

Summary of evidence

- Analysis of the results of the third party campaigning surveys
- Summary of the consultation evidence received
- Third party expenditure at previous General Elections

Analysis of the results of the third party campaigning surveys

General background

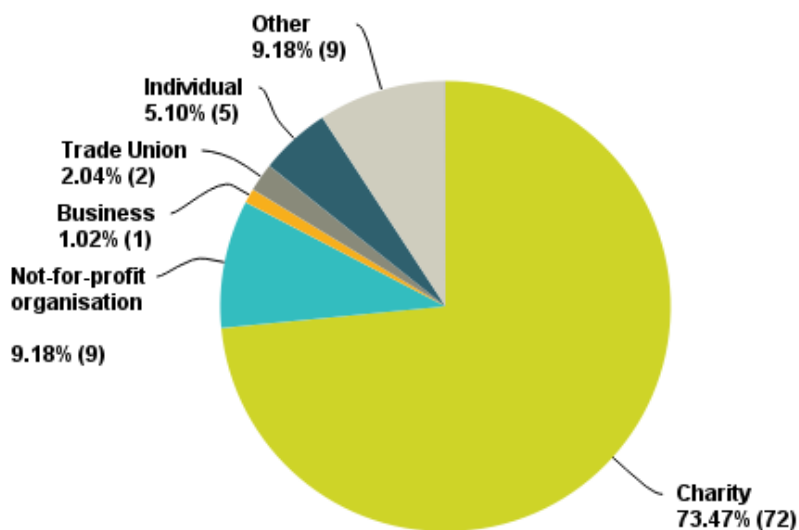
1. While 102 organisations undertook the survey for third parties, 15 people undertook the survey for candidates, and 49 the one for returning officers, only around half completed it. This seems to be due to the varying degree of knowledge organisations had about the subject.

Demographics

2. The majority of the third parties who completed the survey were charities. The organisations who described themselves as other include a faith body, local authority, a think-tank, a charity which is also a company, a political party and an organisation connected to the Conservative party. The organisation which described itself as a business did not complete the survey.
3. The majority of third parties are either based in England (42%) or are UK wide.

Q2 What is the nature of your organisation?

Answered: 98 Skipped: 3



4. Only 43% (three respondents) of candidates and 10% of returning officers (two respondents) believed third parties had been active in their constituencies. The third parties identified were 38 Degrees, a single issue campaign group and not-for-profit organisations.
5. Most returning officers and candidates thought that either there had been no change in the numbers of third parties operating or that they did not know whether there had been more or fewer third parties operating. However, returning officers who did think there was a difference thought that there were fewer organisations operating, particularly charities or not-for-profits; whereas candidates who thought there had been a change thought there were more charities and not-for-profits operating.

