

Third Party Election Campaigning – Getting the Balance Right

Review of the operation of the third party
campaigning rules at the 2015 General Election

The Lord Hodgson of Astley Abbotts CBE

March 2016



Third Party Election Campaigning – Getting the Balance Right

Review of the operation of the third party campaigning rules at the 2015 General Election

The Lord Hodgson of Astley Abbotts CBE

Presented to Parliament
by the Chancellor of the Duchy of Lancaster
by Command of Her Majesty
March 2016



© Crown copyright 2016

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.uk/government/publications

Any enquiries regarding this publication should be sent to us at enquiries@thirdpartyreview.gov.uk

Print ISBN 9781474127950

Web ISBN 9781474127967

ID SGD0011093 03/16 19585

Printed on paper containing 75% recycled fibre content minimum

Printed in the UK by the Williams Lea Group on behalf of the Controller of Her Majesty's Stationery Office

Foreword



I was appointed as the Reviewer of Part 2 of the Transparency in Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 on 28 January 2015. Part 2 of the Act addresses solely Non-Party Campaigning and consists of a series of amendments to Part 6 of the Political Parties, Elections and Referendums Act 2000.

Conducting the Review has been interesting and challenging; interesting because the technology used in the conduct of elections has changed so dramatically in recent years and, indeed, is continuing to change; challenging because the issue of campaigning by those other than political parties has led to widely polarised views about its role and its appropriateness.

I began my Review by seeking to understand the will and purpose of Parliament when it approved this legislation, which enabled me to establish some principles by which to guide the Review.

I was then able to test the practical implications of these principles with a wide range of interested parties. This testing included trips to the devolved administrations in Scotland, Wales and Northern Ireland, to certain Parliamentary Constituencies during the General Election as well as many one on one and roundtable discussions.

Each parliamentary candidate in the 2015 General Election (as far as they could be found) and each Returning Officer was sent a specific questionnaire about the impact of the legislation. A broader questionnaire was made available to third parties and to the general public. And as the Review progressed a Call for Views and Evidence on certain

specific topics was sent to interested parties. My special thanks are due to all who took the trouble to respond to these questionnaires or who gave up time to join in discussions – they have provided the evidence on which my recommendations are based.

In navigating the complex legislation that surrounds electoral law and in particular the work of third parties I have had the invaluable assistance of Helen Mountfield QC of Matrix Chambers and Simon Steeden of Bates Wells Braithwaite solicitors who have acted as advisors to the Review. I would also like to thank the think tank Demos who kindly shared a piece of work looking at the use of social media at the 2015 General Election. As can be imagined this Review has led to a tidal wave of paper. The support team provided by the Cabinet Office, Cathryn Hannah, David Rowland and Lucy Gillam have coped magnificently at every stage. I am deeply in their debt.

The conclusions and recommendations, of course, are mine alone. In summary I have sought to make recommendations which provide a structure which permits open, vigorous debate – an essential part of our democratic way of life – while at the same time providing the disclosure and transparency necessary to give our fellow citizens confidence in the integrity of our electoral system.

A handwritten signature in black ink that reads "Robin Hoodson". Below the signature is a horizontal line with a small flourish at the end.

The Lord Hodgson of Astley Abbots CBE

February 2016

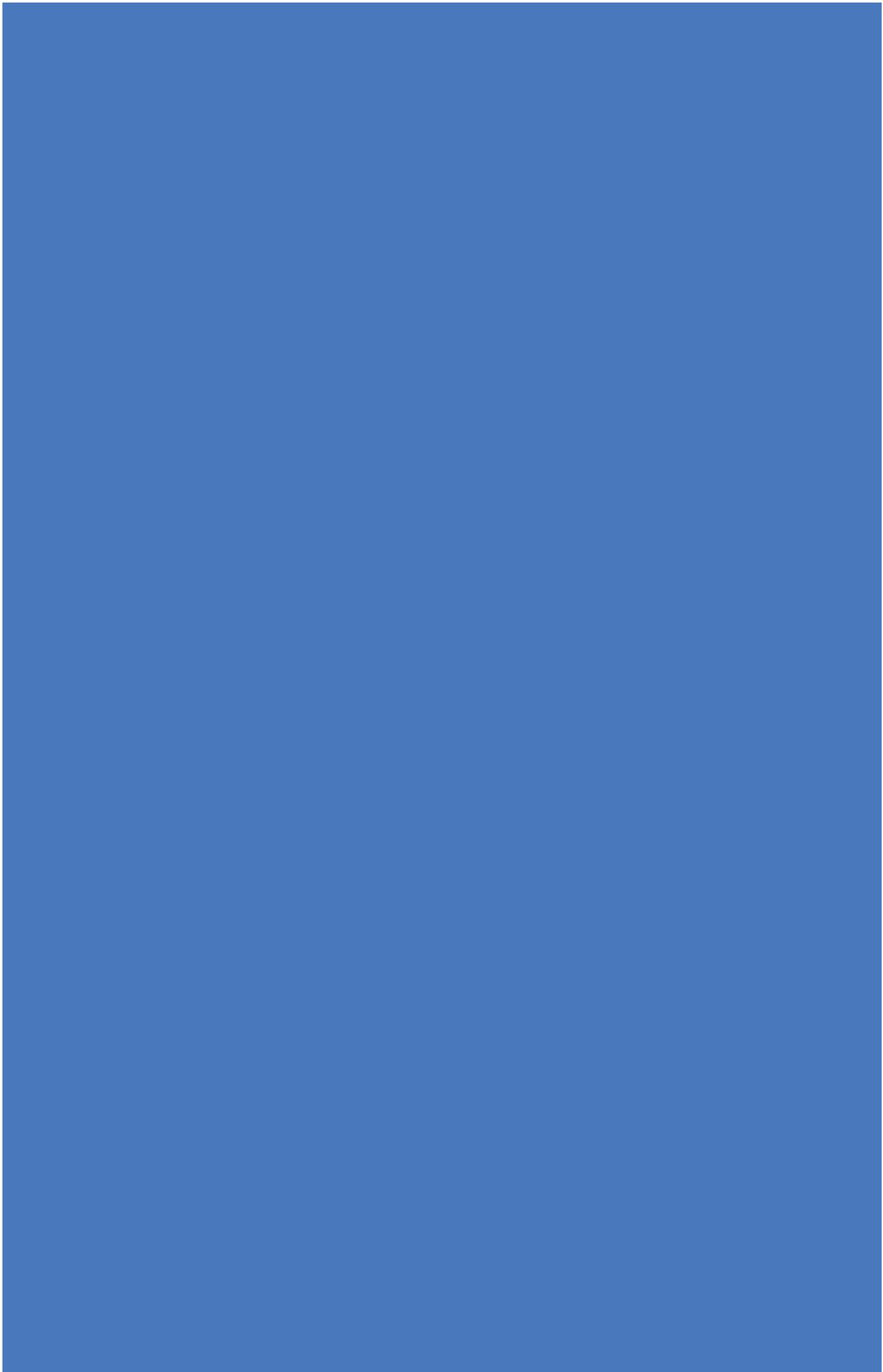


Table of Contents

Foreword	1
Executive Summary	5
Context of the Review	9
Establishing an overarching strategy	9
Background to the regulation of third party campaigning	9
The Principles of the Review	13
Third Party campaigning in practice at the 2015 General Election	14
The jigsaw nature of the proposals	15
Part one – Is any regulation of third parties necessary?	17
Part two – Legislative structure	21
How are third parties defined?	21
What activities can trigger regulation?	23
To what “purpose” can activities/expenditure be directed?	25
Who are the public and what is a member?	29
Regulated period	36
Part three – What activity counts	41
Types of electoral campaigning	41
Staff costs	43
Part four – Levels of spending limits	45
National spending limits	45
Constituency limits	49
Elections to the European Parliament and to the devolved legislatures	53
Targeted spending	54
Joint campaigning	55
Part five – Registration and Regulation	59
Increase transparency pre-election	59
Imprints	62
Registration with the Electoral Commission	63
Reporting requirements	65
Donations	67
Role of the regulator	68

Challenges for the future	73
Technological developments	73
The convergence of online and print media	75
The impact of political fragmentation and the rise in single issue politics	75
Elections to the devolved legislatures	76
Summary of recommendations	77
Appendix A: Terms of reference	82
Appendix B: Methodology of the Review	84
Appendix C: Excerpts of relevant legislation	86
Appendix D: List of registered third parties at the 2015 General Election	90
Appendix E: Third party expenditure at the 2015 General Election	92
Appendix F: List of contributors to the Review	95
Appendix G: Lord Hodgson: House of Lords Register of Interests	98

Executive Summary

1.1 The law places limits on what third parties can spend at elections so as to ensure fair elections, the results of which are not distorted by excessive amounts of expenditure. These rules on third party campaigning, originally set out in Part 6 of the [Political Parties, Elections and Referendums Act 2000](#) (PPERA), were amended by [Part 2 of the Transparency in Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014](#) (2014 Act). The 2014 Act as a whole proved controversial. The other two parts on establishing a statutory Register of Consultant Lobbyists and trade union registration – not covered by the Review – attracted criticism. The lack of pre-legislative scrutiny and the timing of the Bill's passage through the House of Commons also were the subject of adverse comments.

1.2 As a result Part 2, which contains no new statutory provisions – only amendments to existing ones, was perceived as imposing severe restrictions on what third parties could do and say and brought the issue of third party campaigning into the public consciousness. The arguments surrounding the passage of the 2014 Act focused perhaps less on what the legislation was trying to achieve and more on the perceived risk to the legitimate campaigning of charities and the wider civil society. As a response to this controversy Parliament saw fit to provide for a review of third party campaigning in the light of experience gained at the General Election.

The Third Party Campaigning Review

1.3 I have examined the efficacy of Part 6 of PERA and the amendments made to it by Part 2 of the 2014 Act.

1.4 Through significant engagement with over 200 interested parties, I have sought to separate the real from the perceived effects of the legislation and make recommendations, based on the evidence received and of the will of Parliament in passing the legislation, that ensure that the rules in relation to third party campaigning are both effective and proportionate.

Getting the balance right

1.5 While some may argue there is no need to restrict what third party campaigners can spend, my view is that the rules are necessary to ensure that no one individual or organisation is able **to unduly influence an election through excessive spending**. To prevent this undue influence and also to inform the public there needs to be **transparency** about who third party campaigners are and what they are spending. Effective regulation which maintains public trust in our electoral system is in the interest of us all: it should not prohibit third parties from participating in public discourse at election time but it must ensure that the elections cannot be “bought”. So I do **not** recommend the repeal of Part 2 of the 2014 Act.

1.6 But I do not believe the right balance has been struck in the rules as presently drafted. I therefore recommend a series of changes – which interlock so they form part of a package – which will better reflect the realities of third party campaigning as I found them at the 2015 General Election. In particular I have tried to address some of the special challenges posed by ‘social media’ campaigning – a concept undreamt of in 2000 at the time of the passage of the original PPERA (see paragraphs 3.1 – 3.18).

What should the system look like?

1.7 The regulatory system is a jigsaw – a change to one particular aspect of the rules affects the efficacy and appropriateness of another. The recommendations of the Review therefore need to be seen as a package.

1.8 In this Review I describe what the legislation should be regulating as **electoral campaigning** – that is activity focused on influencing the choice of the voting public at an election. The regulation should not capture the **advocacy** of an issue that an organisation may carry out on a day to day basis – its business as usual – nor the **political campaigning** it carries out directly trying to influence political parties and individual politicians (see paragraphs 4.10 – 4.19).

1.9 The nature of the activity sets the appropriate legal definition. The current definition captures activity that could be ‘reasonably regarded’ as intended to influence voters, as so judged by an outside observer. I conclude that overall this produces too much ambiguity about what expenditure on campaigning activity is regulated and consequently has had some perceived “chilling effect” on the activities of third parties. It could also make third party campaigners vulnerable to gratuitous, malicious complaints. If the expenditure of third parties is to be limited to prevent undue influence then it should only include the costs of activities that are actually **intended** by the third party to influence voters. Therefore that the statutory definition needs to be changed to one of **actual intention. This redefinition needs to be accompanied by appropriate anti-avoidance measures** (see paragraphs 4.20 – 4.38).

1.10 However, **there does not seem to be any need to amend the current list of types of organisations** which fall under the 2014 Act. Indeed there is an argument that many commercial companies are insufficiently aware of their obligations under the legislation (see paragraphs 4.2 – 4.9).

1.11 Next, it is important that the definition of who the organisation can seek to influence without having to register is equally clear. I have concluded that unless someone is a **constitutional member** of a third party and so has some direct influence on the organisation they should be considered to be **a member of the public** and any activity intended to influence their voting at an election should be regulated. Maintaining the current exemption for ‘committed supporters’ of an organisation in addition to members is too undefined a term in an age of social media and it represents a potentially serious loophole (see paragraphs 4.39 – 4.71).

1.12 A key concern for many third parties has been the length of the **regulated period**. The current regulated period of 12 months for General Elections is long and has contributed to the regulatory burden. The majority of ‘electoral campaigning’ by third parties takes place in the four months ahead of an election and therefore it makes sense to reduce the regulated

period to four months for General Elections, with appropriate anti-avoidance provisions in place to stop the expenditure rules being flouted (see paragraphs 4.72 – 4.90).

1.13 It is not proposed that there should be any change in the **types of activity** the expenditure on which is regulated (see paragraphs 5.1 – 5.8). However, the treatment of **staff costs** has caused confusion. I recommend that the staff costs of those working specifically, in whole or in part, on the electoral campaigning activities should continue to be covered by the rules. There could usefully be greater clarity in the rules to ensure that *de minimis* work undertaken on electoral campaigning that is ‘incidental’ to a person’s normal job does not count (see paragraphs 5.9 – 5.17).

1.14 The **spending limits** are key to stopping excessive expenditure by third parties at a national level or a constituency level and helping to prevent undue influence. Despite the **national expenditure limits** being reduced in the 2014 Act no third parties came close to spending up to the limit at the 2015 General Election. Therefore no changes are proposed to the national limits (see paragraphs 6.1 – 6.15).

1.15 **Constituency limits** are important in stopping excessive expenditure at a local level. The Review is not recommending any changes in relation to the level of the constituency limits. However, though it is outside the terms of reference of the Review, I suggest that the Government might consider whether the RPA 1983 provisions for third parties at General Elections could usefully be brought into line with the PPERA system. This could form part of a wider tidying up and coordination of the two systems which, *inter alia*, have different complaint and enforcement responsibilities. As the Review was concluding the Law Commission published recommendations on the reform of UK electoral law which seem to be travelling in the same direction. The clarity of a single playing field would, I believe, be welcomed by third party campaigners (see paragraphs 6.16 – 6.35).

1.16 The expenditure limits for the Scotland, Wales and in particular Northern Ireland for **European Parliamentary elections** are low and should be reviewed, possibly using the ‘top up’ approach used in respect of General Elections. The challenges of overlapping and confusing systems for the regulation of third parties campaigning in the different parts of the United Kingdom also need to be considered by all parties when the powers for elections to the Scottish Parliament and National Assembly for Wales are **devolved** to Scotland and Wales respectively (see paragraphs 6.36 – 6.39).

1.17 No changes are proposed to the provisions for **targeted spending** (see paragraphs 6.40 – 6.46). However it is clear that the rules on **joint campaigning** caused concern at the time of the passage of the Act as well as at the 2015 General Election. It must be remembered that the reason for rules on joint campaigning is to prevent undue influence, for example, by organisations working together to evade the spending limits. The Review therefore recommends a series of changes which are intended to give greater clarity in the rules, in particular regarding the responsibilities of a lead campaigner. Joint campaigning in and of itself should not be inhibited, but it must, like all third party campaigning, be subject to spending limits (see paragraphs 6.47 – 6.59).

1.18 Registration with the Electoral Commission which is published on their website should provide greater **transparency** about each individual third party campaigner so as to inform individual voters during the election campaign itself. So I recommend that more information

should be provided as to the purpose of the campaign, where that campaigning is planned to take place and broad estimates of likely expenditure (see paragraphs 7.1 – 7.13). The Review also recommends further transparency on digital and social aspects of campaigning activities with the introduction of some form of imprint (see paragraphs 7.15 – 7.19). The expenditure threshold for a third party to have to register with the Electoral Commission, currently £20,000 in England, and £10,000 in Scotland, Northern Ireland and Wales, should not be changed. Third parties which spend more than £5,000 in any one constituency should be required to register with the Electoral Commission (see paragraphs 7.20 – 7.29).

1.19 As the regulator of the system **the role of the Electoral Commission** is key. The Electoral Commission has a difficult and at times thankless task in regulating the expenditure of third parties particularly given the very varied range of types and sizes of third party organisations. It is clear they go to considerable effort to try and provide guidance and support to those involved. Nevertheless to regulate the rapidly changing world of modern campaigning effectively they need to be more **proactive and risk-based** in their approach than they are currently. There needs to be more active engagement and monitoring of those third parties spending significant amounts of money – particularly where this takes place in marginal constituencies. There are areas where the Commission's **guidance could be clearer**. The Commission should consider issuing **codes of practice** on key parts of the rules. Since these would have to be approved by Parliament this will enable third parties to claim compliance with the code of practice as a defence in law. Overall my hope is that these recommendations will facilitate the critical work of the Electoral Commission (see paragraphs 7.47 – 7.67).

1.20 The recommendations in this Review aim to offer a proportionate and considered response to the complex area of third party campaigning. They are intended to strike the right balance between preventing undue influence at an election without creating a disproportionate regulatory burden for campaigners. To avoid repeating past difficulties, if the Government were minded to take forward the recommendations of this Review I would strongly recommend a period of consultation on the detailed legal drafting that will be required.

1.21 This review has taken place against a background of rapidly **changing campaigning methods**. When PPERA was introduced in 2000, the traditional forms of campaigning such as leafleting and posters were the primary form of communication with the public. That is no longer the case. The use of **social media** as a campaigning tool will only increase and the methods and platforms used can be expected to evolve constantly. The Government and the regulator need to be vigilant as to emerging trends in campaigning methodologies so as to ensure that the regulatory framework continues to strike the right balance (see paragraphs 8.1 – 8.19).

Context of the Review

Establishing an overarching strategy

2.1 In order to produce recommendations that are pertinent, relevant and credible it was important for the Review first to consider the history of the legislative provisions which regulate spending by third parties during election periods by third parties and understand why Parliament deemed it necessary to amend that legislation by the provisions of Part 2 of the [Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014](#) (the 2014 Act).

Background to the regulation of third party campaigning

Key events up to 1998

2.2 For many years third parties, that is, those that are neither political parties nor candidates, have played an important role in political life generally as well as in specific elections. Sometimes this has involved campaigning on particular policy issues. Sometimes this has also involved explicitly campaigning for or against a particular candidate or political party, or a policy of that candidate or party.

2.3 Expenditure by third parties campaigning for or against an individual candidate in a particular electoral area has been regulated for a long time. This was because in the nineteenth century the constituency was the focus of political activity. The current relevant legislation governing expenditure on **local campaigns** is set out in sections 73-76A of the [Representation of the People Act 1983](#) (RPA 1983) or equivalent legislation in Scotland, Wales and Northern Ireland. Subsequently the emphasis shifted away from individual constituencies to campaigning at a national level. So the regulation of expenditure on campaigning activities by third parties on a **national level** has been a more recent occurrence.

2.4 For example the Tate and Lyle ‘Mr Cube’ campaign in 1949 opposed the Labour Party’s proposals to nationalise the sugar-refining industry in an era where rationing was still in place; it is perhaps worth pointing out that Labour nevertheless won the subsequent 1950 General Election. Shortly before the General Election the following year, 1951, Tronoh Mines Ltd, which was campaigning against the Labour Party’s proposal of steel nationalisation, took out an advertisement in a newspaper. A court case was brought¹ which found that the restrictions in law on the amount allowed to be spent promoting or denigrating a candidate did not apply to activity – in this case advertising – that promoted or denigrated a political party generally in all constituencies.

1 *R. v Tronoh Mines Ltd* [1952] 1 All ER 697

2.5 Throughout the 1950s the steel industry spent money opposing nationalisation. At the 1959 General Election the privately-owned steel company, Stewart and Lloyds, ran a series of advertisements in newspapers which were thought to be read by a predominately pro-Labour readership.

2.6 More recently, at the 1997 General Election, Unison spent more than £1 million on advertisements in favour of the introduction of a national minimum wage. The advertisement did not mention any political party or ask people to vote for a party; nevertheless, this was against the well-known background of the policy being supported by the Labour and Liberal Democrat parties and opposed by the Conservative party.

2.7 These actions were intended to have an impact nationally. They may not have identified specific political parties, although this could be inferred, and, in particular, they did not identify individual candidates.

The Establishment of the Neill Committee

2.8 Following a series of scandals in the 1990s the Committee on Standards in Public Life, then led by Lord Neill, and so known as the Neill Committee, carried out a review of the funding and expenditure of political parties. Their 1998 report *The Funding of Political Parties in the United Kingdom*² set the parameters within which the current system of regulation of political party funding and expenditure came to be based, covering donation reporting, expenditure limits and state funding with the intention of stopping excessive spending at elections and cleaning up politics. Importantly for this Review it included recommendations on expenditure by **third parties**. The Neill Committee summed up its approach to third parties as follows:

There is, of course, absolutely nothing wrong with individuals and organisations engaging in such activities. On the contrary, a *free* society demands that they should be able to do so, indeed that they should be encouraged to do so; but, in the context of election campaigns, they should, in doing so, be subject to the same kinds of expenditure limits as the parties themselves.³

The Passage of PPERA

2.9 The then government accepted the vast majority of the Neill Committee recommendations, as well as the principles behind them, and addressed them in legislation known as the [Political Parties, Elections and Referendums Act 2000 \(PPERA\)](#).

2.10 PPERA put in place a reporting framework to provide for transparency in national party funding and national expenditure on elections, and also established statutory limits on the amounts that can be spent on national campaigns at elections, by political parties and others, including by third parties.

2 Website accessed on 13 January 2016 <https://www.gov.uk/government/publications/the-funding-of-political-parties-in-the-united-kingdom--2>

3 The Committee on Standards in Public Life, *The Funding of Political Parties in the United Kingdom*, 1998, para 10.79, p133.

2.11 The basic framework for non-party campaigners, as third parties are known in PPERA, is similar to that for political parties: Part 6 of PPERA, which deals with non-party campaigners, established limits on expenditure together with controls on donations at General Elections, European Parliamentary elections and elections to the devolved legislatures; referendums are regulated under Part 7 of PPERA. The Electoral Commission (established under Part 1 of PPERA) was given the responsibility of regulating the system. PPERA was amended several times before the 2014 Act, including by the Political Parties and Elections Act 2009 which tightened reporting requirements and increased the information which must be included in electoral returns.

