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 1: October 2013
## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foreword</td>
<td>3</td>
</tr>
<tr>
<td>About the Commission</td>
<td>4</td>
</tr>
<tr>
<td>Executive Summary and Recommendations</td>
<td>6</td>
</tr>
<tr>
<td>1. Introduction</td>
<td>14</td>
</tr>
<tr>
<td>2. Context: civil society engagement in democratic processes</td>
<td>15</td>
</tr>
<tr>
<td>3. Bill timing, consultation and scrutiny</td>
<td>17</td>
</tr>
<tr>
<td>4. Motivations for changing the law</td>
<td>20</td>
</tr>
<tr>
<td>5. The definition of non-party campaigning</td>
<td>23</td>
</tr>
<tr>
<td>6. Campaigning materials and activities subject to regulation</td>
<td>26</td>
</tr>
<tr>
<td>7. Registration thresholds</td>
<td>28</td>
</tr>
<tr>
<td>8. Spending limits</td>
<td>30</td>
</tr>
<tr>
<td>9. Constituency limits</td>
<td>32</td>
</tr>
<tr>
<td>10. Reporting requirements</td>
<td>35</td>
</tr>
<tr>
<td>11. Regulation of non-party campaigning in Scotland, Wales and Northern Ireland</td>
<td>37</td>
</tr>
<tr>
<td>12. Coalition working</td>
<td>41</td>
</tr>
<tr>
<td>13. Charities and non-party campaigning</td>
<td>43</td>
</tr>
<tr>
<td>14. Equalities</td>
<td>45</td>
</tr>
<tr>
<td>15. Human rights</td>
<td>47</td>
</tr>
<tr>
<td>16. Implementing the recommendations</td>
<td>49</td>
</tr>
<tr>
<td>17. Appendix:</td>
<td>50</td>
</tr>
<tr>
<td>A. Commission Terms of Reference</td>
<td>51</td>
</tr>
<tr>
<td>B. Consultation and Evidence</td>
<td>52</td>
</tr>
<tr>
<td>C. Acknowledgments</td>
<td>54</td>
</tr>
</tbody>
</table>
Foreword

It is hard to think of another issue that could unite the Countryside Alliance to the Lancashire Badger Trust, the Christian Institute to the National Secular Society, but such is the concern about Part 2 of the Lobbying Bill a remarkable unanimity has been achieved.

It has been a privilege and a pleasure to work so constructively with such a wide range of organisations on an issue as important as civil society's engagement in democratic processes.

But this report should not have had to be written, and this Commission should not have had to be formed. It is a mark of bad governance for legislation to be bounced on Parliament and those directly affected without any consultation. When matters of democracy are at stake it is a very grave error.

There is no doubt, from the evidence that this Commission has gathered, that Part 2 of the Lobbying Bill risks profoundly undermining the very fabric of our democracy by significantly limiting the right of organisations — from charities and community groups to think tanks and blog sites — to speak out on some of the most important issues facing this country and the planet. Whether we agree with these organisations or not, their role is essential in order to have an informed, engaged electorate.

This report has been written under extreme pressure of time and with the support of people across the UK in order to be ready ahead of the House of Lords Committee stage of the Bill. I hope that Parliamentarians will take seriously the recommendations and act on them as they perform the important role of defending our democracy and ensuring high quality legislation.

Richard Harries

Lord Harries of Pentregarth
Chair of the Commission on Civil Society and Democratic Engagement

October 2013
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 50 prominent charities, campaign groups, community groups, academics, think tanks and online networks (see Acknowledgements and visit www.civilsocietycommission.info for latest list).

1 The phrase ‘chilling effect’ was frequently used by organisations consulted by the Commission.
Chair
Richard Harries
Baron Harries of Pentregarth

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.

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.

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.

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.

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.

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.

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.

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

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.

It is intended to give voice to stakeholders not consulted ahead of the Bill’s publication and to inform the actions of Government and Parliamentarians in their deliberations about the legislation.

This report addresses three key issues:

i) The state of civil society’s engagement in democratic processes

ii) The likely impact of Part 2 of the Bill on campaigning activity if it passes into law in its current form

iii) What changes to regulation of non-party campaigning are needed ahead of elections.

The Commission will consider whether further reports assessing the extent to which our recommendations have been met by Government and Parliamentarians would be helpful.

About the Commission’s evidence gathering
Government did not consult any of the major stakeholders affected by the legislation before publishing the Bill.

This report is based on evidence drawn from stakeholders across the UK and political spectrum during a two-week period. Those submitting evidence included the Electoral Commission, key political actors in support of and opposing Part 2 of the Bill, representatives of civil society organisations, academics and the public.

The Commission organised 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 was disappointed that an early agreement to give evidence by Tom Brake MP was withdrawn. The Commission was grateful to Lord Tyler for articulating a case in support of Part 2 of the Bill.

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

Issues of concern
The Commission has three areas of concern.

1. Uncertainty in the definition of non-party campaigning

The definition of non-party campaigning in Political Parties, Elections and Referendums Act 2000 (PPERA) leaves undesirable uncertainty about the activity that is subject to regulation. The impact of that uncertainty is exacerbated by the proposed changes in the Bill to the regulatory threshold, spending cap and new constituency cap.

Before the present bill came before Parliament, it was assumed by the Government that the legal basis for charities and campaigning groups engaging in political activity at the time of an election was relatively clear. What the changes have revealed is that this is not the case and there is a fundamental uncertainty about the law and how it should be applied.

The guidance for charities on how they should work during elections states:

“A charity’s policy position on a particular issue may coincide with, or be more or less similar to, that of one of the political parties. In this case it is entirely acceptable for the charity to continue to campaign on that issue and to advocate its policy as long as it makes clear its independence from any political party advocating the same policy and does nothing to encourage support for any political party”.1

The result of specific sub-clauses in both the current legislation and the proposed Bill is that almost anything a charity or campaigning group does in the year before an election can be considered from the point of view of its effect on the possible success or failure of particular parties or candidates. The result is a fundamental uncertainty, which will inhibit charities from campaigning for fear of breaking the law.

2. Negative impact on issue-focused 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 them are unworkable.

The combined effect of lowering the threshold for registration, cutting spending limits, introducing a cap in constituencies and broadening the scope of activities subject to regulation is extensive: it is likely to result in a broad range of everyday issue-focused campaigning being caught by the Bill.
3. 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.

All three relevant parliamentary Committees have raised concerns.

**The Political and Constitutional Reform Select Committee** said:

“This Bill is an object lesson in how not to produce legislation. There was little or no consultation with those affected. There was no pre-legislative scrutiny. And the Bill is now being rushed through the House in a way that indicates a lack of respect for Parliament.”

**The House of Lords Constitution Committee** said that:

“Effective parliamentary scrutiny matters in relation to every bill. But it is of manifest importance where legislation is of constitutional significance. The present Bill directly affects the ability of people and organisations to engage with the Government and to participate in political and electoral campaigning... As such, the handling of the Bill to date is a matter of significant concern.”

**The Joint Select Committee on Human Rights** said that it is:

“...unacceptable that [the Joint Committee on Human Rights] has not been able to report on a Bill that raises significant human rights issues before it has left the first House, on account of the unnecessary speed at which the Bill is being taken... This amounts to an abuse of the Parliamentary legislative and scrutiny process – and this is not the first time that this has happened during this Parliament.”

In addition, the Commission is concerned that changes with large-scale impact are proposed in the Bill that are not needed ahead of the 2015 General Election. Indeed, the Lords Constitution Committee stated that:

“An overall concern with Part 2 is whether its provisions are necessary.”

Notes

1 Charities Elections and Referendums, Guidance Update, January 2011, published by the Charity Commission.
2 Statement on publication of Political and Constitutional Reform Committee Report into the Lobbying Bill.
3 Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill, 18th October 2013.
Recommendations

The Commission’s recommendations fall into three categories below:

i) Central recommendation: Government should pause Part 2 of the Bill to allow for proper consultation and consideration

ii) [If the central recommendation is not implemented] Changes to Part 2 of the Bill to limit the damage to democratic engagement of civil society

iii) Consideration of regulatory changes to non-party campaigning beyond 2015

I. Central recommendation: Government should pause Part 2 of the Bill to allow for proper consultation and consideration

A Joint Committee of Parliament should be established to consult key stakeholders including:

- The Electoral Commission
- The Charity Commission
- Civil society organisations including: charities, campaigning organisations, community organisations, faith groups, think tanks and bloggers

The Committee should identify if any urgent law change is needed before the 2015 General Election, and make recommendations for such changes.

Government should ensure time in both Houses to allow for proper scrutiny of any urgent law changes proposed by the Committee, and for any new law to be passed by the end of March 2014.

The Political and Constitutional Reform Select Committee recommended:

“The Government must withdraw the Bill and allow a Committee of the House to carry out proper scrutiny, with the aim of producing a better Bill for reintroduction within six months.”

The Joint Select Committee on Human Rights recommended:

“We call on the Government to ‘pause’ this Bill to allow for further scrutiny and consultation, particularly with the Electoral Commission, the Commission on Civil Society and Democratic Engagement and other stakeholders.”

This recommendation was also called for by more than 30 NGO Chief Executives of organisations including the Taxpayer’s Alliance, Oxfam, the Woodland Trust and the Women’s Institute in a letter to Lord Wallace, Leader of the House of Lords:

“We urge you to stop, to listen, and to work with us to find a solution that will protect both the integrity of elections and the vibrancy and diversity of our democracy.”

II. Changes to Part 2 of the Bill to limit the damage to democratic engagement of civil society

If Government does not pause Part 2, the Commission recommends that this Part of the Bill is overhauled in the House of Lords to prevent damage to the democratic engagement of civil society.

The recommendations highlighted with an asterisk are interdependent and must be adopted collectively in full. This is because it is the combined effect of a number of specific provisions of the Bill that are likely to result in disproportionate restrictions to issue-focused campaigning.

1. The definition of regulated non-party campaigning

There is broad acceptance of the need for non-party campaigning to be properly regulated ahead of elections. However, the current definition of non-party campaigning to be regulated, set down in PPERA and now retained in substance in this Bill, creates damaging uncertainty for non-party organisations. There is widespread concern (and evidence from the past two General Elections) that much issue-focused campaigning is also caught within the scope of this definition.

Under PPERA, the problems of this definition were mitigated by the relatively narrow range of activities caught and the relatively permissive thresholds and spending limits. However, the other changes to the regulatory framework proposed in this Bill magnify the problems caused by the uncertainty around the definition.

The Commission recommends the development of a more precise definition of what campaigning by non-parties should be regulated during election periods. Improvements to the definition should aim to remove uncertainty and to focus on partisan election campaigning. An improved definition should ensure that most purely issue-focused campaigning is not drawn within the scope of electoral regulation, while still ensuring that the rules are not easily evaded by groups focused on issues with the intent to influence election outcomes.
The Bill should be paused to allow time for proper consultation and consideration should be given to developing an improved definition, involving the Electoral Commission and a broad range of civil society groups. Given the complexity of this issue and the importance of getting it right, the Commission considers it unlikely that this can be achieved in time for the 2015 General Election.

If an improved definition is not reached in time for it to apply during the 2015 General Election, then the Commission recommends that the PPERA definition with the minor amendments made by the Bill as introduced to the House of Lords should be applied. The other recommendations contained within this report would need to be adopted as a package to mitigate the negative impacts of the uncertainty surrounding this definition.

**Recommendation:**

Part 2 of the Bill should be paused to allow time for consultation and consideration to develop an improved, more precise definition which relates more closely to partisan campaigning by non-parties and removes general issue-based campaigning from its scope.

Failing this:

**Recommendation:**

Accept the changes made to section 85(3) of PPERA as currently drafted in the Bill for the 2015 election; mitigate the negative impacts of this problematic broad scope and uncertainty for issue-focused campaigners by implementing the package of other recommendations contained in this report.

“Simply returning to the previous form of words does not solve the problem... the assurances given by ministers on the floor of the house that charities campaigning on policy issues will not be affected have not been met.”

*Sir Stuart Etherington, NCVO, letter to MPs on 9th October*

### 2. *Campaigning materials and activities subject to regulation*

Whilst there is a case for reviewing the scope of campaigning materials and activities subject to regulation ahead of elections, the impact of any changes is complex. Detailed consultation and consideration is necessary before any changes are made.

Proposals in the Bill to broaden the scope of activities, especially as staff costs need to be accounted for, are unworkable and would unduly curtail issue-focused campaigning activity.

“We think that Parliament should consider carefully the overall impact on campaigners of widening the scope of regulated activity while reducing the amount that they can spend before they have to register, and reducing spending limits.”

*Letter from Jenny Watson, Chair of the Electoral Commission, to the Commission on Civil Society and Democratic Engagement*

No evidence has been brought forward to indicate that the benefit of making changes ahead of the 2015 General Election would outweigh the risks of undermining civil society engagement in democratic processes.

**Recommendation:**

Retain the PPERA scope of regulating campaigning materials pending proper consultation and consideration of potential changes beyond the 2015 General Election.

### 3. *Registration thresholds*

Lowering the registration thresholds to the levels proposed in the Bill would impose an undue burden on small organisations and those that undertake small scale campaigning, and would deter them from campaigning.

“We believe that it would be perverse to reduce the spending limits and registration threshold in light of the increased number of regulated activities.”

*Scope, evidence to the Commission*

In particular, those lowered thresholds are likely to disproportionately affect vulnerable groups such as people with disabilities and NGOs in Scotland, Wales and Northern Ireland.

No evidence has been brought forward to indicate that the benefit of making changes ahead of the 2015 General Election would outweigh the risks of undermining civil society engagement in democratic processes.

**Recommendation:**

Retain the PPERA spending threshold for regulation pending proper consultation and consideration of an appropriate registration threshold beyond the 2015 General Election.

### 4. *Spending limits*

Lowering the spending cap as proposed in the Bill would severely curtail issue-focused campaigning activity ahead of elections. Lowering the cap at the same time as broadening the scope of activities regulated would have the impact of outlawing swathes of planned campaigning activity ahead of the 2015 General Election.

“Given the fact that what we do is ‘encourage our members to participate in public life’, and that most of our campaigns are on issues which are likely to be of political contention in an election, the Bill could be interpreted to limit our total expenditure to £390,000 if staffing and other costs are taken into account. As Citizens UK’s anticipated expenditure in 2014-5 is £1.5m the impact would be disastrous.”

*Citizens UK, evidence to the Commission*

Excessive third party spending is already guarded against through present PPERA legislation and the Representation of the People Act section 75.
**Recommendation:**

Retain the PPERA spending cap pending proper consultation and consideration of an appropriate cap for the 2015 General Election and beyond.

5. *Constituency limits*

The new constituency cap on the proportion of the national limit that can be spent in particular constituencies is unfair, unworkable and does not achieve the apparent policy aim behind it.

It would heavily restrict much issue-focused campaigning activity on geographically focused policy issues such as hospitals or environmental sites. Furthermore, the diminishing effect on NGOs should not be underestimated or dismissed: with already-stretched resources, many would struggle with the new and onerous regulatory requirements.

“Most non-party campaigners are not of course organised on a constituency basis. Obtaining the information necessary to identify potential cases of non-compliance at constituency level, and particularly the evidence needed to be able to sanction breaches, is likely to be so difficult that these provisions may be unenforceable in practice.”

*Electoral Commission*

If the policy aim is, as the Commission understands, to prevent an organisation from spending the entire limit in just a few constituencies, the cap will not achieve this. Political parties are not restricted as to how much of their national spending limit is spent in a single constituency, and candidate spending is unlimited until just a few months before an election. It would therefore still be possible for organisations to register as parties, stand a single candidate, and put all their limits into campaigning against a particular party or candidates in a similarly low number of constituencies.

To address the perceived issue, restrictions would also have to be applied to political parties, and the Electoral Commission’s concerns that such caps are unworkable in practice would have to be addressed.

**Recommendation:**

Withdraw the proposal for a new constituency spending cap pending proper consultation and consideration as to whether one is needed and is workable for both non-party campaigners and political parties beyond the 2015 General Election.

6. Reporting requirements

The Commission acknowledges the Government’s intention to seek greater transparency in the finances and donations of third party campaigners during election cycles. Many civil society organisations expressed support for this intention in their evidence to the Commission. However, this Commission agrees with the Electoral Commission’s view that it is important that any new reporting regulations for third party campaigners are both ‘workable and proportional’. (Ref: EC HoL 2ndR briefing)

The Commission does not believe that the current proposals contained within clause 32 meet this test. Significant concerns have been raised about their proportionality and workability and they risk having a major impact, particularly on the smallest and most grassroots of campaigners.

