



The Scottish  
Parliament

**GUIDANCE FOR MEMBERS WHO  
ARE NOT STANDING AT THE 2007  
SCOTTISH PARLIAMENTARY  
ELECTION**

## FOREWORD

The period before standing down at dissolution is very demanding for Members and their staff. There is an enormous amount of work to complete and the particular challenge of changing from an MSP. It is also a challenging period for Parliamentary staff.

This guidance has been produced in a question and answer format to provide all Members and their staff who are not standing with advice on parliamentary allowances and services and how these will be affected come dissolution. Members and their staff are encouraged to make themselves fully aware of all parts of this guidance. The guidance is also available electronically on the Election Guidance pages of SPEIR for your ease.

[http://intranet/organisation/offices-a-i/cpu/election\\_guidance.aspx](http://intranet/organisation/offices-a-i/cpu/election_guidance.aspx)

Amongst the information included is:

- IT and other parliamentary services such as Clerking and SPICe;
- Members' allowances and pay;
- Members' staff pay and contracts; and
- Members' accommodation at Holyrood.

Members are asked to direct any questions they have on the information contained within this guidance to the relevant office. Contact details for each of the relevant offices can be found in the [contacts section](#) at the end of the guidance.

I hope that Members find this guidance both helpful and useful in the important time before and during dissolution and after the election.



**George Reid**  
Presiding Officer and Chair of the  
Scottish Parliamentary Corporate Body

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## **Questions and Answers Guidance to assist Members and their staff**

This guidance has been produced to assist all Members who are not standing at the election and their staff before and during the election period in 2007.

The current four-year session of Parliament will end at midnight on Monday 2 April 2007 and dissolution will begin immediately thereafter on Tuesday 3 April 2007 with the election taking place on Thursday 3 May 2007. Whilst this date of dissolution is reasonably definite, it will be subject to the pending Scottish Parliament (Elections etc) Order 2006 and a formal announcement by the Presiding Officer.

This will mean that the last Parliament sitting day is likely to be Thursday 29<sup>th</sup> March 2007, although this is subject to the agreement of Parliament nearer the time.

This guidance includes information and guidance on the issues surrounding the use of Parliament resources, in relation to salaries and pensions and issues for consideration in relation to the employment of their staff (both before and during dissolution and following the election). It should be read in conjunction with existing guidance and rules set out in the Code of Conduct, Members' Allowances Scheme and the Equipment and Furniture Scheme.

Members are asked to direct any questions they have on the information contained within this guidance to the relevant office.

### **Allowances**

#### **1. What Allowances can be claimed/paid after the date of dissolution?**

Members who are not standing at the election will be entitled to claim expenses in order to finalise their parliamentary affairs. These costs will be met from the Winding Up Allowance.

#### **2. What is the Winding Up Allowance?**

This is the provision made within the Members Allowances Scheme to meet expenses a Member may incur as a result of finalising his or her parliamentary business.

#### **3. When do I become eligible to claim the Winding Up Allowance?**

Members are eligible to claim the Winding Up Allowance when they cease to be eligible to claim all other parliamentary allowances. In the case of a Member who does not stand at the election, eligibility commences the day following the dissolution of Parliament.

#### **4. How much is the Winding Up Allowance?**

The Winding Up Allowance is set at one third of the Member's annual Members Support Allowance.

#### **5. How do I claim the Winding Up Allowance?**

Claims against the Winding Up Allowance should be made using the standard allowances claim forms and should be submitted to the Allowances Office in the normal way. Like all other allowances, claims against the Winding Up Allowance require to be supported by the relevant documentation i.e. receipts, invoices.

#### **6. Is there a cut off date for the submission of claims against this allowance?**

It is expected that all claims against this allowance will be submitted within four months of ceasing to be a Member.

#### **7. What costs can be claimed/charged against the Winding Up Allowance?**

There are a number of expenses which may be claimed, details of which are as follows:-

##### **Staff Costs**

- Support staff salaries together with Employers National Insurance and Pension Contributions for the period a member of staff is employed to assist in winding up the Member's parliamentary business.
- Contractual staff redundancy payments that are due. Bonus payments to staff cannot be charged to the Winding Up Allowance.
- Child care vouchers in respect of support staff for the period they are employed to assist their Member in winding up his or her parliamentary business.
- Travel costs a member of support staff may incur in the course of assisting his or her Member in winding up his or her parliamentary business. This does **not** include normal commuting costs.

##### **Office Costs**

- Rental payments due in respect of constituency/regional offices arising as a result of any contractual notice to quit period.
- Business rates in respect of a constituency/regional office due as a result of the contractual notice period.
- Utility costs incurred during the notice period.

- Any insurance costs due during the notice period.
- Running repair costs a Member may be contractually obliged to meet during the notice period.
- Stationery, photocopying, postage and business telephone costs a Member may incur as a result of winding up his or her parliamentary business.

### **Edinburgh Accommodation**

- For those who rent accommodation in Edinburgh any contractual rental obligations in relation to the notice to quit period required to be served can be claimed. Any deposit paid on rented accommodation that was met from the Edinburgh Accommodation Allowance will require to be refunded to the Parliament via the Allowances Office.

However, for those Members who are not proposing to stand at the election, if your lease/rental agreement requires you to give notice you are expected to give that notice prior to dissolution so that the notice period expires on the date of dissolution.

- For those who purchased accommodation in Edinburgh any mortgage interest will be paid up to the day he or she ceased to be a Member. In the case of those Members who do not propose to stand at the election this is the date of dissolution.
- Council Tax, factoring, insurance and maintenance agreement costs will be met for the same period as any rent or mortgage interest is paid.
- Gas, electricity and telephone charges incurred up to the day the Member ceases to be a Member can be met.
- Costs incurred as a result of a Member removing his or her personal belongings from his or her Edinburgh accommodation can be met.

### **Members Travel Costs**

- Any travel costs a Member may incur as a result of winding up his or her parliamentary business can be met. Family travel cost **cannot** be met.

### **Overnight Expenses**

- If a Member who was eligible to claim the Edinburgh Accommodation Allowance requires to stay overnight in Edinburgh to wind up his or her parliamentary business he or she may claim overnight expenses up to the limit set. Members will be required to personally settle any hotel bills on departure and reclaim the costs from the Allowances Office.

- Only those Members who were eligible to claim the Exceptional Needs Allowance will be eligible to claim for overnight accommodation costs incurred as a result of staying away from home overnight within his or her constituency/region in order to finalise his or her parliamentary business.

### **8. What do I need to think about if I want to terminate my local office lease before dissolution?**

Any Member wishing to terminate their lease because they are not standing at the election should contact the Allowances Office for guidance.

A Winding-Up checklist has been produced and is available at [Annex 1](#) for your ease.

## **Data Protection**

### **9. How can I transfer personal data and sensitive personal data to an incoming or other MSP?**

The simplest way is to seek the consent of the data subject. Ideally, the consent given should be in writing. There may be reasons why a constituent would not wish his or her data to be passed to the person you think might be appropriate. If you intend to seek consent, you should aim to receive this well before the period provided in the Data Protection (Processing of Sensitive Personal Data) (Elected Representatives) Order 2002 – i.e., 7 May 2007 – runs out. You should therefore begin the process of seeking consent as soon as possible.

Consent given by data subjects should be freely given; specific and informed (they should know exactly why you need the information and what you are going to do with it). It is especially important that the data subjects are aware if you intend to send their personal data to a third party.

### **10. Can't I simply pass all constituency correspondence to an incoming or another MSP?**

It depends on what data the casework contains. Remember that passing data to someone else is a form of processing and can only be done in accordance with the Data Protection Act (DPA).

You should note that the Order does not operate so as to 'transfer' a right to process particular sensitive personal data from you to an incoming or other MSP. That incoming or other MSP cannot process data under the Order unless his or her processing meets the conditions outlined in paragraphs 14 to 19 of the accompanying note, and is otherwise in compliance with the DPA.

For **personal data**, you may pass constituency correspondence if you have consent to do so, or if one of the other conditions is met, and if to do so is otherwise in accordance with the DPA. If you are in doubt, we recommend that you seek consent.

