

Third Party Campaigning
Review

Third Party Campaigning Review

Call for Views and Evidence

June 2015

Contents

Foreword	2
○ What are third parties?	2
○ Changes to the law	2
○ The Review of Third Party Campaigning	2
○ What we do not cover	2
○ Call for Views and Evidence	3
Background to the regulation of third party campaigning	4
○ Local campaigns	4
○ General campaigns	4
○ Third parties	5
○ This Review	5
Part 1 - Fundamental questions and principles	6
Part 2 - Definitions and concepts	8
○ Third party campaigning in an election	8
○ Types of third parties whose expenditure is regulated	8
○ Tests for expenditure which is regulated	9
■ Statutory “reasonably regarded” test	9
■ Electoral Commission’s ‘purpose’ and ‘public’ test	9
○ Perception of regulation	10
Part 3 - Operation of the regulatory system	12
○ Regulatory requirements	12
■ Campaign activity	12
■ Regulated period	13
■ Spending limits	14
■ Constituency limits	14
■ Targeted spending	15
■ Joint campaigning	15
○ Registration with the Electoral Commission	16
○ Reporting requirements	16
■ Donations	16
■ Compliance and Enforcement	17
■ Guidance	17
Part 4 - Changing landscapes	19
○ Elections to devolved legislatures	19
○ Campaigning methods	19
○ Meeting the challenges	20
Summary of questions	21
Annex A: Terms of reference	25

Foreword

What are third parties?

“Third parties” are those organisations or individuals that are actively campaigning at elections but are not political parties or candidates. As we saw at the 2015 general election, third parties campaign for or against a wide variety of issues or for or against political parties or candidates. Some of them campaign nationally, others locally; some spend a lot, others little; some are big organisations, others just one person. What they all have in common is that they are actively participating in the democratic life of the UK, and are usually seeking, in one way or another, to influence the opinions or actions of the UK’s citizens. That can include seeking to influence their voting decisions.

Changes to the law

Changes were made to the regulation of third parties’ campaigning activities by Part 2 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 (the 2014 Act) amending Part 6 of the Political Parties, Elections and Referendums Act 2000 (PPERA). These changes sought to strengthen the system for regulating the campaigning activities of third parties primarily by lowering the amount they could spend, and increasing the activities that count towards that spending limit.

This legislation was controversial. There was criticism of the lack of consultation and pre-legislative scrutiny, as well as the timing of the progress of the Bill through Parliament. In addition, Parts 1 and 3 of the 2014 Act established a register of consultant lobbyists and legislated to increase the regulation of trade unions respectively. Both of these were contested measures in their own right; however they are outside the scope of this review.

The Review of Third Party Campaigning

This review was set up under section 39(1) of the 2014 Act. I have been asked to conduct it, and I am assisted by a team from the Cabinet Office, and specialist advisers Helen Mountfield QC and Simon Steeden. The review is independent of Government and all political parties, and is committed to producing evidence-based recommendations. To that end I have been undertaking a number of actions to gather evidence. These include visits to the three devolved administrations in Scotland, Wales and Northern Ireland, online questionnaires seeking to gather data, meeting key stakeholders, constituency visits, and now launching this call for views and evidence. I will be undertaking further consultation over the next few months.

What the Review does not cover

Third party campaigning does not happen in a silo. There will be issues which overlap or which may raise similar questions, such as the regulation of political parties under Parts 2 to 5 of PPERA; the regulation of participants in referendum campaigns under Part 7 of PPERA; or indeed wider issues concerning the regulation of charities and the role and influence of the media in public life or elections.

These issues are not within the direct remit of this Review. However, to the extent that they overlap with (or provide useful comparisons in relation to) the regulation of third party campaigning under Part 6 of PPERA, it may not be possible to avoid commenting on those issues in the round. Bearing this in mind, we would welcome any views or evidence that you wish to provide in relation to how Part 6 of PPERA interacts with related areas of law.

Call for Views and Evidence

The reason for launching this call for views and evidence is that I want to hear your views. This is your chance to have your say. To aid you in doing this I have set out a number of questions I would like you to answer, starting from the high-level questions, and drilling down to more detailed issues.

The call for views and evidence is in four sections:

Part 1 examines the underlying issues, including asking the purpose of any regulation of third party campaigning, and what the principles should be for any such regulation;

Part 2 asks for your views as to the definitions and concepts of third party campaigning.

Part 3 asks for your views on specific elements of the current system of regulation.

Part 4 seeks your views on what the future of third party campaigning may look like.

The value of this review will be greatly increased if I am able to gather views from as wide a range of people as possible. I have been heartened by the engagement I have had so far, and hope that you will feel able to contribute further by answering the questions in the call for views and evidence. I have tried to frame the questions in such a way that you will be able to express your views freely and fully. If you think that there is something that we have not addressed, or not quite got right, then please write and let me know.

Lord Hodgson of Astley Abbotts

Background to the regulation of third party campaigning

Local campaigns

1. Spending by third parties campaigning for or against a particular candidate in a particular electoral area has been regulated for a long time. Campaigning in a local area is described by the Electoral Commission in its guidance as a 'local campaign'. The current relevant legislation governing expenditure on local campaigns is set out in the [Representation of the People Act 1983](#) (RPA) or equivalent legislation in Scotland, Wales and Northern Ireland. The RPA controls on the local campaign have different regulatory and enforcement procedures from those which apply to third party campaigning under PPERA.

