

MINISTRY OF ELECTRONICS AND INFORMATION TECHNOLOGY

NOTIFICATION

New Delhi, the _____, 2023

G.S.R. _____(E).—Draft of rules proposed to be made by the Central Government in exercise of the powers conferred by sub-sections (1) and (2) of section 40 of the Digital Personal Data Protection Act, 2023 (22 of 2023), on or after the date of coming into force of the Act, are hereby published for the information of all persons likely to be affected thereby; and notice is hereby given that the said draft rules shall be taken into consideration after _____ 2023;

Objections and suggestions, if any, may be submitted on the website of MyGov (_____) by the said date;

The objections and suggestions, which may be received from any person with respect to the said draft rules before the expiry of the period specified above, shall not be attributed to the persons submitting publicly and shall be held in fiduciary capacity to enable them to provide the same freely, and shall be considered by the Central Government.

DRAFT RULES

1. Short title and commencement.—(1) These rules may be called the Digital Personal Data Protection Rules, 2023.

(2) Save as otherwise provided, these rules shall come into force on the date of their publication in the Official Gazette.

2. Definitions.—(1) In these rules, unless the context otherwise requires—

- (a) “Act” means the Digital Personal Data Protection Act, 2023 (22 of 2023);
- (b) “authority” means any authority as referred to in Article 12 of the Constitution;
- (c) “certificate issued under government policy” shall mean a certificate issued under any policy or instruction of the Central Government or any State Government;
- (d) “complaint” means a complaint as referred to in sub-section (1) of section 27;
- (e) “computer resource” shall have the same meaning as is assigned to it in the Information Technology Act, 2000 (21 of 2000);
- (f) “Consent Artifact” means a machine-readable electronic record, which—
 - (i) is capable of enabling—
 - (I) a Data Fiduciary to give any notice referred to in these rules or to Request for Consent; and
 - (II) a Data Principal to directly or through a Consent Manager acting on her behalf, give, manage, review and withdraw her consent, indicate that she does not consent to the use of personal data voluntarily provided by her for a specified purpose or exercise the Rights of the Data Principal;
 - (ii) contains—
 - (I) information to enable identification of the Data Principal and Data Fiduciary;

- (ii) where the Data Fiduciary is the State or an instrumentality of the State, means the rights conferred by Chapter III of the Act other than the right of the Data Principal under section 12 to erasure of her personal data;
- (p) “section” shall mean a section of the Act;
- (q) “service, certificate, licence or permit provided or issued under law” shall mean a service, certificate, licence or permit provided or issued in exercise of any power of or the performance of any function by the State or such instrumentality under any law for the time being in force;
- (r) “Standards for Processing by State and its Instrumentalities” means the standards referred to in sub-rule (1) of rule 6;
- (s) “subsidy, benefit or service provided using public funds” shall mean a subsidy, benefit or service for which expenditure is incurred from, or the receipt therefrom, forms part of,—
 - (i) in respect of the Central Government or a State Government, the Consolidated Fund of India or the Consolidated Fund of the State or the public account of India or the public account of the State; or
 - (ii) in respect of any local or other authority within the territory of India or under the control of the Government of India, the fund or funds of such authority; and
- (t) “user account” means the online account registered by the Data Principal with the Data Fiduciary, and includes any profiles, pages, handles and other similar presences by means of which she is able to access the services offered by such Data Fiduciary.

(2) Words and expressions used herein and not defined in these rules, but defined in the Act, shall have the meanings respectively assigned to them in the Act.

3. [u/s 5(1)]/Notice to seek consent of Data Principal.—(1) Every Request for Consent made to the Data Principal shall be accompanied or preceded by a notice given by the Data Fiduciary to such Data Principal, in the following manner, namely:—

- (a) The notice shall be so made that it is—
 - (i) an electronic record or document presented independently of any other information that is or may be made available by such Data Fiduciary;
 - (ii) understandable independently of any other information that is or may be made available by such Data Fiduciary;
 - (iii) storable by the Data Fiduciary independently of the personal data to which such notice pertains; and
 - (iv) easily storable or preservable by the Data Principal for future reference; and
- (b) The notice shall inform, in clear and plain language, the details necessary to enable her to give specific and informed consent for the processing of her personal data, which shall include, at the minimum,—
 - (i) an itemised description of such personal data;
 - (ii) the specific purpose of such processing;
 - (iii) a declaration that only such personal data is proposed to be processed as is necessary for such purpose;

- (i) such minimum details as are required in respect of a Notice to Seek Consent; and
- (ii) description of the goods or services (including the offering of any service) that were provided, or the uses that were enabled, as a result of such processing.

