

Submission to the Bill Committee for the Elections Bill

National TULO
19 October 2021

Introduction and Summary

This submission relates primarily to S25 of the Bill as published, *Joint campaigning by registered parties and third parties*, and has regard to S12, *Strategy and Policy Statement*.

Whilst not the focus of this submission, we would also note our strong objection to the measures in the Bill on Voter ID, which are discriminatory, and risk denying millions of people their democratic right to vote.

As the organisation that represents the 12 trade unions that are affiliated to the Labour Party, National TULO (the National Trade Union and Labour Party Liaison Organisation) is extremely concerned about proposals in the Elections Bill that risk impacting on trade unions' right to campaign politically.

S25 brings in new measures on Political Parties campaigning jointly with non-party campaigners that will have a disproportionate impact on trade unions and the Labour Party.

Rules already exist that strictly regulate joint campaigning between non-party campaigners. For example, if a group of unions are running a joint campaign that meets the public and purpose tests, then all the unions have to count the total expenditure on the campaign against their own spending limits – so even though the money has only been spent once, it would have to be declared multiple times.

The Elections Bill extends this rule to joint campaigning between a Party and non-party campaigners. This would mean that where the Labour Party is campaigning jointly with trade unions, the total cost of the campaign would have to be declared by both the Party and the participating unions, having the effect of reducing (potentially dramatically) the overall campaign expenditure limit of the organisations.

We believe these proposals:

- will have a disproportionate impact on Labour and on organisations which promote a vote for the Labour Party;
- are an attack on freedom of speech and association and undermine the independence of trade unions and the right of the Labour Party to set its own rules;
- are completely unnecessary – trade union political expenditure is already highly regulated, and there are already additional regulations in place for non-party campaigners who publicly advocate voting for a particular party;
- risk tying organisations up in red tape;
- are illogical – political parties and non-party campaigners are *different*, and already have vastly different expenditure limits at election time – it's illogical and unfair to apply these regulations jointly to such different organisations;
- breach key principles set out by the Committee on Standards in Public Life.

In their 1998 Report on The Funding of Political Parties in the United Kingdom, the Committee on Standards in Public Life wrote of non-Party campaigners engaging in explicitly political campaigning:

“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.”

Committee on Standards in Public Life (1998), The Funding of Political Parties in

The Committee reiterated these remarks in their recent Report on Regulating Election Finance, and added:

“We are equally mindful that third-party campaigning is a good thing, because it encourages people to vote and injects a range of different agendas – as well as those represented by the parties – into elections. Recalling the principles in chapter 1, we believe that campaigning by third parties should:

- a) be transparent, so that the audience knows who is funding the adverts they see and can assess the credibility of the message***
- b) respect the right to participate on equal terms with others***
- c) not be dependent on a campaigner’s level of wealth and access to money (that is, it should be open to all)***
- d) be regulated in a way that is proportionate and administratively practical (campaigners should be accountable).”***

Committee on Standards in Public Life (2021), Regulating Election Finance, page 94

With regard to the Committee's recent report, we would argue, strongly, that the measures contained in the Bill specifically breach principle b) above, by unfairly impacting trade unions and organisations that are constitutionally linked to the Labour Party, and principle d) by being disproportionate and placing a heavy administrative burden on organisations that, unlike political parties, do not primarily exist to campaign in elections. Finally, they go far beyond the call the Committee made for transparency in a), as they apply new, substantial, restrictions to campaigning, rather than simply requiring more information about political campaigning by non-party campaigners to be made public.

Crucially, these measures risk violating the principle set out by the Committee that, in a free society, organisations should be able to campaign politically during elections. The Committee add that "*the right to campaign is also protected by law through the right to freedom of expression*" (Ibid., p89). This fundamental right is at risk under these measures.

1. A deliberate and disproportionate impact on Labour and on organisations that promote a vote for the Labour Party

The impact of these changes will be disproportionately felt by the Labour Party and its affiliated trade unions, due to Labour's unique constitution, where trade unions (and other organisations, generally known as Socialist Societies) are able to affiliate to the Party and in effect become organisational members of the Party. By its very nature, and since its foundation, Labour has trade unions (who are also non-party campaigners in their own right) integrated into every level of decision-making.

