

Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill Oxfam briefing

Oxfam, alongside a wide range of other charities and voluntary organisations, has been calling for the Bill to be amended since it was introduced to Parliament in July. We believe that Part 2 of the Bill (the section on non-party campaigning) would make it significantly harder during the year before an election to campaign on issues that matter to the people we are here to help.

Oxfam's concerns with the Bill

The definition of electoral activity

Oxfam campaigns without any political bias, and does not aim to help get any party or candidate elected. However, even after changes made in the commons stage of the Bill process, legal advice to us suggests that our campaigning and advocacy work could be counted as electoral activity and therefore could be caught as 'controlled expenditure' ahead of an election.

The Bill still states that electoral activity does not have to "involve any express mention being made of the name of any party or candidate" and that 'In determining whether expenditure can be reasonably regarded as intended to promote or procure electoral success.... it is immaterial that it can reasonably regarded as intended to have another effect as well.'

Legal advice given to the NCVO (following the publication of the Government amendments) says that: **"The amendments will not result in controlled expenditure only being incurred where there is "bias towards a particular party or candidate" and "the clear purpose is to advocate support or directly benefit such party or candidate"**. Further legal advice from Ros Baston is attached which states that issue-based campaigning remains covered by the Bill.

It is important to note that charities already had difficulties with interpreting the Political Parties Elections and Referendums Act 2000 (PPERA), and specifically with the guidance and interpretation of that act from the Electoral Commission, issued in spring 2010. This Bill threatens to make a confusing situation worse, but even reverting to the PPERA definition of electoral activity does not solve the problem.

Oxfam's role as an anti-poverty charity and campaigning organisation

Last year Oxfam's work to combat poverty and suffering reached 13.5 million people in 54 countries. This includes supporting 6.2 million people in 27 humanitarian emergencies. We spend 7% of our programme expenditure on campaigning and advocacy – both in the UK and internationally – in order to further our charitable objects of "the prevention and relief of poverty". This includes global and UK focused campaigning work.

Additional concerns

Since advice we've received suggests our campaigning and advocacy work could be drawn into the regulations, it remains relevant and concerning to us that the Bill will widen the scope of activities which count as controlled expenditure, and at the same time reduce the thresholds for registering, and reduce overall spending limits. This could have a severe impact on our work.

The Bill both widens the range of activities that are regulated to include public events, advertising and media events, market research such as polling, and transport for the purpose of obtaining publicity (schedule 3) AND reduces the limits on what a campaigner can spend on regulated activity in each part of the UK in the year before a UK general election by 60% or more (to £320k in England, to £35k in Scotland, to £24k in Wales and to £11k in Northern Ireland).

The Bill also ensures that more charities and localised low spending campaigners will be subject to the enhanced and much more onerous restrictions. This is because the range of activities covered will increase, and the thresholds for registration will decrease to just £5,000 in England and £2,000 in Scotland, Wales and Northern Ireland.

Finally, there are some existing problems with the legislation that should be taken into account if the spending limits and thresholds are to be lowered, and the regulatory burden considerably increased. These include the fact that:

- All participants in a coalition campaign have to report on the entire aggregated spend of that campaign – regardless of the amount their own organisation spent;
- That pro-bono costs including volunteering time are included;
- That, unlike for political parties, it is now proposed that staff time is included.

Electoral Commission Guidance in 2010 interpreted the PPERA very narrowly. It stated:

In almost all cases, an item will be campaign material if it:

- identifies candidates or parties who support or oppose your campaign's aims
- sets out or compares the positions of particular parties or candidates on a policy that you are promoting
- promotes or opposes policies which are so closely and publicly associated with a party or parties that it is not reasonable to argue that the item isn't campaign material

Sometimes, a political party may publicly adopt policies that you are already campaigning for. Your material will not become campaign material as a result of the party's decision, unless you:

- publicise the political party's support in your subsequent campaigning,
- or alter or increase your campaigning activity on the policy as a result of their support

Estimated impact for Oxfam

Regulatory Burden:

- If Oxfam decided that we would have to register with the Electoral Commission then the regulatory burden would be significant, almost certainly requiring an extra member of staff to ensure collection and reporting of costs across our functions.
- However, **we will do all we can to avoid registering with the Commission** to avoid the false impression – to donors and to decision makers themselves – that we are indeed a “third party for electoral purposes” and therefore have a presumed political bias. In this case the vague wording and low thresholds in the Bill could quite likely require a new staffing resources to review all plans and activity and ensure the need to register was not triggered, across all our departments for the year.

