

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 4: September 2015

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Foreword

Our Commission has been following the Lobbying Bill and then Act for two years now. We have heard consistent warnings about the likely impact of the law on the ability and willingness of charities and campaign groups to speak out on some of the issues that matter most to our society.



This report provides the first evidence of the impact of the Lobbying Act on democratic engagement during the regulated period ahead of the election.

Our findings are very concerning. A significant proportion of charities and campaign groups have stepped back from campaigning ahead of the election, or have needed to divert excessive resources to comply with the unwieldy and overbearing new law.

Part 2 of the Lobbying Act was brought in without any evidence at all, of the threat that was claimed of undue influence by campaigning organisations that are not political parties. We have yet to hear any such evidence and none has emerged during the 2015 General Election.

Democracy and the right of individuals and organisations to speak out are the bedrock of our free society. Our findings should raise alarm bells about the erosion of democratic debate when it counts most.

The last Government took a wrong step in introducing Part 2 the Lobbying Act. It is time for the new Government to listen to the evidence of the law's impact in practice, and before the devolved administration elections in 2016, make urgent changes to the law, and for the Electoral Commission to strengthen its guidance.

A handwritten signature in black ink that reads "Rich Harries". The signature is written in a cursive, slightly slanted style.

Richard Harries

Lord Harries of Pentregarth

Chair of the Commission on Civil Society and Democratic Engagement

September 2015

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 covered by Part 2 of the Transparency in Lobbying, Non-party Campaigning, and Trade Union Administration Bill.

Its role is to scrutinise the impact of the law on the democratic engagement of charities and campaign groups and to make recommendations for changes to the law and Electoral Commission guidance that mitigate any negative effects. Full terms of reference can be found at: www.civilsocietycommission.info

The Commission has consulted with key stakeholders about the impact of the law on campaigning – especially focusing on charities and campaign groups, faith and community organisations that were not consulted by Government ahead of introducing the law.

The Commission has produced four influential reports:

- The first report was a critique of the Lobbying Bill. The report resulted in the suspension of the passage of the Bill in Parliament to give additional parliamentarians time for scrutiny.
- The second report made recommendations to parliamentarians about changes needed to the Bill. Many, but not all, were adopted before the Bill was passed – including amendments based on the recommendations being debated between the two Houses in 'Ping Pong'.
- The third report captured evidence of the impact of the new law on charities and campaign groups before the regulatory period started. It recommended that the Act be repealed. Many of the major parties – including Labour and SNP – called for repeal.
- The fourth report captures evidence of the impact of the new law on charities and campaign groups during the regulatory period. It makes recommendations for urgent law and guidance changes before the 2016 Devolved administration elections.

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.



Toni Pearce

Former President, NUS

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



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.



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.



Legal Advisor

Ros Baston

Ros Baston is a political and election law expert. She spent a total of seven years working at the Electoral Commission, and became Lead Adviser (Party and Election Finance). For five years, she worked with parties, candidates, referendum campaigners and non-party campaigners, and helped to develop the Commission's view of how the original regulatory rules in the Political Parties Elections and Referendums Act 2000 should be applied in practice. She advises the Commission as a volunteer.

Executive summary

About this report

This is a 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 fourth report addresses the impact of Part 2 of the Lobbying Act on democratic engagement of charities and campaign groups during the regulated period from 19 September 2014 to 7 May 2015.

About the Commission’s evidence gathering

This report is drawn from evidence from charities and campaign groups addressing a very wide range of issues, from across the UK, and ranging from small community groups to large well known non-governmental organisations; as well as the Electoral Commission.

The Commission organised two large evidence sessions in London that around 50 organisations attended. A questionnaire was circulated very widely within the third sector and 52 organisations submitted evidence. Organisations in Scotland, Wales and Northern Ireland were specifically asked about their experiences of the Act. The Electoral Commission gave evidence in writing based on their submission to the Third Party Campaign Review being undertaken by Lord Hodgson of Astley Abbots.

Issues of concern

The Commission has seen no evidence to substantiate the claim that the Lobbying Act was needed to avert undue influence on elections. The Act has now been tested and considerable evidence shows it has had a negative impact on charities and campaign groups speaking out on crucial and legitimate issues ahead of the election.

Through our evidence we have learnt of the challenges that many charities and campaign groups have faced in implementing the Act, including confusion about the ambiguity of the definition of regulated activity. Charities and campaign groups reported to us that they found it difficult to know what was and was not regulated activity, and as a result many activities aimed at raising awareness and generating discussion ahead of the election have not taken place.

