From:	FOI
To:	[redacted]
Subject:	FOI 186/18 - Response
Date:	08 January 2019 15:14:23
Attachments:	Bernard Jenkin to Jenny Watson - S125 and website - 26-May 2016 - REDACTED.pdf BJ to JW email 9 May 2016 - REDACTED.pdf BJ to JW email 9 May 2016 attachment 2016-05-06 Letter to Bernard Jenkin MP - Section 125 of PPERA (003) - REDACTED.pdf FW EU referendum s125 of PPERA and the eureferendum gov uk website REDACTED.pdf FW s_125 LTT CCM0160732 - REDACTED.pdf PosnerB-to-Rees-MoggJ-2018-09-07 - REDACTED.pdf RE s.125 LTT REDACTED.pdf Rees-MoggJ-to-HolmesJ-2018-08-19 - REDACTED.pdf WatsonJ-to-JenkinB-2016-05-11-s125 PPERA - REDACTED.pdf WatsonJ-to-JenkinB-Section125-response-27-05-2016 - REDATED.pdf

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Dear [redacted],

Our Ref: FOI 186/18

Thank you for your email to the Electoral Commission dated **22 November 2018.**

The Commission aims to respond to requests for information promptly and I regret that it has not been possible to respond within the statutory timeframe of twenty working days on this occasion.

Your request is in bold below followed by our response.

1. **Please release any correspondence regarding UK Gov Brexit Referendum Website**
2. **Did Bob Posner or Commission legal (or other) dept provide any advice to the UK Government on leaving up pro-EU material during the 'purdah' period.**
3. **How did the Commission interpret s125 with regards to Links to other Government websites?**

Our response is as follows:

We have identified that we hold some information relevant to your request. Some of the information we are able to provide in response to your request has been redacted to remove some personal information relating to individuals.

You also ask whether Bob Posner or any other Commission staff provided advice to the UK Government on leaving up pro-EU material during the 'purdah' period, and how the Commission interpreted s125 with regards to links to other Government websites.

Section 125 of PPERA restricted the publication of material about the referendum by UK governments, ministers, local authorities and other public bodies in the 28 days before the referendum (27 May - 23 June 2016). The Commission issued general guidance on the restrictions in section125 of the Political Parties, Elections and Referendums Act 2000 (PPERA), and did not issue guidance specifically to government.

There is an exception to this restriction under section 125(3)(a), which 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 considered that this exception would cover content that was originally published prior to the 28 day period, which remained available to anyone specifically seeking access to that content within the 28 days. Therefore, provided the website was designed in such a way that members of the public needed to take active steps to seek access to the content, in our view the exception under section 125(3)(a) would apply. We considered that the website eureferendum.gov.uk was designed in this way, and on that basis, it appeared to us that there was no breach of section 125(2).

The Commission made clear its position in relation to the restrictions on promotional

activity by both central and local government both before and after the referendum. The Commission gave evidence to the Public Administration and Constitutional Affairs Committee (PACAC) on this issue. Our written evidence to PACAC in July 2015 is on the following link:

http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/public-administration-and-constitutional-affairs-committee/eu-referendum-bill-part-one-purdah-and-impartiality/written/18717.html

A transcript of our oral evidence to PACAC in July 2015 is on the following link:
http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/public-administration-and-constitutional-affairs-committee/eu-referendum-bill-part-one-purdah-and-impartiality/oral/18739.html

A transcript of our oral evidence to PACAC in December 2016 is on the following link:
http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/public-administration-and-constitutional-affairs-committee/lessons-learned-from-the-eu-referendum/oral/44512.html

We also highlighted the issue in our referendum report, and recommended that the legislation should be clarified for future referendums. I refer you to pages 101-104 and recommendation 15.
https://www.electoralcommission.org.uk/__data/assets/pdf_file/0008/215279/2016-EU-referendum-report.pdf

I trust that this information satisfies your request. The Commission strives to be an open, transparent authority, but in some circumstances we cannot responsibly release requested information, and we ask for your understanding in this regard.

If you are not satisfied with this response, please note that the Commission operates a review procedure, details of which can be found on the Commission website at:
http://www.electoralcommission.org.uk/about-us/freedom-of-information-requests/how-do-I-make-an-foi-request

Please also note that if you have exhausted all internal Commission review procedures and you are still not satisfied you have the right to appeal to the Information Commissioner. Details of this procedure can be found on the ICO website:
https://ico.org.uk/

Yours sincerely,

[redacted]
Access to Information Officer (FOI and DPA)

The Electoral Commission
FOI@electoralcommission.org.uk
electoralcommission.org.uk

PACAC (Public Administration and Constitutional Affairs Select Committee)
House of Commons · London SW1A 0AA
Tel 020 7219 3268 Email pacac@parliament.uk Website www.parliament.uk/pacac

