

NIGERIA DATA PROTECTION ACT 2023:

PART III and IV of the Act



Introduction



In our ongoing examination of the Nigeria Data Protection Act 2023 (“the act”), we have already explored the salient provisions of parts I and II of the act in previous articles.



In this article, we look further into the act by focusing on parts III and IV, titled “Appointment of the National Commissioner and other staff of the Commission” and “Financial Provisions” respectively. The Act outlines the criteria and processes for appointing the National Commissioner and staff of the Commission, who are working tirelessly to ensure the Commission fulfils its functions effectively.



We also explore the provisions of the Act that lay the groundwork for the establishment of a dedicated fund, accounts, and audit procedures to ensure the Commission's financial transparency and accountability



Appointment of the National Commissioner

The National Commissioner is the chief executive and accounting officer of the Commission and Secretary to the Governing Council (“the Council”). He/she is appointed by the President on the recommendation of the Minister of Communications and Digital Economy and is responsible for the execution of the policies and administration of the affairs of the Commission.

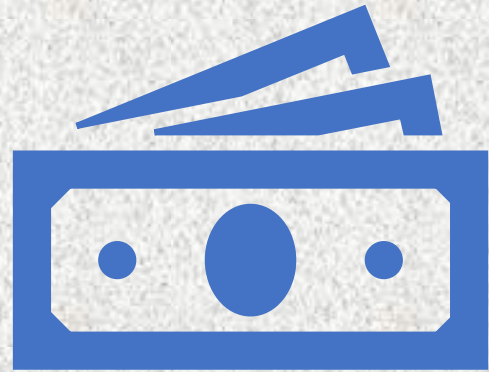
A person to be appointed as the National Commissioner shall hold a certification in data protection from an accredited training body and 10 years of cognate experience, at the senior management level, in data protection, cybersecurity management, information and communication technology, law, consumer protection, management science, or other relevant disciplines.

The National Commissioners shall hold office for a term of 5 years and may be re-appointed for another term of 5 years and no more. He/she shall not hold any other management position in a Ministry, Department or Agency of Government, corporation, company or any other business establishment.

Staff of the Commission



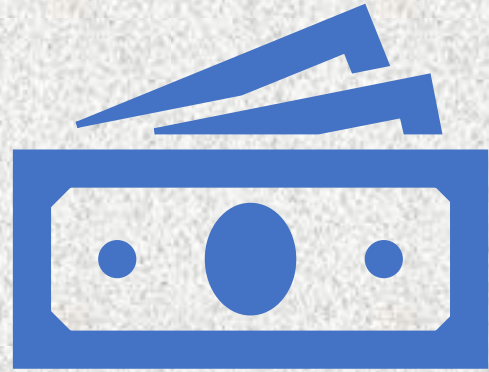
- ❖ The Staff of the Commission are recruited directly or by secondment from the Public Service of the Federation subject to the approval of the Council. The Commission will recruit such number as it deems necessary and expedient for the proper and efficient performance of its functions.
- ❖ The Commission may make staff regulations, subject to Council approval, relating to the appointment, promotion and disciplinary control of staff of the Commission; and regulating appeals by staff against dismissal or other disciplinary measures. Any instrument relating to conditions of service in the Public Service of the Federation shall be applicable, with such modifications, as may be necessary to the Commission pending the making of the Staff regulations. section 17 of the Act
- ❖ Staff of the Commission are entitled to pension and other retirement benefits as provided under the Pension Reform Act unless appointed to any office on conditions which preclude the grant of pension and other retirement benefits in respect of that office. The Council is vested with and shall exercise any power under the Pension Reform Act which would have been exercisable by a Minister or other authority of the Federal Government, other than the power to make regulations under the Pension Reform Act.



Establishment of the Fund of the Commission

The Commission shall establish a Fund (“the Fund”), managed by rules made by the Council, for the performance of its functions under the Act. There shall be paid into the Fund:

- ❖ A take-off grant as may be appropriated by the National Assembly which shall be drawn in the following manner:
 - ❖ 20% from the Consolidated Revenue Fund of the Federation
 - ❖ 40% from the Nigerian Communications Commission; and
 - ❖ 40% from the National Technology Development Agency
- ❖ 50% of the total amount of the take-off grant shall be provided to the Commission on the Commencement of the Act and the remainder 50% shall be provided on the anniversary of the date on which the Act commences.
- ❖ donations, gifts, loans, grants, aids, endowments, and voluntary contributions; However, acceptance of such gifts, aids, donations or contributions shall be consistent with the objectives and functions of the Commission under the Act.¹²
- ❖ returns on investment of the Commission;
- ❖ levies, fees, penalties, and fines collected by the Commission; and
- ❖ such other money or assets that may accrue to the Commission.



Establishment of the Fund of the Commission

The Commission may borrow such sums of money as required in the performance of its functions under the Act, subject to any applicable law.

The following are chargeable to the Fund:

- ❖ The cost of administration of the Commission
- ❖ Allowances and remuneration payable to the members of the Council;
- ❖ Remuneration, allowances, retiring benefits, such as pensions and gratuities, and such other money payable to the staff of the Commission;
- ❖ The payment for consultancies and contracts, including mobilisation, fluctuations, variations, and legal fees;
- ❖ Expenses necessary to meet capital expenditure, such as for the purchase, acquisition, or maintenance of property or other equipment of the Commission;
- ❖ Repayment of funds borrowed by the Commission, including interest on such borrowed funds; and
- ❖ Any other expenditure, approved by the Council, for the purposes of performing the functions of the Commission under the Act.

Annual Reports, Accounts and Audits



The Commission is obligated to keep proper records and accounts in a form which conforms with existing laws on accounts and audits. Such records shall include receipts, payments, assets and liabilities, income and expenditure.



The Accounts shall be audited not later than 6 months after the end of each year. The auditors shall be appointed in accordance with the guidelines provided and from the list maintained by the Auditor-General of the Federation.



The financial year of the Commission is from 1st January to 31st December every year unless otherwise decided by the Governing Council. The Commission is mandated to submit its annual report not later than 6 months after the end of each financial year through the Minister of Communications and Digital Economy to the National Assembly.



The report will detail its activities for the preceding year, audited accounts included and project an estimate of the expenditure and income for the next financial year. The Commission may also submit supplementary or adjusted statements of estimated income and expenditure to the National Assembly.

Conclusion



In conclusion, we delved into the crucial aspects related to the appointment of the National Commissioner and the recruitment of staff for the Commission, as well as the establishment and management of the Commission's Fund and expenditure priorities.

The National Commissioner's role as the chief executive and accounting officer is pivotal in steering the Commission's activities, with strict qualifications and term limits in place to ensure competence and accountability. Furthermore, the procedures for staffing and regulations regarding the Commission's workforce have been outlined, emphasizing the importance of efficient and transparent administration.

By the clear provisions of the Act on the Commission's authority to borrow funds and accept gifts, the Act empowers it to adapt and explore multiple sources of funds to carry out its functions. Moreover, the Act's strict requirements for record-keeping, auditing, and filing of annual reports will promote financial transparency and accountability.

As we continue our exploration of this pivotal legislation, we will unravel more layers of its intricate framework, providing a comprehensive understanding of the mechanisms driving data protection in Nigeria and reinforcing its significance in the digital era.

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