



Supply and sale of the electoral register

Standard Note: SN/PC/01020

Last updated: 15 July 2008

Author: Isobel White

Parliament and Constitution Centre

This note examines the supply and sale of the full and edited versions of the electoral register. The report of the Data Sharing Review, published on 11 July 2008, has recommended that the sale of the edited version should not be allowed and therefore the edited register should be abolished.

Contents

A.	Background	2
B.	The <i>Robertson</i> Judgement	2
C.	The <i>Representation of the People (England and Wales) (Amendment) Regulations 2002</i>	3
D.	Supply of copies of the full register	5
E.	Access to the full and edited registers	6
F.	Sale of copies of the full register	8
G.	Credit Reference Agencies	8
H.	Sale of the edited version of the register	9
I.	www.192.com and B4Usearch.com	9
J.	The report of the Data Sharing Review	11

A. Background

Copies of the electoral register have been made available for sale in one form or another since at least 1832. Electoral law made provision both for the sale of the register and set the fees charged for providing copies.

After the 1997 General Election the Home Office set up a working party on electoral administration under George Howarth, then minister at the Home Office with responsibility for elections. The full report of the working party was published in October 1999.¹ The Howarth working party examined the sale of the electoral register. The data protection implications of the current position, and the possible effect on the level of registration, were weighed against its usefulness for law enforcement, including measures to prevent money laundering, and the concerns of the companies which use the electoral register. The working party recommended that:

- Electors should be allowed to decide whether their personal details should be included in the register made commercially available (Recommendation 12)
- The full register should continue to be available to electoral users, but a licensing arrangement should be agreed to ensure that its use is restricted to electoral purposes only (Recommendation 13).

The recommendations followed considerable debate in the working party, which concluded that 'in the wider economic interest of the United Kingdom, it would be wrong wholly to withdraw electoral registration data from use commercially.'² The Working Party added that 'the requirements of natural justice require that we should go further and allow the extension of consumer choice to the question of what registration information is sold on commercially.'³

The Howarth working party's recommendations on the sale of the electoral register required primary legislation and Section 9 of the *Representation of the People Act 2000* subsequently amended Schedule 2 to the *Representation of the People Act 1983* to require EROs to compile an edited version of the register which omitted the names of all those electors who had asked for their details not to be included in the version of the register that could be sold to commercial organisations.

B. The Robertson Judgement

While the Government was consulting over draft regulations to implement the provisions of the *Representation of the People Act 2000*, an elector in Pontefract, Brian Robertson, requested that his name and address on the electoral register should not be supplied to commercial organisations on privacy grounds. When this was refused, he applied to the High Court for judicial review of the local Electoral Registration Officer's decision. Judgement was given on 16 November 2001.

¹ *Final Report of the Working Party on Electoral Procedures* [Howarth Report], Home Office, October 1999

² *Ibid*, para 2.4.21

³ *Ibid*, para 2.4.23

The judgement held that the refusal of the ERO to accept this request was contrary to the Data Protection Directive and to Article 8 and Protocol 1 of the European Convention on Human Rights. The judge, the honourable Mr Justice Maurice Kay, stated that Mr Robertson was entitled by section 11(1) of the *Data Protection Act 1998* to require the ERO to stop disclosing information about him on the electoral register to commercial concerns which intended to process this for direct marketing purposes. The judge also found that the sale of copies of the register with information about Mr Robertson to commercial concerns without giving him the opportunity to object would be incompatible with the Convention and the *Human Rights Act 1998*; without an individual right of objection there was an unjustified, disproportionate restriction on the right to vote.

C. The Representation of the People (England and Wales) (Amendment) Regulations 2002

In May 2002, the Government published a policy paper on the sale of the register, together with new draft regulations.⁴ The consultation document described the broad principles behind the regulations as follows:

- The extent of access to, and supply and sale of, electoral registers must be that which is appropriate having regard to the nature of the data contained in the registers, including in particular that it is personal data compulsorily obtained for the specific purpose of enabling qualifying electors to vote;
- The regulatory framework must be consistent with the requirements of the European Data Protection Directive and the Data Protection Act 1998; and
- That framework must be compliant with the European Convention on Human Rights and thus the provisions of the Human Rights Act 1998.

