

Anonymous electoral registration- Detailed Policy Paper

1. This paper provides additional technical and operational detail on the proposals on anonymous registration. It is intended to aid stakeholders with a specific interest in these proposals, and should be read in conjunction with the Electoral Reform consultation paper.

Background

2. Anonymous electoral registration was first introduced in Great Britain by the Electoral Administration Act 2006, which amended the Representation of the People Act 1983 and provided for the overall structure of the scheme. The detail of how anonymous registration works is provided for in the Representation of the People (Scotland) Regulations 2001 and the legislation for Scottish Parliament and local government elections.
3. The scheme was introduced to protect those whose safety might be at risk if their name and address appeared in the electoral register, and would therefore be available for public inspection. It was envisaged that this might include for example victims of harassment or stalking, as well as some witnesses in criminal court cases. It was not intended to be available to those who simply wanted to keep their name and address private. Consequently, the threshold of eligibility for anonymous registration was set at a high level.
4. Under the current system, a person can register to vote anonymously if they can show that their safety, or the safety of someone else in their household, would be at risk if the electoral register contained their name.
5. An applicant must provide evidence to the electoral registration officer for the area in which they live of the risk to their safety by providing either:
 - a relevant live court order or interdict/injunction from a set list of orders or interdicts/injunctions;¹ or
 - an attestation made by a qualifying officer, such as a superintendent of Police or any chief social work officer that their safety, or the safety of another person in the same household, would be at risk if their name or address appeared.²
6. Applicants can use either of these types of evidence. They do not have to provide both. As with all applications to register to vote, the final determination as to the applicant's eligibility rests with the electoral registration officer.
7. At present, an anonymous entry on the electoral register ends 12 months after it first takes effect. If someone continues to require anonymous registration, they must reapply for it on an annual basis.

¹ The full list of court orders and interdicts/injunctions, as provided for in regulation 31I(3) of the Representation of the People (Scotland) Regulations 2001, is set out in **Appendix A**.

² The full list of qualifying officers, as provided for in regulation 31J(4) of the Representation of the People (Scotland) Regulations 2001, is set out in **Appendix B**.

8. The anonymous registration scheme has been updated on a number of occasions since it was first introduced, mainly to add new types of court order and to update the list of qualifying officers who can provide an attestation.

Proposals

9. As a first step, the Scottish Government is proposing to bring forward legislation to make a number of changes to the anonymous electoral registration scheme. These changes are, basically, to allow Police Inspectors, some health and medical professionals and domestic abuse refuge managers to attest applications, as well as adding domestic violence protection orders and female genital mutilation protection orders to the list of court orders accepted as evidence of a need for anonymous registration.
10. However, in addition to these proposed changes, the Scottish Government would welcome views on further reform of the anonymous registration scheme, with a view to making it more accessible to those experiencing domestic or other forms of abuse. We would welcome feedback from all interested parties on the proposals set out below to further expand the types of documentary evidence and the types of attestors an applicant for anonymous registration can rely on to provide evidence of the risk to their safety. Some of the suggestions mentioned below are already going to be included in the proposals we will be placing before the Scottish Parliament, but they are included for completeness.
11. Domestic abuse is of course not the only situation where electors might need to protect their identity and location and the Scottish Government would welcome views on other situations where similar protection of identity might be necessary.
12. Some examples might be:
 - situations involving child abuse (where the safety of the child might be at risk if the name and address of their parent/guardian was publicly available);
 - stalking;
 - threatening behaviour; or
 - human trafficking

but other suggestions would be welcomed.

QUESTION 1: Do you have any suggestions for other situations where anonymous electoral registration might be required in order to protect individuals from the risk of physical or mental abuse ?

QUESTION 2: Do you have any views on the appropriate levels of evidence which should be required to support applications for anonymous electoral registration?

