



NCVO proposals

Transparency of lobbying, non-party campaigning and trade union administration bill

28 November 2013

Introduction

The right to campaign sits at the very heart of our democracy.

Charities and other voluntary groups have a strong tradition of bringing people together to campaign on the issues they are affected by, using their knowledge and expertise to shape and challenge public policy where appropriate.

Good legislation demands the involvement of the people that it affects, but this bill seems to tie a great deal of that participation up in red tape. Ultimately restrictions of this kind will limit the ability of citizens to hold government and parliament to account and will diminish public involvement in the development of policy.

Part II of the *transparency of lobbying, non-party campaigning and trade union administration bill* (or 'lobbying bill') represents a significant restriction of campaigning activity during election periods and, in its current form, will prevent charities and other voluntary groups from engaging in public policy issues and speaking out on behalf of the people they support.

The provisions of the bill remain excessively broad in scope, giving substantial discretion to the Electoral Commission and there remains an unbearable amount of uncertainty around whether and when these rules will apply.

This has huge consequences not only for the right to campaign but also the independence of the voluntary sector. It is this independence – of purpose, voice and action – that makes the voluntary sector special and enables it to serve the interests of those who might otherwise be left without support or a voice.

About us

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.

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This submission

Feedback from NCVO members suggests that the lobbying bill has yet to achieve the right balance between introducing necessary elements of transparency and establishing a proportionate regime that captures the type of activity that may have an undue influence on the political process.

Overall it has not yet been made clear to us why the rules that apply to political parties are considered appropriate to apply to non-party campaigners who tend to operate for very different reasons and in different ways to those that seek election.

We also note with concern that the bill has implications for the rights to freedom of association and speech, as highlighted by the report of the Joint Committee on Human Rights, and by the legal opinion provided to NCVO by Helen Mountfield QC.

This document sets out NCVO's proposals for amending the lobbying bill and forms the basis of our submission to the Commission on Civil Society and Democratic Engagement. It includes recommendations to:

- 1. *Reduce the 'regulated period' to 6 months.***
- 2. *Substantially increase the registration thresholds.***
- 3. *Amend the range of activities to remove staff costs.***
- 4. *Change the regulation of coalitions.***
- 5. *Remove the constituency limits.***
- 6. *Amend the range of activities to remove events and public rallies.***
- 7. *End the use of nil reports.***
- 8. *Amend the definition of controlled expenditure.***

We have a small window of opportunity to develop a solution that is fair and workable. As a package, NCVO believes these changes represent a proportionate and reasonable solution, allowing for greater transparency without placing unnecessary limits on campaigning activity.

We look forward to working in partnership with the Commission on Civil Society and Democratic Engagement, members of the House of Lords and government ministers, the Electoral Commission and the Charity Commission to agree a suitable outcome for everyone.

Methodology

NCVO has been working on this bill since its publication in July. As an umbrella organisation representing a wide range of voluntary organisations, registered charities through to campaigning organisations and community groups, we have actively consulted our members to inform our position on the bill.

This has included:

- working intensively with a group of over 80 charities and voluntary organisations engaged with the detail of the bill, meeting regularly and sharing updates via phone and e mail;
- over 140 responses from NCVO members highlighting their concerns about the bill via email;
- publishing 12 blog posts over the course of the passage of the bill updating on progress, generating 17,614 page views, 828 tweets and 90 comments;
- organising a drop in session for MPs to speak directly to a cross section of organisations affected;
- arranging a session of the All Party Parliamentary Group on Civil Society and Volunteering to consider the issues surrounding the bill;
- regular face to face meetings with NCVO members, ministers, officials and the Electoral Commission to discuss the bill;
- hosting a series of roundtables with NCVO members, the Electoral Commission and the Charity Commission (before the publication of the bill) to explore regulatory issues and to assist the Electoral Commission in developing better guidance for non-party campaigners;
- obtaining legal opinion on the implications of the bill for charity campaigning from a leading QC in electoral law, and further legal advice from Bates Wells & Braithwaite LLP on the government's amendments.

Recommendations from NCVO

- This document explores a suggested package of reforms and sets out the rationale for each element.
- The suggestions are made following discussion with NCVO members and consideration of the recommendations with regards to different sizes of organisation and different types of campaigning activity.
- Where possible we have suggested wording for an amendment.
- With each recommendation we have included an anonymised case study to indicate how we expect campaigning activity to be affected should the bill not be amended.
- As election law is complex and each small change is likely to affect how other elements of the bill will operate, it is incredibly important that the following should be viewed as a package of amendments, to be adopted whole.
- In their entirety, NCVO believes these changes represent a proportionate and reasonable solution, allowing for greater transparency without placing unnecessary limits on campaigning activity.

