

<b>Report to:</b>	QSMTM Q4
<b>Report by:</b>	Helen Gardner-Swift, Head of Corporate Services (HOCS)
<b>Meeting Date:</b>	4 August 2021
<b>Subject/ Title:</b> (and VC no)	UK GDPR Update Q1 2021-22 VC154999
<b>Attached Papers</b> (title and VC no)	None

## Purpose of report

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1. To update the Senior Management Team (SMT) on the UK General Data Protection Regulation (UK GDPR) and Data Protection Act 2018 requirements within the organisation and actions taken in Q1 2021-22.

## Recommendation and actions

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2. I recommend:
  - the SMT notes the contents of this report
  - the publication of the report is agreed as set out in paragraph 42.

## Executive summary

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### Background

3. Data protection requirements changed from 25 May 2018 when the EU GDPR and Data Protection Act 2018 came into force.
4. In order to be able to ensure that the Commissioner complies with the relevant requirements, an implementation project was assigned to the HOCS for which was in two parts:
  - the development of an implementation plan
  - the delivery of the implementation plan
5. The GDPR Implementation Plan 2019-20 (VC116199) was agreed by QSMTM on 9 May 2019. As the majority of the steps in the GDPR Implementation Plan 2019-20 were completed, implementation plans for 2020-21 or 2021-22 were not put in place
6. To assist with the delivery of the implementation plan, an internal GDPR Working Party consisting of myself (Chair), Margaret Keyse (SMT), Euan McCulloch (Enforcement), Lorraine Currie (Policy and Information) and Liz Brown (CST) was established.
7. The following matters have been carried forward into 2021-22 and are kept under review by the GDPR Working Party:
  - review of personal data audit
  - finalisation of consent log
  - review of general policies and procedures
  - review of retention periods
8. From July 2019, the GDPR Working Party facilitated by the Scottish Parliament Corporate Body (SPCB), changed to the DPO Network Group, meets every two months and continues

to be made up of Officeholders' representatives. The purpose of these meetings is to discuss general GDPR/data protection requirements and receive general updates from the DPO. Myself and Liz Brown, the Finance and Administration Manager, attend the bi-monthly meetings. An update on the matters discussed is provided to the GDPR Working Party. The SMT is also updated by email.

9. Meetings of the DPO Network Group take place by video conference.

### **COVID –19 pandemic**

10. As a result of the impact of the COVID-19 pandemic, the following actions have been taken:
- the office premises have been closed temporarily since 23 March 2020 and remain closed
  - the DPO has been informed of the temporary closure of the office premises and is updated following each SMT review of this decision
  - office security and IT security measures are in place whilst the office premises are temporarily closed
  - in accordance with ICO guidance, we are taking a proportionate approach to adapting the way we work and sharing information
  - all members of staff are working remotely (with remote access to the office systems) using laptops and mobile phones provided by us and this includes the Commissioner and all members of the SMT
  - updated guidance has been issued to staff working remotely covering:
    - security of information, including data protection
    - records management - staff working remotely must comply with our information and records management procedures including ensuring that our records are trustworthy, complete, accessible, legally admissible in court and robust
    - data incident procedures
    - how to use Microsoft Teams and guidance on use

### **GDPR Working Party (internal)**

11. The GDPR Working party meets every 4 weeks by video conference. Erin Gray, Head of Policy and Information (HOPI) is the Policy and Information representative on the Working Party. The other members of the Working Party remain as set out in paragraph 6 above.
12. Although the GDPR is now referred to as the UK GDPR, the name of the GDPR Working Party will remain the same as a number of policy and procedures contain reference to this.

### **Data Protection Officer (DPO)**

13. The SPCB has provided a shared DPO service and the MOU for this was signed on 24 May 2018. Euan McCulloch has agreed to act as DPO if a conflict of interest arises in the operation of the shared service DPO.
14. The annual HOCS meeting with the DPO is due to take place in September 2021 and will be held by video conference.
15. The MOU has been reviewed, we have been consulted and provided our comments on the revised document and are awaiting details for the signing of the document from the Scottish Parliamentary Corporate Body (SPCB). It is now intended that the MOU will cover 2020-21 and 2021-22.
16. The DPO attended the monthly meeting of the SMT on 24 February 2021 and attended a meeting of the GDPR Working Party on 29 July 2021.

