

Commission on Civil Society and Democratic Engagement

NON-PARTY CAMPAIGNING AHEAD OF ELECTIONS

Consultation and Recommendations relating to
Part 2 of the Transparency in Lobbying, Non-Party
Campaigning and Trade Union Administration Bill



Report 2: December 2013

Contents

Foreword	3
About the Commission	4
Executive summary and recommendations	6
1. Interdependence of the regulatory package	12
2. Criteria for appropriate regulation of non-party campaigning ahead of elections	14
3. Elements of regulation	16
3.1 Definition of non-party campaigning	16
3.2 Campaigning materials and activities subject to regulation	19
3.3 Registration thresholds	22
3.4 Spending limits	26
3.5 Constituency limits	29
3.6 Reporting requirements	32
3.7 Coalition campaigning	35
3.8 Duration of the regulatory period	39
3.9 Regulation of non-party campaigning in Scotland, Wales and Northern Ireland	41
3.10 Supporters	45
3.11 Charities and non-party campaigning	47
4. Case studies showing the impact of different regulatory definitions and spending constraints	50
4.1 Human Rights Consortium	50
4.2 HOPE not hate	52
4.3 Save Lewisham Hospital	52
4.4 Citizens UK	53
4.5 Stop HS2	54
4.6 Countryside Alliance	55
4.7 Stop Climate Chaos	56
4.8 STRIFE	57
5. Equalities and human rights	58
6. Evidence, review and powers to amend the act	59
7. Implementing the recommendations	60
8. Appendix	61
8.1 Commission Terms of Reference	61
8.2 Consultation and evidence	61
8.3 Acknowledgements	62

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Foreword

As this second report of the Commission on Civil Society and Democratic Engagement goes to print, Ministers find themselves in the extraordinary position of having now united over 100 campaigning organisations – from charities and community groups to think tanks and blog sites – against Part 2 of the Lobbying Bill. That is more than twice the number of organisations from when our Commission was launched in October this year.



Our first report documented how the draft legislation risks profoundly undermining the very fabric of democracy by significantly limiting the right of organisations to speak out on some of the most important issues facing the country and the planet.

The very unusual step of pausing a piece of legislation to allow a re-think two-thirds of the way through the parliamentary Bill process is an indication that these concerns are based on solid evidence and have become impossible to ignore.

The decision to pause the Bill for less than six weeks is a rejection of the recommendation of this Commission, the Political and Constitutional Select Committee and the Joint Committee on Human Rights, to task a committee of the House to properly review, consult and consider other options. This is particularly disappointing as the Electoral Commission had advised that the regulatory period could be shortened to allow time for proper reconsideration of the Bill.

For a second time, the Commission has undertaken extremely rapid consultation with civil society organisations in Scotland, Wales, Northern Ireland and England. We have also met with and taken evidence from the Electoral Commission and Charity Commission and a range of other relevant organisations. We want to thank and commend the people around the UK who have given their time to this process at very short notice.

Our conclusion reflects our warning to Ministers in the first report: that it is not possible to solve what we highlighted as fundamental problems not just with the Lobbying Bill but with issues that have emerged in relation to some aspects of PPERA the Political Parties, Elections and Referendums Act 2000 in under six weeks. It is still less possible to do it in a way that seriously draws on civil society's views and experience to inform the principle or practicality of law changes.

This report therefore does four things to advance the discussion about how non-party campaigning should be regulated ahead of elections.

Firstly it establishes six tests for good regulation – criteria upon which any proposals should be judged.

Secondly it puts forward a set of interconnected proposals that will go some way to reducing the risk to democratic engagement threatened by the Lobbying Bill as it stands now. We want to make clear that these proposals do not solve the fundamental flaws in the legislation and are intended to be a temporary set of arrangements for the 2015 General Election.

Thirdly it proposes a full and evidence-based review of the legislation governing non-party campaigning which should take place as a matter of urgency after the 2015 General Election.

Lastly, it uses case studies of non-party campaigning by real organisations to illustrate the disproportionately curtailing effects of the Lobbying Bill proposals on campaigning. The regulatory changes proposed by this Commission would largely obviate this threat – although some problems remain, especially with coalition working.

Ministers should take seriously the severe damage to trust between Government and organised civil society as a result of this legislation and the way it has been rushed through Parliament without due consultation. To repair the damage, Ministers must either withdraw Part Two of the Bill and come forward with fresh legislation based on evidence and proper consultation; or must be prepared to radically overhaul the Bill in line with the recommendations in this report, and commit to urgently reviewing the legislation after the 2015 General Election.

Richard Harries

Lord Harries of Pentregarth

Chair of the Commission on Civil Society and Democratic Engagement

December 2013

About the Commission on Civil Society and Democratic Engagement

The Commission on Civil Society and Democratic Engagement was established in September 2013 in response to concerns about a potential 'chilling effect' on campaigning of Part 2 of the Transparency in Lobbying, Non-party Campaigning, and Trade Union Administration Bill.

Its task has been to consult with key stakeholders not consulted by Government and to report on: the state of civil society's engagement in democratic processes; the likely impacts of Part 2 of the Bill on campaigning activity if it passes into law in its current form; and what changes to regulation of non-party campaigning are needed ahead of elections.

The Commission was set up with the support of over 40 prominent charities, campaign groups, community groups, academics, think tanks and online networks. There are now more than 100 supporting organisations. See Acknowledgements and visit www.civilsocietycommission.info for the latest supporter list.

Chair

Richard Harries

Baron Harries of Pentregarth

Bishop of Oxford from 1987–2006. Richard is active in the House of Lords as an independent crossbench peer, mainly speaking out on human rights issues.



Other members

Lesley-Anne Alexander

Chair of ACEVO and CEO of RNIB

Chair of the Association of Chief Executives of Voluntary Organisations and Chief Executive of the Royal National Institute of Blind People. Lesley-Anne is also a Non-Executive Director of the Royal Brompton and Harefield NHS Foundation Trust.



Georgette Mulheir

Chief Executive, Lumos

Georgette pioneered a model of de-institutionalisation of vulnerable children and is currently advising the European Commission on the reform of children's services across the European Union.



Rob Berkeley

Director, Runnymede Trust

Director of the Runnymede Trust, the UK's leading race equality think tank. Rob is a trustee of the Baring Foundation, and a member of the Cabinet Office Review of Consultation Principles Independent Advisory Panel.



Toni Pearce

President, NUS

Toni is National President of the National Union of Students (NUS), representing seven million students through its 600 member students' unions.



Andrew Chadwick

Professor of Political Science, Royal Holloway, University of London

Andrew is a Professor of Political Science and Co-Director of the New Political Communication Unit in the Department of Politics and International Relations at Royal Holloway, University of London.



Nick Pickles

Chief Executive, Big Brother Watch

Nick is a campaigner and commentator on policies that threaten privacy, freedoms and civil liberties, and on the surveillance state.



Baroness Mallalieu QC

President, Countryside Alliance

President of the Countryside Alliance since 1997. Ann led opposition to the Hunting Act in the House of Lords and is an active campaigner on a range of countryside issues.



Justine Roberts

Chief Executive, Mumsnet

Justine Roberts is Founder and CEO of Mumsnet, an online community of parents sharing advice, support and product recommendations. Over the last 13 years it has grown into the UK's busiest and most influential network for parents with over nine million visits a month.



Legal Advisor

Ros Baston

Director, Baston Legal

Formerly lead advisor for the Electoral Commission on party and election finance, Ros now advises clients including campaign groups, trade union organisations and election candidates across the political spectrum.

Executive summary and recommendations

About this report

This is the second report of the Commission on Civil Society and Democratic Engagement which was set up following concerns that Part 2 of the Transparency in Lobbying, Non-Party Campaigning and Trade Union Administration Bill would have a ‘chilling effect’ on non-party campaigning.

This report builds on our first report, published in October 2013 and available at www.civilsocietycommission.info, which found that Part 2 of the Lobbying Bill risks profoundly undermining the very fabric of democracy by significantly limiting the right of organisations to speak out on some of the most important issues facing the country and the planet.

Our first report recommended a pause of three months to Part 2 of the Lobbying Bill to allow time for a committee of the House to consult, gather evidence, and come forward with fresh proposals about how non-party campaigning should be regulated ahead of elections.

Ministers agreed to pause the Bill for just under six weeks. Commissioners made clear that the duration of the pause would be inadequate to do justice to the complexity of the issues.

The Commission has used the time to consult, for a second time, with a wide range of stakeholders.

Six weeks proved to be insufficient time to develop evidence-based solutions to solve the problems that we highlighted not just with the Lobbying Bill but also the issues with the Political Parties, Elections and Referendums Act 2000 (PPERA). This report therefore does four things:

- i) It establishes six tests for good regulation – criteria upon which any proposals for the regulation of non-party campaigning ahead of elections should be judged.
- ii) It makes a set of interconnected recommendations that will go some way to reducing the risk to democratic engagement threatened by the Lobbying Bill and uncertainty around the PERA legislation.
- iii) It proposes a full and evidence-based review of the legislation governing non-party campaigning which should take place as a matter of urgency after the 2015 General Election.
- iv) It sets out a series of case studies of non-party campaigning ahead of elections and the likely impact of both Lobbying Bill proposals and the Commission’s proposals on the campaigns.

About the Commission’s evidence gathering

Government did not consult any of the major stakeholders affected by the legislation before publishing Part 2 of the Lobbying Bill.

The Commission set up a nation-wide evidence gathering exercise in October 2013 with evidence sessions in London, Edinburgh, Cardiff and Belfast and heard from dozens of charities, campaign groups, community groups, faith groups, think tanks and online networks. The Commission also heard from the Electoral Commission and key political actors in support of and opposing Part 2 of the Bill, from academics and the public.

This report builds on that evidence gathering and also draws on a second round of evidence sessions in November 2013 in London, Edinburgh, Cardiff and Belfast, and on a meeting with the Electoral and Charity Commissions.

All evidence will be published on the Commission website www.civilsocietycommission.info.

Issues of concern

Our concerns about the Lobbying Bill articulated in our first report still stand:

i) Uncertainty in the definition of non-party campaigning

The definition of non-party campaigning in PERA leaves undesirable uncertainty about the activity that is subject to regulation. The impact of that uncertainty would be significantly exacerbated by the proposed changes in the Lobbying Bill to the regulatory threshold, spending cap and new constituency cap.

ii) Negative impact on issue-based campaigning

The far-reaching changes proposed in the Bill would cumulatively have a profoundly negative effect on issue-focused campaigning activity that is essential to a healthy democracy. Individually many of the proposals are unworkable or unenforceable.

iii) Lack of consultation and poor legislation

The legislative process has been inadequate and has resulted in poorly drafted legislation. It is based on insubstantial information and insufficient understanding of non-party campaigning activity and regulatory enforcement. The lack of an evidence-based impact assessment, pre-legislative scrutiny, and appropriate information and time for

Parliamentarians to scrutinise the Bill has made it impossible for Parliament to perform its function in relation to producing high quality legislation that has the confidence of the public.

We have further concerns since our first report.

iv) The duration of the pause

Less than six weeks is completely insufficient time to gather evidence, consult and propose changes to very complex areas of law that are central to the democratic health of our nation.

v) Government consultation during the pause

We are disappointed that Ministers did not agree to a Committee of the House being tasked with undertaking evidence-gathering, consultation and consideration during the pause. We are also concerned that Ministers have failed to use the pause to undertake systematic open consultation with organisations directly affected by the legislation. There has been no opportunity for written evidence, or for any evidence gathered by Government to be published and assessed ahead of Committee stage.

Six tests for good regulation

The Commission has developed six tests intended for parliamentarians and stakeholders to use to judge good regulation on this subject. The tests are informed by the Better Regulation Taskforce, the Electoral Commission, Government and NGO views about good regulation.

Test 1: Deliver the policy goals of avoiding undue influence on elections and transparency of those engaged in activity that could influence an election.

Test 2: Be proportionate in the impact on non-party campaigning organisations in terms of campaigning activities they are able to carry out and the regulatory burden.

Test 3: Be evidence-based including being able to demonstrate the need for regulation and an understanding of the impacts.

Test 4: Be clear in its meaning.

Test 5: Be practical for non-party campaigning organisations to implement.

Test 6: Be enforceable by the Electoral Commission as the regulator.

We assessed the Lobbying Bill proposals against these tests and found that **the Lobbying Bill does not meet any of the tests of good regulation**. We have assessed our own proposals against the tests and found that they mostly meet the tests – we have highlighted where we think the tests are not met.

Recommendations

About our recommendations

We have two types of recommendations.

i) Policy recommendations to amend PPERA and the Lobbying Bill

Our recommendations are not a solution to the issues that have emerged surrounding PPERA. They reverse the risk to democratic engagement threatened by the Lobbying Bill, and go some way to alleviating the potential for disproportionately curtailing non-party campaigning.

The policy recommendations are interconnected and must be implemented in full as a package if they are to avert the threat to democratic engagement. Chapter 1 sets out the inter-dependencies.

ii) Recommendations about monitoring, review and powers to amend the Act

A full review of non-party campaigning regulation is proposed as a matter of urgency after the 2015 General Election. We propose elements of an evidence base that should be gathered during the pre-election period to inform any new proposals for law. Our recommendations are therefore intended to be a temporary set of arrangements for the 2015 General Election.

I) Recommendations to amend PPERA and the Lobbying Bill

1. The definition of regulated non-party campaigning

PPERA and the Lobbying Bill include a definition of non-party campaigning that is both ambiguous in meaning and makes too many campaigning activities subject to regulation that are not intended to promote or procure the election of a registered party and its candidates. This is significant because any restrictions of activity potentially impacts on freedom of expression and association and are only justified if they are proportionate in relation to maintaining fair elections.

The combination of this definition and the proposed new provisions in the Lobbying Bill for much lower thresholds for activity subject to regulation, much lower spending caps, and new constituency spending limits would curtail non-party campaigning a disproportionate way that would undermine democratic engagement.

The Commission's preference would be to reach agreement on a new definition ahead of the 2015 General Election. However Ministers have made that impossible by allowing less than six weeks pause in the Bill.

Recommendation

The PPERA definition, as amended by the Lobbying Bill, should be used for the 2015 General Election; but this recommendation is entirely contingent on the Lobbying Bill being amended to implement this report's other recommendations on: registration thresholds, spending limits, constituency cap, the definition of an organisation's

supporters, and the range of campaigning materials and activities subject to regulation and staff costs.

2. Campaigning materials and activities subject to regulation

In the Commission's first report we concluded that the government's proposals to widen activities subject to regulation were both disproportionate and in parts unworkable.

In our second evidence sessions civil society organisations expressed an appetite to expand the range of activities subject to regulation, for reasons of transparency. They gave evidence, however, about staffing costs in particular being unworkable to apply and that including staffing costs could mean disproportionately restrictive spending caps. Many NGOs gave evidence that parity with political parties was an important point of fairness.

Recommendation

The wider range of campaigning activities set out in Schedule 3 of the Bill should remain but be subject to two amendments to secure alignment with the regime for political parties. First, staff costs should be specifically excluded. Second, market research and canvassing should be covered only where this relates to ascertaining polling intentions.

3. Registration thresholds

In our first report, we concluded that the reduction to a £5,000 threshold in England and a £2,000 threshold in Scotland, Wales and Northern Ireland would mean many more organisations would reach the threshold and be subject to regulation and that this would impose a disproportionate burden on small-spending organisations.

In our second evidence sessions NGOs indicated 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.

In considering an appropriate cap we balanced issues of transparency, proportionate impact on non-party campaigners, and the relationship between the threshold and additional regulated activities.

Recommendation

Registration thresholds should be increased to:

- £20,000 in England
- £10,000 in Wales, Scotland and Northern Ireland

4. Spending limits

In the Commission's first report, we concluded that the 60-70% cut in the spending limits for non party campaigners proposed in the Lobbying Bill was neither proportionate in its impact on non-party campaigning nor evidence based in

motivation. The expanded list of regulated activities also made the proposed spending limits in effect tighter.

In our second round of consultation the relationship between a problematic definition – which makes some activity subject to regulation that NGOs do not regard as intended to influence an election – and any spending limit was discussed. NGOs agreed with the need for spending limits to curb campaigning intended to promote or procure the election of a registered party and its candidates, but not for other activities.

Because the issues raised by the definition cannot be solved in the current short timescale we propose an interim solution which maintains the status quo of PPERA spending limits, but adds inflation. We believe that this is appropriate given there is no evidence of undue influence at previous elections.

The Commission identified distinct issues regarding spending limits for coalition campaigning which are addressed later in the report.

Recommendation

Spending limits for non-party campaigning organisations should be increased to reflect the 2013 value of the limits within PPERA (i.e. PPERA limits plus inflation).

5. Constituency limits

In the Commission's first report we reflected that non-party campaigning organisations that gave evidence were happy to consider constituency spending limits in principle but were universally opposed to the constituency limits proposed in the Lobbying Bill. This is because they are unworkable in practice, they would be disproportionate in curbing campaigning activity, and would pose a disproportionate administrative and legal safeguarding burden. The Electoral Commission also warned parliamentarians that the proposals may be unenforceable.

Since our first report, the Electoral Commission has underlined its concern saying:

“Our concern is that, except in extreme cases, the new constituency controls may be unenforceable within the timescales of an election, given the difficulty of obtaining robust evidence to determine and sanction breaches. Political parties' national campaigning during the year before a UK general election is not subject to constituency limits of this kind.”¹

Recommendation

Remove constituency spending limits for non-party campaigning proposed in the Lobbying Bill.

6. Reporting Requirements

Our first report highlighted evidence of disproportionate regulatory burden on registered non-party campaigners under the Lobbying Bill proposals.

During our second round of consultation the Commission heard evidence from NGOs that some PPERA reporting requirements could be lifted without reducing transparency.

The Electoral Commission has recommended that non-party campaigners who register but spend less than the relevant registration threshold should only be required to submit a declaration that they have not exceeded the threshold, rather than complete a full spending return.

Recommendations

All additional reporting requirements for non-party campaigning proposed in the Lobbying Bill should be removed.

Introduce the option of a declaration by non-party campaigns that have registered that they did not spend above the threshold.

See below recommendation to reduce the regulatory burden on coalition campaigning.

7. Coalition campaigning

Our first report highlighted how central coalition campaigning is to most NGOs' work, and that it is a social good. We concluded that the combined measures proposed in the Lobbying Bill – including lower thresholds, lower spending limits, constituency limits, and increased staffing costs – would have such a disproportionate impact on coalition campaigning amongst NGOs as to probably prevent most of it from happening in the year ahead of the election.

In our second round of consultation, non-party organisations gave evidence that any solution to coalition campaigning regulation would need to address questions including: the definition of a coalition, appropriate spending limits, responsibility for spending across coalition partners, the regulatory burden especially on non-party campaigning organisations that did not spend above the registration threshold.

We have identified a way of reducing the regulatory burden on non-party campaigning organisations spending under the registration threshold.

However, the Commission has not been able to solve the remaining problems in the less than six weeks available. Instead we have proposed a package of measures that together will lessen any disproportionate restrictions on coalition working.

This is a matter that the Commission will continue to interrogate and hope to be able to come forward with further proposals before Report stage. However the rushed timetable for the legislation may make this impossible.

Recommendation

Where an organisation only takes part in regulated activity as part of a single coalition, it will 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.

8. Regulation of non-party campaigning in Scotland, Wales and Northern Ireland

Our first report recorded the disproportionate effect that measures proposed in the Lobbying Bill would have on non-party campaigning in Wales, Scotland and Northern Ireland. We noted the different political and civil society contexts and that they had not been properly accounted for in the Bill or impact assessment.

We addressed the potentially negative impact of the Bill on constructing a lasting peace in the unique political environment of Northern Ireland.

During our second round of consultation in Scotland, Wales and Northern Ireland we heard evidence of problems including:

- The lack of clarity over reporting on campaigns aimed at both the devolved and the UK governments
- Translation into Welsh language contributing to regulated spending
- The impact of post conflict arrangements in Northern Ireland not being taken into consideration in the proposed legislation

Recommendations

- **Increase thresholds for registration in Northern Ireland, Scotland and Wales to £10,000.**
- **Exempt costs relating to translation, security and safety from regulation.**

9. Duration of the regulatory period

The Commission heard evidence from across civil society that the regulatory period of 365 days prior to an election, which was introduced in 2000, has a disproportionate effect on non-party campaigning. We heard that 12 months ahead of an election is simply too far away from the election for most activities relevant to the election.

Many NGOs made the case for parity with election candidates and with the regulated period for EU and devolved elections – of four months, rather than with political parties – of 12 months.

Some organisations thought that a six month regulatory period would not be disproportionate as long as the regulatory measures associated with registration were proportionate.

The Electoral Commission made clear that a shorter regulatory period ahead of the 2015 General Election could be appropriate.

“Should Parliament decide that a period of consultation is desirable before the Bill makes further progress, we would recommend that the start of the regulated period for the 2015 general election be delayed by an appropriate period.”²

Recommendations

Reduce the regulatory period to six months before the poll.

This means it would start on 6 November 2014 for the 2015 General Election unless there is a change to the fixed term date of the election.

10 Supporters

The Commission heard evidence from a large number of non-party organisations that campaign communication with people the organisation considers to be supporters could risk constituting regulated activity because the definition of a supporter is outdated.