2.12 The regulatory system as originally established was partly in place for the 2001 General Election and fully in place for the 2005 and 2010 General Elections – the amendments to PPERA in the 2009 Act did not come into force until **after** the 2010 General Election. The Electoral Commission did not report any significant problems with the activities or expenditure of non-party campaigners at those elections.

2.13 However, it was argued by some that there remained the opportunity for third parties to be used as a way of avoiding the political parties' and candidates' expenditure limits by spending excessively in a particular constituency or group of constituencies with the intention of influencing the result of the election, thus possibly undermining the basic purpose of PPERA, as well as avoiding the controls on spending in individual constituencies set out in the RPA 1983 by focusing ostensibly 'national' election spending in certain target seats. The RPA 1983 controls contain different regulatory requirements, enforcement procedures and purpose tests and are in force for a shorter period of time than the rules which apply to third party campaigning at a national level under PPERA.

Electoral Commission review

2.14 In 2013 the Electoral Commission conducted a review of the UK's political party and election finance laws⁴, which considered, among many other issues, third party expenditure at elections. It drew attention to the apparent discrepancy between what expenditure was covered by the rules on electoral campaigning for political parties and the then national spending rules for third parties. The PPERA rules on non-party campaigning applied only to expenditure on election material, and not to expenditure on other campaigning activity such as events, media work or market research on polling intentions, which are included in the rules for political parties. The Electoral Commission therefore made the following recommendation.

The rules on PPERA non-party campaigning that is intended to influence voters should be changed so that they more closely reflect the scope of rules for political parties by covering events, media work and polling, as well as election material. It would be necessary to review the implications for the campaign spending limits set by PPERA.⁵

4 [A Regulatory review of the UK's Party and Election Finance Laws: Recommendations for Change: The Electoral Commission, June 2013](#)

5 [A Regulatory review of the UK's Party and Election Finance Laws: Recommendations for Change: The Electoral Commission, June 2013](#) (Recommendation 29, p58)

Government plans and the will of Parliament

2.15 The then Government accepted the thrust of the Electoral Commission's recommendation and brought forward proposals which eventually became Part 2 of the 2014 Act. The stated intention of the proposals was to avoid the possibility that third parties could exert 'undue influence' at the election due to excessive expenditure and to provide transparency as to sources of funding and expenditure. The Rt Hon Andrew Lansley, the then Leader of the House of Commons, stated on 3 September 2013 during the Committee stage of the Bill:

It is good that people are motivated to campaign for what they believe in, whether they do it inside or outside a political party. Campaign groups play an important role in the political process. That will continue and it has never been in doubt. The intention of this Bill is to bring greater transparency when third parties campaign in an election. Relevant expenditure on such campaigns will now be more fully recorded and disclosed. To avoid the situation we see in some other countries, where vast amounts of money are spent without any bar or regulation.⁶

2.16 The Government's proposals covered matters other than those contained in the Electoral Commission's proposals: introducing constituency limits on how much could be spent on campaigning with an effect focussed in any particular constituency or constituencies and to prevent the avoidance of the constituency limits in the RPA 1983;⁷ introducing legislative provisions to regulate 'targeted spending', that is, spending to support a particular political party; and proposals to lower the expenditure thresholds at which bodies undertaking activity in an election period had to register with and report expenditure to the Electoral Commission.

2.17 In line with the Electoral Commission's recommendation, the Government proposals *expanded* the list of 'qualifying matters' to be counted towards the expenditure limit for third party campaigners, to bring them more closely in line with the list for political parties.

2.18 The Bill received its Second Reading on the last day before the House of Commons rose for its summer recess in July 2013 and the Committee Stage took place in the two week September session. There was little consultation and no pre-legislative scrutiny of Part 2 of the 2014 Act. The other two parts of the Bill, though nothing to do with non-party campaigning, also proved controversial. Many expressed concern that the Bill had been unduly rushed and was intended to (or would have the effect of) stifling debate rather than its espoused objective of clarifying and tightening the existing law. A significant number of NGOs and charities reacted negatively to the proposals in Part 2, seeing them as an attempt to 'gag' their organisations from speaking out against the Government (indeed the 2014 Act was referred to in some circles as 'the Gagging Law').

2.19 The Electoral Commission expressed concerns about the legal uncertainty that some of the definitions and measures could cause as they were untested in law.

6 *Hansard*, HC Deb 3 September 2013, vol 567, col 180.

7 By amending sections 29, 94 and 96 PPERA to include per-constituency limits on the sums which can be spent by third party campaigners and to require those registered with the Electoral Commission to account for controlled expenditure in each constituency as well as nationally.

2.20 These concerns were not assuaged by assurances from the Government as to its benign intentions. Andrew Lansley stated on 3 September 2013 that:

[the Government is] very clear that we are in no sense seeking substantively to change the boundary between campaigning on policies and issues, which charities and other third parties do to a substantial extent, and being required to register spending for electoral purposes [...]. We are not proposing to change the boundary, so charities, think-tanks, non-governmental organisations and campaign organisations should not be alarmed that this Bill will impact in any sense on their ability to campaign on policy issues.⁸

Pause in the proceedings of the Bill

2.21 The concerns of the charity and NGO sectors about the proposals in the Bill led, *inter alia*, to the establishment of the Commission on Civil Society and Democratic Engagement chaired by Lord Harries of Pentregarth. After receiving evidence from a wide range of stakeholders, the Commission published two reports critical of the proposals in the Bill, one in October 2013, and one in November 2013. The Government reacted to the controversy by pausing the passage of the Bill through the Lords for six weeks between Second Reading and Committee Stage to allow more time for consultation.

2.22 The Government made a number of amendments at Report stage in the Lords, including, significantly, raising the threshold for registration, and in section 39 requiring a review to examine the functioning of the whole system of regulating non-party campaigning, as established in PPERA and amended by the 2014 Act:

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.

2.23 This Review is the fulfilment of that commitment and in the pages that follow the issues that gave rise to these concerns are addressed one by one.

The Principles of the Review

2.24 The Review has sought to take account of first what Parliament intended to achieve by this legislation and then to assess whether the legislation achieved those aims. After reviewing the Parliamentary proceedings, taking into account the proposals of the Neill Committee on which the PPERA provisions were based and discussions with interested parties, the following statement of principles was drawn up to encapsulate what it is that the regulation of third parties should be trying to achieve:

8 Hansard, HC Deb 3 September 2013, vol 567, col 170.

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 comprehensible and proportionate and does not discourage third parties from campaigning.

2.25 The current legislative framework has been assessed against these principles and the recommendations produced to strengthen and clarify the legislative framework are designed to deliver those principles.

Third Party campaigning in practice at the 2015 General Election

Who registered?

2.26 At the 2015 General Election 68 third parties were registered with the Electoral Commission, of which 47 were registered specifically for the 2015 General Election (see Appendix D for further details). These included trade unions, charities, individuals, companies and others. There were also of course other third parties that were active that were not required to register because they did not meet the financial threshold for registration. While for some of the third parties registered with the Electoral Commission the general purpose of their campaign was immediately clear, that was not the case for all of them, in particular the six individuals that were registered.

2.27 Only 23 third parties submitted spending returns, with a total expenditure of £1.8m. None of those that registered spent over £250,000 or anywhere close to the spending limit. By way of comparison, the reported total national spend of all the political parties was £37.3m. Reported third party expenditure was therefore only 4.8% of the sums spent by all the political parties combined.

2.28 There were 33 campaigners registered at the 2010 General Election, compared with 25 in 2005. After the 2010 election, 23 of these campaigners reported total expenditure of £2.8 million – around 9% of the £31.5 million spent by political parties on national campaigning.

The jigsaw nature of the proposals

2.29 One of the challenges the Review has faced has been to understand how the different parts of the regulatory system contained in the 2014 Act and PPERA interact and what the impact of a change to one particular aspect of the rules governing third party expenditure at elections would be on others. Some elements such as duties to report donations are discrete and standalone. Others such as the definitions of who, what types of expenditure and on what activities should be regulated, the length of the regulated period and appropriate spending limits, all interact with one another. **Therefore, the key recommendations of this Review (primarily those in Part 2) have been constructed and are proposed as a package: accordingly implementation of only some of the key recommendations would undermine the intention of the proposals taken as a whole, and could have the potential to undermine the delicate balance which has been struck.**

The structure of the Review

2.30 In order to highlight the interlinking elements of the system of controls on election expenditure, the Review has been split into the following sections.

2.31 **Part one** considers whether **Part 2 of the 2014 Act**, and controls on expenditure by third party in election campaigns, **are necessary**.

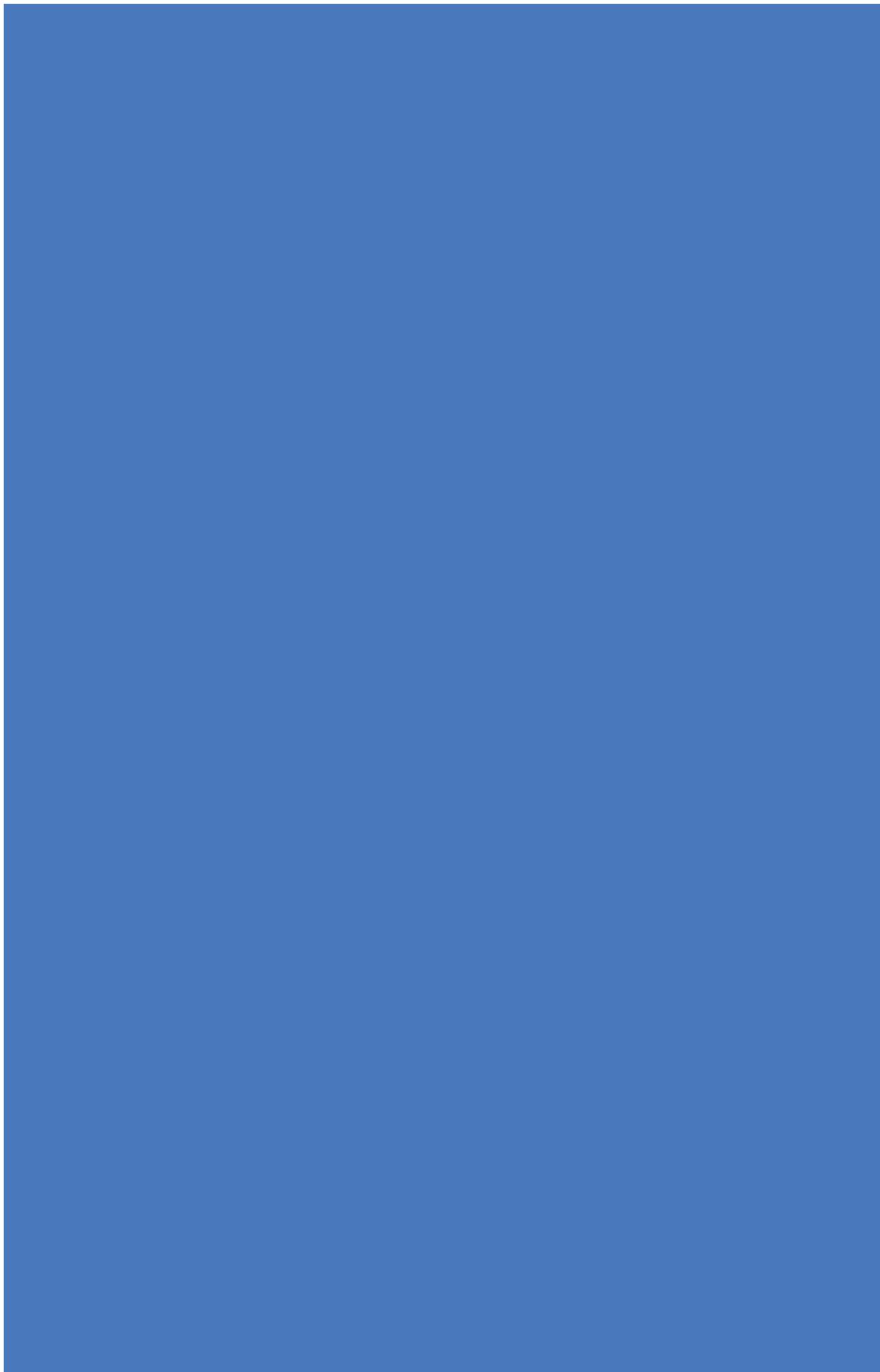
2.32 **Part two** examines the **overall structure**, in particular focusing on expenditure by whom, on what activity and over what period should be controlled.

2.33 **Part three** looks at **what specific activities spending controls focus on**, covering the types of electoral campaigning and how staff costs should be treated.

2.34 **Part four** considers the issues around the levels of **spending limits**, and the interactions of different limits, in particular focusing on the spending limits at the national and constituency levels (as well as elections to the European Parliament and to the devolved legislatures) and examining **targeted spending** and **joint campaigning**.

2.35 **Part five** deals with the **issue of registration** with the Electoral Commission, including the information that needs to be provided when registering, the thresholds for registration, the reporting requirements and how the system is regulated in practice by the Electoral Commission.

2.36 The **final chapter** draws attention to the **challenges for the future** – beyond the immediate compass of the Review – including whether the current system of regulating third party campaigning can keep pace with the rapid changes in campaigning methods, such as likely technological advances, as well as potential changes to the nature of politics.



Part one – Is any regulation of third parties necessary?

What is the issue?

Given the relatively low level of third party expenditure on ‘qualifying activity’ to date, and the widely perceived adverse impact of the controls governing election expenditure on participation in debate by third party campaigners, a necessary first question is to ask whether, and if so, why, any controls on expenditure are required at all.

3.1 This Review examines how controls on election expenditure by third parties work in practice. In summary, the major changes introduced by the 2014 Act reduced the overall maximum expenditure limits, widened the range of activities expenditure on which had to be accounted for and increased the threshold for registration. In addition, it introduced two new concepts: a constituency spending limit, which applies to spending aimed at one or more particular constituencies; and targeted spending, which covers campaign activity aimed at influencing voters to vote for a political party or any of its candidates.

What evidence was received?

3.2 Despite the relatively small number of third parties which registered with the Electoral Commission, of which even fewer completed spending returns, a high number of organisations felt they were adversely affected by the new controls on expenditure and reporting requirements set out in the 2014 Act.

The chilling effect

3.3 Ahead of the General Election there was a lot of discussion as to a potential so-called ‘chilling effect’ of the new rules which regulated the activities of third parties. Concerns were expressed that the 2014 Act was preventing organisations from legitimate and important campaigning activities. The new rules were designed to prevent **undue** influence on the election, **not** to prevent the important work of third parties in engaging in the political debate. Accordingly any evidence found of a general inhibition of activity would be of concern.

3.4 There is little doubt that the controversial circumstances of the passage of the 2014 Act led to it being implemented in a heightened atmosphere of concern within the charity sector and wider civil society. This concern was not confined to rules affecting their activities at elections or uncertainty as to what steps they had to take in order to comply with the new third party campaigning rules but also concern as to what the consequence of such regulation might be on how their roles in society might be perceived more widely.

3.5 A number of fundamental misunderstandings about the nature of Part 2 of the 2014 Act have persisted. For example, a number of third parties appeared not to have appreciated that Part 2 of the 2014 Act was not a 'new' piece of legislation, rather an expansion and tightening of the rules already existing under Part 6 of PPERA. In meetings held in the course of this review, more than one organisation recognised that they probably should have done more to consider their legal obligations at the time of the **2010 General Election** under the **pre-existing regime**. Equally some third parties suggested that the original rules were problematic prior to their amendment by the 2014 Act, but the expansion of their scope by that Act increased the difficulties associated with compliance.

3.6 Some of the tension undoubtedly arose from the fact the amendments to the legislation were new and untested. The Electoral Commission and the charities regulators faced a difficult task in producing guidance. Further, the guidance and informal advice they gave appeared to evolve quite rapidly in the run up to and during the election and this contributed to the sense of uncertainty.

3.7 Similar challenges existed for legal advisors faced with requests for advice from their clients and uncertainty and lack of judicial interpretation as to the scope of the law may have led some advisors to be particularly cautious. In addition, key decision makers in third parties, such as trustees, may have chosen to avoid exposing their organisation to any risk, perceived or real, by refraining from participating in sensitive policy debates during the course of the election campaign.

3.8 A key challenge for the Review was to find counter-factual evidence showing that third parties altered their behaviour specifically because of the provisions in the 2014 Act or indeed PPERA rather than for some extraneous reason. The Review team heard various accounts of organisations which had not undertaken a particular activity because of the 2014 Act, but much of the evidence was second-hand or in relation to activities that were not actually regulated by the legislation, such as the holding of hustings at a constituency level. It was therefore far from clear the extent to which it was the **reality** of the legislation's provisions rather than the **perception** of what restrictions they imposed, which affected organisations' behaviour.

3.9 Against this somewhat confused background it was nevertheless clear that there was an atmosphere of increased nervousness and caution in relation to third party campaigning in the 2015 election. However, it would not be unreasonable to assume that, with the experience of the 2015 General Election, non-party campaigning at the next General Election in 2020 may be conducted in a calmer atmosphere, as those involved will have become more familiar with the regulatory requirements set out in PPERA as amended by the 2014 Act. On the other hand, there were one-off concessions in the 2014 Act which applied only to the 2015 election, such as a reduced regulated period. As these concessions will not apply automatically in relation to future elections, it is possible that concerns in some areas will not disappear.

The applicability of the restrictions on third party campaigning to modern campaigning methods

3.10 PPERA was passed in 2000 before the social media explosion took place. PPERA's basic structure belongs to an age where communication with individual electors was based primarily on face-to-face meetings, delivery of printed material and some telephone canvassing. Unsurprisingly its provisions do not therefore directly address the particular challenge of social media, targeted advertising using big data, and viral marketing campaigns.

3.11 Social media is increasingly being used as a tool for individuals to engage with politics. According to data from IPSOS Mori, 58 per cent of British adults regularly use social networking sites, with 55 per cent of adults using Facebook and 17 per cent using Twitter.⁹ Social media allows for individuals with similar interests to get together and share ideas and thereby, if they wish, to engage in the electoral process. "On social media it is possible to start protesting in a small way without much investment or risk; thus helping participants get accustomed to seeing themselves as activists."¹⁰

3.12 However, it is not just individuals who have recognised the utility of social media: organisations, whether they be third parties or political parties, have been quick to recognise its effectiveness as a tool for communication. The Conservative Party reported spending of £1.2m on Facebook in the regulated period for the 2015 General Election.¹¹ Other political parties also used such communication channels.

3.13 Social media offers the opportunity for an individual or organisation to communicate instantly with thousands of people, quickly and potentially cheaply. That said, for it to be effective such communication needs to be targeted at those it is likely to influence. This leads to what is known as '**data mining**' – the process of identifying the audience and tailoring the message to ensure that it resonates effectively with those who receive it. Although this can be expensive, the use of data mining is likely to increase. The Information Commissioner's Office recently imposed a fine on the Telegraph Media Group¹² for an email sent to subscribers to its various email notification services on election day, and this highlighted the fact that organisations need to be increasingly careful about how they use the information they collect and for what purposes it is collected including its use for electoral campaigning.

3.14 One problem for seeking to regulate expenditure on targeted online political advertising or campaigns is that its effectiveness rests on the development of an effective database and information about the people on it. The development of such a database is expensive and takes time. The costs of actually sending messages during the campaign period are relatively

9 <https://www.ipsos-mori.com/researchpublications/publications/1733/ipsos-MediaCT-Tech-Tracker-Q1-2015.aspx>

10 House of Lords Library Note, Digital Democracy: Political Participation and Citizen Engagement through the Internet, 13 October 2015, Page 10

11 Electoral Commission

<http://search.electoralcommission.org.uk/Search/Spending?currentPage=1&rows=10&query=Conservative%20Facebook&sort=DateIncurred&order=desc&tab=1&open=filter&et=pp&evt=ukparliament&ev=445> accessed on 20 January 2016

12 ICO website <https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2015/12/ico-fines-telegraph-media-group-for-election-day-email-campaign/> accessed on 20 January 2016

low, so limiting 'election spend' during the regulated period may prove to be increasingly ineffectual and irrelevant.

3.15 It would be undesirable and damaging to genuinely free democratic debate if access to power were to depend on the ability to spend money in getting a message across; this applies whether spending is undertaken by political parties themselves or by others on their behalf. Having some controls on expenditure on elections is a necessary means to achieving that end.

Conclusion

3.16 Although some consultees argued for the simple repeal of Part 2 of the 2014 Act, the majority view was that some form of regulatory framework for third party campaigning is required and I agree.

3.17 In part this is to create a structure which ensures accountability for election expenditure so that the public is aware of who is spending significant amounts on getting their messages across. But, equally importantly, it is to ensure that the reputation and activities of genuine third party campaigners are not sullied by the activities of a few. Controls on expenditure are desirable to ensure transparency and to avoid an 'expenditure arms race' by limiting expenditure on elections at a reasonable level. Any such limits would be undermined if they only applied to political parties and candidates themselves and not to third parties which might undertake significant expenditure with a view to influencing the outcome of an election.

3.18 The rapidity of these developments mean that how election expenditure can be controlled in a meaningful way needs to be kept under review. They do not affect the question of principle as to whether it is desirable to maintain any such controls at all.

Recommendation

R1. Restrictions on third party expenditure at elections are necessary. However, the rules governing this should be amended, as recommended in the following chapters.

Part two – Legislative structure

4.1 The legislative structure governing third party campaigning establishes its primary control by setting a series of limits on spending levels. But it also specifies the categories of organisation that can fall within the remit of PPERA; it lays down types of costs and the purposes to which they will be put that can have the effect of triggering the regulatory provisions; finally, through the Electoral Commission’s public test, those categories of the public who can be communicated with outside the provisions of the Act are identified. Each of these issues is dealt with separately in the following sections.

How are third parties defined?

What is the issue?

PPERA lays down categories of organisation that fall to be regulated. During the passage of the Bill various parties raised concerns about the breadth of the list — especially as regards charities for which party political activity is unlawful.

4.2 For the purposes of PPERA third parties are defined widely but are essentially any organisations that are engaging in activities at an election which may influence how people vote. They may be campaigning for or against a political party or candidates or campaigning on an issue that some candidates or political parties support or oppose. By definition a third party is not contesting the election directly by fielding candidates. Once the third party is required, as a consequence of the provisions of the legislation discussed in the sections that follow, to register with the Electoral Commission it becomes a ‘recognised third party’.

