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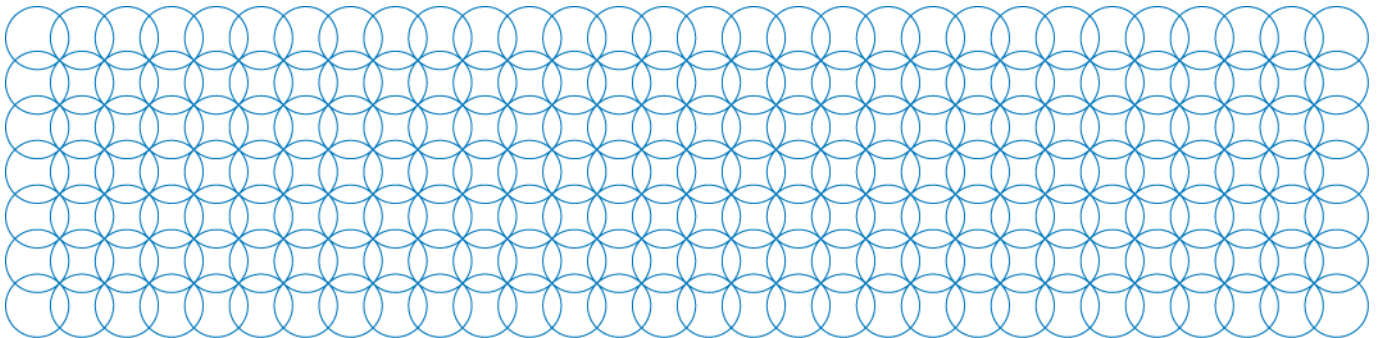
Electoral Registers

Proposed Changes to the Edited Register

Consultation Paper CP 46/09

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Ministry of
JUSTICE

Electoral Registers

Proposed Changes to the Edited Register

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**This information is also available on the Ministry of Justice website:
www.justice.gov.uk**

About this consultation

Duration: From 24/11/09 to 23/02/10

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Response paper: A response to this consultation exercise is due to be published by 18/05/10 at:
<http://www.justice.gov.uk>

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Foreword

In July 2008, Dr Mark Walport¹ and Richard Thomas² undertook a review of the framework within which personal information is used in the public and private sectors: the *Data Sharing Review*³. As part of that Review, they recommended that the Government should remove the provision in law which allows for the sale of the Edited Register⁴ and abolish the Edited Register. As a result of the Review's findings, the Government committed to consult on the future of the Edited Register.

The Electoral Commission and the Association of Electoral Administrators have argued that the electoral register should primarily be used for electoral purposes. Dr Mark Walport and Richard Thomas argued in the *Data Sharing Review* that:

“...selling the edited register is an unsatisfactory way for local authorities to treat personal information. It sends a particularly poor message to the public that personal information collected for something as vital as participation in the democratic process can be sold to ‘anyone for any purpose’. And there is a belief that the sale of the electoral register deters some people from registering at all.”

Any proposal that would change the nature and operation of the Edited Register could have an effect on those organisations that currently use it, as well as the public. This consultation is intended to enable us to build a firmer evidence base about the advantages and disadvantages of the Edited

¹ Director of the Wellcome Trust, the UK's largest charity. Established in 1936, it has an endowment of around £13 billion and is the UK's largest non-governmental source of funding for biomedical research.

² Information Commissioner at the time. The Information Commission enforces and oversees the Data Protection Act, the Freedom of Information Act, Environmental Information Regulations and the Privacy and Electronic Communication Regulations.

³ <http://www.justice.gov.uk/reviews/datasharing-intro.htm>

⁴ See recommendation 19 of the *Data Sharing Review Report*.

Register and the impact of any changes, and to consider the way forward on the basis of the responses we receive. It is essential that Government understands fully the impact of our policy decisions on the wider economy and on society.

The purpose of this consultation is therefore to put forward the arguments for and against the retention or abolition of the Edited Register we have heard to date, as well as the information and views received to date about the potential impact of change, and invite views and evidence from the public and other stakeholders about how they could be affected by its abolition.

On the basis of this evidence, the Government will consider a range of options for the future of the Edited Register, including abolition, changing the process by which individuals are included on it or improving public awareness of the Edited Register. Views are invited on the options set out in this paper, especially from those who may be directly affected.

Executive summary

The context

The Edited Register came into existence in 2002 when the Government introduced Regulations to establish a new framework governing access to and the supply and sale of electoral registers. This followed the recommendation made by the Final Report of the Working Party on Electoral Procedures⁵ (“The Howarth Report”) and the judgment made in a court case (*Robertson*⁶) brought by an elector concerned about the use of his electoral data for commercial purposes. Prior to 2002, the full electoral register could be made available for a variety of purposes. Any company, organisation or person could buy a copy.

As a result of the *Representation of the People (England and Wales) (Amendment) Regulations 2002*⁷ (subsequently referred to as “the 2002 (Amendment) Regulations”) there are now two versions of the electoral register: a full version, and an edited version of the full register. The latter is known as the Edited Register and shows only the names and addresses of those on the full register who have not ‘opted out’ of inclusion in the edited version.

Unlike the full electoral register, the supply and use of which is strictly regulated in law, the Edited Register is available for sale to anyone for any purpose. Members of the public may choose to have their details omitted from the Edited Register by ‘opting out’ by ticking the box included for the purpose on the form used for the annual canvass, which is sent to each household on a yearly basis to determine the names of those to be included on the electoral

⁵ www.dca.gov.uk/elections/reports/procs/report.htm

⁶ *R v Wakefield Metropolitan District Council ex parte Robertson* [2002] QB 1052 (known as ‘Robertson 1’).

