

## **Item: 7**

**Policy and Resources Committee: 17 April 2018.**

**Data Protection Policy.**

**Report by Executive Director of Corporate Services.**

### **1. Purpose of Report**

To consider amendments to the Council's existing Data Protection Policy which are necessary to reflect the provisions of new data protection legislation.

### **2. Recommendations**

The Committee is invited to note:

#### **2.1.**

That the General Data Protection Regulation, which is due to come into force on 25 May 2018, replaces the Data Protection Act 1998 and makes changes to the law in relation to the processing of personal information.

#### **2.2.**

That the Council's existing Data Protection Policy, governing the processing of personal information, requires to be updated in order to reflect, and comply with, the provisions of the General Data Protection Regulation.

**It is recommended:**

#### **2.3.**

That the revised Data Protection Policy, attached as Appendix 1 to this report, be approved.

### **3. Policy Aspects**

This report relates to the Council complying with its statutory obligations and does not relate specifically to progressing any of the Council's key priorities.

### **4. Background**

#### **4.1.**

The Council's existing Data Protection Policy was considered by the Policy and Resources Committee on 26 September 2017. In order to ensure compliance with the Data Protection Act 1988 and associated recommended practice, the policy was updated to record and clarify responsibilities of certain roles within the Council.

## **4.2.**

The General Data Protection Regulation, which is due to come into force on 25 May 2018, replaces the Data Protection Act 1998 and makes changes to the law in relation to the processing of personal information.

## **4.3.**

In order to reflect these changes, Data Protection Policy requires to be further updated.

# **5. Proposed Amendments to the Data Protection Policy**

## **5.1.**

In Section 2 of the Policy the reference to “Special Category Data” replaces the previous reference to “sensitive personal data”, which is a term used in the Data Protection Act 1998. The concepts are similar and refer to those types of data which are subject to stricter conditions on processing.

## **5.2.**

In Section 3 of the Policy there is reference to the Council’s Data Protection Officer, which is a new statutory position. In terms of Article 37 of the General Data Protection Regulation all public authorities have a legal obligation to designate a Data Protection Officer to advise the Council and its employees about their obligations to comply with data protection laws, monitor compliance and act as the contact point for the Information Commissioner’s Office. The Head of Legal Services has been designated as the Council’s Data Protection Officer.

## **5.3.**

The lawful bases for processing personal information in terms of the General Data Protection Regulation are listed Section 4 of the Policy for reference. The bases are broadly the same as the conditions for processing set out in the Data Protection Act 1998.

## **5.4.**

The rights for individuals in terms of the General Data Protection Regulation are narrated in Section 5 of the Policy. These are enhanced versions of the existing rights contained in the Data Protection Act 1998, with the exception of the right to data portability, which is a new right and allows individuals, in certain circumstances, to transfer their personal data across different organisations for their own purposes.

## **5.5.**

The data protection principles for the processing of personal information are set out in Section 6 of the Policy. The principles are the same as those contained in the Data Protection Act 1998 but have been condensed into six as opposed to eight principles.

## **5.6.**

The revised Data Protection Policy, incorporating the proposed amendments referred to above, is attached as Appendix 1 to this report.

## **6. Equalities Impact**

An Equality Impact Assessment has been undertaken and is attached as Appendix 2 to this report.

## **7. Financial Implications**

There are no significant financial implications arising from the recommendations contained in this report.

## **8. Legal Aspects**

### **8.1.**

Adoption of the proposed Data Protection Policy and observance of its terms will help to ensure that the Council complies with its obligations in terms of the General Data Protection Regulation.

### **8.2.**

The existing Data Protection Policy was previously updated within the last 12 months. Further amendments during this period would normally require a revocation of the Council's Standing Orders. However, as the present amendments are necessary to reflect the provisions of new data protection legislation, which amounts to a material change of circumstances in terms of the Council's Standing Order 132, no revocation of Standing Orders is necessary in the present case.

## **9. Contact Officers**

Gillian Morrison, Executive Director of Corporate Services, extension 2103, Email [gillian.morrison@orkney.gov.uk](mailto:gillian.morrison@orkney.gov.uk).

Gavin Mitchell, Head of Legal Services, extension 2233, Email [gavin.mitchell@orkney.gov.uk](mailto:gavin.mitchell@orkney.gov.uk).

George Vickers, Information Governance Officer, extension 2162, Email [george.vickers@orkney.gov.uk](mailto:george.vickers@orkney.gov.uk).

## **10. Appendices**

Appendix 1: Revised Data Protection Policy.

Appendix 2: Equality Impact Assessment.