

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 31 March 2010

Public Authority: Electoral Office for Northern Ireland
Address: 3rd Floor
St Anne's House
15 Church Street
Belfast
BT1 1ER

Summary

The complainant submitted a request to the Electoral Office of Northern Ireland ("the EONI") for information relating to the names of the substitutes that Assembly candidates have nominated for the Northern Ireland Assembly ('the Assembly'). The EONI considered that the requested information was exempt under sections 38(1) (Health & Safety) and 40(2) (Personal Information) of the Freedom of Information Act 2000 ('the Act'). The Commissioner considered that EONI applied section 40(2) correctly to the information which was requested. The Commissioner therefore did not consider the application of the exemption at section 38(2) of the Act. The Commissioner has found that the EONI failed to comply with section 17(1) (a)(b)(c) and 17(7) of the Act. The Commissioner finds that there are no further steps to be taken in this matter.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

Background

2. At the time this request was submitted to the EONI, the law governing the conduct of elections in Northern Ireland was the Northern Ireland

Assembly (Elections) Order 2001¹ ('the 2001 Order'. This has now been amended by the Northern Ireland Assembly (Elections) (Amendment) Order 2009 ('the 2009 Order). The Commissioner is aware that the law was amended following a public consultation entitled 'Improving the Administration of Elections to the Northern Ireland Assembly' launched by the Northern Ireland Office in July 2008.

3. The 2009 Order included provisions to update the 2001 order which relates to filling vacancies in the Assembly that arise during term. Elections to the NI Assembly are held under a single transferable vote form of proportional representation ('PR'). At PR elections, several seats are usually available for each constituency and they are allocated proportionately to candidates who receive enough votes to meet the quota for that constituency. If one of those seats became available or vacant then (unless there was a substitute candidate) there would be a by-election. Under the PR system that seat was then likely to go to a candidate from the strongest party in that constituency, even if previously filled from a candidate from another party. In order to preserve the balance of political representation in Northern Ireland the 2001 Order provided that candidates submit a list of up to six substitutes ranked in order of preference when delivering their nomination papers. This list was then used to fill any vacancy arising should that seat be vacated. This information was given with nomination papers to the Chief Electoral Officer and was not made publically available. There was no formal criterion, statutory or otherwise, for how those substitutes may be chosen by the MLA when he/she submitted their nomination papers. Substitutes may be chosen for any number of reasons such as the fact they were members of the MLA's political party, family members, friends or not known to the MLA in a personal capacity.
4. The 2009 Order modified this system and was intended to address some practical problems that were identified with the system under the 2001 Order; for example those designated as substitutes at the time for the election may be unwilling or unable to fill a vacant seat, or they may have changed party allegiances or had other reasons preventing them from filling the vacancy. Consent was not needed to be named as a substitute Assembly candidate. Article 6 of the 2009 Order introduced new amendments. Under the new system, if a seat becomes vacant the nominating officer of the party that the member belonged to at the time they were elected will be asked to nominate a replacement Member of the Legislative Assembly ('MLA') to fill that seat. For independent MLA's, rather than provide a list of substitutes at the time they are nominated as a candidate, they may only do so once they are elected and consent is required from those they are seeking to put forward as substitutes.

¹ S.I. 2001/2599

5. Further detail of the pertinent sections of the 2001 and 2009 order is set out in the legal annex accompanying this decision notice.

The Request

6. The complainant submitted his original request by email to the EONI on 17 February 2007. He asked the EONI the following question: -

"Do you publish or have accessible the names of the substitutes that Assembly candidates have nominated"

7. The EONI responded to the complainant by email on the same day and advised the complainant that they did not publish the names of substitutes.
8. The complainant contacted the EONI by email again on 19 February 2007 and asked the EONI whether or not these details were accessible to the public.
9. The EONI forwarded a reply to the complainant on 19 February 2007 and advised the complainant that they were not currently available to the public.
10. The complainant contacted the EONI again on 19 February 2007 by email and asked the EONI to explain why there were not available to the public and on what grounds.
11. The EONI provided the complainant with a reply later that day in which it advised the complainant that: -

"It is considered to be personal information which is subject to the provisions of the Data Protection legislation".
12. On the same day, the complainant contacted the EONI and questioned why the EONI applied the Data Protection Act to the requested information. The complainant asked the EONI to confirm which particular provision under the Data Protection Act the EONI were relying on and whether or not legal advice had been provided in relation to this matter.
13. The EONI contacted the complainant on 20 February 2007. The EONI advised the complainant as follows: -

"The substitutes list includes the names and home addresses of the substitutes, as well as indicating their political opinion. We therefore regard this as sensitive personal data and have decided that to release it without obtaining the consent of the individuals would contravene Data Protection Principles 2 and 6 (due to the large number of substitutes the costs of consulting them individually on this issue would be prohibitive). We are in the process of obtaining legal advice on this issue as we have recently had requests for this information. However, the current position still stands".

