

Electoral Commission response to the Ministry of Justice consultation *Electoral Registers: Proposed Changes to the Edited Register*

Summary of key points made in the consultation response

- The Commission does not believe that the register should be made available for direct marketing purposes and therefore we do not support the continued existence of the edited version of the electoral register.
- The edited register should be abolished as soon as is practicable – ideally the law should be changed to coincide with the publication of a revised register on 1 December in a given year.
- The abolition of the edited register may provide reassurance for electors at a time when they will – as part of the transition to individual electoral registration - be asked to supply additional personal information when registering to vote.
- If the edited register were to be maintained then as an absolute minimum the Commission believes that the current “opt out” provision should be replaced with one which allows electors to “opt in”, backed up with improved guidance for the public about the edited register.

Introduction

1. The Electoral Commission is an independent body set up by the UK Parliament under the Political Parties, Elections and Referendums Act 2000 (PPERA). Our aim is integrity and public confidence in the UK’s democratic process.
2. We want people who are entitled to vote to be confident that registering to vote is as straightforward, accessible and secure as possible. We also want them to receive a consistently high-quality service wherever they live. We provide support to Electoral Registration Officers (EROs) to achieve complete and accurate electoral registers and a well-run electoral registration process.
3. We therefore have a direct interest in the Ministry of Justice’s consultation on proposed changes to the edited register and welcome the opportunity to contribute to this process.

Responses to consultation questions

Question 1 – Were you aware that an edited version of the full electoral register existed?

Question 2 – Were you aware of your ability to “opt out” of inclusion on the Edited Register?

Question 3 – Do you have any concerns about how your electoral registration data is used and why?

Question 4 – Does the existence of the Edited Register deter you from registering to vote?

4. These questions appear to be directed at individuals rather than organisations such as the Commission. Nonetheless, we are aware that an edited version of the electoral register exists and that the current system allows electors to “opt out” of this by ticking in the appropriate box on the electoral registration form
5. Very limited public opinion research has been carried out specifically on the edited register. A MORI survey carried out for us in 2003 found 79% of people unaware of the provision allowing people to opt-out of the edited version when they register to vote.¹ In addition, a qualitative research study conducted by MORI for the Commission in Winter 2004/2005 found that the level of awareness of the difference between the full register and the edited register is low.² We are not aware of any more recent evidence.
6. There is some anecdotal evidence to suggest that non-electoral uses of data from the electoral register deter some people from registering to vote. However, the extent to which this deterrent would be reduced by the abolition of the edited register is not clear. People who are concerned about the crime detection and credit reference uses of the register will not have their fears assuaged by the abolition of the edited register, and those concerned about the commercial uses of the register can even now opt-out of it.

Question 5 – Is your preference for abolishing or retaining the Edited Register? Please give reasons for your answer.

7. The Commission’s position is that electoral registers should be used for purposes exclusively related to elections and referendums, although we recognise that Parliament has taken the view that there is a wider civic case for their use in relation to the detection and prevention of crime and for credit references purposes. We do not, however, believe

¹ The Electoral Commission (September 2005) *Understanding electoral registration*, Research Report.

² Public opinion research: Winter 04/05, research study conducted by the MORI Social Research Institute on behalf of The Electoral Commission.

that the register should be made available for direct marketing purposes and therefore do not support the continued existence of the edited version of the electoral register. Our reasons for taking this position are as follows.

8. First, we believe that it is wrong in principle to combine a request for information for the purposes of electoral registration with the issue of direct marketing. The Commission wishes to see more eligible electors registered to vote across the UK and is concerned that, in some cases, the combination of these issues may act as a deterrent to people registering. A recent survey carried out by the Local Government Association and Association of Electoral Administrators found that almost nine in ten electoral officers surveyed believed that the practice of selling the electoral register discouraged people from registering to vote.³
9. Second, the compilation of the edited register has no relevance to Electoral Registration Officers' core function in our democratic system, namely, to compile and maintain a register for electoral purposes. Compiling an edited version of the register may distract EROs from their principal duties. In addition, there is some evidence to suggest that most EROs are opposed to the sale of the edited register and do not feel that the price of the register adequately reflects the resources required to compile it.⁴ While we acknowledge that it may be commercially useful for businesses and charities to have access to an up-to-date mailing list, we do not believe that it is EROs' responsibility to meet this need. If such information is of commercial value, we believe that the market will find an alternative way of compiling and providing it.
10. Third, we share Dr Mark Walport and Richard Thomas' concern that the language used on registration forms – and in particular, asking electors whether they wish to opt out rather than opt in – may confuse some people, and that many people may not realise that the edited register can be sold to anyone. We also agree that there is a risk that people may not realise that they have been entered onto the edited register because they missed their opportunity to 'opt out'.

