

Briefing note: Transparency of Lobbying, Non Party Campaigning and Trade Union Administration Bill 2013

Friday 6 December 2013

This briefing sets out our views on three issues on which people have asked our views in the run-up to the Lords Committee stages of Part 2 of this Bill. It supplements the briefing we published on 4 November 2013. The issues covered by this briefing are:

- whether charities should be exempted from the rules on non-party campaigning in the run-up to elections (page 2).
Charities should not be exempted from the rules.
Exempting charities:
 - **would be likely to undermine public confidence in the rules on non-party campaigning, and**
 - **would create scope for uncontrolled spending on political campaigning** that the Government has said the Bill is intended to prevent.
- how we and the UK's charity regulators (the Charity Commission, the Office of the Scottish Charity Regulator and the Charity Commission for Northern Ireland) can help charities to comply with the rules (page 4).
We are already committed to working with the charity regulators to ensure that charities have clear and reliable guidance about how to comply with the rules and planning how we will jointly test guidance for campaigners.
- when the regulated period covering the run-up to the 2015 UK Parliamentary general election should begin (page 5).
Following the announcement on 5 November that Lords Committee scrutiny of Part 2 of the Bill would be delayed until mid-December, **our view remains that the start of the regulated period covering the run-up to the 2015 UK Parliamentary general election should be deferred to November 2014, as this would ensure implementation of an effective regime, understood by campaigners and controlling significant campaigning in the 6 months prior to the poll.**

This briefing does not comment on specific Committee stage amendments. We will issue a briefing on amendments on Friday 13 December, ahead of the first day of Committee on Monday 16 December.

Our previous briefings for the House of Lords and House of Commons stages can be found on the Commission website [here](#). For further information, please contact Iredia Oboh, Public Affairs Officer on 020 7271 0593 or ioboh@electoralcommission.org.uk

Exempting charities from the rules on non-party campaigning

As we have set out in previous briefings on the Bill, we and the Charity Commission are clear that under both the current PPERA rules on non-party campaigning and Part 2 of the Bill, **a charity campaigning on policy issues may in some circumstances legitimately fall within the scope of the rules**, while complying fully with the restrictions that charity law places on party political campaigning in the run-up to elections¹.

This is because the rules apply to campaigning that can reasonably be regarded as intended to promote the electoral success of a party, parties, or a group of candidates (who may be from different parties). Campaigning does not have to name any party or candidates in order to be regulated. The wide scope of the rules is necessary to prevent campaigners evading them by framing activities which could have significant electoral impact, in terms of policies.

The combined effect of charity law and the PPERA rules is that:

- charities are restricted at all times from engaging in party political activity, but can engage in other political campaigning in pursuit of their charitable objectives, subject to charity law and regulatory guidance²
- in the run-up to some elections, all organisations, including charities, can only spend limited amounts on campaigning that could reasonably be seen as intended to promote the electoral success of parties or groups of candidates

Exempting charities from the PPERA rules would mean that:

- **there will be no restriction on what campaigning charities would be able to spend in the run-up to elections**, provided they are acting in pursuit of their charitable objectives under charity law, and
- **all organisations except charities would be subject to the PPERA rules**, and to the tighter restrictions on campaigning introduced by the Bill

Therefore, organisations promoting opposing views on a controversial policy issue in the run-up to a UK general election could be subject to totally different types and degrees of regulation. Those that are not charitable would be subject to statutory spending limits on campaigning at national and constituency level, while those that are charitable would not be affected by those limits.

In our view this outcome would be likely to undermine public confidence in the effectiveness of the PPERA rules. It would also create incentives for campaigners to seek to carry out as much campaigning activity as possible via charitable channels, in order to avoid or minimise the impact of the PPERA controls. That in turn may have implications for the reputation of charities, and for the UK's charity regulators.

¹ Page 4 of our 4 November briefing gives examples of charity activities that may be regulated: see http://www.electoralcommission.org.uk/_data/assets/pdf_file/0010/163378/House-of-Lords-Third-Parties-Bill-QandA-briefing-2013.pdf

² See page [4] of this briefing for information about the UK charity regulators' guidance on campaigning by charities.