“The red tape terrifies me... when you think about how we are funded and the money that goes to fund my position, it’s not right that it would just go to be wasted on red tape.”

*Jennie Bibbings, Shelter Cymru – Wales consultation session*

**Recommendation**

Retain PPERA reporting requirements pending proper consultation and consideration of appropriate reporting beyond the 2015 General Election.

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

The differences in cultural and political contexts in Scotland, Wales and Northern Ireland compared to England have not been considered in proposing the measures in the Bill. The combination of measures including tightening the spending cap and introducing constituency caps makes the inter-relationship with elections in devolved administrations much more challenging for organisations wanting to campaign.

“The impact of the Bill’s changes... 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.”

*Electoral Commission, Lords Second Reading briefing, October 2013*

The disproportionate reduction in spending caps for Scotland is not justified and would severely curtail legitimate non-party campaigning.

The evidence suggests there are particular concerns for Northern Ireland, as a nation emerging from conflict. The most dominant theme of concern at the Northern Ireland consultation session was the perception that NGOs’ participation in democratic processes is one of the key components of the peace process. Voter registration drives, engagement of young people in campaigning and close cooperation with all-party groups were viewed by all present as processes that strengthen the possibility of a lasting peace in Northern Ireland, as these activities provided a real and participative alternative to a return to violence. The prospect that campaigning activity of this sort is to be curtailed – particularly with the £2000 threshold for registration – was seen as particularly injurious.

**Recommendation:**

1) Retain PPERA spending limits and thresholds for registration in Scotland, Wales and Northern Ireland.

2) Specific consultation and consideration of the impacts of any future regulation in Scotland, Wales and Northern
Ireland should happen before any new legislation is brought forward.

3) Particular consideration should be given to the potential impact of the legislation on the stability of post-conflict governance in Northern Ireland.

8. Coalition working

Under the current PPERA regime, organisations which campaign on the same issues are liable to contribute to one another’s spending limits. With the lower registration threshold and spending caps, and the increased range of activities covered by Schedule 3, there is significant concern from a number of groups that their joint working could be severely restricted.

“We are particularly concerned that the potential impact on some of our smaller partners who may... feel that they are effectively silenced during election periods.”

Julian Rosser, Head of Oxfam Cymru – Wales consultation session

Recommendation:

Government should conduct consultation with the Electoral Commission and affected stakeholders to determine how the current rules on coalition non-party campaigning should be amended post 2015.

9. Charities and non-party campaigning

It is right that non-party campaigning is subject to appropriate regulation ahead of elections – whether or not the organisation is a charity – in order to prevent political parties utilising issue-based campaigning for avoidance purposes, and to ensure that non-party organisations or individuals seeking to influence election outcomes are not able to exert disproportionate power through excessive spending.

Before the present Bill came before Parliament, it was assumed that the legal basis for charities and campaigning groups engaging in political activity at the time of an election was relatively clear. What the changes have revealed is that this is not the case. The present threshold at which a group has to register, and the present limits on expenditure, allowed enough latitude for most groups to campaign without any fundamental problem emerging. What has now emerged is that there is a fundamental uncertainty about the law and how it should be applied.

The guidance for charities on how they should work during elections states:

“A charity’s policy position on a particular issue may coincide with, or be more or less similar to, that of one of the political parties. In this case it is entirely acceptable for the charity to continue to campaign on that issue and to advocate its policy as long as it makes clear its independence from any political party advocating the same policy and does nothing to encourage support for any political party.”

The Charity Commission does indeed warn in that guidance that charities should pay attention to electoral law and may have to register with the Electoral Commission as a non-party campaigner. Nevertheless the Charity Commission guidance itself is quite unequivocal, that provided a charity does not in any way endorse a particular party or candidate, they are free to campaign on specific issues and policies.

Charities are clearly subject to PPERA regulation and would be subject to the additional measures in this Bill – despite Government assurances to the contrary. This is confirmed by the Electoral Commission as the regulator.

“[A] charity campaigning on policy issues may 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.”

Electoral Commission briefing for House of Lords Second Reading, 22 October 2013

PPERA section 85 begins with a definition that is broadly in accordance with Charity Commission guidance, but then has sub-clauses which make it significantly problematic.

The definition of ‘Controlled expenditure’ is that which ‘can reasonably be regarded as intended to promote or procure electoral success in any relevant election’ for a particular party or candidate, or parties or candidates who hold particular views (Clause 26 2(b) of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill).

The present Bill goes on to say that a charity or campaigning group may be held to be doing this ‘though it does not involve any express mention being made of any party or candidate’ (Clause 26 2(c)). It then goes on to say ‘it is immaterial that it can reasonably be regarded as intended to achieve any other purpose as well’ (Clause 26 2(a)). This reflects the existing PPERA provisions.

The consequence of these sub-clauses is that almost anything a charity or campaigning group does in relation to advocating policies in the year before an election can be considered from the point of view of its effect on the possible success or failure of particular parties or candidates. The result is a fundamental uncertainty, which can inhibit charities from campaigning for fear of breaking the law.

Thus, there are significant problems of inconsistency between electoral and charity law and the associated guidance. The effects of those inconsistencies are exacerbated by the proposed tightening of spending caps and lowering of the threshold amongst other measures in the Bill. In particular there is a significant reputational risk for charities as a result of the language used in regulation ahead of elections.

“The ‘political’ behaviour of charities is already strictly controlled by the Charity Commission, regardless of proximity to an election. The Legion appreciates the Government’s aim to remove ‘big money’ from politics. We do not believe that charities should be regulated out of fulfilling their charitable objectives.”

Royal British Legion
**Recommendation:**

The Electoral Commission, Charity Commission and a range of charities should be consulted about inconsistencies between the laws and changes needed to regulation.

10. **Equalities**

For universal suffrage to be meaningful, the electorate in its entirety needs to be able to engage in democratic processes. That means not just to be able to physically access an election box, but to have the opportunity to be informed about and help shape the policy positions of parties and candidates.

Evidence to the Commission received raised real concerns about how vulnerable and disadvantaged groups will be affected by this Bill, yet the equalities impact assessment of the Bill was cursory and based on no evidence.

Contributors to the consultation sessions repeatedly raised concerns that the reduction of both spending limits and thresholds for registration may significantly disadvantage the engagement in campaigning of people with disabilities who require increased expenditure for additional support (such as personal assistants or accessible ('Easy Read') materials) to facilitate their participation.

From the Matchstick Girls to the Stephen Lawrence campaign non-party campaigning has been the driver of equal rights in society. Curtailing the ability of this campaigning ahead of elections would be likely to undermine the progress of equality.

“One of the things that should be accompanying these proposals is some assessment of potential impact on various groups including groups defined by protected characteristics in the Equality Act. There is an obligation that flows from general equality legislation in the Equality Act: you’ve got to assess impact.”

*Graham O’Neill, Scottish Refugee Council – Scotland consultation session, 15th October*

**Recommendation:**

The Government consults appropriate groups and experts about the effect of this Bill on vulnerable groups, including those groups defined by protected characteristics in the Equality Act and should publish an evidence-based Equalities Impact Assessment before the next stage of the Bill’s progress.

11. **Human Rights**

The Bill included a declaration from the Leader of the House, Andrew Lansley MP, that the Bill is compatible with the Convention on Human Rights. However, this is open to question. The Joint Committee on Human Rights held an inquiry and published a report on the human rights implications of the Bill (Legislative Scrutiny: Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill, Fifth Report of Session 2013-14), and found that the Bill engages the rights to freedom of expression and freedom of assembly.

The report states that:

“Due to the lack of pre-legislative scrutiny, consultation, and parliamentary time to scrutinise this Part of the Bill, it is difficult to assess whether the specific measures proposed in Part 2 constitute a necessary and proportionate means of achieving the Government’s aim in order to justify any interference with free speech rights and freedom of association.”

Moreover, case law has established that restrictions on non-party campaigning are an interference with the right to freedom of expression under Article 10. Therefore, measures that might restrict such campaigning must be proportionate. In this regard, the Committee’s findings are of considerable import:

“[W]e remain concerned about the possible impact of the broadened list of regulated campaigning activities on third party campaigners’ rights to freedom of expression (in relation to the new regulation of media activities) and to freedom of association (in relation to the new regulation of public rallies and meetings), when considered together with the Bill’s new spending and regulation limits.”

*Joint Committee on Human Rights report*

**Recommendation:**

Retain PPERA thresholds for registration and spending limits pending consultation and consideration regarding changes beyond the 2015 General Election.

III. **Consideration of regulatory changes to non-party campaigning beyond 2015**

A Joint Committee should be established to identify what law changes or issues of consideration are needed in relation to non-party campaigning beyond the 2015 General Election. The Committee should propose a process of consultation ahead of a new Bill being proposed. Any new Bill should be published as a White Paper, be subject to pre-legislative scrutiny and have proper time for scrutiny in both Houses.

**Implementing the recommendations**

Government is asked to implement our central recommendation immediately: to pause Part 2 of the Bill to allow time for consultation and consideration.

If Government does not pause Part 2 immediately, the Committee urges peers to consider the recommendations in this report in tabling and supporting amendments to the Bill at Committee and Report stage to avert harm to civil society engagement in democratic processes. Note the important inter-dependencies highlighted with an asterisk.

It is hoped that the Commission’s further recommendations – relating to consultation and consideration about the ways in which non-party campaigning ahead of elections should be regulated beyond the 2015 General Election – will inform the work of a Joint Committee before Government brings forward any further legislation.
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.

Notes

1 Charities Elections and Referendums, Guidance Update, January 2011, published by the Charity Commission)
1. Introduction

About this report
This is the first report of the Commission on Civil Society and Democratic Engagement. It is being published in response to the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill 2013-14 (“the Bill”).

It addresses three key issues:

i) the state of civil society's engagement in democratic processes

ii) the likely impact of the current draft of Part 2 of the Bill on civil society campaigning activity

iii) what changes to regulation of non-party campaigning might be needed.

The recommendations are intended to inform Government and Parliamentarians in deliberations about Part 2 of the Bill. In addition, it is hoped this report will provide a useful body of evidence to inform wider consideration of the role of civil society in our democracy.

About the Commission
The Bill was given its First Reading on 17th July 2013. Since its publication, concern has been voiced by many areas of civil society. One key area of concern, and a possible explanation for many of the Bill’s other flaws, was the failure by Government to consult civil society prior to first reading.

More than 40 civil society organisations came together to call for the establishment of an Independent Commission to enable them to contribute to consideration of the Bill. It was out of this call that the Commission on Civil Society and Democratic Engagement (‘the Commission’) was born.

The Commission is fully independent and transparent. Commissioners were appointed due to their broad range of experience and expertise in the sector; each has committed to consider the evidence before them in an objective and open-minded way. They have endeavoured to achieve balance in the evidence they collected and have sought to hear views from all sides of the argument.

The Terms of Reference (see Appendix) outline further the agreed objectives of the Commission.

About the views in this report
This report and its recommendations represent the views of the Commissioners. Many organisations and individuals gave evidence to the Commission.

A significant quantity of evidence was received and a high level of consensus emerged from the majority of those who gave evidence on the issues addressed. On this basis, the Commissioners are confident their recommendations reflect both the views of the majority of civil society and the wider public.

Subsequent Commission reports
This report is being published with a view to informing the debate at Committee Stage in the House of Lords. The Commission will consider whether to publish supplementary reports to highlight the extent of progress made towards amending the Bill in line with the Commission’s recommendations.

http://lawcommission.justice.gov.uk/areas/electoral-law.htm
2. Context: civil society engagement in democratic processes

Civil society

‘Civil society’ is a contested term, as is ‘the voluntary sector’. The boundaries between for-profit and not-for-profit, between government and non-government, and between formal and informal associations can be unclear. However, most would agree that some common types of organisation sit at the heart of a healthy civil society — charities, voluntary groups, faith groups, campaigning organisations, clubs and associations. This Commission has sought to apply such a “common sense” definition of civil society, focusing on those kinds of organisations and groups which exist outside of formal politics and for reasons other than the creation of profit.

The National Council for Voluntary Organisations estimate that there are approximately 900,000 civil society organisations in the UK. These include some extremely large membership organisations. The National Trust claims over four million paid-up members, whilst WWF, the Wildlife Trusts, and the RSPB each enjoy in excess of half a million members. Newer, predominantly online organisations, use different definitions of membership focusing on participation rather than the paying of a subscription, but claim similarly large membership figures: the campaigning organisation 38 Degrees claims 1.9 million members, whilst Mumsnet claims nine million visitors per month.

At the other end of the spectrum, many civil society organisations are very small and very local. The National Association for Voluntary and Community Action works with 160,000 local charities and community groups, many of whom work within a very small geographical area and may have few or no paid staff.

Civil society and the democratic process

Campaigning to secure policy change is a long-established practice within civil society groups. Issue-focused, independent campaigning groups located within civil society have been significant at least since the foundation of the Society for Effecting the Abolition of the Slave Trade in 1787, which organised petitions, distributed leaflets and organised campaign rallies in its efforts to influence MPs. The important campaigning role of charities was clarified in the Charities Act 2006. As the Charity Commission states:

“The experience of charities means that it is right that they should have a strong and assertive voice. Often they speak for those who are powerless, and cannot make their case themselves. Sometimes charities confront extreme social injustice, which they will want to tackle head-on. The work that charities do, and the major role they play in public life, is something they should be proud of.”

Contemporary civil society campaigning combines age-old practices and novel features. Rallies, leaflets and petitions remain key tools by which groups communicate with and involve the general public — these would probably look fairly familiar to the founders of the Society for Effecting the Abolition of the Slave Trade. To these have been added new, digitally-inspired forms of campaigning, such as e-petitions and Facebook groups.

Today, civil society organisations, both charitable and non-charitable, play a huge role in the political life of the United Kingdom. The Hansard Society Democratic Audit found that in 2012-13, donating to charities (20%) was the second most common form of political participation after voting. Signing petitions (9%) and contacting an elected representative (8%) came third and fourth — both these activities are most commonly organised and mediated by civil society organisations.

At the very local level, the Cabinet Office Community Life Survey 2012-13 found that 23% of the public had got involved in some form of social action locally in the past year, with campaigning one of the ‘most common’ forms of local social action. The most common activities observed were face-to-face and online discussions, and signing petitions. The same report also noted the strong relationship between campaigning activity and other forms of civic participation such as donating and volunteering, suggesting “participation in one behaviour helps reinforce involvement in others”.

Within this overall picture of growth, there are some significant variations across the UK. The ‘Big Society Audit’ found lower levels of civic participation in the most deprived communities. In Wales and Scotland, devolution has been associated with the growth of new forms of civil society campaigning, focused on devolved assemblies. In Northern Ireland, civil society has been profoundly affected by the legacy of the troubles, with more civil society groups focused exclusively on community activities and relatively low rates of participation in non-partisan collective political action.

Independence of civil society

For civil society campaigning to make a distinct contribution to the democratic process, the sector needs to be independent and pluralist. Voluntary sector organisations derive legitimacy from their connection and commitment to the people and communities they serve. The public expects them to speak up
without fear or favour. As the panel on Independence of the Voluntary Sector puts it:

“This independence – of purpose, voice and action – is what makes the voluntary sector special and enables it to serve the interests of those who might otherwise be left without support or a voice because they lack power or influence.”

This report concerns itself with one particular perceived threat to the independence of the voluntary sector, Part 2 of the Lobbying Bill. But other commentators have raised other threats, which may also have an impact on the scope and legitimacy of civil society’s role in the democratic process.

