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NIGERIA DATA PROTECTION (ESTABLISHMENT, ETC.) BILL, 2023

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A BILL EXECUTIVE
FOR

AN ACT TO PROVIDE A LEGAL FRAMEWORK FOR THE PROTECTION OF
PERSONAL INFORMATION, AND ESTABLISH THE NIGERIA DATA
PROTECTION COMMISSION FOR THE REGULATION OF THE PROCESSING OF
PERSONAL INFORMATION, AND FOR RELATED MATTERS

[] Commencement

ENACTED by the National Assembly of the Federal Republic of
Nigeria-

PART I - OBJECTIVES AND APPLICATION

- 1 **1.** The objective of this Act is to safeguard the fundamental rights Objectives
2 and freedoms, and the interests of data subjects, as guaranteed under the
3 Constitution of the Federal Republic of Nigeria, 1999, by-
4 (a) providing for the regulation of processing of personal data;
5 (b) promoting data processing practices that safeguard the security
6 of personal data and privacy of data subjects;
7 (c) ensuring that personal data is processed in a fair, lawful and
8 accountable manner;
9 (d) protecting data subjects' rights, and providing means of
10 recourse and remedies, in the event of the breach of the data subject's rights;
11 (e) ensuring that data controllers and data processors fulfil their
12 obligations to data subjects;
13 (f) establishing an impartial, independent, and effective regulatory
14 Commission to superintend over data protection and privacy issues, and
15 supervise data controllers and data processors; and
16 (h) strengthen the legal foundations of the national digital
17 economy and guarantee the participation of Nigeria in the regional and
18 global economies through the beneficial trusted use of personal data.

Application	1	2.- (1) This Act shall apply to the processing of personal data, whether
	2	by automated means or not.
	3	(2) This Act shall apply, where the-
	4	(a) data controller or data processor is domiciled in, resident in, or
	5	operating in Nigeria;
	6	(b) processing of personal data occurs within Nigeria; or
	7	(c) the data controller or the data processor is not domiciled in,
	8	resident in, or operating in Nigeria, but is processing personal data of a data
	9	subject in Nigeria.
Exemption of application	10	3.- (1) This Act shall not apply to the processing of personal data
	11	carried out by one or more persons solely for personal or household purposes.
	12	(2) Subject to the rights and freedoms under the Constitution and the
	13	limitations thereof, the obligations under Part V (other than section 24, 25, 32,
	14	and 40 of this act), shall not apply to a data controller or data processor if the
	15	processing of personal data is-
	16	(a) carried out by a competent authority for the purposes of the
	17	prevention, investigation, detection, prosecution, or adjudication of a criminal
	18	offence or the execution of a criminal penalty, in accordance with any
	19	applicable law;
	20	(b) carried out by a competent authority for the purposes of
	21	prevention or control of a national public health emergency;
	22	(c) carried out by a competent authority, as is necessary for national
	23	security;
	24	(d) in respect of publication in the public interest, for journalism, and
	25	educational, academic, artistic, and literary purposes to the extent that such
	26	obligations and rights are incompatible with such purposes; or
	27	(e) necessary for the establishment, exercise, or defense of legal
	28	claims, whether in court proceedings, or in an administrative or out-of-court
	29	procedure.
	30	(3) The Commission may by regulation prescribe types of personal

1 data and processing that may be exempt from application of this Act.

2 (4) Notwithstanding the provisions of this Act, the Commission
3 may issue a Guidance Notice containing legal safeguards and best practices
4 to a data controller or processor, in respect of any aspect of data processing
5 exempted under this section where in the opinion of the Commission that
6 such processing violates or is likely to violate section 24 and 25 of this Act.

7 PART II - ESTABLISHMENT OF THE NIGERIA DATA PROTECTION

8 COMMISSION, AND ITS GOVERNING COUNCIL

9 4.-(1) There is established the Nigeria Data Protection
10 Commission ("the Commission").

Establishment of
the Nigeria Data
Protection
Commission

11 (2) The Commission-

12 (a) shall be a body corporate, with perpetual succession and a
13 common seal;

14 (b) may sue or be sued in its corporate name; and

15 (c) may hold, acquire, and dispose of its property.

16 (3) The Commission-

17 (a) shall have its head office in the Federal Capital Territory; and

18 (b) may maintain other offices, in any part of Nigeria, for the
19 purposes of achieving the objects of the Commission.

20 (4) Subject to the approval of the Council, the National
21 Commissioner may acquire other offices and premises for the use of the
22 Commission;

23 5. The Commission shall-

Functions of the
Commission

24 (a) ensure the deployment of technological and organisational
25 measures to enhance personal data protection;

26 (b) foster the development of personal data protection
27 technologies, in accordance with recognized international good practices
28 and applicable international law;

29 (c) where necessary, accredit, license, and register suitable bodies
30 to provide data protection compliance services;

- 1 (d) register data controllers and data processors of major importance;
- 2 (e) promote awareness on the obligation of data controllers and data
- 3 processors under this Act;
- 4 (f) promote public awareness and understanding of personal data
- 5 protection, rights and obligations imposed under this Act, and the risks to
- 6 personal data;
- 7 (g) receive complaints relating to violations of this Act or subsidiary
- 8 legislation made pursuant to this Act;
- 9 (h) collaborate with any relevant ministry, department, agency, body,
- 10 company, firm, or person for the attainment of the objective of this Act;
- 11 (i) ensure compliance with national and international personal data
- 12 protection obligations and good practice;
- 13 (j) participate in the international for a and engage with national and
- 14 regional authorities responsible for data protection with a view to developing
- 15 efficient strategies for the regulation of cross-border transfers of personal data;
- 16 (k) determine whether countries, regions, business sectors, binding
- 17 corporate rules, contractual clauses, codes of conduct, or certification
- 18 mechanisms, afford adequate personal data protection standards for cross-
- 19 border transfers;
- 20 (l) collect and publish information with respect to personal data
- 21 protection, including personal data breaches;
- 22 (m) advise government on policy issues relating to data protection
- 23 and privacy;
- 24 (n) submit legislative proposals to the Minister necessary for
- 25 strengthening personal data protection in Nigeria; and
- 26 (o) perform such other legal actions as are necessary for carrying out
- 27 of the functions of the Commission.

Powers of the
Commission

- 28 **6.** The Commission shall have powers to-
- 29 (a) oversee the implementation of the provisions of this Act;
- 30 (b) prescribe fees payable by data controllers and data processors in

- 1 accordance with data processing activities;
- 2 (c) subject to the approval of the Council, issue regulations, rules,
- 3 directives and guidance under this Act;
- 4 (d) prescribe the manner and frequency of filing, and content of
- 5 compliance returns by data controllers and data processors of major
- 6 importance to the Commission;
- 7 (e) call for information from a person, or inspect any documents
- 8 with respect to any thing done under this Act;
- 9 (f) conduct investigations into any violation of a requirement under
- 10 this Act or subsidiary legislation made pursuant to this Act by a data
- 11 controller or a data processor;
- 12 (g) impose penalties in respect of any violation of the provisions of
- 13 this Act or subsidiary legislation made pursuant to this Act;
- 14 (h) acquire assets, and sell, let, lease, or dispose of any of its
- 15 property; and
- 16 (i) perform such other acts as are necessary to give effect to the
- 17 functions of the Commission.
- 18 **7.** The Commission shall be independent in the discharge of its
- 19 functions under this Act.
- 20 **8.-(1)** There shall be for the Commission, a Governing Council
- 21 ("the Council"), which shall consist of-
- 22 (a) a part-time Chairman, who shall be a retired judge of Nigeria;
- 23 (b) the National Commissioner;
- 24 (c) a representative, not below the rank of a Director or its
- 25 equivalent, from -
- 26 (i) the Federal Ministry of Justice,
- 27 (ii) the ministry responsible for communications and digital
- 28 economy,
- 29 (iii) the Central Bank of Nigeria,
- 30 (iv) a law enforcement agency; and

Independence of
the Commission

Establishment of
the Governing
Council of the
Commission

	1	(d) one representative from the private sector.
	2	(2) Members of the Council other than the National Commissioner
	3	shall be paid such allowances as may be determined, in collaboration with the
	4	Revenue Mobilization Allocation and Fiscal Commission.
	5	(3) The supplementary provisions set out in the Schedule to this Act
	6	shall apply with respect to the proceedings of the Council, and other matters
	7	contained therein.
Appointment of members of the Council	8	9. -(1) The Chairman and non-ex-officio members of the Council shall
	9	be appointed by the President, on the recommendation of the Minister.
	10	(2) A member appointed to the Council pursuant to Section 8 of this
	11	Act from-
	12	(a) the private sector shall be a Nigerian and possess not less than five
	13	years cognate experience and proficiency in data protection and privacy; and
	14	(b) government, pursuant to Section 8(1)(c) of this Act, may have
	15	proficiency in data protection and privacy.
Tenure of members of the Council	16	10. -(1) Members of the Council other than the National
	17	Commissioner shall be part-time members.
	18	(2) The Chairman and non-ex-officio members of the Council shall
	19	hold office-
	20	(a) for a term of four years, and may be eligible for re-appointment for
	21	another term of four years, and no more; and
	22	(b) on such terms and conditions, as may be specified in their letters of
	23	appointment.
Cessation of membership	24	11. -(1) A person shall cease to be a member of the Council, where the
	25	person-
	26	(a) dies;
	27	(b) becomes bankrupt or compounds with creditors;
	28	(c) is convicted of a felony or any offence involving dishonesty or
	29	fraud;
	30	(d) is disqualified from professional qualification;

1 (e) is guilty of a serious misconduct with regard to the discharge of
2 the person's duties;

3 (f) pursuant to Section 8(1)(c) of this Act, ceases to occupy the
4 office by virtue of the person became a member of the Council; or

5 (g) resigns from appointment by giving at least two months' notice,
6 in writing, addressed to the President.