⁷ S.I. 2002/1871. Corresponding statutory instruments were made in respect of Scotland (S.I. 2002/1872) and Northern Ireland (S.I. 2002/1873).

register. Once produced, the Edited Register is used by a number of groups like charities and businesses for a variety of purposes including, but not limited to, compiling mailing lists.

The *2002 (Amendment) Regulations* were drafted to be compliant with data protection and human rights law. There have been two court cases⁸ concerning the operation and interpretation of the *2002 (Amendment) Regulations*. In the judgment for each case the Court upheld the Regulations and found them to be compliant with data protection and human rights legislation.

The Data Sharing Review and the Edited Register

In October 2007 the Prime Minister announced that he had asked Dr. Mark Walport, the Director of the Wellcome Trust and Richard Thomas the then Information Commissioner, to undertake an independent review of the framework for the use of personal information in the public and private sectors.

Their final report was published as the *Data Sharing Review* on 11th July 2008 and recommended various specific measures that the authors considered needed to be taken to increase public trust and confidence in the handling and processing of personal data by both the public and private sectors. The Government has already taken on board many of the Review's recommendations, including, for example, strengthening the powers and penalties available to the Information Commissioner.

Recommendation 19 of the report covered the Edited Register and stated:

“The Government should remove the provision allowing the sale of the edited electoral register. The edited register would therefore no longer serve any purpose and so should be abolished. This would not affect the sale of the full register to political parties or to credit reference agencies.”

⁸ R v Secretary of State for the Home Department ex parte Robertson [2003] EWHC 1760 (Robertson No 2) and I-CD Publishing Ltd v Secretary of State [2003] EWHC 1761

There were several reasons given for this recommendation. The report's authors believed that the language used on electoral registration forms was not clear and that people may not realise that it was the Edited Register that was on public sale as opposed to the full register. They argued that it sent a particularly poor message to the public that personal information collected for something as vital as participation in the democratic process could be sold on to 'anyone for any purpose'. They also noted the view that sale of the Edited Register may deter some people from registering to vote.

The current framework governing access to and the supply of electoral registers has now been in operation for seven years. The Government wishes to consult on the impacts, both positive and negative, that could stem from accepting Recommendation 19 of the *Data Sharing Review* and consider whether other options exist.

The options

The Government takes the issues of data protection, the privacy of citizens and democratic engagement, including electoral registration, very seriously. It is for these reasons that the Government committed, in its response to the *Data Sharing Review*, to consult on the future of the Edited Register.⁹

Since the publication of that response, the Government has received representations from a range of stakeholders, from electoral administrators to credit reference agencies, on the potential impacts of abolition of the Edited Register.

Whilst the Government is sympathetic to the arguments made by the Electoral Commission and the Association of Electoral Administrators that data collected for electoral purposes should only be used for electoral purposes, feedback from others suggests that the abolition of the Edited Register may have an impact on the economy and on wider society. The Government

⁹ <http://www.justice.gov.uk/publications/response-data-sharing-review.htm>

believes it important to bear in mind any such impact when considering its approach to the future of the Edited Register.

To this end, the Government proposes for consultation a range of options for the future of the Edited Register. The Government's position is that it is aware of the principled arguments put forward by the *Data Sharing Review* in favour of abolishing the Edited Register. However, the Government does not wish to make a final decision to act on the recommendation until it has considered carefully the available evidence about the potential impact of abolition. In order to ensure that it is in a position to consider all factors that are relevant to abolition the Government invites responses to this consultation from all of those who have any interest in the retention or abolition of the Edited Register.

It is hoped that this consultation will elicit detailed evidence and information from a wide range of sources on the impact of abolition, which will help to inform future policy decisions about the Edited Register.

The following policy options are included for consideration and comment:

Options abolishing the Edited Register

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

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

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.

Options retaining the Edited Register

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

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

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

This wide range of options provides a variety of potential approaches to some of the emerging issues around the existence of the Edited Register. The Government invites views on all of the options, and specifically, the positive and the negative impacts of each of the options.

Introduction

This paper sets out for consultation potential changes to arrangements put in place by the Representation of the People (*Amendment*) Regulations 2002 concerning access to and the supply and sale of electoral registers. This consultation is aimed at all individuals and organisations throughout the UK that have an interest in the proposed changes.

In particular, it aims to reach those who may be impacted by any change – such as businesses, charities and the public. Before considering any change, we need to ensure that we have as comprehensive an understanding as possible of the nature and extent of the impacts on different groups.

This consultation is being conducted in line with the Code of Practice on Consultations issued by the Cabinet Office and falls within the scope of the Code. The consultation criteria, which are set out on page 40, have been followed.

An initial Impact Assessment has been completed (see page 39) and indicates that the proposals are likely to lead to a combination of costs and savings for businesses, charities or the voluntary sector, and the public sector. If you disagree with this initial assessment you are invited to send your reasons as part of your response to this paper.

The consultation closes on 23 February 2010. Responses are welcomed from anyone with an interest in or views on the subject covered by this paper. We have identified the organisations and individuals listed below as being likely to have an interest, and copies of the consultation paper will be sent to them. However this list is not meant to be exhaustive or exclusive.