Some of these concerns stem from a tough financial climate, others arise from Government policy. The Commission has not sought to replicate the work of the Panel on the Independence of the Voluntary Sector, but has noted their work and considered its relevance.5

Civil society and party politics

The growth of non-aligned, civil society organisations has been associated with a decline in participation in more formal politics, particularly the decline in membership of political parties. Membership of the three main parties fell from 3.8% of the UK electorate in 1983, to just 1.0%, or under 500,000, in 2010. The UK now has one of the lowest rates of party membership in the European Union. During this same period, membership of the National Trust almost quadrupled to reach four million for the first time in 2011.6

In 2012 the House of Commons library noted that it is commonly argued that “reduced supply of potential members is based upon the emergence of other political or campaigning organisations that are competing with parties for members”. Whilst the correlation is clear, such causation is hard to prove and others believe that it runs the other way: civil society organisations are enjoying a recruitment boom because membership of the main political parties is a less appealing proposition. The fact that membership of smaller political parties such as the Green Party and UKIP is also on the rise lends some support to this alternative view.7

Evolving regulation of non-party campaigning

Civil society groups seeking to influence the political debate have long been present during election periods – seeking to gain attention for their cause or to persuade candidates to adopt their point of view. On various occasions, legislators have sought to regulate such activity, generally with the stated aim of maintaining boundaries between such nonpartisan, issue-based campaigning and the business of electioneering.

PPERA introduced for the first time national spending limits on electioneering by non-party campaigners – set at 5% of the level of political parties.8

Our Commission has found widespread consensus that partisan electioneering by non-parties during General Elections should be regulated. As the PPRC puts it:

“Campaigning by organisations that are not political parties in the run-up to elections is an important and established part of the UK democratic process. But it is also important that it is regulated effectively, under clear and enforceable rules, to give voters confidence that political campaigning is appropriately controlled and transparent.”

How to define such campaigning so as to distinguish electioneering from ‘bread-and-butter’ issue-focused campaigning – which is the sense of civil society’s contribution to democracy – has proved more controversial. This forms the focus of much of this report.

Notes

1 http://www.charitycommission.gov.uk/Publications/cc9.aspx#1
4 http://www.civlexchange.org.uk/the-big-society-audit
http://www.nicva.org/publications/civicus-civil-society-northern-ireland
6 www.parliament.uk/briefing-papers/SN05125.pdf,
7 www.parliament.uk/briefing-papers/SN05125.pdf
3. Bill timing, consultation and scrutiny

Context

Timing

The Bill was laid before the House of Commons on 17 July 2013, the day before summer recess. Commons Second Reading was the day after MPs returned in September. The Bill is expected to complete its passage through parliament by the end of January.

One reason given for the speed and timing of the Bill is that Government was alerted to changes needed to the law by the Electoral Commission in their June 2013 report, and the legislation needs to be in place a year before the May 2015 General Election.

"Campaigners need time to assess their plans for the run-up to the May 2015 General Election—and, of course, the Electoral Commission needs certainty so that it can give good advice. That is why it recommended opposition to the delaying tactics proposed in the other place."

Lord Tyler

However, the Electoral Commission clarified to the Commission:

"We had made recommendations for change in our own regulatory review, which was published and sent to the government in June before the Bill was introduced.

This review noted that while some of its 50 recommendations, which simplified the rules, could usefully be implemented in time for the 2015 UK Parliamentary General Election regulated period, others would need further work and consultation.

We also made it very clear that widening the scope of regulated third party activity to strengthen the current rules was in the latter category.

It is also our experience as the political regulator that third parties, because of their diverse nature, are very different from political parties, and changes to the rules therefore need careful consideration and testing to avoid unintended consequences."

Consultation

Whilst there had been debate both inside and outside of Parliament about the need for Part 1 of the Bill, Parts 2 and 3 came as a surprise to Parliamentarians, civil society and other directly affected organisations when the Bill was laid before Parliament.

In answers to oral questions, Deputy Prime Minister, Nick Clegg said:

"The parts on third party campaigning were discussed extensively by the three parties in the cross-party funding talks. It was agreed by all parties, and backed by Sir Christopher Kelly in his recommendations on party funding reform, that any change to party funding arrangements should also include some limits on third party campaign groups when they want to influence the political outcome in a constituency or constituencies."

However this was contradicted by John Denham MP, Labour Party lead in the talks who said:

"There were no substantive talks on third party funding at all. Far from discussing the current proposals ‘extensively’ they were never raised, never proposed and never discussed. Indeed, we all agreed that the issues were so difficult and so complex that they lay beyond our powers to examine and resolve them. It was clear that a separate piece of work would be necessary."

There were no White or Green Papers before Part 2 of this Bill was laid before Parliament and nor have any changes to party funding been made. Speaking in the House of Commons 2nd Reading Debate, Conservative MP David Davis said:

"The Bill has not gone through what in my view would be a proper constitutional process and so will of course be subject to unintended consequences all over the place."

The Electoral Commission was not consulted prior to the Bill being tabled.

"We were not consulted on the detail of the Bill’s provisions before the Bill was published, although we were shown some draft clauses shortly before publication... my Board saw the Bill for the first time on the day on which it was published. There was no formal consultation."

Scrutiny

Part 2 of the Bill received less than one day of scrutiny at Commons Committee stage.

Tom Brake MP committed in the Committee stage debate to publish amendments for Report stage a week ahead of the debate. They were published two working days ahead of the debate.
Issues of concern

The lack of due process has made it difficult for Parliamentarians to perform their proper role in scrutinising the legislation. All three relevant parliamentary Committees have raised concern.

The Political and Constitutional Reform Select Committee said:

“This Bill is an object lesson in how not to produce legislation. There was little or no consultation with those affected. There was no pre-legislative scrutiny. And the Bill is now being rushed through the House in a way that indicates a lack of respect for Parliament.”

The house of Lords Constitution Committee said that:

“Effective parliamentary scrutiny matters in relation to every Bill. But it is of manifest importance where legislation is of constitutional significance. The present Bill directly affects the ability of people and organisations to engage with the Government and to participate in political and electoral campaigning… As such, the handling of the Bill to date is a matter of significant concern.”

The Joint Select Committee on Human Rights said that it is:

“...unacceptable that [the Joint Committee on Human Rights] has not been able to report on a Bill that raises significant human rights issues before it has left the first House, on account of the unnecessary speed at which the Bill is being taken... This amounts to an abuse of the Parliamentary legislative and scrutiny process – and this is not the first time that this has happened during this Parliament.”

Timing

The truncated timetable for the Bill has made it difficult for Parliamentarians and civil society to engage with the draft legislation in the normal way.

If the Bill is passed in its current form it will give affected groups a matter of just weeks to make what could be significant changes to their organisations and their campaigning plans. This will be required in order to comply with the rules for May 2014 for the start of the proposed year-long regulated period before the next General Election.

“We have had to put much of our campaign planning for 2014 on hold until we know what the legislation and the Electoral Commission guidelines will be. This is already impacting on our work. We will only have a few weeks from the new guidance being published to May 2014 to plan our campaigns and probably to seek legal advice about what we can and can’t do. It isn’t reasonable.”

Friends of the Earth

Consultation

The lack of consultation has meant that there has been no dialogue with those directly affected about the range of possible solutions to the perceived problems (see Chapter 4). There is a real concern that the Bill reflects a serious lack of understanding about how contemporary campaigning works.

The Electoral Commission has said that part of the Bill ‘may be unenforceable’, stating in their briefing to Peers in advance of 2nd Reading:

“We share the concerns expressed by the Commons Political and Constitutional Reform Committee and the Joint Committee on Human Rights about the timing of the Bill and the absence of pre-legislative scrutiny.”

Scrutiny

Poor drafting has made it difficult for Parliamentarians, experts and civil society to scrutinise the meaning of the Bill.

The lack of clear information – including having access to the wording of amendments in a timely way – has limited campaigners’ ability to seek independent legal advice or to brief Parliamentarians about the impacts on their organisations. When the Government published its amendments just prior to Report stage in the House of Commons, the Association of Chief Executives of Voluntary Organisations said:

“Publishing these amendments today leaves two working days for civil society to consider them before they are debated in the Commons. This rushed timeframe is an object lesson in poor law-making, and will only necessitate further damage-limiting amendments after the next debates.”

Solution

Part 2 of the Bill should be paused to allow for proper consultation and consideration of any law change needed before or after the 2015 General Election. Time should then be allowed in both Houses to allow for proper scrutiny of any proposed law changes.

This solution is supported by the two cross-party Select Committees.

The Political and Constitutional Reform Select Committee unanimously recommended on publication of their report on the Bill:

“The government must withdraw the Bill and allow a Committee of the House to carry out proper scrutiny, with the aim of producing a better Bill for reintroduction within six months.”

The Joint Select Committee on Human Rights recommended:

“We call on the government to ‘pause’ this Bill to allow for further scrutiny and consultation, particularly with the Electoral Commission, the Commission on Civil Society and Democratic Engagement and other stakeholders.”
This solution was also called for by more than 30 NGO Chief Executives of organisations including the Taxpayer’s Alliance, Oxfam, the Woodland Trust and the Women’s Institute:

“We urge you to stop, to listen, and to work with us to find a solution that will protect both the integrity of elections and the vibrancy and diversity of our democracy.”

Implications of the solution
Pausing Part 2 of the Bill would halt the damage to democratic engagement that the Commission believes is inevitable if it is passed.

This would enable appropriate changes to be considered in a measured way as no evidence has been put forward to show that there is a need for urgency. This would also be in-line with the Electoral Commission’s review, which noted that while some of its 50 recommendations, which were chiefly focused on the rules relating to political parties, could usefully be implemented in time for the 2015 UK Parliamentary General Election regulated period, others would need further work and consultation — including its recommendation for review of the range of the activities covered by regulation.

Proper consultation of organisations that undertake non-party campaigning ahead of elections, and relevant bodies including the Electoral Commission, would be necessary.

Time would need to be allocated in both Houses to debate any changes to the law deemed to be necessary following consultation.

Recommendations
Government should pause Part 2 of the Bill to allow for proper consultation and consideration.

A Committee of the House should consult key stakeholders including:

- The Electoral Commission
- The Charity Commission
- Civil society organisations including: charities, campaigning organisations, community organisations, faith groups, think tanks and bloggers

The Committee should identify if any urgent law change is needed before the 2015 General Election and make recommendations for such changes.

Government should ensure time in both Houses to allow for proper scrutiny of any urgent law changes proposed by the Committee, and for any new law to be passed by the end of March 2014.
4. Motivations for changing the law

Context

The Commission considered a range of evidence about the motivation for Part 2 of the Bill from Government and coalition party members.

The Bill impact assessment asks the questions: What is the problem under consideration? Why is government intervention necessary? It states:

“There is a perception of a lack of transparency in the way that third parties campaign in elections including a view that not all expenditure is captured undermining public confidence in the democratic system. In 2010 the largest 10% of third-party organisations spent more than the remaining 90% combined, fuelling a perception of undue influence. Without stronger reporting and spending regulations the behaviours underlying this perception will continue to damage the legitimacy of the system of government.”

Government and Coalition party members outlined four main arguments for the Bill set out below.

i) Proportionality of non-party campaigning compared to party political campaigning ahead of elections

In the Lords Second Reading debate, 22nd October 2013, Viscount Younger of Leckie said:

“Noble Lords will no doubt be aware of the influence that third parties can have on elections. This influence is often very positive, but we believe it should be proportionate. Despite existing controls, there is a real risk of distortion by those who seek to unduly influence the outcome of the election. The Bill takes forward a number of important measures to prevent this occurring.”

“Thirteen years ago, the existing spending limit was fixed in legislation at 5% of the maximum campaign expenditure limit for political parties. This amount was considered quite generous by the organisation that recommended it, the Committee on Standards in Public Life. The committee also noted that groups of third parties could outnumber expenditure by candidates or political parties. That argument remains valid today.”

ii) Transparency and the elimination of ‘front groups’

In evidence to the Commission on 14 October 2013, Lord Tyler said:

“In October 1974 I was a sitting member for the then Bodmin constituency with a majority of 9. In that election in the last few days, a leaflet was distributed to many of the homes in my constituency, attacking all Liberals on the basis that our opposition to apartheid meant that we supported people who planted bombs in South Africa – and on the front page, was the picture of a dead baby. By implication in the run up to the poll in that constituency, I as a Liberal MP was condoning the murder of dead babies.

That particular leaflet was published by an organisation that was subsequently found to be a front organisation, completely independent of any party, but was in a sense precisely the sort of organisation we are now having to deal with.

This particular type of activity has grown quite measurably during recent years, and hence under the Political Parties and Elections Act of 2000, as long ago as that, it was seen to be a problem.”

iii) Keeping ‘big money’ out of pre-election campaigning

Lord Tyler, when giving evidence to the Commission, said:

“There is a very strong case for seeking to improve this situation because otherwise we’re going to go the way the Americans have gone when they go around the regulations, monitorings and controls over political parties and with the Super PACs invest huge sums of money to support candidates and support parties.”

Commission evidence session, 14 October 2013

iv) The demands of the Electoral Commission

In evidence to the Commission on 14 October 2013, Lord Tyler said:

“The Electoral Commission identified back in May that there was a problem about non-party campaigners, that there was an escalating expectation about how much money they would spend.”

and:

“Government as a whole could not ignore the advice they had had from the Electoral Commission, that this issue of non-party campaigning needed to be addressed, because party campaigning is very substantially addressed under the current law.”
Issues of concern

i) Necessity

Whilst various arguments have been made in Parliament and in evidence to the Commission, Commissioners could not identify clear and compelling reasons why the changes contained within Part 2 of the Bill are needed at this time.

There is no evidence in the impact assessment or, to the best of the Commission’s knowledge, elsewhere, to substantiate the concern of a ‘perception of lack of transparency in the way third parties campaign in elections…undermining public confidence in the democratic system’. In fact this Commission received an overwhelming response from the evidence it gathered — albeit in a short period of time — suggesting there is high confidence in third party campaigning actively supporting the democratic system.

From over 49,000 responses to an online survey carried out for the Commission, 83% strongly agreed and a further 14% agreed that ‘charities and campaign groups holding MPs and candidates to account is a vital part of democracy’.

“What are they trying to prevent? What terrible thing has happened that they think this will stop from happening in the future?... Why are we trying to fix a hypothetical situation that you can’t give me any examples of?”

Juliet Swann, Electoral Reform Society Scotland, Scotland evidence session

“Public trust in charities has increased for the third year running. 66% of people now trust charities ‘quite a lot’ or ‘a great deal’ compared to 64% last year. Political parties are still bottom on 8% trust levels, with 57% trusting them very little.”

Sheila McKechnie Foundation evidence to the Commission

This Commission shared the concern of The Political and Constitutional Select Committee which argued:

“We do not believe that the Government has clearly communicated the need for Part 2 of the Bill, or has provided a satisfactory account of the basis on which the new levels for registration and expenditure by third parties have been set.”

Political and Constitutional Reform Committee Report on the Government’s lobbying Bill, 5th September 2013

The Lords Constitution Committee said:

‘An overall concern with Part 2 is whether its provisions are necessary.’

ii) Proportionality of non-party campaigning compared to party political campaigning ahead of elections

In the context of declining membership of political parties and a thriving voluntary and campaigning sector, no case has been made for spending on non-party campaigning to be a reduced proportion of party political spending.

The Commission heard evidence from some organisations voicing a desire for the role of civil society during elections to be an issue for public debate.

“Political party membership is in steep decline yet support for organisations that campaign to change the world, like Friends of the Earth, is growing. It is time to question the assumption that limits to issue-focused campaigning in the year ahead of elections should be capped as a fraction of political party spending. Let’s have a proper debate.”

Liz Hutchins, Senior Political Campaigner, Friends of the Earth England Wales and Northern Ireland

“Democracy is in crisis in our culture and we need to read these proposals within that framework.”

Bishop of Derby, Lords Second Reading Debate

“The public wants legislation that makes politics and corporate lobbying more transparent. Instead this Bill makes almost no change to lobbying rules while punishing civil society for a loss of trust in politics that is not its fault.”

Stephen Bubb, Chief Executive of ACEVO, 4th October 2013

“If you want to buy influence in politics in the United Kingdom, you would not come to a charitable or voluntary sector organisation. You would give money to a political party.”

Alexandra Runswick, Unlock Democracy, London evidence session

iii) Transparency and the elimination of ‘front groups’

No evidence has been presented in parliamentary debates, to this Commission, or in the Bill impact assessment that ‘front groups’ are a growing problem, or even a problem at all.

It is unclear whether any measure in the Bill would address ‘front groups’.

The reduced spending threshold for activity subject to regulation — which is supposed to increase transparency — will introduce a significant extra burden on small organisations which is disproportionate to the transparency benefit achieved.

iv) Keeping ‘big money’ out of pre-election campaigning

Since January 2010 in the United States, Political Action Committees (so-called super PACs) have been able to raise unlimited funds to campaign for a candidate or cause. US electoral rules also allow television campaigning.

