

Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014

Debate on 13 September 2018

This Lords Library Briefing has been prepared in advance of the debate due to take place on 13 September 2018 on the following motion:

Lord Harries of Pentregarth to move that this House takes note of Part II of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 and the effect it has had on third party election campaigning.

Part 2 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014

The Political Parties, Elections and Referendums Act 2000 (the 2000 Act) sets out the rules on what third party, or non-party campaigners, can spend on regulated campaign activity in the run-up to certain elections.¹ A 2016 review into third party campaigning, sponsored by the Cabinet Office, provided the following definition of third party campaigners:

For the purposes of the 2000 Act third parties are defined widely but are essentially any organisations that are engaging in activities at an election which may influence how people vote. They may be campaigning for or against a political party or candidates or campaigning on an issue that some candidates or political parties support or oppose. By definition a third party is not contesting the election directly by fielding candidates.²

Organisations able to register under the 2000 Act as third parties includes bodies such as charitable companies and charitable incorporated organisations.³ Part 2 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 (the 2014 Act) amended the 2000 Act. Amongst its provisions, part 2 of the 2014 Act reduced the overall maximum expenditure limit, widened the range of activities on which expenditure had to be accounted for and increased the threshold for registration.⁴ Additionally, it introduced two new concepts: a constituency spending limit, which applies to spending aimed at one or more particular constituencies, and targeted spending, which covers campaign activity aimed at influencing voters to vote for a political party or any of its candidates.⁵

There is a set time when the rules on spending and donations apply, which is called the ‘regulated period’.⁶ The length of the regulated period will differ depending on the type of election being held. For example, the regulated period for non-party campaigners at the 2017 general election began on 9 June 2016 and ended on polling day, 8 June 2017.⁷ The Electoral Commission has explained that regulated activity may need to be registered if it occurred in the regulated period, even though at the time of the activity an election may not have been triggered:

If you have spent money on regulated activity prior to the announcement of the UKPGE [UK parliamentary general election], which now falls within the regulated period, you should determine

whether that spending is close to or already in excess of the threshold for registering with us. You should then consider whether your planned spending for the UKPGE will mean you exceed the registration threshold.

We advise you to register if that is the case. Registering will ensure that your spending is reported and therefore transparent, and that there is no risk of you beginning or continuing to spend in excess of the registration threshold without being registered.⁸

The impact of the regulated period on the campaigning of charities has recently been the subject of press coverage in relation to the 2017 general election. For example, it has been reported in the press that the Electoral Commission had written to Greenpeace regarding the need to declare spending during the regulated period.⁹ On 19 April 2017, the Electoral Commission announced that it had fined Greenpeace £30,000 and that Friends of the Earth had been fined £1000:

The Commission concluded that Greenpeace Ltd incurred at least £99,000 of spending in England and £12,000 of spending in Wales on a “Coastal Champions” boat tour and on an anti-fracking poster campaign which was undertaken jointly with Friends of the Earth Ltd. The spending on these campaign activities was incurred during the regulated period for the 2015 UK Parliamentary general election.

The Commission also found that Friends of the Earth Ltd incurred at least £24,000 on spending in England. The spending was incurred on the joint activity with Greenpeace Ltd and separately on a “manifesto scorecard” published on its website.¹⁰

The Electoral Commission concluded that “overall, these activities promoted the candidates or parties who demonstrated their support for particular campaign messages and were therefore regulated activities under the legislation”. The *Guardian* report Greenpeace’s UK executive director, John Sauven as saying that the decision not to register was “an act of civil disobedience” and that “sometimes legislation is just wrong and you have to stand up and say so”.¹¹ He argued that 2014 Act was a “democratic car crash” which “weakens democracy and curtails free speech”.¹²

Spending Limits

Third parties must register with the Electoral Commission if they intend to spend more than £20,000 in England, or £10,000 in Scotland, Wales or Northern Ireland.¹³ Registered non-party campaigners may have higher expenditure limits. For example, during the regulated period for the 2017 general election, registered third parties could spend up to the limit of £319,800 in England, £46,100 in Northern Ireland, £55,400 in Scotland and £44,000 in Wales.¹⁴ However, there is an additional limit of £9,750 for ‘focused constituency campaigning’ on regulated campaign activity in a particular parliamentary constituency.¹⁵

Purpose and Public Tests

The rules apply to spending on regulated activity, which is defined as public activity intended to influence voting behaviour. The Electoral Commission’s guidance sets out two tests as to whether this may apply to a particular activity: the purpose and public tests. The Electoral Commission provides the following definition of regulated campaign activity and of the two tests:

