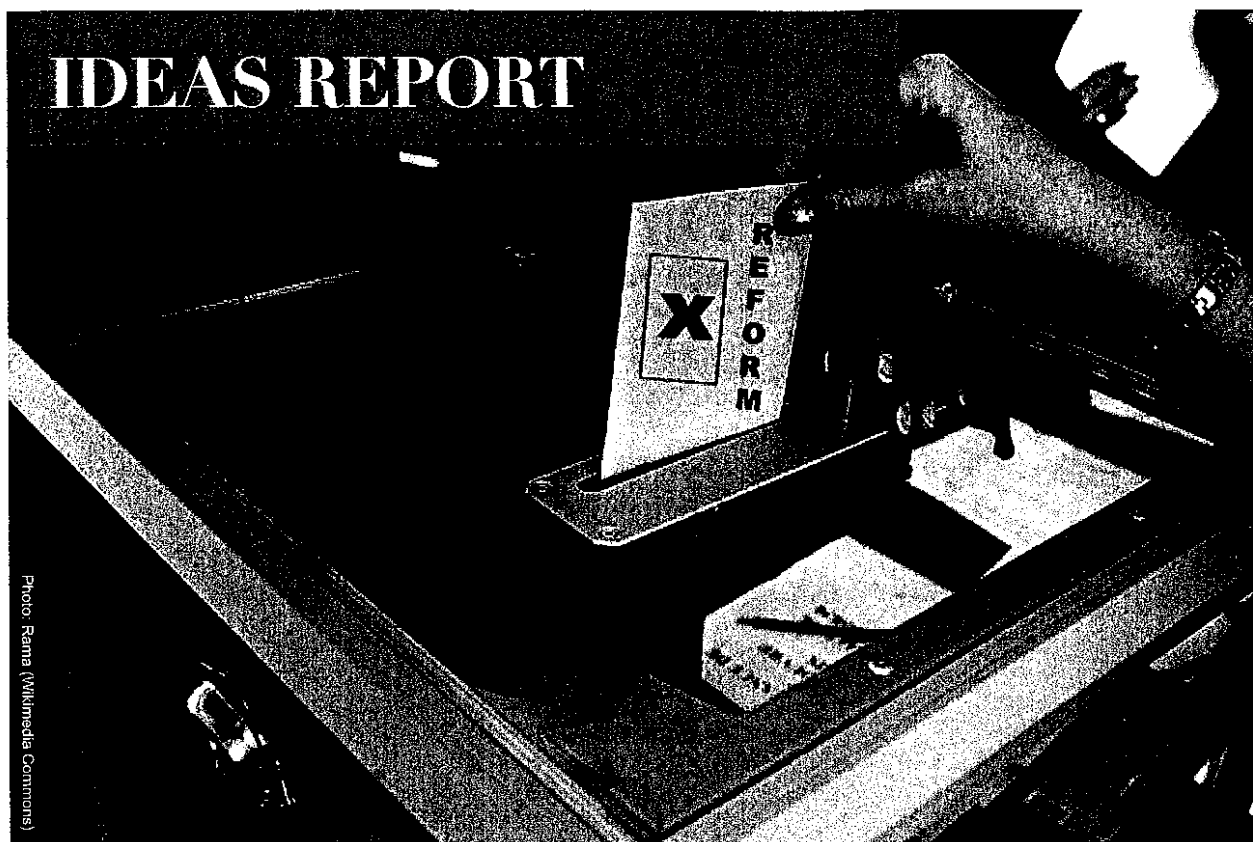


January 2012



## Nine Ideas to Improve Our Electoral System Submission to the Parliamentary Select Committee (PSC) on Electoral Reforms

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*By* Professor James Chin & Wan Saiful Wan Jan



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## About the Authors

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## Note

1. The views expressed in this paper are those of the authors alone
2. This paper was submitted to the PSC on Electoral Reform at their hearing on 12 January 2012 in Johor Bahru

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# Nine Ideas to Improve Our Electoral System

## Introduction

We would like to thank the Parliamentary Select Committee (PSC) on Electoral Reform for this opportunity to appear before it and to give suggestions towards improving our electoral system. We are sure all Malaysians support the work of the PSC and are looking forward to its final report.

The PSC has received many good submissions from various interested parties, and some have even presented technical data. So for us, we will not repeat the technical details that you have already heard, but we will simply present and re-emphasise the key reforms we feel the PSC should recommend for the government to adopt. These reforms, if taken on board, will give Malaysians, and people around the world, a sense that elections in Malaysia are “free and fair”. As it stands now, there are many controversies that make some people feel elections in Malaysia may be “free” but not necessarily “fair”.

