



REPORT TO: Grampian Valuation Joint Board on 29 June 2018

SUBJECT: Governance

BY: The Assessor & ERO

1. Reason for Report

1.1 To update the Board on changes to data protection legislation.

2. Recommendation

2.1 **The Board note the current position.**

2.2 **The Board approve the Data Protection policy and related appendices**

3. Background

3.1 The legal framework for data protection changed on the 25 May 2018 when the provisions of the European General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA) came in to force. The GDPR and the Act place duties on Data Controllers when using personal information. The Assessor and ERO is a data controller for personal information gathered in connection with the statutory duties the office. The Grampian Valuation Joint Board is also a data controller for the HR, financial and related personal data that it holds in connection with its role as a valuation authority and employing authority. This report outlines the principle relevant changes in legislation alongside the action that has been undertaken to comply with GDPR and the Act.

4. New legal framework

4.1 The GDPR altered the definition of personal data to bring it more into line with current technologies and lifestyles, however, in practical terms the new definition does not alter the scope of personal information currently held by the Assessor and ERO or the Board. GDPR replaces the previous concept of sensitive personal data with a definition of special category data, examples of this are: information about racial or ethnic origin, health or trade union membership data. There are additional requirements when processing special category information.

- 4.2 GDPR introduced conditions that require to be met to allow a data controller to process personal information. Before processing information a lawful basis requires to be identified, there are six lawful bases and for the vast majority of the information held by the Assessor, ERO or Board the lawful basis will either be:
- (a) Processing is necessary for the performance of a task carried out in the public interest or in the exercise of an official authority vested in the controller, or
 - (b) Processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract.
- 4.3 The concept of transparency has also been introduced. This requires the Data Controller to inform data subjects of certain information at the time of collecting their information. It governs the type of information to be provided and the point at which it should be provided. Transparency is provided by the provision of Privacy Notices.
- 4.4 The rights of an individual have also been introduced or amended under GDPR, examples of these rights include, the right of access, the right to rectification, the right to object to processing and the right to restrict processing.
- 4.5 In addition to rights given to individuals there are also responsibilities imposed on Data Controllers. It is the responsibility of the data controller to implement appropriate technical and organisational measures to ensure and to be able to demonstrate that processing is in accordance with the regulations.
- 4.6 The requirement to inform the Information Commissioner and in some instances the data subject where there has been a data breach has been amended and a time limit of 72 hours for notification has been introduced. Where a breach has occurred the maximum fine has risen dramatically from £500,000 to €20 million.
- 4.7 Public Authorities are required to appoint an appropriately trained and resourced Data Protection Officer (DPO). The DPO will, amongst other tasks, inform and advise the data controller on fulfilling their obligations and act as a point of contact with the Information Commissioner's Office. The DPO should not be a member of the management team but should have a good understanding of the operations carried out, as well as the information systems, data security and data protection needs of the controller.

5. Current position

- 5.1 Planning for the introduction of the changes to Data Protection has taken place over several months, both independently and collectively through the Scottish Assessors Association (SAA) Governance Committee.
- 5.2 The organisation's Data Protection Policy that reflects the new legal framework is given in **Appendix 1**. The policy covers the fact that the Assessor & ERO and the Board are separate legal entities.

- 5.3 A data audit is underway for data held by the Assessor, ERO and the Board. A legal basis for all processing of personal information undertaken has been identified. Contracts with our Data Processors and key suppliers are under review to ensure compliance with the new legal framework. A review of existing and proposed Data Sharing Agreements (DSAs) is also underway. Whilst DSAs are not generally a legal requirement under the new legislation they are widely recognised as best practice.
- 5.4 The new legislation requires that all data subjects are aware of the uses to which their information will be put so, to that end, Privacy Notices have been created for the Assessor & ERO and the Board (**Appendix 2a, 2b & 2c**). These Privacy Notices are available on our website at <https://www.grampian-vjb.gov.uk/privacy-notice/>. The notices are signposted on documents and inform individuals of the information required under Article 13 of the GDPR. Where we are processing special category information there is a requirement to have appropriate policy documents in place. These have been created for only the ERO and Board. The Assessor does not process any personal information that falls within the definition of special category information. The policy documents for processing special category information for the ERO and the Board (**Appendix 3a & 3b**).
- 5.5 The right of access by data subjects has been significantly amended. Under the Data Protection Act 1998 the data controller could charge a £10 fee for a subject access request (SAR). This charge is no longer permitted and the timescale for responding to a request has reduced from 40 calendar days to 'without delay' and certainly within a month. To assist with the process Subject Access Request Guidance has been produced (**Appendix 4**). This will be available online.
- 5.6 To comply with the changes to the data breach notification requirements a Data Security Breach Procedure has been created (**See Appendix 5**). This outlines the process to be followed and is an important document in ensuring we can properly deal with any data breach that may arise.
- 5.7 A Data Protection Officer (DPO) has been appointed to fulfil the required role. This is being undertaken by Robert Nicol, Depute Assessor & ERO for Dunbartonshire and Argyll & Bute Valuation Joint Board. This is in accordance with the reciprocal arrangements previously approved by the Board. Similarly Gavin Oag, Depute Assessor and ERO in Grampian has been appointed to the position of DPO for the Assessor & ERO and Board in Dunbartonshire and Argyll & Bute.
- 5.8 In Grampian both Deputes and the Principal Admin Officer have undergone formal training and gained a GDPR Practitioner Certificate, as has Robert Nicol. A training programme for all staff is underway in Grampian.
- 5.9 The Data Protection Act 2018 received Royal Assent on 23 May 2018; the Act further enhances some of the provisions of GDPR. The Information Commissioner has yet to update guidance to reflect the Act. It is therefore likely that aspects of the policies and procedures will be refined as further guidance becomes available.

6.0 Conclusion

- 6.1 Significant steps have been taken to ensure that the organisation meets the requirements of the new legal framework for data protection. The work of the Depute Assessors in Grampian and Dunbartonshire along with that of the Principal Admin Officer in Grampian have made this possible.
- 6.2 Compliance with Data Protection Legislation is an ongoing process and measure are in place to ensure that processes and procedures are reviewed in light of revised guidance and best practice. Significant progress has been made with Data Sharing Agreements, however it is acknowledged that this is an ongoing process and discussions are taking place with a number of partners with a view to update existing agreements or draw up new agreements.

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