

Commission on Civil Society and Democratic Engagement

Oxfam Consultation Response

Summary of recommendations

- 1) We think that the legislation should seek to draw a line between issue-based campaigning during an election period and election campaigning by a third party.
- 2) We recognise that it has been, and will continue to be hard to get a perfect definition. Therefore whilst the definition needs to be simplified and improved, it must also be accompanied with robust statutory guidance from the Electoral Commission and Parliament on the type of activity the definition is designed to capture. This will give clarity to what will almost inevitably be a subjective definition.
- 3) We recommend that the thresholds be raised from their current limits. This is necessary both because of inflation since the current thresholds were introduced, and the proposal that additional activities be covered as electoral material.
- 4) We do not see a rationale for reducing overall spending caps and would like to see the PPERA limit re-instated.
- 5) We would like staff costs to be excluded, as is the case for political parties.
- 6) The activities defined as electoral material should revert back to the definition under PPERA.
- 7) We propose removing, or at least significantly raising, the caps on constituency spending to recognise the scale of spending needed to unduly influence an election and to prevent restrictions on normal campaigning in a year-long period.
- 8) We would like the existing law to be amended to allow coalitions to nominate a lead reporting agency, for the lead reporting agency to name its coalition partners and jointly report expenditure. We would also like organisations to only be accountable for what they spend and therefore refrain from registering if their input falls below the thresholds.
- 9) We would like to see the legislation propose a six-month electoral period, and for the regulatory regime to distinguish between this long period and the six-week short campaign.

Useful definitions

- *'Non-party campaigning'* - All campaigning undertaken by organisations other than those registered as political parties, or by candidates themselves.
- *'Registration threshold'* - The spending threshold above which organisations that undertake non-party campaigning are legally obliged to register with the Electoral Commission.
- *'Spending limit'* - The maximum total amount that organisations who undertake non-party campaigning can spend during an election period.
- *'Reporting requirements'* - The requirements placed upon a non-party campaigning organisation to report their donations and spending to the Electoral Commission.

Oxfam in elections

Oxfam campaigns to encourage public and private organisations to adopt policies which we believe will help us further our charitable purpose of the prevention and relief of poverty. This campaigning represents about 7% of our expenditure. We also support some campaigning work by community based organisations in the UK to provide those communities with a voice which might otherwise remain unheard.

We believe that it is appropriate for Oxfam to continue its campaigning, advocacy, media and education work during the year before a general election. As a charity we can never campaign with a political bias and so we argue that, to a great extent, we should be able to continue our work unchanged and without a requirement to register and report to the Electoral Commission. We have never previously registered with the Electoral Commission and would seek not to in future. This is not simply because of the regulatory burden this brings and costs associated with this (we estimate we would have to employ a full-time compliance officer for the electoral period), but because of the reputational risk, and risk to loss in public and institutional donations, if we were erroneously categorised as a third party for electoral purposes.

However, we fully agree that the public needs to have full trust and confidence in charities during an election period, and we need to comply with charitable law at all times. Therefore – in addition to our compliance with charitable law - we want to outline the principles that guide us through our work in an election period.

- **Principle of impartiality and objectivity:** We will not campaign or advocate with any political bias and we undertake many precautions to ensure this including: disclaimers on our public facing material that we do not advocate for the public to vote for one party or candidate over another; taking care to maintain consistent and objective standards for our party and Prospective Parliamentary Candidate (PPC) engagement (such as inviting candidates to local hustings based on polling data or previous electoral success rather than the politics of the party)
- **Principle of one government:** Oxfam will continue to engage with, and advocate towards the UK Government as our primary stakeholder, and sitting MPs as our primary relationships in constituency throughout the year before an election. This only changes in the six weeks of the short campaign and purdah.
- **Principle of consensus:** Oxfam's purpose is to create a consensus for our policy areas in the year before an election to ensure that they are taken forward by whoever forms the next government. We will not look to create political division.
- **Principle of self-declaration:** Oxfam will not make public any subjective views about candidates, parties, or their views. The most we will do is invite candidates and parties to express their agreement/disagreement in their own words.
- **Principle of authenticity:** Oxfam may focus activity on particular constituencies to maximise the impact we are getting for our resources but only through our local supporters. We will not manufacture a sense of constituency support through advertising etc where we don't have that mandate

We believe that a more appropriate regulatory framework would allow charities, non-corporate organisations such as think-tanks and NGOs, and bodies who do not receive funding from political

parties, to continue their work in an election year subject only to restrictions that prevent clear distortion of the political process through vast sums of money.