NCVO is asking for the following package of amendments:

- 1. - Reduce the 'regulated period' to 6 months.**
- 2. Substantially increase the registration thresholds.**
- 3. Amend the range of activities to remove staff costs.**
- 4. Change the regulation of coalitions.**
- 5. Remove the constituency limits.**
- 6. Amend the range of activities to remove events and public rallies.**
- 7. End the use of nil reports.**
- 8. Amend the definition of controlled expenditure.**

1. Reduce the ‘regulated period’ to 6 months.

What’s the problem?

The provisions of the bill apply to a regulated period of 365 days prior to general elections, and four months prior to European elections and elections to the devolved administrations (this was put in place under previous legislation the Political Parties, Elections and Referendums Act 2000).

As the Electoral Commission identified in a recent briefing these periods are “significantly longer than the typical four to six week regulated period that covers candidates’ campaigning before an election.”

While the bill’s provisions are only intended to apply in a specific and time limited period, the staggering of referendums and elections in the UK means that organisations will not be able to predict when activity will come under the regulated period. It is therefore likely that organisations will be forced to limit campaigning activity in perpetuity.

Even if elections proceed as planned, between now and 2020, the time periods proposed by the bill mean that campaigning restrictions will apply in 35 months – almost 60% of the time.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2014		European Elections 2014										
					General Election 2015							
2015	General Election 2015											
		Northern Ireland Assembly 2015										
2016		Scottish Parliament 2016										
		National Assembly for Wales 2016										
2017												
2018												
2019			European Elections 2019									
					General Election 2020							
2020	General Election 2020											

What’s the solution?

NCVO recommends amending the bill to reduce the regulated period for a general election to 6 months.

Many NCVO members feel that a reduced period would reflect the reality of campaigning activity – as most of the expenditure would be focussed on the months closest to the polling date. This would reduce the administrative burden substantially (as organisations would not

have to register and forecast activity for an extended period of time) but would still capture the vast majority of activity that occurs in the run up to the election.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2014		European Elections 2014									General Election	
2015		Northern Ireland Assembly 2015										
		2015 General Election										
2016		Scottish Parliament 2016										
		National Assembly for Wales 2016										
2017												
2018												
2019		European Elections 2019									General Election	
2020	General Election 2020											

Suggested amendment

Schedule 10 of the Political Parties, Elections and Referendums Act 2000

Delete subsection 3 (3) and insert:

For the purposes of this paragraph the relevant period is—

(a) (subject to paragraph (b)) the period of six months days ending with the date of the poll for the election;

(b) where the election (“the election in question”) follows another parliamentary general election held less than six months previously, the period—

(i) beginning with the day after the date of the poll for the earlier election, and

(ii) ending with the date of the poll for the election in question.

Case study

The overlap of regulated periods is particularly problematic for the devolved administrations. For example, as shown by the graph above, Scotland would be in a regulated period from February 2014 to May 2016, then again from March 2019 to May 2020.

2. Substantially increase the registration thresholds.

What's the problem?

The bill considerably lowers how much non-party campaigners can spend before having to register with the Electoral Commission. 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) and sits alongside a significant widening of activity under other parts of the bill.

NCVO does not understand the rationale that has been used to set these limits, in particular the change to the lower limit is not consistent with the stated policy intent to make 'sure our political system doesn't fall prey to opaque and unaccountable groups who spend millions in trying to decide who wins an election' (Andrew Lansley, *The lobbying bill will make our democracy more accountable*, Telegraph, 3 September 2013).

NCVO has been told by its members and by other voluntary groups that the lower registration thresholds proposed in the new bill will be damaging particularly for small community groups. NCVO is particularly concerned this would mean that even smaller organisations undertaking limited activity would be required to register.

A recent briefing from the Electoral Commission highlights that the threshold changes will 'create significant new burdens for small scale campaigns and for us as the regulator' and, in their view, 'the current registration thresholds should be restored unless the government can show the need for the reductions.'

Furthermore, the Electoral Commission's briefing for House of Commons Report Stage and Third Reading is clear that 'the wider scope of controlled spending introduced by the bill may justify increasing the current thresholds in order to ensure that only significant campaigning is regulated.'

What's the solution?

NCVO recommends amending the bill to raise the registration threshold to take account of both inflation and the significant widening of activity included in the scope of the bill. The approximate amount would be £20k in England and £15k in Scotland, Northern Ireland and Wales.

A provision should also be included to review the amounts in line with inflation every 5 years.