We note that even with a shortened regulated period, many have reported evidence of the organisational burden and a ‘chilling effect’. We recommend that the length of the regulated period and the scope of the definition of ‘regulated activity’ is reviewed in light of the concerns that have been raised. In particular, many organisations gave evidence that the Electoral Commission guidance on ‘active supporters’ did not relate to their organisation’s definition of its own supporters.

Working together as part of coalitions is widely accepted to be good practice to amplify charities’ impact, and to use resources efficiently. The Commission found evidence of reluctance from many NGOs to engage in coalition campaigning that they would otherwise have undertaken because of the Lobbying Act.

The Commissioners recognise the challenging job that the Electoral Commission has had in developing guidance for organisations to follow, but many have reported to us that they found much of the guidance to be unclear, and had to invest significant resource in understanding it and ensuring compliance.

The Commissioners are particularly concerned about the impact of the Act on the upcoming elections in the devolved administrations in 2016, where the capacity of many organisations to implement the Act is more limited, and different constituency boundaries between Westminster and the devolved administrations make the implementation of the Act additionally complicated.

In previous reports, Commissioners expressed concerns that the Act will have a ‘chilling effect’ on NGOs – making them less likely to speak out on issues. We have received significant evidence that this ‘chilling effect’ has happened. We are also concerned that at a time when charitable organisations are being asked to demonstrate ‘value for money’ from funders and supporters, that the Act has led to resources having to be shifted to ensure compliance with the Act, rather than achieving their charitable objectives.

Commissioners have concluded that the impact of the Act amounts an infringement on legitimate democratic engagement ahead of the election. Commissioners make a series of recommendations including that Part II of the Act should be repealed, and that if that does not happen immediately, it should be suspended for the duration of the 2016 devolved administration elections pending further consideration by Parliament of the concerns.

About the recommendations

The recommendations are intended to inform the actions of parliamentarians and the Electoral Commission ahead of important devolved administration elections in 2016.

The recommendations will be shared with Lord Hodgson of Astley Abbots, who has been tasked by the Cabinet Office with reporting on the operation and effectiveness of the provisions regulating third-party campaigning during the 2015 general election; with the Electoral Commission; with parliamentarians; and with charities and campaign groups.

Recommendations

These recommendations are intended to inform the actions of Government, parliamentarians and the Electoral Commission ahead of the devolved administration elections in 2016.

Repeal the Act

Part 2 of the Transparency in Lobbying, Non-Party Campaigning and Trade Union Administration Act should be repealed before the May 2016 devolved administration elections.

If that does not happen before May 2016:

Suspension of the Act – The Act should be suspended for the duration of the 2016 devolved administration elections.

Amend the Act

Definition of Regulated Activity – The test for regulated activity should be amended to clarify that campaigning should be regulated only when it is clear that the subjective intention is to influence the outcome of an election, rather than to raise awareness and generate discussion amongst competing parties and candidates.

Registration Thresholds – The £20,000 threshold in England should remain but should be informed by a narrower definition and range of activities, including removing staff costs as counting towards regulated activity and shorter regulated periods, which is in line with the ‘long campaign’ period for candidates. Constituency spending limits should be removed.

Definition of ‘active supporter’ – Should be revised, in consultation with civil society organisations, to define what is meant by ‘active supporter’, based on the experience of the Lobbying Act to date and organisations’ understanding of ‘active supporters’.

Campaigning together – Joint spending of up to £50,000 on a single campaign should be exempted from the working together rules.

Electoral Commission Guidance – The Electoral Commission should provide detailed case studies of regulated and non-regulated activity covering all areas of regulation.

Report

1. Repeal of the Act

No evidence has yet been brought forward to substantiate the assertion that the Lobbying Act was needed to avert undue influence on elections. The Act has now been tested and the evidence shows it has had a negative impact on charities and campaign groups speaking out on crucial and legitimate issues ahead of the election.

“The Act is not required and other than significantly reducing the amount of time we had to focus on campaigning for our charitable objectives, it has not improved the previous framework.”

Living Streets

“A lot of time and effort has been spent on something with very little point. In these days of austerity, how much money was spent complying with the Act and what was achieved?”

NAVCA

“This has caused considerable stress and confusion, requiring charities to spend mental, physical and emotional effort on things like interpreting guidance, getting advice from lawyers and completing surveys, instead of getting on with delivering their charitable purposes effectively and efficiently.”

The Wildlife Trusts

Recommendation:

Part 2 of the Transparency in Lobbying, Non-Party Campaigning and Trade Union Administration Act should be repealed before the May 2016 devolved administration elections.