(2) A Data Fiduciary may use a Consent Artifact for the purpose of giving the Notice to Inform of Processing Done.

5. [u/s 8(6) & u/s 8(9)]Registration, accountability and obligations of a Consent Manager.—

6. [u/s 7(b)] Processing of personal data for provision of subsidy, benefit, service, certificate, licence or permit.—(1) Where a Data Principal has previously consented to the processing of her personal data by the State or any of its instrumentalities as the Data Fiduciary for the purpose of providing or issuing to her any—

- (a) subsidy, benefit or service provided using public funds;
- (b) service, certificate, licence or permit provided or issued under law; or
- (c) certificate issued under government policy,

the State or such an instrumentality may process such personal data to also provide or issue to such Data Principal any other such subsidy, benefit, service, certificate, licence or permit, subject to adherence to the Standards for Processing by State and its Instrumentalities set out in Schedule II.

(2) In this rule, the expressions—

- (a) “Consolidated Fund of India” and “Consolidated Fund of the State” shall mean the funds so named and referred to in clause (1) of Article 266 of the Constitution; and
- (b) “public account of India” and “public account of the State” shall mean the accounts so named and referred to in clause (2) of Article 266 of the Constitution.

7. [u/s 8(6)] Intimation of personal data breach.—(1) On becoming aware of any personal data breach in respect of personal data collected by the Data Fiduciary or generated by processing the same, the Data Fiduciary shall forthwith intimate the Board, through the website of the Board in such form as may be provided thereat, to the best of the knowledge of the Data Fiduciary,—

- (a) a description of the breach, including its nature;
- (b) the date and time when the Data Fiduciary became aware of the breach;
- (c) the timing or duration of occurrence of the breach;
- (d) the location where the breach occurred;
- (e) the extent of the breach, in terms of the nature and quantum of data involved; and
- (f) the potential impact of the breach.

(2) The Data Fiduciary shall also intimate to the Board the details of such personal data breach, through the website of the Board in such form as may be provided thereat, to the best of the knowledge of the Data Fiduciary, within seventy-two hours of becoming aware of the same,—

- (a) the broad facts related to the events, circumstances and reasons leading to the breach;

(2) The Data Fiduciary shall, no later than forty-eight hours prior to expiry of the applicable time period for erasure to be effected under sub-rule (1), intimate the Data Principal that—

- (a) her personal data shall be erased upon such expiry since she has not initiated contact with such Data Fiduciary for the performance of the specified purpose; and
- (b) such erasure shall not be effected if, before such expiry, she logs into her user account or otherwise initiates such contact.

(3) The intimation under sub-rule (2) shall be given in like manner as is provided for an intimation of personal data breach in sub-rule (4) of rule 7.

9. [s 8(9)] Publishing of contact information of person who is able to answer questions about processing.—(1) A Data Fiduciary shall—

- (a) publish on her website or mobile based application, or both, as the case may be; and
- (b) intimate the Data Principal in every piece of correspondence with her,

the business contact information of a person who is able to answer on behalf of the Data Fiduciary, the questions, if any, raised by the Data Principal about the processing of her personal data.

(2) If the Data Fiduciary is a Significant Data Fiduciary, the business contact information published under sub-rule (1) shall be that of its Data Protection Officer.

(3) The business contact information to be published under sub-rule (1) shall be published in like manner as is provided in sub-rule (2) of rule 5.

10. [s 9(1)] Verifiable consent for processing personal data of child or person with disability who has lawful guardian.—(1) A Data Fiduciary, while obtaining verifiable consent from an individual identifying herself as the parent of a child for the processing of personal data of such child, shall observe due diligence to confirm that such individual is not a child and to reliably identify such individual providing the consent in case her identification is required in the interest of prevention, detection, investigation or prosecution of any offence or contravention of any law for the time being in force in India, by—

- (a) reference to reliable details of identity and age available with the Data Fiduciary or collected by her with the consent of such individual; or
- (b) the use of a token in electronic form, mapped to the identity and age details of such individual and voluntarily provided by her, which has been generated by—
 - (i) an entity entrusted or permitted by law or by the Central Government or a State Government with the maintenance of the details of the identity and age of individuals;
 - (ii) any person who is appointed or authorised by such entity, is duly permitted to access such details, and generation of such token by whom would not be inconsistent with any requirement under law or the terms and conditions of licence or agreement governing her appointment or authorisation; or
 - (iii) a Digital Locker service provider.

