



LEGAL NOTICE NO.....

**THE DATA PROTECTION ACT, 2019**  
(No. 24 of 2019)

**THE DATA PROTECTION (COMPLIANCE AND ENFORCEMENT)  
REGULATIONS, 2021**

**ARRANGEMENT OF REGULATIONS**

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**SCHEDULE**

**THE DATA PROTECTION ACT, 2019**

*(No. 24 of 2019)*

**IN EXERCISE** of the powers conferred by sections 31, 54 and 61 of the Data Protection Act, 2019, the Data Commissioner makes the following Regulations—

**THE DATA PROTECTION (COMPLIANCE AND ENFORCEMENT)  
REGULATIONS, 2021**

**PART I—PRELIMINARY**

Citation.                    **1.** These Regulations may be cited as the Data Protection (Compliance and Enforcement) Regulations, 2021.

Interpretation.            **2.** In these Regulations, unless the context otherwise requires

No. 24 of 2019.

—  
“Act” means the Data Protection Act, 2019;

“Data Commissioner” has the meaning assigned to it under section 2 of the Act;

“Office” has the meaning assigned to it under section 2 of the Act;

“complainant” means a person who has lodged a complaint pursuant to regulation 4;

“enforcement notice” means a notice served by the Data Commissioner under regulation 15;

“respondent” means a person against whom the complaint is lodged;

“penalty” means a penalty imposed by a penalty notice; and

“penalty notice” means a notice issued by the Data Commissioner under regulation 19.

Object and purpose of the Regulations.

**3.** The object and purpose of these Regulations is to give effect to the obligations of the Data Commissioner provided for under the Act including providing for the enforcement provisions.

**PART II—COMPLAINT HANDLING PROCEDURE**

Lodging of complaint.

**4.** (1) Pursuant to section 56 of the Act, a data subject or any person aggrieved by a decision of any person under the Act may lodge a complaint with the Data Commissioner in any of the following —

- (a) in Form 1 set out in the Schedule;
- (b) subject to section 56(3) of the Act, orally;
- (c) online by email, web posting, complaint management information system;
- (d) by appropriate electronic means; or
- (e) by any other appropriate means.

(2) A complaint under paragraph (1) may be lodged by—

- (a) the complainant in person;
- (b) a person acting on behalf of the complainant;
- (c) any other person authorized by law to act on behalf of the that person; or
- (d) anonymously.

(3) Upon receipt of the complaint under paragraph (1), the Office shall in writing acknowledge receipt of the complaint to the data subject.

(4) The complaint under paragraph (1) shall be lodged free of charge.

Register of complaints.

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

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

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

Screening of complaints.

**6.** (1) A complaint shall, upon being entered into the register under regulation 5, be screened by the Office.

(2) The Office may, upon screening the complaint—

- (a) admit the complaint;
- (b) where appropriate, advise the complainant in writing that the matter is not within the mandate of the Data Commissioner; or
- (c) advise the complainant that the matter lies for determination by another body or institution and refer the complainant to that body or institution in Form 2 set out in the Schedule.

(3) Despite paragraph (2), the Data Commissioner may decline to admit a complaint where the complaint—

- (a) does not raise any issue under the Act;
- (b) is trivial, scandalous or vexatious;
- (c) not made in good faith; or
- (d) warrants a decline on any other circumstances.

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

- (a) conduct an inquiry into a complaint;
- (b) conduct investigations;
- (c) undertake or facilitate mediation, conciliation or negotiation in accordance with these Regulations; or
- (d) use any other mechanisms to resolve a complaint.

Discontinuation of a complaint.

**7.** The Data Commissioner may discontinue a complaint in Form 3 set out in the Schedule, where—

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

(b) a complainant is required to communicate with the Office and fails or neglects to communicate without justifiable reasons,  
and shall record the reasons for discontinuation and shall notify the complainant accordingly.

Withdrawal of a complaint.

**8.** (1) A complainant may, withdraw a complaint at any stage during its consideration and before a determination is made in Form 3 set out in the Schedule.

(2) Where a complaint has been withdrawn under paragraph (1), it may be deemed to have been settled.

Joint consideration of complaints.

**9.** (1) Where two or more complaints are lodged in which the same or similar allegations are raised against a respondent, the Data Commissioner may —

(a) consolidate the complaints; or

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

(2) The decision on a test complaint shall apply, with necessary modifications, to all other complaints with which the test complaint was consolidated.