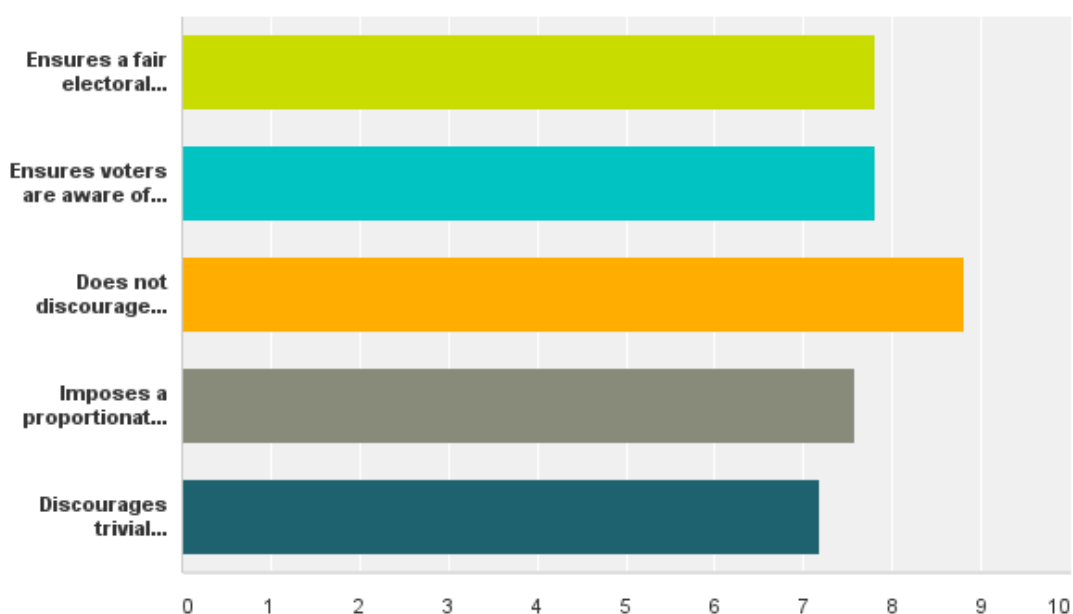
Awareness of the regulatory landscape

6. The vast majority of charities were aware of the role of the charities regulators (94%) in respect to political activity and their guidance (91%). The guidance of the charities regulators was generally seen to be helpful or satisfactory, though some respondents found the England and Wales or Scottish regulators guidance unhelpful. However, of those that answered the question 61% did not find the interaction between the differing charities regulators guidance helpful.
7. While the majority of respondents were clear or very clear (61%) on how their obligations under charity law interacts with their obligations under electoral law, 20% were either unclear or very unclear, with 19% neither clear nor unclear. The comments highlight the scope for differing interpretations of the guidance.
8. There was a high degree of awareness of the role of the Electoral Commission with 89% of respondents aware of it and 83% aware of their guidance. The views on their guidance were very mixed, with 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, but the advice in general from the Electoral Commission on spending limits, the process for registration, and the regulatory period being seen by the majority of respondents as helpful. In the comments section several respondents noted the length and number of documents in the guidance and asked for greater clarity. There was a view expressed by many that the Electoral Commission was interpreting a law which was, in the view of the third parties, confusing. However, there were positive comments about the direct interactions organisations had with the Electoral Commission when dealing with their specific queries.

Principles of regulation

Q12 On a scale of 1-10 (1= low, 10= high) how important do you think the following principles are in relation to the regulation of third party campaigning in the run up to an election?

Answered: 57 Skipped: 43



9. There was a high degree of buy-in to all the principles mentioned for regulation from all groups (third parties, candidates and returning officers). However, third parties in particular thought other principles should be included, such as exemption for charities, freedom of expression, regulation of wealthy business individuals, the discrepancy regarding regulation of the media and the prevention of regulatory overlap and double reporting.

Previous elections

10. Only two respondents said they had registered at previous elections. One not-for-profit organisation (Hope not Hate) and a charity (Salvation Army), who both also registered at this election. There were a variety of reasons why organisations didn't register last time including not carrying out regulated activity, not meeting the purpose test, and not spending enough money.

However, at least eight organisations were unaware of the requirement to register. Four respondents took legal advice before deciding not to register at previous elections and nine consulted the Electoral Commission.

The 2015 General Election

11. Of the respondents 11 organisations registered for the 2015 election, five of which were charities, two not-for-profit organisations and four described themselves as 'other': these were a faith body, a campaign group, the BMA and a group linked to the Conservative Party. Respondents were generally positive about the guidance of the Charity Commission, while their views on the Electoral Commission's guidance were mixed, generally positive about the interactions with them, but 80% found their guidance on expenditure reporting to be either unhelpful or very unhelpful and the guidance on donation reporting was seen as unhelpful or very unhelpful by nearly half of respondents (45%). Those who didn't register were generally more negative about the Electoral Commission, with several areas having a majority of respondents giving negative responses.

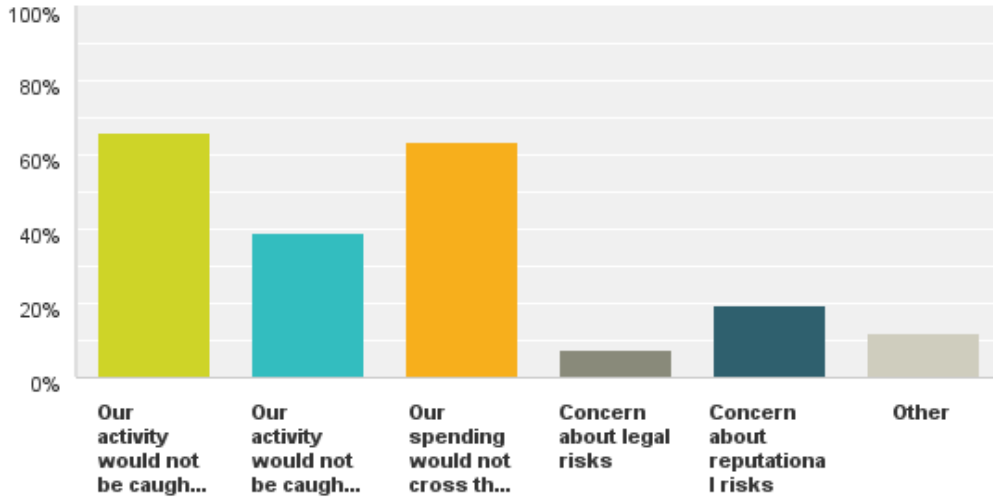
The process of registration

12. Of the 11 respondents that registered at the 2015 General Election five took legal advice before registering and eight consulted the Electoral Commission; whereas of those that did not register eight organisations took legal advice before deciding not to register and eleven consulted the Electoral Commission. The reasons organisations did not register were primarily down to not meeting the purpose test (66% of respondents), the spending threshold (63% of respondents), or the public test (39% of respondents). However, there was some concern about the reputational risk of registration with 20% of organisations citing this as factor.