However, the Commission heard evidence from Ros Baston, specialist political law solicitor and former Lead Adviser (Party and Election Finance) at the Electoral Commission saying:
“Super PACs independent of political parties are already restricted under the current provisions of PPERA and also section 75 of the Representation of the People Act 1983. Spending is limited, and non-party campaigners can only accept donations for election activity from certain UK-based sources. They must also meet transparency requirements, including reporting to the Electoral Commission who publish the details. Further, political advertising, which drives much expenditure in the States, is banned in the UK.

“I do not consider that the UK is vulnerable to super-PACs at present as they are a creature of their own regulatory environment. In the UK, it is more likely that the desire to influence candidates or parties would involve directly funding them because it is easier and more efficient to do that than to create a third party.”

v) The demands of the Electoral Commission

The Electoral Commission did not recommend any of the central elements of Part 2 of the Lobbying Bill, although in its Regulatory Review of the UK’s Party and Election Finance Rules, it did suggest that the range of activities covered by the rules should be reviewed after careful consideration. The recommendation was not, as some others were, proposed for action before the 2015 General Election.

One of its recommendations was, however, aimed at reducing the regulatory burden for low-spending campaigners:

“Registered non-party campaigners and referendum campaigners that 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.”

The Bill does not implement this, or any other, recommendation in the Commission’s report.

vi) Problems with PPERA

This Commission heard evidence from a number of NGOs raising concern about the existing PPERA legislation including the unclear definition of ‘non-party campaigning activity’ and restrictions on coalition working ahead of elections.

“The definition of non-party campaigning in PPERA was never completely clear. The higher spending thresholds meant it was rarely tested in practice. The new Bill is a good opportunity to clarify it.”

ACEVO, evidence to the Commission

“...while we think the current definition of election material in PPERA is too broad, its impact was limited to those spending more significant amounts of money.”

Countryside Alliance, evidence to the Commission

“The Electoral Commission used the higher spending thresholds...if you weren’t near the threshold or weren’t too close to it, then they weren’t really interested in the definition.”

Lindsey Williams, WCVA – Wales consultation session

Because there was no consultation ahead of this legislation being published, these concerns had not been identified and have not been addressed in the Bill.

Solutions

The elements of the Bill that the Electoral Commission have identified as needed before the 2015 General Election should be consulted on and fresh legislation brought forward, scrutinised and voted on by the end of March 2014.

Other less urgent problems, and problems not identified due to lack of consultation, should be the subject of consultation and consideration with a view to introducing changes after the 2015 General Election.

Implications of the solutions

A delay until the end of March 2014 for new legislation will mean a short period ahead of the start of the regulated period in May 2014 for the Electoral Commission to draft and consult on new guidance. However, as no one has articulated a case for urgent change, it is anticipated that there would be few, if any, changes needed in time for the 2015 General Election.

The overall impact of a shorter timetable for minor law changes would be minimal compared to the impact of the Bill passing in its current form.

Recommendations

Government should pause Part 2 of the Bill to allow for proper consultation and consideration.

A joint parliamentary committee should be established to consult key stakeholders including:

- The Electoral Commission
- The Charity Commission
- Civil society organisations including: charities, campaigning organisations, community organisations, faith groups, think tanks and bloggers

The Committee should identify if any urgent law change is needed before the 2015 General Election, and make recommendations for such changes.

Government should ensure time in both Houses to allow for proper scrutiny of any urgent law changes proposed by the Committee, and for any new law to be passed by the end of March 2014.

Notes

5. The definition of non-party campaigning

Context

Under PPERA

Non-party campaigning to be regulated during elections is defined within PPERA s85. Section 85(2) states that controlled expenditure, in relation to a third party, means ‘expenses incurred by or on behalf of the third party in connection with the production or publication of election material which is made available to the public at large or any section of the public’. Section 85(3) defines election material:

(3) ‘Election material’ is material which can reasonably be regarded as intended to:

(a) promote or procure electoral success at any relevant election for –

(i) one or more particular registered parties,

(ii) one or more registered parties who advocate (or do not advocate) particular policies or who otherwise fall within a particular category of such parties, or

(iii) candidates who hold (or do not hold) particular opinions or who advocate (or do not advocate) particular policies or who otherwise fall within a particular category of candidates, or

(b) otherwise enhance the standing –

(i) of any such party or parties, or

(ii) of any such candidates, with the electorate in connection with future relevant elections (whether imminent or otherwise); and any such material is election material even though it can reasonably be regarded as intended to achieve any other purpose as well.

Under the Bill

The Bill as originally tabled would have changed the definition of controlled expenditure to include a range of activities that were ‘for the purpose of or in connection with’ the promotion of electoral success (as defined under existing section 85(3) as set out above). This proposed change became highly controversial, with the Electoral Commission and lawyers, including Helen Mountfield QC on behalf of the NCVO, highlighting significant shortcomings.

In particular, clause 26 of the Bill removed the PPERA test that, to be regulated, activity must be ‘reasonably regarded as intended’ to achieve one of the aims in section 85(3). This test is essentially objective – what seemed to be intended by the activity? The Government’s new test removed the link to the intent behind the activity completely and the phrase ‘in connection with’ would have left campaigners open to having to account for what others, including parties, decided to do with their material beyond its intended purpose.

Responding to the widespread concern, Government amendments returned the test to align with the existing provisions of PPERA relating to ‘promoting or procuring electoral success’. The Government amendments also removed the ‘otherwise enhancing’ provision at PPERA section 85(3)(b). On this specific deletion, the Electoral Commission has concluded that ‘this change does not materially reduce the scope of what is covered by the Bill’.

Issues of concern

Definition

Because there had been no consultation with organisations affected by non-party campaigning regulation, Government appeared not to be aware of pre-existing concerns about the definition of this activity and the resulting difficulties in applying it, even with the Electoral Commission guidance.

In fact, concerns had been raised by affected organisations ahead of the 2010 General Election. These focused on the uncertainty caused by the definition and questioning as to whether it was appropriate for issue-focused campaigning that is non-partisan to require registration with the Electoral Commission. The Electoral Commission, Charity Commission and over 30 civil society organisations had met to discuss this amongst other concerns at a meeting convened by BWB solicitors in June 2013.

Uncertainty

“We found it very hard to determine which of our activities in 2010 fell within the definition of controlled expenditure. We were not backing any particular candidates, but the EC guidance seemed to suggest that our campaign for a register of lobbyists was caught because some candidates and parties agreed and others didn’t – we registered it with the Electoral Commission on that basis. Thankfully we didn’t have to worry too much about spending limits then because the limits were much higher and only applied to some activities.”

38 Degrees
The Commission heard concerns that retaining the PPERA definition is not sufficient to give clarity on what campaigning would be regulated, and that much issue-focused campaigning would be caught rather than just partisan campaigning activity.

After the Government’s amendments had been tabled, Sir Stuart Etherington of NCVo stated:

“Simply returning to the previous form of words does not solve the problem… In our view, the assurances given by ministers on the floor of the house that charities campaigning on policy issues will not be affected have not been met”.2

“The definition of non-party campaigning in PPERA was never completely clear. The higher spending thresholds meant it was rarely tested in practice. The new Bill is a good opportunity to clarify it.”

ACEVO

Certainty is important in any legislation, but particularly in regulatory rules where sanctions can be imposed. The Commission has noted that there is no requirement – current or under the Bill – for activity to have electoral motives as its primary or one of its main purposes. Indeed, it is explicitly provided in clause 26(5) that it can be intended to be for any other purpose as well, which reflects the current position.

There is clearly a need to guard against avoidance and unenforceability in how the definition is framed. However, it is concerning that so many organisations find it difficult to determine whether or not what they wish to do falls under PPERA, even after reading guidance from the Electoral Commission. This seems to be in no small part due to the fact that activity can be caught even when the intent behind it is chiefly to raise public awareness or mobilise the public to lobby politicians on particular issues.

**Issue-focused campaigning**

Many organisations drew a distinction between partisan election campaigning, which has the primary purpose of influencing an election result, and issue-focused campaigning, which has the primary purpose of influencing policy. The Commission found widespread acceptance that partisan election campaigning by non-parties should be regulated. However, many organisations questioned the purpose and legitimacy of issues-focused campaigning being regulated in the same way.

Although most organisations highlighted uncertainty as to exactly which of their activities fell within the definition, many also expressed a concern that a significant proportion of their issues-focused campaigning almost certainly was caught. These concerns are reinforced by the fact that clause 26(5) makes it clear that campaigning may be caught even where its primary intent is not to promote or procure the success of particular parties or candidates, and that clause 26 (4) makes it clear that activities can be caught even where they do not name a party or a candidate.

This view that the issue-focused campaigning generally carried out by charities and other civil society groups can be covered by the PPERA definition is endorsed by the Electoral Commission. In their briefing for the House of Commons Second Reading, they make it clear that charities – barred by law from partisan campaigning, but permitted to do issue-focused campaigning in line with their charitable objectives – could fall within the scope of PPERA:

“…it can still be hard for campaigners to understand what activity is regulated. For instance, activity by charities (which are not allowed to be party political under charity law) can be covered. A common example is where an organisation invites prospective candidates at an election to say whether they support its views, and then issues a leaflet setting out the names of candidates who have expressed support. This will be controlled as election material if it is distributed to the public, even though those producing the material may argue that their aim is only to comment on public policy, or to influence politicians’ agendas, rather than to persuade the public to vote in a certain way.”

Ros Baston also argues that much issue-focused campaigning is caught, stating:

“The natural meaning of ‘promote’ is to enhance the standing of, or make people think better of, something or someone. The Oxford English Dictionary defines it, amongst other things as ‘to advance the interests of, move to a stronger or more prominent position’ and ‘to advance or actively support (a process, cause, result, etc.); to encourage’. In the specific electoral context, the House of Lords in DPP v Luft; DPP v Duffield stated per Lord Diplock:

‘In my view promoting as distinct from procuring the election of a candidate means improving his chances of being elected.’

The natural construction, therefore, is that issues-based campaigning will be covered where it can be reasonably regarded as intended to encourage voters to look more favourably at candidates or parties who do or don’t support particular policies, as well as support for a specific party or candidates. This is primarily an objective test, and, in simple terms, looks at the likely effect of the activity. So, if something is likely to make people think better of candidates or parties who support that issue, it may well be covered even if there are other reasons for it too, such as awareness raising.”

**Combined effects**

The Commission heard evidence that the problems with the definition would be made much more acute by tightened spending limits and constituency limits.

“The definition of controlled expenditure also cannot be isolated from the list of activities to which it is potentially applied. As the NCVO have highlighted, this has been significantly expanded under the bill… These changes, combined with
Reduced expenditure and limits, are likely to result in more charities and voluntary organisations being required to register with the Electoral Commission, despite their activity remaining non-partisan, and more exceeding the maximum limits on controlled expenditure."

VSO

"If the Bill passes in its current form or only after limited amendments then staff and trustees will need to undertake a cost/benefit analysis to determine whether the onerous reporting requirements associated with registration can be justified by the potential outcomes of campaigning."

Children England

**Solution**

Whilst affected campaigning organisations expressed deep concerns about the PPERA legislation they also indicated that the PPERA existing thresholds and spending limits (coalition working aside) meant that this problematic definition did not greatly undermine civil society engagement in campaigning.

Therefore, pending the development of an improved, more precise definition, the Commission recommends reverting to the current higher PPERA thresholds, limits and the current scope of activities.

However, these concerns are substantial and should be considered further to identify an improved, more appropriate definition. This should set out more precisely the scope of activity to be regulated, taking proper account of the campaigner’s intent. An improved definition would focus more specifically on partisan election campaigning and avoid drawing within its scope issue-focused campaigning which primarily seeks to influence policy, not election results.

**Impact of solution**

A more precise definition of the intent required in order for activities to be regulated would improve campaigners’ confidence and certainty as to whether they would be affected by the regulation. It would also avoid undue constraints being placed on the issue-focused campaigning with which civil society groups are generally associated. This would prevent issue-focused campaign groups being deterred from campaigning, during election periods, as a result of concerns about their capacity to meet the administrative requirements. In addition, it would enable the Electoral Commission to produce clear and effective guidance.

**Recommendations**

1. Accept the changes made to section 85(3) of PPERA as currently drafted in the Bill for the 2015 election, but mitigate the negative impacts of its broad scope and uncertainty for issue-focused campaigners by implementing the package of other recommendations contained in this report.

2. Conduct thorough consultation with a view to developing a more precise definition for future elections, which captures partisan campaigning by non-parties without drawing issue-focused campaigning into its scope.

**Notes**

1 38 Degrees evidence to the Commission
2 Sir Stuart Etherington, NCVO, letter to MPs on 9th October
3 ACEVO evidence to the Commission
5 VSO evidence to the Commission
6. Campaigning materials and activities subject to regulation

Context
At present PPERA regulates only ‘election materials’. The Government has argued that more activities need to be subject to the regulatory framework, in order to increase transparency.

At Second Reading, Tom Brake MP, Deputy Leader of the House of Commons, told the House:

"Only activities that can reasonably be regarded as intended to promote or procure electoral success of a party or candidates will be subject to the provisions in the Bill.

The Government amendments to schedule 3 provide further reassurance and clarity. As we discussed in Committee, schedule 3 takes forward a recommendation from the independent Electoral Commission to align the activities by which third parties incur controlled expenditure with the situation for political parties."

9th October 2013

Schedule 3 of the Bill therefore proposes a significant extension to this list of regulated activities. At Report Stage in the House of Commons this Schedule was amended, with a comprehensive list of activities now to be regulated.

Issues of concern
A significant increase in the activities covered
Considerable concern was raised by a number of organisations including the RSPB, NCVO and 38 Degrees that the cumulative effect of lowering the registration threshold, significantly lowering the spending limits, and increasing regulated activity would be to restrict organisations’ campaigning activities.

The Commission has heard organisations’ fears that counting more activities towards their limits is likely to significantly increase their accountable spending, even if their activities do not change from previous elections. The net effect of lowering spending limits and registration thresholds, whilst including new activities with a high budget cost is that organisations’ freedom of expression will be severely restricted.

Lack of clarity over which activities are covered
The list of activities in Schedule 3 of the Bill is not clearly drafted. For example, it is not at all clear to what extent background research for publications should be included as part of their cost – often a significant sum. Further, inclusion of ‘canvassing, or market research seeking views or information from, members of the public’ goes far wider than the current equivalent provision for political parties which includes only canvassing or market research relating to polling intentions.

The Commission heard evidence from groups concerned that there was no definitive answer as to whether hustings could be included.

"In 2010 VSO ran several regional hustings events with candidates, where we sought their support to commit to spending 0.7% of international development spending on aid. Under the proposed legislation as it stands, we would be deterred from carrying out these activities."

VSO, evidence to the Commission

"Hustings are a longstanding Christian tradition of enthusiastic engagement in public life...our fear is that many churches when faced with the new legal risks and uncertainty will decide that it is no longer viable to hold a [hustings] meeting."

Christian Institute, evidence to the Commission

It is important that regulatory legislation must leave little room for doubt and this is not the case with Schedule 3. It is highly likely that many other practical and unintended consequences will arise from this poor drafting. Therefore much more time, consultation and thought is required before making such fundamental changes.

Staffing costs
The existing inclusion of staffing costs within regulated activity is in contrast to the approach taken for political parties, where there is no such requirement.

The Electoral Commission, reporting on its regulatory review in June, made a recommendation in relation to widening the scope of PPERA to include staffing costs for political parties. However, they recognised that this would not be straightforward and required more consideration due to the complexity involved in its introduction.

"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."

Electoral Commission report, paragraph 1.22

In evidence, various witnesses made the point that whereas (by their nature) the entire workforce of a political party is...
working towards an election goal, third parties often have significant other functions such as welfare provision or non-Government focused campaigning.

“For example, it could be argued that support staff, such as I.T technicians, do work related to election campaigns, because they provide parties with the tools to engage electronically with voters.”

Electoral commission report paragraph 4.13

The Electoral Commission report outlined why staffing costs were explicitly excluded from the definition of campaign spending by political parties and referendum campaigners in PPERA:

“Objections to their inclusion included concerns that the list of items covered was too long, complex and burdensome, and that the provisions would be disproportionately burdensome on smaller parties. As a result, directly employed staff costs were explicitly excluded from the definition of campaign spending by political parties and referendum campaigners in PPERA as enacted.”