(3) The Data Commissioner shall in writing communicate to the parties any decision made under this regulation.

Language.

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

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

Notification of a complaint to the respondent.

**11.** (1) Upon admission of a complaint, the Office shall notify the respondent in Form 4 set out in the Schedule and require the respondent within fourteen days to—

- (a) make representations and provide any relevant material or evidence in support of its representations;
- (b) review the complaint with a view of summarily resolving the complaint to the satisfaction of the complainant; or
- (c) provide a response with the required information.

(2) Where a respondent does not take any action under paragraph (1), the Office shall proceed to determine the complaint in accordance with these Regulations.

(3) The notice referred to under paragraph (1) shall specify options available to resolve a complaint including referring the dispute to alternative dispute resolution mechanisms.

Investigations of a complaint.

**12. (1)** In investigating a complaint, the Data Commissioner may, subject to section 57—

- (a) issue summons in Form 5 set out in the Schedule requiring the attendance of any person at a specified date, time and place;
- (b) examine any person in relation to a complaint;
- (c) administer an oath or affirmation on any person during the proceedings;
- (d) require any person to produce any document or information from a person or institution; and
- (e) on obtaining warrant from the court, enter into any establishment or premises and conduct a search and may seize any material relevant to the investigation.

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

(4) In conducting investigation under this paragraph, the Data Commissioner shall be guided by the provisions of the Fair Administrative Action Act, 2015.

No. 4 of 2015.

Outcome of investigation.

**13.**(1) Upon the conclusion of the investigation, the Data Commissioner shall make a determination based on the findings of the investigations.

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

- (a) the nature of the complaint;
- (b) a summary of the relevant facts and evidence adduced;
- (c) the reasons for the decision;
- (d) the remedy to which the complainant is entitled; and
- (e) any other relevant matters.

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

- (a) issuance of an enforcement notice to the respondent in accordance with these Regulations;
- (b) issuance of a penalty notice imposing an administrative fine where a respondent fails to comply with the enforcement notice;
- (c) dismissal of the complaint where it lacks merit;
- (d) recommendation for prosecution; or
- (e) an order for compensation to the data subject by the respondent.

(4) The Data Commissioner shall in writing communicate the decision under paragraph (3) to the parties.

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

- (a) binding on the parties; and
- (b) shall be enforced as an order of the Court.



Negotiation,  
mediation or  
conciliation.

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

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

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

(4) At the conclusion of the negotiations, mediation or conciliation process, the parties shall sign a negotiation, mediation or conciliation agreement in the manner specified in Form 6 set out in the Schedule.

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

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

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

(8) If the complaint is not determined through negotiations, mediation or conciliation, the Office shall proceed to determine the complaint as provided for in the Act and these Regulations.

### **PART III—ENFORCEMENT PROVISIONS**

Issuance of enforcement notice.

**15.** (1) The Data Commissioner may pursuant these Regulations or section 58 of the Act issue an enforcement notice in Form 8 set out in the Schedule.

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

Service of an enforcement notice.

**16.** (1) An enforcement notice shall be deemed to be duly served on the concerned person if—

- (a) an electronic copy of enforcement notice is sent through the concerned person's registered email address; or
- (b) the enforcement notice is posted or physically delivered to the registered offices of the concerned person, in the absence of an electronic address.

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

Review of enforcement notice.

**17.** (1) A person to whom an enforcement notice is given may apply in Form 9 set out in the Schedule to the Data Commissioner for a review of the enforcement notice.

(2) An application under paragraph (2) may be made only—

- (a) before the end of the period specified in the enforcement notice; and
- (b) on the ground that—
  - (i) a change of circumstances or new facts have arisen; or
  - (ii) one or more of the provisions of that notice need not be complied with in order to remedy the failure identified in the notice.

Appeals against enforcement notice.

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

Issuance of penalty notice.

**19.**(1) The Data Commissioner shall, where any of the circumstances specified under section 62 and these Regulations arises, issue a penalty notice in Form 10 set out in the Schedule for each breach identified in the enforcement notice.

