

Elections Bill Committee

Written evidence submitted on behalf of Bond, 21 October 2021

About Bond

1. Bond is the UK network for organisations working in international development, humanitarian assistance and peacebuilding. We have over 400 members ranging from large international non-governmental organisations (NGOs) with a worldwide presence, to small specialist agencies who work on a single issue or with a particular community. Campaigning is a core function of many of our member organisations as it enables them to address the root causes of problems and contribute to social change. At Bond we work with our members to support them to understand the legal and policy frameworks that regulate campaigning and to improve the political and operating environment for campaigners in the UK and globally.

Summary

2. This submission focuses primarily on the proposed third-party campaigning rules contained in the Elections Bill and their impact on issue-based campaigners, a subset of third-party campaigners, including registered charities and other non-partisan campaigning groups whose campaigning is focused on particular issues e.g. international development or climate change. We are concerned that the proposals in the Elections Bill (specifically Part 4 Clauses 22-24 and Part 6) will make an already complicated area of regulation even more confusing and burdensome for issue-based campaigners. The proposals may result in organisations either inadvertently falling foul of the rules or stepping a long way back from any activity that could even potentially incur controlled expenditure. This will further dampen democratic debate and make it harder for registered charities and other issue-based campaigns to amplify the concerns and experiences of the marginalised people that they work with and support informed public conversations on important social and environmental issues.
3. **We urge the Government to: (a) rethink Part 4 Clause 23 so that future governments cannot remove registered charities from the list of eligible third-party campaigners, (b) amend part 4 Clause 24 so that registered charities and Community Interest Companies (CICs) are exempt from the new 'lower-tier' registration requirements, and (c) simplify the new rules on digital imprints in Part 6 so that they are easier for campaigners to understand. More fundamentally, this bill is a missed opportunity to improve the existing regulatory framework for third-party campaigners by making much needed changes to (a) the purpose test, (b) the joint campaigning rules, and (c) changing the retrospective application of the rules and/or reducing the length of regulated period. We ask that the government amend the bill so that it addresses some of these important issues.**

Concerns about the existing regulatory framework for third-party campaigners

4. Many Bond members will engage in campaigning in the 12 months prior to an election. The vast majority of this campaigning will not be focused on elections. For those organisations that do engage in electoral campaigning, they are mainly seeking to raise greater awareness of the issues that they work on or persuade political parties to adopt certain policies or positions in their manifestos, such as committing to spend 0.7% of GNI on Official Development Assistance. As issue-based campaigners, they are rarely seeking to influence voter choice at elections. Yet under electoral law, even activity that is not intended to influence voters could still be regulated.
5. The current rules regulating third-party expenditure at elections are complicated and burdensome and the proposals contained in the Elections Bill will make this situation worse. Under the current rules issue-based campaigners must register with the Electoral Commission if they spend £20,000 on controlled expenditure in England or £10,000 in Scotland, Wales or Northern Ireland in the 12 months ahead of a general election and 4 months ahead of elections to the devolved assemblies. This is known as the regulated period and it is applied retrospectively in the event of a snap election, as happened in 2017 and 2019. This will also be the case at all future elections following the repeal of the Fixed Term Parliaments Act.
6. The area of the current framework that causes the most confusion for issue-based campaigners is the purpose test. This test is designed to help campaigners decide whether an activity incurs controlled expenditure. However, the wording is vague and confusing, making it difficult to establish if an activity is regulated with any certainty. According to the Electoral Commission, an activity passes the purpose test if it can be “reasonably regarded as intended to influence voters to vote for or against” a political party, a candidate or political parties or candidates “who support or do not support particular policies”. This is hugely confusing and ambiguous for campaigners as your actual intention is somewhat irrelevant; what matters is how your activity could be perceived by someone else. This means that even if you are clear that your activity is *not* intended to influence voters, it could still count as regulated activity. To be on the safe side, many issue-based campaigners will count costs towards activities that could potentially be regulated as well as those that definitely are regulated towards their spending totals, and/or they will refrain from undertaking activities that could fall into either of these categories.
7. The joint campaigning rules are another area of concern with the current framework. Joint campaigning is loosely and broadly defined and is deemed to have occurred where an activity can “reasonably be regarded as intended to achieve a common purpose”. This could capture a considerable amount of activity undertaken by issue-based campaigners, who often work through coalitions, networks and partnerships to deliver their social change objectives. If an activity is considered to be joint campaigning and incurs controlled expenditure, then all parties have to record the entire cost of the activity towards their individual spending totals, no matter how much each organisation contributed. This discourages many organisations from

undertaking any activity that could be considered to be joint campaigning, leading them to withdraw from existing coalitions and partnerships for the duration of the regulated period. This is especially true for small organisations who do not have the capacity to cope with the regulatory burden associated with registration and large multi-mandate organisations who are members of multiple coalitions working on different issues.