If the inclusion of staff costs is so complex and burdensome for political parties, it is difficult to understand why they have been, or should continue to be, included for non-party campaigners, which engage in a much more diverse range of activities.

“Incorporating a wider range of activities and staff costs, at the same time as lowering the thresholds and caps could require significant new reporting procedures, including time sheets to account for staff time connected with campaigns and systems for recording spending in our regional offices. This will siphon money away from conservation work and amount to an unnecessarily onerous regulatory burden.”

RSPB briefing

“If full staffing costs are included in controlled expenditure, we estimate that we would need to drastically wind down the time spent by our national campaigning team for the year ahead of a General Election and operate with less than one member of staff able to campaign on geographically focused issues such as local woodland threats in key constituencies.”

Woodland Trust evidence to the Commission

for the time being, since no evidence has been offered by the Government that there is a need for urgency.

If the list of activities is to be widened in the interests of greater transparency, it is the Commission’s view that the spending cap should be increased appropriately to reflect these new activities.

The inclusion of staff costs should be reviewed to address the issues highlighted by the Electoral Commission in the context of political parties, and by the evidence submitted to the Commission.

Implications of the solution

The existing rules covering election material mean that the most common and costly elements of non-party campaigning are already regulated and subject to transparency requirements under PPERA. If it is appropriate to widen the scope of the rules to other activities, this would be achieved in a way that ensures that the law is clear, sensible and does not risk substantial unintended consequences.

Recommendation

Retain the PPERA scope covering campaigning materials only, pending proper consultation and consideration of potential changes to and beyond the 2015 General Election.

Notes

7. Registration thresholds

Context
The Political Parties, Elections and Referendums Act 2000 (PPERA) requires non-party campaigners spending above defined thresholds during election periods to register with the Electoral Commission. At the 2010 General Election, 33 non-party campaigners registered, and ten of them did not report any spending\(^1\).

Clause 27(1) of Part 2 of the Bill drops these thresholds, from:
- £10,000 to £5,000 in England
- £5,000 to £2,000 in Scotland, Wales and Northern Ireland

Government estimated the impact of the new thresholds saying:
- “This would require a minority of unregistered third parties to register and thus become subject to the regulatory framework as a whole.
- This will increase the transparency of the overall regulatory framework as smaller spenders would also be brought into it.”

Lord Tyler, speaking in favour of clause 27(1) at Second Reading in the House of Lords, maintained that:
“...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.”

Issues of concern
The new thresholds represent a significant reduction. Taken alongside the widened scope of regulated activity, and in conjunction with increased reporting requirements, it seems clear that many more organisations will now reach the thresholds unless they stop their campaigning activity entirely.

It is the Commission’s view, based on concerns raised by organisations in all three nations, that the £2,000 threshold in Scotland, Wales and Northern Ireland is particularly low. Geographical distance from Westminster means base-level activity such as staff travel to London could require registration. The application of the same threshold level in Scotland, Wales and Northern Ireland also seems arbitrary, considering the differences in population size.

“We believe that it would be perverse to reduce the spending limits and registration threshold in light of the increased number of regulated activities.”

Scope\(^2\)

The question of whether organisations will be prepared to register has not been adequately explored. The administrative cost of registration, increased reporting and internal controls were cited by a number of organisations submitting evidence to the Commission as both intimidating and potentially unworkable for organisations with smaller or non-professional staff teams.

One outcome of reduced thresholds, therefore, is likely to be an end to activity by smaller organisations and local groups who are put off campaigning by the burden of registration. The Commission views this as a significant risk which would have grave implications for democratic participation.

The Bill’s impact assessment estimates that between zero and 30 more campaigning bodies will need to register in 2015 than in 2010, and that the cost of compliance will be in the region of zero to £800.\(^3\) The Commission agrees with the Electoral Commission that “this appears to be likely to be a severe under-estimate on the basis of our discussions with campaigners”.\(^4\)

In addition, it is also clear from evidence taken, that alongside a number of organisations that will cease campaigning activity to avoid registration, a large number feel they will have to register for the first time. This is because the thresholds, in the context of an uncertain definition of election campaigning (see chapter 5) and an expanded range of controlled activities (see chapter 6) seem unavoidable.

Solutions
This Commission agrees with both
- The Commons Political and Constitutional Reform Committee:
  “In the absence of any evidence that there is a need to lower the threshold for third parties to register with the Electoral Commission, we recommend that the Government revert to the existing levels.” [Ref, p.29]
- and the Electoral Commission:
  “The threshold changes will... create significant new burdens for small-scale campaigns and for us as the regulator. It is important that regulatory controls on non-party campaigning should be proportionate to the scale and impact
of campaigning. Our view is that... the current registration thresholds should be restored unless the government can show the need for the reductions.”

The above recommendations align overwhelmingly with evidence submitted to this Commission.

Parliament should therefore restore the current regulation thresholds as laid out in PPERA, unless the Government can demonstrate a clear and accepted need for the reductions.

Implications of solutions

An appropriate balance between transparent regulation of campaigning activity, and freedom to carry out campaigning activity without incurring burdensome regulation, would be maintained.

Furthermore, in light of the evidence, Parliament should consider reviewing the implications of introducing higher – not lower – spending thresholds.

Recommendations

Retain the PPERA spending threshold for Electoral Commission regulation pending proper consultation and consideration of an appropriate threshold beyond the 2015 General Election.

Notes

2 Scope evidence to the Commission

Case study from Northern Ireland (Amnesty International)

“One example was dealt with in the Good Friday Agreement fifteen years ago – the commitment to the Bill of Rights for Northern Ireland. It’s been sitting on the UK Government’s table for five years now. Our ‘Time to Deal with the Past’ report is about establishing a new overarching mechanism to investigate past human rights violations by state and non-state actors. Again, legislative responsibility and international legal responsibility clearly sits with the sovereign government in London. We’re at the moment organising an event at Westminster to bring that report to peers and MPs over there. That’s going to cost a certain amount of money in bringing the victims and bereaved families over to meet the Westminster politicians, organising the event and producing the materials around it. We’re going to be hitting that threshold really really quickly, and then it’s a case of having to enter into reporting mechanisms that really draw on our resources. Our funding comes from our members by and large, £5-a-month types of subscription model, so we’re not a wealthy organisation and we don’t have a lot of money to lavish on these campaigns in the first place. But we’re still going to cross that threshold quickly.”
8. Spending limits

Context

Spending on non-party campaigning is currently regulated under The Political Parties, Elections and Referendums Act 2000 (PPERA).

In its report of June 2013, the Electoral Commission made clear that any widening of the scope of regulated activity should be accompanied by changes to spending limits to ensure reforms do not restrict that activity.

“The spending limits on PPERA non-party campaigning would need to be reviewed if the scope of activities covered by the rules is widened. The Bowman case on local non-party campaigning highlighted the need to ensure that spending limits on non-party campaigning are sufficient to enable freedom of expression.”

(Ref Electoral Commission report paragraph 4.48)

The Bill reduces the total amount that non-party campaigners can spend in the year before a UK Parliamentary General Election between 60 and 70%, from:

- £793,500 to £319,800 in England,
- £108,000 to £35,400 in Scotland,
- £60,000 to £24,000 in Wales, and
- £27,000 to £10,800 in Northern Ireland.

The regulated period at UK General Elections covers the 12 months prior to the election date. The existing spending limits will continue to apply at elections to the Scottish Parliament, the National Assembly for Wales, the Northern Ireland Assembly and the European Parliament, although the lower thresholds and widened scope of regulated activity will apply.

These limits cover spending on defined activities that ‘can reasonably be regarded as intended to promote or procure electoral success’ for parties, candidates or groups of candidates. This includes campaigning activity on policies and issues, even if the activity also aims to do other things, or doesn’t mention any parties or candidates. All relevant costs must be contained within the new limits, including staff costs.

Pre-existing rules on non-party campaigning mean that where several organisations working in alliance or coalition incur joint expenses, the total spending counts against each individual organisations’ spending limit.

Issues of concern

Contrary to the spirit of the Electoral Commission’s recommendation, the Bill significantly cuts spending limits whilst broadening the scope of activity subject to regulation.

Evidence submitted to the Commission indicates that lowering the limits, alongside the expansion of activity subject to regulation, will unduly curtail freedom of expression.

Organisations in Scotland, Wales and Northern Ireland in particular, due to the significantly lower limits there, reported concerns that their activity will be curtailed.

“We regularly produce manifestos, we do hustings events, sometimes alone and sometimes in partnership with other NGOs, we do pledge-card activity, the doorstep challenge for our activists to use. So all of that, nevermind the staff time, just the production of materials… it’s going to be cutting close [to the limit]."

Amnesty International, NI

“We won’t be able to do any of the things we’ve done previously in the run-up to elections.”

NUS Scotland

Evidence submitted to the Commission suggested both an uncertainty among affected organisations about which of their activities would fall under the scope of the Bill, and the implications of this regarding their ability to be sure they can stay within the spending limit.

“We lobby around UK general elections and devolved elections on a range of issues, some on international human rights issues, Afghanistan and the impact of women’s rights – issues of national concern like the threat to Human Rights Act, which is obviously quite party-political, because one party is proposing to repeal it and the other two main GB parties are pledging to defend it. Does that bring us into partisan political activity because of our stance on the Europe Convention on Human Rights and defending the UK rights framework?”

Amnesty International, NI

“Given the fact that what we do is ‘encourage our members to participate in public life’, and that most of our campaigns are on issues which are likely to be of political contention in an election, the Bill could be interpreted to limit our total expenditure to £390,000 if staffing and other
costs are taken into account. As Citizens UK’s anticipated expenditure in 2014-5 is £1.5m., the impact would be disastrous.”

*Citizens UK, evidence to the Commission*

**Solution**

In order to harmonise with the recommendations of the Electoral Commission, if the scope of regulated activity is widened, then Parliament should consider raising the limits on spending – not lowering them – to ensure freedom of expression.

Particular attention should be paid to the limits on spending in Scotland, Wales and Northern Ireland, bearing in mind the policy contexts of devolution and latterly, a post-conflict society.

“Our discussions with campaigners since the publication of the Bill indicate that the new limits, particularly outside England, may result in a significant reduction in the activity of certain campaigners when taken together with the wider range of regulated activity, compared to what they would have undertaken in the past. In the light of the Bill’s revised definition of regulated spending, we expect that Parliament will now want to consider what spending limits provide the appropriate balance between freedom of expression and controls on undue influence.”

*Electoral Commission House of Lords 2nd reading briefing p5*

As the types of activity covered differs between the rules for political parties and for non-party campaigners and may well continue to do so due to their different natures, it should not be assumed that the only way of assessing non-party limits is by reference to the limits for parties.

**Implications of the solution**

A higher limit on non-party campaigning expenditure to reflect changes in the scope of third party campaigning would help to ensure that the right to freedom of expression is maintained.

**Recommendations**

Retain the PPERA spending cap pending full consultation and consideration of an appropriate cap beyond the 2015 General Election.

Encourage a national debate about the relationship between civil society issue-focused campaigning and party political campaigning and whether the former should be restricted by the latter.
9. Constituency limits

“Most non-party campaigners are not of course organised on a constituency basis. Obtaining the information necessary to identify potential cases of non-compliance at constituency level, and particularly the evidence needed to be able to sanction breaches, is likely to be so difficult that these provisions may be unenforceable in practice.”

Electoral Commission, Briefing ahead of House of Commons Second Reading

Context
There are currently no restrictions on how much of the national spending limit can be spent in individual constituencies, either for political parties or for non-party campaigners.

Clause 28 of the Bill introduces such a limit for non-party campaigners only, where the spending has an effect in some constituencies but no significant effect in others. These limits are:

- £9,750 in each constituency in the year before a UK Parliamentary General Election, of which
- £5,850 can be spent in the four to five weeks between the dissolution of Parliament and the election

The new limits will apply only to UK Parliamentary General Elections, not to devolved elections in Scotland, Wales or Northern Ireland – unless the devolved election overlaps with a UK General Election, in which case clause 28 will need to be considered.

The Bill impact assessment states that the reason for the new constituency cap is to “reduce the perception of undue influence”.1

The impact assessment also explains how the figure was calculated:

“As there is no data presently available for third party spending by constituency the impact of this has been estimated by drawing on the expenditure returns from England, Scotland, Wales and Northern Ireland, the only current geographies for which this information is recorded. The smallest reporting geography in the UK, Northern Ireland, has 18 constituencies, but only one third party organisation in 2010 spent more than £9,750. As Northern Ireland may not be representative of the whole of the UK however we assume, for the higher limit, that 50% of campaigns would be affected by this measure because 50% of distinctly recorded geographical campaigns across the whole UK are known to spend over £5,850 in 2010.”

It has also been suggested that the changes are needed to address a ‘loophole’ in the current rules, which would allow a non-party organisation to spend the entire limit in just a few constituencies on truly partisan campaigning. The Commission heard from Lord Tyler that, in 1974, an emotive and inaccurate leaflet was delivered in his constituency which may have influenced the outcome and cost him his seat.

The Commission notes that the same “loophole” applies to political parties – a party with just two candidates is entitled to spend up to £810,000 in England. In addition, spending promoting individual candidates (rather than the party generally) is unlimited until about five months before Parliament is dissolved, after which each candidate can spend in the region of £40,000. These sums do not count against the national party spending limit. If Parliament does not run to a full term, candidate spending only applies after dissolution – about three or four weeks before polling day.

Issues of concern

Necessity

No evidence has been brought forward to support the claim that there is a public ‘perception of undue influence’ related to non-party activity in a constituency, or that the current combination of PPERA with the constituency-focused controls contained in the Representation of the People Act 1983 is ineffective.

The only data referred to in the Bill’s impact assessment – for Northern Ireland – states that over the 18 Northern Irish constituencies in 2010, only one organisation spent more than £5,850 in all of them “suggesting a limited concentration of spending”.2 Put simply, there is no evidence that campaigners are currently exploiting the existing law by focusing their spending on particular constituencies.

Notwithstanding this, the Commission recognises that there remains a theoretical possibility that a partisan campaign, run by a non-party organisation, could spend up to the national spending limit in a very small number of constituencies – regardless of how unlikely this is to happen in practice. However, it is notable that, in pursuing this theoretical exploiter of loopholes, no consideration at all appears to have been given to how the proposals would impact the very
real participation of thousands of groups across the United Kingdom. Similarly, no consideration appears to have been given to the fact that this loophole equally applies to political parties – and so targeting non-parties alone will not close it.

**Importance of geographically-specific, issue-focused campaigning**

The Commission heard evidence from around the country about campaigning specific to geographical areas – on issues as diverse as local hospitals, nature reserves and HS2.

“Political Parties and candidates seek power by asking the electorate to endorse certain positions which those parties or candidates adopt on local and national issues. Many of these proposals have implications, direct or indirect, for rural Britain and our members and supporters. We believe it is a fundamental right in a free society for anyone, or any organisation, to comment on the policies or opinions of candidates and parties, which are a matter of public record. This is not the same thing as endorsing candidates or parties or prejudicing those who hold contrary opinions. It is about informing the electorate as to what policies we do, or do not, favour.”

*The Countryside Alliance*

The intention of this activity is to have an impact on a particular policy outcome for the local community – any impact on a candidate or party is secondary.

“A core activity which could be negatively affected is our WoodWatch programme, where, often with local community and political support, we fight to save woodland under threat from development. A current example is our campaign to save Smithy Wood in Sheffield... This might not only be hit by a reduction in constituency-level spend limits, but we would also be required to register with the Commission if we wanted to host a public meeting, liaise with the local media, or conduct polling to gauge local opinion on the issue.”

*Woodland Trust*

Campaigning which has local resonance or relates to local issues is often particularly effective in engaging more people in the political process. By constraining civil society groups’ ability to organise in geographically specific ways, the constituency cap risks curtailing some of the most vibrant and appealing forms of democratic participation.

**Constituency-level caps are likely to be unworkable**

The Commission heard wide-ranging concerns about the unworkability of constituency caps.

Campaigning activity does not tend to fit neatly within constituency boundaries. This Commission agrees with the Electoral Commission’s assessment that:

“Most non-party campaigners are not organised by Parliamentary constituency.”

This means that the administrative impact of having to allocate spending against each constituency would be significant, requiring new record-keeping and accounting processes that may well cut across the existing ones. This is very likely to have a deterrent effect on campaigns with limited resources, which form the majority of those affected.

