

Parliamentary Briefing

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

Monday 16 December 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 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.
- These rules could affect charities and other voluntary organisations influencing public policy and raising awareness of the issues affecting the people and causes they support.
- 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.
- 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, campaigning is a routine and important part of their work and central to their charitable objectives and mission.

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Executive Summary

- Part II of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill ('the 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.
- The 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.
- The 'pause' agreed by government at second reading has allowed civil society organisations to work in partnership and develop a package of suggested amendments that represent a proportionate and reasonable solution.
- There is agreement amongst NCVO, the Commission on Civil Society and Democratic Engagement, and other key stakeholders that the following issues continue to be of concern:
 - the definition of regulated non-party campaigning ('controlled expenditure')
 - the wide range of campaigning activities subject to regulation
 - the registration thresholds
 - the new constituency limits
 - the reporting requirements
 - the rules on coalition campaigning
 - the duration of the regulatory period
- If implemented in their entirety, changes that address these issues would go some way towards establishing a framework that is fair and workable, allowing for greater transparency without placing unnecessary limits on campaigning activity.

Key points for Committee Stage

Definition of regulated non-party campaigning ('controlled expenditure')

- 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.
- Following intense criticism during the Commons stage of the bill, government brought forward amendments to the definition of controlled expenditure, reverting to a form of words close to that under existing legislation (s85 PPERA).
- The amended test of controlled expenditure covers qualifying expenditure that can be 'reasonably regarded as intended' to promote or procure electoral success of any particular party or candidate.
- However the definition of non-party campaigning in PPERA still leaves undesirable uncertainty about the activity that is subject to regulation.
- 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*'.
- This is confirmed by a briefing from the Electoral Commission which says: 'In some circumstances, a charity campaigning on policy issues may therefore 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.'
- The impact of this uncertainty would be significantly exacerbated by the proposed changes in the bill to the registration threshold, spending cap, new constituency cap, and broader range of regulated activities.

Recommendation

Support the package of amendments that substantially change the bill in the key areas identified above (registration thresholds, constituency limits, regulated activities, staff costs, coalitions, regulatory period).

Charities and voluntary organisations influencing legislation

- 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's briefing note to Peers ahead of day one of Committee Stage of the Bill in the House of Lords.
- 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.

Recommendation

Support amendment 159B tabled by Lord Harries to Clause 26, to exclude expenditure that relates to legislation before Parliament during the regulated period.

Activities subject to regulation

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 expand the range of activities subject to regulation, for reasons of transparency. However, they raised concerns about the significant regulatory burden that the requirement to account for staff costs would create.
- 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.
- 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.

Recommendation

Support amendment 165B tabled by Lord Harries to Clause 26, Schedule 3 to amend the range of activities so staff costs are specifically excluded.

Rallies and public events

- 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.

- The joint committee on human rights also expressed concern about the possible impact of the broadened list of activities on the freedom of association (in relation to the new regulation of public rallies and meetings).
- A number of organisations have flagged with us (notably those interested in disability/welfare reform issues) the concern that the high costs associated with organising a rally of some form, and then the subsequent impact this would have on campaigning activity through the rest of a regulated period.
- 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.

Recommendation

Support amendment 163A tabled by Lord Best to Clause 26, Schedule 3 to amend the range of activities to remove events and public rallies.

Registration thresholds

- 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 behind the lowering of these amounts, a change that 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).
- The Electoral Commission has highlighted that the threshold changes will 'create significant new burdens for small scale campaigns and for us as the regulator' and 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.'
- The Commission on Civil Society and Democratic Engagement has concluded that a higher cap than in PPERA would not result in undue influence but would mean fewer organisations being deterred from campaigning by the perceived risks being seen as 'too political' if they registered with the Electoral Commission.

