COUNTDOWN TO THE ELECTION

2: Lobbying and Third Party Campaigning: The Current Controls

How PPERA works, following amendment by the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014

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Synopsis

- Election expenditure rules are intended to ensure that elections are conducted on the issues, not on the depth of the pockets of those seeking election or their supporters. Election campaigning has changed with much more now being done at a national level and a lobbying industry having developed.
- With PPERA and the Lobbying Act 2014, the law has grown very complex. There has been real anxiety in the voluntary sector as to what this means for their ability to participate in debate in the run-up to an election.
- Constituency-level controls: expenditure on campaigning activity for or against a candidate in a constituency is regulated by the RPA 1983, ss 73-76A during the “relevant period”.
- Constituency-based expenditure by third parties was previously regulated only by the criminal law; the RPA 1983 (as amended) now also requires third parties to make constituency-level returns to the Electoral Commission.
- National controls: Pt VI of PPERA governs the activities of “registered third parties”, aligned “members organisations” and third parties intending to undertake political expenditure in the run-up to an election.

- Pt VI (as amended) now regulates expenditure by third parties over and above the controls imposed on donations to or expenditure on behalf of registered political parties or candidates.
- Prior to the passage of the 2014 Act it appeared that constituency-based controls imposed by RPA 1983, and national expenditure controls imposed by PPERA, existed as separate and distinct systems of control. Now there is some overlap (although Pt VI does not apply to any expenditure which falls to be included in a return as to election expenses under RPA 1983, s 75).
- PPERA, ss 94, 96 have been amended to include per-constituency limits on the sums which can be spent by third-party campaigners. S 29 of the 2014 Act provides that those registered with the Electoral Commission must account for controlled expenditure in each constituency as well as nationally.
- National campaign expenditure targeted at gaining support for a particular party (but not authorised by it) will be attributed to each constituency in equal proportions unless the campaign is "wholly or substantially" confined to particular constituencies. In effect this introduces a new national expenditure limit for third party campaigners of £9,750 per constituency.
- The 2014 Act also dramatically curtailed the maximum expenditure by a registered third party or group of registered third parties at national level.
- There are now limits on the types of donations which a recognised third party can accept for its controlled spending.
- Human rights questions: the substantial increase in the range of bodies required to register as recognised third parties (by reduction of registration limits); and the increase in reporting requirements on such bodies impose onerous restrictions on freedom of expression.

Key legislation

Political Parties, Elections & Referendums Act 2000

Representation of the People Act 1983

Transparency of Lobbying, Non-Party Campaigning, and Trade Union Administration Act 2014

Key cases

Bowman v UK

R (Animal Defenders International) v Secretary of State for Culture, Media and Sport

Sunday Times v UK

Zdanoka v Latvia

Introduction

1. Expenditure limits on elections started with nineteenth century controls on 'treating'.[1] These controls are intended to ensure that elections are conducted on the issues, not on the depth of the pockets of those seeking election or their supporters; and to level the playing field. They were introduced in the days when the constituency was the locus of political activity, so election expenditure was traditionally controlled by reference to what could be spent by or on behalf of a particular candidate in a particular constituency. Limits on constituency expenditure were mainly controlled by setting fixed expenditure ceilings for candidates, and requiring their election agents to make returns of election expenses on a per-constituency level, failure to comply with constituency limits being an election offence.[2]

2. Election campaigning has changed with much more now being done at a national level and a lobbying industry having developed. There have been lobbying scandals ('cash for questions' onward) and discussions of public funding for political parties. Traditional sources of election funding (membership fees, trade union contributions) are withering, and much political debate now takes place other than through registered political parties. The relationships of business, lobby groups, campaign groups, NGOs and others within the formal political process are uncertain. The use of social media in the election process is in its infancy: how does one account for the costs of a 'viral' marketing campaign? Election expenditure, and how to regulate it, is a heated topic.

3. Controls on expenditure now operate at two levels: constituency and national, though the two regimes overlap. The legislation has also become very complex. The Law Commission's consultation on reforming election law attempts to summarise the law on expenses (at pp 253-264), but with the health warning that:

> ". . . from a basic rule of law viewpoint, the law must be clear enough to achieve its policy aim of ensuring that candidates' conduct conforms to its requirement.
>
> Yet the law . . . has grown very complex. Our attempt here to present it in outline as simply as possible should not detract from the difficulty in understanding the relevant provisions . . . .The scheme of the 1983 Act is hard to understand from reading its provisions . . .".

