

## **Report to Cabinet**

**Subject:** Data Protection Policy and Appropriate Policy Document as required by the Data Protection Act 2018

**Date:** 28 June 2018

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### **Wards Affected**

Not applicable.

### **Purpose of the Report**

To seek approval for the amendments made to the Council's Data Protection Policy to reflect the legislative changes made by the General Data Protection Regulations (GDPR) and the Data Protection Act 2018 (DPA 2018).

### **Key Decision**

This is not a Key Decision.

### **Background**

- 1.1 As Cabinet is aware, the legislation governing data protection in the UK changed on 25 May 2018. The Data Protection Act 1998 has now been repealed and replaced by the GDPR and the DPA 2018. The GDPR and DPA 2018 place new and additional requirements on the Council to demonstrate compliance with the legislation. There are a number of significant changes in the way the Council processes and documents personal information which aren't currently reflected in the Council's Data Protection Policy and therefore a policy update is required. In addition the DPA 2018 requires the Council to have an Appropriate Policy Document in place as it processes special categories of personal data.
- 1.2 There are a number of GDPR and DPA 2018 requirements that are not reflected in the current Data Protection Policy. The GDPR requires the Council to provide individuals with certain information, relating to how and why their personal information is used, at the point of collecting their personal data. This new requirement is met by the Council through the use of layered privacy notices at the point data is collected from individuals, the current policy does not mention the use of privacy notices and this has been included in the amended policy at Appendix 1.
- 1.3 In some instances, personal data can only be collected from an individual with the individual's consent. The GDPR provides a higher burden for what constitutes

valid consent. However the current policy still allows for an 'opt out' or implied consent which is no longer compliant with the legislation. The Council now need to be able to demonstrate that individuals have given an unambiguous indication that they want their personal information to be used for certain purposes. Again the current policy is out dated and allows for what is now unlawful consent to be used. The policy at Appendix 1 provides detail on what constitutes valid consent.

- 1.4 The Data Protection Act 1998 categorised personal information relating to race and ethnic origin, political opinion, religious and other beliefs, trade union membership, physical or mental health, sex life and criminal convictions as 'sensitive personal data'. The GDPR recognises these as 'Special Categories of Personal Data' instead of 'sensitive personal data'. The GDPR also includes genetic data, biometric data and sexual orientation within the special categories of personal data, in addition to the data listed above. The reference to 'sensitive personal data' in the current policy is therefore out of date and has been updated in Appendix 1.
- 1.5 The statutory role of Data Protection Officer (DPO) was created by the GDPR, and at Cabinet on 3 May 2018 members appointed the Legal Service Manager as DPO with two deputies. The current policy has no reference to the DPO or deputies and their role. The policy at Appendix 1 has been updated to point officers to the DPO and/or deputies when they have any data protection queries. It also requires the DPO to be consulted when changes to existing or new types of processing of personal data are being considered.
- 1.6 Schedule 1 of the DPA 2018 requires all organisations to have an Appropriate Policy Document (APD) in place if they are processing special categories of personal data for a number of specified purposes. The APD must set out which special categories of personal data referred to in the DPA 2018 the Council are processing and why. The APD must also explain the Council's procedures for securing compliance with the six data protection principles included within the GDPR. The APD must also explain the Council's policies and procedures regarding the retention and erasure of personal data and give an indication of how long personal data is likely to be retained.

In terms of compliance with these obligations, an explanation of the Council's procedures for complying with the data protection principles is already dealt with in the body of the amended Data Protection Policy. Retention periods are already recorded in the Council's Records Retention and Disposal policy and are also included in the Council's Information Asset Register ("IAR"). The APD, at Appendix 2 to this report sets out which special categories of personal data this Council processes and for what purpose, it also refers the reader to the Records Retention Policy and the IAR in relation to record retention and disposal and refers the reader to the body of the Data Protection Policy in respect of securing compliance with the six data protection principles. The APD at Appendix 2 forms an Annex to the amended Data Protection Policy.

## **Proposal**

- 2.1 It is proposed that Members approve the amendments made to the Data Protection Policy including the Appropriate Policy Document which will form an annex to the Data Protection Policy. The amended Policy is attached at Appendix 1 to this report and the proposed APD is attached at Appendix 2.

## **Alternative Options**

- 3.1 An alternative option is that Members do not grant approval to amend Data Protection Policy including the APD annex. This would mean that the Council's policy is out dated and would not comply with the recent legislative changes and requirements. The out dated policy would also include incorrect information on how the Council treats personal information. The failure to have an up to date policy document including the APD would mean that the Council would be in breach of the DPA 2018 and could open the Council up to enforcement action by the Information Commissioner's Office and ultimately financial penalties.

## **Financial Implications**

- 4.1 There are no immediate financial implications arising from the adoption of this policy.

## **Appendices**

Appendix 1 – Data Protection Policy

Appendix 2 – Annex to the Data Protection Policy - Appropriate Policy Document

## **Background Papers**

None identified.

## **Recommendation**

### **THAT Cabinet:**

- (a) approves the amendments to the Data Protection Policy at Appendix 1 to the report including the Annex to the Data Protection Policy, the Appropriate Policy Document at Appendix 2 to this report.

## **Reasons for Recommendation**

To ensure the Council's data protection policies and procedures are up to date with the recent legislation changes. To ensure the Council is compliant with the GDPR and the DPA 2018.