If that does not happen before May 2016:

2. Suspend the Act for the devolved elections

The Commission is concerned about the negative impact of the Act on the ability of civil society to speak out. This could have a disproportionate influence on civil society in the devolved nations, ahead of the 2016 elections.

“Civic society in Northern Ireland is in a weakened and quietened condition in comparison with the rest of the UK, and this law puts extra pressure on an already beleaguered sector. It would be preferable if the Lobbying Act were suspended in Northern Ireland in the run-up to any non-General and non-EU elections here.”

Friends of the Earth in Northern Ireland

Recommendation:

The Act should be suspended for the duration of the 2016 devolved administration elections.

3. Amend the Act

3.1 The definition of regulated non-party campaigning

Our Commission has raised two fundamental concerns with the definition of regulated activity: the breadth of campaign issues it covers, and the ambiguity of its meaning.

The Commission has heard evidence that both of those elements of concern have been manifested during the regulated period.

“We’re not a politically-affiliated charity, our members are from all walks of life, political views and none, but we’re in a very difficult position: we’ve got one party that’s got it in its manifesto that it wants to go on with this particular policy – that obviously we object to – we’ve got another one that we’ve helped influence putting it in their policy with a nice picture of a badger on the front saying they’re not going to do it.

And what really strikes me about all of this, is that that’s what politics should be about – it should be about offering different views and perspectives to the electorate – and then NGOs by all means should be able to take views on all sides of these positions. And it’s quite right in my view, that if civic society is to work properly, then charities and others should be talking to opposition parties or government parties throughout the whole process of government and in a campaign about what they develop and put before the electorate.”

The Badger Trust

Breadth of campaign issues covered

“When we were campaigning on the 0.7% Overseas Aid Bill in coalition, the Act had an impact on what we blogged and how we used social media. We had to think hard about what to do during the election period and the planning was delayed. This was due to being unsure and nervous about the Act.”

Concern Worldwide

“We were involved in leading a campaign focused on supporting a Private Member’s Bill to enshrine into law the commitment that 0.7%. We undertook this as it was in accordance with our charitable purpose and is an issue that we have long advocated on. Although campaigning on the Bill was not linked to the election, and we had broad cross-party support for its passing, the Lobbying Act meant we were far more cautious in the tactics we used in the campaign.”

Bond

Ambiguity in meaning

Charities and campaign groups reported to us that they found

it difficult to know what was and was not regulated activity. For many organisations, the Electoral Commission’s ‘gateway tests’ were not able to make a complex definition clear and intelligible.

“It took up a lot of time in trying to understand it and in reviewing activities constantly to ensure that we wouldn’t breach it. The guidance was very hard to understand and there were a lot of different opinions being shared on it.”

Anonymous Large NGO

“It wasn’t clear what would count as regulated expenditure, the guidance was vague and untested which contributed to the amount of staff and legal time.”

Tax Dodging Bill Coalition

Recommendation:

The test for regulated activity should be amended, to clarify that campaigning should be regulated only when it is clear that the subjective intention is to influence the outcome of an election, rather than to raise awareness and generate discussion amongst competing parties and candidates.

We recommend that the definition is reframed to follow the wording of PPERA section 111, which refers to expenses at a referendum and will be applied at the forthcoming referendum relating to the European Union.

This would remove the problematic test that activity could be ‘reasonably regarded’ as intended to promote or procure an election outcome, which has been interpreted as an ‘objective’ test. It would be replaced so that activities which are conducted ‘with a view’ to promoting or procuring such an outcome, are regulated.

This test is more subjective, and we recommend that the amended section also makes it clear that the following are not included, unless they form part of a wider regulated campaign:

- accurate listing of candidates’ or party positions without commentary
- publicising party or candidate support for the organisation’s manifesto in the course of promoting that manifesto provided that the selection of such parties and/or parties was made with a view to providing the public with information across the political spectrum.

3.1.1 Campaigning materials and activities subject to regulation

As part of our previous inquiries, our Commission heard a range of views about campaigning activities that should be regulated. There is a widespread appetite amongst NGOs for their work to be transparent – but not restricted. However, we concluded that further evidence was needed about the likely impact on campaigning before the range of activities should be widened.

The regulated period ahead of the 2015 General Election has provided some evidence of the impact on NGOs speaking out on campaign issues.

Range of campaigning activities

In practice, the widening of the range of campaigning activities subject to regulation has caused confusion about the activities that can be undertaken.