13. While the majority of organisations found the registration process ok, two organisations found it difficult.

Q34 Why have you not registered? (You can select more than one answer)

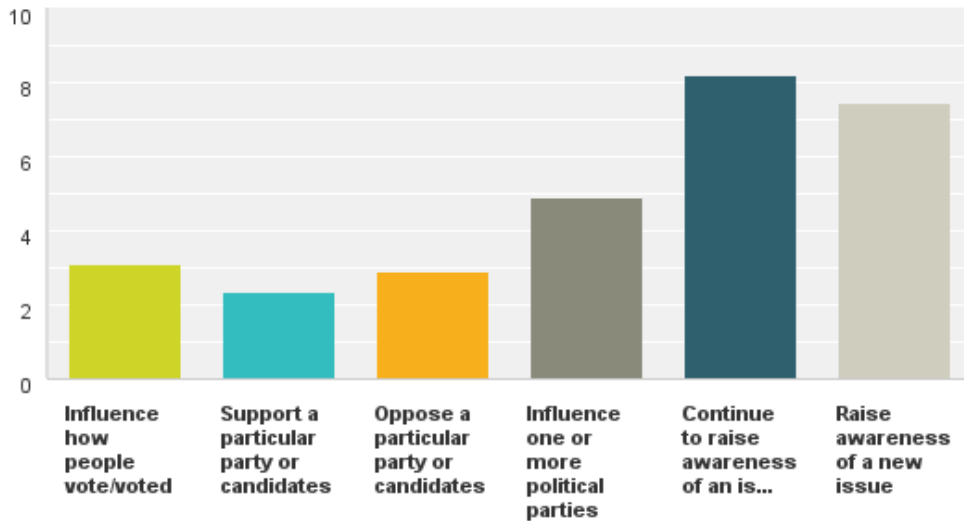
Answered: 41 Skipped: 0



Purpose of campaigns

Q35 On a scale of 1-10 (1= low, 10= high) how far has your campaigning during this election period been intended to:

Answered: 11 Skipped: 0



14. Third parties described the primary purpose of their campaigns as seeking to raise awareness of issues and influence one or more of the particular political

parties. However, the candidates who responded thought that the third parties they were aware of were trying to influence how people voted and/or oppose particular candidates more than they were trying to raise awareness. Only one returning officer responded to this question and they thought that third parties were only trying to raise awareness of issues.

15. 93% of respondents did not campaign in support of a candidate or party in the 2015 General Election. However, one organisation campaigned against a party (UKIP), one for a party (the Conservatives) and one for specific candidates. No respondents described themselves as being involved in targeted campaigning.

National / local differences

16. None of the organisations who registered described themselves as acting at a local level, with 72% working UK-wide. Overall those that responded to the survey were engaged in a mix of local and national campaigns, with 45% having local engagement and 61% a UK wide campaign. However, very few campaigns were aimed specifically at the devolved areas (10% in Wales and Scotland, 6% in Northern Ireland, compared to 35% in England). Only one candidate and one returning officer answered the question on where spending had taken place; the returning officer thought that all spending was on a national level, whereas the candidate thought it was split equally between constituency and a national basis. However, candidates did not always feel able to understand when a campaign was national or local, or the interaction between national and local campaigns.

Methods of campaigning

17. Overall most organisations did not use leaflets or canvassing/market research (though those that used canvassing/market research found it effective). Press conferences were used by 34% of respondents and of those organisations 64% found them effective or very effective. No-one paid for transportation, but 34% of respondents did hold public rallies of which 73% found them effective or very effective.
18. Emails and Facebook were used by 48% of respondents, 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 didn't find it effective.

19. However, from a candidate's perspective they were more aware of the traditional methods of campaigning used by third parties including the use of leaflets, canvassing and press conferences. While two out of the three candidates who answered the question were aware of email campaigns, only one was aware of the use of Twitter and Facebook campaigns.

Spending

20. Of those that registered three organisations expected to spend under £10k (with 72% of respondents overall expecting to spend less than £10K). However, of those that didn't register two organisations said they would spend over £100K, both of whom were charities who claimed they did not need to register because they did not think they were seeking to influence the electoral process and in the case of the other organisation did not meet the purpose test or think they met the spending thresholds. Yet while most of their campaign was intended to raise awareness of issues, they did state that to some degree (30%) they intended to influence the way people voted.
21. While one candidate thought third parties were spending thousands of pounds, the two others who answered the question thought that third parties were spending £500-1000. Candidates generally thought that third parties were spending the same or less than in 2010, whereas returning officers generally felt they couldn't comment (78%), those that did comment thought that it was the same or more than in 2010. No candidates or returning officers thought that third parties were spending more than the spending limits.
22. None of the respondents' spending was confined to just one constituency and 83% of spending took place on a national basis.
23. The rules on spending received mixed responses with people finding the rules at a national level easier to understand, with only 28% finding them difficult or very difficult, compared to 41% of respondents who found the spending limits at a constituency level difficult or very difficult to understand. In addition, 67% thought it was difficult or very difficult to determine how much money was spent in different constituencies and 55% thought it was difficult or very difficult to determine overall how much was spent by the organisation.
24. Staff costs and printed materials represented the greatest expense for organisations.

Joint campaigning

25. 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. There were a number of comments stating how confusing people found the regulations.

