
Established in 1919, the National Council of Voluntary Organisations (NCVO) represents over 11,000 organisations, from large ‘household name’ charities to small voluntary and community groups involved at the local level. NCVO champions voluntary action, our vision is a society where we can all make a difference to the causes that we believe in. A vibrant voluntary and community sector deserves a strong voice and the best support. NCVO works to provide that support and voice.

General comments about the non-party campaigning rules

The regulation of non-party campaigning is inherently complex because it involves a wide range of actors, including individuals, companies, charities and trade unions, as well as single-issue campaigners. Many of these spend most of their time engaged in activities that are not related to campaigning at elections. This means that the rules need to set a balance between enabling participation in the democratic debate and appropriately controlling non-party campaigning that may affect the outcome of the election, while permitting continuity in non-election related activities.

Feedback from NCVO members suggests that the rules as amended by the Lobbying Act do not achieve the right balance between introducing necessary elements of transparency and establishing a proportionate regime that captures the type of activity that may have an influence on the election process.

Overall it has not yet been made clear why the rules that apply to political parties are considered appropriate to apply to non-party campaigners who tend to operate for very different reasons and in different ways to those that seek election.

The main cause of concern is inherited from the previous PPERA legislation and the definition of ‘controlled expenditure’ as ‘activity that could reasonably be regarded as intended to promote or procure the electoral success of a particular party or candidate’. While we accept that the definition needs to be sufficiently broad in order to prevent deliberate circumvention of the rules, the level of uncertainty the current definition brings means that the question remains open whether or not legitimate non-partisan campaigning by charities and other voluntary groups, and awareness-raising on policy issues, would be caught by the rules even if they were not intended to have an electoral effect.

This difficulty is made even greater by the fact that, under the new rules, such definition has to be applied not only to ‘election material’ but to a whole range of activities, such as media events and press conferences, public events, etc.

NCVO is therefore concerned that, due to this uncertainty charities and other voluntary groups will be deterred from engaging in public policy issues and speaking out on behalf of the people they support during election periods. This danger is made greater by some of the narrative surrounding the Lobbying Act, which is spreading confusion and alarm about the rules: while it is important to highlight the challenges that the Act poses, exaggerated claims about its impact on charity campaigning only serve to feed misunderstanding, which will have the consequence of charities unduly self-censoring.

How will Part 2 of the current Lobbying Act affect your campaigning?

We have concluded that NCVO is unlikely to be affected by the new rules on non-party campaigning as amended by Part 2 of the Lobbying Act.
This decision was based on the assessment that NCVO’s anticipated activities during the regulated period would be unlikely to meet the purpose test and the public test applied by the Electoral Commission when establishing what activities are regulated.

**Why NCVO’s activities are unlikely to meet the purpose test**

NCVO is a registered charity whose activities must be in compliance with charity law. As such, NCVO is always very careful to ensure that any campaigning and political activity is undertaken in a way that stresses our independence and political neutrality. NCVO does not give support to a political party, or to a candidate or politician. NCVO does not intend to promote or procure the success of any party, parties or candidates in any election. On that basis, our assessment is that we are unlikely to undertake activities which meet the purpose test.

**Why NCVO’s activities are unlikely to meet the public test**

Nearly all of NCVO’s advocacy work and policy communications take place within meetings between senior members of staff and ministers, government officials, and MPs. The Electoral Commission’s guidance explicitly states that:

‘Electoral rules do not generally cover lobbying or influencing MPs, governments or Parliamentary lobbying unless you involve the public in that activity and your campaign can be seen as intended to influence voter choice during a regulated period.’

Our online communications are mostly restricted to our member organisations, and therefore would also not meet the public test (the guidance expressly says that an organisation’s official members will not be considered part of the public).

Where NCVO does undertake communications to, or other activities involving, non-members, these are likely to count as being aimed at the public. However, such non-member communications should not result in controlled expenditure because it is unlikely that their content could be regarded as ‘intended to promote or procure the electoral success of a particular party or candidate’. To the extent that any communications are considered likely to meet that purpose test, these will be made only with the approval of the director of public policy via the press or licensed broadcast media (as opposed to on demand media) as such activity should not result in qualifying expenses under PPERA.

**What part of current election law causes the most administrative burden?**

The provision according to which staff costs are covered and therefore need to be accounted for is causing the greatest administrative burden for non-party campaigners. Feedback from our members is that, if they are engaging in activities that may be regulated, they will almost certainly require a member of staff dedicated to ensure monitoring and reporting of costs across the organisation’s functions. Most organisations will also need to set up new systems in order to record and calculate the likely costs.

The requirement to include staff costs within regulated activity is in contrast to the approach taken for political parties, whose staff costs relating to national campaigning are not regulated.

Objections to their inclusion included concerns that the list of items covered was too long, complex and burdensome, and that the provisions would be disproportionately burdensome on smaller parties. For these reasons directly employed staff costs were explicitly excluded from the definition of campaign spending by political parties and referendum campaigners in PPERA.

If the inclusion of staff costs is so complex and burdensome for political parties, it is difficult to understand why they have been included for non-party campaigners, which engage in a much more diverse range of activities and therefore have additional complexities in calculating which costs may be relevant.
Do the relevant people in your organisation understand the current legal requirements for campaigners?

NCVO has run a number of information sessions for all staff to explain the rules on campaigning under both charity law and electoral law. We also have a number of policies in place with regards to our external communications, including use of social media by staff, to ensure that at all times our policy positions and messages are, and are seen to be, non-party political.