On the perception of 'undue influence' by third parties during election periods and the rationale for the legislation

As an organisation we have seen no evidence of undue influence by third parties during election periods. We therefore feel that in the current context this bill seeks to fix a problem that in reality does not exist. We recognise that without any restrictions at all, there could be a scenario where huge sums are spent to unseat a particular candidate or candidates – or to ensure that candidates who backed a particular policy gained from a significantly funded campaign to enhance their image. We have not been advised of any current examples of such distortion, and the Charity Commission inform us they undertook only 1 investigation in 2010 in relation to charities being perceived as too party political. We therefore assume that the legislation is designed to ward off a perceived future threat.

At a time of national debate where MPs and candidates are keen to engage with their constituents it is more realistic to characterise civil society as the glue that can bring groups of constituents and candidates together. Simply considering the role Oxfam has played in previous elections we have enabled:

- Constituents (particularly young constituents) to see the value of finding out who their candidates are and what they think
- Candidates to know who is interested in certain topics in their constituency. If a constituent has an "Ask the Climate Question" poster in their window they will have good idea of how to approach canvassing that household
- Candidates to talk to constituents en masse, through hustings for example.

At a time when voter turnout is declining this is an increasingly important function.

Good legislation would strike a balance between dealing with the future threat of undue influence and not curtailing the non-political activity of civil society. It would do this by both striving to determine a definition of electoral campaigning that did not include ordinary or issues-based campaigning in an electoral period AND by placing some limits on spending that were proportionate to the need to prevent vast sums of money being spend to unduly influence an election.

We argue that the current Bill does far too much to restrict civil society¹.

On the difference between issues-focused campaigning and campaigning to influence an election.

We distinguish between three types of campaigning

- 1) **Ordinary campaigning** – the campaigning we do at any time to raise awareness and influence the policies of public or private bodies to further our charitable aims
- 2) **Issue-based campaigning in an election period**– the campaigning we do around an election to to contribute to national debate and to enhance awareness and engagement with our issues in light of the election.
- 3) **Election campaigning** – any campaign that seeks to get certain parties or candidates elected

We think that the legislation should seek to draw a line between types 2 and type 3 for the purposes of this legislation. At present the unclear definition of PPERA and the current Electoral Commission guidance includes all three.

1) Ordinary campaigning:

We are concerned that while the Government has made reassuring statements that “ordinary campaigning” by charities and not for profits is not intended to be caught by the PPERA or the Bill, it is clear from statements by the Electoral Commission in their briefings to Parliament and in their guidance that they believe “ordinary campaigning” can be caught as the regulations apply to any campaign which “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” even if the material makes no reference to the election.

For example, the Electoral Commission give the following example of an ordinary campaign that would be caught in their briefing to the House of Lords for the Committee Stage: *“Campaign to call for change in the law: In the run-up to the UK general election a charity decides to call for a particular piece of legislation to be repealed in order to further its charitable purposes. It organises large public meetings and places advertisements in many national newspapers calling for the change. The change is already well known to be supported by some political parties, and to be opposed by others. The charity avoids drawing attention to the positions of different parties on this issue. But it is promoting a change to the law which is so closely and publicly associated with some parties that its activities could reasonably be seen by others as intended to encourage voters to support parties that have said they will repeal the legislation. The costs of the activities are likely to be regulated if the charity’s spending on regulated activities exceeds the threshold for registering as a non-party campaigner.”*

Furthermore, the Electoral Commission gives guidance on ordinary campaigning on a policy issue which is subsequently adopted by one or more political parties. In a situation where a party publicly adopts the policy position of an organisation in an electoral period the guidance from the Electoral Commission is that the organisation won’t have to register unless they publicise the political party’s support OR “alter or increase its campaigning activity on the policy”.

