# Response to PACAC inquiry into lobbying and influence

## Introduction

1. This is a joint submission by Bond, the Charity Finance Group, Friends of the Earth, Liberty, Refugee Action, and Quakers in Britain.
   1. Bond is the UK network for organisations working in international development, humanitarian assistance and peacebuilding, with over 400 members. 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.
   2. Charity Finance Group (CFG) is the charity that works to inspire a financially confident, dynamic and trustworthy charity sector. We champion best practice, nurture leadership and use our skills to influence policy makers and decision takers on policy issues affecting the charity sector.
   3. Friends of the Earth England, Wales and Northern Ireland is a grassroots campaigning organisation that primarily works on environmental and social justice issues. We aim to create a safer, more healthy and more just society through movement building, supporting our own campaigns as well as an extensive network of local volunteer campaigners.
   4. Liberty is an independent civil liberties and human rights membership organisation. We challenge injustice, defend freedom and campaign to make sure everyone in the UK is treated fairly.
   5. Refugee Action is a national charity which works to enable refugees and people seeking asylum in the UK to rebuild their lives. We are a leading provider of reception and integration services for resettled refugees, and we provide advice and support to thousands of asylum seekers and refugees every year.
   6. Quakers in Britain are a national church supporting Quakers across England, Scotland and Wales. We are also a charity, working for positive change in areas such as climate justice, peace and disarmament, and migration.
2. We are all members of the Civil Society Voice (CSV) network, an informal network of organisations that works to protect and promote the right to campaign in the UK. CSV acts as a space for sharing information and coordinating collective action on restrictions on the right to campaign.
3. We are submitting evidence to this inquiry because the Lobbying Act affects our work significantly. Our submission focuses on Part 2 of the Act, so that Committee members may better understand the chilling impact this has had on civil society. We believe the lessons learned here should inform decisions to amend Part 1. Our evidence is also relevant to how the Act operates in context, and highlights amendments that are needed to ensure its effectiveness.

## The problems with Part 2 of the Lobbying Act

1. Part 2 of the Lobbying Act governs campaigning by civil society organisations such as charities, faith groups and trade unions in the run-up to elections. In the vast majority of cases, these organisations campaign on issues and policies, and do not intend to influence voter choice at elections. Their funding and spending are extremely transparent due to regulation by the Charity Commission and other bodies.
2. In spite of this, under the Lobbying Act these organisations must register with the Electoral Commission if they spend over a certain threshold on regulated activities in the 12 months ahead of a general election and four months ahead of elections to the devolved parliaments. 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 general elections following the repeal of the Fixed Term Parliaments Act. There are three main problems with Part 2 of the Lobbying Act. These issues were also highlighted in civil society organisations’ [oral evidence](https://committees.parliament.uk/oralevidence/2616/pdf/) to PACAC on the work of the Electoral Commission in July 2021.

### The uncertainty of the ‘regulated period’

1. Because of the possibility of snap elections and the repeal of the Fixed-Term Parliaments Act, civil society organisations often do not know whether they are in a regulated period or not. This means that they must always act as if they are. This makes civil society organisations cautious about campaigning at all times.
2. We have raised this issue with the Cabinet Office, the Electoral Commission, and the Equality and Human Rights Commission. It was also raised by Lord Hodgson of Astley Abbotts in his [government-commissioned review](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/507954/2904969_Cm_9205_Accessible_v0.4.pdf) of the legislation. The Hodgson Review acknowledged the widely-held understanding that the 365 day regulated period was ‘unnecessarily restrictive’. It recommended that the government reduce the regulated period to four months and clarify the regulatory position in the event of ‘unexpected’ general elections.
3. Electoral Commission guidance has provided some reassurance on retrospectivity around general elections, but this does not help with activity at local, mayoral and national elections that took place before a general election was called. A change in the law is required to reduce this uncertainty.

### Confusion around the ‘purpose test’

1. We and other civil society organisations have worked with the Electoral Commission on their guidance for third-party campaigners and we are grateful for the improvements they have made. We are working with them now as they update the guidance in light of the Elections Act. In the current guidance, the wording around the ‘purpose test’ remains confusing for civil society organisations. 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 means that even if you are clear that your activity is not *intended* to influence voters, it could still count as regulated activity if it is perceived that way by someone else.
2. When asked, the Electoral Commission can give civil society organisations a sense of the likelihood of falling foul of the law, but they cannot say with any certainty whether the organisation can or cannot do certain activity, because the legislation itself is unclear.
3. To be on the safe side, many civil society organisations will count costs towards all activities that could potentially be regulated, which increases the bureaucratic burden of monitoring their regulated spending. Alternatively, they will not undertake any activities that could be regulated, for fear of financial and reputational repercussions, and will withdraw from democratic debate.