The draft regulations provided for both a full and an edited version of the electoral register to be compiled. The new registration forms to be used for the annual canvass and throughout the year for rolling registration would include an “opt out” box to allow electors to say if they wanted their details left out of the edited version of the register. The edited version would therefore omit the names of those people who had indicated that they wished their names to be excluded from it and would be available for sale without restriction. The consultation document explained the availability of the full version as follows:

The full register is to be available - in terms of access, supply and sale as is appropriate for the purpose - for the following purposes

- to allow qualifying electors to vote which is the primary purpose of the register; and
- for related electoral purposes and to facilitate the democratic process (e.g. to assist candidates and political parties);

⁴ Dep 02/1007, 13 May 2002.

The full register is to be available by way of sale and, as appropriate, supply to public authorities, but only for the purposes of facilitating the discharge of their functions in relation to security, law enforcement and crime prevention, and for statistical and reference purposes;

The full register is to be available by way of sale to private bodies where this is necessary:

- to enable a body to meet its statutory obligations in relation to security, law enforcement and crime prevention; or
- to enable a body to conduct its business in such a manner whereby the public interest benefits clearly outweigh any interference with any Convention rights.

In its response to the consultation document, the Electoral Commission stated its opposition to the principle that the register should be available for sale for commercial purposes:

1. The Commission has previously conveyed its view, in correspondence with the Government, about the issue of principle regarding the access to, and supply and sale of, electoral registers. This is restated here for the avoidance of doubt. **The view of the Commission is that electoral registers should be compiled exclusively for electoral and other limited statutory purposes and that they should not be made available for sale for commercial purposes.** The Commission calls on the Government to reconsider the issue of principle and to restrict the use of the electoral register to electoral purposes alone, together with certain limited statutory purposes.

2. The Commission recognises that the Government puts the sale of electoral registers in its historical context, in that copies of the register have been available for sale in one form or other since the 19th century. However, many circumstances have changed over the years and particularly pertinent are the relatively recent introduction of data protection principles into European law, including in the UK, and the incorporation of the European Convention on Human Rights into UK law. The expansion of mass communications and data processing has meant that the electoral register has been put to uses never previously envisaged. Its sale for direct marketing purposes has led to an individual elector resorting to litigation to protect his data protection and human rights.

3. The personal data contained in the electoral register is obtained compulsorily to enable the register to be compiled. The Commission is concerned about the balance between the rights of individual electors who provided information on this basis and the wider use of the data proposed in the draft Regulations.⁵

The *Representation of the People (England and Wales) (Amendment) Regulations 2002* came into force on 16 October 2002. The regulations made provision for an edited version of the register to be drawn up which omitted the names of those electors who had asked for their details to be excluded from this version. The edited register could be made available for sale without restriction.

⁵ Electoral Commission, *Electoral Registers – Access, Supply and Sale. Response of the Electoral Commission* [Emphasis in original]

D. Supply of copies of the full register

Under the provisions of Part VI of the *Representation of the People Regulations (England and Wales) Regulations 2001*, SI 2001/341, the Electoral Registration Officer **must** supply, free of charge, a copy of the full register on publication to:

- The British Library, the National Library of Wales, the National Library of Scotland, the Office of National Statistics, the Electoral Commission and the Boundary Commissions.
- The Returning Officer for a local government election, the Acting Returning Officer for a Parliamentary election, the Local Returning Officer for a European Parliamentary election

Under the provisions of the *Juries Act 1974* copies of the full register must also be supplied to the courts for the purposes of summoning jurors.

The Electoral Registration Officer must also supply, free of charge, copies of the full register to the following **on request**:

- Elected representatives, including MPs, MEPs, local councillors, Mayor of London and London members of the London Assembly, constituency members of the London Assembly, elected mayors, all within the registration area
- Candidates for election at a Parliamentary, local government, European Parliament or Welsh Assembly election and for election of a mayor under Part II of the *Local Government Act 2000*
- Local constituency parties
- Registered political parties
- The council which appoints the Electoral Registration Officer and any other local authority, such as Parish or Community councils which are part of the ERO's area
- Any police force in Great Britain; the Police Force of Northern Ireland; the National Criminal Intelligence Service, the National Crime Squad, the Police Information Technology Organisation and any body of constables established under an Act of Parliament
- The Security Service; GCHQ and the Secret Intelligence Service.

