

Second Submission to the Commission on Civil Society and Democratic Engagement

November 2013

Executive Summary

- i. The impact of the changes proposed to the Political Parties, Elections and Referendums Act (PPERA) is the result of the combined effect of the individual changes.
- ii. PPERA is flawed. However, for many charities and campaign groups it was 'liveable' with because what counted as controlled expenditure was limited and the threshold for registration with the Electoral Commission, and the limit on expenditure were set at levels which did not capture the small scale activity of most third parties.
- iii. The sheer scope of Clause 26, as with existing PPERA definitions, is a concern. Controlled expenditure must be judged by whether "*the expenditure can reasonably be regarded as intended to promote or procure electoral success*". However, this applies not simply to political parties and party candidates but also a party or parties or individual candidates who hold particular opinions or who advocate particular policies. In other words almost anything can become controlled expenditure because of the issues parties or candidates support, or do not support.
- iv. While the current Electoral Commission guidance suggests that where a political party identifies itself with the campaign of a particular organisation this does not mean that that campaign and previous campaign material becomes regulated, it does note that a change in the "scale" or "nature" of that campaign could become regulated. The Countryside Alliance's campaigning against the Hunting Bill in 2004 would have represented a step change in scale and nature of campaigning, all within the regulated period.
- v. Schedule 3 is important because, contrary to what might be expected, the Bill cuts the threshold for registration and the expenditure limits while at the same time extending, in Schedule 3, the range of activities which count towards controlled expenditure. The range of activities covered is very broad including such undefined terms as "events".
- vi. The impact of the proposed changes are exacerbated by the rules on coalitions and co-ordinated activity, which is already included in the existing legislation, but whose impact is less severe given the higher expenditure allowed and the limit on controlled expenditure to election material. In opposing the hunting bans we worked closely with a wide variety of other rural and hunting organisations. It is unclear whether this could amount to a coalition arrangement, or co-ordinated activity.
- vii. Given the expanded range of activities which fall within controlled expenditure, the huge reduction in the threshold for registration with the Electoral Commission and the similarly large reduction in the expenditure limits, the fact that third parties must include staff costs (unlike political parties), in addition to actual and notional expenditure, means that these reduced limits will be reached more quickly. This must be considered in the light of a regulated period of twelve months. A shorter regulated period would, perhaps, make the Bill's provisions more proportionate.
- viii. The Countryside Alliance does not campaign in specific constituencies. However, the question does arise as to whether because an event takes place in a given constituency, even if part of a nationwide activity, it is to be counted as constituency spending.

Introduction

1. The Countryside Alliance works for everyone who loves the countryside and the rural way of life. Our aim is to protect and promote life in the countryside and to help it thrive. With over 100,000 members we are the only rural organisation working across such a broad range of issues. The Alliance is a UK wide organisation, although our structure is devolved to reflect the current devolution settlement with respect to Scotland, Wales and Northern Ireland.
2. The Alliance welcomes this opportunity to submit further evidence to the Commission on Civil Society and Democratic Engagement. The Countryside Alliance is a strictly apolitical campaigning organisation and works with politicians of all parties both locally and nationally.

Background

3. The Countryside Alliance is strictly apolitical and we have not, and do not, campaign for parties, candidates or groups of candidates. We do, however, urge our membership to be politically engaged and to use their vote. Our members and supporters are aware of our core issues, campaigns and policies. Individual politicians, candidates at elections or political parties may agree with us on some things but not on others. Some may endorse all our policies and some none of them. Clearly some of our issues, such as hunting and shooting, are more 'political' than others. Others may become political even when not so originally. Others may be of greater relevance in certain constituencies such as our policy on HS2 or even post office closures.
4. It is important to understand that the impact of the changes proposed to the Political Parties, Elections and Referendums Act (PPERA) on a campaigning organisation such as the Countryside Alliance is the result of the combined effect of the changes. It is accepted that the Countryside Alliance is, for the purposes of PERA, a non-party campaigning organisation (also known as a "third party").
5. While the introduction of fixed term parliaments makes planning and accounting for "electoral expenditure" easier there is still no absolute certainty as to when an election may take place which has a regulated period.
6. The comments below are informed by our previous discussions with the Electoral Commission and their extensive briefing during the Bill's passage to date. Legal advice received in 2001 with respect to PERA has also been reviewed and supports our concerns.

Clause 26 – Meaning of "controlled expenditure" and "election material"

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

What is wrong with PPERA?

