

## THE TRANSPARENCY OF LOBBYING, NON-PARTY CAMPAIGNING AND TRADE UNION ADMINISTRATION BILL

The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill was introduced to the House of Commons in July 2013, just before the Summer Recess, with its Second Reading debate scheduled immediately after on 3<sup>rd</sup> September 2013.

In summary, the Bill makes provision in three areas:

- It establishes a register of professional lobbyists and a Registrar of lobbyists to supervise and enforce the registration requirements;
- It changes the legal requirements for people or organisations who campaign in relation to elections but are not standing as candidates or a registered political party;
- It changes the legal requirements in relation to trade unions' obligations to keep their list of members up to date;

As has previously been noted, Part 2 of the Bill as currently drafted may affect the CSPA by impacting upon the ability of non-party groups campaigning on political issues in the 12 months before a general election.

The Bill changes the spending limits that such people or organisations can spend in an election campaign ('controlled spending') from up to £989,000 to £390,000 and the level of spending at which they are required to register with the Electoral Commission, broadens the definition of what counts as spending – to include overheads and staff costs – and widens the definition of what counts as election-related activity to include work that could affect the outcome, even if that was not its purpose.

The Bill also limits spending per constituency to £9,750, and lowers to £5,000 the amount charities can spend before they have to register with the Electoral Commission.

The Bill aims to increase transparency in relation to spending by non-parties by requiring them to publish and record more information about their spending, donations, accounts and board members. Lastly, the Bill clarifies and extends the Electoral Commission's duty to monitor and take all reasonable steps to secure compliance with regulatory requirements, including those inserted by the Bill.

This briefing provides the CSPA with an update on the debates undertaken on Part 2 of the Bill as it passed through Second Reading and Committee Stage in the House of Commons.

## Government concessions to date – Part 2 of the Bill

- The Government has agreed to amend the Bill to change its proposed definition of 'controlled expenditure' in Part 2 – Initially this was proposed to cover all expenditure *'for electoral purposes'*, but will now be somewhat softened and defined as expenditure *'which can reasonably be regarded as intended to promote or procure electoral success'*;
- The Government is currently considering whether or not to amend the Bill to grant a specific exemption to charities from Part 2, subject to further discussions with the Electoral Commission and NCVO.

### The Bill so far

#### August 2013 - Before Second Reading in the House of Commons

Ahead of the Second Reading debate in September it was reported in the Guardian newspaper that the Electoral Commission, the independent body responsible for supervising and implementing the regulatory framework for the electoral system, expressed concerns in a private briefing that the clauses in part 2 of the Bill may be unenforceable and spell uncertainty for charities, campaign groups and voluntary organisations. Their briefing said:

*"In our view, it is not at all clear how that test will apply in practice to the activities of the many third parties that have other purposes beyond political campaigning. For instance, it seems arguable that the new test could apply to many of the activities of charities, voluntary organisations, blogs, thinktanks and other organisations that engage in debate on public policy.*

*"In contrast, the current definition of third party campaigning sets out quite clearly both the type of activity that may be covered (material directed at the public that promotes electoral success), and the fact that such activity is controlled whatever the intentions of those carrying it out."*

In the same article, the Shadow Leader of the House of Commons Angela Eagle MP said:

*"This bill amounts to a sinister gag on charities and campaigners in the year before the election. The government urgently needs to listen to charities and campaigners who are telling them that these proposals will have a chilling effect on the quality of our national debate."*

#### 2nd September 2013 – NCVO Helen Mountfield QC Advice

On 2<sup>nd</sup> September the NCVO published written advice it had received from Helen Mountfield QC of Matrix Chambers warning that the Government's proposals could have a *'chilling effect on freedom of expression'*. The NCVO had asked Helen Mountfield for advice about the impact on charity campaigning of the proposals in the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill. Her advice reads:

*"In my view NCVO is right in its perception that the provisions in Part 2 of the Bill are likely to affect the activities of many of their members, and to impose substantial new regulatory hurdles in relation to what they can say on matters of public interest for a very long time...**The lack of clarity as to the extent of the controls mean that the provisions in Part 2 of the Bill are likely to have a chilling effect on the expression of views on matters of interest for third sector organisations.**"*

### 3rd September 2013 – HoC Second Reading Debate

On 3<sup>rd</sup> September the Bill received its Second Reading in the House of Commons. Specifically on Part 2 of the Bill, the Leader of the House of Commons Rt Hon. Andrew Lansley said:

*"Let me give this assurance - we are very clear that we are in no sense seeking to change the boundary between campaigning on policies and issues which charities do and third parties do to a substantial extent...**Charities, think-tanks, NGOs (non-governmental organisations) should not be alarmed that this in any sense impacts on their ability to campaign on policy issues.**...The campaigning by third parties at the last election was not in any substantial way undertaken by charities. It was undertaken by other third parties - trade unions, companies, campaign groups, etc etc. So the idea that charities are in any way constrained is completely wrong."*

Responding for Labour, Shadow Leader of the House of Commons Angela Eagle MP called the Bill "one of the worst pieces of legislation I've seen any government produce in a very long time". On Part 2 of the Bill, she said:

*"Worries about part 2 are being widely expressed outside the House, and the Government would be wise to listen and consider some major amendments to the suggestions that they have put before us today—or, better, to delay the Bill, so that we can have proper pre-legislative scrutiny."*