8. As a result, the existing rules already discourage many registered charities and issue-based campaigners from speaking out ahead of elections and we are concerned that the Elections Bill will exacerbate this. Evidence collected by the Sheila McKechnie Foundation shows that to avoid falling foul of the rules inadvertently, issue-based campaigners will step a long way back from any activity that could even potentially incur controlled expenditure. Ultimately, this results in the “withdrawal from our public and political debate of organisations that work with and for ordinary people, often the most marginalised or vulnerable”¹. Issue-based campaigners who register with the Electoral Commission find it extremely burdensome and have to spend considerable time and resources on compliance. The regulatory burden associated with registration, along with a concern about appearing to be more political than they are, puts many issue-based campaigners off undertaking activities that could require them to register as a third-party campaigner.
9. Consequently, we believe that the current legislative framework governing elections does not get the balance right between supporting transparency and ensuring vibrant and inclusive public debate at elections. Following the 2015 General Election, the Conservative Peer Lord Hodgson of Astley Abbotts conducted a government commissioned review of the third-party campaigning rules and concluded that several changes needed to be made to get this balance right. This included changing the purpose test, so that it focuses on the actual intent of campaigners rather than how their intention could potentially be perceived by someone else and reducing the regulated period from 12 to 4 months. Several parliamentary committees have subsequently endorsed Lord Hodgson’s recommendations and called on the Government to introduce much needed reforms to the third-party campaigning rules, including the House of Lords Committee on Charities 2017 report *Stronger Charities for a Stronger Society* and The House of Lords Select Committee on Citizenship and Civic Engagement 2018 report *The Ties That Bind: Citizenship and Civic Engagement in the 21st Century*. The Committee of Standards in Public Life report on *Regulating Election Finance* published on 2 July 2021 also proposes a number of changes to the third-party campaigning rules which we would support.
10. **The Elections Bill does not make any changes to parts of the third-party campaigning rules that are of most concern to issue-based campaigners. As such we believe it is a missed opportunity to make much needed, broader changes that would encourage greater and more vibrant public debate at elections while supporting greater transparency. We ask that the government amend the bill so that it addresses these important issues, specifically the purpose test, the joint campaigning rules and the length and retrospective application of the regulated period.**

Proposed changes to the third-party campaigning rules in the Elections Bill

11. Overall, the changes to the third-party campaigning rules set out in the Elections Bill will serve to make an already complex area of law much more complicated. They will also give future governments extremely broad powers to determine who can (and by implication who cannot) engage in public debate ahead of elections. Together, they will have a serious impact on issue-based campaigners, and we are concerned that they will discourage many more organisations from speaking up on behalf of the people and issues they care about, not just ahead of elections but all year round. We are most concerned about Part 4 Clauses 22, 23 and 24.
12. Part 4 Clause 22 prevents any third-party from incurring controlled expenditure during a regulated period unless it is able to register with the Electoral Commission, while Part 4 Clause 23 gives the Secretary of State the power to add, remove or otherwise amend the list of eligible third-party campaigners by statutory instrument. Together, these changes would give future governments the power to prevent entire categories of third-party campaigners from incurring any controlled expenditure during a regulated period by removing them from the list of eligible third parties. Were a future government to remove registered charities from the list of eligible third-party campaigners, for example, this would have a hugely detrimental impact on these organisations and the people they work with. It would effectively prevent them from being able to undertake any public campaigning, given (a) the confusing nature of the rules which make it difficult to determine with certainty whether an activity is regulated or not and (b) the fact that the 12 month regulated period is applied retrospectively once an election is called and that this could happen at any time following the repeal of the Fixed Term Parliaments Act. **To prevent this, the Government must rethink Part 4 Clause 23 and either remove it from the Bill or amend it so that its scope is much narrower, for example only giving future governments the power to add new corporate forms or to remove outdated corporate forms that are no longer used anymore if this is the intended purpose of the new clause.**
13. Part 4, Clause 24 introduces a new 'lower-tier', which would mean third parties who spend just £10,000 on regulated activity in the 12 months prior to an election must register with the Electoral Commission as a third-party campaigner. While 'lower-tier' campaigners will not have to complete a full spending return, they will have to meet certain transparency and reporting requirements (which are unspecified in the legislation, but we understand will include nominating a responsible person who must monitor and authorise all controlled expenditure). These proposals make an already complicated area of regulation even more complex and difficult to understand. We anticipate that it would be relatively easy for many issue-based campaigners to meet the threshold for registration given (a) it applies over a 12 month period, (b) it includes staff time and any controlled expenditure incurred by an organisation or any of their partners under the joint campaigning rules, and (c) the vague and confusing wording of the purpose test effectively requires campaigners, in practice, to count any spend they believe could even potentially be regulated towards their spending total. Consequently, we believe there is a

very real risk that plans to introduce a new 'lower tier' registration for third-party campaigners will have a disproportionate impact on small charities and CICs, further discouraging them from campaigning in the 12 months leading up to an election. This will weaken public debate and hurt the communities that charities work with.

