



Meeting of Lanarkshire
NHS Board: 28 March 2018

Lanarkshire NHS Board
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SUBJECT: GENERAL DATA PROTECTION REGULATION (GDPR)

1. PURPOSE

The update on preparedness for the new regulations around Data Protection is coming to the Board :

For approval	<input type="checkbox"/>	For endorsement	<input type="checkbox"/>	To note	<input checked="" type="checkbox"/>
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2. ROUTE TO THE BOARD

The update has been :

Prepared	<input type="checkbox"/>	Reviewed	<input checked="" type="checkbox"/>	Endorsed	<input type="checkbox"/>
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by the Corporate Management Team on 12 March 2018.

3. SUMMARY OF KEY ISSUES

The General Data Protection Regulation (GDPR) is new legislation coming into force on 25th May 2018. It governs how organisations collect, use and share data and requires that bodies must build data protection into their existing system design and infrastructure. This legislation will give individuals more control over how organisations use their personal information, setting new standards of protection.

As we approach Brexit there will also be new Data Protection legislation specifically for the UK. This Bill, currently going through Parliament, will modernise the data protection laws with in the UK and make them fit for purpose in the ever increasing digital society. The Bill will apply GDPR standards allowing the UK to continue to trade with other countries using equivalent safeguards following Brexit. It is anticipated that the Bill will be approved as an Act on or around the same time as GDPR comes into force. GDPR devolves some aspects to the member state body, therefore the UK Bill will provide clarity on some of the definitions used in the GDPR to develop the Bill in the UK context. The Bill is a complete data protection system covering areas such as law enforcement and national security, which GDPR does not cover. A number of agreed modifications from GDPR to the Bill make the new legislation work for the benefit of the UK in areas such as academic research and child protection.

The Bill adopts the GDPR standards for all general data protection in the UK until exit negotiations are concluded therefore GDPR and the UK Bill will operate in tandem. When the UK leaves the EU we will restore a wholly domestic basis to UK data protection laws but the Bill allows for the continued application of GDPR standards allowing organisations to trade outside the UK with ease.

In order that NHS Lanarkshire meets its obligations in respect of GDPR, implementation and ongoing support, this paper provides an update of a workplan being developed and monitored to ensure that the Board is compliant with the GDPR. An update on the resources being deployed in view of the risks associated with non compliance was included in the Finance paper presented at the Board meeting in January 2018.

An action plan was devised and presented, discussed and endorsed at the Information Governance Committee in November 2017. The remit of the Gap Analysis Group that was formed to allow NHS Lanarkshire to comply with the NHS Scotland Information Security Policy Framework DL (2015) 17, was changed to progress the implementation plan for GDPR.

GDPR requires that organisations undertake a variety of tasks that have not previously been mandated. For example GDPR stipulates that Data Protection Impact Assessments be carried out on all new projects or changes to projects where there is a high risk to an individual's privacy, with a greater emphasis on privacy by design at the beginning of projects and not as an add on at the end when the project is already up and running.

GDPR and the UK Bill provide citizens with more control over their data by increasing their rights. However, these rights are not absolute and require certain conditions to be applicable. For example, NHS Boards will use their "Public Task" to process most of their data, meaning that the right to erasure (right to be forgotten) will not be applicable.

All Boards are required to display a Data Protection Notice, or Privacy Notice for both the public and staff detailing what information is held about individuals and what the Board do with that data. A Data Protection Notice has been developed nationally by the Information Governance Forum and has been approved by the Information Commissioner's Office in Scotland. This will be displayed on the public facing website. A further notice is also being developed nationally for staff and will be displayed on FirstPort.

There is a need to raise awareness amongst staff in NHSL as part of implementation making them aware of their responsibilities and how it will affect them. There also needs to be communication with service users to manage their expectations in respect of the additional rights for data subjects

Whilst Information Governance within NHSL maintains an Information Asset Register (IAR) there is a need to expand this in terms of content and to ensure that training is provided to staff to support awareness of requirements and Information Asset Owner responsibilities. A maintained and comprehensive IAR allows the Board to be able to monitor the processing of information in compliance with the regulation and mitigate the risks associated with the processing of information.