4. There must be real concerns that the controls on election expenditure lack sufficient clarity to conform to the 'basic' requirements of the rule of law.

[1] Now contained in the Representation of the People Act 1983, s114.
[2] A person who incurs or aids, abets, counsels or procures another to incur expenses in contravention of s75(1) of the 1983 Act is guilty of a corrupt practice (RPA 1983, s 75(5)).

5. The Law Commission's comments relate to the per-constituency local controls. A further layer of complexity is imposed by national controls on expenditure which were introduced by the Political Parties, Elections & Referendums Act 2000 ("PPERA"). This required political parties, associated 'members organisations', and third parties intending to spend large sums of money at elections on political activities in the 'regulated period' to register with the Electoral Commission and account for their expenditure. For the first time there were national limits on expenditure by political parties, members organisations, and other registered bodies, and explicit provisions on who was a 'permissible donor' to any of those persons. Donors had to be registered so that others could see that they were 'permissible' – UK-based individuals who featured on the electoral register or UK-based companies, friendly societies etc. The object was to ensure that British elections were not 'captured' by donations from foreign sources.[3]

6. PPERA has been amended several times since it was passed, including by the Political Parties & Elections Act 2009, which tightened reporting requirements and what must be included in electoral returns. PPERA as amended was not in force at the time of the last general election,[4] so the amendments have not been tested in the heat of battle. The Transparency of Lobbying, Third Party Campaigning, and Trade Union Administration Act 2014 ("the Lobbying Act 2014"), which received Royal Assent on 30 January 2014, has now further amended PPERA by (Part II):

   - extending the numbers of persons, bodies and other organisations caught by the registration requirements (by reducing expenditure limits for registration);
   - extending the ambit of political activity in relation to which expenditure must be accounted for; and
   - making the returns provisions more detailed.

7. This has been highly controversial legislation. There has been real anxiety in the voluntary sector as to what this means for the ability of civil-society organisations to participate in debate in the run-up to an election. Fears have been expressed that uncertainty as to the ambit of 'political activity' will have a chilling effect in the run-up to elections since the combination of uncertainty as to the date of the regulated period (in some cases), ambit of regulated activity, coalition activity and more detailed registration provisions make it difficult for would-be campaigners to regulate their activity with any real certainty as to what is permitted, by whom, and when.

[3] According to the Supreme Court in *R (Electoral Commission) v City of London Magistrates' Court v UKIP* [2010] UKSC 40, paras 25–29.
[4] The amendments came into force on 1 December 2010.

Constituency-level Controls

8. Expenditure on campaigning activity for or against a candidate in a constituency is regulated by sections 73-76A of the Representation of the People Act 1983 ("RPA 1983"). During the course of an election campaign there are limits on what can be spent campaigning for or on behalf of candidates.[5] Among these limits are those imposed on third parties in a constituency during an election campaign under section RPA 1983, s 75(1) (as amended), which apply to any person other than a candidate, his election agent or a person authorised in writing by an election agent. They prohibit the incurring of any expenses in the "relevant period" (see paragraph 10 below) in holding public meetings or organising any public display; issuing advertisements, circulars or publications; or otherwise in presenting to the elector a candidate or his views or the extent or nature of his backing or *disparaging a candidate or his views* (s 75(1)(d)).

9. The only material exceptions to the expenditure limits concern the publication of any matter relating to the election in a newspaper or periodical other than advertisements[6]; expenses in travelling or in living away from home and "other similar personal expenses"[7]; and expenses which do not exceed in aggregate £700 (in the case of a candidate at a general election).[8] That limit applies to a group of people, formal or informal, who undertake campaigning activities as a concerted plan of action, as it does to individuals.[9] Further, the *aggregate* of election expenses which can be incurred by or on behalf of a candidate (ie including those spent by an election agent and by third parties) must not exceed £8,700 per constituency plus 9p for every entry in the register for the general election for county constituencies and 6p for borough constituencies, and £100,000 for a candidate at a by-election (RPA 1983, s 76).[10] The limits for local government elections in England and Wales are £740 per constituency and 6p per entry in the register in the area in question.