The Electoral Commission published a useful table showing who is entitled to receive a copy of the full register in Appendix A to its circular 06/2006, *Representation of the (England and Wales) (Amendment) Regulations 2006*.⁶

The standard prohibitions which restrict the use of the full register by these people or organisations i.e. anyone who is supplied with a free copy of the full register, are contained in Regulation 96 of the *Representation of the People (England and Wales) Regulations 2001*. Anyone supplied with a copy of the full register must not supply a copy of it or

⁶ http://www.electoralcommission.org.uk/__data/assets/pdf_file/0009/47169/EC06-2006-SuppliesaleandinspectionoftheRegisterofElectors_20407-15011__E__N__S__W__.pdf

disclose any information contained in it to any other person, or disclose any information contained in it which is not in the edited version.

Under Regulation 103, *Representation of the People (England and Wales) Regulations 2001*, Members of Parliament can be supplied with a copy of the full electoral register for their constituency; they are subject to these three prohibitions above and may not make use of the information in the full register 'otherwise than for the purposes in connection with the office by virtue of which he is entitled to the full register or for electoral purposes'.⁷ "Electoral purposes" is not defined in the legislation. The Electoral Commission's Circular EC 36/2002 drew the attention of Electoral Registration Officers to this and to the comments of Yvette Cooper, then Parliamentary Secretary at the Lord Chancellor's Department in the debate on the relevant regulations on 11 July 2002:

Fundamental questions were asked about the nature of "electoral purposes". It is a broad concept and it is right to adopt a liberal interpretation of what it means. It should be defined as anything to do with the process of campaigning and getting elected. Fundraising for the purposes of winning elections is part of "electoral purposes" and the regulations cover the circumstances when political parties seek to raise funds. It would be different if money were being raised to buy equipment for a local hospital or other purpose, but fundraising for the core purpose of communicating with voters and campaigning to get elected clearly counts as "electoral purposes".

The regulations apply to the period between elections—we are not talking only about when the gun has been fired and the election campaign is under way—and equally to people who are not members of political parties. If they are standing for election, they should have access to the electoral register for electoral purposes. It would be inappropriate to disadvantage people on the basis of political background or the issues on which they wanted to campaign.

It is right not to pin down "electoral purposes" too narrowly. We do not want to omit anything that counts as an important part of what political parties and those seeking to represent the people in a democracy should be able to do to communicate with voters. Voters themselves should have their human right to participate in free and fair elections recognised. In a democracy, it is crucial to sustain those principles.

E. Access to the full and edited registers

The full electoral register is a public document and it can be made available to any member of the public who wishes to consult it. However this has to be done in person and under supervision at the local electoral services office. It is not possible to make copies of part or all of the register although hand written notes can be made. The 2001 regulations were amended by the *Representation of the People (England and Wales) (Amendment) Regulations 2006* and it is now an offence to use hand written notes (produced by any inspection of the register under supervision) for marketing purposes, unless those persons are also on the edited version of the register.

The Electoral Commission's guidance for Electoral Registration Officers gives advice about making the full register of electors available for consultation by members of the public. The

⁷ Regulation 103, *Representation of the People (England and Wales) Regulations 2001*

guidance also suggests that where EROs are satisfied that library or other council staff can offer an appropriate level of supervision, more copies of the full register can be made available in addition to the one in the electoral services department:

The full register of electors

3.1 The full register must be made available for public inspection, under supervision, at the Electoral Registration Officer's office and at such places, if any, in their registration area that will allow members of the public reasonable facilities for that purpose.

3.2 Electoral Registration Officers have responsibility for the level and nature of supervision of the registers under their control. The regulations are not prescriptive with regard to the method of supervision to allow Electoral Registration Officers flexibility in their provision. Electoral Registration Officers should, however, satisfy themselves that people who inspect the full register are supervised in such a way that it prevents unauthorised copying or theft of all or any part of the register. It may be appropriate to provide training or guidance notes to those staff who will be supervising the register.

3.3 Supervision is designed to discourage large-scale hand-copying of the registers or any other attempt to subvert the rules. It is an offence to make copies of the full register, other than by handwritten notes. It is an offence to use any handwritten notes for marketing purposes.

3.4 Most registers are made available for inspection in paper form, but access may be provided by using an electronic copy of the register. Care must be taken to address the security implications of providing the register for inspection electronically, particularly with regard to preventing a person from downloading, transmitting electronically or printing this information or copying by any other means. Any search facility should be by address only and not by name, as this is specifically prohibited.

