

Parliamentary Briefing

Committee stages of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill

The National Council for Voluntary Organisations (NCVO) is the largest membership organisation for the voluntary sector in England.

With over 10,000 members, NCVO represents all types of organisations, from large ‘household name’ charities to small voluntary and community groups involved at the local level.

- This briefing focuses on Part II of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill. Specifically this contains provisions to amend the rules covering ‘non-party campaigners’ – people and organisations other than political parties in the run up to an election.
- These rules could affect charities because of their non-partisan campaigning activity, where organisations can campaign for changes to law or policy where such a change would support their charitable objectives. This is an entirely legitimate activity for charities to pursue, provided they do not give support to a political party, nor to a candidate or politician. The rules will also affect a range of voluntary organisations and community groups that undertake similar activity.
- Under the current rules of the Political Parties, Elections and Referendums Act (PPERA 2000), some of this activity is already regulated by the Electoral Commission when an organisation has been deemed to produce ‘election material’.

For many charities and voluntary organisations, influencing public policy and raising awareness of the issues affecting the people and causes they support is a routine and important part of their work and central to their charitable objectives.

Summary

- Following NCVO’s meeting with the Leader of the Commons on Friday 6th September, the Government has agreed to clarify what is meant by the term ‘for electoral purposes’. This should ensure that the vast majority of charities operating within charity law should not be subject to registration with the Electoral Commission and therefore their activities will not be regulated.
- The Leader of the House at Second Reading committed the Government to ensuring that “charities will still be able to give support to specific policies that might also be advocated by political parties if it helps to achieve their charitable purposes. The Bill does not seek to regulate charities that simply engage with the policy of a political party.”
- When the new wording is published before report stage we will take legal advice and also urgently seek the view of the Electoral Commission, to ensure the revised definition meets the spirit and the letter of policy intent set out by government.

- However we still have significant concerns about other parts of the bill:
 - We remain concerned that voluntary organisations may still be subject to ambiguous and damaging legislation. NCVO believes in a society where freedom of speech, the freedom to associate and the right to free and fair elections are all similarly inviolable.
 - The list of activities that count towards controlled expenditure remains neither clear nor workable.
 - We remain similarly concerned that the expenditure thresholds proposed in the new bill will be damaging, particularly for small community groups that are not charities. These must be restored to the current levels.
 - We are particularly concerned about the lowered registration thresholds would mean that even smaller organisations undertaking limited activity would be required to register and have to deal with heavy reporting requirements.
 - The question of how to sensibly regulate groups working in coalition remains to be addressed. This could be solved by requiring each member of the coalition to account only for their direct financial contribution.

Clause 26 and Schedule 3

Meaning of “controlled expenditure”

Further to our meeting with the Leader of the House of Commons, we view the Government’s subsequent commitment to change the definition of what is meant as ‘for electoral purposes’ as a significant step in the right direction. When the new wording is published we will take legal advice and also urgently seek the view of the Electoral Commission, to ensure the definition meets the spirit and the letter of policy intent set out by government.

This should ensure that the vast majority of charities operating within charity law should not be subject to registration with the Electoral Commission and therefore their activities will not be regulated.

We would echo concerns from the Electoral Commission following the Government’s announcement that *“it is important that this is done carefully, and in particular that the new definition is properly applied to each of the new categories of regulated activity in Schedule 8A. Otherwise our concerns about wide discretion and regulatory uncertainty for campaigners will remain.”*

The proposed list of activities that could towards controlled expenditure remains neither clear nor workable. In particular, it is unclear how the inclusion of media work and staff costs can be calculated without burdensome time recording systems.

It is disproportionate to expect charities and voluntary organisations to comply with such a requirement, especially considering that political parties’ staff costs related to campaigning are explicitly excluded from the definition of campaign spending. Moreover, since donations in kind must be included, it is possible that even expenditure of volunteer time on such matters would have to be quantified and included.

Clause 27

Changes to existing limits

We remain concerned that the expenditure thresholds proposed in the new bill will be damaging, particularly for small community groups. These must be restored to the current levels. In particular, the lowered registration thresholds would mean that even smaller organisations undertaking limited activity would be required to register and have to deal with heavy reporting requirements.

The existing limits of how much a third party can spend have been considerably lowered. Under the Bill, if a non-party campaigner spends more than £5,000 in England (£2,000 in Scotland, Wales and Northern Ireland) then it must register with the Electoral Commission as a 'recognised third party'.