For **sensitive personal data**, you may do so if you have explicit consent (ideally in writing) or you consider that one of the other conditions is met, and if to do so is otherwise in accordance with the DPA. If you are in doubt, we recommend that you seek explicit consent.

However, in all of the above cases you should not pass data to any person who is not entitled under the DPA to process it. It may be a breach of the requirements of the DPA to pass data to someone who is not so entitled.

**11. What if I seek explicit consent but cannot trace the constituent or the constituent does not respond?**

You should use your best judgement, after considering all the circumstances. It may be that the safest option would be to arrange for the secure disposal of the sensitive personal data.

**12. Does the Data Protection (Processing of Sensitive Personal Data) (Elected Representatives) Order 2002 allow a new MSP to access records held by me?**

No, the Order does not create a right for a new MSP to access records held by a current Member.

**13. If I am not returning as an MSP in the next Parliament, and a person formerly acting with my authority is taken on by another MSP, can that person continue to process my case work under the order?**

No. The Order operates so as to allow you or a person acting with your authority to process sensitive personal data, but only until the end of the fourth day after the election, i.e. 7 May 2007, even if the same person is later taken on by an incoming or other MSP. The employee is only entitled to process the data which his or her new employer is entitled to process.

More detailed information on Data Protection can be found at [Annex 2](#).

## **Equipment and Furniture Scheme**

**14. Can I purchase any new equipment/furniture under the Scheme in the run up to dissolution?**

In order to continue to provide access to the Equipment and Furniture Scheme for Members we will ensure that up until 31 January 2007, all purchases will be available as normal.

The SPCB has agreed that from 31 January 2007, up until dissolution, Members can only make purchases to replace lost, stolen or faulty equipment or furniture. We will not be able to authorise the purchase of any new equipment or furniture.

**15. I am not standing at the election what are the arrangements for the collection of equipment and furniture purchased under the Equipment and Furniture Scheme?**

Our Facilities Management team will arrange for equipment and furniture purchased under the Scheme to be collected at a convenient date and time for Members and their staff, and we shall ensure that the arrangements will take into account the time Members require to wind up their affairs.

We would ask Members who will not be standing for election to make sure that all equipment and furniture purchased under the Scheme, or supplied by the BIT office, is left either in their local office or in the Parliament.

Where a Member has already terminated the lease of their local office as part of winding up their affairs, then we would ask that they provide us with details of where all the remaining equipment can be collected from.

Members will wish to note that these arrangements will also include the return of all Scottish Parliament Stationery e.g. envelopes and letterhead paper.

**16. When should I contact the Facilities Management team to arrange the collection of equipment and furniture?**

As soon as a Member, who is not standing for election, has set a date for closing his or her local office we would suggest they contact the Facilities Management Helpdesk (please see the contacts section for details).

Wherever possible, a minimum of three weeks notice of the closure date should be given to Facilities Management. This will allow the necessary arrangements to be made and a date and time that is suitable for the Member to be confirmed.

**17. Will there be any exceptions to these arrangements?**

Low value items such as fans, heaters, kettles, and second-hand furniture will have been purchased from the Members' Support Allowance and, as such, need not be returned to the Parliament.

This equipment is the property of the Member and may be retained/disposed of locally as she/he sees fit. If there is any doubt as to how to dispose of any items in the local office the Facilities Management Helpdesk will be pleased to provide assistance. (Please see the contact section for details).

## Freedom of Information

### **18. What happens if I receive an FOI request that relates to an official position I held?**

If you are a member of the Corporate Body, (which continues to exist during dissolution) you should pass it to the SPCB Secretariat (Judith Proudfoot, 0131 348 5307). If the request relates to a Committee position you should pass it to the appropriate Committee clerk.

## IT Services

### **19. What IT support will I receive if I am not standing?**

The IT Election Helpdesk will assist any Member not standing for election to copy and clear out their IT network account.

## Mobile Telephones

### **20. I am not standing at the election, what should I do with my mobile phone and BlackBerry that was provided by the Parliament?**

The SIM card in each handset belongs to the provider (in this case Vodafone) and the number is issued by the regulatory body OFTEL. If Members want to keep their telephone number then please contact the Allowances Office who will arrange to have the SIM card transferred from the current business account to a personal account with Vodafone Retail.

If Members want to keep the mobile phone handset then they may do so. However, they should bear in mind that this may be viewed as a benefit by the Inland Revenue and will be reported to them on a future P11D tax return.

All BlackBerry devices will need to be returned to the Parliament.

### **21. I am not standing at the election, and I transferred my personal number to the Vodafone contract but the handset belongs to me. I want to keep the number so what will happen?**

The line rental and calls will be met from a Member's Winding Up Allowance providing the costs were incurred in winding up your parliamentary affairs.

As soon as a Member is satisfied that their responsibilities are concluded the Allowances Office will arrange for the SIM card to be transferred from the current business account to a personal account with Vodafone Retail.

**22. I am not standing at the election; will the costs of using my mobile phone be met from the Winding Up Allowance?**

The cost of using a mobile phone will be met from the Winding Up Allowance. However, Members should be aware that they will be expected to confirm with the Allowances Office that the costs of any calls were necessarily incurred in winding up their parliamentary affairs.

**23. I am not standing at the election, and I want my number transferred to a provider other than Vodafone?**

This can be arranged but, as Members are terminating their contract with Vodafone, there may be charges incurred as a result of changing providers. Members will therefore be invoiced for any costs that the Parliament incurs.

It should be noted that all of the above guidance in relation to Members and the arrangements for their mobile phones equally applies to Members' support staff.

## **MSPs Salaries and Pensions**

**24. When will my salary end if I am not standing at the election?**

If Members are not standing at the election, they are entitled to a salary up to and including the day of dissolution.

**25. When will I be advised about my pension if I am not standing again at the election?**

The Personnel Office will be writing individually to all Members who have announced their intention to stand down at the election detailing their specific entitlements once dissolution has been announced. Any Member who wishes to obtain an estimate before then should contact the Personnel Office (please see contacts section).

**26. Am I entitled to a Resettlement Grant and, if yes, when will it be paid?**

Under the Scotland Act 1998 (Transitory and Transitional Provisions) (Grants to Members and Officeholders) Order 1999 any Member of the Scottish Parliament is entitled to receive payment of a resettlement grant subject to the person being a Member immediately before the Parliament's dissolution and at the subsequent election either:

- does not stand for election as a Constituency or Regional Member; or
- stands and is not elected.

It is determined by both the Member's age at dissolution and the number of completed years of service as a Member before the dissolution. Therefore at the elections in 2007 any Member who is entitled to the grant will receive 50% of their annual salary as it stands immediately before dissolution. As all Members with under 10 years service receive the same percentage of salary under the Order, the calculation at the elections in 2007 will be made irrespective of a Member's age at the time.

Members will need to fill in the appropriate claim form certifying length of service and any other details required. Forms can be obtained from the Personnel Office.

Assuming the date of the election will be 3 May and timeous receipt of a Members form we would expect to make payment through the payroll on the last working day in May.

## **MSP Staff**

### **27. What do I need to do in terms of my staff if I am not standing at the election?**

Members will have many issues to consider in terms of the redundancy of their staff and the appropriate notice that is required. The following questions 28 to 50 will provide members with advice and guidance.

### **28. What is redundancy?**

Dismissal may be termed redundancy when it results from:

- closure of the business for the purposes of which the employee was employed
- the employer closing down the employee's workplace
- a reduction or cessation of work of a particular kind
- anticipation of a reduction or cessation of work.

Accordingly, in the event that you decide not to stand at the election, or if you are unsuccessful in retaining your seat, it is likely that this will amount to a redundancy for your staff in terms of the legislation.

### **29. Who qualifies for a redundancy payment?**

Dismissed employees, with two or more years' service are entitled to at least a statutory redundancy payment based on their length of service and weekly earnings (a week's pay is defined in the answer to question 32).

For each complete year of service, up to a maximum of 20 years, employees are entitled to:

- up to the age of 21 - half a week's pay for each completed year of service;
- 22-40 years of age – one week's pay for each completed years of service;

- 41+ years of age – one and a half weeks' pay for each completed years of service.