8. The sheer scope of Clause 26, as with existing PPERA definitions, is too wide. While whether or not something is considered controlled expenditure must be judged by whether *“the expenditure can reasonably be regarded as intended to promote or procure electoral success”* this applies not simply to political parties and party candidates but relates to the electoral success of a party or parties who advocate or do not advocate particular policies or candidates who hold particular opinions or who advocate particular policies. In other words almost anything can become controlled expenditure because of the issues parties or candidates support or do not support.
9. The situation is made worse by the fact that *“in determining whether expenditure can reasonably be regarded as intended to promote or procure electoral success...it is immaterial that it can reasonably be regarded as intended to achieve any other purpose as well”*. This last provision is repeated in the definition given in the Bill of “electoral material”, which then goes on to include a definition of “candidate” which *“includes a future candidate, whether identifiable or not”*.
10. These definitions are capable of including almost anything and everything a campaigning group may do depending on whether or not the issue is, or is not, a ‘political’ issue at the time of an election. Hunting clearly was, and is.
11. It must be wondered why the definition of “controlled expenditure” cannot be limited to expenditure which can *“reasonably be regarded as intended to promote or procure electoral success of particular parties, parties or candidate or group of candidates”*. This could then be read in conjunction with sensible and proportionate statutory guidance from the Electoral Commission. As with any legislation any dispute over interpretation would ultimately be determined in the courts. As far as we know the Electoral Commission’s current guidance and interpretation of PPERA has not been challenged in the courts.

Why is the PPERA definition now such a problem when it was not before?

12. As explained above, the impact of PPERA on small campaigns and charities was limited by three factors which this Bill proposes to change:
 - Firstly, election material was limited to printed materials including online content made available to the public and not to the broader range of activities now to be included by Schedule 3 of the Bill.
 - Secondly, the threshold for registration was £10,000 in England and £5000 in Scotland, Wales and Northern Ireland. The Bill would reduce the thresholds to £5000 in England and £2000 in Scotland, Wales and Northern Ireland.
 - Thirdly, the expenditure limits were much higher for registered third parties. The Bill would cut these by between 60 and 70 per cent.
13. An example of the potential impact of the combined changes proposed by the Bill can be seen by looking at what the Alliance did at the 2010 General Election. In 2009 the Countryside Alliance produced a Rural Manifesto which, taking account of staff and production costs, would have exceeded the proposed £5000 threshold but was well within the current £10,000 expenditure threshold, above which we would have had to register with the Electoral Commission. The production took place entirely within England. The production of a distinctly Scottish version would have easily exceeded the proposed £2000 limit in Scotland and indeed, the cost of translating and printing a Welsh version would also exceed the proposed £2000 threshold in Wales.

14. Was The Rural Manifesto “election material”? The advice received from the Electoral Commission was that it probably was, particularly given that it explicitly called for repeal of the Hunting Act which was clearly an electoral issue, especially given the activities of organisations opposed to hunting. There was some discussion with the Commission, as at previous elections, as to whether the document as a whole was election material or, in calculating controlled expenditure, we need only account for that part which dealt with hunting and that therefore only a proportion of the overall costs need be accounted for. This question remains unresolved but given that we did not exceed the threshold the uncertainty did not matter and the question did not need deciding. That would not be the case if the Bill passes in its current form.
15. Clearly had the expenditure been incurred before the regulated period then we would have avoided any area of doubt. However, given the broader range of activities which under Schedule 3 of the Bill would count towards controlled expenditure, the subsequent use and promotion of the document, indeed any election material, ahead of an election would incur controlled expenditure.
16. For an organisation not to promote its policies and campaigns ahead of an election to avoid the need to register would be a rather self-defeating exercise for any organisation which seeks to educate and inform debate, and relies on its profile for membership and funding. However, the chance of breaching the new expenditure threshold is a very real possibility and would severely limit what could be done during a regulated period.

Do “core campaigns” not count for the purpose of controlled expenditure?

17. While the current Electoral Commission guidance suggests that where a political party identifies itself with the campaign of a particular organisation this does not mean that that campaign and previous campaign material becomes regulated, it does note that a change in the “scale” or “nature” of that campaign could become regulated. So if, following Diana Johnson MP’s recent announcement that the Labour Party wish to conduct the biggest overhaul of firearms legislation since the ban on handguns, this becomes Labour Party policy, and possibly even a manifesto commitment, would the Alliance campaigning against this policy, or an Alliance manifesto setting out opposition to such a proposal, be controlled expenditure? Our response to such a policy would be, and be seen to be, an escalation in our campaigning. Given all the other changes in the Bill, this could see us having to register with the Commission and then reaching the expenditure limit relatively quickly, depending on how Schedule 3 is understood and applied. A further example would be the Alliance’s campaigning activity ahead of the 2005 General Election in opposing the Hunting Bill. Under the changes proposed by the Bill we would not simply have had to consider expenditure on printed material and websites but all our activity would have been caught by the new definition and scope of controlled expenditure as set out in the Bill. We would then have reached the limits on expenditure relatively quickly and been unable to mount any effective opposition to the then Hunting Bill, because we were within a regulated period.
18. While being registered with the Electoral Commission is not, of itself, an issue it would involve significant additional bureaucracy, accounting and reporting requirements which would represent a very significant additional cost to the organisation especially as some of our activities might be considered electoral/controlled expenditure while others might not. How would we account for staff time and notional expenditure?