Donations

26. While the regulation of donations were not seen as confusing as the rules on joint campaigning, 48% of respondents found the rules difficult or very difficult to understand and 23% of respondents found the reporting in the relevant timescales difficult or very difficult.

The effect of the legislation

27. It was a mixed picture in terms of how far the existence of the regulation affected people's behaviour. Of those that registered the median average perception was 5.5 out of 10, with some organisations saying it didn't affect them at all and other claiming it had a massive effect.

28. Overall 34% of respondents said they would have campaigned differently if the legislation had not been in place, but only 10% of respondents said they would have spent differently. Fifty per cent of respondents said they had incurred costs complying with the regulatory regime, with staff costs being the most significant expense.

29. Neither the candidates nor the returning officers thought that the campaigns of third parties had had a significant effect at a local level and only one candidate and one returning officer thought the campaigns had had a significant effect at a national level.

Summary of the consultation evidence received

Who should be regulated?

1. Respondents to the consultation generally agreed that the rules should be blind as to the type of organisation undertaking the activity, and should focus on the intention with which the money is spent, and how much is spent.
2. As to which organisations should be regulated, it was thought that business was not sufficiently regulated (even though they are covered by the regulations) and that in particular newspapers and the media more widely should be regulated in some way.
3. Some respondents stated that charities should not be regulated by such regulation, either through an assertion that their activity doesn't meet the current definitions, or by saying that the regulation of their activities should take place by the charities' regulators.

What should be regulated?

4. 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 takes place during the regulated period. One respondent argued that electoral campaigning is a subset of political campaigning, which is itself a subset of advocacy. Others stated that such a distinction was not possible, or that the three were essentially the same, the difference being when, where and how the activity took place, although another respondent argued that the activity could not be defined solely by the period in which it took place. Respondents broadly agreed that if there is to be regulation then it should focus on 'electoral campaigning', in particular the use of money to undertake such activity.
5. Alternative distinctions provided included distinguishing between 'public campaigning', meaning campaigning on policy issues, whether at an election or not, which should not be regulated, and 'electoral/political campaigning', meaning activity designed to encourage support for one party or candidate, which should be regulated.

6. Others drew a distinction between ‘political’ and ‘party political’ campaigning, in line with the distinction made in the Charity Commission’s guidance CC9. Some of the respondents thought that only the latter should be regulated, and charities should not, therefore, be undertaking activity that would fall to be regulated. It was also suggested that issue-based campaigning would be very unlikely to influence a voter’s choices, and should therefore be excluded. Another respondent commented that charities should only be allowed to campaign pursuant to their charitable objectives, and that a charity should not be party political, but should be allowed to highlight the voting record of the incumbent MP, where the incumbent is seeking to defend this by standing for re-election.
7. In addition, the difference between ‘campaigning for political change’ and ‘party political campaigning’ was mentioned, as was the need to distinguish between the use of money with the intention of influencing electoral outcomes, and other types of campaigning which do not have this intention or which do not rely on a significant level of financial influence.

Statutory test of what should be regulated

8. Respondents to the consultation paper were asked whether the test for third parties is the right one, whether it could be improved, or whether it would be better to use a test of ‘actual intention’. Opinion was divided among respondents as to whether the ‘reasonably regarded’ test or an ‘actual intention’ test was preferable.
9. The ‘reasonably regarded’ test was seen by some as inherently uncertain, and dependent on a person’s judgement. Such uncertainty means that organisations that would have no intention to influence voter choices still feel they need to be circumspect regarding their activities as they could be seen as an outside observer as designed to influence the election.
10. In addition, if a political party takes up the issue the organisation has been campaigning on, it may unexpectedly become involved in the election campaign, and undertaking activity which should be regulated, without intending to do this. Until such time as a test case is brought there will continue to be a lack of certainty, although the outcome of such a case may not necessarily provide clarity. The reputational damage involved in such a case, or even the perceived reputational damage in registering with the Electoral Commission, could be significant. The lack of certainty as to what counts may also allow for malicious complaints designed to stop an organisation campaigning, or to damage the organisation’s reputation.

11. One submission recommended that guidance be developed to make clear that a charity, when acting within CC9, has not broken the law if it is successful in influencing the policy positions of one or more political parties, and is free to continue campaigning on the issue in order to influence other political parties.
12. Comments received on the 'actual intention' test noted the precedent in the RPA, where the definition reads expenditure that is incurred "with a view to promoting or procuring the election of a candidate". The test is seen as clearer, providing more certainty, and is easier to apply for organisations without creating unnecessary burden. Unintended consequences, such as when a political party backs on to a charity's campaigning area, would be avoided.
13. Such a test was seen as lessening the 'chilling effect' while still enabling regulators to assess the legitimacy of the campaigning organization's judgement.
14. A test of actual intention would also allow the organisation to demonstrate that it wasn't their intention to influence the election. There would however potentially be a loophole for organisation to campaign whilst falsely stating what their intention was, and it may be difficult to prove the actual intention in such cases. Where an organisation was seeking to be disingenuous about the nature of its activities, it would in the first place be up to the regulator to assess what the actual intention was.
15. One respondent recommended that the legislation relating to third party campaigning should be consolidated into a single statutory regime, and that this should be based on actual intention.