(2) A penalty notice shall contain—

- (a) the name and address of the concerned person, to whom it is addressed;
- (b) the reasons why the Data Commissioner proposes to impose the penalty and the amount thereof;
- (c) an administrative fine imposed as contemplated under section 63 of the Act;
- (d) details of how the penalty is to be paid;
- (e) details of the rights of appeal under section 64; and
- (f) any other relevant matter.

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

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

Enforcement of penalty notice.

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

- (a) on the lapse of the period specified in the penalty notice for payment of penalty;
- (b) on the final determination of any appeal against the penalty notice; or
- (c) on the lapse of the period given to appeal against the penalty.

**SCHEDULE**

**FORM 1**

**(r. 4 (1) (a))**

**COMPLAINT SUBMISSION FORM**

<b>Particulars of a complaint.</b>	
1.	Are you—  (a) Personally affected by the issues(s) at stake in your complaint (b) Not personally concerned, but would like to draw the attention of the Data Commissioner to an alleged breach of data protection rules as a: (i) guardian,  (ii) informant or  (iii) whistle-blower?
2.	Who are you complaining against?
3.	Please describe your complaint and specify which personal data protection laws you believe have been infringed by the person or institution you are complaining against.
4.	Please explain what you would like the institution to do in order to remedy the alleged breach or breaches.
5.	When did you become aware of the alleged breach or breaches?
6.	If you have supporting documents to substantiate your claim, please annex copies to this Form.
<b>Which other steps have you already taken in relation to the Complaint</b>	

7.	<p>Have you already contacted the institution you want to complain against concerning the alleged breach or breaches? If yes, please provide details. For example, if you want to complain about the reply you received to your request for personal data, please provide a copy of that reply.</p> <p>(a) Yes (b) No.</p>
8.	<p>Have you submitted the same matter to other bodies (such as the Commission on Administrative Justice, (Ombudsman etc.)?)</p>
<b>Contact Information</b>	
9.	<p>Your Name (*please note: if you are acting on behalf of a data subject, please enter the data subjects name here, not yours – please enter your details under "contact information" below)</p>
	Salutation*
	First name *
	Surname *
10.	Contact information*
11.	Email Address*
<b>Confidential treatment</b>	
12.	<p>The Data Commissioner treats all complaints confidentially. However, the investigation of your complaint may require disclosing your identity and the allegations you made to the institution against which you complained and, if necessary for the investigation, to the third parties involved, including other national regulatory authorities where relevant.</p> <p>The Data Commissioner will also copy the Data Protection Officer (DPO) of the institution concerned into all correspondence between the Data Commissioner and the institution in question.</p>

	<p>Any public cases (e.g. for the annual report of the Data Commissioner) will be completely anonymous.</p>
	<p>Do you accept this standard confidential treatment of your complaint? If not and you wish to remain anonymous to the institution concerned, to the relevant DPO or to third parties, please explain the reasons for your request. Please also explain which additional safeguards you would like us to take. We will consider how far we can implement these requests and will keep you informed. *</p> <p>(a) Yes (b) No</p>

Public Participation

**Form 2**

**(r. 6(2)(c))**

**OFFICE OF THE DATA PROTECTION COMMISSION  
REFERRAL OF A COMPLAINT**

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**NAME OF COMPLAINANT/DATA SUBJECT**

.....

**ADDRESS/CONTACT**

.....

**INSTITUTION/DATA CONTROLLER/PROCESSOR COMPLAINED  
AGAINST**

.....

.....

**NATURE OF COMPLAINT**

.....

.....

**INITIAL ASSESSMENT OF THE COMPLAINT**

.....

.....

.....

.....

**ACTION REQUESTED BY THE COMPLAINANT**

.....

.....

.....

**OFFICE/INSTITUTION REFERRED TO**

.....

.....

**FOR THE ATTENTION OF**

.....

**REFERRED BY**

.....

**SIGNATURE.....DATE.....**

...

---

Public Participation



**Form 3**

**(r. 7) (r.8(1))**

**OFFICE OF THE DATA PROTECTION COMMISSIONER  
REQUEST TO DISCONTINUE OR WITHDRAW A COMPLAINT**

*Note:*

- (i) *If the space provided for in this Form is inadequate, submit information as an Annexure to this Form.*

**PART I: NATURE OF REQUEST**

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

DISCONTINUATION

WITHDRAWAL

---

**NAME OF COMPLAINANT/DATA SUBJECT**

.....

