GUIDANCE FOR MEMBERS WHO ARE NOT STANDING AT THE 2016 SCOTTISH PARLIAMENTARY ELECTION
FOREWORD FROM THE PRESIDING OFFICER

The period before standing down at dissolution presents a range of unique challenges for Members and their staff. There is an enormous amount of work to complete and a range of obligations to fulfil, both as parliamentarian and employer. Staff of the Scottish Parliamentary Service are committed to supporting and assisting Members throughout this process.

This document has been designed to complement the main election guidance and is intended to make the process of winding up parliamentary affairs as straightforward as possible for Members. As at previous elections, it is presented in a question and answer format for ease of reading. Parliamentary staff will also provide direct support and advice to Members in concluding their affairs, particularly in relation to pay and expenses, staff employment issues and closing down local offices.

In preparing this guidance we have included as much detail as possible to assist Members in winding up their parliamentary affairs. However, should it be necessary to issue further guidance or advice on specific issues we will update this document and advise Members accordingly.

I hope that Members find this guidance helpful.

Tricia Marwick MSP
Presiding Officer
Questions and Answers Guidance to assist Members and their staff

This guidance has been produced to assist all Members who are not standing at the election and their staff before and during the election period in 2016. The current session of Parliament will end at midnight on Wednesday 23 March 2016 and dissolution will begin immediately thereafter on Thursday 24 March 2016, with the election taking place on Thursday 5 May 2016.

This guidance should be read in conjunction with the existing guidance and rules set out in the Code of Conduct, Reimbursement of Members’ Expenses Scheme and SPCB policies on the use of parliamentary resources.

Members are asked to direct any questions they have on the information in this guidance to the relevant office. Contact details are provided throughout the text and below. Any questions relating to this guidance document itself should be directed to the Chief Executive’s Office on (0131) 348 6836.

Please note that the term “Members” should be taken throughout this document to refer to current MSPs. While there are, technically speaking, no Members of the Scottish Parliament during the dissolution period, we have maintained the terminology for reasons of consistency, familiarity and ease of reading.

Contacts

Allowances Office 0131 348 6659/6615/6609
Business Information Technology
Business Information 0131 348 6100
ithelpdesk@scottish.parliament.uk
Facilities Management 0131 348 5100
helpdesk2@scottish.parliament.uk
FOI/Data Protection 0131 348 6913
foi.officer@scottish.parliament.uk
Human Resources 0131 348 6500
humanresources@scottish.parliament.uk
Media Relations 0131 348 6852
mediarelations@scottish.parliament.uk
Public Information 0131 348 5000
Scottish Public Pensions Agency 01896 893 090
Security Office 0131 348 6556
SPCB Secretariat 0131 348 5307

SPICe 0131 348 5300
SPICe@scottish.parliament.uk

Standards, Procedures and Public Appointments Committee clerks 0131 348 5177
standards.clerks@scottish.parliament.uk

Visitor Services 0131 348 5200
Expenses

1. What Expenses can be claimed/paid after the date of dissolution?

Members who are not standing at the election will be entitled to claim expenses in order to finalise their parliamentary affairs. Costs incurred after dissolution will be met from the Winding up Provision.

2. What is the Winding Up Provision?

This is the provision made within the Members’ Expenses Scheme to meet expenses a Member may incur after dissolution as a result of finalising his or her parliamentary business. The provision is in two parts: a capped provision of up to one third of the Office Cost Provision to meet accommodation, office and associated costs; and a separate provision to meet staff salary costs during the winding up period and staff redundancy costs.

3. When do I become eligible to claim the Winding Up Provision?

For those Members who do not stand at the election, eligibility commences the day following the dissolution of Parliament.

4. How much is the Winding Up Provision?

The Winding up Provision is made up of a capped provision of up to one third of the Office Cost Provision to meet accommodation, office and associated costs and a separate provision to meet staff salary costs during the winding up period and staff redundancy costs.

Where, under the terms of the employment contract between the Member and the employee, the employee’s entitlement to a redundancy payment exceeds the employee’s statutory entitlement, the costs of the contractual provision will be met where the SPCB considers the provision to be reasonable. Where it is not considered reasonable the SPCB may restrict the application for contractual redundancy payment to what it considers reasonable.

In this regard, the Corporate Body agreed that in these circumstances, using a test of ‘reasonableness’, it would be willing to meet a redundancy payment of up to 4 weeks’ salary for each year of service up to a maximum of 1 year’s salary.