General campaigns

2. Regulation of spending by third parties campaigning on issues or for or against political parties or candidates on a national level is more recent. It was introduced by PPERA. This type of campaigning is described in Electoral Commission guidance as a 'general campaign'. The Electoral Commission guidance refers to third parties undertaking general campaigns as 'non-party campaigners' to distinguish them from political parties or candidates and organisations explicitly linked to them.
3. The intention of the legislation governing regulation of general campaign expenditure is to avoid the possibility that third parties could 'buy' undue influence at the election as a result of excessive expenditure and to provide transparency as to sources of funding and expenditure intended to influence an election result.
4. The regulatory system for third party campaigning activities set out in PPERA is based on the regulatory system for political parties (with some significant differences). There is a regulated period during which there are controls on donations and limits on expenditure for any third party that spends more than a threshold amount. The Electoral Commission oversees the system, which has been in place, with amendments, since 2000. In some cases breaches of Part 6 of PPERA are also governed by the criminal law.
5. Significant amendments were made by Part 2 of the 2014 Act. Part 2 of the 2014 Act does not set up a new regulatory system: rather it amends Part 6 of PPERA. The 2014 Act expanded the campaign activity that counts towards the expenditure limit to match more closely the list for political parties (following on from a recommendation from the Electoral Commission) and reduced the amount that could be spent. It also introduced constituency limits to address concentration of spending in any particular constituency or groups of constituencies; it introduced targeted spending controls, that is, spending to support a particular party, as a means of tackling possible evasion of the spending limits by a political party which gets a third party to campaign on its behalf; and, finally, it increased the thresholds for registration.

Third parties

6. We are using the term third parties throughout this call for views and evidence to capture all of those active at elections: those registered as non-party campaigners with the Electoral Commission; those campaigning and not needing or deciding not to register; and those active at constituency level and who may be subject only to the RPA regulations.

This Review

7. Section 39(1) of the 2014 Act established this review. It reads:

The Minister must, within the period of 12 months beginning with the day on which this Act is passed, appoint a person to conduct a review of the operation of Part 6 of the Political Parties, Elections and Referendums Act 2000 in relation to the first relevant parliamentary general election.

8. The 2014 Act achieved Royal Assent on 30 January 2014. Lord Hodgson was appointed on 28 January 2015 and, according to the Terms of Reference (Annex A), must report back to Ministers by May 2016. The Minister must then lay the report before Parliament by November 2016. The review is to cover the whole of the regulatory system for third parties set out in Part 6 of PPERA, not solely the amendments introduced by the 2014 Act.

Part 1 - Fundamental questions and principles

9. In reviewing any regulatory system some fundamental questions need to be addressed. These include whether regulation is necessary, and, if it is, then what is it that the regulation is trying to achieve, in terms of both who and what is it trying to regulate.

10. The Review has come up with the following working draft of principles which could provide the strategic framework for the regulation of third party campaigning. These are:

To maintain the rich diversity of public participation and involvement which historically has characterised British elections while not jeopardising public trust and confidence in the integrity of the electoral system.

To achieve this:

- a. As regards the voting public by providing clarity and transparency about significant campaigning activity undertaken with a view to influencing the outcome of an election, especially any with an underlying party political motivation; and
- b. As regards third parties by establishing a regulatory system which is accessible, comprehensible and proportionate and does not discourage third parties from campaigning.

11. Arguments for regulating third party campaigning include:

- the need for the general public to be aware about who is campaigning at elections and is seeking to influence their vote, how much they are spending, and where their money comes from;
- the need to maintain trust and confidence in the fairness of the electoral system by controlling the amounts being spent, so avoiding the possibility of excessive expenditure distorting electoral outcomes; and
- the need to ensure that third parties cannot be used as a mechanism for political parties evading their spending limits.

12. Arguments against regulating third parties' expenditure include:

- that some third parties may be spending money in order to raise debate on an issue which just happens to be identified with a party or candidate (or perhaps an issue which comes to the fore during an election campaign) rather than specifically to influence voters for or against a particular party or candidate;
- that regulation may impose a disproportionately heavy burden on relatively small organisations or organisations spending small amounts of money;
- that some organisations may be put off undertaking legitimate campaigning activity during election time for fear of inadvertently breaking the law; and
- concern about dual regulation of those third parties which are charities, since they are already subject to regulation by charity law.

13. Our attention has been drawn to the fact that there is a perception amongst some that third party organisations spending small amounts of money are subject to the regulation, while some more influential and powerful participants in electoral campaigns and indeed those influencing the political process in a wider sense, such as newspapers, lobbyists and companies, often are not.

Q1 - In your view, is any regulation necessary? If so, what should it be trying to achieve? Which organisations or bodies should be regulated, in respect of what activity or expenditure? To what extent, if any, should there be and can there be transparency as to who is trying to influence the electoral process?

Part 2 - Definitions and concepts

Third party campaigning in an election

14. The current legislation targets expenditure by third parties on activities that can be reasonably regarded as intended to influence a voter's choice at a particular election, whether for or against a candidate or party generally or for or against candidates and parties that support or oppose a particular issue.
15. Registered charities are not allowed to give their support to a political party (though they may support or oppose a particular policy which may be advocated by one or more political parties). The Charity Commission of England and Wales's guidance '[Speaking Out: Campaigning and Political Activity by Charities](#) (CC9)'¹ defines education and awareness raising activity as 'campaigning', and campaigning for a change in law or policy as 'political activity'.
16. However, the boundaries between the different types of campaigning or political activity, whether undertaken by charities or others, are not necessarily always clear-cut. A primarily issue-based campaign could also influence voters, or be seen as so doing, whether the influence is intentional or not.
17. A number of third parties, including charities, carry out campaigning activities in one form or another regularly, not solely at election time: this could be termed 'advocacy'. Others carry out or increase their activity specifically at election time, for example as an attempt to influence the wider political process in the run up to a general election, to shape the terms of debate, and to influence which issues will be prominent in the drafting of political parties' manifestos: this could be described as 'political campaigning'. Finally there is the activity that is intended to influence people's voting choices in the run-up to the election, which could be termed 'electoral campaigning'.