What organisations are caught?

4.3 Under PPERA the following can register as third parties:

- an individual;
- registered political parties;
- companies;
- trade unions;
- building societies;
- limited liability partnerships;
- friendly, industrial or provident societies;
- charitable companies and charitable incorporated organisations;
- a body incorporated by Royal Charter;

- a Scottish partnership; and
- any unincorporated association.

4.4 For an individual to be able to register as a third party he or she has to be resident in or on the electoral register in the UK.¹³ For any of the organisations to be able to register they have to be registered in the UK and carrying on business here. The regulation captures all third parties that meet the relevant criteria, with no regard to the size or nature of the organisation.

Who registered for the 2015 General Election?

4.5 Of the 68 organisations which were registered as third parties with the Electoral Commission at the 2015 General Election there were: 40 companies (of which the Review believes ten were also charities although the Electoral Commission's register makes no distinction between the two); 11 unincorporated associations (of which one was a charity); 11 trade unions, and six individuals.

What evidence was received as to the categories of third parties?

4.6 Evidence the Review gathered indicated firstly a general agreement that there should be regulation of the expenditure of third parties in relation to activity at elections, and secondly that the rules as to registration should be blind as to the type of organisation undertaking the activity, and should depend instead on how much an individual or organisation intended to spend.

4.7 Some respondents considered that charities should not be caught by the rules either because their activity must necessarily fall outside any proper definition of 'electoral activity' since they are not permitted, by law, to support political parties or candidates, or by saying that any regulation of their activities of whatever kind should be undertaken by the charities' regulators¹⁴ rather than the Electoral Commission. Others thought that businesses were not sufficiently aware of the legislation. The media, including newspapers, are not covered by the rules governing third party expenditure, and this exclusion was criticised as illogical by some respondents who pointed to the influence the press can have at election time. This issue is returned to in the final chapter [Challenges for the future](#).

Conclusion

4.8 Since one of the fundamental purposes of PPERA is to maintain public trust and confidence in the integrity of the electoral system it must be right that any regulation should apply to all such participants, regardless of their size or status.

13 In addition, individuals resident in or on the electoral register in Gibraltar are included, as are companies based in Gibraltar. While electors in Gibraltar cannot vote in the UK Parliament they are able to vote in UK elections to the European Parliament.

14 The Charity Commission for England and Wales, the Office of the Scottish Charity Regulator, and the Charity Commission for Northern Ireland.

4.9 Despite the perception among some that business organisations are not covered by the provisions of the Act, they very clearly are. It may be that the Electoral Commission should look at ensuring that businesses are fully cognisant of the rules in advance of the next relevant elections.

Recommendation

R2. There should be no change to the current definitions of third parties in section 85(8) PPERA and of recognised third parties in section 88 PPERA.

What activities can trigger regulation?

What is the issue?

During the passage of the Bill strong views were expressed that it was not possible to provide a sufficiently clear definition of the type of activity and/or purpose that would be caught by the legislation. The consequences would be, the argument went, that the voice of civil society would be diminished.

4.10 Under PPERA as it stood before the passage of the 2014 Act, ‘controlled expenditure’ used to mean expenses incurred by or on behalf of the third party in connection with the production or publication of election material made available to the public at large or any section of the public.¹⁵ As amended by the 2014 Act the definition became wider. The relevant provisions of PPERA (section 85 and schedule 8A) now list a variety of activities upon which expenditure can amount to ‘qualifying expenses’ counting towards expenditure controls. These include canvassing material, conferences and public events, and market research and opinion polls. Expenditure on these activities are ‘qualifying expenses’ whether or not they are intended to change the voting intentions of electors if, in accordance with section 85 of PPERA, “the expenditure can reasonably be regarded as intended to promote or procure electoral success at any relevant election for:

- one or more particular registered parties;
- one or more registered parties who advocate (or do not advocate) particular policies [...]; and
- candidates who hold or do not particular opinions [...].”

4.11 The application of the test of what someone might ‘reasonably regard’ as the purpose of the expanded categories of qualifying expenditure on promoting particular policies or opinions led to considerable uncertainty. It was argued that the consequence of the legal framework was to stifle the voice of civil society organisations.

15 Section 82 PPERA before amendment by section 26 of the 2014 Act.

What is the purpose of the regulation of the expenditure on activities by third parties?

4.12 It is important to be clear about what the legislation is seeking to achieve, and in consequence what it should be seeking to capture. The strategic overarching approach sets out the key aims as being to increase transparency and to reduce the possibility of undue influence by excessive or undeclared expenditure. Judging from the organisations that registered as third parties at the 2015 General Election, campaigning third parties tend to have a primary purpose not connected directly with campaigning at elections. There have been few third parties that were set up solely to campaign at elections. The balance to be struck is the extent to which any organisation or person which comments on public policy on an ongoing basis, if it continues to do so at the time of an election, should have to limit and account for its expenditure.

4.13 To help clarify thinking on this difficult issue the consultation paper issued by the Review identified three broad areas of activity that third parties carry out that could, in the broadest sense, be termed campaigning.

4.14 These areas of activity are:

- **advocacy**, that is ‘business as usual’ campaigning activities which the third party carries out in one form or another year on year, with a regular pattern of events, activities and very often expenditure. In many cases this is the ‘bread and butter’ purpose for the third party’s existence;
- **political campaigning**, that is, activity undertaken specifically in the run-up to and, to a lesser extent, during an election campaign; for example, attempts 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 political parties’ manifestos; and
- **electoral campaigning**, that is, activity that is intended to influence people’s voting choices in the run-up to and during the election at a time when the general public has ‘switched on’ to the political process.

4.15 These are not discrete categories of activity and the boundaries between them are not clear ones. Rather, the activities inevitably overlap. For example an organisation might well be seeking to influence political parties’ manifestos (‘political campaigning’) while continuing with its normal advocacy work at the same time. However, only the third category is clearly intended to affect the prospects of particular parties or candidates in a particular election.

What evidence was received?

4.16 Opinion was divided among respondents to the consultation as to whether a meaningful distinction can be made between ‘advocacy’, ‘political campaigning’ and ‘electoral campaigning’. The distinction is seen to be nuanced, especially if the activity is taking place during a regulated period. One respondent said that such a distinction was not possible; another that the three were essentially the same with the difference being when, where and how the activity took place; another respondent disagreed with this view arguing that the activity could not be defined solely by the time period in which it took place. But respondents broadly agreed that if there is to be regulation then it should focus on ‘electoral campaigning’ and in particular the use of money to undertake such activity.

4.17 Others drew a distinction between ‘political’ and ‘party political’ campaigning, in line with the distinction made in the Charity Commission for England and Wales’s [Speaking Out: Campaigning and Political Activity by Charities](#),¹⁶ known as CC9. Some of the respondents thought that only the latter should be regulated, and charities should not or could not, due to their status as registered charities, be undertaking activity that would fall to be regulated.

Conclusion

4.18 The distinction between advocacy, political campaigning, and electoral campaigning, while far from perfect, is a useful one to make conceptually. All three activities are perfectly legitimate and make a valuable contribution to our democracy and to wider civic life. Advocacy of an issue is an important way for charities, trade unions, companies and others to influence public debate. Political campaigning contributes to a healthy democracy, whether it is seeking to influence the legislative programme of the Government or the content of a political party’s manifesto. Similarly electoral campaigning by third parties has a vital role in ensuring the flourishing of a healthy democracy, as the Neill Committee recognised.

4.19 Three key elements can be identified in any campaigning: **when** the campaigning is taking place; **who** the audience is; and **whether** the intent is to influence that audience. The regulation of third parties should seek to regulate only **electoral** campaigning, that is, activity intended to influence people’s voting choices in the run-up to or during the election campaign. It should not seek to regulate the normal campaigning activities of organisations or individuals where that could more properly be described as advocacy or political campaigning.

Recommendation

R3. The statutory definition of ‘procuring electoral success’ should be narrowed so as to capture only electoral campaigning – that is activity which is clearly intended to influence voters’ choices as between candidates or parties.

To what ‘purpose’ can activities/expenditure be directed?

What is the issue?

Refining the activities captured by the statute to those focused on ‘electoral campaigning’ provides some strategic clarity. But it does not answer the more specific issue of the nature of any ‘statutory test’. During the passage of the Bill the ‘reasonably regarded’ wording of the current test proved controversial.

16 Charity Commission for England and Wales website, accessed 8 February 2016 <https://www.gov.uk/government/publications/speaking-out-guidance-on-campaigning-and-political-activity-by-charities-cc9>

What does the statute say?

4.20 The definition of ‘controlled expenditure’ by a third party is set out in section 85 of PPERA (see Appendix C), which defines what counts as “controlled expenditure” for third parties.¹⁷

4.21 Expenditure on a particular activity is controlled where it “can reasonably be regarded as intended to promote or procure electoral success at any relevant election” for political parties or for candidates, or for categories of candidates, including those that support or oppose a particular policy.

4.22 This definition means that the current test for whether expenditure on an activity should be regulated depends on how the purpose of the activity could be perceived by an observer, that is, how it can be ‘reasonably regarded’, and not the **actual intention** of the person undertaking the activity. While the test of reasonableness is one that is well-established in law, there is a widely held view that it may cause difficulty to the third party undertaking the activity. Since it cannot always be sure how the purpose of an activity could reasonably be regarded by others, it cannot be sure whether expenditure on that activity is caught by the legislation, which may have the effect of dissuading it from expressing its views in areas of legitimate public debate.

What other statutes exist?

4.23 Other areas of electoral law which are aimed at the concept of capturing electoral campaigning by regulating expenditure by third parties contain slightly different tests. First, the RPA 1983 deals with general electoral activity after the dissolution of Parliament. Section 75 of the RPA 1983 provides that expenditure on an activity is only regulated if the person undertaking the activity does so ‘with a view to promoting or procuring the election of a candidate’. Similarly Part 7 of PPERA sets out the rules for referendums, again using the words ‘with a view to promoting or procuring’, a particular outcome in relation to any question asked in the referendum. These tests focus on what the third party actually means to do, not what others might think they mean to do.

What evidence was received?

4.24 Given the centrality of this issue, special importance was given to collecting as wide a range of evidence as possible on it. Respondents to the consultation paper were specifically asked whether the test for determining what is controlled expenditure by a third party is the right one, whether it could be built upon, or whether it would be better to use a test of ‘actual intention’ along the lines of the definitions in the RPA 1983 and Part 7 of PPERA.

4.25 Many respondents saw the ‘reasonably regarded’ test as inherently uncertain, given its dependence on another person’s judgement. Such uncertainty means that organisations that had no intention to influence voter choices still believed they needed to be circumspect regarding their activities which might be seen by an outside observer as designed to influence voters at the election.

17 As at 5 February 2016, the version of PPERA on www.legislation.gov.uk has not been updated to incorporate the changes made by section 26 of the 2014 Act, which must be viewed separately.

4.26 There is a further complication. In the course of the hurly burly of a General Election, an issue on which a particular third party has a long record of campaigning – its ‘business as usual’ – might well assume heightened significance as a result of some external event over which the third party has no control. As a result the third party might unexpectedly become directly involved in the election campaign, finding itself undertaking activity which suddenly falls to be regulated, without having had any intention of doing so. In addition, it was felt that the ‘reasonably regarded’ test could also allow for malicious complaints to be made designed at stopping an organisation campaigning or aimed at damaging an organisation’s reputation.

4.27 Evidence received in support of a test of the ‘actual intention’ test noted the precedent in the RPA 1983. That test was seen as being clearer, providing more certainty, and being easier to apply for organisations. Such a test was seen as likely to lessen the alleged ‘chilling effect’ while still providing regulators with the power necessary to control expenditure of activity by assessing whether it was actually intended to affect the result of the election. Unintended consequences, such as when a political campaign suddenly moves into a third party’s campaigning area, would also be avoided.

4.28 It can be argued that it is undesirable for there to be different tests for what can fall within the definition of ‘controlled expenditure’ by third parties, depending on whether one is looking at constituency level or national campaigns. One respondent suggested that both main pieces of the legislation relating to third party campaigning, that is PPERA and the RPA 1983, should be consolidated into a single statutory regime, and that this should be based on the actual intention test contained in the latter.

Conclusion

4.29 The test that needs to be met for expenditure on activity to be regulated is the difficult balance to be struck between providing on the one hand a proper level of transparency and protection against undue influence without creating undue regulatory uncertainty on the other.

4.30 The current definition appears to have created some uncertainty among third parties as to whether certain activities will fall to be regulated and consequently as to what they can say and do during the course of an election campaign. It is arguable that uncertainties like this are inevitable with new, or in this case amended, legislation being implemented for the first time and that this uncertainty has been increased by the natural caution of professional advisers and absence of case law based on the provisions of PPERA.

4.31 As noted in the previous section, the activity that should be captured is that described as ‘electoral campaigning’, that is, activity intended to influence people’s voting choices in the run-up to or during the election. It cannot be denied that other activities, such as advocacy or political campaigning, may have an incidental effect of influencing to some extent how people vote, but the focus of the regulation should surely be to capture activity that is **actually** intended to influence **voters**, not activity which does so unintentionally or appears to others to be doing so.

4.32 The recommendation is therefore to move from controlling expenditure on activity which may be ‘reasonably regarded’ as intended to affect the result of an election, and instead adopting the narrower and clearer test in the RPA 1983, which focuses on whether the actual

intention of the third party undertaking the expenditure is to affect support for a particular candidate or candidates or party at an election.

4.33 There are a number of ways in which such an amendment to the legislation could be made. The existing language in the RPA 1983 provides a model: it contains the words “with a view to promoting or procuring the election of a candidate”. This wording could be expanded to include multiple candidates and political parties. Using this definition has the advantage of building upon provisions already agreed by Parliament. There is also already significant case law around the RPA 1983 definition of third party activity, including notably the cases of *Luft*,¹⁸ *Bowman*,¹⁹ *Tronoh Mines*²⁰ and going back to 1928 *Hailwood*,²¹ so there is already a degree of clarity.

4.34 In short, a third party recommending voters should vote for candidates or parties should be regulated – that is electoral campaigning with a view to promoting or procuring the election of a **candidate or party**. However, a third party which has a record of campaigning on a particular issue **continues** to express support for or opposition to that policy *per se* during the regulated period should not be caught.

4.35 The intention to influence voters might not be the only or even the primary intention of an activity, but as long as it forms part of the intention then expenditure on that activity should be regulated. Given this fundamental change the risk of abuse has to be assessed. To date this test has worked well in the context of constituency campaigning under the RPA 1983. While potentially there would be a loophole for an organisation to campaign with a view to affecting the outcome of the election whilst falsely stating that this was not its intention, criminal courts are familiar with the concept of intent and assessing the underlying state of mind (*mens rea*). A regulator or court looking at this question can draw inferences as to a third party’s intention from the surrounding circumstances. For example, the amount of money being spent by a third party during the regulated period compared to its average level of expenditure should also be an issue which the regulator should consider, as would a completely new communications strategy instituted for the regulated period.

4.36 Nor is it the case that a third party could easily evade limits on expenditure during the controlled period before an election by ‘frontloading’ its expenditure to before the controlled period. Section 75(8) of the RPA 1983 and section 94(8) of PPERA contain clear anti-avoidance provisions, which provides that where expenditure takes place before the controlled period on activity which takes place during the regulated period, that expenditure counts towards expenditure limits.²² These anti-avoidance provisions should be carried over into the amended definition of controlled expenditure in PPERA. The anti-avoidance

18 *DPP v Luft* [1977] AC 962 at 982, [1976] 2 All ER 569 at 573, HL, in the context of the Representation of the People Act 1949 s 63(1) (repealed), which is re-enacted as the Representation of the People Act 1983 s 75(1).

19 *Bowman v United Kingdom* [1998] 26 E.H.R.R. 1

20 *R. v Tronoh Mines Ltd* [1952] 1 All ER 697

21 *R. v. Hailwood* [1928] 2 K.B.277

22 S75(8) RPA 1983, added by s25(5) of the Electoral Administration Act 2006 provides that for the purposes of the limits on local expenditure in s75(1) RPA 1983, expenditure incurred **before** the date when a person becomes a candidate at the election is to be *treated* as having been incurred **after** that date if it is incurred in connection with anything which is used or takes place after that date.

provisions, and the guidance of the Electoral Commission, need to ensure that the particular issues of modern campaigning techniques are captured, including, for example, data mining and the creation of databases which can be undertaken some time in advance of the election and have purposes other than solely for campaigning at the elections.

4.37 As noted above, this Review does not propose to make any changes to the list of individuals and organisations covered at present. But if the definition of ‘controlled expenditure’ is changed to cover only spending on activity intended to affect the result of an election, one effect will be that charities that properly comply with the law which prohibits support for political parties or candidates will not undertake activity which falls within the controlled expenditure provisions in PPERA. That is because a charity must not undertake activity intended to support the electoral prospects of political parties or candidates. So provided a charity’s campaigning activity complies with the law, for example as set out in the Charity Commission for England and Wales’s current guidance CC9 (see paragraph 4.17 above), then its activities will not fall to be regulated. Any breach of charity law in this area is a matter for the relevant charities regulators, the Charity Commission for England and Wales, the Office of the Scottish Charity Regulator and the Charity Commission for Northern Ireland.

4.38 However at a later stage in the Review recommendations are made about the need for the Electoral Commission to undertake a more active monitoring role – particularly in marginal seats – and work closely with the charity regulators to identify and tackle any potential infringements.

Recommendation

R4. The test for whether campaign activity should be regulated should be one of actual intention, using a definition along the lines of that contained in section 75 of the RPA 1983 and with an anti-avoidance provision along the lines of section 75(8) RPA 1983 and section 94(8) of PPERA.

Who are the public and what is a member?

What is the issue?

PPERA only requires those costs incurred communicating with the ‘public at large’ to be included in controlled expenditure. This means that communications by an organisation with its members are excluded. The nature of what constitutes ‘membership’ varies greatly. Moreover, PPERA was drafted at a time before social media became ubiquitous. This development has further radically changed the nature of “membership” both because of the increased informality of any involvement and because the marginal cost of contacting individuals has become very small. Further the absence of any relevant case law on this topic has caused further uncertainty.

Background

4.39 The next important issue is who can receive such electoral campaigning material without the costs of such material being required to be identified and included in the permissible expenditure limit. Paragraph 1(1) of Schedule 8A to PPERA, as inserted by the 2014 Act, describes the material expenditure on which is regulated as follows:

The production or publication of material which is made available to the public at large or any section of the public (in whatever form and by whatever means).

4.40 In assessing who should count as “the public at large or any section of the public” the Electoral Commission devised a ‘**public test**’. The ‘public test’ asks whether activities are “aimed at, seen or heard by, or involve the public”. The costs of campaigning activity aimed at, seen or heard by, and only ‘involving’ members and committed supporters is, under the Electoral Commission’s public test, deemed to be exempt from regulation.

4.41 To assess whether the public test is set appropriately it is helpful to divide members of the public into four key groups:

- members of the organisation;
- committed supporters of the organisation;
- self-certified supporters of the organisation; and
- the wider public.

4.42 The salient characteristics of each of these groups are set out below.

What is a Member?

4.43 A clear distinction can be drawn between the wider public and those who have formally ‘signed up’ to join the organisation as a member according to its rules. Members will have made a conscious effort to join it and, in doing so, usually paid a membership fee. Becoming a member usually implies a broad acceptance of the organisation’s aims, so an organisation which communicates with its members at election time may be thought to be unlikely to be seeking to affect the outcome of the election by changing their point of view. A contrary view, however, is that while members of an organisation might expect to see ‘advocacy’ on the issues on which that organisation campaigns, they would not necessarily expect that to extend to ‘electoral’ activity. The organisation might be very large, and sending a message to members of that organisation which is intended to affect their voting intentions might be argued to be a communication with ‘a section of the public’.

4.44 The trade union movement represents a particularly challenging case. This is because trade unions are organisations which have both a political role as well as a role of providing advocacy and social support for workers in particular sectors – roles which vary from trade union to trade union (for example, some trade unions are affiliated to the Labour Party, others are not). Some adopt an uncompromising political profile, others are more nuanced. But in all cases there is a democratic structure: as well as electing the union’s leaders and putting forward motions regarding the union’s policies and voting on them, the members have the right to vote on the existence of the political fund every ten years.

4.45 Trade unions can only conduct certain political activities if the members have voted to establish or to continue a political fund.²³ Political activities could include campaigning on specific issues linked to or identified with one or more political party, or opposing another political party, as well as on wider issues such as the NHS: it could also include explicitly supporting a political party, including by affiliating to it. As is well known, trade unions were among the founder members of the Labour Party. However, an individual trade union member may contract out of paying into the political fund.²⁴

4.46 But whatever the organisation, not all its members may agree with the particular campaigning that the organisation may be undertaking at an election. It could be argued that the leadership of the organisation may be seeking to influence its **own members** to vote in a particular manner, at the same time as it is seeking to influence **others** outside the organisation and therefore such campaign activity should be regulated.

4.47 In addition, there exists the possibility that organisations could use their members to disseminate campaigning material, e.g. through social media – in effect running a campaign by proxy - so there is an argument that even ‘internal’ campaigning from the organisation should be regulated, or should be open to being regulated, when it could be used outside the organisation.

4.48 The contrary view is that the leadership of an organisation communicating with its members is part of the internal dialogue of the organisation. As such it cannot be considered in such cases to be a third party seeking to make election material available to, in the words of the legislation, “the public at large or any section of the public”.

4.49 Regulating what an organisation sends to its members could risk being seen as the state intervening in the private relationship between an individual and the organisation of which they are a member. It could also risk artificially increasing the amount spent by requiring some of the costs associated with internal communications of organisations, e.g. newsletters, to be included where these may, only in very small part, relate to electoral campaigning.

4.50 In summary, providing an exemption for members would provide an accurate picture of campaigning activities aimed at the public (i.e. not the members or leadership of the third party). However, not all members of an organisation will necessarily agree with every campaigning line, and providing an exemption for members would mean that campaigning activities aimed at these individuals would be outside the regulation.

What is a Committed Supporter?

4.51 Not all organisations have memberships which can be easily defined. For instance, the members of a faith group may be difficult to identify as not all religious organisations have formal categories of membership.

23 See section 72 of the Trade Union and Labour Relations (Consolidation) Act 1992.

24 Under section 84 of the Trade Union and Labour Relations (Consolidation) Act 1992 an individual trade union member may opt out of paying into the political fund. The Government has brought forward proposals to change this to opting in in the Trade Union Bill currently before the House of Lords.

