

Lobbying Bill Mythbuster briefing

27 January 2014

This document has been produced following concern that the debate in the House of Commons on 22 January included some misrepresentations of the Lobbying Bill and how charities and campaigning groups operate. It is important for parliamentarians to vote in the final stages of the Bill based on an accurate understanding, not on myths.

The briefing has been written with the input of Ros Baston, leading electoral law specialist and former senior adviser at the Electoral Commission. It reflects the latest changes agreed to the Bill.

Myths

Myth 1: Staff costs are practical to include in regulation and are not unduly burdensome

Myth 2: Lord Harries' amendment on staff costs frustrate Government intentions

Myth 3: Constituency regulation is needed and practical

Myth 4: Lord Harries' amendments on constituency regulation would frustrate Government intentions

Myth 5: The new spending limits are still high

Myth 6: Spending limits are reasonable in relation to political parties and candidate

Myth 7: The Lobbying Bill will help stop non party organisations seconding staff to political parties or candidates

Myth 8: The Lobbying Bill will only restrict partisan, not routine issue-based campaigning

Myth 1: staff costs are practical to include in regulation and are not unduly burdensome

Context

The Political Parties, Elections and Referendums Act 2000 meant that staff costs associated with just printed materials were subject to regulation. The Lobbying Bill proposes to include staff costs for a wide range of additional activities including market research, transport with a view to obtaining publicity, and press conferences [see Schedule 3].

Myth

“On the concerns of third parties about the difficulties associated with calculating staff time, that is an existing element of the regulatory regime. Its operation in the last two general elections, alongside Electoral Commission guidance, shows that such costs can be accounted for without it being overly burdensome.”

Andrew Lansley MP, Commons consideration of the Bill 22 January 2014

Reality

The much wider range of regulated activities makes staff costs much more difficult and bureaucratically burdensome to account for. NGOs gave evidence to the Commission on Civil Society and Democratic Engagement that their organisations are set up to campaign on a whole range of issues, only some of which may be subject to election regulation. Accounting for fractions of staff time - from HR to management - spent on a plethora of activities would be extremely burdensome.

It is worth noting that political parties do not have to include staff costs in their own spending limits, and have argued that it would be too complicated for them to do so. It is much harder for non-party organisations for whom election activity is a small part of what they do.

“If full staffing costs are included in controlled expenditure, we estimate that we would need to drastically wind down the time spent by our national campaigning team for the year ahead of a general Election and operate with less than one member of staff able to campaign on geographically focused issues such as local woodland threats in key constituencies.”

Woodland Trust evidence to the Commission, Report 1, p.27

Electoral Commission recommendation

The Electoral Commission acknowledge that staff costs are difficult for charities and campaigning groups to identify and allocate and recommend that staff costs are excluded from

regulation for the 2015 General Election (Electoral Commission Report Stage briefing, p.5).

Myth 2: Lord Harries amendment on staff costs would frustrate Government intentions

Background

The Government has said it would like civil society organisations' staff costs to be publicly declared, for greater transparency. It said it is not trying to discourage campaigners by introducing undue bureaucracy.

Lord Harries amendment:

Page 57, line 14, at end insert—

“Exclusions of background staff costs

1AA Nothing in sub-paragraphs (3) to (5) of paragraph 1 shall be taken as extending to any expenses incurred in respect of remuneration or allowances payable to any member of staff (whether permanent or otherwise) of the third party.”

Myth

"[T]he Government believe that the inclusion of staff costs is an important element of the regime. We have none the less agreed to a review of the operation of the Bill during the 2015 general election. The inclusion of staffing costs will be an aspect of that review. Lords amendment 108 would, however, create a significant gap in the operation of an effective regulatory regime at the next general election, so I ask the House to reject it."

Andrew Lansley MP, Commons consideration of the Bill 22 January 2014

Reality

This amendment means only staff costs directly relating to communicating with the electorate are included in controlled expenditure, not 'background' staff costs that are impractical to allocate. It achieves transparency of the campaigning costs that matter most, without discouraging campaigners from their usual activities.