Oxfam “works with others to overcome poverty and suffering”

In the UK we have lots of smaller partner organisations for whom we have concern that this legislation, with such low thresholds and such broad definitions of electoral campaigning, could mean they are unable to speak out on their issues of concern.

And in developing countries we do a lot of work to build the capacity of civil society to engage in elections and use them to hold their parties and governments to account (for instance on where oil money really goes!). We have done this from a position of experience in a mature democracy. It would be very difficult if this right came under threat in the UK

A case study based on our electoral campaigning last year:

- In 2010 Oxfam was a member of Ask the Climate Question, a coalition of around 20 large development and environmental agencies who ran a campaign with the objective of raising climate change consistently as an issue throughout the election.
- To this end we organised hustings up and down the country (inviting 5-6 candidates based on the objective test of how their party polled last time); we ran a national hustings for the energy spokespeople for major parties; we created materials for people to have at their home to be able to ask climate change questions to candidates; and we funded adverts and campaigning activity.
- In 2010 we ran this campaign with some confidence because potential “electoral material” was confined to leaflets and websites (material available to the public) and so was easy to identify this and ensure it remained under the £10,000 threshold.
- If the Bill is passed as it stands we would be very likely to trigger registration since we would have to account for all hustings meetings, all staff time, the pro-bono costs of celebrity engagement, and all other associated transport costs etc and do this within £5000.
- If we chose to deliver this campaign and register with the Electoral Commission we would have report the full coalition spend as our own, regardless of what we put in. We would have to add the costs of our own staff time, and we would need to work out whether we would have enough money left for other campaigning, advocacy, research or media work that may count as electoral activity in that entire year.
- If we decided that the impact of registering was too large (because of the regulation, because of the impact on our charitable reputation and because of the impact on our donors) we would not be able to take part in the campaign and our ability to talk about one of the biggest threats facing our planet at a time of national debate would be seriously limited.

A case study based on our non-electoral campaigning that may be in an election year

Coalitions of international charities have been campaigning for 0.7% of GNP to be allocated to international aid for many decades. Outside of election periods (ill defined but could be up to a year for fixed term parliaments) this activity is regulated by the Charity Commission. During an election period, if one or more political parties or candidates publicly provide support for that policy, then it is possible that all future expenditure on the campaign might be deemed to be for electoral purposes. The members of the coalition would have to register with the electoral commission if expenditure on election material exceeded £5k in England or £2k in Wales or Scotland.

If the members of the coalition have to register with the Electoral Commission they will have to submit returns on expenditure to the Electoral Commission. Under existing rules the total expenditure of the coalition would have to be reported by each member of the coalition as their individual election expenditure. As the notional as well as cash costs have to be calculated, and some campaigns are supported by celebrity led videos whose notional cost could be considerable, then the total campaign budget for one campaign could exceed the £390k limit allowed to third party campaigners. As each member of the coalition has to report the total coalition expenditure as their own expenditure, regardless of whether or not they contributed to the campaign, the ceiling on expenditure for each charity would be rapidly reached. In this scenario the coalition would have to stop campaigning on the issue and each member of the coalition would have to stop campaigning on that or any other policy issue to which a political party or candidate committed themselves to supporting. From a transparency perspective, if there were ten members of the coalition then it would be reported to the Electoral Commission that £3.9m was spent on the campaign when in reality only £390k was spent and some of that was in non cash contributions.

As a logical consequence of this scenario, charities might then only be able to campaign on issues which political parties ignore. In the event of a political party opposing one of those “new” policy proposals then this too might designated the policy campaign as for an election purpose as to continue with the campaign might have the effect of benefitting those parties who have not rejected the policy, and any further expenditure on the campaign might have to be reported to the Electoral Commission and leave the charity in the position of having breached the limit of allowable expenditure.