Q2 - Is there a meaningful distinction to be made between 'advocacy', 'political campaigning' and 'electoral campaigning'? If so, assuming there is to be regulation of third party campaigning, which type(s) of activity should be captured?

Types of third parties whose expenditure is regulated

18. A third party is defined in electoral law by two tests. First, that its expenditure on certain activities in advance of an election could be reasonably regarded as intended to influence people's voting intentions. Second, that it is not directly contesting the election as a political party or candidate. A third party can therefore be, for example, a charity, a company, an NGO, a trade union or an individual, as can be shown by the third parties which registered at the 2015 general election, details of which can be found [here](#)². There are a number of groups and individuals registered with the Electoral Commission for whom it is not immediately clear what they campaign on, and why they believed it necessary to register.

¹ Charity Commission of England and Wales website, accessed 16 June 2015
<https://www.gov.uk/government/publications/speaking-out-guidance-on-campaigning-and-political-activity-by-charities-cc9>

² Electoral Commission website, accessed 16 June 2015
<http://search.electoralcommission.org.uk/Search/Registrations?currentPage=1&rows=10&sort=RegulatedEntityName&order=asc&et=tp®ister=gb®ister=ni®ister=none&reqStatus=registered>

19. The current regulation for third parties does not distinguish between the different types of third parties, nor the campaign activities they are undertaking. This has the advantage that all third parties are bound by the same rules; however the rules take no regard of the different nature, activities, intentions and spend of the various types of third parties, say of a charity compared to a commercial company; a big media organisation compared with a small web-based campaign group; or a large trade union compared with a small single industry trade association.

Q3 - Should the regulatory system take regard of the differences between third parties? Are there any other groups or third parties not currently required to register who should be required to register? Are there any other groups or third parties currently required to register who should not be required to register?

Tests for expenditure which is regulated

Statutory “reasonably regarded” test

20. The current test under PPERA for expenditure on general campaign activity that falls to be regulated is whether the activity “can reasonably be regarded as intended to promote or procure electoral success at any relevant election” for political parties or categories of candidates. The test applies both to activity which can reasonably be regarded to promote or procure electoral success for specific candidates or specific parties’ candidates, but also activity which can reasonably be regarded as intended to promote or procure success for categories of candidates, i.e. those who either support or do not support particular policies or issues. In order for expenditure to be regulated it must also be incurred on carrying out certain activities, which are set out later in this document under Part 3.
21. By contrast, expenditure on local campaign activity that falls to be regulated under section 75 of the RPA is only regulated if the person undertaking the activity undertakes it “with a view to promoting or procuring the election of a candidate”, which is a test of the actual intention of the person undertaking the activity.
22. What a person subjectively intends could be different from what an observer could reasonably regard them as intending. Although the latter is a test with a long legal precedent, it ultimately boils down to a judgement as to whether an activity could reasonably be regarded as intended to promote or procure electoral success by an outside observer, rather than considering the actual intention of the person undertaking that activity.

Q4 - Is the ‘reasonably regarded’ test the right one? Can the test in PPERA be improved? Would it be better to use a test of ‘actual intention’? If so, why? If not, why not? Would you suggest any other changes to the test for regulated campaigning?

Electoral Commission’s ‘purpose’ and ‘public’ tests

23. Based on the statutory definition contained in PPERA, the Electoral Commission has devised a “purpose test” and a “public test” as to whether activities could be considered to be regulated campaign activity. Guidance on the tests can be found [here](#)³.

³ Electoral Commission, Overview of regulated non-party campaigning, accessed 16 June 2015 http://www.electoralcommission.org.uk/_data/assets/pdf_file/0003/165963/to-activities-npc.pdf

24. In relation to the “purpose test” the Electoral Commission states that “spending on campaign activity during a regulated period will be regulated if the activity can reasonably be regarded as intended to influence voters”, and goes on to say that “campaign activity can meet the purpose test even if it does not name a particular party or candidate, if the campaign is on an issue which is closely and publicly associated with one or more political parties or categories of candidate. In addition, an activity can meet the purpose test even if influencing voters was not its primary purpose, if it can reasonably be regarded as also having the intention to influence voters.”
25. The Electoral Commission’s “public test” asks whether activities are “aimed at, seen or heard by, or involve the public” and generally excludes activities from regulation if they only involve “members” or “committed supporters” of the third party.
26. Third party campaigning activities generally will only be covered by the regulation if they meet both the purpose and public tests.

Q5 - Could the explanation of the “purpose test” and/or the “public test” be improved in the guidance? If so, in what ways?

Q6 - In this age of complex relationships between individuals and organisations, including through social media, is it possible to define member or committed supporter in a way that is consistent across organisations?