We therefore want to emphasise the following nine reforms. Some of the reforms we ask for may be similar to what others have requested. But we feel that it is important to reinforce their importance.

## Idea 1

### **Provide mandatory and equal access to public media for all contesting political parties**

The issue of media access is a long-standing one. Obviously there is no agreement on this issue between the ruling party and the opposition. There is little doubt that the media plays an important part in elections.

The easiest way to resolve this issue is to give the EC powers to organise party political broadcast by all contesting parties on public broadcasters. In Malaysia this only refers to RTM- both radio and television. RTM should set aside a time, say one hour per week over the campaign period for each party to present their manifesto.

Some have suggested that these political broadcasts be carried by private stations as well. We are of the opinion that we should not dictate to the private operators. Of course they can be encouraged to play a role, but, it is up to them if they want to carry these broadcasts. Private broadcasters should also be allowed to freely decide if they want to cover all parties or only selected ones without fear of being penalised by the authorities.

In the case of RTM, since it is funded by the taxpayers, it has a responsibility to all Malaysians

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regardless of political affiliations. It is wrong, immoral and corrupt if RTM abuses taxpayers money by acting as a propaganda machine for one side only.

### Idea II

#### Reform the postal and absentee voting system

There is no reason why postal votes should be restricted to members of the security forces and some civil servants. Everyone should be able to use the postal vote if they choose to do so. There should not be a need to have a 'reason' to use postal voting.

The same goes for overseas Malaysians. We do not think that just because you are living overseas, you should lose one of your most important constitutional rights, i.e., the right to vote. We feel that all Malaysians, as long as they meet the legal requirements, must be given the right to vote using a voting method that they feel is best for them. Even our neighbour, Singapore, grants overseas voting in selected cities overseas to give their citizens living overseas a chance to select their government (see Appendix A).

In an increasingly globalised world, more and more Malaysians will be living and working abroad for a period of their working lives and giving them the vote is a powerful "glue" to remind them of their country

of birth. Overseas Malaysians must be given a feasible method to vote.

Of course, it goes without saying that with the adoption of a widened postal voting scheme, the EC has to ensure that the system is trustworthy, secure and efficient.

### Idea III

#### Allow free and open access to electoral roll for authorised bodies

We would like to see open access to the electoral roll for all political parties and other "approved bodies" (i.e. parties with a legitimate need to consult the roll).<sup>1</sup> At the present moment, you have to buy the latest version direct from the Election Commission. This will allow all interested parties to scrutinise the roll. For too long, one of the key issues facing the credibility of elections in this country is the "cleanliness" of the electoral roll. If the authorities are totally transparent with the roll, then this will immediately bring confidence to the process.

We would also like to see the process of objection to names on the electoral roll simplified. At the present moment, you have to pay to object. This is incomprehensible to most people. How can you charge people who are trying to ensure that the electoral roll is as clean as possible? It does not make

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<sup>1</sup> While IDEAS would like to see access by all to the roll, in reality this cannot be done as there is the issue of data protection and privacy. The most practical approach is thus open access for legitimate parties.

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sense. Instead, if we were to follow logic, it is the EC who should pay people who did the job for them!

The argument that a fee will stop unreasonable objection does not stand given that the credibility of the roll is much more important than a small minority making a 'nuisance'.

One final word on this issue. We would like to recommend that the PSC reads a document entitled "Supply and sale of the electoral register" published by the British House of Commons in 2008 which will have many useful suggestions on how to handle this issue (Appendix B).

### Idea IV

#### Institute a minimum 21 days campaign period

In the past few elections, the duration of a formal campaign period is too short; in 2008 it was 13 days. In 2004 it was a mere 8 days. The last four general elections before 2004 had lasted 10 days or less: Nine days in 1999, and 10 days each for the 1986, 1990 and 1995 elections.

We propose that the formal campaigning period be fixed at three weeks or 21 days. This is not too short nor too long. Given the geographical realities

of Sabah and Sarawak, and the vast rural areas in some states, 21 days would seem to be the most appropriate number of days needed to get the message across.

The argument that a longer period is not necessary because political parties actually undertake "underground" or informal campaigning before the nomination day is not a sound reason to have a short campaign period. There is a big difference between an informal and formal campaign. A clear difference is the candidate; before nomination day, you can never be sure who the actual candidates are.

Moreover, *if* the informal campaigning were to be counted, then we might as well have polling immediately after nomination day. After all, the campaign has been going on anyway. And using the logic of this argument, the formal campaigning period actually does not make any difference.