“Despite familiarising our staff with the Act, we still felt uncertain as to whether some events would constitute regulated activity or not and as a result refrained from doing certain activities. For example we received many requests from local candidates to visit our local partners’ services and host events. Several partners chose not to hold such events, missing opportunities to develop relationships with prospective MPs because they did not feel able to make the same offer to all candidates from all parties and were worried that it would inadvertently be seen as a regulated event or were concerned about criticism from other local candidates, even if they had valid non-political reasons for not inviting all local candidates.”

Age UK

Staff costs

“The fact that staff time was included as regulated activity added an enormous bureaucratic burden to the organisation. Most of our staff were working on a mix of regulated and unregulated activity, which made it difficult to account for accurately. We were asking individual staff to account for their own time – the only honest way we could make a reasonable assessment – which meant every one of them had to be familiar with the intricacies of the law, this added a massive training burden. There were also a lot of day-to-day questions that senior staff had to answer so that people knew what they should be accounting for. This felt like an unnecessary waste of time.”

38 Degrees

“None of our staff worked solely on activities that the Lobbying Act could deem regulated, therefore to make an ‘honest and reasonable assessment’ of staff time was difficult and likely to be open to different interpretations.”

Bond

Recommendation:

Staff costs should be excluded from regulated activity.

3.1.2 Registration thresholds

Our Commission welcomed the change made to raise PPERA (Political Parties, Elections and Referendums Act 2000) registration thresholds in England from £10,000 to £20,000 in the Lobbying Act.

The registration thresholds have not been tested fully in practice because the regulated period ahead of the 2015 General Election was shorter than the one year regulated period in the Act.

Evidence from charities and campaign groups shows that they would expect to spend more money on regulated activities during a one year period than a period of just over 7 months.

“Friends of the Earth undertook regulated activity in the 7 months ahead of the 2015 General Election. We expect much more of our activity on campaigns such as opposing fracking will be regulated in the longer 12 month regulated period. This will have a big impact on our work – it will tie our staff up in negotiating the fiendishly complex and onerous Lobbying Act rather than focusing on what our supporters want us to be campaigning on. It is also likely there will be an even bigger ‘chilling effect’ on our work in coalition with other environment groups.”

Friends of the Earth England, Wales and Northern Ireland

It is therefore likely that more organisations would reach the threshold for regulated spending ahead of future elections.

Recommendation:

A £20,000 threshold in England would be reasonable on condition of a narrower definition and range of activities and shorter regulated periods.

3.2 National spending limits

In our previous reports, the Commission expressed concern about the 60-70% cut in spending limits from PPERA 2000. We had a particular concern about the spending limits impacting on large coalitions of charities and campaign groups working together.

The national spending limits have not been tested fully in practice because the regulated period ahead of the 2015 General Election was shorter than the one year regulated period in the Act.

Coalition campaigning and spending limits

Evidence gathered for this report shows that no coalitions were restricted in their spending as a result of the lower limits. However, NGOs gave evidence that this could well be because of a combination of:

- the ‘chilling effect’
- the shorter regulated period, and
- the nature of the campaigns that happened to be worked on ahead of this election.

Evidence of the need for tight spending limits

No evidence has emerged during this regulated period that a spending limit in line with PPERA would have resulted in undue influence. Raising the upper spending limit would significantly alleviate potential working together campaigning restrictions.

Recommendation:

The upper spending limit should be increased to the previous PPERA limits of £793,500 in England and the higher limits in Scotland, Wales and Northern Ireland.

3.2.1 Constituency regulation

In previous reports, our Commission expressed concern about the introduction of constituency spending limits. Our concerns were threefold. Firstly, no evidence was brought forward about the need for such limits. Secondly, we gathered substantial evidence that charities and campaign groups and their campaigns are not structured around constituencies in the way that political parties are and that the rules are likely to be burdensome. Thirdly, we were concerned about the tight spending limits imposed.

Constituency spending limits

“We had to reduce (spending limits) in a number of constituencies in which we’ve worked for a considerable amount of time. In the past we would have had an organiser for a constituency or a cluster of constituencies for up to nine months before an election. This time we had organisers for three months and they had much wider remits.

“In the past almost each constituency had a tailored campaign, this time, again in order to reduce costs, we had to rely more on generic materials, generic traditional and social media outreach and a more centralised mechanism in terms of staff support/time/expertise.”

Hope not Hate

Workability of spending limits for charities and campaign groups

“Campaign expenditure is the most complicated area, as one has to keep track of the total national spending and constituency spending, and the parameters for each are different.”

Hope not Hate

Recommendation:

Remove constituency spending limits.

