Bond Briefing: Transparency of Lobbying, Non Party Campaigning and Trade Union Administration Bill

Background
On 17 July 2013, the Government introduced to Parliament the Transparency, Non-Party Campaigning and Trade Union Administration Bill ('the Bill'). As the summer recess began a day after on 18 July 2013, there has been very little opportunity for proper consultation or pre-legislative scrutiny. The Second Reading of the Bill was in the House of Commons on 3 September, and will be followed by Committee Stage on 9, 10 and 11 of September 2013.

The Government has said that the proposed Bill is intended to strengthen existing rules that limit what organisations can do to support political parties in the lead-up to and during a general election. The Bill contains three parts. Part I establishes a statutory register of lobbyists. Part II (which this paper focused on) seeks to amend the rules on non-party campaigning, set out in the Political Parties, Elections and Referendums Act 2000 (“PPERA”). Part III deals with the regulation of membership of trade unions.

The National Council for Voluntary Organisations (NCVO) has described the proposals as “damaging” and “a disaster for charities and community groups” with the Electoral Commission describing the Bill as “flawed” and having “unworkable content”. Leading human rights QC, Helen Mountfield of Matrix Chambers, has warned that the bill could breach the right to freedom of speech. The Charity Commission has not yet released any commentary, although there have been calls for them to do so.

Bond’s Response to the Bill
- Bond welcomes efforts to enhance the transparency and oversight of lobbying in the UK; however – like many others – we have serious reservations about the Bill.
- The Bill, in its current form, is unworkable; it lacks clarity and threatens to undermine democratic participation due to excessive regulation, reduced spending and burdensome reporting requirement.
- Rather than strengthening democracy – which was the Government’s original aim – the Bill threatens to undermine democratic participation by restricting civil society involvement in public debates and campaigning in the year before a General Election
- The Bill would restrict Bond members and tens of thousands of charities, voluntary organisations and faith groups from campaigning on matters of public interest.
- Each year hundreds of thousands of people donate money to charities and voluntary organisations so that they are able to speak up on behalf of society’s most vulnerable – this Bill will take away that democratic expression.
- Due to complex and unclear rules there is a greater possibility NGOs and charities may accidently and unknowingly breach the new rules and be subject to criminal penalties.
- This Bill is too important to get wrong – more time is needed to get it right. The Bill should be put on hold and a wide and robust consultation should be implemented immediately.

Bond’s Recommendation
Bond, on behalf of its 400 NGO members, calls on the Government to put the Bill on hold to allow more time to explore the issues and implications for NGOs, charities and other voluntary groups. We call for wide and thorough consultation on the proposed changes, enabling interested parties to bring forward constructive solutions that will balance transparency measures with regulatory burden in a way that will still encourage and enable widespread civil engagement during and in between election periods.

What do Bond members stand for?

Bond members support the principles of transparency and accountability; we believe that no one organisation or individual should be able to undermine the democratic process by exerting disproportionate influence. Bond members support regulation which seeks to achieve a more transparent and accessible society for all, allowing the general public to understand the influence and impact of lobbying groups, as well as the private and public sectors, and obtain the information needed in order to hold our elected officials, decision-makers and organisations to account. Since 2011 Bond has actively supported more than 100 of our members to publish data to the International Aid Transparency Initiative (IATI) standard as well as improving NGO transparency and the disclosure of project, governance and performance information.

What impact would this Bill have?

- Many of our members have spent years campaigning towards a 0.7% GNI overseas aid budget, and specifically work to ensure cross-party manifesto commitments before the last election, may not have been allowed under the current proposals.
- Make Poverty History, which inspired millions across the UK and led G8 leaders to cancel millions of pounds of debt for developing countries and provided crucial life-saving aid, would have been against the law because 2005 was an election year.
- Campaigning for water, sanitation and hygiene is a crucial part of the work of many Bond members. Sanitation is one of the most off track Millennium Development Goals (MDG) and it's essential that NGOs active on this issue are able to build momentum to hold all governments to account in the run up to the MDG target date of 2015, in which the UK election period falls. National lobbying restrictions must not curtail NGOs ability to campaign on sanitation for 2.5 billion people all around the world.
- Support from high-profile public figures. A number of Bond members receive support from celebrities, including ones who donate their time to travel internationally to visit programmes and undertake media work. If for example, a celebrity were to travel to Africa with Oxfam and undertake media work in the UK to highlight the effect of climate change (something that then may subsequently become an electoral issue) this could take up a significant total of Oxfam's expenditure limit on regulated activity.
- Staff costs. Across many Bond member organisations staff roles are split across different functions, especially in smaller organisations (e.g. a staff member could be employed to do campaigning, fundraising and media work), the campaigning component of which will fluctuate over time, and may be working to service a global campaign, the UK function being only one part. In addition, many staff work overtime, or volunteer extra time during busy periods such as elections, and it would be unclear as to whether such activities would have to be included as ‘in kind’ contributions.

