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Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill

In my letter of 24th September I promised to respond fully to the Committee's question about the human rights compatibility of amendments to Part 2 of the Bill once tabled for Report stage (in response to question 8 of the Committee's original letter). Now that the amendments have been published (which I attach for the Committee's information) I am happy to respond to the Committee's question.

The amendments that the Government has tabled for Report stage are to revise the wording of the test that determines whether expenditure does or does not amount to "controlled expenditure", and to make amendments to the list of activities which count towards it as set out in Schedule 3 of the Bill.

In order to be consistent with the existing definition of campaign expenditure by political parties in the Political Parties Elections and Referendums Act 2000 (PPERA), clause 26 of the Bill as drafted for introduction amended the test for controlled expenditure so that expenditure had to be "for the purposes of, or in connection with "promoting or procuring electoral success, or enhancing the standing, of parties or candidates." As I said at Committee stage, and confirmed in my letter to you of 24th September, the Government recognised the anxiety that has been caused by that slight change to the existing PPERA test. I therefore committed to revert to the existing PPERA test that controlled expenditure would be incurred only where expenditure could "reasonably be regarded as intended to" promote or procure electoral success.

The Electoral Commission tells us that this test is well understood by the Commission and by campaigners, and avoids concerns about widening of the definition of campaigning captured by the Bill. The amendments I have introduced for Report therefore propose that the language of the test set out at clause 26 reverts to the existing terms of PPERA – expenditure must "reasonably be regarded as intended to" promote or procure electoral success. The amendments will also remove the second limb of the existing test – that expenditure may be regulated if it "otherwise enhances the standing" of parties and candidates. I do not think that this is likely to significantly alter the type of expenditure regulated, but again I recognise that the potential breadth and ambiguity of that language in relation to third parties was unhelpful and we have taken steps to address it.

The description of the materials and activities that are regulated is also modified to provide greater clarity. In particular, the amendments ensure that the existing 'publicity test' for election material is carried across to the provisions relating to materials and activities listed in Schedule 3 to the Bill. The matters listed do not cover materials or activities unless they involve the public in a specified way. Material or activities which do not – for example material available only to members of the third party or meetings to which the public are not admitted – will accordingly not be regulated. This is consistent with the existing test for third party election material regulated by PPERA. We believe that these amendments provide greater clarity and reassurance to campaigners.

The concern raised at earlier stages by both the Electoral Commission and campaigners was that the new language of both the test and the activities listed significantly widened the expenditure that would be regulated. In reverting to the original PPERA language, and tightening the definitions of other activities, we are taking steps to directly address those concerns. The overall purpose and effect of these amendments is entirely consistent with the policy intent behind the existing provisions in clause 26 and Schedule 3. The arguments which I set out in relation to the necessity of, and the justification for, part 2 of the Bill in my response to your Question 4 in my letter of 24th September therefore apply equally to the amendments that we have tabled.

As I said in that letter, controls on third party spending were first set out in Part 6 of PPERA. The purpose of these controls is to seek to limit national expenditure by third parties in support of or in opposition to political parties, in the same way as the controls in section 75 of the Representation of the People Act 1983 (RPA) seek to control expenditure by third parties in support of or in opposition to individual candidates.

A number of countries have controls on the activities of third parties, which are necessary to ensure that the outcome of elections is not determined by who has the wealthiest supporters and to prevent third parties being used by political parties as a way around other controls.

In the context of possible future changes to the regulation of party funding, the 13th report of the Committee on Standards in Public Life (CSPL) noted that, despite the PPERA and RPA controls, the activities of third parties would require further close attention because of the risk that they may be used by political parties to evade spending limits. The Government thinks that this risk may also arise under the current arrangements given the relatively more onerous reporting obligations on political parties.

The differences in the regulatory regime for party and non-party campaigners was also an issue which was highlighted as a potential gap in the rules in the Electoral Commission's 2013 report '*A regulatory review of the UK's party and election finance laws – Recommendations for change*'. Even where third parties are not acting in concert with political parties, the amount that they spend, if it is directed to supporting a particular party or group of candidates, can have a significant impact on election results. In line with the legitimate aim of ensuring that the amount of money spent is not the most important factor in succeeding in elections it is therefore necessary to control the amount that third parties spend in connection with influencing the outcome of elections.

The amendments that the Government is bringing forward at this stage remain consistent with the recommendations of the CSPL and Electoral Commission reports. The Government's view is that they are necessary to maintain the effective control of third party spending at elections, in order to pursue the legitimate aim of securing greater financial equality between parties and candidates contesting elections.

For the reasons that I have set out above, the Government is confident that the measures are compatible with Articles 10 and 11 of the ECHR. I hope this further information is helpful.

Rt Hon Andrew Lansley CBE MP
Leader of the House of Commons

Dr. Hywel Francis MP
Chair, Joint Committee on Human Rights

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