Jenny Watson,
Electoral Commission,
3 Bunhill Row
London
EC1Y 8YZ

26 May 2016

s.125 PPERA 2000 and eureferendum.gov.uk

Dear Jenny

Thank you for your letter, dated 11 May 2016, responding to my inquiry regarding the status of the Government's EU Referendum website, www.eureferendum.gov.uk, during the 28 day restricted period, under s.125 of the Political Parties Elections and Referendums Act 2000, which begins tomorrow. Since your letter, we have taken further advice from Sir Michael Carpenter that is now published on our website (http://www.parliament.uk/documents/commons-committees/PACAC/Correspondence/Note-from-Michael-Carpenter-Speakers-Counsel-Sect-125-PPERA-17-05-16.pdf) and a copy is attached to this letter.

I also attach a copy of my letter to the Cabinet Secretary and an exchange of letters between Rt Hon Iain Duncan Smith et al and the Cabinet Secretary.

It is highly significant that you agree that "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 PPERA". This corresponds with our own legal advice, and it is clear from Sir Jeremy's response to my colleagues' letter that the government has now retreated from this position.

Your letter has however suggested that continued access to the website could be permissible under the exception provided in s.125(3), concerning "material made available to persons in response to specific requests for information or to persons specifically seeking access to it". As a result you conclude that "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".

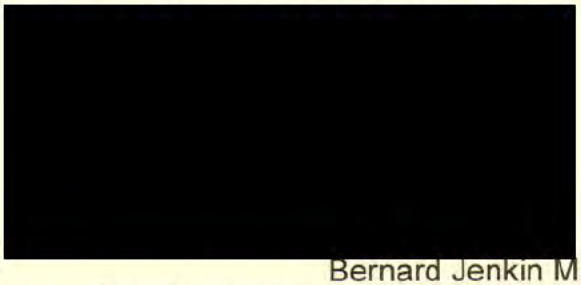
As our latest legal advice notes, the words "specifically seeking access" in s.125(3) require this exemption to be read in a restrictive way and s 125 would be deprived of its effect if the website could continue to be signposted on the gov.uk website or accessible via search engines such as Google or Yahoo.

p 1 of 2

As Speaker's Counsel explains –

> "Simply clicking on a website does not strike me as 'specifically seeking access', whereas gaining access to information hidden behind a password by a person who knows what to look for and clicks on a particular icon might well be. It seems to me that 'specifically' has to be given some weight, and that to provide the information to a person who has responded to a generic signpost on the website (as would occur with general browsing) is not covered by the exception. Even less would this be true of being directed to the material by a search engine. If the exception were to cover such visits to a website, then the exception would deprive section 125(2) of any effect, since the material would remain published on the website and readily available to all. There would, in substance, be no difference between the period before the statutory 'purdah' and thereafter."

It would be helpful if you could also make it clear in your advice to the Government that that the government must adopt this reading of s.125(3) in respect of any relevant material on the gov.uk site in order to comply with it, including ensuring that the website cannot be found on search engines and is not signposted in any form, during the 28 day period, on the Government's website, www.gov.uk.



Bernard Jenkin MP
Chairman of the Public Administration and Constitutional Affairs Committee

Attached: Speaker's Counsel Opinion : 17 May 2016

Tom Hawthorn

From: JENKIN, Bernard <bernard.jenkin.mp@parliament.uk>
Sent: 09 May 2016 17:31
To: Jenny Watson; [redacted]
Subject: Fwd: EU Referendum, Section 125 of PPERA, and the EUreferendum.gov.uk website
Attachments: image003.jpg; ATT00001.htm; 2016-05-06 Letter to Bernard Jenkin MP - Section 125 of PPERA.pdf; ATT00002.htm

Dear Jenny

Any reaction to this? PACAC will be publishing this correspondence tomorrow, after we have met. We will also be publishing Speaker's Counsel's advice, which is unequivocal in its condemnation of the government's position.

Will the EC be in a position to express an opinion on this matter?

When could we have a further conversation on the matter?

Thanks

Bernard

Bernard Jenkin MP (Harwich and North Essex)
Chair, Public Administration and Constitutional Affairs Committee (PACAC)
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www.bernardjenkin.com
Follow Bernard on http://twitter.com/bernardjenkin
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Begin forwarded message:

From: [redacted]@cabinetoffice.gov.uk>
Date: 6 May 2016 at 13:49:05 BST
To: "JENKIN, Bernard" <bernard.jenkin.mp@parliament.uk>
Subject: Re: EU Referendum, Section 125 of PPERA, and the EUreferendum.gov.uk website

Dear Bernard,

Please find attached a letter from Jeremy in response to your email.

Best wishes,

[redacted]

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Cabinet Office

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

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 PPERA 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 PPERA. 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 PPERA; 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.