We heard evidence about the need for a definition of supporters which reflects the contemporary way in which members of the public lend their support to organisations and campaigns including by email and social media – not just financial supporters.

Recommendation

Exclude communications between non-party organisations and their supporters from activities related to ‘the public’ in the list of regulated activities.

The definition of supporters should include people who have given specific consent to contact from the non-party campaigner in accordance with the Data Protection Act.

11. Charities and non party campaigning

The Commission considered concerns about an apparent contradiction between the non-party political nature of charities and registering as a third party with the Electoral Commission.

We met with the Charity and Electoral Commission to discuss the matter. We heard from the Commissions that undertaking regulated activity can be compatible with charitable objectives and status.

We heard evidence from charities that were anxious to avoid disproportionate regulatory burden and restrictions on campaigning associated with registering as a third party. There were also concerns expressed about the reputational risk of registering and being seen to be ‘political’.

The Commission also heard evidence from charities and the Charity Commission that the regulatory system should not be structured such that the status of being registered as a charity could be a mechanism for avoidance.

Charities also expressed strongly the need for a regulatory system which was fair and proportionate for all types of non-party campaigning organisations – not least because coalition campaigning with non-charities is so central to many charities’ activities.

Recommendation

Charities should not be exempted from regulation of non-party campaigning.

12. Equalities and Human Rights

Chapters 14 and 15 of the Commission’s first report outlined significant concerns about the equalities and human rights implications of the proposals within the Lobbying Bill. Concerns centred around the lack of pre-legislative scrutiny for the proposals made, and that no detailed assessments of either equalities impact or whether the proposals were proportional

in terms of their impact on human rights had been presented.

We are not aware of progress by Government being made in this regard during the pause. Both human rights and equalities impacts remain a concern for the Commission based on the evidence that can be seen throughout our report.

The Commission’s package of proposals within this report are intended to lessen the disproportionate curtailment of human rights and any adverse equalities impact which Part 2 of the Lobbying Bill risked.

Recommendations

Exempt from regulated spending costs associated with:

- Translation to any language.
- Making documents accessible to people with physical or learning disabilities.

II) Evidence, Review and powers to amend the Act

Evidence

Throughout the Commission’s work, one of the challenges we have faced is the lack of evidence presented by Government about what regulation is needed, practical and enforceable. The Commission gathered evidence through our two consultation rounds to inform our recommendations but the very limited time to consult has meant that some key evidence is still not available.

Recommendation

We have identified a range of evidence that should be gathered during the pre-2015 General Election regulatory period to inform an assessment of the Act and any proposals for new legislation.

Review of the law

The Lobbying Bill was introduced and scrutinised by Parliament in an unsatisfactory way which has been roundly condemned by all relevant bodies. The resultant Bill is rushed and there has not been time to form a considered informed view about the likely consequences of any new legislation.

Recommendation

We recommend a Committee of the House, such as the Political and Constitutional Reform Select Committee review the regulation of non-party campaigning as a matter of urgency after the 2015 General Election.

Amending the Act

We are concerned about powers of the Secretary of State to make changes to the Act, on an issue so fundamental to democratic engagement, without both Houses having the opportunity to scrutinise and vote on changes.

Recommendation

Changes to proposed Schedule 8A should be undertaken through primary legislation.

Implementing the recommendations

The Commission will publish a set of amendments to the Lobbying Bill alongside this report that we hope peers will support at Committee stage.

The recommendations in this report have been carefully considered as a package of measures that will deliver on the policy objectives of transparency and avoiding undue influence on elections whilst relieving disproportionate burdens and restrictions on non-party campaigning organisations.

Recommendation

We propose that the Bill is amended according to the full package of our recommendations or that Part 2 of the Bill is withdrawn.

Further changes will be needed to the regulation of coalition campaigning before the Bill is completed.

Case studies

The Commission has considered a range of case studies and evaluated the impact of the campaign from the perspective of PPERA legislation, the proposed Lobbying Bill provisions, and our own set of regulatory proposals.

- Human Rights Consortium
- HOPE not hate
- Save Lewisham hospital
- Citizens UK
- Stop HS2
- Countryside Alliance
- Stop Climate Chaos
- STRIFE

Notes

1 EC Q&A briefing for House of Lords, 4 November 2013: <http://tinyurl.com/qdqvm2s>.

2 EC Q&A briefing for House of Lords, 4 November 2013, p.2: <http://tinyurl.com/qdqvm2s>.

Disclaimer

Due to the truncated timescale of the Bill process, this report has by necessity been written in an unusually short timescale. Evidence from charities, campaigning organisations, community groups, faith groups, bloggers and think tanks continues to be submitted as the report is being written. Nevertheless, the report draws on a wide range of evidence gathered from stakeholders, politicians and civil society from around the UK.

Every effort has been made to ensure the report is clear, accurate and properly reflects the evidence gathered. The Commission welcomes feedback on the content of the report to clare.hammacott@civilsocietycommission.info.

1. Interdependencies of the regulatory package

It is the Commission's view, based on evidence submitted by non-party campaigning organisations and the Electoral Commission, that the policy issues addressed in the Bill are indelibly interdependent. The Royal Society for the Protection of Birds and the Northern Ireland Council for Voluntary Action gave an overview of the impact on their organisations, stating:

"The combination of a wider range of activities counting toward 'controlled expenditure' with a lower cap on spending would be debilitating for charitable work during an election period, especially if staff costs and coalition expenditure were included: while campaigning would not be directly prevented, the new rules would pose a considerable administrative burden, increase uncertainty and impose arbitrary and untested spending caps on campaigning."

RSPB, written submission

"The impact of the Bill's changes to the scope of non-party controls, taken together with lower registration thresholds and spending limits, could be particularly significant in Scotland, Wales and Northern Ireland, where civil society has often had a prominent role in development and discussion of new policy and legislation in recent years."

NICVA, Northern Ireland evidence session

The chart below shows particular interdependencies – highlighted with 'x' where an interdependency occurs. These issues must be considered relative to each other. Individual aspects of the legislation should not be adjusted without due consideration

of the implications for the workability of other aspects of the regulation, and the impact on non-party campaigning activity.

To take an example, the interdependencies between the definition of regulated activity and other provisions such as registration thresholds and spending caps are clear – the wider the scope of the definition, the higher the thresholds and caps need to be set in order to maintain a balance between transparency and proportionality.

This is illustrated by the Countryside Alliance's evidence that:

"Although Clause 26 was amended in the Commons to take the definition of 'controlled expenditure' and 'election material' back to one which is closer to that contained within PPERA, PPERA was, and is, in our opinion flawed. The reason why many charities and campaign groups could live with PPERA was because what counted as controlled expenditure was limited, and the threshold for registration with the Electoral Commission and the limit on expenditure for those registered were set at levels which did not capture the small scale activity of most third parties. This was the case for the Countryside Alliance, and which we think will no longer be the case if this Bill becomes law in its present form. These definitions are capable of including almost anything and everything a campaigning group may do depending on whether or not the issue is, or is not, a 'political' issue at the time of an election."

Countryside Alliance, written evidence

	Definition	Activities	Registration thresholds	Spending caps	Constituency cap	Reporting requirements	Coalition working
Definition		x	x	x	x	x	x
Activities	x		x	x	x	x	x
Registration thresholds	x	x			x	x	x
Spending caps	x	x				x	x
Constituency cap	x	x	x			x	x
Reporting requirements	x	x	x	x	x		x
Coalition working	x	x	x	x	x	x	

In the case of this particular interdependency, that balance has not been achieved. In the Lobbying Bill, reducing both thresholds for registration and spending caps spend amounts, while widening the range of spending that counts towards them, has a multiplying effect on the 'chill factor'. Oxfam highlighted this, as well as the added bureaucracy of bringing more organisations into regulating, stating that:

"There is no particular rationale for lowering the thresholds for registration. It will simply mean that small community based organisations may be required to register and involve the Electoral Commission in 'policing' low cost campaigning at a local level."

Oxfam, written evidence

Similar evidence was given by many NGOs regarding the interdependency between registration thresholds and reporting requirements, and the chilling effect this would have particularly on small organisations. BOND also gave evidence that many of their members reduced campaigning to avoid registration because they felt it brought with it potential reputational damage of being seen as being 'too political.'

The Bill's impact assessment is disappointingly light on the cumulative effects of the legislation as a whole, and on the interdependencies between the separate provisions. This cumulative effect was highlighted by the Electoral Commission, most recently in their briefing ahead of the Lords second reading of the Bill, which stated:

'In particular, we expect that Parliament will want to consider further the cumulative impact that Part 2 of the Bill will have on non-party campaigners, taking into account the scope of controlled spending and the effect of lower thresholds for registration as a campaigner, lower spending limits, new limits on spending in constituencies, issues around how the rules should be enforced, and concerns about administrative burdens.'¹

The evidence demonstrates that the legislation must be addressed as a package and any adjustments to individual provisions must be considered within the wider framework of interdependencies.

In writing this report, the Commission has done its best to produce a workable, proportionate and responsive package of recommended amendments to the legislation which reflects the importance of the interdependencies. Together, this package addresses many, though not all and concerns about the Bill evidenced by organisations across the country.

Recommendations

Parliamentarians should fully take account of the significant interdependencies between the provisions in considering and amending this legislation.

The Commission's recommendations should be implemented as a package.

Notes

¹ Electoral Commission briefing for Lords second reading: <http://tinyurl.com/qf7tcut>.

2. Criteria for appropriate regulation of non-party campaigning ahead of elections

The Commission sought to identify appropriate criteria against which any regulation of non-party campaigning should be judged.

We relied primarily on the principles set out by The Better Regulation Taskforce, but also considered views expressed by Ministers, the Electoral Commission and NGOs.

The Better Regulation Taskforce: Principles of good regulation

“Politicians differ about the appropriate level of intervention, but all governments should ensure that regulations are necessary, fair, effective, affordable and enjoy a broad degree of public confidence. To achieve this, any policy intervention, and its enforcement, should meet the following five principles which the Better Regulation Task Force devised in 1997:

- *Proportionality*
- *Accountability*
- *Consistency*
- *Transparency*
- *Targeting*

The Principles are a useful toolkit for measuring and improving the quality of regulation and its enforcement, setting the context for dialogue between stakeholders and government. They should be applied to the full range of alternatives for achieving policy objectives, when dealing with both domestic and European legislation.

Government departments and independent regulators alike should use them when considering new proposals and evaluating existing regulations. The principles should also be used to avoid unnecessary bureaucratic burdens being imposed on the public sector.”¹

Further criteria for regulation identified by the taskforce are listed as:

- Be balanced and avoid knee jerk reactions
- Seek to reconcile contradictory policy objectives
- Balance risks, costs and benefits
- Avoid unintended consequences
- Be easy to understand
- Have broad public support
- Be enforceable

The Electoral Commission

The Electoral Commission has indicated the need for the legislation to:

- Deliver the policy objectives of ensuring transparency and control over campaigning on a scale that could have a significant impact on elections.
- Be proportionate in terms of the impact on non-party campaigning organisations
- Be clear in its meaning
- Be practical for non-party campaigning organisations to implement
- Be enforceable by the Electoral Commission as the regulator²

Government

The Government’s impact assessment for Part 2 of the Bill stated some of their policy intentions for regulation. Ministerial statements since have further clarified their position and the balance they seek to achieve.

The impact assessment for Part 2 of the Bill stated that regulation would:

- i) ‘provide for a greater degree of transparency’;
- ii) ‘in part’ mirror controls on political parties; and
- iii) ‘curb perceptions of undue influence’.³

Ministers have also identified that a policy objective of the Bill is to:

- Ensure that third-party campaigning is not curtailed
- Be proportionate

Six tests for good regulation

Based on the above information, the Commission has decided to judge legislation regulating non-party campaigning ahead of elections based on the following six tests:

Test 1: Deliver the policy objectives of avoiding undue influence on elections and transparency of those engaged in activity that could influence an election.

Test 2: Be proportionate in the impact on non-party campaigning organisations in terms of campaigning activities they are able to carry out and the regulatory burden.

Test 3: Be evidence-based, including being able to demonstrate the need for regulation and an understanding of the impacts.

Test 4: Be clear in its meaning.

Test 5: Be practical for non-party campaigning organisations to implement.

Test 6: Be enforceable by the Electoral Commission as the regulator.

Analysis of whether the Lobbying Bill meets the six tests

Test 1: Deliver the policy objectives of avoiding undue influence on elections and transparency of those engaged in activity that could influence an election.

✗ The measures in the Bill would increase transparency but in a disproportionate way – see below. It would do little to avoid undue influence. The most important measures to avoid undue influence, such as US style super PACs, are already in PPERA and the Representation of the People Act. In addition, none of the measures introduced affect undue influence in relation to political parties or candidates.

Test 2: Be proportionate in the impact on non-party campaigning organisations in terms of campaigning activities they are able to carry out and the regulatory burden.

✗ The overall impact of the Bill on non-party campaigning organisations is not proportionate. The much tighter spending controls mean activity would be restricted that could not reasonably be deemed to have an undue influence on elections. It makes many more smaller-spending organisations subject to burdensome regulation – which is disproportionate to the challenge of transparency. The Bill does not follow the advice of the Electoral Commission to reduce the reporting burden.⁴

Test 3: Be evidence-based including being able to demonstrate the need for regulation and an understanding of the impacts.

✗ The Government's stated aim of the legislation is to avoid the 'perception' of undue influence. It is the Commission's view that legislation could be appropriate if there was actual undue influence, but Government has yet to come forward with specific evidence of undue influence that has been present at or affected previous elections, or evidence that it is likely to affect the 2015 General Election. Matters of perception are best addressed with appropriate communication, not legislation.

The Bill's Impact Assessment lays bare the lack of evidence upon which the Bill is based in terms of how non-party campaigning organisations operate ahead of elections. For example, there is no evidence about the levels of non-party campaign spending in constituencies ahead of elections. A fuller critique can be found in Report One from the Commission.

Test 4: Be clear in its meaning.

✗ The Bill as drafted is unclear in its meaning. The Electoral Commission said:

"The combination of lower registration thresholds and spending limits, new constituency limits, and the wider scope of regulated activity, is likely to create a much higher level of allegations of breaches of the rules by non-party campaigners than at previous elections. We are particularly concerned that the constituency controls may be unenforceable within the timescales of an election, given the difficulty of obtaining robust evidence to determine and sanction breaches..."⁵

Test 5: Be practical for non-party campaigning organisations to implement.

✗ Several elements of the Bill are not practical for non-party campaigning organisations to implement. For example, the Commission has found that most organisations do not organise themselves on a constituency basis and do not have the accounting systems set up to administer constituency-level spending.

Test 6: Be enforceable by the Electoral Commission as the regulator.

✗ The Bill would not be enforceable in several important parts. The Electoral Commission advised Parliament that "some of the new controls in the Bill may in practice be impossible to enforce, and it is important that Parliament considers what the changes will achieve in reality, and balances this against the new burdens imposed by the Bill on campaigners."⁶

The Commission has used the same criteria to assess all recommendations in this report.

Notes

1 Principles of Good Regulation – Better Regulation Task Force: <http://tinyurl.com/pdhn65r>.

2 The Electoral Commission: <http://www.electoralcommission.org.uk>.

3 Parliamentary impact assessment: <http://tinyurl.com/ohhecem>.

4 EC written evidence to the Political and Constitutional Reform Committee: <http://tinyurl.com/pdhhbqyn>.

5 EC Lords second reading briefing: <http://tinyurl.com/qf7tcut>.

6 EC submission to Political and Constitutional Reform Committee: <http://tinyurl.com/pdhhbqyn>.

3. Elements of Regulation

This chapter provides detailed evidence-based analysis of each element of the Bill in turn, providing recommendations, where possible, for amending the bill. It also highlights areas where further research and consultation is necessary to resolve complex matters.

3.1 Definition of non-party campaigning activity

Context

Chapter 5 of the Commission's first report highlighted the ambiguity in meaning of the Government's proposed definition of campaigning activities, and the view that the scope of the definition would encompass too many activities that are not intended to influence elections.

It noted the disproportionate combined effect of this widely-cast definition and the proposed new provisions in the Lobbying Bill for much lower thresholds for activity subject to regulation, much lower spending caps, and new constituency spending limits.

We recommended that changes in the Lobbying Bill made to section 85(3) of PPERA are a minor improvement and should be accepted, but that a thorough review of the definition is needed.

Developments since our first report

Since our first report, the Government has acknowledged growing concerns about problems in definition:

"We intend to draw on the work of the Commission on Civil Society, chaired so ably by the noble and right reverend Lord, Lord Harries of Pentregarth, and to build on it so that the charity sector has a proper opportunity to explain to the Government its concerns not only with this Bill but, as we discovered in our conversations, with the current statute electoral law in this area, in particular the Political Parties, Elections and Referendums Act 2000."¹

The Electoral Commission has also clarified further their interpretation of the definition:

"The Government's amendments clarified that as under the current rules, the Bill will regulate campaigning activity on policies and issues that can be reasonably regarded as intended to promote electoral success. This applies even if the activity also seems intended to achieve other things, or does not mention any party or

candidates. 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.

"We think these controls on campaigning that are not explicitly 'party political' are a necessary part of the regime."²

The Electoral Commission has also made clear that whilst it is ready to help Government consider proposals for change, there is concern about creating scope for evasion.

Instead, the Electoral Commission suggests:

"The burdens imposed on campaigners by the Bill could be reduced without these unintended consequences by increasing the registration thresholds and spending limits that apply to non-party campaigning."³

Evidence

In our second round of consultations, NGOs have continued to give evidence that both the lack of clarity and the scope of activities subject to regulation under PPERA and proposed by the Lobbying Bill would have a disproportionate impact on their campaigning:

"Before the Government moves forward, they need to 'distinguish between raising awareness of policy issues and specific campaigning as politically motivated'."

Disability Wales, Wales evidence session

NGOs gave evidence that the PPERA definition, as well as the definition within the current Bill, do not sufficiently take account of the difference between issue-focused campaigning activity which has the primary purpose of influencing policy, and partisan campaigning activity which has the primary purpose of influencing an election result.

"The present legislation (PPERA) is unclear and unpopular because it is not very good at defining the difference between issues-based campaigning and electoral campaigning. It is not, however, as threatening to our work as the current Bill because it set registration thresholds and spending limits at a more proportionate level that better reflected the scale needed to unduly influence an election."

Oxfam, written evidence

“Generally, what we’re trying to say to government here is that you shouldn’t take a sledgehammer and crack a nut... You should not stop everything that goes on in a normal society because you are fearful of a small group of influencers. So, focus on the small group of influencers.”

NICVA, Northern Ireland evidence session

They also voiced frustration at the Government’s belief that campaigns currently run by NGOs could unduly influence an election result.

“The Bill team’s inherent understanding of the activities of charities and campaign group and their intentions is wrong, there is no undue influence...from a campaigning point of view, if I was trying to actually influence the outcome of an election, I think getting people on the streets and campaigning in the ways political parties do, actually if you want to influence an election, is the most effective way you can do it, and I’m not saying it should be regulated but it is something that is not being regulated by these proposals. I think people power is actually far more effective than an organisation publishing manifestos.”

Unlock Democracy, London evidence session

“I just want to express the idea that ‘undue influence’ is just the government saying ‘we don’t want any input from anybody, leave it to us!... My problem with this kind of discourse is that it promotes the idea of neutral campaigning, which is just not possible... it doesn’t make sense to water down campaigning and impose regulations that make people try to be party-neutral, lobbying both sides equally... The undue influence is the corporate influence, the idea that the government would try to undermine charitable organisations rather than corporate influence. That’s the biggest problem.”

Edinburgh University Students’ Association, Scotland evidence session

“In regards to scorecard campaigns being considered undue influence: Certainly for us that would be a deal-breaker issue because the whole Cabinet Office is very much into getting younger people to take part in democracy and this will completely undermine what we are trying to do. The rationale for this is that just because you promote a candidate’s point of view relating to a certain issue, people still retain the freedom to agree or disagree.”

British Youth Council/UKYP, London evidence session

NGOs at evidence sessions were shown the following case study example produced by the Electoral Commission. It illustrates activity likely to be subject to regulation under the Lobbying Bill. They felt that this sort of activity should not fall under regulation:

“In the run-up to the UK general election, a charity decides to call for a particular piece of legislation to be repealed in order to further its charitable purposes. It organises large public meetings and places advertisements in many national newspapers calling for the change. The change is already well known to be supported by some political parties, and to be opposed by others. The charity avoids drawing attention to the positions of different parties on this issue. But it is promoting a change to the law which is so closely and publicly associated with some parties that its activities could reasonably be seen by others as intended to encourage voters to support parties that have said they will repeal the legislation. The costs of the activities are likely to be regulated if the charity’s spending on regulated activities exceeds the threshold for registering as a non-party campaigner.”⁴

Analysis

The Commission shares the views of non-party campaigners about the lack of clarity of the Government’s proposed definition. We would further highlight that the combination of a definition that makes a wide range of activity subject to regulation with low thresholds, spending caps and a narrow definition of ‘supporters’ would have a disproportionate impact on non-party campaigning and is likely to damage democratic engagement.

