

## Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill Peers' briefing, Second Reading, 17 October 2013

**This briefing outlines Oxfam's concerns about the impact of the proposals in the Lobbying Bill, the changes we are calling for, and points we would encourage members to make during the Second Reading in the Lords on 22<sup>nd</sup> October.**

Oxfam, alongside a wide range of other charities and voluntary organisations, has been calling for the Bill to be amended since it was introduced to Parliament in July. We believe that Part 2 of the Bill (the section on non-party campaigning) would make it significantly harder during the year before an election to campaign on issues that matter to the people we are here to help.

The Bill was amended during its passage through the Commons by the Government after concerns were raised. Regrettably the legal advice received by charities indicated that these did not go far enough in addressing concerns.

### **Oxfam's concerns with the Bill**

#### **The definition of electoral activity**

Oxfam campaigns without any political bias, and does not aim to help get any party or candidate elected. However, even after changes made in the commons stage of the Bill process, legal advice to us suggests that our campaigning and advocacy work could be counted as electoral activity and therefore could be caught as 'controlled expenditure' ahead of an election.

The Bill still states that electoral activity does not have to "involve any express mention being made of the name of any party or candidate" and that 'In determining whether expenditure can be reasonably regarded as intended to promote or procure electoral success.... it is immaterial that it can reasonably be regarded as intended to have another effect as well.'

Legal advice given to the NCVO (following the publication of the Government amendments) says that: **"The amendments will not result in controlled expenditure only being incurred where there is "bias towards a particular party or candidate" and "the clear purpose is to advocate support or directly benefit such party or candidate"**. Further legal advice from Ros Baston is attached which states that issue-based campaigning remains covered by the Bill.

It is important to note that charities already had difficulties with interpreting the Political Parties Elections and Referendums Act 2000 (PPERA), and specifically with the guidance and interpretation of that act from the Electoral Commission, issued in spring 2010. This Bill threatens to make a

#### **Oxfam's role as an anti-poverty charity and campaigning organisation**

Last year Oxfam's work to combat poverty and suffering reached 13.5 million people in 54 countries. This includes supporting 6.2 million people in 27 humanitarian emergencies. We spend 7% of our programme expenditure on campaigning and advocacy – both in the UK and internationally – in order to further our charitable objects of "the prevention and relief of poverty". This includes global and UK focused campaigning work.

confusing situation worse, but even reverting to the PPERA definition of electoral activity does not solve the problem.

### Additional concerns

Since advice we've received suggests our campaigning and advocacy work could be drawn into the regulations, it remains relevant and concerning to us that the Bill will widen the scope of activities which count as controlled expenditure, and at the same time reduce the thresholds for registering, and reduce overall spending limits. This could have a severe impact on our work.

The Bill both widens the range of activities that are regulated to include public events, advertising and media events, market research such as polling, and transport for the purpose of obtaining publicity (schedule 3) AND reduces the limits on what a campaigner can spend on regulated activity in each part of the UK in the year before a UK general election by 60% or more (to £320k in England, to £35k in Scotland, to £24k in Wales and to £11k in Northern Ireland).

The Bill also ensures that more charities and localised low spending campaigners will be subject to the enhanced and much more onerous restrictions. This is because the range of activities covered will increase, and the thresholds for registration will decrease to just £5,000 in England and £2,000 in Scotland, Wales and Northern Ireland.

Finally, there are some existing problems with the legislation that should be taken into account if the spending limits and thresholds are to be lowered, and the regulatory burden considerably increased. These include the fact that:

- All participants in a coalition campaign have to report on the entire aggregated spend of that campaign – regardless of the amount their own organisation spent;
- That pro-bono costs including volunteering time are included;
- That, unlike for political parties, it is now proposed that staff time is included.

### Electoral Commission Guidance in 2010 interpreted the PPERA very narrowly. It stated:

In almost all cases, an item will be campaign material if it:

- identifies candidates or parties who support or oppose your campaign's aims
- sets out or compares the positions of particular parties or candidates on a policy that you are promoting
- promotes or opposes policies which are so closely and publicly associated with a party or parties that it is not reasonable to argue that the item isn't campaign material

Sometimes, a political party may publicly adopt policies that you are already campaigning for. Your material will not become campaign material as a result of the party's decision, unless you:

- publicise the political party's support in your subsequent campaigning,
- or alter or increase your campaigning activity on the policy as a result of their support

## Changes that need to be made

Oxfam is calling for the Bill to be amended to clarify the definition of what constitutes electoral activity. In the Commons stage of the Bill, we urged MPs to support an amendment from Graham Allen MP, Chair of the Political and Constitutional Reform Committee, to **reword clause 26 so that it requires that “the primary purpose” of the expenditure should “reasonably be regarded as intended to” promote or procure electoral success.** This would ensure that expenditure aimed at highlighting a particular issue or issues, rather than promoting a particular party or parties or candidate or candidates, is not caught by the expenditure controls. This would also ensure more consistency in this area as it would bring the Bill closer in line with existing charity law which uses a test of purpose or intent.

