

When is policy campaigning really electioneering and when is it not?

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At the heart of all the amendments peers will vote on at Report Stage on 15 January is the question of definition: what counts as third party policy campaigning and what is electioneering.

It is essential therefore that peers fully understand the definition and how broadly it casts the net of activity subject to regulation.

This briefing has been produced because of concerns that Ministers have not adequately reflected the full meaning of the definition in House of Lords debates and therefore **the full scale of impact of the Lobbying Bill on NGOs' normal policy campaigning may be unclear to peers.**

The full definition in the Lobbying Bill

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.

Electoral Commission guidance about what activity the definition would catch

The Electoral Commission produces guidance to help clarify how they will apply the law as the regulator. They are explicit (see 22 Oct 2013 briefing) that this definition covers much wider activity than prima face electioneering for parties or candidates and 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

What is wrong with the definition?

The definition 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 at all of that campaigning having an electoral impact.

Why not change the definition?

The rushed timescale of the Bill and the lack of pre-legislative scrutiny has made it impossible to reconsider the definition in an appropriate way that would properly assess the full consequences.

Why the impact of the definition is so different in the Lobbying Bill compared to PPERA

The main difference between the existing PPERA law and the proposed Lobbying Bill is the **scale of activity permitted** - both before activity becomes subject to regulation, and once organisations are registered with the Electoral Commission.

The Lobbying Bill proposes to slash thresholds for registration by half and cuts spending limits by 60%. It would also make subject to regulation a whole range of activities not previously caught – including staffing costs for all of those activities.

This means many more organisations would be limited in the amount of campaigning activity they can undertake.

Because of the ambiguities of the definition, the activity restricted is likely to be routine policy campaigning as well as campaigning explicitly for or against the electoral success of a party or candidates.

PPERA attempted to overcome disproportionate curtailment policy campaigning that could result from ambiguities in the definition by setting thresholds and limits at a level that would only make subject to regulation activity on a scale that could have an undue impact on an election.

Large campaigning cuts

The Bill dramatically reduces the total amount that non-party campaigners can spend in the year before a UK Parliamentary general Election between 60 and 70%, from:

- £793,500 to £319,800 in England
- £108,000 to £35,400 in Scotland
- £60,000 to £24,000 in Wales
- £27,000 to £10,800 in NI

New regulated activities

Advertising
Leaflets sent to the public
Websites
Public rallies and events
Press conferences
Market research
Transport

All costs are covered, **including staff costs** (which are not regulated for political party spending).

Democracy

The Lobbying Bill is predicated on the idea that activity on the scale permitted under PPERA could have an undue influence on elections. However no evidence has been brought forward by Government to substantiate this. Instead arguments are repeatedly presented about threats that could not materialise in the UK because of existing legislation.

Peers must consider the cumulative impacts of the proposed measures in the Lobbying Bill. Does the, as yet unsubstantiated, threat of undue influence on elections by non-party campaigning justify dramatically limiting normal policy campaigning of NGOs in the year ahead of General Elections?

Further Information

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