4.52 In consequence, the Electoral Commission, in consultation with civil society organisations, has drawn a distinction between, on the one hand, members and committed supporters and, on the other, the wider public. As seen from the views of the respondents to the consultation paper discussed below it is arguable whether such a distinction is still tenable.

4.53 The current situation is that election material provided to members and **committed supporters** is exempted from counting as regulated expenditure. Therefore, as with the definition of member, it could be seen to presuppose an alignment of the voting intention of the committed supporter and the organisation which is not always the case.

What is a Self-certified Supporter?

4.54 Some respondents suggested that it would be possible to extend the current test to allow people to self-certify themselves as 'committed supporters' and to receive electoral campaigning material without that falling to be counted as a regulated campaign activity. There are various ways this could work; for example, a person could self-certify on an ongoing, say annual, basis; self-certify only for the duration of the regulated period at each relevant election with renewal of self-certification required on each occasion; or alternatively a concept of 'unsolicited material' could be used, as is already the case in relation to referendum expenditure regulated under Part 7 of PPERA, which would work in a similar manner to a person self-certifying, and thereby implicitly requesting relevant material related to the particular issue or campaign at the election.

4.55 The attraction of this approach is that it would provide more flexibility as to definitions of membership so reflecting the very different types of organisation that may have to register as third parties.

4.56 However, conversely this creates a risk that very little electoral campaigning might in practice be caught. It could be easy for a person to be encouraged to self-certify, e.g. a tick in a box in an email or even a 'negative pledge' with no tick being taken as self-certification. This could potentially provide a campaigning organisation with an easy way around the controls on regulated activity. Transparency would therefore be significantly reduced.

What evidence was received?

4.57 The evidence the Review has gathered reveals considerable uncertainty about who properly should count as the public. Some respondents to the consultation saw the Electoral Commission's 'public test' as fairly clear to apply; others sought more clarity about who should be included as a member or a committed supporter.

4.58 In particular, there was much disagreement as to whether a distinction between members, committed supporters and other members of the public was still tenable. The advances in digital communication, the various means of contacting people through online and social media, and the different nature of organisations was highlighted as complicating the issue. In addition, churches and other faith organisations raised the particular difficulty of seeking to define their members.

4.59 One respondent stated that the only practical position would be to allow individual organisations themselves to define these terms. Others supported the view that individuals should be able to self-certify, which might make things easier for faith organisations. Others suggested that the definition should be extended to include active supporters, which could include people making donations, offering time as a volunteer, or being a beneficiary of the organisation’s activities, while excluding ‘likes’ on Facebook and ‘follow’ on twitter.

Making the trade-off

4.60 If the strategic objective set out at the beginning of the Review is accepted it follows that all electoral campaigning by a third party that seeks to influence “the public at large or any section of the public” should be caught. The difficult issue as to where the line should be drawn as to what constitutes the public is further complicated by the asymmetrical nature of the organisations which may fall to be subject to regulation; there are very different bodies with different memberships, structures and rules.

4.61 Once again there is a trade-off to be achieved. The fewer people classed as ‘the public’, the less electoral campaign spending to be regulated, resulting in less transparency and more risk of undue influence, but also less regulatory burden for third party campaigners. The more people classed as the public, the greater the electoral campaigning to be regulated. This provides greater transparency and less risk of undue influence, but at the cost of imposing a higher regulatory burden.

4.62 In tabular form the trade-off can be summarised as follows, taking the current situation as the baseline:

	Option 1: All voters	Option 2: Members excluded	Option 3: Members and committed supporters excluded	Option 4: Self-certification
Regulatory burden	Significant increase since internal comms included.	Increase. Comms to ‘committed supporters’ included.	Current situation.	Decrease. Need to keep records as to who had self-certified.
Transparency	Increase. All electoral campaigning caught. Would not be clear what was internal and what external.	Increase. All external campaigning caught, less than option 1 as members now excluded.	Current situation. Less transparency than options 1 and 2.	Potentially a very significant decrease. If third party signed up many people very little of spend would need to be declared.
Undue influence	Real terms decrease. Amount that could be spent externally reduced as more activities count towards expenditure limit.	Real terms slight decrease. Amount that could be spent externally reduced as more activities count towards expenditure limit.	Current situation.	Potentially an increase. Less electoral campaigning would fall to be counted so more could be spent overall.
Cost	Significant for third parties in monitoring spend. Negligible for Electoral Commission.	Increase for third parties in monitoring spend. Negligible for Electoral Commission.	Current situation.	Decrease as less regulatory burden.

Table 1: comparison of the categories of the public and the implications for regulation

4.63 There are two broad approaches to identifying those who should count as members which could be followed:

Affiliated supporters

- Organisations would be able to determine who their members are and therefore who can be communicated with 'free of charge'.
- Such decisions would be open to challenge by other third parties or the regulator and so ultimately tested in the courts.
- The Electoral Commission might consider replacing its non-statutory guidance on this point with a statutory code of practice (see paragraphs 7.58 – 7.65 for further information on codes of practice). This would enable Parliament to express its view and provide third party campaigners with a statutory defence.
- To provide a means to address the particular challenges posed by online communication the definition of 'material' should be extended to include material sent electronically to persons who are invited to forward it to other persons.

Constitutional members

- The definition of what constitutes a member would be based on certain standards. Each organisation would have a degree of flexibility in definition but a member would be expected to have at least one of the following characteristics:
 - a right of participation in the organisation (e.g. the right to elect a management board) and/or exposure to some financial detriment in the event of the failure of the organisation; or
 - an established procedure for making formal commitment to an organisation in a form which indicates a broad support of the objectives of the organisation with annual renewals thereof; or
 - the payment of some meaningful annual financial subscription or commitment.
- Normally to qualify as a constitutional member of the organisation for the purposes of the rules each individual must have made such a pledge or renewal within 12 months of polling day of the relevant election, and there must be an established procedure, suitably publicised, under which individuals can resign from the organisation without notice.

Specific exclusion

4.64 In either case there will need to be a specific exclusion for those employees of a third party organisation, including unremunerated volunteers, where these are involved in the governance/compliance processes of the organisation; they should not count as members of the public. The organisation would therefore be free to communicate with them on any matter without incurring regulated costs.

Conclusion

4.65 Attempts to achieve clarity, let alone any form of consensus, about what constitutes a 'member' as opposed to a 'committed supporter' have proved challenging.

4.66 The challenge has been made more severe by the emergence of social media which can lead to tick box acceptance of membership (or even negative pledges) against a background of low marginal costs of communication.

4.67 One is forced to conclude that the present test, at least as interpreted in the Electoral Commission’s guidance as to who constitutes ‘the public or a section of the public’, is not satisfactory and that the boundary lines as to what constitutes a “committed supporter” have become blurred – a blurring that is likely to increase over the next few years. A new test should be established.

4.68 I am, by nature, in favour of de-regulation. But on this occasion I conclude that the dangers of the ‘affiliated supporter test’ for what constitutes a member outweigh its advantages. Chief amongst these is the danger of social media providing a loophole to undermine the transparency test which is a fundamental purpose of the legislation.

4.69 In reaching this conclusion I have taken into account the fact that the issue of what constitutes ‘the public’ is part of a wider balance to be struck. Elsewhere in the Review attention has been drawn to the interdependent nature of the overall package of proposals. Other recommendations include proposals to shorten the regulatory period and refine the ‘intention’ test – the statutory definition of what is regulated.

4.70 These recommendations should provide reassurance to third party campaigners and reduce any regulatory burden. But they need to be balanced by a more focussed test of membership. Social media has brought tremendous advantages to society but its inevitably transitory nature provides a means of enlarging a category of ‘committed supporters’ for whom the level of their commitment appears fairly tangential.

4.71 Accordingly I recommend that the definition in statute should be maintained, so that election material “to the public at large or any section of the public” should be regulated. However, the Electoral Commission’s public test should be amended so that there is no longer an exclusion from regulated costs for committed supporters.

Recommendation

R5. The development of social media means that a change to the Electoral Commission’s concept of what constitutes ‘the public’ is required. The exclusion from regulated costs of a third party of communication with its members should be maintained but the exclusion for “committed supporters” is no longer tenable.

Regulated period

What is the issue?

The period during which the provisions of the Act apply ('the regulated period') varies from election to election mirroring the length of the regulated period applied to political parties. During the passage of the Bill concern was expressed about the confusing, uncertain and sometimes overlapping nature of regulated periods. In particular the 365 day regulated period for General Elections was considered as placing a heavy administrative burden on third parties.

What are the different regulated periods?

4.72 The regulated periods for elections and referendums for political parties, candidates and third parties are as follows:

	Political parties	Candidates (as set out in the RPA 1983 as amended)	Third parties
General Election	365 days	Long campaign: from 55th month of that Parliament to dissolution of Parliament. Short campaign: from dissolution to date of poll. Total in 2015 around 4½ months.	365 days
Devolved legislatures	4 months		4 months
European Parliament	4 months		4 months
Referendums	To be decided for each referendum (was 16 weeks for Scottish referendum).		

Table 2: regulated periods for third parties at elections and referendums

4.73 As can be seen the length of the regulated period for third parties at the relevant elections is the same as that for political parties. For a General Election the regulated period is usually 365 days before the election ending on the date of the poll, but this can be altered.

4.74 The regulated period for elections to the Scottish Parliament, the National Assembly for Wales, the Northern Ireland Assembly and the European Parliament period is four months ending on the date of the poll.

4.75 At the 2015 General Election the regulated period for third parties began on 19 September 2014, the day after the Scottish independence referendum, and ended on 7 May 2015, the date of the poll. The spending limits remained the same, even though the regulated period had been shortened.

4.76 Some of the concerns expressed reflected the experience of individuals who had grown up with the 'random' nature of the dates of UK General Elections when these could be called by the Prime Minister of the day.

4.77 This of course is no longer the case following the passage of the Fixed-term Parliaments Act 2011 which set the length of each Parliament at five years. At the time PPERA was passed the date of the next General Election could not be known with any certainty. The 365 day regulated period would only take effect once the election had been called, and so in effect was backdated. Now, however, there is certainty about the date of the General Election, and so there is certainty as to the start of the regulated period.

4.78 While it remains possible that a General Election could take place outside the fixed schedule it seems unlikely to occur with any frequency.

Overlapping regulated periods

4.79 A further complication is that special limits apply if another election or elections (such as European Parliamentary elections, or elections to the devolved legislatures) is/are held during the period when a parliamentary General Election is 'pending'. In cases of such combined elections, the "limits applying in special circumstances" specified in Part III of Schedule 10 PPERA apply. These 'combination provisions' are very complicated and vary depending upon which combination of elections occurs, and the relevant dates of each.

What evidence was received?

4.80 The majority of respondents to the consultation paper saw the present regulated period of 365 days for General Elections as too long. It was seen as unnecessarily restrictive, and contributing to the erosion of the voice of civil society.

4.81 It was claimed that in practice most third parties do not campaign earlier than four months before a General Election, and that any activities they may undertake in the calendar year before the election are likely to have a minimal effect on voters' intentions. The Commission on Civil Society and Democratic Engagement found evidence that indicated that the majority of third party campaigning takes place in the six months immediately preceding the General Election. In terms of the regulatory burden, the longer the regulated period, the longer the time the organisation must spend considering whether their campaigning activities could fall within the scope of the regulation and calculating the cost thereof.

4.82 In addition, it was pointed out that when elections to the devolved legislatures and to the European Parliament are taken into account it is possible that over a five-year period – the lifetime of a Parliament under the Fixed Term Parliament Act – third parties could be regulated for 20 months, that is, one-third of the lifetime of the Parliament. Another way of expressing this is that, during the five year period 2015-20, with the devolved legislature elections in 2016, the possibility of a referendum on membership of the European Union in 2016 or 2017, the European parliamentary elections in 2019 and the UK parliamentary elections in 2020, only 2018 would be a full year during which third parties would not have to consider the provisions of the legislation.

4.83 While the current 365-day regulated period was seen by the majority as being too long, respondents were divided as to what the length of the regulated period for General Elections should be. A number suggested that it should be the same as for the devolved legislature and European parliamentary elections (four months). Others suggested it should be tied to

the length of the campaign for candidates, as set out in the RPA 1983 as amended; the long campaign starts from the 55th month of that Parliament, which is likely to be just over four months before the election. Finally some respondents suggested that the regulated period should only commence post the dissolution of Parliament, in the period commonly known as ‘purdah’, which typically lasts for about five or six weeks.

4.84 Another complication for those organisations that work across the whole UK is that when there are elections to the devolved legislatures the same activity happening at the same time may fall to be regulated in Scotland, Wales and Northern Ireland, but not in England.

Conclusion

4.85 Elsewhere in the Review broad distinctions are drawn between (1) advocacy (‘business as usual’); (2) political campaigning (the direct approach to individual political parties to influence the shape of election manifestos); and (3) electoral campaigning (activity directed at voters). For the latter to have impact the general public has to be in ‘listening mode’ – which it is suggested only occurs relatively close to an election.

4.86 As a general rule it must be undesirable for third parties to be unsure as to the length of the regulated period for an election, depending upon what particular combination of polls is held at the same time.

4.87 Little or no evidence was received of electoral campaigning by third parties a full year ahead of the General Election. Most of their activity appears to occur in the months immediately preceding the election, with ‘electoral campaigning’ taking place from the start of the year of the election. A regulated period of 365 days therefore seems unduly long. In particular the Fixed-term Parliaments Act 2011 now provides certainty as to the date of the General Election, unless there are exceptional circumstances, and so importantly it provides certainty as to the start of the regulated period.

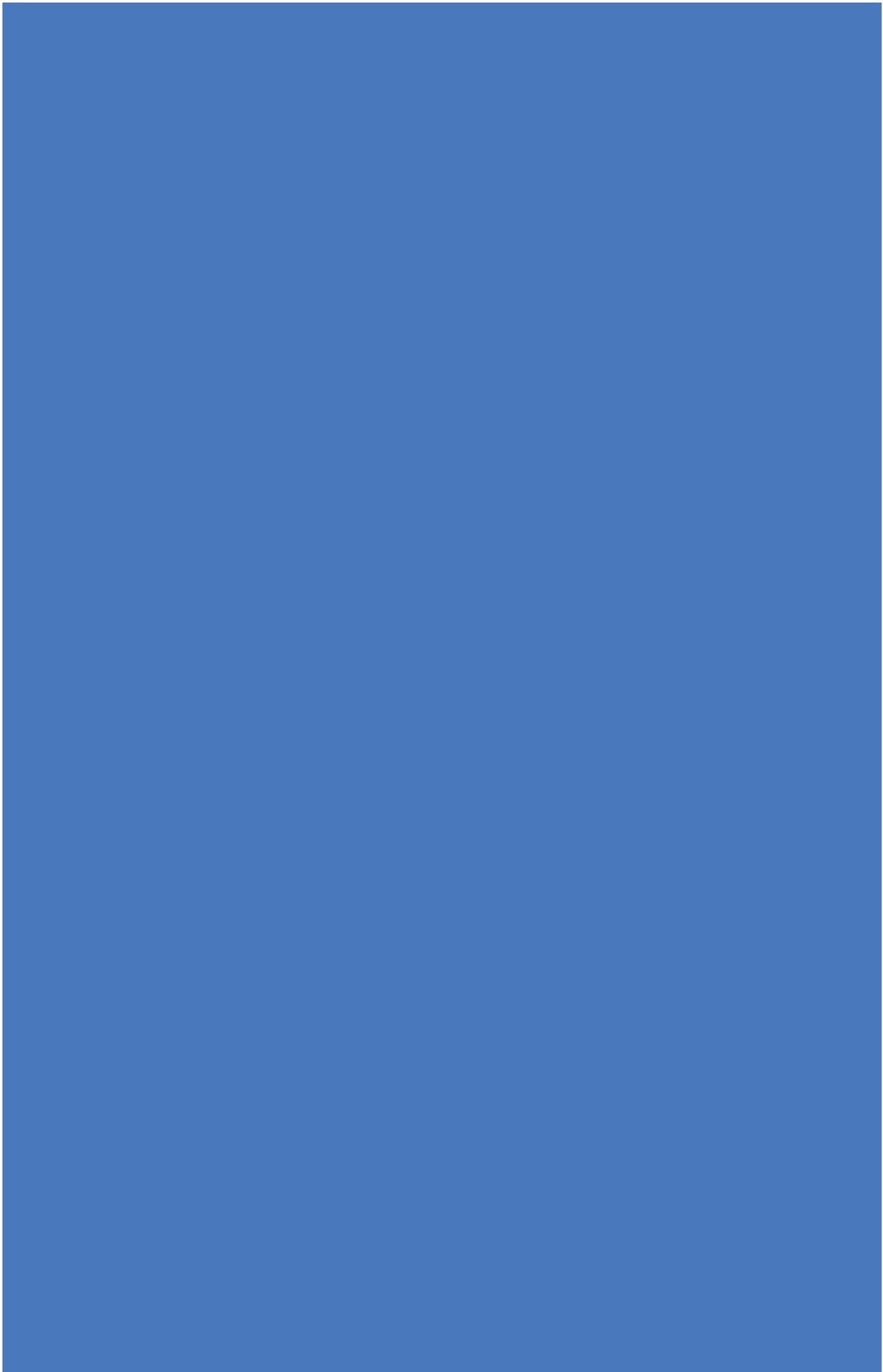
4.88 In addition, the fact that there were no problems at the 2015 General Election with a significantly reduced regulated period for third parties indicates that a 365 day regulated period is not necessary.

4.89 The Review therefore proposes a four-month regulatory period. This would be the same length as that for the elections to the devolved legislatures and the European Parliament.

4.90 However, as the regulated period for political parties and third parties would now be different there would need to be an anti-avoidance provision, aimed at ensuring that a third party could not be used as a front for a political party and incur unregulated spending during the eight months between the start of the regulated period for political parties and that for third parties on behalf of the political party itself. An anti-avoidance provision is recommended, possibly based on the language of section 75 ZA of the RPA 1983 as amended, so that any expenditure by a third party acting in concert with a registered political party or candidate is treated as expenditure by that party or candidate.

Recommendation

- R6.** The regulated period for third parties should be set as 4 months before the General Election, in line with that for elections to devolved legislatures and to the European Parliament.
- R7.** There should be an anti-avoidance provision to prevent political parties improperly channelling expenditure during their longer controlled period through third parties to avoid the expenditure controls upon them.
- R8.** It would be helpful if the regulatory position in the event of an ‘unexpected’ General Election could be clarified, in legislation if necessary, as the current provisions in Schedule 10 are excessively complicated.



Part three – What activity counts

Types of electoral campaigning

What is the issue?

The 2014 Act moved away from a situation where the only expenditure by third parties which was ‘controlled’ was expenditure on the production or publication of ‘election material’. It introduced a long list of ‘qualifying expenses’ which counted towards a third party’s ‘controlled expenditure’, including spending on canvassing, market research, press conferences, transport, and public rallies provided (as with the previous test of regulated election material) these could ‘reasonably be regarded’ as intended to promote or procure electoral success for candidates with particular opinions or views. This broadening of the list of ‘qualifying expenditure’ was based on an Electoral Commission recommendation.

Concern was also expressed about the different legislation provisions for the same activity (e.g. polling) whether published by a third party or in a newspaper.

Background

5.1 An important piece in the jigsaw of the limits on third party expenditure at an election is the types of activity upon which expenditure falls to be ‘controlled’.

The Electoral Commission recommendation

5.2 Under the requirements of PPERA as it stood for the 2001, 2005 and 2010 General Elections, only the “production or publication of *election* material” was regulated. The 2014 Act expanded the definition of what falls to be counted as regulated activity for third parties. As a result controlled expenditure is expenditure on any of the following activities:²⁵

- (1) The production or publication of material made available to the public or a section of the public (in whatever form and by whatever means).
- (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).

25 As defined in Schedule 8A to PPERA, which was inserted by the 2014 Act.

5.3 This extended list still leaves some anomalies. For example, it includes the costs of publishing materials if they are published on the internet or in paid newspaper advertising, but excludes them if they are published in a 'newspaper or periodical', or via regulated broadcast media.

What evidence was received?

5.4 Most of the organisations which responded to our survey did not use leaflets or canvassing or market research, although those that did found them effective. Press conferences were used by 34% of respondents and 64% of those found them effective or very effective. No respondents paid for transportation, while 34% of respondents had held public rallies of which 73% found them effective or very effective.

5.5 Emails and Facebook were used by 48% of respondents to the survey, Twitter by 53%, and YouTube by 21%, with emails being seen as effective or very effective by 93% of those that used them compared to 70% for Twitter, 73% for Facebook and 71% for YouTube. Instagram was only used by one respondent who did not find it effective.

5.6 No clear evidential pattern emerged from the respondents to our consultation paper; some were in favour of the expanded list, some preferred the list originally in PPERA; others stated that the list was too vague; and others that there should be complete parity with political parties. In addition, it was pointed out that the cost of the various activities caught by the list varied widely from the minimal cost of a tweet to the more significant costs of a newspaper advertisement.

Conclusion

5.7 The list of matters that falls to be regulated needs to be read in conjunction with the statutory definition of the type of activity that is regulated. With the definition of regulated activity based on actual intent to influence the result of an election it will be easier for third parties to determine what activities count towards the controlled expenditure limits.

5.8 The issue of the different treatment afforded to newspapers and periodicals as opposed to blogs is examined more fully in the final chapter [Challenges for the future](#).

Recommendation

R9. There should be no change to the current list of matters the costs of which are included in regulated spending.

Staff costs

What is the issue?

Staff costs for third parties have to be accounted for and are included in their overall spending limits, while staff costs for political parties are exempt. The time taken up establishing records of staff spending time on regulated activity – especially where these were small amounts of time – was a concern of many third parties.

Background

5.9 For political parties, staff costs on campaign activity are expressly excluded under Schedule 8 to PPERA: however for third parties no such exclusion exists, and therefore staff costs incurred on any regulated campaign activity are included and count towards overall spending.

5.10 The Electoral Commission guidance “Managing non-party campaign spending”²⁶ on including staff time states that:

Staff costs for all regulated campaign activity will count towards the spending limit. If you have a member of staff working on regulated campaign activity as well as your usual organisation’s work you will need to count a proportion of the staff salary which reflects the time spent working on regulated campaign activities.

5.11 It asks third parties to make an “honest and reasonable assessment of the proportion of staff costs that can be fairly attributed to your regulated campaign spending.”