Schedule 3

19. This schedule is important because, contrary to what might be expected, the Bill cuts the threshold for registration and the expenditure limits while at the same time extending, in Schedule 3, the range of activities which count towards controlled expenditure.
20. In 2010 "election material" was limited to printed matter including web content. Under the Bill, in addition to the production or publication of material we will now need to account for canvassing, or market research; press conferences or other media events; transport and public rallies or other public meetings or events.
21. The promotion to the public of hunting documents, or a new rural manifesto type document, or a document opposing a review of firearms law at events such as game fairs and agricultural shows around the country, in the twelve months ahead of the election, would all now be covered by Schedule 3. Not only would these costs easily exceed the new registration threshold and even possibly the old threshold, but it is likely that we could reach the new reduced expenditure limit before the election, requiring us to cease some, or all, of these activities ahead of the election. A reduced regulated period might address some of these concerns, but is not a solution on its own.
22. Legislation should be drafted to stand the test of time. The campaigning activity to prevent the ban on hunting in England and Wales would not only have included election material as currently defined by PPERA but events, demonstrations, rallies, the Countryside Marches including polling, media, transport costs etc. Indeed the Countryside March scheduled for February 2001 and then postponed due to Foot and Mouth disease, was largely organised, publicised etc. in the regulated period ahead of the 2001 General Election. Similarly the regulated period before the 2005 General Election was full of rallies, demonstrations, media events etc. as we fought to protect hunting. All these would represent an escalation of our campaigning on hunting in response to government action and all these activities would fall within Schedule 3 where previously controlled expenditure was limited to election material. Had PPERA been amended as the Bill proposes at the time the Hunting Bill was making its final way through Parliament our opposition to the proposed ban would have been severely curtailed, if not silenced. Being cynical one might suggest that if a future government wanted to do something which would provoke considerable protest, like banning hunting, then it should do so during the regulated period when the ability of a campaign group to oppose it would be heavily restricted.
23. Were we, or any other campaigning organisation, to face a similar threat and needed to mobilise again then it is more than likely that we would be unable to do so, at least to the same degree in a regulated period, given the expanded range of activities which count towards controlled expenditure coupled with the massive reduction in the expenditure limits. It is worth noting that this would apply equally to Scotland, Wales and Northern Ireland. For example the big mobilisation and demonstration against the ban on hunting in Scotland took place ahead of the 2001 General Election but would have required the Alliance, being a UK body, with no separate legal personality in Scotland, Wales and Northern Ireland to register and it is likely that under the proposed changes we would have had to stop, or limit, our activities in opposition to the legislation in Scotland.
24. A similar need to mobilise may be necessary in Northern Ireland one day. There is currently no ban on hunting there and given the reduced threshold and expenditure limits we may be unable to mobilise as we would like. The expenditure limit in Northern Ireland is merely £10,800 which would not even cover staff costs.

Coalitions

25. The impact of the proposed changes are exacerbated by the rules on coalitions and co-ordinated activity, which is already included in the existing legislation but whose impact is less severe given the higher expenditure allowed and the limit of controlled expenditure to election material. In opposing the hunting bans we worked closely with a wide variety of other rural and hunting organisations. It is unclear whether this could amount to a coalition arrangement, or co-ordinated activity, which would have implications for our accounting and controlled expenditure.

Staff Costs

26. Given the expanded range of activities which fall within controlled expenditure, the huge reduction in the threshold for registration with the Electoral Commission and the similarly large reduction in the expenditure limits, the fact that third parties must include staff costs (unlike political parties), in addition to actual and notional expenditure, means that these reduced limits will be reached more quickly. It also has serious implications for a multifaceted campaigning organisation like the Countryside Alliance where some, but not all, of its activities may be considered controlled expenditure. This would be a bureaucratic nightmare and a significant additional cost for such organisations which would now be required to be registered with the Electoral Commission, but which had previously not had to do so.

Constituency Campaigning

27. The Alliance does not campaign in specific constituencies. However, the question arises as to whether an event which takes place in a constituency and costs more than the constituency limit would be permissible. The entire country is divided into constituencies. Would a mass rally against a ban on hunting at a given location which falls within a given constituency and which costs more than the constituency limit be possible, even if part of a national campaign? What would be the situation for the Alliance's presence at a major country show, such as the CLA Game Fair, which inevitably takes place in a constituency and at which the Alliance was campaigning for repeal of the Hunting Act in a regulated period? How would the controlled expenditure be decided, including staff costs? At the Game Fair we have staff on site for nearly two weeks and the whole event costs well over the constituency spending limit. We understand why constituency limits are a concern to a wide variety of organisations and local campaigns on issues such as HS2. We also appreciate the importance of proper regulation and transparency in this area which the Government is seeking to ensure. We wonder whether a constituency limit of less than £10,000, given the 12 month length of the regulated period ahead of a General Election, is proportionate to achieving the objective of keeping "big money" out of politics?