Causeway Coast & Glens Borough Council

Title of Report:	HOUSES IN MULTIPLE OCCUPATION: DATA PROCESSING AGREEMENT
Committee Report Submitted To:	ENVIRONMENTAL SERVICES COMMITTEE
Date of Meeting:	4th June 2019
For Decision or For Information	FOR DECISION

Linkage to Council Strategy (2019-23)	
Strategic Theme	Resilient Healthy & Engaged Communities
Outcome	Delivery of New Statutory function
Lead Officer	Head of Health & Built Environment

Budgetary Considerations	
Cost of Proposal	Nil – full cost recovery
Included in Current Year Estimates	**YES**
Capital/Revenue	Revenue HMO Licensing Scheme.
Code	
Staffing Costs	Nil – staff managed through Belfast City Council

Screening Requirements	Required for new or revised Policies, Plans, Strategies or Service Delivery Proposals.		
Section 75 Screening	Screening Completed:	N/A	Date:
	EQIA Required and Completed:	N/A	Date:
Rural Needs Assessment (RNA)	Screening Completed	N/A	Date:
	RNA Required and Completed:	N/A	Date:
Data Protection Impact Assessment (DPIA)	Screening Completed:	N/A	Date:
	DPIA Required and Completed:	N/A	Date:

1.0 Purpose of Report

The purpose of the report is to request that committee approve the signing of the above Data Processing Agreement and that the Chief Executive sign on Councils behalf.

2.0 Background

The Houses in Multiple Occupation (HMO) Act NI 2016 received Royal Assent on 12th May 2016 and is due to be commenced on 1st April 2019.

As members will be aware, the above service is delivered on behalf of all councils by Belfast City Council with Causeway Coast and Glens and Derry City and Strabane District Council as sub regional cluster leads. Belfast City Council (BCC) is a Data Controller for the processing of its own data and will act as a Data processor for the Data owned by the 10 other Northern Ireland Councils. This will involve BCC collecting/gathering, recording, organising, structuring, maintaining and facilitating the processing of personal data for itself and on behalf of 10 NI councils to ensure it meets its compliance obligations with regard to the General data Protection Regulations and the Data Protection Act 2018.

A Data processing agreement has been prepared and reviewed by Information Governance officers, data to be processed, storage location, arrangements for access and destruction arrangements. The agreement is to be reviewed every six months for the first 12 months after signing and thereafter every 2 years.

A copy of the Data processing agreement and Annex may be found at Appendix 1 to this report.

3.0 Recommendation

It is recommended that committee approve the signing of the above Data Processing Agreement and that the Chief Executive sign on Councils behalf.

Annex A – Data Processing Agreement
House in Multiple Occupation (HMO)

GDPR CLAUSE DEFINITIONS:

Data Protection Legislation: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy.

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Controller, **Processor**, **Data Subject**, **Personal Data**, **Personal Data Breach**, **Data Protection Officer, Special Category Data, Processing** and **Information Commissioner** take the meaning given in the GDPR.

Council Liaison Officer: the person nominated by the Controller who will assume the day to day management responsibility and liaison with BCC.

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by BCC under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach. A Data Loss Event can take the form of, but is not limited to, the following:- the loss or theft of Personal Data; equipment failure; hacking; "blagging" whereby Personal Data is obtained by a third party by deceit; accidental or unintentional disclosure of Personal Data due to human error.

Data Subject Access Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

DPA 2018: Data Protection Act 2018

GDPR: the General Data Protection Regulation *(Regulation (EU) 2016/679)*

LED: Law Enforcement Directive *(Directive (EU) 2016/680)*

Project Manager: the person nominated by BCC who will assume the day to day management responsibility and liaison with each Data Controller (other Councils).

Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident and regularly assessing and evaluating the effectiveness of such measures adopted by it.

Services: the services that will be provided by BCC during the period of this Agreement

Sub-processor: any third Party appointed to process Personal Data on behalf of BCC related to this Agreement.