7 (2) The President, upon the recommendation of the Minister, may
8 remove a member of the Council, where satisfied that it is not in the interest
9 of the Commission or the public that the member continues in that office.

10 (3) Where a member of the Council ceases to hold office before the
11 expiration of the term, the President shall appoint a person to fill the
12 vacancy, and the person so appointed shall hold office for the remainder of
13 the term of office of that member.

14 **12.-(1)** The Council shall be responsible for-

Functions and
Powers of the
Council

15 (a) formulating and providing overall policy direction of the affairs
16 of the Commission;

17 (b) approving strategic plans, action plans and budget support
18 programmes submitted by the National Commissioner;

19 (c) approving annual reports and financial reports submitted by the
20 National Commissioner;

21 (d) approving the terms and conditions of service of the employees
22 of the Commission, including remuneration, allowances and pension
23 benefits in accordance with the Pension Reform Act;

24 (e) approve staff regulations for the appointment, promotion and
25 discipline of staff of the Commission;

26 (f) providing advice and counsel to the National Commissioner;

27 (g) assisting the National Commissioner in matters relating to
28 compliance by ministries, departments and agencies of government with
29 this Act; and

30 (h) handling such other matters, as may be prescribed by any other

Conflict of
Interest

1 provision of this Act.

2 (2) The Council may delegate any part of its responsibilities under
3 this Act to a Committee set up by it, in accordance with the provisions of this
4 Act.

5 **13.-(1)** A member of the Council shall ensure that personal interest
6 shall not conflict with the member's duties under this Act.

7 (2) A member of the Council shall not make secret profit in the course
8 of discharging official duties.

9 (3) A member of the Council shall fully disclose to the Council any
10 personal, commercial, financial, or other interest, which may directly or
11 indirectly hold or be connected with the business of the Commission, or
12 becomes the subject of consideration by the Council.

13 (4) Subject to subsection (3) of this section, a member of the Council
14 shall be ineligible to participate in any Council deliberation and voting-related
15 matter.

16 (5) A member of the Council shall not accept any gift or advantage in
17 whatever form or manner, for anything done or likely to be done with respect to
18 the responsibilities of Council.

19 (6) A member of the Council, who contravenes the provisions of
20 subsections (2) and (5) of this section, commits an offence and is liable on
21 conviction to-

22 (a) in the case of a contravention of subsection (2) of this section -

23 (i) a fine of not less than N 10,000,000,

24 (ii) imprisonment for a term not exceeding three years, or

25 (iii) both fine and imprisonment; and

26 (b) in the case of a contravention of subsection (4) of this section-

27 (i) a fine of not less than N 5,000,000,

28 (ii) imprisonment for a term not exceeding two years, or

29 (iii) both fine and imprisonment.

PART III - APPOINTMENT OF THE NATIONAL COMMISSIONER, AND

OTHER STAFF OF THE COMMISSION

14.-(1) There shall be for the Commission, a National Commissioner, who shall be-

Appointment of
the National
Commissioner of
the Commission

(a) appointed by the President, on the recommendation of the Minister;

(b) the Chief Executive and accounting officer of the Commission;
and

(c) responsible for the execution of the policies and administration of the daily affairs of the Commission.

(2) The National Commissioner shall-

(a) hold a certification in data protection; and

(b) possess not less than ten years cognate experience, at a senior management level, in data protection, cyber security management, information and communication technology, law, consumer protection, management science, or other relevant disciplines.

(3) A person appointed as the National Commissioner shall not hold any other management position in a Ministry, Department, or Agency of Government, corporation, company, or any other business establishment.

(4) The National Commissioner shall hold office-

(a) for a term of four years, and may be re-appointed for another term of four years, and no more; and

(b) on such other terms and conditions as may be specified in the letter of appointment.

15. The National Commissioner shall be the Secretary to the Council, and-

Secretary to the
Council

(a) be responsible to the Council;

(b) keep the Council's records;

(c) conduct the Council's correspondence; and

	1	(d) perform such other duties, as the Council may from time to time
	2	determine.
Staff of the Commission	3	16. The Commission shall, subject to the approval of the Council,
	4	recruit directly or by secondment from the Public Service of the Federation,
	5	such number of staff, as it deems necessary and expedient-
	6	(a) for the proper and efficient performance of its functions; and
	7	(b) on such terms and conditions, with remunerations, allowances,
	8	and benefits.
Staff Regulations and discipline	9	17.-(1) The Commission may make staff regulations relating
	10	generally to the conditions of service of the staff, and without prejudice to the
	11	generality of the foregoing, such regulations may provide for-
	12	(a) the appointment, promotion, and disciplinary control of staff of
	13	the Commission; and
	14	(b) appeals by staff against dismissal or other disciplinary measures,
	15	provided that pending the making of such staff regulations, any instrument
	16	relating to conditions of service in the Public Service of the Federation shall be
	17	applicable, with such modifications, as may be necessary to the staff of the
	18	Commission.
	19	(2) The staff regulations made under subsection (1) of this section
	20	shall not have effect until approved by the Council.
Pensions	21	18.-(1) Staff of the Commission shall be entitled to pensions and other
	22	retirement benefits, as prescribed under the Pension Reform Act.
	23	(2) Without prejudice to the provisions of subsection (1) of this
	24	section, nothing in this Act shall prevent the appointment of a person to any
	25	office on conditions, which preclude the grant of pension and other retirement
	26	benefits in respect of that office.
	27	(3) For the application of the provisions of the Pension Reform Act,
	28	any power exercisable by a Minister or other authority of the Federal
	29	Government, other than the power to make regulations under the Pension
	30	Reform Act, shall be vested in and exercisable by the Council.

1 PART V - PRINCIPLES AND LAWFUL BASIS GOVERNING

2 PROCESSING OF PERSONAL DATA

3 19.-(1) A data controller or data processor shall ensure that Principles of
4 personal data is- personal data processing

5 (a) processed in a fair, lawful and transparent manner;

6 (b) collected for specified, explicit, and legitimate purposes, and
7 not to be further processed in a way incompatible with these purposes;

8 (c) adequate, relevant, and limited to the minimum necessary for
9 the purposes for which the personal data was collected or further processed;

10 (d) retained for no longer than is necessary to achieve the lawful
11 bases for which the personal data was collected or further processed;

12 (e) accurate, complete, not misleading, and, where necessary, kept
13 up to date having regard to the purposes for which the personal data is
14 collected or is further processed; and

15 (f) processed in a manner that ensures appropriate security of
16 personal data, including protection against unauthorised or unlawful
17 processing, access, loss, destruction, damage, or any form of data breach.

18 (2) A data controller and data processor shall use appropriate
19 technical and organisational measures to ensure confidentiality, integrity,
20 and availability of personal data.

21 (3) Notwithstanding anything to the contrary in this Act or any
22 other law, a data controller or data processor owes a duty of care, in respect
23 of data processing, and shall demonstrate accountability, in respect of the
24 principles contained in this Act.

25 (4) For the purposes of subsection (1)?(b) of this section-

26 (a) compatibility of further processing shall be assessed
27 considering-

28 (i) the relationship between the original purpose and the purpose
29 of the intended further processing,

30 (ii) the nature of the personal data concerned,

Lawful basis of
personal data
processing

- 1 (iii) the consequences of the further processing,
- 2 (iv) how the personal data has been collected, and
- 3 (v) the existence of appropriate safeguards; and
- 4 (b) further processing for archiving purposes in the public interest,
- 5 scientific, historical research purposes, or statistical purposes shall not be
- 6 considered to be incompatible with the initial purposes.