### Idea V

#### Lower the voting age to 18

Most of our neighbours have a lower voting age. In Indonesia it is 17; in Thailand it is 18; and Philippines 18 (16 for municipal elections in some municipalities). In Singapore, because of the British heritage, they have the same voting age: 21.

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Among the more developed countries: Canada, US and UK 18, Australia and New Zealand 18; most of continental Europe 18 years old. At our last count, 142 countries have 18 as their voting age. This number will go up as more countries lower their voting age.

Given the education levels and our level of development, we do not see why we need to maintain the age of 21 years. We are living in the 21<sup>st</sup> century and the more appropriate voting age is 18.

If you can get married at 18 we do not see why you cannot choose the government at the same age!

### Idea VI

#### **Ensure autonomy and independence of the Election Commission**

It is clear to all that one of the reasons why general elections in Malaysia suffer from credibility issues is the set-up of the Election Commission. At present, the EC is effectively an arm of the Prime Minister's office and as such, is widely perceived to be non-independent and biased towards the ruling party. Many people think the EC is involved in the manipulation of electoral boundaries, especially when it comes to delineation exercises.

There are two simple steps to overcome the perception of bias. First, the EC should be made an independent body similar to SUHAKAM. Second, the EC should report annually to Parliament directly. The all-important delineation report can also go directly to parliament.

The EC must also work hard to create a neutral and independent image. Any EC Commissioner or staff who created the impression that he or she is no longer neutral must be removed. In fact, we do not see any reason for the EC commissioners to play such a prominent role in public life. We cannot remember instances from any developed country where members of their Election Commission (or comparable bodies) become as well-known the way some of our EC members are. Have any of you seen the heads of the Election Commission (or comparable bodies) in Britain, Germany or America making news headlines? EC members should work behind the scene. They should not act like politicians.

Appointment to the EC must also be transparent. They must be professional members who are capable of performing their responsibilities without fear or favour. The EC must not be seen as a retirement club or an old-folks home for senior civil servants.



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### Idea VII

#### Remove malapportionment of constituencies

There are serious problems associated with the principle of “one vote one value” in Malaysia. The easiest way is to give a straightforward example. The Putrajaya constituency has about 6,008 voters. Kapar constituency has 112,224 voters or about 17 times more voters than Putrajaya. In layman’s terms, this means “one vote” in Putrajaya equals to “17 votes” in the Kapar constituency.

At the time of independence, there was a rule that the difference in constituency electorate sizes were limited to 15 per cent above or below the average constituency electorate. This rule was relaxed in the 1960s and completely removed in 1973.

We do not want to go into arguments as to why the number of rural seats need to be adjusted, the so called “rural weightage” argument. We recognise the need for rural weightage but we think there should be a limit as well. It is quite clear that “rural weightage” does not mean that one vote in one constituency can equal to 17 votes in another constituency.

We propose that the maximum “rural weightage” or difference between seats be limited to 100 percent. In practice this means that the ratio for the smallest parliamentary constituency to the largest one is 1:2.

We understand that there needs to be separate arrangements for Sabah and Sarawak given that they want 1/3 of parliamentary seats as promised in the Malaysia agreement. What we recommend is that once you have allocated 1/3 of the parliamentary seats to Sabah and Sarawak the “1:2” formula applies to 1/3 allocated seats.

### Idea VIII

#### Use indelible Ink

We understand this is no longer an issue given that the EC has said that it will be used for the coming General Election. We wanted to mention it here to enter the records that we feel this is an important recommendation. Indelible ink must be used starting from the next election. This will greatly reduce the allegations of double- or even triple voting by “professional” voters. It will also add to the confidence that we have a simple system to detect people who vote more than once.

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### Idea IX

#### **Publish 'Minority Report' of this PSC**

Our last proposal concerns the operations of this PSC itself. While we talk about the need to ensure the integrity of the EC and the whole electoral process, we must also ensure the integrity of this PSC itself. It would be wasteful if the public does not trust the work of this PSC after all the hard work members of this PSC have put in.

We feel that, in the PSC's final report to Parliament, a "Minority Report" must be included as an appendix that is published together as part of the full document. The principle to be used in producing this minority report should be the same as normal parliamentary practices – i.e. all points are recorded and all votes are public.

This minority report should outline all the ideas and proposals that the PSC has rejected and those which the PSC could not achieve consensus on. If votes were taken, then how each member voted should be published too. Only by doing this the PSC can ensure the public fully trusts the processes it has employed.

#### **Summary**

To summarise, we would like to see the following changes adopted as soon as possible:

First, we want to see mandatory and equal access to public broadcasters for all contesting political parties.