3.5 Where Electoral Registration Officers are sufficiently confident that library or other council staff can offer an appropriate level of supervision, more copies can be made available. If electors are accustomed to inspecting the register at a certain place and continue to demand it, Electoral Registration Officers may wish to meet that demand, providing that the supervision requirement can be met. The Electoral Registration Officer should be satisfied that the local authority library to which they supply a copy is able to provide the supervision required. This could be done, for example, by sending a copy of the legislation and obtaining a signed letter or email from the library manager stating that they will follow the requirements. The Electoral Registration Officer might also add a guidance note to accompany the register for library staff. While the librarian, and/or the appropriate supervisor, would be responsible for any failure to apply the legislation, the Electoral Registration Officer may wish to take legal advice if they are concerned that they have not taken the necessary steps to avoid a breach of the regulations.

3.6 Any venue which is not able to meet the inspection requirement should not be given a copy of the full register, nor would it be appropriate to supply the edited register to such locations as this may confuse electors who, on any inspection, find that they are not listed where they have chosen to opt out of their details appearing on the edited register. Libraries and archive units may apply for a copy of the full register¹⁹ and if this is the case they take full responsibility for complying with the rules regarding inspection under supervision.

The edited register of electors

3.7 There are no restrictions on access to the edited register. No supervision is required and so it may be made available for public inspection at any place the Electoral Registration Officer sees fit.⁸

F. Sale of copies of the full register

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*. These organisations are:

- Government departments (including the Environment Agency, the Financial Services Authority and any body which carries out the vetting of any person for the purpose of safeguarding national security)
- Credit reference agencies

The standard prohibitions apply to the persons to whom the full register is sold who must not use the register other than for the purposes set out in the regulations authorising the sale.⁹

G. Credit Reference Agencies

Parker's Law and Conduct of Elections notes that:

The registration officer is required to sell a copy of the full register, any notice amending it or the list of overseas electors to a credit reference agency which satisfies the conditions described below on request from the agency and on the conditions described in para 3.136 above and payment of a fee calculated in the manner described in para 3.135 above (regulation 114(1) of the 2001 Regulations, as inserted by regulation 15 of the 2002 Regulations)...The agency must be registered under the *Consumer Credit Act 1974, Part III*, by virtue of section 147 of that Act and carrying on the business of providing credit reference services. The agency carries on such services where it furnishes persons with information relevant to the financial standing of individuals, which is information collected by the agency for the purpose of so furnishing it (regulation 114(5)).

The credit reference agencies purchase the electoral register because it provides proof to lenders that applicants for credit do in fact live at the address given and that they are not attempting to obtain credit fraudulently using a false name and address. There are three main credit reference agencies operating in the United Kingdom; Experian Ltd, Equifax plc and Callcredit plc. Electoral registers are compiled locally and there is not a single register for the whole country. The credit reference agencies therefore have to purchase the

⁸ *Managing electoral registration in Great Britain: guidance for Electoral Registration Officers*, Electoral Commission, 2008. Available at http://www.electoralcommission.org.uk/__data/assets/pdf_file/0006/42927/Full-ERO-FINAL.pdf

⁹ Regulation 112, *Representation of the People (England and Wales) Regulations 2001*

registers for each area separately and they do this in December each year shortly after the publication of the register following the autumn canvass; they also purchase the monthly updates to the register.

For further information about credit reference agencies see the Library Standard Note SN/BT/4070.¹⁰

H. Sale of the edited version of the register

There are no restrictions on the sale of the edited version of the register or on the uses that can be made of it. The Electoral Registration Officer must supply a copy of it to any person on payment of a fee.

The current fees are as follows:

- in data format, £20 plus £1.50 for each 1,000 entries (or remaining part of 1,000 entries) in it
- in printed format, £10 plus £5 for each 1,000 entries (or remaining part of 1,000 entries) in it¹¹

I. www.192.com and B4Usearch.com

Since the introduction of the edited version of the register in 2002 it has been possible for electors to tick a box on the annual canvass form to 'opt out' of appearing in the version of the register which is available for sale without restriction to commercial concerns. In theory it is therefore possible for an individual to prevent the sale of their personal details to companies who purchase the edited version of the electoral register. However, websites such as 192.com and B4Usearch.com have been able to circumvent this by using old electoral registers to build their databases because these registers were compiled before the law was changed. Much of the information in the old registers compiled before 2002 is of course still current.

The companies are not acting illegally by providing this information but they are exploiting a loophole in the regulations as the information was originally provided by the electors before it was possible to 'opt out' of the register which can be sold.