7 **20.-(1)** Without prejudice to the principles set out in this Act, data
8 processing shall be lawful, where-

9 (a) the data subject has given and not withdrawn consent for the
10 specific purpose or purposes for which personal data is to be processed;

11 (b) the processing is necessary-

12 (i) for the performance of a contract to which the data subject is a party
13 or to take steps at the request of the data subject prior to entering into a contract,

14 (ii) for compliance with a legal obligation to which the data controller
15 or data processor is subject,

16 (iii) to protect the vital interest of the data subject or another person,

17 (iv) for the performance of a task carried out in the public interest or in
18 the exercise of official authority vested in the data controller or data processor,

19 (v) for the purposes of the legitimate interests pursued by the data
20 controller or data processor, or by a third party to whom the data is disclosed.

21 (2) Interests shall not be legitimate for the purposes of subsection
22 (1)?(b)?(v) this of section, where-

23 (a) they override the fundamental rights freedoms and the interests of
24 the data subject;

25 (b) they are incompatible with other lawful basis of processing under
26 subsection (1)(b) of this section; or

27 (c) the data subject would not have a reasonable expectation that the
28 personal data would be processed in the manner envisaged.

Consent

29 **21.-(1)** A data controller shall bear the burden of proof for establishing
30 a data subject's consent.

1 (2) In determining whether consent was freely and intentionally
2 given, account shall be taken of whether, the performance of a contract,
3 including the provision of a service, is conditional on consent to the
4 processing of personal data that is not necessary for the performance of that
5 contract.

6 (3) Silence or inactivity of the data subject shall not constitute
7 consent.

8 (4) Where the processing of personal data is based on the consent
9 of the data subject, the data subject shall be informed of the right to withdraw
10 consent, prior to the granting of consent.

11 (5) The withdrawal of consent under subsection (4) of this section
12 shall not affect the lawfulness of data processing that occurred before the
13 withdrawal of the consent.

14 (6) A request for consent shall be in clear, simple language, and
15 accessible format.

16 (7) Consent-

17 (a) shall be in the affirmative, and not based on a pre-selected
18 confirmation; and

19 (b) may be provided in writing, orally, or through electronic means.

20 **22.-(1)** Before a data controller collects personal data directly from
21 a data subject, the data controller shall, inform the data subject of-

Provision of
information to the
data subject

22 (a) the identity, residence or place of business of, and means of
23 communication with the data controller and its representatives, where
24 necessary;

25 (b) the specific lawful basis of processing under section 25(1) or
26 30(1) of this Act, and the purposes of the processing for which the personal
27 data are intended;

28 (c) the recipients or categories of recipients of the personal data, if
29 any;

30 (d) the existence of the rights of the data subject under Part VI;

1 (e) the retention period for the personal data;
2 (f) the right to lodge a complaint with the Commission in accordance
3 with Section 46(1) of this Act; and
4 (g) the existence of automated decision-making, including profiling,
5 significance, and envisaged consequence of such processing for the data
6 subject, and the right to object to and challenge such processing.

7 (2) Before a data controller collects personal data, other than directly
8 from the data subject, the data controller shall inform the data subject of the
9 matters set out in subsection (1) of this section, except where the-

10 (a) data subject already has been provided such information; or

11 (b) provision of such information is impossible or would involve a
12 disproportionate effort or expense.

13 (3) The information referred to in subsection (1) of this section shall
14 be contained in a privacy policy and expressed in clear, concise, transparent,
15 intelligible, and easily accessible form.

Data protection
impact assessment

16 **23.**-(1) Where the processing of personal data may likely result in
17 high risk to the rights and freedoms of a data subject by virtue of its nature,
18 scope, context, and purposes, a data controller shall, prior to the processing,
19 carry out a data protection impact assessment.

20 (2) The data controller shall consult the Commission prior to the
21 processing if, notwithstanding the measures envisaged under subsection
22 (4)(d) of this section, the data protection impact assessment indicates that the
23 processing of the data would result in a high risk to the rights and freedoms of a
24 data subject.

25 (3) The Commission may make regulations or issue directives with
26 regards to this Section, including the categories of processing and persons
27 subject to the requirement for the conduct of a data protection impact
28 assessment.

29 (4) For purposes of this section, a "data protection impact assessment"
30 is a process designed to identify the risks and impact of the envisaged

1 processing of personal data, and it comprises-

2 (a) a systematic description of the envisaged processing and its
3 purpose, including the legitimate interest pursued by the data controller,
4 data processor, or third party;

5 (b) an assessment of the necessity and proportionality of the
6 processing in relation to the purposes for which the personal data would be
7 processed;

8 (c) an assessment of the risks to the rights and freedoms of a data
9 subject; and

10 (d) the measures envisaged to address the risks, and the safeguards,
11 security measures, and mechanisms to ensure the protection of personal
12 data, taking into account the rights and legitimate interests of a data subject
13 and other persons concerned.

14 **24.-(1)** Where a data controller engages the services of a data
15 processor, or a data processor engages the services of another data
16 processor, the data controller or data processor engaging another shall take
17 reasonable measures to ensure that the engaged data processor-

Obligations of the
data controller and
data processor

18 (a) complies with the principles and obligations set out in section
19 24 of this Act, applicable to the data controller;

20 (b) assist the data controller or data processor, as the case may be,
21 by the use of appropriate technical and organisational measures, in the
22 fulfilment of the data controller's obligations to honour the rights of a data
23 subject under Part VI;

24 (c) implements appropriate technical and organisational measures
25 to ensure the security, integrity, and confidentiality of personal data as
26 required in Part VII;

27 (d) provides the data controller or engaging data processor, where
28 applicable, with information reasonably required to comply and
29 demonstrate compliance with this Act; and

30 (e) notifies the data controller or engaging data processor, where

Sensitive personal
data

1 applicable, when a new data processor is engaged.

2 (2) Measures under subsection (1) of this section include a written
3 agreement between the data controllers and the data processor, or between data
4 processors, as the case may be.

5 **25.**-(1) Without prejudice to the principles set out in this Act, a data
6 controller or data processor shall not process, or permit a data processor to
7 process on its behalf, sensitive personal data, unless-

8 (a) the data subject has given and not withdrawn consent to the
9 processing for the specific purpose or purposes for which it will be processed;

10 (b) the processing is necessary for the purposes of performing the
11 obligations of the data controller or exercising rights of the data subject under
12 employment or social security laws or any other similar laws;

13 (c) the processing is necessary to protect the vital interests of the data
14 subject or of another person, where the data subject is physically or legally
15 incapable of giving consent;

16 (d) the processing is carried out in the course of its legitimate
17 activities, with appropriate safeguards, by a foundation, association, or such
18 other not-for-profit body with charitable, educational, literary, artistic,
19 philosophical, religious, or trade union purposes, and-

20 (i) the processing relates solely to the members or former members of
21 the entity, or to persons, who have regular contact with it in connection with its
22 purposes, and

23 (ii) the sensitive personal data is not disclosed outside of the entity
24 without the explicit consent of the data subject;

25 (e) the processing relates to personal data, which are manifestly made
26 public by the data subject;

27 (f) the processing is necessary for the establishment, exercise, or
28 defense of a legal claim, obtaining legal advice, or conduct of a legal
29 proceeding;

30 (g) the processing is necessary for reasons of substantial public

1 interest, on the basis of a law, which shall be proportionate to the aim
2 pursued, and provides for suitable and specific measures to safeguard the
3 fundamental rights and freedoms and the interests of the data subject;

4 (h) the processing is carried out for purposes of medical care or
5 community welfare, and undertaken by or under the responsibility of a
6 professional or similar service provider owing a duty of confidentiality;

7 (i) the processing is necessary for reasons of public health and
8 provides for suitable and specific measures to safeguard the fundamental
9 rights and freedoms, and the interests of the data subject; or

10 (j) the processing is necessary for archiving purposes in the public
11 interest, or historical, statistical, or scientific research, in each case on the
12 basis of a law, which shall be proportionate to the aim pursued, and provides
13 for suitable and specific measures to safeguard the fundamental rights and
14 freedoms and the interests of the data subject.

15 (2) The Commission may make regulations or issue directives
16 prescribing-

17 (a) further categories of personal data that may be classified as
18 sensitive personal data;

19 (b) further grounds on which such personal data may be processed;
20 and

21 (c) safeguards that may apply.

22 (3) In making regulations or issuing directives under subsection (2)
23 of this section, the Commission shall have regard to-

24 (a) the risk of significant harm that may be caused to a data subject
25 or class of a data subject by the processing of such category of personal data;

26 (b) the reasonable expectation of confidentiality attached to such
27 category of personal data; and

28 (c) the adequacy of protection afforded to personal data generally.