Some campaigns can be based in one constituency, but could be seen to have influence in another. For example, the Save Lewisham Hospital Campaign targeted a decision made by Jeremy Hunt, whose constituency is in Surrey. In addition to having the activity regulated in the constituencies served by the hospital, it is possible that the activity would also be counted in Jeremy Hunt’s own constituency.

The Commission heard further concerns about the burden of dealing with allegations that organisations had breached the rules, including from opposing campaigns.

“Campaigning organisations will spend more time silencing each other than campaigning for our objectives.”

*Electoral Reform Society Scotland*

The Electoral Commission has expressed serious concerns about both the scale and enforceability of the caps:

“[We expect] 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.”

The Electoral Commission has yet to receive clarity from Government on enforcement:

“We have asked the government to clarify how it expects us to enforce the new constituency controls, and in particular whether it anticipates that enforcement will take place ‘after the fact’ as is usual with breaches of the rules on election campaign spending or that we should be in a position to take action more quickly. We have not yet had a conclusive response...”

**The policy aim would not be achieved**

If the policy aim is, as the Commission understands, to prevent an organisation spending the entire limit in just a few constituencies, the cap will not achieve this. As political parties are not restricted as to how much of their national spending limit is spent in a single constituency, and candidate spending is unlimited until just a few months before an election, it would still be possible for organisations to register as parties. They could stand a single candidate, and put all their limits into campaigning against a particular party or candidates in a similarly low number of constituencies.

This may appear farfetched to some, but it is no more so than the scenario suggested by the Government as its justification for the change. Both scenarios are, at present, hypothetical.

Without greater controls on constituency spending by parties and candidates, the potential for large spending organisations
to intervene disproportionately in specific constituencies will remain.

Solution
Clause 28 is so ill-considered that it should be withdrawn: not only would local campaigning be significantly damaged but it does not achieve the apparent aim. If Parliament wishes to pursue the policy aim of preventing excessive spending in small numbers of constituencies, it should do so after proper consultation and in conjunction with achieving a similar preventive effect for political party and candidate spending.

Implications of the solution
Given that no evidence has been presented to the Commission or made available by government either during debates or in the Bill’s impact assessment to substantiate that the theoretical issue is becoming an actual one, the Commission concludes that it will not be a significant concern at the next election.

Recommendations
Parliament should remove the proposal for a new constituency spending cap, pending proper consultation and consideration as to whether one is needed or is workable for both non-party campaigners and political beyond the 2015 General Election.

Notes
10. Reporting requirements

Context

Reporting requirements for non-party campaigners are currently regulated under PPERA, under which campaigners have to report donations towards regulated spending after polling day.

Under clause 32 of this Bill, registered third party campaigners must report donations every three months in the year before a UK Parliamentary General Election. Reports will cover:

i) donations over £7,500
ii) repeat donations from the same source over £1,500
iii) the total value of other donations

After the dissolution of Parliament, registered campaigners will have to report each week on donations over £7,500.

Government’s justification for this additional reporting is that “donations information of all registered third parties will be more transparent as it will be reported in a more timely manner”.

The Bill’s impact assessment estimated that these changes would incur a “small administrative cost” for registered campaigners. The time allowance estimations allow two hours of administration time, and a further four hours for separate reporting on pre-poll donations.

The Bill also makes changes to reporting procedures after polling day. Under the current rules, registered campaigners have to report spending and donations three months after polling day, or six months after polling day if spending exceeds £250,000.

Under clauses 28 and 29 of the Bill, these reports will have to detail:

i) spending in particular constituencies
ii) spending in support of a single political party

The Bill’s impact assessment estimates that these reporting changes will incur a “small administrative cost”, estimated as four hours for familiarisation with the legislation, a day for presenting accounts, half a day for publication and two further hours to allow an accountant to check presentation.

Issues of concern

The Commission acknowledges the government’s intention to seek greater transparency in the finances and donations of third party campaigners during election cycles. Many civil society organisations expressed support for this intention in their evidence to the Commission.

However, the cumulative effect of lower thresholds and a higher reporting burden was concerning to many of the organisations who gave evidence to the Commission.

“The red-tape terrifies me... [if] you think about how we are funded and the money that goes to fund my position, it’s not right that it would just go to be wasted on red tape.”

Shelter Cymru

“Further regulation only adds to the administrative burden charities have to bear. Even the Legion, a relatively large charity, does not have a dedicated administrative function within its campaigns team.”

The Royal British Legion

Particularly in Scotland, Wales and Northern Ireland, the Commission heard evidence that small organisations with one or two staff members would be unable to fulfil the reporting requirements attached to registration, and would choose to stop their activity instead.

“For a lot of organisations in Scotland, who are very small, but punch above their weight and work very hard, they couldn’t afford the time to do this. They would just fold.”

Electoral Reform Society Scotland

Furthermore, federated organisations such as Mind and Age UK have expressed concerns that their structures would mean particularly burdensome reporting, with each part of the organisation making separate returns to the Electoral Commission.

The Commission questions the reliability of the estimates given in the Bill’s impact assessment, given the fears expressed by organisations around the country. This Commission agrees with the Electoral Commission’s assessment that:

“On the basis of our experience of the effort that campaigners need to make to comply with the current rules, and of our discussions with organisations that may be affected by the new rules, we do not think these estimates are credible.”

The Commission notes that the Government has not offered evidence of public concern or a perception of wrongdoing related to the current reporting regime for non-party campaigners. It also notes that the Electoral Commission’s Regulatory Review of the UK’s Party and Election Finance Laws contained numerous recommendations to reduce the administrative burden on small organisations, including both parties and non-parties.
The Commission therefore questions whether it is sensible to impose new requirements on non-party campaigners without due consideration or consultation.

Solution

This Commission agrees with the Electoral Commission’s view that it is important that reporting regulations for third party campaigners are both “workable and proportional”. The Commission does not find that the current proposals contained within clause 32 meet this test. Significant concerns have been raised about their proportionality and workability, and they risk having a profoundly negative impact, particularly on the smallest and most grassroots of campaigners. Clause 32 should be withdrawn, and fresh proposals developed following the proper process of consultation and consideration.

Implications of the solution

Withdrawing the new requirements contained within clause 32, pending the development of fresh proposals, would mean that reporting requirements for non-parties during the 2015 General Election would remain as they have been in the past two elections, and would not be in line with that of political parties.

Recommendation

Withdraw clause 32 and revert to the existing reporting regime for non-party campaigners pending consultation and the development of fresh proposals.

Notes

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

Context
Special consideration is needed for regulations of issue-focused campaigning activity in Scotland, Wales and Northern Ireland — not just due to the interrelationship of UK Parliamentary General Elections with elections to devolved administrations, but also to account for significant differences in the political and civil society context.

Disproportionate changes to spending limits and thresholds for registration in Scotland, Wales and Northern Ireland

The Bill proposes cuts in the overall spending limits in Wales and Northern Ireland which are roughly proportionate to that in England (59.6%):
- 60% cut in Wales, to £24,000
- 60% cut in Northern Ireland, to £10,800

The Bill proposes a disproportionate cut in Scotland, relative to the cut in England:
- 67.2% cut in Scotland, to £35,400

Additionally, the Bill proposes a disproportionate cut in the threshold for registration in Scotland, Wales and Northern Ireland as compared to England:
- The threshold will drop in England by 50%, from £10,000 to £5,000
- The threshold will drop in Scotland, Wales and Northern Ireland by 60%, from £5,000 to £2,000

Government Minister Tom Brake justified the reduced limits at Commons Report stage, saying:

“The Government wanted to arrive at some straightforward figures — £5,000 and £2,000 in the respective nations — and we felt that given the size of those nations, spending £2,000 had a significant impact on the election campaign. Therefore, from a transparency point of view, we felt this was important to allow people to see who was actively campaigning in support of a party or candidates.”

Political and civil society context
Evidence submitted to this Commission from organisations based in Scotland, Wales and particularly Northern Ireland suggested that the Bill’s impact will be disproportionately felt in those nations, given the particularly prominent role played by charities and campaigning organisations in devolved political and civil society contexts.

These concerns are reflected by The Electoral Commission, who suggested that:

“… the impact of the Bill’s changes … 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.”

Interrelationship with devolved administration elections

Part 2 of the Bill will apply fully in Scotland, Wales and Northern Ireland during UK Parliamentary General Elections.

During elections to the Scottish Parliament, the National Assembly for Wales, and the Northern Ireland Assembly, the spending limits will remain as laid out in Schedule 10 of PPERA, the relevant period for which is four months prior to the date of the election:
- £78,500 in Scotland
- £30,000 in Wales
- £15,300 in Northern Ireland

However, during devolved elections the Bill adds the following regulations:
- Clause 26 and Schedule 3: the widened scope of regulated spending
- Clause 27: the reduced thresholds for registration
- Clause 31: the new notification requirements for ‘relevant participators’ when registering with the Electoral Commission

Issues of concern

Spending limits and thresholds for registration in Scotland, Wales and Northern Ireland

The Commission heard concerns from organisations in all three nations about the new limits and thresholds for regulation.

A number of NGOs in Northern Ireland stated that the registration threshold of £2,000 would significantly affect their abilities to campaign in their usual way on a range of issues. For example, their activities require travel to Westminster from Belfast, including only one day’s prep time, I reckon from my experience it’s...
about £1850 including staff time. So you can see how quickly it adds up."

NICVA

According to the NGOs present at the consultation session, the requirement to register with the electoral commission would result in many smaller NGOs ceasing their usual campaigning activities during the pre-election period.

In Wales, the difference in threshold between Welsh and English organisations was considered both arbitrary and disproportionate. On the subject of the differential impact on student union activity in Wales and England, NUS Wales said:

“If you compare Cardiff Union to Bristol, not far apart, comparable university size, comparable union size, now one will have a threshold of £5,000 and the other will have a threshold of £2,000."

NUS Wales

Of further concern in Wales was the impact of dual language activity. The reduced limits are considered too low to absorb the cost of large-scale translation and printing in both Welsh and English without curtailing activity.

In Scotland, the £35,400 limit was considered similarly unfeasible:

“I’m based in a team of policy officers and there are about ten of us, and you could argue that a lot of our time is based on advocacy, so that’s over the limit already.”

RSPB Scotland

Evidence submitted to the Commission also suggests that civil society organisations in Scotland, Wales and Northern Ireland often work in coalition.

Organisations expressed repeated concerns that lower limits combined with the regulations on joint working would curtail coalition activity (see chapter 12) in Scotland, Wales and Northern Ireland faster than similar activity would be curtailed in England.

“You could have quite a large unconstituted group as a coalition. So for example, you know the M4 relief road might come back again on the agenda and there’ll be loads of people on that one, which also then raises the issues about the coalition working and everyone’s requirement to account for everybody else. I mean that would be a nightmare.”

WCVA

“I think Oxfam will be in a really difficult position here, I look around the table and I think we’re in coalition in some form with every other organisation here, either through the End Child Poverty Network or Cuts Watch Cymru or Stop Climate Chaos Cymru or the World’s International Development or Future Generations Bill or work within with WCVA, so... we would have to take on board the total expenditure for each of those.”

Oxfam Wales

Political and civil society context

From the contributions to the consultation sessions, it would appear the Government has not given due consideration to the impact of the Bill within the devolved nations, given the specific political and civil society contexts. It is certainly the case that differences in the contribution of issue-focused campaigning activity to established, and at times formalised democratic processes in England, Scotland, Wales and Northern Ireland were not addressed in the Bill’s impact assessment.

Organisations in Wales overwhelmingly felt that their unique role within the Welsh context was not adequately recognised:

“[Civil society] is basically part of getting devolution of Wales... building a strong civil society and strong participatory democracy was really key to legitimising that close [referendum] vote and creating institutions in Wales."

Friends of the Earth Wales

Specific concerns for Northern Ireland

Specific concerns around the impact of the Bill in Northern Ireland must be highlighted. Evidence taken from UK-wide organisations reflected concerns felt on behalf of Northern Ireland:

“We all know about the polarised nature of politics in Northern Ireland but the voluntary sector over there play a particularly keen role in facilitating those debates and so we would be particularly concerned about the impact of this Bill in Northern Ireland.”

Unlock Democracy UK

Evidence taken from a range of organisations based in Northern Ireland suggested particular problems with curtailment of civil society within a post-conflict society.

“Civil society is a key check and balance in any country but here we don’t have a political opposition. We have a mandatory coalition. So civil society here is all we’ve got in terms of holding decision-makers to account. Ministers try to hold each other to account but it results in a very sectarian patchwork... On top of that [there’s] a risk aversion out there that you find in all post-conflict societies. There’s a bit of fear around already about challenging and speaking out... Those things together make the situation here more severe.”

Community Foundation Northern Ireland

Normalisation of the political process in Northern Ireland is not yet widely considered to be complete. Evidence presented to the Commission suggested that the role of civil society in the political process in Northern Ireland is therefore uniquely relevant.

“Political discourse between parties in Northern Ireland is often still about culture and flags. All the issues of today – young people, disabilities,
fracking – who is standing up for the issues that matter to ordinary people? It’s the voluntary sector. True dissent comes from civil society today, not politicians. We need to show them leadership, guidance and help in formulating policy."

Nick Garbutt, Former Chair of Opportunity Youth

With this in mind, the new £11,000 spending limit in Northern Ireland appears particularly restrictive.

“Say there was some serious outrage by dissident Republicans or Loyalists. If people who support violence were standing in a general election it would clearly be an “election activity” to hold a peace rally. You couldn’t do it for less than £11,000. So goodbye to that work and that leadership.”

Nick Garbutt

In Northern Ireland, it was also noted that a close and formalised relationship exists between civil society and Members of the Legislative Assembly (MLAs) in relation to developing policy on a range of issues. In particular, a number of NGOs provide resources to support all-party groups on a range of issues and raised concerns that they were unsure how that work would be affected in a pre-election period. For example, one contributor stated:

“One of the other things I would be concerned about is that we provide the secretariat support for the all-party group on ethnic minority communities in Stormont. I would be quite interested to see what is going to happen to that because to be an all-party group we obviously have members from all parties but the way we operate is on a six month rotational basis with our chairs. But that means that for six months at a time I am working very closely with an MLA from one particular party who is putting forward our motion and working on our particular things. I don’t know if that’s going to be affected.”

Northern Ireland Council for Ethnic Minorities

It was also noted that MLAs who chair all-party groups often state this in their profiles or their election materials. NGOs were concerned – since they do not know the full implications of being seen to provide the secretariat for an all-party group chaired by a specific MLA during the pre-election period – that some would prefer to cease providing the secretariat in order not to run the risk of being caught by the Bill. It was noted that concerns around the Bill could seriously limit the capacity of MLAs to develop and scrutinise policy related to vulnerable groups, since they rely heavily on the support of civil society and do not have sufficient resources to set up secretariats without the input of NGOs.

There were particular concerns regarding the impact the Bill may have on NGOs being viewed as partisan. If issues that NGOs addressed as part of their normal activity were caught by the Bill during the pre-election period and the NGO had to register with the Electoral Commission, it was suggested this would result in the NGO being viewed as partisan. In Northern Ireland, this has particularly worrying connotations, as being ‘partisan’ is equated with being on one side or the other of the sectarian divide. Two contributors stated that:

“Having an issue described as party political or supporting a particular party has ramifications in this place. It’s not as straightforward as Labour/Tory here. There’s sectarian issues in there and back in the day you were blacklisted if you suddenly appeared to be a Republican organisation, even if you didn’t intend it”.

NICVA

“In recent times, i.e. the last year or two, there have been Stormont ministers standing up and directly naming and criticising voluntary sector groups and staff members, suggesting that they are partisan in exactly that way. So I can imagine that if this were law there would be vexatious challenges by politicians who don’t like someone’s policies being advocated, directed particularly at those organisations”.

Amnesty International Northern Ireland

“And even if it doesn’t go that far it’s reputational risk as well. We live and die by our public reputation. It’s really important that we try to protect that as best as we can. If all of a sudden you get aligned with one part of the sectarian divide here, reputationally that’s very difficult. It has implications for our funding too”.