(2) A Data Fiduciary, while obtaining verifiable consent from an individual identifying herself as the lawful guardian of a person with disability in respect of whom such guardian is appointed, shall observe due diligence to ensure that such appointment has been duly made, is

Data or Right to Erasure of Personal Data, which may include the sequence of characters that uniquely identifies the Consent Artifact pertaining to such consent; and
(d) the details, under the terms of service of such Data Fiduciary or Consent Manager, regarding the form in which a request for nomination may be made and whether the Data Principal may nominate one individual for the exercise of her rights in respect of all processing of her personal data or different individuals for such exercise of rights in respect of different instances of such processing.

(2) The information under sub-rule (1) shall be published in like manner as is provided in sub-rule (2) of rule 5.

(3) Rights of the Data Principal may be exercised by her using the means and furnishing the particulars and, where applicable, the details referred to in sub-rule (1) and making a request that describes—

- (a) the information sought under the Right to Access Information;
- (b) the correction, completion or updating to be carried out under the Right to Correction of personal data;
- (c) the erasure to be carried out under the Right to Erasure of Personal Data;
- (d) the redressal sought under the Right of Grievance Redressal; or
- (e) the nomination sought under the Right to Nominate.

(4) The Data Fiduciary or the Consent Manager, as the case may be, shall, on receipt of a grievance from any Data Principal,—

- (a) where any period is provided under any other law for the time being in force for the redressal of or response to such grievance, communicate its response to the grievance within such period; or
- (b) where no such period is provided, communicate its response to the grievance within a period of seventy-two hours of receipt of the grievance.

(5) In this rule, the expression—

- (a) “identifier” means any sequence of characters issued by the Data Fiduciary to identify the Data Principal and includes a customer identification file number, customer acquisition form number, application reference number, enrolment ID or licence number that enables such identification;
- (b) “Right to Access Information” means the right referred to in section 11;
- (c) “Right to Correction of Personal Data” means the right of the Data Principal under section 12 to have her personal data corrected, completed or updated;
- (d) “Right to Erasure of Personal Data” means the right of the Data Principal under section 12 to erasure of her personal data;
- (e) “Right of Grievance Redressal” means the right referred to in section 13;
- (f) “Right to Nominate” means the right referred to in section 14;
- (g) “terms of service”, in relation to a Data Principal, means the terms of service, by whatever name called, of the Data Fiduciary or Consent Manager, as the case may be, for processing her personal data; and

(4) The Central Government shall, after considering the suitability of the individuals recommended by the Search-cum-Selection Committee, appoint the Chairperson or other Member, as the case may be.

(5) No act or proceeding of the Search-cum-Selection Committee shall be called in question on the ground merely of the existence of any vacancy or absence in such committee or defect in its constitution.

16. [u/s 20(1)]Salary, allowances and other terms and conditions of service of Chairperson and other Members.—(1) The Chairperson and every other Member shall receive such salary and allowances and shall have such other terms and conditions of service as are specified in Schedule VI.

(2) Matters relating to the conditions of service of the Chairperson and every other Member in respect of which no express provision has been made in these rules shall be referred in each case, to the Central Government for its decision and the decision of the Central Government on the same shall be final.

17. [u/s 23(1)]Proceedings of Board and authentication of its orders, directions and instruments.—(1) The Chairperson shall fix the date, time and place of meetings of the Board, approve the items of agenda therefor, and cause notice specifying the same to be issued under her signature or that of such other individual as the Chairperson may authorise by general or special order in writing.

(2) Meetings of the Board shall be chaired by the Chairperson and, in her absence, by such other Member as the Members present at the meeting may choose from amongst themselves.

(3) Save as otherwise provided for in these rules, the Board shall, *mutatis mutandis*, observe in respect of its meetings such secretarial standards as are applicable in respect of Board meetings of a company under sub-section (10) of section 118 of the Companies Act.

(4) The Chairperson or any Member of the Board, or any individual authorised by it by a general or special order in writing, may, under her signature, authenticate its order, direction or instrument.

(5) For the purposes of this rule, any requirement of—

(a) giving of notice shall be satisfied if the same is given, issued, or maintained, as the case may be, in the form of an electronic record; and

(b) an individual signing any notice, order, direction, instrument, document or electronic record shall be satisfied if she affixes thereon her electronic signature.

18. [u/s 24] Terms and conditions of appointment and service of officers and employees of Board.—(1) The Board may, with previous approval of the Central Government and in such manner as the Central Government may by general or special order specify, appoint such officers and employees as it may deem necessary for the efficient discharge of its functions under the provisions of the Act.

