

Briefing



Part 2 Transparency, Non-Party Campaigning and Trade Union Administration Bill

Second Reading Tuesday 3rd September 2013

Key points:

- Citizens Advice has received legal advice (enclosed) that Part 2 of the Transparency, Non Party Campaigning and Trade Union Bill will impose significant restrictions on the ability of both Citizens Advice and individual Citizens Advice Bureaux to fulfil its charitable aims and impose significantly increased bureaucratic reporting requirements on both Citizens Advice and Citizens Advice Bureaux
- We are concerned that as the Bill is currently drafted it would leave the campaigning activities of the Citizens Advice service open to vexatious legal challenge by interested parties claiming that we are electioneering by campaigning for policies supported by the Government (or the Opposition). For example, we are keen to avoid a scenario in which the pay day lending industry could challenge our campaigning work to reform this market on the grounds that our views were supported by one or more political parties in an election year.
- Citizens Advice is calling on the Government to amend the Bill in the following places to ensure that it does not have devastating unintended consequences for charities, community groups and civil society:
 - **Provide a clearer and much narrower definition of what is considered as ‘activity for election purposes’ under Clause 26 so that politically neutral charities and community groups engaging in legitimate activity to ensure that the voices of ordinary people are represented in public policy debates are clearly exempt from the restrictions the Bill imposes on non-party campaigners**
 - **Maintain current limits on levels of expenditure for non party campaigners during election periods**
 - **Remove staff costs related to campaigning from the spending rules, until the detail of what spending is covered is carefully considered and defined.**
 - **Remove aggregated costs for members of coalitions so that organisations that join coalitions should only be accountable for their direct financial contribution.**
 - **Ensure that charities that receive no reportable donations are not required to submit nil returns.**

Contact

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About the Citizens Advice service

- Citizens Advice's charitable aim is to make society fairer by providing the advice people need for the problems they face; and improving the policies and practices that affect people's lives.
- 340 Citizens Advice Bureaux provide advice from 3500 locations across England and Wales
- In the last year Citizens Advice Bureaux helped over 2 million clients to solve over 7 million problems face to face and on the phone.
- Last year 14 million people received advice and information from our advice website Adviceguide
- Our policy, campaigning and influencing work is a hugely important part of the work we do for our clients. This year alone we estimate that our campaigning work positively impacted on 8.3 million people.

Introduction

Citizens Advice has received legal advice (enclosed) that Part 2 of the Transparency, Non Party Campaigning and Trade Union Bill will impose significant restrictions on the ability of both Citizens Advice and individual Citizens Advice Bureaux to fulfil its charitable aims to provide the advice people need for the problems they face; and improve the policies and practices that affect people's lives.

Many charities have raised concerns that the new rules contained in Part II of the Bill will impose additional regulatory burdens and reduced expenditure limits on charities and prevent them from campaigning for policy changes during election periods. The legal opinion commissioned by NCVO and provided to the charity sector today by Helen Mountfield QC of Matrix Chambers is that:

"NCVO is right in its perception that the provisions in Part II 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 and restrictions on their ability to comment on matters of public interest for very substantial periods of time. The lack of clarity as to the extent of the controls, coupled with the criminal sanctions for non-compliance with them, mean that the provisions of Part II of the Bill are likely to have a chilling effect on the expression of views on matters of public interest by third sector organisations."

Her opinion is that the provisions of the Bill are so restrictive of civil society that the Bill contravenes Article 10 of the European Convention on Human Rights (Freedom of Expression).

Impact on charities of the increased scope of regulated activities

The Political Parties, Elections and Referendums Act 2000 ("PPERA") already covers the activities of charities around elections. The Transparency, Non Party Campaigning and Trade Union Bill introduces new rules on the campaigning activities of non-parties during elections. The scope of activities that are caught by the new rules is considerably widened and the threshold for registration is lowered. Under the existing legislation there is some uncertainty around which activities are permitted during an election. This uncertainty will become acute if the scope of the activities are widened and the thresholds significantly lowered.

It is the opinion of Helen Mountfield QC that:

"It is intended that the range of speech/policy activities in relation to which expenditure may now potentially be controlled be significantly expanded."

Any policy influencing activity by any charity or community group could be interpreted as “for election purposes” under the broad definition contained in the Bill if they were seeking to influence a policy supported or opposed by one or more candidates in a local election or one or more parties at a national level.

We are concerned that as the Bill is currently drafted it would leave the campaigning activities of the Citizens Advice service open to vexatious legal challenge by interested parties claiming that we are electioneering by campaigning for policies supported by the Government (or the Opposition). For example we are keen to avoid a scenario in which the pay day lending industry could challenge our campaigning work to reform this market on the grounds that our views were supported by one or more political parties in an election year.