This new regulation risks redefining campaign activity that is currently classified as Labour Party spending as joint campaigning, potentially making unions liable for substantial expenditure by the Party. The fact that S12 of the Elections Bill empowers the Secretary of State to issue policy statements to influence the work of the Electoral Commission is particularly concerning - the definition of joint campaigning might be widened (by direction of a Conservative Secretary of State) to encompass ever greater swathes of Labour Party campaigning, and thus restrict further the ability of unions to campaign in their own right.

6 million people are members of trade unions – unions are democratic membership organisations that make their own decisions about what to campaign on, whether to campaign at election time and whether to endorse political parties. It cannot be right that fact that there is a historic constitutional link between the affiliated unions and the Labour Party risks many unions being unable to campaign, independently, in their own right, on the issues and priorities of their members.

These new provisions could severely weaken trade unions' ability to campaign for Labour during elections, as they may find their own (already highly regulated) expenditure limits 'eaten up' with campaign expenditure by the Labour Party, whose spending limits dwarf those of unions. The potential effect of this change could be chilling, and serve to dramatically reduce the ability of trade unions to campaign freely and publicly on political issues, by forcing them to be liable for expenditure that has actually been incurred by the Labour Party or units of the Labour Party.

In the event that substantial areas of Labour Party campaigning were deemed to have been joint campaigning with the 12 affiliated trade unions, we would find that the Party and the unions each had to declare expenditure up to the UK non-party limit of £390,000 – effectively sharing that £390,000 between 13 organisations – a notional allowance of just £30,000 for each organisation over a year, when otherwise they would have been able to spend £390,000 each. This rule punishes organisations with close, historic relational ties, and fails to account for the collective nature of the trade union movement and the century-long relationship with the Party.

There is no other political party that has the close constitutional ties with separate, independent organisations in the way that the Labour Party is linked to the trade union movement. This change can only serve to silence organisations that advocate a vote for Labour, while having little or no impact on organisations that advocate for other political parties.

2. An attack on freedom of speech and association

This new regulation is an attack on freedom of speech. It proposes substantial changes to the rights of non-party campaigns such as trade unions, charities and pressure groups, fundamentally limiting their power to campaign for a political party, or to work with political parties for a joint goal. Unions and other campaign organisations have a right to engage in our democracy, and already face a highly-regulated landscape. This Bill risks silencing organisations for fear of breaking the rules. It appears to be designed to actively discourage coalition campaigning, which is a perfectly legitimate activity in a democracy.

It is patently undemocratic to restrict genuine non-party campaigners from campaigning together in coalition. Why should working together mean that three separate entities have to share one expenditure limit, when if they had campaigned separately they would have had three? Why is legitimate coalition campaigning restricted in this way?

The impact of these changes are likely to fall hardest on Labour's affiliated unions. There is a substantial risk that Labour Party activity could be redefined as joint campaigning, forcing unions to account for expenditure that they did not incur, for campaigning that was nothing to do with their organisation, made by an organisation with a vastly higher spending limit (particularly when there's a new risk of partisan interference in the way that Electoral Commission defines and regulates joint campaigning). Unions are entitled to take a public view on politics in their own right as independent organisations, and the fact that unions are affiliated to the Party cannot be allowed to silence their own, independent public voice.

This change also undermines the legitimate constitutional activity of trade unions as part of the Labour Party, where they have a stake in decision-making and are regularly consulted as key stakeholders. There is a real risk that the constitutional role of affiliated unions could be conflated with joint campaign activity, forcing unions to declare massive sums of money which they have not spent themselves. Much of this will hinge on how the Electoral Commission choose to interpret the law and the guidance that they give – which will now be open to influence by the Secretary of State. Taken to an extreme, could unions (who sit on the National Executive Committee of the Labour Party) be held accountable for the entire election campaign expenditure of the Labour Party? If so, affiliated unions would have exceeded their own expenditure limits many times over before they had even started to campaign in their own right.

3. This is unnecessary regulation

There is no problem here that needs to be fixed. There is already a great deal of regulation in this area, with strict spending limits and transparency already in place - recently added to twice in the last decade by successive Conservative governments under the Lobbying and Trade Union Acts. In fact, there is already legislation that deals with the specific issue of trade unions campaigning for the Labour Party and sets an even higher bar on transparency in this case.