The non-party campaigning rules apply to spending on what we call ‘regulated campaign activity’. The following will be ‘regulated campaign activity’ if they can reasonably be regarded as intended to influence voters to vote for or against political parties or categories of candidates, including

political parties or categories of candidates who support or do not support particular policies or issues (we call this the ‘purpose test’):

- press conferences or other media events that you organise
- transport in connection with publicising your campaign

As well as meeting the purpose test, spending on the following activities is only regulated if the activities are also aimed at, seen or heard by, or involve the public (we call this the ‘public test’). This applies to:

- the production or publication of election material (such as leaflets, adverts and websites) canvassing and market research (including the use of phone banks)
- public rallies and public events¹⁶

The Electoral Commission further explains that campaign activity can meet the purpose test even if it does not name a particular party or candidate.¹⁷ For instance, campaigning for a policy that is closely and publicly associated with one or more political parties can meet its scope. For example, even if the intention is to achieve something else, such as raising awareness of an issue, it can still meet the purpose test if it can also reasonably be regarded as intended to influence how people vote.

Commentary

Part 2 of the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014 has received some criticism for allegedly targeting organisations such as charities.¹⁸ During the Bill’s progress in Parliament, the House of Commons Political and Constitutional Reform Committee heard evidence from a number of charities and organisations, including the National Council for Voluntary Organisations (NCVO), who expressed concerns that a lot of their activities would come under the scope of the definition of expenses incurred for “electoral purposes”.¹⁹ The Electoral Commission also told the Committee that the “uncertainty created by the Bill seem[ed] likely to affect a wide range of organisations”.²⁰

Commission on Civil Society and Democratic Engagement

The Commission on Civil Society and Democratic Engagement, chaired by Lord Harries of Pentregarth (Crossbench), a former Bishop of Oxford, was set up in October 2013 following concerns expressed by Helen Mountfield QC that the Bill was likely to have a “chilling effect” on campaigning.²¹ It published four reports on the 2014 Act. This included two reports during the Bill’s passage through Parliament, both of which criticised the definition of regulated non-party campaigning.²² The Commission called for an “improved” definition which would ensure that the “most purely issue-focused campaigning is not drawn within the scope of electoral regulation”, while still ensuring that the “rules are not easily evaded by groups focused on issues with the intent to influence election outcomes”.²³

The Commission published a further report in September 2015 (which followed an interim report in September 2014²⁴), after the legislation had come into force. It examined the impact of part 2 of the 2014 Act on the “democratic engagement” of charities and campaign groups during the regulatory period of the May 2015 general election. It stated that the 2014 Act had been tested and that “considerable evidence” had shown that it had a “negative impact” on charities and campaign groups “speaking out on crucial and legitimate issues ahead of the election”.²⁵ The report reiterated the Commission’s recommendation that the test for regulated activity should be amended to clarify that

campaigning should be regulated only when it is “clear that the subjective intention is to influence the outcome of an election, rather than to raise awareness and generate discussion amongst competing parties and candidates”.²⁶ It also called for the definition of controlled expenditure to be narrowed, including removing staff costs as counting towards regulated activity, shorter regulated periods, and for the definition of an ‘active supporter’ to be revised in consultation with civil society organisations. The Commission on Civil Society and Democratic Engagement has stated on its website that it is undertaking a new inquiry into “the impact of the Lobbying Act on civil society during the 2017 general election regulated period”.²⁷

Hodgson Review

In January 2015, the Coalition Government appointed Lord Hodgson of Astley Abbotts (Conservative) to conduct an independent review into the operation of third party campaigning provisions, in relation to the 2015 general election. The review was sponsored by the Cabinet Office and established under section 39 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014.²⁸

Lord Hodgson’s report, [*Third Party Election Campaigning: Getting the Balance Right*](#), was published on 17 March 2016. He stated that he did not advocate a repeal of the Act, because it was “necessary” to regulate third party spending to prevent individuals or organisations from “unduly” influencing an election through “excessive spending”.²⁹ He also emphasised the importance of there being transparency about “who third party campaigners are and what they are spending”.