1. DATA PROTECTION

Controller and Processor

1.1   The Parties acknowledge that for the purposes of the Data Protection Legislation, the 11 Northern Ireland Councils are Data Controllers in their own right for HMO related data. Belfast City Council (BCC) will also act in the capacity of a Data Processor for the 10 other Northern Ireland Councils. The only processing that BCC is authorised to do is listed in Schedule One by each Council and is determined collectively by each Council. They further acknowledge that each Council will at all times retain ownership and control of their specific Council Personal Data.

Instructions

1.2   BCC will only process Personal Data in accordance with written instructions agreed by each Council and shall notify each Council immediately if it considers that any of each Council's instructions infringe the Data Protection Legislation. At all times the processing carried out by BCC must be proportionate to the purpose of the processing.

Compliance with Data Protection Legislation

1.3   BCC shall comply with all Data Protection Legislation in connection with the processing of Personal Data, the Services and the exercise and performance of its respective rights and obligations under this Agreement. In particular BCC will apply all such measures as are necessary to ensure full compliance with GDPR Article 5 (1) (a) – (f)

Processing Personal Data and Security

1.4   BCC shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

    (a)   process that Personal Data only in accordance with Schedule One, unless BCC is required to do otherwise by Law. If it is so required, BCC promptly notify each Council in writing, before processing the Personal Data, stating the identity of the requesting body and the nature of the Personal Data sought, unless prohibited by Law from doing so;

    (b)   ensure that it has in place Protective Measures, which have been reviewed and approved in writing by each Council as appropriate to protect against a Data Loss Event having taken account of the:

        (i)   nature of the data to be protected;

        (ii)   harm that might result from a Data Loss Event;

        (iii)   state of technological development; and

        (iv)   cost of implementing any measures;

    (c)   ensure that:

        (i)   BCC Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule One);

        (ii)   it takes all reasonable steps to ensure the reliability, integrity and suitability of BCC Personnel who have access to the Personal Data and ensure that they:

        (iii)   are aware of and comply with BCC's duties under this clause;

        (iv)   are subject to appropriate confidentiality undertakings with the BCC; if required to do so by each Council.

        (v)   are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by each Council or as otherwise permitted by this Agreement; and

        (vi)   have undergone adequate training in the use, care, protection and handling of Personal Data.

(d)   If requested by another Council to do so, BCC will provide written details to the Council of any BCC Personnel who have access to the Personal Data.

(e)   Not transfer Personal Data outside of the EU unless the prior written consent of each Council has been obtained.

(f)   At the written direction of each Council, delete or return Personal Data (and any copies of it) to each Council on termination of the Agreement, unless BCC is required by Law to retain the Personal Data.

(g)   Ensure appropriate security of Personal Data, including adequate protection against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of personal Data or damage to Personal Data, by using appropriate technical or organisational measures to ensure the integrity and confidentiality of the Personal Data. In particular, BCC shall ensure that adequate measures are in place to:

(i)   prevent accidental compromise or damage during storage, handling, use, processing, transmission or transport

(ii) deter deliberate compromise or opportunist attack

(iii) promote discretion in order to avoid unauthorised access

(iv) provide suitable training to its staff on how to handle each Council's Personal Data

Confidentiality

(a)   Subject to sub-clause (c) below, BCC acknowledges that each Council's Personal Data is strictly private and confidential and BCC will not disclose or communicate each Council's Personal Data to any other individual, organisation or third party.

(b)   The obligations of confidentiality imposed on BCC under this Agreement will remain in full force and effect after the expiry or termination of this Agreement.

Notifications to the Council

1.5   Subject to clause 1.7, BCC shall notify each Council immediately if it:

    (a)   receives a Data Subject Access Request (or purported Data Subject Access Request);

    (b)   receives a request to rectify, block or erase any Personal Data;

    (c)   receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

    (d)   receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

    (e)   receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

    (f)   becomes aware of a Data Loss Event. A Data Loss Event must be notified by the Project Manager to the Council Liaison Officer in the Council's prescribed form.

Ongoing obligation to notify

1.6   BCC's obligation to notify under clause 1.6 shall include the provision of further information to each Council in phases, as details become available.