NCVO member organisations that engage in campaigning and public-facing communications have reported carrying out the following activities in order to ensure that all relevant staff is complying with the requirements of the Lobbying Act:
- running training sessions for all staff involved in public-facing activities;
- obtaining legal advice on whether planned campaigning activities are likely to be regulated;
- requiring staff to complete an initial assessment form for each piece of public-facing work
- creating additional sign-off processes for cases in which material is considered to be more likely to be regulated.

How should regulations work as regard to coalitions?

The new rules on non-party campaigning as amended by the Lobbying Act make available a new option to non-campaigners working together as part of a joint campaign. It is now possible for a registered non-party campaigner who is part of the coalition to report the joint campaign spending on behalf of all the non-party campaigners involved in the joint campaign, and therefore act as the ‘lead campaigner’.

This is a proportionate solution to the problem existing under previous legislation, whereby each organisation involved in a joint campaign was required to account for the full incurred expenditure, regardless of their individual contribution.

Which staff costs, if any, should be regulated? If they are to be regulated, what is the best way to do this?

The inclusion of staff costs should be the object of consultation in order to ensure that the law is clear, sensible and does not risk substantial burdens

The Electoral Commission itself, reporting on its regulatory review last year, although it made a recommendation in relation to widening the scope of the rules to include staffing costs for political parties, recognised that these are complex and potentially controversial changes that would need further thought and consultation before they are implemented.

The need for careful analysis and consultation is even greater with regards to requiring non-party campaigners to account for their staff costs, since the range of activities they undertake is much broader and diverse.

Which campaigning activities during elections should be regulated? Or if you prefer, which should NOT be regulated?

NCVO recognises that the interests of transparency are better served by a wider range of campaigning activities being covered and counting toward controlled expenditure if they meet the two-limb test applied by the Electoral Commission. This means that activities are regulated if:
- they are directed at the public; and
- they can reasonably be regarded as intended to promote or procure the electoral success of a particular party or candidate.
The broadening of activities also amends an issue that had been identified under the previous PPERA controls. There was a potential gap in the rules due to the fact that the rules on non-party campaigning applied only to election material, and not to other campaigning activity such as events, media work or market research on polling intentions. However, such activity was covered by the rules on local non-party campaigning, election campaigning by candidates and political parties, and campaigning at referendums.

This difference meant that, if a non-party campaigner organised a series of activities such as public rallies and media events, the only spending caught by the current rules would be any election material they made available to the public while doing so. However, if a non-party campaigner carried out these activities on behalf of a political party, the cost of the full range of activities would count towards the party’s spending limit.

This consistency and the greater level of transparency are a welcome improvement. However, we share concerns about how the definition of controlled expenditure will be applied in practice to this new list of activities, since this is an untested area of law.

Does your organisation plan or run campaigns with regard to parliamentary constituencies and boundaries? How will constituency limits affect your campaigning?

NCVO’s activities are not directly affected by the new constituency limits.

However, we have heard widespread concerns about the unworkability of the new constituency caps. Campaigning activity by charities and other non-party campaigners does not tend to fit neatly within constituency boundaries: most non-party campaigners are not organised by parliamentary constituency, but rather structure their campaigning by policy issues and communities of interest.

NCVO members have told us that the constituency limits will cause particular problems for smaller organisations, such as those running a campaign limited to a geographical area, and for national charities with a federated structure. These organisations will need to estimate whether their campaigning costs relate to activity in particular constituencies, and ensure that their planned spending will stay within the new spending limits for activity in constituencies.

The Electoral Commission has also highlighted a number of challenges in enforcing the new constituency controls. It is particularly concerned that the constituency controls may be unenforceable within the timescales of an election, given the difficulty of obtaining robust evidence to determine and sanction breaches.

Additional recommendations to improve the legislation

Length of the regulated period

NCVO recommends amending the rules to reduce the regulated period for a general election to 6 months.

The current provisions apply to a regulated period of 365 days prior to general elections, and four months prior to European elections and elections to the devolved administrations. As the Electoral Commission itself has highlighted, these periods are ‘significantly longer than the typical four to six week regulated period that covers candidates’ campaigning before an election’.

In addition, while the provisions are only intended to apply in a specific and time limited period, the staggering of referendums and elections in the UK means that organisations will not be able to predict when activity will come under the regulated period. It is therefore likely that organisations will be forced to limit campaigning activity constantly and in perpetuity.

Many NCVO members feel that a reduced period would reflect the reality of campaigning activity that should be regulated – as most of the expenditure would be focussed on the months closest to the polling date. This would
substantially reduce the administrative burden (as organisations would not have to register and forecast activity for an extended period of time) but would still capture the vast majority of activity that is likely to have an electoral effect.

**Definition of ‘controlled expenditure’**

It is crucial that charities and other voluntary organisations have as much clarity as possible on whether and when their campaigning activities will count towards controlled expenditure and therefore be regulated by the Electoral Commission. But as the definition currently stands, the question remains open whether or not legitimate non-partisan campaigning by charities and other voluntary groups, and awareness-raising on policy issues, would be caught by the new rules, even if they were not intended to have an electoral effect.

While we accept that the definition of controlled expenditure needs to be to sufficiently broad in order to prevent abuse, we believe that further clarity would be helpful.

In particular, the result of specific sub-clauses in the current legislation is that almost anything a charity or campaigning group does in the way of advocating policies in the year before an election can be considered from the point of view of its effect on the possible success or failure of particular parties or candidates. The result is a fundamental uncertainty, which is likely to inhibit charities from campaigning for fear of coming within the scope of the rules.

We therefore recommend the development of a more precise definition of what campaigning by non-parties should be regulated during election periods. Improvements to the definition should aim to remove uncertainty and to focus on partisan election campaigning. An improved definition should ensure that 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.