192.com

ACPO Criminal Records Office

Advertising Standards Authority

Age Concern

Alzheimer's Society

Aristotle International

Association for Payment Clearing Services

Association of Chief Archivists in Local Government

Association of Electoral Administrators

Association of Fundraising Consultants

B4USearch.com

Department for Business, Innovation and Skills

Big Brother Watch

British Bankers' Association

British Council of Disabled People

British Library

Cabinet Office

Call Credit

Charity Commission

Charity Commission for Northern Ireland

Chartered Institute of Library and Information Professionals

Chief Electoral Officer for Northern Ireland

Citizen's Advice Bureau

Citizenship Foundation

Civil Court Users Association

Credit Services Association

Department of Communities and Local Government

Department of Work and Pensions

Direct Marketing Association

Electoral Reform Society
Electoral Registration Officers
Environment Agency
Equality and Human Rights Commission
Equality Commission for Northern Ireland
Equifax
Experian
Federation of Family History Societies
Federation of Small Businesses
Finance and Leasing Association
Financial Services Authority
Fundraising Standards Board
General Register Office for Scotland
HM Courts Service, Jury Summoning Bureau
HM Revenue and Customs
Home Office
House of Lords Constitutional Affairs Select Committee
Identity and Passport Service, Home Office
Information Commissioner's Office
Institute of Fundraising
Incorporated Society of British Advertisers
Local Government Association
Members of the House of Commons
Members of the House of Lords
Money Advice Liaison Group
National Assembly for Wales
National Consumer Council
National Council on Archives
National Council for Voluntary Organisations
National Ireland Library
National Library of Scotland
National Library of Wales
Northern Ireland Assembly
Northern Ireland Office

Northern Ireland Council for Voluntary Action
Northern Ireland Human Rights Commission
Office for National Statistics
Office of Fair Trading
Office of the Scottish Charity Regulator
Police Information Technology Organisation
Political Parties
Privacy International
Royal Mail
Scottish Assessors Association
Scottish Council for Voluntary Organisations
Scottish Courts Service
Scottish Environment Protection Agency
Scottish Government
Scotland Office
Serious Fraud Office
Society of Archivists
Society of Chief Librarians
Society of Local Authority Lawyers and Administrators in Scotland
SOLACE, the Society of Local Authority Chief Executives and Senior Managers
The Council of Mortgage Lenders
The Electoral Commission
Third Sector Daily
Wales Office
Wales Council for Voluntary Action
Welsh Government
Dr Mark Walport
Richard Thomas

Background

Electoral registers are compiled and maintained for each local authority area by around 400 Electoral Registration Officers (EROs) across the UK. In England and Wales these registration officers are located at the local authority (district, borough, or unitary) level. In Scotland, the officers are sometimes located within local authorities, but may also be separate. Northern Ireland has a Chief Electoral Officer who is responsible for maintaining a single electoral register for Northern Ireland.

The electoral register is compiled principally from the information gathered from the annual canvass (conducted between 1 July and 1 December each year). Each year, households are asked to supply details on the canvass form of all those living at the property who are eligible to be registered to vote and who are or will be in occupancy on 15 October. A fine of up to £1,000 can be imposed for failing to complete and return the canvass form or giving false information. The revised annual register is published on 1 December following conclusion of the canvass period. There is no annual canvass in Northern Ireland, which has a system of continuous, individual rather than household, registration.

The register is also updated throughout the rest of the year. This takes place by means of 'rolling registration' which allows new registrants and those who have changed their address, for example, to inform the ERO in their area of the relevant change before the start of the next annual canvass. Applications to register can be accepted up to 11 days before an election.

Since its introduction in the nineteenth century the electoral register has always been a public document. A public register of electors is an important safeguard against potential abuses of the electoral system. The primary purpose behind its public accessibility is to allow members of the public and political parties to check the register to ensure that all eligible people who have applied to appear on the register have been included, that details are accurate and that names of ineligible people have not.

Prior to 2002, the register existed in a single form and was freely available for use. Any company, organisation or person could buy a copy.

The Final Report of the Working Party on Electoral Procedures (“The Howarth Report”) in October 1999 recommended the introduction of an ‘Edited Register’ based on a right of individual electors to ‘opt out’ of inclusion in the version of the register that could be sold on to anyone for any purpose. Prior to that change, the law permitted personal data from the register to be sold to commercial organisations.

The Government also reviewed the existing legislation on the electoral register following a court case brought by Brian Robertson who had concerns about the use of his electoral data for commercial purposes. He opposed his ERO’s intention to register him, even though he met the criteria to be registered and the ERO was therefore required to do so. The ERO argued that the compilation of the register was a separate matter from the subsequent uses of it. The High Court found that the supply of the register for, in this case, direct marketing purposes, without giving individual electors the opportunity to object, was contrary to the Data Protection Directive and to Article 8 and Protocol 1 of the European Convention on Human Rights, both of which protect disclosure of personal information in certain circumstances.

The current position

Accordingly, the Representation of the People 2002 (Amendment) Regulations were introduced to revise the rules allowing access to the register by establishing a new framework governing access to and the supply and sale of electoral registers.

As a result, there are now two versions of the electoral register: a full version and an edited version of the full register.

The full register contains the following information:

- elector number (two letters indicating the polling district, followed by a number)
- elector's name and address

- which elections each elector is eligible to vote in
- date of birth (if the person's 18th birthday falls within a year of the register being published)
- if the elector has requested a postal vote
- after an election, an indication of whether or not that elector cast their vote (but not who they voted for).

The names and addresses of those that have registered anonymously are excluded from the full register¹⁰.

¹⁰ Anonymous registration is available to people who believe that having their name and address included in the electoral register could put their safety at risk. There is a strict application process for obtaining anonymous registration and applicants must supply evidence in the form of a court order or an attestation by a qualifying officer, such as a police officer of the rank of superintendent or above.