Recommendation

Support amendments 167A and 167B tabled by Lord Harries to Clause 27 to substantially increase the registration thresholds as follows:

- 1. The registration thresholds should be increased to:**
 - **£20,000 in England;**
 - **£10,000 in Wales, Scotland and Northern Ireland.**
- 2. For Scotland, Wales and Northern Ireland costs relating to translation, security and safety should be exempted.**

NCVO and sister councils in Scotland, Northern Ireland and Wales remain concerned about the lower registration thresholds for non-party campaigners in the devolved nations but recognise the amendment from Lord Harries as a useful starting point for consideration.

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.
- 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. 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.
- These new limits will cause difficulties for smaller organisations running a campaign limited to a geographical area, 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 because 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.
- 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.
- There is a disparity with regards to the regulation of political parties, which are not subject to constituency limits of this kind in their national campaigning.

Recommendation

Give notice of your intention to oppose the question that clause 28 stand part of the bill.

Reporting requirements

- The bill introduces a number of administrative and reporting requirements, including 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.
- Both NCVO and the Commission for Civil Society have raised serious concerns about the disproportionate regulatory burden of the reporting requirements and the cost of the additional burden.
- The Electoral Commission has also highlighted the need to minimise the regulatory burdens imposed on campaigners: in particular recommended that the reporting requirements could be simplified by adopting the changes proposed in its regulatory review for political parties.

Recommendation

Support amendment 173 tabled by Lord Hodgson to Clause 32 to end the requirement for non-party campaigners to submit nil reports.

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.
- The aggregated reporting of coalition spending has been put in place as an anti-avoidance mechanism, but the impact on collaborative working across the voluntary sector could be detrimental.
- In the year before an election, 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.
- As noted by the Commission on Civil Society and Democratic Engagement, this is an area where charities in particular are likely to suffer because of the need to respond to two regulators: the Charity Commission encourages coalition working, in order to make an efficient use of resources and because organisations working together are likely to have a higher impact on the policy area of concern.

Recommendation

Support amendment 170M tabled by Lord Harries after Clause 32, which recommends that where an organisation only takes part in regulated activity as part of a single coalition, it should not have to register separately with the Electoral Commission, provided that all its relevant spending does not exceed the registration threshold and is reported through either the coalition or one of the coalition partners.

Support amendment 174 tabled by Lord Hodgson to Clause 32, which states that a recognised third party campaigning in coalition may nominate another recognised third party to take responsibility for the accounting and reporting requirements.

NCVO remains concerned that even amended along the lines suggested the rules on coalition expenditure will still have a disproportionately detrimental impact on non-party campaigners wishing to jointly campaign. We believe this issue requires further detailed consideration.

Duration of the regulatory period

- 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 the previous PPERA legislation).
- 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.
- A reduced period would reflect the reality of campaigning activity – as most of the expenditure would occur in 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 take place in the run up to the election.
- The Electoral Commission has made clear that, should the bill’s progress through Parliament be delayed, a shorter regulatory period ahead of the 2015 General Election would be appropriate.

Recommendation

Support amendment 170L tabled by Lord Harries after Clause 30 to reduce the ‘regulated period’ to 6 months for the 2015 election.

Review

The inadequate legislative process of the bill has been highlighted as a matter of great concern throughout all Parliamentary debates.

The lack of an evidence-based Impact Assessment and appropriate information, in addition to the absence of any pre-legislative scrutiny or time for Parliamentarians to adequately scrutinise the bill have led to a poorly drafted piece of legislation.

Three Parliamentary Committees have raised their concerns:

- the Political and Constitutional Reform Select Committee;
- the House of Lords Constitution Committee;
- the Joint Select Committee on Human Rights.

In addition, the lack of consultation means that there remains insufficient understanding of non-party campaigning activity and regulatory enforcement so there is a high level of uncertainty about the likely impacts of the bill on non-party campaigning.

Recommendation

Support amendment 181 tabled by Lord Hodgson after Clause 41 which requires the Minister to appoint a person to review the operation of the Act within two years of its implementation.

Case studies

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.

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).

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.

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.

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 public 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.

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.