

Parliamentary Briefing

Report Stage in the House of Lords of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill

Wednesday 15 January 2014

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:

- The bill contains provisions to amend the rules covering 'non-party campaigners' – people and organisations other than political parties in the run up to an election.
- For many charities and voluntary organisations, campaigning is a routine and important part of their work and central to their charitable objectives and mission.
- Campaigning for changes to law or policy where such a change would support their charitable objectives is an entirely normal and legitimate activity for charities to pursue, provided they do not give support to a political party, or candidate.
- In some circumstances, a charity campaigning on policy issues may quite legitimately fall within the scope of the rules on non-party campaigning, even though its activity is fully compliant with the restrictions that charity law places on party political campaigning.

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Executive Summary

- Last week, Government tabled a set of amendments, which go some way towards achieving a more sensible balance between creating accountability and transparency in elections while still allowing charities and others to speak up on issues of concern.
- The key change is an increase of the registration thresholds (to £20,000 in England and £10,000 in Scotland, Wales and Northern Ireland).
- This is an important concession that NCVO has welcomed. It means that the majority of organisations that undertake small scale campaigning activity won't have to worry about the rules as they are highly unlikely to go anywhere near the registration thresholds.
- This shows that Government has listened to the concerns of charities and of the wider voluntary sector about the possible unintended consequences of the bill, which could severely restrict campaigning by charities and voluntary organisations.
- However, it is likely that due to the broader range of activities that contribute towards expenditure, organisations that take on larger scale campaigns will have to register.
- It is therefore important that the accounting and reporting requirements involved in registration are proportionate and workable.
- Furthermore, there are still a number of problems with the bill, which need to be addressed in order to make it workable and ensure charities and voluntary organisations are not deterred from undertaking campaigning activities.
- In particular, changes are needed to provisions of the bill around accounting for staff costs and working in coalitions. Unless these further changes are made, organisations will be faced with onerous and complicated reporting processes that could deter them from carrying out their usual campaigning and influencing activities.
- We would also welcome an amendment to the bill to clarify organisations can continue to engage with legislation during the regulated period.

Key points for Report Stage

Government amendments

Government has tabled a set of amendments that are designed to remove campaigners who incur small amounts of controlled expenditure from the regulatory regime, ensure reporting requirements are not overly burdensome, ease the transition into the new regime, and clarify the regulatory rules. The amendments are outlined in detail in Annex I to this briefing.

Recommendation

Support the amendments tabled by Lord Wallace of Tankerness aimed at:

- **raising the registration thresholds;**
- **reducing the length of the 2014-2015 regulated period;**
- **removing the post-dissolution constituency limit so there is only a simpler constituency cap;**
- **introducing an exemption for the costs of translating material from English into Welsh (and vice versa) and for campaign costs relating to disability and security;**
- **simplifying the reporting regime;**
- **allowing a lead campaigner to report on behalf of the small campaigners when working in coalition;**
- **committing to a review of the effects of the bill following the 2015 General Election.**

Campaigning on legislation before Parliament

- Influencing a particular piece of legislation to further their charitable purposes or to protect the interests their beneficiaries is a key part of what charities and voluntary organisations do. Charity Commission guidance on campaigning makes clear that campaigning for a change in the law is an entirely legitimate activity and can be an effective means of supporting a charitable purpose. This includes supporting or opposing the passage of a Parliamentary Bill, commenting on proposed changes in the law or government policy, and promoting the need for a new piece of legislation.
- However, this type of activity is likely to be subject to regulation under the bill, as highlighted by the Electoral Commission.
- This causes great concern that, in the year before an election, organisations will be prevented from promoting or opposing a change to the law if such activity could be publicly associated with some political parties. This would be to the detriment of the democratic parliamentary process and could leave parliamentarians from all parties without access to expert advice from voluntary organisations.
- Ministers have made statements on the floor of the House saying that it is not Government's intention to include this type of activity in the scope of the rules.

- It is therefore important to clarify on the face of the bill that the definition of ‘controlled expenditure’ does not include routine non-party campaigning in support or against legislation passing through Parliament.

Recommendation

Support amendment 34 tabled by Lord Harries of Pentregarth to clause 26, to exclude expenditure that relates to legislation before Parliament during the regulated period.

Staff costs

- 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 expressed a willingness to increase the types of activities subject to regulation, for reasons of transparency.
- However, we have consistently raised concerns about the significant regulatory burden that the requirement to account for staff costs would create when applied to such an expanded range of activities.
- The inclusion of staff costs also contradicts the concerns raised for political parties at the time PPERA was being debated in Parliament, when it was acknowledged that the list of items covered would be too long, complex and burdensome, and that the provisions would be disproportionately burdensome. 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.