What evidence was received?

5.12 In the Review’s meetings with third parties, as well as in responses to the survey and the consultation, this issue was raised repeatedly. The view of many third parties was that staff costs should not be included as an issue of parity, as they are not included for political parties, nor are they included for campaigners at referendums. Accounting for staff costs was seen as requiring the establishment of considerable internal procedures and greatly adding to the bureaucratic burden, whether in a small organisation or across a larger organisation where many different people would be involved in a particular issue. It was suggested that it would be easier to simply state the number of members of paid staff working on a regulated activity, and whether this takes up all or part of their job.

5.13 In the survey responses and in meetings, third parties emphasised that staff costs, together with election materials, represented their greatest expense. However, due to the way that the spending is accounted for in the returns to the Electoral Commission, it is not possible to work out exactly a precise figure for staff costs.

26 Electoral Commission website, accessed 11 December 2015.
http://www.electoralcommission.org.uk/_data/assets/pdf_file/0010/169471/sp-manage-spending-npc-ukpage.pdf

Conclusion

5.14 The case to exclude staff costs for third parties has been strongly made, not least due to the issue of parity with political parties. However one cannot evade the fact that there is a clear difference in the role of the staff working for political parties and those working for third parties. Political parties exist to contest elections, and campaigning to achieve this is a key part of their *raison d'être*. This is not the case for third parties. When a third party is undertaking electoral campaigning a significant expense will be staff time and it must be right that this is regulated.

5.15 It is important that, in requiring these costs to be recorded a proportionate approach is adopted, in order to ensure that the regulatory burden is not too great. The amendment to the statutory definition of the activity that falls to be regulated taken together with the reduction in the regulated period to four months should significantly reduce any additional administrative burden. For any third party that is tempted to argue the contrary one is entitled to ask whether sufficient internal controls exist for the organisation to be able to judge the effectiveness of its activities more generally.

5.16 As a general principle it needs to be clear that only the staff costs involved in electoral campaigning should be captured – not costs associated with ‘business as usual’, or where the work can be seen as part of the day-to-day work of a member of staff, or seen as ‘incidental’ *de minimis* expenditure.

Case study

The press officer for the Flat Earth Believers Society, a registered third party, responds to a query about the electoral campaign from the media. It takes her about one hour in total to respond, having got the line to take cleared by the leadership of the organisation. Assuming that this is part of her normal role as press officer and that most of her time is spent on other issues this should not be captured by the legislation.

The press officer also tweets about the campaign on an occasional basis. Again this should not be caught.

The Flat Earth Believers Society employs a person to work full time on their campaign related to the election. The time spent working on the campaign and any associated costs should be included for the duration of the regulated period.

5.17 The legislation should continue to be drawn to cover the costs of all staff working on regulated campaign activities, whether new staff taken on specifically to undertake electoral campaigning or existing staff undertaking such activities.

Recommendation

R10. Staff costs should continue to be included in regulated activities for third parties. However, there needs to be clarity about the exclusion of incidental staff costs or those below a *de minimis* threshold. Given the rapidly changing nature of campaigning this clarity is probably best provided in Electoral Commission guidance.

Part four – Levels of spending limits

National spending limits

What is the issue?

The overall spending limits for third parties at General Elections were reduced in the 2014 Act at the same time as the activities that fall to be regulated were expanded. This led to considerable adverse comment at the time of the passage of the Bill.

Background

6.1 Maximum spending limits for third parties have been established so as to prevent the possibility of excessive spending by a third party causing undue influence at an election. These spending limits form part of the overall system of regulation of expenditure; the level at which they are set being interdependent with the definition of controlled activity, the length of the regulated period, and the matters in relation to which expenditure falls to be controlled.

6.2 Maximum spending limits for third parties have been set in the legislation by reference to those for political parties. The overall spending limit for political parties is set at a figure of £30,000 multiplied by the number of constituencies contested by the party in England, Scotland, Wales or Northern Ireland. There are currently 533 constituencies in England, 59 in Scotland, 40 in Wales and 18 in Northern Ireland, making a total of 650 constituencies,²⁷ which set the maximum total spend by each political party at the 2015 General Election at £19.5 million. There is an order-making power to vary this figure of £30,000.

6.3 For third parties the overall limits are set at 2% of the maximum campaign expenditure limit for political parties in England, and 2% of the maximum limit for political parties plus a top-up figure of £20,000 in Scotland, Wales and Northern Ireland to avoid the figures being too low.

27 The forthcoming boundary review is likely to reduce the overall figure to 600. It is not yet clear what the reductions will be in each country.

6.4 This results in the following figures:

	Political parties – £30,000 per constituency			Third parties		
	Seats	Maximum limit for political parties	2% of limit for political parties	Top-up	Limit for third parties	Previous limit
England	533	£15,990,000	£319,800	—	£319,800	£793,500
Scotland	59	£1,770,000	£35,400	£20,000	£55,400	£108,000
Wales	40	£1,200,000	£24,000	£20,000	£44,000	£60,000
Northern Ireland	18	£540,000	£10,800	£20,000	£30,800	£27,000
Total					£450,000	£988,500

Table 3: overall spending limits for third parties at the 2015 General Election

6.5 As can be seen the 2014 Act reduced the limits significantly in England, Scotland and, to a lesser extent, Wales, while making a slight increase in Northern Ireland.

Implications for national campaigns

6.6 There is no UK-wide spending limit for third parties, rather there are limits per country. The total of these limits per country is £450,000. However, a campaign conducted by a third party on a UK-wide basis would have to attribute spending equally between each of the different nations based on the number of parliamentary seats in each: as there are 533 seats in England, apportioning a total spend of £450,000 to the constituent parts of the UK would result in the third party exceeding the spending limit in England – arithmetically a pro rata share of £450,000 for 533 English constituencies gives a total of £369,000, some way above the English limit of £319,800. The spending limit at the 2015 General Election for a single UK-wide campaign was therefore not £450,000 but £390,000.

6.7 If the third party, or its constituent parts, were to have run **separate** campaigns in each of the four constituent parts of the UK then it would have been able to spend up to the maximum spending limit in each country and therefore at the 2015 General Election to have spent up to £450,000 in total.

What evidence was received?

6.8 No third party came close to the limit during the 2015 General Election. The spending figures submitted to the Electoral Commission show that at the 2015 General Election the highest expenditure was undertaken by 38 Degrees, which spent £241,253, followed by London First which spent £225,942, and the NASUWT which spent £197,018.

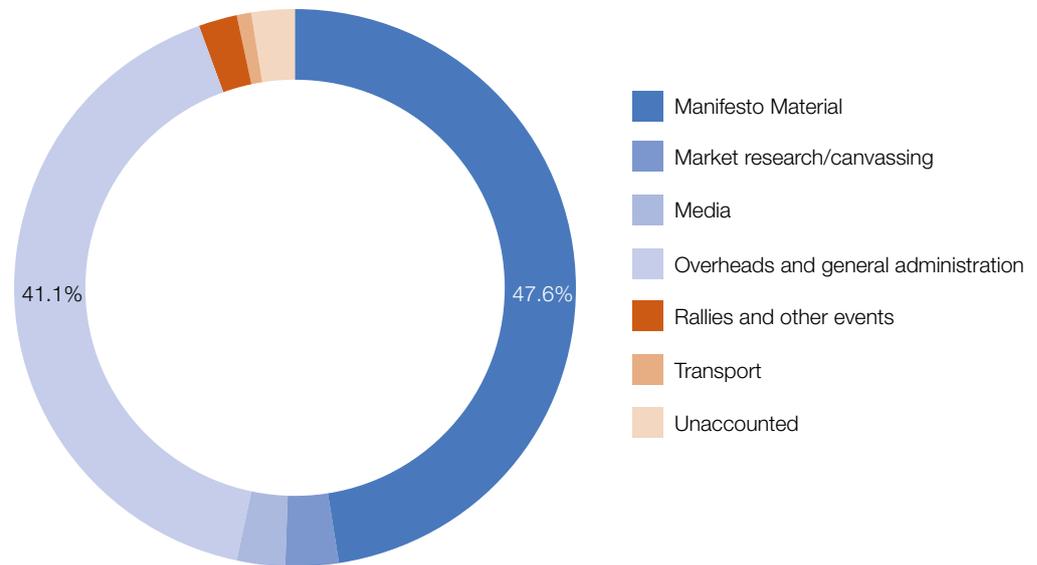


Fig 1. Breakdown by category of third party expenditure at the 2015 General Election

6.9 The most spent in England was £225,942 (London First), in Scotland £19,215 (UNISON), in Wales £21,350 (NASUWT), and in Northern Ireland £13,757 (38 Degrees).

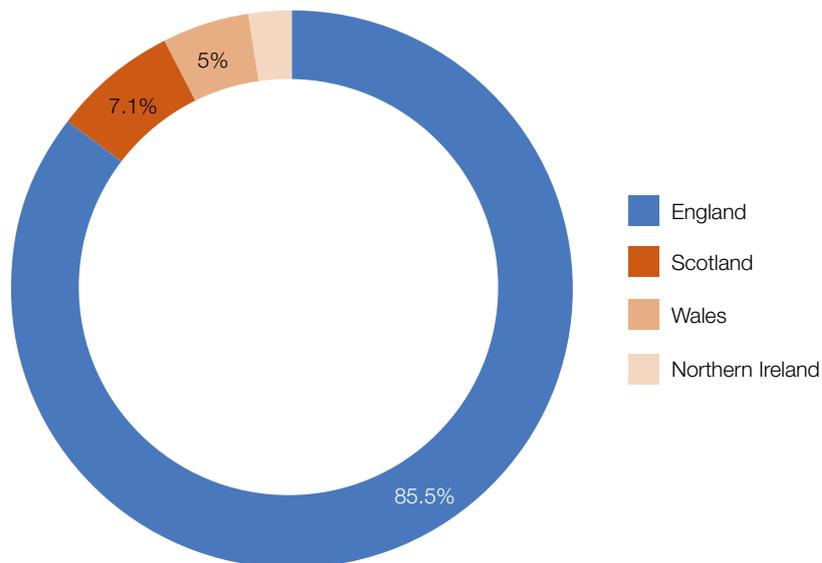


Fig 2. Breakdown by country of third party expenditure at the 2015 General Election

6.10 The respondents to our survey viewed the rules on spending at a national level as relatively easy to understand, with only 28% finding them difficult or very difficult. Respondents to the survey were engaged in a mix of local and national campaigns, with 45% undertaking local engagement and 61% a UK wide campaign. No respondent had spending confined to just one constituency and 83% of spending took place on a national basis. Accordingly, very few campaigns were targeted at specific countries (10% in Wales and Scotland, 6% in Northern Ireland, compared to 35% in England).

6.11 The consultation paper contained questions as to what level of spending could be considered to influence, or to 'unduly' influence, an election. No respondents suggested figures, preferring to describe what they thought influence or 'undue' influence would be in this context. Respondents stated that the ability to influence an election could not solely be attributed to a particular level of spend, but was decided by a combination of factors, such as the effectiveness of a campaign, the issue, the media profile etc., of which spend was only one factor. Spending that would 'unduly' influence an election was described as being when substantial financial power was used to influence an election without transparency or reasonable limit.

6.12 Respondents expressed concern that the overall spending limits were reduced from those in PPERA by the 2014 Act despite there being no evidence of undue influence due to significant spending at previous elections. The current limits were seen as being far below the amount of money that would need to be spent to influence the election let alone 'unduly' influence it. In addition, it was pointed out that the same level of spend may prove significant in one constituency but have no effect in another. Respondents drew attention to the disparity between the reduced spending limits for third parties and the higher limits for political parties and also the higher limits for campaigners in referendums run under Part 7 of PPERA.

6.13 Broadly speaking, respondents were not clear about the rationale for the different spending limits in the different constituent parts of the UK. It was felt, but with little evidence provided, that the limits for the General Election were too low in Scotland, Wales and Northern Ireland.

Conclusion

6.14 The maximum spending limits for third parties in the constituent parts of the UK exist to stop excessive spending which may unduly influence the election. The Review found no evidence that the spending of third parties at the 2015 General Election was inhibited by it. No third party spent up to the new limit and no compelling evidence was produced to suggest there was a compelling need to raise or lower the limits. But given that the limits are significantly lower than the limits originally set in PPERA, reducing them any further might justifiably be seen as impacting upon freedom of speech and the right of third parties to participate in elections and the wider democratic process.

6.15 On the other hand, it could be argued that if, as recommended, the regulated period is reduced to four months then the maximum spending limit should be reduced by the same proportion, i.e. a third of the current limit. However, that argument assumes that spending by third parties takes place evenly across the present 365-day regulated period, which the evidence that the Review has received shows is not the case. Most of the spending takes

place in the period immediately before the election, which is why a regulated period of four months is recommended.

Recommendation

R11. There should be no change to the current national spending limits.

Constituency limits

What is the issue?

Constituency limits were introduced to prevent undue influence at a General Election by eliminating the possibility of a third party campaign spending excessive amounts, perhaps up to the overall national spending limits, but concentrated only in a handful of constituencies.

Background

6.16 The individual constituency limit is set at 0.05% of the total of the maximum campaign expenditure limits for political parties for the whole of the UK (as noted in the earlier section £19.5 million at the 2015 General Election). The limit is therefore £9,750.²⁸ The constituency limit covers the whole of the regulated period.

6.17 The spend that has to be included in calculating whether the constituency limit has been reached is:

- spending on **focused constituency campaigning** in one or more particular constituencies;
- **spending on a UK-wide campaign apportioned equally** to each of the UK's 650 parliamentary constituencies; and
- spending in only one part of the UK (England, Scotland, Wales or Northern Ireland) **attributed equally to each constituency** in that part.

6.18 Any spending must be apportioned equally to the number of constituencies where the campaigning is taking place. The third party must make sure that it does not spend more than the maximum limit of £9,750 in any one constituency whether made up of focused constituency spending in that particular constituency and/or a proportion of any other regulated campaign spending that has to be attributed to that constituency.

6.19 It should be noted that the individual constituency limit of £9,750 is lower than the registration threshold of £20,000 in England and £10,000 in Scotland, Wales or Northern Ireland. It is therefore possible that a third party could spend up to the constituency limit in

28 A reduction in the number of seats to 600 would, assuming no increase to the figure per constituency of £30,000, lead to a constituency limit of £9,000.

any one constituency, and indeed in two in England, without being required to register with the Electoral Commission.

6.20 The growth in social media and online campaigning which can be increasingly accurately targeted on particular sub-groups of potential electors makes it harder to identify the focused effect of electoral campaigning in any particular constituency, as opposed to a more traditional campaign involving billboards and leaflets where the targeting of particular constituencies is more visible. However, it should not be imagined that, in consequence, there is any less targeting of campaigning material: indeed the evidence, from political parties activities, suggests that there is likely to be, and maybe already is, far more sophisticated material focussed on identified members of the public believed to be favourably disposed towards a particular point of view as a result of an analysis of social media.

Limits for individual candidates in a constituency

6.21 As well as political parties having national campaign expenditure limits, individual candidates are also subject to limits, as set out in the RPA 1983 as amended. The candidate's constituency spending limit at the 2015 General Election was composed of two parts: a) in the 'long campaign' period (which starts from the 55th month of a Parliament until the dissolution of that Parliament) a fixed amount of £30,700 and a variable limit of 6p per elector in a borough constituency, or 9p per elector in a county constituency, giving a range, depending on the number of electors in a constituency, of approximately £34-39,000; and b) the 'short campaign' (from the dissolution of Parliament to the date of the poll) consisted of a fixed amount of £8,700, and the same variable limit as above, resulting in a range of approximately £12-17,000.

6.22 Therefore for individual candidates the total constituency spending limit at the 2015 General Election was in the region of £46-56,000. The total length of the long and short campaign was four and a half months.

6.23 In addition, it was pointed out in evidence received by the Review that constituency spending limits for candidates do not include spending on materials by political parties that do not name the candidate but rather the party and/or the party leader, even when they are concentrated in a particular constituency. This falls to be counted as national spend for the political party rather than spend for the candidate and so counts towards the overall limit for political parties in PPERA and not the limits for individual candidates in the RPA 1983.

The regulation of third parties under the RPA 1983

6.24 Well before the limits imposed by the 2014 Act, restrictions were in place on the amount that third parties can spend in a particular constituency for or against one or more particular candidates after the dissolution of Parliament. The relevant legislation in place is contained in Part 2 of the RPA 1983 and the equivalent legislation in Scotland, Wales and Northern Ireland.

6.25 The time period for the regulation of campaigning for or against a particular candidate in a particular constituency under the RPA 1983 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. The expenditure that falls to be counted is that which is incurred “with a view to promoting or procuring the election of a candidate” and the maximum amount that can be spent is £700. The RPA 1983 controls on the local campaign have different regulatory and enforcement procedures from those which apply to third party campaigning under PPERA – being a matter for the local police authorities. The Electoral Commission has no regulatory role or powers under this section of the RPA 1983.

What evidence was received?

6.26 Of respondents to the survey 41% found the constituency spending limits difficult or very difficult to understand: 67% thought it difficult or very difficult to determine how much was spent in individual constituencies.

6.27 Respondents to our consultation reported difficulty in distinguishing between national and constituency spend, and stated that the Electoral Commission’s guidance created a “false impression that a relatively clear distinction can be made between focussed constituency spending and national spending.”

6.28 The constituency spending threshold of £9,750 was seen by one respondent as being very low when it is applied over a period of year – in particular when compared with a candidate’s spending limit of approximately £46-56,000 over a period of four and a half months. In addition, most third parties are not structured along constituency lines and so faced difficulty in accounting for spend on that basis.

Law Commission Interim Report

6.29 Shortly before the Review was completed the Law Commission produced an Interim Report with recommendations to reform UK electoral law. That Report, of course, ranged far wider than this Review. Nevertheless, aspects such as the impact of internet and social media and the advantages of a simplified electoral regulatory system read across to some of the challenges faced in regulating third party campaigners.

Conclusion

6.30 Ensuring that the spend of a third party cannot be overwhelmingly concentrated on a single or small group of constituencies is an important aspect of preventing possible undue influence at constituency level.

6.31 There is a legitimate concern regarding reduced transparency: given that the individual constituency spending limit is lower than the threshold required for registration. A third party could be spending up to the limit in any one constituency (or in two in England) and not be required to register.

6.32 It is worth reflecting on what should be the appropriate ratio between spending in an individual constituency by a person standing for election and a third party which wishes to campaign but not put up a candidate. Some might argue that £9,750 for the latter against £50,000 for the former (i.e. about 20%) is a high figure and that a ratio of 10% might be more

appropriate; after all it is always open to the third party if it feels sufficiently strongly to put up a candidate and gain access to higher spending limits.

6.33 It may therefore be considered appropriate to introduce a new registration threshold for a third party wishing to focus its campaigning in one or two constituencies (see paragraphs 7.28 – 7.29 for further detail).

6.34 As with the arguments of the overall spending limits for third parties, it could be argued that if, as recommended, the regulated period is reduced to four months then the constituency limit should be lowered proportionately. However, a reduction in proportion with the decrease in the length of time would set the limit at £3,250, a very low figure indeed, especially once staff costs are taken into account. The same counter-argument applies as for the overall spending limits – the spending only takes place in the last few months before the date of poll, so the constituency limit should not be changed on this account.

6.35 It is hard to argue with the contention that having two separate systems of regulation for third parties at elections, that is, one in PPERA and one set out in the RPA 1983, adds additional and unnecessary complexity for third parties. While outside the scope of this review, there would appear to be no logic for the existing regulatory system for third parties in the RPA 1983 to continue at future General Elections. It also makes compliance and enforcement harder as there is no clear line of responsibility for investigating complaints about the activities of a third party at an individual constituency level. The effective policing of complaints at constituency level requires specialist knowledge and potential resources which may not be available to the local police force. The system in PPERA has been established specifically to ensure third parties' campaign activity is regulated to provide a proper degree of transparency and avoid undue influence. It must make sense for there to be one system – the system set out in PPERA as amended. However, the Government and devolved legislatures need to consider further how this would work for the elections for the devolved legislatures.

Recommendation

R12. There should be no change to the level of the constituency limits.

R13. The Government should consider whether, with the amendments suggested to the PPERA system and the interim recommendations of the Law Commission, it would be advantageous for the provisions in PPERA and the RPA 1983 regarding third party expenditure at General Elections to be aligned to avoid the problems of two systems with different regulatory provisions and enforcement procedures.

Elections to the European Parliament and to the devolved legislatures

What is the issue?

There are separate spending limits for elections to the UK Parliament, to the European Parliament and to the devolved legislatures. Some third parties have claimed they are unnecessarily restrictive.

6.36 The national spending limits for third parties at the elections regulated under Part 6 of PPERA are:

	General Election	European Parliament	Devolved legislatures
England	£319,800	£159,750	n/a
Scotland	£55,400	£18,000	£75,800
Wales	£44,000	£11,259	£30,000
Northern Ireland	£30,800	£6,750	£15,300

Table 4: national spending limits for third parties at elections

What evidence was received?

6.37 A number of consultees raised the issue of the spending limits for elections to the devolved legislatures and, in Scotland, Wales and Northern Ireland, for elections to the European Parliament, expressing their concern that the quantum of these spending limits seemed to be too low to allow third parties to be properly active at these elections, even allowing for the fact that the regulated period for these elections, four months, is shorter than that currently for General Elections.

Conclusion

6.38 As can be seen from the above table the maximum spending limit for third parties in Northern Ireland at elections to the European Parliament is some way below the level required for registration. In addition, the figures for European Parliamentary elections in Scotland and Wales are very low. To put the limits no higher than this appears to be counter-intuitive to a strategic objective of permitting a healthy level of third party campaigning. It may be that, as exists in PPERA now with the limit for General Elections, a top-up amount should be added.

6.39 Responsibility for the elections to the Scottish Parliament and to the National Assembly for Wales will be devolved to these bodies in the near future. Doubtless they will learn from the experience of the elections to take place in 2016 and will make appropriate changes if required. Ministers of the UK Government may wish to do the same with regard to the elections to the Northern Ireland Assembly. They will, of course, be aware of the potential for confusion if the regulation of third party campaigning in Scotland, Wales or Northern Ireland for elections to the relevant devolved legislatures differs significantly from the regulation of third party campaigning in the same countries for elections to the UK Parliament.

Recommendation

R14. The Government should review the expenditure limits at the European Parliamentary elections in Scotland, Wales and in particular Northern Ireland possibly mirroring the existing top-up provisions (of £20,000) in PPERA for the UK General Election.