This is a proportionate and reasonable solution. In particular, the vast majority of smaller organisations are unlikely to meet this limit in a 6 month period, while the policy aim to prevent vast amounts of money distorting politics would not be frustrated.

Suggested amendment

(1) In section 94(5) of the Political Parties, Elections and Referendums Act 2000 (limits on controlled expenditure by non-recognised third parties)—

(a) in paragraph (a), for “£10,000” substitute “£20,000”;

(b) in paragraph (b), for “£5,000” substitute “£15,000”.

Case study

A local community group in Wales is concerned about an issue in its area, for example a proposed bypass road.

A campaign is set up to raise awareness within the community, including activities such as producing leaflets, renting the village hall to host a debate, inviting local media.

If a local candidate subsequently expresses a view on the issue, the campaigning activity could be deemed to assist candidates’ election campaigns.

Costs might include the cost of hall hire, catering costs, transport for elderly residents, AV requirements, producing and delivering leaflets, an advert in the local newspaper and associated staff costs (time spend organising event, hosting event).

The costs of their campaign would be higher as they legally are required to work bilingually in English and Welsh in all their communications and publications.

The costs of the activities undertaken would easily reach the current proposed £5,000 threshold and therefore the community group would have to register and become subject to regulation, even if it had acted apolitically and had no intention to support any candidate’s campaign.

3. Amend the range of activities to remove staff costs

What's the problem?

The bill extends the rules to cover a broader range of activities, including not only 'election material' (such as advertising, leaflets sent to the public, manifestos and policy documents, and websites) but previously unregulated activities such as press conferences and media events, transport, market research and canvassing, rallies and public events.

All relevant costs are covered, including staff costs.

NCVO and many other organisations have raised concerns about the significant regulatory burden this would create, almost certainly requiring an extra member of staff to ensure monitoring and reporting of costs across each organisation's functions. Most organisations will also need to set up new systems in order to record and calculate the likely costs.

In this respect both the current rules on non-party campaigning and the bill differ from the rules on political parties, whose staff costs relating to national campaigning are not regulated (schedule 8, paragraph 2(1)(d) PPERA).

Originally, in the bill that became PPERA, spending on directly employed staff brought in to work on election campaigns was listed as an item that would count against parties' spending limits. During the passage of the bill there were debates as to whether directly employed staff costs, and a number of other items of regulated spending, should count against parties' limits. Objections to their inclusion included concerns that the list of items covered was too long, complex and burdensome, and that the provisions would be disproportionately burdensome on smaller parties. As a result, directly employed staff costs were explicitly excluded from the definition of campaign spending by political parties and referendum campaigners in PPERA as enacted.

The Electoral Commission's Regulatory Review recommended widening the scope of the PPERA spending rules in some areas, to cover political parties' staff costs related to campaigning, and a wider range of non-party campaigning activity. However, it also recognises that these are complex and potentially controversial changes that would need further thought and consultation before they are implemented.

The same arguments about complexity, red tape, bureaucratic burden and workability apply equally to non-party campaigners. Furthermore, since charities and voluntary organisations do not have an 'electoral' or 'political' purpose, these difficulties are likely to be greater.

What's the solution?

NCVO recommends removing staff costs from the scope of the bill.

Suggested amendment

After Schedule 3 insert:

'Nothing in paragraph 1 shall be intended as extending to any expenses incurred in respect of the remuneration or allowances payable to any member of the staff (whether permanent or otherwise).'

Case study

A small disability charity campaigning on welfare reform employs an additional member of staff in the run up to the election, to run local campaigns in branches across the country. The organisation however does not have the systems in place to account for this person's time or to monitor which activities undertaken by local groups could count towards controlled expenditure.

Even taking a simplistic approach, such as looking at a yearly salary, could immediately bring the organisation over the registration threshold (for example, one public affairs officer on £30,000 per annum).

4. Change the way coalitions are dealt with under the rules

What's the problem?

The current rules on non-party campaigning mean that where several organisations campaign together on an issue and jointly incur spending, their total spending counts against each organisation's individual spending limit. This means that each member has to account for the full amount spent for the joint campaign, regardless of their individual contribution.

This is how the rules are structured under the previous legislation, primarily as an anti-avoidance mechanism. Charities already had difficulties with these rules during the 2010 General Election, and these will become so much more dramatic in the context of the lower expenditure thresholds and the broader range of activities

NCVO has been told by its members and other voluntary organisations that, unless a more proportionate solution can be found, there will be huge consequences for collaboration in the sector: small groups will be unlikely to join coalitions for fear of dealing with the related administrative burdens, and larger organisations will walk away from coalitions in order to avoid reaching the maximum expenditure limits.

