

Lord Harries of Pentregarth  
Sent via e-mail

17 October 2013

Dear Lord Harries

I wanted to write to thank you for the invitation from your Commission on Civil Society and Democratic Engagement to provide evidence to it on the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill ('the Bill'), which had its Third Reading in the House of Commons on 9 October and is having its Second Reading in the House of Lords on 22 October.

Given the exceptionally quick timetable for the Bill, together with other demands on our time, I regret that we will not be able to give oral evidence to the Commission. I am sorry for this disappointing reply. However I am keen to give your Commission our overall view of Part 2 of the Bill as introduced in the Lords. I have therefore included a copy of our Second Reading briefing for peers. We will also send copies of our future briefings on the Bill to your secretariat. I hope that you find this helpful and if you require technical assistance on any of the points raised in the briefing, your secretariat has the contact details for the team in the Commission that will be able to assist with this.

Our briefings have consistently made clear as the Bill has progressed our view that campaigning by people and organisations other than political parties in the run-up to elections is an important and established part of the UK democratic process; but that where significant non-party campaigning takes place, this should be transparent and properly regulated. Buts our latest briefing makes clear, following the amendments made by the Government at Commons Report stage there are a range of issues which still need to be addressed to ensure that the amended rules on non-party campaigning are proportionate and workable. In particular, we think that Parliament should consider carefully the overall impact on campaigners of widening the scope of regulated activity

while reducing the amount that they can spend before they have to register, and reducing spending limits.

I wanted also to respond to some specific questions put to the Commission in an email from your secretariat dated 17 Oct. I understand that you have concerns that you have received confused and contradictory information about (1) what is and is not covered by the current rules, (2) the degree of our involvement in the preparation of Part 2 of the Bill, and (3) the EC's view on the urgency for and timetabling of the legislation. The email sought our comments on these issues, and I have summarised our view below.

On the question of what is covered by the current rules, paragraphs 4 – 8 of our Lords Second Reading briefing summarise the scope of the current rules and of the Bill as amended at Commons Report stage. In particular, it is clear that like the current rules, the Bill will regulate campaigning activity on policies and issues that can be reasonably seen as intended to promote electoral success. This is the case even if the activity does not mention any party or candidates, or if it can also reasonably be seen as intended to do other things as well. In some circumstances, a charity campaigning on policy issues may therefore quite legitimately fall within the scope of the rules, both as they stand and under the Bill. Again, should your secretariat require technical assistance on any of the points this raises, they are welcome to contact the team in the Commission responsible for this.

On our view of the need for and urgency of the legislation, we had made recommendations for change in our own regulatory review, which was published and sent to the Government in June before the Bill was introduced. This review noted that while some of its 50 recommendations, which simplified the rules, could usefully be implemented in time for the 2015 UK Parliamentary General Election regulated period, others would need further work and consultation. We also made it very clear that widening the scope of regulated third party activity to strengthen the current rules was in the latter category. In part this is because of the nature of third party campaigning, and the need to set a balance between enabling participation in democratic debate and having appropriate controls on campaigning that may affect the outcome of elections. But it is also our experience as the political regulator that third parties, because of their diverse nature, are very different from political parties, and changes to the rules therefore need careful consideration and testing to avoid unintended consequences.

That is why we formed the view that pre-legislative scrutiny and effective consultation with potential campaigners, as well as with the Electoral Commission, should have played an important part in the development of these changes. The Commission of course made clear to the Government, when asked, that if it had decided it wanted to

make changes in this area it was important that they were settled in good time before the regulatory period for the UK Parliamentary General Election, which begins in May 2014. There would be obvious practical implications for campaigners' ability to understand and comply with the new rules if they were not. . We have also been clear throughout all of our briefings on this Bill that we have concerns about its timetabling, the scale of changes it makes to different aspects of the regime beyond those we recommended in our regulatory review, the lack of consultation with those affected by it, and in some cases concerns with the evidence underpinning it (for example in relation to the Impact Assessment provided with the Bill).

Finally, on our involvement in the preparation of Part 2 of the Bill, we made it clear in our written evidence to the Political and Constitutional Reform Committee in August that "we were not consulted on the detail of the Bill's provisions before the Bill was published, although we were shown some draft clauses shortly before publication"<sup>1</sup>. I also made clear in my oral evidence to the Committee that, "my Board saw the Bill for the first time on the day on which it was published. There was no formal consultation."<sup>2</sup> We were also not consulted on the change to the Commission's remit to introduce a "duty... to take all reasonable steps to secure compliance".

I hope that this, along with our briefing, provides a helpful summary of our views for you to consider as the Commission develops its work. I look forward to seeing your final report

Yours sincerely,



**Jenny Watson**  
**Chair**

Approved by the Chair and electronically signed in her absence.

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<sup>1</sup> See paragraph 11 of Electoral Commission evidence - <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpolcon/601/601vw.pdf>

<sup>2</sup> See response to Question 273 <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpolcon/601/601ii.pdf>