

**Agenda Item No:**

**Report To:** Cabinet

**Date of Meeting:** 14<sup>th</sup> March 2019

**Report Title:** Data Protection Policy (amended due to legislative change)

**Report Author & Job Title:** Tom Swain – Governance and Data Protection Officer

**Portfolio Holder:** Cllr Neil Bell

**Portfolio Holder for:** Deputy Leader & Portfolio Holder for Legal & Democratic



**Summary:**

The councils current Data Protection Policy was agreed by Members in March 2017. As of 25 May 2018 the Data Protection legislative landscape has seen significant changes with the repealing of the Data Protection Act 98 and its replacement with the General Data Protection Regulation and domestic implementation legislation, The Data Protection Act 18.

The enclosed policy document revises and amends the councils Data Protection Policy bringing it in-line with the current legislative landscape.

The revised policy will amend the following policy document in the current Conditions of Service:

- D1 Data Protection – General Data Protection Regulation

**Key Decision:** NO

**Significantly Affected Wards:** None specifically

**Recommendations:** The Cabinet is recommended to:

- I. Review and approve the amended Data Protection Policy
- II. Authorise the Director of Law and Governance, in consultation with the Portfolio Holder, to approve minor amendments to the policy in-line with working arrangements.

**Policy Overview:** Amended Data Protection Policy reflecting the General Data Protection Regulation and Data Protection Act 18.

**Financial Implications:** None

**Legal Implications:** Required to ensure the council complies with its obligations as a Data Controller.

**Equalities Impact:** See Attached **Appendix A**

**Assessment**

**Other Material Implications:** None

**Exempt from Publication:** NO

**Background Papers:** N/A

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## Report Title:

### Introduction and Background

1. The General Data Protection Regulation (GDPR) and its domestic implementation legislation, the Data Protection Act 2018, are now in force as of 25 May 2018, marking the biggest change to data protection law since the 1998 Data Protection Act.
2. The council's current Data Protection Policy was last updated in March 2017 with a review date set for March 2019. With significant change in the legislative landscape between these time periods the policy has required significant amending.

### Proposal/Current Position

3. The current Data Protection Policy was built with the Data Protection Act 98 in mind, this no longer satisfactorily reflect the current legislation and as such, it is recommended that it be replaced with the amended policy attached.
4. This policy is built around the revised 6 data protection principles which state personal data shall be;
  1. processed lawfully, fairly and in a transparent manner in relation to the data subject (**'lawfulness, fairness and transparency'**)
  2. collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes. Further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes (**'purpose limitation'**)
  3. adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (**'data minimisation'**)
  4. accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay (**'accuracy'**)
  5. kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed. Personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, with due regard to the rights and freedoms of the data subject (**'storage limitation' or 'retention'**)
  6. processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using

appropriate technical or organisational measures (**'integrity and confidentiality'**).

5. It also takes into account other key areas of variance from the previous governing data protection legislation including; strengthened individual rights, the requirement of contractual arrangements for data processors, increased record keeping requirements, necessity to conduct data protection impact assessments, and a requirement to report breaches.
6. The amended Data Protection Policy is the key anchor policy within a suite of information security policies, in addition it should be noted two of these linked policies have been amended addressing specifically the increased rights now available to individuals and detailing the councils approach to managing data breaches. Please find these attached at the end of this report. **Appendix B&C**

### **Implications and Risk Assessment**

7. A robust Data Protection Policy is required to ensure our data protection obligation are documented, met and promoted to all.
8. A failure to have such a policy would potentially place the council in a vulnerable position which could result in financial and reputational damage.

### **Equalities Impact Assessment**

9. Please see attached Assessment. **Appendix A**

### **Consultation Planned or Undertaken**

10. The policy has been drafted through collaborative work with the data protection team, external consultative experts and scrutinised through the internal officer led Information Governance Group.
11. This final draft of the Data Protection Policy is provided to Cabinet for consideration. As the policy document informs part of the Conditions of Services, the JCC have already been consulted regarding the proposed changes.

### **Other Options Considered**

12. The update is required for reasons of legislative change and as such it is not an option to maintain the previous policy.

## **Reasons for Supporting Option Recommended**

13. GDPR and thus the Data Protection Act 18 requires a data controller to be responsible for, and be able to demonstrate compliance with the 6 data protection principles covered in para 4. A robust Data Protection Policy is required to documents our approach to these.

## **Next Steps in Process**

14. Once approved by Cabinet this revised Data Protection Policy will replace its predecessor as the anchor policy within the suite of information security policies.

## **Conclusion**

15. We are committed to having robust Data Protection policies and procedures and appreciate the importance and requirement to protect personal data. The policy aims to spell out how we intend to uphold this.

16. Please find attached:

Data Protection Policy  
Equalities Impact Assessment (Appendix A)  
Data Security Breach Management Policy (Appendix B)  
Individual Rights Policy (Appendix C)

## **Portfolio Holder's Views**

17. Portfolio Holders comments to be given at meeting if required.

## **Contact and Email**

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