However, Lord Hodgson stated that he did not “believe the right balance has been struck in the rules as presently drafted”, and he set out a series of recommendations that will “form part of a package which will better reflect the realities of third party campaigning”.³⁰ His proposals included:³¹

- A revision of the statutory definition of regulated activity. The report argued that the current definition of regulated activity captured activity that could be “reasonably regarded” as intended to influence voters, which created “too much ambiguity” about what expenditure on campaigning activity was regulated. Therefore, the statutory definition should be changed to “one of actual intention”.
- A reduction of the regulated period before a general election from twelve months to four.
- Clarification on how staff costs should be regulated to ensure that work undertaken on electoral campaigning that is ‘incidental’ to a person’s normal job does not count.
- Registration with the Electoral Commission which is published on their website should provide greater transparency about each individual third party campaigner, and therefore more information should be provided as to the purpose of the campaign, where that campaigning is planned to take place, and broad estimates of likely expenditure.
- The Government and the regulator to monitor the use of social media to ensure that the regulatory framework continued to strike the right balance.

The Hodgson review also analysed the number of third parties that registered with the Electoral Commission during the 2015 general election. It found that:³²

- At the 2015 general election 68 third parties were registered with the Electoral Commission, of which 47 were registered specifically for the 2015 general election. These included trade unions, charities, individuals, companies and others. The report stated that “while for some of the third parties registered with the Electoral Commission the general

purpose of their campaign was immediately clear, that was not the case for all of them, in particular the six individuals that were registered”.

- There were 23 third parties that submitted spending returns, with a total expenditure of £1.8 million.
- None of those that registered spent over £250,000 or “anywhere close to the spending limit”.
- The reported total national spend of all the political parties was £37.3 million. Reported third party expenditure was therefore only 4.8 percent of the sums spent by all the political parties combined.
- There were 33 campaigners registered at the 2010 general election, compared with 25 in 2005. After the 2010 election, 23 of these campaigners reported total expenditure of £2.8 million—around 9 percent of the £31.5 million spent by political parties on national campaigning.

In response to the report’s publication, John Penrose, the then Minister for Constitutional Reform, welcomed a number of the recommendations, and stated that the Government would consider the package of proposals.³³ On 5 July 2017, in response to a written question, the Government stated that it was currently considering Lord Hodgson’s report on third party campaigning alongside “a number of other reports” on the framework of electoral law.³⁴ It cited the Law Commission’s review of electoral law³⁵ in particular, and said it would “respond to the issues raised in due course”.³⁶

The House of Lords Charities Committee published its report on 26 March 2017. The Committee supported the recommendations of Lord Hodgson’s review and recommended that the Government implement them in full:

We believe that Lord Hodgson of Astley Abbotts’ proposals for a review of the rules set out in the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 are eminently sensible and will provide reassurance to charities that they will not face censure for carrying out ordinary campaigning activity during election periods. We recommend that the Government implement Lord Hodgson’s recommendations in full.³⁷

In its response to the Committee’s report the Government stated that it recognised the value and importance of the role of charities “in undertaking non-partisan campaigning that supports their charitable purposes”.³⁸ However, it stated that it would not be bringing forward legislation to implement Lord Hodgson’s recommendations, stating that the rules are aimed at reducing undue influences on election outcomes and citing a lack of parliamentary time:

The rules on third party campaigning in elections ensure that campaigning is transparent and prevent any individual, company or organisation exerting undue influence in terms of an election outcome. Lord Hodgson of Astley Abbotts produced a comprehensive report, but the Government has already made clear that we will not be bringing forward legislation to implement his package of recommendations. The legislative programme for this session is already at full capacity.³⁹

By working with charities, the Government stated that it would try to address a concern, expressed by the Committee, that the perception of the legislation was an issue:

One of the report’s conclusions was that it was the perception of the legislation, rather than its direct impact, that was dissuading charities from legitimate campaigning. We have offered to work

with charities to provide guidance on the legislation and encourage charities to continue their important campaigning work.⁴⁰

UN Special Rapporteur

The 2014 Act was considered by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, in his April 2016 follow-up to his 2013 mission to the UK. In a June 2017 report on this mission, Mr Kiai described the 2014 Act as a concern and stated that he had received representations that the Act had had a “chilling effect” on the work of charities during election periods.⁴¹ He stated that many such organisations had opted for silence on issues they worked on and that they had been reluctant to register in case this was mistakenly perceived as “engaging in prohibited party political activity”.⁴² The Special Rapporteur also expressed a concern as to how the 2014 Act regulated activity for professional lobbying organisations versus third party campaigners:

[T]he Special Rapporteur is concerned that the Lobbying Act has a disproportionate impact upon civil society and trade unions vis-à-vis businesses. This is because Part 1 of the Act does not restrict the activities of in-house lobbyists, who enjoy the most influence in the Government by far, and who overwhelmingly work for business interests. It is important that the Government follow a policy of sectoral equity in its treatment of businesses and associations, so that civil society organizations are able to operate in an environment at least as favourable as the one provided for businesses.⁴³