However, the Commission recognises that:

- It is difficult to provide a clearer definition of the line between issue-based campaigning and electoral campaigning within the timescale available
- The Electoral Commission has indicated its preference for retaining the present definition to allow time to produce clear guidance in time for a 2015 election.
- There is a contested distinction between issue-based campaigning at a large scale and campaigning to promote or procure the election of a registered party or candidates.

Recommendations

i) Amendments to the Lobbying Bill

The PPERA definition, as amended by the Lobbying Bill, should be used for the 2015 General Election; but this recommendation is entirely contingent on the Lobbying Bill being amended to implement this report’s other recommendations on: registration thresholds, spending limits, constituency cap, the definition of an organisation’s supporters, and the range of campaigning materials and activities subject to regulation.

ii) Review this provision

A full review of the definition should take place with a view to amending the definition in primary legislation after the 2015 General Election. Evidence should be gathered during the regulated period ahead of the General Election to inform any review. Consideration should be given to gathering the following evidence:

- How ‘undue influence’ should be defined
- What changes in voter behaviour, in past elections, were due to perceived ‘undue influence’?
- What activity by third parties at a General Election should count as ‘undue influence’?
- What will be the impact of the existing legislation going forward?
- Will ‘undue influence’ be properly curbed by the existing legislation going forward?

Rationale and implications of the recommendations

The package of recommendations we propose form an imperfect solution to the problem of the definition. This reflects the inadequate time and process for policy development.

Taken alone, our recommendation on the definition does not meet the requirements of good legislation. It only forms something that is acceptable to the Commission if it is implemented in concert with all further recommendations in this report as it may allow for issue-focused campaigning at a limited level to continue unregulated, for non-party

campaigning to continue with regulation to ensure transparency, and for undue influence over an election to be prevented.

This view is shared by the vast majority of civil society organisations with whom the Commission has consulted; they maintain that this definition of non-party campaigning alone is not proportionate.

“Although Clause 26 was amended in the Commons to take the definition of ‘controlled expenditure’ and ‘election material’ back to one which is closer to that contained within PPERA, PPERA was and is, in our opinion, flawed. The reason why many charities and campaign groups could live with PPERA was because what counted as controlled expenditure was limited, and the threshold for registration with the Electoral Commission and the limit on expenditure for those registered were set at levels which did not capture the small scale activity of most third parties. This was the case for the Countryside Alliance, and which we think will no longer be the case if this Bill becomes law in its present form.”

Countryside Alliance, written submission

The six tests of good regulation

Test 1: Deliver the policy objectives of avoiding undue influence on elections and transparency of those engaged in activity that could influence an election.

✓ Using this definition alongside the package of other recommended provisions would avoid undue influence and would allow for proportionate transparency.

Test 2: Be proportionate in the impact on non-party campaigning organisations in terms of campaigning activities they are able to carry out and the regulatory burden.

✗ It is likely that using this definition would mean a disproportionate curtailing of some campaigning activity – especially when working in coalitions.

Test 3: Be evidence-based, including being able to demonstrate the need for regulation and an understanding of the impacts.

✓ Maintaining this definition has been recommended because of the lack of evidence about the likely impacts of changing it. The cumulative effect of the regulatory provisions recommended is untested but is similar to the existing PPERA legislation; changes are supported by evidence of practicality gathered from NGOs.

Test 4: Be clear in its meaning.

✗ The PPERA definition was unclear, although clarificatory examples provided by the Electoral Commission during the process of the Bill have reduced the elements of uncertainty. Further guidance from the Electoral Commission is likely to be needed to give non-party campaigners confidence about what activity will be subject to regulation.

Test 5: Be practical for non-party campaigning organisations to implement.

✓ Evidence from NGOs suggests that the combination of measures recommended are likely to be practical to implement – so long as there is further Electoral Commission guidance and access to individual guidance from the Commission.

Test 6: Be enforceable by the Electoral Commission as the regulator.

✓ The Electoral Commission has indicated that the current definition is enforceable and that a combination of higher thresholds and spending limits would be enforceable. The element of the package concerning supporter definition (and explored in a later chapter) is untested.

3.2 Campaigning materials and activities subject to regulation

Context

Chapter 6 of the Commission's first report acknowledged the case for considering the widening of activities subject to regulation. However it concluded that the proposals in the Lobbying Bill were both disproportionate and in parts unworkable. We proposed the retention of PPERA's use of 'election material' to define regulated activity, pending proper consultation and consideration of potential changes to and beyond the 2015 General Election.

Developments since our first report

Since the Commission's first report, Lord Wallace of Saltaire indicated during the first day of Committee stage debate that Part 6 of PPERA, which includes the provisions relating to activities subject to regulation, would be reconsidered during the pause before consideration at Committee stage in the House of Lords:

"My Lords, I assure the House that the Government are open-minded on the possibility of changing a number of aspects of the Bill. One thing we discovered in the course of the consultation is that the language of PPERA 2000, particularly of Part 6, does not meet the needs or requirements of a very large number of those who are now to be affected by it. I hope I will not embarrass my noble friend Lord Greaves if I quote him as having said that he had never previously read Part 6 of PPERA 2000, and now that he has, he does not like it very much. I think that opinion is shared by a number of voluntary organisations outside the House."⁵

The Electoral Commission confirmed in a meeting with the Commission on 28 November that its regulatory review report, published in June 2013, had not highlighted the recommendation that the range of regulated activities should be widened as one that needed to be implemented before the 2015 General Election, and had emphasised that it was a change that would need careful consideration.

Evidence

The Commission has consulted NGOs further on the issue since our first report and there is still a high level of agreement that the proposals for widening the range of activities subject to regulation in the Bill would not be practically implementable in time for the 2015 General Election and would be unduly administratively burdensome.

However, the evidence we have heard in relation to this centres on the need to include staff costs for all of these activities, which is neither proportionate nor practical.

NCVO, in their submission to the Commission's second consultation exercise, said:

"[E]xpecting organisations to record and account for staff costs will require entirely new reporting structures for the sector, which is an unacceptable bureaucratic burden. These systems do not currently exist and would have to be in place by May 2014. We understand the argument that this exists already under PPERA but this is only in relation to the much narrower category of 'election material'."

Other NGOs reinforced this point, highlighting the inclusion of staff costs in particular:

"I'd say definitely staff time and costs would be a bureaucratic nightmare to try and account for. A lot of our organisations, where it's not one person's sole time, and it's split into a million different jobs, quite often and trying to work out what would fit into specific regulation, would be very difficult... We don't have these vast structures, with bureaucracy and maybe members of staff that just deal with finance. That's a luxury for most of us, to be honest, so setting a lower threshold in Wales would seem unfair, because we have smaller organisations having to deal with the bureaucracy, whether appropriate or not, of registering and accounting for all of our work."

Friends of the Earth, Wales Evidence Session

"There is a disparity between the 'red tape and bureaucracy' of charities and political parties, there is also an argument of unfairness, given that political parties are excused from accounting their staff costs."

Bond, London evidence session

"Widening the activities that count towards controlled expenditure would require significant new reporting procedures, including time sheets to account for staff time connected with campaigns and systems for recording spending in regional offices. This would siphon money away from conservation work and amount to an unnecessarily onerous regulatory burden: more than the £0–800 per organisation for implementation estimated in the Impact Assessment."

RSPB, written evidence

Oxfam and Children England made the point that enforcing the rules would also not be practical in many instances. This would make it difficult and sometimes impossible to regulate or enforce the rules:

“We do not see the rationale for including staff costs since the costs of political party staff are explicitly excluded. This is a point of principle but also of practicality since many of our roles are not easily divided into UK or Global campaigning. The regulatory burden of including staff costs would be disproportionate. We would like staff costs to be excluded, as is the case for political parties.”

Oxfam GB, written submission

“If members in constituencies pick up the national campaign and use it to their own end, will that then count in costs that must be declared? The other point I wanted to bring up was in terms of who is paying for the staff time, so we are an infrastructure organisation and it may well be that we will produce campaign material, as another example, which will be distributed to our members. Now they might then use that campaigning material for local lobbying without us knowing about it. So although our staff time hasn't been used directly campaigning, other organisations may make use of the work that we have already done, and how is that accounted for?”

Children England, London evidence session

Analysis

The Commission recognises that the interests of transparency could be better served by a wider list of campaigning activities under the Bill.

The Commission continues to have particular concerns about the following, if staffing costs are included in the widened range of campaigning materials.

- the ability of organisations to meet their duties under the proposed extended list of activities
- the administrative burden; and
- the regulator's ability to meaningfully enforce these rules

The Commission is of the view that widening the list, but removing the need to report staffing costs, would bring the requirements for third parties into line with those for political parties.

Recommendations

i) Amendments to the Lobbying Bill

The wider range of campaigning activities set out in Schedule 3 of the Bill should remain. This is subject to two amendments to secure alignment with the regime for political parties. First, staff costs should be specifically excluded. Second, market research and canvassing should be covered only where this relates to ascertaining polling intentions.

ii) Review the provision

A review of the provision should be carried out after the 2015 General Election.

Evidence to inform a review should include:

- the activities that non-party campaigners undertake ahead of elections
- how non-party campaigning is organised

Rationale and implications of the recommendation

The Commission's recommendation will ensure that non-party campaigners are practically able to account for the activities which are regulated in the run-up to the 2015 General Election.

It also takes into account the Electoral Commission's statement that:

“We also recommend 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, we recognise that these are complex and potentially controversial changes that would need further thought and consultation before they are implemented.”⁶

The Commission's recommendation increases the level of transparency required around controlled activities, but at the same time ensures that there is a proportionate and practical requirement on non-party campaigners by removing the need to account for staff costs.

Furthermore, the Commission's first recommendation helps to achieve Measure 2 of the Government's Impact Assessment: to “align the definition of controlled expenditure so that for third parties, controlled expenditure will mirror the list [for political parties] with the exception of party political broadcasts.” Removing staff costs will achieve the Government's stated intention here more effectively than the Bill's proposals as they stand.

Six tests

The Commission's recommendations meet the six tests.

Test 1: Deliver the policy objectives of avoiding undue influence on elections and transparency of those engaged in activity that could influence an election.

✓ The recommendation widens the scope of campaigning activities and so increases transparency and ensures a wide range of ways in which undue influence could be created are covered.

Test 2: Be proportionate in the impact on non-party campaigning organisations in terms of campaigning activities they are able to carry out and the regulatory burden.

✓ The recommendation is proportionate – it does not impose an undue burden on non-party campaigners.

Test 3: Be evidence-based, including being able to demonstrate the need for regulation and an understanding of the impacts.

- ✓ The recommendation is based on compelling evidence from non-party campaigners and the Electoral Commission.

Test 4: Be clear in its meaning.

- ✓ The provision is clear to non-party campaigners.

Test 5: Be practical for non-party campaigning organisations to implement.

- ✓ Non-party campaigners are significantly more able to implement the recommendations due to the removal of staffing costs.

Test 6: Be enforceable by the Electoral Commission as the regulator.

- ✓ The regulator has been able to enforce this provision in previous elections.

3.3 Registration thresholds

Context

As outlined in chapter 7 of the Commission's first report, lower spending thresholds for registration with the Electoral Commission are likely to have a disproportionately detrimental impact on the campaigning activity of smaller-spending, and particularly non-professional, organisations.

The reduction to a £5,000 threshold in England and a £2,000 threshold in Scotland, Wales and Northern Ireland would mean many more organisations would reach the threshold and be subject to regulation.

Furthermore, the first report found that: organisations' willingness to bear the administrative cost of registration was inadequately explored in the Bill's impact assessment; Government's estimate of zero to 30 more organisations needing to register in 2015 was likely to be a significant under-estimate; the £2,000 threshold in Scotland, Wales and Northern Ireland is arbitrary and unworkably low, as is the £5,000 threshold in England.

The Commission also notes the conclusion on the topic of thresholds in the *Fifth Report of the Committee on Standards in Public Life*, written by Lord Neill of Bladen QC in 1998 and addressing the topic of the funding of political parties in the UK.

The report informed the existing PPERA legislation, although its recommendations were not wholly adopted. While the PPERA thresholds for registration are currently £10,000 in England and £5,000 in Scotland, Wales and Northern Ireland, section 94, subsection 5 of the Neill Report recommended a threshold of £25,000 with no mention of geographical distinction within the UK:

“to avoid the administrative burden of catching even relatively small third-party campaigns.”⁷

The process by which the PPERA thresholds were reached from this initial figure is unclear. It is the view of the Commission that the new Bill's threshold proposals are similarly arbitrary.

Scotland, Wales and Northern Ireland

Evidence gathered in Scotland, Wales and Northern Ireland repeated concerns laid out in the Commission's first report about the proposed £2,000 threshold.

Organisations at all three consultation sessions gave evidence that the threshold, especially if it included staff costs alongside a widened scope of regulated activity, and considering geographical distance and associated travel costs, is low and would introduce a disproportionate reporting burden on small-spending organisations.

Organisations gave evidence that due to the relative ease of hitting the threshold with minor activity, alongside the reporting burden post-registration, small organisations would be more likely to refrain from any policy campaigning activity at all during elections rather than risk breaching the threshold accidentally.

Developments since our first report

Since the Commission's first report, Government has said it will review the threshold provisions. Lord Wallace of Saltaire, speaking at Lords second reading, said:

“the necessarily wide scope of the definition of controlled spending makes it particularly important to consider the overall impact on campaigners of Part 2 of the Bill, including the registration thresholds and spending limits.”⁸

Lord Tyler, also speaking at Lords second reading, further expanded on the necessary balance between transparency and accountability required to set workable thresholds:

“For example, the threshold for registration is obviously a big concern for these organisations. You could plot on a graph transparency on the one hand and bureaucracy on the other in very many areas of life. If transparency is low, the regulatory burden tends to be low, too. If accountability is strong, it is likely that the regulatory burden will be significant. The threshold is a question of where we plot this legislation on that graph. The lower thresholds proposed by the Government will improve and increase the accountability of campaign spending. Conversely, they inevitably increase the burden on smaller organisations. It will be our responsibility in your Lordships' House to get the balance right when we come to Committee.”⁹

Evidence

Evidence gathered by the Commission from charities and campaigning organisations around the country, particularly from small organisations and from umbrella bodies representing small organisations, showed that the PPERA threshold had a chilling effect on campaigning activity. Many organisations said that they limited or stopped altogether some campaigning activity in order to ensure they did not get close to the registration threshold. For many organisations, the perceived issue of reputational risk associated with registering as a third party was important in addition to the administrative burden. The reputational risk was a particular concern to some NGOs:

“Even large charities with large budgets go to great lengths to avoid registration thresholds as it is not their intention to be seen as political... no Bond members registered in the last election but a similar situation in that Oxfam deliberately chose to ensure their spending was capped under £10,000 so they didn't have to register, because for charities, they see it as a real brand reputational risk, they have to register as a third party because we are meant to be really apolitical NGOs. But yes they do have large budgets but have chosen not to spend them on election campaigns.”

Bond, London evidence session

The NGOs we spoke to were in agreement that a higher cap would not allow non-party campaigners to have undue influence over elections. In fact, the lower the cap, the less likely organisations are to get involved in the democratic process at all. The National Secular Society and Christian Institute told us:

“In terms of the constituencies we represent, we do not know of any undue influence. On the contrary, our perception is that there may already be considerable caution and self-censorship on the part of some who would like to play their full part in the democratic process, but are averse to the risk of being inadvertently caught up in the legislation governing third party campaigning. There is a risk of reputational damage if they are registered and regulated alongside groups that are plainly party-political when they themselves are not partisan but entirely issues-focused.”

National Secular Society and Christian Institute, written evidence

Some would continue work, but evidence from NIDOS demonstrated how this could result in the severe curtailment of other work:

“A prevalent fear is that it will put a halt to all activity if the threshold is as it stands, that would be one member of policy staff. Everybody else would have to stop work. It would effectively cut down some organisations.”

NIDOS, Scotland evidence session

Organisations such as SPAN gave evidence that both the registration threshold and the constituency cap would combine to hamper what they referred to as ‘normal engagement with politicians’. The Commission echoes this, and believes that this normal engagement does not constitute undue influence:

“Recently, we invited our MP to our AGM. It was an opportunity for her to hear about the direct experience of single parents and welfare changes and for the parents to learn more about the political process and having a voice. The MP has subsequently asked a series of questions on welfare reform and single parents in the House of Commons. We would be concerned that

inviting our local MP and PPCs to events with our members and clients could be caught under the activities of the Bill, and that we would need to register as the cost of putting on such an event in addition to other activities we may undertake in the year – including the staff costs of all the staff involved with an AGM and its preparation – would likely exceed £5,000. We would also be concerned that we would then exceed the constituency limit if we did any other kind of activity in the year before an election. We consider this kind of activity to be key to the democratic process and engagement in the run up to the elections, however. It would seriously hamper our normal engagement with local politicians.”

Single Parent Action Network SPAN, written submission

This highlights another area on which the Commission heard evidence from NGOs: that they would be so keen to avoid falling foul of the requirement to register because of the low threshold that small organisations might stop engaging in debate at all, making the threshold unworkable.

“The £2,000 cap is much too low... You're suddenly capturing whole loads of small organisations and I think that in Wales perhaps that is not really appreciated... the uncertainty around the policy, which policies would be captured and which wouldn't be, seems to be a stranglehold on what people can say, and even if it's only perceived that we might not be able to say this, we're suddenly strangling a whole load of democratic debates here.”

National Pensioners Convention, Wales evidence session

“I think that this will kill small organisations. They just won't participate. There is just too much bureaucracy. They've never had to register before.”

Electoral Reform Society, Scotland evidence session

There was overwhelming support for raising the thresholds. The Commission received many statements similar to this from Oxfam:

“We recommend that the thresholds be raised from their current limits. This is necessary both because of inflation since the current thresholds were introduced, and the proposal that additional activities be covered as electoral material.”

Oxfam GB, written evidence

Analysis

The Commission agrees wholeheartedly with the principle of transparency. However the evidence demonstrates that the PPERA thresholds, and even more so the lower thresholds in the Bill would have a chilling effect on non-party campaigning activity that simply could not have an undue influence on the outcome of elections.

The Commission agrees with the Electoral Commission that “it is important that regulatory controls on non-party campaigning should be proportionate to the scale and impact of campaigning”.

The Commission is of the view that the proposed thresholds set out in the Bill are not proportionate.

Furthermore, the Commission has come to the view that the PPERA thresholds are not proportionate, since they make campaigning subject to regulation on a scale that could not have an undue influence on election outcomes.

Recommendations

i) Amend the Lobbying Bill

Registration thresholds should be increased to:

- £20,000 in England
- £10,000 in Wales, Scotland and Northern Ireland

ii) Review the thresholds post-2015

Spend threshold for registration should be reviewed following the 2015 UK Parliamentary General Election. This should be based on evidence including:

- The effect in terms of the number of organisations registering of any change in threshold
- Any change in the profile and nature of third-party campaigning activity following any change in threshold
- An assessment about any undue influence as a result of the threshold
- The particular impact of thresholds on campaigning activity in Scotland, Wales and Northern Ireland.

Rationale for the recommendations

The recommendations are based on: an assessment of the necessary balance between transparency and the need to avoid undue influence on election outcomes; evidence that the original threshold did not achieve an appropriate balance.

The recommendation is based on a proportionally equal increase in threshold for England, Scotland, Wales and Northern Ireland. The Commission received evidence that the increase for Scotland, Wales and Northern Ireland should be increased further, but considered this was disproportionate to the relative number of constituencies and populations in these nations when compared with England. Furthermore we have made recommendations in relation to cost related to specific activities that should be exempt (security and safety costs; translation costs), which should mitigate some of the extra costs incurred in national contexts. We note that costs in relation to directly lobbying members of devolved administrations are not subject to regulation and most travel costs for meetings in Westminster would not be covered.

Organisations from whom the Commission gathered evidence were universally supportive of higher thresholds. NCVO suggested:

“PPERA plus inflation...That would just be for your action material and then we would have to assess how that would work on the broader range of

activities but already £10,000 is insufficient just for materials.”

NCVO, written evidence

“I think the threshold should be significantly higher than it even is in current law. Never mind them trying to lower it, I actually think the threshold should only really be there for somebody who’s a multi-millionaire trying to literally trash somebody’s policies.”

NUS USI, Northern Ireland evidence session

Rationale and implications of the recommendations

The Commission recognises that the exact figures recommended are not based on solid evidence. However, the Government has not evidenced the need for a significant lowering of the threshold as no evidence on thresholds allowing undue influence has been provided.

In discussions with NGOs, the Commission has been clear to push the need for transparency. It is our view that these recommendations are formed on the basis of the best evidence that could have been gathered within the time frame of the pause and legislators can feel confident of these proposals being both proportionate and workable. If our recommendations are not followed, clear evidence shows that the effect on NGOs and civil society will be extremely damaging. Both large and small organisations will be deterred from speaking up about the issues of the day in the regulated period before an election.

The six tests of good regulation

The recommendations meet the criteria for good regulation.

Test 1: Deliver the policy objectives of avoiding undue influence on elections and transparency of those engaged in an activity that could influence an election.

✓ The Commission believes, in line with the Neill Report, that beyond a certain spending threshold, it is in the public interest to require transparency. However, also in line with the Neill Report, there is a balance to be struck between ensuring transparency and avoiding placing an intolerable burden on smaller organisations.

The recommended thresholds, in the view of the Commission, are high enough to avoid acting as a deterrent, but also low enough to ensure transparency of high impact spending.