NICVA

NGOs were therefore concerned that the ‘chilling effect’ noted elsewhere due to not wishing to be seen as aligned with a particular political party, would be even more severe in Northern Ireland, because of the specific concerns of being labelled as sectarian. NGOs believe that if the Bill is passed in its current form, it is likely to have a severe impact on their ability to campaign on policy issues – a vital plank of the democratic process in a post-conflict society. This in turn could result in disaffection and disengagement among the general population:

“In a society like ours, full of conflict and with a young and kind of weird democracy, what you really don’t want is people disengaged from politics. There were a lot of people offering a different way here for a long time, and there’s some people still doing it... What we don’t want is huge swathes of the population thinking that the government doesn’t speak for them, or they can’t engage with it, or that it’s not held accountable, or that it’s not doing anything. Particularly young people, no post-conflict society wants masses of disengaged 16-25 year olds. That’s why it’s a bit different here.”

NICVA

Thus the most dominant theme of concern at the Northern Ireland consultation session was the perception that NGOs’
participation in the democratic process is one of the key components of an at times fragile peace. Voter registration drives, engagement of young people in campaigning and close cooperation with all-party groups were viewed by all present as processes that strengthen the possibility of a lasting peace in Northern Ireland, as these activities provided a real and participative alternative to a return to violence. The prospect that campaigning activity of this sort is to be curtailed—particularly with the £2000 threshold for registration and the £10,800 spending limit—was seen as particularly injurious.

Interrelationship with devolved administration elections

Evidence submitted to the Commission highlighted a range of concerns about the impact of the Bill in devolved nations, where a higher number of election cycles will mean longer regulated periods.

As discussed above, during devolved elections the new spending limits will not apply—but the widened scope of regulated activity alongside lower registration thresholds will exacerbate the pressures felt by organisations operating in Scotland, Wales and Northern Ireland.

Furthermore, it seems illogical to the Commission that the Bill will drop the spending limits during UK Parliamentary General Elections, but merely widen the scope of regulated activity while maintaining the PPERA limits during devolved elections. To take the Scottish example, the £75,800 limit during a devolved election cycle seems out of step with a £34,800 limit during a national election cycle.

Solution

Parliament should retain the PPERA spending limits in Scotland, Wales and Northern Ireland, and ensure that both the wider scope of regulated spending and the lower registration threshold introduced in this Bill are not made applicable to devolved elections.

Parliament should also ensure that before legislation is brought forward to adjust the regulations for third-party campaigners in Scotland, Wales and Northern Ireland, appropriate time is allowed for substantive and wide-ranging consultation in each national context and with devolved governments as well as civil society.

Implications of the solution

Appropriate consultation time will mean that Government’s current timetable for new regulation in Scotland, Wales and Northern Ireland will be unfeasible.

Given that Government has provided no specific evidence of problems with third-party campaigning activity in Scotland, Wales and Northern Ireland, which it seeks to address with this Bill, the Commission does not foresee that being a problem in the 2015 election cycle.

Recommendations

1) Retain PPERA spending limits and thresholds for registration in Scotland, Wales and Northern Ireland.

2) Specific consultation and consideration of the impacts of any future regulation in Scotland, Wales and Northern Ireland should happen before any new legislation is brought forward.

3) Particular consideration should be given to the potential impact of the legislation on the stability of post-conflict governance in Northern Ireland.

Notes

1 http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm131009/debtext/131009-0003.htm#131009-0003.htm_spnew37
12. Coalition working

Context
Under the current PPERA regime, organisations which campaign on the same issues can be liable to contribute to one another’s spending limits. Previously this has not been an issue of concern, but with the lower registration threshold and spending limits, and the increased range of activities covered by Schedule 3, there is significant concern from a number of groups that their joint working could be severely restricted.

Issues of concern
A number of organisations gave evidence that they were particularly concerned about the impact of this aspect of the cumulative changes within the Bill.

Unlock Democracy, giving oral evidence to the Commission said:

“my concern is that far from bringing transparency to NGO campaigns, what will happen is it will simply break up coalitions – effective coalitions that actually work and deliver outcomes that political parties are supportive of, because of this regulatory frame. There is a lot of debate about ‘big society’ and increasing participation, but what this bill could do is actually take away from what we are currently able to do.”

The RSPB Scotland, also giving oral evidence, said that their campaign to introduce the Stop Climate Change Act would not have been possible had these rules been in place:

“We worked with the Stop Climate Chaos Coalition to introduce the Stop Climate Change Act, which was the broadest coalition Scotland has ever seen, from the churches to the NUS to the trade unions to the environment movement to the development movement. Basically, every single one of them. Scottish Gardens and Allotment Society that’s run by volunteers. Every single one would have been caught. And we wouldn’t have gotten a decent Climate Change Act.”

RSPB Scotland

For other organisations, there is great uncertainty about how the new rules will affect coalition working. NUS Scotland, giving evidence, said:

“We worked with pubs and nightclubs around the Scottish government’s plans to raise the drinking age. Organisations like Wetherspoons. Would that have been caught?”

Given the significant lowering of spending limits in devolved nations, this issue is even more of a concern within those areas.

“We are particularly concerned that the potential impact on some of our smaller partners who may... feel that they are effectively silenced during election periods.”

Julian Rosser, Head of Oxfam Cymru, Wales consultation session

Furthermore, the practicalities of accounting for the new list of activities within Schedule 3 of the Bill resulted in organisations questioning whether the rules were even workable.

Whilst the Government has repeated that they do not want to stop the type of campaigns seen at the last General Election, the Commission heard evidence from organisations which were certain – because of the coalition spending rules, in conjunction with an extension of covered activities, and the lowering of spending caps – they would not be able to run similar campaigns in future pre-election periods.

For example, giving evidence to the Commission, the President of Queen Margaret University Students’ Union said that were QMUSU to – as they do now – replicate an NUS Scotland campaign at a local level, the joint working regulations would mean they exceeded the £2000 threshold, and conceivably the overall spend limit, extremely quickly.

“Under the proposed Bill we would not have been able to deliver key activity around our Care in Crisis campaign, particularly the Mass Lobby of Parliament, if it had been planned in the year running up to a General Election. If social care became a key focus of debate in the run up to the General Election (as it did in 2010) and our campaigning was considered ‘for election purposes’ then all campaign activity co-ordinated by the 70+ strong Care and Support Alliance, of which we are a member, would be regulated. The combined spend of all the staff members who worked as part of the coalition would have brought us over the spending limits.”

Age UK in written evidence to the Commission

Solution
The Electoral Commission believes that coalition working needs to be covered by the regulations, otherwise it would become easy for large organisations to circumvent the rules by creating numerous smaller campaigning organisations.
The current rules, however, are acknowledged to work well. The Commission is therefore of the view that the status quo should be maintained, in relation to the registration threshold and spending cap, and by not extending the list of activities to include those proposed within Schedule 3.

At a later date proper consultation about the need for changes to the rules around coalition working could be carried out, in order to ensure the regulation of third-party campaigning is balanced with appropriate limits for organisations to exercise their right to freedom of expression.

**Impact of solution**

The impact of this solution would be that the proposed rules in relation to registration thresholds, spending limits and the increased range of regulated activities would not be in place for the 2015 General Election, as the Government has stated is its intention.

Furthermore, proper consultation would require resources to be allocated.

**Recommendations**

Government should conduct consultation with the Electoral Commission and affected stakeholders to determine how the current rules on coalition non-party campaigning should be amended post 2015.

---

**Case study: Stop HS2 written submission**

“The example of Stop HS2 is potentially the best example of how Part 2 of the Bill is completely unworkable. We have around 120 action groups nationally, a number which keeps rising and three national organisations specifically set up to campaign against HS2. We operate a loose coalition working to a common end and additionally have a number of other organisations which campaign against HS2 as part of their work. These range from ultra-local organisations such as The Kenilworth Greenway Trust or Friends of Culcheth Linear Park, to regional organisations such as Bucks Beds & Oxon Wildlife Trust or Warwickshire CPRE, to national organisations such as the Institute of Economic Affairs, Woodlands Trust or Taxpayers Alliance.

Part 2 of the Bill would mean all of the HS2 specific organisations would have to detail all of their spending, plus all of the "bit part" organisations would have to attribute their HS2 specific costs and the whole thing would have to be compiled and submitted within three months of a General Election. This would be completely unworkable.

It would also be the case that if the arbitrary cost limits, either nationally or on a constituency basis had been exceeded, then a criminal act would have taken place. Well, who exactly would be liable?

For example, in the Kenilworth & Southam constituency there are 11 action groups. If the Kenilworth Action Group decided in the year coming up to a General Election to leaflet the entire town, and have the normal level of public meetings, information days and stalls in town as has been done in previous years, £3,000 could easily be spent, taking up a third of the entire constituency limit. The Cubbington Action Group, or any of the other nine would have no control over that spending and would have no right to even know how much has been spent, yet their activities would effectively be curtailed by the spending of another action group. If all the remaining nine groups spent £1000, this would take them over the constituency limit (before attribution of county-wide organisations would have to be split across the two constituencies affected by HS2 in the county). This would be a criminal act. Who would be liable?

Over the last three years, all these organisations have produced leaflets, held meetings, done media work etc and this will not go away. To attempt to somehow regulate the spending across all these groups will be completely impossible and unworkable.

In the run up to the next election, it would be planned that the HS2 Phase 1 Hybrid Bill will be going through Parliament, so it is likely that our level of activities and spending will have to increase. The Lobbying Bill will in effect limit some of the activities (for example leafletting affected parties and doing media work) around a live piece of legislation, which is completely anti-democratic.”

*Extract from Stop HS2’s written submission to the Commission.*
13. Charities and non-party campaigning

The specific impact of Part 2 of the Bill on charities

Context

During the 2nd Reading debate in the House of Commons Andrew Lansley said:

“Charities know, and have told us, that the Charity Commission guidance is clear about the fact that they should not undertake party political activity. To that extent, there are very limited circumstances in which charities might consider it essential, from their point of view, to register their spending as spending for an electoral purpose. I am at a loss to understand how they think the Bill could have an adverse impact on their ability to campaign on policies and issues for their charitable purposes.”

However, the Electoral Commission has stated that:

“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.”

Issues of concern

It is an issue of concern for the Commission that there remains confusion in Parliamentarians’ minds about a) whether charities are covered by Part 2 of the Bill and b) whether it is possible or proper that charities should be exempted.

Ros Baston, solicitor and ex-Lead Adviser (Party and Election Finance) at the Electoral Commission, helpfully submitted advice she had written addressing these two questions.

Are charities covered by Part 2 of the Bill?

Ros Baston, in outlining that charities will indeed be regulated under the Bill stated:

“The Charity Commission has acknowledged that charities may need to comply with PPERA even if their campaigns remain within the rules on political activities by charities,”

and:

“[T]he Electoral Commission’s briefing notes on the Bill reflect its guidance that such activities are included.”

She goes on to give examples of such activities by charities which, depending on the exact circumstances, would continue to be regulated under clause 26:

“Comparing party or candidate policies on issues related to the charity’s objects; Campaigning for policies that happen to be associated with one or more particular parties – for example, advocating a specific approach to the allocation of benefits, the funding of university education, or local health services – where the aims include raising the topic up the electorate’s political agenda.”

She goes on to state:

“[T]he overall effect of the Bill remains that more charities and low spending campaigners will be subject to the enhanced and much more onerous restrictions.”

“The situation will be exacerbated for charities and grassroots campaigners by the lack of clarity in the drafting of Schedule 3 of the Bill, which sets out the activities to be controlled, and some exemptions.”

Is it possible or proper to exempt charities from the controls?

Ros Baston advised on the possibility of exempting charities. She said:

“I consider it unlikely that it would be legally viable to give charities a specific exemption from the PPERA restrictions either as they stand or as amended by the Bill. An exemption would have the effect of making it possible for charities to spend unlimited amounts of money on doing things on which others can only spend up to £390,000.”

She said that such a change would make the legislation “even more open to successful challenge” under Article 10 of the ECHR, arguing:

“Logically, if it can exempt one group from the controls and spending limits, the imposition of them on others who do exactly the same activity for exactly the same reason can rarely be ‘necessary’ or proportionate.”

On whether charities should be excluded, Ms Baston said:

“I do not consider it reasonable to suggest that, because of the additional restrictions on [charities] political campaigning which relate to activities caught by PPERA… they should be excluded… it is clearly Parliament’s intention that this type of activity should be regulated as potentially influential during an election period. As charities carry out these activities, it is difficult to see a justification for their exemption.”
“The obvious exception would be if the exempted groups were in fact unable to legally carry out the activities in question, or subject to similar penalties were they to do so, or had some other evidence-based rationale for differential treatment. This is not the case for charities — they are able to carry out activities that fall within PPERA controls and remain within charity law, and they are not required to disclose the detailed information on spending and donations necessary for PPERA reporting, and nor are they prohibited from accepting donations from non-UK based sources. If one were to breach the spending limits — nationally, or in a particular constituency — the Electoral Commission would not be able to use the sanctions it would be able to apply against any other infringer.”

“[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.”

Electoral Commission briefing for House of Lords Second Reading, 22 October 2013

Solution

Following the advice of Ms Baston, it is the Commission’s view that it is right that charities are not excluded from within this legislation, and we believe the government’s approach to distinguish by activity rather than by type of organisations is correct.

However, the Commission is concerned by the lack of understanding within Parliament of the effect on charities of both PPERA and Part 2 of this Bill. Parliamentarians should therefore be made aware that charities’ restrictions on party political activity within charity regulation do not preclude their activities being subject to registration and counting towards spending limits for the purposes of PPERA or Part 2 of the Bill. It is the Commission’s view that charities will often wish to carry out issue-based campaigns, permitted under Charity Commission regulation, which will be regulated by this Bill.

Implications of solution

Clarity as to what the regulation is actually intended to cover will be achieved, together with a shared understanding of how it affects organisations of all types.

Recommendations

The Commission believes that Government is correct to regulate charities’ activities alongside those of other types of third party organisations and recommends that the Bill should not be amended to attempt to exempt charities from the regulations.

Furthermore, the Commission recommends Government is clear to Parliamentarians that it is wholly legitimate for charities to carry out campaigns that will fall under this Bill (as such activity would also fall under PPERA).
14. Equalities

Context

Under section 149 of the Equalities Act 2010, public authorities are required to have due regard to the need to advance equality of opportunity between people who share protected characteristics. (Protected characteristics include age, religion, race or disability). This duty includes, in particular, having due regard to the need to minimise or remove disadvantage suffered by persons with protected characteristics; taking steps to meet the needs of such persons; and encouraging such persons to participate in public life.

Typically public authorities discharge these duties by undertaking an equalities impact assessment. By carrying out an assessment the public authority evaluates whether people likely to be affected by the proposals have protected characteristics; and if so how those impacts may be minimised, or addressed.

The equality assessment in the Bill’s Impact Assessment is as follows:

“For the 2010 General Election, 30 third parties were recognised by the Electoral Commission. These groups represented a wide range of causes including animal welfare groups, tactical voting groups, rural campaign groups, religious groups, individuals and trade unions. There is no robust equalities data covering these groups, however we do not believe that these proposals will have an adverse equalities impact, based on the wide range of groups that are registered with the Electoral Commission in 2010.”

Issues of concern

The impact assessment for the Bill contained an inadequate equalities impact assessment

The equalities impact assessment presented with this Bill is inadequate in respect of equalities law.

No proper assessment has been carried out, since the “assessment” contained in the Impact Assessment document does not consider whether persons with protected characteristics will be affected. Accordingly, no consideration has been given as to whether such persons will be disadvantaged as a result of the proposals (eg: as employees of affected groups, or persons whose interests are represented or advocated by such groups). Yet contributors suggested these groups are likely to be most affected by the Bill.

It is no defence to state that impacts are wide ranging, since wide ranging impacts may, by their very nature, adversely affect persons with protected characteristics, so as to contravene section 149 of the 2010 Act.

The evidence received by the Commission raises significant questions regarding the effects of the Bill on severely vulnerable and disadvantaged groups, yet little evidence was provided to suggest the Government has given this issue due consideration.

The Bill would limit the opportunity of people protected under the Equalities Act to engage in democratic processes

The Commission heard evidence that the Bill would be likely to limit the opportunity of some of the most vulnerable and disadvantaged people in society to engage fully in democratic processes in the period ahead of elections. In particular, the engagement of people with severe physical disabilities or learning disabilities is likely to be affected by the reduction in the threshold for registration, the broadening of scope of activities and, potentially, the reduction in spending limits.

