

## Summary of risks

### Risks resolved:

1. **New definition of controlled expenditure:** *as the bill was initially drafted, a new definition of controlled expenditure (including spending “for the purpose of or in connection with” promoting electoral success) (clause 26). Reverted to familiar PPERA 2000 wording in Rt Hon Andrew Lansley MP’s amendment.*

### Risks reduced:

1. **Registration threshold:** *the bill proposes to reduce the threshold for registration with the Electoral Commission from £10k to £5k in England, from £5k to £2k in Scotland, Wales or Northern Ireland) (clause 27). This would increase the number of organisations required to register, even for small spend, introducing disproportionate costs and reporting requirements. This risk has been reduced by a commitment in the House of Lords to increase the proposed thresholds. However, it remains to be seen whether the new thresholds take into account the new activities that will count towards controlled expenditure.*

### Risks remaining:

1. **The set of “qualifying expenses” counting as “electoral purposes” would be widened:** *currently only expenditure on written election materials is counted; the bill would widen the definition to include events, rallies, conferences, transport, canvassing and other activities. These remain ill-defined and it is unclear how the test for political spending would apply (schedule 3).*
2. **The limits on spending allowed by non-party campaigners in an election period would be reduced by 60%:** *from £793k to £320k in England; from £108k to £35k in Scotland; from £60k to £24k in Wales; and from £27k to £11k in Northern Ireland (clause 27). This could mean that legitimate spending is curtailed especially in combination with two related risks:*
  - a. **Spending limits would include coalition spending:** *Under Section 94(6) of PPERA, when partnerships undertake campaign activities as a concerted plan of action, each group has to account for the spending of every other member. Taken in combination with the inclusion of new activities, this could mean that long-standing coalitions such as Stop Climate Chas are forced to disband during election periods.*
  - b. **Spending limits would include staff costs:** *The inclusion of staff costs associated with new activities like events and rallies risks pushing far more organisations over spending thresholds and caps.*

*Breaching spending thresholds constitutes a criminal offence and a severe reputational risk.*
3. **New, unreasonably low limits would be applied to spending by constituency:** *a constituency limit of £9,750 in year before a General election, or £5,850 per constituency for the 4–5 weeks after Parliament is dissolved, could easily be breached by a single event, such as a rally, especially involving several staff or a coalition (Clause 28).*

**Introduction:** The RSPB welcomes the improvements to Clause 26 (reverting to the wording under PPERA 2000), the “pause for thought” before Lords Committee Stage, and the Government’s commitment to increase the proposed thresholds for registration with the Electoral Commission.

We remain committed to transparency during election periods. It is right that spending that could have a material impact on an election is properly accounted for. The regime under PPERA 2000 required improvement: it did not cover a full range of activities and rules relating to coalition spending were proving difficult to implement. There was already considerable uncertainty about the definition of political spending. This amounted to a good case for legislation to improve the rules.

However, Part 2 of the *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill* was conceived without consultation and introduced in a form riddled with unintended consequences. It continues to pose a threat to legitimate non-party campaigning during election periods. The combination of a wider range of activities counting toward “controlled expenditure” with a lower cap on spending would be debilitating for charitable work during an election period, especially if staff costs and coalition expenditure were included: while campaigning would not be directly prevented, the new rules would pose a considerable administrative burden, increase uncertainty and impose arbitrary and untested spending caps on campaigning.

A set of five inter-related amendments could improve the bill:

1. **The caps on “controlled expenditure” should be increased;**
2. **The regulated period should be halved from 12 months to 6 months in England;**
3. **Staff costs should be excluded** from controlled expenditure;
4. **Coalition spending should not be accounted for by each partner** in a coalition; and
5. **Constituency limits should be revised or removed.**

#### **Increase caps on controlled expenditure**

Clause 27 would lower limits on spending in an election period by 60%. The new caps for each country are apparently arbitrary; no justification has been presented for a reasonable limit and no evidence offered to illustrate typical spending on different kinds of campaigning activities.