The Government has sought to reassure charities that it is not the intention of the legislation to restrict the normal campaigning activities of independent charities. However the legal advice we have received is that the definition of “for election purposes” in Part 2 is so broad that there can be no legal certainty regarding what campaigning or policy related activities the Bill would and would not cover. The Electoral Commission has raised concerns about the amount of discretion the Bill would leave to them regarding its interpretation.

As well as charities, church groups, residents associations, conservation activists and members clubs could all be affected. This means that the number of charities regulated will increase substantially.

In a healthy democracy civil society organizations play a hugely important role in ensuring that the ordinary people affected by the decisions of Governments, businesses and other decision makers have a voice in the public debate. We estimate that this year alone our policy and campaigning work positively impacted on 8.3 million. For example we have successfully campaigned for

- New government guidance for local authorities giving 1.5 million residents better protection from aggressive bailiffs.
- Effective action by the OFT to tackle unscrupulous pay day lenders resulting in 14 of the worst offenders leaving the market
- The reform of insolvency law to make it easier for banks to offer basic banking accounts to 30,000 people in the most severe financial difficulty
- An additional £200 million to be invested in supporting childcare costs under Universal Credit for 180,000 working families.

The proposed changes to the law would put all of this work in jeopardy.

Impact on charities and other local campaigning groups of new reporting requirements

In addition to our concerns that in its current form the Bill could open the day to day policy influencing work of the Citizens Advice service to legal challenge, we are also concerned that the Bill will impose additional bureaucratic reporting requirements both on Citizens Advice and on individual Citizens Advice Bureaux. The provisions of the Bill could require all Citizens Advice Bureaux to report on the value of both their staff and volunteer time to the Electoral Commission. In a service with 22,000 volunteers this would represent a significant bureaucratic burden. Helen Mountfield QC’s opinion is:

“The reporting requirements are onerous, and include statements of the nature and value of gifts in kind. It is arguable that a substantial gift of time by a volunteer in relation to a qualifying activity under Part 1 of Schedule 8A PPERA would amount to a ‘reportable donation’, and

therefore fall to be quantified and reported. Sanctions for non-compliance with reporting requirements can be criminal penalties, civil liability imposed by the Electoral Commission or forfeiture of an amount equal to the value of a relevant donation.”

Impact on charities and other local campaigning groups of the reduced expenditure thresholds

The Bill significantly reduces the existing limits on how much a third party can spend. In future any non-party campaigner spending more than £5,000 in England or £2,000 in Scotland, Wales and Northern Ireland then it must register with the Electoral Commission as a ‘recognised third party’. All relevant spending on the defined activities will count towards these thresholds.

The legal opinion of Helen Mountfield QC enclosed is that:

“almost any expenditure in cash or time on speech or advocacy material is capable of ‘qualifying’ as expenditure for election purposes”

This means that not only Citizens Advice but each of the 340 individual Citizens Advice Bureaux in England and Wales may be required to register as a third party with all of the bureaucratic burdens and associated restrictions on activity this entails if their activities are deemed to be “for election purposes” under the broad definition contained in the Bill. The same is true for any other community organisation involved in local campaigning activities for or against any policy supported or opposed by either the Government or the Opposition. As well as charities, church groups, residents associations, conservation activists and members clubs could all be affected.

Constituency limits have also been introduced. In the relevant period, a non-party campaigner may only spend up to 0.05% of the total of the maximum campaign expenditure limits in any particular parliamentary constituency. For UK Parliamentary elections, the maximum spending is £18.96m in Great Britain so the cap equates to roughly £9,480 for each constituency.

The low expenditure thresholds are likely to cause particular problems for campaigning organisations involved in coalitions because expenditure by coalitions is aggregated (this means that each member has to account for the full amount spent for the joint campaign, regardless of the individual contribution).

In relation to the new, reduced expenditure thresholds for non-party campaigners we are seeking urgent legal clarity regarding the impact of Citizens Advice national influencing work on the reporting requirements of individual bureaux. Bureaux provide us with the advice issue statistics our campaigning and policy work is premised upon. We also encourage bureaux to participate in national campaigns by communicating with local decision makers regarding the local impact of policy changes and providing information about policy changes and their impact to the public.

Bureaux may work together in coalitions to pursue issues of shared concern beyond their immediate area. Many bureaux are part of self-organised social policy cluster groups which coordinate policy work which can cut across local authority and constituency boundaries. The expenditure on these would be low, but it’s not impossible that if the costs were aggregated (e.g. including staff costs), they could exceed the £5,000 and £2,000 limits the Bill sets for constituencies in England and Wales respectively.

Aggregation may also affect bureaux working in more structured coalitions. For example eleven bureaux lead consumer empowerment partnerships (CEPs), local networks including bureaux, trading standards and other community stakeholders which lead consumer empowerment initiatives in their areas. This work involves running joint campaigns on topical issues affecting consumers in the local community. CEPs are strategically led by Citizens Advice, but are operationally independent. It is through these structures that the Citizens Advice service delivers on its duty for local delivery of consumer advocacy and education.