JEREMY HEYWOOD

Tom Hawthorn

From: Bob Posner
Sent: 03 May 2016 10:20
To: [redacted]; [redacted] Louise Edwards
Cc: Tom Hawthorn; [redacted] Louise Footner
Subject: FW: EU Referendum, Section 125 of PPERA, and the EUreferendum.gov.uk website

For info.

From: [redacted]
Sent: 03 May 2016 08:24
To: [redacted]; Bob Posner; [redacted]; [redacted]
Cc: Claire Bassett
Subject: RE: EU Referendum, Section 125 of PPERA, and the EUreferendum.gov.uk website

Thanks, just looping others in ([redacted] / [redacted] followed this up by saying [redacted] realised on a second read this wasn't addressed to [redacted] so hasn't acknowledged)

From: [redacted]
Sent: 02 May 2016 18:22
To: Bob Posner
Cc: Claire Bassett; [redacted]
Subject: Fwd: EU Referendum, Section 125 of PPERA, and the EUreferendum.gov.uk website

Bob - see the below which is self explanatory. S 125 is not a matter where I am recused so happy to speak further tomorrow. I have acknowledged receipt.

J

Sent from my iPhone

Begin forwarded message:

> **From:** "JENKIN, Bernard" <bernard.jenkin.mp@parliament.uk>
> **Date:** 2 May 2016 at 09:48:03 BST
> **To:** "Jeremy Heywood [redacted]@cabinet-office.gsi.gov.uk)" [redacted]@cabinet-office.gsi.gov.uk>, "Jeremy Heywood

[redacted]@cabinet-office.gsi.gov.uk)" [redacted]@cabinet-office.gsi.gov.uk>
Cc: [redacted]@electoralcommission.org.uk>, [redacted]@electoralcommission.org.uk>, "[redacted]@no10.x.gsi.gov.uk)" [redacted]@no10.x.gsi.gov.uk>, Liaison Committee <LiaisonCommittee@parliament.uk>, [redacted]@parliament.uk>, "[redacted]@parliament.uk>, "[redacted]@parliament.uk>, "DAVIES, Dr Rebecca" [redacted]@parliament.uk>, "EVANS, Adam" <evansab@parliament.uk>, [redacted]@parliament.uk>, "HOLLIS, Rhiannon" [redacted]@parliament.uk>, "HANKIN, Iwona A" [redacted]@parliament.uk>, "[redacted]@parliament.uk>, "[redacted]@parliament.uk>, "[redacted]@parliament.uk>, "[redacted]@parliament.uk>, "BARRON, Kevin" <kevin.barron.mp@parliament.uk>, "BERESFORD, Paul" <paul.beresford.mp@parliament.uk>, "BETTS, Clive" <clive.betts.mp@parliament.uk>, "BLACKWOOD, Nicola" <nicola.blackwood.mp@parliament.uk>, "BLUNT, Crispin" <crispin.blunt.mp@parliament.uk>, "BRIDGEN, Andrew" <andrew.bridgen.mp@parliament.uk>, "BROWN OF EATON-UNDER-HEYWOOD, Lord" [redacted]@parliament.uk>, "CARMICHAEL, Neil" <neil.carmichael.mp@parliament.uk>, "CASH, William" <william.cash.mp@parliament.uk>, "DAVIES, David" <david.davies.mp@parliament.uk>, "ELLMAN, Louise" <louise.ellman.mp@parliament.uk>, "FIELD, Frank" <frank.field.mp@parliament.uk>, "GRIEVE, Dominic" <dominic.grieve.mp@parliament.uk>, "HILLIER, Meg" <meg.hillier.mp@parliament.uk>, "IRRANCA-DAVIES, Huw" <huw.irrancadavies.mp@parliament.uk>, "JENKIN, Bernard" <bernard.jenkin.mp@parliament.uk>, "JONES, Helen (MP)" <helen.jones.mp@parliament.uk>, "LEWIS, Julian" [redacted]@parliament.uk>, "MACNEIL, Angus" <angus.macneil.mp@parliament.uk>, "MCCONALOGUE, Jim" <MCCONALOGUEJ@parliament.uk>, "MEARNS, Ian" <ian.mearns.mp@parliament.uk>, "MILLER, Maria" <maria.miller.mp@parliament.uk>, "NEILL, Bob" <bob.neill.mp@parliament.uk>, "NORMAN, Jesse" <jesse.norman.mp@parliament.uk>, "PARISH, Neil" <neil.parish.mp@parliament.uk>, "ROBERTSON, Laurence" <laurence.robertson.mp@parliament.uk>, "TWIGG, Derek" <derek.twigg.mp@parliament.uk>, "TWIGG, Stephen" <stephen.twigg.mp@parliament.uk>, "TYRIE, Andrew" <andrew.tyrie.mp@parliament.uk>, "VAZ, Keith" <keith.vaz.mp@parliament.uk>, "WALKER, Charles" <charles.walker.mp@parliament.uk>, "WIGGIN, Bill" <bill.wiggin.mp@parliament.uk>, "WISHART, Peter" <pete.wishart.mp@parliament.uk>, "WOLLASTON, Sarah" <sarah.wollaston.mp@parliament.uk>, "WRIGHT, Iain" <iain.wright.mp@parliament.uk>
Subject: EU Referendum, Section 125 of PPERA, and the EUreferendum.gov.uk website