As we have noted in our previous briefings, it is illogical to halve the thresholds and caps at the same time as widening the activities that count towards them; this could seriously curtail legitimate charitable work. The caps on “controlled expenditure” should be increased to reflect their application to a wider set of activities and the effects of inflation since they were set in 2000. The overall cap should be increased to reflect the new activities and the change in the value of money. Alternatively, an order-making power could be introduced to review the caps periodically, following consultation with the Commissions and civil society.

#### **Reduce the regulated period**

The Commission may wish to consider proposing an amendment to halve the term of the regulated period. Under Schedule 10 of PPERA 2000, the regulated periods are 365 days for UK Parliamentary General Election and 4 months for General Elections to the European Parliament or the devolved parliaments of Wales, Northern Ireland and Scotland.

The Bill currently provides for that regulated period to begin on 23 May 2014, the day after the 2014 European Parliament elections. With General Elections approaching for the European Parliament, Westminster and the devolved countries, a considerable portion of the next three years could be covered by regulated periods. Reducing the length of the regulated period would reduce the regulatory burden of accounting for spending in advance of an election. It would also reduce the impact of any curtailment of activities necessitated by spending caps.

The effect of reducing the regulated period would be to effectively increase the money available to spend “per day”. However, the increase would not be proportional to the reduction in time: most election spending is “back-loaded” to the few months before an election. The potential influence of spending on an election is also much lower the further away in time the election is, so halving the regulated period would be unlikely to notably increase the risk of spending influencing an election.

#### **Exclude staff costs from controlled expenditure**

There may be legitimate reasons for including some staff costs as regulated expenditure; for example, a politically-motivated telephone campaign by a non-party body could conceivably influence election outcomes, with almost all of the spending on personnel.

However, widening the activities that count towards controlled expenditure (Schedule 3) would require significant new reporting procedures, including time sheets to account for staff time connected with campaigns and systems for recording spending in regional offices. This would siphon money away from conservation work and amount to an unnecessarily onerous regulatory burden: more than the £0–800 per organisation for implementation estimated in the Impact Assessment.

Moreover, combined with a constituency limit, or coalition spending, the inclusion of staff costs could easily take an organisation over the spending caps or thresholds.

#### **Revise the rules for regulating coalition spending and proposed limits on constituency spending**

The rules for coalition spending already applied under PPERA. Some control of coalition spending may be necessary to guard against “gaming” the system, by splitting one campaign under several banners. However, their significance would be increased by the proposed rules, as they could be applied to a much wider range of activities. Rules for constituency spending are new: the caps seem to have been set arbitrarily, with little regard to the cost of different kinds of local campaigns.

Taken together, the rules on constituency spending, coalitions and new “qualifying expenses” could seriously curtail legitimate campaigning activity, especially local work and coalition work which is vital to the effectiveness of many charities in achieving their core charitable objectives.

For example, RSPB often works locally, in partnership with other groups, on issues such as infrastructure projects that would affect the natural environment, in line with our charitable objectives. For example, we may wish to campaign on the M4 relief road, or plans for HS2, during the regulated period. We may consider public reports or press conferences as part of a campaign.

Such activities could affect the electoral success of parties or candidates that share a view on the proposed development, even though our objectives would be clearly based on policy not politics. We have no experience of how the test for “political activities” would be applied to events like press conferences or public rallies. Working in partnership, the total spending would count against each organisation’s individual constituency spending limit of £9,750 over a year.

The combined effect of constituency limits, coalition rules, and the uncertainty associated with the incorporation of new activities could be to limit legitimate campaigns which could make an important democratic contribution. The combined effect of these changes must be addressed before the bill is enacted.

The Government must consider carefully the role it wishes charities and civil society to play. We believe that the political voice of a charity is an important contribution to our democracy and helps to enhance the work of Parliament. As it stands, the bill remains incompatible with that role.