In regard to the part 2 of the 2014 Act, the Special Rapporteur recommended that the Government:

- Clarify the definition of “regulated activity” under the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 by introducing the notion of “actual intention”, and proceed with care at the implementation level;
- Amend the guidance of the Electoral Commission to clarify what activities civil society groups are entitled to undertake.⁴⁴

Responding to the report, the Government said that it continued to make every effort to uphold and advance human rights and was confident that current legislation in place met international standards.⁴⁵ It wrote that the regulation of third party campaigners was not new and:

[T]he regime applies to any organisation which is not a political party, including campaigning organisations and companies. The regime was established by the Political Parties, Elections and Referendums Act 2000. It is also worth noting that longstanding rules under charity law already prohibit charities from engaging in any party-political campaigning or activity. This is particularly important in a pre-election period.⁴⁶

In response to the Special Rapporteur’s concerns about the application of the 2014 Act to ‘civil society’ and trade unions as, compared with businesses, the Government stated:

The Lobbying Act requires consultant lobbyists to register in order to carry out their activities. This is to increase transparency about who consultant lobbyists are representing rather than restrict their activities. The statutory provisions are complemented by non-statutory requirements for information about meetings between external organisations and Ministers to be disclosed on a regular basis. Both Part 1 of the Act and the disclosure requirements apply equally to all sectors.⁴⁷

The Government has argued that the changes made to rules on third party campaigning by the 2014 Act do not restrict charities' freedom to campaign to further their charitable purposes in a non-partisan way.⁴⁸ Instead, it has stated that it makes the political system more accountable.⁴⁹ It has cited guidance provided by the Electoral Commission, saying that this "provides clear guidance for charities that may be considering campaigning in the run up to an election. Where there is significant spending on campaigning that could influence the election, the rules ensure that this is transparent".⁵⁰

Further Information

- Chris Walker, a Senior External Relations Officer for National Council for Voluntary Organisations, '[We Still Need to Change the Lobbying Act—But We Shouldn't Let It Stop Us Campaigning](#)', National Council for Voluntary Organisations Blog, 18 September 2017
- Ben Wilkinson, Head of External Communications for the Electoral Commission, '[Charities and the Lobbying Act: The Electoral Commission's View](#)', National Council for Voluntary Organisations Blog, 26 May 2017
- Third Party Campaigning Review, [Summary of Evidence](#), March 2016
- House of Lords Committee on Charities, [Stronger Charities for a Stronger Society](#), 26 March 2017, HL Paper 133 of session 2016–17; and Department for Culture, Media and Sport, [Response to "Stronger Charities for a Stronger Society" the report of the House of Lords Committee on Charities](#), December 2017

¹ Electoral Commission, [Overview of Regulated Non-party Campaigning](#), April 2017, p 2.

² Third Party Campaigning Review, [Third Party Election Campaigning: Getting the Balance Right](#), 17 March 2016, Cm 9205, p 21.

³ *ibid.*

⁴ *ibid.*, p 17.

⁵ *ibid.*

⁶ Electoral Commission, [Overview of Regulated Non-party Campaigning](#), April 2017, p 3

⁷ Electoral Commission, [UK Parliamentary General Election 2017: Non-party Campaigners](#), April 2017, p 6.

⁸ *ibid.*, p 11.

⁸ *ibid.*, p 8.

⁹ For example: Matthew Taylor and Sandra Laville, '[Charities May Face Criminal Sanctions as "Gagging Law" Backdated Before Election](#)', *Guardian*, 21 May 2017; Ben Webster, '[Greenpeace Fined Over Election Spending](#)', *Times (£)*, 19 April 2017; May Bulman, '[More Than 100 Charities Claim They are Being Gagged by Anti-lobbying Rules](#)', *Independent*, 30 August 2017.

¹⁰ Electoral Commission, '[Greenpeace and Friends of the Earth Fined for Breaking Campaigning Rules](#)', 19 April 2017.

¹¹ Matthew Taylor, '[Greenpeace Fined Under Lobbying Act in "Act of Civil Disobedience"](#)', *Guardian*, 18 April 2017.

¹² *ibid.*

¹³ Electoral Commission, [Overview of Regulated Non-party Campaigning](#), April 2017, p 3.

¹⁴ Electoral Commission, [UK Parliamentary General Election 2017: Non-party Campaigners](#), April 2017, p 11.

¹⁵ *ibid.*, p 12.

¹⁶ Electoral Commission, [Overview of Regulated Non-party Campaigning](#), April 2017, p 4.

¹⁷ *ibid.*, p 5.