14. The complainant contacted the EONI on 20 February 2007 and advised that he did not wish to receive substitutes' addresses, just their names in relation to his request for information.
15. On 9 March 2007, the EONI contacted the complainant regarding his information request. The EONI confirmed that the names of substitutes nominated by candidates for the 2007 Northern Ireland Assembly election were held by the Electoral Office. However, the EONI considered this information to be exempt from disclosure under section 40 (Personal Information) and section 38 (Health & Safety) of the Act.
16. On 14 March 2007, the complainant contacted the EONI and asked for an appeal of their decision.
17. On 20 March 2007, the EONI contacted the complainant and advised the complainant that a review had been held in relation to the decision of 9 March 2007 to withhold the information requested.
18. On 19 February 2008, the complainant contacted the Commissioner and asked the Commissioner to investigate his complaint. The Commissioner considered his complaint to be out of time as the complainant had waited for almost a year before contacting him. In taking into account the complainant's representations for the delay in coming to him, the Commissioner advised the complainant to resubmit their request to the EONI.
19. The complainant resubmitted his request to EONI on the 19 March 2008, requesting that the list of names referred to his previous request be made public. The Commissioner is treating this request of 19 March 2008 as the request for the purposes of this decision notice.
20. On the 20 March the EONI confirmed to the complainant that their decision to exempt the information remained the same.
21. On the 25 March 2008 the complainant duly forwarded their complaint to the Commissioner for investigation.

The Investigation

Scope of the case

22. The Commissioner has considered this EONI's handling of the complainant's second request of the 19 March 2008. The EONI have confirmed to the Commissioner that the withheld information in this case relates to substitutes candidate lists submitted by MLA's when they ran for office before the law was amended by the 2009 order. ('The withheld information')

Chronology

23. The Commissioner commenced his investigation by contacting the EONI by telephone on 16 December 2008 to discuss the case. The Commissioner discussed with EONI the possibility of informally resolving this case. The Commissioner drew the EONI's attention to a Government consultation response concerning elections to the Northern Ireland Assembly, which stated that: -

"The Electoral Commission proposed an alternative process where candidates would still propose a list of substitutes when standing for election. This list would be endorsed by the party nominating officer and would also be published by the Chief Electoral Officer on the Electoral office website".²

The EONI advised the Commissioner that they had taken legal advice on the matter but would submit further representations to the Commissioner in relation to the matters discussed.

24. In the absence of any further communication from EONI, the Commissioner wrote to the EONI on 10 February 2009. The Commissioner questioned the EONI on their handling of this request. The Commissioner also asked the EONI to confirm the exemptions applied in this case, and make representations and provide further detail behind the reasoning for the application of the exemptions to this request.
25. The Commissioner contacted the complainant on 18 February 2009 to provide him with an update as to the progression of his case.
26. The EONI provided the Commissioner with a written response dated 25 February 2009 which was received by the Commissioner on 2 March

² Government Response to Consultation – "Improving the Administration of Elections to the Northern Ireland Assembly", October 2008, Para. 7, produced by the Northern Ireland Office.