Dear Jeremy

I am writing to ask you to prevent what would be a clear and serious breach of the law and of the undertakings you gave to my Committee in oral evidence on the question of Section 125 of the Political Parties, Elections and Referendums Act 2000 (PPERA). I am copying this email to the Chair of the Electoral Commission, to the Attorney General, to the Prime Minister's chief of staff, and to members of the House of Commons Liaison Committee, before whom the Prime Minister is due to appear on Wednesday.

Section 125(1) of the PPERA explicitly prohibits and restricts central government from publishing materials during the last 28 days of a referendum period, which:

(a) provides general information about a referendum to which this Part applies;
(b) deals with any of the issues raised by any question on which such a referendum is being held;
(c) puts any arguments for or against any particular answer to any such question; or
(d) is designed to encourage voting at such a referendum.

The prohibition includes the publication of materials "published during the relevant period by or on behalf of any Minister of the Crown, [and] government authority" (Section 125(2)(a)).

In relation to the EU Referendum, this means that nothing should be published during the 28 day period from 27 May 2016. Section 125(4)(a) explains that publish should be defined as meaning to "make available to the public at large, or any section of the public, in whatever form and by whatever means (and "publication" shall be construed accordingly)".

The Government has launched its eureferendum.gov.uk website at a cost of nearly £3 million. The Government's position on the EU referendum also features extensively across the gov.uk online platform, including as a topic through the weblink: https://www.gov.uk/government/topical-events/eu-referendum and in recent days a banner has appeared on a number of sections of the gov.uk websites advising people to click a link about the referendum which takes them to the eureferendum.gov.uk website.

Although Section 125(3) enables central government to publish materials about the holding of the poll and provisions in Section 8 of the European Union Referendum Act 2015 enable the Government to undertake routine day-to-day business on EU matters, it would clearly breach Section 125 of PPERA for the Government to continue to publish online its EUreferendum.gov.uk during the 28 day relevant period as well as the other web links referred to. These quite clearly relate to the Government's position on the EU Referendum question to support the arguments for remaining in the EU and seek to encourage voters to vote in that particular manner too.

However, the Government has committed itself to breach Section 125 of PPERA by maintaining these materials on the gov.uk online platform during the relevant 28 period. In response to a **Written Parliamentary Question** explicitly asking the Government if the website EUreferendum.gov.uk would be removed from the internet during the 28 day period, the Government in its response committed only not to add new content. It made it clear that the Government would keep the website live so that, in their words, "the public continue to have access to factual information throughout the Referendum campaign." I have also enclosed a copy of the question and answer for your reference. However, maintaining the website and these materials online is publishing them within the definition of Section 125(4)(a) of PPERA, therefore, their presence on the internet facilitated by the gov.uk online platform during the 28 day period would in itself be a breach of the law.

Much of the material which the government claims to be 'facts' on this issue is contentious and is the subject of extensive debate during the EU Referendum campaign. As such it would be in breach of the law for taxpayer-funded resources to continue to maintain the publication of this material online during the 28 day period to which the provisions of Section 125 of the PPERA apply. Moreover, the extent to which this material is being published and the cost and the value to the Remain campaign is significant and if a non-governmental body was promoting a particular view in the Referendum to this level they would be regulated accordingly.

Please can you issue appropriate ensure that this campaign material is removed by 27th May to ensure compliance with Section 125 of PPERA.

I very much hope that the written answer given to me is a temporary lapse of no significance and that you will quickly ensure that the government complies with the law. I look forward to your reply in time for Wednesday's meeting of the Liaison Committee.

Yours sincerely,

Bernard

Bernard Jenkin MP (Harwich and North Essex)
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House of Commons, LONDON SW1A 0AA
www.bernardjenkin.com

Follow Bernard on http://twitter.com/bernardjenkin

cc. [redacted], Chair, Electoral Commission
Jeremy Wright MP
[redacted] Office of the Prime Minister
Members of the House of Commons Liaison Committee

UK Membership of EU: Referendums:Written question - 33477

Q

Asked by Mr Bernard Jenkin
(Harwich and North Essex)
[N]
Asked on: 11 April 2016

Cabinet Office

UK Membership of EU: Referendums

33477

To ask the Minister for the Cabinet Office, with reference to the press release entitled Government responds to the public desire for EU facts published on 6 April 2016, what proportion and how much of the £2,894,064 will be spent on digital promotion and a website as part of the EU referendum campaign; and whether the website eureferendum.gov.uk will be removed from the internet during the period in which section 125 of the Political Parties, Elections and Referendums Act 2000 applies.