R15. Ministers, including those in the Scottish Government and the Welsh Government, may wish to review the experience of third parties in the light of the experience gained in the 2016 elections to the devolved legislatures. Any changes made need to avoid the administrative burden created for third party campaigners if very different regulatory structures were to emerge in the different parts of the United Kingdom.

Targeted spending

What is the issue?

The 2014 Act introduced the concept of targeted spending which covers campaign activity that can be reasonably regarded as intended to influence voters to vote for a political party or any of its candidates.

Background

6.40 A political party can authorise a third party to incur an amount of targeted campaign spending, in which case the third party may spend only up to the limit authorised by that political party and this sum must be included in that political party's overall spending. The third party must not in any case exceed the national or constituency spending limits on third party campaigns, even if the political party has authorised it to spend more than these amounts.

6.41 If a political party has not authorised the third party to incur spending then the targeted spending limits apply: they are set at 0.2% of the maximum campaign expenditure limit in that part of the United Kingdom. This results in the following figures:

	Political parties – £30,000 per constituency		Targeted spending limits (for spending not authorised by political party)
	Seats	Maximum limit for political parties	0.2% of limit for political parties
England	533	£15,990,000	£31,980
Scotland	59	£1,770,000	£3,540
Wales	40	£1,200,000	£2,400
Northern Ireland	18	£540,000	£1,080

Table 5: targeted spending limits for third parties at the 2015 General Election

6.42 At the 2015 General Election the Electoral Commission received notifications from five organisations that they were undertaking targeted spending. All five were trade unions affiliated to the Labour Party.

What evidence was received?

6.43 Not many respondents to the consultation expressed views on this topic. One respondent was completely opposed to the concept, another thought the concept was confusing and unclear, and one thought that it made sense for there to be such limits for “campaigning that is essentially outsourced by political parties.”

Conclusion

6.44 The Review received no evidence that the caps for expenditure that is not authorised should be increased or decreased. The provisions should, nevertheless, be kept in place as they provide increased transparency prevent political campaigning by proxy and help prevent unseen influence while entailing only a minimal regulatory burden.

6.45 Currently political parties have to notify the Electoral Commission that third parties are undertaking targeted spending on their behalf. However, there is a lack of transparency as although political parties have to report the amount spent on their behalf, they do not have to distinguish it from their overall spend.

6.46 Later in the document there is a recommendation that third parties provide added transparency when registering which would increase transparency as to whether the third party is campaigning for a political party and, if so, which one.

Recommendation

R16. There should be no change to the targeted spending provisions. However, political parties should have to distinguish what was spent by third parties as targeted spending on their behalf.

Joint campaigning

What is the issue?

The rules on joint campaigning were amended by the 2014 Act causing uncertainty as to what was covered. Third parties cited these rules in particular as having a ‘chilling effect’.

Background

6.47 It is common practice for third sector organisations, such as charities, NGOs, and trade unions, to work together on certain issues where they have a common goal. This is usually a more effective and more efficient way for them to operate, allowing them to maximise their

impact as well as making best use of their resources. Sometimes this involves establishing a formal organisation or governance body with oversight of all the actions; more commonly it involves loose coordination on the part of the relevant third parties.

6.48 The reason for regulating joint campaigning is primarily to avoid undue influence by ensuring that spending limits are respected, and that the spending limits cannot be evaded by a joint campaign falsely claiming to be separate campaigns. The legislation controlling expenditure achieves this by ensuring transparency about which groups are campaigning together on a particular issue and what collectively they are spending.

6.49 Provisions regarding joint campaigning were set out originally in PPERA. The 2014 Act introduced provisions allowing for those involved in a joint campaign to nominate a 'lead campaigner', with the other participants being called 'minor campaigners' with the intention of reducing some of the regulatory burden on smaller campaigners. The lead campaigner has to take responsibility for reporting the joint campaign spending on behalf of all the groups in the campaign, and then account for **all** the expenditure of **all** the campaigners in the coalition, which together are not to exceed the statutory expenditure limit.

6.50 If the participants in a joint campaign choose to work together **without** nominating a lead campaigner, then each organisation had to account to the Electoral Commission for its own expenditure, which was deemed to include the combined regulated campaign spending of all the organisations involved in the joint campaign.

6.51 It should be noted that there has been an evolution of the provisions regarding joint campaigning among **referendum participants** under Part 7 of PPERA, building upon the original provisions in PPERA, and modifying them first for the referendum on Scottish independence on 2014 and most recently in Schedule 1 to the European Union Referendum Act 2015.

What evidence was received?

6.52 The joint campaigning provisions were one of the most heavily criticised parts of the 2014 Act particularly in terms of their impact in combination with the other changes made under the 2014 Act. The majority of respondents to our survey (87%) described themselves as working with other organisations as part of their non-election related work and, while 44% considered undertaking joint campaigning at the election, only nine organisations stated that they carried out joint campaigning. 76% of respondents found the rules in relation to joint campaigning either difficult or very difficult to understand and 71% found the rules difficult or very difficult to comply with.

6.53 The joint campaigning provisions were seen by the majority of the respondents to our consultation as being unnecessarily complicated, unclear, and contributing to what was seen as the 'chilling effect', restricting joint campaigning by organisations on important issues. One respondent thought that overall the effect of these rules was to encourage organisations to be insular and "over-cautious to the point of inaction."

6.54 Coalition-building was seen as being frustrated by the rules, not least those rules requiring the lead campaigner to be responsible for the spend of the minor campaigners.

Some smaller organisations may have only intended to spend a small amount of money, including their contribution to the joint campaign, and so would not have needed to register. However, respondents were concerned that simply being engaged in a joint activity would lead a third party to have to register even though it had spent little or no money or making it liable for all campaigning expenditure by co-campaigners, over which it might have little effective control. The joint campaigning rules required each third party participant to register and to keep detailed records of their expenditure, including staff time, thus adding a significant regulatory burden.

6.55 Respondents saw taking on the role of lead campaigner as risky as it would require an organisation to take responsibility for other organisations' spending without any control of that organisation's management structure, or power to require or compel them to provide accurate and timely information. It was seen as perfectly possible for a participant in the joint campaign not to be fully aware of how much the other participants were spending, which could put them at risk of unintentionally exceeding the statutory spending limit.

6.56 In addition, respondents stated that greater clarity was needed about what should be considered to be joint campaigning. The guidance produced by the Electoral Commission was criticised as not being sufficiently clear or practical, with not enough real-life examples, including such as when organisations work together for a brief period of time, or when an organisation supports another's campaign.

Conclusion

6.57 The legislation regarding joint campaigning by third parties is overly complex and does not work well.

6.58 It is important to remember the underlying reason for regulating expenditure on joint campaigning. It is not to stop joint campaigning by third parties: there is nothing wrong with organisations acting in this way and this is often part of their normal practice when campaigning on issues. The joint campaigning provisions need to ensure that the spending limits cannot be evaded by third parties, for example by organisations acting together whilst pretending not to. The regulation of joint campaigning is an anti-avoidance measure, and the provisions should be framed with this in mind.

6.59 The legislation should therefore contain provisions which include requirements:

- to register as a joint campaign, with a nominated lead campaigner but with the member organisations (minor campaigners as currently set out in PPERA) involved in the decision making of the joint campaign being named but not required to register individually (unless they individually exceed the spending limits);
- that each member organisation must be eligible to register on its own behalf (i.e. meet the permissibility requirements for registering as a third party);
- that individual member organisations of the joint campaign are permitted to register as well, but not required to unless they campaign on their own behalf and their expenditure, including any spending on their own account as well as contributions to the joint campaign, exceeds the threshold for registration (currently £20,000 in England and £10,000 in Scotland, Wales and Northern Ireland);

- that the amount spent by a third party on a joint campaign as opposed to any separate campaign (if there is one) needs to be shown separately in their spending report;
- that the nominated lead campaigner is responsible for monitoring and reporting all the expenditure of the **joint campaign** (but not the amount spent by third parties on their own separate campaign) and ensuring that the spending on the joint campaign does not exceed the spending limit for the joint campaign; and
- that the spending of an individual third party, including both their own spending and their contribution to the joint campaign, should not exceed the spending limit.

Recommendation

R17. The current legislation governing joint campaigning needs to be reviewed in the light of the stated aims of what it seeks to achieve. The legislation should focus on preventing avoidance of the spending limits with as much clarity and simplicity as possible based on the proposals above.

Part five – Registration and Regulation

Increase transparency pre-election

What is the issue?

There is limited transparency before the election, with most information being provided after the election. This does not help voters understand the purpose of the third party campaigns.

Background

7.1 Currently third parties are required to register with the Electoral Commission before the election and this information is publicised on the Electoral Commission's register which appears on their website. This provides some transparency as to which organisations or individuals are actively campaigning at the election: it does not, however, state what they are campaigning on, what the aims of their campaign are and how much they are intending to spend. Further information is provided through donation reports throughout the course of the campaign. But spending returns and the statement of accounts are only required **after** the election.

7.2 At the 2015 General Election there were 68 third parties on the Electoral Commission's register, of which 47 registered during the regulated period for the 2015 general election from 19 September 2014 to 7 May 2015; the others had already been registered for a previous election or referendum. These included trade unions, charities, individuals, companies and others. There were also other third parties that were active during the General Election that were not required to register because they did not meet the threshold for registration. Spending returns were submitted by 23 third parties. The majority of registered third parties did not submit spending returns.

7.3 While for some of the third parties registered with the Electoral Commission their broad campaign objectives were immediately clear, that was not the case for all of them. Six individuals registered as third parties, with no indication of what they were campaigning on.

7.4 It is therefore not clear why some third parties believed it necessary to register. Some may have registered in case they spent over the threshold and then did not; others to indicate that they were planning to campaign actively. It may also have been that the statutory definition used for third party campaigning activities (that their activity in relation to the election could be 'reasonably regarded' by an observer as being intended to influence voters) may have led some third parties to register as a precautionary measure.

7.5 In addition, the Review is aware of two organisations both very active during the election campaign that did not register: one because, although actively delivering leaflets in at least six constituencies, it said it did not meet the spending threshold for registration; the other, although it spent significantly over the threshold for registration, because it did not believe its activities would influence voters. In both these cases the Electoral Commission was involved in communication with these organisations regarding their decisions.

7.6 A further complication is that when a third party registers with the Electoral Commission it is, in accordance with the legislation, kept on the register for 15 months or, if its registration is due to expire during a regulated period for another election, the registration is extended to the end of that period. This means that a third party could have registered for one election but still appear on the register for a subsequent one. For example, a third party could have registered shortly before the 2015 General Election at which it might have been campaigning in England alone. It would still however be on the register for the 2016 elections to the devolved legislatures. This does not provide an accurate way of understanding which third parties are active at which election, which surely is the point of having the register. It is also not possible by looking at the current register to trace which third parties were active at previous elections.

What evidence was received?

7.7 Respondents to the consultation paper noted that the transparency regarding what was spent and where it was spent largely comes after the election, upon the publication of spending returns, which have to be submitted three or six months after the date of poll depending on the amount spent. It was pointed out that there is not always a correlation between the expenditure on and the effectiveness of a campaign, so the reported spending figures cannot be seen as indicating which third parties were most influential, or even most active, simply which spent the most.

7.8 A number of respondents thought that requiring third parties to provide further information before the election, such as what they are campaigning on, where, and how much they intended to spend, to provide some 'transparency of intent', would be helpful. It could also allow organisations to make clear their campaigning objectives.

7.9 Other respondents opposed this approach, pointing out that campaigns needed to be flexible, to respond to changing circumstances and that requiring this further information would add to the regulatory burden, while providing information that for charities and trade unions that, to some extent, may already be in the public domain. The necessity of such information was questioned, with one respondent pointing out that "If the aims and objectives of a campaign are not inherently apparent outside the organisation then it is unlikely to be a successful campaign."

Conclusion

7.10 There is a lack of real-time, pre-election reporting as to who is doing what, where and how in respect of third party campaigning. On the current register the reason for the third party's campaign, and indeed for its registration, is not clear. To increase transparency pre-polling day the public should be provided with more information about what third parties are

campaigning on, by requiring third parties to provide more information when they register with the Electoral Commission. This would increase the transparency for the public of third parties' campaigns in the run-up to polling day, which is when it is most needed. It should also allow the Electoral Commission to regulate the system more effectively as it would be more aware of where campaigning is being concentrated and what issues were being focused on.

7.11 The information given by each registrant that could helpfully be given would include:

- which election they are registering for;
- the purpose of their campaigning (e.g. support/oppose a party or candidate);
- where they intend to focus their campaign (e.g. UK, England, Northern Ireland, Scotland, Wales, regional or local (and specify which regions/constituencies));
- whether they are part of a registered joint campaign (if so, which); and
- indication of estimated spend (e.g. bands of, say, up to £20k, £20-50k, £50-100k, £100-250k, over £250k).

7.12 The information required would only need to be at a high level. There may need to be a word limit (as for political parties' descriptors on ballot papers).

7.13 As the information would only be an indication of what the third party planned to be doing, sanctions should not apply if the information provided is an honest assessment of the activities and spend given to the best of the organisation's ability. Organisations should also have the possibility of updating the register if their plans later change and the focus of their activity changes or they decide to change the amount they spend on the campaign. In such cases they should not face sanctions. Sanctions should only be used in the case of deliberately fraudulent information being given.

Recommendation

R18. To improve transparency when third parties register they should be required to submit information regarding their planned activities related to electoral campaigning. As long as they state what they reasonably expect to do, then there should be no sanctions if their behaviour or spending subsequently changes provided the appropriate updating changes were made to their entry. There should though be sanctions in cases of deliberately misleading or fraudulent behaviour.

R19. The Electoral Commission should review how the register of third parties is presented. While there may be merits to having a running register with third parties on the register for 15 months as a minimum there should also be a specific register for each election. This register should be 'frozen' post-election and remain published online so that it can be seen who was active at that election. Individual third parties would be required to re-register in respect of every regulated period. There may need to be changes to the legislation to enable this.

7.14 The information provided could therefore look as follows:

Case study	
<i>Name</i>	Flat Earth Believers Society UK
<i>Relevant election</i>	2015 General Election
<i>Purpose of campaign</i>	To support parties that agree that the earth is actually flat
<i>Location of campaign</i>	England
<i>Part of joint campaign</i>	Flat Earth Coalition
<i>Estimated spend</i>	£20-50,000
<i>Campaign info</i>	website address and twitter: @username

Imprints

What is the issue?

Imprints provide transparency as to who is putting out printed election material and for which organisations or individuals. They do not currently apply to online material.

Background

7.15 Currently political parties, candidates and third parties campaigning in an election need to put what is known as an imprint on their printed election material. The imprint sets out the name and address of the printer, the promoter, and the person on whose behalf the material is being published. However this information does not have to be included on material published online.

Conclusion

7.16 With the advent of online campaigning and social media, it would provide greater transparency if the requirements for imprints on printed material were to be extended to electronic material so that its provenance can also be ascertained. Though outside the terms of this Review if this is accepted there is an argument that it should apply equally to political parties and candidates as well as third parties.

7.17 In this regard, the Review notes the recommendation from the Law Commission in their interim report on electoral law that “[t]he imprint requirement should extend to online campaign material which may reasonably be regarded as intending to procure or promote any particular result, subject to a reasonable practicability defence.”²⁹

7.18 As part of their imprints on printed election material, and on the homepage of their presence on the internet and social media, third parties could be required to state that they

29 Law Commission, *Electoral Law: An Interim Report*, 4 February 2016, p156.

are registered with the Electoral Commission under Part 6 of PPERA. This draws a parallel with charities displaying that they are registered with the relevant charities regulator.

7.19 There may be a practical difficulty on some websites or social media platforms of being able to display the appropriate information. The answer could be for a logo to be developed by the Electoral Commission to indicate registration. For online use it could be clicked on and provide a hyperlink automatically to the third party's entry on the register of third parties maintained by the Electoral Commission.

Recommendation

R20. The Government should consider requiring imprints on electronic material, as well as on printed material, for third parties.

R21. Third parties should state on relevant material and their internet and social media homepages, wherever reasonably possible, that they are registered with the Electoral Commission as a third party under Part 6 of PPERA.

Registration with the Electoral Commission

What is the issue?

Third parties are not allowed to incur more than £20,000 in England or £10,000 in Scotland, Wales or Northern Ireland on controlled expenditure unless they register with the Electoral Commission. The level required for registration proved controversial during the passage of the Bill.

Background

7.20 There is an overall spending threshold below which a third party does not need to register and is not subject to regulation, with the exception of constituency limits as discussed earlier. The thresholds set in PPERA were £10,000 and £5,000 respectively. The Government originally proposed in the 2014 Act that they should be lowered from the PPERA figure to £5,000 and £2,000; however, following opposition to those proposals the thresholds were raised to the current figures of £20,000 in England, and £10,000 in Scotland, Wales and Northern Ireland. The threshold for registration is higher for England than for Scotland, Wales or Northern Ireland: this is because it is considered that the amount a third party would need to spend to influence the election is less in these three countries as there are fewer constituencies than in England.

7.21 In this context it is worth noting that the Neill Committee, following whose report the current regulatory system was constructed, suggested a figure of £25,000 as the threshold for registration 18 years ago – about £40,000 in current spending power.

What evidence was received?

7.22 At the 2015 General Election campaign 68 third parties were registered with the Electoral Commission. Of those only 23 submitted spending reports, two of which spent less than the threshold figures and were not actually required to submit a return. Therefore only 21 organisations were required to submit an expenditure return.

7.23 A number of respondents to the consultation paper thought that the present threshold was too low, in particular given the combination of a long regulated period, the ‘reasonably regarded’ test and the inclusion of staff time and overhead costs. Respondents stated that the threshold led a number of organisations to curtail their activities so that they would not be required to register. Some organisations such as charities believed that registering could cause some reputational damage. Increasing the threshold for registration, it was argued, would help convince smaller organisations that they would not be covered, and reduce the regulatory burden on them.

7.24 One respondent suggested a figure of £50,000 would be appropriate, while others recommended that the definition of regulated activity which counted as qualifying expenditure was more important to get right first and that the threshold as to what level of expenditure should be permitted without needing to register should be dependent on what was caught.

7.25 There was some concern expressed that the figures for Scotland, Wales and Northern Ireland were too low, and should be brought into line with that for England. In practice, only one organisation, Scotland in Union, was affected by the lower threshold, although Scottish CND also registered and submitted a spending return but spent less than the £10,000 threshold.

Conclusion

7.26 The financial threshold for registration needs to be set at the appropriate level to provide transparency without entailing an excessive regulatory burden. The recommended change to the definition of the activities that should be regulated and the reduction in the length of the regulated period need to be taken into consideration when setting any limit. The recommendation that the regulated period be reduced to four months might suggest a reduced threshold, but as most campaigning by third parties appears to happen in the period immediately before polling day there appears to be no need to lower the threshold for registration – particularly given the experience of the 2015 General Election.

7.27 The current registration threshold in England of £20,000 and in Scotland, Wales and Northern Ireland of £10,000 should therefore be maintained.

7.28 The constituency spending limit is currently set at £9,750. As discussed previously with the registration threshold of £20,000 in England it is possible that a third party could spend up to the limit in two constituencies, and up to the limit in one constituency in Scotland, Wales and Northern Ireland, and yet not be required to register. This seems to defeat some of the purpose of regulating third party expenditure at a constituency level.

7.29 I therefore recommend that a registration threshold should be introduced for third parties spending significant amounts in any one or more than one constituency. I recommend that the figure be set at £5,000. A third party would only have to register once. This requirement would be triggered if it spent over £5,000 in any one constituency or over £10,000 in Scotland, Wales or Northern Ireland or over £20,000 in England.

Recommendation

R22. There should be no change to the threshold for registration of £20,000 in England and £10,000 in Scotland, Wales and Northern Ireland.

R23. A constituency threshold for registration should be introduced. Third parties should be required to register when they spend more than £5,000 in any one constituency.

Reporting requirements

What is the issue?

Third parties that spend over the threshold for registration need to submit spending returns to the Electoral Commission and account for their expenditure and donations received.

Background

7.30 Currently if a registered third party spends up to or including £250,000 the deadline for reporting its spend to the Electoral Commission is three months after the General Election with a deadline for submitting the statement of accounts six months after that (i.e. nine months after polling day). For those third parties that spend over £250,000 the deadline for reporting regulated campaign spending and donations is six months after the General Election. In addition, the campaign spending return must be audited with a deadline for submitting the audited statement of accounts a further six months after the deadline for the campaign spending return (i.e. 12 months after polling day).

7.31 Third parties are also exempted 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 the 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. In practice, this means that only unincorporated associations are subject to this requirement; companies, charities and trade unions are exempt as they are already legally required to submit accounts that can be inspected. The rule does not apply to individuals.

What evidence was received?

7.32 At the 2015 General Election no third parties spent more than £250,000, and 14 spent between £50,000 and £250,000 (see Appendix E for details).

7.33 In the consultation paper the question was posed as to whether there was a case for setting a different threshold for third parties to register with the Electoral Commission and a higher threshold requiring them to report on what they have spent. Opinion was divided on this issue, with some respondents believing it would reduce the regulatory burden while others thought it would increase it.

7.34 Those who thought it would reduce the burden argued that it could alleviate the need for complicated reporting systems for external spend and staff time, because the reporting would be much simpler unless spending large amounts. Only those organisations that were going to spend significant amounts of money would need to keep detailed records.

7.35 There was concern, though, that this might make the regulatory system overly complex and reducing transparency. It was emphasised that introducing such a distinction must not be seen as a reason to reduce the initial registration threshold.

Conclusion

7.36 There is a need to ensure the appropriate level of transparency regarding reporting expenditure whilst ensuring that the regulatory burden on third parties is set at an appropriate level. A properly run organisation should be able to keep track of significant spend and therefore meet the current reporting requirements, so the current situation should be maintained.

7.37 There is currently no requirement for registered third parties that spend less than the threshold figures to submit a nil return, which means that, after the three month deadline for the submission of the spending returns, the Electoral Commission has to contact all registered third parties that have not submitted a spending return to see whether they have failed to submit a return, did not need to as they spent less than the threshold for registration, or spent over £250,000 and so would submit a spending return six months after the election. The Government may therefore wish to consider together with the Electoral Commission the introduction of a requirement for third parties to submit a nil return where appropriate before the end of the three-month period.

Recommendation

R24. There should be no change to the reporting requirements and the time limits for reporting.

