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Pakistan: A comparative analysis of 2020 and 2021 draft personal data protection bills

The Ministry of Information Technology and Telecommunications ('MOITT') is entrusted with the development of a law on personal data protection. In April 2020, the MOITT issued a consultation draft of the Personal Data Protection Bill 2020 ('the 2020 Draft') and, based upon this consultation, a revised draft was issued in August 2021 ('the 2021 Draft'). Saeed Hasan Khan and Saifullah Khan, from S.U.Khan Associates Corporate & Legal Consultants, survey the significant changes brought in by the 2021 Draft, as compared to the 2020 Draft.



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Commencement	
2021 Draft	2020 Draft
<p>The law would come into force within two years from the date of its promulgation, as may be determined by the Federal Government through a notification in the official gazette, providing at least three months advance notice of the effective date.</p> <p>This could mean that the law may come into force even earlier than one year from the date of its promulgation.</p>	<p>The law was to come into force between a period of one to two years from the date of its promulgation.</p>
Definitions	
2021 Draft	2020 Draft
<p>The name of the supervisory authority would be the National Commission for Personal Data Protection ('NCPDP/the Commission').</p>	<p>The name of the supervisory authority was to be the Personal Data Protection Authority ('the Authority').</p>
<p>'Critical personal data' is defined to mean and include data relating to public service providers, unregulated e-commerce transactions, and any data related to international obligations.</p> <p>The term 'public service provider' is defined in the 2021 Draft, however the term 'unregulated e-commerce transactions' has not been defined and needs to be defined in the 2021 Draft.</p>	<p>'Critical personal data' was not defined, but left to be classified by the Authority with the approval of the Federal Government.</p>
<p>'Foreign data subject' is defined to mean a data subject who is not a Pakistani national.</p>	<p>No such definition was included in the 2020 Draft.</p>
<p>'Government' is defined to mean the Federal Government, provincial governments, and local governments.</p>	<p>No such definition was included in the 2020 Draft.</p>

<p>'Legitimate interest' is defined to mean anything permitted under the law or permitted legislation.</p> <p>This definition is included in the 2021 Draft in connection with specified exclusions to seek consent from a data subject (where consent is not required to be taken), as one of the exclusions is 'for legitimate interests pursued by the data controller.'</p>	<p>No such definition was included in the 2020 Draft.</p>
<p>'Personal data breach' is defined to mean a breach of security leading to the accidental or unlawful destructions, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored, or otherwise processed.</p>	<p>No such definition was included in the 2020 Draft.</p>
<p>'Public interest' is defined to mean any matter pertaining to the general welfare of the public that warrants recognition and protection and is a subject in which the public as a whole has a stake, especially an interest or common interest inconformity with laws of the land.</p> <p>The definition is included in the 2021 Draft to provide clarity to the meaning of the term 'public interest,' and has been referred to at a few instances in the draft law, such as the extent of disclosure, the right to erasure, and exemption.</p>	<p>No such definition was included in the 2020 Draft.</p>
<p>'Public service provider' is defined to mean any entity dealing with and having personal data while working for the Federal Government.</p> <p>The definition is included in the 2021 Draft as the same (public service provider) and is referred to in the definition of 'critical personal data.'</p>	<p>No such definition was included in the 2020 Draft.</p>

<p>The scope of 'sensitive personal data' has been enlarged and now the term includes therein following:</p> <ul style="list-style-type: none"> • computerised national identity cards; • political affiliation; • physical identifiable locations; • traveling details; • pictorial or graphical and motion forms; • IP addresses; and • online identifiers. 	<p>The definition of 'sensitive personal data' in the 2020 Draft did not include these terms within its meanings.</p>
<p>The scope of 'vital interests' has been enlarged and now the definition means 'matters relating to life, fundamental rights, security of a data subject, humanitarian emergencies, in particular in situations of natural and man-made disasters, monitoring and management of epidemics.'</p>	<p>The definition of 'vital interest' was limited in scope to mean matters relating to life, death, or security of a data subject.</p>
<p>Scope and applicability</p>	
<p>2021 Draft</p>	<p>2020 Draft</p>
<p>Applicable to any person/government processing or has control/authorises the processing of any personal data, where data subject, data controller, or data processor is present in Pakistan.</p> <p>Applicable to a controller or processor digitally or non-dig- itally operational in Pakistan (but incorporated in any other jurisdiction outside Pakistan) and is involved in commercial or non-commercial activity in Pakistan.</p> <p>Applicable to processing of personal data by a controller and processor not established in Pakistan but in a place where Pakistani law applies by virtue of private and public interna- tional law.</p>	<p>Applicable to any person who processes or has control over/authorises the processing of any personal data where any of the data sub- ject, data controller, or data processor is lo- cated in Pakistan.</p> <p>A data controller not established/registered in Pakistan was to nominate a representative in Pakistan.</p>
<p>Protection of personal data</p>	
<p>2021 Draft</p>	<p>2020 Draft</p>

