

Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill – Non-Party Campaigning

Executive Summary

On 17 July 2013, the Government introduced to Parliament the Transparency, Non-Party Campaigning and Trade Union Administration Bill. The Second Reading is timetabled for the House of Commons on 3 September, followed by Committee Stage on 9, 10 and 11 of September 2013. This will be a Committee of the whole House.

Most of the media attention has focused on Part I of the Bill, which establishes a statutory register of lobbyists. However, Part II of the Bill also seeks to amend the rules on non-party campaigning, set out in the Political Parties, Elections and Referendums Act 2000 (“PPERA”).

NCVO’s position on the Bill

Scope – The scope of activities that are caught by the new rules is considerably widened and the threshold for registration is lowered. This means that the number of charities regulated will increase substantially.

Complexity – We have major concerns that the provisions of the Bill are highly complex and unclear, and run the risk of discouraging charity campaigning.

Bureaucratic burden - The Bill gives substantial discretion to the Electoral Commission. This will, in turn, create a huge regulatory burden on organisations that will be required to analyse and discuss individual campaign actions with the Electoral Commission.

Excessive reporting requirements - The Bill also introduces a number of administrative and reporting requirements, which are likely to cause a significant bureaucratic burden especially for smaller organisations.

Timing – While the Bill’s provisions are only intended to apply in a specific and time limited period, the staggered and unpredictable nature of referendums and elections in the UK means that organisations will not be able to predict when activity will come under the regulated period and organisations will be forced to limit campaigning activity in perpetuity.

We are asking the Government to make the rules clearer and less restrictive, so that charities are able to undertake legitimate campaigning.

Key issues

Range of regulated activities

Under the Bill a wider range of activities will be regulated by the Electoral Commission than under existing PPERA: the list in new Schedule 8A to PPERA includes not only election material (such as leaflets, adverts, etc.) but other campaigning activities such as events, media work and manifestos.

Furthermore, the new definition of the term 'for election purposes' is cast in such broad terms that it captures all expenditure incurred for the purpose of, or in connection with, promoting or procuring the electoral success or enhancing the standing of a political party or candidate. The definition of 'for election purposes' doesn't rely only on the intent of the third party: the effect is also taken into account even if the activity was carried out for other purposes.

The concern is that, as the definition is currently drafted, legitimate day to day activities of charities engaging in public policy for non-political purposes would be considered 'for election purposes' and caught by the rules. A charity's activities which are intended to advance the interests of its beneficiaries, for example by raising public awareness of issues in connection with the election, could be regarded as being 'for election purposes' even if it doesn't refer to specific policies or candidates.

It also means that charities' ability to react to important public policy developments on issues relevant to their mission and beneficiaries will be severely undermined, as this could be seen as potentially coming within the meaning of 'activity for election purposes'.

Expenditure thresholds

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. While a lower limit may seem reasonable, because of how the total expenditure is calculated over the course of year and how broad the definition of 'for election purposes' is drawn it is inevitable many organisations will reach this threshold unless they stop their campaigning activities entirely.

Such low levels are likely to cause problems for campaigning organisations, especially those involved in coalitions given that 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).

The requirement to account for the whole expenditure of a coalition is particularly burdensome: it will force the larger organisations to leave many joint campaigns, while also deterring smaller charities to work together for fearing of dealing with the financial and administrative burden.

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.