10. The "relevant period" is defined by RPA 1983, s 75(1) as occurring after a person has become a candidate.[11] Expenditure incurred before the date when a person becomes a candidate at the election is to be treated as having been

[5] Election expenses in this context are defined by RPA 1983, s 90ZA, to mean specified expenses used "for the purposes of the candidate's election after the date when he becomes a candidate at the election".
[6] RPA 1983, s 75(1)(b)-(c) and (1ZZA).
[7] RPA 1983, s 75(1ZZB).
[8] RPA 1983, s 75(1ZA)(a), as amended by the Lobbying Act 2014, s 36.
[9] RPA 1983, s 75(1ZA).
[10] Breach of this limit appears to be a problem for the candidate's election agent and not any third party.
[11] And see RPA 1983, s 118, which provides that this occurs (in respect of candidates already declared) on the date of dissolution of Parliament (in the case of a general election) or the date upon which a vacancy occurs (in the case of a by-election), otherwise on the earlier of the date of declaration or nomination.

incurred after that date if it is incurred in connection with anything which is used or takes place after that date.[12] In other words, expenditure incurred for the purposes of RPA 1983, s 75(1) in connection with a particular election counts as expenditure in connection with the purposes of promoting or disparaging a particular candidate if the activities funded by the expenditure are then undertaken whilst the candidature is ongoing.[13] Incurring, or aiding or abetting the incurring by another of, expenses in contravention of RPA 1983, s 75(1) is a corrupt practice.[14]

11. There are also absolute limits on pre-candidacy expenses for Parliamentary general elections. These are defined by RPA 1983, s 76ZA. Once the predecessor Parliament has not been dissolved for 55 months from the date when it first met, pre-candidacy spending limits apply. These are £30,700 plus 9p per entry in the electoral register for county constituencies and 6p per entry in borough constituencies. The maximum is tapered depending on how far into a full term a particular parliament lasts, and the spending limit applies in relation to expenses incurred in the period between the 55th month and the date when the person formally becomes a candidate at the election. This is also a recipe for uncertainty, since the formula depends on the number of voters on the electoral roll on the date of the election which may rise or fall well after the regulated period starts.

12. One of the most significant changes introduced by the Lobbying Act 2014 in this context is that, whereas constituency-based expenditure by third parties was previously regulated only by the criminal law, the RPA 1983 now also requires third parties to make constituency-level returns to the Electoral Commission. The new s 75ZA of the 1983 Act (inserted by the Lobbying Act 2014, s 36(2)) allows the returning officer or the Electoral Commission to request a record of expenditure of a third party at a candidate level up to six months after the date of poll (or a declaration that less than £200 has been spent).

13. The new s 75ZB of the 1983 Act then requires compliance with such a request within 21 days. Failure to make such a return or declaration is an illegal practice and the making of a false return being a corrupt practice.[15] Where such an act or omission is undertaken by an association or body of persons, any person who at the time of the act or omission was a director,

[12] RPA 1983, s 75(8) (as added by the Electoral Administration Act 2006, s 25(5)).
[13] In the light of this provision, the correctness of the observations in paragraph 8.18 of *Parker's Law and Conduct of Elections*, which appears to suggest that s 75(1) can only operate when both a candidacy and election have been declared must be doubted.
[14] RPA 1983, s 75(5).
[15] It is also an illegal practice for any candidate or election agent to authorise the incurring of election expenses in excess of the specified permitted amount in circumstances where they knew or ought reasonably to have known that incurring those expenses would exceed the permitted amount (RPA 1983, s 76ZA(5)).

general manager, secretary or other similar officer of the association or body or was purporting to act in such a capacity, shall also be deemed guilty of that offence unless he or she proves *both* that the act or omission took place without his consent or connivance, and that s/he exercised all such diligence to prevent the commission of the offence.[16] The Electoral Commission plays no role in monitoring or regulating spending on local campaigns and any enforcement falls to the police and the Crown Prosecution Service.

National Controls

14. Parts V and VI of PPERA set out for the first time a variety of controls on the income and expenditure of political parties registered under Part II of PPERA. Part VI governs the activities of "registered third parties", aligned "members organisations"[17] and third parties intending to undertake political expenditure in the run-up to an election. Those wishing to spend above particular limits are required to register with the Electoral Commission, and to submit statements of accounts on a regular basis. Registered third parties are also required to declare major donors, and are prohibited from accepting donations of more than £500 from anonymous (ie unidentifiable) or foreign donors.[18] As a result of the furore following the so-called 'Cash for Honours' affair in December 2006, loans must also be declared.

