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1. Introduction

This briefing sets out the concerns that many voluntary organisations still have about Part 2 of the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill following its passage through the House of Commons.
Notwithstanding Government amendments this legislation risks having a ‘chilling effect’ on non-party campaigning ahead of election – stopping organisations speaking out about some of the most important issues facing the country and the planet.

The briefing addresses the lack of proper consultation and appropriate scrutiny throughout the parliamentary process so far, and explains why dozens of voluntary organisations are supporting a new Commission on Civil Society and Democratic Engagement to consult the public about the Bill.

It proposes ways in which peers from across the House can help avert a major attack on democratic engagement ahead of elections.

2. What is the Lobbying Bill?

The Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill 2013-14 is draft legislation currently being debated in parliament.

- **Part 1**: Introduces a statutory register of consultant lobbyists and establishes a Registrar to enforce the registration requirements
- **Part 2**: Changes the existing Political Parties Elections and Referendums Act 2000 (PPERA) regulation of those campaigning ahead of elections but not standing for election or registered as political parties.
- **Part 3**: Tightens the legal requirements placed on trade unions in relation to their obligation to keep their list of members up to date.

3. Did the existing Political Parties Elections and Referendums Act 2000 (PPERA) legislation work for campaigners?

The existing rules were problematic, but because the spending caps were reasonable, more confident campaigning organisations were able to function. Many smaller and less experienced organizations at campaigning were put off from pre-election campaigning activity.

Voluntary organisations had been meeting with the Electoral Commission and Charity Commission before the Lobbying Bill was published to raise concerns about the Political Parties Elections and Referendums Act 2000 (PPERA) legislation.

Key concerns were:

i) The definition of what the law was intended to cover was not precise enough to give certainty for campaigners and made it difficult for the Electoral Commission to provide sufficient support.
This led to many organisations changing their plans to make absolutely sure that they did not have to use their limited resources to comply with the regulatory recording and reporting requirements. There was a ‘chilling effect’ on their campaigning activity.

ii) Coalition working is central to modern campaigning. Where groups share interests, it makes sense for them to work together. Under the rules, where they do so, each campaign must count the whole cost of the coalition’s activity towards their own spending limit. The aim is to stop people avoiding the rules by setting up several campaigns and benefitting from separate spending limits for each. However, joint liability for spending made it very difficult in practice for organisations to work together ahead of elections - precise budgets and authorisation for spending had to be agreed, and if the spending might exceed the thresholds for regulation, each organisation would need to comply, even if their own contribution was very small.

4. What does Part 2 of the Lobbying Bill change?

Part 2 introduces new restrictions on the activities of voluntary organisations and other parts of civil society (other than the media and political parties and candidates) in the run up to elections including:

- Reducing the spending threshold for registering with the Electoral Commission to campaign by 50% - meaning many more and smaller campaigning organizations and community groups will need to register.
- Reducing the spending limits on what can be spent in the year by 60% (more in Scotland NI and Wales) - significantly limiting legitimate activity.
- Introducing new very tight spending limits in constituencies - significantly limiting legitimate activity.
- Widening the range of activities that are regulated. This makes the cuts in thresholds and spending limits even more severe than the bold percentage suggests - especially as staff costs are included (they are excluded for political party spending)
- Introducing new burdensome reporting requirements – including weekly reporting in the short period before elections.

5. What are campaigners worried about?

The combination of new restrictions in the Lobbying Bill in addition to problems already existing in the Political Parties Elections and Referendums Act 2000 (PPERA) risks severely curtailing campaigning activity ahead of elections.

The new spending caps combined with a wider range of activities caught (especially full staffing costs) and the problematic definition of what constitutes ‘non-party campaigning’ would radically reduce the scale of campaigning activity possible.
For example it could mean organisations such as Friends of the Earth reduced to nine national campaigning staff for the year ahead of a General Election – with fewer than one member of staff able to campaign on geographically-focused issues such as fracking in key constituencies.