5. How do I claim the Winding Up Provision?

Claims against the Winding up Provision for accommodation, office and associated costs should be made using the standard expenses claim forms and should be submitted to the Allowances Office in the normal way. Like all other expenses, claims against the Winding Up Provision require to be supported by the relevant documentation, i.e. receipts, invoices.
The HR Office will liaise with Members directly over the process of making redundancy payments to staff from the Winding Up Provision.

6. Is there a cut-off date for the submission of claims against this provision?

All claims against this provision must be submitted within six months of ceasing to be a Member.

7. What costs can be claimed/charged against the Winding Up Provision?

There are a number of expenses which may be claimed, details of which are as follows:

**Staff Costs**

- Support staff salaries together with Employers National Insurance and pension contributions for the period a member of staff is employed to assist in winding up the Member's parliamentary business.

- Contractual staff redundancy payments that are due. (Performance award payments to staff cannot be charged to the Winding up Provision.)

- Childcare vouchers in respect of support staff for the period they are employed to assist their Member in winding up his or her parliamentary business.

- Travel costs a member of support staff may incur in the course of assisting his or her Member in winding up his or her parliamentary business. This does not include normal commuting costs.

**Office Costs**

- Rental payments due in respect of constituency/regional offices as a result of any contractual notice to quit period.

- Business rates due in respect of a constituency/regional office as a result of the contractual notice period.

- Utility costs incurred during the notice period.

- Any insurance costs due during the notice period.

- Office running and repair costs a Member may be contractually obliged to meet during the notice period.

- Stationery, photocopying, postage and business telephone costs a Member may incur as a result of winding up his or her parliamentary business.
Edinburgh Accommodation

- For those who rent accommodation in Edinburgh any contractual rental obligations in relation to the notice to quit period required to be served can be claimed. Any deposit paid on rented accommodation that was met from the Edinburgh Accommodation Provision will require to be refunded to the Parliament via the Allowances Office.

  Please note that if your lease/rental agreement requires you to give notice you are expected to give that notice prior to dissolution so that the notice period expires on the date of dissolution.

- Council Tax, factoring, insurance, gas, electricity and telephone charges and maintenance agreement costs will be met for the same period as any rent or mortgage interest is paid.

- Costs incurred as a result of a Member removing his or her personal belongings from his or her Edinburgh accommodation can be met.

Members’ Travel Costs

- Any travel costs a Member may incur as a result of winding up his or her parliamentary business can be met.

Overnight Expenses

- If a Member who was eligible to claim the Edinburgh Accommodation Provision requires to stay overnight in Edinburgh to wind up his or her parliamentary business he or she may claim overnight expenses up to the limit set. Members will be required to personally settle any hotel bills on departure and reclaim the costs from the Allowances Office.

- Only those Members who were eligible under the Overnight Accommodation Provision to claim for overnight accommodation costs incurred as a result of staying away from home overnight within their constituency/region will continue to be eligible to claim such costs incurred as consequence of finalising their parliamentary business.

8. What do I need to think about if I want to terminate my local office lease before dissolution?

Any Member wishing to terminate their lease because they are not standing at the election should contact the Allowances Office for guidance.

A Winding Up checklist has been produced and is available at Annex 1 for your ease.
MSPs’ Salaries and Pensions

9. When will my salary end if I am not standing at the election?

If Members are not standing at the election, they are entitled to a salary up to and including the day of dissolution.

10. When will I be advised about my pension if I am not standing again at the election?

The Scottish Public Pensions Agency (SPPA) will be writing individually to all Members who have announced their intention to stand down at the election, detailing their specific entitlements, once dissolution has been announced. Any Member who wishes to obtain an estimate before then should contact SPPA (please see contacts section).

11. Am I entitled to a Resettlement Grant and, if yes, when will it be paid?

Under Schedule 2 of the Scottish Parliamentary Pensions Act 2009, a Member of the Scottish Parliament is entitled to receive payment of a resettlement grant if the person is a Member immediately before the Parliament’s dissolution and at the subsequent election and either:

- does not stand for election as a Constituency or Regional Member; or
- stands and is not elected.

The amount of resettlement grant payable is the greater of:

- 50% of the annual salary in payment at the time of ceasing to be a Member; or
- one month’s salary for each complete continuous year of service as a Member, subject to a maximum period of 12 years’ service.

The provision for payment of resettlement grants under the Act applies from the date of the election. Resettlement grants will therefore be paid in the next available pay run after the election, ie 31 May 2016.