15. The Lobbying Act 2014 amended the national campaign expenditure limits in PPERA and imposed new controls on third parties. Part VI now regulates expenditure by third parties[19] over and above the controls imposed on donations to or expenditure on behalf of registered political parties or their candidates. Any person or body intending to incur more than £20,000 in England (or more than £10,000 in any one of Scotland, Wales or Northern Ireland, or more than £9,750 in any single constituency) on "controlled expenditure" during the "regulated period" for a relevant election must register with the Electoral Commission and re-notify the Commission of its continued registration no more than 15 months thereafter to maintain its registration.[20] Such bodies do *not* have to tell the Electoral Commission where they will campaign or the subject matter of their campaigns.

16. "Controlled expenditure" used to mean expenses incurred by or on behalf of the third party in connection with the production or publication of election

[16] RPA 1983, s 76.
[17] "Members associations" are defined under para 1(6) of Sch 7 to PPERA as any organisation whose membership consists wholly or mainly of members of a registered party other than a registered political party or a unit of such party.
[18] Impermissible donations have to be returned; unidentifiable or non-returnable donations go into the consolidated fund.
[19] Defined in PPERA, s 85(8) as any person or body other than a registered party or a registered party undertaking expenditure not in connection with the party itself or its own candidates.
[20] PPERA, ss 85(2) and 94 (as amended). Any third party which spends more than these sums without registering will commit an offence under PPERA. s 94(5).

material made available to the public at large or any section of the public.[21] The definition is now wider, and subjective. As amended by the Lobbying Act 2014, the relevant provisions of PPERA (s 85 and Schedule 8A) now list all expenses which "can reasonably be regarded as intended to promote or procure electoral success at any relevant election for

- one or more particular registered parties;
- one or more registered parties who advocate (or do not advocate) particular policies or who otherwise fall within a particular category of such parties; or
- candidates who hold (or do not hold) particular opinions or who advocate (or do not advocate) particular policies or who otherwise fall within a particular category of candidates".[22]

17. Expenditure can fall within PPERA, s 85 even if does not involve any express mention of the name of a particular party or candidate and even if it is also intended to achieve any other purpose as well.[23] Schedule 8A to the Act lists qualifying expenses as:

- Production or publication of material which is made available to the public at large or any section of the public (in whatever form and by whatever means);
- Canvassing, market research, seeking views from members of the public;
- Press conferences or other media events;
- Transport by any means of persons to any place or places with a view to obtaining publicity;
- Public rallies or other public events other than AGMs and certain public processions/protests in Northern Ireland;
- Expenses in respect of such events including premises hire, provision of goods, services or facilities.

18. There are some fairly limited exceptions: security costs; publications in newspapers and periodicals other than advertisements; BBC broadcasts; translations from Welsh to English; reasonable non-reimbursed personal travel expenses; reasonable expenses attributable to a person's disability; and voluntary services.

19. The limits apply to expenditure during the "relevant periods" specified in Schedule 10 to PPERA (PPERA, s 94(1)). For the 2015 General Election, a one-off specific relevant period has been defined, which starts on 28 April

[21] PPERA, s 82 pre-amendment by the Lobbying Act 2014, s 26. There is no longer a definition of "election material".
[22] S85(2) PPERA as amended.
[23] PPERA, s 85(4) and (4A) (as amended).

2014 for political parties and 19 September for controlled third parties. Otherwise, the "relevant periods" for general elections are 365 days ending with the date of the poll for the relevant election, unless the election in question follows another parliamentary general election held less than 365 days previously. In that case the "relevant period" is the period starting on the day after the date of poll for the earlier election and ending with the date of poll for the election in question.[24] If a poll is called early, the "relevant period" may have started before anyone would be capable of determining that this has occurred: thus any body which incurs expenditure on matters which may be controlled will have to account for that expenditure just in case it falls within a relevant period. It is an offence for a person or third party to breach controlled expenditure limits unless the person can show he was acting in accordance with a Code of Practice issued by the Electoral Commission (PPERA, s 94).

20. Prior to the passage of the Lobbying Act 2014 it appeared that the constituency-based controls imposed by RPA 1983, and the national expenditure controls imposed by PPERA, Part VI, existed as separate and distinct systems of control. Now there is some overlap.

21. The controls in PPERA, Part VI do not apply to any expenditure which falls to be included in a return as to election expenses under RPA 1983, s 75[25] – ie, election expenses which have been authorised by an election agent for a particular candidate. The Lobbying Act 2014 also amended PPERA, ss 94 and 96 to include – for the first time – per-constituency limits on the sums which can be spent by third-party campaigners. S 29 of the 2014 Act provides that those registered with the Electoral Commission must account for controlled expenditure in each constituency as well as nationally. The Electoral Commission has expressed concerns about the enforceability of this section. National campaign expenditure targeted at gaining support for a particular party (but not authorised by it) will be attributed to each constituency in equal proportions unless the campaign is "wholly or substantially" confined to particular constituencies. In effect this introduces a new national expenditure limit for third party campaigners of £9,750 per constituency.