¹⁸ Polly Toynbee, '[The Lobbying Bill will Save Corporate PRs but Silence the Protestors](#)', *Guardian*, 3 September 2013; House of Commons Political and Constitutional Reform Committee, [Introducing a Statutory Register of Lobbyists](#), 13 July 2012, HC 1809-i of session 2012–13; and House of Commons Library, [Political Party Funding: Controversies and Reform since 1997](#), 24 March 2016, p 16.

¹⁹ House of Commons Political and Constitutional Reform Committee, [The Government's Lobbying Bill](#), 5 September 2013, HC 601-i of session 2013–14, p 27.

²⁰ *ibid.*

²¹ Commission on Civil Society and Democratic Engagement, '[About](#)', accessed 19 July 2016.

²² Commission on Civil Society and Democratic Engagement, [Report 1: Non-Party Campaigning Ahead of Elections: Consultation and Recommendations relating to Part 2 of the Transparency in Lobbying, Non-Party Campaigning, and Trade Union Administration Bill](#), October 2013, and [Report 2: Non-Party Campaigning Ahead of Elections: Consultation and Recommendations relating to Part 2 of the Transparency in Lobbying, Non-Party Campaigning, and Trade Union Administration Bill](#), December 2013.

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- ²³ Commission on Civil Society and Democratic Engagement, [Report 1: Non-Party Campaigning Ahead of Elections: Consultation and Recommendations relating to Part 2 of the Transparency in Lobbying, Non-Party Campaigning, and Trade Union Administration Bill](#), October 2013, p 8.
- ²⁴ Commission on Civil Society and Democratic Engagement, [Interim Report: Impact of the Lobbying Act on Civil Society and Democratic Engagement](#), September 2014.
- ²⁵ Commission on Civil Society and Democratic Engagement, [Report 4: Non-Party Campaigning Ahead of Elections: Consultation and Recommendations relating to Part 2 of the Transparency in Lobbying, Non-Party Campaigning, and Trade Union Administration Bill](#), September 2015, p 6.
- ²⁶ *ibid*, p 8.
- ²⁷ Commission on Civil Society and Democratic Engagement, [‘Home: The Impact of the Lobbying Act on Civil Society During the 2017 General Election Regulated Period’](#), accessed 3 September 2018.
- ²⁸ At committee stage in the House of Lords of the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill, debate was had on whether there should be a review into the operation of the provisions in part 2 of the Bill. In response to these discussions, and following a commitment made at committee stage, the Government tabled an amendment at report stage requiring that within twelve months of the Bill receiving royal assent, the Minister must appoint a person to review the workings of part 2 of the Bill in relation to the first relevant parliamentary general election.
- ²⁹ Third Party Campaigning Review, [Third Party Election Campaigning: Getting the Balance Right](#), 17 March 2016, Cm 9205, p 5.
- ³⁰ *ibid*, p 6.
- ³¹ *ibid*, pp 6–8.
- ³² *ibid*, p 14.
- ³³ [HC Hansard, 17 March 2016, col 44WS.](#)
- ³⁴ House of Commons, [‘Written Question: Third Party Campaigning Review’](#), 5 July 2017, 2302.
- ³⁵ Law Commission, [‘Electoral Law’](#), accessed 3 September 2018.
- ³⁶ House of Commons, [‘Written Question: Third Party Campaigning Review’](#), 5 July 2017, 2302.
- ³⁷ House of Lords Committee on Charities, [Stronger Charities for a Stronger Society](#), 26 March 2017, HL Paper 133 of session 2016–17, p 97.
- ³⁸ Department for Culture, Media and Sport, [Response to “Stronger Charities for a Stronger Society” the report of the House of Lords Committee on Charities](#), December 2017, p 17.
- ³⁹ *ibid*.
- ⁴⁰ *ibid*.
- ⁴¹ Maina Kiai, [Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association on his Follow-up Mission to the United Kingdom of Great Britain and Northern Ireland](#), 8 June 2017, A/HRC/35/28/Add.1, p 8.
- ⁴² *ibid*, p 9.
- ⁴³ *ibid*, pp 9–10.
- ⁴⁴ *ibid*, pp 20–1.
- ⁴⁵ United Kingdom, [Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association: Comments by the State United Kingdom of Great Britain and Northern Ireland](#), 2 June 2017, A/HRC/35/28/Add.4, p 2.
- ⁴⁶ *ibid*, p 5.
- ⁴⁷ *ibid*.
- ⁴⁸ House of Commons, [‘Written Question: Charities: Lobbying’](#), 18 April 2018, 135348.
- ⁴⁹ *ibid*.
- ⁵⁰ *ibid*.
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