**For quick reference please refer to the Redundancy Ready Reckoner (Annex 11).**

**Please note.** If an employee who is under notice of termination chooses to leave their employment during the notice period, they are still generally entitled to the appropriate redundancy payment.

**30. What if I have provided specific redundancy entitlements in the contract of employment?**

If you have provided for, within your employee's contract of employment, more generous redundancy entitlements, then these will apply instead. You must therefore, check the employment contract to establish the actual legal entitlement. You should also seek advice from the Personnel Office (see contacts section).

**31. Are all employees entitled to a redundancy payment?**

The following groups of employees do not qualify for redundancy payments:

- those on fixed-term contracts of at least two years service who have waived their rights to redundancy provided that the fixed-term contract has not been agreed, extended or renewed after 1 October 2002. If this is the case, the waiver is invalid following the enactment of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002. (Members can however remove the waiver at any time and pay statutory redundancy).

**32. What is a week's pay?**

A week's pay is that which the employee is entitled to under his or her terms of the contract at the 'calculation date'. The 'calculation date' is the date on which the employer issues notice to terminate the contract. If the pay varies (e.g. the employee works ad-hoc hours or consistently works overtime) the employer must average the last 12 weeks' earnings prior to the 'calculation date'. **You must inform payroll if the latter definition applies to any of your staff.**

**Please note.** The Government has defined a maximum statutory limit of £310 per week as of 1 February 2007. In other words even if an employee earns more than £310 per week, he or she will receive the statutory maximum of £310.

**33. How much notice do I have to give my employees?**

The recommended SPCB model statement of terms and conditions details the minimum notice period to terminate Members' staff contracts of employment and this is in line with the minimum statutory periods of notice set out in the Employment

Rights Act 1996. The notice to which he or she is entitled to depends on length of service:

<b>Service</b>	<b>Notice</b>
Up to 2 years	One week
2-12 years	One week for each year of employment
Over 12 years	12 weeks

If you wish to end the contract of employment before your employee has worked out their notice, it is essential for you to have a contractual right to make a payment in lieu of notice. If the contract of employment does not state this contractual right and you attempt to make a payment in lieu of notice, you will be in breach of contract. It is essential; therefore, that you review the contracts of employment, before you enter into an arrangement to make a payment in lieu of notice since the Winding-up allowance only allows contractual obligations to be met.

**Please note.** The above advice relates to the recommended SPCB statement of terms and conditions. If you have enhanced the notice period, you should review the terms of the notice period contained in your employees' contracts of employment. In such circumstances you are contractually obliged to honour the contractual notice period. Failure to comply may result in breach of contract. Further, if the contractual period of notice is shorter than the minimum period of notice which the employee would be entitled to under the Employment Rights Act, the latter would take effect and apply.

### **34. Do I have to consult with my employees before I issue notice?**

Yes, the consultation process should precede any public announcements of the redundancy and the issue of notices of termination. Such notices may be issued once consultation meetings have commenced but only after sufficient and meaningful consultation has taken place.

Statute prescribes that employers should consult with all employees individually, and collectively with their individual representatives, when the employer intends to make 20 or more employees redundant. However case law makes it clear that individual consultation is also necessary for both small scale redundancies (fewer than 20) and larger scale redundancies (20 or more). The purpose of consultation is to provide as early an opportunity as practicable for all concerned to discuss the potential redundancy and to explore all options available. Particular issues to discuss during consultation will generally include:

- notifying the employee that they have been provisionally selected for redundancy;
- verifying the basis for selection;
- allowing an employee to comment on their redundancy selection assessment;
- consideration of alternative employment (if there is any possibility of this);

- alternative ways of tackling the problem or if the redundancies are inevitable, ways of minimising hardship.

Applied to the present situation, the duty to warn employees would arise when you have decided whether or not to stand for re-election. You would be expected to consult with the individual(s) who are potentially affected, to discuss possible means of avoiding or mitigating the redundancy. You would also be expected to disclose information relating to how the dismissals will be carried out and the method of calculating the redundancy payment.

- **If you are standing for re-election**, you should announce your decision to all of your staff at a staff meeting. The reason for this is to ensure that all staff are informed of the decision at the same time thereby allowing for consistency. After holding this meeting you should write to all affected staff using the **Early Warning Letter (Annex 4)**. You should hold the first consultation meeting with your staff within 1 week of the announcement and any further meetings should be arranged if required.
- Similarly, **if you are not standing for re-election** you should announce your decision to all of the staff at a staff meeting to ensure that all staff are informed of the decision at the same time thereby allowing for consistency. After holding this meeting you should write to your staff using the **Early Warning Letter (Annex 5)**. You should hold the first consultation meeting with your staff within 1 week of the announcement. This will give the employee time to consider the matter and to prepare any questions he or she may have. You should agree a second consultation meeting to be held the following week (a total period of two weeks would be considered as a meaningful period of consultation) and any further meetings should be arranged if required.

In addition to those areas outlined above and in the interests of good employment relations practice, employers may wish to consult with their staff on the following:

- the effect on earnings where the contract has varied (e.g. reduction in hours of work) in preference to redundancy;
- when a redundant employee may leave during the notice period;
- any extension of the length of the statutory trial period of four weeks (see question 39 below) if a new job is offered as an alternative to redundancy.

**Please note.** The purpose of both early warning letters is to inform employees of the risk of redundancy and to enter a period of consultation. As this process may lead to the employee being dismissed, **it is vitally important to keep effective documentation (see Annex 10 for a suggested format)**. By issuing the appropriate letter you can prove that you have attempted to follow a fair and reasonable process. Case law has established that any dismissal on grounds of redundancy that proceeds without meaningful consultation is likely to amount to an unfair dismissal. It is imperative, therefore, that you issue the early warning letter that applies to your circumstances and that you hold meaningful consultation with all affected staff.

### **35. Do I need to hold a meeting to confirm the dismissal?**

Yes, wherever an employer is contemplating dismissal, statutory dismissal procedures are triggered (Employment Act 2002 and Employment Act 2002 (Dispute Resolution) Regulations 2004). Dismissal for these purposes includes dismissal on grounds of redundancy. The statutory dismissal procedures set out the minimum procedures which must be followed. These are:-

- writing to the employee to tell them why dismissal is being considered and setting out the basis for the dismissal;
- inviting the employee to a meeting to discuss the matter;
- informing the employee of the decision;
- and notifying the employee of the right to appeal.

A similar process must be followed if an appeal against dismissal is lodged.

### **36. Do I need to give employees an opportunity to appeal against the decision to make them redundant?**

Yes, the employee must be given an opportunity to appeal to ensure compliance with the statutory dismissal procedures.

Failure to follow the statutory procedures will lead to the dismissal being automatically unfair (for process, see the answer to Q35).

### **37. Do I need to confirm the termination in writing?**

Yes, legally, employees with at least one year's continuous employment are entitled to receive, on request, a written statement of reasons for dismissal within 14 days of the termination date. However, following good practice you are advised to provide written reasons for dismissal to all of your staff, irrespective of their length of service. You should issue the **Notice of Termination Letter (Annex 6 or 7 if you have not been re-elected or Annex 8 or 9 if you are not standing for re-election)**. These letters have been drafted to reflect whether the employee is to be paid in lieu of notice or whether they are required to work their notice period. If you wish to reserve the right to make a payment in lieu of notice, you must make sure that the contract of employment allows you to do this. You will only be able to pay this out of your Winding-Up Allowance if it does.

Both letters state the reason for dismissal and detail how the redundancy pay will be calculated along with any additional payments due such as: outstanding wages; pay in lieu of notice (where applicable); overtime; and accrued holidays. It also confirms arrangements for payment.

**Please note.** Payroll will calculate the final salary if your staff are terminated on grounds of redundancy. It is therefore essential for you to provide the Payroll Team with accurate information. To ensure Payroll receives all relevant information please

use **Annex 10**. If you have any queries please contact the Payroll Team on 0131 348 6642.

