

Parliamentary Briefing

Second reading 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 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. While under charity law it cannot be the continuing and sole activity of the charity, this is an entirely legitimate activity for charities to pursue. The rules will also affect a range of voluntary organisations 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, 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.

The bill as currently drafted is entirely unworkable and may limit charities' and other groups' ability to speak out on issues of concern:

- The provisions of the Bill are very **broad in scope**. We are concerned that legitimate day to day activities of charities and voluntary organisations engaging with public policy would be caught by these rules. This means that the number of regulated charities, voluntary organisations and other groups will increase substantially.
- As a whole, the Bill is incredibly **complex and unclear**. It may be difficult for charities and other voluntary groups to understand if any of their activities would be caught, and this runs the risk of discouraging campaigning activity.
- The Bill gives **substantial discretion to the Electoral Commission**. This creates an unnecessarily burdensome regulatory regime and may leave charities, voluntary organisations and the Electoral Commission open to legal challenge.
- The Bill introduces a number of **excessive reporting requirements and stringent spending limits** for those caught within the scope of the bill.
- Although we now have fixed term parliaments, the date of an election is not always knowable, this means an even **greater degree of uncertainty** for organisations to understand how and when the rules will apply.

Legal opinion provided to NCVO by election law expert Helen Mountfield QC of Matrix Chambers suggests the new rules are so complex and unclear that they are "likely to have a **chilling effect on freedom of expression**, putting small organisations and their trustees and directors in fear of criminal penalty if they speak out on matters of public interest and concern".

We are asking the Government to remove Part II of the Bill – Clause 26 through to Clause 35 and associated schedules – in order to consult widely on the changes that are necessary to balance the aim of increasing transparency with the regulatory burden.

Reactions from charities and other voluntary groups to part II of the Bill:

Karl Wilding, Director of Public Policy at NCVO:

'This Bill takes us from a situation in which everyone understands the rules on what charities can do and considers them reasonable, into a position where no one has any idea what the rules are, but could nevertheless face criminal prosecution for getting them wrong. This is what happens when legislation is rushed through with no consultation.'

'I would like the government to give serious consideration to putting its proposals on hold. This would give them the chance to consult properly on a solution that addresses concerns about undue influence in politics without the risk of sweeping every charity and community group in the country into a deeply burdensome bureaucratic regime.'

James Legge, Head of Political Affairs Countryside Alliance:

'The changes proposed are potentially hugely damaging to charities and other organisations and the Government needs to think again.'

'It would be wrong if we were unable to continue representing our members' interests as we do year in, year out simply because there was an election or referendum coming up.'

Julia Unwin, Chief Executive of the Joseph Rowntree Foundation:

'It is my view that the provisions of the Bill, if enacted, could reduce significantly the effectiveness of the endowed foundation I lead, make it difficult for us to achieve our purpose, and divert charitable funds to responding to legal challenge in a way that is wholly inappropriate.'

Mark Freeman, Deputy Chief Executive Officer, of Cambridge CVS:

'Are we simply being expected to stop representing our members in the run up to an election in order to safeguard any inadvertent wrongdoing?'

Dr Chris Simpkins, Director General, of the British Legion:

'The Legion is a strictly apolitical organisation which has worked tirelessly and successfully with parliamentarians in the interests of the Armed Forces community for 92 years. It seems to us that this Bill has been generated with a degree of haste and consequentially risks creating a raft of unintended consequences. We are deeply concerned that provisions in Part II of the Lobbying Bill will severely restrict our ability to carry out important charitable activities in the interests of our beneficiary community. We urge the government to take another close look at its proposals and to work with charities to achieve a workable solution.'

Mike Wild, Chief Executive of Macc:

'Community organisations from informal voluntary groups to large national and international charities need to be able to challenge politicians, ask difficult questions and say what they are seeing happening in communities around them. The ambiguities in this Bill will leave many organisations uncertain over what they are allowed to say and when.'

A spokesperson for the Electoral Commission:

'The Bill effectively gives the Electoral Commission a wide discretion to interpret what activity will be regulated as political campaigning,

'It is likely that some of our readings of the law will be contentious and challenged, creating more uncertainty for those affected.'"

Key points for second reading

The Bill introduces a new and much broader definition of ‘for election purposes’

“The proposed definition of that which is ‘for election purposes’ appears to be broader than the previous definition of election material.” Helen Mountford QC.

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 and voluntary organisations engaging in public policy for non-political purposes would be considered ‘for election purposes’ and caught by the rules. This means that the number of regulated charities, voluntary organisations and other groups will increase substantially. 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’.

The scope of activities that are caught by the new rules is considerably widened and the threshold for registration is lowered.

“NCVO is right in its perception that the provisions in part II of the Bill are likely to affect the activities of many of their members and to impose substantial regulatory hurdles in relation to what they can say and restrictions on their ability to comment on matters of public interest for very substantial periods of time.” Helen Mountford QC.

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.

All relevant costs are considered, including staff costs. However the list of items that this would potentially cover is long and complex, making the provisions excessively burdensome, particularly on smaller organisations. 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.

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. Objections to their inclusion included concerns that accounting for staff costs would be disproportionately burdensome.

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 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).

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 and voluntary organisations 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.

