

HOUSE OF LORDS BRIEFING: Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill

Executive summary

On 17th July 2013 The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill was introduced to parliament with the aim of "restoring trust and confidence in the political system" and ensuring the public are "able to see how third parties seek to influence the political system." The Bill will reach the House of Lords for committee stage on 5 November 2013.

The Sheila McKechnie Foundation believes the Bill has multiple weaknesses and should be delayed, properly scrutinised and amended to ensure this legislation does not have a detrimental impact of the voice of charities and other civil society groups in speaking out on key issues, injustices and public concerns. **We believe that Government amendments before its third reading in the House of Commons did not go far enough; we have grave concerns that the Bill will not achieve its stated objectives.**

SMK's position on the Bill is clear. If enacted, this legislation will not:

- Achieve the government's aim to 'restore trust and confidence in the political system'
- Clean up the lobbying scandals we expect it to address
- Allow the public to see how third parties seek to influence the political system
- Allow charities and groups to speak out without fear or undue constraint on issues that affect their beneficiaries

SMK is calling for:

1. The Bill to be delayed and properly scrutinised and consulted upon

In the case that it is not delayed, it must still be amended so that:

2. The definition of controlled expenditure is amended

3. The current existing expenditure requirements are retained

4. A more comprehensive lobbying or 'transparency' register covering a wider set of people is included

About the Sheila McKechnie Foundation

Established in 2005, the Sheila McKechnie Foundation (SMK) is the only UK charity dedicated to connecting, educating and supporting those who want to take action on issues important to them and their communities. Our work is UK-wide and so we understand the challenges this Bill poses to individuals and groups in England and across the devolved nations. In 2012 SMK submitted responses to the Government's proposals for a lobbying register (including the Scottish Lobbying Bill). We made specific, workable suggestions that would have made more of an impact

on transparency and lobbying scandals in contrast to what has now been produced in part one of this Bill.

1. The Bill should be delayed and properly scrutinised and consulted upon

1.1 There are already sufficient rules and regulations in place to ensure “trust and confidence” in charity campaigning. This must be taken into consideration. The high profile lobbying scandals that resulted in the Governments’ plans for a register involved, in the main, politicians and lobbying consultants. And yet the current draft legislation will place constraints on charities, and few or none on lobbying consultants or politicians.

- **Forty-nine per cent** of respondents to a YouGov poll say they **trust charities to lobby** government 'for the benefit of society' - only **8 per cent trust lobbying consultants**
- Public **trust in charities has increased for the third year running**. 66% of people now trust charities 'quite a lot' or 'a great deal' compared to 64% last year (nfpSynergy poll)
- **Political parties are still bottom on 8% trust levels**, with 57% trusting them very little (nfpSynergy poll)

1.2 Charities do not require further regulation relating to campaigning because there are already laws and rules in place:

- The work of charities, including their campaigning work, is regulated by the Charity Commission
- There is also specific regulatory guidance, CC9, which sets out clear rules for charity campaigning
- All charities must prepare accounts and make them available on request. All registered charities whose gross income exceeds £25,000 have a duty to file accounts with the Charity Commission
- Charities’ accounts are published online and are searchable on the Charity Commission website, ensuring transparency and probity.

CC9 - Speaking Out: Guidance on Campaigning and Political Activity by Charities- sets out clear, sensible and balanced rules about campaigning and political activity. We believe that the guidance in its current form is adequate to ensure that charities do not undertake political campaigning. The guidance is clear that charities can:

- Undertake campaigning and political activity as a positive way of furthering or supporting their purposes
- Undertake political activity only in the context of supporting the delivery of their charitable purposes
- Choose to focus most, or all, of their resources on political activity for a period but cannot do so on a permanent basis.

These measures provide the right framework for enabling charities to campaign, and to prevent them acting like or becoming political bodies. Indeed, the scandals and breaches of trust that led to the Bill in the first instance related to corporate lobbyists and politicians, not charities.