Exempting charities could heighten the risk of high levels of campaign spending by non-party campaigners in the run-up to an election. The Government has said that this is what Part 2 of the Bill is intended to prevent, by “*reducing the risk of super-PACs*”³.

The burdens on charities that campaign on policy issues in the run-up to elections could be reduced without these unintended consequences, by increasing the registration thresholds and spending limits that the Bill will apply to all non-party campaigning.

³ Deputy Leader of the House of Commons, 3 September 2013, Hansard col 270

Future guidance for charities and other campaigners

Part 2 of the Bill will introduce new requirements for a range of campaigners, including charities. We intend to produce additional tools to explain the new rules, as well as updating our existing range of [guidance documents for non-party campaigners](#). As noted above, charities' campaigning is also governed by charity law. Charities will therefore need particular help to understand and comply with the rules.

Our commitment on guidance for charities

We are committed to working with the UK's charity regulators to produce clear and reliable guidance that will help charities to understand how to comply with both electoral law and charity law. We have agreed to work jointly with the Charity Commission for England and Wales, the Office of the Scottish Charity Regulator and the Charity Commission for Northern Ireland, and representatives of charities, to test our guidance and tailor it to meet charities' needs. We had already planned to do this for campaigners at the 2015 Parliamentary general election before the Bill was introduced.

Our new guidance will cover common charity campaigning tools and scenarios. It will explain how campaigners can assess whether their activities fall under the non-party campaigning rules, and how to comply with the requirements. It will complement and cross-refer to existing guidance produced by the charity regulators⁴ on how charities can engage in political campaigning in pursuit of their charitable objectives.

Legal requirement for joint guidance

A legal requirement for us and the charity regulators to produce joint documents is unnecessary and likely to be inflexible. It may also be counterproductive because it could hinder our ability to respond quickly to the needs of the charities whose activities fall within our regulatory remit, especially as new questions will arise during the regulated period. We are a UK-wide regulator, whereas charity regulation is dealt with by separate regulators in England and Wales, Scotland and Northern Ireland, and any new legal requirements on guidance for charities would need to take account of the devolved arrangements.

We are already committed to working closely and cooperatively on our guidance for the good of everyone that we regulate. We will be best able to do this if the law gives us flexibility about how to develop that guidance.

⁴ Existing relevant guidance produced by the charity regulators includes:

- Charity Commission for England and Wales: [Speaking Out: Guidance on campaigning and political activities by charities \(CC9\)](#)
- Charity Commission for England and Wales: [Charity Commission: Charities, Elections and Referendums](#)
- Charity Commission for Northern Ireland: [Guidance on campaigning and political activity](#)
- Office of the Scottish Charity Regulator: [Guidance for charity trustees on the independence referendum in Scotland](#)

Regulated period for the 2015 UK Parliamentary general election

The controls on non-party campaigners amended by Part 2 of the Bill usually apply for 12 months before UK Parliamentary general elections. The Bill currently provides for the regulated period covering campaigning in the run-up to the 2015 UK general election to begin on 23 May 2014, the day after the European Parliament elections.

We said in our 4 November briefing that if Parliament decided that a period of consultation was desirable before the Bill made further progress, we would recommend that the start of the regulated period for 2015 is delayed by an appropriate period.

This would allow time for:

- campaigners to understand and prepare to comply with the regime before it comes into effect
- implementation of an effective enforcement regime.

There are clear risks associated with a regulated period that starts less than four months after significant changes to the rules on non-party campaigning are confirmed. Many campaigning organisations will already have drawn up their plans for 2014 and will be committing funds to their activities, without any clarity as to what the restrictions on non-party campaigning will be or how they will be enforced by us as the regulator.

Our view remains that the start of the regulated period covering the run-up to the 2015 UK Parliamentary general election should be deferred to November 2014, as this would ensure implementation of an effective regime, understood by campaigners and controlling significant campaigning in the 6 months prior to the poll.