Electoral Commission's public test

16. Some respondents to the consultation saw the 'public test' as fairly clear to apply, although others would welcome more clarity about who should be included as a member or a committed supporter, and about the changing nature of campaigning, particularly online and social media campaigning, and issue-based campaigning.
17. 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 ways of contacting people through online and social media, and the different nature of organisations was highlighted as complicating the issue. In addition, there is

a particular difficulty for churches and other faith organisations seeking to define their members.

18. One respondent stated that the only sensible position is maintained is to allow organisations themselves to define these terms. Others supported the view that individuals should be able to self-certify, which may make things easier for faith organisations, and that the definition should be extended to include active supporters, which could include people making donations, or offering time as a volunteer, while excluding 'likes' on Facebook and 'follow' on twitter.
19. Another respondent pointed out that as the regulation is based on expenditure limits, the low cost of disseminating information through social media means that this may not be a major issue.
20. The submission from Bates Wells Braithwaite drew a parallel with Part VII of PPERA on referendums, which contains an express provision stating that "unsolicited material addressed to electors" will constitute qualifying expenditure. Adopting such a measure for third parties, whether by amending the legislation or extending the definition in the guidance, would allow for a voter to consent to being provided with such information, and that such information would therefore be solicited, and not count as controlled expenditure.

Regulated period

21. The consultation paper asked what the length of the regulated period for third parties should be. The majority of respondents saw the present regulated period of 365 days as too long. It is seen as unnecessarily restrictive, and contributing to eroding the voice of civil society. It was stated 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 period, the longer the organisation must spend time considering whether their campaigning activities could be within the scope of the regulation.
22. 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, which is 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 a Parliament. Another way of expressing this is that, with the devolved legislature elections in 2016, the possibility of a referendum on membership of the EU in 2017, the European parliamentary elections in 2019 and the UK parliamentary elections in 2020, only 2018 would be a full year without campaigning restrictions.

23. There is a further complication for those organisations that work across the UK where some parts of the organisation work in the devolved legislatures, where the same activity happening at the same time may fall to be regulated in Scotland, Wales and Northern Ireland, but not in England. However, with the proposed amendment to the statutory definition this is less likely to be an issue.
24. Respondents were divided as to what the length of the regulated period should be, with a number suggesting that it should be the same as for the devolved legislature and European parliamentary elections, that is, four months. Others suggested it should be tied to the length of the campaign for candidates; the long campaign starts from the 55th month of that Parliament, which is likely to be just over four months before the election. Other respondents suggested that the regulated period should be post-dissolution of Parliament, in the period commonly known as 'purdah' which typically lasts for about five or six weeks, or possibly twice the length of this period.
25. Concern was also expressed by respondents to the consultation about how the regulation of third party campaigning would function were an early election to be called, and whether activities could fall to be regulated retrospectively as they could be deemed as being 'reasonably regarded' as influencing voters' intentions. With the recommended change to the definition of what should be regulated there is less of a risk, as the campaign activity would have to be actually intended to influence voters which before an election is actually called is unlikely, albeit not impossible.

Types of electoral campaigning

26. The consultation paper asked whether the list of campaign activity was the right one. In the responses to our consultation opinion was divided as to whether the list of campaigning activities was the right one; some were in favour, 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.

27. The inclusion of market research in the list of campaign activities was questioned by some respondents, as it was not seen as being clear how such activity constitutes political campaigning, or why it should count as controlled expenditure when market research is important for a charity to operate effectively. In addition, the wording for third parties, “seeking views or information from, members of the public”, is seen as more restrictive than that for political parties “conducted for the purpose of ascertaining polling intentions”.
28. A further issue is the use of significant resources to build up a database of people that could be contacted in the event of a campaign, be that for electoral campaigning, fundraising, or any other such activity. The use of increasingly sophisticated campaigning and fundraising techniques, such as data mining or targeting people through advertisements on Facebook, can take place ahead of the regulated period, and not be solely used for electoral campaigning, raising questions as to how the use of such expenditure for electoral campaigning can be accurately regulated.
29. In addition, the point was made to us that modern campaigning techniques use a variety of methods to get across their message, and that there is sometimes an artificial divide between the different activities undertaken in electoral campaigning whereby some do not fall to be regulated and some do. For example, a letter to a newspaper, which could be used to launch a campaign, would not be included whereas a press conference would.
30. The distinction between blogs, which fall to be regulated, and opinion pieces in the media, which are not regulated, both of which are hosted online, was called into question by respondents. One charity thought that, as long the blogging content abided by the framework of charity regulation and the Charity Commission’s guidance CC9, it seemed strange that they might not be able to use the blog during a regulated period. More importantly in their view, the distinction between online-only newspapers and newspapers with an online presence is not clear, and as such it was recommended that the definition of newspaper or periodical (Schedule 8A to PPERA, paragraph 2(1)(a)(i), which provides an exemption for publication in a newspaper or periodical, excluding advertisements) should be extended to reflect this.

