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Bernard Jenkin MP
Chair
Public Administration and Constitutional Affairs Committee
House of Commons
London
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6 May 2016

Dear Bernard,

Thank you for your email of 2 May regarding section 125 of the Political Parties, Elections and Referendums Act 2000 (PPERA). You also raised this issue with the Prime Minister when he appeared before the Liaison Committee on 4 May.

I want to assure you that the Government takes very seriously its statutory obligations. We have taken legal advice on this issue, and this letter has been approved by the Government's lawyers.

The relevant legislation states clearly that Ministers and public bodies are prevented from publishing the categories of material set out in section 125(1) of PERA during the 28-day period ending with the referendum (other than in response to specific requests). The Government will be complying in full with these legislative requirements.

Accordingly, during the 28-day period, the Government will not be publishing any new material of a kind falling within section 125(1) of PERA. The eureferendum.gov.uk website (to which you referred) will effectively be frozen, with no new content added. We will also be removing all links to the website from government channels such as GOV.UK, and taking the same approach to voter registration communications activity. The materials already on the website will not be new – they will all have been published before the start of the 28-day period. Individuals will be able to search out information that is already on the public record, but they will actively have to do this.

We do not consider that section 125 imposes a legal obligation to remove previously published material from the web. In your exchange with the Prime Minister at the Liaison Committee, you mentioned the case of *Byrne v Deane* and other "more recent rulings" to contest this point. We do not believe that precedents from the law of defamation, in particular a case from 1937 (obviously long-predating the internet), are helpful in interpreting PERA; the factual and legal contexts here are completely different. And even in *Byrne v Deane*, the court said that what constituted "publication" depended on all the facts of the case.

The Government's clear view is that, for the purposes of PPERA, material is to be regarded as "published" on a website when it is made available for the first time.

The logic of your position, and the implication of your remarks at the Liaison Committee, is that even hard copy materials published before the 28-day period would have to be somehow removed or suppressed at the start of that period. In our view, that is not intended by section 125. Nor is it remotely practical.

In summary, we agree that the Government has a duty not to make new information available in the final 28 days. But we do not consider that section 125 imposes a legal obligation to cleanse the web of already published material; or, for example, to close down the Government's pre-existing online voter registration service. Rather, this legislation was aimed at preventing new material from being put into the public domain by the Government during the 28-day period.

Yours,


JEREMY HEYWOOD