3.3 'Working together' coalition campaigning rules

Charities and campaign groups reported to the Commission, as part of our previous inquiries that the PPERA 2000 rules for 'working together' as part of a coalition campaign were problematic. The rules have not fundamentally changed in the Lobbying Act – other than some welcome changes to the reporting requirements for small spending members of coalitions.

Working together as part of coalitions is widely accepted to be good practice amongst charities and campaign groups to amplify their impact and to use resources efficiently.

Withdrawal from coalitions because of the Act

The Commission found evidence of some NGOs withdrawing from coalition campaigning that they would otherwise have undertaken because of the Lobbying Act.

The Quakers in Britain withdrew from the coalition working on the Tax Dodging Bill to avoid the Lobbying Act's rules on joint working.

Another organisation reported experiencing allies withdrawing from coalition campaigns to avoid thinking about the Lobbying Act:

"We were meant to be participating in a huge cross-NGO campaign, but all apart from a couple of the organisations ended up not campaigning during the general election period leaving us with not enough partners to run the campaign."

Greenpeace UK

Our survey of NGOs found that:

- Due to the Lobbying Act, 12.5% of organisations reported taking no part in coalition campaigning.
- A further 12.5% **substantially reduced** their involvement in coalition campaigning, while 31% **slightly reduced** their involvement.
- 44% reported that the Lobbying Act had no impact on their level of involvement in coalition campaigning.

Chilling effect on coalition campaigns

"We found that some charities became quite risk-averse, and so the overall scope of the joint campaigning we were involved with was reduced. Scope of activities undertaken was reduced. We felt many charities became risk averse on coalition campaigning."

Anonymous Medium-Sized NGO

Concern Worldwide reported that the restrictions on joint working impacted how they talked publicly about their involvement in the campaign on the 0.7% GNI ODA Bill. The Salvation Army reported concerns about engaging with trade bodies and other ecumenical initiatives for fear of falling foul of the Act.

"Effectiveness of the campaign (was) damaged by the sheer time taken to do due diligence on the legal implications of working in coalition."

Tax Dodging Bill Coalition

"It has made coalition campaigning onerous and I think risk-averse. It's been difficult for staff or trustees of organisations who are finding it hard enough to understand the guidance and put in place measures that mitigate risk to what they deem to be an acceptable level for their own organisation; to also take on the potential risk of being aligned to other organisations who might go and say something which you can't control and it's not that clear how accountable you would be for that."

Oxfam

Problems with working together rules

"As we are not traditionally a campaigning charity we were not in danger of exceeding the top limit. However, we were wary of supporting causes that could be considered coalition campaigning because we felt the administrative cost would be excessive and we couldn't control the level of spending."

The Salvation Army

"One of our general election campaigns involved working with a partner that was registering, which added significant time pressure and regulations to what we were doing and how we were doing it, which ultimately made our campaign less effective."

Greenpeace UK

The Campaign to Protect Rural England reported curtailed timescales and scope of coalition working.

Smaller organisations expressed concerns:

"Whether or not we could hold a hustings meeting (was one such concern) and our potential liability through joint campaigning, even if we were only a minor partner."

Newcastle CVS

"As an umbrella body we regularly publicise campaigning activity by member churches and bodies, and sometimes provide some resource support for these. We were very unclear as to whether this amounts to a 'common plan'; or what counted as a 'committed supporter' – do all supporters of all our member bodies so count? (This is difficult to define in the case of churches anyway)."

"Trustees decided that during the regulated period we should send out only factual information about our members' campaigns,

rather than anything implying endorsement for the campaign.”

“We were unclear whether promotion of campaigns at a stage remove was regulated activity or not. Because of this, it was difficult to conceive of a way of documenting compliance.”

Cytûn: Churches Together in Wales

One federated organisation reported the effect of uncertainty on several of its branches: they “started planning actions and then gave up because of the perceived difficulty and complexity”.

Recommendation:

We recognise that the working together rules are in place to stop avoidance of the spending limits, by large campaigning organisations pooling their individual spending limits, but believe that the current position strikes the wrong balance by having a disproportionate effect on the democratic ability of smaller groups to join together on issues that they have in common.

We recommend that a joint spending of up to £50,000 on a single campaign, should be exempted from the working together rules. Each group would have to count their contribution towards their own spending only.

3.4 Duration of the regulatory period

“Most of the bureaucracy, legal costs and ‘chilling effect’ would have been less damaging to the scope of our campaign, if the regulated period would have been 4 months, in line with legislation covering other major elections.”

Hope not Hate

Third party spending has been regulated for 12 months since PPERA was passed in 2000.