What's the solution?

NCVO recommends that an amendment needs to be made so that non-party campaigners working in coalition are not responsible for the whole aggregated expenditure. A number of options have been discussed, such as requiring each member of a coalition to only account for their direct financial contribution to a joint campaign, or appointing a lead organisation as responsible for reporting on behalf of the whole coalition.

Suggested amendment

Amend s.94 par 6 of PPERA so that each member of a coalition accounts only for its direct financial contribution to the joint campaign.

Case studies

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 Oxfam organised hustings events across the country, created materials for people to have at their home to be able to ask climate change questions to candidates, and funded adverts and campaigning activity.

Under the previous rules, members of the coalition joined this campaign with some confidence because potential "electoral material" was confined to leaflets and websites (material available to the public).

If the bill is passed as it stands, each member of the coalition would have to account for all the costs of organising hustings meetings, relevant staff time, associated transport costs, etc. The full coalition spend would be reported and would be very likely to trigger registration.

The problems caused by the rules on coalitions are compounded by the fact that organisations in a federated structure are treated not as a single entity but as working in coalition. Many organisations with a national remit (such as Mind UK, the Quakers, RSPCA, Campaign for the Protection of Rural England) adopt this structure.

However, there are governance and accountability implications for national organisations with a federated structure, the key one being that in most cases each constituent part is a local charity that operates entirely autonomously, including with regards to campaigning and related expenditure.

This raises a series of difficulties in relation to the rules in the bill, particularly on aggregated expenditure and monitoring campaigning activities.

For example, the Royal Society of Wildlife Trusts (RSWT) is a coalition of which every Wildlife Trust is a member.

A significant proportion of RSWT's expenditure is on engaging in public policy debate to promote the need for nature conservation.

If any of the related activities were deemed to be 'for election purposes', each Wildlife Trust would be required to account for the aggregated costs of any coalition of which the Trust may be a member (such as the RSWT), which would also count towards the individual spending limit.

5. Remove the constituency limits.

What's the problem?

The bill introduces new constituency limits. These new constituency limits apply to spending in relation to parties or groups of candidates (but not individual candidates) that has an effect in one or more constituencies, but “no significant effect” in others.

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. The controls apply to spending relating to parties or groups of candidates, but not to spending relating to individual candidates. Where such spending has an effect in several constituencies, it must be divided equally between them. This equates to £9,750 in each constituency over the year before a UK Parliamentary general election and £5,850 in the 4-5 weeks after Parliament is dissolved.

NCVO members have told us that this lower limit will cause issues for smaller organisations, such as those running a campaign limited to a geographical area such as a bypass or a wind farm for example, and for national charities with a federated structure.

These organisations will need to estimate whether their campaigning costs relate to activity in particular constituencies, and ensure that their planned spending will stay within the new spending limits for activity in constituencies. This will be problematic for various reasons, particularly small local groups often target their campaigning on a specific area identified by communities of interest, not by political constituencies.

The Electoral Commission has also highlighted a number of challenges in enforcing the new constituency controls. It is particularly concerned that that the constituency controls may be unenforceable within the timescales of an election, given the difficulty of obtaining robust evidence to determine and sanction breaches.

In particular these new controls will require the Commission to respond to allegations about campaign activity in 650 constituencies during the 12 month election regulated period, making it extremely challenging to obtain robust evidence to determine and sanction breaches in specific geographical areas. Due to the low level of the spending limits it is expected that there will be high level of allegations. The constituency controls may also be unenforceable within the timescales of an election, particularly if potential breaches occur in the last few weeks of the campaign.

It is also worth pointing out that political parties' national campaigning during the year before a UK general election is not subject to constituency limits of this kind.

What's the solution?

NCVO recommends removing the new controls on constituency spending

Suggested amendment

Delete clause 28 which places new limits on spending by non-party campaigners that is focused in particular constituencies in the run-up to a UK Parliamentary general election.

Case study

A local bird sanctuary is concerned about plans to build a high speed rail link that would affect local wildlife. The area affected spans two constituencies. The organisations' supporters are drawn from a wider area.

The charity begins a campaign to highlight the impact the rail link would have on local wildlife. This includes hosting events, proactive media work, an advert in a local paper and publications, leaflets and social media. They are very careful not to express support for a particular candidate and make efforts to invite people with a range of views to their events.

However, one of the local candidates in the election has put this issue front and centre in their campaign and is incredibly vocal about the issue when speaking on platforms and to the local media.

It is unclear if the campaign would fall within the scope of the rules, and if so how the organisation would calculate spend in each constituency, or how activity outside of constituency borders will be accounted for.

