

Parliamentary Briefing

Report Stage and Third Reading of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill

7 October 2013

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 the amendments laid to Part II of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill ahead of Report Stage and Third Reading. Specifically this part of 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.
- These rules could affect charities and other voluntary organisations because of their non-partisan activity, that is campaigning for changes to law or policy where such a change would support their charitable objectives and mission.
- This is an entirely legitimate activity for charities and voluntary organisations to pursue, provided they do not give support to a political party, or candidate.
- 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 and mission.

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Summary

- 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.
- Further to second reading, government recognised this need, and agreed to bring forward amendments that would clarify the scope of the rules.
- In particular, various statements made on the floor of the house during Commons debates have made clear that government's commitment is to ensure charities are still able to campaign on policy issues.
- In our view, following legal advice and consultation with members, **the amendments proposed by the government do not go far enough.**
- **The assurances given by ministers on the floor of the house to ensure that charities will still be able to support specific policies that might also be advocated by political parties have not been met.**
- In particular, there is **still too much uncertainty and ambiguity** in relation to the definition of controlled expenditure. 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.
- The government amendments will not result in controlled expenditure only being 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".
- In our view, **many organisations will need to consult the Electoral Commission before undertaking campaigning activity in an election period** in order to ensure they are not falling foul of the new regulations.
- **This amount of uncertainty is unbearable, especially for small community groups.**
- In addition, the Compact (the agreement between government and the voluntary sector) commits government to "respect and uphold the independence of charities and other voluntary organisations to deliver their mission, including the right to campaign, regardless of any relationship, financial or otherwise, which may exist." **There are serious concerns that the bill's proposals will place limits on this independence.**
- 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. Government is committed to the national Compact which states that "where it is appropriate, and enables meaningful engagement, conduct 12-week formal written consultations, with clear explanations and rationale for shorter time-frames or a more informal approach." We do not believe that this has been followed.
- **The timing of the Bill is also problematic for charities and other voluntary organisations:** 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.

Definition of controlled expenditure – Clause 26

Various statements made on the floor of the house during Commons debates have made clear that government's commitment is to ensure charities are still 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. It does not prevent charities from having a view on any aspect of the policy of a party and it does not inhibit charities attempting to influence the policy of a party.' (Mr Andrew Lansley, House of Commons Debate, 3 September 2013, c181.)

'...charities that campaign on policy issues will not be affected...' (Tom Brake MP, House of Commons Debate, 10 September 2013, c891).

We understand this intention is also reflected in more recent correspondence to MPs from the Leader of the House.

What do the amendments do?

- The amendment by government changes the definition of 'controlled expenditure' (clause 26 of the bill) by reverting to a form of words close to that under existing legislation (s85 PPERA).
- The amended test of controlled expenditure will only cover qualifying expenditure that can be 'reasonably regarded as intended' to promote or procure electoral success of any particular party or candidate.

NCVO position on Clause 26

- Legal advice provided to NCVO suggests that the new definition of 'controlled expenditure' would be considered as substantively the same as the test under the Act as currently in force (PPERA).
- The legal advice recognises that this has created difficulties for charities and voluntary sector campaigners in the past and these difficulties will 'not materially be mitigated by the changes made by the amendments.'
- In particular, the amendments will not result in controlled expenditure only being 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".
- Following this advice, and after discussion with the Electoral Commission, NCVO is concerned that charities and other voluntary organisations will not be able to support specific policies that might also be advocated by political parties without coming within the scope of the rules and having to register with the Electoral Commission.
- This is reinforced by the [briefing from the Electoral Commission](#) (issued 4 October 2013) which says 'in our view, it is clear that (as under the current rules) the bill can

cover such spending (campaigning on public policy issues), depending on the facts of each case' and 'activity does not have to be 'party political' for its costs to be regulated.' The briefing goes on to say that 'such provisions also inevitably affect organisations whose primary intentions are clearly not party political.'

- This leaves a great deal of uncertainty and ambiguity. Many organisations will need to consult the Electoral Commission before undertaking campaigning activity in an election period in order to ensure they are not falling foul of the new regulations. This amount of uncertainty is unbearable, especially for small community groups.

Why is the PPERA wording not sufficient?

- The test of controlled expenditure under PPERA has itself created difficulties for voluntary sector campaigners in the past. This is because s85 of PPERA includes activities that can reasonably be regarded as intended to promote or procure electoral success of a particular party or candidate, based on whether or not the party or candidate holds particular views or advocates particular policies. The party or candidate does not need to be named in order for the activity to be caught.
- The test applied by the Electoral Commission is an 'objective test' and looks at the likely effect of the activity as well as the intent. So, if something is likely to make people think better of candidates or parties who support that issue, it may well be covered even if the reason behind it was different, such as awareness-raising.
- The Charity Commission has acknowledged that charities may fall within PPERA even if their campaigning activities comply with charity law and the rules on political activities by charities.
- Furthermore, at the time of the 2010 general election, the definition of controlled expenditure only applied to 'election material' and expenditure thresholds were set at reasonable level.
- The bill has significantly expanded the list of activities, and considerably lowered the thresholds. With continued ambiguity in Clause 26, the overall effect will be that more charities and voluntary groups will be subject to the enhanced and much more onerous rules.

Support for amendment 101

We are asking MP's to support amendment 101 tabled by Graham Allen, Chair of the Political and Constitutional Reform Committee.

This would introduce a rewording of clause 26 that requires that "*the primary purpose*" of the expenditure should "*reasonably be regarded as intended to*" promote or procure electoral success.

This would ensure that expenditure aimed at highlighting a particular issue or issues, rather than promoting a particular party or parties or candidate or candidates, is not caught by the expenditure controls.

Changes to existing limits – Clause 27

There have been no government amendments to this section of the bill, however:

- The expenditure thresholds have been considerably lowered from the previous Act. 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.
- The lower registration thresholds proposed in the new bill will be damaging particularly for small community groups that are not charities. We are particularly concerned this would mean that even smaller organisations undertaking limited activity would be required to register and have to deal with heavy reporting requirements.
- These must be restored to the current levels. We do not understand the rationale that has been used to set these limits, in particular the change to the lower limit does not make sense if the policy intent is 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).
- The question of how to sensibly regulate groups working in coalition remains to be addressed. At the moment 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 is already problematic for many organisations and as a result of the lowered spending threshold 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.

Support for amendment 102

Graham Allen, Chair of the Political and Constitutional Reform Select Committee has tabled an amendment for Clause 27 not to stand part of the bill.

This would leave the existing thresholds in place. We are asking MPs to support this amendment.

Activities (Schedule 8A)

The definition of controlled expenditure also cannot be isolated from the list of activities to which it is potentially applied. This has been significantly expanded under the bill.

- The list in Schedule 8A includes not only 'election material' (which now replaces the categories of advertising, unsolicited material and manifesto/policy documents) but a broad range of activities such as press conferences and media events, transport, market research and canvassing, rallies and public events.
- Even as amended the list remains very wide in scope. Indeed, in some cases the proposed amendments have widened the categories of activities compared to those originally contained in the bill.
- Once again, these changes, combined with reduced expenditure and limits, are likely to result in more charities and voluntary organisations being required to register with the Electoral Commission and more exceeding the maximum limits on controlled expenditure.

Remaining issues

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.