### **38. Am I required to offer my employees alternative positions?**

The law requires employers to take reasonable steps to see whether instead of dismissing an employee on grounds of redundancy, an employer could offer the employee alternative employment. Failure to offer suitable alternative employment may give rise to a complaint of unfair dismissal. Suitable alternative employment will include alternative roles which are similar in status, skill set required, location, salary.

If no suitable alternative employment is available, you should consider whether any alternative employment, namely work at a lower grade or salary, is available as a means of avoiding redundancy. You should not automatically assume that an offer of alternative employment involving demotion will be refused – you should discuss this with your employee. If your employee is prepared to accept jobs of lower status, a failure to offer such a job may give rise to a complaint of unfair dismissal.

You are not, however, obliged to create alternative employment where none already exists.

In some cases, the legal obligation to consider whether alternative work can be found for the employee will extend beyond the particular employment from which the employee is to be made redundant. The Employment Appeal Tribunal has held, for example, that there might be circumstances where it is appropriate for the employer to consider whether alternative employment is available within other companies within the same group of companies. This can happen where the management of all of the group companies is closely integrated.

When a Member steps down or is not returned, it is possible that they will return to a previous employment or will pursue other business interests. We recommend that Members take independent advice with regard to the extent of their obligations in circumstances where they could offer redundant employees an alternative position, albeit not in the capacity as an MSP.

### **39. Are employees entitled to a statutory trial period?**

Yes, an employee who is under notice of redundancy has a statutory right to a trial period of four weeks where an alternative job has been identified and where the provisions of the new contract differ from the original. Under these circumstances employees must be issued notice (or paid in lieu of notice if applicable), as the statutory trial period cannot begin until the previous contract has ended.

The effect of the trial period is to give the employee a chance to decide whether the new job is suitable without necessarily losing the right to a redundancy payment. It also allows you, as the employer, to assess their suitability for the new job. What this means in practice is that both you and the employee can terminate the contract if the new role is found to be unsuitable. It is therefore essential to give notice to an employee before the trial period commences.

If the employee works beyond the end of their trial period, any redundancy entitlement will be lost because they will be deemed to have accepted the new employment.

**40. I am standing down at the next election and I want to issue notice to all of my staff. One of my employees has been off sick and is currently being paid Statutory Sick Pay. What payments will he/she be entitled to during his/her notice period?**

Notice to terminate the contract of employment should be paid at his/her normal weekly pay. For additional information of what constitutes a 'normal weekly pay' please refer to question 32 above.

**41. Are employees entitled to paid time off to look for alternative work/training?**

Yes, an employee who is given notice of dismissal because of redundancy and who has two years' continuous service is entitled to reasonable time off with pay during working hours to look for another job or to make arrangements for training for future employment.

Legislation does not specify the amount of time off since this will vary with the differing circumstances of employer and employees. However, under the legislation the employer does not have to pay more than two-fifths of a week's pay regardless of the length of time off.

**42. When will the final salaries be processed?**

We have asked our payroll provider to confirm the pay dates of staff who leave their employment during the months of April and May 2007. Currently our payroll provider can only supply provisional dates. To ensure your employees are paid correctly and on time you should contact the Payroll Team on or before the following dates:

<u>Contact Payroll</u>	<u>Pay Date</u>
Friday 13 April 2007	Monday 30 April 2007
Wednesday 16 May 2007	Thursday 31 May 2007

**43. Unfair dismissal?**

Redundancy in itself is a potentially fair reason for dismissal. However an employee dismissed on grounds of redundancy may nevertheless be found by an Employment Tribunal to be unfairly dismissed. It is important to take all necessary steps to protect yourself from an unfair dismissal claim as the awards that can be made by Tribunal are high – maximum basic award £8,700 and compensatory award £58,400. The compensatory award may in some cases be uncapped, for example if the dismissal is found to be connected to a potential disclosure (whistleblowing) or for

discrimination issues. This can arise for example where the employee was unfairly selected for redundancy on the grounds of:

- trade union membership or (non-membership);
- gender, marital status, disability, ethnic origin or pregnancy, employment status (e.g. part time worker, **fixed term employee**);
- asserting a statutory employment right; or
- a public interest disclosure ('whistleblowing').

But the fairness of a decision to dismiss on the grounds of dismissal can also be challenged on the following grounds:

- failure to warn and consult employees;
- failure to use a fair (objective) basis for selecting employees for redundancy;
- failure to consider redeployment;
- failure to follow a fair procedure and in particular a failure to follow the statutory dismissal procedures set out in the Employment Act 2002 and the Employment Act 2002 (Dispute Resolution) Regulations 2004 Please note that failure to follow a fair procedure will render a dismissal automatically unfair and lead to an uplift in compensation awarded by the tribunal between 10 – 50%.

## **MSP staff (Pooled)**

### **44. I contribute to a 'pool' with other Members. What is the position?**

Members will be aware of the provision in the Allowances Scheme with regard to 'pooling' of costs in order to employ employees who are shared and the requirement that those employees remain employed by a single member.

However, all Members of the "pool" should meet to discuss how any potential change would affect the "pool" financially.

If the Members of the "pool" decide that the current arrangements are not financially sustainable then the employer must consider whether a redundancy situation arises. The employer would then need to consult with employees. See next question.

### **45. In relation to "pooled" or "grouped" staff, should all Members of the "pool" or "group" carry out the consultation process?**

No, the employing Member should consult with all of the potentially affected staff, to discuss possible means of avoiding or mitigating the redundancy. Information relating to how the dismissals will be carried out and the method of calculating the redundancy payment should also be discussed.

**46. The employing Member of the pool is standing down, what actions should the 'pool' consider?**

Where the Member, who is the employer, is not seeking re-election but the remaining members of the pooling arrangement are, a new employer Member will require to be in place from dissolution. This is necessary where Members seeking re-election wish to continue the employment of staff until the election results are known.

**47. A member contributing to the pool is standing down or is not returned, what actions should the 'pool' consider?**

A potential redundancy situation will arise where **any** Member of the pool is standing down or not returned and it is considered that there is a reduction in the amount of staff needed to carry out the work remaining. All Members of the "pool" should meet to discuss how this circumstance affects the "pool" financially and how this will affect the employees' current terms and conditions of employment. Thereafter the employing Member should consult with the employees to discuss how this change will affect them personally and exhaust all possibilities to continue their employment before taking any decision to terminate the contract on the grounds of redundancy.

**48. Who would be responsible for the redundancy payments in relation to "pooled" members of staff?**

The employing Member is legally responsible although Members may have made their own arrangements as to how redundancy costs can be met. However, a charge to the Members' Support Allowance (or for a Member who is not re-elected, the Winding-Up Allowance) can be made for redundancy costs in proportion to the contributions Members of the pool have made to the pool.

**49. If a redundancy situation arises, what must the employing Member do?**

If a redundancy situation is inevitable, the employees who may be affected need to be clearly identified. Where there is only one post that is affected it may prove to be a simple exercise. However, where there is more than one individual who is doing the same work, it is important to identify correctly which group of employees constitutes the "pool for selection". The "pool for selection" is the group of employees from whom some of those who are to be made redundant are to be drawn.

It is important to consider other groups of employees who are doing similar work to the "pool" and whether employees' jobs are interchangeable. Consideration should also be given to those employees working in other locations.

Once the pool for selection has been identified, a method of selecting those to be made redundant from that pool should be established. Case law requires selection to be based on objective criteria that is fair and consistently applied, for example, records of attendance, length of service, relevant experience, timekeeping, disciplinary record and any other relevant factors. Such criteria can then be weighted by importance.

Employees in the “pool for selection” should be properly consulted. Employees may have representations or explanations to make on how they score on the proposed selection criteria. The pool can sometimes be difficult to identify and if you are in any doubt please take appropriate advice.

## **Postal Services**

### **50. What will happen to my mail if I am not re-elected?**

If Members are not standing, then their mail will continue to be re-directed to an agreed address for a period of 3 months after the dissolution date. This will provide assistance to Members during the winding up of their affairs.