MSP Staff

12. What do I need to do in terms of my staff if I am not standing at the election?

Members will have many issues to consider in terms of the redundancy of their staff and the appropriate notice that is required.
Annex 3 contains a flow chart that summarises the redundancy process that Members will require to follow. The HR Office will arrange to meet with Members who are standing down, during September/early October to provide guidance and assistance with this process.

Security Passes

13. What do I and my staff do with photographic security passes if I am not standing?

If Members are not standing at the election, their passes and their staff’s passes should be left in the envelope provided for office keys, which will be clearly marked for the attention of the Security Office. The envelope may either be left in the parliamentary office or handed to a security officer on exiting the building.

14. What will happen to the photographic passes of those I have sponsored as a Member?

Organisations or individuals who have a sponsored photographic pass will be required to send their security passes to the Security Office, if the sponsoring Member is not standing at the election. The Member should advise any such pass holders of the need to return their passes.

15. What will happen to my partner’s pass?

If a Member is not standing at the election then any passes held by their partner will be required to be returned to the Security Office.

Data Protection

16. How can I transfer personal data and sensitive personal data to an incoming or other MSP?

This would be defined as processing and the simplest way is to seek the consent of the data subject. Ideally, the consent given should be in writing. There may be reasons why a constituent would not wish his or her data to be passed to the person you think might be appropriate.

Under the Data Protection (Processing of Sensitive Personal Data) (Elected Representatives) Order 2002 elected representatives are permitted to process sensitive personal data in connection with the discharge of elected representative functions in certain circumstances. If you are not seeking re-election, you will continue to be treated as a Member under this Order until 9 May 2016 (see question 17 and Annex 2 for more background on this). Therefore, if you intend to seek
consent, you should aim to receive it well before this period runs out and you should begin the process of seeking consent as soon as possible.

Consent given by data subjects should be freely given, specific and informed (they should know exactly why you need the information and what you are going to do with it). If you intend to send their personal data to a third party, it is especially important that the data subjects are aware of that.

17. Can’t I simply pass all constituency correspondence to an incoming or another MSP?

It depends on what data the casework contains. Remember that passing data to someone else is a form of processing and can only be done in accordance with the Data Protection Act (DPA).

You should note that the 2002 Order does not operate so as to ‘transfer’ a right to process particular sensitive personal data from you to an incoming or other MSP. That incoming or other MSP cannot process data under the Order unless his or her processing meets the conditions outlined in the accompanying note attached at Annex 2 and is otherwise in compliance with the DPA.

For personal data, you may pass constituency correspondence if you have consent to do so, or if one of the other conditions is met, and if to do so is otherwise in accordance with the DPA. If you are in doubt, we recommend that you seek consent.

For sensitive personal data, you may do so if you have explicit consent (ideally in writing) or you consider that one of the other conditions is met, and if to do so is otherwise in accordance with the DPA. If you are in doubt, we recommend that you seek explicit consent.

However, in all of the above cases you should not pass data to any person who is not entitled under the DPA to process it. It may be a breach of the requirements of the DPA to pass data to someone who is not so entitled.

18. What if I seek explicit consent but cannot trace the constituent or the constituent does not respond?

You should use your best judgement, after considering all the circumstances. It may be that the safest option would be to arrange for the secure disposal of the sensitive personal data.

Members should make their own arrangements for the confidential disposal of papers in relation to constituency casework held at their local office. For confidential paperwork held at Holyrood, Facilities Management can assist by arranging the provision of the necessary confidential waste bags and their uplift for shredding once filled. Any Member wishing to take up this offer should contact the Facilities Management Helpdesk on (0131) 348 5100.
19. Does the Data Protection (Processing of Sensitive Personal Data) (Elected Representatives) Order 2002 allow a new MSP to access records held by me?

No, the 2002 Order does not create a right for a new MSP to access records held by a current Member.

20. If I am not returning as an MSP in the next Parliament, and a person formerly acting with my authority is taken on by another MSP, can that person continue to process my casework under the 2002 Order?

No. The 2002 Order operates so as to allow you or a person acting with your authority to process sensitive personal data, but only until the end of the fourth day after the election, ie. 9 May 2016, even if the same person is later taken on by an incoming or other MSP. The employee is only entitled to process the data that his or her new employer is entitled to process.

More detailed information on Data Protection can be found at Annex 2.

IT Services

21. What IT support will I receive if I am not standing?

BIT will assist any Member not standing for election to copy and clear out his/her IT network account. IT accounts will remain active for the duration of the winding up period (normally 3 months) and will not be closed without agreement of the Member. Pooled staff who work for more than one MSP may retain IT equipment and access if one or more of the employing Members is standing at the election.