### Joint campaigning rules

1. Joint campaigning is defined as activity that can “reasonably be regarded as intended to achieve a common purpose”. This affects a broad range of civil society organisations of all sizes, who work through coalitions, networks and partnerships to deliver their social change objectives.
2. If an activity is considered to be joint campaigning and regulated spending, 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 carrying out 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 reduces collaboration and creativity in the third sector, and significantly the ability of civil society organisations to communicate their views to key decision-makers and engage in policy-making.

### Bureaucratic burden

1. Monitoring and reporting expenditure places a huge bureaucratic burden on civil society organisations, and either makes campaigning not worth the resources required, or reduces the resources that organisations can spend on campaigning and service-delivery. Even if an organisation does not spend enough on regulated activity to meet the threshold for registering with the Electoral Commission, they have to keep track of their spending if they are likely to come anywhere near the threshold. In 2017, Quakers in Britain spent 21 days of staff time complying with the regulations, costing us over £3,000.

## The implications for democracy

1. The result of these four issues is that civil society voices are being lost from the political arena. Organisations find it increasingly difficult to advocate on behalf of the groups who they serve and represent, including some of the most marginalised sections of society. This makes it harder for many civil society organisations to fulfil their missions and purpose. The Sheila McKechnie Foundation’s 2020 report, [The Chilling Reality](https://smk.org.uk/wp-content/uploads/2020/08/SMK_The_Chilling_Reality_Lobbying_Act_Research.pdf), provides extensive evidence of the negative effect of the Lobbying Act on civil society.
2. This is important because civil society organisations play a vital role in bringing the voices and experiences of different groups to decision-making. Particularly those groups who are vulnerable due to their circumstances, marginalised, and/or underrepresented in government and parliament. They raise awareness of key issues and provide expertise to help improve legislation, policy and practice.
3. During the Covid-19 pandemic, civil society campaigning has helped the government respond to emerging situations and protect vulnerable groups. For example, civil society organisations helped the government to reduce rough sleeping, improve care during pregnancy and birth, and protect survivors of domestic violence and abuse.
4. Civil society campaigning acts as a pressure valve, allowing anger and concern about social issues to be raised in a structured and constructive way. The UK government and parliament’s approach to civil society also matters on a global stage. A thriving civil society makes the UK a role model. Conversely, attempts to restrict civil society in the UK can be used by repressive regimes to justify their own efforts to limit dissent.
5. Our concerns around the Lobbying Act sit within a broader context of restrictions on civil society campaigning in the UK. Other threats include:
   1. Legislation such as the Bill of Rights Bill, Public Order Bill, Elections Act, and Police, Crime, Sentencing and Courts Act
   2. Rhetoric by politicians, public bodies and the media criticising civil society organisations for campaigning
   3. Malicious referrals to the Charity Commission for charities who campaign
   4. Lack of meaningful engagement with civil society by government and parliamentarians
   5. The use of anti-advocacy clauses by government departments

This list is not exhaustive but gives a sense of the variety of factors that are severely hindering civil society in their attempts to help shape policy, legislation and practice in the UK.

## Conclusion and recommendations

1. The Lobbying Act in its current form does not get the balance right between supporting transparency and ensuring vibrant, informed and inclusive public debate at elections. It is a very blunt solution to a problem with transparency of lobbying that exists mainly in the business sector rather than civil society, yet corporate lobbying is largely unaddressed by the Act. It is important that any amendments to Part 1 of the act are informed by the challenges posed by Part 2.
2. We are calling for the rules on non-party campaigning to be revised along the lines proposed by the Hodgson Review. In particular:
   1. Reduce the regulated period for third-party campaigners to four months before the general election
   2. Substantially revise the purpose test, so that it is clearer for campaigners to understand and to comply with
   3. Review and amend the legislation on joint campaigning in consultation with civil society organisations, to ensure it meets its stated aim without hindering collaboration.
3. 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 Committee on Citizenship and Civic Engagement 2018 report *The Ties That Bind: Citizenship and Civic Engagement in the 21st Century*.