Test 2: Be proportionate in the impact on non-party campaigning organisations in terms of campaigning activities they are able to carry out and the regulatory burden.

✓ The recommended thresholds are proportionate. The Commission believes that while the recommended thresholds will incur a regulatory burden for a number of non-party campaigners, transparency above that threshold is desirable and registration is therefore proportionate.

Similarly, the Commission believes that it is proportionate to allow organisations with a total spend of under £20,000 in England and £10,000 in Scotland, Wales and Northern Ireland not to register. This view is founded on both a belief

in freedom of speech, and evidence heard repeatedly across the country of organisations' nervousness about the cost and administrative resources needed to comply with regulation.

Test 3: Be evidence-based, including being able to demonstrate the need for regulation and an understanding of the impacts.

- ✓ The recommendation to raise the thresholds is based on evidence from the Neill Report, from the Electoral Commission and from non-party campaigners.

The Commission freely admits that the exact figures recommended are not based on solid evidence. This is a consequence of having inadequate time for full and proper consultation.

Test 4: Be clear in its meaning.

- ✓ The recommended provisions are clear to non-party campaigners.

Test 5: Be practical for non-party campaigning organisations to implement.

- ✓ Non-party campaigners have been able to implement this provision during previous election periods, although its interdependencies with clarity of definition and scope of regulated material (material counting towards the threshold) must still be addressed.

Test 6: Be enforceable by the Electoral Commission as the regulator.

- ✓ The regulator has been able to enforce this provision during previous election periods.

3.4 Spending limits

Context

Chapter 8 of the Commission's first report outlined significant concerns about the proposal in the Lobbying Bill to cut spending limits for non-party campaigning by 60–70 per cent. The Commission found that the proposals within the Lobbying Bill are contrary to the spirit of the Electoral Commission's statement which highlighted "the need to ensure that spending limits on non-party campaigning are sufficient to enable freedom of expression".¹⁰

The Commission found that the proposed spending limits would curtail the campaigning of non-parties in a way that was disproportionate to the perceived threat of their undue influence at elections. Additionally, the combined effect of tighter spending limits and the new broader range of activities subject to regulation – including significantly more staffing costs – would have a disproportionate impact on campaigning and would be a threat to democratic engagement by civil society.

The Commission's first report also highlighted the lack of evidence to indicate that undue influence is being exerted by non-party campaigners under the current limits. We expressed concern at Government arguments about the risk of so-called 'super-PACs' (Political Action Committees) emerging in the UK. The Commission heard clear evidence that super-PACs were not a threat in the UK, primarily because groups wishing to support a party can donate directly in large amounts, and secondly because there are already spending limits in place under PPERA which restrict spending on non-party campaigning.

Scotland, Wales and Northern Ireland

Consultation in Scotland, Wales and Northern Ireland echoed again concerns raised in the Commission's first report that the Bill's proposed spending caps in the devolved nations are disproportionately low.

£35,400 in Scotland, £24,000 in Wales and £10,800 in Northern Ireland were considered firstly to be arbitrary in their relation to each other. Secondly, although both the Commission and the organisations involved acknowledge that the cuts represent a similar percentage to that in England, the proposed caps when viewed alongside the £319,800 were felt to be unreasonably low.

"We have to work twice as hard to get our voices heard at Westminster in particular, so it's completely ridiculous that we can spend less money to do that when our job is twice as hard."

Northern Ireland Council for Ethnic Minorities (NICEM), Northern Ireland evidence session

Developments since our first report

Since the first report, charities and NGOs have discussed whether there is a need for a spending limit and – if there is – what it should be. The Electoral Commission has further clarified that "the necessarily wide scope of the definition of controlled spending makes it particularly important to consider the overall impact on campaigners of Part 2 of the Bill, including the registration thresholds and spending limits."¹¹ However, we are yet to hear Government's view on this.

Evidence

The Commission sought out, but heard of no evidence of undue influence of non-party campaigning organisations operating within the PPERA spending limits. There have also been no investigations into breaches of the spending limits set under PPERA.

Non-parties indicated that the spending limits within PPERA (in all but the most extreme cases) allowed charities and NGOs to campaign as they have done in the past and intend to in the future, whilst providing the flexibility for organisations to respond to public policy issues without fear of inadvertently breaching the limits.

Evidence was heard about the extent to which non-party campaigners should have their spending determined in relation to that of political parties. Friends of the Earth Northern Ireland commented:

"Political parties have all the power, which grants them access to vast amounts of corporate and union funding, as well as thousands of hours a year of free publicity through broadcast and print media. If non-party campaign spending caps are to be relational to party caps, then it should be by orders of magnitude much larger."

Friends of the Earth Northern Ireland, written evidence

Many NGOs gave evidence about the impact of Government proposals in the Lobbying Bill to significantly lower spending limits and the impact this would have when considered alongside other measures in the Bill. In written evidence, the RSPB commented:

"As we have noted in our previous briefings, it is illogical to halve the thresholds and caps at the same time as widening the activities that count towards them; this could seriously curtail legitimate charitable work. The caps on 'controlled expenditure' should be increased to reflect their application to a wider set of activities

and the effects of inflation since they were set in 2000. The overall cap should be increased to reflect the new activities and the change in the value of money. Alternatively, an order-making power could be introduced to review the caps periodically, following consultation with the Commissions and civil society.”

RSPB, written submission

The Countryside Alliance demonstrated the impact the reduced threshold might have on their campaigning. In written evidence, it stated:

“The promotion to the public of hunting documents, or a new rural manifesto-type document, or a document opposing a review of firearms law at events such as game fairs and agricultural shows around the country, in the twelve months ahead of the election, would all now be covered by Schedule 3. Not only would these costs easily exceed the new registration threshold and even possibly the old threshold, but it is likely that we could reach the new reduced expenditure limit before the election, requiring us to cease some, or all, of these activities ahead of the election’.

Countryside Alliance, written submission

The Commission also heard evidence about the proportionality of the spending limits proposed as they could have an impact on equalities, with people who engaged less online suffering as a result:

“[If we do] all our campaigning online, we will be in a position where everything we do is virtual – is that going to have an impact at the right level?”

National Pensioners Convention, Wales evidence session

Many NGOs presented examples of where the PPERA spending limits were too low for coalition working – that is addressed in a later chapter.

Analysis

Whilst only a limited number of organisations came close to the current limits, the Commission judges that the PPERA level presents approximately the right balance of freedom to campaign and avoidance of undue influence. However the limits do still present a serious problem for coalition working.

Recommendations:

i) Amend the Lobbying Bill

Spending limits for non-party campaigning organisations should be increased to reflect the 2013 value of the limits within PPERA (i.e. PPERA limits plus inflation).

ii) Review of principle, evidence base and policy objectives

After the 2015 General Election, spending limits should be reviewed. Evidence should be gathered to inform this review, and the following considerations should be included:

- Whether there is any evidence of undue influence on election outcomes as a result within the current limit
- What campaigning activity has been restricted as a result of the limits
- The impact of limits on coalition working

Rationale for the recommendations

PPERA's spending limits were generally agreed to have enabled freedom of expression and allowed a framework under which non-parties felt enabled to carry out campaigning without fear of inadvertently breaching limits. The Commission feels it is useful to take the opportunity of this legislation being reviewed to update the spending limits to 2013 values, taking into account inflation over the last 13 years.

A review of the policy basis for non-party spending limits is necessary given the changing face of political engagement and the need to foster civil society and democratic engagement by the public. A review of the evidence base and policy objectives would also lead to consideration of any changes to the regulatory regime to ensure that those objectives are met. This includes the need to regulate partisan non-party campaigning.

Rationale and implications of the recommendations

Retaining the same spending limits with an adjustment for inflation could maintain the status quo in terms of the spending of third parties at elections. As the Government has produced no evidence of undue influence at previous elections, it seems that maintaining the level for the 2015 Election with a thorough review thereafter satisfies the need for further interrogation. Making cuts to the limit without this interrogation seriously risks harming non-party campaigners' ability to operate in the regulated period before an election.

The status quo would only be maintained if the Commission's other recommendations relating to the definition and activities caught by regulation are actioned.

The six tests of good regulation

The recommendations meet the criteria for good regulation.

Test 1: Deliver the policy objectives of avoiding undue influence on elections and transparency of those engaged in activity that could influence an election.

✓ The PPERA spending limits are set at a level where spending that could result in undue influence is avoided. Transparency is a function of the threshold for registration and the combination of measures means that the activities of the larger non-party spenders are transparent.

Test 2: Be proportionate in the impact on non-party campaigning organisations in terms of campaigning activities they are able to carry out and the regulatory burden.

✓ The recommendations are broadly proportionate for individual campaigns – as long as the other recommendations are implemented.

✗ They may not be proportionate for coalition working – see chapter 3.7.

Test 3: Be evidence-based, including being able to demonstrate the need for regulation and an understanding of the impacts.

✓ The recommendation is based on evidence from non-party campaigners and the Electoral Commission. The Government has not come forward with any contrary evidence to substantiate undue influence as a need to cut spending limits – it has merely asserted (but not provided evidence for) a perception of undue evidence.

Test 4: Be clear in its meaning.

✓ The provision is clear to non-party campaigners.

Test 5: Be practical for non-party campaigning organisations to implement.

✓ Non-party campaigners have been able to implement this provision in practice during previous election periods.

Test 6: Be enforceable by the Electoral Commission as the regulator.

✓ The regulator has been able to enforce this provision in previous elections.

3.5 Constituency limits

Context

Chapter 9 of the Commission's first report highlighted that the Lobbying Bill proposals had been developed without an evidence base about either the threat of undue influence or about how non-party organisations administer campaign spending in constituencies; that the proposals were unworkable; that they would have a disproportionate impact on non-party campaigning; and that the Electoral Commission advised Parliament that the measures may be unenforceable.

Developments since our first report

Since the first report, Government has said it would review this provision, along with others in the Bill. In a letter to Peers, Lord Wallace acknowledged the need to re-examine constituency spending limits in light of the interdependency between them and any changes made to registration thresholds. He said:

"I will make clear to the House this afternoon that the Government will bring forward amendments to the Bill to substantially raise these thresholds from those proposed in the Bill. In doing so, we will need to take account of the consequences for the constituency limits set out in the legislation, and the government will reflect further on how to bring this about."¹²

The Electoral Commission reiterated its view that the proposals may be unenforceable.

"We have noted in previous briefings on the Bill our concern that except in extreme cases, the new constituency controls may be unenforceable within the timescales of an election, given the difficulty of obtaining robust evidence to determine and sanction breaches. Political parties' national campaigning during the year before a UK general election is not subject to constituency limits of this kind."¹³

Evidence

The Commission's second consultation exercise gathered evidence pointing to the proposed constituency limits being both unworkable for NGOs and administratively disproportionately burdensome.

Unworkable

Numerous NGOs gave evidence to the Commission that the proposed constituency limits were unworkable.

NGOs stated that their work was often not based along constituency lines; equally, it was not divided evenly across the 650 Parliamentary constituencies.

"At the last election there were, what, 100 seats that decided the whole election so the idea of producing a manifesto uniformly across the whole country I think is slightly naive."

Big Brother Watch, London evidence session

The Save Lewisham Hospital campaign gave evidence that it would be impossible for them to divide their work along constituency lines, calling such proposals 'a bureaucratic nightmare'. By discouraging money being spent in individual constituencies, Bond, the development organisations' umbrella body, said:

"The alternative almost seems to be not letting constituents know what their potential MP thinks about something which, to me, seems far more dangerous."

Bond, London evidence session

The Electoral Reform Society, giving evidence to the Commission, said a problem with constituency limits is its focus on issues.

It cited the M4 relief road campaign as one that was organised locally but has wider national consequences and that would likely be caught by the Bill.

"This is capturing something that is not, on the face of it, supposed to be captured, and is it leaving people not being able to talk about issues that they should be able to talk about in a democratic debate."

Electoral Reform Society, oral evidence

The Electoral Reform Society said that they do not have spending figures per constituency and that primary research would be needed to identify that.

"The bureaucracy and confusion surrounding constituency limits with devolved nations will be impossible". Citing Guide Dogs UK as having headquarters in England, offices in Scotland, Northern Ireland and Wales, they gave evidence asking: "How on earth are we going to fit in organisations that are cross administration? It's going to cause immense difficulties".

Electoral Reform Society, oral evidence

The Countryside Alliance, CPRE and Women first echoed this in their evidence, saying:

"The Countryside Alliance does not campaign in specific constituencies. However, the question does arise as to whether because an event takes place in a given constituency, even if part of a nationwide

activity, it is to be counted as constituency spending', and cites the 2004 Hunting Bill campaign as evidence of a campaign that would likely have been caught by the legislation.

"Furthermore, they said the impact of constituency limits would mean having to divert donations on setting up a whole layer of bureaucracy for additional financial accounting. Many other organisations still questioned whether it would even be possible."

Countryside Alliance, written evidence

"It is unrealistic for small CPRE branches doing this kind of campaigning to monitor how their activity relates to constituency boundaries, as would be necessary under the proposed rules. These branches are unlikely to have the capacity or capability to undertake this work...As a result CPRE branches may be forced to stop activity rather than falling foul of the Electoral Commission requirements or simply have less capacity to do the campaigning activity they exist to do because their limited time and resources are taken up reporting."

Campaign to Protect Rural England (CPRE), written evidence

NGOs also highlighted the types of campaign which would likely fall foul of the rules on constituency limits. Friends of the Earth Northern Ireland, in oral evidence, said:

"A good example [of a local campaign was] the campaign against the incinerator in and around Lough Neagh. That was an unbelievably successful campaign where a group of residents who happened to be quite well-to-do got together and fought off... they did what they had the right to do. They fought off a development."

Friends of the Earth, Northern Ireland evidence session

NCVO, in their written submission to the Commission's second consultation, state:

"NCVO members have told us that this lower limit will cause issues for smaller organisations, such as those running a campaign limited to a geographical area such as a bypass or a wind farm for example, 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."

NCVO, written evidence

Clearly, constituencies are different sizes so applying the same limit to all of them is unfair:

"The huge variation in constituency size also make this plan unworkable: the fact that constituency electorate size varies from around 20,000 in Na h-Eileanan an Iar to over 110,000 for the Isle of Wight mean that resources would be under much more strain in some constituencies. Furthermore, factors such as seclusion of some rural areas, postage costs and internet access would make the cost of campaigning vary significantly between different constituencies."

Freedom Association, written evidence

Unenforceable

We also heard from NGOs and from the regulator that the constituency limits set by the Government would be difficult to enforce.

In its briefing for Lords ahead of the second reading debate, the Electoral Commission said:

"The new constituency controls will require us to respond to allegations about campaign activity in any of 650 constituencies over a 12-month regulated period. Even if we were given significant extra resources to deal with this, we anticipate that it will be challenging to obtain robust evidence to determine and sanction breaches in specific geographical areas, for example, regarding the effects of a leafleting campaign or mobile advertising in different constituencies. This in turn means that it is likely to be difficult to demonstrate that a breach meets the necessarily high test for using a stop notice to intervene to halt campaigning activity."¹⁴

Oxfam's evidence to the Commission expanded on the point:

"The Electoral Commission has noted that the proposed constituency limits are unenforceable. We also feel that, whilst there should be a consideration around grossly disproportionate spend in key constituencies, the proposed limits are far too low. We also note some very valid examples from the Electoral Commission around campaigns that are geographically specific (such as those around major infrastructure projects) but are not designed around constituency boundaries. We propose removing, or at least significantly raising, the caps on constituency spending to recognise the scale of spend needed to unduly influence an election and to prevent restrictions on normal campaigning in a year-long period... your ability to maximise your resources to defend yourselves as citizens should not be limited."

Oxfam, written evidence

Analysis

There is an absence of evidence that the lack of constituency limits for non-party campaigning has, or imminently threatens,

an undue influence on election outcomes. In addition, the Commission has seen compelling evidence that the Lobbying Bill proposals are unworkable, would disproportionately curtail campaigning and may be unenforceable. It is hard to see how constituency limits can be introduced ahead of the 2015 General Election.

Recommendations

i) Amend the Lobbying Bill

Remove constituency spending limits for non-party campaigning proposed in the Lobbying Bill.

ii) Review the provision

Review the provision based on evidence, including:

- What scale of campaigning activity happens at a constituency level
- Whether there is any evidence of undue influence because of unequal distribution of spending between constituencies; and
- Whether non-party campaigning organisations could re-structure their administration to be able to account for constituency level spending – and what the administrative burden of such restructuring would be.
- An Impact Assessment of the likely effect of the cap on grassroots political engagement

The review should also include constituency limits for political parties, for parity, and to guard against avoidance of regulation by organisations that would register as a political party.

Rationale of the recommendations

Reverting to no constituency limits will ensure NGOs are in a position to both understand and comply with the regulations prior to a review being carried out.

NGOs agree with this sentiment:

“So there is a problem in the sense of defining it by constituency because every constituency has a different applicability. They absorb information differently, campaign differently. There’s a problem if we universalise in that respect because different funding is needed to reach people across the country... Universalisation of this whether it be spending thresholds or permitted activities is absolutely going against the fundamentals of a pluralistic society, it’s trying to uniformize the system.”

Children England, London evidence session

“HOPE not hate thinks it is only fair for us to be able to spend up to £50,000 in a constituency vulnerable to the hate message and lies of racist or fascist candidates. Any constituency spending limit lower than £35,000 will dramatically jeopardise our work and mission, at a time when the political vacuum left by the three mainstream political parties is being filled by candidates and parties determined to spread myths, fear and hate in order to gain votes.”

HOPE not Hate, written submission

Implications of the recommendations

As the Commission recommends that there should be no regulation in relation to constituency limits, the criteria for good regulation does not apply to this recommendation. Not introducing constituency limits will ensure that non-party campaigners are not subject to unduly burdensome regulation and that the regulator is not bound to enforce unworkable duties.

The Commission’s second recommendation will ensure any future regulation meets the good regulation criteria, and is based on clearly defined policy objectives from a rigorous evidence base. As stated above, on the evidence heard by the Commission, there is evidence that regulation which is both practical and enforceable in this area may simply be impossible to achieve. However, this would be for any review to assess within a longer time frame of consideration and consultation.

The six tests of good regulation

The Commission’s recommendations meet most of the six tests.

Test 1: Deliver the policy objectives of avoiding undue influence on elections and transparency of those engaged in activity that could influence an election.

✓ As Government has brought no evidence of undue influence at all at a constituency level, the recommendation does not undermine the policy objective of avoiding undue influence.

Test 2: Be proportionate in the impact on non-party campaigning organisations in terms of campaigning activities they are able to carry out and the regulatory burden.

✓ These recommendations are proportionate - they do not impose an undue burden on non-party campaigners. Constituency limits would have imposed a disproportionate administrative burden.

Test 3: Be evidence-based, including being able to demonstrate the need for regulation and an understanding of the impacts.

✓ The recommendation is based on evidence from non-party campaigners and the Electoral Commission.

Test 4: Be clear in its meaning.

✓ The provision is clear to non-party campaigners.

Test 5: Be practical for non-party campaigning organisations to implement.

✓ The removal of constituency limits is practical for non-party campaigning organisations to implement, as this is the status quo.

Test 6: Be enforceable by the Electoral Commission as the regulator.

✓ As the limits will be removed, the Electoral Commission will not need to enforce constituency limits.

3.6 Reporting requirements

Context

Chapter 10 of the Commission's first report highlighted serious concerns about the additional and disproportionate regulatory burden of the reporting requirements for registered non-party campaigners outlined in the Bill.

While the Commission acknowledges that the intention behind increasing reporting requirements is to increase transparency, evidence heard by the Commission contradicted the Impact Assessment about the cost of the additional burden.

We noted the Electoral Commission's Regulatory Review of the UK's Party and Election Finance Laws recommendations to reduce and simplify the administrative burden on small parties – not increase them. Key suggestions include:

- Removing the requirement for parties with no reportable donations within a quarterly period to have to provide further reports until a reportable donation is received
- that weekly donation reports after the dissolution of Parliament should be replaced by a single report, only required if a reportable donation is received.

We also noted no evidence of wrongdoing in the way that non-party campaigners currently report their regulated spending or donations.

We recommend that Government withdraw the proposals and carry out full consultation before drafting new changes.

Developments since our first report

Lord Wallace of Saltaire acknowledged the need to look again and consult on the reporting requirements for non-party campaigners. He stated:

“Clearly, we will need to look at that in consultation with others. It may well be that we will need a government amendment. That is the process through which we should go on that and a number of other concerns that were set out very well in the Harries commission report: for example, the range of activities covered, the treatment of campaigning coalitions, the reporting procedures requested of campaigning groups and so on. We are open to listening, we are open to adjustment, and we expect that when we come back to Committee and Report, this House will give the Bill the detailed scrutiny that it needs.”¹⁵

Evidence

The Commission heard evidence during its second round of consultation both that proposed additional reporting requirements in the Lobbying Bill would present a disproportionate burden on non-party campaigning

organisations, and that some PPERA reporting requirements could be lifted without reducing transparency.