The full register

The full register contains details of all registered electors. It is this register that is used for electoral purposes. It is available for inspection by members of the public, under supervision. The law clearly defines which organisations and individuals can obtain a copy of the full register and the purposes it can be used for once it has been obtained. On publication EROs must supply a copy of the full register for free to the British Library, the National Libraries of Scotland and Wales, the Statistics Board, the Electoral Commission and to the returning officers in their areas. The full register is supplied on request for free to elected representatives, certain office holders, the Boundary Commission, the Electoral Commission, political parties and candidates for electoral purposes. It is also supplied on request for free to police forces and other law enforcement agencies and for jury summoning. The full register is sold, on request, to Government Departments for the prevention and detection of crime and to credit reference agencies for checking a person's identity when they apply for credit and the prevention of money laundering fraud¹¹. It is an offence to pass on copies of the full register for use for any purpose other than those set out in law.

¹¹ The provisions for the sale and supply of the full register are slightly different in Northern Ireland and are set out in Part 6 of the Representation of the People (NI) Regulations 2008.

The Edited Register

An 'edited' version of the full register, known as the 'Edited Register', which only includes a list of electors' names and addresses, is available for sale to anyone and they can use it for any purpose. When registering, whether during the annual canvass or by rolling registration, members of the public may choose to have their details omitted from the Edited Register. Electors are able to 'opt out' of being included in the edited version by ticking a box on the registration form which asks whether they want to be included in this register or not. As a result, the Edited Register is a shorter list of names than that included in the full register.

EROs are allowed to charge fees for supplying the Edited Register. These fees are set by legislation in the *Representation of the People (Amendment) Regulations 2008*¹². The sale of the Edited Register is not intended to be a mechanism to generate income. The fee structure is based on the number of entries requested and is designed to cover the administrative cost of providing the information, not for EROs to make any profit. In any event, the revenue generated is relatively small: on average, local authorities collect £1,900 per annum from the sale of the Edited Register. Income generated by local authorities from the sale of the Edited Register differs significantly - with some showing profits around £2,000 and others up to £8,000¹³. However, we are not aware of the reasons for these disparities.

For those who purchase the Edited Register, it provides a comprehensive national and updated source of name and address data in the UK. Figures provided by the Office for National Statistics (ONS) and the Northern Ireland Statistics and Research Agency (NISRA) show annual upwards trends in 'opt out' rates (now at an average 40% nationally and as high as 70% in some areas¹⁴). Even despite these opt out rates in some areas, it is argued that there

¹² S.I. 2008/1901.

¹³ Local Government Association and the Association of Electoral Administrators survey carried out between 7 and 20 August 2008. 204 councils responded.

¹⁴ Data Sharing Review 11 July 2008.

is currently no equivalent national database of address details that covers such a large proportion of the UK population or guarantees annual validation.

Recent Developments: The Data Sharing Review

In view of growing public concern about the use of personal data and related identity issues, in October 2007¹⁵ the Prime Minister announced that he had asked Dr. Mark Walport and Richard Thomas to undertake an independent review of the framework for the use of personal information in the public and private sectors. They were asked: to consider whether changes were needed to the operation of the Data Protection Act 1998; to make recommendations on the powers and sanctions available to the Information Commissioner and the courts in the legislation governing data sharing and data protection; and to make recommendations on how data-sharing policy should be developed to ensure proper transparency, scrutiny and accountability.

Their final Review was published on 11th July 2008 and recommended various specific measures to be taken to increase public trust and confidence in the handling and processing of personal data by both the public and private sectors. The Government has taken on board many of the Review's recommendations. For example, the Government has agreed that as a matter of good practice any significant data breach should be brought to the attention of the Information Commissioner's Office (ICO), and that the representative organisation should work with the ICO to ensure that remedial action is taken.

Recommendation 19 of the report covered the Edited Register and stated:

“The Government should remove the provision allowing the sale of the edited electoral register. The edited register would therefore no longer serve any purpose and so should be abolished. This would not affect the sale of the full register to political parties or to credit reference agencies.”

¹⁵ The speech focused on how to "entrench and enhance" individual freedoms while also detailing the responsibilities "that flow from British citizenship".

There were a number of reasons given for this recommendation. The report's authors believed that the language used on electoral registration forms was not clear, meaning that people may not realise that the Edited Register is available for public sale. They further argued that it sends a poor message to the public, that information required for something as important as participation in the democratic process, and which people are under a legal obligation to provide, could be sold on 'for any purpose'. They also accepted the view put forward by electoral administrators and others that sale of the Edited Register could deter some people from registering to vote.

The new framework governing access to and the supply of electoral registers has now been in operation for seven years. The Government wishes to consult on what the impact of accepting Recommendation 19 of the Data Sharing Review Report would be, particularly on businesses, charities and the privacy of individuals. The Government would also like to consult on the advantages and disadvantages of a number of options relating to retention or abolition of the Edited Register. The following pages set out the arguments for and against abolishing the Edited Register, the potential impact of abolishing the Edited Register and some of the policy options moving forward.

Arguments for and against

Introduction

Since the publication of the *Data Sharing Review* in 2008, the Government has received representations and feedback, both directly and indirectly, from a range of organisations and individuals with an interest in the future of the Edited Register – many of these are included in the list of organisations in the Introduction to this consultation. This has helped to inform our approach to this consultation and in considering any potential impacts of abolition.

Views on the future of the Edited Register are mixed. Those who use data from the Edited Register for commercial or other purposes argue that it should be retained because it is a useful tool. Those who oppose the existence of the Edited Register argue that data obtained for electoral purposes should not be sold on for any purpose, whatever the commercial or other benefit and that the sale of electoral data from the Edited Register to anyone for any purpose for which they may wish to use it undermines public trust.