A

Answered by: John Penrose
Answered on: 14 April 2016

The Government published details of the cost of the production and delivery of this public information leaflet on 6th April. It is not possible to provide a further breakdown of these figures, as this would compromise the commercial confidentiality of Royal Mail and the relevant printers.

The Government has confirmed that a budget of £2.894,064m has been allocated for digital promotion and the operation of the EUreferendum.gov.uk website. This will be a key means through which the public can access factual information on the Referendum question.

It is important to ensure that the public continue to have access to factual information throughout the Referendum campaign. The Government has been clear that it will comply fully with the statutory restrictions in place during the 28 day period from 27th May 2016. No new content will be added to the EUreferendum.gov.ukwebsite during this period.

Work on the leaflet and the website was taken forward by Cabinet Office and No 10 staff, as part of their on-going responsibilities and it is not possible to separate out the cost without incurring disproportionate cost.

Grouped Questions: 33476 | 33449 | 33450 | 33451

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From: [redacted]
Sent: 02 June 2016 11:05
To: [redacted]@electoralcommission.org.uk>; [redacted]@electoralcommission.org.uk>; [redacted]@electoralcommission.org.uk>; [redacted]@electoralcommission.org.uk>; [redacted]@electoralcommission.org.uk>; [redacted]@electoralcommission.org.uk>; [redacted]@electoralcommission.org.uk>; [redacted]@electoralcommission.org.uk>; [redacted]@electoralcommission.org.uk>; [redacted]@electoralcommission.org.uk>; Victoria Fox <[redacted]>; [redacted]@electoralcommission.org.uk>; [redacted]@electoralcommission.org.uk>; [redacted]@electoralcommission.org.uk>
Subject: FW: s.125 LTT CCM:0160732

Hi all,

Please see below for agreed LTT on complaints/questions about breaches of Section 125. I'll be allocating the queries we've had so far on this today. The lines below should cover the most common questions we are getting, but let me know if there's anything you aren't sure about.

Thanks

[redacted]

General complaints about breaches of s.125:
The rules for the EU Referendum place restrictions on the publication of material by governments, Ministers, local authorities and other public bodies in the 28 days before the referendum. The restrictions prevent the publishing of material (other than in response to specific requests for material, and subject to certain other exceptions) that:

- provides general information about the referendum;
- deals with any of the issues raised by the referendum question;
- puts arguments for or against any outcome; or
- is designed to encourage voting at the referendum

The Electoral Commission has no powers under PPERA to sanction bodies who do not comply with these restrictions. However, we will monitor and take all reasonable steps to secure compliance with the restrictions.

We have published a factsheet explaining how the restrictions apply, which also gives contact details for the appropriate body if you are concerned that the restrictions have been breached. You can find the factsheet here:

http://www.electoralcommission.org.uk/__data/assets/pdf_file/0010/194635/Public-Bodies-and-EU-Referendum-material.pdf

Government websites:
The rules for the EU Referendum place restrictions on the publication of material by governments, Ministers, local authorities and other public bodies in the 28 days before the referendum. The restrictions prevent the publishing of material (other than in response to specific requests for material, and subject to certain other exceptions) that:

- provides general information about the referendum;
- deals with any of the issues raised by the referendum question;
- puts arguments for or against any outcome; or
- is designed to encourage voting at the referendum

The law allows the UK Government (and other publicly funded bodies) to provide information on request and to those specifically seeking access to material. We consider that continued access to the Government's website is permissible provided that members of the public need to take active steps to seek access to the existing content of any such website. In order to comply with the restrictions, the UK Government has removed links to the referendum website (such as from DVLA and HMRC), and will not publish any new content on the website.

The Electoral Commission has no powers under PPERA to sanction bodies who do not comply with these restrictions. However, we will monitor and take all reasonable steps to secure compliance with the restrictions.

We have published a factsheet explaining how the restrictions apply, which also gives contact details for the appropriate body if you are concerned that the restrictions have been breached. You can find the factsheet here:

http://www.electoralcommission.org.uk/__data/assets/pdf_file/0010/194635/Public-Bodies-and-EU-Referendum-material.pdf

Ministerial interventions/social media:
The rules for the EU Referendum place restrictions on the publication of material by Ministers and public bodies in the 28 days before the referendum. It prevents Ministers and certain public bodies from publishing material (other than in response to specific requests for material, and subject to certain other exceptions) that:

- provides general information about the referendum;
- deals with any of the issues raised by the referendum question;
- puts arguments for or against any outcome; or
- is designed to encourage voting at the referendum

The restrictions apply to government activity undertaken by Ministers, civil servants and certain publicly funded bodies. They do not apply to Ministers operating in a political or personal capacity without official support or resources.