2009. The EONI provided the Commissioner with detailed reasons as to why it felt that the exemptions applied to the requested information.
27. The EONI also advised the Commissioner that the law on the filling of vacancies to the Northern Ireland Assembly had changed so that the lists of substitutes submitted prior to the 2007 elections no longer had any effect. The EONI pointed the Commissioner specifically to the content in Articles 6A and 6B in the NI Assembly (Elections) Order 2001.
 28. The Commissioner contacted the complainant on 11 March 2009 to clarify the nature of his information request. The Commissioner indicated to the complainant that the EONI wished to know whether he requested a succinct/freestanding list of names of all those substitute candidates or whether the request relating to a list of substitute candidates matched to each Assembly candidate who nominated them.
 29. The complainant contacted the Commissioner on 12 March 2009 and advised the Commissioner that his request was for a matching list of substitute candidate linked to the Assembly candidate who nominated them. The Commissioner passed this clarification to the EONI to take further representations from them.
 30. On 9 April 2009, the Commissioner having spoken with EONI contacted the complainant. The Commissioner advised the complainant that the EONI were willing to speak with him directly regarding his request and in particular, the changes to the law regarding elections subsequent to the date when his information request was lodged.
 31. The EONI contacted the Commissioner by telephone on 17 April 2009. The EONI provided further reasons as to why they believed the information was exempt.
 32. On 24 April 2009, the Commissioner contacted the EONI and advised the EONI that the complainant, having being advised of the changes to the law and the factors to be considered in relation to the exemptions cited, still wished for a formal decision to be made in this matter. The Commissioner asked the EONI to provide him with a written response as to their position regarding the information request, and in particular the issues raised by the Commissioner in his letter to the EONI of 6 April 2009.
 33. On 30 April 2009, the EONI provided the Commissioner with a detailed written response to the matters raised within the Commissioner's correspondence of 6 April 2009 as well as further arguments as to why the exemptions applied to the information requested.

Analysis

Exemptions

Section 40(2) – personal data

34. Section 40(2) provides an exemption for information which is personal data of a third party. The public authority has stated that it is withholding the recorded information under section 40 (2) -that release of the information would breach the Data Protection Act 1998 ('DPA'). Section 40(2) is contingent on two requirements. The first requires the information to be personal data under the DPA and the second that the disclosure of it would contravene a data protection principle.

Is the information personal data?

35. Personal data is defined in section 1(1)(a) of the DPA as:

'... data which relate to a living individual who can be identified
a. from those data, or;
b. from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller

and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual."

36. EONI has applied the exemption under section 40(2) of the Act to the names of the substitutes that assembly candidates have nominated. The Commissioner is satisfied that the withheld information would fall within the definition of personal data as set out in the DPA, as it contains the names of living individuals who can be directly identified from those data.

Is the information Sensitive Personal Data?

37. Although the EONI did not make any express arguments, the Commissioner considered whether the withheld information may constitute sensitive personal data as defined at section 2 of the DPA of those individuals identified within the information. The Commissioner also considers that the list of substitute candidates could well be the personal data of those MLA's nominating them, as both the MLA and the nominated candidates can be identified from the list. A full text of section 2 has been set out in the legal annex of this decision notice. The Commissioner has considered that the withheld information may

be sensitive personal data as defined by section 2 (b) (personal data consisting of information as to his political opinion) and 2 (c) (personal data consisting of information as to religious belief or other beliefs of a similar nature). The Commissioner considered the nature of the withheld information. Whilst there is not explicit or express information to denote either an MLA or a substitute candidate's political opinion or religious belief, the Commissioner considers that owing to the socio-political landscape of Northern Ireland it may be possible to identify (rightly or wrongly) or to associate an individuals' political opinion or indeed their religious or other belief if the withheld information was made available. The Commissioner therefore considers the withheld information to be sensitive personal data as defined by schedule 2 of the DPA.

Would it be fair to disclose the requested information?

38. Having concluded that the information falls within the definition of 'sensitive personal data' the Commissioner must then consider whether disclosure of the information breaches any of the eight data protection principles as set out in schedule 1 of the DPA. A full text of schedule 1 is found in the Legal Annex of this decision notice.

39. The Commissioner notes that EONI argues that disclosure of the withheld information would be in breach of the first data protection principle as it would be unfair. The first data protection principle has two components:

Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-

*(a) at least one of the conditions in Schedule 2 is met, and
(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met".*

40. In considering whether a disclosure is fair under the first principle of the DPA for the purposes of section 40 of the Act, it is useful to balance the consequences of any disclosure and the reasonable expectations of the data subject with general principles of accountability and transparency.

41. In considering whether disclosure of this information would be unfair and therefore contravene the requirements of the first data protection principle, the Commissioner has taken the following factors into account:

(i) fairness and sensitive personal data

(ii) The individual's reasonable expectation of what would happen to their personal data and whether disclosure would be incompatible with the purposes for which it was obtained;

(iii) the consequences of disclosure and whether disclosure would cause any unnecessary or unjustified damage or distress to the individual and whether the individual has refused to consent to disclosure.