Staff costs

31. In responses to 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 referendums; and that including staff costs requires considerable internal

process and procedures, and greatly adds 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.

Increased transparency pre-election

32. Respondents to the consultation paper noted that the transparency regarding what was spent and where it was spent comes after the election, upon the publication of spending returns, which have to be in three or six months after the date of poll. It was also pointed out that there is not always a correlation between expenditure and the effectiveness of a campaign, so the reported spending figures cannot be seen as showing which third parties were most influential, or even most active, simply which spent the most.
33. Providing 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' was seen by a number of respondents as helpful. It could also allow organisations to make it clear that they were conducting an ongoing campaign on an issue, not solely trying to influence the election.
34. However, other respondents were more negative, pointing out that campaigns needed to be flexible and 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 was already 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."

Spending limits

35. 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 'undue' influence would be in this context. 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. 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, the effectiveness of a campaign, the issue, the media profile etc., of which spend was only one factor.

36. Respondents expressed concern that the 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. In addition, the same level of spend may prove significant in one constituency and have no effect in another. Respondents also pointed out the disparity between the spending limits for third parties and the much higher limits for political parties, and also for campaigners in referendums run under Part 7 of PPERA.

37. 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, with little evidence provided, that the limits were too low in Scotland, Wales and Northern Ireland.

Constituency limits

38. 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 focused constituency spending and national spending."

39. The constituency spending threshold of £9,750 was seen by one respondent as being very low when it is taken over a period of year, in particular when compared with a candidate's spending limit of approximately over a period of just under five months. In addition, most third parties are not structured along constituency lines and so faced difficulty in accounting for spend.

Targeted spending

40. Not many respondents to the consultation expressed views on this topic. These provisions seem confusing and it is unclear to some respondents how targeted campaigning is different from ordinary campaign. 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."

Joint campaigning

41. The joint campaigning provisions were seen by the majority of the respondents to our consultation as being unnecessarily complicated, unclear, and formed part of the overall 'chilling effect', restricting campaigning by organisations on important issues. They were one of the most heavily criticised parts of the regulations. 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."
42. Coalition-building was seen as being frustrated by the rules, not least those requiring the lead campaigner to be responsible for the spend of the minor organisations. 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 need to register. The point was made that simply by being engaged in a joint activity would lead a third party having to register even though it had spent little or no money. The joint campaigning rules would require the third party to register and to keep detailed records of their expenditure, including staff time, thus adding a significant bureaucratic burden which would have stretched their practical capacity and capability.
43. 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 on that organisation's management structure, or power to require or compel them to provide accurate and timely information.
44. 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 for example on where organisations work together just for a brief period of time, or when an organisation supports another's campaign.
45. A number of respondents expressed the view that each organisation should be responsible for its own spend and not that of others. One respondent suggested that the requirement to aggregate spending for joint campaigns should be removed, while recommending that if the rules on joint campaigning were to remain in place then the concepts of 'lead' and 'minor' campaigner should also remain. The only positive comment from a respondent was that while the 'lead' and 'minor' campaigner exemption had not been widely used, it was well-intentioned.

Registration and reporting thresholds

Registration with the Electoral Commission

46. 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.
47. Respondents stated that it led a number of organisations to curtail their activities so that they would not be required to register, in particular those organisations such as charities who believed that registering could cause some reputational damage. Increasing the threshold for registration would help convince smaller organisations that they would not be covered, and reduce the regulatory burden on them.
48. One respondent suggested a figure of £50,000 would be appropriate, while others recommended that the definition of regulated activity was more important to get right first, and that the threshold would be dependent on what was caught.
49. There was also 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.

Reporting

50. 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.
51. Those who thought it would reduce the burden said that it could alleviate the need for complicated reporting systems for external spend and staff time, as the reporting would not need to be that detailed for organisations not spending large amounts. This would also benefit those organisations that were not sure if their spend would be considered to be controlled expenditure under the 'reasonably regarded' test, or if they were not sure if they would reach the threshold registration. Only those organisations that were going to spend significant amounts of money would need to keep detailed records.

52. It was pointed out that there already is a distinction in reporting requirements between those organisations that spent £250,000 or more, which have longer to report spending (six months after the election, rather than three for those spending under £250,000), and have to get their submission of accounts audited.
53. There was concern, though, about this making the regulatory system overly complex, and possibly reducing transparency. It was recommended that introducing such a distinction should not be seen as a reason to reduce the initial registration threshold.

Donations

54. 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 and how much, 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.
55. It was also thought the reporting should inform the public about the influence the organisation has, and that at the moment the reporting doesn't do that. The current process relies on self-reporting, which has limitations, and the spending returns come in some time after the election.
56. 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. Most third parties, in particular charities, receive donations which are not ring-fenced to be used on particular issues. The donations may often be small amounts, given anonymously, or from bequests.
57. In addition, registered charities are already required to provide annual accounts to the Charity Commission, and trade unions have to provide detailed accounts as well, as do many companies and others. These are publically available and set out sources of funding and donations.
58. Some saw the rules as not practical, and the guidance not related to actual processes. Another described the rules as "pointless, rather than unworkable."
59. In addition, BWB provided the following comment regarding the Electoral Commission's guidance.