About Bond

Bond is the UK membership body for over 400 non-government organisations (NGOs) working in international development. In addition to delivering life changing programmes to tackle poverty in some of the world’s poorest communities and responding to humanitarian and natural disasters, most Bond members undertake campaigning, advocacy and media work as part of their day-to-day activities. All Bond members are registered with the Charity Commission, this means that all activities they undertake need to adhere to charity law and the guidelines set by the Charity Commission – this includes guidelines for election period campaigning and advocacy.

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Further Reading

Key concerns identified in Parts II of the bill

The concerns outlined below are an amalgamation of concerns raised by Bond members in various briefing papers and submissions. The concerns outlined below are focused on part II of bill as this is of most relevance to Bond members.

Part II – Non-Party Campaigning, as set out in the Political Parties, Elections and Referendums Act 2000 (“PPERA”)

This section of the Bill has not been the subject of previously published proposals or consultation, the rationale and motivation for this lapse is not clear. Bond is extremely worried about the unintended restrictions that the Bill is likely to have on all of our 400 members – who, alongside tens of thousands of other charities, voluntary organisations, community groups and faith groups – may inadvertently be caught in the scope of deeply burdensome regulation that will stifle legitimate public debate and independent non-party political campaigning over policies that affect people’s lives.

- **Consultation.** It is of grave concern to us that there has been such limited consultation on a Bill that has the potential to have significant and wide-ranging impact on the core activities of NGOs. The Bill is being rushed through without proper consultation. The text of the Bill was only released the day before Parliamentary recess. The Government has not offered an appropriate period for pre-legislative scrutiny and has not left enough time for a full Parliamentary debate. This should be addressed immediately. It is deeply disappointing that a Bill purportedly designed to increase transparency and accountability has not followed these principles and included a period of open consultation.

- **Implications for NGO campaigning.** For many NGOs, raising awareness of issues affecting the people and causes they support is a routine and important part of their work and central to their charitable objectives. Furthermore, all parts of government and key policy makers rely upon NGOs to contribute their valuable expertise and insights into debates about policy development. However, the rules in the new Bill risk seriously hampering their ability to speak up on issues of concern, in the year before a General Election. Many Bond members work on behalf of the most vulnerable members of society here in the UK and abroad. These groups are often overlooked or marginalised in policy debates, and it is critical that these organisations have the freedom to legitimately campaign on issues that affect these communities. Indeed, tens of thousands of members of the public who support NGOs – both financially and through campaign actions – expect them to do so.

- **Spending threshold and coalition campaigns:** Current spending restrictions on campaigning activities would be reduced by more than half despite the regulated period being extended to a full year before the election (currently the election period runs from the dissolution of Parliament to the day of the Election). Furthermore, relevant costs have been extended from core campaign materials to all staffing, event costs, in kind support, travel and other indirect costs. In combination, these two changes will mean that even small organisations may easily meet the maximum spending thresholds. Consequently, many organisations – who represent the voices of the most marginalised – could be side-lined in public debates for prolonged periods. In addition, the rules regarding coalitions (which require each organisation to account for the expenditure of all partners thereby imposing double counting), combined with the new lower thresholds, mean that charities will be discouraged from working together for fear of breaching the allowed spending limits. All political parties have commented that they value NGOs working together on collaborative campaigns– these new rules are completely contradictory to this view.
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- **Lack of clarity and unworkable rules.** This is not just our view, but the view of the Electoral Commission, whose job it will be to implement them. The complexity of the legislation, the unclearly defined terms, the amount of discretion given to the Electoral Commission in determining how the rules apply, and the remarkably burdensome reporting requirements make it difficult to understand how the rules will be interpreted, applied and monitored. In its current form, the Bill runs the risk of discouraging any campaigning activity as many NGOs would be likely to err on the side of caution rather than risk legal proceedings. There is also no clarity on the role of the Charity Commission in relation to this Bill.

