Dear Ms Smith

Re: Non-Party Campaigning

We are writing to you in light of increasing concerns among charities that the new rules proposed in Part II of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill will have a huge impact on charities’ and other groups’ day-to-day work. We fear that the rules as they are currently drafted are entirely unworkable and call on you to reconsider.

For many charities and voluntary organisations, raising awareness of issues affecting the people and causes they support is a routine and important part of their work and central to their charitable objectives. However the rules in the new bill risk seriously hampering their ability to speak up on issues of concern, including as part of their fundraising activities.

We are concerned by the broad scope of the proposed changes to the Political Parties, Elections and Referendums Act, and by their lack of clarity. We are seeking urgent legal advice in the interests of preventing this bill from having disastrous unintended consequences.

We are concerned that the proposed new rules could apply to a range of normal and legitimate awareness-raising activities despite them being intended to be party-politically neutral. For example:

1) A health charity could publish a leaflet highlighting the dangers of smoking. If smoking legislation became a party political issue in an election this activity could be deemed to have the effect of supporting a party’s campaign, and be subject to regulation.

2) A local community group could campaign for or against a proposed bypass road. If local candidates subsequently express a view on the issue the campaigning activity could be deemed to assist candidates’ election campaigns. The community group would become subject to regulation, even if it had acted apolitically and had no intention to support any candidate’s campaign.

3) A children’s charity calls for a statutory inquiry via the media in response to a major abuse scandal at the same time as one of the major political parties. This could leave them open to claims that they have inadvertently benefited that party’s election campaign.

All these cases show how charities and other groups risk being accused of benefiting a party or candidate’s election despite their campaign and material being entirely party politically neutral. It will, of course, not always be possible for a charity to know in advance what issues may become political during an election period, and may be deemed to be ‘for election purposes’. Nor will it be
possible for them to predict when their activity may be deemed to have the effect of supporting a particular party or candidate.

The new rules encompass such a broad range of activities (including staff time, media appearances, leaflets and posts on social media and websites) that even small organisations may easily meet the maximum spending thresholds - for example only £9,000 per constituency or £35,000 in all of Scotland - and we would be prevented from undertaking further activity in an election year. Many organisations could find themselves unable to operate, in whole or part, for prolonged periods. In addition, the rules regarding coalitions (which require each organisation to account for the expenditure of all thereby imposing double counting), combined with the new lower thresholds, mean that charities will be discouraged from working together for fear of breaching the allowed spending limits.

Furthermore, there is an assumption that the election period is certain and definite. While we now have fixed term parliaments, previous experience shows that the precise date of an election is, more often than not, an unforeseeable event, making it even more difficult for organisations to understand how and when the rules would apply. This adds a further concern for organisations, and increases the administrative burdens related to ensuring compliance. The regulatory burden imposed by this legislation would be crushing for a small organisation, yet it would not even be able accurately to predict when, or whether, it would be subject to the reporting rules.

It is deeply worrying that large numbers of organisations would be unable to know with any degree of certainty whether they were acting within the law, leaving them open to the risk of prosecution.

The complexity of the legislation, the lack of clarity in drafting, the amount of discretion given to the Electoral Commission in determining how the rules apply, and the remarkably burdensome reporting requirements, at a time when the government has given a commitment to reducing regulation, will collectively have the result of muting charities and groups of all sorts and sizes on the issues that matter most to them and the people they support.

The government’s desire to legislate in order to promote transparency in this area in one we share and understand. We hope you will consider our concerns and ensure the bill does not damage the work of the country’s thousands of charities and community groups. We stand ready to work constructively with you and your colleagues to achieve the objectives of the Bill without imposing burdensome unintended and unnecessary consequences on a vitally important sector of society.

Yours sincerely,

Sir Stuart Etherington
Chief Executive

cc:
Rt Hon Francis Maude MP, Minister for the Cabinet Office
Nick Hurd MP, Minister for Civil Society

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