

(For Consultation)

Draft Order

Regarding the Data Subject Rights

After reviewing Law No. (30) of 2018 issuing the Personal Data Protection Law, and in particular Articles 17 to 24 thereof,

And upon the recommendation of the Chief Executive of the Authority,

Article 1

Obligations of the Data Controller and Data Processor towards data subjects

Data Controllers and Data Processors must observe the data subject's rights as detailed under Articles 17 to 25 in Law No. 30 of 2018, and in particular the following:

1. Inform the data subject with the necessary information and the purposes of processing when collecting and processing their personal data, whether directly or indirectly.
2. Comply with notifying the data subject of the processing or modification of their personal data in cases where they are required to be notified of that.
3. The data subject's right to give consent to the processing of their personal data, or to withdraw that consent.
4. Enabling the data subject to object to the direct marketing of their personal data.
5. Stopping the processing that may cause material or moral damage to the data subject or others.

Article 2

Decisions based on Automated Processing

The Data Controller shall inform the data subject about the decisions based on automated data processing.

The data subject must direct a written request to the Data Controller requesting that the processing be solely automated, explaining the reasons and justifications for raising the request, and the Data Controller must respond to the data subject's request within a maximum period of ten (10) working days, from the date of receiving the request.

If the automated processing relates to performance of a contract executed with the data subject, the Data Controller may reject the request subject to, hearing the data subject's concerns and, detailing the measures taken to safeguard the personal data of the data subject.

Article 3

Consent to process personal data and scope of application

Data Controllers must obtain consent to process personal data including sensitive personal data of data subjects unless the processing has a lawful basis under Articles 4 and 5 in Law No. 30 of 2018. In the absence of a lawful basis, data subjects must provide consent before processing can commence.

The Data Controller must, before commencing any of the processing activities, obtain the consent of the data subject when collecting personal data in the following ways:

- a. Physical collection of personal data through manual means for example, via forms, telephone calls etc.
- b. Data collected electronically from technology-based platforms for example websites and mobile applications via cookies (statistics - analytics cookies and/or marketing cookies - tracking cookies) installed or any other means.
- c. Embedded content on the platforms which may set third party tracking cookies on the users' browsers.

For the purposes of implementing the provisions of this order, the data subject consent means not having an objection regarding any processing operations conducted on his personal data by the data controller or the data processor, and that he is aware of the identity of the data controller and the purposes of processing, and that he can withdraw his consent regarding the processing or raise objections regarding the manner of processing.

Article 4

Cookie walls that make consent conditional for access to a website is an unlawful way of obtaining consent.

Article 5

Conditions of validity of consent of the data subject

Consent must comply with the following principles:

- a. Consent must be freely given and not be cited as a condition for using the service. Data subject must be given the opportunity to reject or options of consent for selection.
- b. To be issued by the guardian, legal guardian, or custodian of the data subject if he is deficient or incapable.
- c. Information provided must be simplified and clear to enable an informed consent. Data subject must know the Data Controller's and Data Processor's identity, purpose of data processing and the activities that will be conducted, and scope of processing, with the option to withdraw consent or object to processing at any time.
- d. Consent may be time-barred when processing of personal data is associated with a specific purpose, contract or activity and this must be clearly communicated to the data subject. In the absence of a time-barred processing, consent is for an indefinite time.
- e. Consent is explicit and unconditional.
- f. New consent should be obtained from the data subject if any changes occur to the processing activities.

Article 6

Procedures to be Established by the Data Controller

The Data Controller must establish consent management procedures and communicate these to the data subjects at the time of seeking consent.

The procedures shall cover the following and be communicated to data subjects in writing:

- a. Details of the written consent sought from the data subject and, consequences in case consent is not provided.

- b. Data subject's rights to withdraw consent at any point in time and the related process to follow. Withdrawal of consent should be facilitated the same as the process of providing consent.

Article 7

Withdrawal of consent

The data subject has the right at any time to submit a request to withdraw their consent to the processing of personal data without causing them any material or moral damage, and the data subject must notify the Data Controller about their request to withdraw consent.

The data subject's withdrawal does not affect his consent to the legality of the processing that took place based on the consent, before it was withdrawn.

Article 8

Procedures for withdrawal of consent

- a. The Data Controller must immediately stop processing any procedures data when it is initially based on the consent of the data subject.
- b. The Data Controller must respond to the withdrawal request within a period not exceeding ten working days from the date the request was received.
- c. If consent withdrawal is managed in a fully automated environment, the Data Controller shall stop the processing within one working day of receiving the request.
- d. If the Data Controller cannot process the request within the specified periods defined in paragraphs (a) and (b) of this article, the Data Controller must be able to justify the delay in processing the withdrawal and communicate in writing to the affected data subject, stipulating the time required to action the request.
- e. The request to withdraw consent does not affect the continuation of the data processing as long as the processing is based on the cases stipulated in Article (4) of the law.

Article 9

Cases in which the data subject has no right to object to the processing

As an exception to the cases stipulated in Clause (1) of Article (21) of the Law, the data subject may not object to the treatment that causes him or another, material or moral harm, in any of the following cases:

1. If the data subject has previously provided explicit consent to the processing.
2. If the Data Controller can prove that acceptance of the objection request will result in significant material and moral damages that exceed the damages that may be caused to the data subject or others.

Article 10

The Chief Executive Officer of the Authority shall implement the provisions of this Order, and it shall take effect from the day following the date of its publication in the Official Gazette.