This seems to advocate a scenario where an organisation would be required to ignore - in the media and to their own supporters – a key moment in a long-standing campaign. It could also require us to be very ineffective campaigners. If the governing party were to adopt this position, this guidance would ban us from taking the natural next step and call on them to implement this policy before the election, for example.

There is a range of factors that affect the timing of these campaigns: The run up to global meetings, policy reviews by governments, the parliamentary timetable or the need to get a policy issue onto the public and political agenda. These campaigns can be either short term or long term – focused on immediate political meetings or active over many years. Most of the timing of our campaign agenda is therefore not set by elections but still occurs during “election periods”. The impact of the Bill on these campaigns is a source of concern.

It is our view that the Electoral Commission’s guidance does not reflect the Government’s commitment that “ordinary campaigning” by charities is not caught by the current draft of the Bill.

2) Issue based campaigning in an election period:

We believe that it is appropriate for Oxfam as a charity, campaigning and civil society organisation to continue its campaigning, advocacy, media and education work during the year before a general election and to engage with politicians at this time of national debate and focus on political decision making.

In carrying out election oriented activities, our intent is always to get policy makers and candidates to raise issues of concern which we believe the next Parliament should address. It is not to get any specific party or candidate elected. Not only is it prohibited under charity law for a charity to advocate support for any individual candidate or political party, it is also not in our interests to be associated with one or more political parties: our influence would be diminished should we ever be perceived to be party political. A key question here is “intent” which is a key aspect of the definition of controlled expenditure.

In particular we think that we should be able to:

- Continue our normal work advocating on policy issues towards the current UK government and working with sitting MPs in Westminster and in their constituencies.
- Engage the major political parties and hold direct meetings as well as panel events etc. to discuss our policy ideas with them as they formulate manifestos.
- Publish documents such as “mock manifestos” showing the ideal policies Oxfam would like to see on our relevant issues.
- Create incentives for all major parties to prioritise our relevant policy issues - such as holding national hustings events for party policy spokespeople.
- Communicate to our supporters the opportunity an election provides to have their voices heard by candidates and parties on the issues they care about, and to provide them with information and suggestions for how to do this on issues relevant to Oxfam.
- Capitalise on a time of national debate to raise the profile of issues relevant to Oxfam in the media.
- Directly ask candidates and parties if they support our policy proposals and encourage our supporters to do the same.
- Conserve resources by focusing our effort on the seats most likely to increase impact and be noticed (so the seats of key decision makers or key marginal seats).
- Reach out to a wide range of PPCs to educate them on our areas of work and expertise and to find new champions for our work.
- Provide opportunities - for any candidate who wants to - to show their support for Oxfam and our work and our issues.

We would be very interested to hear arguments for why a civil society organisation should not be able to do any of these things and to understand if stopping them is a policy aim of the government.

We think the activities above – if followed by the principles we outline in our introduction - should be possible to be delivered without registering as a third party for electoral purposes, because they do not have the intention of promoting a party or candidate.

3) Election campaigning:

Charities cannot do this under electoral law and so we feel that the legislation should seek to draw a line between campaigning to get a candidate or party elected (or not elected) and the issues based campaigning.

We recognise that it has been, and will continue to be hard to get a perfect definition. Therefore whilst the definition needs to be simplified and improved, it must also be accompanied with robust statutory guidance from the Electoral Commission and Parliament on the type of activity the definition is designed to capture. This will give clarity to what will almost inevitably be a subjective definition.

On what should be regulated to strike the right balance

We recognise the need for an amount of care and regulation to ward off a future threat of undue influence by third parties in elections. We also recognise that the line between issue-based campaigning and electoral campaigning can be hard to legally define. In many cases it comes down to an issue of scale: A poster in the window of the local Oxfam shop saying “ask the climate question” is very different from a constituency covered in numerous billboards about the threat of climate change and inviting people to look at the voting record of the local MP.