On the Government's specific proposed changes in Part 2 of the Bill:

*"[The Government] have widened the meaning of the term 'political purposes' and cut the amount of money that can be spent before it is necessary to register; and they have inserted some extremely uncertain definitions of 'electoral purposes'. I do not want to get into a Committee-stage debate, but **the Government cannot simply declaim that nothing has changed when they have changed, broadened and widened definitions and cut the amount of money that can be spent lawfully during an election period.**"*

She concluded:

*"This bill is hurried, badly drafted, an agglomeration of the inadequate and sinister and partisan...It's a sop to powerful, vested interests; a sinister gag on democratic debate in the run-up to the general election; a shameful abuse of the legislative process to make cheap, partisan points. This is a very bad bill."*

## 5<sup>th</sup> September 2013 – Political and Constitutional Reform Committee Report

On 5<sup>th</sup> September the Political and Constitutional Reform Committee, chaired by Graham Allen MP, published its report on the Bill. The report was critical of the Government's introduction of the Bill, and called for it to be temporarily withdrawn. The report also called for the Government to bring forward a motion in the House to set up a special Committee to carry out pre-legislative scrutiny, using the text of the existing Bill as a draft. On Part 2 of the Bill the committee concluded:

*"We do not believe that the Government has clearly communicated the need for Part 2 of the Bill, or has provided a satisfactory account of the basis on which the new levels for registration and expenditure by third parties have been set. The definition of spending "for electoral purposes", in particular, is confusing. It is unsatisfactory that its interpretation should be left largely to the Electoral Commission—a state of affairs the Commission itself has criticised. Many charities and other organisations contacted us to express concern about the combined effects of new lower thresholds for registration, new lower limits for expenditure, and a wider, vague definition of what will count as controlled expenditure."*

Responding to the publication of the report, Sir Stephen Bubb of ACEVO said:

*"The Bill as it stands will still create unnecessary uncertainty, bureaucracy and cost for charities seeking to engage with public policy debate. Many charities have told me they remain concerned about its effects. The Government should listen to the Political and Constitutional Reform Committee's recommendation and go back to the drawing board. We shall offer our help and cooperation, if the government allows us time, to design a bill that properly restores the public's trust in politics."*

## 6<sup>th</sup> September – Cabinet Office Statement

On 6<sup>th</sup> September, in a press release, the Leader of the House of Commons Rt Hon. Andrew Lansley MP announced that the Government would bring forward amendments to the Bill after a meeting with the National Council for Voluntary Organisations (NCVO). The statement announced that the Government would amend the Bill to prevent charities from falling foul of the new regulations in Part 2, specifically by changing the definition of the types of activities that the Bill would cover.

Rather than describing the campaigning activities covered by the new Bill as "for electoral purposes", which the NCVO warned could capture legitimate day-to-day activities of charities, the Government said it would make use of a definition in existing legislation. The statement said:

*"I heard what charities and voluntary organisations had to say. While we always were clear that we had no intention of preventing them campaigning on policies and issues as they always have, I wanted the Bill to be as clear as it could possibly be...**After discussions with the NCVO and others, and in order to make the point as clear as possible while maintaining the reforms to electoral law, we now propose to revert to the situation as set out under existing legislation, which defines controlled expenditure as expenditure 'which can reasonably be regarded as intended to promote or procure electoral success'**"*

The statement did however reiterate the proposed new limits that the Bill will introduce for third-party campaigning expenditure, from up to £989,000 to £390,000.

Responding to the statement, Sit Stuart Etherington, Chief Executive of NCVO, and Sir Stephen Bubb, Head of the Charity Chief Executives Body Acevo, said more needed to be done to meet the voluntary sector's concerns. Etherington said that although the changes proposed by the Government were a significant step in the right direction, the NCVO remained concerned about the 'ambiguous and damaging' legislation.

## 10th September – HoC Committee Stage (Day 2)

On the second day of debate at Committee Stage, during a debate on an amendment from Liberal Democrat MP John Thurso to specifically exempt chairites from the new legislation, the Deputy Leader of the House of Commons Tom Brake MP suggested that the Government would bring forward amendments to clause 26 of the Bill on the meaning of 'controlled expenditure'. During the debate he said that Government amendments to the Bill would be published in due course, and following further discussions with both the NCVO and Electoral Commission. He said the Government had listened to the concerns of charities and amendments would be published before the report stage of the Bill begins on 8 October:

*"The Government do not believe that we are significantly changing or widening the present test (for "controlled expenditure")...**However, I am conscious, as are the Government, of the concerns raised by hon. Members that charities and voluntary organisations will be caught by the proposals in clause 26 and that the new language leaves room for ambiguity. This is not the Government's intention...** on when an amendment will be tabled and whether there will be a process for engaging with the Opposition, the Electoral Commission and the National Council for Voluntary Organisations, I can provide them with reassurance that that process will happen... **Discussions will take place with the Electoral Commission and the NCVO prior to them being finalised.** Although the House will be in conference recess, the Government hope to table amendments at least a week before to give Members time to consider them."*

Following the three days of Committee Stage debates, the Report Stage of the Bill will take place in the House of Commons on 8<sup>th</sup> October after the end of the party conferences season.