

Pre-printing of the opt-out tick on a canvass form

1. Following the receipt of a number of complaints from electors, we have been in discussions with the Information Commissioner's Office (ICO) regarding the pre-printing of the opt-out tick on a canvass form where electors have made a request to the ERO to permanently or indefinitely opt out of the edited register. The outcome of these discussions has prompted us to issue the following guidance on when EROs should and should not pre-print the opt-out tick.
2. On a canvass form, electors are asked on a yearly basis whether or not they wish to opt out of the edited register. Electors can opt out from the edited register for the next 12 months by ticking a box on the form.
3. Our guidance manual to EROs states that the opt-out tick should not be pre-printed on the basis of the elector having previously chosen to opt out of the edited register by ticking the box on the form (see Part C of our guidance manual for EROs:
www.electoralcommission.org.uk/_data/assets/electoral_commission_pdf_file/0008/43955/Part-C-Annual-canvass-final-August-2009.pdf.)
4. This guidance is still valid as the elector, by ticking the opt-out box on the form, has only expressed a wish not to be included in the edited register for the next 12 months.
5. However, it has become clear, following our discussions with the ICO, that under data protection legislation electors have the right to require Electoral Registration Officers (EROs) to exclude them from the edited register on a permanent basis (or until further notice). This is because Section 11 of the Data Protection Act 1998 (DPA) gives individuals a right to issue a notice to data controllers requiring them to cease (or not to begin) processing their data for the purposes of direct marketing. When conducting the annual canvass and maintaining the electoral registers, EROs act as 'data controllers'.
6. Where such notice has been received, the opt-out tick should be pre-printed on the canvass form in future years (until further notice from the elector).
7. It is for individual EROs to decide whether and how to promote an elector's right to permanently opt out of the edited register under data protection legislation. However, this should not be done on the canvass form itself. The canvass form is prescribed and we consider that altering it to include an option for electors to permanently opt out of the edited register would not make the form 'to same effect'. The form, as currently prescribed, requires the elector to make a choice on an annual basis. The notes accompanying the form state that:

'If you want to opt out of having your details appear on the edited register, please tick the 'Edited register' box. You must also ask each person named on the form if they want to opt out of the edited register.'

8. It is this requirement to make, and indicate, a choice each year that differentiates the information about the opt-out from other information on the form. Changing the form to include the option of a permanent opt-out would alter the effect of the form in this respect.

Requirements of a notice requiring EROs to exclude electors from the edited register on a permanent basis (or until further notice)

9. The notice given to EROs must, by law, be in writing. Making a request in writing includes making it via e-mail.
10. The request does not have to explicitly state that the elector wishes to opt out of the edited register; it may simply state that the elector does not want their details to be passed on to third parties or used for direct marketing purposes on a permanent basis or until further notice. There is also no need for the notice to refer to Section 11 of the DPA.
11. The request does not need to be made on a separate document. For example, it may be made on the canvass form itself if an elector has personally annotated their form to indicate that they wish to opt-out on a permanent basis or until further notice. However, as set out at paragraphs 7 and 8 above, the canvass form is prescribed and **cannot be altered** by EROs to include a specific field for electors to make a request for a permanent or indefinite opt-out.
12. The ICO's website contains information for the general public on how individuals can stop their personal information being used for any sort of direct marketing, which EROs may also find useful:
www.ico.gov.uk/for_the_public/personal_information/how_manage/unsolicited_marketing.aspx.

Practical implications for the ERO

13. The request has to come from the elector themselves. An elector cannot make the request on behalf of another person. Also, EROs cannot make the assumption that an elector has made a request under Section 11 of the DPA simply because they have ticked the opt-out box on a continuous basis for a number of years.
14. Where an annotation has been made on a canvass form by a person listed on it indicating that they permanently or indefinitely wish to opt-out from the edited register and it is clear that the annotation relates to them, the opt-out box for that person should be pre-ticked for all future canvasses (or until further notice).
15. Where EROs receive an annotated canvass form where it is not clear who has made the annotation or it has been annotated by only one person but appears to make the request on behalf of everyone listed on the form, the ERO should write to all electors listed on the canvass form to enquire whether they would want to opt out of the edited register on a permanent basis or until further notice.

16. Under data protection legislation, EROs are under a legal duty to comply with a valid request made under Section 11 of the DPA. If an ERO believes that an elector is trying to make such a request on a canvass form, but it is not clear who is making that request, the ERO should, in discharging their duty, make the necessary enquiries of the electors in question. This does not affect the processing of the canvass form, which should proceed as usual.
17. If during the canvass an ERO receives a complaint from an elector about the opt-out box not having been pre-ticked on the form even though they had ticked the box last year, the ERO should set out the reason why it had not been pre-ticked (i.e. that electoral law requires them not to pre-tick the box even where it has been ticked in preceding years), but explain that under data protection law, they may request that the opt-out box be pre-ticked on a permanent or indefinite basis if they make such a request in writing to the ERO.
18. If an ERO has already received a request from any person to permanently (or until further notice) opt-out of the edited register, the ERO should pre-print the tick in the opt-out box on this year's canvass form and any canvass forms sent out to them in subsequent years (until further notice from the elector).
19. The ERO should ensure that whoever is printing their canvass forms is aware of the fact that there may be some opt-outs that need to be pre-printed on the form.
20. We have been in consultation with the software suppliers about the practical implications of this guidance, including how software systems may identify those electors who have made a request for a permanent opt-out to EROs to facilitate the pre-printing of ticks in those cases, and the responses we have received to date indicate that they do not anticipate any difficulties with implementing this guidance.