The Government accepts that there are strong principled arguments in favour of abolishing the Edited Register and is sympathetic to the argument that data collected for electoral purposes should not be sold on for commercial purposes. The Government made this position clear in Parliament during debates on the Political Parties and Elections Act 2009. The Government also accepts the findings of the Data Sharing Review that members of the public are often insufficiently aware of the existence and uses of the Edited Register. Given this, the Government believes that some reform of the current system is necessary. We do not therefore propose a 'do nothing' option in this consultation. Nevertheless, the Government believes that before taking any action proper account should be taken of the potential impact of that change.

The following paragraphs set out some of the arguments in favour of both abolition and retention of the Edited Register.

Arguments for abolishing the Edited Register

There are three important arguments of principle against the continued existence of the Edited Register:

- recognising concerns about **data sharing**
- **supporting electoral registration**, and
- safeguarding **democratic legitimacy**.

The Government accepts these arguments and considers them to be important.

Data sharing

The first key argument is that the public should be aware of how and where their data is being used. Dr. Mark Walport and Richard Thomas in their 2008 report stated that the language used on electoral registration forms did not properly inform the public about either the existence of the Edited Register or their ability to be excluded from it. This created a risk that people were not sufficiently aware that data provided on electoral registration forms could be sold or that they had a choice about whether they could be included on the Edited Register. A further risk is that people do not realise that they have been entered onto the Edited Register because they missed their opportunity to 'opt out'. The report's authors also stated that the public were not clear about to whom the data was commonly sold and for what purposes. The risk of missing the opportunity to opt out is of particular concern, given that the edited electoral register can be sold to 'anyone for any purpose' and as such, individuals lose control of their proprietary rights over their personal data if they do not opt out of inclusion.

The Association of Electoral Administrators and the Electoral Commission support the abolition of the Edited Register.

Supporting electoral registration

The second key argument in favour of abolition of the Edited Register is that it may deter individuals from registering to vote. The Association of Electoral Administrators and the Local Government Association conducted a survey in August 2008 to which 204 local authorities responded. The survey showed that 88% of the Electoral Registration Officers who responded believed that the current system of registration, utilising two registers with one of them available for sale, deters people from registering to vote and that 98% of Electoral Registration Officers would like to see a change in the law to abolish the Edited Register.¹⁶

Detailed research has not been undertaken to determine the extent to which the public may be deterred from registering to vote as a result of concerns about the use of their personal data, or about the existence of the Edited Register. We would welcome views and evidence from respondents on this point. Nonetheless, privacy, data sharing and identity issues are increasingly matters of concern for the public, and the sale of the electoral data 'to anyone for any purpose' is unlikely to engender confidence in the electoral process.

This is a significant point in the context of recent developments to the legislative framework for registration. The Government has legislated in the Political Parties and Elections Act 2009 for the phased implementation of a system of individual electoral registration (IR) in Great Britain¹⁷. Individual registration will involve the collection of identifying information (signature, date of birth and National Insurance number) from individuals registering to vote. While this will initially be collected on a voluntary basis (from 2010), depending on the outcome of the Electoral Commission's review of the voluntary phase of IR, collection of identifiers may be made compulsory (from 2015 at the earliest). If collection is made compulsory, these details will have to be provided in order for a person to be included in the electoral register.

¹⁶ "New survey shows overwhelming support for changes to electoral register" LGA press release - Tuesday 26 August 2008. 204 Councils responded to the survey.

¹⁷ Individual registration has been in place in Northern Ireland since 2002.

That phased implementation will need to be accompanied by a programme of work to enhance the registration system and improve the comprehensiveness of the register, before moving towards the compulsory collection of identifying information. It will be important that our wider work on registration is aligned to this implementation programme, in a way which does not undermine the principles of enhancing both the accuracy and completeness of the electoral register.

Democratic legitimacy

The third key argument – and a fundamental one, which brings together the concerns about data sharing and the risk of deterring individuals from registering to vote – is around the legitimacy of our democratic processes. An effective system of electoral registration in which the public have confidence underpins democratic legitimacy. The registration system is the gateway to participation in the democratic process in the UK. That process must therefore be designed in a way that engages, involves the public and encourages participation wherever possible. A failure to do so threatens the legitimacy of our democratic processes and undermines public confidence in the electoral system.

The Government is aware, from correspondence it receives from members of the public on this topic, that some continue to be concerned about these issues of principle. There is also evident concern about the practical affects the sale and use of the Edited Register can have on personal privacy and security.

Given the importance of securing democratic legitimacy, and the concerns that have been raised by Dr. Mark Walport and Richard Thomas, as well as by electoral administrators, about the potential for the existence of the Edited Register to give rise to privacy concerns and to deter individuals from registering to vote, it is essential that decisions on the future of the Edited Register are taken against this backdrop.

In addition to these arguments, there are also practical considerations to be taken into account. Electoral administrators have indicated their view that selling the Edited Register is a distraction from their core work of maintaining

their registers and ensuring that they are as comprehensive and accurate as possible. This work becomes increasingly important in the context of the Government's drive to enhance registration and improve the effectiveness of the registration system ahead of the phased implementation of individual registration in Great Britain.

Arguments against abolishing the Edited Register

Since publication of the *Data Sharing Review* in July 2008, Government has received representations from a range of businesses and business associations voicing their concern about the recommendation to abolish the Edited Register. These organisations have indicated that they consider the Edited Register to be valuable and that its abolition would have a significant impact on them.