Examples provided to the Commission include the additional costs incurred in order to facilitate the participation of people with severe physical disabilities or learning disabilities, such as the provision of a support worker or the development of learning accessible or “Easy Read” materials. Under the proposed legislation, the costs associated with the provision of such support could easily bring a small disability rights group up to the threshold for registration. As a result, some such groups may be discouraged from carrying out their normal campaigning activities during the period leading up to an election. In this way, the reduced thresholds for registration run the risk of disadvantaging disabled people.

“I’m thinking of organisations that are there to support people with various forms of sensory impairment, where you have really deep disadvantage and silence, in effect – whether those organisations are able to do their job and represent their members... There is an issue here about a particular vulnerability for membership organisations in terms of constraining their ability to pursue their charitable objectives in certain political time lines.”

Scottish Refugee Council

Direct negative impact on equalities campaigning

The Commission also heard that the Bill, if passed as it stands, might have a direct, negative impact on groups striving for equality, since Government policy is directly concerned with the provision of services to disadvantaged groups.
“Any comment on public policy that Scope may make in the run up to an election could be construed as impacting on how the electorate may view the policies of a particular party. This would restrict our ability to promote new policy solutions to Government as well as publicly highlight the impact of certain policies on the lives of disabled people and their families”.

Scope

“We are currently looking at taking forward a campaign to highlight the disproportionate impact of the welfare reforms on women working... potentially we wouldn’t be able to continue with that.”

Chwarae Teg

Issues were raised regarding the engagement of civil society with international efforts to achieve equality for specific groups. Contributors highlighted in particular the long-established role of NGOs in engaging with the UN, and challenging their governments, through the process of providing ‘Shadow Reports’ or ‘Alternative Reports’ with regard to specific UN Conventions, such as the Convention on the Rights of the Child (CRC), the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention to Eliminate all forms of Discrimination Against Women (CEDAW).

It is clear that the UK has a long and proud history of shadow reporting, as noted by the UK Equality and Human Rights Commission:

“The successful input to CERD’s [Committee on the Elimination of Racial Discrimination] examination of the UK in 2003 demonstrates how civil society can have a real impact on the outcome of government policies. It is important to continue this trend for race equality organisations acting at an international level and highlight the good working relationship between CERD and UK NGOs.”

UK Equality and Human Rights Commission (with Runnymede Trust)

Concerns were once more raised regarding the likelihood that such activities might be caught by the Bill and that the costs involved would quickly exceed the threshold for registration.

“We are a membership organisation that looks at how policy affects women in Northern Ireland from an international and European dimension. We’re a lobbying organisation. The [concern] is in regard to international mechanisms that come from the United Nations like Resolution 1325 on women, peace and security. That is a big part of our work: trying to address the legacy of conflict in Northern Ireland and where women stand in that whole arena. We have been engaging with politicians to make them aware of their obligations. But also, from a Westminster point of view because those international obligations are not based in Northern Ireland. It means that we have to physically go across there [to Westminster] and fight the corner of women in Northern Ireland at that level.”

Northern Ireland Women’s European Platform

In this regard, a number of NGOs suggested this might cause them to cease their involvement in reporting on UN Conventions and Resolutions, if the reporting process fell in the pre-election period.

Solutions

The Government should pause Part 2 of the Bill and consult appropriate groups and experts regarding the effect of this Bill on vulnerable groups, and those groups defined by protected characteristics in the Equality Act. In particular, this consultation should include making information about the Bill available in accessible formats to groups with specific barriers to access.

In addition, the Government should publish an evidence-based Equalities Impact Assessment before the next stage of the Bill’s progress. This is supported by a range of civil society organisations.

“One of the things that should be accompanying these proposals is some assessment of potential impact on various groups including groups defined by protected characteristics in the Equality Act. There is an obligation that flows from general equality legislation in the Equality Act: You’ve got to assess impact.”

Scottish Refugee Council

Implications of the solution

A pause in the Bill would delay the implementation of any law changes. See other chapters for impact of delay.

Parliamentarians would be able to perform their proper function of Bill scrutiny based on the information needed.

Recommendation

1) The Government consults appropriate groups and experts about the effect of this Bill on vulnerable groups and those groups defined by protected characteristics in the Equality Act; and

2) The Government should publish an evidence-based Equalities Impact Assessment before the next stage of the Bill’s progress.

Notes

15. Human rights

Context
The Bill included a declaration from the Leader of the House, Andrew Lansley MP, that the Bill is compatible with the Convention on Human Rights. (http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0097/cbill_2013-20140097_en_1.htm)

The Joint Committee on Human Rights held an inquiry and published a report on the human rights implications of the Bill (Legislative Scrutiny: Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill, Fifth Report of Session 2013-14), on the basis that the Bill engages the rights to freedom of expression and freedom of assembly.

Issues of concern
The Joint Committee on Human Rights stated:

“Due to the lack of pre-legislative scrutiny, consultation, and parliamentary time to scrutinise this Part of the Bill, it is difficult to assess whether the specific measures proposed in Part 2 constitute a necessary and proportionate means of achieving the Government’s aim in order to justify any interference with free speech rights and freedom of association.”

The Committee was also concerned by the broadened list of regulated activities:

“While we welcome the Government’s amendment to ensure that annual conferences are not caught by regulation, we remain concerned about the possible impact of the broadened list of regulated campaigning activities on third party campaigners’ rights to freedom of expression (in relation to the new regulation of media activities) and to freedom of association (in relation to the new regulation of public rallies and meetings), when considered together with the Bill’s new spending and regulation limits.”

It is of course always important to balance the rights of those standing for election, who face restrictions on their spending and donations, and non-party campaigners. It has long been established in case law that it is a legitimate aim to limit non-party campaigning, but that the interference with the right to freedom of expression must be proportionate.

The Government has produced no evidence to show that the new spending limits or thresholds for registration have undergone any proper assessment of their proportionality. In the absence of this, it is not possible to conclude that they are compatible with the Human Rights Act.

It should be noted that, according to the Joint Committee:

“The freedom of political speech is the form of expression that attracts the most protection under Article 10 ECHR. The Government acknowledges that this right attracts the highest level of protection because freedom of political debate is central to a democratic society, and that any restriction on this right needs to be examined rigorously.” (23:12-13)

The Committee was also concerned by the lack of sufficient consultation on the Bill, noting that:

“Prior to Commons Report Stage, and in the light of Government commitments at Committee stage to bring forward amendments to Part 2 of the Bill on non-party campaigning, we made a specific request to the Leader of the House of Commons to provide us with a supplementary human rights memorandum setting out the Government's analysis of any significant amendments. In his response to us on 24 September, the Leader of the House of Commons confirmed that this memorandum would be made available when the Government tabled its amendments at Report stage. We are disappointed that no such memorandum was received, particularly as the Government amendments raise potentially significant human rights issues.” (6:8)

Solution
The Committee’s main recommendation was for a ‘pause’ in the Bill’s legislative progress to allow more time for further consideration of the measures. Further, the Committee added:

“If this does not happen, we recommend that the Bill should be amended to remove both the lower thresholds for registration and reduced spending limits, and leave them at their current level pending further detailed work on whether the current limits are appropriate.”

Given the Joint Committee on Human Rights’ expertise, and considered inquiry, Commissioners are unanimous in their support for the Committee’s analysis and suggested solution.
Implications of solution
To follow the Committee’s recommendation would, by definition, introduce a delay into the Bill’s legislative process and thus delay its implementation. This would mean it would be unlikely the Bill’s provisions would be in force prior to the 2015 General Election. However, the Electoral Commission have not indicated any need for such an urgent change and in their briefings their concern has focused on the need for new provisions to be considered, guidance produced and organisations given time to make adjustments.

Recommendations
1) For Government to pause the legislative process on the Bill to allow more time for further consideration of the human rights implications of the Bill; or
2) Retain PPERA thresholds for registration and spending limits pending consultation and consideration about changes beyond the 2015 General Election.
16. Implementing the recommendations

The Commission’s recommendations are intended to inform Parliamentarians’ consideration of the Bill as it passes through Parliament.

**Government action needed**

Our central recommendation is for Government to pause Part 2 of the Bill to allow time for consultation and consideration.

**Peers’ action needed**

If Government does not pause Part 2 immediately, the Commission recommends that peers amend Part 2 of the Bill to ensure it does not undermine civil society engagement in democratic processes.

The Commission hopes that peers will consider this report’s recommendations in tabling and supporting amendments at Committee and Report stages of the Bill, and at Third Reading if needed.

**Committee of the House action**

A range of issues has been raised in relation to how non-party campaigning activity should be regulated.

In most cases these are complex issues and require a clear evidence base acquired through consultation with all the relevant parties and for due consideration of the impact of any proposals and proper scrutiny in both Houses.

This Commission recommends that a Committee of the House should undertake a consultation and consideration exercise to bring forward recommendations ahead of any Government legislation to apply post the 2015 General Election.

**Commission on Civil Society and Democratic Engagement action**

The Commission will consider whether it would be useful to report on the extent to which its recommendations have been met by Government or Parliamentarians as the progress of the Bill unfolds.
17. Appendix
A) Commission Terms of Reference

1. To advise Parliament about appropriate regulation of civil society during election periods.

2. Advice to include consideration of:
   - Appropriate spending thresholds for activity subject to regulation.
   - Activities that should properly be regarded as partisan ‘election activity’ and therefore subject to regulation.
   - Appropriate spending limits for ‘election activity’.
   - Whether spending limits are appropriate for individual constituencies, and the level of any such limits.
   - Appropriate definition for types of spending which should count towards such limits.
   - Appropriate regulatory period for ‘election activity’.
   - Appropriate regulation in devolved administrations.

3. In formulating this advice, the Commission should consider:
   - How civil society can best contribute to an increase in public engagement in electoral processes, particularly at a time when membership of political parties and party-affiliated organisations is small and declining.
   - How civil society can contribute to increased public awareness and engagement in matters of public policy.
   - How technological and cultural changes such as the development of the internet have altered public engagement in policy debates, and how regulation might need to be updated to reflect these changes.

4. In formulating its advice the Commission will be expected to engage and take evidence from the widest range of views, interests and sections of civil society.

5. The Commission will report to Parliament in time for Committee Stage of the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill 2013-14 in the House of Lords.
The Commission has attempted, within an extremely tight timescale, to hear evidence from as many civil society organisations as possible. Below is a list of the organisations from whom the Commission has taken evidence, either verbally or in writing.

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

The Commission held its first evidence session for Parliamentarians on Monday 14th October.

It is to the regret of the Commission that neither of the Bill’s leaders, Andrew Lansley MP and Tom Brake MP, felt able to accept its invitation to give evidence.

The following people gave evidence to the Commission in Parliament:

- Graham Allen MP, Chair of the Political and Constitutional Select Committee
- Caroline Slocock
- Ros Baston
- Hywel Francis MP, Chair of the Joint Committee on Human Rights
- Angela Eagle MP
- Tom Burke
- Lord Paul Tyler

The Commission held subsequent evidence sessions in London, Edinburgh, Cardiff and Belfast.

Organisations in attendance at each session were as follows.

**Edinburgh – Tuesday 15th October 2013**

- Edinburgh University Students’ Association
- Electoral Reform Society Scotland
- MND Scotland
- Muslim Council of Scotland
- NUS Scotland
- Queen Margaret University Students’ Union
- RSPB (Scotland)
- Scottish Refugee Council
- Scottish Wildlife Trust
- The Church of Scotland

**Cardiff – Tuesday 15th October 2013**

- Children in Wales
- Christian Aid Wales
- Chwarae Teg
- Electoral Reform Society Cymru
- Friends of the Earth Cymru
- NUS Wales
- Oxfam Cymru
- Shelter Cymru
- WCVA

**Belfast – Thursday 17th October 2013**

- Amnesty International NI
- Charities Aid Foundation
- Children in Northern Ireland
- Community Foundation NI
- Ecumenical Alliance
- Friends of the Earth NI
- Macmillan Cancer NI
- NICVA
- Northern Ireland Council for Ethnic Minorities
- Northern Ireland Women’s European Platform
- NUS-USI
- Open College Network
- RSPB NI
- Save the Children NI

**London – Friday 18th October 2013**

- Electoral Reform Society
- Unlock Democracy
- Citizens UK
- Bond
- Oxfam
- Friends of the Earth
- National Pensioners Convention
The Commission has received written evidence from the following organisations:

- ACEVO
- ActionAid
- Age UK
- Christian Institute
- Citizens UK
- CWVYS
- Electoral Reform Society
- Friends of the Earth
- HOPE not hate
- National Secular Society
- NUS
- Quakers in Britain
- Queen Margaret University Students Union
- Scope
- Scottish Churches Parliamentary Office
- Sheila McKechnie Foundation
- Stop HS2
- The Church of Scotland
- The Countryside Alliance
- The Royal British Legion
- The Women’s Institute
- 38 Degrees
- Unlock Democracy
- Woodland Trust
- VSO
C) Acknowledgements

The Commission wishes to acknowledge and thank the extraordinary number and range of organisations that have contributed to or submitted evidence to inform the Commission’s work. These include:

- ACEVO
- Age UK
- Amnesty International – Northern Ireland
- Bond
- Charities Aid Foundation
- Children in Northern Ireland
- Children in Wales
- Christian Aid Wales
- Christian Institute
- Ecumenical Alliance
- Friends of the Earth NI
- The Church of Scotland
- Chwarae Teg
- Citizens UK
- Community Foundation NI
- CWVYS
- Edinburgh University Students’ Association
- Electoral Reform Society
- Electoral Reform Society Cymru
- Electoral Reform Society Scotland
- Friends of the Earth
- Friends of the Earth Cymru
- HOPE not hate
- Macmillan Cancer NI
- MND Scotland
- National Pensioners Convention
- National Secular Society
- NICVA
- National Union of Students (NUS)
- Northern Ireland Council for Ethnic Minorities
- Northern Ireland Women’s European Platform
- NUS-USI
- NUS Scotland
- NUS Wales
- Open College Network
- Oxfam
- Oxfam Cymru
- Quakers
- Queen Margaret University Students’ Union
- RSPB NI
- RSPB (Scotland)
- Save the Children – Northern Ireland
- Scope
- Scottish Churches Parliamentary Office
- Scottish Refugee Council
- Scottish Wildlife Trust
- Sheila McKechnie Foundation
- Shelter Cymru
- Stop HS2
- The Countryside Alliance
- The Electoral Reform Society Scotland
- The Muslim Council of Scotland
- The Royal British Legion
- The Women’s Institute
- The Woodland Trust
- 38 Degrees
- Unlock Democracy
- VS0
- WCVA

The Commission wishes to thank the following organisations and venues for hosting evidence sessions in London, Edinburgh, Cardiff and Belfast at extraordinarily short notice, and for making them such a success:

- Bond, London
- The Edinburgh Training and Conference Venue
- The Wallich Centre, Cardiff
- NICVA, Belfast

The Commission’s work would not have been possible without financial support. Full details of donors and accounts are published on the Commission website:

[www.civilsocietycommission.info](http://www.civilsocietycommission.info)

The Commission was set up with the support of the following organisations, to whom we are grateful:

- A Rocha
- ACEVO
- Amnesty International UK
- Barrow Cadbury Trust
- Better Transport
- Big Brother Watch
- Bond
- Centrepoint
- Change.org
- Children England
- Christian Aid
- Christian Institute
- Citizens UK
- Democracy Matters
- Electoral Reform Society
- Electoral Reform Society Cymru
- Friends of the Earth
- Gingerbread
- Global Poverty Project
- Greenpeace UK
- Health Poverty Action
• HOPE not hate
• Lancashire Badger Trust
• League Against Cruel Sports
• London Voluntary Services Council
• Lumos
• Lush
• Micah Challenge International
• Mumsnet
• Muslim Council of Britain
• National Secular Society
• National Union of Students
• NAVCA
• NCVO
• Newham Monitoring Project
• Oxfam GB
• People & Planet
• Peter Tatchell Foundation (PTF)
• Quakers
• RSPB
• Runnymede Trust
• Sheila McKechnie Foundation
• Small Charities Coalition
• Stop AIDS
• Stop HS2
• Sue Ryder
• Tearfund
• The Countryside Alliance
• The Royal British Legion
• The Women’s Institute
• The Wildlife Trusts
• 38 Degrees
• Unlock Democracy
• VSO
• Water Aid
• Woodland Trust