Fairness and sensitive personal data

42. The Commissioner considers that the withheld information in this case falls under section 2(b) and (c) of the DPA as it relates to the data subject's party political affiliations. In some instances the Commissioner considers that given the historical and cultural significance of those political party affiliations, the individual's religious preference or religious denomination within the Northern Ireland socio-political context may be derived. As such, by its very nature, the withheld information has been deemed to be information that individuals regard as the most private about themselves, the Commissioner considers individuals would have a heightened expectation that this information would remain confidential. Where this is the case the Commissioner considers there is an increased likelihood that if this information is released it would be unfair. He has assessed this heightened expectation of privacy about these categories of sensitive personal data with the reasonable expectations of the individuals whose personal data this is.

The individual's reasonable expectation of what would happen to their personal data?

43. In assessing the reasonable expectation of the individual in relation to what would happen to their personal data, the Commissioner considers that there is a distinction between public and private lives. Where the information relates to an individual's public life (such as running for office) their interests will not be the first and paramount consideration when determining whether the disclosure would be fair.

44. The Tribunal in the case of *House of Commons v. ICO and Norman Baker* [EA/2006/0015] stated that in such situations the interests of the data subject "is no longer first or paramount." and that "Their interests are still important, but where data subjects carry out public functions, hold elective office or spend public funds they must have the expectation that their public actions will be subject to greater scrutiny than would be the case in respect of their private lives." (Para 78).

45. The Tribunal summarised its position as:

"...we find:

(2) the interests of data subjects.....are not necessarily the first and paramount consideration where the personal data being processed relate to their public lives; and

(3) it is possible to draw a distinction between personal data related to an individual's public and private life....."

46. In assessing whether it would be fair to the individuals concerned if this information were to be released the Commissioner has taken into account two considerations, firstly whether the expectation is reasonable and secondly the nature of the expectation in this particular case.

(i) reasonableness of the expectations

47. The EONI have stated to the Commissioner that prior to the law being amended by the 2009 Order, a candidate to the Assembly submitted a list of up to six substitute candidates ranked on order of preference when delivering their nomination papers. The withheld information in this case relates to such a list held prior to the law being amended. Previously the EONI pointed out that substitute candidates did not need to give consent to be on this list. Some may have no knowledge that they were included on it at all. There was no process previously available to the Chief Electoral Officer for Northern Ireland to ensure that candidates obtained the consent of those they were nominating as candidates. EONI confirmed that these lists were not made publicly available. When a seat was vacated the Chief Electoral Officer would have contacted in rank order the substitute assembly candidates until the vacancy was filled.

(ii) The nature of the expectation

48. As the lists were not made publicly available the EONI have asserted that in many cases of those nominates as substitutes they would not be prepared or have perceived to have their beliefs [political or religious] made public. EONI have not approached the 600 affected substitute candidates to seek their consent for release of the information in this case

The consequences of disclosure

49. The EONI consider that the information if released could lead to individuals being linked with a particular political party. EONI have informed the Commissioner that in 2007 at the time of the election

that year (the electoral period to which the requested information refers) many in the loyalist community regarded Sinn Fein and the Provisional IRA as one and the same. Others in the Nationalist community may regard the Progressive Unionist Party and the Ulster Defence Association ('UDA') as having links. Having reviewed the EONI's representations the Commissioner considers these views may still have prevailed at the time of the request. It may have been perceived that other candidates were aligned to dissident terrorist groupings. The EONI have given the Commissioner several examples of the recent terrorist crimes in Northern Ireland which have served to increase the terrorist threat level as set by the government.

50. EONI consider that the public may assume, rightly or wrongly, that the substitute candidates shared the same political opinions as the candidates who nominated them. To reveal this information EONI argue may leave some substitute candidates prone to danger if they were linked to certain political parties or factions. EONI further argued to the Commissioner that once the name and address of the substitute candidate is revealed this could leave them vulnerable to possible threat.
51. Taking into account EONI's representations the Commissioner considers that as individuals may not have given their consent to be on the list (as governed by the 2001 order) it would be unfair to them to release their information into the public domain. In taking into account EONI's arguments that it may be possible to identify or affiliate an individual with a particular party which espouses a particular tradition or belief it would be unfair to individuals to have this information released. The Commissioner considers that the exemption at section 40(2) of the Act is engaged in relation to this information and it would be unfair under the first principle of the DPA to individuals to release this information. As the Commissioner considers that it would be unfair he has not gone on to consider whether a schedule 2 or Schedule 3 condition can be met in this case. Whilst the Commissioner has noted EONI's representations in relation to the exemption at section 38 of the Act he has not gone on to consider its application as he considers section 40(2) to be engaged in relation to the withheld information.