This is a significant reduction from the current £10,000 in England (£5,000 in Scotland, Wales and Northern Ireland). The Bill will also reduce the total that registered campaigners can spend on regulated activity in the year before the general election by 60%-70%. All relevant spending on the defined activities will count towards these thresholds.

Such low levels are likely to cause problems especially for organisations and groups involved in coalitions, because expenditure by coalitions is aggregated (this means that each member has to account for the full amount spent for the joint campaign, regardless of the individual contribution).

This requirement will force the larger organisations to leave many joint campaigns, while also deterring smaller charities and voluntary organisations to work together for fearing of dealing with the financial and administrative burden. This could be solved by requiring each member of the coalition to account only for their direct financial contribution.

Clause 28

Constituency limits

Constituency limits have also been introduced. In the relevant period, a non-party campaigner may only spend up to 0.05% of the total of the maximum campaign expenditure limits in any particular parliamentary constituency. For UK Parliamentary elections, the maximum spending is £18.96m in Great Britain so the cap equates to roughly £9,480 for each constituency.

Again, this lower limit will cause issues for smaller organisations and should be re-examined.

Clause 32

Reporting of donations to recognised third parties

The Bill introduces a number of administrative and reporting requirements, which are likely to cause a significant bureaucratic burden.

The Bill increases the regulation of reporting by introducing a requirement for quarterly reports of donations to recognised third parties. During 'regulated periods' (i.e. after Parliament is dissolved) more frequent weekly reports of donations to recognised third parties

will be required. Even if an organisation does not receive a reportable donation, it is still required to submit a nil return for the relevant period.

In addition, some charities, such as Mind or Age UK, take the form of a federated structure. Under the proposals, each part of the organisation will have to account for their campaign work and make a separate return to the Electoral Commission.

NCVO statement following meeting with Leader of the Commons

Sir Stuart Etherington, CEO of NCVO said:

‘The government’s commitment to abandon the change to the test of what constitutes non-party campaigning is a significant step in the right direction. When the new wording is published we will take legal advice and also urgently seek the view of the Electoral Commission, to ensure the revised test meets the spirit and the letter of policy intent set out by government.

‘The revised test should ensure that for charities operating within charity law, their activities should not be subject to registration with the Electoral Commission and therefore the regulation outlined in part two of the Bill.

‘We remain concerned that other voluntary organisations in civil society may still be subject to ambiguous and damaging legislation. NCVO believes in a society where freedom of speech, the freedom to associate and the right to free and fair elections are all similarly inviolable.

‘The proposed definition of controlled expenditure remains neither clear nor workable for non-charitable voluntary organisations. We remain similarly concerned that the expenditure thresholds proposed in the new bill will be damaging, particularly for small community groups that are not charities. These must be restored at current levels. The question of how to sensibly regulate groups working in coalition remains to be addressed.

‘If a revised test of what constitutes non-party campaigning by charities, together with a clear definition of controlled expenditure and unchanged expenditure thresholds, cannot be achieved, we will continue to argue for the withdrawal of part two of the Bill.

‘We will continue to work with the broad range of organisations expressing concerns, as well as with government and with the Political and Constitutional Reform Committee, to ensure we get legislation that recognises and does not undermine the valuable role undertaken by charities’ and community groups.’

Ends

Further reading

NCVO's briefing ahead of Second Reading <http://blogs.ncvo.org.uk/wp-content/uploads/chloe-stables/Parliamentary-Briefing-2nd-reading1.pdf>

Legal advice provided by Helen Mountfield QC of Matrix Chambers <http://blogs.ncvo.org.uk/wp-content/uploads/chloe-stables/Opinion-for-NCVO-on-Part-2-of-the-Transparency-Bill.pdf>

Letter to Chloe Smith expressing concern about the Bill <http://blogs.ncvo.org.uk/2013/09/03/lobbying-lets-get-this-right/>

Contact and next steps

NCVO would be happy to provide the following:

- Further briefing on any of the areas discussed above
- Support with drafting amendments
- Case studies for use in second reading debate or committee stages
- A face to face meeting at your convenience

For further information contact:

Chloe Stables, Parliamentary and Media Manager at NCVO by telephone on 0207 520 2474 or chloe.stables@ncvo-vol.org.uk

Elizabeth Chamberlain, Senior Policy Officer at NCVO by telephone on 0207 520 2559 or elizabeth.chamberlain@ncvo-vol.org.uk