R25. The Government may wish to consider whether third parties that had registered before the election but spent less than the threshold for registration should be required to submit a nil return to the Electoral Commission.

Donations

What is the issue?

Donations received by registered third parties for use on controlled expenditure have to be from permissible donors and have to be reported to the Electoral Commission.

Background

7.38 The aim of the regulation of donations is to stop UK elections being influenced by money provided by impermissible donors, e.g. individuals and companies not on the electoral register in the UK, and to provide transparency as to the sources of funding of third parties.

7.39 Donations of over £500 received by registered third parties can only be accepted if they are from a permissible source, such as an individual registered on a UK electoral register, or a company, trade union, building society or unincorporated association registered and active in the UK. Donations given for regulated campaign activity must be reported to the Electoral Commission if the donation, or the aggregate of donations from the same source, exceeds £7,500. Reporting is on a quarterly basis before the dissolution of Parliament, and weekly thereafter.

7.40 Money received for activities unrelated to electoral campaigning is not covered and nor are donations given for activities that fall entirely outside the regulated period or for unregulated activity.

7.41 In practice third parties receive donations from a number of sources. For organisations with functions other than electoral campaigning (that is the overwhelming majority) donations are rarely received solely for the purpose of electoral campaigning. Transparency is therefore limited and the efficacy of these provisions has been questioned.

7.42 The Electoral Commission guidance says that it is not important whether the donation was made before or during the regulated period, nor whether or not the donation is received before registration as a non-party campaigner, the **purpose** of the donation is the key consideration. However, one respondent to our consultation argued that a third party can only be subject to regulation as a ‘recognised’ third party once it has registered, and so donations received before it has registered should neither be regulated regarding their permissibility nor declared to the Electoral Commission.

7.43 Provisions were included in the [European Union Referendum Act 2015](#) to deal with the scenario of a permitted participant in the referendum receiving a donation before it has registered. However a referendum is different to an election not least as the date of the referendum and so the timing of the commencement of the regulated period may not be known until a relatively late stage.

What evidence was received?

7.44 At the 2015 General Election 13 registered third parties reported donations totalling £547,877. Of survey respondents, 48% of third parties found the rules difficult or very difficult to understand and 23% found the reporting in the relevant timescales difficult or very difficult.

7.45 Respondents to the consultation stated that the purpose of reporting expenditure and donations should be to ensure transparency regarding third parties' activity at elections, and to generate a public record of who is spending money, how much they are spending, and where that money comes from. Such transparency also demonstrates that a third party is not being used as a front organisation by a political party, candidate or other organisation. Some respondents thought that it was tenable to make a distinction between donations used for regulated campaign activity and other donations, and it was important to keep the rules in place. Others queried the practical usefulness of such rules. One described the rules as "pointless, rather than unworkable."

Conclusion

7.46 The reporting of donations has only limited enforceability because those with malice aforethought will almost certainly be able to find ways to evade the legislation. But suspending either the permissibility requirements or reporting requirements would potentially significantly decrease transparency and would be sending a dangerous signal. While there would be a reduction in the regulatory burden there is the danger of creating a legal loophole. Keeping the current system indicates the standards that should be aspired to and provides a regulatory framework to undertake enforcement action should problems emerge in the future e.g. the emergence in the UK of Super-PACs. The Review has received no evidence to suggest that the rules are not currently being respected.

Recommendation

R26. There should be no change to the current rules on donations but they should be kept under review.

Role of the regulator

Guidance

What is the issue?

The Electoral Commission issues guidance on all aspects of third party campaigning. There are mixed views about their guidance with some criticism of its length and the number of documents that are produced, as well as a perceived lack of clarity and consistency with verbal advice.

Background

7.47 The Electoral Commission issues general guidance on third party campaigning setting out and explaining the regulatory requirements; it is responsible for all enforcement procedures in connection with Part 6 of PPERA. The Electoral Commission regularly keeps the structure and content of its guidance under review and seeks to ensure that its guidance meets the needs of those who use it.

7.48 The relevant charity regulators also produce guidance focused on the charities within their jurisdiction. Ahead of the 2015 General Election the Electoral Commission and the charity regulators worked together on the guidance for charities subsequently published by the Electoral Commission. These bodies continue to collaborate on a regular basis.

What evidence was received?

7.49 Among respondents to our survey there was a high degree of awareness of the role of the Electoral Commission with 89% of respondents aware of the Commission's role and 83% aware of their guidance. The views on their guidance were very mixed; some areas such as focused constituency campaigning, joint campaigning and the Electoral Commission's purpose test being found by the majority of respondents to be unhelpful, while, by contrast, the general advice from the Electoral Commission on spending limits, the process for registration, and the regulatory period was seen by the majority of respondents as helpful.

7.50 A number of respondents called for the guidance to be clearer, as a lack of clarity was seen as adding to the perceived 'chilling effect', and to contain more practical examples of campaigning that would or would not be fall to be regulated.

7.51 The majority of respondents thought that the Electoral Commission produced too many guidance documents, which due to their sheer volume were perceived as being overwhelming by some. The information was seen as covering the majority of issues although some said it was difficult to locate the specific required information as the documents tended to be repetitive.

7.52 There were positive comments about the direct interactions organisations had with the Electoral Commission when dealing with their specific queries. Those who didn't register were unsurprisingly generally more negative about the Electoral Commission.

Conclusion

7.53 In conclusion, while it has to be acknowledged that the Electoral Commission had a difficult job to do in interpreting new statutory provisions so far untested in law, there are aspects of its guidance which can be improved and which it is hoped that the Electoral Commission will consider when it next reviews how it presents its guidance. These include consolidating the guidance into a single document, with increased use of case studies on specific areas, and above all simplifying the documents where possible.

7.54 While generally the comments of those who had dealings with individuals at the Electoral Commission was positive, the Commission may wish to look at building on this by ensuring that each registered third party has a specific named point of contact to support them.

Recommendation

R27. The Electoral Commission needs to improve its guidance, ensure that a consistent message is given and should take further steps to create purposeful working relationships with regulated third parties.

Code of Practice and Guidance

What is the issue?

Parliament gave the Electoral Commission the power to issue a code of practice which Parliament would then have to approve. It is a defence for a third party to show that it was acting in accord with such a code of practice. However the Electoral Commission has so far never chosen to produce a code of practice in this area.

7.55 Under paragraph 3 of Schedule 8A to PPERA the Electoral Commission has the power to issue a code of practice for non-party campaigners regarding the expenses that fall to be regulated which has to be laid before Parliament and approved. There is also a safe harbour provision under section 94 of PPERA as amended by the 2014 Act which states that it is a defence for third party to show that it was acting in accord with such a code of practice.

7.56 The Electoral Commission issues guidance on all areas related to third party campaigning, such as the statutory definition, what counts as communication to the public, joint campaigning and donation reporting, though it only has the power to issue a code of practice in relation to the expenses that fall to be regulated. However, it is not solely this area that caused third parties difficulties at the election, or that is perceived as being difficult to interpret. It may therefore be considered helpful for the Electoral Commission to be able to issue codes of practice on certain key areas of the regulation, not least so that this would provide 'safe harbour' protection to third parties.

7.57 The Electoral Commission's current approach on all issues – not just non-party campaigning – is to issue guidance, rather than codes of practice.

What evidence was received?

7.58 Concern was expressed by one respondent that by choosing not to issue guidance in the form of a code of practice in respect of the kinds of expenses falling to be regulated, the Electoral Commission was depriving organisations of a statutory defence under PPERA. The respondent nevertheless did recognise that the extent of the additional protection offered by such a defence would be limited in practice by the low likelihood of the Commission choosing to prosecute organisations under the Act where they have complied with the Commission's non-statutory guidance.

Conclusion

7.59 In passing PPERA Parliament gave the Electoral Commission the power to issue a code of practice regarding the types of expenses that fall to be regulated: such a code of practice which would then have to be approved by Parliament for it to enter into force. While there is an understandable concern that a code of practice may lack the flexibility of informal guidance, there is a strong argument that a code of practice should be issued. While it did not **require** the Electoral Commission to issue a code of practice, by giving the Electoral Commission the **power** to do so Parliament clearly indicated what it believed would be best practice. It also reserved a role for itself in approving such a code: the scrutiny of Parliament of a code of practice would be invaluable.

7.60 Having a code of practice in place for certain other key aspects would provide a safe harbour for third parties: this would provide reassurance for third parties that they will not unintentionally fall foul of the law. The majority of third parties, unlike political parties, are not professional electoral campaigners and it can be argued are entitled to extra protection.

7.61 The legislation should be changed so that the Electoral Commission is enabled and encouraged to issue a wider range of codes of practice, again to be approved by Parliament, on key issues such as the expenditure of third parties, on the definition of a member of the public and on joint campaigning.

7.62 Issuing codes of practice would not preclude the possibility of the Electoral Commission issuing more informal and nuanced guidance, including case studies, in line with any code of practice. It is important any such code of practice be approved by Parliament sufficiently in advance of the start of the regulated period.

Recommendation

R28. Parliament gave the Electoral Commission the power to issue a code of practice under paragraph 3 of Schedule 8A to PPERA. This should now be widened so that the Electoral Commission has the power to issue codes of practice on key aspects of third party campaigning more generally.

Compliance and Enforcement

What is the issue?

Any regulatory system relies on having an effective regulator with appropriate powers and the willingness to use them. The Electoral Commission is the regulator for third parties and has a wide range of powers. However, its effectiveness as a regulator has been called into question.

Background

7.63 As with any regulatory system the role of the regulator, in this case the Electoral Commission, is fundamental to the success of the regulatory system.

What evidence was received?

7.64 When asked what would be the best way for the Electoral Commission to regulate the system, respondents to our consultation called for it to be more proactive in engaging with third parties, including working with organisations to ensure they abide by the rules, rather than only taking a view of activities after the event. There were calls for the whole of third party campaigning rules to be consolidated into one piece of legislation for which the Electoral Commission would be responsible, and for the charities regulators to be responsible for the regulation of charities that registered. The reliance on self-reporting was also questioned, and it was suggested that the Commission should investigate more deeply the spending returns it receives.

Conclusion

7.65 The Electoral Commission needs to refocus its activities to concentrate on risk-based, proactive, informed regulation, rather than relying on following primarily administratively oriented processes and procedures. It needs to be regulating more than monitoring and putting an emphasis on understanding the implications of third party activities rather than compliance with rules.

7.66 Among other areas the Electoral Commission needs to address are:

- understanding more thoroughly how third parties campaign;
- understanding more thoroughly modern campaigning techniques, in particular regarding the use of social media and data mining;
- as each election campaign begins to gather momentum assessing where there is the possibility of significant expenditure or influence by third parties;
- increasing focus on third parties' activities in key constituencies, e.g. marginal constituencies and areas where there are controversial local issues; and
- using its existing powers to carry out targeted assessments on those spending significant amounts, in particular in a limited number of constituencies.

7.67 As in any regulatory system it is crucial that the regulator has the necessary powers to enable it to do its job. Schedule 19B of PPERA as amended by the Political Parties and Elections Act 2009 gives the Electoral Commission precise powers in relation to registered and formerly registered third parties, in addition to the more general powers in Schedule 1 of PPERA. There is a question as to whether the Commission requires precise powers in relation to those third parties that have never registered but perhaps should have. If such a need does exist then the Electoral Commission should of course be given the necessary extra powers.

Recommendation

R29. The regulatory system for third parties requires those regulated to have trust in the capabilities of the Electoral Commission. It should therefore put more emphasis on intelligent, smart, risk-based, informed regulation.

Challenges for the future

What is the issue?

The regulation of third party campaigning needs to be future-proofed as much as possible. The nature of campaigning is changing, the campaigning methods are evolving, and the use of the internet and social media is developing at a rapid pace. All this is taking place against the background of a political context in a particular state of flux.

8.1 For a regulatory system to be effective it needs to be able to adapt to a changing landscape without the need for constant alterations to the legislative framework. This poses a particular challenge for the regulation of third party campaigning, where the participants, the methods deployed and the issues of concern are constantly changing; in line with, but not always identical to, the development of political party campaigning. While it is impossible to predict the direction of travel of third party campaigning there are clearly key future challenges that the Government and the regulatory system must be alive to.

8.2 Below are four areas that bear further examination: technological developments and their influence on campaigning methods; the evolving online presence of the media; the changing nature of politics; and the increasingly devolved nature of politics in the UK.

Technological developments

The evolving use of social media

8.3 As noted elsewhere in the report, PPERA was passed in 2000. This was before the widespread use of the internet and the development of **social media**, which have significantly changed the way people communicate and campaign. The regulation in PPERA was designed to capture the traditional methods of campaigning prevalent at the time: there is a risk that any new legislation will be unable to regulate adequately future campaigning methods.

8.4 Social media is not static, it changes constantly – there is no guarantee that Twitter or Facebook will have the same following by the time of the next election; new tools will undoubtedly emerge. It is also difficult to gauge the effect social media has had in directly influencing voters' intentions. Twitter in particular can be seen as a communication tool where people largely engage with like-minded individuals rather than engaging with those with different views.

8.5 The think tank Demos undertook a piece of work looking at how social media was used at the 2015 General Election. This work confirmed some useful insights in to the way social media is currently used, including:

- Individuals are more likely to re-tweet a tweet from friends or from those they admire than from an organisation trying to influence the election;
- Data mining of information regarding social media users is becoming increasingly sophisticated with an ability to target individuals based on postcodes, or to focus on particular demographics with a view to specifically targeted communications at those most likely to be influenced by that message and to do so at a very low marginal cost;
- Those using social media to attempt to influence an election may not be based in that particular constituency or indeed in the UK. In Bradford West, for example, of the 35,000 users on Twitter who mentioned MPs or Prospective Parliamentary Candidates in Bradford West and whose profile showed their location only 330 marked Bradford (compared to 12,671 marking London and 506 marking Pakistan);
- Those accounts (individuals) which have the most followers on Twitter were not particularly electorally active in relation to the 2015 General Election (with the exception of Russell Brand and Katie Hopkins); and
- Third parties are not **currently** accessing all the functionalities that social media has to offer in relation to attempting to influence an election.³⁰

8.6 The Demos research highlighted the fluid nature of social media campaigning and the difficulty in being able to attribute easily a campaign to any particular organisation. There is a further challenge in that the 2014 Act measures activity purely in financial terms and social media usage can be very cheap. Therefore a campaign with a high electoral impact can cost little and so is not caught by the regulatory framework which regulates expenditure only.

8.7 There is increasing sophistication in how communications are targeted at those individuals identified, as being more likely to be receptive to the arguments advanced. While the recommendations of the Review are alive to the likelihood that the use of social media, including the use of data mining and more specific messaging, will increase, the way social media will be used at the 2020 General Election may well be very different from how it was used in 2015.

The fluidity of borders

8.8 Social media and the internet are not bound by geographical borders. Content on social media, such as YouTube, could be paid for, created, uploaded and hosted anywhere in the world. As the engagement in Bradford West at the 2015 General Election has shown, it is increasingly easy for those not based in a particular constituency or even in the UK to make their voices heard in a UK election. At the moment there is no evidence of third parties based abroad seeking to unduly influence UK elections. However, it is very possible that a third party based in the UK 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. Exactly how to create an appropriate regulatory structure for activities that are 'in the cloud' and so do not respect national boundaries is not clear. But public trust and confidence in the electoral system is brittle and Governments need to keep this issue under review.

8.9 In the meantime it is important therefore that the Electoral Commission actively investigates organisations who appear to have links to foreign organisations to ensure that there is transparency about who is trying to influence an election and that funding is coming from a permissible source.

The convergence of online and print media

Blogs and op-ed pieces

8.10 The distinctions between print media and online publications are breaking down. Several respondents drew attention to the distinction in the current regulation between blogs, which fall to be regulated, and opinion pieces in the media, which are not regulated.

8.11 It is often difficult to distinguish in terms of content between a blog by a third party, which is regulated under PPERA, and a comment piece in an online media publication, which is not. Newspapers are increasingly moving more of their content online where, with some exceptions, it is available for free. As the House of Lord's Library Note on Digital Democracy stated:

The internet decentralises the power of reporting and media, and makes it easier to scrutinise the government and other organisations, such as private corporations, than it was before.³¹

8.12 Many of those third parties who gave evidence raised the inconsistency of the treatment of the press compared with other third parties; a proprietor of a newspaper is able to publish articles in favour of or against a particular political party or candidate without being subject to the legislation which imposes expenditure limits on other third parties doing the same thing.³² By contrast the same content published by a third party would be likely to be regulated and count towards their overall spending.

8.13 The role of the press seeking to influence elections is outside the scope of the Review, but given the amount of evidence received on this point it is recommended that the Government keep this issue under review.

The impact of political fragmentation and the rise in single issue politics

8.14 Many commentators have argued that the old certainties about the major political parties are breaking down. The electoral success of the SNP in Scotland and the increase in influence, though not necessarily the number of seats, of smaller parties has added to the complexity of the overall picture.

31 House of Lords Library Note, Digital Democracy; Political Participation and Citizen Engagement through the Internet, 13 October 2015, Page 8

32 See paragraph 4.14 regarding the fine imposed by the ICO on the Telegraph Media Group.

8.15 With voters' allegiance to parties shifting and in consequence a reduction in 'safe' seats and an increase in marginal ones it is possible that the effect a single issue can have on an election will increase, with a parallel increase in the influence that third parties could have on the outcome of a General Election. This could set the stage for the emergence of U.S.-style Super-PACs. This Review has focused on ensuring that this eventuality will remain unlikely but further assessments in the future will undoubtedly be needed.

Elections to the devolved legislatures

8.16 In 2016 there will be elections to the Northern Ireland Assembly, the Scottish Parliament and the National Assembly for Wales. The political parties in power in these legislatures are currently 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 political party which is both in opposition and in power depending on the part of the UK concerned. The proposal in this Review for a more tightly defined test may be helpful in this regard in the future, although it should be remembered that the 2016 elections will be run under the current rules.

8.17 The situation is further complicated by the fact that in the future regulation of third parties in elections to devolved legislatures will be devolved to the Scottish Parliament and the National Assembly for Wales (though not to the Northern Ireland Assembly) which will be able to amend them as they see fit; this could create the risk that third parties would have to adhere to different regulatory regimes simultaneously as well as the Electoral Commission having the challenging task of being required to enforce these different regimes.

Conclusion

8.18 It is almost certain that there will be developments in campaigning, the technology used, and the political situation which may require the issue of the regulation of third party campaigning to be revisited within the next decade.

8.19 However, for the present it is my belief that the principles contained in this Review, and the recommendations that follow from those, will provide an appropriate framework for regulating third party campaigning at least in the medium term.

Summary of recommendations

Part one – Is any regulation of third parties necessary?

R.1 Restrictions on third party expenditure at elections are necessary. However, the rules governing this should be amended, as recommended in the following chapters. (Paragraphs 3.1 – 3.18)

Part two – Legislative structure

How are third parties defined?

R.2 There should be no change to the current definitions of third parties in section 85(8) PPERA and of recognised third parties in section 88 PPERA. (Paragraphs 4.2 – 4.9)

What activities can trigger regulation?

R.3 The statutory definition of ‘procuring electoral success’ should be narrowed so as to capture only electoral campaigning – that is activity which is clearly intended to influence voters’ choices as between candidates or parties. (Paragraphs 4.10 – 4.19)

To what ‘purpose’ can activities/expenditure be directed?

R.4 The test for whether campaign activity should be regulated should be one of actual intention, using a definition along the lines of that contained in section 75 of the RPA 1983 and with an anti-avoidance provision along the lines of section 75(8) RPA 1983 and section 94(8) of PPERA. (Paragraphs 4.20 – 4.38)

Who are the public and what is a member?

R.5 The development of social media means that a change to the Electoral Commission’s concept of what constitutes “the public” is required. The exclusion from regulated costs of a third party of communication with its members should be maintained but the exclusion for ‘committed supporters’ is no longer tenable. (Paragraphs 4.39 – 4.71)

Regulated period

R.6 The regulated period for third parties should be set as four months before the General Election, in line with that for elections to devolved legislatures and to the European Parliament.

R.7 There should be an anti-avoidance provision to prevent political parties improperly channelling expenditure during their longer controlled period through third parties to avoid the expenditure controls upon them.

R.8 It would be helpful if the regulatory position in the event of an “unexpected” General Election could be clarified, in legislation if necessary, as the current provisions in Schedule 10 are excessively complicated. (Paragraphs 4.72 – 4.90)

Part three – What activity counts

Types of electoral campaigning

R.9 There should be no change to the current list of matters the costs of which are included in regulated spending. (Paragraphs 5.1 – 5.8)

Staff costs

R.10 Staff costs should continue to be included in regulated activities for third parties. However, there needs to be clarity about the exclusion of incidental staff costs or those below a *de minimis* threshold. Given the rapidly changing nature of campaigning this clarity is probably best provided in Electoral Commission guidance. (Paragraphs 5.9 – 5.17)

Part four – Levels of spending limits

National spending limits

R.11 There should be no change to the current national spending limits. (Paragraphs 6.1 – 6.15)

Constituency limits

R.12 There should be no change to the level of the constituency limits.

R.13 The Government should consider whether, with the amendments suggested to the PPERA system and the interim recommendations of the Law Commission, it would be advantageous for the provisions in PPERA and the RPA 1983 regarding third party expenditure at General Elections to be aligned to avoid the problems of two systems with different regulatory provisions and enforcement procedures. (Paragraphs 6.16 – 6.35)

Elections to the European Parliament and to the devolved legislatures

R.14 The Government should review the expenditure limits at the European Parliamentary elections in Scotland, Wales and in particular Northern Ireland possibly mirroring the existing top-up provisions (of £20,000) in PPERA for the UK General Election.

R.15 Ministers, including those in the Scottish Government and the Welsh Government, may wish to review the experience of third parties in the light of the experience gained in the 2016 elections to the devolved legislatures. Any changes made need to avoid the administrative burden created for third party campaigners if very different regulatory structures were to emerge in the different parts of the United Kingdom. (Paragraphs 6.36 – 6.39)

Targeted spending

R.16 There should be no change to the targeted spending provisions. However, political parties should have to distinguish what was spent by third parties as targeted spending on their behalf. (Paragraphs 6.40 – 6.46)

Joint campaigning

R.17 The current legislation governing joint campaigning needs to be reviewed in the light of the stated aims of what it seeks to achieve. The legislation should focus on preventing avoidance of the spending limits with as much clarity and simplicity as possible based on the proposals above. (Paragraphs 6.47 – 6.59)

Part five – Registration and Regulation

Increase transparency pre-election

R.18 To improve transparency when third parties register they should be required to submit information regarding their planned activities related to electoral campaigning. As long as they state what they reasonably expect to do, then there should be no sanctions if their behaviour or spending subsequently changes provided the appropriate updating changes were made to their entry. There should though be sanctions in cases of deliberately misleading or fraudulent behaviour.

