



THE ANNUAL CANVASS AND DATA SHARING WITH THE ERO

This document is produced by Lawyers in Local Government (LLG) with the cooperation of the Association of Electoral Administrators and the Society of Local Authority Chief Executives who both represent Returning and Electoral Registration Officers for the purpose of assisting each organisation's memberships and their authorities with data sharing between any given department and the Electoral Registration Officer (ERO) for the purpose of the Annual Canvass and the EROs duties generally.

This document is intended for use by local authorities and EROs in England and Wales.

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1. Introduction

- 1.1 The ERO holds a legal requirement to undertake an annual canvass which ensures that the electoral register is accurate and complete. The process by which this is undertaken has been reformed this year (2020) by the Cabinet Office, the Scottish Government, and the Welsh Government, in order to streamline the procedure, reduce the administrative and financial burden and make the process simpler; affording greater discretion to EROs to tailor a canvass to suit their local area.

2. The Annual Canvass

- 2.1 The annual canvass requires contacting all residential addresses in Britain to establish if information currently held is accurate and complete. A National Data Matching step has been introduced which is undertaken by disclosing data to the Cabinet Office which is then checked against the data held by the Department for Work and Pensions (DWP). EROs also have the option to undertake Local Data Matching against locally held data sets. This can include council tax, housing benefits, blue badge, garden recycle waste, social services, and education, but is not exhaustive.
- 2.2 Where the details of a property match the national or local dataset, an ERO has the discretion to canvass that property through a streamlined canvass process (Route 1), where a response is only required if there is a change to report (although where an ERO chooses to send an e-communication, a response is required). There is no requirement to follow up or further contact those properties concerned unless changes need to be actioned or no acknowledgement is made to an initial e-communication.
- 2.3 Properties that have unmatched electors which do not appear on the national or local data sets require a fuller canvass process (Route 2), whereby they are required to respond to the ERO. The ERO is obligated to make a minimum of three attempts at contact where they do not receive a response, including a personal attempt and the delivery of a paper communication.



- 2.4 There is also a separate route for those properties containing multiple occupants, such as care homes or student accommodation (Route 3), which involves identifying and working with a 'responsible person' at those sites.

3. Data Sharing Obstacles for EROs

- 3.1 It has been reported that in some authorities (especially within two tier areas), EROs are having difficulty accessing data on the basis of the General Data Protection Regulation 2018 or other statutory provisions which bar access to data without taking into account regulations 23, 35 and 35A of the Representation of the People Regulations 2001 ("the Regulations"). There is also an additional concern raised against giving access to data where the Regulations are acknowledged, but the provisions relating to inspecting and taking copies are applied verbatim without consideration of the practical application (see paragraph 4.6 and 4.7 below).

4. The Law

- 4.1 The Regulations contain three key provisions to enable EROs to access and obtain data information. The first is regulation 23, the 'Power to Require Information', the second is regulation 35, the 'Registration Officer's right to inspect certain records', and third is regulation 35A, 'Disclosure of certain local authorities' records.

r 23 Power to Require Information

- 4.2 Regulation 23 states as follows: -

23.— (1) A registration officer may require any person to give information required for the purposes of that officer's duties in maintaining registers of parliamentary and local government electors.

(1A) A registration officer may not use the power conferred by paragraph (1) to require a person who has made an application under section 10ZC or 10ZD of the 1983 Act to provide information to assist the registration officer in determining, in



connection with that application, whether the applicant is the person named in the application or is entitled to be registered.

(2) A registration officer is under a duty to require persons to give information required for the purposes of that officer's duty under section 3(1) of the Juries Act 1974.

(3) If any person—

(a) fails to comply with

any such requisition of the registration officer as is mentioned in this regulation, he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

r 35 Registration Officer's right to inspect certain records

4.3 Regulation 35 states as follows: -

35.— (1) A registration officer is authorised to inspect, for the purpose of his registration duties, records kept (in whatever form) by—

(a) an authority listed in paragraph (2) below, or

(b) any person providing services to, or authorised to exercise any function of, any such authority.

