

18th February 2021

Chloe Smith
Minister for the Constitution and Devolution
Cabinet Office
cc: Amanda Milling

By email only

Political leafleting

Dear Ms. Smith,

We are writing to urge you to clarify that political leafleting is not prohibited under The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 ('the Regulations'). This is in response to your letter dated 22nd January 2020 to Members of the Parliamentary Parties Panel concerning doorstep campaigning and leafleting. Our letter to you concerns only leafleting.

Political leafleting is a key part of the democratic process, particularly in the run up to elections which are due to take place in May. We understand that some restrictions are necessary given the risk to public health. However, any suggestion of a prohibition on political leafleting would contradict the continuation of other postal and delivery services, lack a public health justification, lack legal authority, engage the right to freedom of expression protected by Article 10 of the European Convention on Human Rights, and threaten the functioning of democracy.

The Government's view, as described in your letter, is "that these [lockdown] restrictions do not support door to door campaigning **or leafleting** by individual political party activists" (emphasis added). However, the lockdown restrictions have not impeded delivery services including Royal Mail, couriers, food delivery services or others that have continued throughout lockdowns.

There is no restriction on leafleting under the Regulations. You stated in your letter that under "current national lockdown restrictions" leafleting is "not considered an essential or necessary activity." In fact, the legal test set out in the Regulations is that an individual must have a "reasonable excuse" to leave or remain outside of the place where they are living; the test is not one of 'necessity' in the way you described, nor is necessity defined. The Regulations contain a *non-exhaustive* list of reasonable excuses a person may leave or remain outside of their home, including for work or voluntary services, or for activities "ancillary" to voting.¹ Delivering campaign material, either as an employee of a political party, or as a volunteer, clearly falls under these exemptions.

¹ The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020, Schedule 3A, para 2(5); para 2(18)

Furthermore, the presumption is that fundamental rights protected by ECHR are unimpeded unless specifically limited for a legitimate purpose under domestic law.

We urge you to withdraw your previous guidance and affirm that political leafleting is lawful under the current Regulations.

Given the proximity of local elections, we look forward to a response within seven days of the date of this letter.

Yours sincerely,

Silkie Carlo, Director, Big Brother Watch

Kyle Taylor, Director, Fair Vote UK

Tom Brake, Director, Unlock Democracy

Sam Grant, Head of Policy and Campaigns, Liberty

Gabrielle Guillemin, Senior Legal Officer, Article 19

Ruth Smeeth, Director, Index on Censorship

Local Government Association Independent Group