Procedural Requirements

52. The Commissioner finds the EONI in breach of section 17(1) (a) (b) and (c) for failing in their refusal notice of the 20 March 2008 to state that an exemption applied, failing to specify which exemptions applied, and failing to state why the exemption applies.
53. The Commissioner further considers that in its refusal notice of the 20 March 2008 the EONI failed to make the complainant aware of its

internal review procedure or right to appeal to the Commissioner. The Commissioner finds the EONI to be in breach of the requirements of section 17(7) of the Act.

The Decision

54. The Commissioner's decision is that the public authority dealt with the request for information in accordance with section 40(2) of the Act.
55. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
56. The Commissioner considers EONI breached section 17(1)(a)(b) and (c) of the Act in not providing enough detail to the complainant in their refusal notice in relation to the exemptions applied.
57. The Commissioner also considers that EONI breached section 17(7) of the Act by not providing the complainant with the details of appeal under section 50 of the Act in their refusal notice of the 20 March 2008.

Steps Required

58. The Commissioner requires no steps to be take

Right of Appeal

59. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 31st day of March 2010

Signed

Lisa Adshead
Senior FOI Policy Manager

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Legal Annex

Freedom of Information Act 2000

Section 1

1(1) Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.

Section 17

17(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.

17(7) A notice under subsection (1), (3) or (5) must –

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50.

Section 38

38(1) Information is exempt information if its disclosure under this Act would, or would be likely to –

- (a) endanger the physical or mental health of any individual, or
- (b) endanger the safety of any individual.

Section 40

40(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

40(2) Any information to which a request for information relates is also exempt information if –

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.

40(3) The first condition –

- (a) in a case where the information falls within any of the paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene –
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

Schedule 2 of the Data Protection Act

CONDITIONS RELEVANT FOR PURPOSES OF THE FIRST PRINCIPLE:
PROCESSING OF

ANY PERSONAL DATA

1. The data subject has given his consent to the processing.
2. The processing is necessary-
 - (a) for the performance of a contract to which the data subject is a party, or
 - (b) for the taking of steps at the request of the data subject with a view to entering into a contract.

3. The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.
4. The processing is necessary in order to protect the vital interests of the data subject.
5. The processing is necessary-
 - (a) for the administration of justice,
 - (b) for the exercise of any functions conferred on any person by or under any enactment,
 - (c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department, or
 - (d) for the exercise of any other functions of a public nature exercised in the public interest by any person.
- 6.-(1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

(2) The Secretary of State may by order specify particular circumstances in which this condition is, or is not, to be taken to be satisfied.

SCHEDULE 3 Conditions relevant for purposes of the first principle: processing of sensitive personal data

- 1 The data subject has given his explicit consent to the processing of the personal data.
- 2 (1) The processing is necessary for the purposes of exercising or performing any right or obligation which is conferred or imposed by law on the data controller in connection with employment.

(2) The Secretary of State may by order—
 - (a) exclude the application of sub-paragraph (1) in such cases as may be specified, or
 - (b) provide that, in such cases as may be specified, the condition in sub-paragraph (1) is not to be regarded as satisfied unless such further conditions as may be specified in the order are also satisfied.
- 3 The processing is necessary—

(a) in order to protect the vital interests of the data subject or another person, in a case where—

- (i) consent cannot be given by or on behalf of the data subject, or
- (ii) the data controller cannot reasonably be expected to obtain the consent of the data subject, or

(b) in order to protect the vital interests of another person, in a case where consent by or on behalf of the data subject has been unreasonably withheld.

4 The processing—

(a) is carried out in the course of its legitimate activities by any body or association which—

- (i) is not established or conducted for profit, and
 - (ii) exists for political, philosophical, religious or trade-union purposes,
- (b) is carried out with appropriate safeguards for the rights and freedoms of data subjects,
- (c) relates only to individuals who either are members of the body or association or have regular contact with it in connection with its purposes, and

(d) does not involve disclosure of the personal data to a third party without the consent of the data subject.

5 The information contained in the personal data has been made public as a result of steps deliberately taken by the data subject.

6 The processing—

- (a) is necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings),
- (b) is necessary for the purpose of obtaining legal advice, or
- (c) is otherwise necessary for the purposes of establishing, exercising or defending legal rights.