**ADDRESS/CONTACT**

.....

.....

**INSTITUTION/DATA CONTROLLER/PROCESSOR COMPLAINED AGAINST**

.....

.....

**NATURE OF COMPLAINT**

.....

.....

**INITIAL ASSESSMENT OF THE COMPLAINT**

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.....

**ACTION REQUESTED BY THE COMPLAINANT**

.....

.....

.....

**REASONS FOR WITHDRAW/DISCONTINUE COMPLIANT**

.....

.....

**SIGNATURE**.....

**DATE**.....

**PART II – to be completed by Data Protection Officer (or designate)**

1. Date Received [STAMP]

2. Reference Number: .....

**3. REQUEST ASSENTED/DECLINED TO BY THE DATA COMMISSIONER**

.....

4. Signature of Data Protection Officer/authorized person:

.....

Date:.....20.....

**FORM 4**

**(r.11 (1))**

**Notification of a complaint to the Respondent**

<b>Details of the Respondent</b>	
Name	
Registration Number	
Address	
<b>Particulars of the Complaint</b>	
Complainant (Optional)	
Provision of the Act breached	
Remedy being sought by the Complainant	
<b>Options available to the Respondent to determine the complaint</b>	
Investigations	
Alternative Dispute Resolution	
Summarily resolve the Complaint with the Complainant	
<b>Representations to be made to the Data Commissioner</b>	

**FORM 5**

**Summons to Enter Appearance**

**(r.12 (1) (a))**

**OFFICE OF THE DATA PROTECTION COMMISSIONER**

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

\_\_\_\_\_ } **Complainant**

*AGAINST*

\_\_\_\_\_ } **Respondent**

TO: \_\_\_\_\_  
\_\_\_\_\_ *Address of the respondent*  
\_\_\_\_\_

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

**YOU ARE HEREBY REQUIRED** within 14 days from the date of service hereof to enter an appearance in the said Complaint. Should you fail to enter an appearance within the time mentioned above, the Data Commissioner may proceed with the resolution of the Complaint and issue an enforcement notice in your absence.

Given and issued under my hand and the Seal of the Office of the Data Protection Commissioner this ..... day of ..... 20.....

.....  
*Data Commissioner*

**Form 6**

**(r. 14 (4))**

**ALTERNATIVE DISPUTE RESOLUTION SETTLEMENT  
AGREEMENT**

The undersigned parties, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, have agreed to the following settlement or their dispute concerning

\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

In order to facilitate the above-specified terms of settlement, the parties further agree that on or before the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, they will  
Plaintiff: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant:

\_\_\_\_\_  
\_\_\_\_\_

**Plaintiff:**

Signature

Date

\_\_\_\_\_

**Defendant**

Signature

\_\_\_\_\_

Date

\_\_\_\_\_

**Advocate for Complainant(s)**

Signature

\_\_\_\_\_

Date

\_\_\_\_\_

**Advocate for Respondent(s)**

Signature

\_\_\_\_\_

Date

\_\_\_\_\_

Public Participation

**Form 7**

**(r. 15(1))**

**ENFORCEMENT NOTICE IN TERMS OF SECTION 58 OF THE  
DATA PROTECTION ACT, 2019**

**Reference number:** \_\_\_\_\_

**A DETAILS OF DATA SUBJECT**

Name(s) and surname/registered name of data.....

subject/complainant/aggrieved party:.....

Unique Identifier/ Identity Number.....

Residential, postal or business address:.....

Code .....

Contact number(s):.....

E-mail address:.....

**B DETAILS OF RESPONSIBLE PARTY**

Name(s) and surname/Registered name of responsible party:.....

Residential, postal or business address:.....

Code.....

....

Contact number(s):.....

E-mail address:.....

Complaint received by:

\_\_\_\_\_

(Full name(s) and surname)

Date received:

\_\_\_\_\_

Responsible party:

\_\_\_\_\_

(Full names)

**A. The Office has concluded that the protection of personal data of a data subject has been interfered with as follows:**

- A. Breach of the conditions for the lawful processing of personal data.
- B. Non-compliance with the duty to notify security compromises (section 43 of the Data Protection Act 24 of 2019)
- C. Non-compliance with the duty of confidentiality (section 29 of the Data Protection Act 24 of 2019)
- Non-compliance with obligations for direct marketing by means of unsolicited electronic communications (section 69 of the Data Protection Act 24 of 2019)
- Non-compliance with obligations regarding automated decision making (section 35 of the Data Protection Act 24 of 2019)
- Non-compliance with obligations regarding transfer personal information outside the Republic (section 48 of the Data Protection Act 24 of 2019)
- Breach of the provision of a code of conduct issued in terms of section 55

**B. The reasons for reaching this conclusion are:**

.....