“We believe that the Electoral Commission's guidance is incorrect in law in its suggestion that when a donation is received is immaterial in terms of determining whether or not it is a regulated donation. Section 95 PPERA is clear that the controls under Schedule 11 apply only to donations received by "recognised third parties", meaning third parties which are registered with the Electoral Commission. So, under the statute only donations to registered third parties are capable of being regulated. In our view, this is not just the correct reading of the statute but also the most practical approach to regulation of donations. Third parties should only be obliged to put in place systems to determine when donations are intended to be used for regulated activity by the time they are required to register with the Commission. Otherwise, many organisations may feel obliged to put such systems in place even where there is only a small possibility of them later being required to register with the Commission, creating a disproportionate regulatory burden.”

Role of the regulator

60. 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 at engaging with third parties, including working with organisations to ensure they abide by the Act, rather than taking a view of activities only once they had happened. There were also calls for all of third party campaigning to be consolidated into one piece of legislation for which the Electoral Commission would be responsible. There were also calls for the charities regulators to be responsible for the regulation of charities that registered. The reliance on self-reporting was also questioned.

Guidance

61. A number of respondents to our consultation stressed how helpful the guidance was, including the guidance produced jointly with the charities regulators which was specifically for charities, and emphasised the difficult job that the Electoral Commission had had to do. Others called for the guidance to be clearer, as a lack of clarity was seen as adding to the ‘chilling effect’, and to contain more practical examples of campaigning that would or would not be fall to be regulated.

62. The majority of respondents thought that the Electoral Commission produced too many documents, and that it was difficult to find the required information,

as the documents were repetitive. The information was seen as comprehensive, and perceived as being over-whelming by some due to its sheer volume. It was suggested that a comprehensive document should also be produced containing all the relevant information, possibly together with individual documents on specific areas.

63. One respondent stated that they would welcome a more explicit statement in the guidance that, where an issue that a third party has been campaigning on becomes a major dividing line between political parties, the charity should not come within the scope of the rules provided there is no change in its campaigning activity. Similarly, if the policy issue has always been aligned in the public's view with a particular political party, an explicit statement that this does not by itself bring the rules in play or if the policy issue becomes the object of endorsement or opposition by a particular party or candidate, further clarity of what type and level of 'altering or increasing activity' brings the rules into play would also be helpful, particularly if practical examples could be provided.
64. As to how to make the guidance clearer, the difficulty of the task given the legislation as it stands was acknowledged. More practical examples would be welcomed by some, as would further clarity on joint campaigning. The Electoral Commission's advice line was seen as helpful, albeit with frustration that they were unable to provide certainty on hypothetical examples before the campaigns took place.
65. Others thought that the guidance user-friendly, and stated that, given the complexity of the legislation, it was difficult to improve the guidance. Others would like to see more clarity about the links between the regulation of third parties and charity regulation: the Charity Commission guidance is seen in general as being quite easy to follow. It was also recommended that there be greater clarity in the guidance to assist third party campaigners in making reasonable assessments about compliance, and that the guidance should also focus on clarifying what can be done, rather than talking vague general principles.
66. One respondent recommended that the Electoral Commission invest in staff with experience of campaigning and running charities, and that it allow for longer periods of consultation with campaigners about what guidance would be useful, as well as the guidance itself. In addition, the Electoral Commission should ensure that its guidance is well-publicised, easy to follow, and does not require lawyers to interpret it. It was also recommended that the Electoral Commission communicate more with private sector organisations to ensure that they know that they are covered by the Act.

67. Concern was expressed by one respondent (BWB) that the Electoral Commission chose not to issue guidance in the form of a formal code of practice in respect of the kinds of expenses capable of qualifying as regulated under Schedule 8A, as it is empowered to do under Part 2 of that Schedule. BWB stated that “This deprives organisations of a statutory defence under section 94(4A) of Part VI PPERA, though we recognise that the extent of the additional protection offered by such a defence would be limited in practice by the limited likelihood of the Commission choosing to prosecute organisations under the Act where they have complied with the Commission's non-statutory guidance.”