6. **What examples are there of campaigning that would be stopped?**

   The Royal British Legion’s ‘Time to do your bit’ campaign, which ran in the build to the 2010 general election simply invited candidates to pledge to do their bit – whatever that might be – on behalf of the Armed Forces. MPs that made a pledge had their photo taken with a pledge card and this was then used as publicity in constituency media. A list of those candidates who had signed up to the campaign was also published on the Legion’s website. As more activities involved in this campaign would count towards ‘controlled expenditure’ and the thresholds are lower, it is likely that under the new proposals the same campaign would be caught by the rules.

   A charity or community group is concerned about a local issue such as the impact of a proposed out-of-town shopping centre, perhaps due to its effect on local wildlife or on the town-centre economy. If they wanted to host a public event, to discuss via the local media, and conduct polling to gauge local opinion on the issue, they would be required to register even if all local candidates are engaged with the issue and does not clearly preference one candidate over another.

   A health charity could publish a leaflet highlighting the dangers of smoking. If smoking legislation became a party political issue in an election this activity could be deemed to have the effect of supporting a party’s campaign, and be subject to regulation.

7. **Why has Part 2 been criticised for lack of consultation or scrutiny?**

   Graham Allen MP, Chair of the Political and Constitutional Reform Committee, stated on 8 October that the Bill’s “hysterically fast progress ... has meant that it has not been considered properly by the House. ... Parliament has been disrespected; Parliament has been abused.” [Hansard 08 Oct 2013, c65]

   Part 2 of the Bill was introduced without any consultation with voluntary organisations the public, the Electoral Commission (tasked with regulating elections) or the Charity Commission.

   Ministers accepted that there are problems with the parliamentary drafting of the Bill text. MPs complained that the drafting was so poor it was impossible to know what law was intended and therefore impossible to scrutinise properly. MPs disagreed about whether it was a ‘dog’s breakfast’ or not – because canine nutrition is produced with more rigor of process and content.

   There has been very limited time for debate in the House of Commons. Less than one day was allocated for Committee stage debate about Part 2.
Ministers made commitments at Committee stage to publish key Government amendments a week before Report stage – so that voluntary organizations and parliamentarians could develop an informed view about the proposed changes in time for the debate. Instead the amendments were published just two days ahead of Report stage.

8. Who has expressed concerns?

Concern remains incredibly widespread about the Bill as it passes from the House of Commons to the House of Lords – from formal stakeholders including the Electoral Commission and the Charity Commission; to all opposition parties and some members of Coalition parties; to a phenomenal array of voluntary organizations, bloggers, think-tanks and academics.

Sir Stephen Bubb, CEO of ACEVO
“The public wants legislation that makes politics and corporate lobbying more transparent. Instead this Bill makes almost no change to lobbying rules while punishing civil society for a loss of trust in politics that is not its fault.”

Sir Stuart Etherington, Chief Executive of NCVO
“The [Government] amendments leave a great deal of uncertainty and ambiguity. In short, many organisations including small community groups, will be required to consult the Electoral Commission before undertaking campaigning activity in an election period in order to ensure they are not falling foul of the new regulations.”

Electoral Commission
“[The Government amendments] do not address other issues that we have raised with the Bill, including concerns about the impact of reducing the spending threshold that requires campaigners to register with us, and about the new controls on spending focused in individual constituencies.”

Graham Allen, Chair of the Political and Constitutional Reform Select Committee
“This bill is an object lesson in how not to produce legislation. There was little or no consultation with those affected. There was no pre-legislative scrutiny. And the bill is now being rushed through the House in a way that indicates a lack of respect for Parliament. We can all agree on the need for transparency about lobbying and effective regulation of third-party spending. But this bill contains serious flaws.”

Hywel Francis, Chair of the Joint Committee on Human Rights
"My Committee’s view is that the overall effect of part 2, on lower spending limits, lower thresholds for registration and increased numbers of campaigning activities, may well be a chilling and adverse effect on free speech and freedom of assembly at a particularly important time—the run-up to general elections."
Open letter from 13 faith groups
“We are concerned that Part II of this Bill, even with the Government amendment, may curtail our ability to express deeply-held beliefs in the political arena.”