In written evidence, HOPE not hate outlined how they felt existing legislation could be improved, but stated that they did not think the burden of weekly reporting was proportionate:

“HOPE not hate thinks it is only fair that we should be allowed, as we have in the past, to report back to the Electoral Commission three to six months after the General Elections on spending and relevant donations, or, at most, on a trimestral basis on spending during a 12 months regulated period, every two months during a 6 months regulated period, or monthly as in the case of a 3 months ‘long campaign’.”

HOPE not hate, written submission

Oxfam echoed concerns about what many NGOs saw as complex reporting requirements and whether the Electoral Commission have the resource to support the new regime. They also spoke about the impact of these requirements on small organisations:

“We have heard from a number of our local partners that the reporting requirements could become a barrier for them to engage with issues locally. Many of these organisations are quite small and have very limited administration capacity. Some of them are concerned that the time taken to work out the potential costs of a campaign or action and whether they'd need to register would prohibit them from undertaking that action in the first place. If they did continue and did register the quarterly returns are of a concern to all organisations, not least some of our smaller partners, particularly the need to come up with figures for staff costs against those activities and to report on nil donations”.

Oxfam, written evidence

In particular, federated organisations gave evidence that the new rules are both unclear and disproportionately burdensome for structures such as theirs where different parts of the organisation operate autonomously, can be separate legal entities and sometimes operate in different nations within the UK. The requirement for separate entities to submit separate reports to the Electoral Commission was considered too burdensome by every federated organisation heard by the Commission.

The Campaign to Protect Rural England specifically highlighted that they felt these issues had not been as big a part of the debate as they should have been to date, stating:

“As a charity with a federal structure... We feel the voice of smaller groups has been less prominent in the discussion around the Bill to date, whereas the Bill has potential to disproportionately affect these smaller organisations. CPRE has more than 200 local groups, a branch in every county, around 2,000 parish council members and 64,000 members and supporters”.

Campaign to Protect Rural England, written evidence

Membership organisations gave similar evidence. The Women’s Institute highlighted:

“I think it would be very difficult for membership organisations, such as the WI. We work very much with our members, all our campaigning work comes from the grassroots, and then there are active communities, so try and count that, put a cost on that, the time that they give, to campaigning locally and liaising with their MPs and so on would be very difficult.”

National Federation of Women’s Institute, Wales evidence session

The Electoral Commission (EC) has said in its briefings that the reporting requirements could be simplified to reduce the new burdens on campaigners by adopting changes that the EC has recommended to the equivalent rules for political parties. Also, campaigners that register but spend less than the registration threshold could just submit a declaration to this effect to the EC, rather than a full spending report. Campaigners that do not report any donations in their first donation report could be exempted from future reports unless and until they receive a reportable donation; in addition, the proposed weekly reports following the dissolution of Parliament could be replaced with a single report. These changes would not reduce the transparency of the regime and would reduce burdens on campaigners.

Evidence submitted to the Commission suggests that this administrative burden is particularly disproportionate for small organisations with little administrative capacity. Written evidence from NCVO states:

“The Electoral Commission has also highlighted the need to minimise the regulatory burdens: its regulatory review recommended simplifying the reporting rules for political parties, and following the publication of the Bill it has recommended also adopting them for the proposed new regime to help reduce the new burdens imposed on campaigners.”

NCVO, written submission

Coalition working

The Commission heard considerable evidence about disproportionate curtailment of coalition working between non-party campaigning organisations. This is addressed in the next chapter. One element of disproportionate burden is reporting. Evidence from several organisations demonstrated the reporting requirements had made them cautious about taking

part in coalition campaigning ahead of the 2010 General election that could be subject to regulation. The Electoral Reform Society Scotland said in oral evidence that this “would be a disincentive to join big NGOs, and the smaller ones might not feel able to participate”.

Analysis

The Commission recognises that the secondary motivation for introducing more burdensome reporting requirements for non-party campaigners is to bring the regulation of non-party campaigners further into line with the regulation of political parties. We are surprised that the Government has not considered the Electoral Commission’s Regulatory Review recommendations in this respect.

However, we consider the proposed additional regulatory requirements to be disproportionately burdensome on non-party campaigning organisations. We also agree with the Electoral Commission that some changes can be made to PPERA reporting requirements to lift burden without reducing transparency.

We think a package of measures is needed to reduce the disproportionate regulation of non-party campaigning. One element is reducing the regulatory burden on organisations not reaching the threshold.

Recommendations

i) Amend the Lobbying Bill

All additional reporting requirements for non-party campaigning proposed in the Lobbying Bill should be removed.

Introduce the option of a declaration by non-party campaigns that have registered that they did not spend above the threshold.

We also propose that PPERA should be amended such that where an organisation only takes part in regulated activity as part of a single coalition, it will not have to register separately with the Electoral Commission, provided that all its relevant spending and donations do not exceed the registration thresholds and are reported either through the coalition or one of the coalition partners. See below chapter on coalition campaigning.

ii) Review

Reporting requirements should be reviewed after the 2015 General Election with evidence gathered to inform judgements about:

- Whether the new reporting requirements are proportionate to the public’s need for transparency.
- Whether the new reporting requirements are easily achievable by third parties without high spending on compliance.
- The costs for the Electoral Commission of enforcing the new rules.

Rationale and implications of the recommendations

The recommendations remove some reporting requirements which impose an undue administrative burden whilst maintaining high levels of transparency.

The recommendations would mean that the disproportionate regulatory burden is lifted whilst maintaining transparency.

The six tests of good regulation

The Commission's recommendations meet most of the six tests.

Test 1: Deliver the policy objectives of avoiding undue influence on elections and transparency of those engaged in activity that could influence an election.

✓ The Commission's first recommendation will ensure an adequate level of transparency is achieved. The recommendation for a review will enable further evidence gathering, consideration and consultation about how to maximise transparency in a proportionate way without being unduly burdensome on non-parties.

The recommendations do not increase the risk of undue influence on elections.

Test 2: Be proportionate in the impact on non-party campaigning organisations in terms of campaigning activities they are able to carry out and the regulatory burden.

✓ The recommendations are proportionate in that whilst they carry administrative burdens, the requirements are not so cumbersome or stringent as to make campaigning unworkable.

Test 3: Be evidence-based, including being able to demonstrate the need for regulation and an understanding of the impacts.

✓ The recommendations are based on evidence from non-party campaigners and the Electoral Commission. The recommendation for a review will further increase the evidence-base and show whether there is a demonstrable need for regulation.

Test 4: Be clear in its meaning.

✓ The provision is clear to non-party campaigners.

Test 5: Be practical for non-party campaigning organisations to implement.

✓ Whilst there is an administrative requirement for non-parties, the changes will make the regulations more practical for non-party organisations to implement.

Test 6: Be enforceable by the Electoral Commission as the regulator.

✓ The proposed changes will make reporting simpler and therefore more easily enforceable.

3.7 Coalition campaigning

Context

Under the current PPERA regime, organisations which campaign on the same issues can be liable to contribute to one another's spending limits.

Because of this, chapter 12 of the Commission's first report highlighted the wide range of organisations that were concerned that the lowering of registration thresholds and spending limits in the Bill would prevent working in coalition in the year before an election.

Organisations gave evidence that the reforms proposed in the Bill would bring many more coalition campaigns – and smaller individual organisations who are members of such coalitions – into the scope of the regulation and make them subject to the reporting requirements. We also heard evidence that larger organisations working in coalition would be increasingly likely to reach the proposed spending limits.

Scotland, Wales and Northern Ireland

In our first report we noted the particular prevalence of coalition campaigning in Scotland, Wales and Northern Ireland; therefore the Commission recommends that any Government proposals to amend the way in which coalitions operate should take into account the particular contribution of coalitions of small organisations in a devolved policy environment.

The impact on smaller organisations, community groups and local organisations working in tandem with or under the umbrella of larger, better-funded organisations was considered by a number of organisations in devolved nations to have a particularly harmful impact considering the level of involvement of local organisations in Scotland, Wales and Northern Ireland. Small and predominantly volunteer-based organisations were considered unlikely to be willing or able to register with the regulator if a coalition partner were to spend £2000 on their behalf (and which was counted against them) – rather, they would likely cease joint activity.

It should be noted this potential impact is one 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. Yet it is that higher impact of joint working that the proposed legislation would severely limit.

Furthermore, the Commission remains concerned about the situation federated organisations find themselves in. In addition to the possibility of local federated organisations entering into local coalitions, the Commission has noted the negative

impact the reporting requirements will have on them across linked offices in different nations. Particularly, we would like to highlight the potential impact of increasingly burdensome reporting requirements on small federated organisations with limited capacity to bear the cost.

Developments since our first report

In the debate on the pause of the Bill, Lord Wallace of Saltaire said he was open to 'listening' and 'adjustment'.

"Clearly, we will need to look at that in consultation with others. It may well be that we will need a government amendment. That is the process through which we should go on that and a number of other concerns that were set out very well in the Harries commission report: for example, the range of activities covered, the treatment of campaigning coalitions, the reporting procedures requested of campaigning groups and so on. We are open to listening, we are open to adjustment."¹⁶

In addition, the Electoral Commission has stated in their most recent briefing to Peers that they are considering whether there is scope to amend these rules to minimise the reporting burdens on campaigners in coalition.

Evidence

Both large and small organisations have expressed serious concern about the impact of the Bill on coalition working and the Bill's proportionality and practicality. The following is broadly representative of what the Commission heard:

"Coalitions are formed to amplify people's voices. This is a blatant attack on that."

Edinburgh University Students Association, Scotland evidence session

"I think that non-party campaigning coalitions should not be restricted. That's ridiculous... it's about increasing the diversity of the discourse and that's a good thing in a democratic society. We wouldn't have got a good climate change act without coalition working. That would be out. The Scottish Parliament basically exists because of coalition campaigning. Governmental advice on working in coalitions contradicts the legislation. One of the things they keep throwing at the charity sector is that we don't collaborate enough."

NIDOS, Scotland evidence session

Small organisations who may give very little in financial and in-kind contributions to a campaign told the Commission that they were worried that the Bill would mean that they are very likely to be drawn into the regulatory framework.

“The irony would be that smaller organisations with very low capacity, with no money, not spent any, could find themselves heavily regulated having spent nothing, because somebody else whom they partnered with did. That’s crazy.

“If they’re putting limits on coalitions that, to me, actively disincentivises people to work together, which can’t be good, you know. At the same time, politicians and civil servants are telling us all to work together and stop duplicating, so what you’re going to have is people all trying to do the exact same thing because if we work together then we’re going to be penalised.”

Ni Women’s European Platform, Northern Ireland evidence session

“It would be a disincentive to join big NGOs, and the smaller ones might not feel able to participate.”

Electoral Reform Society, Wales evidence session

In addition, there was confusion about what would and would not be included, and how this could impact on the strength of the coalition:

“We would have a joint manifesto for every election, and it’s where you count the cost through the organisation. There are some shared resources as well, so it’s a minefield.”

Community Housing Cymru, Wales evidence session

“With regards to the confusion surrounding limits on coalition spending... If having our logo on something means that money will then be apportioned to that, then we can’t endorse it... Furthermore, it will weaken the cohesiveness of coalitions; is this going to breed some kind of suspicion, ‘are you only wanting to link up with us so that we can share the cost’.”

The Board of Deputies of British Jews, London evidence session

Large organisations who may be involved in several coalitions in any given year as well as undertaking their own campaigns gave evidence that the arrangements for coalition working would draw them into the regulatory framework at a much earlier stage, and would make it much more likely that they would reach their spending cap. Oxfam said:

“To be effective and get our voice heard, we often work in coalitions with other likeminded organisations for example in the Make Poverty History coalition, the ‘IF’ campaign, and the Robin Hood Tax coalition. Many of these coalitions have hundreds of organisations as members and are managed by a steering committee representative

of the membership of the coalition. These may also involve non-charitable organisations, hence our concern about the impact of the Bill on charities and non-charities alike. We understand that the aggregated reporting of coalition spending is seen as a key anti-avoidance measure, however the effect of this under the new Bill would be to deter smaller organisations joining coalitions which would then require them to register, and would deter larger organisations from coalition working because in joining too many they may all too soon reach their limit. For instance our programme partners in the UK are concerned that the partnership with Oxfam could be considered a coalition where Oxfam and its partners raise awareness of a particular issue. For example, Oxfam and its partners are raising concerns around sanctions to benefits, living wage (we are also in coalitions in Wales and Scotland on the living wage) and supporting partners to lobby on their own issues both locally and nationally. This is activity we engage with our partners on in every year, not just an election year. We would like the existing law to be amended to allow coalitions to nominate a lead reporting agency, for the lead reporting agency to name its coalition partners and jointly report expenditure. We would also like organisations to only be accountable for what they spend and therefore refrain from registering if their input falls below the thresholds.”

Oxfam GB, written evidence

RSPB and Children England agreed with this stating:

“For example, RSPB often works locally, in partnership with other groups, on issues such as infrastructure projects that would affect the natural environment, in line with our charitable objectives. For example, we may wish to campaign on the M4 relief road, or plans for HS2, during the regulated period. We may consider public reports or press conferences as part of a campaign. Such activities could affect the electoral success of parties or candidates that share a view on the proposed development, even though our objectives would be clearly based on policy not politics. We have no experience of how the test for “political activities” would be applied to events like press conferences or public rallies. Working in partnership, the total spending would count against each organisation’s individual constituency spending limit of £9,750 over a year. The combined effect of these changes must be addressed before the bill is enacted.”

RSPB, written evidence

“We have a turnover over of under £1m but our membership has a combined turnover somewhere closer to £500m. Any campaign we coordinate with our members is therefore almost certainly going to breach the reporting threshold and may

well hit the spending limit. As a principle, we believe that no organisation should be responsible for reporting the spending of another. Given that the sector is often criticised for not collaborating enough, it also seems perverse to us to punish charities for working together by restricting coalition campaigns to the same spending limit as a single organisation. There are so many shades of grey in collaboration that I cannot see how a coalition campaign can be reasonably defined and maintain that the only clear way to apply a spending limit is to individual organisations. I realise that this opens up loopholes but 1) there will be loopholes with any definition 2) it should be relatively easy to add some additional protections to prevent the most egregious abuses e.g. campaign groups which are majority funded by the same organisation/individual must share the spending limit 3) clarity is the single most important quality that the legislation should have.”

Children England, written evidence

Analysis

This remains one of the most intractable areas of the legislation where various factors and judgments need to be considered by Parliament.

For instance the Electoral Commission state in their most recent briefing to Peers that:

“Where co-ordinated campaigning takes place, the total spending of every campaigner involved will count separately against each organisation’s individual spending limit (so if two campaigners each spend £7,000 then each campaigner must count £14,000 against its own limit). This ensures that the relevant spending limit applies to any campaign message, whether it is put forward by a single campaigner or a coalition.”¹⁷

This is true, but the Commissioners also note that it:

- could create the misleading impression that £28,000 was spent on the campaign if £14,000 is reported twice;
- multiplies by a significant factor the amount an organisation is deemed to have spent, thereby reducing the amount they can spend on other campaigns or messages.

Whilst the Commission recognises the need to ensure that coalition working is not used as an avoidance mechanism, we remain concerned that the existing rules under PPERA for coalition working represents an undue regulatory burden on smaller organisations.

We are also concerned that the proposals in the Bill would have the effect of making it very difficult for larger organisations to work in coalition as they would reach their spending limit much sooner than would otherwise be the case. This can be somewhat mitigated by the Government following all other recommendations in this report on: registration thresholds, spending limits, constituency limits, definition of supporters and range of campaigning materials covered.

Recommendations

i) Amend PPERA

Where an organisation only takes part in regulated activity as part of a single coalition, it will 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.

ii) Review

Evidence should be collected during 2015 of coalition campaigns that were halted or not entered into because of the regulation. This will provide the necessary evidence to determine whether the policy intent of the legislation to increase transparency and prevent undue influence over elections was a threat to the normal coalition working of civil society.

The review should also collect evidence of coalition campaigns that do take place in the regulated period prior to the 2015 general election, to assess the impact of the legislation.

This will provide the necessary evidence to determine whether the policy intent of the legislation to increase transparency and prevent undue influence over elections did in fact pose a threat to the normal coalition working of civil society.

Rationale and implications of the recommendations

The first recommendation would assist in addressing some of the evidence the Commission heard in our two consultation periods about the negative impact of the proposals on coalition working. It would help to ensure that smaller organisations who may contribute some funds or-in kind contribution to a coalition campaign, but who do not spend over the registration thresholds in either this campaign or other relevant campaigns, would not have to register with the Electoral Commission.

The six tests of good regulation

Test 1: Deliver the policy objectives of avoiding undue influence on elections and transparency of those engaged in activity that could influence an election.

✓ Our recommendation still requires a coalition, in which one set of policy messages is being pursued in a coordinated fashion, to register with the Electoral Commission and fulfil the full transparency requirements should the combined spending of the campaign meet the registration thresholds. It would prevent avoidance through coalition working

Test 2: Be proportionate in the impact on non-party campaigning organisations in terms of campaigning activities they are able to carry out and the regulatory burden.

✓ The recommendation would lead to a more proportionate arrangement, and would ensure that any organisation who has not spent over the registration threshold would not have to register due to being involved in a larger coalition.

Test 3: Be evidence-based, including being able to demonstrate the need for regulation and an understanding of the impacts.

✓ The recommendation is based on evidence from a wide range of organisations and case studies of coalition work. We are supported in our policy intent by the Electoral Commission.

Test 4: Be clear in its meaning.

✓ Our recommendation brings greater clarity as it requires an organisation to simply think about its own spending and report that through the coalition or one coalition partner.

Test 5: Be practical for non-party campaigning organisations to implement.

✓ Our recommendation is practical to implement and reduces unnecessary duplication of reporting.

Test 6: Be enforceable by the Electoral Commission as the regulator.

✓ The regulator will be able to enforce non-compliance through the coalition secretariat or lead agency.

3.8 Duration of the regulatory period

Context

Since PPERA was passed in 2000, third party spending intended to influence the outcome of a General Election has been controlled for a period of 365 days before the poll. This is the same length of time as the regulatory period for political party spending. The regulated period for EU and devolved elections and for candidates is four months.

Ahead of the debate in the House of Lords about pausing part 2 of the Bill, the Electoral Commission made clear that the start of the regulatory period ahead of the 2015 general election could be delayed:

“Should Parliament decide that a period of consultation is desirable before the Bill makes further progress, we would recommend that the start of the regulated period for the 2015 general election be delayed by an appropriate period.”¹⁸

Evidence

In our second phase of consultation the Commission heard evidence from across civil society that the regulatory period of 365 days prior to an election has a disproportionate effect on non-party campaigning. We heard that 12 months ahead of an election is simply too far away from the election for most activities relevant to the election.

“There should be a recognised difference between our campaigning in the year before an election and campaigning in a six-week election period. We also think that in the context of fixed term parliaments the year-long election period is too restrictive. Reducing the timescale is unlikely to reduce the impact on any organisation that is trying to influence the outcome of an election because spending in support of a specific candidate or party would be more impactful in the months leading up to an election. We would like to see the legislation propose a six-month electoral period.”

Oxfam GB, written submission

Organisations raised concerns that it is difficult to manage campaigning budgets over such a long period of time when the issues that are politically contentious and therefore may become subject to regulation can change radically.

“Since much campaigning is reactive and based on policy decisions or political debates of the day, campaign groups should not be restricted for campaigning on these issues simply because of the timing. Politicians could bring up a series of controversial proposals or policies in the year

running up to an election in the knowledge that they would face less opposition than at other times of the electoral cycle.”

Freedom Association, written evidence

Many NGOs made the case for parity with the regulated period for EU and devolved elections of four months, rather than with political parties of 12 months.

Some organisations thought that a six month regulatory period would not be disproportionate as long as the regulatory measures associated with registration were proportionate.

“The Commission may wish to consider proposing an amendment to halve the term of the regulated period. Reducing the length of the regulated period would reduce the regulatory burden of accounting for spending in advance of an election. It would also reduce the impact of any curtailment of activities necessitated by spending caps.”

RSPB, written evidence

Scotland, Wales and Northern Ireland

In our first report we noted the particular impact of a 12 month regulatory period on organisations operating in Scotland, Wales and Northern Ireland. The existence of devolved elections in all three nations means that they will find themselves in a regulated period of some sort for a larger proportion of the time than organisations working in England. We heard evidence that this is disproportionately burdensome for non-party campaigning organisations in those nations.

“Oxfam Scotland is concerned that Scottish organisations may end up being in a regulated period repeatedly for the next three years with the UK elections in 2015, and Scottish national elections in 2016. This seems to be a disproportionate amount of time for a regulated period.”

Oxfam GB, written evidence

Analysis

The Commission shares the Government’s commitment to transparency; this must be balanced against the risk of disproportionate curtailment of civil society campaigning and overly burdensome administrative requirements.

The Commission is mindful of the evidence that the majority of campaigning relevant to elections takes place nearer the election.

Recommendations

i) Amend the Lobbying Bill

Reduce the regulatory period to six months before the poll.

This means it would start on 8 November 2014 for the 2015 General Election unless there is a change to the fixed term date of the election.

The Government should consider and develop a further amendment to address the issue that general election may occur unexpectedly, which could result in activity planned for what would normally be an unregulated period becoming subject to one.

ii) Review the regulatory period

The regulatory period for General Elections after 2015 should be reviewed.