6. Amend the range of activities to remove events and public rallies

What's the problem?

The broadened list of regulated activities also raises concerns about the impact on freedom of association, in relation to the new regulation of rallies and other public meetings, when considered together with the bill's new spending and regulation limits.

This is a very widely drawn category that will not be limited to events organised "*so as to obtain publicity in connection with an election campaign or for other purposes connected with an election campaign*".

The Electoral Commission's Regulatory Review, while recommending that a broader range of campaigning activities should be covered, highlighted the importance of taking into account the range of campaigners that exist, and the need to set a balance between enabling participation in the democratic debate.

In particular, the Electoral Commission has stressed that, when recommending that the scope of non-party campaigning activity that is regulated should be widened, it also recommended that the spending limits would need to be reviewed as a consequence. The resulting limits should be sufficient to provide the appropriate balance between freedom of expression and freedom of association, and controls on undue influence.

What's the solution?

NCVO recommends removing events and public rallies from the scope of the bill.

Suggested amendment

Remove s.1 par.(4) from the list of qualifying expenses in Schedule 3.

Case study

Environmental groups with an interest in maintaining the bee population stage a demonstration in central London ahead of a key vote on a ban on pesticides.

The demonstration was organised by nine campaign groups but the costs split predominately between two of the groups. A press conference is organised.

If this were to happen during a regulated period and the use of pesticides was associated to a particular political party, the event could be considered as falling within the scope of the rules, and all associated costs would have to be accounted for.

7. End the use of nil reports.

What's the problem?

The bill (and the previous legislation) introduces a number of administrative and reporting requirements, which are likely to cause a significant bureaucratic burden.

This includes a new requirement to submit 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.

The Electoral Commission has also highlighted the need to minimise the regulatory burdens: its regulatory review recommended simplifying the reporting rules for political parties, and following the publication of the bill it has recommended also adopting them for the proposed new regime to help reduce the new burdens imposed on campaigners.

In particular, regulatory review recommended that in order to reduce reporting burdens on political parties:

- those that have no reportable donations in a quarterly donation report should then be exempt from providing further reports until they receive a reportable donation;
- weekly donation reports after the dissolution of Parliament should be replaced by a single report, which would only be required if a reportable donation is received.

These changes could be adopted in the equivalent rules for non-party campaigners.

What's the solution?

NCVO recommends tabling an amendment to end the use of nil reports.

Suggested amendment

Amend Schedule 4 new Schedule 11A to:

- *delete paragraph 3(3)*
Where the recognised third party did not accept any reportable donations during the reporting period, the statement must record that fact.
- *delete paragraph 5(4)*
Where the recognised third party did not deal with any reportable donations of the kind mentioned in sub-paragraph (1) in accordance with section 56(2) during the reporting period, the statement must record that fact.

Case Study

Following a government announcement to remove forests and woodlands from public ownership, a number of organisations set up a joint campaign to oppose the policy. This happens at the start of the regulated period, so the organisations register with the Electoral Commission, expecting a high spend throughout the year on the basis of the initial costs (for setting up the coalition, media releases, publications, etc.).

The public outcry and success of the campaign result in a swift u-turn by Government, meaning that no further activities will be necessary for the rest of the regulated period.

However, if the proposed new rules are not changed, the organisations that have registered would still be required to submit nil reports up until polling day.

8. Amend the definition of controlled expenditure

What's the problem?

It is crucial that charities and other voluntary organisations have absolute clarity on whether and when their campaigning activities will count towards controlled expenditure and therefore be regulated by the Electoral Commission. The question remains open whether or not legitimate non-partisan campaigning by charities and other voluntary groups, and awareness-raising on policy issues, would be caught by the new rules.

This level of uncertainty is hugely problematic: as the definition currently stands, activities can be caught even if there were not intended to have an electoral effect.

What's the solution?

Clarify the definition of controlled expenditure so it is only 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”*.

Suggested amendment

Delete subsection 5 of clause 26:

“In determining whether expenditure can reasonably be regarded as intended to promote or procure electoral success as mentioned in subsection (2)(b), it is immaterial that it can reasonably be regarded as intended to achieve any other purpose as well.”

Case study

A number of charities and voluntary organisations providing advice are concerned about some of the proposals in pay day loans legislation, particularly the proposal to cap the cost of pay day loans. As the bill progresses through Parliament, organisations brief MPs, set up a number of events in Parliament, issue press releases and organise a media conference, all with the aim of securing changes to the bill.

This is in line with the organisations' missions, but if in the media and public view the activities are seen as a criticism on a particular political party, the Electoral Commission has indicated that they could come within the scope of the rules.