

## SCHEDULE 8

Article 6(5)

### ACCESS TO MARKED REGISTERS AND OTHER DOCUMENTS OPEN TO PUBLIC INSPECTION AFTER AN ELECTION

#### Interpretation of this Schedule

1.—(1) In this Schedule references to the “marked register or lists” means any part of the marked copies of—

- (a) the polling register;
- (b) the postal voters list;
- (c) the list of proxies; and
- (d) the proxy postal voters list,

retained by the CRO under paragraph 29 of Schedule 4 (retention of postal ballot papers, etc.) or rule 70 of the Scottish Parliamentary Election Rules (retention of documents).

(2) In this Schedule—

- (a) “full register” and “edited register” have the same meaning as in the 2001 Regulations<sup>(1)</sup>;
- (b) “processor” means a person who provides a service which consists of putting information into data form and any reference to a processor includes a reference to the processor’s employees;
- (c) “relevant conditions” has the same meaning as in section 33(1) of the Data Protection Act 1998<sup>(2)</sup>;
- (d) “research purposes” shall be construed in accordance with section 33(1) of the Data Protection Act 1998; and
- (e) any reference to an employee of any person who has access to a copy of the full register shall be deemed to include any person working or providing services for the purposes of that person or employed by or on behalf of, or working for, any person who is so working or who is supplying such a service.

(3) Any duty of a CRO to supply records or lists or make them available for inspection under this Schedule imposes only a duty to provide that information in the form in which the CRO holds it.

#### Commencement Information

II Sch. 8 para. 1 in force at 16.12.2015 in accordance with art. 1(1)

#### Supply of marked registers and lists after an election

2.—(1) Any person entitled to be supplied, in accordance with any of the provisions specified in sub-paragraph (2), with copies of the full register at the time of a Scottish parliamentary election is also a person entitled, subject to this paragraph and to paragraphs 4 and 5 (restrictions on supply, disclosure and use, etc.), to request that a CRO supply copies of the relevant part (within the meaning of those provisions) of the marked register or lists the CRO is required to keep.

(2) The provisions referred to in sub-paragraph (1) are—

- (a) paragraph 3 of Schedule 1 (supply of full register etc. to elected representatives for electoral purposes and restriction on use);

(1) See regulation 93(1) inserted by S.I. 2002/1872.

(2) 1998 c.29.

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- (b) paragraph 4 of Schedule 1 (supply of full register etc. to certain candidates and restriction on use); and
- (c) the following provisions of the 2001 Regulations—
  - (i) regulation 99(3) (supply of free copy of full register etc. to Electoral Commission and restrictions on use);
  - (ii) regulation 104(4) (supply of full register etc. to local constituency parties and restrictions on use);
  - (iii) regulation 105 (supply of full register etc. to registered political parties etc. and restrictions on use);
  - (iv) regulation 108(5) (supply of full register etc. to police forces and other agencies, and restrictions on use); and
  - (v) regulation 112(6) (sale of full register to government departments and other bodies).
- (3) A person who was entitled to request copies of the marked register or lists under sub-paragraph (1) by being in a category of persons covered by sub-paragraph (2)(a), (b), or (c)(ii) or (iii) before a particular election, shall be entitled to request those documents regardless of whether that person remains in an entitled category after the election for which the marked register or list was prepared.
- (4) A request under sub-paragraph (1) must be made in writing and must—
  - (a) specify which of the marked register or lists (or the relevant part of the register or lists) are requested;
  - (b) state whether a printed copy of the marked register or lists is requested or a copy in data form;
  - (c) state the purposes for which the marked register or lists will be used and why the supply or purchase of a copy of the full register or unmarked lists would not be sufficient to achieve those purposes.
- (5) The CRO must supply a copy of the relevant part of the marked register or lists where a request is duly made, and—
  - (a) the CRO is satisfied that the requestor needs to see the marks on the marked register or lists in order to achieve the purpose for which it is requested, and
  - (b) the CRO has received payment of a fee calculated in accordance with paragraph 6.
- (6) If the CRO is not satisfied in accordance with sub-paragraph (5)(a) the CRO must inform the requestor of the CRO's decision under this paragraph; and
  - (a) where the request relates to the marked register, provide the requestor with information concerning the availability of the published full register for inspection in accordance with regulation 43 of the 2001 Regulations(7) (publication of register);
  - (b) where the request relates to the marked lists, provide information concerning the availability of the unmarked lists in accordance with paragraphs 16 and 17 of Schedule 3 (absent voting lists: supply of copies and inspection).
- (7) A person who obtains a copy of any part of a marked register or list under this paragraph may use it only for the permitted purposes specified in paragraph 5(3), and any conditions—
  - (a) specified in that paragraph; or

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(3) Regulation 99 was inserted by [S.I. 2002/1872](#) and amended by [S.I. 2007/925](#).