.....

.....

.....

**C. The responsible party is hereby ordered to:**

.....

.....

.....

**D. Take the following specified steps:**

.....

.....

.....



.....  
To refrain from taking the following specified steps:  
.....  
.....  
.....  
.....  
.....

To stop the processing, the following specified personal information:  
.....  
.....  
.....

To stop processing of personal information for the following purpose:  
.....  
.....  
.....

To stop the processing of personal information in the following manner:  
.....  
.....  
.....

**D. Urgency**

The Data Commissioner directs that this notice should be complied with a matter of urgency for the following reasons:  
.....  
.....  
.....

**E. Time periods**

The responsible party must comply with this Enforcement Notice and the directives under C after 30 (thirty) working days from receiving this notice.  
The responsible party must comply with this Enforcement Notice and the directives under C after 4 (four) working days from receiving this notice.

**F. Request for Review:** The responsible parties may apply to the Data Commissioner for review of the Enforcement Notice within fifteen (15) working days of receiving this notice. In applying for the review, the responsible party shall state the reasons for the request for review of the Enforcement Notice.

**Right of Appeal:** The responsible party may appeal against this Enforcement Notice within 30 (thirty) working days of receiving this not

Public Participation

**Form 9**

**(r. 17 (1))**

**REVIEW OF ENFORCEMENT NOTICE**

**Reference number:** \_\_\_\_\_

**A DETAILS OF DATA SUBJECT**

Name(s) and surname/registered name of data.....

Subject/complainant/aggrieved party:.....

Unique Identifier/ Identity Number.....

Residential, postal or business address:.....

Code .....

Contact number.....

E-mail address:.....

**B DETAILS OF PARTY THAT SOUGHT REVIEW OF NOTICE**

Name(s) and surname/Registered name of responsible party:.....

Residential, postal or business address.....

Code .....

Contact number(s):.....

E-mail address:.....

Complaint received by:

\_\_\_\_\_  
(Full name(s) and surname)

Date received:  
\_\_\_\_\_

Responsible party:  
\_\_\_\_\_  
(Full names)

**A. The Office had concluded that the protection of personal data of a data subject had been interfered with as follows:**

.....  
.....

**B. The reasons for reaching the conclusion were:**

.....  
.....  
.....

**C. The responsible party had been ordered to:**

.....  
.....  
.....

**D. Change of circumstances or new facts have arisen:**

.....  
.....  
.....

**E. One or more of the provisions of that notice need not be complied with in order to remedy the failure identified in the notice:**

**E. Time periods**

The party that sought the review has complied with this Enforcement Notice and the directives under C after 30 (thirty) working days from receiving this notice.

The party must serve this Review of Enforcement Notice and the directives under C after 4 (four) working days from receiving this notice.

**Form 10**

**(r. 19(1))**

**PENALTY NOTICE**

Alleged data controller/data processor.....

Address.....  
.....

County.....  
.....

Country.....  
.....

I, .....an authorised officer of Office of the Data Protection Commissioner have reason to believe that on..... you committed the offence as marked overleaf, within the area of.....

This notice offers you the opportunity to discharge any liability to conviction for the above offence by payment of a penalty. If you pay the penalty of ..... within 14 days no further proceedings will be taken. If you do not pay the penalty within that time, you may be prosecuted for the offence described above and, if convicted, could receive a much larger fine; the maximum for the offence is stated overleaf. [You may pay the lesser amount of ..... if you do so within 10 days of receiving this notice.]

Payment must be made to [Name/Title and Address of Officer to whom payments should be sent].

Authorised  
Officer.....  
Name.....  
Signature.....  
Date.....

SERIAL NO

Made on the ....., 2021

**IMMACULATE KASSAIT,**  
Data Commissioner.

*Office of the Data Protection Commissioner.*

Public Participation