For example, for public meetings, the costs of venue hire, publicity, speaker fees and staff transport costs would all be included, and count towards the spending limit. However,

campaigners would not have to make sure that every telephone call or email sent by staff – for example to book the venue – was recorded and counted.

For leaflets and telephone canvassing, all staff costs would have to be included – such as design time for leaflets, and project management of large scale operations.

Electoral Commission recommendation

The Electoral Commission recommended that all staff costs be excluded for the 2015 General Election.

Myth 3: Constituency regulation is needed and practical

Context

Under existing law, there is no restriction on the proportion of the national spending limit that may be spent in a confined area, by political parties or non-party campaigners.

Whilst most charities and campaigning organisations do not object to constituency level regulation in principle, they have provided evidence that the proposals in the Bill are unworkable in practice. No evidence has been produced to substantiate undue influence in constituencies from non-party campaigning or an imminent threat of it.

Myth

“The constituency limits applying to third parties were introduced to prevent candidates and political parties—they are, of course, the main actors in any election, and rightly so—from being outspent and overwhelmed by the activities of third parties, so that parties do not put their own candidates forward in an election. The Bill does not prevent third parties from campaigning, but it does require them to be open and up front about their spending, and not to overwhelm and outspend the candidates and parties.”

Andrew Lansley MP, Commons consideration of the Bill, 22 January 2014

Reality

“Most non-party campaigners are not of course organised on a constituency basis. Obtaining the information necessary to identify potential cases of non-compliance at constituency level, and particularly the evidence needed to be able to sanction breaches, is likely to be so difficult that these provisions [in the Bill] may be unenforceable in practice.”

Electoral Commission, Briefing ahead of House of Commons Second Reading

“What really makes a difference, as we all know, to a constituency campaign is leaflets through doors, letters sent, and telephone calls made.”

Lord Tyler, ‘An update on the Lobbying Bill’, Liberal Democrat Voice, 16 January 2014. <http://www.libdemvoice.org/lord-paul-tyler-writes-an-update-on-the-lobbying-bill-37867.html>

Myth 4: Lord Harries amendment on constituency regulation would frustrate Government intentions

Context

The Government said that constituency limits were needed for the sake of transparency, and to ensure that election candidates were not outspent in their constituencies. Civil society organisations accept, in principle, the Government's aim of greater transparency. Yet this must be balanced with the risk of curbing freedom of association and the freedom to campaign. If they exist, constituency limits must be workable and fair.

Myth

"The amendments would require that only the costs of election materials—whether they are addressed to households or otherwise distributed—and unsolicited telephone calls to households should count towards those constituency limits. They therefore fail to take into account the principle that lay behind the introduction of constituency limits, namely the principle of transparency."

"As Members know very well, campaigning does not revolve around leafleting and cold calls. There are events such as press conferences and rallies; there is transport to bus supporters to an area, and there are the payments made to campaigners. All those are significant aspects of campaigning, and excluding the costs of such activities would undermine the effectiveness of the constituency limits."

Andrew Lansley MP, Commons consideration of the Bill 22 January 2014

Reality

Lord Harries' amendment on constituency regulation seeks to ensure the government's policy aim is workable. It ensures transparency of the constituency-level spending by non-party campaigns that most affects election candidates; that which is targeted directly at particular constituencies in order to influence a result. By making the language of the constituency limit more precise, the amendment makes it easier for campaigners and the regulator to implement.

As Lord Tyler recently stated,

"What really makes a difference, as we all know, to a constituency campaign is leaflets through doors, letters sent, and telephone calls made."