Getting the right regulation around non-party campaigning therefore requires two things: a clear and consistent definition AND restrictions set at the appropriate scale.

The present legislation (PPERA) is unclear and unpopular because it (and the Electoral Commission Guidance) is not very good at defining the difference between issues-based campaigning and electoral campaigning. It is not, however, as threatening to our work as the current Bill because it sets registration thresholds and spending limits at a more proportionate level that better reflected the scale needed to unduly influence an election.

In reducing registration thresholds, spending limits, constituency limits and by including a wider range of material such as events and media work as well as materials made available to the public the Bill restricts issue-based campaigning to an extent that is disproportionate to the threat.

Our recommendations:

- **Registration thresholds:** There is no particular rationale for lowering the thresholds for registration. It will simply mean that small community based organisations may be required to register and involve the Electoral Commission in “policing” low cost campaigning at a local level. We also note there is a logical case for raising the thresholds to take into account the wider range of materials covered, inflationary impacts, and also the fact that the electoral period in a fixed-term parliament is more likely to be enforceable for a full 12 months. ***We recommend that the thresholds be raised from their current limits.***
- **Spending limits:** No clear argument or evidence has been provided that would indicate that current levels of expenditure have a distorting impact on the outcome of elections. ***We do not see a rationale for reducing overall spending caps and would like to see the PPERA limit re-instated.***
- **Staff costs:** We do not see the rationale for including staff costs since the costs of political party staff are explicitly excluded. This is a point of principle but also of practicality since many of our roles are not easily divided into UK or Global campaigning. The regulatory burden of including staff costs would be disproportionate. ***We would like staff costs to be excluded, as is the case for political parties.***
- **Electoral material:** We understand that the Electoral Commission want more items and activities to be covered by the definition of electoral material. It has to be recognised that a widened list would compound the impact of reduced thresholds - campaigners are asked to account for more things under a lower threshold. We also echo concerns of the Joint Committee on Human Rights about limits to freedom of association. ***The activities covered should revert back to the definition under PPERA.***
- **Constituency caps:** The Electoral Commission has noted that the proposed constituency limits are unenforceable. We also feel that, whilst there should be a consideration around grossly disproportionate spend in key constituencies, the proposed limits are far too low.

We also note some very valid examples from the Electoral Commission around campaigns that are geographically specific (such as those around major infrastructure projects) but are not designed around constituency boundaries. ***We propose removing, or at least significantly raising, the caps on constituency spending recognise the scale of spend needed to unduly influence an election and to prevent restrictions on normal campaigning in a year-long period.***

Campaigning in coalition

To be effective and get our voice heard, we often work in coalitions with other like minded organisations for example in the Make Poverty History coalition, the “IF” campaign, and the Robin Hood Tax coalition. Many of these coalitions have hundreds of organisations as members and are managed by a steering committee representative of the membership of the coalition. These may also involve non-charitable organisations, hence our concern about the impact of the Bill on charities and non charities alike.

We understand that the aggregated reporting of coalition spending is seen as a key anti-avoidance measure, however the effect of this under the new Bill would be to deter smaller organisations joining coalitions which would then require them to register, and would deter larger organisations from coalition working because in joining too many they may all too soon reach their limit.

For instance our programme partners in the UK are concerned that the partnership with Oxfam could be considered a coalition where Oxfam and its partners raise awareness of a particular issue. For example, Oxfam and its partners are raising concerns around sanctions to benefits, living wage (we are also in coalitions in Wales and Scotland on the living wage) and supporting partners to lobby on their own issues both locally and nationally. This is activity we engage with our partners on in every year, not just an election year.

We would like the existing law to be amended to allow coalitions to nominate a lead reporting agency, for the lead reporting agency to name its coalition partners and jointly report expenditure. We would also like organisations to only be accountable for what they spend and therefore refrain from registering if their input falls below the thresholds.

Reporting requirements

We are concerned that the Electoral Commission will have a “policing role” of monitoring expenditure during an election period which would in effect create another regulator for charities during election periods.