Given this, there may be adverse economic and other consequences if the Edited Register were to be abolished. This section briefly sets out some of the benefits and advantages which have been suggested to Government to date. It is hoped that this consultation will elicit detailed evidence from a wide range of sources on the advantages and disadvantages of the Edited Register and on the potential impacts of its abolition.

At present, it is difficult to quantify with precision the benefits the Edited Register brings or what would be the impact of its abolition. The attached draft Impact Assessment provides an initial analysis of the potential costs and benefits of the Edited Register, and of the different options proposed for its future. We would also welcome comments on this.

The representations so far received from business suggest that the abolition of the Edited Register would cause difficulties for some businesses which currently use it. They argue that the Edited Register is an invaluable resource to them as a database of names and addresses; when all of the EROs' individual Edited Registers are combined, it is the most comprehensive national and updated source of data in the UK. There is currently no equivalent national database of address details that covers such a large proportion of the UK population or guarantees annual validation. As it is

validated and revised annually, these organisations consider it to be an up to date and reliable source of information. Because it covers all areas of the country and can include all those eligible to register in residence at a property, it is also considered to be comprehensive. The businesses using the Edited Register describe it as a cost-effective and relatively inexpensive data source.

The Edited Register is used, directly or indirectly, for a variety of purposes - some could still be performed without it but, perhaps, at a significantly greater cost. Some may no longer be able to be performed if the Edited Register no longer existed.

Credit reference agencies use the Edited Register to create databases for many varied users and for post-credit application (extending credit) verification purposes¹⁸ when the full register is no longer available to them. Financial institutions such as banks and building societies that lend money use the credit reference agencies and their databases to verify customers' details for applications to extend credit.

The agencies have indicated that some public authorities use their databases to trace debtors.

Similarly, the **Credit Services Association** sent the Ministry of Justice co-ordinated correspondence on behalf of the debt-collection industry indicating that they are significant users of the Edited Register as a source of information in tracking down people who have moved without informing their creditors of their new address.

Direct marketing companies access data both directly from the Edited Register and from the databases created by the credit reference agencies to compile and maintain mailing lists. It is argued that consumers benefit from this as a means of informing their consumer choice and may eliminate the need for them to undertake greater product research. It is argued that this may

¹⁸ Post- credit applications describe those circumstances where a creditor's existing customer makes an application to extend their credit facility.

be of particular benefit to some who may find difficulty leaving their home, such as the elderly or people with some disabilities.

Other users include **directory services companies**. In a presentation to the 2009 Annual Conference of the Association of Electoral Administrators, the online people, business and place finder 192.com set out the uses, benefits and advantages of the Edited Register for them and the users of their services. In the presentation, 192.com described the Edited Register as a "unique and irreplaceable" data resource and suggested that the costs of discontinuing or replacing the Edited Register would be immense. Among other uses, 192.com suggested that the Edited Register was helpful in tackling online plastic card fraud in so-called 'card not present' transactions, and that 80% of e-commerce merchants use it to fight online fraud. Similarly, 192.com suggested that it was a vital tool in helping to limit access to age restricted goods and services available online, including gambling and alcohol.

There are arguably wider benefits from the sale and use of the information in the Edited Register than those to businesses. As 192.com have suggested, using online directory services individuals can use the Edited Register when looking to track down friends and family with whom they have lost contact and in researching family histories and genealogy.

Charities also use the Edited Register. The Institute of Fundraising has told us that charities use the Edited Register (both directly and through the credit reference agencies' databases) when creating and maintaining accurate donor mailing lists.

The Options

As noted earlier, the Government accepts the findings of the *Data Sharing Review* that members of the public are often insufficiently aware of the existence and uses of the Edited Register and considers that some reform of the current arrangements is likely to be desirable. Against that backdrop and in light of the concerns highlighted by the *Data Sharing Review* this consultation does not propose a 'do nothing' option.

Instead, the Government has identified the following options for the future of the Edited Register and invites views on them, as well as on the principles and the practical choices to be made in delivering each of the options. The Government is open to any of these options, up to and including the abolition of the Edited Register. The Government also invites respondents to propose variants or combinations of options where appropriate.

Options abolishing the Edited Register

- Option 1: Abolish the Edited Register as soon as practicable.
- Option 2: Set a timescale or trigger for abolition of the Edited Register.
- Option 3: Abolish the Edited Register as soon as practicable, but extend access to the full electoral register for other purposes to be decided.

Options retaining the Edited Register

- Option 4: Retain the Edited Register, but impose restrictions in legislation on who can purchase it and for what purposes.
- Option 5: Replace the current 'opt out' provision with an 'opt in'.
- Option 6: Improve guidance for the public about the Edited Register.

These options are set out in more detail below, together with an assessment of the pros and cons of each, and questions for consideration.

Option 1– Abolish the Edited Register as soon as practicable

This option would see the Edited Register abolished as soon as Parliamentary time allows once the Government has published its response to this consultation. There are two principal mechanisms for abolishing the Edited Register: by amending either primary or secondary legislation. Whichever route were taken, the effect would be that Electoral Registration Officers would no longer compile an edited version of the register for sale to anyone for any purpose.

One advantage of abolishing the Edited Register outright would be that if the consultation found that the Edited Register is a significant deterrent to registration it would support the Government's determination to tackle electoral under-registration and demonstrate the Government's commitment to upholding data sharing principles.

Obviously, abolition of the Edited Register would mean that it would no longer be available to those businesses and charities which currently use it for a variety of purposes. Moving to abolition under this option would limit the amount of time available for organisations to adapt to this change, although as much notice as possible would need to be given under this proposal.