22. It is easy to see how the amended provisions could give rise to difficulties. Is a campaign run by an environmental NGO against fracking a national issue (with the result that any expenditure incurred by it should be divided between all the constituencies), or is it 'wholly or substantially confined' to constituencies in which fracking is a local issue?

[24] Specified by PPERA, Sch 10, para 3. The relevant period is defined in relation to other elections by Part II of Sch 10.
[25] RPA 1983, s 8(1)(b)(ii).

23. The Lobbying Act 2014 also dramatically curtailed the maximum expenditure by a registered third party or group of registered third parties at national level.[26] The caps are now set at £319,800 for England (down from £793,000); £55,400 for Scotland (down from £108,000); £44,000 for Wales (down from £60,000) and £30,800 for Northern Ireland (up from £27,000). Special (and complicated limits) apply if another election or elections (such as European Parliamentary elections, or elections to the devolved legislatures) is or are held during the period when a parliamentary general election is "pending".[27] The maximum a registered third party can spend nationally on non-authorised "targeted expenditure" (ie expenditure which does not count towards the party's own limits) at the 2015 General Election is £31,980 for England, £3,540 for Scotland, £2,700 for Wales and £1,080 for Northern Ireland.

24. S 27 of the Lobbying Act 2014 inserts a new s 94A into PPERA. Where a recognised third party notifies the Electoral Commission that it has agreed to be a "lead campaigner" for a plan or arrangement under which more than one third party agrees to each incur controlled expenditure for a common qualifying purpose, and of the identity of other third parties that it would consider "minor campaigners" in respect of that arrangement, the minor campaigner's expenditure must be included for the purposes of the "lead campaigner's" spending return, and the minor campaigner need not itself separately register.[28]

25. Uncertainty as to the length of the regulated period and as to what constitutes "qualifying expenditure" may lead to administrative problems for a third party campaigner. So too may uncertainty as to the applications of controls over donors. Whereas, in general, a civil society group can take donations from anyone it likes, for any purpose it likes, there are limits on the types of donations which a recognised third party can accept for its controlled spending.[29] These rules are in material respects identical to those for registered political parties: where such a donation is for controlled spending and is of £500 or more, the third party has 30 days to decide whether the donor is permissible. It cannot accept a donation to pay for controlled spending from an unidentifiable source. Impermissible donations must be returned or, if the donor cannot be traced, must go into the consolidated fund. Third parties are now required by the Lobbying Act 2014[30] to prepare a quarterly report on donations in the relevant period for submission to the

[26] See PPERA, Sch 10 (as amended).
[27] PPERA, Sch 10, Pt III – a parliamentary election is pending during the period beginning with the date on which Parliament is dissolved by the Fixed-term Parliaments Act 2011, s 3(1) and ending with the date of the poll for that election.
[28] PPERA, ss 96–99A.
[29] PPERA, s 95 and Sch 11.
[30] S3 and Sch 4.

Electoral Commission within 30 days of the end of the reporting period, and report more frequently during a general election period.[31]

26. In addition to the quarterly reports to the Commission, PPERA now requires each recognised third party (or the lead party of a coalition) to submit a spending return to the Electoral Commission after a regulated election for inclusion on a public "Register of Third Party Spending".[32] Knowingly or recklessly making a false or inadequate return is an offence which may be the subject of criminal charges or civil fines imposed by the Electoral Commission.[33]

Human Rights Questions

27. There has been considerable debate as to whether PPERA as amended by the Lobbying Act 2014 may violate the right to freedom of expression under ECHR, article 10. The Convention has particular resonance in the context of interpreting legislation designed to ensure the integrity of the democratic electoral system, because the governments signing the ECHR did so in the wake of the assaults on democracy which preceded the Second World War. The Government's signatory to the Convention "reaffirm[ed]":

> " . . . their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend . . ." (Preamble to the ECHR).