14. In September and October 2021, Bond, the Association of Chief Executives of Voluntary Organisations (ACEVO), the Foundation for Social Improvement (FSI), the National Council for Voluntary Organisations (NCVO), the Small Charities Coalition (SCC) and the Sheila McKechnie Foundation (SMK) conducted a survey to better understand how the proposed 'lower tier' would impact campaigners. The survey found that one in three (33%) campaigners who responded said the new 'lower tier' would deter them from campaigning, or cause them to change the way they campaign, and a further 29% said the proposals would "possibly" stop them from campaigning. Only a fifth (21%) of respondents said it would *not* deter them. Respondents to the survey said:

- a. "We would have to implement a procedure to train staff, plan activity, assess activity and record activity (regardless of reporting requirements) to ensure adherence. This is an additional burden that may deter us." (Large international development charity)
- b. "Additional regulation on a small charity will impact on our ability to carry out our normal work activities. The prospect of providing additional records and information simply for doing our work on behalf of disadvantaged groups and communities is something we'd struggle to comply with and could therefore stop any work that could be seen as campaigning." (Small children and young people charity)

15. The survey also highlighted the impact that the changes will have on joint campaigning, which is broadly defined as any activity that can "reasonably be regarded as intended to achieve a common purpose" and captures a considerable amount of activity undertaken by charities, who often work through coalitions, networks and partnerships to deliver change. If a joint campaign spends money on a regulated activity, then all parties involved have to record the entire cost of that activity towards their individual spending totals, regardless of how much each organisation contributed. This already discourages many organisations from taking part in activities that could be defined as joint campaigning, leading them to withdraw from existing coalitions and partnerships throughout the regulated period. This is true for both small organisations, who do not have the capacity to cope with the regulatory burden associated with registration, and large multi-mandate organisations, who are members of multiple coalitions working on different issues.

16. We are concerned that the new 'lower tier' will exacerbate this trend. Findings from our recent survey support this, where almost half (46%) of campaigners said the new 'lower tier' would deter them from collaborating with other organisations, a further one in four (25%) campaigners said the changes could "possibly" deter them from campaigning with others and 23% said it would *not* deter them from working with other organisations. Respondents said they would

need to carefully think through collaborations, and many noted that they would either avoid or withdraw from coalition work if it was likely to push them into the new 'lower tier'. One respondent said:

- a. "The joint campaigning rule is the one that makes me feel sick with worry. Funders are always saying they want us to collaborate more but I just don't have the resources to get into this level of reporting." (Small environmental organisation)

17. **To mitigate this, we urge the government to exempt registered charities and CICs from Part 4 Clause 24 of the Elections Bill.** Registered charities and CICs exist solely for public or community benefit, and so should be exempt as a means of ensuring that civil society organisations are not deterred from engaging in public debate. An exemption would enable these organisations to continue campaigning while ensuring that unscrupulous actors are prevented from avoiding spending limits. We agree that registered charities and CICs should not be automatically exempt from all campaigning regulations. However, as we understand it, this proposal is specifically about increasing transparency with regards to an organisation's board members and key funders. Registered charities and CICs are subject to stringent transparency and reporting requirements and must already, by law, publish their accounts and identify their trustees, or in the case of CICs, their directors. Setting up a registered charity or CIC and registering with the appropriate authorities also takes a considerable amount of time and effort, and the Charity Commission will not register organisations that exist solely for political purposes. Therefore, we believe that it is highly unlikely that those seeking to exert undue influence at elections would pursue this approach as a means of avoiding regulation.

Other parts of the Elections Bill that will impact third-party campaigners

18. We are also concerned about Part 3 Clauses 12 and 13 and the impact that these provisions could have on the independence of the Electoral Commission. The Electoral Commission provides important advice and guidance to third-party campaigners and it is vital that it is able to do this without political interference. Bond worked with the Electoral Commission on the latest guidance for issue-based campaigners published in 2019. This was much clearer than the previous guidance and the results of the 2019 Campaigner Survey published in January 2020 by the Sheila McKechnie Foundation showed that it had a positive impact on the operating environment for campaigners.
19. We welcome the introduction of digital imprints as a measure to increase transparency at elections. However, the proposals set out in the Elections Bill (Part 6 Clauses 35 - 48) are extremely complicated and we are concerned that issue-based campaigners could inadvertently fall foul of the new rules. They establish two separate regulatory regimes for paid for digital material and unpaid for digital material, in addition to the existing regime for paper materials and a separate regime covering Scotland. Each of these regimes each use different purpose tests, which will be very confusing for issue-based campaigners. It is also not clear whether staff

time counts towards determining whether material falls into the paid for category. Issue-based campaigners rarely spend money on 'paid for' material beyond staff costs, so if this were to be included, it would significantly increase the volume of 'paid for' material published by issue-based campaigners. **We urge the government to clarify and simplify these rules so that they are easier for issue-based campaigners to understand.**

20. While other aspects of the bill such as voter ID are unlikely to affect Bond's members who primarily work with poor and vulnerable communities in Africa, Asia and Latin America, we share the concerns of other civil society organisations about their impact on marginalised communities in the UK.