Perception of regulation

27. Some organisations appear reluctant to register as a third party, as in their view the campaign activity that they are undertaking is not political and/or because they do not regard their activity that is overtly political as being covered by the registration requirement.
28. In addition, those that are charities are prohibited from being party political and so are concerned about any implication that they are spending money with the intention of promoting or undermining the success of particular parties or candidates. As charities are prohibited from supporting parties or candidates, questions can be raised about whether their activities, if compliant with the regulation of charities, should ever reasonably be regarded as intended to promote or procure the success of parties or candidates.
29. Others however have seen registering as a positive force, by providing legitimacy to their campaigning activities.

Q7 - In your view, what are the overall costs versus benefits (financial and other) to a third party itself of registering with the Electoral Commission?

30. Requiring third parties to register with the Electoral Commission provides a degree of transparency as to which organisations are actively campaigning at the election and may be assumed to be spending enough to need to register. However, there is limited transparency prior to and during the election as to what the organisation is campaigning on, what they are hoping to achieve, and where they are active. The third party’s spending return which has to be filed after the election does provide greater transparency. In addition, some organisations may have decided that it was safer for them to register even though they are unlikely to spend above the relevant threshold on campaign activities.

Q8 - Currently registration only provides transparency about sources of funding for and expenditure on some forms of activity by third parties at election time. Would it be useful to require third parties also to provide information about other issues, such as what they are campaigning on, their reason for campaigning and where they are active?

31. Some organisations consider uncertainty about what the law requires has had and will continue to have a chilling effect on freedom of expression, putting small organisations and their trustees/directors in fear of criminal penalty if they speak out on matters of public interest and concern. Others consider these concerns have been overstated.

Q9 - In your view, has there in fact been a 'chilling effect'? If you consider there has been a chilling effect, why? Do you have any examples of this? If you do not consider there has been a chilling effect, why not?

Part 3 - Operation of the regulatory system

32. The regulatory system for third parties is based on that for political parties, and was established by the PPERA. The regulatory system comprises:
- types of campaign activity on which spend is regulated
 - a time period during which spend is regulated
 - spending limits
 - thresholds for registration
 - controls on donations
 - reporting requirements
33. The system is interlinked. Spend on certain items is regulated during a specific length of time, with spending subject to limits and registration required if the threshold for spending is met. Altering one of these elements could change the effect of the overall system.
34. The 2014 Act expanded the list of items that count as campaign activity to bring it more into line with the list for political parties and decreased the spending limits, while increasing the registration threshold. In addition, there are rules on joint campaigning at elections, targeted spending, and constituency limits. The Electoral Commission issues guidance on the regulatory system.
35. In addition, third parties campaigning for or against one or more particular candidates in a particular constituency are subject to the regulations in the RPA.

Regulatory requirements

36. There is a maximum spending limit on what third parties can spend on certain campaign activity during the regulated period. The reason to limit spending is to stop levels of spending that could excessively influence elections.

Campaign activity

37. PPERA as originally passed only regulated the amount which could be spent on producing election material. The 2014 Act expanded the areas of campaign activity over which expenditure controls operate. As the law now stands, controlled expenditure is spending on any of the activities from the following list:
- (1) material made available to the public or a section of the public.
 - (2) canvassing or market research, seeking views or information from the public.
 - (3) press conferences or other media events.
 - (4) transport with a view to obtaining publicity.
 - (5) public rallies or other public events (except annual conferences, or public processions or protest meetings within the meaning of the Public Processions (Northern Ireland) Act 1998).
38. Expenditure on material (other than advertisements) published in a “newspaper or periodical”, or via regulated broadcast media, is excluded from the statutory definition of controlled expenditure, which has raised concerns about the difficulty of distinguishing between a political blog and an editorial in a newspaper online, where the same content could be regulated in the former instance but not in the latter.

39. For political parties, staff costs on campaign activity are excluded: however for third parties staff costs for campaign activity on the above list are included and count towards overall spending.
40. The Electoral Commission guidance suggests that all costs (including staff costs) that relate to regulated campaign activity will count towards a third party's spending limit. It states that third parties must also include overheads or administrative costs which are directly associated with each activity, but not overhead or administrative costs associated with an organisation's general, non-campaign related activities. Third parties are asked to make an honest and reasonable assessment of the amount they have spent, based on the facts.

Q10 - Is the list of campaign activity that counts towards the spending limit the right one? Are there other matters which are not in the list that should be included? Are there activities in the list which should be excluded?

Q11 - Is it clear what costs incurred on regulated campaign activities are regulated? Should staff costs for third parties be included? What, if any, other fixed or overhead costs should be included? How easy is it to distinguish between overhead or administrative costs which are associated regulated campaign activities and those associated with general, non-campaign related activities?

Regulated period

41. The length of the regulated period at general elections is usually 365 days before the election ending on the date of the poll; however, for the 2015 general election it began on 19 September 2014, the day after the Scottish independence referendum, and lasted until the day of the election, 7 May 2015. The spending limits remained the same as they would have been for a regulated period of 365 days.
42. For elections to the Scottish Parliament, Welsh Assembly, Northern Ireland Assembly and the European Parliament the regulated period is generally four months before the election, ending on the date of the poll.
43. The challenge is when elections take place on the same day or within a short space of time, such as if a snap general election were called (although this has been made less likely due to the Fixed Term Parliaments Act 2011). In the first situation the regulated periods would overlap, and in the second there would be uncertainty as to when they started. These circumstances add significant complexity and complication as to what should be counted and declared as spend for which particular election bearing in mind that the same campaign activity could be classed as spend at two different elections or solely at one election.
44. The time period for the regulation of campaigning for a particular candidate in a particular constituency under the RPA is from when a person becomes a candidate to the date of election. The earliest date a person can officially become a candidate is the day that the UK Parliament is dissolved, which, following the Fixed-term Parliaments Act 2011, will usually be 25 working days before polling day.