The Electoral Commission has no powers under PPERA to sanction bodies who do not comply with these restrictions. However, we will monitor and take all reasonable steps to secure compliance with the restrictions.

We have published a factsheet explaining how the restrictions apply, which you can find on our website at the link below. If you are concerned that the restrictions may have been breached by a Minister of the UK or devolved governments, you should raise your concerns with the appropriate body (contact details are listed in the factsheet):

http://www.electoralcommission.org.uk/__data/assets/pdf_file/0010/194635/Public-Bodies-and-EU-Referendum-material.pdf

The Electoral Commission

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Rt Hon Jacob Rees-Mogg MP
House of Commons
London
SW1A 0AA

6 September 2018

Dear Mr Rees-Mogg

Thank you for your letter of 19 August, received on 21 August, to Sir John Holmes, regarding campaigning for the EU referendum. Sir John has asked me to respond on his behalf.

[redacted]

[redacted]

[redacted]

[redacted]

Government referendum leaflet and website

As you mention in your letter, section 125 of PPERA restricted the publication of material about the referendum by UK governments, ministers, local authorities and other public bodies in the 28 days before the referendum (27 May - 23 June 2016).

However, there is an exception to this restriction under section 125(3)(a), which 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 considered that this exception would cover content that was originally published prior to the 28 day period, which remained available to anyone specifically seeking access to that content within the 28 days. Therefore, provided the website was

designed in such a way that members of the public needed to take active steps to seek access to the content, in our view the exception under section 125(3)(a) would apply. We considered that the website eureferendum.gov.uk was designed in this way, and on that basis, it appeared to us that there was no breach of section 125(2).

Parliament has not given us powers to enforce section 125. We do, however, have a duty under section 145 of PPERA to take all reasonable steps to ensure compliance with the relevant Part of PPERA.

In our post referendum regulatory report – which can be found on our website – we outline the action we took in order to secure compliance with the restriction. We also comment on government spending on the leaflet and the website. We recommend that section 125 of PPERA should be "*significantly redrafted before any future referendum to clarify the nature and scope of the restriction on activities by Governments and other publicly funded bodies during the referendum period*".

You also refer to the UK Government incurring costs supporting a 'remain' vote at the referendum. The section 125 restriction is separate from the controls on campaign spending for campaigners during the regulated period for the referendum. By law, those controls do not apply to the UK Government.

[redacted]

I trust this reply is of assistance to you, pending appropriately also addressing your documentation request. May I assure you that the Commission always seeks to proceed diligently and fairly in carrying out its duties.

Yours sincerely

[redacted]

Bob Posner
Director of Political Finance and Regulation & Legal Counsel
[redacted]@electoralcommission.org.uk

Tom Hawthorn

From: [redacted]
Sent: 01 June 2016 12:05
To: [redacted]; Bob Posner; [redacted]; [redacted]; [redacted]; [redacted]
Subject: RE: s.125 LTT

All,

As we are starting to receive queries about the s.125 restrictions, I have drafted some standard responses to the three most common types of questions (there is obviously crossover between them in certain areas) we have received thus far. Grateful for your comments on the proposed lines.

Thanks

[redacted]

General complaints about breaches of s.125:
The rules for the EU Referendum place restrictions on the publication of material by governments, Ministers, local authorities and other public bodies in the 28 days before the referendum. The restrictions prevent the publishing of material (other than in response to specific requests for material, and subject to certain other exceptions) that:

- provides general information about the referendum;
- deals with any of the issues raised by the referendum question;
- puts arguments for or against any outcome; or
- is designed to encourage voting at the referendum

The Electoral Commission has no powers under PPERA to sanction bodies who do not comply with these restrictions. However, we will monitor and take all reasonable steps to secure compliance with the restrictions.

We have published a factsheet explaining how the restrictions apply, which also gives contact details for the appropriate body if you are concerned that the restrictions have been breached. You can find the factsheet here:

http://www.electoralcommission.org.uk/__data/assets/pdf_file/0010/194635/Public-Bodies-and-EU-Referendum-material.pdf

Government websites:
The rules for the EU Referendum place restrictions on the publication of material by governments, Ministers, local authorities and other public bodies in the 28 days before the referendum. The restrictions prevent the publishing of material (other than in response to specific requests for material, and subject to certain other exceptions) that:

- provides general information about the referendum;
- deals with any of the issues raised by the referendum question;
- puts arguments for or against any outcome; or
- is designed to encourage voting at the referendum

The law allows the UK Government (and other publicly funded bodies) to provide information on request and to those specifically seeking access to information. We consider that continued access to the Government's website is permissible provided that members of the public need to take active steps to seek access to the existing content of any such website. In order to comply with the restrictions, the UK Government has removed links to the referendum website (such as from DVLA and HMRC), and will not publish any new content on the website.