(2) Those authorities are—

(a) the council by which he was appointed.

(aa) where the council by which he was appointed is a council for a district in a county for which there is a county council, that county council; and

(b) any superintendent registrar of births, deaths and marriages, registrar of births and deaths or registrar of marriages.

(3) A registration officer is authorised to make copies of information contained in such records.



r 35A Disclosure of certain local authorities' records

4.4 Regulation 35A states as follows: -

35A.—(1) A local authority listed in paragraph (2) may disclose to a registration officer information contained in records held by that authority, for any of the purposes mentioned in paragraph 1A(1) of Schedule 2 to the 1983 Act¹.

(2) The authorities are—

(a) the authority by which the registration officer was appointed; and

(b) where the council by which the registration officer was appointed is a council for a district in a county for which there is a county council, that county council.

(3) A disclosure under paragraph (1) may be made only in accordance with a written agreement between the authority and the registration officer regulating the processing of the information, including its transfer, storage, destruction, and security.

(4) Where an authority refuses a request by a registration officer to disclose information under paragraph (1) it must give the registration officer written reasons for its refusal.”

4.5 In practice, for the purposes of data sharing within authorities, regulations 35 and 35A will be the most pertinent. Regulation 35 provides the power to an ERO to inspect and regulation 35A provides the legal authority to allow the local authority department to provide data to the ERO.

4.6 Regulation 35A provides for ‘disclosure’ but does not prescribe the form of disclosure, providing flexibility for the methodology this takes, (although in accordance with r.35A(3), disclosure must be in accordance with a written agreement between the ERO and the local authority detailing the processing of information to be disclosed). Regulation 35 however, (in-force from 2001), provides at r.35(3), that a registration

¹ * As inserted by the Electoral Registration and Administration Act 2013, to (a) to verify information relating to a person who is registered in a register maintained by the officer or who is named in an application for registration in, or alteration of, a register, (b) to ascertain the names and addresses of people who are not registered but who are entitled to be registered, or (c) to identify those people who are registered but who are not entitled to be registered.



officer “is authorised to make copies of information contained in such records”. This has caused some Council departments to give access only, with the ERO having to make copies and or attempt to compare information.

- 4.7 Whilst we do consider that it would be useful for parliament in the future to clarify the wording within r.35 to resolve any ambiguity, the practical application of transferring data to an ERO amounts to the same result as allowing them to make copies. Put simply, EROs are entitled to have access to and make use of the data for electoral registration purposes. Approaching this in a pragmatic way reduces a significant administrative burden for both the ERO and those providing the data and does not raise any additional data sharing or data protection concerns. Further, whilst a written agreement between the ERO and the local authority is not required under r35 (unlike r35A), concerns around data sharing could usefully be alleviated under this regulation by entering into a written agreement in identical terms to that required under r35A.

5. Two Tier Authorities & Data Sharing Protocols

- 5.1 The majority of issues appear to have arisen in two tier areas, with district EROs facing difficulties in obtaining data from their County Council colleagues. Regulation 35A clearly provides for data to be provided to an ERO in a District Council by the County Council. Given the scheduled County Council elections in 2020, no doubt the County Council Returning Officer will wish to have as complete a register as possible and therefore liaison with them over this is recommended in terms of agreeing an approach and garnering their support. We advise that it is good practice to have a dedicated named individual at the County Council who is familiar with the provisions discussed within this guidance for the District ERO (or their staff) to copy in each time they request data from a County Council department.
- 5.2 Reliance on r.35A requires in all cases a written agreement regulating the processing of data to be in place between both parties. It is also good practice to establish a protocol between departments identified by the ERO, who are required to provide data. A template data sharing protocol is appended to this guidance to provide a model on which to base a bespoke arrangement.