Second, allow everyone to use the postal vote and allow Malaysians living overseas to be given the right to vote. We can start with a limited number of locations.

Third, we would like the electoral roll to be "open access" to all authorised bodies with a legitimate interest, including political parties.

Fourth, we would like to see a minimum 21 days campaigning period.

Fifth, lower the voting age to 18.

Sixth, we would like to see the Election Commission as a truly independent statutory body, rather than housed under the Prime Minister's office. The EC should report directly to parliament.

Seventh, we would like to see the 1:2 formula adopted as the basis for apportionment of constituencies in Malaysia. At present, the differences are too wide. A simple formula of 1:2 will be in

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keeping with the spirit of the original system where a limit was imposed on constituency size differences.

more credible for the benefit of all Malaysians regardless of political affiliations.

Eighth, indelible ink must be used starting from the next elections.

We thank the committee for giving us time today.

And finally, we would like the PSC to publish a “minority report” as part of the final report that goes to Parliament. Just like proceedings in parliament, there should be a permanent record of the ideas proposed to the PSC, what was accepted or rejected, and how each member voted.

Our suggestions given here are practical first steps towards having credible elections in Malaysia. It will go a long way in the constant indictment that Malaysia does not have “free and fair” elections. There is no point in keeping the same old system if people are fast losing faith in it.

If we do not change our electoral system now, we can foresee a situation where the people will find an alternative to make their voices heard. We dare say if the people choose another way, it will most probably not be peaceful.

We have a unique opportunity today to do something significant that will really push Malaysia to the next level. It is our hope that the Committee can set aside any political differences between the members and concentrate on how to make elections in Malaysia

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### **APPENDIX A: LOCATIONS/CITIES OVERSEAS WHERE SINGAPOREANS CAN VOTE**

- 1) High Commission of the Republic of Singapore in Australia, Canberra, Australia
- 2) High Commission of the Republic of Singapore in the United Kingdom, London, UK
- 3) Embassy of the Republic of Singapore in Japan, Tokyo
- 4) Embassy of the Republic of Singapore in the People's Republic of China, Beijing
- 5) Consulate-General of the Republic of Singapore in the People's Republic of China, Shanghai
- 6) Consulate-General of the Republic of Singapore in the Hong Kong Special Administrative Region
- 7) Embassy of the Republic of Singapore in the United States of America, Washington DC
- 8) Consulate-General of the Republic of Singapore in the United States of America, San Francisco
- 9) Consulate of the Republic of Singapore in the United States of America, New York



## 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.

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## 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.<sup>1</sup> 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.'<sup>2</sup> 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.'<sup>3</sup>

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.

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

<sup>2</sup> *Ibid*, para 2.4.21

<sup>3</sup> *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.<sup>4</sup> 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);

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<sup>4</sup> 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.<sup>5</sup>

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.

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<sup>5</sup> 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*.<sup>6</sup>

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

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<sup>6</sup> [http://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0009/47169/EC06-2006-SuppliesaleandinspectionoftheRegisterofElectors\\_20407-15011\\_\\_E\\_\\_N\\_\\_S\\_\\_W\\_\\_.pdf](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'.<sup>7</sup> "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

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<sup>7</sup> 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 register<sup>19</sup> 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.<sup>8</sup>

## **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.<sup>9</sup>

## **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

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<sup>8</sup> *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](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0006/42927/Full-ERO-FINAL.pdf)

<sup>9</sup> 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.<sup>10</sup>

## 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 it<sup>11</sup>

## I. [www.192.com](http://www.192.com) and [B4Usearch.com](http://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

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<sup>10</sup> Available at [http://pims.parliament.uk:81/PIMS/Static%20Files/Extended%20File%20Scan%20Files/LIBRARY\\_OTHER\\_PAPERS/STANDARD\\_NOTE/snbt-04070.pdf](http://pims.parliament.uk:81/PIMS/Static%20Files/Extended%20File%20Scan%20Files/LIBRARY_OTHER_PAPERS/STANDARD_NOTE/snbt-04070.pdf)

<sup>11</sup> 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.<sup>12</sup>

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.<sup>13</sup>

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<sup>12</sup> HC Deb 18 April 2006 c42W

<sup>13</sup> 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.<sup>14</sup> 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?<sup>15</sup>

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.<sup>16</sup>

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.<sup>17</sup>

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<sup>14</sup> 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>

<sup>15</sup> Ibid, p1

<sup>16</sup> Ibid, Recommendation 19

<sup>17</sup> Ibid, p 73

# IDEAS



Institute for Democracy and Economic Affairs

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