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Calum Kerr MSP
Convener
Delegated Powers and Law Reform Committee

By email: DPLR.Committee@parliament.scot

15 September 2026

Dear Calum,

REPRESENTATION OF THE PEOPLE BILL

Thank you for your letter of 3 September 2026 in relation to the Representation of the People Bill.

The Committee asked about clauses 58(3) and (11), 67(3) and (4) and 69 of the version of the Bill before the House of Commons. Following report stage amendments and the Bill moving to the House of Lords, these clauses are now re-numbered:

- Clause 63 - Risk assessments for donations etc
- Clause 75 - Extension of Electoral Commission's enforcement functions
- Clause 77 - Civil sanctions orders: combining reserved and devolved provision

The Committee had asked whether the Scottish Government considers the delegation of powers to the Secretary of State under these clauses to be appropriate given that regulations made under these powers would not be subject to scrutiny by the Scottish Parliament.

The Committee's query goes to the heart of my ongoing consideration of Part 4 of the Bill on the regulation of campaign finance and Part 5 on the Electoral Commission, where I have a number of concerns despite being broadly sympathetic to the initiatives of the UK Government in this area.

For example, on Clause 63(3) and (11) (which introduces schedule 13) it seems to me that requiring registered political parties and other regulated groups to undertake risk assessments on certain donations is a positive step in protecting the security of elections.

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However, I am also concerned to ensure that the roles of the Scottish Parliament and of Scottish Ministers are not diminished if consent is to be provided for these provisions.

I therefore welcome the provision made in schedule 13 (in particular paragraphs 2, 30 and 37) of the Bill to ensure that regulations made by the Secretary of State under new section 54C(3) to the Political Parties, Elections and Referendums Act 2000 (PPERA) (inserted by Clause 63 of the Bill) will apply in relation to a Scottish devolved donation only if, before making the regulations, the Secretary of State has obtained the consent of the Scottish Ministers.

It would be my preference with this provision for the Scottish Parliament to also have a direct role in this process and I am in the course of making a representation to that effect to the UK Government. In doing so, I have also set out an alternative position: that if no specific provision is to be included in respect to the Scottish Parliament, then it will be necessary in their reaching a view on consent for the Scottish Ministers to have sufficient time to consult with the Parliament.

I also acknowledge that the UK Statutory Instrument Protocol will apply in relation to measures under the delegated powers in clause 63(3).

The position on the risk assessment guidance approval process under new section 54D of PERA (to be inserted by Clause 63(3)) is more complex. The UK SI Protocol would not apply to the Electoral Commission's guidance on how to undertake risk assessments, nor to UK Government commencement regulations setting the date for the guidance to take effect. However, under new section 54D(4) the Commission would have to consult interested parties before finalising the guidance and submitting the draft to the Secretary of State for approval. One possibility therefore – if consent is to be granted - would be to seek to ensure that the Scottish Parliament is consulted as a part of that process.

I expect parliamentarians of all parties to be interested in any changes in this area. I therefore propose to seek that Scottish Parliament should be a named consultee in the Electoral Commission's guidance process, as they are under section 100BA of PERA for the Code of Practice on controlled expenditure by recognised third parties at Scottish Parliament elections. I will also suggest that the guidance commencement regulations should require consent of the Scottish Ministers in relation to Scottish devolved donations.

Part 5 of the Bill and the Electoral Commission

In relation to Clause 75 of the Bill and the extension of the Electoral Commission's enforcement functions, this Clause makes provision for the extension of the Electoral Commission's investigatory and civil sanctioning powers to electoral finance and imprint offences committed by candidates and local third parties. It amends schedule 19C of PERA, which established the Electoral Commission's civil sanction regime.

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The Electoral Commission can only impose civil sanctions where the relevant offence has been prescribed by order for the purposes of applying the civil sanctions regime. The power to prescribe offences is contained in paragraphs 1, 5, 10 and 15 of schedule 19C of PPERA and the power to make supplementary provision by order is in paragraph 16 of that schedule. The power to prescribe offences and to make supplementary provision in schedule 19C for devolved purposes was transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 and section 9 of the Scotland Act 2016.

Clause 75(3) widens the scope of the offences which can be prescribed for the purposes of schedule 19C, meaning that offences could be prescribed in relation to local government elections in Scotland (in addition to the current ability to prescribe offences in relation to Scottish Parliament elections). It does so by adding a new paragraph 17A to schedule 19C, which broadens the range of offences that may be prescribed for the purposes of paragraphs 1, 5, 10 and 15 of schedule 19C.

I should highlight that if consent is provided, the Scottish Ministers will continue to be able to prescribe offences under paragraph 1, 5, 10 or 15 of schedule 19C in an order under paragraph 16 of that schedule to the extent that it is within their devolved competence to do so. This will generally be when the offences are in respect of elections to the Scottish Parliament or local government in Scotland.

Clause 75(4) introduces schedule 17 (extension of Electoral Commission's enforcement functions) of the Bill, which amends PPERA to expand the Electoral Commission's enforcement, investigatory and civil sanctions framework. The schedule does not create standalone powers, but expands the scope and effect of existing powers exercisable by the Scottish Ministers under schedule 19C of PPERA in relation to devolved electoral matters.

I am therefore broadly sympathetic to the changes in Clause 75, but if the Committee has a specific concern, I would be keen to engage further.

On Clause 77 (civil sanctions orders: combining reserved and devolved provision), this adds a new supplementary power to schedule 19C of PPERA, which would enable the Secretary of State to make provision that could be made by supplementary order (under paragraph 16 of schedule 19C) by the Scottish Ministers. This would be exercisable only with the consent of the Scottish Ministers. A similar power is taken in relation to provision that could be made by Welsh Ministers, which is also subject to their consent.

This provision gives the Secretary of State the ability to make devolved provision in relation to Scotland. The supplementary order could be used to make provision applying or amending the Electoral Commission's civil sanction regime in respect of offences for local government elections in Scotland (following the amendments made by clause 66) and relevant offences in Parts 5 & 6 of PPERA occurring during a devolved regulated period for a Scottish Parliament election. It would seem likely that the UK Government will suggest this when making similar changes for reserved elections.

The power is exercisable only with the consent of the Scottish Ministers where that order contains provision that the Scottish Ministers could make themselves. It would be subject to the UK Statutory Instrument (SI) Protocol and subject to the scrutiny of the Scottish Parliament.

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While I again acknowledge the benefit of the Scottish Parliament having a direct role in relation to scrutiny of any such provision, I would suggest that in considering any request for consent the Scottish Government would seek to consult the Scottish Parliament and to ensure that sufficient time for this was factored in.

I hope that this response is of assistance to the Committee. I have copied this letter to the Standards, Procedures and Public Appointments Committee and will highlight it in my communications with the UK Government.

Yours Sincerely,

JAMIE HEPBURN

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