## **Security Passes**

### **51. What do I and my staff do with photographic security passes if I am not standing?**

If Members are not standing at the election your and your staff’s passes should be left in the envelope provided for office keys which will be clearly marked for the attention of the Security Office. You can either leave the envelope in your office or hand the envelope to a security officer on exiting the building.

### **52. What will happen to the photographic passes of those I have sponsored as a Member?**

Organisations or individuals who have a sponsored photographic pass will be required to send their security passes to the Security Office, if the sponsoring Member is not standing at the election. The Member should advise any such pass holders of the need to return their passes.

### **53. What will happen to my partner’s pass?**

If a Member is not standing at the election then any passes held by their partner will be required to be returned to the Security Office.

## **Surgeries**

### **54. Can I hold surgeries in my region/constituency up until dissolution?**

Members can continue to hold surgeries in their region/constituency as Members up until dissolution. Members will wish to ensure that their constituents are aware in advance that all MSP surgeries will cease as of the date of dissolution.

## Websites

### **55. What will happen to my details on the Parliament's website after the date of dissolution?**

The biographical information on the Parliament's website relating to current MSPs will be moved to the section on previous Members for Session 2. Each will be edited to add closing dates for the end of the session where appropriate and contact details will be removed.

## Contacts

Allowances Office: - 0131 348 6830

Personnel: - 0131 348 6501 or 6651 (pension queries)  
0131 348 6642 (pay queries)  
0131 348 6670 (contract queries)

Corporate Policy Unit: - 0131 348 6836  
0131 348 6838

Security Office: - 0131 348 6556

Facilities Management: - 0131 348 5100  
(Email): - [helpdesk@scottish.parliament.uk](mailto:helpdesk@scottish.parliament.uk)

Information Technology: - 0131 348 5551

SPICe: - 0131 348 5300  
(Email): - [SPICe@scottish.parliament.uk](mailto:SPICe@scottish.parliament.uk)

Visitor Services: - 0131 348 5000

Public Information: - 0131 348 5200

SPCB Secretariat: - 0131 348 5307

### Winding-Up Check List

When winding-up your parliamentary business you may find the following check list helpful:-

- Office Lease. Check lease to ascertain whether there is a termination clause and issue notice to quit accordingly bearing in mind the time required to wind-up parliamentary duties.
- Office Telephones. Arrange to have these disconnected with all number listings removed.
- Office Signage. Arrange to have this removed.
- Websites. Removal all reference to status as an MSP and Scottish Parliament logo as applicable.
- Refunds of Office Costs. Arrange to have any refunds due in respect of rental deposits, business rates, annual insurances and utility provision submitted to the Allowances Office.
- Mobile Phones. If appropriate contact the Allowances Office to arrange the transfer from the SPCB's contract.
- Edinburgh Accommodation. Check lease to ascertain whether there is a termination clause and issue notice to quit accordingly.
- Utilities. Arrange final reading of utility meters as appropriate.
- Edinburgh Accommodation Telephones. Arrange to have these disconnected with all number listings removed as appropriate.
- Refunds of Edinburgh Accommodation Costs. Arrange to have any refunds due in respect of rental deposits, council tax, annual insurances/maintenance agreements, factoring charges and utility provision submitted to the Allowances Office.
- Mortgage Statement. Forward a copy of the mortgage statement covering the period for which mortgage interest has been claimed.

# Data Protection & Constituency Casework during the Election period

You may be thinking about what to do with constituency correspondence and casework in the run up to, and following, the election. We hope this note will provide answers to some of your questions and give you a bit of background about your obligations under the Data Protection Act 1998 (the DPA).

## INTRODUCTION

1. This note provides further advice and guidance on handling and good records management practice for constituency casework during the election period – in particular, regarding your obligations under the **Data Protection Act 1998**<sup>1</sup> (the DPA) and the effect of the provisions contained in the **Data Protection (Processing of Sensitive Personal Data) (Elected Representatives) Order 2002**<sup>2</sup> (the Order).

2. This Order took effect on 17 December 2002 and permits elected representatives and persons acting with their authority to process sensitive personal data *without* explicit consent, but only where certain conditions are met. Similarly, the Order permits others (e.g. departments, local authorities, NHS bodies, police authorities etc) to disclose sensitive personal data to you, or persons acting with your authority, in response to action by you in progressing constituency casework.

3. Provided the relevant conditions are met, the Order permits you and persons acting with your authority, to process sensitive personal data **up to the end of the fourth day after the day of the election – i.e., 7 May 2007** – irrespective of whether you are retiring or standing again, or whether you are re-elected or not. The Order also permits other holders of such data to disclose it to you up to this date. If you are not standing or not re-elected, this may facilitate you in concluding your constituency casework.

4. For the purposes of this note –

- ‘constituency casework’ is to be taken as any information (e.g. incoming and outgoing correspondence, notes or other related work) held by you (in paper, electronic or other format) as a result of a request made to you, on which you have taken action, or are expected to take action, in the discharge of your functions as an ‘elected representative’ (see paragraph 3 above);
- the ‘election period’ for the purposes of this Order is to be taken as the period from beginning with the day of the Parliament’s dissolution, i.e. 3 April 2007, to 4 days after the date of the election, i.e. 7 May 2007.

## BACKGROUND

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<sup>1</sup> <http://www.legislation.hmso.gov.uk/acts/acts1998/19980029.htm>

<sup>2</sup> <http://www.legislation.hmso.gov.uk/si2002/20022905.htm>

## THE DATA PROTECTION ACT 1998

5. You (and your employees) are subject to the DPA. As such, paperwork (in a structured filing system) and all electronic records containing personal data held by you, in your capacity as an elected representative, fall within the scope of this Act. This places important obligations in the way that you handle (or “process”) personal information, not only during the election period, but at any time. Processing personal data includes obtaining, collecting, disclosing, rationalising (e.g. sorting, transferring, deleting or destroying) or merely holding such information.

6. Further information about your day-to-day obligations under the DPA is contained in Section 8 of the **MSP Staff Induction Handbook** and in the **Data Protection Guidance for Members** or copies may also be obtained from Claire Turnbull, Records Manager, on ext. 86913.

7. The [Election Guidance](#) distributed to all Members in December also provides further advice for the period of dissolution, including matters such as contact details and how you should refer to yourself during this period.

8. Further information on data protection matters is available from the **UK Information Commissioner**<sup>3</sup>.

### Personal data and sensitive personal data

9. Some detail of important concepts is given here in order to assist you. For fuller descriptions, you should refer to the [Guidance for MSPs on the Data Protection Act](#).

10. **Data** means information held in a way specified in the DPA – generally, it includes information held electronically or in a structured filing system.

11. **Personal data** means data, relating to a living individual, containing details that would enable a person to identify another living individual. Personal data may only be processed if one or more conditions are met as set out below and in Schedule 2 to the DPA.

- Fairly and lawfully processed
- Processed for limited purposes and not in any manner incompatible with those purposes
- Adequate, relevant and not excessive
- Accurate
- Not kept for longer than is necessary

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<sup>3</sup> <http://www.ico.gov.uk>

- Processed in line with the data subjects rights
- Secure
- Not transferred to countries outside the European Economic Area without adequate protection.

12. For constituency casework, the most commonly met condition is likely to be consent, though for personal data this can be *implied* consent.

13. **Sensitive personal data** is another category of personal data. It means personal data about racial or ethnic origin, political opinions, religious beliefs (or beliefs of a similar nature), trade union membership, physical or mental health details, sexual life, or criminal activity or proceedings. Processing is stricter for this type of data. Sensitive personal data may only be processed if one or more conditions for processing personal data are met (see paragraph 11 above), and in addition, if one or more further conditions are met as set out in Schedule 3 to the DPA.

- where the data subject has given his or her explicit consent
- where the processing is required by law in connection with employment
- where the processing is necessary in order to protect the vital interests of the data subject or another person
- where the processing is necessary for the administration of justice or in connection with legal proceedings

14. For constituency casework, the most commonly met further condition is likely to be *explicit* consent.

15. **Data subject** means the person to whom the personal data relates.

