cross Cutting

Data Protection Act, 2019

- 2019 - The Data Protection Act, 2019 Enacted
- 2020 - Data Protection Office Established
- The Act provides;
 - framework for the right to privacy as it applies to “personal data”.
 - practices, safeguards, rules, transparency and responsibility
 - safe collection, processing and storage of personal data
- The Act shifts some control from institutions to “data subject”.



Mandate

The mandate of the Office of the Data Protection Commissioner derived from the Data Protection Act 2019 and includes;

- Regulate the processing of personal data;
- Ensure that the processing of personal data of a data subject is guided by the principles set out in section 25 of the Act;
- Protect the privacy of individuals;
- Establish the legal and institutional mechanism to protect personal data; and
- Provide data subjects with rights and remedies to protect their personal data from processing that is not in accordance with the Act.



Functions of the Office

Enforcement &
Implementation

Register Data
Controller/processors

Oversight

Promote Self
Regulations

Conduct assessments

Investigation



Functions of the Office

Public
Awareness

Inspections

International
cooperation

Research

Any other duty



Draft Regulations

Taskforce on the Development of the Data Protection General Regulations

The Taskforce was constituted on 15th January 2021, through Gazette Notice No. 100 of 2021.

Membership - Drawn from various government agencies,

TOR's of the Taskforce included:

1. Undertaking a comprehensive audit of the Data Protection Act, 2019
2. Identify any gaps or inconsistencies in the Data Protection Act, 2019 and the Data Protection Policy and propose specific review requirements
3. Develop the Data Protection (General) Regulations,
4. Sensitize stakeholders and the public on the Data Protection Regulations.
5. Undertake stakeholder and public consultations on the Data Protection, General Regulations; and



Draft Regulations

- The Taskforce has developed 3 sets of Regulations

1. Data Protection (General) Regulations, 2021.

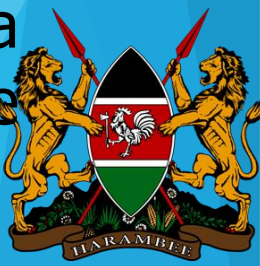
These set out the procedures for enforcement of the rights of the data subjects as well as elaborating on the duties and obligations of the data controllers and data processors.

2. Data Protection (Compliance and Enforcement) Regulations, 2021.

These outline compliance and enforcement provisions for Data Commissioner, Data Controllers and Data Processors

3. Data Protection (Registration of Data Controllers and Data Processors) Regulations, 2021.

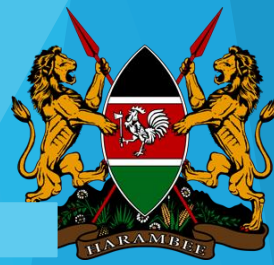
set out the procedure that will be adopted by the office of the data commissioner in registering data controllers and data processors as per the data protection act



1. Data Protection (General) Regulations, 2021

Scope of the Regulations

- ▶ Rights of the Data Subjects;
- ▶ Restriction on the Commercial Use of Personal Data;
- ▶ Obligations of Data controllers and Data Processors;
- ▶ Data Protection by Design or Default;
- ▶ Notification of Personal Data Breaches;
- ▶ Transfer of Personal Data Outside Kenya;
- ▶ Conduct of Data Protection Impact Assessment;
- ▶ Provision of Exemptions under the Act.



2. Data Protection (Registration of Data Controllers and Data Processors) Regulations, 2021

Scope of the Regulations

1. Eligibility for Registration
2. Application for Registration
3. Registration of a Public Body
4. Verification of Application
5. Certificate of Registration
6. Renewal of Registration.
7. Refusal of renewal of the Certificate of Registration.
8. Exemption from Mandatory registration
9. Register of Data Controllers and Data Processors.

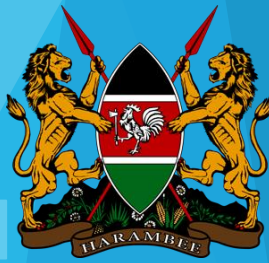
1. Change of Particulars
2. Cancellation or variation of registration.
3. Regulatory Fees
4. Certified Copy
5. Replacement of Registration Certificate
6. Electronic Registration.
7. Offences



3. Data Protection (Compliance and Enforcement) Regulations, 2021

Scope of the Regulations

1. Complaints Handling Procedures.
2. Enforcement provisions



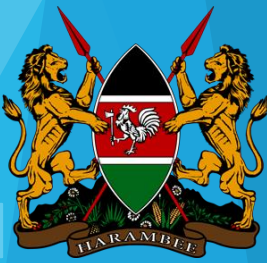
Stakeholder Engagement Meetings

- ▶ Taskforce has successfully held Sixteen (17) virtual stakeholders meetings with the private sector and Government entities, as well as three (3) virtual public participation forums
- ▶ Consolidation of comments and submissions
- ▶ Taskforce is scheduled to have a pre-publication meeting with members of the National Assembly



SUMMARY OF THE COMMENTS RECEIVED

1. Review of the data localization requirements
2. Cross boarder transfer of Personal Data
3. Duration of renewal of the Certificate of Registration.
4. Reduction of the Registration fees
5. Automation of the process of the Data Commissioner.
6. Clarification and simplification of the Complaints handing procedures.
7. Harmonization of the Commercial use of Personal Data with existing Legislations.
8. Ratification of the Malabo Convention by Kenya.
9. Time of Implementation



Way forward

1. Pre Publication meeting with National Assembly
2. Public awareness
3. Compliance



THANK you