(4) Regulations 104, 105, 108 and 112 were inserted by [S.I. 2002/1872](#).

(5) Regulation 108 was amended by [S.I. 2006/594](#) and [834](#) and the Counter-Terrorism Act 2008 (c.28).

(6) Regulation 112 was amended by [S.I. 2006/834](#) and the Counter-Terrorism Act 2008.

(7) Regulation 43 was amended by [S.I. 2002/1872](#), regulation 9.

(b) which would apply to the use of the full register under whichever of the provisions specified in sub-paragraph (2) entitled that person to obtain that document, shall apply to such use.

(8) Where a person has been supplied with a marked register or list, or any information contained in it (that is not contained in the edited register), by a person to whom a provision specified in sub-paragraph (9) applies, the restrictions in that provision also apply to the person to whom the register, list or information was supplied, as they apply to that other person.

(9) The provisions specified in sub-paragraph (8) are—

- (a) paragraph 3(3) of Schedule 1;
- (b) paragraph 4(5) of Schedule 1; and
- (c) the following provisions of the 2001 Regulations—
  - (i) regulation 99(3);
  - (ii) regulation 104(4);
  - (iii) regulation 105(3); and
  - (iv) regulation 108(3).

(10) Any person who has obtained or is entitled to obtain a copy of the marked register or lists under this paragraph may—

- (a) supply a copy of the marked register or lists to a processor for the purpose of processing the information contained therein; or
- (b) procure that a processor processes and supplies to them any copy of the information in the marked register or lists which the processor has obtained under this paragraph,

for use in respect of the purposes for which that person is entitled to obtain such copy or information (as the case may be).

(11) A processor may not disclose the marked register or lists or the information contained in them except to the person who supplied it to the processor or any other person who is entitled to obtain a copy of the marked register or lists under this Schedule, or an employee of such a person.

#### **Commencement Information**

**I2** Sch. 8 para. 2 in force at 16.12.2015 in accordance with art. 1(1)

### **Inspection of documents open to public inspection**

**3.—(1)** Any person is entitled to request that the CRO make available for inspection a copy of any of the following documents (referred to in this Schedule as “the documents open to public inspection”)—

- (a) the marked register or lists;
- (b) such other documents relating to a Scottish parliamentary election as the CRO is required by or under any enactment to retain for any period except—
  - (i) ballot papers;
  - (ii) completed corresponding number lists;
  - (iii) certificates as to employment on the day of the election;
  - (iv) the list under paragraph 25(4) of Schedule 4.

(2) A request under sub-paragraph (1) must be made in writing and must specify—

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- (a) which documents are requested;
- (b) the purposes for which the information in any document will be used;
- (c) where the request is to inspect the marked register or lists, any reason why inspecting the full register or unmarked lists would not be sufficient to achieve those purposes;
- (d) who will inspect the documents;
- (e) the date on which they wish to inspect the documents; and
- (f) whether they would prefer to inspect the documents in a printed or data form.

(3) Subject to sub-paragraph (5), the CRO must make the documents open to public inspection available for inspection under supervision not later than 10 days after the date of receipt of a request that has been duly made.

(4) In computing the period referred to in sub-paragraph (3), Saturday, Sunday, Christmas Eve, Christmas Day, Good Friday, Easter Monday or a day which is a bank holiday in Scotland under section 1 of the Banking and Financial Dealings Act 1971<sup>(8)</sup> shall be disregarded.

(5) Where a request has been made to inspect copies of the marked register or lists under sub-paragraph (2) and the CRO is not satisfied that the purposes of the requestor cannot be met by inspection of the full register, the CRO must—

- (a) inform the requestor of the CRO's decision under this paragraph; and
- (b) provide the requestor with information concerning the availability of the published full register for inspection in accordance with regulation 43 of the 2001 Regulations.

(6) A person who obtains a copy of or information in any document open to public inspection under this paragraph may use it only for the permitted purposes specified in paragraph 5, and any conditions—

- (a) specified in that paragraph;
- (b) specified in sub-paragraph (8); or
- (c) which would apply to the use of the full register under regulation 108 of the 2001 Regulations where such a person had obtained a copy of that document under sub-paragraph (9),

shall apply to such use.

(7) Where inspection takes place by providing the records or lists on a computer screen or otherwise in data form, the CRO must ensure that the manner in which, and equipment on which, that copy is provided do not permit any person consulting that copy to—

- (a) search it by electronic means by reference to the name of any person; or
- (b) copy or transmit any part of that copy by electronic or any other means.