Q12 - When should spending be regulated? What should the length of the regulated period for a UK general election be, and why? What should the length of the regulated period for elections to the Scottish Parliament, Welsh Assembly, Northern Ireland Assembly and the European Parliament be, and why?

Spending limits

45. The maximum spending limit for third party campaigns is set at 2% of the limits for political parties' campaign expenditure in each of the constituent parts of the UK, which is based on the number of parliamentary seats in each part (the legislation is framed this way to take account of the political parties contesting only one of the constituent parts of the UK), with a top-up of £20,000 for Scotland, Wales and Northern Ireland to avoid the limits being excessively low. The limits are:

England	£319,800
Scotland	£ 55,400
Wales	£ 44,000
Northern Ireland	£ 30,800

46. A single UK-wide campaign would have to attribute spending equally between each of the different nations based on the number of parliamentary seats: it would therefore have a limit of £390,000 (excluding the £20,000 top-up for Scotland, Wales and Northern Ireland). A third party running *separate* campaigns in each of the four parts of the UK could spend up to the limit in each part, and therefore spend up to £450,000 in total.

Q13- Do you have a view as to levels of spending that might influence an election? What level of spending in your view would 'unduly' influence the election?

Q14 - Are the spending limits right for the different parts of the UK? How easy is it to allocate spending to the different parts of the UK? Is the current balance between the expenditure limits for political parties and third parties appropriate?

Constituency limits

47. If the campaign activity of a third party can be reasonably regarded as intended to promote or procure electoral success in a particular constituency or constituencies, rather than the electorate at large, then it is likely to be subject to constituency limits. These were introduced by the 2014 Act, and limit the amount that can be spent in any one constituency in the regulated period of 365 days to £9,750. When campaign activity takes place in such a manner in more than one constituency it has to be apportioned between the constituencies, while still staying within the expenditure limit for each constituency. However, as the constituency limit (£9,750) is lower than the registration threshold (£20,000 in England, £10,000 in Scotland, Wales or Northern Ireland) it is possible that a third party could spend up to or even exceed the constituency limit without being required to register.
48. For a third party that is campaigning in a particular constituency in support of or against one or more particular candidates the RPA rules apply and the maximum amount that can be spent in the much shorter regulated period (likely to be 25 days or fewer) is £700.

Q15 - If you have registered with the Electoral Commission, how easy have you found it to attribute expenditure between constituencies?

Q16 - Would it be easier if the test was whether the expenditure was intended to have effect in particular constituencies, rather than what its actual effect happens to be?

Targeted spending

49. "Targeted spending" is a new concept introduced by the 2014 Act covering spending on campaign activity that can reasonably be regarded as intended to influence voters to vote for one particular registered political party or any of its candidates. The limits for such targeted expenditure depend on whether a registered political party has authorised the third party to incur the targeted spending or not. If the political party has authorised the third party to incur an amount of targeted campaign spending, then the third party may spend only up to any limit authorised by that political party and this sum will be included in that political party's overall spending. The third party also must not exceed the national or constituency spending limits on third party campaigns (even if the political party authorises it to spend more than these amounts).
50. If the political party has not authorised the expenditure then the targeted spending limits below apply, set at 0.2% of a political party's limit in each of the UK's constituent parts:

England	£31,980
Scotland	£3,540
Wales	£2,400
Northern Ireland	£1,080

51. Expenditure incurred between the above targeted spending limits and the political party's authorised limit will also count towards the political party's spending limit.

Q17 - Is "targeted spending" a useful concept? Are the levels right?

Joint campaigning

52. Third parties often work together with one or more other campaigners on a joint campaign. Under the 2014 Act, a third party which is part of the joint campaign can act as a lead campaigner and report the joint campaign spending on behalf of themselves and all the other non-party campaigners involved in the joint campaign who have designated themselves 'minor campaigners'. The lead campaigner must then account for all the expenditure of all the campaigners in the coalition, which together must not exceed the statutory expenditure limit.
53. If non-party campaigners work together as part of a joint campaign without a lead campaigner, then each organisation must account to the Electoral Commission for its expenditure, which will be deemed to include the combined regulated campaign spending of all the organisations involved in the joint campaign. An organisation involved in the joint campaign may be unaware of what the other organisations are spending and so would be more likely to exceed the registration threshold and potentially also the statutory spending limit.

Q18 - Is the guidance as regards joint campaigning clear? Are the rules on 'lead' and 'minor' campaigners in a coalition a helpful way to avoid duplication of reporting obligations? If not, what are the problems with the rules? How could the rules be improved?

Q19 - What has been the effect of these rules on joint campaigning?

Registration with the Electoral Commission

54. A third party needs to register with the Electoral Commission as a “non-party campaigner” if it meets, or believes it is likely to meet, these three conditions:
- it intends to spend money on certain election-related activities or material;
 - the expenditure can reasonably be regarded as intended to promote or procure the electoral success of a party, parties or candidates;
 - it intends to spend more than £20,000 in England, or £10,000 in any one of Scotland, Wales and Northern Ireland during the regulated period on the activities covered by the Act (see Q12 for an explanation of the regulated period).
55. The threshold for registration was doubled by the 2014 Act. It was previously £10,000 in England, and £5,000 in any one of Scotland, Wales and Northern Ireland.
56. Once registered, third parties have to provide reports on spending and the controls on receiving donations and the reporting requirements come into effect.