A PQ in April 2006 asked whether companies using the information provided before electors were able to 'opt out' could be prevented from doing so:

Mr. Benyon: To ask the Minister of State, Department for Constitutional Affairs what assessment she has made of the viability of amending the Electoral Administration Bill so that voters who currently opt to appear on the edited version of the register could block third parties using personal details which appear on historic registers

¹⁰ Available at http://pims.parliament.uk:81/PIMS/Static%20Files/Extended%20File%20Scan%20Files/LIBRARY_OTHER_PAPERS/STANDARD_NOTE/snbt-04070.pdf

¹¹ Regulation 110(2) *Representation of the People (England and Wales) Regulations 2001*

which were published only as full versions without the choice to appear on an edited version.

Bridget Prentice: The Representation of the People Regulations 2002 provide that electors may opt out of the edited version of the register of electors if they do not want their details to be sold to anyone for any purpose. Any attempt to use legislation to impose a retrospective ban on the use of information derived from pre-2002 electoral registers, though, is likely to be impracticable and unenforceable since this may be provided by commercial organisations based outside of the UK against whom the sanctions of UK law cannot be applied. Electors who do not want their details to be used by commercial organisations may wish to approach the mailing or telephone preference services requesting deletion from company records or publicly available websites or otherwise make a request directly to an individual organisation. If an organisation fails to comply with such a request an elector may pursue the issue with the Information Commissioner's Office.¹²

Following complaints from electors, the Association of Electoral Administrators sought advice from the then Department for Constitutional Affairs on the activities of the website B4Usearch.com and the company's compliance with requests from individuals to remove their personal details from the website. The DCA sent the following reply to the Association on 24 May 2006:

...we have ascertained from the Information Commissioner's Office (ICO) that if an organisation offers, as we understand b4u.co.uk has, to comply with requests from individuals to remove those individuals' details from their electoral register-based online directories it would not be within the reasonable expectations of an individual that their data continues to appear on the website in question after they have made a removal request. It is, therefore, the view of the ICO that if b4u.co.uk fails to comply with such a removal request the processing of that individual's personal data could be considered not to be 'fair' for the purposes of the Data Protection Act (DPA). It could thus be considered unlikely that the processing of personal data would be compliant with the first principle of the DPA (which states that "Personal data shall be processed fairly"). In these circumstances the ICO has the power to serve an enforcement notice on the offending organisation in respect of the first principle of the DPA if voluntary compliance is not possible.

The ICO subsequently issued an enforcement notice against the B4Usearch website as the report of the Data Sharing Review published in July 2008 later noted:

In July 2006 - after receiving almost 1600 complaints - the Information Commissioner's Office issued an enforcement notice against the *B4U* website, which offered a free 'people search' facility, using data from the pre-2002 'full' Electoral Roll. Complainants included a police officer whose family's names and address, along with a map to their house, appeared on the website; and an individual who had previously been a victim of identity fraud. Following an investigation, the ICO found that – because of the way that the pre-2002 register had been used – the website did not comply with the first principle of the Data Protection Act.¹³

¹² HC Deb 18 April 2006 c42W

¹³ The Data Sharing Review, by Mark Walport and Richard Thomas. Ministry of Justice, July 2008. Available at <http://www.justice.gov.uk/docs/data-sharing-review.pdf>, p72

J. The report of the Data Sharing Review

On 11 July 2008 the Ministry of Justice published the report of the Data Sharing Review which had been set up by the Government in December 2007 to examine the operation of the Data Protection Act 1998 and to make recommendations on the powers and sanctions available to the Information Commission and the courts in the legislation governing data sharing and data protection.¹⁴ The authors of the review commented that they had

...focused primarily on the issues surrounding the sharing of personal information that have given rise to recent problems and anxieties: how is data shared? by whom? with what authority? for what purposes? with what protections and safeguards?¹⁵

One of the final recommendations of the review was that:

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.¹⁶

In making this recommendation the authors of the report said:

In any event, we feel 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. We are sympathetic to the strong arguments made by the Association of Electoral Administrators and the Electoral Commission that the primary purpose of the electoral register is for electoral purposes.¹⁷

¹⁴ The Data Sharing Review, by Mark Walport and Richard Thomas. Ministry of Justice, July 2008. Available at <http://www.justice.gov.uk/docs/data-sharing-review.pdf>

¹⁵ Ibid, p1

¹⁶ Ibid, Recommendation 19

¹⁷ Ibid, p 73