Expanding the list of attestors

13. As mentioned above, the Scottish Government intends to lower the seniority required of an attestor from the police. In Scotland an attestation could then be provided by a police officer of the rank of Inspector and above, Inspectors normally supervise domestic violence investigations and are therefore in close contact with victims of abuse.
14. This change in seniority would significantly increase the number of potential police attestors and would include those to whom victims of abuse are more likely to have access.
15. The Government will also work with the Electoral Commission to improve guidance for social workers who may be able to help individuals access the scheme.
16. We are also seeking views on other people who appear to be well qualified to verify, with authority, the risk to an applicant's safety.
17. The Scottish Government would welcome feedback on whether the following should be added to the list of attestors:
 - health professionals;
 - domestic abuse specialist services, such as women's aid groups;
 - First Responder under the National Referral Mechanism (system to identify victims of human trafficking).
18. In addition to the above professions, please feel free to suggest further possible attestors and to give reasons for your suggestion(s).

Health professionals

19. The Scottish Government is considering adding certain health professionals to the list of attestors. Health professionals are one of the groups of people to whom survivors of abuse are more likely to disclose what has happened to them. As such, they may be well placed to provide an independent judgment of the validity of the risk to the safety of an applicant for anonymous registration. However, expanding the ability to attest an application to all health professionals is unlikely to be necessary and we would prefer to focus on those specialisms which are most likely to have contact with survivors of abuse. We would, therefore, appreciate views on which categories of health professionals would be appropriate.

QUESTION 3: Do you think that certain health professionals, such as GPs, community nurses etc., should be able to attest an application for anonymous registration?

QUESTION 4: What categories of health professionals do you think should be allowed to attest an application?

Domestic abuse specialists

20. The Scottish Government is considering adding managers of domestic abuse specialist services to the list of attestors. This could allow any manager to attest about any applicant, or it could be limited to allow only the manager of a service which is currently providing - or has provided - services to an applicant, to provide an attestation. Domestic abuse specialist services may need to be defined in legislation in such a way as to identify the appropriate organisations.

QUESTION 5: Do you have any views on whether managers of domestic abuse specialist services should be able to attest an application for anonymous registration?

QUESTION 6: If managers of domestic abuse specialist services were to be allowed to attest applications, do you think that this should only be allowed where there is a direct connection between the applicant and the service?

QUESTION 7: Do you have any suggestions on how domestic abuse services should be defined in order to capture all appropriate organisations?

QUESTION 8: Do you have any views on other individuals/organisations, such as children's panels or National Referral Mechanism First Responders, which might be able to attest an application for anonymous registration in certain circumstances?

Cross border issues

21. Whilst this consultation is about Scottish Parliament and local government elections, we need to take into account that different parts of the UK have different legal systems. The intention is that court orders which are granted in one part of the UK can be used to support an application for anonymous registration in another part.

22. The Scottish Government will be adding three new court orders to the list of live court orders and interdicts/injunctions that applicants for anonymous registration can use as evidence of the risk to their safety.

- domestic violence protection orders (DVPOs);³
- Forced Marriage Protection Orders (FMPOs) or interim FMPOs;⁴; and
- Female Genital Mutilation Protection Orders.

23. DVPOs are used in England and Wales after domestic incidents to provide short-term protection to victims, granting them a period of distance from their

³ Provision for DVPOs and DVPOs was made for England and Wales by sections 24-33 of the Crime and Security Act 2010 and for Northern Ireland by section 97 of the Justice Act (Northern Ireland) 2015 (not yet in force).

⁴ Provision for FMPOs was made for Scotland by Part 1 of the Forced Marriage etc. (Protection & Jurisdiction) (Scotland) Act 2011.

abusers. Female Genital Mutilation Protection Orders⁵ are intended to protect women against the commission of a genital mutilation offence or women against whom such offences have already been committed.

Expanding the list of documentary evidence

24. The Scottish Government could expand the list of documentary evidence more broadly to include different types of evidence. This would bring the list of acceptable documentary evidence for anonymous registration more closely in line with the documentary evidence allowed in the processes for settlement in the UK, as a victim of domestic abuse.

25. We are considering potential additions to an expanded list of documentary evidence which victims are permitted to produce to prove they are at risk from an abuser, such as a positive conclusive grounds decision from the National Referral Mechanism.

QUESTION 9: Do you think that the list of current court orders and interdicts/injunctions which can be used to support an application for anonymous registration should be expanded? If so, what further court orders should be included and why?

QUESTION 10: Are there any other forms of documentary evidence which you think should be allowed to be used to support an application for anonymous registration?

