

## Written evidence from Chesham and Amersham ForwardTogether<sup>1</sup> (TEB 19)

### Public Administration and Constitutional Affairs Committee The Elections Bill inquiry

#### Introduction

Chesham and Amersham ForwardTogether considers various aspects of the Elections Bill, in particular sections 23, 24 and 25, and the provisions limiting the powers of the Electoral Commission, deeply concerning for the reasons set out below.

#### 1. Section 23

Section 23 of the Elections Bill would give the Secretary of State the power to decide who can and who cannot campaign during elections by changing, unilaterally, the definition of “campaigning”.

This has the potential to exclude whole tranches of our society from the democratic process of campaigning prior to an election, without providing a reason or rationale, potentially on a whim. So, for example, charities and trade unions could be excluded, as might individuals with, say, minor convictions for protesting, under the Police, Crime, Sentencing and Courts Bill (as currently drafted).

This could prevent or even criminalise political engagement amongst the population at large. It could stifle a range of voices, facts, opinions and objections that a Government may wish to silence. As such it would damage and limit the public debate that is so necessary to a well-functioning democracy: it would significantly tip the balance of power and ability to be heard away from anyone or group whose views or aims were in any way at variance with those of the Executive of the day.

In a healthy democracy, all voices should have a right to be heard, within the law. Silencing opposition by denying parties the right to campaign would diminish civil rights and liberties in this country. In our submission, it has no place in this legislation, must not be left in the hands of a single person, namely the Secretary of State, and certainly not without significant scrutiny.

#### 2. Section 24

Section 24 significantly lowers the financial threshold for registration, thereby imposing much more regulation and compliance work on many smaller and less resourced organisations. This is likely to make campaigning harder or even impossible for such organisations and again, this will suppress political engagement across society in a way that is likely to damage our democracy by narrowing the range of voices that may otherwise be heard in a national debate.

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<sup>1</sup> Chesham and Amersham ForwardTogether is a Chilterns-based group which brings together local people to campaign on a range of issues, including tactical voting and electoral reform. Chesham and Amersham has no political affiliation.

### **3. Section 25**

By referring to ‘a common purpose’, Section 25 of the Elections Bill imposes restrictions, via proposed new rules on spending limits, on groups, unions, charities and even individuals doing anything considered to be “intended to achieve a common purpose”.

Chesham and Amersham ForwardTogether is deeply concerned by how these words may be interpreted and how that interpretation may evolve over time as, once more, the Secretary of State would have the unilateral, unscrutinised and apparently unlimited power to decide on what constitutes ‘a common purpose’.

Not only is this phrase open to interpretation, it also broadens the wording set out in the Political Parties, Elections and Referendums Act 2000 which the Elections Bill seeks to amend. No explanation or limitation is put forward for this change in scope.

Again, this could be used as an exclusionary provision: it could prevent such organisations as charities and voluntary groups from the electoral process. It could stop voluntary or campaigning groups from working with or in support of political parties leading to the exclusion of many concerned citizens from the campaign process and therefore political engagement. It might make it impossible for political parties with broad bases of support to work together. Conceivably, it could be applied inequitably, stopping parties on one side of the political divide from working together whilst allowing others to do so, again skewing the ability of many people and organisations to campaign in an election, and ultimately preventing an election from being free and fair.

### **4. The Electoral Commission**

Chloe Smith’s statement of 17 June 2021 sets out changes to be made to the powers of the Electoral Commission, reflected in sections 12, 13 and 15 of the Elections Bill.

Chesham and Amersham ForwardTogether makes submissions on two of those changes:

1. The removal of the power to bring prosecutions
2. The extension of the function and powers of the Speaker’s Committee on the Electoral Commission.

#### ***4.1 Removal of power to bring prosecutions***

The Electoral Commission is an independent regulatory body. As with any regulator it can only be effective if it has enforcement powers. However, Section 15 of the Elections Bill would remove the power of the Electoral Commission to bring prosecutions.

Chesham and Amersham ForwardTogether submits that this would be a grave mistake. We submit that rather, its enforcement regime should be enhanced: the current relatively low level of fines for offenders against electoral law means many offenders are able to write off such penalties merely as a ‘cost of doing business’.