### **THE DATA PROTECTION (PROCESSING OF SENSITIVE PERSONAL DATA) (ELECTED REPRESENTATIVES) ORDER 2002**

16. This Order took effect on 17 December 2002 and permits elected representatives and persons acting with their authority (see below) to process sensitive personal data *without* explicit consent, but only where certain conditions are met. Similarly, the Order permits other holders of such data (e.g. departments, local authorities, NHS bodies, police authorities etc) to disclose it to you or persons acting with your authority, in response to action by you in progressing constituency casework.

17. Provided the relevant conditions are met, the Order permits you and persons acting with your authority, to process sensitive personal data **up to the end of the fourth day after the day of the election – i.e., 7 May 2007** – irrespective of whether you are retiring or standing again, or whether you are re-elected or not. The

Order also permits other holders of such data to disclose it to you up to this date – this may facilitate you in concluding your constituency casework. However, the Order only *permits* holders to disclose this data to you – it does not *require* them to do so. They may still take other factors into consideration or look for evidence that there is explicit consent.

18. Even when relying on the Order, you are still required to meet all the other requirements of the Data Protection Act.

#### Conditions when individual is the data subject

19. The Order permits elected representatives and their employees to process sensitive personal data *without* explicit consent where the processing:

- is carried out by you or a person acting with your authority;
- is in connection with the discharge of your functions as an elected representative;
- is carried out as a result of a request made to you by the data subject to take action on behalf of that or any other individual; and
- is necessary for the purposes of, or in connection with, the action reasonably taken by you in response to that request.

#### Conditions when individual is *not* the data subject

20. Sensitive personal data may also relate to an individual other than the person raising the matter (e.g. where Smith writes complaining about nuisance neighbour Jones, the information may also include sensitive personal data relating to Jones; or if the correspondent is writing on behalf of someone else, correspondence may contain sensitive personal data about that other person).

21. In such circumstances, the Order also permits elected representatives and their employees to process sensitive personal data *without* explicit consent as long as the processing:

- is carried out by you or a person acting with your authority;
- is in connection with the discharge of your functions as an elected representative;
- is carried out as a result of a request made by *an individual other than the data subject* to you to take action on behalf of the data subject or any other individual;
- is necessary for the purposes of, or in connection with, the action reasonably taken by you in response to that request; and
- is carried out *without* the explicit consent of the data subject because the processing -
  - is necessary in a case where explicit consent cannot be given by the data subject;
  - is necessary in a case where you cannot reasonably be expected to obtain the explicit consent of the data subject;
  - must necessarily be carried out without the explicit consent of the data subject being sought so as not to prejudice the action taken by you; or

- is necessary in the interests of another individual in a case where the explicit consent of the data subject has been unreasonably withheld.

### Persons acting with your authority

22. Clearly “persons acting with your authority” would include your employees. It may also include other persons working for you, e.g. volunteers or party employees. However, only your employees can process personal data under your notification. The DPA imposes certain controls when other persons process data on your behalf. You should refer to the general [Guidance for MSPs on the Data Protection Act](#).

### **Processing constituency casework during the election period**

23. Personal data (sensitive or otherwise) should not be retained for any longer than is reasonably necessary, nor used for any purpose apart from that for which it was received. You may have a number of closed constituency casework files in your office. It is also possible that you may not have concluded all current constituency casework before the dissolution of the Parliament. You should have a records management policy in place to deal with closed constituency casework. You are also encouraged (particularly if you are standing down, or as a contingency, in the event of you not being re-elected) to make arrangements in advance of the election to rationalise all constituency casework in accordance with the DPA and to benefit from the provisions in the Order. Rationalisation options could include secure disposal (shredding, incineration, deletion etc.). See the **Q&A** section if you intend to transfer such data to an incoming or other MSP.

24. Of course, your constituency casework files may not all contain personal data, nor even contain data for the purposes of the DPA. As indicated above, generally information is only data for the purposes of the DPA if it is held electronically or in a structured filing system.

25. For constituency casework stored electronically or held in a structured filing system, containing personal data only, any implied consent given by the person on behalf of whom you are, or were, acting *may* be sufficient for you to process such information. However, if you are in any doubt, you should seek the view of that person.

26. For constituency casework stored electronically or held in a structured filing system containing sensitive personal data, you should, as always, exercise greater care. Whilst it is now possible, subject to the conditions and circumstances outlined in the Order, for you to continue to process sensitive personal data *without* obtaining explicit consent from the data subject, this does not mean you should not *ask* for consent. There may be occasions when it would be wise or appropriate to obtain explicit consent from the data subject (for example, when you intend to contact organisations such as local authorities, the NHS, hospitals, GPs, the Scottish Prison Service etc, which may themselves hold sensitive personal data on behalf of the data subject or another party).

27. The Order permits you to continue processing sensitive personal data up to the end of the fourth day after the day of the election (i.e. from the Friday immediately

after polling day up to and including Monday, 7 May 2007). **However, this period includes Saturday and Sunday, so does not provide much time – we therefore recommend that you take early action in this matter.** The Order can be relied on at any time up to the election and for those four days after it – you do not have to wait for the four-day period.

28. , If you have not already done so, we recommend the introduction of an office system whereby explicit consent to process sensitive personal data in particular ways is obtained when embarking on *any* new case. This allows you greater freedom of action. A template letter is available [where?].

### **Questions you should ask yourself**

- Is it data for the purposes of the DPA (generally, information held electronically or stored in a structured filing system)?
- Is it personal data? If so, have I met at least one of the conditions for processing personal data – e.g. consent (which includes implied consent) – set out in Schedule 2 to the DPA? Should I seek consent?
- Is it sensitive personal data? If so, have I (in addition to Schedule 2 to the DPA) met at least one of the conditions for processing sensitive personal data – e.g. explicit consent or meeting the terms of the Order – set out in Schedule 3 to the DPA? Should I seek explicit consent?
- Am I processing the data in full accordance with the eight Data Protection Principles?
- By what method may I rationalise personal data?

## Redundancy Checklist

Even where the redundancy is genuine, the dismissal could still be unfair. A situation where the dismissal may be unfair includes unfair selection; failure to consult; failure to offer alternative employment where this exists.

- ✓ When employees have been identified as being potentially redundant, they should be consulted individually before any final decision to dismiss is made (and, therefore before notice of dismissal is given). It would be unfair for an employer to make a final decision to select someone for redundancy without first speaking to him or her and seeking their views. Consultation should **take at least two weeks** for it to be 'meaningful'.
- ✓ The employer must conduct all consultation meetings.
- ✓ The employer must consider representations made by individuals.
- ✓ The employer should consult with employees on the constitution of the "pool" for redundancy where more than one role is redundant, the selection criteria to be used, the application of the selection criteria and with individuals on their own "scores" calculated by reference to the selection criteria.
- ✓ The employer must consider alternative employment for the employee.
- ✓ The employer must continue investigations into alternative employment up until the employment terminates.
- ✓ If the decision is to dismiss for redundancy, the employer must meet with employees and confirm decision in writing accordingly.
- ✓ The employer should consider whether the employees need to work out their notice or whether there should be a payment in lieu.
- ✓ **The employer must notify the employees in writing of the decision to dismiss and set out financial entitlements, including redundancy payment, pay in lieu, outstanding wages, holidays accrued etc.**

## Annex 4

Name	Office
Address line 1	Address
Address line 2	Address
Address line 3	
Address line 4	Tel:
Address line 5	Fax:
Postcode	e-mail address
	Date

Dear **[Employee's Name]**

The Scottish Parliamentary Election will be called on **[Date]** and it is my intention to stand for re-election. Clearly, I will be making every effort to ensure that I will be re-elected. However, I must inform you that if I am not successful **[or if any other member contributing to the pool is not successful in being re-elected]**, it is possible that your current role will cease to exist and that your post will be potentially redundant.

I have arranged a meeting for **[time]** on **[date]** at **[location]** to discuss how this will affect you personally. Prior to this meeting you should give some thought as to what questions you might wish to ask me. If you wish to bring a work colleague to this meeting he or she would be most welcome.

If you require further time to consider this matter, or if the proposed time or date is not convenient, please let me know as soon as possible so that we can arrange an alternative meeting.