7 (1) The processing is necessary—

- (a) for the administration of justice,
- (b) for the exercise of any functions conferred on any person by or under an enactment, or
- (c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department.

(2) The Secretary of State may by order—

- (a) exclude the application of sub-paragraph (1) in such cases as may be specified, or

(b) provide that, in such cases as may be specified, the condition in sub-paragraph (1) is not to be regarded as satisfied unless such further conditions as may be specified in the order are also satisfied.

8 (1) The processing is necessary for medical purposes and is undertaken by—

(a) a health professional, or

(b) a person who in the circumstances owes a duty of confidentiality which is equivalent to that which would arise if that person were a health professional.

(2) In this paragraph “medical purposes” includes the purposes of preventative medicine, medical diagnosis, medical research, the provision of care and treatment and the management of healthcare services.

9 (1) The processing—

(a) is of sensitive personal data consisting of information as to racial or ethnic origin,

(b) is necessary for the purpose of identifying or keeping under review the existence or absence of equality of opportunity or treatment between persons of different racial or ethnic origins, with a view to enabling such equality to be promoted or maintained, and

(c) is carried out with appropriate safeguards for the rights and freedoms of data subjects.

(2) The Secretary of State may by order specify circumstances in which processing falling within sub-paragraph (1)(a) and (b) is, or is not, to be taken for the purposes of sub-paragraph (1)(c) to be carried out with appropriate safeguards for the rights and freedoms of data subjects.

10 The personal data are processed in circumstances specified in an order made by the Secretary of State for the purposes of this paragraph.

Section 2 Data Protection Act 1998

In this Act “sensitive personal data” means personal data consisting of information as to—

(a) the racial or ethnic origin of the data subject,

(b) his political opinions,

(c) his religious beliefs or other beliefs of a similar nature,

(d) whether he is a member of a trade union (within the meaning of the [1992 c. 52.] Trade Union and Labour Relations (Consolidation) Act 1992),

(e) his physical or mental health or condition,

(f) his sexual life,

- (g) the commission or alleged commission by him of any offence, or
- (h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.

The NI Assembly (Elections) order 2001

6 (1) The Chief Electoral Officer ("the Officer") shall act in accordance with this article where -

(a) he has been notified by -

(i) an election court or the High Court under section 144 or 146 of the 1983 Act, as applied by article 3 of, and Schedule 1 to, this Order, or

(ii) the presiding officer of the Assembly under section 35(3) of the 1998 Act,

that a vacancy exists in the seat of a member of the Assembly,

(b) that member had given a notice under rule 8A of the elections rules (" the relevant notice"), and

(c) the vacancy has arisen otherwise than as a result of the resignation of a person who has been returned as a member for more than one constituency.

(2) The Officer shall take such steps as appear to him to be reasonable to contact the person whose name and address appear as the first choice in the relevant notice to ask that person whether he will state in writing that he is willing and able to be returned as a member of the Assembly.

(3) Where -

(a) within such period as the Officer considers reasonable -

(i) he decides that the steps he has taken to contact that person have been unsuccessful, or

(ii) he has not received from that person a statement in writing that he is willing and able to be returned as a member of the Assembly, or

(b) that person has stated in writing that he is not willing or able to be so returned,

the Officer shall repeat the procedure required by paragraph (2) above in respect of the person (if any) whose name and address appear as the second choice in the relevant notice or, where sub-paragraph (a) or (b) above applies in respect of that person, in respect of the person (if any) whose name and address appear as the third choice in that notice; and the Officer shall continue to repeat the procedure until the seat is filled or the names in the list exhausted.

(4) Where a person whose name and address appear in the relevant notice states in writing in response to the question from the Officer under paragraph (2) above (including that paragraph as applied by paragraph (3) above) that he is willing and able to be returned as a member of the Assembly, the Officer shall (subject to paragraph (5) below) declare that person to be so returned.

(5) Where under paragraph (3) above the Officer has asked the person whose name appears as the second or, as the case may be, other subsequent choice in the relevant notice the question set out in paragraph (2) above prior to the receipt of a statement from a person whose name appears as an earlier choice in that notice that he is willing and able to be returned as a member of the Assembly, that statement shall not have effect for the purposes of paragraph (4) above unless -

(a) the first-mentioned person has stated in writing that he is not willing and able to be so returned, or

(b) no statement in writing that he is willing and able to be so returned has been received from him by the Officer in response to the Officer's question within such period as the Officer considers reasonable.