(8) Subject to sub-paragraph (9) a person who inspects a copy of a document open to public inspection, whether a printed copy or in data form, may not—

- (a) make copies of any part of it; or
- (b) record any particulars in it,

except that a person who inspects a copy of the marked register or lists may make hand written notes.

(9) The CRO must, on request, supply free of charge copies of any documents open to public inspection—

- (a) to the Security Service, the Government Communications Headquarters, or the Secret Intelligence Service;

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(8) 1971 c.80.

- (b) to a person who has inspected those documents and who is entitled to be supplied with a copy of the marked register or lists by virtue of being a person to whom regulation 108 of the 2001 Regulations applies.

**Commencement Information**

**I3** Sch. 8 para. 3 in force at 16.12.2015 in accordance with art. 1(1)

**Restrictions on supply and disclosure of documents open to public inspection**

- 4.—(1) This paragraph applies to—
- (a) the CRO; and
  - (b) any person appointed to assist the CRO or who in the course of that person’s employment is assigned to assist the CRO.
- (2) A person to whom this paragraph applies must not—
- (a) supply to any person a copy of the documents open to public inspection, or
  - (b) disclose information contained in those documents (and not contained in the edited register),

otherwise than in accordance with this Schedule, or for the purposes of an election.

**Commencement Information**

**I4** Sch. 8 para. 4 in force at 16.12.2015 in accordance with art. 1(1)

**Restriction on use of documents open to public inspection, or of information contained in them**

5.—(1) This paragraph applies to any person who has obtained access to a copy of the documents open to public inspection or information contained in them by any means.

- (2) No person to whom this paragraph applies may—
- (a) supply a copy of the documents open to public inspection or any part of those documents;
  - (b) disclose any information contained in those documents (that is not contained in the edited register); or
  - (c) make use of any such information,

other than for a permitted purpose construed in accordance with sub-paragraphs (3) and (4).

(3) Where a person obtains copies of the information in the marked register or lists in accordance with paragraph 2(1) or inspects information in accordance with paragraph 3(1), the “permitted purpose” means either—

- (a) research purposes within the meaning of that term in section 33 of the Data Protection Act 1998; or
- (b) electoral purposes.

(4) Where a copy of any information was supplied in the circumstances to which paragraph 3(9) applies, the “permitted purpose” means either—

- (a) the prevention and detection of crime and the enforcement of the criminal law (whether in Scotland or elsewhere); or
- (b) the vetting of a relevant person for the purpose of safeguarding national security.

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**Commencement Information**

**I5** Sch. 8 para. 5 in force at 16.12.2015 in accordance with art. 1(1)

**Calculating the fee for supply of marked registers or lists**

**6.—**(1) The fee to be paid in accordance with paragraph 2(5)(b) by a person making a request for a copy of the whole or of any part of the marked register or lists is set out in sub-paragraph (2).

(2) The fee shall be the sum of £10, plus for a copy—

- (a) in printed form, £2 for each 1,000 entries (or remaining part of 1,000 entries) covered by the request; and
- (b) in data form, £1 for each 1,000 entries (or remaining part of 1,000 entries) covered by the request.

(3) For the purposes of this paragraph, a request for a copy of the whole or the same part of the marked register or lists in both a printed and data form may be treated as two separate requests.

**Commencement Information**

**I6** Sch. 8 para. 6 in force at 16.12.2015 in accordance with art. 1(1)

**Failure to comply with conditions relating to supply etc. of certain documents**

**7.—**(1) A person (“P”) is guilty of an offence—

- (a) if P fails to comply with any of the provisions specified in sub-paragraph (2), or
- (b) if P is an appropriate supervisor of a person (“Q”) who fails to comply with such a provision and P failed to take appropriate steps.

(2) Those provisions are paragraphs 2(7), (8) and (11), 3(6) and (8), 4(2) and 5(2).

(3) Q is not guilty of an offence under sub-paragraph (1) if—

- (a) Q had an appropriate supervisor, and
- (b) Q has complied with all the requirements imposed on Q by Q’s appropriate supervisor.

(4) A person (“R”) who is not Q or an appropriate supervisor is not guilty of an offence under sub-paragraph (1) if R takes all reasonable steps to ensure that R complies with the provisions.

(5) In sub-paragraphs (1)(b), (3) and (4)—

- (a) an appropriate supervisor is a person who is a director of a company or concerned in the management of an organisation in which Q is employed or under whose direction or control Q is;
- (b) appropriate steps are such steps as it was reasonable for the appropriate supervisor to take to secure the operation of procedures designed to prevent, so far as reasonably practicable, the occurrence of a failure to comply with the provisions.

(6) A person guilty of an offence as mentioned in paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**Commencement Information**

**I7** Sch. 8 para. 7 in force at 16.12.2015 in accordance with art. 1(1)

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