In the meantime I should like to thank you for your past efforts and for your continued support over the forthcoming months.

Yours sincerely

## Annex 5

Name	Office
Address line 1	Address
Address line 2	Address
Address line 3	
Address line 4	Tel:
Address line 5	Fax:
Postcode	e-mail address
	Date

Dear **[Employee's Name]**

The Scottish Parliamentary elections will be called on **[Date]**. I am writing to let you know that **[I have] [another member contributing to the pool has]** decided not to stand for re-election. As a consequence to this, it is likely that your current role will no longer exist and that your post is potentially redundant.

I have arranged a meeting for **[time]** on **[date]** at **[location]** to discuss how this will affect you personally. Prior to this meeting you should give some thought as to what questions you might wish to ask me. If you wish to bring a work colleague to this meeting he or she would be most welcome.

If you require further time to consider this matter, or if the proposed time or date is not convenient, please let me know as soon as possible so that we can arrange an alternative meeting.

In the meantime I should like to thank you for your past efforts and for your continued support over the forthcoming months.

Yours sincerely

## Annex 6

Employee Name	Office
Address line 1	Address
Address line 2	
Address line 3	Tel:
Address line 4	Fax:
Address line 5	e-mail address
Postcode	
	Date

Dear **[Employee Name]**

I refer to my letter dated **[X]** regarding the potential redundancy situation, the consultation meetings which took place on **[X]** and to the dismissal meeting which took place on **[X]**. Further to these meetings, I am now writing with regret to give you notice of termination of your employment on the grounds of redundancy.

As you are aware **[I have not] [not all of those members contributing to the pool have]** been re-elected to the Scottish Parliament. As you know, I have explored ways in which your redundancy could be avoided or mitigated and the possibility of alternative employment. Unfortunately, I have not been able to identify any alternative employment for you or any way in which the termination of your employment on grounds of redundancy could be avoided.

I require you to work your contractual notice period and your employment will therefore terminate on **[X]** after which you will receive your **statutory\*/contractual\* [\*delete where appropriate]** redundancy payment. During your notice period, you will continue to be eligible to receive your normal benefits. You should note that all benefits will cease on **[Date of Termination]**.

Under the Employment Rights Act 1996, you are entitled to reasonable paid time off to look for other work or to arrange training for future employment during your period of notice. If you wish to take advantage of this right please contact me to make suitable arrangements.

### **Redundancy payment**

**\*Under your contractual arrangements, you are entitled to receive a redundancy payment of £[AMOUNT]**

**OR**

**\*As you have more than two years' continuous service, you will be entitled to receive a statutory redundancy payment of £[AMOUNT].**

**OR**

**\*As you have less than 2 years' continuous service you are not entitled to receive a statutory redundancy payment**

**\* Delete where applicable**

You will **[also]** be entitled to receive payment for any holiday entitlement earned but not taken and payment in lieu for holidays that you would have earned during your notice period. These payments will be subject to income tax and NI.

Throughout your contractual notice period you will be paid your normal salary (which will be taxed and subject to NI deductions in the usual way).

The above payments and all outstanding monies you are due will be paid **[by cheque/ directly into your bank account]** on **[Date]**. You are also advised to contact your Pension Provider, **[State Company name]** to discuss your pension benefits and options available to you.

If any suitable alternative vacancies arise between now and the date of the termination of your employment, I will advise you of this immediately.

Should you wish to appeal against your selection for redundancy, please apply in writing to the Head of Personnel, Room T2.41 by no later than **[X]**. If you wish to appeal, please state clearly in writing the grounds for appeal.

Once again I regret that I have been forced to serve you with this notice of redundancy but external factors have dictated this. I would like to thank you for your service and to wish you every success for the future. If you require a reference for future employment you should address all correspondence to **[State details]**. In the meantime should you have any questions about this matter please do not hesitate to raise them with me.

Yours sincerely,

## Annex 7

Employee Name  
Address line 1  
Address line 2  
Address line 3  
Address line 4  
Address line 5  
Postcode

Office  
Address  
  
Tel:  
Fax:  
e-mail address

Date

Dear **[Employee Name]**

I refer to my letter dated **[X]** regarding the potential redundancy situation, the consultation meetings which took place on **[X]** and to the dismissal meeting which took place on **[X]**. Further to those meetings I am now writing with regret to give you notice of termination of your employment on the grounds of redundancy. As you are aware **[I have not] [not all of those members contributing to the pool have]** been re-elected to the Scottish Parliament and under the circumstances, I will not require you to work your contractual notice period of **[XX]** weeks. Your effective date of termination will therefore be today, **[Date]**.

You will receive **[XX]** weeks' payment in lieu as compensation for the **[XX]** weeks' notice that you would otherwise have been entitled to under your contract of employment. This payment will be subject to income tax and NI in the usual way (although in some circumstances this may be paid free of tax up to £30k). This payment in lieu of notice is in addition to your **statutory\*/contractual\* [\*delete where appropriate]** redundancy payment. Details of how this is calculated are set out below. You should note that all benefits will cease on **[Date of Termination]**.

### Redundancy payment

**\*Under your contractual arrangements, you are entitled to receive a redundancy payment of £[AMOUNT].**

**OR**

**\*As you have more than two years' continuous service, you will be entitled to receive a statutory redundancy payment of £[AMOUNT].**

**OR**

**\*As you have less than two years' continuous service, you are not entitled to receive a statutory redundancy payment.**

**\*Delete where applicable**

You will **[also]** be entitled to receive payment for any holiday entitlement earned but not taken and payment in lieu for holidays that you would have earned during your notice period. These payments will be subject to income tax and NI.

The above payments and all outstanding monies you are due will be paid [**by cheque/ directly into your bank account**] on [**Date**].

You are also advised to contact your Pension Provider, [**State Company name**] to discuss your pension benefits and options available to you.

Should you wish to appeal against your selection for redundancy, please apply in writing to the Head of Personnel, Room T2.41 by no later than [**X**]. If you wish to appeal please state clearly in writing the grounds for the appeal.

Once again I regret that I have been forced to serve you with this notice of redundancy but external factors have dictated this. I would like to thank you for your service and to wish you every success for the future. If you require a reference for future employment you should address all correspondence to [**State details**]. In the meantime should you have any questions about this matter please do not hesitate to raise them with me.

Yours sincerely,

## Annex 8

Employee Name	Office
Address line 1	Address
Address line 2	
Address line 3	Tel:
Address line 4	Fax:
Address line 5	e-mail address
Postcode	
	Date

Dear **[Employee's Name]**

I refer to my letter dated **[X]** regarding the potential redundancy situation, the consultation meetings which took place on **[X]** and to the dismissal meeting which took place on **[X]** during all of which I told you that I will not be standing for re-election to the Scottish Parliament. I am writing, with regret, to give you **[XX]** weeks' notice to terminate your employment on the grounds of redundancy. Your effective termination date will be **[Date]**. As you know, I have explored ways in which your redundancy could be avoided or mitigated and the possibility of alternative employment. Unfortunately, I have not been able to identify any way in which the termination of your employment on grounds of redundancy could be avoided.

I require you to work your contractual notice period after which you will receive your **statutory\*/contractual\* [\*delete where appropriate]** redundancy payment. During your notice period, you will continue to be eligible to receive your normal salary and benefits which will be subject to income tax and NI in the usual way. You should note that all benefits will cease on **[Date of termination]**.

Under the Employment Rights Act 1996, you are entitled to reasonable paid time off to look for other work or to arrange training for future employment during your period of notice. If you wish to take advantage of this right please contact me to make suitable arrangements.

### **Redundancy payment**

**\*Under your contractual arrangements, you are entitled to receive a redundancy payment of £[AMOUNT].**

**OR**

**\*As you have more than two years' continuous service, you will be entitled to receive a statutory redundancy payment of £[AMOUNT].**

**OR**

**\*As you have less than two years' continuous service, you are not entitled to receive a statutory redundancy payment.**

**\* Delete where applicable**

You will **[also]** be entitled to receive payment for any holiday entitlement earned but not taken at your date of termination. These payments will be subject to income tax and NI.