22. What should I do about IT equipment if I am not standing for re-election?

Laptops, mobile devices and local office equipment supplied centrally will be reclaimed by the Parliament. Some mobile devices may be available for Members to purchase (price will vary depending on the make and model but will generally be between £100 and £200). Someone from BIT will be in touch in the months preceding dissolution to discuss and provide detailed costs.

Mobile Devices

23. What should I do with my smartphones and tablets provided by the Parliament?

Someone from BIT will contact Members to arrange retrieval of any centrally provided devices.
If Members would like to keep their telephone number then please contact BIT, who will arrange to have the number transferred out of the corporate account. If it is to another provider then the Porting Authorisation Code (PAC) will be provided to facilitate the transfer to another network.

As soon as a Member is satisfied that their responsibilities are concluded, BIT will arrange for the SIM card to be transferred from the current business account to a personal account.

Members are permitted to purchase smartphones or tablets that have made up part of their centrally provided allocation (cost between £100 and £200 depending on the model) however the Member will remain responsible for any data that resides on the device. Please speak to BIT for precise costs.

24. What should I know if I am purchasing a smartphone or tablet?

If you decide to purchase a mobile device that was supplied centrally as part of your MSP provision:

1. Let BIT know that you would like to purchase the device.
2. Provide payment for the agreed amount.
3. If you have contacts on your device that are stored in your parliamentary email then BIT can show you how to move these to the device.
4. If your AppleID or equivalent is associated with your parliamentary address then you will need to change this to a different email address. BIT can advise you on how this is done.
5. BIT will show you how to remove parliamentary mailboxes set up on your device.
6. If you have purchased apps from the Apple store or equivalent then these will be associated with your Apple ID and will be available for you to use in the future.

Please be aware that Members are responsible for any documents and data that may remain on the device as per the Data Protection Act.

Smartphones or tablets purchased using the Members’ Expenses Scheme belong to the Member.

If you have any questions in the meantime, please contact the IT Helpdesk on (0131) 348 6100.

25. Will the costs of using my mobile phone be met from the Winding Up Provision?

The cost of using a mobile phone for the purpose of winding up a Member’s parliamentary business will be met from the Winding Up Provision and should be claimed in the usual way.

It should be noted that all of the above guidance in relation to Members and the arrangements for their mobile devices applies equally to Members’ support staff.
**26. What should I do with my laptop?**

If your laptop was provided centrally as part of your MSP allocation, then it is not available for purchase, since the software licences are provided on a subscription basis and not bought outright.

Laptops purchased using the Members’ Expenses Scheme belong to the Member, however the Member will need to contact BIT to remove the Parliament’s software from the device. Laptops will be restored to the standard Windows 7 build that they came with when purchased.

**BT Phone Book**

**27. What will happen to my entries in the BT Phone Book after polling day?**

Members are responsible for removing the entries against their names under ‘Members of the Scottish Parliament’ in the Business Listings section of the BT Phone Book. Parliament staff do not have the authority to get these entries deleted, as telephone suppliers and BT will not accept instructions from them in relation to Members’ entries.

When a Member who is not standing for election has set a date for closing their constituency office, they should contact the company that provides the local office with a telephone/fax line as soon as possible and ask them to remove their name and number(s) from the Phone Book. (For example, if the constituency office has a BT telephone line, the Member should contact BT.)

BT Phone Books are updated on a rolling programme every 18 months. Changes will appear in the next published edition of the Phone Book.

**Office Supplies and Equipment**

**28. Can I request any new equipment/furniture in the run-up to dissolution?**

Requests for new equipment/furniture may be submitted up to 1 January 2016.

Thereafter, up until dissolution, Members can only be provided with equipment and furniture to replace lost, damaged, stolen or faulty equipment or furniture.
29. What should I do if I need to purchase equipment before dissolution from Expenses?

Under the Reimbursement of Members’ Expenses Scheme, Members can purchase equipment and furniture and meet the costs from their Office Cost Provision (OCP) (for items not supplied by the Parliament) to replace any faulty or broken items.

However, from 1 January 2016 Members should seek the endorsement of the Allowances Office prior to incurring any equipment costs in excess of £100 to be claimed from OCP.

30. What are the arrangements for the collection of equipment and furniture provided by the Parliament?

Our Facilities Management team will arrange for equipment and furniture to be collected at a convenient date and time for Members and their staff, and we shall ensure that the arrangements will take into account the time Members require to wind up their affairs.