Provision of Assistance

1.7   Taking into account the nature of the processing, BCC shall provide each Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause **1.5 (**and insofar as possible within the timescales reasonably required by each Council) including by promptly providing:

    (a)   each Council with full details and copies of the complaint, communication or request;

    (b)   such assistance as is reasonably requested by each Council to enable each Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

    (c)   each Council, at its request, with any Personal Data it holds in relation to a Data Subject;

(d)   assistance as requested by each Council following any Data Loss Event;

(e)   assistance as requested by each Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.

(f)   assistance as requested by each Council in order to investigate any alleged breach of this Agreement or the Data Protection Legislation.

Records

1.8   BCC shall maintain complete and accurate records and information to demonstrate its compliance with this clause.

Audit

1.9   BCC shall allow for audits of its Data Processing activity by each Council or the Council Liaison Officer. In particular:-

(a)   at any time BCC shall promptly provide, following a written request from each Council, such information or documentation as each Council may reasonably require to demonstrate BCC's compliance with its obligations under the Data Protection Legislation

(b)   At any time during the Agreement the Council Liaison Officer may perform such inspections, whether at BCC's premises or otherwise, as each Council considers are appropriate to ensure that any assurances provided by BCC are being met to the satisfaction of each Council. Any such inspection will be carried out after 48 hours' notice is given to BCC and will be permitted during normal working hours.

Data Protection Officer

1.10   BCC shall designate a data protection officer as required by the Data Protection Legislation.

Sub-processor

1.11   Before allowing any Sub-processor to process any Personal Data related to this Agreement, BCC must:

(a)   notify each Council in writing of the intended Sub-processor and processing;

(b)   obtain the written consent of each Council;

(c)   enter into a written agreement with the Sub-processor which give effect to the terms set out in this Agreement such that they apply to the Sub-processor; and

(d)   provide each Council with such information regarding the Sub-processor as each Council may reasonably require.

Liability for Sub-processor

1.12   BCC shall remain fully liable for all acts or omissions of any Sub-processor.

ISO 27001

1.13   BCC is working to the principles of Information Security Standards ISO 27001 and at all times endeavour to meet these standards regarding the handling of Personal Data processed on behalf of each Council.

Location of Processing

1.14   If at any time BCC should consider processing Personal Data in a home office environment, in the first instance BCC must obtain the prior written consent of each Council and shall provide such additional written guarantees as are necessary to satisfy each Council that such processing of Personal Data can be safely, properly and securely carried out in the particular home office environment.

Freedom of Information

1.15   BCC acknowledges that each Council is a public authority for the purposes of the Freedom of Information Act 2000 ("the FOIA") and may be required to disclose information about the Agreement, including the Services provided by BCC and the processing carried out under this Agreement. BCC agrees to provide any such assistance to each Council as may reasonably be required to enable each Council to comply with its obligations under the FOIA.

Review of this Agreement

1.16   The agreement will be reviewed every 6 months for the first 12 months after signing and then will be reviewed every 24 months. It may be reviewed sooner should there be changes to legislation or other exceptional circumstances. All changes are to be agreed and approved by all signatories prior to changes taking place.

Information Commissioner's Office

1.17   The Parties agree to take account of any guidance issued by the Information Commissioner's Office. Each Council may on not less than 30 Working Days' notice in writing to BCC amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Headings

1.18   The section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

Schedule of processing, House in Multiple Occupancy (HMO)

Schedule One: Processing, Personal Data and Data Subjects

1. Belfast City Council shall comply with written instructions with respect to processing for the 10 Northern Ireland Councils.