The Electoral Commission has no powers under PPERA to sanction bodies who do not comply with these restrictions. However, we will monitor and take all reasonable steps to secure compliance with the restrictions.

We have published a factsheet explaining how the restrictions apply, which also gives contact details for the appropriate body if you are concerned that the restrictions have been breached. You can find the factsheet here:

http://www.electoralcommission.org.uk/__data/assets/pdf_file/0010/194635/Public-Bodies-and-EU-Referendum-material.pdf

Ministerial interventions/social media:
The rules for the EU Referendum place restrictions on the publication of material by Ministers and public bodies in the 28 days before the referendum. It prevents Ministers and certain public bodies from publishing material (other than in response to specific requests for material, and subject to certain other exceptions) that:

- provides general information about the referendum;
- deals with any of the issues raised by the referendum question;

- puts arguments for or against any outcome; or
- is designed to encourage voting at the referendum

The restrictions apply to government activity undertaken by Ministers, civil servants and certain publicly funded bodies. They do not apply to Ministers operating in a political or personal capacity without official support or resources.

The Electoral Commission has no powers under PPERA to sanction bodies who do not comply with these restrictions. However, we will monitor and take all reasonable steps to secure compliance with the restrictions.

We have published a factsheet explaining how the restrictions apply, which you can find on our website at the link below. If you are concerned that the restrictions may have been breached by a Minister of the UK or devolved governments, you should raise your concerns with the appropriate body (contact details are listed in the factsheet):

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JACOB REES-MOGG, MP
MEMBER OF PARLIAMENT FOR NORTH EAST SOMERSET

HOUSE OF COMMONS
LONDON
SW1A 0AA

RECEIVED
21 AUG 2018

Sir John Holmes,
Chairman,
Electoral Commission,
3 Bunhill Row,
London, EC1Y 8YZ.

