



# NEWSLETTER



## DATA PROTECTION LAW IN NIGERIA: AN OVERVIEW

### INTRODUCTION

The Nigerian Data Protection Act ('NDPA' or the 'Act') was signed into law on the 14th of June 2023 by President Bola Tinubu. The signing of this law marks a new regime for the protection of personal data and the operation of data protection in Nigeria. Before the enactment of the Act in June 2023, there was the Nigerian Data Protection Regulation ("NDPR" or "regulation") of 2019 which served as the standard regulation for data protection in Nigeria. The Act now serves as the legal framework for regulating data protection in Nigeria superseding the already existing regulation of the National Information Technology Development Agency Act.

### OBJECTIVES OF THE NIGERIAN DATA PROTECTION ACT

Some of the objectives<sup>[1]</sup> of the Act include

1. To safeguard the fundamental rights and freedom of data subject
2. To serve as a regulation for processing personal data
3. To promote best practices for data processing in Nigeria
4. To safeguard personal data and the privacy of data subjects
5. To ensure the fair and accountable use of personal data
6. To strengthen the legal foundation of the national digital economy

The objectives, as contained, in the Act are a clear indication of the effort of the government to ensure that the citizens' data are properly and adequately protected through standard and best practices.

### HIGHLIGHTS

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## HIGHLIGHTS OF THE NIGERIAN DATA PROTECTION ACT

**1. The Establishment of the Nigeria Data Protection Commission (the “Commission”)** - The Act establishes the Nigeria Data Protection Commission as an agency that operates as a body corporate with perpetual succession. The establishment of the commission under the law gives them the power of a corporate body with a separate legal entity that can sue and be sued. This also gives the Commission some autonomy to operate in the best interest of Nigerians and the development of data protection in the ever-changing world.

The Commission has the function of ensuring the development of personal data protection, and technologies, registering data controllers, and accrediting and granting licences to people who provide data compliance services. The commission is saddled with the responsibility of promoting public awareness and the understanding of personal data protection. The Commission also receives complaints concerning the violation of any sections of the act or any data breach violation in Nigeria.

A governing council is created for the Commission.[2] The governing council is responsible for formulating the policy directions of the Commission, approving the strategic plans, budgets, annual reports and financial reports, advising the National Commissioner and approving staff regulations. The members of the governing council include representatives from various governmental agencies such as the Ministry of Justice, the Federal Ministry for Communication and digital economy, the Central Bank of Nigeria and the private sector.

**2. Sensitive Personal Data** – The Act makes provisions for the process of dealing with sensitive data. It gives the permissible parameters under which sensitive data can be used. The Act makes it mandatory for consent to be obtained and not withdrawn before such sensitive data can be processed. Also, sensitive data processing can only occur where it involves legitimate activities, coupled with the appropriate safeguards.

Furthermore, the Act provides that a data controller can only process data if it relates to a defence of a legal claim or obtaining legal advice or in the process of a legal proceeding. Other listed permissible circumstances where a data controller can process data are where processing is necessary to protect vital interests, where it is necessary for substantial public interests,

suitable to protect fundamental human rights, medical care or community welfare, public health or any historical, statistical and scientific purposes.

The Act discusses the case of children who cannot give consent for the use of their data. In this case, the data controller is expected to obtain the consent of the parent or the legal guardian. Further obligations are placed on the data controller such as verifying age and consent. The exceptions here are where it involves the vital interests of the child, where it is for education, medical or school care and where it is necessary for proceedings before a court.

### **3. Rights and Obligations of Data Controller –**

- A data controller is expected to have a Data protection officer that understands the data protection law and practices and such an officer should be an employee of the data controller. The function of this data protection officer includes monitoring compliance with the Act or any regulations.
- The Data controller must implement measures to guarantee data security, integrity and confidentiality.
- Personal data breaches must be reported within 72 hours to the Commission of occurrences, describing the breach nature, and the number of data subjects and personal data records concerned.
- A data Controller should ordinarily not transfer personal data to another country. This can only be done where the recipient of the personal data is subject to laws or rules that afford an adequate level of personal data protection.





## THE QUESTION OF CONFLICT BETWEEN THE ACT AND THE REGULATION

Before the enactment of the NDPA, the NDPR was the regulation in Nigeria for data protection. But since the enactment of the NDPA, the question that arises is whether the enactment of NDPA makes the NDPR null and void. This question has, however, been answered in section 63 of the Act which provides that: “where the provisions of any other law or enactment, in so far as they provide or relate directly or indirectly to the processing of personal data, are inconsistent with any of the provisions of this Act, the provisions of this Act shall prevail.” This connotes that the Act prevails over the NDPR and the NDPR can be taken as a regulation of the NDPA.

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## COMMENTARY AND CONCLUSION

The duties of the Commission can be categorized as protectional and promotional. The protectional duty of the Commission arises with ensuring that the data of Nigerians are protected fully while minimizing the possibility of risks to the barest minimum. The promotional duty is to ensure that people are aware of their rights concerning their data and the need to understand how to handle their data with a third party. It then behoves on the Commission to ensure that these data rights promotions are taken further even to the young Nigerian population. Equally, the mix of the governing council with members of the government and private sector is a step in the right direction to ensure that both sectors are equally represented in the decision-making of the Commission. The Act does not give an allowance to accommodate the other reasons why a data controller may need to process sensitive data. Where a reason does not fall under any of the identifiable reasons produced in the Act, it may become difficult to properly process such data. It is essential that there is a follow-up regulation expanding the scope for data processing.

If you need further clarification on this matter you may contact **Omotayo Akinrinwa** at **[oakinrinwa@wyze-ng.com](mailto:oakinrinwa@wyze-ng.com)** and on **07069577626**

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