(6) The Officer shall give public notice of a declaration under paragraph (4) above and send it to the presiding officer of the Assembly.

By-elections

7. - (1) This article applies where the Chief Electoral Officer has been notified by -

(a) an election court or the High Court under section 144 or 146 of the 1983 Act, as applied by article 3 of, and Schedule 1 to, this Order, or

(b) the presiding officer of the Assembly under section 35(3) of the 1998 Act,

that a vacancy exists in the seat of a member of the Assembly and either the conditions in article 6(1)(b) and (c) above are not satisfied or no person has been declared a member to fill the vacancy under article 6(4) above.

(2) Where this article applies, the Chief Electoral Officer shall set a date as

the date of the poll for a by-election to fill the vacancy.

Northern Ireland Assembly (Elections) (Amendment) Order 2009

Amendment of Article 6 of the 2001 Order

5. In article 6 of the 2001 Order for paragraph (1)(b) substitute—
“that member—

- (i) did not belong to a registered party at the time he was returned; and
- (ii) had given a notice in accordance with article 6A to the Officer; and”.

Insertion of new Articles 6A and 6B

6. After article 6 of the 2001 Order insert—

“Vacancies arising during an Assembly term: independent members

6A.—(1) A member who has been returned who was not a member of a registered party at the time he was returned may give to the Chief Electoral Officer a notice in accordance with paragraph (2).

(2) The notice referred to in paragraph (1) must—

(a) be signed by the member;

(b) set out the names and addresses of not more than six persons to act as a substitute for the member and indicate, where more than one person is so named, an order of preference; and

(c) be signed by those persons, indicating their consent to be contacted in accordance with article 6(2).

(3) A substitute is a person who, in the event of the member’s seat falling vacant, is returned in place of that member as a member of the Assembly.

(4) For the purposes of article 6 the “relevant notice” shall be taken to be the last notice given by the member concerned to the Chief Electoral Officer where the member has given more than one notice under this article.

Vacancies arising during an Assembly term: members of registered parties

6B.—(1) The Chief Electoral Officer (“the Officer”) must act in accordance with this article where—

(a) he has been notified by—

(i) an election court or the High Court under section 144 or 146 of the 1983 Act, as applied by article 3 of, and Schedule 1 to, this Order; or

(ii) the presiding officer of the Assembly under section 35(3) of the 1998 Act, that a vacancy exists in the seat of a member of the Assembly;

(b) at the time that member was returned he belonged to a registered party ("the relevant registered party") whether or not he continued to do so; and

(c) the vacancy has arisen other than as a result of the resignation of a person who has been returned as a member for more than one constituency.

(2) As soon as practicable after being notified that a vacancy exists under paragraph (1) or the circumstances in paragraph (4) arise, the Officer shall ask the nominating officer of the relevant registered party to nominate in writing, within seven days of receipt of the Officer's request, a person to fill the vacant seat and be returned as a member of the Assembly.

(3) On receipt of a nomination under paragraph (2), the Officer shall write to the person nominated asking him to respond in writing within seven days of receipt of the Officer's request stating that he is willing and able to be returned as a member of the Assembly or, if he is not, that fact.

(4) Paragraph (5) applies where the person nominated—

(a) does not respond in writing within seven days to a request under paragraph (3); or

(b) states that he is not willing or able to be returned as a member of the Assembly.

(5) Subject to paragraph (8), in the circumstances set out in paragraph (4), the Officer shall repeat the procedure set out in paragraphs (2) and (3).

(6) Where the person nominated does respond in accordance with paragraph (3) that he is willing and able to be returned as a member of the Assembly, the Officer shall declare that person to be so returned.

(7) The Officer shall give public notice of a declaration under paragraph (6) and send it to the presiding officer of the Assembly.

(8) If having applied the procedure in paragraphs (2) and (3) twice by virtue of paragraph (5) no person has been returned as a member of the Assembly, then article 7 shall apply.

(9) In this article and article 6 a "registered party" is a party registered in the Northern Ireland register within the meaning of part 2 of the Political Parties, Elections and Referendums Act 2000 and the "nominating officer" in relation to a party means the person registered as the party's nominating officer under that part of that Act."

Amendment of Article 7 of the 2001 Order

7. In article 7(1) of the 2001 Order for the words "article 6(4) above" substitute "either article 6(4) or article 6B(6).".