



Association of Charitable Foundations

Commission on Civil Society and democratic engagement
*Transparency of Lobbying, Non-party Campaigning and
Trade Union Administration Bill 2013*
SUBMISSION

THE ASSOCIATION OF CHARITABLE FOUNDATIONS (ACF)

Summary

ACF argues that provisions in Part 2 of the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill 2013, introduced to Parliament on 17 July 2013, if unamended, could substantially restrict many charities' and civil society organisations' ability to act freely.

We believe that civil society organisations engaging in a wide range of public awareness activities would needlessly be regulated, face (reduced) limits on what they can spend and be required to shoulder heavy reporting requirements. The current Bill should be amended to update the current regulations set out in the Political Parties, Elections and Referendums Act 2000 (PPCRA). Specifically amendments should:

- *Remove staff from the calculation of costs*
- *Remove the provision requiring individual members of coalitions to report on the aggregate costs*
- *Reduce the regulated period from a year to six months.*
- *Bring registration thresholds in line with PPCRA but update them to take account of inflation.*

1. The Association of Charitable Foundations

- 1.1. ACF is the umbrella body and membership organisation for grant-making charitable trusts and foundations in the United Kingdom. ACF's priorities include enabling trusts and foundations to achieve good practice in grant-making, in their investments for charitable purposes and the way in which they manage their endowments.
- 1.2. ACF has over 330 members. They range in size from large foundations with paid staff distributing over £20 million a year each, to small, often local, volunteer-run trusts distributing less than £100,000 a year. Together they give over £1.7 billion a year to a

wide range of charitable causes. Across the UK, trusts and foundations provide about 5% of the total funding of the charitable and wider voluntary sector.

2. Introduction

- 2.1. *The Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill 2013 was introduced to Parliament on 17 July.*
- 2.2. *Part Two of the Bill, which will apply to the whole of the UK, includes changes to what counts as activity 'for electoral purposes' and limits the expenditure permitted on such activity.*
- 2.3. *We believe that these changes will adversely affect charitable trusts and foundations, potentially restricting their work and inhibiting the flow of funding to organisations who seek to influence policy on behalf of their beneficiaries but with no intent to affect the outcome of elections.*

3. Answer to Commissions' consultation questions

3.1 Our answers to the Commissions' questions are as follows:

Question 1: Do you agree with the Government that there is a perception of 'undue influence' by third parties during election periods? Can you name examples of when you have seen this happen in previous elections?

Democracy requires that individual voters are able to make informed and independent decisions. It is therefore important to prevent undue influence being used to shape public opinion during an election. However it is also important that views, opinions and facts are freely shared in the public sphere to help inform voters when making their electoral choices. There is a long and noble tradition of engagement by charities and civil society organisations in British public life. The Government has failed to produce any concrete evidence that the current regime concerning non-party campaigning is inadequate, and particularly that there has been undue influence from the charity sector - whose aim is to pursue their charitable objectives not influence elections - or from other civil society organisations. We therefore believe existing rules should be updated rather than rewritten as they at least have had the working consent of civil society.

Question 2: Where do you think the line between issue focused campaigning and campaigning for the electoral success of a party or candidate should fall? Can you name examples? E.g. should a document setting out what parties or candidates think about a policy issue - but not calling for the electorate to vote for a party or candidate - be caught by regulation?

Charities and other civil society organisations have a responsibility to campaign impartially for their views, and not become embroiled in political battles. However, while charities and civil society organisations must be impartial in terms of party politics, they cannot be neutral in relation to the issues that affect their beneficiaries or mission.

Therefore, it is appropriate that charities and civil society organisations are able to assess and set out the impact of party policy positions on issues that touch their mission.

Nonetheless, due to the fact that political policy can and will overlap with these issues, we believe that the issue of intent is important. Therefore we believe and accept that any activity can be reasonably regarded as being intended to affect the outcome of a particular election should be regulated.

The key question remaining in terms of regulation is of proportionality. The regulator should take a risk-based approach, based on judgments about what sort of behavior and what scale of activity is most likely to have a material effect on the outcome of an election.

Therefore a document setting out what parties or candidates think about a policy issue - but not calling for the electorate to vote for a party or candidate - should not be caught by regulation.

The Nuffield Foundation funds the Green Budget prepared by the Institute for Fiscal Studies (IFS), which inevitably touches on issues that different political parties may view as helpful or unhelpful, positive or negative. However, the aim is not to promote the electoral success of any particular parties or candidates but to inform the public. Likewise the Nuffield Foundation has funded the IFS's Election Briefings, where they conduct an analysis of the budget and financial positions in each of the main parties' manifestos; again the aim is not promote any party but to enable the public to make informed choices. The Nuffield Foundation funded the IFS Briefings before the 2010 election, when the question of how to approach the deficit was a key election issue. Such activity was not then regulated by the legislation and the Foundation did not need to register with the Electoral Commission.

Question 3: Which campaigning activities do you think should be regulated? Which do you think should not be regulated? E.g. Do you think staffing costs or opinion polls should be subject to regulation?

We believe that the current regulations, set out in the PPERA, which identified 'election material' should be updated to reflect contemporary communications methods. So for example it should include:

- Unsolicited material addressed to electors, including social media.

- Market research or canvassing conducted for the purpose of ascertaining polling intentions.
- Transport of persons to any place or places with a view to obtaining publicity in connection with an election campaign.

We believe that charities and civil society organisations should be able to advertise as they would normally as well as provide services or facilities in connection with press conferences or other dealings with the media, as well as hold meetings.