29 **26.-(1)** Where a data subject is a child or a person lacking the legal
30 capacity to consent, a data controller shall obtain the consent of a parent of

Children or persons
lacking the legal
capacity to consent

1 the child or legal guardian of the child or person lacking legal capacity to
2 consent, as applicable, to rely on consent under section 25(1)(a) or 35(1)(a) of
3 this Act.

4 (2) A data controller shall apply appropriate mechanisms, where
5 feasible, to verify age and consent, taking into consideration available
6 technology.

7 (3) For the purposes of subsection (2) of this section, presentation of
8 any government approved identification documents shall be an appropriate
9 mechanism.

10 (4) Subsection (1) of this section shall not apply, where-

11 (a) the processing is necessary to protect the vital interests of the child
12 or person lacking the legal capacity to consent;

13 (b) the processing is carried out for purposes of education, medical, or
14 social care, and undertaken by or under the responsibility of a professional or
15 similar service provider owing a duty of confidentiality; or

16 (c) the processing is necessary for proceedings before a court relating
17 to the individual.

18 (5) Without prejudice to subsection (1) of this section, a data
19 controller may rely on consent provided by a child aged 13 years or more for
20 the purposes of section 26(1)(a) and 31(1)(a) of this Act, in relation to the
21 provision of information and services by electronic means at the specific
22 request of the child.

23 (6) Nothing in this Act shall be construed as authorizing data
24 processing in respect of a child in a manner that is inconsistent with the
25 provisions of the Child's Right Act.

Data Protection
Officers

26 **27.-(1)** Data controllers of major importance shall designate a Data
27 Protection Officer with expert knowledge of data protection law and practices,
28 and the ability to carry out the tasks prescribed under this Act and subsidiary
29 legislation made pursuant to this Act.

30 (2) The Data Protection Officer may be an employee of a data

1 controller or engaged by a service contract.

2 (3) The Data Protection Officer shall-

3 (a) advise the data controller or the data processor, and their
4 employees, who carry out processing pursuant to this Act;

5 (b) monitor compliance with this Act and related policies of the
6 data controller or data processor; and

7 (c) act as the contact point for the Commission on issues relating to
8 data processing.

9 **28.** The Commission may license a person or body having a
10 requisite level of expertise, in relation to data protection and this Act, to
11 monitor, audit and report on compliance by data controllers and data
12 processors with-

Data protection
compliance services

13 (a) this Act; and

14 (b) regulations, guidelines, directives, and codes of conduct issued
15 by the Commission pursuant to the provisions of this Act.

16 **PART VI - RIGHTS OF A DATA SUBJECT**

17 **29.-(1)** A data subject has the right to obtain from a data controller,
18 without constraint or unreasonable delay-

Rights of a data
subject

19 (a) confirmation as to whether the data controller or a data
20 processor operating on its behalf, is storing or otherwise processing personal
21 data relating to the data subject, and where that is the case-

22 (i) the purposes of the processing,

23 (ii) the categories of personal data concerned,

24 (iii) the recipients or categories of recipient to whom the personal
25 data have been or will be disclosed, particularly recipients in third countries
26 or international organisations,

27 (iv) where possible, the period for which the personal data will be
28 stored, or, if not possible, the criteria used to determine that period,

29 (v) the existence of the right to request from the data controller
30 rectification or erasure of personal data, or restriction of processing of

- 1 personal data concerning the data subject or to object to such processing,
2 (vi) the right to lodge a complaint with the Commission;
3 (vii) where the personal data is not collected from the data subject,
4 any available information as to their source, and
5 (viii) the existence of automated decision-making, including
6 profiling, and significance and consequences for the data subject;
7 (b) a copy of data subject's personal data in a commonly used
8 electronic format, except to the extent that providing such data would impose
9 unreasonable costs on the data controller, in which case the data subject may be
10 required by the data controller to bear some or all of such costs;
11 (c) the correction or, if correction is not feasible or suitable, deletion
12 of the data subject's personal data that is inaccurate, out of date, incomplete, or
13 misleading;
14 (d) the erasure of personal data concerning the data subject, without
15 undue delay; and
16 (e) restriction of data processing pending -
17 (i) the resolution of a request,
18 (ii) objection by the data subject under this Act, or
19 (iii) the establishment, exercise, or defense of legal claims.
20 (2) Subject to subsection (1)(d) of this section, a data controller shall
21 erase personal data without undue delay, where-
22 (i) the personal data is no longer necessary, in relation to the purposes
23 for which it was collected or processed, or
24 (ii) the data controller has no other lawful basis to retain the personal
25 data.
- 26 **30.-(1)** A data subject shall have the right to withdraw, at any time,
27 consent to the processing of personal data under section 25(1)(a) or section
28 30(1)(a) of this Act.
29 (2) The data controller shall ensure that it is as easy for the data subject
30 to withdraw, as to give consent.

1 **31.**-(1) A data subject shall have the right to object to the processing Right to object
2 of personal data relating to the data subject on grounds based on section
3 25(1)(b)(iv) or (v) of this Act, including profiling.

4 (2) A data controller may discontinue the processing of personal
5 data, unless the data controller demonstrates a public interest or other
6 legitimate grounds, which overrides the fundamental rights and freedoms,
7 and the interests of the data subject.

8 (3) Where personal data is processed for direct marketing
9 purposes, the data subject shall have the right to object, at any time, to the
10 processing of personal data concerning the data subject, which includes
11 profiling to the extent that it is related to such direct marketing.

12 (4) Where the data subject objects to processing for direct
13 marketing purposes, the personal data shall no longer be processed for such
14 purposes.

15 **32.**-(1) A data subject shall have the right not to be subject to a Automated
16 decision based solely on automated processing of personal data, including decision making
17 profiling, which produces legal or similar significant effects concerning the
18 data subject.

19 (2) Subsection (1) of this section shall not apply, where the
20 decision is-

21 (a) necessary for entering into or the performance of a contract
22 between the data subject and a data controller;

23 (b) authorised by a written law, which establishes suitable
24 measures to safeguard the fundamental rights and freedoms, and the
25 interests of the data subject; or

26 (c) authorised by the consent of the data subject.

27 (3) Subject to subsection (2)(a) and (c) of this section, the data
28 controller shall implement suitable measures to safeguard the data subject's
29 fundamental rights and freedoms and interests, including the rights to-

30 (a) obtain human intervention on the part of the data controller;

	1	(b) express the data subject's point of view; and
	2	(c) contest the decision.
Data portability	3	33. -(1) The Commission may make regulations establishing a right of
	4	personal data portability.
	5	(2) Right of data portability established by the Commission shall
	6	entitle the data subject to -
	7	(a) receive, without undue delay from a data controller, personal data
	8	concerning the data subject in a structured, commonly used, and machine-
	9	readable format;
	10	(b) transmit the personal data obtained under paragraph ?(a) of this
	11	subsection to another data controller without any hindrance; and
	12	(c) where technically possible, have the personal data transmitted
	13	directly from one data controller to another.
	14	(3) The Commission may prescribe -
	15	(a) circumstances and conditions on which the data subject may
	16	exercise the right of data portability; and
	17	(b) the obligations it would impose on a data controller or data
	18	processor, or categories of data controllers or data processors, including in
	19	relation to costs and timing.
	20	PART VII - DATA SECURITY
Security, integrity, and confidentiality	21	34. -(1) A data controller and data processor shall implement
	22	appropriate technical and organisational measures to ensure the security,
	23	integrity, and confidentiality of personal data in its possession or under its
	24	control, including protections against accidental or unlawful destruction, loss,
	25	misuse, alteration, unauthorised disclosure, or access, taking into account-
	26	(a) the amount and sensitivity of the personal data;
	27	(b) the nature, degree and likelihood of harm to a data subject that
	28	could result from the loss, disclosure, or other misuse of the personal data;
	29	(c) the extent of the processing;
	30	(d) the period of data retention; and

1 (e) the availability and cost of any technologies, tools, or other
2 measures to be implemented relative to the size of the data controller or data
3 processor.

4 (2) Measures implemented under subsection (1) of this section
5 may include -

6 (a) pseudonymization or other methods of de-identification of
7 personal data;

8 (b) encryption of personal data;

9 (c) processes to ensure security, integrity, confidentiality,
10 availability and resilience of processing systems and services;

11 (d) processes to restore availability of and access to personal data
12 in a timely manner, in the event of a physical or technical incident;

13 (e) periodic assessments of risks to processing systems and
14 services, including where the processing involves the transmission of data
15 over an electronic communications network;

16 (f) regular testing, assessing, and evaluation of the effectiveness of
17 the measures implemented against current and evolving risks identified; and

18 (g) regular updating of the measures and introduction of new
19 measures to address shortcomings in effectiveness, and accommodate
20 evolving risks.