The guidance is clear that charities cannot:

- Exist for a political purpose

- Give their support to a political party
- Engage in any party political activity
- Undertake political activity
- Give support or funding to a political party, nor to a candidate or politician
- Be used as a vehicle for the expression of the political views of any individual trustee or staff member.

In addition, the Electoral Commission, an independent body set up by Parliament, publishes guidance on charity campaigning in the lead up to elections, including rules about supporting candidates and parties.

1.3 The Bill is badly timed and at odds with other activity, including guidance from the devolved nations.

- The [Office of the Scottish Charity Regulator \(OSCR\)](#) issued guidance saying that charities would be able to campaign for a specific 'yes' or 'no' vote in the Scottish Independence Referendum. This raises concerns that charities in the devolved nations working on issues controlled by Westminster could face conflicting guidance.¹

"There is a complex relationship between the devolved and non-devolved institutions in this country. We all know that an important referendum is taking place in Scotland next year. We also know with near certainty, because of the Fixed-term Parliaments Act 2011, when the next general election will be. The two periods concerned are bound to overlap and there will inevitably be a great deal of confusion about which measures apply, what moneys may be spent, what moneys apply to one campaign but not to another and what moneys apply to both campaigns."

- Wayne David MP, 9 October 2013

The Law Commissions of England and Wales, Scotland and Northern Ireland are already undertaking a review of the UK's "complex, voluminous, and fragmented" electoral law. It is not clear what advantage there will be in rushing through this Bill in advance of the completion of such a significant review.

1.4 The Government's amendments have failed to assure or fully address the concerns of charities, and there are additional issues relating to non-charity campaigning or campaigners. Many individuals and organisations that use their democratic voices to speak up on issues of concern to them are not charities themselves, but work with charities on a range of issues. Subsequently, any concessions are inadequate if they will have a silencing effect on those who work with, but outside of, charities.

- A recent Hansard Society report noted that **third party campaigns increase interest in elections**, can increase voter turnout, and draw otherwise disenfranchised citizens into the democratic process.² At a time when so many feel cut off from politics, politicians and the political process, these must surely be good things.

1.5 More time and thought is needed to ensure amendments make this Bill fit for purpose:

¹ <http://www.thirdforcenews.org.uk/2013/08/scottish-charities-at-risk-of-being-shut-out-of-uk-elections/>

² Audit of Political Engagement 10, Hansard Society

2. Definition of controlled expenditure should be amended – Clause 26

2.1 Government amendments have replaced the definition of 'controlled expenditure' with original wording from the Political Parties, Elections and Referendums Act 2000 so that it covers expenditure that can be 'reasonably regarded as intended' to promote or procure electoral success of any particular party or candidate.

2.2 We believe these amendments are insufficient. This definition has historically caused problems for charity campaigners. Now, this would be combined with a widening of activities that must be accounted for and a drastic reduction in the threshold for which non-party campaigners must register with the Electoral Commission. As such, charities and small campaign groups would be under immense pressure, restricting their ability and capacity to speak out on injustices and public concerns.

2.3 We believe the definition should be amended so that clause 26 requires that 'the primary purpose' of the expenditure should 'reasonably be regarded as intended to' promote or procure electoral success (as tabled by Graham Allen MP, Chair of the Political and Constitutional Reform Select Committee, at the House of Commons third reading).

3. Current expenditure requirements should be retained

3.1 The expenditure threshold has been lowered whilst the scope of activities that must be accounted for has been widened and, of serious concern, includes staff costs. This would seriously restrict the ability of charities and organisations to campaign on key issues in the lead up to an election.

3.2 The legislation would not only affect large charities but little groups affiliated to national umbrella organisations whose spending will contribute to a national capped limit.

- **A *Save Our Sure Start or Save Our Hospital*** in a small town would find every linked Sure Start or NHS campaign counted into its local spending for electoral purposes."³

3.3 Campaigns are stronger when people work together towards a common aim, but this legislation would make joint working between campaigners difficult because costs would be aggregated; they would be in danger of bringing spending over the limit.