### Further information on the problematic content included in Part II

**Definition of ‘activity for election purposes’**
The new definition of the term ‘for election purposes’ is cast in such broad terms that it captures all expenditure incurred for the purpose of, or in connection with, promoting or procuring the electoral success or enhancing the standing of a political party or candidate. The Bill removes any need for an organisation’s activities to be intended to promote a particular party or candidate and instead focuses on the possible effect (whether intended or not) of their actions. The concern is that the new definition, as it is currently drafted, could cause charities to silence themselves on issues of key public concern for fear of being caught up in the rules. The breadth of the definition will make it incredibly difficult for an organisation to determine in advance whether their activity will be deemed to be “for electoral purposes.”

*The range of activities considered to be ‘for election purposes’ and the definition of this term needs to be defined more clearly so that organisations are able to forecast what would count towards their controlled expenditure.*

**Types of activity regulated under the Bill**
Under the Bill a wider range of activities will be regulated by the Electoral Commission than under existing PPERA. Activities won’t be restricted to election materials, like leaflets and adverts, but will also include other campaigning activities such as event and, media work. Furthermore, all costs connected to the activity or material will be counted, including staff time. This could extend to any in-kind support that may be received. These new rules will capture legitimate commentaries on political issues and public views which may be used to provide political context for a policy proposal and have nothing to do with promoting or procuring the electoral success of one or more political parties, especially during a prolonged election period.

*The proposed definition is so widely drawn as to capture otherwise independent non-party campaigning activity. The existing definition in the Political Parties, Elections and Referendum Act (as well as charity commission guidance) should be reinstated and further consultation should be carried out.*

**Proposed reduction of expenditure for third-party campaigning activities**
Current spending restrictions on such activities would be reduced by more than half, despite a much longer election period, with relevant costs extended from core campaign materials to all staffing, travel and other indirect costs. In reality, even small organisations would easily meet the maximum spending thresholds. Consequently, many organisations could be side-lined in public debates for prolonged periods. The significantly reduced expenditure limits are problematic because of the wide and unclear definition of what activity they would cover. It is hard to recommend an appropriate limit until the definition of activity “for election purposes” has been clarified and revised.

*While there may be arguments for reducing spending limits, given the extension of the regulated period and the broader and unclear definition of regulated activities, this requires further thought.*
**Proposed aggregated costs for members of coalitions**

The law as it currently stands states that any organisation working in coalition with others will be held accountable for the collective financial spend of all partners. Combined with the proposed reduction of expenditure for non-party campaigning activities, this will have a negative impact on coalition campaigning. The ability to work in coalition is an important part of charity campaigning in the UK and is often welcomed by policy makers who like to see a combined and coherent voice. The new rules may force the larger organisations to leave many joint campaigns as allocating total coalition expenditure to each member organisation may push them over spending limits, while also deterring smaller charities to work together for fear of the regulatory, financial and administrative consequences. As an example, the Make Poverty History campaign, which took place in an election year, would not have been permissible under the new provisions set out in this campaign. As recently as June the UK public showed its enthusiasm for popular public campaigning through coalitions with 1.4 million people offering their support for the Enough Food for Everyone IF campaign.

Organisations that join coalitions should only be accountable for their own direct financial contribution.

**Burdensome reporting requirements**

The Bill’s proposed reporting requirements include organisations having to account for every aspect of their spending quarterly for the entire year before a general election, on a weekly basis after Parliament dissolves, and then to submit a statement of accounts shortly after the elections conclude even when an agency has nothing to report (nil reporting). This will further increase the administrative burden on charities, having a potentially crushing impact on smaller agencies with minimal capacity.

Reporting requirements should be designed in such a way that captures useful information at key moments but that.

**Definition of ‘election period’**

Current proposals extend the regulated period from the dissolution of Parliament to the day of the Election, to 365 days before the Election. NGOs should not be excluded from contributing to public policy debate in the year leading up to an election – this is a critical period and it is in the public’s interest that a wide group of policy experts are involved in agitating for robust policy outcomes.

This new and longer time period should be reviewed.

**Criminal Offence**

Breaching these rules would become a criminal rather than civil offence – a huge disincentive to civil society organisations speaking up for the most vulnerable at home and abroad in the margins of an election.

NGOs should not be persecuted for speaking up on behalf of the often marginalised and vulnerable communities that they are working for and alongside.