## Data Protection Policy and Handbook

17. The updated and revised Key Document C5 Data Protection Policy and Handbook (VC1490830) was approved in March 2021 and has now been published. All members of staff have been advised that the update and revised document is in place. The related template documents are currently being reviewed.

## Privacy Notice

18. The Key Document C5 Privacy Notice (VC102891) has been kept under review throughout Q1 2021-22 and has been updated when required.

## Staff training

19. The annual all staff UK GDPR training/update is being planned for Q3.
20. The online data protection/UK GDPR training provided by the Scottish Parliament has been rolled out and staff will be asked to refresh this training prior to the annual all staff training.

## Budget

21. There was no specific budget allocated for data protection/UK GDPR requirements in the approved budget for 2021-22.

## Cyber resilience

22. Any element of a cyber security issue resulting in the loss of or harm to personal data is likely to be treated as a data breach.
23. Although not required to do so, the Commissioner follows the Scottish Government guidance on cyber security and is participating, as far as possible, in the Public Sector Action Plan as part of the Cyber Resilience Strategy issued by the Scottish Government. Appropriate action has been taken in response to early warning notices (Crew Notices) that have been sent to us by the Scottish Government's Cyber Resilience Unit.
24. The Commissioner was re-accredited with Cyber Essentials in December 2020 and re-accredited with Cyber Essentials Plus in March 2021.

## Data Incidents

25. In Q1 there was one data incident, which did not need to be reported to the ICO.
26. The DPO has been consulted on all data incidents and the SMT has approved the recommended actions.
27. The table below provides a summary, for each quarter, of the number of data incidents and the action taken.

<b>Data Incidents 2020-21</b>			
	Number	DPO consulted	Reported to ICO
Q1	1	Yes	No
Q2			
Q3			
Q4			
<b>Total</b>	<b>1</b>		

## Data protection at the end of the EU transition period

28. The UK left the EU on 31 January 2020 and the transition period ended on 31 December 2020.
29. As regards relevant terminology, we now operate under the “UK GDPR” with references to the EU’s version being the “EU GDPR”. Our contracts, policies, correspondence and relevant documentation should now refer to “UK GDPR”, where appropriate, to distinguish the difference between these regimes.
30. A positive EU-UK adequacy agreement is in place and this means the free flow of personal data between the EU and the UK can continue. The agreement is due to be reviewed again in five years.

## Schrems II

31. The HOCS and the GDPR Working Party are also keeping under review the implications of the European Court of Justice decision in Schrems II (July 2020) which struck down the EU-US Privacy Shield scheme and emphasised the additional steps that organisations need to take when relying on the EU Standard Contractual Clauses (SCCs) for international data transfers and other transfer mechanisms. This decision also has a potential impact on EU/UK data transfers following the expiry of the transition period referred to above.
32. Any use of the SCCs (either current or new) will need to comply with the Schrems II decision - this means EEA-based controllers are going to need to understand UK surveillance laws and assess the risk of any proposed transfer to the UK.
33. New draft SCCs have been published by the European Data Protection Board.
34. The ICO has published UK versions of the SCCs (with guidance).

## Risk impact

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35. The effective implementation of UK GDPR and data protection requirements ensures that there are relevant policies and procedures in place, including policies and procedures relating to information governance, data incidents, subject access, HR governance and privacy by design. In turn, this ensures that operational risks are mitigated as far as possible.

## Equalities impact

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36. There is no direct impact arising from this report. Equality and diversity matters will be considered in data protection requirements.

## Privacy impact

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37. There are no direct privacy implications arising from this report.

## Resources impact

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38. Additional staff resource is required to enable work to continue on the steps carried forward from the GDPR Implementation Plan 2019-20 and this will be met from within current resources.

## Operational/ strategic plan impact

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39. None at present.

## Records management impact (including any key documents actions)

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40. None at present.

## Consultation and Communication

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41. QSMTM minute and HOCS email update to staff.

## Publication

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42. This committee report should be published in full but the GDPR Implementation Plan 2019-20 (VC116199) referred to within the report should be withheld on the basis that the exemptions in Sections 30(b)(ii), 30(c) and 39(1) of the Freedom of Information (Scotland) Act 2002 would apply if a request were, at this stage, to be made for the information.