Recommendation

Support amendment 45 tabled by Lord Harries of Pentregarth to clause 26, to exclude background staff costs.

Constituency limits

- The bill introduces new constituency limits. These 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.
These new constituency limits will be extremely problematic for charities and voluntary organisations and will cause significant bureaucratic burdens. Accounting for expenditure on the basis that it has a certain effect in one constituency would require

organisations to develop new financial systems to account for expenditure on this basis.

Recommendation

Support amendment 52 tabled by Lord Tyler to clause 28, to ensure constituency spending limits only apply to activity that directly targets people in a particular constituency.

Coalition campaigning

- Under the already existing PPERA rules, where several organisations campaign together on an issue, each member has to account for the full amount spent for the joint campaign, regardless of their individual contribution. Ministers have accepted a recommendation made by the Commission on Civil Society and Democratic Engagement, and have brought forward an amendment so that a lead campaigner is able to report on behalf of the small campaigners it is in coalition with. The small campaigners, provided their expenditure does not exceed the registration threshold, would not be required to account for the coalition's spending against their own limits. The small campaigner would not have to provide any spending return nor register with the Electoral Commission.
- This lessens the administrative burden for organisations that do not spend over the registration threshold, but significant problems exist for organisations spending more than this amount.
- These problems, already experienced during the 2010 General Election in relation to the PPERA rules on coalition campaigning, are exacerbated by the proposal in the bill to cut spending limits by 60%.

Recommendation

Support amendment 39A tabled by Lord Tyler after clause 26, to exclude expenditure in pursuance of any matter unrelated to an arrangement.

Spending limits

- The bill reduces the total amount that non-party campaigners can spend in the year before a General Election by approximately 60%.
- This is contrary to the spirit of a recommendation by the Electoral Commission, which in its report of June 2013 made clear that any widening of the scope of regulated activity should be accompanied by changes to spending limits to ensure the changes would not unduly restrict freedom of expression.

- The Commission on Civil Society and Democratic Engagement has highlighted the lack of evidence to indicate that undue influence is being exerted by non-party campaigners under the current PPERA limits.

Recommendation

Support amendment 46A tabled by Lord Harries of Pentregarth to maintain spending limits at the current levels set by the Political Parties Elections and Referendums Act.

Guidance for charities

- Both the Charity Commission and the Electoral Commission have made clear that electoral law is interpreted more broadly than charity law, so a charity campaigning on policy issues may in some circumstances legitimately fall within the scope of the rules on non-party campaigning, even if it complies fully with the restrictions that charity law places on party political campaigning.
- Because of the different regulatory frameworks, it is important to ensure that charities have clear and reliable guidance by the Electoral Commission about how to comply with the rules, and that the relevant guidance by all regulators is appropriately cross-referenced.

Recommendation

Support amendment 119ZA tabled by Lord Hodgson of Astley Abbots, which requires the Electoral Commission and the Charity Commission to work jointly and coordinate their respective guidance.

Annex I - Government amendments

The main measures are:

- Raising registration thresholds to £20,000 for England and £10,000 in each of Scotland, Wales and Northern Ireland. This rise addresses the particular concerns the Government has heard about the impact of the threshold on lower spending, small campaigning groups and small charities. It will effectively exempt these groups from the need to register as a third party, and the reporting requirements that entails.
- Reducing the length of the 2014/2015 regulated period for non-party campaigning. It will now commence after the Scottish independence referendum on 18th September 2014. This will allow more time for the Electoral Commission to produce clear and sensible guidance so that changes are clearly understood by those affected before the regulated period begins.
- Remove the post-dissolution constituency limit of £5,850, to maintain a simpler constituency cap of £9,750.
- Increasing the spending limits in Scotland, Wales and Northern Ireland from the levels originally set out in the Bill, giving an uplift of £20,000 in each nation, in response to suggestions that those limits were too low.
- An exemption for the costs of translating material from English into Welsh (and vice versa) and for campaign costs relating to disability and security.
- Simplifying the reporting regime by removing the need for nil returns to be submitted to the Electoral Commission on donations (returns will only be required when a reportable donation has been received) and by removing the need for spending returns and a statement of accounts if a recognised party spends below the registration threshold.
- Amending the rules on campaigning in coalition so that a lead campaigner is able to report on behalf of the small campaigners it is in coalition with. The small campaigners, provided their expenditure does not exceed the registration threshold, would not be required to account for the coalition's spending against their own limits. The small campaigner would not have to provide any spending return nor register with the Electoral Commission.
- A review of the effects of the provisions of Part 2 following the 2015 UK Parliamentary General Election, to ensure the regulatory system remains effective and proportionate.