If you are closing your local office, you should contact the FM Helpdesk on (0131) 348 5100 to arrange a removal service. This will include the uplift and moving of furniture, storage, and disposal if required. FM will also provide any necessary packing materials such as crates, security tags, labels etc. FM will also be happy to provide Members with a list of the furniture and equipment belonging to the Parliament that requires to be returned when the local office is closed.

Where a Member has already terminated the lease of their local office as part of winding up their parliamentary affairs, then we would ask that they provide us with details of where all the remaining furniture and equipment can be collected from.

Members will wish to note that these arrangements will also include the return of all Scottish Parliament supplied postage stamps and Scottish Parliament headed stationery e.g. envelopes and letter headed paper.

31. When should I contact the Facilities Management team to arrange the collection of equipment and furniture?

As soon as a Member who is not standing for election has set a date for closing his or her local office we would suggest they contact the FM Helpdesk on (0131) 348 5100.

Wherever possible, a minimum of three weeks’ notice of the closure date should be given to Facilities Management. This will allow the necessary arrangements to be made and a date and time that is suitable for the Member to be confirmed.
32. Will there be any exceptions to these arrangements?

Low-value items such as fans, heaters, kettles and second-hand furniture that have been purchased from the Office Cost Provision are the property of the Member and need not be returned to the Parliament.

Members may retain or dispose of these items locally as they see fit. If there is any doubt as to how to dispose of any items in the local office, the Facilities Management Helpdesk (0131) 348 5100 will be pleased to provide assistance.

Postal Services

33. What will happen to my mail if I am not standing?

If Members are not standing, their mail will continue to be redirected to an agreed address for a period of 3 months after the dissolution date. This will provide assistance to Members during the winding up of their parliamentary affairs.

Surgeries

34. Can I hold surgeries in my region/constituency up until dissolution?

Members can continue to hold surgeries in their region/constituency as Members up until dissolution. Members will wish to ensure that their constituents are aware in advance that all MSP surgeries will cease as of the date of dissolution.

New casework

35. Can I take on new casework during dissolution?

No. If approached by a constituent you should direct them to contact a candidate in the election.

Websites

36. What will happen to my details on the Parliament’s website after the date of dissolution?

The biographical information on the Parliament’s website relating to current MSPs will be moved to the section on previous Members for Session 4. Each will be edited to add closing dates for the end of the session where appropriate and contact details will be removed.
A separate list of contact details during dissolution will be available on the website.

**37. I have a personal website funded from the Office Cost Provision. Can I continue to use it during dissolution?**

Members must either remove the website completely or else attach the following rider:

“This website was established while I was a Member of the Scottish Parliament. I stood down as a Member with effect from 24 March 2016.”

The website cannot be used for political electioneering or canvassing. All links to Members’ personal websites from the Scottish Parliament website will be removed from the day of dissolution.

**38. I have a private website paid for by myself. What do I need to do?**

Websites which have been paid for by a Member need not be removed from the web, but should again make clear that he/she is no longer a Member of the Scottish Parliament with effect from 24 March 2016.

**Social Media**

**39. What should I do about my social media accounts I use as an MSP?**

All references to being a current Member of the Scottish Parliament must be removed from social media profiles or the text amended, as with private websites, to reflect that the Member intends to stand down as at 24 March 2016 and that there are no Members of the Scottish Parliament during the period of dissolution.
Annex 1

Winding up Checklist

When winding up your parliamentary business you may find the following checklist helpful:

- Office Lease. Check lease to ascertain whether there is a termination clause and issue notice to quit accordingly bearing in mind the time required to wind up parliamentary duties.

- Office Telephones. Arrange to have these disconnected with all number listings removed.

- Office Signage. Arrange to have this removed.

- Websites. Remove all reference to status as an MSP and Scottish Parliament logo as applicable.

- Refunds of Office Costs. Arrange to have any refunds due in respect of rental deposits, business rates, annual insurances and utility provision submitted to the Allowances Office.

- Mobile Phones. If appropriate contact the Allowances Office to arrange the transfer from the SPCB’s contract.

- Mobile devices. Contact BIT if you would like to know more about purchasing your tablet or smartphone.

- Edinburgh Accommodation. Check lease to ascertain whether there is a termination clause and issue notice to quit accordingly.

- Utilities. Arrange final reading of utility meters as appropriate.

- Edinburgh Accommodation Telephones. Arrange to have these disconnected with all number listings removed as appropriate.