Changing the requirement that court orders used as evidence must be current

26. The Government has considered the existing requirement for annual re-registration. However, when balanced against the intention that an individual's safety must currently be at risk and the need to maintain the accuracy of the electoral register, the Government does not feel that removing the annual registration requirement is justified at this stage. The Government will however continue to investigate potential improvements in this area.

QUESTION 11: Do you have any suggestions on how the current requirement for annual renewal of an anonymous entry in the electoral register might be improved?

QUESTION 12: Do you have any other comments or suggestions about the anonymous registration rules or process?

⁵ Provision to protect a woman against the commission of a genital mutilation offence, or protect a woman against whom a FGM offence has been committed was made by section 5A and schedule 2 of the Female Genital Mutilation Act 2003.

Appendix A: List of court orders and interdicts/injunctions

The list of court orders and interdicts/injunctions which are acceptable as evidence for an anonymous registration is as follows:

- an injunction for the purpose of restraining a person from pursuing any conduct which amounts to harassment granted in proceedings under section 3 of the Protection from Harassment Act 1997,
- an injunction granted under section 3A(2) of the Protection from Harassment Act 1997,
- a restraining order made under section 5(1) of the Protection from Harassment Act 1997,
- a restraining order on acquittal made under section 5A(1) of the Protection from Harassment Act 1997,
- a non-harassment order, interdict or interim interdict made under section 8 or 8A of the Protection from Harassment Act 1997,
- a non-harassment order made under section 234A(2) of the Criminal Procedure (Scotland) Act 1995;
- a non-molestation order made under section 42(2) of the Family Law Act 1996;
- an injunction for the purpose of restraining a person from pursuing any conduct which amounts to harassment granted in proceedings under article 5 of the Protection from Harassment (Northern Ireland) Order 1997;
- a restraining order made under article 7 of the Protection from Harassment (Northern Ireland) Order 1997;
- a restraining order on acquittal made under article 7A(1) of the Protection from Harassment (Northern Ireland) Order 1997;
- a non-molestation order made under article 20(2) of the Family Homes and Domestic Violence (Northern Ireland) Order 1998.
- a matrimonial interdict within the meaning of section 14 of the Matrimonial Homes (Family Protection) Scotland Act 1981;
- a domestic interdict within the meaning of section 18A of the Matrimonial Homes (Family Protection) Scotland Act 1981;
- a relevant interdict within the meaning of section 113 of the Civil Partnership Act 2004;
- an interdict that has been determined to be a domestic abuse interdict within the meaning of section 3 of the Domestic Abuse (Scotland) Act 2011;
- any interdict with an attached power of arrest made under section 1 of the Protection from Abuse (Scotland) Act 2001;
- a forced marriage protection order or interim forced marriage protection order under any of the following provisions—
 - Part 4A of the Family Law Act 1996;
 - section 2 of, and paragraph 1 of Schedule 1 to, the Forced Marriage (Civil Protection) Act 2007;
 - section 1 of the Forced Marriage etc. (Protection & Jurisdiction) (Scotland) Act 2011; and
 - section 5 of the Forced Marriage etc. (Protection & Jurisdiction) (Scotland) Act 2011.

Any relevant protection measure ordered in another EU member state and entitled to be recognised in Scotland under EU Regulation 606/2013 on mutual recognition of protection measures in civil matters.

Appendix B: List of qualifying officers

The list of qualifying officers who can provide an attestation for anonymous registration is as follows:

- a police officer of or above the rank of superintendent of any police force in England and Wales;
- a police officer of or above the rank of superintendent of the Police Service of Scotland;
- a police officer of or above the rank of superintendent of the Police Service of Northern Ireland;
- the Director General of the Security Service;
- the Director General of the National Crime Agency;
- any director of adult social services in England within the meaning of section 6(A1) of the Local Authority Social Services Act 1970;
- any director of children's services in England within the meaning of section 18 of the Children Act 2004;
- any director of social services in Wales within the meaning of section 6(1) of the Local Authority Social Services Act 1970;
- any chief social work officer in Scotland within the meaning of section 3 of the Social Work (Scotland) Act 1968;
- any director of social services of a Health and Social Services Board established under article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972;
- any executive director of social work of a Health and Social Services Trust established under article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991.