ICO response to the draft Scottish Elections (Reduction of Voting Age) Bill

16 April 2015
About the ICO

The ICO’s mission is to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.

The ICO is the UK’s independent public authority set up to uphold information rights. We do this by promoting good practice, ruling on complaints, providing information to individuals and organisations and taking appropriate action where the law is broken.

The ICO enforces and oversees the Data Protection Act 1998 and the Privacy and Electronic Communication Regulations 2003, as well as the UK Freedom of Information Act 2000 and the UK Environmental Information Regulations 2003, both of which apply to reserved matters in Scotland.
Introduction

The Information Commissioner’s Office (ICO) is pleased to submit its views on the draft Scottish Elections (Reduction of Voting Age) Bill (the draft Bill) to the Devolution (Further Powers) Committee of the Scottish Parliament.

Our focus is solely on aspects of the draft Bill which relate to the handling of personal data to help ensure that the proposed extension of the franchise in Scottish elections complies with the eight Data Protection Principles contained within the Data Protection Act 1998 (the DPA). No comments will therefore be made on issues relating to entitlement to vote or to alterations in the registers except where such alterations may apply to personal data.

The ICO previously gave oral evidence on 14 March 2013 to the Referendum (Scotland) Bill Committee on similar issues contained in the Scottish Independence Referendum (Franchise) Bill.
Comments on the draft Bill

Sections 3-5: Invitations and applications to register

The ICO welcomes the requirement that an explanation of how a young person’s information will be used is included on the invitation to register and application to register. The first Data Protection Principle requires the organisation requesting the personal data to the person sufficient fair processing information such as the purposes for which the information will be used, and who else it might be shared with.

As we previously said to the Referendum (Scotland) Bill Committee, we recommend that voter registration forms for under-16s give clear information about alternative methods of registering such as anonymous registration or declarations of local connection in order to protect their personal privacy.

We note that the Electoral Commission may be given the function of designing appropriate forms. We would be happy to work with them on the drafting of a fair processing statement.

Section 5: Additional evidence

Section 5(3) proposes to include a new Regulation 26B(6A) in the 2001 Regulations. This would allow the ERO to verify the identity of an applicant who is under the age of 16 by confirming details against any educational record to which the ERO can have access.

The explanatory memorandum says that this will be access to local authority records held for educational purposes to which the ERO already has the ability to request under Regulation 35 of the 2001 Regulations. It appears to us that the ERO may not then have the same ability to access information about 14 or 15 year olds in independent schools or are schooled at home. The Committee should satisfy itself that the ERO has sufficient power to access this information as necessary. Our [Data-Sharing Code of Practice](#) should be used as a guide for ensuring that any such sharing complies with the DPA.

Sections 7-8: Anonymous registration and declarations of local connection

We welcome the continuation of the above provisions as methods by which young people under the age of 16 can continue to use when they register to vote. These are important measures for protecting the privacy of young people who could suffer some damage or distress if their current residence could be identified.
Sections 12-14: Protection of information

The ICO would strongly recommend a separate register of young voters to be maintained by EROs as was the case for the Scottish Independence Referendum. This would have afforded young voters greater protection by ensuring a clear separation between the register of young voters and the full electoral register.

We support the limitations on the disclosure of personal information of under 16s included in the draft Bill. However, as the register may be used by credit reference agencies in relation to the assessment of applications for credit, consideration also should be given to how best to restrict access to the details of under-18s. We support the proposal that wrongful disclosure would be an offence and note that it would also be a civil breach of the DPA whereby we could take regulatory action as well.

Section 34 of the DPA exempts information that is publicly available from certain aspects of the DPA. However, as information about any registered 14 or 15 year olds would not be available for public inspection, appropriate measures should be put in place by EROs to ensure that requests made under the exception contained in section 13(5) are responded to as business as usual rather than through the rights of subject access, thus according young people the equivalent rights as others.
Further issues

Marked electoral registers

The handling of personal information in the marked electoral registers on polling day and thereafter is a matter to be addressed in the conduct rules for the particular election types rather than under the draft Bill. We would expect the Scottish Government to apply the same principles governing the marked referendum registers when drafting those election rules.

Privacy Impact Assessment

We previously recommended to the Standards, Procedures and Public Appointments Committee that “a Privacy Impact Assessment (PIA) be required to accompany any bill that involves the processing of personal information when it is introduced to the Scottish Parliament”.\(^1\) Scottish Government guidance also expects that its officials will provide a summary of the privacy issues identified to the lead Committee.\(^2\)

The Scottish Government has prepared a PIA for the draft Bill which we have had sight of. Whilst we would not formally endorse the content of a PIA, we are nevertheless satisfied that consideration has been given to the main privacy impact of the Bill and the factors mitigating the privacy risk have been identified.

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\(^{1}\) [ICO response to the inquiry into the procedures for considering legislation](https://www.ico.org.uk/documents/2912/WWW12061.pdf)

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For further information on this submission, please contact Dr Ken Macdonald, Assistant Commissioner (Scotland & Northern Ireland) on 0131 244 9001 or email scotland@ico.org.uk.