- Refunds of Edinburgh Accommodation Costs. Arrange to have any refunds due in respect of rental deposits, council tax, annual insurances/maintenance agreements, factoring charges and utility provision submitted to the Allowances Office.

- BT Phonebook. Arrange through local office telephone provider to have all listings removed.
Annex 2

Data Protection & Constituency Casework during the Election period

You may be thinking about what to do with constituency correspondence and casework in the run-up to, and following, the election. We hope this note will provide answers to some of your questions and give you a bit of background about your obligations under the Data Protection Act 1998 (the DPA).

INTRODUCTION

1. This note provides further advice and guidance on handling and good records management practice for constituency casework during the election period – in particular regarding your obligations under the Data Protection Act 1998¹ (the DPA) and the effect of the provisions contained in the Data Protection (Processing of Sensitive Personal Data) (Elected Representatives) Order 2002² (the Order).

2. This Order took effect on 17 December 2002 and permits elected representatives and persons acting with their authority to process sensitive personal data without explicit consent, but only where certain conditions are met. Similarly, the Order permits others (e.g. departments, local authorities, NHS bodies, police authorities) to disclose sensitive personal data to you, or persons acting with your authority, in response to action by you in progressing constituency casework.

3. Provided the relevant conditions are met, the Order permits you and persons acting with your authority to process sensitive personal data up to the end of the fourth day after the day of the election – ie 9 May 2016 – irrespective of whether you are retiring or standing again, or whether you are re-elected or not. The Order also permits other holders of such data to disclose it to you up to this date. If you are not standing or not re-elected, this may facilitate you in concluding your constituency casework.

4. For the purposes of this note –
   - ‘constituency casework’ is to be taken as any information (e.g. incoming and outgoing correspondence, notes or other related work) held by you (in paper, electronic or other format) as a result of a request made to you, on which you have taken action, or are expected to take action, in the discharge of your functions as an ‘elected representative’ (see paragraph 3 above);
   - the ‘election period’ for the purposes of this Order is to be taken as the period beginning with the day of the Parliament’s dissolution, i.e. 24 March 2016, to 4 days after the date of the election, i.e. 9 May 2016.

BACKGROUND

THE DATA PROTECTION ACT 1998

5. You (and your employees) are subject to the DPA. As such, paperwork (in a structured filing system) and all electronic records containing personal data held by you in your capacity as an elected representative fall within the scope of this Act. This places important obligations on you about how you handle (or “process”) personal information, not only during the election period but at any time. Processing personal data includes obtaining, collecting, disclosing, rationalising (e.g. sorting, transferring, deleting or destroying) or merely holding such information.

6. Further information about your day-to-day obligations under the DPA is contained in Section 8 of the MSP Staff Induction Handbook and in the Data Protection Guidance for Members. Copies may be obtained from Claire Turnbull, Head of Information Governance, on (0131) 348 6913.

7. The Election Guidance distributed to all Members in December also provides further advice for the period of dissolution, including matters such as contact details and how you should refer to yourself during this period.

8. Further information on data protection matters is available from the UK Information Commissioner³.

Personal data and sensitive personal data

9. Some detail about important concepts is given here in order to assist you. For fuller descriptions, you should refer to the Guidance for MSPs on the Data Protection Act.

10. Data means information held in a way specified in the DPA – generally, it includes information held electronically or in a structured filing system.

11. Personal data means data, relating to a living individual, containing details that would enable a person to identify another living individual. Personal data may only be processed if one or more conditions are met as set out below and in Schedule 2 to the DPA.

   - Fairly and lawfully processed
   - Processed for limited purposes and not in any manner incompatible with those purposes
   - Adequate, relevant and not excessive
   - Accurate

³ http://www.ico.gov.uk
• Not kept for longer than is necessary
• Processed in line with the data subject’s rights
• Secure
• Not transferred to countries outside the European Economic Area without adequate protection.

12. For constituency casework, the most commonly met condition is likely to be consent, though for personal data this can be implied consent.