Data is to be collected for specified, explicit, and legitimate purposes and is not to be further processed in a manner that is incompatible with those purposes. Data is to be adequate, relevant, and limited to what is necessary in relation to the purpose for which data is processed.	No such provision was included in the 2020 Draft.
Security requirements	
2021 Draft	2020 Draft
The Commission, keeping in mind national interest, is to prescribe best international standards to protect personal data from any loss, misuse, modification, unauthorised or accidental access, or disclosure, alteration, or destruction. All other laws provided for security of personal data will remain in the field in their respective domains.	The Authority was to prescribe standards to protect personal data from any loss, misuse, modification, unauthorised or accidental access, or disclosure, alteration, or destruction.
Record keeping	
2021 Draft	2020 Draft
The data controller is to make known to the supervisory authority, on a regular basis, the type of data it is collecting and the processing undertaken on the data. This requirement is not applicable where data collection is occasional, unless the processing is likely to result in a risk to the rights and freedoms of data subject.	No such provision was included in the 2020 Draft.
Personal data breach notification	
2021 Draft	2020 Draft
The data controller is to notify the data subject, as well as notify the Commission, of a data breach.	The data controller was only to notify the Authority of the breach.
Cross-border transfer of personal data	
2021 Draft	2020 Draft

No such powers are vested in the Federal Government.	Personal data may be transferred outside Pakistan on the principal of 'equal protection,' based upon consent of the data subject. The Federal Government was empowered to notify certain categories of personal data as exempt from requirements of 'equal protection' and consent.
Imprisonment for processing personal data after withdrawal of consent	
2021 Draft	2020 Draft
A data controller may be fined up to PKR 5,000,000 (approx. €25,200) and imprisonment no longer a penalty.	A data controller who continues to process the personal data after withdrawal of consent may be fined up to PKR 5,000,000 (approx. €25,200) or imprisoned for a term not exceeding one year, or with both.
General protected rights	
2021 Draft	2020 Draft
The right of data portability and right not to be subjected to a decision based solely on automated processing (including profiling) are to be protected.	No such provision was included in the 2020 Draft.
Powers of the Federal Government for exemption	
2021 Draft	2020 Draft

<p>No such powers are vested in the Federal Government.</p>	<p>The Federal Government may, upon recommendation of the Authority via an order published in the official gazette, exempt the application of any provision of the law to any data controller or class of data controller. The Federal Government may impose any terms and conditions for such an exemption and may revoke the exemption (likewise through an order published in the official gazette on recommendation of the supervisory authority).</p>
<p>Supervisory authority</p>	
<p>2021 Draft</p>	<p>2020 Draft</p>
<p>The Commission is to consist of five members, as follows, to be appointed by the Federal Government:</p> <ul style="list-style-type: none"> • an ICT expert of data protection field; • a legal expert; • a strategic interest expert; • a representative of civil society; and • a financial/accounting expert. 	<p>The Authority was to consist of seven members, as follows, to be appointed by the Federal Government:</p> <ul style="list-style-type: none"> • a representative of the MOITT; • a representative of the Ministry of Defence; • a representative from the Ministry of Interior; • an ICT expert; • a financial expert; • a legal expert; and • a representative of civil society.
<p>Powers of the supervisory authority</p>	
<p>2021 Draft</p>	<p>2020 Draft</p>

<p>The Commission has the power formulate a compliance framework with respect to cross-border sharing of data and cross border equivalence mechanism (equal protection principle).</p> <p>No such power is included in the 2021 Draft.</p>	<p>No such power was included in the 2020 Draft.</p> <p>The Authority had the power to formulate licensing frameworks for data controllers and data processors.</p>
Delegation of powers	
2021 Draft	2020 Draft
<p>No such powers are included in the 2021 Draft.</p>	<p>The Authority may have, by general or special order, delegated any of its powers/functions/duties to its Chairman, Members, or officers, subject to such conditions as it may deem fit to impose.</p>
Submission of yearly reports	
2021 Draft	2020 Draft
<p>The Commission is to submit its annual report to the Federal Government. A copy of the annual report (with a copy of the audit report) is to be placed before the National Assembly of Pakistan (legislature). In addition, the Federal Government may require the Commission to supply any return/statement/estimate/statistics/other information in respect of any matter under control of the Commission or a copy of any document in custody of the Commission.</p>	<p>No such provision was included in the 2020 Draft.</p>
Contravention of provisions of law/rules/regulations/policy of the Federal Government/Direction of the Commission	
2021 Draft	2020 Draft

The Commission may levy a fine up to PKR 2,500,000 (approx. €12,600) or suspend or terminate the registration and may impose additional conditions (for the purposes of registration) in following cases:

- failure to respond to a notice issued by the Commission;
- failure to satisfy the Commission about any alleged contravention; or
- failure to remedy the contravention within the time allowed by the Commission.

No such provision was included in the 2020 Draft.

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