6. GDPR & Data Protection

- 6.1 The General Data Protection Regulation (GDPR) provides a lawful basis for processing under Article 6(1)(3) where “processing is necessary for the performance of a task carried out in the public interest or in the exercises of official authority vested in the controller”. This applies when carrying out a task laid down in law in the public interest (the annual canvass) or exercising official authority laid down by law (an EROs right to inspect to ensure complete and accurate records).
- 6.2 There is no additional public interest test (as here the ERO is exercising official authority) but there is a requirement to demonstrate that the processing is necessary which can be achieved via the data sharing protocol. Necessary in this context means targeted and proportionate.
- 6.3 It is worth noting that previous [Ministerial Guidance](#) produced in 2014 prior to the GDPR, does add some weight to the position that data protection should not be used to refuse disclosure of records requested by the ERO under Regulations 35 or 35A (see paragraph 2.7.9). This does not mean however that GDPR and the data protection principals do not apply to the access, transfer, and storage of that data, only that it should not be used as a blanket reason not to disclose it.

The relevant legislation is:

Paragraph 1 of Schedule 2 to the Representation of the People Act 1983:

- (4) Provisions authorising a registration officer to inspect, for the purpose of his registration duties, records kept (in whatever form) by—
- (a) any local or public authority of any prescribed description, or
 - (b) any person providing services to, or authorised to exercise any function of, any such authority, and to make copies of information contained in such records.
- (5) Provisions made under sub-paragraph (4) above shall have effect despite any statutory or other restriction on the disclosure of information.



7. Conclusion

- 7.1 EROs are entitled to have access to council department data (and district EROs held by County Councils) under the Representation of the People (England and Wales) Regulations 2001 and should enter into a data sharing protocol (which is good practice regardless of whether r35A is being relied upon or not), which sets out why the processing of such data is necessary for the purposes of electoral registration which includes the annual canvass process (such as compliance with the law, reduction in administration burden and protecting tax-payers money).

8. Further Information

[Electoral Commission Guidance on Delivering the Annual Canvass](#)

[Electoral Commission Guidance on Planning for Data Matching](#)

[The Representation of the People \(England and Wales\) Regulations 2001](#)

[The Representation of the People \(England and Wales\) Regulations \(Amendment\) Regulations 2014](#)

[ICO Guidance- Lawful Basis for Processing Data](#)

[EU General Data Protection Regulation \(GDPR\) and Data Protection Act 2018-](#)

[Resource for Electoral Registration Officers and Returning Officers](#)

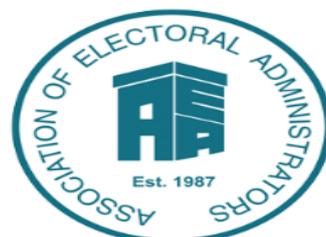
9. Acknowledgements

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APPENDIX 1

Information Sharing Agreement – Template for EROs

Effective sharing of information between partners is an essential step in delivering better services and outcomes to communities.

The objective of information sharing protocols is to provide a framework of trust between partners and stakeholders to facilitate the sharing of information while respecting the rights of the individual and complying with relevant legislation.

What is the difference between an Information Sharing Protocol & an Information Sharing Agreement?

An **Information Sharing Protocol** aims to provide a high level multi – agency framework for the sharing of information between agencies engaged in partnership working arrangements for a defined purpose. By clearly defining the reasons why information sharing is required, how it supports the functions of the partnership and the principles that govern the sharing, a protocol can provide the foundations for partners to agree in principle to share the required information.

The function of an Information Sharing Protocol should therefore be to achieve agreement in principle and should only include the level of information necessary for that purpose. It should not aim to detail every data sharing requirement between named agencies, the protocol is underpinned by Information Sharing Agreements which set out the specific data sharing needs between agencies.