19th August 2018

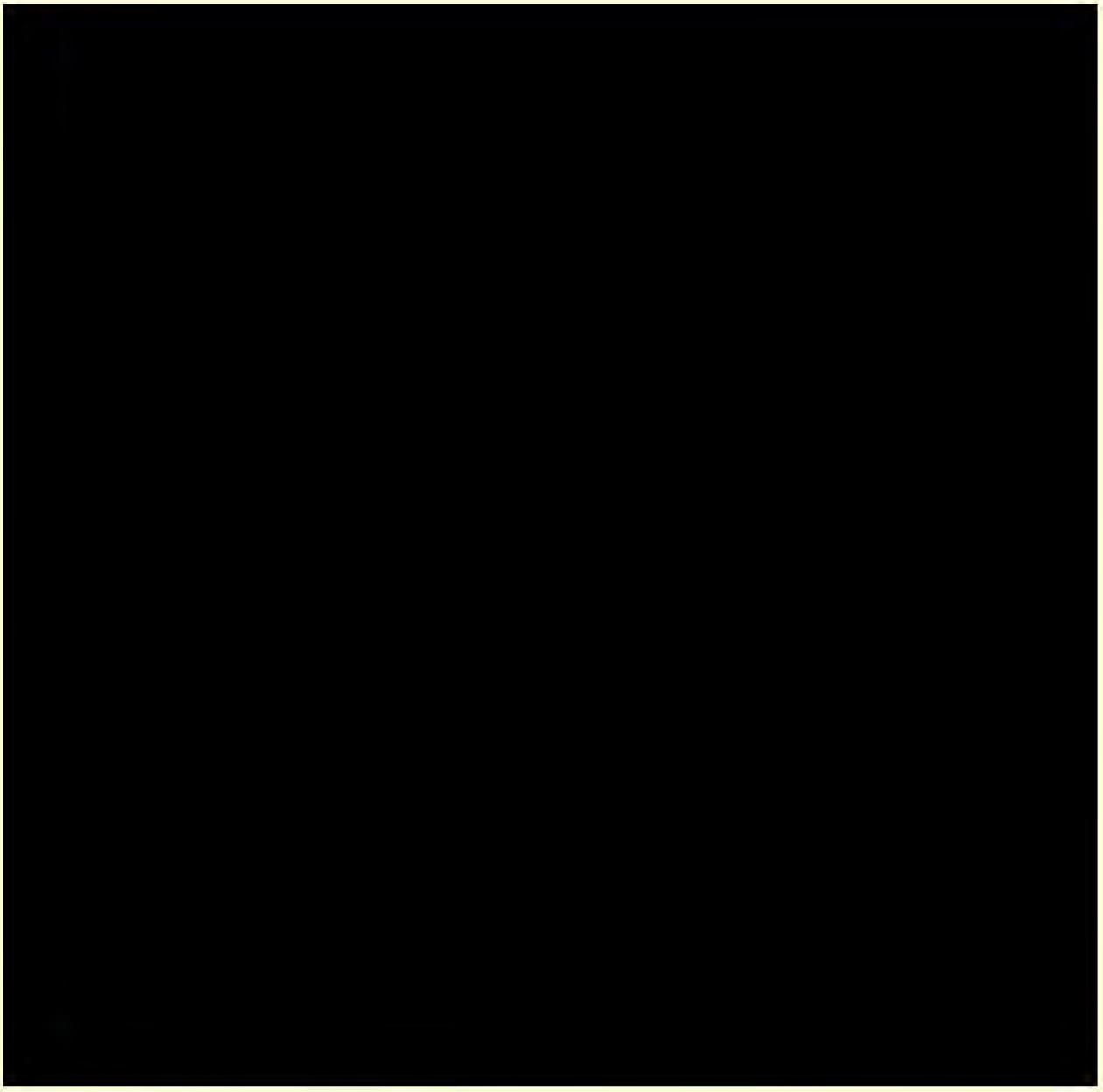
Dear Sir John,

[redacted]

[redacted]

Continued

TEL: 020 7219 7118 FAX: 020 7219 3215
EMAIL: JACOB.REESMOGG.MP@PARLIAMENT.UK WEBSITE: WWW.JACOBREESMOGG.COM



There is then the issue of the £9.3 million the Government spent supporting its position in favour of remaining in the EU, of which £2.9 million was used to pay for the digital promotion and support of the eureferendum.gov.uk website. This website was live and operational during the whole of the Referendum campaign, including the twenty eight day Section 125 PPERA restricted period. While the Government stated it would not update the website, it was material that was available and accessible which promoted the messages of the Remain campaign and could have influenced voters up until the polls

Continued

closed on the 23rd June 2016. As you will know, previous correspondence to the Electoral Commission has highlighted the admission in Sir Craig Oliver's book that there was interaction between the Government and Remain campaigners and coordination on messaging and campaigning. The Government propaganda was therefore actively supporting the Remain effort throughout the entirety of the campaign. On top of the £9.3 million, there are also staffing and administrative costs which the Government has not provided.

In view of this, I would be grateful if you would forward to me copies of any advice or discussions, whether internal or between the Electoral Commission and the Government or Britain Stronger In Europe, whether legal advice or informal discussions, as to whether the £9.3 million was or was not and whether the eureferendum.gov.uk was or was not within the rules of the Referendum Law. Did the Commission consider these matters at the time? Did it take advice on them from any source? Did it give advice to the Government at any time on them? Did it ever consider protesting to or rebuking the Government on these points? Did it make any protest?

I much look forward to your answer to these questions.

Yours sincerely,

[redacted]

The Electoral Commission

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 PPERA. 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 PPERA, 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 [redacted] on [redacted] or by email at [redacted]@electoralcommission.org.uk.

Yours sincerely

[redacted]

Jenny Watson
Chair

The Electoral Commission

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

27 May 2016

Dear Mr Jenkin

Thank you for your further letter of 26 May regarding section 125 of the Political Parties, Elections and Referendums Act 2000 (PPERA), and the correspondence enclosed with it. We have carefully considered all this correspondence, including the recent legal opinion given by Speaker's Counsel.

You consider that continued access to the Government's website, www.eureferendum.gov.uk, will only be permissible under the exception provided in s.125(3)(a) if that exception is read in a restrictive way, and that the exception would not apply if the website continues to be found on search engines such as Google or Yahoo, or to be signposted in any form on the gov.uk website. You would like the Commission to make this clear to the Government.

As you have noted, and as mentioned in my last letter, we consider that provided that members of the public need to take active steps to seek access to the content of any such website, the exception under s.125(3)(a) will apply. We do not consider that it is necessary to prevent a website containing the material from being found on search engines in all circumstances, provided that the material itself can only be found by those specifically seeking access to it. We note that in order to access the material found at the site www.eureferendum.gov.uk it is necessary to click on particular, clearly labelled, sections of the page to access the material concerned. It is also clear from a banner at the top of this page that no new material will be added from 27 May. We also note that the Government has confirmed that it would remove links to the website from gov.uk.

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and regard this happening as a necessary component of being within the requirements of s.125(3).

In these circumstances, we consider that the material published in www.eureferendum.gov.uk will be covered by the exception in s.125(3)(a).

We do appreciate that discussions around s.125 have raised some complex legal issues and matters of principle, concerning whether the legislation is drafted in the best way to achieve the underlying purpose behind the provision. As I mentioned in my last letter, this is a matter we would expect to return to in our post-referendum report, and we look forward to discussing with you and the Committee in due course.

If there is anything more that you would like to know now, please do ask your office to contact [redacted] on [redacted] or by email at [redacted]@electoralcommission.org.uk.

Yours sincerely,

[redacted]

Jenny Watson
Chair