Evidence should be gathered during the pre-2015 regulatory period to inform the review including:

- What scale of non-party campaigning happened during the six months ahead of the General Election.
- Whether there are any examples of undue influence of unregulated non-party campaigning in May to November 2014 ahead of the six month regulatory period.
- The costs and benefits of different lengths of regulatory period, for the Electoral Commission and for third-party campaigners.
- The interdependencies between lower thresholds, a wider scope of regulated activity, increased and graded reporting requirements, and a different length of regulated period.

Rationale and implications

The Commission understands the Government's rationale of having the same regulatory period for party and non-party campaigners, to avoid the possibility of non-party campaigns being used to avoid party spending limits. However, it also believes the regulatory period for non-party organisations should be proportionate to their actual activity.

The Commission would not object to parity of the regulated period with EU and devolved elections of four months.

The Six tests of good regulation

Test 1: Deliver the policy objectives of avoiding undue influence on elections and transparency of those engaged in activity that could influence an election.

✓ The shorter regulatory period for 2015 will continue to prevent undue influence by non-party campaigners. The Commission's evidence suggests most of their campaigning takes place in the six months immediately before an election. It will reduce transparency slightly but only in relation to activity on a small scale that is less likely to have any relevance to an election.

Test 2: Be proportionate in the impact on non-party campaigning organisations in terms of campaigning activities they are able to carry out and the regulatory burden.

✓ The impact on non-party organisations will be reduced, correcting a current situation of disproportionate impact.

Test 3: Be evidence-based, including being able to demonstrate the need for regulation and an understanding of the impacts.

✓ The proposal for a shorter regulatory period for 2015 is based on evidence from the Electoral Commission. Evidence from NGOs indicates this would be unlikely to result in undue influence and would materially lift disproportionate regulatory burden.

Test 4: Be clear in its meaning.

✓ The provision is clear to non-party campaigners and the regulator.

Test 5: Be practical for non-party campaigning organisations to implement.

✓ Non-party campaigners' reporting requirements would be reduced.

Test 6: Be enforceable by the Electoral Commission as the regulator.

✓ This would reduce the time spent by the Electoral Commission in regulating non-party campaigns. It would not otherwise change the mechanisms by which regulation is carried out.

3.9 Regulation of non-party campaigning in Scotland, Wales and Northern Ireland

Context

Chapter 11 of the Commission's first report detailed particularly serious concerns about the impact of the Bill in Scotland, Wales and Northern Ireland. Campaigners in all three devolved nations gave evidence that the extremely low thresholds for registration and spending caps proposed in the Bill were disproportionate. We noted that the Bill did not adequately acknowledge or allow for different political and civil society contexts.

"The impact of the bill's changes to the scope of non-party controls, taken together with lower registration thresholds and spending limits, could be particularly significant in Scotland, Wales and Northern Ireland, where civil society has often had a prominent role in development and discussion of new policy and legislation in recent years".

*Northern Irish Council for Voluntary Action,
Northern Ireland evidence session*

Furthermore, organisations in all three nations suggested that the proposed regulation of coalition working would have an unduly harmful impact, due to increased prevalence of coalition working there.

The first report also addressed the potentially negative impact of the Bill on constructing a lasting peace in the unique political environment of Northern Ireland.

Developments

Since the Commission published its first report, a number of parliamentarians from both houses have acknowledged specific concerns regarding the Bill's proposals for the devolved nations. In addition, the Electoral Commission has highlighted that:

"It has been suggested to us that the impact of the Bill's changes to the scope of the non-party controls, taken together with the lower registration thresholds and spending limits could be particularly significant in Scotland, Wales and Northern Ireland, where civil society has often had a prominent role in the development and discussion of new policy and legislation in recent years."¹⁹

The particular concerns regarding Northern Ireland, security and stability of the peace process, were endorsed by Northern Irish peers in their communications with the Commission following the launch of the first report.

The government has indicated willingness to look again at spending caps and thresholds for registration and ministers have travelled to Northern Ireland and Scotland to consult

civil society organisations. The Commissions welcomes these developments and hopes that ministers will publish any findings and will also include Wales in their consultation, to provide as full a picture as possible of the specific differences that apply in each of the devolved nations.

Evidence

The Commission held a second round of consultation sessions in Edinburgh, Cardiff and Belfast, with as wide a range of organisations as could give evidence given the timescale. From these, the Commission has gathered further evidence about the unique impact of the Bill in the devolved nations. Key issues identified in addition to those in the first report include:

Clarity over reporting on campaigns aimed at both the devolved and the UK governments.

Organisations in all three devolved nations stated that the provisions of the Bill did not seem to recognise the challenges faced by organisations working both in England and another (or all other) devolved parliament or assembly. Responsibility for some policies might rest with the devolved government, whilst other policies were owned by the Westminster government. In some cases, both Westminster and the devolved government have responsibility for a policy area. Many organisations gave evidence about the difficulties they would face in the attribution of costs and resources to campaigning activities (particularly staffing costs) where such activities addressed both the devolved government and Westminster. This would make reporting on campaigning activities difficult during the regulated period.

The Electoral Reform Society highlighted this in their evidence stating:

"If you're an environmental organisation based in Scotland, most of the policies you're interested in are decided in the Scottish Parliament. If you're a welfare organisation... it's decided at Westminster. So how do you divvy that up? It portrays a complete lack of understanding of devolved politics."

*Electoral Reform Society Scotland, Scotland
evidence session*

Similar evidence was heard over policy issues where the responsibility is shared by Westminster and a devolved Parliament – organisations expressed a worry that it would be unclear during different election cycles which activity, directed at whom, counted towards regulated limits. Existing and proposed policy was not seen as being clear in this area.

“We have a problem here, in that the policies and issues are not clear, whether they’re Westminster or devolved. I don’t understand how that works in the context of the Assembly election and Westminster election.”

Electoral Reform Society Cymru, Wales evidence session

Further concerns were expressed regarding potential unintended breach of the new regulations. Contributors said they could run the risk of violation, or of needing to count their activity as regulated, if they ran a campaign directed at the national branch of a party that was also running for seats at Westminster.

“What if the same party is in power in Cardiff and Westminster and it’s near the Westminster election, what can we do in Cardiff with our politicians, on issues that may affect the Westminster elections?”

NUS Wales, Wales evidence session

Translation into Welsh

There was unanimous agreement among organisations in Wales who gave evidence to the Commission, that reduced spending limits for Wales had not taken account of the desire to produce all materials in two languages. The National Federation of Women’s Institutes Wales noted that legislation is coming in soon in Wales requiring certain organisations to operate bilingually, and that many already do – the costs of material translations will mean that limits and thresholds are reached much more quickly in Wales.

Specific concerns in Northern Ireland

The Commission raised specific concerns in its last report regarding the impact of the Bill in Northern Ireland. Particular reference was made to its impact on civil society activity in a post-conflict society with a mandatory coalition and a political process yet to be firmly established.

During the second evidence session, contributors highlighted a number of key areas that regulations should take into account:

- NGOs and charities in Northern Ireland are frequently working on issues that relate to ensuring the full implementation of the Good Friday Agreement. This campaigning requires addressing politicians in Westminster since the responsibility for implementation of the agreement lies both with Westminster and with the Northern Ireland Assembly. Contributors’ evidence suggested that a way needed to be found to ensure that the Bill would not catch such activities and that any ambiguities would be removed regarding the definition of controlled activity, such that the Bill did not have a chilling effect on civil society which is still in early stages of development.

As one contributor stated:

“Imagine this debate we’re having at the moment about how we deal with the past. We’ve got the US envoy here to help holding talks, and it’s taken quite a while but it’s happening right now. There’s

a public debate with victims organisations, with the Attorney General; 600 plus civil society groups have written submissions, and anything that could quash that would be a real setback, because these are the kind of civil constitutions we need in order to get to the next level of democracy here. For example, imagine if families’ groups who lost their loved ones in atrocities, just suddenly felt that they couldn’t speak out because they were worried about what might be regulated or they couldn’t go and speak to elected members. That would be a tragedy here.”

NICVA, Northern Ireland evidence session

- Another reiterated this issue and emphasised that a great deal of work undertaken in Northern Ireland relates to equality – a sensitive issue in a country where divided communities believe they have historically not been given equal treatment:

“I think there’s a really specific point in Northern Ireland on this particular issue. We have a different landscape here in terms of equality, in terms of building our fragile peace and cementing our fragile democracy that we have here and the institutions; that sort of engagement here is all the more important because it is a real support mechanism for the Assembly when it’s in times of crisis. You know, you have groups saying, we’ve achieved so much we need to keep moving forward, but also in the battle for equality and things like LGBT rights, issues regarding abortion and things like that, women’s rights. There is so much here in Northern Ireland that is different, as regards the political landscape, than the rest of the UK, and I think for this [Bill] to come in here could really shatter the progress that’s been made in the past few years, which has been really pretty good and there’s going to be far more that needs to be done to deliver genuine equality here, and I think that’s something that’s unique to Northern Ireland as regards the legislation.”

NUS Northern Ireland, Northern Ireland evidence session

- Grave concerns were raised regarding the potential impact of the rules on coalition working in the Northern Irish context. All contributors to the evidence session were involved in campaigning as part of a coalition. Many of these coalitions work collaboratively across traditionally sectarian divides and offer the first real opportunities for different communities to engage constructively and to find common ground. Many coalition members were small organisations who would feel unable to cope with the regulatory burden and reporting requirements and would therefore be likely to decide not to participate if the proposed rules on coalition working came into force. Contributors suggested that a way must be found not to discourage small organisations from participating in coalition-based campaigns.

- Organising public meetings and rallies in Northern Ireland requires much greater expenditure on security than in the rest of the UK. In this context, both the proposed threshold for registration of £2,000 and the spending cap of £10,800 seem inordinately restrictive.

The Commission is of the view that the nuances involved are complex, multi-origin and difficult to untangle. The potential to do harm in Northern Ireland with hastily adopted legislation is likely to be of a different order to that in Scotland, Wales and England.

Analysis

The evidence would suggest that closer scrutiny is required to clarify the impact of the regulations on campaigns aimed at the UK government and a devolved government.

In addition there is a need for careful research into the need to ensure the regulations do not impinge on the vital role played by NGOs, charities and campaigners on the continued implementation of the peace process in Northern Ireland. A specific case study in Chapter 4 provides ample demonstration of this. It provides clear evidence of the social good performed by civil society and demonstrates how NGOs, campaigning organisations and human rights groups have been working together across deeply divided communities to enhance the engagement of citizens in the democratic process. The ability to engage with policy development in a meaningful way is providing both a democratic outlet for individual and community-level frustrations and a pathway for constructive dialogue. All stakeholders are in agreement that a lasting peace in Northern Ireland will take decades to build. During that time many different political administrations will come and go. There is surely cross-party agreement that building a lasting peace is a social good. True engagement in democracy is a major building block in that process, and that means more than simply exercising one's vote. As Shkolnikov and Nadgrodkiewicz stated, regarding the development of emerging democracies:

“Democratic institutions cannot be just minimalist frameworks that engage the citizenry only during periodic elections but between them provide little opportunity for policy input.”²⁰

True democratic engagement in Northern Ireland is unlikely to be achieved if ill-prepared legislation severely curtails the abilities of NGOs to forge links between communities and to work together to influence the policies that affect them, irrespective of which political party is in power in Westminster.

On the basis of this analysis, the Commission has formulated a series of recommendations in relation to regulation of non-party campaigners in the devolved nations.

Recommendations

1) Amend the Bill

Increase thresholds for registration in Northern Ireland, Scotland and Wales to £10,000.

Exempt costs relating to translation, security and safety from regulation.

ii) Review the provisions

In advance of introducing any new legislation, Government should:

- Undertake full, in-depth and considered consultation with a range of organisations in Northern Ireland and with the Stormont Parliament itself to ensure that civil society's contribution within the unique political environment of post-conflict recovery is not jeopardised. In particular, ways should be found to ensure that pre-election regulation does not inhibit progress in towards full implementation of the Good Friday Agreement.
- Explore, and reflect in any new legislation, the interface between devolved policy responsibility and Westminster policy responsibility, and the dual focus of organisations based in Scotland, Wales and Northern Ireland.
- Re-examine the proposed rules for coalition working, taking account of the necessity of coalition working across divided communities to moving the peace process forward in Northern Ireland. Explore ways to ensure that regulation does not discourage small community groups and charities from working in coalition.

Rationale and implications of the recommendations

The recommendations are based on evidence received from a broad range of organisations based in Scotland, Wales and Northern Ireland. They reflect both the depth of the concern with the Bill, and the Commission's view that consultation has been unacceptably sparse.

Raising the threshold and exempting certain costs from regulation should have the effect of ensuring that many smaller organisations do not reach the regulatory threshold of expenditure. This should assist in reducing the potential 'chilling effect' feared by many non-party campaigners in the devolved nations, as well as demonstrating that the amended Bill is responding to the different contexts in different nations.

However, unless the rules on coalition working are addressed, it is still likely that many small organisations will cease or reduce their activities during the regulated period. This is of concern in any country but has implications of a different order in Northern Ireland.

If the recommendation to reduce the regulatory period to six months is adopted, this should allow sufficient time for a thorough review of the specific issues highlighted in this chapter, namely: clarifying the impact of the Bill on campaigning aimed at two governments (devolved and UK); exploring ways to ensure campaigning essential to peace-building in Northern Ireland is not affected by the Bill; finding ways to ensure coalition working is not discouraged by the regulations.

The Commission believes that these recommendations are the only workable way of proceeding from the point that the legislation is currently at, without having a significant impact on civil society and democratic engagement in Scotland, Wales and Northern Ireland.

The Commission also believes that the recommendations are both achievable and reasonable.

If the recommendations are not adopted, clear evidence gathered by the Commission in both rounds of consultation suggests that the Bill's impact is likely to be damaging.

The six tests of good regulation

The recommendations meet the criteria for good regulation.

Test 1: Deliver the policy goals of avoiding undue influence on elections and transparency of those engaged in an activity that could influence an election.

✓ The Commission believes that in light of a lack of evidence in Scotland, Wales and Northern Ireland of undue influence during election periods, the modest amendments to the Bill suggested in these recommendations are unlikely to allow undue influence.

Test 2: Be proportionate in the impact on non-party campaigning organisations in terms of campaigning activities they are able to carry out and the regulatory burden.

✓ The recommended amendments are both proportionate and workable in the interim. The raised threshold for registration is still likely to catch organisations intent on spending large amounts influencing the outcome of a general election.

Test 3: Be evidence-based including being able to demonstrate the need for regulation and an understanding of the impacts.

✓ The recommendations are based on two rounds of consultation, both written and verbal, in Scotland, Wales and Northern Ireland, with evidence taken from a broad range of organisations.

Test 4: Be clear in its meaning.

✓ The suggested threshold for registration and suggested exempted costs are clear and easy to understand. More work is needed to clarify the rules on coalition working.

Test 5: Be practical for non-party campaigning organisations to implement.

✓ Because the raised threshold is likely to ensure small organisations are not caught by the Bill, any organisation spending £10,000 or more is also likely to have sufficient capacity to report (as long as the recommendations on reporting requirements are also adopted).

Test 6: Be enforceable by the Electoral Commission as the regulator.

✓ The regulator has been able to enforce similar provisions during previous election periods.

3.10 Supporters

Context

This issue was not considered by the House of Commons during debates. It is a matter which the Commission believes may have been inadvertently overlooked and which requires further consideration.

The list of regulated activities within Schedule 8A of the Bill as it stands refers to 'the public at large or any section of the public' as being the key for triggering regulation.

The Commission heard evidence from a large number of non-party organisations that campaign communication with people the organisation considers to be supporters could risk constituting regulated activity because there is no clear definition in PPERA on what is meant by a 'section of the public'. The case law in relation to similar provisions suggests that only paid members may escape being regarded as the 'public'. This is outdated.

We heard evidence about the need for a definition of supporters which reflects the contemporary way in which members of the public lend their support to organisations and campaigns including by email and social media – not just financial supporters.

There was concern that a definition that excluded sections of NGOs supporters would have the impact of making more activity subject to regulation, and therefore have an impact on thresholds and spending caps.

Developments since the Commission's first report

Whilst these exclusions and the definition of 'relevant supporter' were problematic, the Bill as amended and now before the House of Lords removes these exclusions and reverts back to PPERA's definition, regulating activities directed at the 'public'. The result is that there is great uncertainty amongst non-parties (and the Commission) about what 'normal' organisation-to-supporter contact will count as regulated activity.

Evidence

The Commission found no evidence of Government considering a modern definition of an organisations' supporters and campaigning, within the Impact Assessment or elsewhere. This is concerning given the Bill is intended to update regulation in the context of contemporary campaigning.

NGOs gave evidence that they engage with people in a range of different ways, all of whom are considered to be supporters: financial, taking online action, member or attender of a local group, campaigning on social media in support of an organisation or campaign.

"We printed a manifesto document that we sent to all our members and supporters... that cost a couple of thousand pounds. Because we were sending it to people we already had a relationship with, that wasn't deemed to be public, therefore that wasn't in play when it came to registration. There is campaigning that you can do, at the moment anyway, that wasn't included in calculating whether or not you had to register."

Unlock Democracy, London evidence session

Louise Irvine, chair of the Save Lewisham Hospital campaign, referred to the variety of tasks people carried out for their campaign, including web design, drafting of press releases and attending marches as 'all part of the great alphabet soup of what people contribute to the campaign'.

The evidence NGOs gave indicated the need for specific exclusion for organisations' contact with their supporters. Furthermore, the definition must be based on a modern view of supporters, and not a narrow definition as originally included within the Bill, which would have meant that communicating with a large number – perhaps the majority – of people they consider to be supporters would be regarded as 'the public' and thus subject to regulation.

The Commission also heard evidence that different sections of society engage and support organisations and campaigns in different ways. Notably the young, the old and those with disabilities often engage with organisations in significantly different ways.

Analysis

Reverting to PPERA, as the Lobbying Bill currently does in this regard, could result in everyday communications between organisations and their supporters being caught as regulated activity and count towards registration thresholds and spending limits. The definitions relating to the public must exclude supporters of organisations, in a modern reading of the word 'supporter'.

The Data Protection Act could act as an example of a tested system for identifying people who have agreed to be communicated with.

Recommendations

i) Amend the Bill

Exclude communications between non-party organisations and their supporters from activities related to 'the public' in the list of regulated activities.

The definition of supporters should include people who have given specific consent to be contacted by the non-party campaigner in accordance with the Data Protection Act.

Six tests of good regulation

Test 1: Deliver the policy goals of avoiding undue influence on elections and transparency of those engaged in activity that could influence an election.

✓ The recommendation will ensure communication between organisations and their existing supporters is not regulated, but that wider campaigning to the public where undue may be an issue, is properly controlled.

Test 2: Be proportionate in the impact on non-party campaigning organisations in terms of campaigning activities they are able to carry out and the regulatory burden.

✓ The recommendation will allow non-parties to continue to communicate with their supporters without regulatory burden.

Test 3: Be evidence-based, including being able to demonstrate the need for regulation and an understanding of the impacts.

✓ There is no evidence that undue influence is exerted by organisation-to-supporter communications, so it is right these should not be regulated.

Test 4: Be clear in its meaning.

✓ As long as drafted appropriately, with a clear, modern definition of 'supporter', NGOs should be able to understand the regulations' meaning.

Test 5: Be practical for non-party campaigning organisations to implement.

✓ This recommendation would be practical for non-parties to implement.

Test 6: Be enforceable by the Electoral Commission as the regulator.

✓ This regulation would be enforceable by the Electoral Commission.

3.11 Charities and non-party campaigning

Context

Chapter 13 of the Commission's first report established our view that the Bill has an impact on campaigning activities carried out by charities. This is a view shared by both the Electoral Commission and the Charity Commission, who acknowledge that they play a crucial role in 'signposting' charities onto the Electoral Commission. As the Electoral Commission has stated:

"A charity campaigning on policy issues may therefore quite legitimately fall within the scope of the rules, both as they stand and under the Bill."²¹

Our first report recommended that the Government make clear that it is wholly legitimate for charities to carry out campaigns that will fall under this Bill. However we also recommended that the Bill should not be amended to exempt charities from the regulations.

Developments since our first report

Since our first report the Government has acknowledged that the Bill could have an impact upon charities and limit their campaigning.

Some members of the House of Lords have expressed further concerns at the impact of the Bill on charities and have proposed amendments to exempt charities alone from the legislation. Lord Phillips has tabled an amendment exempting charities from the legislation, stating:

"I am wholly unpersuaded that we need charities in Part 2 at all. They should be exempt from Part 2 and from the 2000 Act."²²

Evidence

Though at first glance removing charities from the legislation may seem like a way of solving one of the problems created by the Bill, many charities who submitted evidence to the Commission are against it as a solution. Disability Wales stated:

"I guess there are organisations, bodies that are trying to get support from charities, making charities exempt, or different rules for charities that could be a proposal that the government could come back with, something like that, and we don't want to fall into that trap. But, there are a number of quite likely smaller organisations that wouldn't be registered charities, that wouldn't meet requirements at the moment, which might be trapped by this legislation. If it becomes so bureaucratic, they think, why am I bothering?"

