Non-party campaigning

On 17 July 2013, the government introduced to parliament the Transparency, Non-Party Campaigning and Trade Union Administration Bill. We are concerned that the bill could severely restrict civil society campaigning activity and may even be in breach of Article 10 of the Human Rights Act. However, with the summer recess beginning the day after introduction of the bill and its second reading scheduled just days after parliament resumes, there has been precious little time for parliamentary scrutiny.

Our concerns with the bill are supported by the views of the Electoral Commission, which in a briefing to MPs today has stated that the bill “creates significant regulatory uncertainty for large and small organisations that campaign on, or even discuss, public policy issues” and “imposes significant new burdens on such organisations”.

Part 2 of the bill amends the rules relating to the regulation of campaigning by non-party organisations in the year running up to a general election. The proposed changes would substantially increase the risk of charities and issue-based campaigning organisations being required to register with the Electoral Commission. For those organisations that do register with the commission, the bill would significantly increase the restrictions and administrative burdens applying to their campaigning activities.

The risk is particularly acute for charities and issue-based campaigning organisations that campaign to advance their mission in areas of political debate, like welfare benefits, housing, human rights or climate change. If a charity advocates or opposes a policy position which is adopted by one political party and not another, it could be seen to enhance or harm the standing of a party and therefore affect the results of an election. Expenditure associated with that campaign may then be expenditure “for election purposes”, under a broad new definition with uncertain scope, which no longer includes any express test of whether the expenditure might reasonably be regarded as intended to influence an election result.

The threat is not only to larger charities and campaigning organisations but to coalitions and local grass roots activity.

For coalitions, the likely effect of a 60% reduction in the amount of expenditure which may be incurred for “election purposes” (from £988,500 across the UK to £390,000) is multiplied by the existing requirement that each coalition member, no matter how small, has to report the entire coalition spend and register with the Electoral Commission if it exceeds £5,000. That limit itself is being halved (currently standing at £10,000) and will apply to a much wider range of expenditure. Currently, only costs of election-directed materials distributed to the public are caught, such as leaflets and advertising. In future, expenditure on events, media work, polling, transport and staff costs will also be caught. Many charities and other organisations could be prevented from working in coalitions as a result.

The Electoral Commission has stated that “it is not clear that the new spending limits [proposed in the bill] have been based on any evidence of the costs that campaigners incur in carrying on the activities that are to be regulated” and has suggested that the government's impact assessment includes estimates of likely impact on campaigning organisations which it does not think are credible.

At the same time, the ambiguity of the new rules and the threat of criminal liability for breaching them may deter many organisations from engaging in policy debates at all, even where vital to their mission. Smaller organisations, dependent on volunteer support and without access to expert advice, are likely to be hardest hit.
It is not just charities that could be caught by the bill – trade associations and business bodies such as the federation of small businesses could also be caught if their campaigning and policy work coincide with, or contradict, the policies of a particular political party or candidate.

Together, the increase in uncertainty and regulatory burden posed by the bill is likely to result in a damaging effect on freedom of expression, potentially in breach of Article 10 of the Human Rights Act.

For all of these reasons, we consider that the bill as drafted poses a serious threat to campaigning and policy work by charities and other civil society organisations. We hope that the government will take account of our view and that of others in the sector and amend the bill to alleviate that risk.

We are currently supporting a number of our clients in their engagement with the parliamentary process in relation to the bill. If you would more information about the bill or to be kept up to date on developments, please contact Rosamund McCarthy at r.mccarthy@bwblp.com or Simon Steeden at s.steeden@bwblp.com.

Bates Wells Braithwaite
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