Question 6 – Which options (listed at page 6) are your most and least preferred? Please give reasons.

Question 7 - Do you have any comments and/or suggestions about how any of the options would work in practice, particularly taking into account the issues and questions raised in this consultation paper?

Option 1: Abolish the Edited Register as soon as practicable.

³ "New survey shows overwhelming support for changes to electoral register" LGA press release - Tuesday 26 August 2008.

⁴ Ibid.

11. The Commission's preference is for Option 1 - abolish the edited register as soon as is practicable - for the reasons set out in response to question 5. We do not see the value in Option 2 since the time it takes for legislation to be passed to cease the compilation of the edited register should allow time for an alternative to the edited register to be found, if that is deemed necessary.
12. It may be appropriate for the law to be changed to coincide with the publication of a revised register on 1 December in a given year. Obviously changes to the form used in the preceding annual canvass would need to be made and user tested. Nonetheless we would hope to see the abolition of the edited register implemented in time for the 2011 canvass.
13. It is possible that this would coincide with the start of the voluntary phase of individual registration, during which EROs would be required to ask electors to supply, initially on a voluntary basis, personal identifiers – namely, signature, date of birth and national insurance number – when registering.
14. The abolition of the edited register may provide reassurance for electors at a time when they will be asked to supply additional personal information when registering to vote. Abolition would also enable a more straightforward and consistent message to be presented to the public with respect to the collection of personal identifiers and the use of that information.

Option 2: Set a timescale or 'trigger point' for abolition of the Edited Register.

15. We do not support this option. Setting a national trigger point relating to the level of opting-out would not reflect the variation between different local authorities (in a number of areas the opt-out rate is already as high as 80%). Setting a firm date for the abolition of the register would allow businesses and charities to better prepare than a scenario in which the register could be scrapped at an unspecified time in the future.

Option 3: Abolish the Edited Register as soon as practicable, but extend access to the Full Register for other purposes to be decided in light of the consultation.

16. We see little difference in practice between this option and our preferred Option 1. Under Option 3, as is currently the case, a full version of the register would be available only to those persons and organisations specified in legislation. Parliament can amend this list, following the required consultation, if it so desires. The Commission is not aware, however, that any case has currently been made to increase the range of purposes for which electoral registration data can be used and we would oppose any reversion to the pre-2002 situation

where the full electoral register could be purchased by any company or person.

Option 4: Retain the Edited Register, but impose restrictions in legislation on who can purchase it and for what purposes.

17. Option 4 represents a compromise that is unlikely to satisfy either side of the debate. Those who feel that the register is too widely available will continue to have concerns that the register could be used for inappropriate purposes while those who claim that there is an economic advantage in having access to the register will have concerns about limitations on its use.
18. We believe that maintaining only the full register and specifying exactly who can access the register and for what purposes is the option most in-keeping with the legislation and principles of data-protection. As stated earlier, if there is commercial value in the edited register then we believe the private sector will move to fill the gap created by its abolition.

Option 5: Replace the current 'opt out' provision with an 'opt in'.

Option 6: Improve guidance for the public about the Edited Register.

19. As stated, the Commission's position is that the edited register should be abolished as soon as is practicable (Option 1). However, if the edited register were to be maintained then as an absolute minimum options 5 and 6 should be implemented. An opt-in system would be much clearer and would better adhere to the principles of the data-protection legislation.
20. The Commission's current electoral registration guidance recommends that EROs should record the transactions of sales of the full and edited register and make this information available for public scrutiny, although we suggest that it may not be appropriate, in data protection terms, to make available the actual names and addresses of those who have exercised their right to purchase the data. However, we are aware that the Walport/Thomas review recommended that organisations should, in the interests of transparency, publish and regularly update a list of those organisations with which they share, exchange or to which they sell, personal information, including selected "third parties". The Commission would welcome discussions with MoJ and the Information Commissioner as to how best this recommendation could be made to work in the context of the sale of the edited register (if it is retained), and, in particular, the extent to which this issue could be addressed through Commission guidance.

Question 8 – Do you consider that the abolition of the Edited Register would affect you, your organisation, or those you represent positively or negatively? Please give as much information as you can about your organisation, or those you represent and address the following:

- **Exactly how you or your organisation could be affected.**
- **What the cost (monetary or otherwise) to you, your organisation, or those you represent would be, explaining how this has been quantified where possible?**
- **Would others be affected and who, in what ways and what would the cost be?**

21. The Commission would not be affected directly by the abolition of the edited version of the register. However, we wish to see an electoral process in which there are no barriers to full and equal participation by all electors, including at the point of registration. Abolishing the edited register will remove one of the reasons why some people may be reluctant to register, namely, that they are concerned that their details may be sold on to commercial companies.

**The Electoral Commission
23 February 2010**