

Item: 4

Orkney Islands Area Licensing Board: 3 May 2018.

Appointment of a Data Protection Officer.

Report by Clerk to the Board.

1. Purpose of Report

To designate a Data Protection Officer for the Board.

2. Recommendations

The Board 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 General Data Protection Regulation imposes an obligation on public authorities, including the Board, to appoint a Data Protection Officer.

2.3.

That Article 39 of the General Data Protection Regulation prescribes minimum tasks of the Data Protection Officer, which are listed in section 6 of this report.

2.4.

That, in order to ensure the Board's compliance with the General Data Protection Regulation by 25 May 2018, including all outstanding preparatory work that requires to be undertaken, it is considered appropriate that a Data Protection Officer is appointed as soon as possible.

It is recommended:

2.5.

That Gavin Mitchell, the Clerk to the Board, be appointed as the Board's Data Protection Officer with immediate effect.

3. Policy Aspects

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

4. Background

4.1.

The General Data Protection Regulation is due to come into force on 25 May 2018.

4.2.

The General Data Protection Regulation replaces the Data Protection Act 1998 and makes changes to the law in relation to the processing of personal information. One of these changes (Article 37) is a new obligation on public authorities, including the Board, to appoint a Data Protection Officer.

4.3.

Article 39 of the General Data Protection Regulation prescribes minimum tasks of the Data Protection Officer, which are listed in section 6 below.

4.4.

In order to ensure the Board's compliance with the General Data Protection Regulation by 25 May 2018, including all outstanding preparatory work that requires to be undertaken, it is considered appropriate that the Data Protection Officer be appointed as soon as possible.

5. Designation of the Data Protection Officer

5.1.

In terms of Article 37 of the General Data Protection Regulation, the Data Protection Officer must be designated on the basis of professional qualities and, in particular, expert knowledge of data protection law and practices and the ability to fulfil the tasks referred to in section 6 below.

5.2.

The Data Protection Officer may be a staff member of the Board or fulfil the tasks on the basis of a service contract.

5.3.

The Board must publish the contact details of the Data Protection Officer and communicate these to the Information Commissioner's Office.

6. Tasks of the Data Protection Officer

In terms of Article 39 of the General Data Protection Regulation the Data Protection Officer must have the ability to fulfil the following minimum tasks:

- To inform and advise the Board and its Members and Officers about their obligations to comply with the General Data Protection Regulation and other data protection laws.

- To monitor compliance with the General Data Protection Regulation, including the assignment of responsibilities, awareness-raising and training of staff involved in the processing operations and related audits.
- To provide advice where requested about data protection impact assessments and to monitor their performance.
- To co-operate with the supervisory authority (the Information Commissioner's Office).
- To act as the contact point for the Information Commissioner's Office on issues relating to the processing of personal data.

7. Position of the Data Protection Officer

7.1.

In terms of Article 38 of the General Data Protection Regulation, the Data Protection Officer must report directly to the highest management level of the organisation. In the present case it is considered that this would be achieved by ensuring that the Data Protection Officer has direct access to the Members of the Board as required.

7.2.

Article 38 of the Regulation provides that the Board must support the Data Protection Officer in the performance of his/her tasks by providing the resources necessary to carry out those tasks and access to personal data and processing operations, and resources to maintain his/her expert knowledge.

7.3.

In addition, Article 38 provides that the Data Protection Officer must be allowed to perform his/her tasks in an independent manner and should not receive any instructions regarding the discharge of his/her statutory functions. The Data Protection Officer cannot be dismissed or penalised for performing his/her statutory functions.

8. Qualities of the Data Protection Officer

8.1.

According to the A29 Guidance, published by the Article 29 Working Party, which is an advisory body made up of a representative from the data protection authority of each EU Member State, the European Data Protection Supervisor and the European Commission, the Data Protection Officer should have expertise in national and European data protection laws and practices and an in-depth understanding of the General Data Protection Regulation.

8.2.

According to the A29 Guidance, the necessary level of expert knowledge should be determined according to the data processing operations carried out by the organisation and the protection required for the personal data being processed.

8.3.

The minimum necessary skills include expertise in national and European data protection laws and practices, including an in-depth:

- Understanding of the General Data Protection Regulation.
- Understanding of the processing operations carried out.
- Understanding of information technologies and information security.
- Knowledge of the business sector and the organisation.
- Ability to promote a data protection culture within the organisation.

9. Conflicts of Interest

9.1.

In terms of Article 38 of the General Data Protection Regulation, the Data Protection Officer may “fulfil other tasks and duties”, but the Board must ensure that “any such tasks and duties do not result in a conflict of interests”.

9.2.

The absence of conflict of interests is closely linked to the requirement to act in an independent manner referred to in section 7.3 above. In terms of the A29 Guidance, although the Data Protection Officer is allowed to have other functions, he/she can only be entrusted with other tasks and duties provided that these do not give rise to conflicts of interests.

10. Appointment

10.1.

Gavin Mitchell, who is Orkney Islands Council’s Head of Legal Services and Monitoring Officer, acts as the Clerk to the Board, which is also a role where the functions need to be discharged in an independent manner. Mr Mitchell has significant knowledge and experience in data protection law and has managed the Board’s preparations to date for the General Data Protection Regulation.

10.2.

It is submitted that Mr Mitchell meets the statutory criteria for the Data Protection Officer, as set out in section 5 above and is capable of discharging the statutory functions set out in section 6.

11. Equalities Impact

An Equality Impact Assessment has been undertaken and is attached as Appendix 1 to this report.

12. Financial Implications

There are no financial implications arising directly from the recommendation contained in this report. Once appointed, Mr Mitchell will continue in his substantive roles referred to in section 10.1 of this report, and the duties of Data Protection Officer to the Board will be added to his existing remit.

13. Legal Aspects

The legal aspects are contained within the body of this report.

14. Contact Officers

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15. Appendix

Appendix 1: Equality Impact Assessment.