Lord Tyler, 'An update on the Lobbying Bill', Liberal Democrat Voice, 16 January 2014. <http://www.libdemvoice.org/lord-paul-tyler-writes-an-update-on-the-lobbying-bill-37867.html>

Electoral Commission recommendation

*“The Bill seeks to regulate spending that has a particular effect in one or more constituencies. We have previously expressed concerns that it includes some activity that cannot easily be identified as having a particular effect at constituency level, and that this will cause practical problems for campaigners and will make it difficult for us to enforce the rules. An amendment debated at Report stage sought to narrow the constituency controls to items that can be linked to specific addresses and evidenced with some confidence. This amendment builds on that concept. **We see benefits in defining the scope of activity covered by the constituency controls more narrowly than in Part 2 of the Bill generally.***

*... [Lord Harries’ amendment] also covers election material that is distributed in a constituency in other ways. This would include some activities with effects that cannot easily be attributed to particular constituencies, such as the distribution of leaflets at a busy transport interchange used by commuters from several constituencies. However, the amendment only covers activity that “can reasonably be inferred” as being aimed at electors in particular constituencies. Ministers indicated at Report stage that it was important for the constituency controls to cover such activity. **On balance, we support this amendment, which should make the new constituency controls more practicable for campaigners and more enforceable.***

*In previous briefings we have noted that, except in extreme cases, the new constituency controls may be unenforceable within the timescales of the regulated period, given the difficulty of obtaining robust evidence to determine and sanction breaches. **We think this amendment would reduce this problem, but in practice it will still often be difficult to obtain adequate evidence of a breach at constituency level and deal with it before polling day.***

Electoral Commission, Briefing ahead of House of Lords Third Reading.

Myth 5: The new spending limits are still high

Context

The Lobbying Bill slashes the total amount of money a charity or campaigning group can spend ahead of elections by 60% in England, 48.7% in Scotland and 26.7% in Wales. In Northern Ireland the amount has been raised by 14%.

Myth

“[A] third party could print 40 million leaflets, it could take out a dozen front-page advertisements in a national newspaper, or it could make 780,000 telephone calls from a professional phone bank.”

Andrew Lansley MP, Commons consideration of the Bill 22 January 2014

Reality

Andrew Lansley’s figures do not appear to include any staff costs for campaign development, design, concept testing or management of the work so is a significant over-representation of what could be purchased.

The new much lower spending caps will significantly restrict the work of high-spending organisations such as HOPE not hate, campaigning against the far right; and of coalitions of organisations working together such as Stop Climate Chaos.

It would be possible to demand greater transparency from non-party campaigners without limiting the total amount of money they may spend on campaigns.

There is no evidence to suggest that the current limits have led to disproportionate spending by non-parties, and in any event the wider range of activities introduced by the Bill would mean that the limit is, in any case, reduced in effect.

Electoral Commission recommendation

The Electoral Commission recommended that total spending limits should be revised if additional campaigning activities become subject to regulation. They have made clear they think it is appropriate to rise in line with this additional activity.

Myth 6: Spending limits are reasonable in relation to political parties and candidate

Context

Political parties have no caps on spending ahead of General Elections.

Candidates have spending limits of around £40,000 to cover approximately five months before a general election. Before that period, their spending is unlimited.

Myth

“The £450,000 overall spending limit that the Bill now proposes is at a level that few political parties exceed, accounting for the same range of activities. For instance, at the last general election only four political parties—ourselves, the Liberal Democrats, Labour and the UK Independence Party—spent more than that.”

Andrew Lansley MP, Commons consideration of the Bill 22 January 2014

Reality

The spending of political parties referenced here does not include staff costs, so any comparison to non-party spending is not valid.

Non party campaigners spent a fraction of political parties at the 2010 General Election. Total spending by political parties was £31 million. In that same election period, third-party organisations spent just £3 million.

There is no record of non-party campaigning spending in constituencies. The Lobbying Bill was drafted without this information. No claims have been made that large sums were concentrated in constituencies ahead of any recent elections, and no evidence has been brought forward to substantiate the concern that this is likely to happen.

Electoral Commission recommendation

In principle the Electoral Commission recommended that staff costs are introduced for both political parties and non-party campaigning:

“However, given the practical challenges we would support exempting all campaigners’ staff costs from the rules for the 2015 UK Parliamentary general election, on the basis that the approach could be re-considered in the post-legislative review. If all staff costs are not excluded, we think that amendment 45 offers some advantages over the current position in the Bill.”

