

European Union Referendum Bill House of Lords Third Reading Briefing

1 December 2015

Introduction

This briefing sets out the Electoral Commission's views on amendments published in the Marshalled list this morning ahead of Third Reading of the European Union Referendum Bill in the House of Lords on 1 December.

We have not commented on all amendments tabled in relation to this Bill as it progressed through Parliament, and the absence of comment does not imply that we support them. In particular, decisions on the franchise for the referendum and on the level for spending limits for campaigners are important issues for Parliament to decide on, although the Commission has commented on the practical implications and workability of any amendments to the Bill in these areas where needed. All our previous briefings, which also include an explanation of the Commission's role in referendums are available on our website [here](#).

This briefing covers amendments relating to:

- Designation of a lead campaigner on one side only
- Pre-poll transparency

Schedule 1: Campaigning and financial controls

Amendment 1 tabled in the name of Baroness Anelay of St Johns would allow the Electoral Commission to designate a lead campaigner on only one side of the referendum debate if there are either no applicants, or if there is no applicant which meets the statutory test of adequately representing those campaigning on that side of the debate. In the case of designation on one side only, the lead campaigner would be entitled to a higher spending limit, a free mailing to voters, and access to public meeting rooms, but would not be entitled to a publicly funded grant or referendum broadcasts.

The Electoral Commission supports this amendment.

This amendment implements recommendations that we made following the 2011 referendums.

Based on our experience of those referendums, we recommended that steps should be taken to reduce the potential advantages of the current PPERA designation model for a

prospective lead campaigner to decide against applying for designation – for example if a campaigner sees a tactical advantage in not seeking designation to frustrate the other side’s access to the additional campaigning benefits. We also recommended that one-sided designation should only be considered alongside the overall package of benefits available to designated campaigners in order to balance the reduced incentive to make a tactical decision against applying for designation, whilst not artificially creating a one-sided campaign.

In the case of one-sided designation at the EU referendum, this amendment would mean that the lead campaigner will not be entitled to campaign broadcasts or a publicly funded grant. In relation to campaign broadcasts in particular, this approach will address concerns raised by broadcasters about having to show a referendum broadcast for only one outcome. It would also go some way to mitigate the risk that voters may be less easily able to access arguments for one of the referendum outcomes compared to the other.

Amendments 2 and 3 tabled in the name of Lord Hamilton of Epsom would restrict the Commission’s ability to designate a lead campaigner on only one side of the referendum debate. The Commission would only be able to designate a lead campaigner on one side if there were no applicants for designation on the other side.

The Electoral Commission does not support these amendments.

Our experience from previous referendums indicates that we may receive frivolous or non-serious applications for designation as a lead campaigner, which could never meet the statutory test of adequately representing those campaigning on that side of the debate. If the Commission was restricted in the way this amendment intends, such a frivolous or non-serious application on one side would effectively rule out the prospect of being able to designate a single lead campaigner on the other side.

Schedules 1 and 2: Campaigning and financial controls and Control of loans etc. to permitted participants

Amendments 10, 11, 13 to Schedule 1, together with amendments 19, 21 and 23 to Schedule 2 tabled in the name of Baroness Anelay of St Johns will provide for the first pre-poll donation and loans return period to end on the seventh day of the referendum period and for the return to be submitted to the Electoral Commission within seven days thereafter.

The Electoral Commission supports these amendments.

These amendments would provide clarity for campaigners about when the first pre-poll donation and loans return period will end and by when the first return must be submitted to us. Although the start date for the referendum period will be set in Regulations after Royal Assent of the Bill, along with the dates for subsequent pre-poll returns, advance

notice of the need to submit a return within the first two weeks of that period once set will assist campaigners with their administrative planning.

Amendment 12 to Schedule 1 together with amendment 22 to Schedule 2 tabled in the name of Baroness Anelay of St Johns, make a number of changes to the donation reporting rules. The amendments will require permitted participants¹ to report the sources of all funding that they receive to meet referendum expenses after commencement of this provision (including before the start of the referendum period). We have only had limited time since the amendments were published to consider the detailed implications of these changes.

The Electoral Commission supports these amendments, which will increase transparency of information about the sources of funding received by referendum campaigners. Increased transparency during the months before the referendum poll will help encourage campaigners to ensure that they only accept donations from permissible sources², regardless of whether they are legally required to do so.

Our briefing issued in advance of the first day of Report Stage consideration of the Bill in the House of Lords highlighted a concern we had identified about the controls on donations received by campaigners before they register as a permitted participant at the referendum.

Having considered in detail the application of these donation controls for the EU referendum, we noted that it is not clear that the permissibility requirements and post-poll reporting obligations would apply to donations received before a campaigner registers with us as a permitted participant. These funds could then be used for campaigning during the referendum period up to polling day.

We have worked with the UK Government to identify whether the Bill could be clarified to fully address this concern, but it has not been possible to do so in the time available. Nevertheless, in addition to these amendments we will use our guidance for referendum campaigners to strongly encourage them to only accept donations from permissible sources prior to registering with us.

For further information, please contact **Mazida Khatun**, Senior Communications Officer on 020 7271 0583 or mkhatun@electoralcommission.org.uk.

¹ Permitted participants are campaigners that have registered with the Electoral Commission because they have spent, or intend to spend, more than £10,000

² Permissible sources are individuals and organisations with specified links to the UK and Gibraltar that will be permitted to donate money to campaigners for the purpose of referendum spending during the minimum 10 week regulated period.