13. Sensitive personal data is another category of personal data. It means personal data about racial or ethnic origin, political opinions, religious beliefs (or beliefs of a similar nature), trade union membership, physical or mental health details, sexual life, or criminal activity or proceedings. Processing is stricter for this type of data. Sensitive personal data may only be processed if one or more conditions for processing personal data are met (see paragraph 11 above), and in addition, if one or more further conditions are met as set out in Schedule 3 to the DPA:

• where the data subject has given his or her explicit consent
• where the processing is required by law in connection with employment
• where the processing is necessary in order to protect the vital interests of the data subject or another person
• where the processing is necessary for the administration of justice or in connection with legal proceedings

14. For constituency casework, the most commonly met further condition is likely to be explicit consent.

15. Data subject means the person to whom the personal data relates.

THE DATA PROTECTION (PROCESSING OF SENSITIVE PERSONAL DATA) (ELECTED REPRESENTATIVES) ORDER 2002

16. This Order took effect on 17 December 2002 and permits elected representatives and persons acting with their authority (see below) to process sensitive personal data without explicit consent, but only where certain conditions are met. Similarly, the Order permits other holders of such data (e.g. departments, local authorities, NHS bodies, police authorities etc) to disclose it to you or persons acting with your authority, in response to action by you in progressing constituency casework.

17. Provided the relevant conditions are met, the Order permits you and persons acting with your authority, to process sensitive personal data up to the end of the
fourth day after the day of the election – ie 9 May 2016 – irrespective of whether you are retiring or standing again, or whether you are re-elected or not. The Order also permits other holders of such data to disclose it to you up to this date – this may facilitate you in concluding your constituency casework. However, the Order only permits holders to disclose this data to you – it does not require them to do so. They may still take other factors into consideration or look for evidence that there is explicit consent.

18. Even when relying on the Order, you are still required to meet all the other requirements of the Data Protection Act.

Conditions when individual is the data subject

19. The Order permits elected representatives and their employees to process sensitive personal data without explicit consent where the processing:

- is carried out by you or a person acting with your authority;
- is in connection with the discharge of your functions as an elected representative;
- is carried out as a result of a request made to you by the data subject to take action on behalf of that or any other individual; and
- is necessary for the purposes of, or in connection with, the action reasonably taken by you in response to that request.

Conditions when individual is not the data subject

20. Sensitive personal data may also relate to an individual other than the person raising the matter (e.g. where Smith writes complaining about nuisance neighbour Jones, the information may include sensitive personal data relating to Jones; or if the correspondent is writing on behalf of someone else, correspondence may contain sensitive personal data about that other person).

21. In such circumstances, the Order also permits elected representatives and their employees to process sensitive personal data without explicit consent as long as the processing:

- is carried out by you or a person acting with your authority;
- is in connection with the discharge of your functions as an elected representative;
- is carried out as a result of a request made by an individual other than the data subject to you to take action on behalf of the data subject or any other individual;
- is necessary for the purposes of, or in connection with, the action reasonably taken by you in response to that request; and
- is carried out without the explicit consent of the data subject because the processing:
  - is necessary in a case where explicit consent cannot be given by the data subject;
  - is necessary in a case where you cannot reasonably be expected to obtain the explicit consent of the data subject;
must necessarily be carried out without the explicit consent of the data subject being sought so as not to prejudice the action taken by you; or

- is necessary in the interests of another individual in a case where the explicit consent of the data subject has been unreasonably withheld.

**Persons acting with your authority**

22. Clearly “persons acting with your authority” would include your employees. It may also include other persons working for you, e.g. volunteers or party employees. However, only your employees can process personal data under your notification. The DPA imposes certain controls when other persons process data on your behalf. You should refer to the general Guidance for MSPs on the Data Protection Act.

**Processing constituency casework during the election period**

23. Personal data (sensitive or otherwise) should not be retained for any longer than is reasonably necessary, nor used for any purpose apart from that for which it was received. You may have a number of closed constituency casework files in your office. It is also possible that you may not have concluded all current constituency casework before the dissolution of the Parliament. You should have a records management policy in place to deal with closed constituency casework. You are also encouraged (particularly if you are standing down, or as a contingency, in the event of you not being re-elected) to make arrangements in advance of the election to rationalise all constituency casework in accordance with the DPA and to benefit from the provisions in the Order. Rationalisation options could include secure disposal (shredding, incineration, deletion etc). See the Q&A section if you intend to transfer such data to an incoming or other MSP.

24. Of course, your constituency casework files may not all contain personal data or even data for the purposes of the DPA. As indicated above, generally information is only data for the purposes of the DPA if it is held electronically or in a structured filing system.

25. For constituency casework stored electronically or held in a structured filing system containing personal data only, any implied consent given by the person on behalf of whom you are, or were, acting may be sufficient for you to process such information. However, if you are in any doubt, you should seek the view of that person.