The Commission has heard deep concern from charities and campaign groups throughout our enquiries about the very long regulated period. We heard that 12 months before an election is simply too far away from the election, for most activities to be relevant.

The 12 month regulatory period has not been tested with the much tighter spending limits and new constituency limits of the Lobbying Act, which because of the shortened regulatory period started on 19 September 2014.

From our most recent enquiry we have found widespread evidence of the organisational burden and ‘chilling effect’ during the shortened regulated period.

“We understand and agree that there should be a regulated period prior to an election. We feel strongly though that the 12 month period is unjustified, not least because it is so much longer than the regulated periods which apply to parties, candidates and the Civil Service. For organisations such as ours that operate across the UK, including in Scotland and Wales, and who will therefore need to ensure compliance with the Lobbying Act during the shorter regulated periods prior to Scottish Parliament and Welsh Assembly elections, we will have to invest time and money in ensuring compliance with the Act – approximately 25% of the time, and that feels disproportionate.”

Oxfam

Given the impact on charities and campaign groups speaking out when regulated for just over 7 months, the Commission thinks there is a strong case for shortening the regulated period to one that is much more directly related to the election campaign.

“The different lengths of time that regulation is applicable had caused unnecessary confusion. For example, the Charity Commission’s supplementary guidance on campaigning during elections applies after the dissolution of Parliament, similar to the period of ‘purdah’ for Whitehall departments.”

Bond

As a result of the Fixed Term Parliament Act 2011, the expenditure of candidates is regulated in the six months before the election, often referred to as the ‘long campaign’ while the ‘short campaign’ begins when Parliament is dissolved about five weeks before the election.

Recommendation:

The regulated period should be cut from 12 months to the same as the long campaign for candidates. We recognise that this means that the period will be longer than that for political parties and it may be that the appropriateness of the parties’ regulated period and spending limits should also be reviewed – this is beyond the scope of the Commission’s work.

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

Many of the organisations based in Scotland, Wales and Northern Ireland reported that their activities were limited around the General Election as much of their work focuses on Westminster issues.

“We focused our campaigning around matters relating directly to the National Assembly and Welsh Government during the past year, and this was primarily because of important legislation going through the Assembly. But we were also very cautious about getting involved in the UK general election and policy issues that might be contentious or mean that we’d get caught by the Lobbying Act.”

Stop Climate Chaos Cymru

But they are concerned about the impact of the Act on upcoming devolved administrations elections in 2016.

“The Assembly elections in 2016 will be a crucial indicator of how the Lobbying Act will affect the Northern Ireland team, because we would usually feel free to offer our honest reflections on the environmental performances of Northern Ireland’s ruling parties during the previous four to five years in the run-up to the Stormont poll. Having to be aware for such an extended period of how our non-partisan policy analysis may unintentionally affect someone’s vote is inevitably going to have a ‘chilling effect’ on our ability to do this effectively.”

Friends of the Earth Northern Ireland

“It’s going to be a real headache to work out what we can do from January onwards in the run up to the Assembly elections in May – we don’t have our own staff or admin support so it’s really difficult for us as a coalition.”

Stop Climate Chaos Cymru

In particular, they have reported that the devolved administration elections in Wales and Scotland have list and constituency boundaries that overlap, making the implementation of the Act additionally complicated.

Recommendation:

Suspend Part 2 of the Lobbying Act for the duration of the 2016 devolved administration election. A full and independent review of the impact of the Lobbying Act on the 2016 devolved administration elections should take place.

3.6 The definition of ‘active supporters’

The Commission has consistently raised concerns about the definition of members of the public compared to supporters of organisations. There is no definition in the Act of supporters; it refers to ‘the public at large or any section of the public’. The Electoral Commission have therefore had to develop guidance with no underpinning in the Act.

The definition of a supporter is important because activity is regulated if it is directed at members of the public. The Electoral Commission developed the concept of ‘active supporters’ in its guidance to attempt to assist with this.

Many organisations gave evidence that the Electoral Commission guidance did not relate to their organisation’s definition of its own supporters. Neither are NGO databases of supporters segmented in a way that relates to the Electoral Commission guidance.

“We take issue with the assumption that there is a clear line between ‘member of the public’ and ‘supporter’, as not all organisations distinguish between people in that way.”

Quakers in Britain

“Some supporters donate, some campaign, some are just on our email list so there are varying levels of ‘commitment’. The word ‘reasonably’ was too vague. Increased or altered campaigning – our campaigns vary and are altered throughout the year, and go in peaks and troughs.”

Concern Worldwide

There is no provision in the Act or Electoral Commission guidance for supporters of NGOs to declare themselves as ‘active supporters’ and that they wish to receive communications from the NGO which constitute regulated material.

