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In the light of recent developments and enquiries, the Electoral Commissioners have given further consideration to the implications of the Robertson judgment.

Sale of register under Regulation 48

In our earlier emails we advised that copies of the register should not be sold to commercial concerns pending clarification of the implications of the judgment. Beyond that, the Commission now takes the view that until the issues are resolved EROs should not sell any copies of the register pursuant to Regulation 48, irrespective of the nature of the proposed purchaser. This is based on an assessment we have reached that it is better in the interim to treat the principles underlying Mr Justice Maurice Kay's decision as not confined to the direct marketing concerns which were the actual subject of that decision, but applicable across the whole range of potential purchasers under Regulation 48.

Supply of register under Regulations 46 and 47

However, we understand that some EROs may be going further than this and refusing to provide copies of the register to those bodies entitled to receive copies pursuant to Regulations 46 and 47 of the RPA Regulations 2001. These bodies include political parties, the Electoral Commission and the Secretary of State.

The Commission remains unequivocally of the view that nothing in the Robertson judgment justifies failure or refusal to comply with the obligations under Regulations 46 and 47. To deny the register to political parties and the Electoral Commission prevents compliance with, and enforcement of, the obligations in relation to the acceptance of donations by political parties imposed by the Political Parties, Elections and Referendums Act 2000. It is therefore, in the Commission's view, contrary to the public interest and unlawful.

The Commission would regard as unacceptable a situation where another public body fails to observe its statutory duty and thus prevents the Commission from discharging its statutory obligation.

In his judgment in the Robertson case, Mr Justice Maurice Kay said

Regulation 46 requires an ERO to supply copies of the register to specified persons, free of charge and without request, for uncontroversial purposes. In similar fashion, regulation 47 provides for the supply of free copies on request to specified persons with a legitimate interest in the electoral process. Surprisingly, regulation 48 imposes upon an ERO an obligation to "supply a copy or copies of the register to any person on payment of a [prescribed] fee"

Supply of free copies of the register to political parties

Although we are firmly of the view that nothing in the Robertson judgment brings into question the obligations on EROs under Regulations 46 and 47, we would point out to political parties that to use registers for collateral or extraneous activities to that of electoral purposes, such as marketing, could well conflict with the principle underlying the Robertson judgment and thereby infringe the rights of electors. EROs may wish to make this clear on supplying the register to political parties, but in our view no liability for any inappropriate use made of the registers would attach to the ERO whether or not such a warning was provided.

We are pressing DTLR on how best to deal with the position EROs now find themselves in following the judgment. We regret it is taking longer than we would have wished to provide you with more than short term advice. But as you will recognise there are significant legal and practical issues involved in trying to find a way through the consequences of the ruling."