21 **35.-(1)** Where a personal data breach has occurred with respect to
22 personal data being stored or processed by a data processor, the data
23 processor shall, without undue delay-

Personal data
breaches

24 (a) notify the data controller or data processor that engaged it, upon
25 becoming aware of the breach, describing the nature of the personal data
26 breach including, where possible, the categories and approximate numbers
27 of data subjects and personal data records concerned; and

28 (b) respond to all information requests from the data controller or
29 data processor that engaged it, as they may require to comply with their
30 obligations under this section.

1 (2) Where a personal data breach occurs, which is likely to result in a
2 risk to the rights and freedoms of individuals, the data controller shall notify the
3 Commission of the breach without undue delay and, where feasible, within
4 seventy-two hours after having become aware of it, describing the nature of the
5 personal data breach including, where possible, the categories and
6 approximate numbers of data subjects and personal data records concerned.

7 (3) Where a personal data breach is likely to result in a high risk to the
8 rights and freedoms of a data subject-

9 (a) the data controller shall communicate the personal data breach to
10 the data subject without undue delay, in plain and clear language, including
11 advice about measures the data subject could take to mitigate effectively the
12 possible adverse effects of the data breach; and

13 (b) if a direct communication to the data subject under paragraph ?(a)
14 of this subsection would involve disproportionate effort or expense, or is
15 otherwise not feasible, the data controller may instead make a public
16 communication in one or more widely used media sources such that the data
17 subject is likely to be informed.

18 (4) The notifications and communications referred to in subsections
19 (1), (2) and ?(3) of this section shall, in addition to the requirements of those
20 subsections-

21 (a) communicate the name and contact details of a point of contact of
22 the data controller, where more information can be obtained;

23 (b) describe the likely consequences of the personal data breach; and

24 (c) describe the measures taken or proposed to be taken to address the
25 personal data breach, including, where appropriate, measures to mitigate its
26 possible adverse effects.

27 (5) The Commission may, at any time, make a public communication
28 about a personal data breach notified to it under subsection ?(2) of this section,
29 where it considers the steps of the data controller to inform data subjects
30 inadequate.

1 (6) The Commission shall issue and publish regulations on the
2 steps to be taken by a data controller to adequately inform data subjects of a
3 personal data breach for purposes of subsection (6) of this section.

4 (7) In evaluating whether a personal data breach is likely to result
5 in a risk to the rights and freedoms of a data subject under subsection (3) of
6 this section, a data controller and the Commission may take into account-

7 (a) the likely effectiveness of any technical and administrative
8 measures implemented to mitigate the likely harm resulting from the
9 personal data breach, including any encryption or de-identification of the
10 data;

11 (b) any subsequent measures taken by the data controller to
12 mitigate such risk; and

13 (c) the nature, scope and sensitivity of the personal data involved.

14 (8) A data controller and data processor shall keep a record of all
15 personal data breaches, comprising the facts relating to the personal data
16 breach, its effects and the remedial action taken in a manner that enables the
17 Commission to verify compliance with this section.

18 (9) Where it is not possible to provide information under this
19 section at the same time, the information may be provided in phases without
20 undue further delay.

21 PART VIII - CROSS-BORDER TRANSFERS OF PERSONAL DATA

22 **36.-(1)** A data controller or data processor shall not transfer or
23 permit to be transferred personal data from Nigeria to another country,
24 unless-

Basis for cross-
border transfer of
personal data

25 (a) the recipient of the personal data is subject to a law, binding
26 corporate rules, contractual clauses, code of conduct, or certification
27 mechanism that affords an adequate level of protection with respect to the
28 personal data in accordance with section 43 of this Act; or

29 (b) one of the conditions set forth in section 44 of this Act applies.

30 (2) A data controller or data processor shall record the basis for

1 transfer of personal data to another country under subsection (1) and the
2 adequacy of protection under section 42 of this Act, if applicable.

3 (3) The Commission may make regulations requiring data
4 controllers and data processors to notify it of the measures in place under
5 subsection (1) and to explain their adequacy in terms of section 42 of this Act,
6 if applicable.

7 (4) The Commission may, by regulations, designate categories of
8 personal data that are subject to additional specified restrictions on transfer to
9 another country based on the nature of such personal data and risks to data
10 subjects.

Adequacy of
protection

11 37.-(1) A level of protection is adequate for the purposes of section
12 41(1)(a) of this Act, if it upholds principles that are substantially similar to
13 the conditions for processing of the personal data provided for in this Act.

14 (2) The adequacy of protection referred to in subsection (1) shall be
15 assessed taking into account -

16 (a) the availability of enforceable data subject rights, the ability of a
17 data subject to enforce such rights through administrative or judicial redress,
18 and the rule of law;

19 (b) the existence of any appropriate instrument between the
20 Commission and a competent authority in the recipient jurisdiction that
21 ensures adequate data protection, in a manner that is similar to subsection (1) of
22 this section;

23 (c) the access of a public authority to personal data;

24 (d) the existence of an effective data protection law;

25 (e) the existence and functioning of an independent, competent data
26 protection, or similar supervisory authority with adequate enforcement
27 powers; and

28 (f) international commitments and conventions binding on the
29 relevant country and its membership of any multilateral or regional
30 organisations.

1 (3) The Commission shall issue guidelines as to the assessment of
2 adequacy and the factors set forth under subsection (2) of this section.

3 (4) The Commission may, from time to time, determine whether a
4 country, region or specified sector within a country, or standard contractual
5 clauses, affords an adequate level of protection under subsection (1) of this
6 section.

7 (5) The Commission may approve binding corporate rules, codes
8 of conduct, or certification mechanisms proposed to it, where the
9 Commission determines that they meet the adequacy requirements of
10 subsection (1) of this section.

11 (6) The absence of a determination by the Commission under
12 subsection (4) or (5) of this section with respect to a country, territory,
13 sector, binding corporate rule, contractual clause, code of conduct, or
14 certification mechanism shall not imply the adequacy of the protections
15 afforded by it.

16 (7) The Commission may make a determination under subsection
17 (4) of this section based on adequacy decision made by a competent
18 authority of other jurisdictions, where such decision have taken into account
19 factors similar to those listed in subsection (2) of this section.

20 **38.-(1)** In the absence of adequacy of protection under section 42
21 of this Act, a data controller or data processor shall only transfer personal
22 data from Nigeria to another country if-

Other bases for
transfer of personal
data outside Nigeria

23 (a) a data subject has provided and not withdrawn consent to such
24 transfer after having been informed of the possible risks of such transfers for
25 the data subject due to the absence of adequate protections;

26 (b) the transfer is necessary for the performance of a contract to
27 which a data subject is a party or in order to take steps at the request of a data
28 subject, prior to entering into a contract;

29 (c) the transfer is necessary for the conclusion or performance of a
30 contract concluded in the interest of a data subject between the data

- 1 controller and a third party;
- 2 (d) the transfer is for the sole benefit of a data subject and-
- 3 (i) it is not reasonably practicable to obtain the consent of the data
- 4 subject to that transfer, and
- 5 (ii) if it were reasonably practicable to obtain such consent, the data
- 6 subject would likely give it;
- 7 (e) the transfer is necessary for important reasons of public interest;
- 8 (f) the transfer is necessary for the establishment, exercise, or defense
- 9 of legal claims; or
- 10 (g) the transfer is necessary to protect the vital interests of a data
- 11 subject or of other persons, where a data subject is physically or legally
- 12 incapable of giving consent.

13 PART IX - REGISTRATION AND FEES

Registration of
data controllers
and data processors
of major importance

- 14 **39.-(1)** Data controllers and data processors of major importance
- 15 shall register with the Commission within six months after the commencement
- 16 of the Act or upon becoming a data controller or data processor of major
- 17 importance.
- 18 (2) Registration under subsection (1) of this section shall be made by
- 19 notifying the Commission of-
- 20 (a) the name and address of the data controller or data processor, and
- 21 name and address of the data protection officer of the data controller or data
- 22 processor;
- 23 (b) a description of personal data and the categories and number of
- 24 data subjects to which the personal data relate;
- 25 (c) the purposes for which personal data is processed;
- 26 (d) the categories of recipients to whom the data controller or data
- 27 processor intends or is likely to disclose personal data;
- 28 (e) the name and address, or name and address of any representative
- 29 of any data processor operating directly or indirectly on its behalf;
- 30 (f) the country to which the data controller or data processor intends,

1 directly or indirectly to transfer the personal data;

2 (g) a general description of the risks, safeguards, security measures
3 and mechanisms to ensure the protection of the personal data; and

4 (h) any other information required by the Commission.