Recommendation:

Criteria should, in consultation with civil society organisations, be set out in the guidance to define an ‘active supporter’, based on the experience of the Lobbying Act to date. We would recommend that a ‘committed supporter’ could include any individual who is a member of the organisation, has donated in the last two years, engaged as a volunteer or responded to a contact.

4. Electoral Commission guidance

Our Commission has heard concerns about the lack of clarity of some of the Electoral Commission's guidance. Concerns focus on two areas. One concern is the time it takes to read and train staff about compliance with the guidance. The other concern is about the ambiguity of meaning in some of the guidance.

Parts of the Electoral Commission guidance were amended and developed in response to feedback from non-party campaigners.

Time to read and train staff about compliance

Many organisations gave evidence about excessive amounts of time needed to train and guide local groups and activists overwhelmed at the complexity:

“Local groups organising ‘selective’ hustings of parliamentary candidates required considerable guidance with regard to how to select the candidates to include, the nature of local publicity and the recording of expenses.”

Cytûn: Churches Together in Wales

“We had to create and distribute our own internal guidance so-as to save each and every component charity within our federation from wasting time and money working through the huge volume of material to reach their own (still not definitive or necessarily defensible) conclusions. Many aspects of our own internal guidance still reached the conclusion that we should ‘do our best’, ‘act in good faith’, ‘demonstrate our reasoning and decision-making trail’ and ‘wait to be challenged’, as it wasn’t clear what would be acceptable and what would not.”

The Wildlife Trusts

“We surveyed organisations that we have supported in the past three years. 60% of those that responded had an income of less than £99,999 per year. We asked how much time and money organisations had spent on deciding how the Lobbying Act affected their activities. The responses ranged from 1 hour and £50 to 30 hours and £500, significant amounts for small civil society groups, particularly those that are entirely volunteer led.”

Sheila McKechnie Foundation

“We took compliance with the Act very seriously and this was resource-intensive for the organisation, heavily involving our senior management team and board of trustees. We delivered training on the requirements of the Act to about 80 staff and set up an assessment process to review all of our external outputs (such as reports, blogs, social media). We also

engaged external legal advice. We estimate that all of this probably cost the organisation in the region of £30k, including staff time.”

Shelter

Ambiguity of guidance meaning

Organisations reported problems in understanding whether their planned activity would be regulated.

“A number our local groups were unclear about if and how they could approach local candidates, for fear of breaching the Act. This occurred at least 5 times, all of which had to be dealt with individually – this takes a significant amount of time. In addition, our local staff across the country had to be fully briefed and equipped to support local campaigners during their work in the regulatory period, which also took a significant amount of time.”

Anonymous Large NGO

“As a membership body, we produced guidance for our members around the Act, and had to dedicate significant resources to responding to member questions and concerns about whether their activities would comply with the Act. Many of these suggested a caution to undertake advocacy on issues like preventing child trafficking or the flow of remittances to Africa during the regulated period, despite broad cross party support for them. Those organisations felt it necessary to modify their activities or reduce joint campaign activities on topics demonstrate the unintended consequences of the act.”

Bond

“We had questions about the guidance we needed to provide to local campaigners about whom they should invite to hustings events; what activity could reasonably be regarded as directly or indirectly influencing a person's voting intentions; and to what extent simply commenting on a political issue (such as welfare) could be regarded as a breach of neutrality.”

Anonymous Large NGO

Ambiguity about reporting rules

“We have ended up reporting to such an extent that it seemed like Electoral Commission thought we had gone over the top. But they were not clear at all on how we would comply, nor had they shared some vital documents on compliance. We had many questions but felt we needed to use lawyers extensively.”

38 Degrees

“In our survey on the impact of the Lobbying Act, 58% of respondents rated the “ease of finding

out if the Act affected their activities” as below 5, on a scale where 10 was the highest score.”

Sheila McKechnie Foundation

Campaign groups found it very difficult to understand the Electoral Commission guidance and apply it to their work. Case studies based on existing or previous campaigns would allow campaigners to quickly identify the sort of activity that they need to pay attention to, and which will certainly not be regulated.

“The Electoral Commission’s printed guidance was written in clear language, but nevertheless remained confusing as there were far too many PDFs cross referencing each other. Sometimes the most important point on a page of a particular guidance was in the side bars, but not in the main text, which was utterly confusing.”

Hope Not Hate

Recommendation:

The Electoral Commission should provide detailed case studies of regulated and non-regulated activity covering all areas of regulation.