Q20 - Are the current thresholds for registration (£20,000 in England, or £10,000 in each of Scotland, Wales and Northern Ireland) the right levels?

Q21 - Is there any case for setting two thresholds - one requiring third parties to register with the Electoral Commission if they wish to spend money on election-related activities and a second setting a higher threshold above which third parties are required to report to the Electoral Commission on what they have spent? If your answer is yes, what are the right levels?

Reporting requirements

57. Regulated campaign spending and donations need to be reported to the Electoral Commission. If the third party spent £250,000 or less the deadline for reporting is three months after the election (7 August 2015) and the deadline for submitting the statement of accounts is six months after that (7 February 2016).
58. If the third party spent over £250,000 the deadline for reporting regulated campaign spending and donations is six months after the election (7 November 2015). The campaign spending return must be audited. The deadline for submitting the statement of accounts is six months after the deadline for the campaign spending return (7 May 2016).
59. Third parties are exempt from submitting a statement of accounts if they are already legally required to submit a statement of accounts that the Electoral Commission is able to inspect; and that statement of accounts contains an income and expenditure account for the regulated period, and a balance sheet, showing assets and liabilities of the organisation as at the end of the regulated period.

Donations

60. The rules on donations received by third parties only cover donations received towards regulated campaign activity. If a donation is given for regulated campaign activity it must be reported to the Electoral Commission if the donation, or the aggregate of donations from the same source, exceeds £7,500. In the regulated

period before the election donations must be reported on a quarterly basis before Parliament is dissolved and weekly thereafter.

61. When a donation of more than £500 is received towards regulated campaign activity, the third party needs to ascertain that the donation is from a permissible source, in essence an individual registered on a UK electoral register or a company, trade union, building society, or unincorporated association registered and active in the UK. The Electoral Commission guidance says that it is not important when the donation is made, whether before or during the regulated period, nor whether or not the donation is received before registration as a non-party campaigner.
62. The rules on donations do not cover money received for the purpose of spending on activity that is not regulated, for example, leaflets produced and used before the regulated period begins, nor money given for unregulated campaign activity, nor donations for activities unrelated to campaigning.

Q22 - What should be the purpose of reporting expenditure and donations? Do the current reporting requirements meet that purpose?

Q23 - Are the rules on the acceptance of donations workable in practice? Do they reflect the reality of where third parties receive donations from?

Q24 - Is the distinction between donations made for regulated campaign activity and other donations tenable? Is it clear to a third party when it receives a donation what it is to be used for?

Compliance and Enforcement

63. As elections are conducted on a constituency by constituency basis, across the whole of the UK, it can be very difficult for any effective monitoring of campaign activity to take place. It may not be clear how much is being spent and by whom. There are rules requiring third parties to register if they wish to spend over £20,000 in England or £10,000 in any one of Scotland, Wales and Northern Ireland but it may not be clear how much an activity costs, in particular in terms of costs such as staff time, or whether that activity contributes to a total spend that requires registration. The regulatory system therefore to some extent depends on third parties being transparent and honest.
64. In addition, general campaigns are regulated under PPERA by the Electoral Commission, which has no regulatory role regarding local campaigns under the RPA. Complaints about local campaigns have to be made to the police.

Q25 - What is the best way for the Electoral Commission to regulate the system?

Q26 - Does the fact that there are two different regulatory regimes for local campaigns and for general campaigns cause difficulty regarding compliance and enforcement?

Guidance

65. The Electoral Commission produces guidance on third party campaigning, setting out the regulatory requirements, and the relevant charity regulators produce guidance for the charities in their jurisdiction. The Electoral Commission and the charity regulators worked together on the guidance for charities and third party campaigning.

66. The Electoral Commission's guidance can be found [here](#)⁴. The Charity Commission for England and Wales's guidance can be found [here](#)⁵; the Office of the Scottish Charity Regulator's guidance can be found [here](#)⁶; and the Charity Commission for Northern Ireland's guidance can be found [here](#)⁷.

Q27 - Are there ways in which the guidance referred to above could be made more user-friendly?

⁴ Electoral Commission website, accessed 16 June 2015 <http://www.electoralcommission.org.uk/i-am-a/party-or-campaigner/non-party-campaigners/guidance>

⁵ Charity Commission website, accessed 16 June 2015 <https://www.gov.uk/government/publications/speaking-out-guidance-on-campaigning-and-political-activity-by-charities-cc9>

⁶ Office of the Scottish Charity Regulator, accessed 16 June 2015 http://www.oscr.org.uk/media/1885/faqs-charities-and-campaigning-on-political-issues_final-for-publication.pdf

⁷ Charity Commission for Northern Ireland website, accessed 16 June 2015 <https://www.charitycommissionni.org.uk/charity-essentials/charities-and-politics/>

Part 4 - Changing landscapes

67. The 2015 election witnessed two important developments: first, there were more political parties contesting it more closely so that small changes in voting totals could make a decisive difference to the outcome; and second there was an increase in campaigning via social media, alongside the more traditional methods.

Elections to the devolved legislatures

68. In the short term, next year there will be elections to the Northern Ireland Assembly, the Scottish Parliament and the National Assembly for Wales. The parties in power in these legislatures are not the same as the party in power in Westminster. Third parties could therefore find themselves actively campaigning on an issue supported or opposed by a party which is both in opposition and in power depending on the part of the UK concerned. For example, a third party could be actively campaigning on an issue in Scotland which is a reserved matter and on which the policy is owned by the UK government; there is a question as to whether that should be reasonably regarded as seeking to influence the elections to the Scottish Parliament.
69. Looking further forward there appears likely to be a referendum on membership of the EU, which may take place at the same time as other elections. In such a situation there may be overlapping regulations. Referendums are governed by Part 7 of PPERA, which is not covered in this Review.

