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Calum Kerr MSP
Convener
Delegated Powers and Law Reform Committee
The Scottish Parliament,
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By email: DPLR.Committee@parliament.scot

Dear Calum

5th October 2026

REPRESENTATION OF THE PEOPLE BILL

Thank you for your letter of 2 September 2026 in relation to the Representation of the People Bill.

The Committee asked about Clause 66 of the Bill. This confers powers on the Secretary of State to make regulations to impose equivalent or similar prohibitions and restrictions on other political donations, transactions and gifts to those introduced by the Bill regarding relevant donations to and relevant transactions involving registered political parties in relation to the moratorium on crypto-assets, the cap on donations and transactions entered into by overseas contributors, and transactions and/or donations to registered parties by companies and LLPs.

The Committee had noted that "this is a significant delegated power which enables the Secretary of State to make provision applying the effects of the Bill's new political finance measures to a range of other electoral and referendum regimes, including Scottish Parliament elections and Scottish referendum campaign finance arrangements." The Committee went on to ask if the Scottish Government considers the delegation of these powers to the Secretary of State to be appropriate given that regulations made under the powers would not be subject to scrutiny by the Scottish Parliament.

As I indicated in my letter of 15 September, I am broadly sympathetic to the initiatives of the UK Government in this area but it is my priority to ensure that the roles of the Scottish Parliament and of the Scottish Ministers are not diminished if consent is to be provided.

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In considering this Clause, I consider that it is helpful to acknowledge that the UK Government has made provision to require the consent of Scottish Ministers and to limit the ability to use the Clause to the first 18 months after the Bill is passed. As noted in paragraph 83 of the Supplementary Legislative Consent Memorandum lodged by the Scottish Government in August, the regulations would also be subject to the affirmative procedure and would need to be approved by both Houses of Parliament. Before laying any regulations before Parliament, the Secretary of State is required to consult the Electoral Commission and the Scottish Ministers in relation to any aspects of the regulations which relate to Scottish devolved matters.

I consider that ideally any provision in this area would in fact be set out in the text of the Bill. For example, clause 63 of the Bill sets out a new risk assessment duty which applies to registered parties and schedule 13 makes matching changes to a range of legislation to apply the same new duty to other types of campaigners and candidates. It would seem that this approach could be used instead of the secondary legislation proposed by clause 66. I acknowledge however that the time required to prepare and consult upon provision in this area would be likely to delay the Bill significantly. It seems evident that this is the rationale behind the 18 month period in which the power will be operable. It means that the UK Government will not be able to make policy in this area by secondary legislation beyond the 18 month time limit.

My intention therefore is to make representations to the UK Government that consent in this area must be on the assurance that sufficient time will be granted for the Scottish Ministers and the Scottish Parliament to have the opportunity to consider any proposed scheme to be set out in secondary legislation.

I would also highlight that the UK Statutory Instrument Protocol is expected to apply in relation to measures under the delegated powers in Clause 66.

A further complication in this area concerns the way in which existing devolved law cross-refers to the definition of "permissible donor" in section 54(2) of the Political Parties, Elections and Referendums Act 2000 ("PPERA"). For example, Schedule 2A of the Representation of the People Act 1983 ("the 1983 Act") which makes provision in relation to, amongst other things, Scottish local government elections, cross-refers to that definition and Article 36 of the Scottish Parliament (Elections etc.) Order 2015 applies Schedule 2A of the 1983 Act for the purposes of Scottish Parliament elections. This means, effectively, that a change by the UK Parliament to section 54(2) of PPERA would automatically carry over to devolved law. Clause 62 (cap on donations etc. by overseas contributors), for instance, has its effect by amending section 54(2) so will carry over to Scottish local government elections and Scottish Parliament elections even if no regulations are made under Clause 66. The Scottish Parliament would be able to legislate to reverse these changes, but the law at present would make any such changes apply automatically.

There would therefore seem to be merit in considering this relationship further and the Government will look into this link between Scottish devolved legislation and the definition in section 54(2) of PPERA.

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I should also note that this read-across does not apply to the ban on crypto-assets as that is not achieved by amendment to section 54(2) PPERA. It will require regulations to extend the cryptoassets prohibition into devolved law so that it would apply to other kinds of donation such as those to independent candidates and third party campaigners (as the scheme under the Bill will only apply the cryptoassets prohibition to party donations and party regulated transactions).

If consent is given to the Bill provisions restricting the making of these kinds of donations to parties then it would seem desirable for the same or similar restrictions to apply to independent candidates and third party campaigners as to party candidates in order to ensure fairness.

My officials continue to engage with UK counterparts on all of these matters and as I set out, I will be making representations to the UK Government regarding their Bill.

I hope that this response is helpful. I would welcome any views the Committee might have. I have copied this letter to the Standards, Procedures and Public Appointments Committee.

JAMIE HEPBURN

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