

Bernard Jenkin MP
Chair
Public Administration and Constitutional
Affairs Committee
House of Commons
London
SW1A 0AA

11 May 2016

Dear Mr Jenkin

Thank you for your email of 9 May regarding section 125 of the Political Parties, Elections and Referendums Act 2000 (PPERA) in relation to the European Union Referendum.

I understand the Government intends that its website www.eureferendum.gov.uk will continue to be available to the public during the 28 day period from 27 May to 23 June. You are concerned that this may breach section 125 of PERA. You have forwarded advice received from Speaker's Counsel at the House of Commons on this issue. You have now received a letter from Jeremy Heywood dated 6 May that sets out the Government's position on this matter. Mr Heywood's letter states that the website will effectively be frozen and all links to the website from government channels will be removed. You have asked for our view on the Government's position.

In the Commission's view, allowing continued access to a website that was published before the 28 day period, whether or not any new content is subsequently added, is likely to amount to "publishing" under section 125 of PERA, given the wide definition of "publish" in section 125(4)(a). Accordingly, we consider that relevant material (falling within section 125(1)) made available in this way by the Government is likely to be prohibited under section 125(2) unless an exception under section 125(3) applies.

The exception that appears relevant here is that under section 125(3)(a). This exception concerns "material made available to persons in response to specific requests for information or to persons specifically seeking access to it". With regard to material searchable on the internet, we consider that this exception would cover content that was originally published prior to the 28 day period, which remained available to

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anyone specifically seeking access to that content within the 28 days. Therefore, provided the website is designed in such a way that members of the public need to take active steps to seek access to the content, in our view the exception under section 125(3)(a) would apply. From Mr Heywood's letter, we understand this to be the government's intention. On this basis, it appears to us that there will be no breach of section 125(2).

I hope that this reply is helpful to you. We will, as you would expect, return to this issue in our post-referendum report but if there is anything more that you would like to know now, please do ask your office to contact Karim Aziz on 020 7271 0512 or by email at kaziz@electoralcommission.org.uk.

Yours sincerely

A handwritten signature in black ink that reads "Jenny Watson". The signature is written in a cursive, flowing style.

Jenny Watson
Chair