We are also calling for a removal of the new threshold and spending limits being proposed for third parties. Oxfam maintains that we should not be caught up in this regulation because we don't do anything party political or to procure electoral success. **But the fact that the definition remains too broad means that we could get caught up and therefore the threshold is an issue of great concern.**

## Some key points we'd encourage members to raise at Second Reading

- 1) Call for full and proper consultation with affected parties. This is something the Electoral Commission themselves have stated remains necessary. Ministers should engage with and respond to the policy proposals to be made by the Commission for Civil Society and Democratic Engagement which has been set up to undertake consultation in lieu of Government consultation.
- 2) Clarification of the definition of electoral activity. Despite reassurances from Ministers, legal opinion received by charities suggests that the definition of electoral activity could capture much of the issue-based campaigning charities undertake. If no consistent definition of electoral activity can be understood from the legislation this creates huge uncertainty and gives an inappropriate level of discretion to the Electoral Commission.
- 3) Highlight the damaging and disproportionate impact of widening the scope of activities covered as controlled expenditure, and the reductions in limits on campaign spending and the threshold to register to vote.
- 4) Speak up for the role of civil society in supporting and promoting democratic participation, rather than as a threat that can undermine it.

## Estimated impact for Oxfam

### Regulatory Burden:

- If Oxfam decided that we would have to register with the Electoral Commission then the regulatory burden would be significant, almost certainly requiring an extra member of staff to ensure collection and reporting of costs across our functions.

- However, **we will do all we can to avoid registering with the Commission** to avoid the false impression – to donors and to decision makers themselves – that we are indeed a “third party for electoral purposes” and therefore have a presumed political bias. In this case the vague wording and low thresholds in the Bill could quite likely require a new staffing resources to review all plans and activity and ensure the need to register was not triggered, across all our departments for the year.

#### Campaigns we may not be able to do – a step by step case study:

- In 2010 Oxfam was a member of Ask the Climate Question, a coalition of around 20 large development and environmental agencies who ran a campaign with the objective of raising climate change consistently as an issue throughout the election.
- To this end we organised hustings up and down the country (inviting 5-6 candidates based on the objective test of how their party polled last time); we ran a national hustings for the energy spokespersons for major parties; we created materials for people to have at their home to be able to ask climate change questions to candidates; and we funded adverts and campaigning activity.
- In 2010 we ran this campaign with some confidence because potential “electoral material” was confined to leaflets and websites (material available to the public) and so was easy to identify this and ensure it remained under the £10,000 threshold.
- If the Bill is passed as it stands we would be very likely to trigger registration since we would have to account for all hustings meetings, all staff time, the pro-bono costs of celebrity engagement, and all other associated transport costs etc and do this within £5000.
- If we chose to deliver this campaign and register with the Electoral Commission we would have report the full coalition spend as our own, regardless of what we put in. We would have to add the costs of our own staff time, and we would need to work out whether we would have enough money left for other campaigning, advocacy, research or media work that may count as electoral activity in that entire year.
- If we decided that the impact of registering was too large (because of the regulation, because of the impact on our charitable reputation and because of the impact on our donors) we would not be able to take part in the campaign and our ability to talk about one of the biggest threats facing our planet at a time of national debate would be seriously limited.

#### Oxfam “works with others to overcome poverty and suffering”

In the UK we have lots of smaller partner organisations for whom we have concern that this legislation, with such low thresholds and such broad definitions of electoral campaigning, could mean they are unable to speak out on their issues of concern.

And in developing countries we do a lot of work to build the capacity of civil society to engage in elections and use them to hold their parties and governments to account (for instance on where oil money really goes!). We have done this from a position of experience in a mature democracy. It would be very difficult if this right came under threat in the UK

#### Additional information

If you would like a meeting to discuss Oxfam’s concerns or for more information please contact Mike Smith [mikesmith@oxfam.org.uk](mailto:mikesmith@oxfam.org.uk), 07827354394

And the advice from [elections lawyer Ros Baston](#)