Q28 - Are the regulations for third party campaigning at the elections to the devolved legislatures sufficiently clear and workable?

Campaigning methods

70. The regulation in PPERA was designed to capture traditional methods of campaigning. Social media can reduce the cost of campaigning and allow campaigners to communicate directly with their supporters, to some extent bypassing traditional media. In addition, targeted marketing to individuals believed to be more likely to be receptive to the arguments advanced is increasingly becoming more sophisticated. The current regulatory system seeks to limit spending to stop third parties unduly influencing the election; with the cost of campaigning methods reducing so rapidly there is an open question about whether setting expenditure limits is the best way of achieving the strategic aims of the Act.
71. There is also the issue of the convergence of media, in that as well as existing in print a newspaper will have an online presence. The online presence of a newspaper can include making and hosting short videos, as well as creating a virtual community of supporters. Third parties are also developing more sophisticated online presences comprising these elements. However, the expenditure linked to the online presence of a third party may fall to be regulated while that of a newspaper would not. It is not always possible to be clear where the dividing line might be between, for example, an opinion piece in an online version of a newspaper and a political blog: indeed, the content may be the same, but in one case it could fall to be regulated and the other not.

72. The nature of the internet means that a website and content on social media, such as YouTube, could be paid for, created, uploaded and hosted anywhere in the world. An organisation could, if it so wished, seek to influence voters in the UK through widespread use of social media, websites, etc, while basing its online presence outside the UK. There is a question about how this can be effectively regulated and appropriate compliance and enforcement action taken.

Q29 - Are expenditure limits the best way to limit undue influence? Is there something else that should be regulated instead of or as well as expenditure limits?

Q30 - Should there be a distinction between material published online by a newspaper or periodical and other forms of online publication, such as political blogs? Why?

Q31 - How can online activity be sufficiently regulated in the future?

Meeting the challenges

73. Looking ahead, any regulation needs wherever possible to be framed to take due account of likely developments in campaigning methods, and changes in the political context. The regulation needs to be both resilient and flexible enough to accommodate these changes, and the regulator needs to be agile enough to respond to the changing situation.

Q32 - What developments do you expect to see in third party campaigning?

Q33 - How can the regulation be sensitive to the changing landscape?

Please feel free to set out any other issues that you would like to draw our attention to.

Summary of questions

Part 1 - Fundamental questions and principles

Q1 - In your view, is any regulation necessary? If so, what should it be trying to achieve? Which organisations or bodies should be regulated, in respect of what activity or expenditure? To what extent, if any, should there be and can there be transparency as to who is trying to influence the electoral process?

Part 2 - Definitions and concepts

Third party campaigning in an election

Q2 - Is there a meaningful distinction to be made between 'advocacy', 'political campaigning' and 'electoral campaigning'? If so, assuming there is to be regulation of third party campaigning, which type(s) of activity should be captured?

Types of third parties whose expenditure is regulated

Q3 - Should the regulatory system take regard of the differences between third parties? Are there any other groups or third parties not currently required to register who should be required to register? Are there any other groups or third parties currently required to register who should not be required to register?

Tests for expenditure which is regulated

Statutory "reasonably regarded" test

Q4 - Is the 'reasonably regarded' test the right one? Can the test in PPERA be improved? Would it be better to use a test of 'actual intention'? If so, why? If not, why not? Would you suggest any other changes to the test for regulated campaigning?

Electoral Commission's 'purpose' and 'public' tests

Q5 - Could the explanation of the "purpose test" and/or the "public test" be improved in the guidance? If so, in what ways?

Q6 - In this age of complex relationships between individuals and organisations, including through social media, is it possible to define member or committed supporter in a way that is consistent across organisations?

Perception of regulation

Q7 - In your view, what are the overall costs versus benefits (financial and other) to a third party itself of registering with the Electoral Commission?

Q8 - Currently registration only provides transparency about sources of funding for and expenditure on some forms of activity by third parties at election time. Would it be useful to require third parties also to provide information about other issues, such as what they are campaigning on, their reason for campaigning and where they are active?

Q9 - In your view, has there in fact been a 'chilling effect'? If you consider there has been a chilling effect, why? Do you have any examples of this? If you do not consider there has been a chilling effect, why not?

Part 3 - Operation of the regulatory system

Spending

Campaign activity

Q10 - Is the list of campaign activity that counts towards the spending limit the right one? Are there other matters which are not in the list that should be included? Are there activities in the list which should be excluded?

Q11 - Is it clear what costs incurred on regulated campaign activities are regulated? Should staff costs for third parties be included? What, if any, other fixed or overhead costs should be included? How easy is it to distinguish between overhead or administrative costs which are associated regulated campaign activities and those associated with general, non-campaign related activities?

Regulated period

Q12 - When should spending be regulated? What should the length of the regulated period for a UK general election be, and why? What should the length of the regulated period for elections to the Scottish Parliament, Welsh Assembly, Northern Ireland Assembly and the European Parliament be, and why?

Spending limits

Q13- Do you have a view as to levels of spending that might influence an election? What level of spending in your view would 'unduly' influence the election?