Third party expenditure at previous General Elections

2001 General Election

<i>Third party</i>	<i>Amount in England</i>	<i>Amount in Scotland</i>	<i>Amount in Wales</i>	<i>Amount in NI</i>	<i>Total amount</i>
Campaign for an Independent Britain	£1,398	£190	£106	£0	£1,694
Charter 88	£180,868	£0	£0	£0	£180,868
Democracy Movement	£103,868	£769	£65	£0	£104,702
Manufacturing, Science & Finance Union	£4,055	£435	£236	£0	£4,726
Tacticalvoter.Net Limited	£3,809	£518	£288	£0	£4,616
British Declaration Of Independence [The]	£18,185	£0	£0	£0	£18,185
Union of Shop, Distributive and Allied Workers (USDAW)	£69,952	£9,271	£5,057	£0	£84,280
UNISON - The Public Service Union	£621,935	£86,412	£47,027	£19,422	£774,796
Yes Campaign Ltd	£185	£0	£0	£0	£185
Total	£1,004,255	£97,595	£52,779	£19,422	£1,174,052

Total expenditure by registered third parties at the 2001 General Election by country

2005 General Election

<i>Third party</i>	<i>Amount in England</i>	<i>Amount in Scotland</i>	<i>Amount in Wales</i>	<i>Amount in NI</i>	<i>Total amount</i>
Unite	£500	£90	£66	£0	£656
British Declaration Of Independence [The]	£12,776	£0	£0	£0	£12,776
Campaign for an Independent Britain	£189	£23	£14	£0	£225
Community	£20,663	£0	£0	£0	£20,663
Conservative Rural Action Group	£550,370	£0	£0	£0	£550,370
Mr Patrick Evershed	£48,457	£0	£0	£0	£48,457
Mr Zaccheus Gilpin	£405	£0	£0	£0	£405
G.M.B.	£53,164	£0	£0	£0	£53,164
Howard's End Ltd	£7,980	£0	£420	£0	£8,400
The League Against Cruel Sports	£17,958	£899	£2,086	£0	£20,943
Muslim Friends Of Labour	£15,444	£4,000	£2,006	£0	£21,450
National Autistic Society [The]	£12,120	£1,650	£915	£414	£15,099
Hope not Hate Ltd	£42,761	£0	£0	£0	£42,761
Society for the Protection of Unborn Children	£2,761	£369	£232	£0	£3,362
TMVO Ltd	£20,953	£3,204	£0	£0	£24,157
Transport and General Workers' Union	£20,128	£0	£0	£0	£20,128
Transport Salaried Staffs' Association	£8,355	£855	£46	£0	£9,256
Uncaged Campaigns Ltd	£9,950	£1,062	£716	£323	£12,051
Union of Shop, Distributive and Allied Workers (USDAW)	£57,858	£7,789	£6,163	£0	£71,811
UNISON	£534,916	£120,244	£24,733	£2,222	£682,115
Unite Against Fascism	£17,628	£1,691	£1,024	£0	£20,343
Vote-OK	£36,207	£0	£0	£0	£36,207
Waging Peace	£26,634	£1,498	£2,208	£0	£30,340
Working Hound Defence Campaign	£470	£0	£0	£0	£470
Total	£1,518,646	£143,374	£40,629	£2,959	£1,705,607

Total expenditure by registered third parties at the 2005 General Election by country

2010 General Election

<i>Third party</i>	<i>Amount in England</i>	<i>Amount in Scotland</i>	<i>Amount in Wales</i>	<i>Amount in NI</i>	<i>Total amount</i>
38 Degrees	£7,748	£671	£420	£168	£9,007
A Minority Pastime Limited	£10,969	£0	£0	£0	£10,969
Mr Patrick Evershed	£14,056	£0	£0	£0	£14,056
IFAW in Action	£169,440	£18,756	£12,716	£5,722	£206,634
Dr Brian Harold May	£151,948	£0	£0	£0	£151,948
National Union of Teachers	£107,629	£0	£14,307	£0	£121,936
Political Animal Lobby Ltd	£149,763	£9,739	£13,041	£0	£172,543
Public and Commercial Services Union	£55,469	£20,699	£5,231	£3,394	£84,794
Hope not Hate Ltd	£310,634	£4,082	£4,515	£0	£319,231
The Campaign to End all Animal Experiments	£4,916	£540	£360	£180	£5,996
The Democratic Reform Company	£241,419	£20,967	£33,142	£4,461	£299,989
The League Against Cruel Sports	£47,298	£10,488	£3,550	£1,597	£62,933
Uncaged Campaigns Ltd	£6,518	£471	£696	£0	£7,685
Union of Construction, Allied Trades and Technicians	£10,781	£0	£0	£0	£10,781
Union of Shop, Distributive and Allied Workers (USDAW)	£4,101	£544	£296	£0	£4,941
UNISON	£671,167	£0	£699	£0	£671,866
Unite	£11,850	£2,539	£2,539	£0	£16,928
Unite Against Fascism	£30,550	£2,872	£1,436	£0	£34,858
Vote Cruelty Free	£12,578	£1,381	£920	£460	£15,339
Vote-OK	£18,188	£0	£957	£0	£19,145
Wales TUC	£0	£0	£4,298	£0	£4,298
Mr Robin Wight	£6,000	£0	£0	£0	£6,000
The Young Britons' Foundation	£113,044	£11,350	£7,218	£3,248	£134,860
Vote For A Change Ltd	£478,442	£52,962	£35,906	£16,159	£583,469
Total	£2,634,507	£158,061	£142,248	£35,389	£2,970,205

Total expenditure by registered third parties at the 2010 General Election by country