The Lobbying Act brought in much stricter expenditure rules where a union (or other non-party campaigner) wishes to overtly campaign for a political party (called the 'targeted spend' rules). An organisation wanting to spend more than £31,980 in England, £3,540 in Scotland or £2,400 in Wales on public-facing campaigning advocating for a named political party has to first get permission from the party, and then the expenditure over those limits have to be declared by both the party and the non-party campaigner in their election return – so the expenditure counts towards both organisations' limits. Furthermore, this is already a highly regulated landscape, with trade union political expenditure separately regulated by the Certification Officer, as well as the regulation by the Electoral Commission.

It is telling that in their recent report, the Committee on Standards in Public Life make no recommendation on expanding the definition of joint campaigning – the only recommendation they make is with regard to transparency of targeted spending:

“Recommendation 21 - Parties should be required to identify what is spent by third parties as targeted spending on their behalf. The government should introduce a specific reporting category for targeted expenditure that non-party campaigners have spent in relation to an authorisation given by a political party.” (Ibid., p95).

If there are concerns about the transparency of specifically partisan 'targeted spend' by non-party campaigners, this would be a much simpler and more straightforward way of dealing with those concerns, that would put the administrative burden on the political parties who have authorised the expenditure, rather than on the non-party campaigners. S25 of the Elections Bill goes far beyond this recommendation, by introducing new *restrictions*, rather than limiting itself to new measures to increase *transparency*.

The Committee's Report makes clear that regulation of non-Party campaigners must "strike the right balance" (Ibid., p89) – we would argue that the measures in S25 go far beyond this, and should be removed from the Bill.

We would not be opposed to the transparency measures proposed in Recommendation 21 in the Committee's recent report, although we'd note that this information is already in the public domain as both the Party and the non-party campaigner are already obliged to report spending that is authorised under 'targeted spend' rules.

It is worth noting that trade union political activity is already *highly* regulated through a series of Acts including:

- The Trade Unions & Labour Relations (Consolidation) Act 1992
- The Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014
- The Trade Union Act 2016

Electoral campaigning by trade unions is also regulated through a series of Acts including:

- Representation of the People Act 1983
- The Political Parties, Elections and Referendums Act 2000
- The Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014

Unions' political funds are already regulated by the Certification Officer:

- Trade Unions can only spend money on political objects if they establish a Political Fund.
- In order to establish a political fund, unions must ballot all members on whether the union should have a political fund and pursue political objects.
- Unions must ballot their members to renew support for the fund's existence every 10 years.
- Only money contributed by members directly to the Political Fund can be spent on pursuit of political objects. Since the 2016 Trade Union Act, new members of the union must actively opt-in to the union's Political Fund, and cannot be auto-enrolled, and members must suffer no detriment as a result of choosing not to opt-in.
- Unions must make an Annual Return to the Certification Officer, which is published, detailing all expenditure from the Political Fund if the total annual expenditure exceeds £2,000. The return must include amounts spent on:
 - contributions to the funds of a political party, or payment of expenses incurred by a political party
 - provision of services or properties for use by a political party
 - the registration of electors, the candidature of any person, or the selection of any candidate
 - the maintenance of any holder of a political office
 - holding party political conferences or meetings, or any meetings the main business of which is to do with a political party.
 - materials to persuade people to vote for or against a political party or candidate.
- The Certification Officer has powers to investigate where there is reasonable evidence of breaches of a union's Political Fund Rules.

Trade unions are also covered by various aspects of electoral law, including the Representation of the People Act 1983, the Political Parties, Elections and Referendums Act 2000 and the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014.

- Trade union donations to political parties, including affiliation fees to the Labour Party, must be declared to the Electoral Commission and are published.
- Trade union campaign activity relating to elections is regulated by the Electoral Commission. Unions wanting to spend in excess of £20,000 in England, and £10,000 in Scotland, Wales or Northern Ireland during the regulated period leading up to an election are required to register as a Non-Party Campaigner with the Electoral Commission, and to complete a spending return after the election.
- The scope of this law was extended in the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014 to include all public campaigning intended to persuade people to vote for or against a political party – including some issues-based campaigns where there might be seen to be a clear association between an issue and a political party. The extensive new rules also require unions to obtain permission from a political party to spend in excess of set limits in support of that party, and requires organisations campaigning in coalition to each report the total expenditure of the coalition.
- The Representation of the People Act also sets limits on local expenditure for unions campaigning as Non-Party Campaigners in support of named candidates in the run-up to an election.