2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	The new regulatory approach introduces a system of mandatory licensing for Landlords relating to Houses in Multiple Occupation (HMO). The service delivery is to cluster Councils on a geographical basis with the largest number of HMO's in Belfast, Causeway Coast and Glens and Derry and Strabane. 1) Belfast City Council 2) Causeway Coast and Glens Borough Council Mid and East Antrim Borough Council Antrim and Newtownabbey Borough Council Lisburn and Castlereagh City Council Ards and North Down Borough Council 3) Derry City and Strabane District Council Fermanagh and Omagh District Council Mid Ulster District Council Newry Mourne and Down District Council Armagh, Banbridge and Craigavon Borough Council Belfast City Council (BCC) is a Data Controller for the processing of its own data and will act a Data Processor for the data owned by the 10 other Northern Ireland Councils. BCC will host all the information and personal data required for the licensing and associated enforcement action relating to the processing of data relating to the Houses in Multiple Occupation addressed under the Houses in Multiple Occupation Act (Northern Ireland) 2016.

	The information submitted by those persons required to license will be processed by Belfast City Council in electronic format and to a lesser degree in paper format. The data contained within paper applications will be transferred into electronic format upon receipt. This system will record service requests, inspection, notices and action diary details. Initial licensing will be through a dedicated online secure website managed by Belfast City Council or via the submission of a paper application form. The system is named Tascomi.
Duration of the processing	Commencing 1st April 2019 onwards.
Nature and access of the processing	To develop and use an electronic information system for the licensing of HMO data, which will permit other Councils access to the HMO information relevant to their own Council area. This will involve Belfast City Council collecting / gathering, recording, organising, structuring, maintaining, and facilitating the processing of personal data for itself and on behalf of 10 NI Councils to ensure it meets its compliance obligations with regard to GDPR and the Data Protection Act 2018. Purpose: To provide a service, via a contractual requirement with 10 other NI Councils. **Access levels** Access to the data held will be available at three different levels:- 1) Access by members of the Public 2) Read only Access by HMO Officers from each Council 3) Access by identified staff from Belfast City Council acting as the Data Processor **1) Public Access** The general public will have a view only access to the following data via a web based search facility hosted by Belfast City Council as the Data Processor:-

	• Name of relevant Council • Address of the premises • Number of occupants • Date of license expiry **2) Access for HMO Control Officers from each Council** Three identified staff from each Local Council will have a read only access via a direct log in to the HMO electronic information system. The access is specifically to their own data processed on the system. • Name and personal details of the landlord, owner(s) and manager or agent • Address of the premises • Telephone number of the premises • Details of the premises, ie accommodation details, certification and maintenance records • Details of the applicants fit and proper person checks • Enforcement data **3) Belfast City Council acting as a Data Processor** Identified staff of the Data Processor will have access via a direct log in to the HMO electronic information system. The staff acting as a Data Processor will require access to the complete information and personal data processed to permit appropriate administration of the system.
Type of Personal Data	The personal data involved will relate to:- Full name, full contact address, phone numbers and e-mail address, satisfactory management arrangements (ie listing on the insolvency register, bankrupt declaration, availability of sufficient funds to undertake remedial works and to maintain to licensable standards, and details of fit and proper person checks.

Categories of Data Subject	• Landlords • Owners • Agents
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	Belfast City Council will retain this information in line with a retention and disposal schedule agreed by all NI Councils. Any use of the data outside the remit of the timescales of the programme is not permitted. If data must be deleted, BCC shall delete any copy electronic and manual Personal Data permanently and beyond recovery. This deletion will be confirmed in writing by BCC.
Location of the processing	The processing of HMO data will take place on the premises of BCC with any paper data being held in a locked cabinet within a locked office and electronic data held with appropriate technical and organisational measures that are fully compliant with GDPR. This will ensure there is no unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to the personal data. If special category personal data is processed, it is deserving of additional protection regarding its security, how it is held and who is permitted access. BCC will comply with the security obligation in respect of this specific type of data as per Annex 'A' section 1.5 during the term of the programme to satisfy Belfast City Council. No processing of personal data must take place in a public space or in any area or facility to which the public has open access.

In signing below, I agree to the terms and conditions outlined in this Data Processing Agreement

1. **Signed ………………………………………………………………………………….**

Chief Executive of Belfast City Council

Date ……………….………………………………………………………………….

2. **Signed ………………………………………………………………………………….**

Chief Executive of ……………………………………………… Council

Date ……………….………………………………………………………………….