We are also concerned that the Electoral Commission will not be able to provide the advice and support the sector will need. The Electoral Commission acknowledge that the status of many campaigns will have to be decided on a case by case basis, leading to questions of capacity within the Commission and causing uncertainty within the sector [EC briefing 9 October 2013, p4].

We have heard from a number of our local partners that the reporting requirements could become a barrier for them to engage with issues locally. Many of these organisations are quite small and have very limited administration capacity. Some of them are concerned that the time taken to work out the potential costs of a campaign or action and whether they’d need to register would prohibit them from undertaking that action in the first place. If they did continue and did register the quarterly

returns are of a concern to all organisations, not least some of our smaller partners, particularly the need to come up with figures for staff costs against those activities and to report on nil donations. They feel the administrative burden might be too high and may restrict their activities in order to avoid registering. All of our partners will also work in coalition to amplify their voices and the reporting requirements for coalitions may also cause them to remove themselves from coalitions.

Regulated period

We feel that there should be a recognised difference between our campaigning in the year before an election and campaigning in a six-week election period. We also think that in the context of fixed term parliaments the year-long election period is too restrictive. Reducing the timescale is unlikely to reduce the impact on any organisation that is trying to influence the outcome of an election because spending in support of a specific candidate or party would be more impactful in the months leading up to an election.

We would like to see the legislation propose a six-month electoral period, and for the regulatory regime to distinguish between this long period and the six-week short campaign.

Devolved issues

Oxfam Scotland, along with a number of other Scottish organisations think that whilst there should be a difference in thresholds and spending limits in Scotland compared to England, this should be based on which parliament is being lobbied (for example thresholds should be lower for engaging with the Scottish parliament compared to the British parliament) rather than specifically country basis. However, there is recognition that this approach isn't without its issues given the devolved/reserved split between policies.

Oxfam Scotland is also concerned that Scottish organisations may end up being in a regulated period continuously for the next three years with the independence referendum in 2014, UK elections in 2015, and Scottish national elections in 2016. This seems to be a disproportionate amount of time for a regulated period.

There is also confusion, that given the devolved nature of charity legislation and criminal proceedings in Scotland that a Legislative Consent Motion will be needed in Scotland for aspects of the Bill to take effect, most noticeably for criminal proceedings arising from the Bill to be enforceable. Whilst many Legislative Consent Motions are passed as matter of course, some are opposed and this could be the situation with the Bill in Scotland, creating greater uncertainty for Scottish organisations which work with organisations beyond Scotland, or organisations which have a wider reach beyond Scotland.

ⁱ In detail this is because:

- The definition of “controlled expenditure” remains unclear (as it was in PPERA 2000), and has been interpreted by the Electoral Commission to include campaigns which are motivated by factors completely outside an election and are caught simply because they take place during an election period

And on top of this:

- It widens the scope of regulated activity – to include press conferences, opinion polls, public demonstrations; AND

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- It reduces the thresholds of expenditure for registration with the Electoral Commission, thereby potentially capturing a wide range of local low level campaigning activities
 - It reduces the amount of allowable controlled expenditure – thus affecting the sustainability of national campaigns on issues unrelated to elections but which are caught by the regulations
 - It retains current law on double counting of coalition expenditure – misleading the public as to the actual amount spent and making working in coalitions less likely, thus leading to additional costs to charities as they act independently of one another.
 - The new rules on constituency thresholds will affect small community based groups and may affect national campaigns: eg through hiring of advertising billboards to promote a national campaign but which evidently sit in a particular constituency
 - The reportable costs include staff costs which are not included in the regulations for political parties and seem irrelevant as the intent is to regulate material in the public domain, not the costs of generating the material
 - The Impact Assessment published alongside the Bill seriously underestimates the compliance costs for third parties (£0-£800) who will have to assess and manage budgets for campaigns around election periods regardless of when they were launched or due to end – [see also paragraph 23 of Electoral Commission guidance for the Second Reading in the House of Lords for examples]