Q14 - Are the spending limits right for the different parts of the UK? How easy is it to allocate spending to the different parts of the UK? Is the current balance between the expenditure limits for political parties and third parties appropriate?

Constituency limits

Q15 - If you have registered with the Electoral Commission, how easy have you found it to attribute expenditure between constituencies?

Q16 - Would it be easier if the test was whether the expenditure was intended to have effect in particular constituencies, rather than what its actual effect happens to be?

Targeted spending

Q17 - Is “targeted spending” a useful concept? Are the levels right?

Joint campaigning

Q18 - Is the guidance as regards joint campaigning clear? Are the rules on ‘lead’ and ‘minor’ campaigners in a coalition a helpful way to avoid duplication of reporting obligations? If not, what are the problems with the rules? How could the rules be improved?

Q19 - What has been the effect of these rules on joint campaigning?

Registration with the Electoral Commission

Q20 - Are the current thresholds for registration (£20,000 in England, or £10,000 in each of Scotland, Wales and Northern Ireland) the right levels?

Q21 - Is there any case for setting two thresholds - one requiring third parties to register with the Electoral Commission if they wish to spend money on election-related activities and a second setting a higher threshold above which third parties are required to report to the Electoral Commission on what they have spent? If your answer is yes, what are the right levels?

Reporting requirements

Donations

Q22 - What should be the purpose of reporting expenditure and donations? Do the current reporting requirements meet that purpose?

Q23 - Are the rules on the acceptance of donations workable in practice? Do they reflect the reality of where third parties receive donations from?

Q24 - Is the distinction between donations made for regulated campaign activity and other donations tenable? Is it clear to a third party when it receives a donation what it is to be used for?

Compliance and Enforcement

Q25 - What is the best way for the Electoral Commission to regulate the system?

Q26 - Does the fact that there are two different regulatory regimes for local campaigns and for general campaigns cause difficulty regarding compliance and enforcement?

Guidance

Q27 - Are there ways in which the guidance referred to above could be made more user-friendly?

Part 4 - Changing landscapes

Elections to the devolved legislatures

Q28 - Are the regulations for third party campaigning at the elections to the devolved legislatures sufficiently clear and workable?

Campaigning methods

Q29 - Are expenditure limits the best way to limit undue influence? Is there something else that should be regulated instead of or as well as expenditure limits?

Q30 - Should there be a distinction between material published online by a newspaper or periodical and other forms of online publication, such as political blogs? Why?

Q31 - How can online activity be sufficiently regulated in the future?

Meeting the challenges

Q32 - What developments do you expect to see in third party campaigning?

Q33 - How can the regulation be sensitive to the changing landscape?

Please feel free to set out any other issues that you would like to draw our attention to.

Annex A

Terms of Reference

Background

The Transparency of Lobbying, Non Party Campaigning and Trade Union Administration Act 2014 requires (in s.39) the Minister to appoint a person to undertake a review of the operation of Part 6 (regulation of third parties) of the Political Parties, Elections and Referendums Act (PPERA) 2000 at the 2015 General Election. The review must result in a report, which will be presented to the Minister and which the Minister must lay before Parliament November 2016.

Aim and Principle of the Review

The review must report on the operation and effectiveness of the provisions regulating third parties contained within Part 6 of PERA. Parliament, with the passing of PERA in 2000, has sought to ensure that the regulatory regime governing political and third party activities during regulated periods is robust and transparent.

The regulation of third parties was strengthened by the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014.

The Government's view is that it is of the utmost importance that the principles of a robust and transparent regulatory regime are maintained to ensure that the public have trust and confidence in the system governing elections.

When assessing the effectiveness of the current provisions governing third parties within Part 6 of PERA, the reviewer should consider the following principles:

- The need to maintain public trust and confidence in the regulatory regime governing third parties.
- The need to ensure campaigning which seeks to influence voting intentions at elections is undertaken in an open and transparent way.

Structure of the Review

The reviewer should expect to interview representatives of third parties registered with the Electoral Commission for the 2015 General Election and other interested bodies, including the Electoral Commission. The reviewer will gather evidence and seek views from relevant stakeholders and the public. The reviewer will be independent; the findings and recommendations of the reviewer will represent the views of the reviewer. The reviewer will be supported by designated officials from the Constitution Group.

The reviewer will complete their report by May 2016 at the latest. This will enable them to take into consideration evidence submitted to them, as well as the independent reports which the Electoral Commission must produce.

Upon completion of the review, the Minister will need to lay the report in Parliament before November 2016.

Scope of the Review

The review aims to assess the effectiveness of the regulatory regime governing third parties, ensuring that the system is robust, transparent and ensures public trust and confidence is maintained.

In doing so, the review will need to take in account whether:

- Third parties understood the regulatory rules;
- Third parties have complied with those rules; and
- Where breaches of the rules have occurred, whether robust and appropriate enforcement activity has been undertaken by the regulator.

In order to determine the above, the review should in particular consider the following specific matters:

- Suitability of Electoral Commission guidance and whether it was clear to non-party campaigners what the regulatory rules are and their obligations under the regulatory regime.
- Appropriateness of the registration thresholds and the effect on the number of third parties registering.
- The operation of the new reporting regime in relation to donations to recognised third parties.
- The operation of the rules on lead/small campaigner provisions, where a coalition of third parties work together to a common plan.
- Effective and proportionate enforcement of the rules by the Electoral Commission to ensure third parties comply with the regulatory regime, and where complaints or breaches occur, these are effectively and appropriately investigated and enforced.