ACF strongly opposes the inclusion of staffing costs as an expense. This is not presently included and staffing costs are not included in calculating the expenditure of political parties.

The Nationwide Foundation gives grants to charities that aim to create decent affordable homes for people in need. For example, funding organisations to bring empty properties into use as homes for people in need. In connection with its work, the Foundation plans to hold meetings/briefings with policy makers/MPs, their grantees and other key players with the aim of ensuring that each of the main political parties commit to doing something about bringing empty properties back into use as homes; and to do something about improving living conditions for private rented sector tenants. The Foundation has set aside £7k for this work over 3 years, but this figure excludes staff time.

It is not clear why civil society organisations should be treated differently from political parties themselves. The inclusion of staff costs are likely to cause a number of organisations to reach the threshold and so add a considerable regulatory burden which currently they do not face.

Question 4: How do you think appropriate thresholds for registration should be judged? What threshold do you think is appropriate? For info, the Government is currently proposing changing the threshold from £10,000 to £5,000 in England, and from £5,000 to £2,000 in Scotland, Wales and Northern Ireland.

If the regulator is to take a risk-based approach, the thresholds for registrations should be set at levels that are most likely to capture those organisations whose activity might materially affect the outcome of an election. The Government has not brought forward any examples of how the current levels as set out in PPERA have failed to capture organisations whose activities ought to be regulated, and so we believe that those thresholds should be retained but updated to take account of inflation.

Question 5: How do you think the spending limit for non-party campaigning should be judged? Should there be a limit? What if any cap should there be? E.g. The previous limit

was 5% of the political party spending limit. Do you think a proportion of political party limits is an appropriate way to decide? What other ways might there be of deciding?

The current system where campaigns are limited to 5% of the political parties spending limit (£793,500 in England, £108,000 in Scotland, £60,000 in Wales, and £27,000 in Northern Ireland) is acceptable, and the significant lowering of the limit (by around 60-70%) will adversely affect charities and civil society organisations.

Question 6: Do you think non-party campaigning in coalition should be restricted? How do you think non-party campaigners working in coalitions should be regulated?

We believe that the proposal for campaigning in coalitions should be revised. It is reasonable for groups to be regulated, but the proposed provisions which make each member of a coalition accountable for the total spending of the group is unfair and would hamper organisations from joining together and providing much greater social good than they could do on their own.

We therefore advocate removing the provision requiring individual members of a coalition to report on aggregate costs, as this disproportionately affects smaller charities and civil society organisations who would face considerably more bureaucracy. A fairer proposal would be to make each group responsible for their share of the spending in the coalition.

During 2012 mayoral elections Trust for London worked in coalition with a wide range of charities, many of which it funds. Three key organisations were Child Poverty Action Group (receiving funding of £110,000), London Voluntary Service Council (receiving funding of £146,000) and Save the Children (receiving funding of £81,000). Together they produced a 'manifesto', outlining actions to address child poverty in the capital, that mayoral candidates were asked to endorse. The work took up a large amount of staff time, which, in addition to the 'manifesto' itself. The Trust is concerned that this activity could now come under the remit of the proposed changes if it were carried out in the run up to a national election.

Question 7: Do you think that non-party campaigning organisations should be limited on what they can spend in a single constituency? Do you think accounting for spending in individual constituencies is workable?

We strongly object to the limits in place of constituencies, as this will unduly affect charities and civil society organisations who operate in a small geographical area dealing with particular issues and problems, and will be extremely detrimental to their ability to pursue their charitable objectives.

Question 8: Do you think that the devolved nations should have different registration thresholds and spending limits to England? How should these be set / determined? NB please specify whether your organisation campaigns in any or all of the devolved nations.

We believe that spending on elections for the devolved administrations should be treated, pro rata, in relation to overall election spending, in the same way as spending on Westminster elections.

Question 9: What should the reporting requirements for non-party campaigners be? Where should the balance between transparency and bureaucracy fall?

The current reporting requirements seem acceptable and we are not aware of any significant failures in its operation in terms of providing an adequate regulatory framework. However the new proposals would require those who do not spend anything to send in a 'nil report' stating this. This unnecessarily increases administrative costs for registered organisations and the Electoral Commission alike and we believe that nil reporting requirements should be removed from the Bill.

Question 10: How long should the regulated period for non-party campaigning be? How should the length of this period be arrived at?

We believe that there is strong merit in the current regulated period of 12 months being halved, particularly if spending caps are to be reduced. If the intention is to restrict activity that could reasonably be regarded as being intended to have a material effect on the electoral success of a political party or candidate, curtailing organisations' activity for a year prior to an election seems excessive when political campaigns themselves don't begin in earnest until months into this time.

We suggest that the period of regulation could be reduced to six months, in order to mirror the instigation of political campaigns directly related to the election.

This is important because given the nature of UK elections and referenda, which are not definitely fixed, an overly extended regulatory period could leave some charities and civil society organisations in a perpetual state of uncertainty and have a chilling effect, restricting their ability to pursue their charitable objectives.

- 4. We believe the Bill as currently drafted could substantially restrict the ability and confidence of foundations', and those they fund, to engage in the public or policy sphere in the pursuit of their charitable objectives. This not only threatens the way charities and civil society organisations have traditionally operated, but potentially constitutes a severe*

restriction on the quality of public debate on issues which relate to all the areas where charities and foundations work. We therefore believe that, as far as charities are concerned, the Bill should be amended in the way we have suggested.

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The Association of Charitable Foundations
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