The above payments and all outstanding monies you are due will be paid **[by cheque/ directly into your bank account]** on **[Date]**.

You are also advised to contact your Pension Provider **[State Company Name]** to discuss your pension benefits and options available to you.

If any suitable vacancies arise between now and the date of the termination of your employment, I will advise you of this immediately.

Should you wish to appeal against your selection for redundancy, please apply in writing to the Head of Personnel, Room T2.41, by no later than **[ X ]**. If you wish to appeal please state clearly in writing the grounds for the appeal.

Once again I regret that I have been forced to serve you with this notice of redundancy but external factors have dictated this. I would like to thank you for your service and I wish you every success for the future. If you require a reference for future employment you should address all correspondence to **[State details]**. In the meantime should you have any questions about this matter please do not hesitate to raise them with me.

Yours sincerely,

## Annex 9

Employee Name	Office
Address line 1	Address
Address line 2	
Address line 3	Tel:
Address line 4	Fax:
Address line 5	e-mail address
Postcode	
	Date

Dear **[Employee's Name]**

I refer to my letter dated **[XX]** regarding the potential redundancy situation, the consultation meetings which took place on **[XX]** and to the dismissal meeting which took place on **[XX]** during all of which I told you that I will not be standing for re-election to the Scottish Parliament. I am writing, with regret, to give you **[XX]** weeks notice to terminate your employment on the grounds of redundancy. Under these circumstances I will not require you to work your contractual notice period therefore your effective termination date will be today, **[Date]**.

You will receive **[XX]** weeks' payment in lieu as compensation for the **[XX]** weeks' notice that you would otherwise have been entitled to under your contract of employment. This payment will be subject to income tax and NI in the usual way although in some circumstances this may be tax free up to £30k. This payment in lieu of notice is in addition to your **statutory\*/contractual\* [\*delete where appropriate]** redundancy payment. Details of how this is calculated are set out below. You should note that all benefits will cease on **[Date of Termination]**.

### Redundancy Payment

**\*Under your contractual arrangements, you are entitled to receive a redundancy payment of £[AMOUNT]**

**OR**

**\*As you have more than two years' continuous service, you will be entitled to receive a statutory redundancy payment of £ [AMOUNT].**

**OR**

**\*As you have less than two years' continuous service, you are not entitled to receive a statutory redundancy payment.**

**\*Delete where applicable**

You will **[also]** be entitled to receive payment for any holiday entitlement earned but not taken at your date of termination. These payments will be subject to income tax and NI.

The above payments and all outstanding monies you are due will be paid **[by cheque/ directly into your bank account]** on **[Date]**.

You are also advised to contact your Pension Provider **[State Company Name]** to discuss your pension benefits and options available to you.

Should you wish to appeal against your selection for redundancy, please apply in writing to the Head of Personnel, Room T2.41 by no later than **[X]**. If you wish to appeal please state clearly in writing the grounds for the appeal.

Once again I regret that I have been forced to serve you with this notice of redundancy but external factors have dictated this. I would like to thank you for your service and I wish you every success for the future. If you require a reference for future employment you should address all correspondence to **[State details]**.

In the meantime should you have any questions about this matter please do not hesitate to raise them with me.

Yours sincerely,

**Annex 10**

<b>Employee Name:</b>	<b>Employee Rep: (if applicable)</b>
<b>Reason for Meeting:</b>	<b>Date:</b>
<b>Notes</b>	
<b>I have read the minutes and confirm that they are accurate.</b>	
<b>Employee's Signature:</b>	<b>Employee's Rep. Signature:</b>
<b>Date:</b>	<b>Date:</b>
<b>MSP's signature:</b>	
<b>Date:</b>	

## Annex 11

### READY RECKONER FOR CALCULATING THE NUMBER OF WEEKS' PAY DUE (IN RESPECT OF REDUNDANCY DISMISSALS ON OR AFTER 1 OCTOBER 2006)

To use the table:

- Read off employee's age and number of complete years' service. The table will then show how many weeks' pay the employee is entitled to.
- Service below the age of 18 and above the age of 65 is now taken into account for calculating redundancy pay (it is possible that an individual could start to build up continuous service before age 16, but this is likely to be rare, and therefore we have started the table from age 18).
- There is no longer a tapering down of redundancy pay after the age of 64.
- Redundancy payments are capped at £310 maximum (as of 1 February 2007).

		Service (Years)																		
	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	
Age																				
18	1																			
19	1	1½																		
20	1	1½	2																	
21	1	1½	2	2½																
22	1	1½	2	2½	3															
23	1½	2	2½	3	3½	4														
24	2	2½	3	3½	4	4½	5													
25	2	3	3½	4	4½	5	5½	6												
26	2	3	4	4½	5	5½	6	6½	7											
27	2	3	4	5	5½	6	6½	7	7½	8										
28	2	3	4	5	6	6½	7	7½	8	8½	9									
29	2	3	4	5	6	7	7½	8	8½	9	9½	10								
30	2	3	4	5	6	7	8	8½	9	9½	10	10½	11							
31	2	3	4	5	6	7	8	9	9½	10	10½	11	11½	12						
32	2	3	4	5	6	7	8	9	10	10½	11	11½	12	12½	13					
33	2	3	4	5	6	7	8	9	10	11	11½	12	12½	13	13½	14				
34	2	3	4	5	6	7	8	9	10	11	12	12½	13	13½	14	14½	15			
35	2	3	4	5	6	7	8	9	10	11	12	13	13½	14	14½	15	15½	16		
36	2	3	4	5	6	7	8	9	10	11	12	13	14	14½	15	15½	16	16½	17	
37	2	3	4	5	6	7	8	9	10	11	12	13	14	15	15½	16	16½	17	17½	
38	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	16½	17	17½	18	
39	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	17½	18	18½	
40	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	18½	19	
41	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	19½	
42	2½	3½	4½	5½	6½	7½	8½	9½	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	
43	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	

44	3	4½	5½	6½	7½	8½	9½	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	21½
45	3	4½	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
46	3	4½	6	7½	8½	9½	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	21½	22½
47	3	4½	6	7½	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23
48	3	4½	6	7½	9	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	21½	22½	23½
49	3	4½	6	7½	9	10½	12	13	14	15	16	17	18	19	20	21	22	23	24
50	3	4½	6	7½	9	10½	12	13½	14½	15½	16½	17½	18½	19½	20½	21½	22½	23½	24½
51	3	4½	6	7½	9	10½	12	13½	15	16	17	18	19	20	21	22	23	24	25
52	3	4½	6	7½	9	10½	12	13½	15	16½	17½	18½	19½	20½	21½	22½	23½	24½	25½
53	3	4½	6	7½	9	10½	12	13½	15	16½	18	19	20	21	22	23	24	25	26
54	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	20½	21½	22½	23½	24½	25½	26½
55	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22	23	24	25	26	27
56	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	23½	24½	25½	26½	27½
57	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25	26	27	28
58	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	26½	27½	28½
59	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28	29
60	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28½	29½
61 or over	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28½	30

**MSP STAFF**

**NOTIFICATION OF TERMINATION OF EMPLOYMENT ON GROUNDS OF REDUNDANCY**

**Please note. If your employee leaves in April or May 2007, you must complete and send this form to Payroll before 13 April and 16 May respectively.**

**NAME OF MSP'S:** .....

**NAME OF EMPLOYEE:** .....

**DATE OF BIRTH:** .....

**EMPLOYEE PAY REFERENCE:** .....

**EMPLOYEE START DATE:** .....

**DATE OF LEAVING:** .....

**EMPLOYEE'S ADDRESS FOR P45:** .....  
.....  
.....  
.....

**Please delete as appropriate:**

1. There are no payments due in respect of unused annual leave.

**Or**

2. Payment should be made for ..... days outstanding annual leave.  
(please enter number of days)

3. He/she will be required to work their notice period.

**Or**

4. He/she will be paid in lieu of notice.

5. Please state other contractual / agreed payments:.....  
.....  
.....

I confirm that the above named employee will terminate his/her employment with me on the date stated above.

**SIGNATURE:** ..... **DATE:** .....