(2) Subject to sub-rule (1), the Board shall have the following classes of officers and employees, namely:—

SCHEDULE I
[see rule 3(3)]

Model Notice

[To be added]

SCHEDULE II
[see rules 3(2) and 6(1)]

Standards for Processing by State and its Instrumentalities

Where the Data Principal has previously consented to the processing of her personal data by the State or any of its instrumentalities to provide or issue to her any subsidy, benefit, service, certificate, licence or permit, such personal data may also be processed by the State or any of its instrumentalities as the Data Fiduciary for the purpose of providing or issuing to her any other such subsidy, benefit, service, certificate, licence or permit, subject to adherence to the following standards, namely:—

- (a) Notice is given by the Data Fiduciary to the Data Principal in the following manner, namely:—
- (i) The notice shall be made in like manner as is provided for a Notice to Seek Consent; and
 - (ii) The notice shall include, in clear and plain language, reference to such previous consent and the details necessary to enable her to exercise the Rights of the Data Principal, including such minimum details as are required in respect of a Notice to Seek Consent; and
- (b) Processing is carried on in accordance with—
- (i) any other policy issued by the Central Government or any State Government; and
 - (ii) the provisions of any other law for the time being in force in India, applicable to such processing,
- which provides for the observance of higher standards applicable to such processing.

SCHEDULE III
(see rule 8)

Table

| Sl. No. | Class of Data Fiduciaries | Purpose | Time period |
|----------------|--|---|---|
| (1) | (2) | (3) | (4) |
| 1. | E-commerce entity having not less than two crore registered users in India | Every purpose other than the enablement of the Data Principal to access— (a) her user account; (b) her money accessible | Three years from the date on which the Data Principal last approached the e-commerce entity for performance of the specified purpose, or three years from the |

| | | | |
|--|--|--|--|
| | | which is usable by her online for accessing or availing of any service provided by the social media intermediary | |
|--|--|--|--|

Note:

In this Schedule,—

- (a) “e-commerce” has the same meaning as is assigned to it in the Consumer Protection Act, 2019 (35 of 2019);
- (b) “e-commerce entity” means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce, but does not include a seller offering her goods or services for sale on a marketplace e-commerce entity;
- (c) “intermediary” means a person defined as such in the Information Technology Act, 2000 (21 of 2000);
- (d) “marketplace e-commerce entity” means an e-commerce entity who provides an information technology platform on a digital or electronic network to facilitate transactions between buyers and sellers;
- (e) “online gaming intermediary” means any intermediary who enables the users of its computer resource to access one or more online games;
- (f) “social media intermediary” means an intermediary who primarily or solely enables online interaction between two or more users and allows them to create, upload, share, disseminate, modify or access information using her services;
- (g) “seller” means the product seller as defined in clause (37) of section 2 of the Consumer Protection Act, 2019 (35 of 2019) and shall include any service provider;
- (h) “user”, in relation to—
 - (i) an e-commerce entity, means any person who accesses or avails any computer resource of an e-commerce entity; and
 - (ii) an online gaming intermediary or a social media intermediary, means any person who accesses or avails of any computer resource of an intermediary for the purpose of hosting, publishing, sharing, transacting, viewing, displaying, downloading or uploading information.

SCHEDULE IV

(see rule 11)

Table

Class of Data Fiduciaries to whom, and purpose for which, provisions of sub-sections (1) and (3) of section 9 to not apply

| Sl. No. | Class of Data Fiduciaries or purpose | Conditions |
|---------|--|------------|
|---------|--|------------|

| | | |
|--|---|--|
| | of a child whose personal data is to be processed | |
|--|---|--|

Note:

In this Schedule—

- (a) “allied healthcare professional” shall have the same meaning as is assigned to it in the National Commission for Allied and Healthcare Professions Act, 2021 (14 of 2021);
- (b) “clinical establishment” shall have the same meaning as is assigned to it in the Clinical Establishments (Registration and Regulation) Act, 2010 (23 of 2010);
- (c) “educational institution” means and includes an institution of learning that imparts education, including vocational education, which is—
 - (i) established, owned or controlled by or under a Central Act or State Act;
 - (ii) established, owned, controlled or recognised by the Central Government, a State Government or a local authority;
 - (iii) recognised by a body which is established by law for the co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions and is empowered to regulate such institutions;
 - (iv) affiliated to a University; or
 - (v) declared as an institution deemed to be University under the Universities Grants Commission Act, 1956 (3 of 1956);
- (d) “healthcare professional” shall have the same meaning as is assigned to it in the National Commission for Allied and Healthcare Professions Act, 2021 (14 of 2021);
- (e) “health services” means the services referred to in clause (j) of section 2 of the National Commission for Allied and Healthcare Professions Act, 2021 (14 of 2021);
- (f) “local authority” shall have the same meaning as is assigned to it in the Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009);
- (g) “mental health establishment” shall have the same meaning as is assigned to it in the Mental Healthcare Act, 2017 (10 of 2017); and
- (h) “University” shall have the same meaning as is assigned to it in the Universities Grants Commission Act, 1956 (3 of 1956).