26. For constituency casework stored electronically or held in a structured filing system containing sensitive personal data, you should, as always, exercise greater care. Whilst it is now possible, subject to the conditions and circumstances outlined in the Order, for you to continue to process sensitive personal data without obtaining explicit consent from the data subject, this does not mean you should not ask for consent. There may be occasions when it would be wise or appropriate to obtain explicit consent from the data subject (for example, when you intend to contact organisations such as local authorities, the NHS, hospitals, GPs and the Scottish Prison Service, which may themselves hold sensitive personal data on behalf of the data subject or another party).
27. The Order permits you to continue processing sensitive personal data up to the end of the fourth day after the day of the election (i.e. from the Friday immediately after polling day up to and including Monday, 9 May 2016). However, this period includes Saturday and Sunday, so does not provide much time – we therefore recommend that you take early action in this matter. The Order can be relied on at any time up to the election and for those four days after it – you do not have to wait for the four-day period.

28. If you have not already done so, we recommend the introduction of an office system whereby explicit consent to process sensitive personal data in particular ways is obtained when embarking on any new case. This allows you greater freedom of action. A template letter is available below.

Questions you should ask yourself

- Is it data for the purposes of the DPA (generally, information held electronically or stored in a structured filing system)?
- Is it personal data? If so, have I met at least one of the conditions for processing personal data – e.g. consent (which includes implied consent) – set out in Schedule 2 to the DPA? Should I seek consent?
- Is it sensitive personal data? If so, have I (in addition to Schedule 2 to the DPA) met at least one of the conditions for processing sensitive personal data – e.g. explicit consent or meeting the terms of the Order – set out in Schedule 3 to the DPA? Should I seek explicit consent?
- Am I processing the data in full accordance with the eight Data Protection Principles?
- By what method may I rationalise personal data?
- In order to assist in my judgement of privacy requirements, should I undertake a privacy impact assessment?
Dear (Constituent Name)

The Scottish Parliamentary general election will be held on Thursday 5 May 2016. I am writing to let you know that it is my intention not to stand for re-election. I will be standing down at dissolution, which will begin on Thursday 24 March 2016.

I am now winding up my local parliamentary office and as part of that exercise I need to deal with the correspondence/casework between ourselves and [provide details of any third parties] relating to [provide a broad description of the correspondence/casework].

In winding up my office and appropriately dealing with correspondence/casework which I have had with my constituents, whether ongoing or closed, I must comply with the requirements of the Data Protection Act 1998. Some of the information contained in your casework file contains personal [if appropriate include sensitive personal data] relating to [you, your family or relatives].

I am now seeking your written consent to further process any of your personal data [or sensitive personal data] I may have. I would request your consent to either pass the contents of your casework file to the next elected Member or confidentially destroy the contents of your casework file or return the casework file to you at (include address details). If this is not your correct address any longer please advise.

I would be grateful if you would complete and sign the attached slip by………………………. (select date) and return it to me at the above address in order that I may process your file according to the requirements of the Data Protection Act 1998.

If I do not hear from you the contents of your casework file will be confidentially destroyed on ……………………… (provide date).

Yours sincerely

(Insert Member’s name)
I consent to the contents of my casework file currently held by (insert name of current Member) being: (please tick box)

- Passed to the incoming Member, once elected [ ]
- Confidentially destroyed [ ]
- Returned to me [ ]

N.B. Please confirm that the address I have for you is correct. If not, please advise what the address should be.

Name…………………………………………………………………………………………………………………………………………………

Signature…………………………………………………………………………………………………………………………………………

Date………………………………………………………………………………………………………………………………………………

Annex 3

REDUNDANCY PROCESS FLOWCHART

**Timescales**

- **September/October 2015**

**Process**

1. The Human Resources Office contacts Member to discuss redundancy process

2. Member announces intention (standing or not standing) to staff, ensuring all are notified

3. Issue early warning letters (risk of redundancy)

4. Hold individual consultation meeting(s)

   - Hold redundancy meeting
     - Advise if you require employee to work notice period or if you wish to pay in lieu of notice (if contract allows for this)
     - Issue letter confirming outcome
     - Notify Human Resources Office

5. Appeal (where applicable)

   - Employee works notice (where required)
     - Facilitate paid time off to seek alternative employment/training

6. Employment ends

**Notice period varies according to length of service as set out in contract of employment. The notice period can range from 1 to 12 weeks.**

**First consultation meeting should be held as soon as possible after intention announced. The HR Office will assist with timetabling.**

**The HR Office will provide guidance to ensure a meaningful period of consultation.**