In the area of procurement the GDPR introduces increased documentation around contracts and the Information Governance Manager will continue to progress this with colleagues in Procurement.

In addition to the above, all IT/IG/HR policies will have to be reviewed to ensure compliance with new data protection legislation, along with learn pro modules.

The Corporate Management Team acknowledged that the scope of implementation and ongoing compliance tasks associated with GDPR could not be carried out with the current single resource allocated to Information Governance, and decided to allocate £0.113m additional expenditure in 2018/19 to implement the revised Data Protection requirements (as reported to the NHS Board in January 2018).

The attached highlight report was reviewed by the Corporate Management Team on 12 March 2018 and will continue to be closely monitored to ensure that all risks are mitigated.

4. STRATEGIC CONTEXT

This paper links to the following:

Corporate objectives	<input type="checkbox"/>	LDP	<input type="checkbox"/>	Government policy	<input type="checkbox"/>
Government directive	<input type="checkbox"/>	Statutory requirement	<input checked="" type="checkbox"/>	AHF/local policy	<input type="checkbox"/>
Urgent operational issue	<input type="checkbox"/>	Other			

5. CONTRIBUTION TO QUALITY

This paper aligns to the following elements of safety and quality improvement:

Three Quality Ambitions:

Safe	<input checked="" type="checkbox"/>	Effective	<input checked="" type="checkbox"/>	Person Centred	
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Six Quality Outcomes:

Everyone has the best start in life and is able to live longer healthier lives; (Effective)	<input type="checkbox"/>
People are able to live well at home or in the community; (Person Centred)	<input type="checkbox"/>
Everyone has a positive experience of healthcare; (Person Centred)	<input checked="" type="checkbox"/>
Staff feel supported and engaged; (Effective)	<input checked="" type="checkbox"/>
Healthcare is safe for every person, every time; (Safe)	<input type="checkbox"/>
Best use is made of available resources. (Effective)	<input checked="" type="checkbox"/>

6. MEASURES FOR IMPROVEMENT

Measures for improvement are set out in detail in the highlight report.

7. FINANCIAL IMPLICATIONS

The actions required to comply with the Regulations, by May 2018, and the associated risks of not doing so, were considered by the Corporate Management Team and additional resources were allocated.

8. RISK ASSESSMENT/MANAGEMENT IMPLICATIONS

Under GDPR and the new UK legislation, the Information Commissioner will be able to apply fines ranging from 2% of turnover or 10,000,000 Euros for failures in governance in areas such as consent, privacy by design, breach reporting, contracts and data sharing, to 4% of turnover or 20,000,000 Euros for breaches relating to the 6 principles, subjects rights and overseas transfers.

However, data subjects including staff as well as patients will have a right to claim for compensation for data that is processed inappropriately i.e. data loss, data damage, inappropriate sharing.

The risk in relation to being unable to demonstrate compliance with the regulations, by May 2018, were assessed and additional resources deployed.

9. FIT WITH BEST VALUE CRITERIA

This paper aligns to the following best value criteria:

Vision and leadership	<input checked="" type="checkbox"/>	Effective partnerships	<input checked="" type="checkbox"/>	Governance and accountability	<input checked="" type="checkbox"/>
Use of resources	<input checked="" type="checkbox"/>	Performance management	<input checked="" type="checkbox"/>	Equality	<input checked="" type="checkbox"/>
Sustainability	<input checked="" type="checkbox"/>				

10. EQUALITY AND DIVERSITY IMPACT ASSESSMENT

An Equality and Diversity Impact Assessment has not, thus far, been undertaken because the Regulations apply to the whole population within the Board’s area.

11. CONSULTATION AND ENGAGEMENT

The Highlight Report will continue to be monitored by the Corporate Management Team and the Information Governance Committee.

12. ACTIONS FOR THE BOARD

The Board is asked to:

Approve	<input type="checkbox"/>	Endorse	<input type="checkbox"/>	Identify further actions	<input type="checkbox"/>
Note	<input checked="" type="checkbox"/>	Accept risk	<input type="checkbox"/>	Ask for a further report	<input type="checkbox"/>

13. FURTHER INFORMATION

For further information about any aspect of this paper, please contact:

Colin Sloey
Director of Strategic Planning & Performance

14 March 2018