SCHEDULE V

[see rule 14]

Standards of processing for research, archiving and statistical purposes

Table

| Sl. No. | Purposes | Requirements |
|---------|--------------|---|
| (1) | (2) | (3) |
| 1. | Research and | (a) In the interests of public health or the making of evidence-based |

with family (including in respect of journey undertaken by her and her family) or on tour within India, shall be entitled to journey allowance, daily allowance and reimbursement of expense on transportation of personal effects at such scales and rates as are applicable to an officer of the Central Government in the following level of the pay matrix, namely:—

- (a) level 17, in the case of the Chairperson; and
- (b) level 15, in the case of every other Member.

(2) The Chairperson and every other Member may undertake tour outside India only in accordance with guidelines or instructions issued by the Central Government, and in respect of such tour, she shall be entitled to draw the same allowances as an officer of the Central Government, in the following level of the pay matrix, is entitled to draw, namely:—

- (a) level 17, in the case of the Chairperson; and
- (b) level 15, in the case of every other Member.

5. Medical assistance.—(1) The Chairperson and every other Member shall be entitled to such medical assistance as may be admissible to them under any group health insurance scheme of the Board for officers and employees of the Board and their eligible dependants.

(2) If the Chairperson or other Member has retired from Government service or from the service of a public sector entity or a body corporate established by a Central or State Act which has a separate set of rules for the grant of medical assistance for such service, she may, in lieu of medical assistance under sub-paragraph (1), opt to be governed by such rules.

6. Leave.—(1) The authority competent to sanction leave shall be the Central Government in respect of the Chairperson, and the Chairperson in respect of any other Member.

(2) The Chairperson and every other Member may avail of such kinds of leave as are admissible to a government servant under sub-clause (i) of clause (a) and clause (b) of sub-rule (1) of rule 26, rules 27, 29, 30 and 40 to 43-C of the Central Civil Services (Leave) Rules, 1972 (hereinafter referred to as “Leave Rules”).

(3) Leave shall be subject to the conditions applicable to a government servant under rules 7 to 11 and 22 to 25 of the Leave Rules, and the Central Government may, if satisfied that the operation of any of the said rules causes undue hardship in a particular case, by order relax the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner.

(4) The Chairperson and every other Member shall be entitled to casual leave to such extent as is admissible to a government servant under instructions issued by the Central Government.

(5) The Chairperson and every other Member shall be entitled to encashment of earned leave standing to her credit subject to such conditions and in like manner as are applicable to a government servant under rule 38-A, sub-rules (1) and (2) and sub-clauses (i) and (ii) of clause (a) of sub-rule (6) of rule 39, rule 39-A and rule 39-C of the Leave Rules, subject to the maximum extent of encashment under any of the said rules other than rule 38-A being fifty per cent. of the earned leave standing to her credit.

4. Travelling allowance.—The travelling allowance payable to the officers and employees shall, *mutatis mutandis*, be the same as those applicable to the officers and employees of the Central Government.

5. Medical assistance.—The officers and employees shall be entitled to such medical assistance as may be admissible to them and their eligible dependants under any group health insurance scheme of the Board, made with the previous approval of the Central Government.

6. Leave.—(1)The officers and employees may avail of such kinds of leaves as are admissible to a government servant under the Central Civil Services (Leave) Rules, 1972, subject to the conditions applicable under the said rules, and shall be eligible for encashment of earned leave as provided therein.

(2) The officers and employees shall be entitled to casual leave to such extent as is admissible to a government servant under instructions issued by the Central Government.

7. Leave travel concession.—Leave travel concession shall be admissible to the officers and employees in accordance with the provisions applicable to persons appointed to civil services and posts in connection with the affairs of the Union of India under the Central Civil Services (Leave Travel Concession) Rules, 1988.

8. Other service conditions.—(1) The provisions of the Civil Service (Conduct) Rules, 1964 shall apply to the officers and employees in like manner as applicable to a person appointed to a civil service or post in connection with the affairs of the Union of India under the said rules.

(2)The provisions contained in Part IV to Part IX of the Central Civil Services (Classification, Control and Appeal) Rules, 1965shall apply, *mutatis mutandis*, to the officers and employees in like manner as applicable to a government servant under the said rules.

9. Deputation.—Any officer or other employee may be taken on deputation by the Board for a period not exceeding five years from an institution including an infrastructure, finance or development institution.