You will need an Information Sharing Agreement when [personal / sensitive personal](#) is data shared. The following template will help anyone wishing to set up a system to share information to comply with legislation. During the development of an information sharing agreement advice should be sought from the authorities Data Protection Officer and Legal Department. Before drafting the agreement, you should ensure the data to be shared is recorded in the Information Asset Register and that the Information Asset Owner has been involved in the creation of this agreement.

The following provisions should be included within the agreement (guidance in italics; sample clauses in plain text):

1	Scope of the agreement
1.1	Made Between: <i>The names of the individuals/partner organisations who will be involved in sharing information - specify who the Agreement owner is.</i> Data Controller/Owner:



	<p>[relevant LA and Department]</p> <p>Partner: Electoral Registration Officer [Name of] Council</p> <p>[Council] Information Asset Owner: Service: Directorate:</p> <p>Partner Organisation Information Asset Owner: [ERO registered data holder]</p>
1.2	<p>Summary:</p> <p><i>Set out the nature or type of information involved (i.e. customer/client information, socio-demographic data, research data)</i></p> <p><i>This Agreement outlines the circumstances when information sharing can occur and provides a framework for achieving this appropriately and in a lawful and justified manner.</i></p> <p><i>Its purpose is to facilitate the lawful exchange of information (including personal information) between the Owner and the Partner to support the partnership's Purpose as specified below.</i></p> <p><i>This agreement should be read in conjunction with [set out your council's information sharing policies]</i></p>
1.3	<p>Date Agreement comes into force:</p> <p><i>Where relevant indicate timescales for this agreement (i.e. one-off transaction for a project or longer-term commitment).</i></p> <p><i>Also consider a date for review, (this could be annually) and consider a termination date if applicable (the sharing may be for a specific project of a fixed duration).</i></p>
2	<p>Purpose</p>



2.1	<p><i>Set out <u>why</u> the partnership needs to share or obtain the information (the business case).</i></p> <p>Electoral Registration Officer Duties for the Annual Canvass</p> <p><i>What is the lawful basis for sharing (state relevant section of Data Protection Act)?</i></p> <p>Regulations 23, 35 and 35A of the Representation of the People (England and Wales) Regulations 2001.</p>
2.2	<p>Types of Information to be shared <i>Explain what information will be shared – are you sharing personal data or sensitive personal data?</i></p> <p><i>Unless the information to be shared is entirely anonymised or statistical, the answer to this will probably be 'yes'. However, even if it is anonymised or statistical, you should give careful consideration to the possibility that an individual could nevertheless be identified from it e.g. if it provides statistics on the ethnicity of crime victims in a limited geographical area it might inadvertently identify someone from an uncommon ethnic group in that locale</i></p> <p>[Data Controller/Owner] will provide information to [Partner] on the following:</p> <ul style="list-style-type: none"> • <p>[Partner] will provide information to [Data Controller/Owner] on the following:</p> <ul style="list-style-type: none"> • N/A
2.3	<p><i>Whose information will be shared – what is within scope?</i></p>
2.4	<p><i>Set out <u>what</u> the information will be used for.</i></p> <p>To inform the Annual Canvass through data matching.</p>
3.	Permissions and Consent
3.1	<p><i>Explain whether the data subjects need to be aware of the sharing or does an exemption apply which allows us not to inform them (e.g. for criminal or taxation investigation purposes)?</i></p>



	See Regulations 23, 35 and 35A of the Representation of the People (England and Wales) Regulations 2001.
3.2	<p><i>Have the data subjects consented? If yes, set out how consent was obtained</i></p> <p><i>If not, consider whether you need to rely on consent to share the information or whether there is an alternative legal basis to enable the sharing – please refer to Article 6 and Article 9 of the General Data Protection Regulations (GDPR). If consent not sought/unavailable, set out the legal basis for sharing the information (e.g. for the purposes of a criminal or taxation investigation or in the vital interests of the data subject)</i></p> <p>Alternative legal basis under Regulations 23, 35 and 35A of the Representation of the People (England and Wales) Regulations 2001.</p>
	Method and Timing
	<i>Sharing procedure/specific details on how information will be shared</i>
	<i>How will information be securely transferred to partner?</i>
	<i>Specific details on when information will be shared</i>
	Security
4	<i>Set out who will be accountable for ensuring that information is obtained/used/stored/destroyed securely</i>
4.1	<p><i>Set out how information held on paper, computer, website etc will be secure and whether certain policies or procedures will be applied.</i></p> <p>Information provided by the Partner will be held securely. Electronic copies of information will only ever be held on</p>