Disability Wales, Wales evidence session

Bond set out their position, stating:

"Bond is wary about the proposal to exempt charities for three main reasons:

1. Should be about activity not type of organisation

Bond believes that all organisations should be open and transparent about their campaigning work. We also believe charities can and do legitimately undertake campaigning work covered by Electoral Commission. We support the view that it is the activity of the organisations that should be regulated not the type of organisation carrying out the activity.

2. It could impact coalition working

Many of Bond's members work in coalition with organisations that are not charities, for example campaigning groups, voluntary organisations, faith communities and social enterprises. Many of the most well-known and effective campaigns including Make Poverty History or the Jubilee Debt Campaign include both charities and non-charities. Bond is concerned that the bill could curtail or disrupt these alliances and coalitions as charities would not want to work with non-charities if it would bring them under the scope of the lobbying bill's burdensome and bureaucratic regulation.

3. Legally unviable

The advice from election law expert Ros Baston is that it would be 'legally unviable to give charities a specific exemption [as] this would have the effect of making it possible for charities to spend unlimited amounts of money doing things on which others can only spend up to £390,000'. Ms Baston said that such a change would make the legislation even more open to successful challenge under Article 10 (freedom of expression) of the European Convention on Human Rights. Moreover, it is anticipated that legal challenges to the exemption would successfully reverse the decision, and charities would once more be covered by the regulations envisaged by the lobbying bill. This would create a weaker and potentially more punitive position for charities given their lack of engagement (if exempted) with the bill as it becomes legislation."

Organisations that are not charities, but which operate within civil society, also told us about the impact this would have had on the Save Lewisham Hospital campaign and highlighted the impracticality of having to register as a charity.

“We simply wouldn’t have achieved all that we did if we had been forced to register as a charity in order to do it. The bureaucracy would have tied us down, and I think people would have been unwilling to formally commit themselves in to something that we were all running on a voluntary basis. We were already snowed under with keeping the campaign going, this would have been a huge added complication for us.

“I also think there is a separate point about why a charity exemption is a bad idea. We see ourselves as a part of civil society. When you look at it in 5 or 10 years’ time, I would imagine there will be lots more groups like us, formed from local people who care about an issue. We shouldn’t make these groups the ‘poor relation’ of civil society by giving charities a way out of regulation but forgetting about us, or placing such a burden on us that we don’t form in the first place.”

Save Lewisham hospital campaign, written evidence

In addition, the Electoral Commission has outlined its position on the workability and desirability of exempting charities from the legislation:

Implications of exempting charities from the rules

The current combination of charity law and the PPERA rules means that:

- charities are restricted at all times from engaging in party political activity, but can engage in other political campaigning in pursuit of their charitable objectives (subject in England and Wales to the Charity Commission’s guidance on Campaigning and Political Activity by Charities, CC9 and their guidance on Charities, Elections and Referendums²³; and
- in the run-up to some elections including UK Parliamentary general elections, all organisations, including charities, are restricted in their ability to spend money on campaigning that could reasonably be seen as intended to promote the electoral success of parties or groups of candidates. (The Bill imposes tighter restrictions on such campaigning, particularly at UK general elections).

If charities were to be exempted from the PPERA rules, then:

- **charities would be able to spend unlimited amounts in the run-up to elections on campaigning** on issues that may be closely associated with particular

parties or groups of candidates in the minds of the public, provided that they are acting in pursuit of their charitable objectives under charity law; and

- **all other organisations except charities would be subject to the tighter restrictions on campaigning introduced by the Bill.**

Therefore if charities are exempted, organisations promoting different views on a controversial policy issue in the run-up to a UK general election would be subject to totally different types and degrees of regulation. Those that are not charitable would be subject to statutory spending limits on campaigning at national and constituency level, while those that are charitable would not be affected by those limits.

In our view this outcome would be likely to undermine public confidence in the effectiveness of the PPERA rules. It would also create incentives for campaigners to seek to carry out as much political campaigning activity as possible via charitable rather than non-charitable means, in order to avoid or minimise the impact of the PPERA spending and donation controls. That in turn may have implications for the reputation of charities and for the UK’s charity regulators.

The unintended consequence is that an exemption for charities would heighten the risk of high levels of spending on political campaigning by non-party campaigners in the run-up to an election. The Government has said that this is what Part 2 of the Bill is intended to prevent, by ‘reducing the risk of super-PACs’.²⁴

We also note the concerns expressed by others that an exemption for charities could increase the prospects of a successful challenge to the PPERA rules on freedom of expression grounds, since it will make it more difficult to argue that the restrictions imposed on others by the rules are necessary and proportionate.”

Analysis

The Commission recognises the particular issues of concern for charities inherent in the Bill. In particular we note:

- the requirement to comply with existing charity law at all times, which prevents charities from taking part in party political activity;
- that there are significant areas of activity that are not party political but which would nevertheless would be regulated under PPERA and the Bill;
- the potential for confusion here which will require close collaboration and clear joint guidance from the Electoral Commission and Charity Commission.

We also note that whilst it may be wholly legitimate for charities to register with the Electoral Commission as a

non-party campaigner, in practice many charities and charity trustee boards will find this highly undesirable due to:

- the reputational risks inherent in being officially registered as a non-party campaigner despite no party political activity taking place;
- the impact this may have on donors (both members of the public and institutional and corporate donors) who will also want to avoid any perception of political activity;
- the significant regulatory costs which risk either diverting resources from service-provision or prevent a charity from campaigning at all.

The Commission is therefore concerned about the impact of the Bill on the reputation and trust in charities in the UK and the extra regulatory costs they will face in order to campaign for their charitable objectives.

However, it remains our opinion that any exemption of charities only serves to make it much more difficult to highlight that the restrictions placed on others are necessary or proportionate, and recognise the Electoral Commission's evidence that it would lead to unfair outcomes. We maintain that the solution to this is not to exempt charities but to seek to focus the legislation more tightly on larger-scale, politically-driven campaigning.

Recommendations

Charities should not be exempted from regulation of non-party campaigning.

Rationale and implications of the recommendations

The recommendation will ensure that the legislation continues to be framed around the nature of the activity undertaken in an electoral period rather than the nature of the organisation undertaking this activity. This will prevent any perception of double-standards and potential for avoidance.

Six tests for good regulation

Test 1: Deliver the policy goals of avoiding undue influence on elections and transparency of those engaged in activity that could influence an election.

✓ As the Government and both relevant statutory commissions have all made clear that a charity can follow charity law but still be deemed to engage in activity that could influence an election, our recommendation ensures that all types of organisation who undertake the relevant activity are treated equally.

Test 2: Be proportionate in the impact on non-party campaigning organisations in terms of campaigning activities they are able to carry out and the regulatory burden.

✓ It ensures charities and campaigning organisations are treated equally, but only implementation of the Commission's recommendations in full will ensure a proportionate impact on both.

Test 3: Be evidence-based, including being able to demonstrate the need for regulation and an understanding of the impacts.

✓ The recommendation is based on evidence from charities, non-charities, and the Electoral and Charity Commissions

Test 4: Be clear in its meaning.

✓ The recommendation is clear for all organisations.

Test 5: Be practical for non-party campaigning organisations to implement.

✓ The recommendation is practical to implement as it provides the same guidelines for all organisations.

Test 6: Be enforceable by the Electoral Commission as the regulator.

✓ The Electoral Commission have stated their preference for this recommendation as the regulator.

Notes

- 1 Lord Wallace of Saltaire, pause debate, 5 Nov 2013, c110: <http://tinyurl.com/pvm65cf>.
- 2 EC Lords second reading briefing: <http://tinyurl.com/qf7tcut>.
- 3 EC unpublished briefing.
- 4 Electoral Commission Q&A briefing – 4th October: <http://tinyurl.com/qdqvm2s>.
- 5 Lord Wallace of Saltaire, pause debate, 5 Nov 2013, c116: <http://tinyurl.com/pvm65cf>.
- 6 EC Regulatory Review 2013, p.8: <http://tinyurl.com/pndqgtg>.
- 7 Fifth Report of the Committee on Standards in Public Life – section 10.77, p.132: <http://tinyurl.com/op3b8xd>.
- 8 Lord Wallace of Saltaire, 22 October 2013, c989: <http://tinyurl.com/pod9qns>.
- 9 Lord Tyler, 22 October 2013, c903: <http://tinyurl.com/q9uj sme>.
- 10 Electoral Commission report, paragraph 4.8: <http://tinyurl.com/pndqgtg>.
- 11 EC Lords second reading briefing: <http://tinyurl.com/qf7tcut>.
- 12 Wallace letter to Peers on morning of the debate – 5th November.
- 13 EC Q&A briefing for House of Lords, 4 November 2013: <http://tinyurl.com/qdqvm2s>.
- 14 Electoral Commission Lords second reading briefing: <http://tinyurl.com/qf7tcut>.
- 15 Lord Wallace – Lord debate, 5th November, column 116: <http://tinyurl.com/pvm65cf>.
- 16 Lord Wallace – Lord debate, 5th November, column 116: <http://tinyurl.com/pvm65cf>.
- 17 Electoral Commission Q&A briefing for House of Lords, 4 November 2013: <http://tinyurl.com/qdqvm2s>.
- 18 EC Q&A briefing for House of Lords, 4 November 2013, p.2: <http://tinyurl.com/qdqvm2s>.
- 19 Electoral Commission Lords second reading briefing, p.9: <http://tinyurl.com/qf7tcut>.
- 20 Caucasian Review of International Affairs – The Fall of the Berlin Wall: Twenty Years of Reform in Central and Eastern Europe – p.76: <http://tinyurl.com/o33dymz>.
- 21 EC Lords second reading briefing, p.4: <http://tinyurl.com/qf7tcut>.
- 22 Lords debate, 22nd October, column 974: <http://tinyurl.com/ptlx46v>.
- 23 <http://tinyurl.com/pcu8xnz>.
- 24 Deputy Leader of the House of Commons, 3 September 2013, Hansard col 270.

4. Case studies

The following case studies are sourced from across civil society, including charities, national and local campaign groups and coalitions.

Each case study is assessed by how the activities described could be affected by the regulations outlined in:

- PPERA
- The current Lobbying Bill proposals
- The Commission recommendations

We have reached our assessment based on the information supplied to us, but as the actual effect of regulation depends on a range of factors, we have not conducted a full legal analysis.

These case studies demonstrate how the current Lobbying Bill proposals fulfill none of the six tests set out in the Executive Summary.

4.1 Human Rights Consortium (HRC)

The Human Rights Consortium actively campaigns for a strong and inclusive Bill of Rights for Northern Ireland. It was established in 2000 to spearhead civil society's support, and now has a supporter base of over 180 NGOs. They recently gained charitable status.

Members are drawn from across the community and religious divides in Northern Ireland. The breadth of membership, from all communities in Northern Ireland, is unprecedented and represents a significant success in terms of maintaining a coherent coalition of groups who would be unlikely to agree with one another on many other issues in Northern Ireland.

Case study: Bill of Rights for Northern Ireland

The Good Friday Agreement made provision for a Bill of Rights for Northern Ireland. The Human Rights Commission were mandated with providing advice on its content to the British Government. To examine specific needs in terms of Human Rights legislation that responded to Northern Ireland's unique position within the UK as a society emerging from conflict, in the early stages of a fragile peace. The Commission presented its advice to the UK government in December 2008 after a long period of engagement and consultation with the public, civil society and politicians. The Northern Ireland Office (NIO) took nearly a year to respond, and in November 2009 launched its own consultation which largely dismissed the Commission's advice and instead presented its own alternative set of proposals. The NIO suggested that only two new rights be guaranteed for Northern Ireland, as opposed to the nearly 100 extra protections suggested by the Human

Rights Commission. The HRC says civil society in Northern Ireland was 'hugely insulted' given the depth of consultation and public support that had been displayed in the previous ten years for a more expansive approach. This was of particular concern since the need to engage citizens in the democratic process was viewed as essential to building confidence in the new governance arrangements in Northern Ireland.

In order to keep communities engaged and help them demonstrate that, working together, citizens can influence the development of policies that affect them directly, the HRC launched its own campaign to generate responses to the NIO public consultation on a Bill of Rights. The focus was not on supporting or dismissing one political party, but rather on ensuring the implementation of key elements of the Good Friday Agreement. The HRC did state the NIO's additional rights recommendations and its materials allowed for responses to be submitted rejecting the NIO's narrower proposals and call for a more comprehensive Bill of Rights reflective of local circumstances and public opinion. The response they received was overwhelmingly – of the 36,000 responses made to the NIO consultation, 34,800 stated a need for a stronger Bill of Rights for Northern Ireland.

The intention of the consultation was to achieve a policy aim, not to further any particular party. However, the results of the consultation essentially opposed a Labour government proposal within the 12 months before the 2010 General Election. According to the Electoral Commission guidance, this activity could be interpreted as having the intention of influencing the outcome of a General Election, and the activity could perhaps be accused of furthering the political success of opponents under these guidelines despite similarly narrow interpretations of a Bill of Rights for Northern Ireland being displayed by other main Westminster parties.

It should be noted that the timescale for implementing the policy was driven by the government in power at the time. The human rights organisations did not choose to respond in the 12-month period before a general election, rather they had no alternative if they were going to enable and empower community groups to work together and engage with the democratic process.

In order to facilitate such a large response, the HRC did the following:

- Sent out a mailer to every home in Northern Ireland
- Set up billboards
- Sent out leaflets
- Used online petitions

"In the run-up to the UK general election a charity decides to call for a particular piece of legislation

to be repealed in order to further its charitable purposes. It organises large public meetings and places advertisements in many national newspapers calling for the change. The change is already well known to be supported by some political parties, and to be opposed by others. The charity avoids drawing attention to the positions of different parties on this issue. **But it is promoting a change to the law which is so closely and publicly associated with some parties that its activities could reasonably be seen by others as intended to encourage voters to support parties that have said they will repeal the legislation.** [Emphasis added] *The costs of activities are likely to be regulated if the charity's spending on regulated activities exceeds the threshold for registering as a non-party campaigner."*

Because the HRC was campaigning against a specific government position regarding the enactment of (rather than repealing) a law, it would appear this campaign fits the definition as outlined in the Electoral Commission's example.

In total the consultation cost over £100,000 and would have far exceeded both the proposed spending limit in Northern Ireland (£10,800), and the threshold for registration (£2,000). Because of the need for a response from every constituency, it would also possibly have breached constituency limits in some areas.

The results of the consultation played a key role in persuading the government not to take its narrower Bill of Rights proposals forward. The HRC believes this one successful campaign had a considerable influence on the engagement of community groups in the democratic process.

Had the HRC's spending been thus limited, such a broad consultation – carried out in good faith, in line with the Good Friday Agreement, and in an attempt to strengthen and move forward a post-conflict society – would not have been possible.

Impact of regulatory proposals

The following table explains how the activity described would be regulated under the current PPERA legislation, under the proposals the Government has made in the Lobbying Bill and under the Commission recommendations.

Issue	PPERA	Lobbying Bill proposals	Commission recommendations
Activities and materials – what would fall under regulation?		Some leaflets, billboards, staff costs relating to these	Leaflets and billboards, excluding staff costs
Would they be considered to be working in coalition?		Yes	Yes
Would they exceed the constituency limit		Yes	Constituency limit would not apply.
Spending limits for Northern Ireland		Yes	This requires further assessment, as with other devolved nations; security/ safety costs should be exempt.

4.2 HOPE not hate

HOPE not hate is a grassroots, national campaign that seeks to challenge and expose openly racist political parties and candidates.

Case study: HOPE not hate’s campaign in Barking and Dagenham

In the 2010 General Election, HOPE not hate registered £319,231 of spending in England with the Electoral Commission.

A key part of their work is campaigning in constituencies where there is a risk that far-right parties such as the British National Party (BNP) could perform well, in order to make voters aware of what their policies really mean.

For example, in Barking and Dagenham in 2010, HOPE not hate mobilised for both General and local elections in 2009 and into the short campaign period in order to gain trust with local community groups and to build a coalition against the BNP.

Campaign costs for a typical HOPE not hate campaign such as Barking and Dagenham include:

- Printing of leaflets and HOPE not hate newspapers
- Staff time to write campaign literature
- Media coverage costs
- Communicating the campaign to supporters
- The HOPE not hate battle bus which transports staff and volunteers

Impact of regulatory proposals

The following table explains how the activity described would be regulated under the current PPERA legislation, under the proposals the Government has made in the Lobbying Bill and under the Commission recommendations.

Issue	PPERA	Lobbying Bill proposals	Commission recommendations
Activities and materials – what would fall under regulation?	Leaflet and newspaper printing Communications to supporters HOPE not Hate battle bus (part) Staff costs for the above	Leaflet and newspaper printing Media coverage costs Communications to supporters HOPE not Hate battle bus Staff costs for all the above	Leaflet and newspaper printing Media coverage costs Communications to supporters HOPE not Hate battle bus
Would they exceed the constituency limit?	No constituency limit under PPERA	Yes, the combination of printing and staff costs would put a campaign such as Barking and Dagenham well over the constituency limit.	Constituency limit would not apply.
Would they exceed the spending limit?	£319,231 was well within the spending limit	Increased number of regulated activities including staff costs would mean they would easily exceed the proposed £390,000 limit.	No as the limit will be the current PPERA limit plus inflation.

4.3 Save Lewisham Hospital

The Save Lewisham Hospital campaign grew from local residents’ concerns about proposed changes to provision at Lewisham Hospital, in southeast London. The organisation has a flat structure, with a small steering group, but no employees or formal constitution. Save Lewisham Hospital is a wholly grassroots campaign, run by local people with a shared interest in their local NHS provision.

The campaign has run for just over a year, and during that time its supporters have carried out a large number of actions. These included two demonstrations, each with over 10,000 participants, a legal commission, a ‘question time’ event, delivery of a petition to Downing Street, a Pensioners’ ‘Trolley’ March, participation in a wider Save our NHS demonstration and the launching of an ultimately successful judicial review against the Health Secretary’s decision. These actions were mainly focussed in Lewisham itself, but activity has also been directed across other areas which would have been affected by the proposals and additionally at Westminster where, ultimately, decision-making power lay.

Although there are no formal records or employees, it is estimated by the campaign’s Chair, Dr Louise Irvine, that during the course of the campaign so far, around £36,000 has been collected and spent by the campaign.

The following table explains how the activity described would be regulated under the current PPERA legislation, under the proposals the Government has made in the Lobbying Bill and under the Commission recommendations. NB. Below table is based on the assumption that the Save Lewisham Hospital campaign was run during the regulated period.

Issue	PPERA	Lobbying Bill proposals	Commission recommendations
Activities and materials – what would fall under regulation?	Some activities, e.g. Leaflets and posters would have been covered.	The majority of activities listed would have been covered. Staff costs for the above.	The majority of activities listed would have been covered.
Would the activity exceed the registration threshold?	Save Lewisham Hospital would have to register.	Save Lewisham Hospital would have to register.	Save Lewisham Hospital would have to register.
Would they be considered to be working in coalition?	Yes	Yes	Yes
Constituency spending limits	N/A	Save Lewisham Hospital operates across three parliamentary constituencies, but dissecting spending between these constituencies would be impossible - the campaign is focused on the hospital, not on a specific parliamentary constituency. The Save Lewisham Hospital campaign do not believe it would be possible for them to accurately report their constituency activities and spending.	N/A

4.4 Citizens UK

Citizens UK’s ethos and objective as a charity is to involve citizens in politics. They campaign about issues that affect people’s lives and their interests. They challenge politicians, government institutions and others holding power. Citizens UK’s member institutions include faith organisations, community organisations, educational institutions, trade union branches and other elements of civil society. These are organised into chapters – four in London and one each in Nottingham, Birmingham and Milton Keynes.

Case study: Citizens Assembly

For the 2015 General Election Citizens UK plan to do the following:

1. Develop policy ‘asks’ through a listening campaign involving their member institutions. This will involve several thousand people in one-to-ones and small group meetings, and then several executive meetings to clarify and refine the list.
2. Pose the asks to the main party leaders formally at a large Civil Society Assembly (the Citizens Assembly in 2010 was held at Central Hall and 2500 attended, and was also streamed to supporters).
3. Publicise the results of the Assembly, i.e. the responses of party leaders to the asks through member institutions to their supporters. This is done through a variety of means such as email, paper newsletters or meetings, as well as through their online presence. Citizens UK has no way of monitoring how their members publicise the results.

The following table explains how the activity described would be regulated under the current PPERA legislation, under the proposals the Government has made in the Lobbying Bill and under the Commission recommendations.

Issue	PPERA	Lobbying Bill proposals	Commission recommendations
Activities and materials – what would fall under regulation?	While the Citizens Assembly and contributing ‘listening campaign’ would be unlikely to be caught, the publicising of the outcomes of the Assembly by Citizens UK members could be.	While the Citizens Assembly and contributing ‘listening campaign’ would be unlikely to be caught, the publicising of the outcomes of the Assembly by Citizens UK members could be.	While the Citizens Assembly and contributing ‘listening campaign’ would be unlikely to be caught, the publicising of the outcomes of the Assembly by Citizens UK members could be if directed at wider public.
Would the activity exceed the registration threshold?	Citizens UK would be unlikely to have to register with the Electoral Commission under current thresholds.	The cost of materials to promote the results of the Assembly by even a few of the member organisations would take Citizens UK above the £5,000 threshold.	Citizens UK may not have to register with the Electoral Commission.
Would they be considered to be working in coalition?	Yes	Yes	Yes
Would they exceed the spending limit?	No	Citizens UK has no way of collecting and verifying the activities of all its members. This would make reporting almost impossible to monitor, and could even put them near the spending limit.	No

4.5 Stop HS2

Stop HS2 is the national grassroots campaign against HS2, the proposed High Speed Two railway. As well as the national organisation, there are around 120 local action groups that campaign against HS2.