4. The burden of red tape is unfair

Political parties exist to win elections, and expect their expenditure at election time to be highly regulated. They employ Governance departments to ensure that they comply with the law and can complete the various complex returns correctly and on time. For unions, charities and other non-party campaigners, activity at election time is not their primary purpose, and they are much less likely to have the budget to employ officials to negotiate the increasing burden of election campaigning regulations.

In particular, the potential redefinition of Labour Party expenditure as joint campaigning expenditure risks many trade unions and other affiliated organisations being brought into regulation by the Commission for the first time. A number of affiliated unions are small, specialist organisations, that do not currently spend enough at election time on regulated activity to have to register with the Commission at all. They, and the Socialist Societies, could suddenly find themselves having to complete a return for expenditure (by the Labour Party) in the hundreds of thousands. In fact, twelve affiliated unions could all find themselves completing twelve identical returns for Labour Party expenditure. This is an exercise in red tape multiplication, and not in democracy or accountability. The smallest affiliates to the Labour Party (the Socialist Societies) are run by volunteers, and are highly unlikely to have the capacity to complete a spending return on this scale.

The burden on small organisations will already be increasing, as S24 introduces a new, lower threshold for registration with the Electoral Commission. There is a good chance that limited joint campaign activity, even though an individual organisation may incur negligible expenditure themselves, could easily bring an organisation into the requirement to register with the Commission.

It is worth also noting that these rules are applied retrospectively for 12 months at the point an election is called – so while they ‘only’ regulate the 12 months leading up to election day, were a snap election to be called then campaign activity for 12 months would be deemed to be regulated. Organisations have to limit their campaign expenditure as if there might be an election at any time – lest a snap election be called and they find they have exceeded their expenditure limits before the election was even called.

If S25 were replaced with the transparency recommendation on ‘targeted spend’ (Recommendation 21) made by the Committee on Standards in Public Life in their recent report, then any additional administrative burden would fall on the political party who is authorising ‘targeted spend’, rather than the organisation that had been authorised to incur it. This would be a much better balance and would increase transparency without adding to the administrative burden of non-party campaigners.

5. This is illogical – non-party campaigners and political parties are not the same, and cannot be regulated together

We opposed, and continue to oppose, the joint campaigning rules that were brought in as part of the Lobbying, Non-party Campaigning and Trade Union Administration Act in 2014. We believe that legitimate, independent non-party campaigners should be able to campaign together and to pool their campaign expenditure entitlement, because we believe in free speech and freedom of association. Rogue front organisations that are created in order to artificially increase expenditure limits should be dealt with in other ways.

However, regulating non-party campaigners and political parties in the same way is simply illogical. Political Parties not only have vastly superior specialist Governance teams, they also have an expenditure limit that dwarfs that of non-party campaigners. Political parties can spend £19.5 million on regulated activity in the year leading up to an election. Non-party campaigners that are registered with the Commission can spend £390,000 in the same time period. It is completely illogical, and unfair, to expect an organisation that can be out-spent by a political party 50 times over to have equal responsibility for accounting for expenditure that has been deemed to have been a joint campaign.

Conclusion

The Elections Bill contains yet more attacks on already highly regulated trade unions, which do anything but level the playing field.

The changes in S25 are an attack on freedom of speech and association, appear one-sided and targeted, will tie non-party organisations up in red tape and, critically, are completely unnecessary. They are compounded by the unprecedented powers given to the Secretary of State in S12, and S23 – with the Government giving itself powers to remove the right of entire categories of organisations from campaigning publicly at election time.

We strongly believe that S12, 23, 24 and 25 should be removed from the Elections Bill.

We would conclude by quoting the Committee on Standards in Public Life, in their 2021 report:

“When considering calls for greater regulation of non-party campaigning it is important to be mindful of the role of non-party campaigning in the broader ecosystem of democracy and pre-election debate. As the Committee made clear when it first concluded that spending limits for non-party campaigners would be necessary, there is nothing wrong with individuals and organisations sending out explicitly political messages in advance of and during election campaigns – “On the contrary, a free society demands that they should be able to do so, indeed that they should be encouraged to do so.” The right to campaign is also protected by law through the right to freedom of expression. This should act as a check on ensuring that regulation strikes the right balance.”

Committee on Standards in Public Life (2021), Regulating Election Finance, page 95

About National TULO

National TULO is the National Trade Union and Labour Party Liaison Organisation. We represent the 12 trade unions that are affiliated to the UK Labour Party.

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