5 (3) A data controller or data processor of major importance shall
6 notify the Commission of any significant change to the information
7 submitted under subsection (2) of this section within sixty days after such
8 change.

9 (4) The Commission shall maintain and publish on its website a
10 register of duly registered data controllers and data processors of major
11 importance.

12 (5) A data controller or data processor shall be removed from the
13 register of the Commission, where it notifies the Commission that it has
14 ceased to operate as a data controller or data processor of major importance.

15 (6) The Commission may exempt a class of data controllers or data
16 processors of major importance from the registration requirements of this
17 section, where it considers such requirement to be unnecessary or
18 disproportionate.

19 **40.** The Commission may prescribe fees or levies to be paid by data
20 controllers and data processors of major importance. Fees and levies

21 PART X - ENFORCEMENT

22 **41.-(1)** A data subject, who is aggrieved by the decision, action, or
23 inaction of a data controller or data processor in violation of this Act, or
24 subsidiary legislation made pursuant to this Act may lodge a complaint with
25 the Commission. Complaints and investigations

26 (2) The Commission shall investigate any complaint referred to it,
27 where it appears to the Commission that-

28 (a) the complainant has an interest in the matter; and

29 (b) the complaint is not frivolous or vexatious.

30 (3) The Commission may initiate an investigation of its own accord

1 where it has reason to believe a data controller or data processor has violated or
2 is likely to violate this Act or any subsidiary legislation made pursuant to this
3 Act.

4 (4) The Commission may, for the purpose of an investigation, order a
5 person to-

6 (a) attend at a specific time and place for the purpose of being
7 examined orally in relation to a complaint;

8 (b) produce such document, record, or article, as may be required with
9 respect to any matter relevant to the investigation, which the person is not
10 prevented by any other written law from disclosing; or

11 (c) furnish a statement in writing made under oath or an affirmation
12 setting out all information, which may be required under the order.

13 (5) Where material to which an investigation relates consists of
14 information stored in any document, record, minute, mechanical or electronic
15 device, the Commission may require the person named to produce such
16 material or give access to the Commission to conduct an inspection on the
17 material.

18 (6) For the purposes of subsection (5) of this section, the person shall
19 ensure that the information relating to the material under investigation is
20 visible and legible, in a structured, commonly used, and machine-readable
21 format.

22 (7) The Commission may, where necessary, make representations to-

23 (a) the data controller or data processor on behalf of a complainant; or

24 (b) a complainant on behalf of the data controller or data processor.

25 (8) The Commission shall establish a unit to receive and follow up on
26 complaints from data subjects and conduct investigations.

27 (9) The Commission shall adopt rules and procedures on handling
28 complaints and conducting investigations referred to it under this Act.

Compliance
Orders

29 42.-(1) Where the Commission is satisfied that a data controller or
30 data processor has violated or is likely to violate any requirement under this Act

1 or subsidiary legislation made pursuant to this Act, the Commission may
2 make an appropriate compliance order against that data controller or data
3 processor.

4 (2) The order made by the Commission under subsection (1) of this
5 section may include any of the following-

6 (a) a warning that certain act or omission is likely to be a violation
7 of one or more provisions under this Act or any subsidiary legislation or
8 orders issued thereunder;

9 (b) a requirement that the data controller or data processor
10 complies with such provisions, including complying with the requests of a
11 data subject to exercise one or more rights under this Act; or

12 (c) a cease and desist order requiring the data controller or data
13 processor to stop or refrain from doing an act, which is in violation of this
14 Act, including stopping or refraining from processing personal data that is
15 the subject of the order.

16 (3) An order made under this section shall be in writing and shall
17 specify-

18 (a) the provisions of this Act that the Commission is satisfied the
19 data controller or data processor has violated;

20 (b) specific measures to be taken by the data controller or data
21 processor to avoid, remedy, or eliminate the situation which has resulted in
22 the violation;

23 (c) a period within which to implement such measures; and

24 (d) a right to judicial review under section 250 of this Act.

25 **43.-(1)** Notwithstanding any criminal sanctions under this Act, if
26 the Commission, after completing an investigation under Section 246 of this
27 Act, is satisfied that a data controller or data processor has violated any
28 provision of this Act or subsidiary legislation made pursuant to this Act, it-

29 (a) may make any appropriate enforcement order or impose a
30 sanction on the data controller or data processor; and

Enforcement
orders

1 (b) shall inform the data controller or data processor, and if
2 applicable, any data subject who lodged a complaint leading to the
3 investigation, in writing of its decision.

4 (2) An enforcement order made or sanction imposed under
5 subsection (1) of this section shall include the following-

6 (a) requiring the data controller or data processor to remedy the
7 violation;

8 (b) ordering the data controller or data processor to pay compensation
9 to a data subject, who has suffered injury, loss, or harm as a result of a violation;

10 (c) ordering the data controller or data processor to account for the
11 profits realized from the violation; or

12 (d) ordering the data controller or data processor to pay a penalty or
13 remedial fee.

14 (3) A penalty or remedial fee under subsection (2)(d) of this section
15 may be an amount up to the-

16 (a) higher maximum amount, in the case of a data controller or data
17 processor of major importance; or

18 (b) standard maximum amount, in the case of a data controller or data
19 processor not of major importance.

20 (4) The "higher maximum amount" shall be the greater of-

21 (a) N10,000,000, and

22 (b) two percent of its annual gross revenue in the preceding financial
23 year.

24 (5) The "standard maximum amount" shall be the greater of -

25 (a) N2,000,000, and

26 (b) two percent of its annual gross revenue in the preceding financial
27 year.

28 (6) In determining the sanctions, the Commission shall take into
29 consideration the following factors-

30 (a) the nature, gravity, and duration of the infringement;

1	(b) the purpose of the processing;	
2	(c) the number of data subjects involved;	
3	(d) the level of damage and damage mitigation measures	
4	implemented;	
5	(e) intent or negligence;	
6	(f) the degree of cooperation with the Commission; and	
7	(g) the types of personal data involved.	
8	44. -(1) A data controller or data processor, who fails to comply	Offences
9	with orders made under section 48 of this Act commits an offence and is	
10	liable on conviction to-	
11	(a) a fine of up to the-	
12	(i) higher maximum amount, in the case of a data controller or data	
13	processor of major importance; or	
14	(b) standard maximum amount, in the case of a data controller or	
15	data processor not of major importance;	
16	(b) imprisonment for a term not exceeding one year; or	
17	(c) both fine and imprisonment.	
18	45. A person, who is not satisfied with an order of the	Judicial review
19	Commission, may apply to the court for judicial review within thirty days	
20	after the order was made.	
21	46. A data subject, who suffers injury, loss, or harm as a result of a	Civil remedies
22	violation of this Act by a data controller or data processor, or a recognized	
23	consumer organization acting on behalf of the data subject, may recover	
24	damages from such data controller or data processor in a civil proceedings.	
25	47. Notwithstanding anything to the contrary, the Court may make	Forfeiture
26	an order of forfeiture against a convicted data controller, data processor, or	
27	individual in accordance with the Proceeds of Crime (Recovery and	
28	Management) Act.	
29	48. -(1) Where an offence has been committed by a body corporate	Joint and vicarious liability
30	or firm, the body corporate or firm, as well as principals officers of the body	

1 corporate or firm shall be deemed culpable, unless the principal officers prove
2 that-

3 (a) the offence was committed without their consent or connivance;
4 and

5 (b) that they exercised diligence to prevent the commission of the
6 offence.

7 (2) A data controller and data processor shall be vicariously liable for
8 the acts or omissions of its agent or employees, in so far as the acts or omissions
9 relates to its business.

10 PART XI - LEGAL PROCEEDINGS

Limitation of
suits against the
Commission

11 **49.-(1)** No suit shall be instituted against the Commission, member
12 of the Council, or staff of the Commission for an act done in pursuance of or in
13 execution of this Act, or any public duty of the Commission, unless-

14 (a) it is commenced within three months after the act, neglect, or
15 default complained of; or

16 (b) in the case of continued damage or injury, within three months
17 after the ceasing of such act, neglect or default complained of.

18 (2) No suit shall be commenced against the Commission, member of
19 the Council, or staff of the Commission before the expiration of one month
20 after written notice of intention to commence the suit is served upon the
21 Commission, member, or staff of the Commission by the intending plaintiff or
22 plaintiff's agent.

23 (3) The notice referred to in sub-section (2) of this section shall clearly
24 state the-

25 (a) cause of action;

26 (b) particulars of the claim;

27 (c) name and place of abode of the intending plaintiff; and

28 (d) relief being sought.