Their mission is:

- To stop High Speed Rail Two by persuading the Government to scrap the HS2 proposal
- To facilitate local and national campaigning against HS2.

Case study: Stop HS2 in the Kenilworth and Southam constituency

In the Kenilworth and Southam constituencies, through which HS2 would pass, there are 11 separate action groups. The groups regularly undertake activities independently such as producing leaflets, holding meetings and carrying out media work.

The following is a likely scenario of actions taken by the 11 groups in the year before a General Election:

- The Kenilworth Action Group leaflet the entire town, hold public meetings, information days and stalls in town, pending £3,000 in total.
- All remaining groups spend £1,000, with no knowledge of what the others are spending.
- In addition, there is money spent by countywide organisations that would have to be split across the two constituencies affected by HS2 in the county.

The following table explains how the activity described would be regulated under the current PPERA legislation, under the proposals the Government has made in the Lobbying Bill and under the Commission recommendations.

Issue	PPERA	Lobbying Bill proposals	Commission recommendations
Activities and materials – what would fall under regulation?	Leaflets that could reasonably be regarded as intended to encourage people to favour parties or candidates who are against HS2	Leaflets as before Public meetings attended by candidates Proactive media work Staff costs on the above	Leaflets as before Public meetings attended by candidates Proactive media work
Would they be considered to be working in coalition?	Possibly	Possibly	Possibly
Would the activity exceed the registration threshold?	Organisations would be likely to exceed the £10,000 threshold, if they are regarded as a coalition.	Organisations would exceed the £5,000 threshold, if they are regarded as a coalition.	The organisations would be less likely to exceed a higher threshold, even if they were regarded as a coalition.
Would they exceed the constituency limit?	The constituency limit does not apply under PPERA	If a coalition would almost certainly exceed the £9,750 limit with the wider range of activities and materials brought into regulation.	The constituency limit would not apply.

4.6 Countryside Alliance

The Countryside Alliance works to promote the countryside. Their aim is to protect and promote life in the countryside and to help it thrive. The Alliance is an apolitical campaigning organisation, though some of the issues they work on can be seen as highly partisan, such as hunting. They work with politicians of all parties both locally and nationally.

Case study: opposition to the hunting ban in 2001 and 2005

The Countryside Alliance mobilised its supporters and the general public against the hunting ban in the run up to the 2001 and 2005 General Elections. Activities included:

- Large events such as demonstrations and rallies against the hunting ban, a policy heavily associated with the incumbent Labour government – for example, the Countryside March scheduled for February 2001 (then postponed due to Foot in Mouth disease) was largely organised and publicised during the regulated period ahead of the 2001 General Election. The regulated period before the 2005 General Election also saw many rallies and demonstrations to protect hunting
- Press conferences to promote the events
- Transport costs for those attending events
- Producing and distributing leaflets to promote the events

“Had PPERA been amended as the Bill proposes at the time the Hunting Bill was making its final way through Parliament, our opposition to the proposed ban would have been severely curtailed, if not silenced. Being cynical, one might suggest that if a future government wanted to do something which would provoke considerable protest, like banning hunting, then it should do so during the regulated period when the ability of a campaign group to oppose it would be heavily restricted.”

Countryside Alliance, written evidence

The following table explains how the activity described would be regulated under the current PPERA legislation, under the proposals the Government has made in the Lobbying Bill and under the Commission recommendations.

Issue	PPERA	Lobbying Bill proposals	Commission recommendations
Activities and materials – what would fall under regulation?	Printing of leaflets Staff costs on the above	Events, demonstrations and rallies Printing of leaflets Media Transport costs Staff costs on the above	Events, demonstrations and rallies Printing of leaflets Media Transport costs
Would the activity exceed the registration threshold?	The cost of printing leaflets was below the £10,000 threshold.	The cost of printing leaflets and putting on events, particularly the associated staff costs, would mean the activity easily exceeded the £5,000 threshold.	The activity may have been over the proposed £20,000 threshold.
Would they exceed the spending limit?	No	Given the expanded range of activities which count towards controlled expenditure coupled with the massive reduction in the expenditure limits, the Alliance would be in danger of exceeding the spending limit if they mobilised on an issue in this way during an election period.	No

4.7 Stop Climate Chaos

Stop Climate Chaos is the UK's largest coalition dedicated to action on climate change. The coalition spans over 100 organisations with a combined supporter base of more than 11 million. Members range from national charities such as Oxfam, the Salvation Army and the WI to local organisations and networks across the UK.

As a coalition, Stop Climate Chaos campaigns for the Government to take practical action to keep global warming as far below the 2 degrees centigrade danger threshold as possible.

Case study: Stop Climate Chaos campaigning leading up to the 2010 General Election

In the run-up to the to the Copenhagen Climate change summit in December 2009 and the UK General Election in May 2010, the organisations in the Stop Climate Chaos coalition worked on a range of events, including:

- The Kingsnorth Mili-band – where over 1,000 supporters came together to form a human chain around the Kingsnorth coal power station then had an outdoor rally including speakers from Bangladesh and Kenya
- The Wave, a huge march through London attended by 50,000 supporters
- Oxfam hosting international visitors from programmes in Bangladesh and Kenya for climate hearings to understand the impacts of climate change on them
- The Ask the Climate Questions campaign, leading up to the 2010 General Election. This was a constituency-based campaign with coalition organisations encouraging their supporters to raise climate action when speaking to MPs, pollsters, local parliamentary candidates, etc.
- Schools Conferences – four conferences were held with schools from across England to talk about climate change, with MPs invited to a panel debate
- Climate 'question times' – these were local hustings events that took place in 50 constituencies. The events involved staff from a range of organisations and adhered to strict rules. Each one came to a total cost of around £2,280. Additionally, all other material for constituency-specific activity – posters to promote the campaign, staff time delivering it, as well as central campaign costs – reports, insight, promotional material for the campaign, would have exceeded the £9,750 constituency limit.

The following table explains how the activity described would be regulated under the current PPERA legislation, under the proposals the Government has made in the Lobbying Bill and under the Commission recommendations.

Issue	PPERA	Lobbying Bill proposals	Commission recommendations
Activities and materials – what would fall under regulation?	Some leaflets and other materials Staff costs on the above	Some leaflets Several of the events listed including some related promotional materials, staff time and transport costs.	Some leaflets Several of the events listed including some related promotional materials and transport costs.
Would they be considered to be working in coalition?	Yes	Yes	Yes
Would they exceed the constituency limit?	No constituency limit under PPERA	Coalition would exceed the £9,750 limit in specific constituencies	Constituency limit would not apply.
Would they exceed the spending limit?	No	Including staff costs the coalition could have exceeded the spending limit	No

4.8 STRIFE

STRIFE (Stop the Rail Freight Exchange) is a campaign group set up by local residents to oppose the construction of an International Rail Freight Exchange near St Albans. The campaign aims to prevent the terminal being built, thereby safeguarding the site’s current green belt status.

How would the campaign be affected by the Lobbying Bill?

The building of the terminus is an important issue locally. The local MP is vocal in her support for the campaign to stop the terminus being built. If another candidate in the next election chose to support the building of the terminus, the issue would become politically contentious.

Past activities carried out by the campaign that could be organised during the year before an election include:

- Leafleting
- Organising public meetings
- Gathering public responses for consultations
- Photo opportunities for local politicians
- Adverts
- Local polling of opposition to the scheme

The cost of such activities would quickly put the STRIFE campaign close to the proposed £5,000 threshold for registering with the Electoral Commission.

“STRIFE is an apolitical campaign, but we value the support of politicians and the role they can play in fighting our corner. We feel strongly that we have the right to find out what our local candidates think about an issue such as this, and to publicise it. However if the involvement of candidates in our campaign meant we would have to register with the Electoral Commission we would stop some of our campaigning activities to avoid the red tape. If this regulation was in place for the full year before an election and a planning decision came up during that time, with candidates commenting on the issue publicly I can imagine how difficult it could be for us not to be caught.”

STRIFE, written evidence

Impact of regulatory proposals

The following table explains how the activity described would be regulated under the current PPERA legislation, under the proposals the Government has made in the Lobbying Bill and under the Commission recommendations.

Issue	PPERA	Lobbying Bill proposals	Commission recommendations
Activities and materials – what would fall under regulation?	Leaflets including staff costs	Leaflets Public meetings Photo opportunities Adverts Polling Staff costs on the above	Leaflets Public meetings Photo opportunities Adverts Polling
Would the activity exceed the registration threshold?	STRIFE would be unlikely to reach the £10,000 threshold	The cost of the increased range of activities would put STRIFE close to the £5,000 threshold	STRIFE would be unlikely to reach the £20,000 threshold.

5. Equalities and human rights

Chapters 14 and 15 of the Commission's first report outlined significant concerns about the equalities and human rights implications of the proposals within the Lobbying Bill. Concerns centred around the lack of pre-legislative scrutiny for the proposals, and the fact that no detailed assessments – either of equalities impact or whether the proposals were proportional in terms of their impact on human rights – had been presented.

Unfortunately, the lack of due process or a longer pause to the Bill means consideration of these issues has not progressed. To the Commission's knowledge, the Government has not consulted appropriate groups and experts about the effects of this Bill on vulnerable groups and those groups defined by protected characteristics in the Equality Act. Neither has the Government published an evidence-based Equalities Impact Assessment.

It is also the Commission's understanding that no further evidence exists as to the human rights implications of the proposed provisions within the Lobbying Bill, and suggested solutions for how to address them. This is particularly worrying in light of the Joint Committee on Human Rights' statement that "it is necessary to consider whether the design and operation of the Bill's measures will, in effect, restrict meaningful participation in the political process by third parties."¹

During our second consultation period, equalities and human rights issues were raised a number of times, repeating the evidence the Commission heard during the first round of consultation. Evidence from the oral sessions with NGOs gives an overview of what the Commission heard:

"When you campaign on issues like my organisation is campaigning on issues for blind and partially sighted people, and we campaign for things like getting audio notices on busses, these aren't political... political with a small p, but they're not really about politics. They're about moral issues defending the most vulnerable part of society. In these circumstances, there should never be a limit, at election time, or any other time."

Guide Dogs Cymru, Wales evidence session

"If we are saying that in Scotland there are incredibly low thresholds for campaign groups that stand for gender equality and that they cannot associate with one party over another, this will evidently have a detrimental effect. Thus in answer to the question of whether there should be limits on this kind of activity or spending,

"the answer to this question would be none",
"women's campaigns oppose the Conservative government for obvious reasons."

*Edinburgh University Students' Association,
Scotland evidence session*

In addition, a participant at the London evidence session spoke about an event she organised for RNIB where extra costs were incurred for marshalls, guide dogs etc. Questions were raised about whether this spending would need to be recorded as part of registered activities.

Both the equalities and human rights implications of the Government's proposals remain a serious concern for the Commission. The Commission's package of proposals are intended to lessen the potential for a disproportionate curtailment of human rights.

Recommendation

Exempt from regulated spending costs associated with:

- Translation to any language.
- Making documents accessible to people with physical or learning disabilities.

In advance of any review of non-party campaigning after the 2015 General Election (as recommended within this report), the Commission recommends comprehensive evidence-gathering and consideration of both the equalities and human rights impact of any proposed changes to the regulatory regime. This should include, but not be limited to:

- Consultation with appropriate groups and experts about the effects of proposed regulation on vulnerable groups and those groups defined by protected characteristics in the Equality Act;
- An evidence-based Equalities Impact Assessment for any proposed regulatory changes; and
- Consultation and legal advice on the Human Rights implications of any proposed regulatory changes.

Notes

¹ Paragraph 24, Fifth Report – Legislative Scrutiny: Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill
<http://tinyurl.com/px526ew>

6. Evidence, review and powers to amend the act

Evidence

As highlighted throughout this report, the Commission is concerned at the lack of evidence available to inform judgments about what regulation is appropriate, practical and enforceable. We have made suggestions about evidence that should be gathered during the regulatory period ahead of the 2015 General Election to inform a future review. This is not an exhaustive list.

Recommendation

Non-party campaigning organisations should be encouraged by the Electoral Commission, who have a statutory election reporting function, to make them aware of any regulatory concerns arising in the regulated period ahead of the 2015 General Election so that these can be taken into consideration in the report by the Electoral Commission to Parliament.

Review of the Act

Several fundamental problems have been highlighted with the 2000 PPERA legislation as well as the Lobbying Bill. Because of the lack of evidence, consultation and consideration there is an unusually high level of uncertainty about the likely impacts of the Bill on non-party campaigning.

Recommendation

The Commission therefore recommends that the law relating to non-party campaigning ahead of elections is reviewed as a matter of urgency after the 2015 General Election by an appropriate parliamentary committee such as the Political and Constitutional Reform Committee.

The review should be based on a much more rigorous evidence base than the Lobbying Bill about how non-party campaigning operates, and on consultation with affected stakeholders including non-party campaigners and the Electoral Commission. We ask the Committee to take into consideration the areas of evidence we have highlighted in this report that are needed.

Any change to the law proposed by the Committee should be introduced by Government allowing time for pre-legislative scrutiny and proper time and arrangements for scrutiny in both Houses.

7. Implementing the recommendations

The Commission will be publishing a set of amendments to the Lobbying Bill alongside this report that we hope peers will support at Committee stage.

The recommendations have been carefully considered as a package of measures that will deliver on the policy objectives of transparency and avoiding undue influence on elections whilst relieving disproportionate burdens and restrictions on non-party campaigning organisations.

Recommendation

The Bill should be amended according to the full package of our recommendations or Part 2 of the Bill should be withdrawn.

Further changes will be needed to the regulation of coalition campaigning before the Bill is completed.

8. Appendix

8.1 Terms of reference

The terms of reference of the Commission on Civil Society and Democratic Engagement are available at www.civilsocietycommission.info.

8.2 Consultation and evidence

In a second consultation exercise, the Commission heard evidence from a broad array of civil society organisations to inform our analysis and recommendations for the second report. Open invitations were sent to hundreds of charities and campaigning groups from across the United Kingdom. Below is a list of those organisations that attended.

Belfast – Monday 25th November 2013

- Integrated Education Fund
- Friends of the Earth Northern Ireland
- NICVA
- Northern Ireland Council for Ethnic Minorities
- Northern Ireland Women's European Platform
- NUS Northern Ireland
- Save the Children Northern Ireland

London – Monday 25th November 2013

- Big Brother Watch
- Bond
- British Youth Council
- Children England
- Freedom Association
- Friends of the Earth
- League Against Cruel Sports
- National Federation of Women's Institutes
- National Pensioners Convention
- NCVO
- RSPB
- Quakers
- The Board of Deputies of British Jews
- UK Youth Parliament
- Unlock Democracy

Edinburgh – Tuesday 26th November 2013

- Edinburgh University Students' Association
- Electoral Reform Society, Scotland
- Friends of the Earth Scotland
- Oxfam Scotland
- NIDOS

- RSPB Scotland
- SCVO
- 38 Degrees

Cardiff – Wednesday 27th November 2013

- ACEVO
- Chwarae Teg and Fair Play
- Community Housing Cymru
- Disability Wales
- Electoral Reform Society Wales
- Friends of the Earth Wales
- Guide Dogs Cymru
- NUS Wales
- National Federation of Women's Institute Wales
- National Pensioners Convention Wales
- WCVA
- Welsh Women's Equality Network

The Commission has received written evidence from the following organisations:

- Alice Through the Broken Glass
- Amnesty International
- Association of Charitable Foundations
- British Medical Association
- British Youth Council
- Campaign to Protect Rural England
- Children England
- Christian Institute
- Countryside Alliance
- Democracy Matters
- Freedom Association
- Friends of the Earth
- Guide Dogs
- Hope Not Hate
- Human Rights Consortium
- Jewish Leadership Council
- Mencap
- National Pensioners Convention
- National Secular Society (paired with Christian Institute)
- NAVCA
- NCVO
- Oxfam
- Quakers
- RSPB
- STRIFE

This built upon the evidence we received from the following organisations before the pause:

- ActionAid
- Age UK
- Charities Aid Foundation
- Children in Northern Ireland
- Children in Wales
- Christian Aid Wales
- Citizens UK
- Community Foundation Northern Ireland
- CWVYS
- Ecumenical Alliance
- Macmillan Cancer Northern Ireland
- MND Scotland
- Muslim Council of Scotland
- Open College Network
- Queen Margaret University Students' Union
- Save the Children Northern Ireland
- Scope
- Scottish Churches Parliamentary Office
- Scottish Refugee Council
- Scottish Wildlife Trust
- Shelia McKechnie Foundation
- Shelter Cymru
- Stop HS2
- The Church of Scotland
- The Royal British Legion
- VSO
- Woodland Trust

Full transcripts and summaries are available at www.civilsocietycomission.info.

8.3 Acknowledgements

The Commission wishes to acknowledge and thank the extraordinary number and range of organisations that have aided in the Commission's work through official support, funding or submitting evidence. These include:

- ACEVO
- ActionAid
- Age UK
- Aids Alliance
- Alice Through the Looking Glass
- Amnesty International
- Article 19
- Aviation Environment Federation
- Barrow Cadbury Trust
- Better Transport
- Big Brother Watch
- Bond
- British Heart Foundation
- British Humanist Association
- British Youth Council
- Campaign Against Climate Change
- Campaign for Nuclear Disarmament
- Campaign to Protect Rural England
- Canon Collins
- Centrepont
- Change.org
- Charities Aid Foundation
- Children England
- Children in Northern Ireland
- Children in Wales
- Christian Aid
- Christian Aid Wales
- Christian Institute
- The Church of Scotland
- Chwarae Teg
- Citizens UK
- Clinks
- Community foundation Ni
- Compassion in World Farming
- Concern Worldwide
- Countryside Alliance
- CWVYS
- Democracy Matters
- Disability Wales
- Ecumenical Alliance
- Edinburgh University Students' Association
- Ekklesia
- Electoral Reform Society
- Electoral Reform Society Cymru
- Electoral Reform Society Scotland
- Friends of the Earth
- Friends of the Earth Cymru
- Friends of the Earth NI
- Friends of the Earth Scotland
- Full Fact
- Gingerbread
- Global Poverty Project
- Greenpeace
- Guide Dogs for the Blind
- Health Poverty Action
- Hope Not Hate
- Human Appeal
- Human Rights Consortium
- Integrated Education Fund
- Islamic Relief UK
- Jewish Leadership Council
- Lancashire Badger Trust
- League Against Cruel Sports
- London Voluntary Services Council
- Lumos Trust
- Macmillan Cancer NI
- MADE in Europe
- Malaria Consortium
- Mencap
- Micah International
- MND Scotland
- Mumsnet
- Muslim Council of Britain
- Muslim Council of Scotland
- National Federation of Women's Institutes
- National Pensioners Convention
- National Secular Society
- NAVCA
- Newham Monitoring Project
- NCVO

- NICVA
- NIDOS
- Northern Ireland Council for Ethnic Minorities
- Northern Ireland Women's European Platform
- NUS
- NUS-USI
- NUS Northern Ireland
- NUS Scotland
- NUS Wales
- Open College Network
- Oxfam
- Oxfam Cymru
- Oxfam Scotland
- People & Planet
- Peter Tatchell Foundation
- Progressio
- Quakers
- Queen Margaret University Students' Union
- Results UK
- Rospa
- Rowntree Reform Trust Fund
- RSPB
- RSPB NI
- RSPB Scotland
- Runnymede Trust
- Salvation Army
- Save the Children Northern Ireland
- Scope
- Scottish Churches Parliamentary Office
- Scottish Refugee Council
- Scottish Wildlife Trust
- SCVO
- Sheila McKechnie Foundation
- Shelter Cymru
- Sightsavers
- Small Charities Coalition
- Stop Aids
- Stop HS2
- STRIFE
- Sue Ryder
- Tearfund
- The Board of Deputies of British Jews
- The Freedom Association
- The Royal British Legion
- The Vegan Society
- The Women's institute
- The Woodland Trust
- 38 Degrees
- Trade Justice Movement
- UK Youth Parliament
- Unlock Democracy
- Voice 4 Change
- VSO
- War Child UK
- War on Want
- Water Aid
- WCVA
- Womankind Worldwide
- Wildlife Trusts

The Commission wishes to thank the following organisations and venues for hosting evidence sessions across the UK at extraordinarily short notice, and for helping to make them such a success.

- Amnesty, London
- The Edinburgh Training and Conference Venue, Edinburgh
- WCVA, Cardiff
- NICVA, Belfast

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- ActionAid
- Barrow Cadbury Trust
- Bond
- Campaign for Better Transport
- Christian Aid
- Christian Institute
- Compassion in World Farming
- Electoral Reform Society
- Friends of the Earth
- League Against Cruel Sports
- Lush
- National Secular Society
- NUS
- Oxfam
- Rowntree Reform Trust Fund
- Shelter
- The Freedom Association
- 38 Degrees
- Wildlife Trusts
- Women's Institute
- Woodland Trust

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