Option 2: Set a timescale or a trigger for abolition

Under this proposal, the Government would clearly signal its intention to abolish the Edited Register, although it would not do so at the first available opportunity. Rather, the Government would set a longer timescale for abolition.

Such a timescale would be devised to take into account those organisations or individuals that currently use the Edited Register so as to provide them with as much opportunity as is practicable to adapt their business models or activity in response to the change. This could involve finding or developing alternative sources of information, or re-focussing activity to place more emphasis on those areas which do not require access to the Edited Register.

There are alternative sources of information available to those currently using the Edited Register. Whilst some in the private sector have indicated that the Edited Register is likely to be the cheapest source of information of this kind, it

is not the only source. Credit reference agencies, for example, compile alternative personal databases which are available for purchase. Direct mail is only one method of marketing and there are a range of other methods which could be used to target individuals. If the Edited Register is abolished, businesses may need to innovate and change their existing methods and practices. A lead in time to abolition could give them time to consider and develop their options, if needed.

It would be necessary to establish what an appropriate lead in time would be. We would welcome views from respondents on what period they consider would be reasonable, particularly in view of the current challenging economic climate.

An advantage of setting a timescale for abolition would be that it strikes a balance between the competing interests of business and other users of the Edited Register, and of the integrity of the electoral process and upholding data sharing principles.

An alternative to setting a strict timetable would be to identify and set a 'trigger' point which, if reached, would mean the Edited Register would be abolished. Once the 'trigger' was reached, Government would move to abolish the Edited Register as soon as practicable.

It may, for example, be desirable to align abolition of the Edited Register with 'opt out' rates. Figures provided by the Office for National Statistics (ONS) and the Northern Ireland Statistics and Research Agency (NISRA) show annual upwards trends in 'opt out' rates (now at an average 40% nationally and as high as 70% in some areas¹⁹). As such, there may naturally come a point when the data available in the Edited Register was no longer considered useful. However, representations the Government has received have indicated that at least some organisations that use the Edited Register believe that they cannot imagine a point where the data would no longer be useful because there is not a cost-effective alternative to the Edited Register available on the market.

¹⁹ Data Sharing Review 11 July 2008.

We recognise the difficulty in identifying an appropriate ‘trigger’ point. A trigger point ought to serve a purpose and as such should not be arbitrary. There are a number of different ways to establish a trigger point in this case. Perhaps the most straightforward would be to opt for one based on the national average of ‘opt out’ rates. However, as noted above, different areas currently have very different ‘opt out’ rates, ranging from 20% to 70%. The reason for these variances is not clear.

The trigger could be set high, so that it would only be reached nationally and the Edited Register abolished if all EROs in the country were to report ‘opt out’ rates above a certain level in their areas. Another alternative could be to allow individual EROs to no longer compile the Edited Register once ‘opt out’ rates in their areas had reached a certain point.

Regardless of the trigger point set, it would be difficult for current users of the Edited Register to plan effectively for its abolition as it would not be clear when or perhaps whether the trigger point would be reached. We welcome views on whether a trigger point based on ‘opt out’ rates would be desirable and workable, and on what the appropriate level of ‘opt outs’ might be.

Option 3: Abolish the Edited Register, but extend access to the full electoral register for other purposes (to be decided)

This option would see the Edited Register abolished, but with additional access to the full register being granted for other purposes to be decided following the consultation, should any other organisations make a compelling case for access.

A copy of the full register can only be sold to those organisations listed in Regulations 113 and 114 of the Representation of the People (England and Wales) Regulations 2001 and equivalent legislation in Northern Ireland and Scotland. Those organisations are Government Departments (including the Environment Agency, the Financial Services Authority and any public body which carries out the vetting of any person for the purpose of safeguarding national security) and Credit Reference Agencies. Currently, Credit Reference

Agencies are the only commercial organisations permitted by law to buy the full register. They are permitted by legislation to use it for credit referencing purposes only.

It may be that there are other groups or purposes for which the full register might be made available in carefully defined circumstances and we welcome views on this.

In practical terms, to implement this proposal an amendment would be required to Regulation 112, Representation of the People (England and Wales) Regulations 2001 and equivalent amendments to legislation in Northern Ireland and Scotland. This particular regulation governs whom the full register can and cannot be sold to. Such an amendment would be subject to the 'affirmative procedure' in Parliament and would therefore require debates in both Houses.

Arguably, however, extending access to the full register to further organisations or for new purposes could serve to undermine the principles which the Government believes underpin the calls to abolish the Edited Register. Indeed, extending access to the full electoral register in this way could result in the arguably perverse situation where some organisations would no longer be able to use the more limited information available in the Edited Register, but instead would have access to the greater information contained in the full register. The one advantage to this route would be that, unlike now when the Edited Register can be used by anyone for any purpose, extending access to the full register and the purposes for which it could be used would be explicit and strictly limited in law.

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

Currently, the Edited Register is available 'to anyone for any purpose'. Under this option the Edited Register would be retained, but clear and explicit restrictions would be placed on which individuals and/or organisations could purchase it and the uses to which the information could be put. This could go

some way to meeting the concerns of those with principled objections to the current arrangements, but fall short of full abolition.

This might appear to be a workable solution if it were thought that abolishing the register would have disproportionate impacts on some types of organisation. It is possible, for example, that in comparison to large companies, small businesses or charities do not have the necessary resources to find or develop viable alternatives for obtaining the same or similar information as they currently find in the Edited Register.

