

ANNEX TO THE EXPLANATORY MEMORANDUM TO THE REPRESENTATION OF THE PEOPLE (SCOTLAND) (AMENDMENT NO 2) REGULATIONS 2014

Privacy Impact Assessment – Enabling disclosure of data to Electoral Registration Officers by the local authority by which they were appointed

1. Background

This Privacy Impact Assessment (PIA) describes how privacy issues which may arise from allowing the disclosure of data to Electoral Registration Officers (EROs) in Scotland by their own local authority will be addressed and how the risks will be mitigated.

Current legislation permits EROs to *inspect*, and make copies of information contained in, records kept by the council that appointed them (and records kept by any registrar of births and deaths). It does not however make provision for the council to *disclose* the data to the ERO (for example, to supply it to the ERO in a format to be agreed between them so that it can be matched, possibly electronically, against electoral register information).

In order to facilitate the use of local data matching to maintain and improve the accuracy and completeness of the electoral register during the transition to Individual Electoral Registration (IER) and beyond, Her Majesty's Government is therefore proposing to legislate by statutory instrument under the affirmative resolution procedure to enable the *disclosure*¹ of data by the authority by which the ERO was appointed, for the purposes only of (i) verifying information relating to a registered person or a person who has applied for registration or for alteration of the register; (ii) identifying people who are not registered but who are entitled to be registered, and (iii) identifying people who are registered but who are not entitled to be registered. No authority will be compelled to disclose its data, and any disclosure would only be made in accordance with an agreement between the ERO and the authority setting out the conditions under which the data is to be disclosed, including its transfer, storage, destruction and security. Similar provision has already been made in respect of England and Wales.

HM Government will expect those involved in such data sharing to comply with the relevant legislation and the data protection principles that personal data must be:

- Fairly and lawfully processed;
- Processed for specific and lawful purposes and not further processed in a way that is incompatible with the original purpose;
- Adequate, relevant and not excessive;
- Accurate and up to date;

¹ By allowing the local authority to provide its data to the ERO (e.g. in a form suitable for electronic matching) disclosure goes further than the inspection and making of copies permitted by regulation 35 of the Representation of the People (Scotland) Regulations 2001.

- Not kept for longer than is necessary;
- Processed in accordance with the data subject's rights;
- Kept secure;
- Not transferred to countries outside the European Economic Area unless an adequate level of protection is ensured or an exemption applies.

The PIA is a living document and will continue to be updated as the policy on allowing the sharing of data develops.

2. Personal data to be used

The aim is for EROs to be able to receive information from within their local authority in a form which will allow it to be matched against electoral register data. The local datasets helpful to EROs in maintaining and improving the accuracy and completeness of their electoral registers include:

- the register of births and deaths;
- council tax records;
- registers of households in multiple occupation;
- housing benefit applications;
- lists of persons in residential and care homes;
- details of "attainers" (those aged 16 or 17) held by education departments.

3. Data protection issues and risks of data sharing

HM Government takes the handling of personal data and prevention of identity fraud very seriously. The changes that are currently being made to electoral registration (which received cross party support) are intended to prevent fraud and maintain the integrity of the electoral system. This section provides details of data protection issues and risks for data sharing.

The table below sets out data protection risks of data sharing:-

Risk Description	Controls/Mitigation
1. The data held by local authorities varies significantly in its form, quality and suitability for use by EROs.	It can be expected that locally-held data will vary in form and quality from area to area. The new legislation will enable every ERO to explore the scope for matching information held within their own local authority against electoral register data

Risk Description	Controls/Mitigation
	in order to maintain and improve the accuracy and completeness of their electoral registers.
<p>2. The local authority, as data controller, refuses to disclose the data to the ERO due to data protection concerns.</p>	<p>The new legislation will not compel the council to disclose its data to the ERO. Disclosure would be made only in accordance with an agreement made between the ERO and the council.</p> <p>The agreement would enable the data holding council to set out the parameters for the use of the data (as set out in risk 3.) and conditions for (among other things) the transfer, security, retention and destruction of the data.</p> <p>An authority which refuses to disclose data to an ERO in this way will be required to provide the ERO with written reasons for its refusal.</p> <p>The ERO will however still have the same right as at present to inspect records held by the council and to make copies of information contained in them.</p>
<p>3. Access to the data – data received by the ERO is disclosed to other departments in the Local Authority - Data received is used for unauthorised purposes or disclosed inappropriately by EROs.</p>	<p>As far as inspection of records is concerned, the legislation (regulation 35 of the 2001 regulations, and paragraph 1(4) of the Representation of the People Act 1983) provides that inspection must be for the purposes of the ERO's registration duties.</p> <p>Any disclosures of data under the new provision should follow the approach set out in paragraph 2 of Schedule 2 to the Electoral Registration and Administration Act 2013 and must be for the purposes of (1) verifying information relating to a registered person or a person who has applied for registration or for alteration of the register; (2) ascertaining names and addresses of people who are not registered but who are entitled to be registered, and (3) identifying people who are registered but who are not entitled to be</p>

Risk Description	Controls/Mitigation
	<p>registered.</p> <p>Handling and use of the data will be subject to the requirements of the applicable law, including the provisions of the Data Protection Act 1998.</p>
<p>4. Citizens are concerned about their data being shared and confused about the purpose of this legislation</p>	<p>The Electoral Commission, the Information Commissioner's Office; the Association of Electoral Administrators, the Scottish Assessors' Association, the Society of Local Authority Chief Executives (Scotland), the Society of Local Authority Lawyers and Administrators in Scotland and the Electoral Management Board for Scotland have all been consulted on this change of policy and also on the draft legislation. All of those organisations are supportive of the change.</p> <p>Clear messaging on effective use of local authority data and data sharing will be built into the communication strategy for IER.</p> <p>Guidance issued on this kind of data matching will include reference to the Information Commissioner's Office's Data Sharing Code of Practice.</p>
<p>5. Risk of loss of data during transfer to the ERO</p>	<p>HM Government is not in a position to mandate how data is transferred and insist that it is transferred over a secure network. However, all disclosures of data under the new provision would be subject to an agreement between the ERO and the local authority which would set out the agreed requirements for the transfer, storage, destruction and security of the data.</p>

4. Consultation and general communications activity

Stakeholders consulted on this change include:

- The Information Commissioner's Office
- The Electoral Commission
- The Scotland Office
- The Scottish Government
- The Society of Local Authority Chief Executives (Scotland)
- The Association of Electoral Administrators
- The Scottish Assessors' Association
- The Society of Local Authority Lawyers and Administrators in Scotland
- The Convention of Scottish Local Authorities
- The Electoral Management Board for Scotland

5. Contact Details

For further information regarding this PIA please contact **Carol Gokce** at the Cabinet Office, tel 020 7271 2679: email Carol.Gokce@cabinet-office.gsi.gov.uk