Electoral Commission January 15 Briefing

Myth 7: the Lobbying Bill will help stop non party organisations seconding staff to political parties or candidates

Context

There has been one unsubstantiated claim that a trade union seconded undeclared staff to campaign for a political candidate ahead of the 2010 General Election.

Political parties do not have to include staff costs in their spending returns. Candidates only include staff costs for the much shorter five month period before a general election.

Myth

“The reaction to this bill is ill-founded. It will not prevent any charity from carrying on its legitimate activity. What it will do is prevent trade unions spending shed loads of money in marginal seats at election times without any reference to the spending limits with which parties and candidates have to comply.”

Gary Streeter MP, Plymouth Herald, 24 January 2014

Reality

Note the Lobbying Bill and Lord Harries amendments do not have any bearing on the situation that some politicians have expressed concern about in which a third party may want to second staff to work for a party or candidate. That is not a situation regulated by third party rules. Such costs would either count towards a party’s spending limit, or a candidate’s spending limit depending on the timing and nature of the secondment. Ensuring appropriate enforcement, rather than changing the rules, is the appropriate response to such concerns.

Myth 8: The Lobbying Bill will only restrict partisan, not routine issue-based campaigning

Background

The current definition in Clause 26 of PPERA does not adequately distinguish between policy campaigning and electioneering for a party or candidate through non-party campaigning.

This means that the normal campaigning activity of NGOs on policy issues that are, or become, politically contentious can be deemed to fall within the definition – even if there is no intention of that campaigning having a meaningful electoral impact.

It is thus possible to be fully compliant with charity law and still fall within the definition of regulated expenditure from PPERA, which is retained by the Lobbying Bill.

Myth

“I received an email from a constituent yesterday urging me to support Lord Tyler because he wanted to continue to campaign against wind farms in our area and because he wanted to be able to campaign against the building of houses on the battlefield of Culloden if anybody ever suggested it. I was able to point out to him with complete certainty that those two things would never be covered by the Bill.”

John Thurso MP, Commons consideration of the Bill 22 January 2014

“If charities comply with the guidance, called CC9, issued by the Charity Commission, we can be pretty confident, except in very limited circumstances, that they would not fall to be regulated under election law. It could happen if, for example, a charity pursued its purpose in a run-up to an election, received various pledges from various candidates or parties in relation to its objectives and then chose to issue details to the public. That could be held to be seeking to influence electoral outcomes.”

Andrew Lansley MP, Commons consideration of the Bill, 22 January 2014

Reality

Ministers have frequently referred in debates to the first part of the definition of controlled expenditure:

Expenditure that can reasonably be regarded as intended to promote or procure electoral success at any relevant election for—

(i) one or more particular registered parties,

- (ii) one or more registered parties who advocate (or do not advocate) particular policies or who otherwise fall within a particular category of such parties, or
- (iii) candidates who hold (or do not hold) particular opinions or who advocate (or do not advocate) particular policies or who otherwise fall within a particular category of candidates.

The second part of the definition is crucial because it means normal campaigning activity by charities and NGOs which has nothing to do with electioneering can be subject to regulation. But Ministers have frequently omitted this from the debate and their explanation of what campaigning would be caught by regulation. It says:

A course of conduct may constitute [promoting or procuring electoral success] even though it does not involve any express mention being made of the name of any party or candidate.

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 have another effect as well.

This definition is not clear as to when a 'policy-based' campaign might be construed by one candidate, party or other complainant as having a partisan effect.

These problems were present in the definition of non-party regulated spending in PPERA. However the effect of the ambiguity has been greatly exacerbated by other proposed changes in the Bill, particularly the wider list of regulated activities, including staff costs. This means the thresholds for registration and national spending limits will be more quickly reached.

Electoral Commission

The Electoral Commission is explicit (see 22 Oct 2013 briefing) that this definition covers a much wider range of activities than prima facie electioneering for parties or candidates. It can include:

- A campaign to call for a change in the law
- A long-term campaign on a policy issue which is subsequently adopted by one or more political parties
- A leaflet stating the policy positions of candidates

For further information please contact Simon Tiller: simon.tiller@civilsocietycommission.info