Organisations reported scaling back their activities to avoid registration, citing unmanageable complexity.

“Most significant environmental charities work closely together on a wide range of issues that are potentially politically sensitive. The groupings of organisations working on different issues overlaps, shifts and changes from issue to issue and time to time. Had we needed to register, there would have been the potential for that triggering a large number of our regular partners also to register... and for us to have to set up a huge, complex web of joint accounting and reporting across the sector.”

The Wildlife Trusts

Conclusions

Our inquiry has produced concerning evidence about the impact of the Lobbying Act on the role that NGOs can play in a democratic society.

In previous reports, we have expressed concern that the Act will have a ‘chilling effect’ on NGOs – making them less likely to speak out on issues. It will also put additional bureaucratic hurdles in place, reducing the time that staff have to focus on achieving their charitable objectives.

The Commissioners have considered the evidence provided and concluded that there is considerable evidence of the following:

1. Chilling effect

“Our members have told us that their grassroots campaigners and volunteers have been terrified into silence by the Act and just haven’t been campaigning because they’ve been worried about falling foul of the regulations.”

*Public Relations Consultants Association (PRCA)
Charity and Not-For-Profit Group*

“I think the Act has created an atmosphere of caution within parts of our sector. It has also wasted time in terms of analysis of it, explaining it to Trustees, staff etc. It is not (or at least Part 2 is not) a piece of legislation we need.”

WWF-UK

“We are deeply concerned at the ‘chilling’ effect of the Act and the consequent reduction in third sector campaigning in the run-up to the election. This may well be one reason for the restricted and repetitive nature of most media coverage and the stranglehold of the political parties’ machines on the news agenda.”

Cytûn: Churches Together in Wales

2. Red tape

Over 50% of organisations that responded to our survey indicated that the Lobbying Act had delayed the planning of their campaigns.

“We pushed back the launch of a report that would raise issues of tax and overseas development. We limited public activity around another report launch. We were members of a

campaign coalition on tax that spent a lot of time making sure it was not regulated activity and this altered the nature of the campaign significantly.”

Health Poverty Action

“The bureaucratic, logistic and legal burdens we had to overcome have reinforced our belief that many smaller, less experienced campaigning groups and NGOs were put off significantly or completely from engaging in the democratic process. In doing so, the elements of civil society they represent, more often than not the most vulnerable groups and marginalised communities in our country, remained voiceless, at a time when they should have been heard more than ever, given that so many feel apathetic or disenfranchised.”

Hope not Hate

“Harder to account for is the opportunity cost: there are many ways in which we could have otherwise used this resource to advance our charitable objectives and support people in housing need.”

Shelter

3. Spending caps limiting campaigning

“We pretty much worked alone during the election campaign. Other NGOs we work with in the wildlife protection field stopped any activity during election campaign due to the Lobbying Act.”

The Badger Trust

“The Act meant we didn’t undertake some of the activities we planned. Also, joint campaigning was tough as many organisations were very nervous about the Act and (therefore) watered down their activities, meaning our ability to campaign in the run-up to the election was severely hampered.”

Anonymous Large NGO

Evidence

Evidence was gathered for this report:

Through an online survey drawing evidence from charities, campaign and voluntary groups, and faith groups – promoted very widely within the third sector.

Organisations that agreed to be quoted are listed below, others asked for their submissions to be anonymised:

38 Degrees
 Age UK
 ActionAid UK
 The Badger Trust
 Bond
 CAFOD
 Campaign to Protect Rural England
 Carers Trust
 Civil Service Pensioners Alliance
 Concern Worldwide
 Cytûn – Eglwysi Ynghyd yng Nghymru/Churches Together in Wales
 Electoral Reform Society
 Friends of the Earth England, Wales and Northern Ireland
 GM Freeze
 Greenpeace UK
 Health Poverty Action
 HOPE not Hate
 Living Streets
 London Voluntary Services Council
 Lush Ltd
 National Secular Society
 NAVCA
 Newcastle CVS
 NPC
 NUJ
 Oxfam
 Palestine United UK
 Plan UK
 Public Relations Consultants Association (PRCA) Charity and Not-For-Profit Group
 Quakers in Britain
 Sheila McKechnie Foundation
 Shelter
 Stop Climate Chaos Cymru
 The Salvation Army
 The Vegan Society
 UNISON
 Unlock Democracy
 WWF-UK

Through interviews with and written submissions from individual charities, campaign and voluntary groups and faith groups. The Commission also received written submissions from the Electoral Commission.

Full details of the evidence are on the Commission website: www.civilsocietycommission.info