29 (4) Subject to the provisions of this Act, the provisions of the Public
30 Officers Protection Act Cap P41, LFN, 2004, shall apply in relation to any suit

1 instituted against an official or employee of the Commission.

2 **50.** A notice, summons, process, or document, required or
3 authorised to be served on the Commission under the provisions of this Act
4 or any other law or enactment, may be served by delivering it to the National
5 Commissioner at the Head Office of the Commission.

Service of
documents

6 **51.**-(1) No execution or attachment process in the nature thereof
7 shall be issued against the property of the Commission, in respect of an
8 action or suit against the Commission.

Restriction on
execution against
property of the
Commission

9 (2) Any sum of money which may be the judgment of any court
10 awarded against the Commission shall be paid from the Fund of the
11 Commission.

12 **52.** The National Commissioner, member of the Council, staff of
13 the Commission, or other persons engaged by the Commission shall be
14 indemnified out of the assets of the Commission against-

Indemnity of staff,
members, and
employees of the
Commission

15 (a) losses, charges, claims, expenses, and liabilities incurred in the
16 performance of official duties, or

17 (b) liability incurred in defending a criminal or civil proceeding,
18 where -

19 (i) judgement is given in favour of the National Commissioner,
20 member of the Council, or staff of the Commission;

21 (ii) the National Commissioner, member of the Council, or staff of
22 the Commission is otherwise acquitted;

23 (iii) the proceedings are otherwise disposed of without any finding
24 or admission of any material breach of duty; or

25 (iv) the court grants the National Commissioner, member of the
26 Council, or staff of the Commission relief from liability for negligence,
27 default, breach of duty, or breach of trust in relation to the Commission.

28 **53.**-(1) The Commission shall apply ex-parte to a Judge in
29 Chambers for the issuance of a warrant for the purpose of obtaining
30 evidence in relation to an investigation.

Power of arrest,
search and seizure

1 (2) A Judge may issue a warrant under subsection (1) of this section
2 upon the satisfaction that-

3 (a) a person has engaged, engaging, or likely to engage in a conduct
4 that contravenes the provisions of this Act;

5 (b) the warrant is sought to prevent the commission of an offence
6 under this Act;

7 (c) the warrant is sought to prevent interference with investigative
8 process under this Act;

9 (d) the warrant is for the purpose of investigating data security
10 breaches and data privacy breaches, or obtaining electronic evidence; or

11 (e) the person named in the warrant is preparing to commit an offence
12 under this Act.

13 (3) A warrant issued under subsection (2) of this section shall
14 authorise the Commission to-

15 (a) in the company of a law enforcement officer, enter and search any
16 premises, where-

17 (i) an offence under this Act is being committed;

18 (ii) there is evidence of the commission of an offence under this Act or
19 other relevant law;

20 (iii) there is an urgent need to prevent the commission of an offence
21 under this Act or other relevant law; or

22 (iv) where there is reasonable suspicion that a crime under this Act is
23 or about to be committed;

24 (b) stop and search any person found on such premises;

25 (c) enter, and search any conveyance found on the premises;

26 (d) seize, seal, remove, or detain anything which is, or contains
27 evidence of the commission of an offence under this Act;

28 (e) use or cause to be used a computer or other device to search any
29 data contained in or available to any computer system or computer network;

30 (f) use any technology to decode or decrypt any coded or encrypted

1 data contained in a computer into readable text or comprehensible format; or
2 (g) require any person having charge of or conversant with the
3 operation of a computer or electronic device in connection with an offence
4 under this Act to produce such computer or electronic device.

5 **54.** A legal officer of the Commission or a private legal
6 practitioner engaged by the Commission may represent the Commission in
7 civil proceedings, in respect of matters relating to the business or operations
8 of the Commission.

Right to appear
in court

9 PART XII - MISCELLANEOUS

10 **55.** Subject to the provisions of this Act, the Minister may give to
11 the Commission directives of a general nature or relating generally to
12 matters of policy with respect to the objectives and functions of the
13 Commission, and it shall be the duty of the Commission to comply with the
14 directives.

Directives by the
Minister, etc.

15 **56.-(1)** The Commission may make regulations for carrying out its
16 objectives under this Act.

Regulations

17 (2) Without prejudice to the generality of subsection (1) of this
18 section, the regulations may provide for-

- 19 (a) the financial management of the affairs of the Commission;
20 (b) the protection of personal data and data subjects;
21 (c) the manner in which the Commission may exercise any power
22 or perform any duty or function under this Act;
23 (d) any matter that under this Act is required or permitted to be
24 prescribed;
25 (e) the forms of applications and related documents required for
26 the purposes of this Act;
27 (f) the procedures to be followed under this Act in the submission
28 of complaints to the Commission;
29 (g) frequency of filing, and content of compliance returns by data
30 controllers and data processors of major importance to the Commission;

	1	(h) fees, fines, and charges prescribed under this Act, and such related
	2	matters; and
	3	(i) any matter that the Commission considers necessary or expedient
	4	to give effect to the objectives of this Act.
	5	(3) The regulations made pursuant to this Act may-
	6	(a) create offences, in respect of any contravention of the regulations;
	7	and
	8	(b) impose penalty not exceeding that prescribed in this Act.
	9	(4) The Commission may, prior to making any regulation under this
	10	Act, publish on its website, a draft regulation and a notice inviting comments to
	11	be submitted on the proposed regulation within a stipulated time.
Directives, codes and guidelines	12	57. The Commission may, where necessary, issue directives, codes,
	13	or guidelines on the-
	14	(a) conduct of the business and operations of the Commission in a
	15	manner that-
	16	(i) fosters accountability, ensures transparency, and consistency with
	17	the highest ethical standards, and
	18	(ii) ensures compliance with international best practice, as it relates to
	19	the regulation of data protection and privacy;
	20	(b) budgeting and expenditure of the Commission in accordance with
	21	the provisions of this Act;
	22	(c) governance code for the Commission; and
	23	(d) any other matter relevant to the operations of the Commission.
Priority of the Act	24	58. Where the provisions of any other law or enactment, in so far as
	25	they provide or relate directly or indirectly to the processing of personal data, is
	26	inconsistent with any of the provisions of this Act, the provisions of this Act
	27	shall prevail.
Transitional provisions	28	59.-(1) As it relates to the provisions of this Act, the Commission is
	29	the successor-in-title in every way to the Nigeria Data Protection Bureau,
	30	which existed before the commencement of this Act, and all persons engaged

1 by the Commission shall have the same rights, powers, and remedies, as
2 existed against the Nigeria Data Protection Bureau before the
3 commencement of this Act.

4 (2) For the purpose of subsection (1)-

5 (a) any person who, prior to the commencement of this Act, was a
6 staff of the Nigeria Data Protection Bureau shall continue in office, and be
7 deemed to have been appointed under this Act on such terms and conditions
8 not less favourable than that enjoyed prior to the transfer of service;

9 (b) all existing agreements and compacts currently in effect by the
10 Nigeria Data Protection Bureau, as it relates to the provisions of this Act
11 shall continue;

12 (c) all records and equipment previously belonging to or allocated
13 for use to the Nigeria Data Protection Bureau shall become, on the effective
14 date of this Act, part of the records and equipment of the Commission;

15 (d) properties held immediately before the commencement of this
16 Act on behalf of the Nigeria Data Protection Bureau shall on the
17 commencement of this Act, be vested in the Directorate established under
18 this Act;

19 (e) any proceeding or cause of action pending or existing
20 immediately before the commencement of this Act by or against Nigeria
21 Data Protection Bureau, in respect of any right, interest, obligation or
22 liability may be commenced or continued, as the case may be by the
23 Commission; and

24 (f) all orders, rules, regulations, decisions, directions, licenses,
25 authorizations, certificates, consents, approvals, declarations, permits,
26 registrations, rates or other documents that are in force before the coming
27 into force of this Act and that are made or issued by National Information
28 Technology Development Agency or Nigeria Data Protection Bureau shall
29 continue in force as if they were made or issued by the Commission until
30 they expire or are repealed, replaced, reassembled or altered.