Full text of letter: https://www.quaker.org.uk/news/faith-bodies-express-concern-over-lobbying-bill

The Panel on the Independence of Voluntary Organisations
“The Government must not rush to restrict the voluntary sector from campaigning”:

Legal opinion of Ros Baston, independent lawyer
“Campaigns could fall within regulation if they...promote policies which, for whatever reason, are associated with one or more political parties or candidates.”

More quotes from the Report Stage debate: http://www.theyworkforyou.com/debates/?id=2013-10-09a.198.6&s=ros+baston#g208.5

9. What is the Commission on Civil Society and Democratic Engagement – and why should parliamentarians listen to its recommendations?

The Commission on Civil Society and Democratic Engagement was established to consult voluntary organisations, key stakeholders including the Electoral Commission, and the public about how they think ‘non-party campaigning’ should be regulated ahead of elections.

The body was set up following concerns that the Government failed to consult at all ahead of publishing Part 2 of the Lobbying Bill, and given the potentially very far-reaching implications for democracy in the UK.

The Commissioners represent a diverse coalition of prominent charities, campaign groups, academics, think tanks and online networks. They are:

Lord Harries, former Bishop of Oxford and Chair of the Commission.
Lesley-Anne Alexander, Chair of the Association of Chief Executives of Voluntary Organisations
Baroness Mallalieu QC, President, Countryside Alliance
Justine Roberts, Chief Executive, Mumsnet
Toni Pearce, President, NUS
Andrew Chadwick, Professor of Political Science, Royal Holloway, University of London
Rob Berkeley, Director, Runnymede Trust
Georgette Mulheir, Chief Executive, Lumos
Nick Pickles, Chief Executive, Big Brother Watch
The Commission is supported by over 40 voluntary organisations including:

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The Commission will undertake very rapid consultation across the UK – seeking to hear the broadest range of interests and perspectives in the short time period ahead of the Lords Committee stage.

It will then publish recommendations for how non-party campaigning should be regulated ahead of the elections. Because the recommendations will be based on consultation they should be considered seriously by parliamentarians.

Full details of the Commission including Terms of Reference and consultation sessions is here: http://civilsocietycommission.info.

10. What is the timescale for the bill?

There is an extremely truncated timescale for the Bill.

It was published the day before the Commons summer recess, and Second Reading was just a couple of days after MPs returned. It has now completed Report and Third Readings in the House of Commons stages.

First Reading in the House of Lords was on 10 October. Second Reading in the Lords is on 22 October. The Bill is expected to be completed by January 2014. Government is intent on implementing the legislation by May 2014 – one year ahead of the expected date of the General Election.

11. What should peers do to stop democratic engagement ahead of elections being undermined?

The House of Lords has an important role as a constitutional safeguard, and to ensure high quality legislation. Both of those are at risk with this Bill.

Peers should first seek to ensure no harm is caused to democratic engagement ahead of elections.

Then they should act to ensure the most appropriate regulation of non-party campaigning activity such that it supports and encourages vibrant democratic engagement from across civil society.

Peers are asked to:

i) Call for a pause in the legislative process for Part 2 of the Bill to allow proper consultation and scrutiny.
Listen to the recommendations of the Commission on Civil Society and Democratic Engagement when they are published.

Opportunities for peers to help include:

i) Meet with Ministers to express your concern.

ii) Attend a briefing meeting with Voluntary organisations: **Wednesday 16 October, 12.00, Committee Room 2**

iii) Meet individually with voluntary organisations that you have a relationship with or are interested in.

iv) Voice your concerns at Second Reading, on 22 October, and call for a pause in the legislative timetable for Part 2.

v) Vote for amendments at Committee stage based on recommendations from the Commission on Civil Society and Democratic Engagement.