- **The *HOPE not hate campaign*** is a registered third party that spent £319,231 campaigning against the BNP in the 2010 General Election. The legislation would restrict HOPE's expenditure to 2% of that available to the BNP; restrict their ability to build coalitions; and ultimately place more restrictions on HOPE than the BNP, National Front or any other political party, dramatically reducing their ability to campaign against fascism and racism.⁴

³ <http://www.theguardian.com/commentisfree/2013/sep/03/lobbying-Bill-corporate-prs-silence-protest>

⁴ <http://www.hopenothate.org.uk/gagging-hope-not-hate/>

3.4 The expenditure requirements are particularly restrictive in the devolved nations. The overall picture for campaigners in the devolved nations is extremely worrying.

"...the Government generally lack realisation of how important civil society engagement is in Northern Ireland. In fact, civil society engagement is a cornerstone of the peace process. That is one reason why great progress has been made in Northern Ireland. It is extremely worrying that the Bill undermines that process. It does not do so deliberately, but unintentionally. However, that is indicative of a lack of any real understanding or desire to ensure that there is a holistic, consensual approach to such legislation."

- Wayne David MP, 9 October

*'No consideration appears to have been given to the costs of working bilingually in Wales, which is supported by most third sector organisations, but which inevitably increases their expenditure. The limit of £24k in Wales must also take into account staff costs during the relevant period - which again will require time-consuming and burdensome record keeping.'*⁵

- Graham Benfield, Chief Executive, WCVA

3.5 The Bill introduces geographical limits on the amount that non-party campaigners can spend in a particular constituency. This would seriously restrict campaigns targeted in a particular area, perhaps because that area is marginalised or disadvantaged.

3.5 Non-party campaigners already spend far less than political parties during elections; there is no clear reason to limit non-party campaigning expenditure beyond existing regulations.

In the 2010 General Election:

- **Campaign expenditure by all political parties was £31.5 million; non-party campaigners spent £2.8 million.**⁶

3.6 The Bill would place harmful expenditure requirements on charities, whilst failing to address the huge amount of money pumped into the political arena by the private and financial sector before and during election periods. Both nationally and internationally, private/financial sector spending is far higher than the voluntary sector, but the draft Bill instead treats charities as the real threat.

- In 2011, the British **financial sector spent £92m lobbying** politicians and regulators.⁷
- The voluntary EU lobbying register showed that the **pharmaceutical industry spend 40€ million** annually lobbying the EU, compared to **3.4€ million by civil society organisations.**⁸

3.7 We believe the Bill must be amended to ensure current expenditure requirements for non-party campaigning is upheld.

⁵ <http://www.wcva.org.uk/about-us/news/2013/10/sectors-anger-at-amendments-to-lobbying-bill>

⁶ http://www.electoralcommission.org.uk/_data/assets/pdf_file/0011/109388/2010-UKPGE-Campaign-expenditure-report.pdf

⁷ <http://unlockdemocracy.org.uk/pages/scandals>

⁸ <http://corporateeurope.org/pressreleases/2012/big-pharma-spends-over-40-million-year-lobbying-eu-dwarfing-public-health-ngos>

4. A more comprehensive lobbying register covering a wider set of people

4.1 SMK supports the general concept of a lobbying (transparency) register, and strongly believes the current government proposals are too limited to ensure the public are “able to see how third parties seek to influence the political system” and in particular, private sector lobbyists.

4.2 The legislation will fail to strengthen or even equal current lobbying regulations.

“The Government’s plans are likely to result in less transparency with fewer organisations and individuals actually having to register than under the current self-regulatory regime the lobbying industry operates.”