	<p>encrypted devices or servers and will not be emailed outside of the organisation.</p> <p>Paper copies of information (including print outs of electronic information) will be held securely; transferred by courier in sealed containers and shredded upon disposal and buildings and areas where personal data can be accessed from must have adequate physical security in order to prevent unauthorised access.</p> <p>Only nominated representatives will be able to access, request information and make disclosure decisions.</p>
4.2	<p><i>Set out whether access to personal information will be limited to those with a strict need-to-know, how access will be determined and by whom</i></p> <p>Information will only be used by appropriate staff who have been identified by [insert how] for the purposes identified within this agreement.</p>
4.3	<p>If the receiving partner has a requirement to transfer data onto a portable device in order to provide services in relation to this agreement, this must be agreed first with the information owner; devices must be encrypted, data will be disposed of securely and permanently; an audit trail must be kept of which laptops/drives/devices the personal data are held on.</p> <p>Removable media may be prohibited from use unless a business case is in place.</p>
5.	Retention and Disposal
	<i>Set out how will information be deleted or destroyed when it is no longer required</i>
	<i>Set out the arrangements for document retention and disposal</i>
6	Review and monitoring arrangements



6.1	<i>Keep a record of what / when information is shared</i>
6.2	<i>Set out monitoring arrangements to ensure that there is compliance with this protocol and meeting required standards</i>
	<i>Set out frequency and process for reviewing and/or renewing this protocol (timescales, who etc.)</i> <i>Annually</i>
8	Other Data Protection Requirements
8.1	The ERO agrees to assist the Data Owner promptly with all subject access requests which may be received from the data subjects of the personal data in accordance with the law.
8.2	The ERO shall not use the personal data for any other purposes other than those formally agreed by the Data Owner
	The ERO shall not disclose the personal data to a third party in any circumstances other than at the specific written approval of the Data Owner unless prescribed by law (i.e. the Cabinet Office)
9.	The ERO will not transfer the personal data to any other country without explicit written agreement from the Data Owner and in accordance with the law.
10.	The ERO will ensure that all employees used by it to provide the services as defined in the Agreement have undergone training in the law of data protection, their duty of confidentiality under the contract, and in the care of handling personal data



10.1	<i>Outline who the Data Controller is and who the Data Processor is or if the parties to this agreement are joint Data Controllers. For more information please visit the Information Commissioner's website.</i>
11	Any other agreement/comment

List of Signatory Organisations & Their Designated Persons

Department and Authority	Designated Person & Position	Contact Details (telephone no. & email address)	Signatory Date



Declaration of Acceptance & Participation

In respect of [title of agreement]

By signing this agreement, all signatories accept responsibility for its execution, agree to ensure that their staff and personnel are trained so that requests for information and the process of sharing are sufficient to meet the purpose of this agreement and agree to put into practice the principles of the [name of relevant Information Sharing Protocol].

The ERO signing this agreement accept that the procedures laid down in this document provide a secure framework for the sharing of information between agencies in a manner compliant with their statutory and professional responsibilities.

Signed by, for and on behalf of:

Organisation:	
Name:	
Position:	
Telephone:	
Email:	
Signature:	
Date:	

Name of contact for sharing information under this Information Agreement:	
Position:	
Telephone:	
Email:	



ICO Registration No & Renewal Date:	

Each agency who signs up to this agreement is to complete this form.