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

"The reporting requirements (of the Bill) are onerous, and include statements of the nature and value of gifts in kind." Helen Mountford QC.

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.

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 would not be able to accurately predict when, or whether, they would be subject to the reporting rules.

"The definition of 'relevant period' is not straightforward, and it may not always be possible to predict whether a 'relevant period' has started in advance, before it has begun." Helen Mountford QC

This adds a further concern for organisations and increases the administrative burdens related to ensuring compliance.

Additional points of concern:

- In addition to the concerns set out above, we do not have a clear understanding of the policy objectives behind part II of the Bill. We understand the desire to promote greater transparency in this area and accept that activity which could have a significant impact on elections should be appropriately controlled. However, the current proposals are unlikely to achieve these aims, while deterring many organisations from undertaking important activities such as engaging in public policy and debate

- We also have concerns about the lack of pre-legislative scrutiny and the lack of consultation with organisations that might be affected by the changes in order to ensure they are clear and workable. The timing of the Bill is a particular issue, if enacted the provisions will come into force in May next year leaving only a matter of weeks for organisations to prepare for the new rules.

Useful examples

Some brief examples of the sort of issues that may emerge under the Bill as drafted are as follows:

- A local community group could campaign for or against a proposed bypass road. If local candidates subsequently express a view on the issue the campaigning activity could be deemed to assist candidates' election campaigns. The community group would become subject to regulation, even if it had acted apolitically and had no intention to support any candidate's campaign.
- A children's charity calls for a statutory inquiry via the media in response to a major abuse scandal at the same time as one of the major political parties. This could leave them open to claims that they have inadvertently benefited that party's election campaign.
- A health charity could publish a leaflet highlighting the dangers of smoking. If smoking legislation became a party political issue in an election this activity could be deemed to have the effect of supporting a party's campaign, and be subject to regulation.
- A large coalition of charities and other voluntary groups on the same issue. Coalition members range from the very large national charities to local organisations. If smoking legislation became a party political issue in an election this activity could be deemed to have the effect of supporting a party's campaign, and be subject to regulation. Under the proposed regulations, each charity in the coalition would have to account for the total spend of the whole coalition against their limits. If each member organisation provided £2,000 towards the work of an alliance of 150 organisations, they would each have to account for its total spend – as much as £300,000.
- A youth organisation runs a project encouraging young people to vote and get involved in decision-making. It employs one staff member, alongside occasional support from other staff, and spends some money on publications/media/events. Even though the charity is apolitical and is encouraging voting generally, not for a specific party, if it were deemed to have had the effect of supporting a particular party – perhaps if one party announced it would lower the voting age in order to encourage engagement, for example – the charity would be subject to spending caps. This one project could easily meet the maximum annual threshold of £35k in Scotland or £10k in Northern Ireland for the whole organisation.
- A charity or community group is concerned about a local issue such as the impact of a proposed out-of-town shopping centre, perhaps due to its effect on local wildlife or on the town-centre economy. All local candidates are engaged with the issue and the group wishes to host an event in a local theatre, attended by local media and bloggers. To coincide with the event they wish to publish a poll of local opinion. The costs of the venue hire (whether it was gifted to them or not) the staff time, and the poll would all count towards the £9k total.

Conclusions

Members of the House of Commons may wish to explore the following points of concern:

- The Bill as currently drafted is **entirely unworkable** and may limit charities ability to speak out on issues of concern:

- The provisions of the Bill are very **broad in scope**. We are concerned that legitimate day to day activities of charities and voluntary organisations engaging with public policy would be caught by these rules. This means that the number of regulated charities, voluntary organisations and other groups will increase substantially.
- As a whole, the Bill is incredibly **complex and unclear**. It may be difficult for charities and other voluntary groups to understand and this runs the risk of discouraging campaigning activity.
- The Bill gives **substantial discretion to the Electoral Commission**. This creates an unnecessarily burdensome regulatory regime and may leave charities, voluntary organisations and the Electoral Commission open to legal challenge.
- The Bill introduces a number of **excessive reporting requirements and stringent spending limits** for those caught within the scope of the rules.
- Although we now have fixed term parliaments the date of an election is not always knowable, this means an even **greater degree of uncertainty** for organisations to understand how and when the rules will apply.

We are asking the Government to remove Part II of the Bill – Clause 26 through to Clause 35 and associated schedules – in order to consult widely on the changes that are necessary to balance necessary transparency measures with regulatory burden.

There are a number of potential amendments that can be made the Bill but without sufficient time to consider the precise implications of each, and without careful consideration by Parliament, it would be unlikely we will be able to ensure the rules achieve the desired policy outcomes without creating an unnecessarily burdensome regime and severely hampering democratic participation.

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 XXX XXXX or elizabeth.chamberlain@ncvo-vol.org.uk

Join our drop-in session before second reading

NCVO will be hosting a drop-in session in Portcullis House just before second reading.

MPs will be given the opportunity to talk to representatives of the British Legion, Guide Dogs, the Wildlife Trust, Oxfam, the British Youth Council, Quakers in Britain and the Foundation for Social Improvement.

Please join us in Portcullis House in Room T from 10 – 11.30am on Tuesday 3 September

RSVP to chloe.stables@ncvo-vol.org.uk