28. Rights under article 3 of Protocol 1, to "free elections . . . under conditions which will ensure the free expression of the people in the choice of the legislature" are foundational: those rights are seen as guarantees of respect for pluralism of opinion in a democratic society: *Zdanoka v Latvia*[34]. So, too, are the rights protected by article 10. While article 10 is a qualified right, political expression is particularly closely protected by the ECHR, and particularly in the context of elections. In *Bowman v UK*[35] the Court held that draconian spending limits (of £5) then imposed on third parties by RPA 198, s 75 breached article 10. The applicant (an anti-abortion activist) had no means of informing the public about the candidates' attitudes to abortion other than publishing and distributing leaflets.

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[31] PPERA, ss 95A–95F and see Sch 11A for information about the very detailed reports which must be made, quarterly from 19 September 2014- 30 March 2015, and weekly from 30 March 2015 to polling day.
[32] For time limits and auditing requirements see PPERA, ss 96–98; for requirements to list expenditure in particular constituencies, see new PPERA, s 94 (inserted by the Lobbying Act 2014, s 29).
[33] PPERA, Sch19C (inserted by s 3(2) of and Sch 2 to the Political Parties and Elections Act 2009 and SI 2010/2860.
[34] (2007) 45 EHRR 17 (Grand Chamber), at [115].
[35] (1998) 26 EHRR 1.

29. In *R (Animal Defenders International) v Secretary of State for Culture, Media and Sport*[36], the House of Lords held that the blanket ban on political advertising on television and radio under the Communications Act 2003, s 321(2), did not contravene ECHR, article 10, and that the majority of the Grand Chamber of the European Court of Human Rights agreed (notwithstanding a later ruling to the effect that an absolute prohibition on political advertising was a contravention of article 10).[37] Part of the rationale for the *Animal Defenders* decision was the extent of Parliamentary scrutiny of the need for the blanket ban. Lord Bingham observed that "it is reasonable to expect that our democratically-elected politicians will be peculiarly sensitive to the measures necessary to safeguard the integrity of our democracy. It cannot be supposed that others, including judges, will be more so".[38] The European Court of Human Rights agreed, not least because Parliament had decided that more nuanced tests of what would amount to 'political advertising' would be too difficult to apply with sufficient certainty.

30. It may be that a court would be satisfied by the extent of the political debate on this issue and consider the proportionality of PPERA (as amended) was beyond its purview.[39] Nonetheless, the range and lack of clarity as to the activities in relation to which expenses may 'qualify' for control; the lack of clarity in relation to the 'relevant period' over which expenditure must be accounted; the substantial increase in the range of bodies required to register as recognised third parties (by reduction of registration limits); and the increase in reporting requirements on such bodies impose onerous restrictions on freedom of expression. That is particularly so when breach of these requirements is subject to criminal penalty and/or forfeiture of assets.

31. While the measures imposed by PPERA pursue a legitimate aim, they may fall foul of Article 10 because they lack the requisite clarity to satisfy the 'prescribed by law' threshold. In *Sunday Times v UK*[40] the European Court of Human Rights held:

> "Firstly, the law must be adequately accessible: the citizens must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as "law" unless it is formulated with sufficient precision to enable the citizen to regulate his conduct".

32. There is a lack of clarity as to what is meant by 'for political purposes', the length of the 'relevant period', with the effect that it is not possible to say with

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[36] [2008] 1 AC 1312.
[37] *TV Vest As & Rogaland Pensjonistparti v Norway* (2009) 48 EHRR 51.
[38] [2008] 1 AC 1312, at [33].
[39] It is likely that the exceptions in Part 2 of proposed Schedule 8A are intended to meet the *Bowman* situation.
[40] (1979) 2 EHRR 245 at [49].

sufficient certainty what steps must be taken in relation to recording and reporting expenditure associated with particular activity in advance. Even though it is a defence to a criminal charge to say that one has followed Electoral Commission guidance, many small organisations may be anxious about the possibility of inadvertently breaching the law.

33. Secondly, it may be argued the restrictions and restraints are so wide and so burdensome, at so low a level of expenditure, as to amount to a disproportionate restraint on freedom of expression, notwithstanding the legitimate aim of ensuring equality between candidates so that all voices can be heard in an election. That is particularly the case given that they affect advertising 'in any form'. Unlike *Animal Defenders*, these restrictions do not just go to one medium.

34. Third party campaigners in any doubt as to whether to register or how to account for their expenditure are advised to contact the Electoral Commission, since following their advice or guidance renders prosecution, at least, unlikely.

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Further information

Find out more about our election team at Matrix at matrixlaw.co.uk.

Look out for our next briefing on Friday 10 April, on election offences.