R.19 The Electoral Commission should review how the register of third parties is presented. While there may be merits to having a running register with third parties on the register for 15 months as a minimum there should also be a specific register for each election. This register should be 'frozen' post-election and remain published online so that it can be seen who was active at that election. Individual third parties would be required to re-register in respect of every regulated period. There may need to be changes to the legislation to enable this. (Paragraphs 7.1 – 7.13)

Imprints

R.20 The Government should consider requiring imprints on electronic material, as well as on printed material, for third parties.

R.21 Third parties should state on relevant material and their internet and social media homepages, wherever reasonably possible, that they are registered with the Electoral Commission as a third party under Part 6 of PPERA. (Paragraphs 7.15 – 7.19)

Registration with the Electoral Commission

R.22 The threshold should be maintained at £20,000 in England, and £10,000 in Scotland, Wales and Northern Ireland.

R.23 A constituency threshold for registration should be introduced. Third parties should be required to register when they spend more than £5,000 in any one constituency. (Paragraphs 7.20 – 7.29)

Reporting requirements

R.24 There should be no change to the reporting requirements and the time limits for reporting.

R.25 The Government may wish to consider whether third parties that had registered before the election but spent less than the threshold for registration should be required to submit a nil return to the Electoral Commission. (Paragraphs 7.30 – 7.37)

Donations

R.26 There should be no change to the current rules on donations but they should be kept under review. (Paragraphs 7.38 – 7.46)

Role of the regulator

Guidance

R.27 The Electoral Commission needs to improve its guidance, ensure that a consistent message is given and should take further steps to create purposeful working relationships with regulated third parties. (Paragraphs 7.47 – 7.54)

Code of Practice and Guidance

R.28 Parliament gave the Electoral Commission the power to issue a code of practice under paragraph 3 of Schedule 8A to PPERA. This should now be widened so that the Electoral Commission has the power to issue codes of practice on key aspects of third party campaigning more generally. (Paragraphs 7.55 – 7.62)

Compliance and Enforcement

R.29 The regulatory system for third parties requires those regulated to have trust in the capabilities of the Electoral Commission. It should therefore put more emphasis on intelligent, smart, risk-based, informed regulation. (Paragraphs 7.63 – 7.67)

Appendices

- Appendix A: Terms of reference
- Appendix B: Methodology of the Review
- Appendix C: Excerpts of relevant legislation
- Appendix D: List of registered third parties at the 2015 General Election
- Appendix E: Third party expenditure at the 2015 General Election
- Appendix F: List of contributors to the Review
- Appendix G: Lord Hodgson: House of Lords Register of Interests

Appendix 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 PPERA. Parliament, with the passing of PPERA 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 PPERA, 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.

Appendix B: Methodology of the Review

The Review and the recommendations are based on evidence. The Review team focused on obtaining evidence and views in relation to the following themes:

- the regulatory architecture;
- the operation of third party campaigns in practice;
- the current regulatory system;
- enforcement and compliance by the Electoral Commission; and
- the future of third party campaigning and regulation.

In order to obtain the necessary evidence and views the Review team undertook the following activities:

- **Engagement with key stakeholders** – over the course of March to June 2015 the Review met a number of organisations (a list can be found at Appendix F), including third parties, charities, the Electoral Commission, the charities regulators of the constituent parts of the UK, MPs, political parties and other interested parties. These meetings were designed to find out their views as to what the regulation of third party campaigning should cover and their experiences of the regulations in practice.
- **Visits** – While many third parties operate across the UK, this is not always the case and it was important that the Review understood the effect of the regulations on the constituent parts of the UK and on local campaigns in specific constituencies. In March 2015 the Review visited Scotland, Wales and Northern Ireland to speak to third parties based there, the relevant regulators and representatives from political parties. The Review also visited constituencies where there was the potential for a high degree of third party campaigning, including Sheffield Hallam, Thanet South, Croydon Central and several constituencies along the proposed HS2 line. In these constituencies the Review spoke to campaigners, returning officers and candidates.
- **Perception surveys** – The Review conducted three online surveys, one targeted at third parties, one for candidates and one for returning officers looking at their experiences of the regulations over the course of the 2015 General Election. In total 102 organisations undertook the survey for third parties, and 15 candidates and 49 returning officers or electoral administrators undertook their respective surveys.
- **Call for Views and Evidence** – In July a Call for Views and Evidence was launched to get submissions on specific questions in relation to third party campaigning. Of the 26 respondents to the Call for Views and Evidence, 16 were charities or linked to the charitable sector, three were trade unions, three were individuals, one a law firm, one think tank, one an employers' organisation, and one an organisation representing the media.

- **Roundtables** – In order to look at some of the questions posed in the call for evidence in greater detail the Review held three roundtables with interested third parties.
- **Analysis** – The Review team analysed the legislation and regulations regarding third party campaigning. This included examining the experience at previous elections and the situation before PPERA was introduced. The Review team analysed the expenditure and donation reports in the public domain including those submitted in relation to the 2015 General Election. In addition, the team worked with the think tank Demos to gain an understanding of the way social media was used at the election.

Further evidence gathered by the Review, including summaries of the survey evidence and consultation responses, as well as expenditure figures for third parties at the 2001, 2005 and 2010 General Elections can be found at <https://www.gov.uk/government/organisations/third-party-campaigning-review>

Appendix C: Excerpts of relevant legislation

Political Parties, Elections and Referendums Act 2000

Part VI Controls relating to third party national election campaigns

Chapter I Preliminary

Section 85 Controlled expenditure by third parties

(2) 'Controlled expenditure', in relation to a third party, means (subject to section 87) expenses incurred by or on behalf of the third party where—

- (a) the expenses fall within Part 1 of Schedule 8A, and
- (b) the expenditure can reasonably be regarded as intended to promote or procure electoral success at any relevant election for—
 - (i) one or more particular registered parties,
 - (ii) one or more registered parties who advocate (or do not advocate) particular policies or who otherwise fall within a particular category of such parties, or
 - (iii) candidates who hold (or do not hold) particular opinions or who advocate (or do not advocate) particular policies or who otherwise fall within a particular category of candidates.

...

(4) For the purposes of subsection [(2)(b)]

- (a) the reference to electoral success at any relevant election is a reference—
 - (i) in relation to a registered party, to the return at any such election of candidates standing in the name of the party or included in a list of candidates submitted by the party in connection with the election, and
 - (ii) in relation to candidates, to their return at any such election; and
- (b) the reference to doing any of the things mentioned in [that provision] includes doing so by prejudicing the electoral prospects at the election of other parties or candidates [...] ; [and]
- (c) a course of conduct may constitute the doing of one of those things even though it does not involve any express mention being made of the name of any party or candidate.

(4A) In determining whether expenditure can reasonably be regarded as intended to promote or procure electoral success as mentioned in subsection (2)(b), it is immaterial that it can reasonably be regarded as intended to achieve any other purpose as well.

Schedule 8A: Controlled Expenditure: Qualifying Expenses

Part 1: Qualifying Expenses

For the purposes of section 85(2) the expenses falling within this Part of this Schedule are expenses incurred in respect of any of the matters set out in the following list.

List of matters

- (1) The production or publication of material which is made available to the public at large or any section of the public (in whatever form and by whatever means).
- (2) Canvassing, or market research seeking views or information from, members of the public.
- (3) Press conferences, or other media events, organised by or on behalf of the third party.
- (4) Transport (by any means) of persons to any place or places with a view to obtaining publicity.

Expenses in respect of the transport of such persons include the costs of hiring a particular means of transport.

- (5) Public rallies or other public events, other than—
 - (a) annual conferences of the third party, or
 - (b) any public procession or protest meeting, within the meaning of the Public Processions (Northern Ireland) Act 1998, in respect of which notice is given in accordance with section 6 or 7 of that Act (advance notice of public processions or related protest meetings).

Expenses in respect of such events include costs incurred in connection with the attendance of persons at such events, the hire of premises for the purposes of such events or the provision of goods, services or facilities at them.

But expenses in respect of such events do not include costs incurred in providing for the protection of persons or property.

Representation of the People Act 1983

Part II The Election Campaign

Election expenses

Section 75 Prohibition of expenses not authorised by election agent.

(1) No expenses shall, with a view to promoting or procuring the election of a candidate [(or, in the case of an election of the London members of the London Assembly at an ordinary election, a registered political party or candidates of that party)] at an election, be incurred [after he becomes a candidate at that election] by any person other than the candidate, his election agent and persons authorised in writing by the election agent on account—

- (a) of holding public meetings or organising any public display; or
- (b) of issuing advertisements, circulars or publications; or
- (c) of otherwise presenting to the electors the candidate or his views or the extent or nature of his backing or disparaging another candidate [or
- (d) in the case of an election of the London members of the London Assembly at an ordinary election, of otherwise presenting to the electors the candidate's registered political party (if any) or the views of that party or the extent or nature of that party's backing or disparaging any other registered political party.]

[but paragraph (c) [or (d)] of this subsection shall not—

- (i) restrict the publication of any matter relating to the election in a newspaper or other periodical or in a broadcast made by the British Broadcasting Corporation or [or by Sianel Pedwar Cymru or in a programme included in any service licensed under Part I or III of the Broadcasting Act 1990 [or Part I or II of the Broadcasting Act 1996];] or
- (ii) apply to any expenses not exceeding in the aggregate the sum of [£5] which may be incurred by an individual and are not incurred in pursuance of a plan suggested by or concerted with others, or to expenses incurred by any person in travelling or in living away from home or similar personal expenses.]

[(1ZZA) Paragraph (c) or (d) of subsection (1) above does not restrict the publication of any matter relating to the election in—

- (a) a newspaper or other periodical,
- (b) a broadcast made by the British Broadcasting Corporation or by Sianel Pedwar Cymru, or
- (c) a programme included in any service licensed under Part 1 or 3 of the Broadcasting Act 1990 or Part 1 or 2 of the Broadcasting Act 1996.

(1ZZB) Subsection (1) above does not apply to any expenses incurred by any person—

- (a) which do not exceed in the aggregate the permitted sum (and are not incurred by that person as part of a concerted plan of action), or
- (b) in travelling or in living away from home or similar personal expenses.]

[(1ZA) For the purposes of [subsection (1ZZB)(a)] above, 'the permitted sum' means—

- (a) in respect of a candidate at a parliamentary election, £500;
- (b) in respect of a candidate at a local government election, £50 together with an additional 0.5p for every entry in the register of local government electors for the electoral area in question as it has effect on the last day for publication of notice of the election;

and expenses shall be regarded as incurred by a person "as part of a concerted plan of action" if they are incurred by that person in pursuance of any plan or other arrangement whereby that person and one or more other persons are to incur, with a view to promoting or procuring the election of the same candidate, expenses which (disregarding [subsection (1ZZB)(a)] fall within subsection (1) above.]

Appendix D: List of registered third parties at the 2015 General Election

- 100% Registration Campaign
- 38 Degrees
- Amnesty International
- Arthritis Research
- Association of Teachers & Lecturers
- Avaaz
- Britain Yearly Meeting of the Religious Society of Friends (Quakers)
- British Institute of Human Rights
- British Medical Association
- Campaign For an Independent Britain
- Campaign for Nuclear Disarmament
- Campaign for the NHS Reinstatement Bill 2015
- CCFON Ltd
- Centre for Labour & Social Studies (CLASS)
- Common Decency
- Communication Workers Union
- Conservative Muslim Forum
- Conservative Support Ltd
- Educational Institute of Scotland
- Equitable Members Action Group Ltd
- Fabian Society
- Fire Brigade Union
- Forces Pension Society
- Global Dialogue
- GMB
- Hope Not Hate Educational Ltd
- Hope Not Hate Ltd
- Hyperlipidaemia Education & Atherosclerosis Research Trust UK
- Independent Diplomat Commission
- Independent Schools Council
- League Against Cruel Sports
- Left of Centre coalition campaign
- London First
- Lush Ltd

- Mass1 Netgen Ltd
- Movement for Change Ltd
- Mr Ghill Donald
- Mr Graham McArthur
- Mr Graham Wason
- Mr Matthew Brown
- Mr Mike Rigby
- Mr Stuart Long
- NASUWT The Teachers' Union
- National Union of Rail Maritime and Transport Workers
- National Union of Students
- National Union of Teachers
- Network for Animals Ltd
- One Norbiton
- Political Animal Lobby Ltd
- Progress
- RSPCA Campaigns Ltd
- Scotland in Union
- Scottish Campaign for Nuclear Disarmament
- Stand up to UKIP
- Stonewall Equality Ltd
- Thanet Stand up to UKIP
- The Campaign for British Influence in Europe Limited
- The Campaign to End All Animal Experiments
- The Hacked Off Campaign
- The Preferendum Society
- The Salvation Army
- The Woodland Trust
- Union of Shop, Distributive and Allied Workers (USDAW)
- UNISON – The Public Service Union
- Unite the Union
- Vote for Policies Ltd
- Vote-OK
- Voter Consultancy Ltd

Appendix E: Third party expenditure at the 2015 General Election

Third party	Expenditure
38 Degrees	£241,254
London First	£225,942
NASUWT	£197,019
Hope Not Hate Ltd	£132,278
USDAW	£92,894
CND	£91,382
Centre for Labour and Social Studies	£87,514
UNISON	£86,346
Campaign for British Influence in Europe Ltd	£79,738
Unite	£73,432
Amnesty International UK section	£67,396
Salvation Army	£59,538
Quakers	£56,147
NUS	£54,179
Avaaz Campaigns UK	£47,375
British Institute of Human Rights	£42,990
Fabian Society	£35,098
Network for Animals Ltd	£33,781
Cruelty Free International	£30,002
Lush Ltd	£21,365
Scotland in Union	£13,388
Arthritis Research UK	£7,407
Scottish CND	£4,564
Total	£1,781,027

Table 6: total expenditure by registered third parties at the 2015 General Election

Third party	Amount in England	Amount in Scotland	Amount in Wales	Amount in NI	Total amount
38 Degrees	£204,482	£14,695	£8,319	£13,757	£241,254
Amnesty International	£46,648	£15,405	£3,685	£1,658	£67,396
Arthritis Research UK	£6,074	£672	£456	£205	£7,407
Avaaz Campaigns UK	£38,848	£4,264	£2,843	£1,421	£47,375
Quakers	£47,352	£5,242	£3,554	£0	£56,147
BIHR	£35,279	£3,889	£2,636	£1,186	£42,990
CND	£91,382	£0	£0	£0	£91,382
CLASS	£87,514	£0	£0	£0	£87,514
CFI	£24,867	£2,590	£1,754	£790	£30,002
Fabian Society	£31,041	£2,045	£1,387	£624	£35,098
Hope Not Hate Ltd	£127,911	£988	£3,092	£287	£132,278
London First	£225,942	£0	£0	£0	£225,942
Lush Ltd	£21,365	£0	£0	£0	£21,365
NASUWT	£165,158	£5,252	£21,350	£5,259	£197,019
NUS	£54,179	£0	£0	£0	£54,179
NFA Ltd	£8,445	£8,445	£8,445	£8,445	£33,781
Scotland in Union	£600	£12,788	£0	£0	£13,388
SCND	£0	£4,564	£0	£0	£4,564
CBIE	£65,390	£7,235	£4,905	£2,207	£79,738
Salvation Army	£48,821	£5,404	£3,664	£1,649	£59,538
USDAW	£75,699	£5,951	£11,097	£147	£92,894
UNISON	£58,127	£19,215	£4,194	£4,810	£86,346
Unite	£57,884	£7,774	£7,774	£0	£73,432
Total	£1,523,008	£126,417	£89,155	£42,447	£1,781,027

Table 7: total expenditure by registered third parties at the 2015 General Election by country

	Manifesto Material	Market research/canvassing	Media	Overheads and general administration	Rallies and other events	Transport	Unaccounted	Total
38 Degrees	£188,419	£4,845	£0	£39,264	£8,621	£105	£0	£241,254
Amnesty International UK section	£51,985	£3,112	£0	£11,836	£462	£0	£0	£67,396
Arthritis Research UK	£4,167	£3,240	£0	£0	£0	£0	£0	£7,407
Avaaz Campaigns UK	£31,735	£10,500	£0	£5,140	£0	£0	£0	£47,375
Quakers	£1,638	£0	£0	£53,807	£0	£0	£702	£56,147
British Institute of Human Rights	£36,100	£0	£0	£6,882	£0	£8	£0	£42,990
CND	£1,384	£0	£0	£77,220	£12,778	£0	£0	£91,382
Centre for Labour and Social Studies	£23,597	£3,030	£0	£54,120	£5,761	£1,007	£0	£87,514
Cruelty Free International	£30,002	£0	£0	£0	£0	£0	£0	£30,002
Fabian Society	£15,839	£0	£13,366	£5,539	£0	£354	£0	£35,098
Hope Not Hate Ltd	£71,372	£0	£0	£54,793	£563	£5,550	£0	£132,278
London First	£487	£0	£1,386	£224,069	£0	£0	£0	£225,942
Lush Ltd	£20,884	£0	£0	£0	£481	£0	£0	£21,365
NASUWT	£143,259	£9,466	£39,331	£4,963	£0	£0	£0	£197,019
NUS	£46,656	£0	£120	£7,208	£0	£146	£49	£54,179
Network for Animals Ltd	£594	£22,235	£48	£10,508	£396	£0	£0	£33,781
Scotland in Union	£9,668	£1,920	£0	£1,800	£0	£0	£0	£13,388
Scottish CND	£0	£0	£0	£2,835	£1,101	£627	£0	£4,564
Campaign for British Influence in Europe Ltd	£27,242	£0	£0	£52,057	£439	£0	£0	£79,738
Salvation Army	£0	£0	£561	£55,991	£0	£2,986	£0	£59,538
USDAW	£85,218	£2,400	£0	£5,275	£0	£0	£0	£92,894
UNISON	£44,825	£4,350	£0	£19,170	£0	£0	£18,000	£86,346
Unite	£10,646	£0	£0	£42,000	£0	£0	£20,786	£73,432
Total	£845,717	£65,098	£54,812	£734,478	£30,602	£10,783	£39,537	£1,781,027

Table 8: expenditure by registered third parties at the 2015 General Election by category

Appendix F:

List of contributors to the Review

The following individuals and organisations kindly contributed to the Review, either in writing, through completing the survey, participating in roundtables or meeting us directly. Their contribution is very much appreciated and has, as far as possible, been reflected in the text. Any omissions from the list are entirely accidental and the Review team offer their sincere apologies for any oversight:

38 Degrees
ACEVO
Age Concern
Arthritis Research
Association of School and College Lecturers
Bates Wells Braithwaite
Battersea Dogs Home
Maggie Beirne
Bond
Tom Brake MP
Breast Cancer Care
David Brindle, Public Services Editor. The Guardian
British Institute of Human Rights
British Medical Association
Dame Rosemary Butler, Presiding Officer, National Assembly for Wales
CBI
Charities Aid Foundation
Charity Commission for England and Wales
Charity Commission for Northern Ireland
Charity Finance Group
Charity Law Association
Chief Electoral Officer for Northern Ireland – Graham Shields
Children in Northern Ireland
Church of Scotland
Chwarae Teg
Commission on Civil Society and Democratic Engagement
Conservative Party
Crisis
Demos

Directory of Social Change
Mr Ghill Donald
Electoral Commission
Mr Patrick Evershed
The Hacked Off Campaign
Hope Not Hate
Institute of Economic Affairs
IPPR
The King's Fund
Labour Party
League Against Cruel Sports
Liberal Democrats
John Muir Trust
Joint Public Issues Team of Methodists, Baptists, URC and Church of Scotland
Julian Knight MP
John McCallister MLA, Northern Ireland Assembly
Macmillan
Methodists
NASUWT
National Trust
National Association for Voluntary and Community Action
NCVO
News Media Association
NFP Synergy
NICVA
Office of the Scottish Charity Regulator
Oxfam
Graham Phillips
Plaid Cymru
Victoria Prentis MP
Public Relations Consultants Association
Andrew Purkis
Quakers
Peter Riddell, Director, Institute for Government
RSPB
RSPCA Campaigns Ltd
The Salvation Army
Scottish Council for Voluntary Organisations
Sheila McKechnie Foundation
SNP

Stonewall Equality Ltd

TUC

UKIP

Wales Council for Voluntary Action

The Review would like to thank those who filled in our survey: 102 organisations undertook the survey for third parties, 15 people that for candidates, and 49 that for returning officers. The Review would also like to thank those people who helped us on our visits to the constituencies of Thanet South, Thanet North, Sheffield, Croydon Central, and a number of other constituencies including along the proposed route of the HS2 line.

Appendix G: Lord Hodgson: House of Lords Register of Interests

Category 1: Directorships

- Chairman, RFIB Group Ltd (insurance and reinsurance brokerage) (interest ceased 31 October 2015)
- Chairman, Johnson Bros & Co Ltd, Walsall (investment company; the Member's remuneration from Nova Capital Management is paid to Johnson Bros & Co Ltd (see category 4(a))
- Chairman, Nova Capital Management (interest ceased 30 November 2015)
- Non-executive Chairman, Cash Management Solutions Ltd and Cash Management Solutions payments intelligence Ltd (global outsourced cash management provider)

Category 4: Shareholdings (a)

- Johnson Bros & Co Ltd, Walsall (investment company; jointly with wife)

Category 4: Shareholdings (b)

- Nova Capital Management (private equity)
- Bank of Ireland (banking)
- Royal Dutch Shell plc (oil)
- Whitbread plc (hotels and restaurants)
- AstraZeneca plc (pharmaceuticals)
- Barclays plc (banking)

Category 10: Non-financial interests (a)

- Official Reviewer of the Charities Act 2006, appointed by the Minister for the Cabinet Office
- Official Reviewer of Part 2 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014, appointed by the Minister for the Constitution

Category 10: Non-financial interests (c)

- Trustee, St Peter's College, Oxford

Category 10: Non-financial interests (d)

- Trustee, Leamington Fund
- Trustee, Fair Trials International

Category 10: Non-financial interests (e)

- Chairman, Advisory Committee, Armed Forces Charity
- President, Ludlow and District Beekeepers' Association
- Member, Board of Governors, Hereford Cathedral Perpetual Trust

ISBN 978-1-4741-2795-0



9 781474 127950