The Electoral Commission states in its Enforcement Policy paper of 2016 that:

*‘The aim of our enforcement activity is to ensure that the ... rules on party and election finance are complied with, and that people throughout the UK are confident in the integrity and transparency of party and election finance’.*

This is of critical importance in the light of documented misuse of funds, ‘dark’ money and foreign interference already having a worrying impact on our voting system and therefore our democracy<sup>i</sup>. To achieve this objective, the powers of the Electoral Commission need to be strengthened, not weakened. To weaken those powers further would be a failure to take these threats seriously, would reduce objective, independent scrutiny and would undermine public trust in our electoral system.

#### ***4.2 The extension of the function and powers of the Speaker’s Committee on the Electoral Commission.***

If a regulator is subject to the edict of the governing party and does not have the final say in holding the government to account, it is not independent.

However, Sections 12 and 13 of the Elections Bill would require the Electoral Commission to align with a ‘Strategy and Policy Statement’ written by the government in power. It is then answerable to the Speaker’s Committee. This would deprive the Electoral Commission of its powers and authority, and strip it of its independence, rendering it instead the tool of government.

In summary, these provisions of the Elections Bill would strip an independent regulatory body of both its power to have any meaningful regulatory function and its independence, and would consolidate the power of an incumbent government.

This would not simply further entrench the position of such a government but, even worse, could enable it to interfere in elections, with a resultant loss of public trust and confidence in the electoral process.

### **5. Human Rights**

We disagree with Chloe Smith’s declaration, prefacing the Elections Bill, that *‘the provisions of the Elections Bill are compatible with [the European] Convention [on Human] Rights’* and cannot see on what basis she has reached this conclusion.

We submit that the changes sought by the Elections Bill would cut across fundamental and long-established rights enjoyed and depended upon by our citizens as part of our everyday lives, including the right to freedom of assembly and association as set out in Article 11 of the Human Rights Act 1998.

Other human rights which could be affected are Article 9: freedom of belief, Article 10: freedom of expression, Article 14: protection from discrimination in respect of these rights and freedoms and critically, Protocol 1, Article 3: the right to participate in free elections.

It is acknowledged that most rights are qualified rather than absolute. However, qualifying such rights can only be justified where doing so is necessary to protect the wider public interest. It is hard to see how any public interest is protected by these provisions in the Elections Bill, and much clearer to see that power would be transferred from the people and the Legislature, to the Executive of the day.

## Conclusions

Chesham and Amersham ForwardTogether submits that the above changes are aimed at suppressing and in some cases, criminalising participation in campaigning and in elections by individuals, charities and other groups within our society. If it enters into law, it would stop parties from working together and collaborating with others. It would particularly impact on those wishing to campaign across the political spectrum. It would inevitably deter us, scare us and silence us.

Preventing people from working together, especially in the build up to general elections, loads the dice against opponents wishing to engage legitimately in the democratic process. It makes it harder to hold the Government of the day to account.

Unscrutinised and arbitrary decision-making by a single person would almost certainly lead to mistakes and poor outcomes. It makes for bad government. It is not how an advanced democracy should be conducting itself. It significantly limits the power of the legislature: a vital role of Parliament is to scrutinise the workings of the Government, but this bill, by putting so much decision-making power within the sole remit of the Secretary of State, withdraws that scrutiny and prevents Parliament from doing the job that it has been elected by the people to do. These are not the workings of a healthy democracy.

Further, bestowing such unfettered and arbitrary powers upon the Secretary of State as outlined in sections 23 and 25, builds massive uncertainty into our legal system such that it is contrary to the rule of law.

Finally, our legislature has a duty to the people of this country to enact laws in the best interests of this country's citizens and institutions, to prevent harm, and not to accumulate unaccountable power. It is submitted that this legislation would fail on all these counts. If these sections were to become law, Parliament would have emasculated itself, individuals and organisations would be arbitrarily silenced, and a gross unfairness, quite alien to our nationally and deeply held belief in fair play, would be visited upon this country.

Since no political party can expect to stay in power for ever, will this legislation not hurt everyone?

If vital independent regulation and scrutiny are lost, is our democracy not damaged?

If people are silenced in a democracy, what is that democracy worth?

*August 2021*

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<sup>i</sup> See, for instance, the Digital, Culture, Media and Sport Committee 'Disinformation and 'fake news': Final Report' and the Intelligence and Security Committee of Parliament's 'Russia Report'.