It is likely to be extremely difficult to settle on which types of organisation or individual might be given such access, and which would lose out. We would welcome views and supporting evidence from respondents on whether this would be workable, which types of organisations might qualify and why, and on the merits or otherwise of EROs having to compile and maintain a separate register for the benefit of what might be relatively few users.

Option 5: Replace the current ‘opt out’ provision with an ‘opt in’

At present, in order to avoid being included on the Edited Register, individuals have to ‘opt out’. There is a tick-box on every electoral registration form that allows individuals to choose to be excluded from the edited version of the electoral register. The current position is that if the tick-box is left unchecked, individuals are automatically included on the Edited Register, there is a concern that people are leaving this box unchecked unwittingly. This proposal would change the ‘opt out’ to an ‘opt in’, requiring people to proactively state their preference for inclusion on the Edited Register in order to be included. In a reversal of the current position, if no preference is stated then the presumption would be that a person should be excluded.

This proposal would mitigate the risk of individuals unwittingly being included on the Edited Register. It would also give individuals the chance to make a fully informed decision about whether they want to be included on the Edited Register.

The immediate practical effect of this proposal would be that electoral registration forms would need to be changed to incorporate an 'opt in' rather than an 'opt out' tick box. This would require secondary legislation.

EROs would still have to compile and maintain an edited version of the electoral register and it would still be available for sale to anyone for any purpose. But, as people would now have to make a positive choice to be included, over time, this proposal could be expected to lead to fewer entries and, arguably, therefore see the Edited Register become less useful as a source of information.

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

The Data Sharing Review concluded that many people are not aware of the existence of the Edited Register, that it can be sold on, or that they can 'opt out' of appearing in it. It also found that the language used on registration forms about the Edited Register could be confusing. To address these concerns, the public could be given more information and guidance about the effects of being included on the Edited Register. This might better enable people to make an informed choice about whether or not they wish to be included in the Edited Register.

Such guidance could take a number of different forms - it could be written guidance similar to leaflets already provided by the Electoral Commission²⁰ for EROs to voluntarily distribute alongside electoral registration forms, or Electoral Registration Officers could be directed to provide these leaflets on a compulsory basis.

This proposal would not involve any legislative changes. Guidance could be produced by the Electoral Commission or the Government or could be reflected in the existing informative material sent out by the Electoral

²⁰ The Electoral Commission's leaflet "Who has my personal details" can be provided alongside the annual canvass forms. The leaflet explains that there are two versions of the electoral register and the choice electors have to 'opt out' of their details appearing on the Edited Register.

Commission, or a combination of the two. Electoral administrators would still have to compile and maintain an edited version of the electoral register and it would still be available for sale to anyone for any purpose.

'Opt out' rates are also shown to differ significantly throughout the UK with rates as low as 20% in some areas, and as high as 70% in others, according to the *Data Sharing Review*. It is not known why this is the case, but it may in part be due to the different practices employed by Electoral Registration Officers in explaining and differentiating the effects of being included on the Edited Register. Prescriptive standardised wording to be used about the Edited Register may resolve this apparent issue.

Better information from EROs could therefore be given to electors about the 'opt out' option available. At the same time, Government could work with the Electoral Commission to ensure greater accuracy and consistency in the way EROs carry out this function.

Whilst this would help tackle the issue of public awareness it would not address the concern that the Edited Register deters people from registering.

Questionnaire

We would welcome responses to all of the following questions set out in this consultation paper where possible.

1. Were you aware that an edited version of the full electoral register existed?
2. Were you aware of your ability to 'opt out' of inclusion on the Edited Register?
3. Do you have any concerns about how your electoral registration data is used and why?
4. Does the existence of the Edited Register deter you from registering to vote?
5. Is your preference for abolishing or retaining the Edited Register? Please give reasons for your answer.
6. Which options (listed at page 6) are your most and least preferred? Please give reasons.
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?
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 detail as you can about you, 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?
9. If the Edited Register were abolished, how might you, your organisation, or those you represent adapt to the change?

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by 23 February 2010 to:

Kirsten O'Connell
Ministry of Justice
Elections and Democracy Division
Floor 5, 5.18
102 Petty France
London SW1H 9AJ

Tel: 020 3334 5241

Fax: 020 3334 3749

Email: kirsten.o'connell@justice.gsi.gov.uk

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <http://www.justice.gov.uk/index.htm>.

Alternative format versions of this publication can be requested from kirsten.o'connell@justice.gsi.gov.uk / 020 3334 5241

Publication of response

A paper summarising the responses to this consultation will be published in May 2010. The response paper will be available on-line at <http://www.justice.gov.uk>

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic

confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Impact Assessment

The Impact Assessment can be found at www.justice.gov.uk

The consultation criteria

The seven consultation criteria are as follows:

1. **When to consult** – Formal consultations should take place at a stage where there is scope to influence the policy outcome.
2. **Duration of consultation exercises** – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. **Clarity of scope and impact** – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. **Accessibility of consultation exercises** – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. **The burden of consultation** – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. **Responsiveness of consultation exercises** – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. **Capacity to consult** – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

These criteria must be reproduced within all consultation documents.

Consultation Co-ordinator contact details

If you have any complaints or comments about the consultation **process** rather than about the topic covered by this paper, you should contact Julia Bradford, Ministry of Justice Consultation Co-ordinator, on 020 3334 4496, or email her at consultation@justice.gsi.gov.uk.

Alternatively, you may wish to write to the address below:

Julia Bradford
Consultation Co-ordinator
Ministry of Justice
102 Petty France
London SW1H 9AJ

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given under the **How to respond** section of this paper at page 37.

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