Interpretation

1 **60.** In this Act, unless the context otherwise requires-

2 "automated decision-making" means a decision based solely by automated

3 processing by automated means, without any human involvement;

4 "applicable law" means any law enacted by the National Assembly or House of

5 Assembly of any State in Nigeria;

6 "binding corporate rules" means personal data protection policies and

7 procedures adhered to by the members of a group of firms under common

8 control with respect to the transfer of personal data among such members and

9 containing provisions for the protection of such personal data;

10 "biometric data" means personal data resulting from specific technical

11 processing relating to the physical, physiological, or behavioural

12 characteristics of an individual, which allow or confirm the unique

13 identification of that individual, including without limitation by physical

14 measurements, facial images, blood typing, fingerprinting, retinal scanning,

15 voice recognition and deoxyribonucleic acid (DNA) analysis;

16 "certification mechanism" means certification by an official or professional

17 third-party entity that evaluates the personal data protection policies and

18 procedures of data controllers and data processors according to recognised

19 standards;

20 "child" has the meaning ascribed in the Child's Right Act;

21 "Commission" means the Nigeria Data Protection Commission established

22 under this Act;

23 "consent" means any freely given, specific, informed, and unambiguous

24 indication, whether by a written or oral statement or an affirmative action, of an

25 individual's agreement to the processing of personal data relating to him or to

26 another individual on whose behalf he has the Commission to provide such

27 consent;

28 "Council" means the Governing Council of the Commission established under

29 this Act;

30 "competent authority" means the Government of Federal Republic of Nigeria,

- 1 any state government, any statutory authority, government authority,
2 institution, agency, department, board, or commission, exercising
3 executive, legislative, judicial, investigative, regulatory, or administrative
4 functions, pursuant to any applicable law.
- 5 "court" means a High Court or Federal High Court;
- 6 "data controller" means an individual, private entity, public Commission or
7 agency or any other body who or which, alone or jointly with others,
8 determines the purposes and means of the processing of personal data;
- 9 "data controller or data processor of major importance" means a data
10 controller or data processor that is domiciled, resident in, or operating in
11 Nigeria and processes or intends to process personal data of more than such
12 number of data subjects who are within Nigeria, as the Commission may
13 prescribe, or such other class of data controller or data processor that is
14 processing personal data of particular value or significance to the economy,
15 society or security of Nigeria as the Commission may designate;
- 16 "data processor" means an individual, private entity, public authority, or any
17 other body, who or which processes personal data on behalf of or at the
18 direction of a data controller or another data processor;
- 19 "data subject" means an individual to whom personal data relates;
- 20 "Minister" means the Minister charged with the responsibility of matters
21 relating to communications and digital economy;
- 22 "National Commissioner" means the National Commissioner of the Nigeria
23 Data Protection Commission;
- 24 "personal data" means any information relating to an individual, who can be
25 identified or is identifiable, directly or indirectly, by reference to an
26 identifier such as a name, an identification number, location data, an online
27 identifier or one or more factors specific to the physical, physiological,
28 genetic, psychological, cultural, social, or economic identity of that
29 individual;
- 30 "personal data breach" means a breach of security of a data controller or data

1 processor leading to or reasonably likely to lead to the accidental or unlawful
2 destruction, loss, alteration, unauthorised disclosure of, or access to, personal
3 data transmitted, stored, or otherwise processed;

4 "President" means the President and Commander-in-Chief of the Armed
5 Forces of the Federal Republic of Nigeria;

6 "processing" means any operation or set of operations which is performed on
7 personal data, whether or not by automated means, such as collection,
8 recording, organisation, structuring, storage, adaptation or alteration, retrieval,
9 consultation, use, disclosure by transmission, dissemination or otherwise
10 making available, alignment or combination, restriction, erasure or
11 destruction, and does not include the mere transit of data originating outside
12 Nigeria;

13 "pseudonymization" means the processing of personal data in such a manner
14 that the personal data can no longer be attributed to a specific data subject
15 without the use of additional information, provided that such additional
16 information is kept separately and is subject to technical and organisational
17 measures to ensure that the personal data are not attributed to an identified or
18 identifiable natural person;

19 "sensitive personal data" means personal data relating to an individual's-

20 (a) genetic and biometric data, for the purpose of uniquely identifying
21 a natural person;

22 (b) race or ethnic origin;

23 (c) religious or similar beliefs, such as those reflecting conscience or
24 philosophy;

25 (d) health status;

26 (e) sex life;

27 (f) political opinions or affiliations;

28 (g) trade union memberships; or

29 (h) other information prescribed by the Commission, as sensitive
30 personal data pursuant to section 31(2); and

1 "social security laws" means "the Employee Compensation Act, Pension
2 Reform Act, National Health Insurance Authority Act, National Housing
3 Fund Act, Nigeria Social Insurance Trust Fund Act, Industrial Trust Fund
4 Act or any other similar law.

5 **61.** This Bill may be cited as the Nigeria Data Protection Citation
6 (Establishment, etc.) Bill, 2023.

1 SCHEDULE

2 SUPPLEMENTARY PROVISIONS RELATING TO PROCEEDINGS

3 OF THE COUNCIL

4 *[Section 8(3)]*5 *Council to Regulate Proceedings*

6 1. Subject to the provisions of this Act, the Council may make
7 standing orders regulating the proceedings of the Council and set up any
8 Committee. The Council shall meet once per quarter.

9 Presiding Officer

10 2. Every meeting of the Council shall be presided over by the
11 Chairman, and where the Chairman is unable to attend a particular meeting, the
12 members present at the meeting shall elect one of their members to preside at
13 the meeting.

14 *Quorum*

15 3. The quorum at a meeting of the Council shall be the Chairman, or
16 in an appropriate case, the person presiding at the meeting under item 2 of this
17 Schedule, and four other members.

18 4. The quorum of any committee of Council shall be determined by
19 the Council.

20 *Voting*

21 5. At a meeting of the Council, each member present shall be entitled
22 to one vote and any question on which a vote is required shall be determined by
23 a majority of votes of members present and voting but, in the case of an equal
24 division of votes, the Chairman or the member presiding over the meeting shall
25 have a casting vote.

26 6. Where the Council seeks the advice of any person on a particular
27 nature, the Council may invite that person to attend for such period as it deems
28 fit, but the person, who is invited shall not be entitled to vote at any meeting of
29 the Council and shall not count towards the quorum.

1 *Teleconference Meeting*

2 7. In addition to meeting with all participants physically present,
3 the Council may hold or continue a meeting by the use of any means of
4 communication by which all the participants can hear and be heard at the
5 same time and such a meeting is referred to in this item as a "tele-conference
6 meeting".

7 8. A member of the Council, who participates in a teleconference
8 meeting shall be taken for all purposes to have been present at the meeting.

9 9. The Council may establish procedure for tele-conference
10 meetings (including recording the minutes of such meetings) in its minute's
11 book.

12 *Committees of the Council*

13 10. Subject to Standing Orders made by the Council pursuant to
14 this Act, the Council may appoint such number of standing and ad hoc
15 committees, as it deems fit to consider and report on any matter with which
16 the Council is concerned.

17 11. Every Committee appointed under the provisions of item 10
18 shall be presided over by a member of the Council, and shall be made up of
19 such number of persons, as the Council may determine in each case.

20 12. The decision of a Committee shall have no effect until it is
21 approved or ratified by the Council.

22 *Seal of the Commission*

23 13. The fixing of the seal of the Commission shall be done and
24 authenticated by the signature of the National Commissioner or such other
25 member authorised by the Council to act for that purpose.

26 14. Any contract or instrument which, if made by a person not
27 being a body corporate, shall not be required to be under seal, may be made
28 or executed by the National Commissioner or by any other officer or staff
29 specifically authorised by the National Commissioner to act for that
30 purpose.

1 15. Any document purporting to be a contract, an instrument, or other
2 document signed or sealed on behalf of the Commission shall be received in
3 evidence and shall, unless the contrary is proved, be presumed, without further
4 proof, to have been so signed and sealed.

5 *Miscellaneous*

6 16. The validity of a proceeding of the Council or its Committee is not
7 adversely affected-

8 (a) by any vacancy in the membership of the Council;

9 (b) by any defect in the appointment of a member of the Council, staff,
10 or committee; or

11 (c) by reason that a person not entitled to do so took part in the
12 proceeding.

13 17. A member of the Council or any of its Committees, who has a
14 personal interest in any contract or arrangement entered into or proposed to be
15 considered by the Commission shall-

16 (a) disclose to the members of the Council the nature of the interest, in
17 advance of any consideration of the matter;

18 (b) not influence nor seek to influence a decision to be made in
19 relation to the matter;

20 (c) take no part in any consideration of the matter; and

21 (d) be absent from the meeting or that part of the meeting during
22 which the matter is discussed.

18. If a member of the Council discloses an interest pursuant to item 17 the disclosure shall be recorded in the minutes of the meeting of the Council.

EXPLANATORY MEMORANDUM

*(This Memorandum does not form part of the above Act
but is intended to explain its purport)*

This Bill seeks to provide a legal framework for the protection of personal information, and establish the Nigeria Data Protection Commission for the regulation of the processing of personal information.