- Association of Professional Political Consultants (APPC) ⁹

- Department for Business, Innovation and Skills had 988 meetings with lobbyists in 2012 – only two of which were with lobbying consultants. Under the proposals, only those two would need to be entered on the register. ***That means the proposed register would capture less than 1% of ministerial meetings.*** ¹⁰

4.3 The Government has not taken on board overwhelming feedback from the consultation on ‘Introducing a Statutory Register of Lobbyists’, which they carried out in 2012. Many respondents pointed out then that those proposals lacked breadth and depth, and would fail to collect meaningful and sufficient information. In terms of regulating lobbying, the current Bill is actually a backwards step from what were already poor and inadequate proposals in 2012. In words that chime with many other respondents to that consultation, SMK said at the time:

“SMK supports the general concept of a lobbying register, but believes the current proposals are too limited to provide effective transparency and regulation of lobbying activity. In terms of the regulatory aspects, if a lobbying register as proposed was to be truly effective, we believe it should require more information to be collected, including the amount of money being spent and the policy objectives behind the lobbying activity. Additionally, an effective register would include an obligatory code of conduct for all registrants, along with clear sanctions for non compliance or breaches.”

4.5 We believe the register should require more information to be collected, including the amount of money being spent and the policy objectives behind the lobbying activity. It should include an obligatory code of conduct for all registrants, along with clear sanctions for non compliance or breaches.

⁹ <http://www.appc.org.uk/appc-statement-on-lobbying-transparency-etc-Bill-17-july-2013/>

¹⁰ <http://www.spinwatch.org/index.php/issues/lobbying/item/5537-bill-protects-lobbyists-while-targeting-civil-society>

5. Further reading

5.1 SMK's consultation response to Introducing a Statutory Register of Lobbyists, 2012:
<http://www.smk.org.uk/storage/Register%20of%20Lobbyists%20SMK%20consultation%20response%20FINAL.pdf>

5.2 SMK's consultation response to the proposed Lobbying Transparency (Scotland) Bill, 2012:
<http://www.smk.org.uk/storage/Response%20to%20Scottish%20Lobbying%20Register%20consultation%20FINAL%2029-10-12.pdf>

5.3 SMK's submission of evidence to the Political and Constitutional Reform Committee, August 2013: <http://www.smk.org.uk/smk-provides-briefing-to-commi/>

5.4 The full document of evidence submitted to the Committee can be read here:
<http://www.parliament.uk/documents/commons-committees/political-and-constitutional-reform/ConsGLB01-81.pdf>

6. Related concerns

6.1 Judicial review:

We are concerned that this Bill is potentially part of a wider threat to democratic rights. Another issue for us is judicial review, "with the government currently consulting on reforms to judicial review which include a proposed restriction on who can bring judicial review, openly aimed at stopping charities and other not for profits using the courts to uphold the law and as part of campaigning challenges."¹¹ Information about this consultation can be found here: <https://consult.justice.gov.uk/digital-communications/judicial-review>

Judicial Review is used by people to challenge decisions that they disagree with, demonstrated by the recent Save Lewisham Hospital campaign and the longer-standing No Third Runway campaign. But this too is under threat, with plans to cut back the amount of judicial reviews at court - but Judicial Review is about justice, not numbers. This was compounded by a derisory six-week consultation period on this vital issue, run over the Christmas period.

6.2 Freedom of Information Act 2000:

The Freedom of Information Act 2000 is another key tool for people wanting to expose truths and improve openness and transparency. It is potentially under threat due to Government plans to make it easier for authorities to refuse requests on costs grounds and limit the "inappropriate burden" they can be. But what exactly is an "inappropriate burden"? Public authorities are already protected against vexatious requests.

The implications of such changes are worrying because they indicate an erosion of the democratic rights of people to speak out on issues and, when necessary, legitimately challenge the decisions of government.

Linda Butcher
Linda.butcher@smk.org.uk / 020 7697 4045
Sheila McKechnie Foundation
356 Holloway Road, London, N7 6PA

¹¹ Bates Wells Braithwaite