

## Written evidence from The Trades Union Congress (TUC) (TEB 34)

### Public Administration and Constitutional Affairs Committee The Elections Bill inquiry

#### 1. Introduction

1.1 The Trades Union Congress (TUC) exists to make the working world a better place for everyone. We bring together more than 5.5 million working people who make up our 48 member unions. Trade unions' day-to-day work is bargaining for higher wages and fairer conditions in workplaces, and representing individual trade union members. We use the insight from our industrial work to campaign for policy changes that benefit all working people and input into emerging government policy. During the pandemic, for example, the TUC has met government ministers across HM Treasury, Beis, DWP and the Cabinet Office frequently, and we were thanked by the Chancellor for our input as he announced the Job Retention Scheme.

1.2 We welcome this inquiry into the Elections Bill. The TUC believes in democracy, and in free and fair elections. We want working people to have a voice and have their concerns taken seriously by government and decision makers.

1.3 We have previously raised concerns about the impact of elections regulations on trade unions and wider civil society, most notably during the passage of the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014.

1.4 We will concentrate on a small number of issues in our answer: the impact of changes to the joint campaigning rules, the reduction of the registration threshold for third party campaigners to £10,000, and the impact of giving greater powers to ministers to decide what is acceptable campaigning activity during an election, and which organisations may undertake electoral campaigning.

1.5 Although it is not the focus of this submission, we also wish to put on record our strong objection to the measures in the bill (part 1 clause 1) on the requirement for voters to produce identification, which are discriminatory, and risk denying millions of working people their right to vote.

#### 2. Background: union election activity is already highly-regulated

2.1 Our core concern in this submission is the disproportionate and unnecessary impact (and potential for impact) of further restrictions on unions' legitimate campaigning activity. Unions are already some of the most regulated organisations in UK society. We already have to meet high standards of transparency and submit annual returns covering our membership and spending to the Certification Officer.

2.2 The political and electoral campaigning activity of unions is already public. Unions wishing to undertake political campaigning have to set up a political fund, and every ten years, they have to hold an all-member vote on whether to continue it. Under the 2016 Trade Union Act, new members of the union have to actively opt-in to paying an additional political levy to the political fund. Unions have to report detailed information about their political expenditure to the Certification Officer every year – and it is publicly available. Much of the

increased transparency requirements proposed in the bill will result in unions needing to declare spending the details of which are already publicly available.

2.3 There is no problem here that needs to be fixed. Union spending at elections – and throughout the year – is already highly regulated and made public as a matter of course. The regulations on unions have been added to twice in the last decade by successive Conservative governments under the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014 and Trade Union Act 2016.

### **3. Ministerial oversight of elections and campaigning (Part 3, clauses 12 and 13; Part 4 clauses 22 and 23)**

3.1 The TUC has particular concerns that two parts of the bill give inappropriate oversight of elections campaigning to ministers (who are of course elected politicians who compete in elections), specifically:

- Part 3, clauses 12 and 13 which gives ministers the power to set a ‘strategy and policy statement’ for the Electoral Commission
- Part 4, clauses 22 and 23, which proposes restrictions on which third parties may incur controlled expenditure

3.2 The impact of Part 3, clauses 12 and 13 is to give the secretary of state powers to direct the Electoral Commission. This undermines its independence. The powers are wide – and the effect could be direct the Commission in such a way that undermines the level playing field of elections for participants and campaigners. Ministers could force the Electoral Commission to change how it spends its resources or approaches its public communications, or direct a revision to guidance. This last part is key: third party campaigners such as unions rely on Electoral Commission guidance to plan our activity and remain within the law, yet this could be subject to ministerial interference.

3.3 The Electoral Commission themselves have stated that

*“there should be no actual or perceived involvement from government in [the Electoral Commission’s] operational functions or decision-making. Our independence must be clear for people to see, as this underpins fairness and trust in the electoral system.”<sup>1</sup>*

3.4 Part 4, clauses 22 and 23 would stop organisations or individuals that are not listed in Section 88 of the Political Parties, Elections and Referendums Act 2000 (PPERA) from taking part in electoral campaigning (clause 22) and gives ministers the power to change which organisations are listed (clause 23). Taken together, these two clauses will enable ministers to prevent certain types of organisations from undertaking most electoral campaigning (as it would prevent them spending more than £700 on election campaigning anywhere across the UK during the 365 days prior to election day). Ministers could use this to bar whole categories of organisation – such as trade unions – from campaigning at elections. The TUC considers this power to be too wide, and to give far too much power to ministers. We believe this power could be used inappropriately to target trade unions.

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<sup>1</sup> A strategy and policy statement for the Electoral Commission, The Electoral Commission, 5 July 2021, <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/elections-bill/a-strategy-and-policy-statement-electoral-commission>

3.5 We would urge the committee to recommend the deletion of Part 3, clauses 12 and 13 and Part 4 clauses 22 and 23.

#### **4. Reducing the threshold for registration with the Electoral Commission (Part 4, clause 24)**

4.1 Part 4, clause 24 proposes to reduce the amount of spending that requires registration with the Electoral Commission, from £20,000 to £10,000, albeit with a lesser reporting regime.

4.2 The TUC supports a clear regime of transparency in spending on elections, but we believe that this reduction in the spending threshold imposes too many burdens on smaller organisations including smaller unions, for whom activity at election time is not their primary purpose. The imposition of further reporting regulations on those smaller unions who would not usually meet the £20,000 spending threshold at elections is both burdensome and unnecessary, as the expenditure is already accounted for in the public disclosures of political fund spending to the Certification Officer.

4.3 We believe the lower registration limit will intensify the “chilling effect” that pushes sections of civil society to auto-exclude from election campaigning for fear of inadvertently falling foul of the rules. Any small amount of increased transparency in elections achieved by reducing the threshold for registration is dwarfed by the harm done to the UK’s national debate when organisations fear using their voices at election time.

4.4 It is worth also noting that these rules apply retrospectively for 365 days from the point at which an election is called. The UK has recently experienced two snap general elections – meaning that a prudent organisation would seek to record and possibly reduce likely electoral campaigning activity consistently, for fear of a further snap election leading to it being retrospectively designated as regulated activity, potentially exceeding the registration limit, or even the expenditure limits.<sup>2</sup>

4.5 We would urge the committee to recommend the deletion of Part 4, clause 24.

#### **5. Joint campaigning rules (Part 4, clause 25)**

5.1 The TUC is concerned about Part 4, clause 25, which extends joint campaigning rules, currently only applicable to third party campaigners working with one another, to third party campaigners working with political parties.

5.2 The existing joint campaigning rules require campaigners working to a common plan to submit extra election spending returns for the spending involved in that joint campaign. The TUC is not in favour of the current joint campaigning rules. We believe in free speech, and freedom of association: third party campaigners such as unions should be able to campaign together and to pool their campaign expenditure entitlement. The joint campaigning rules as they exist currently already cause significant confusion, and contribute to the well-

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<sup>2</sup> The Electoral Commission guidance for the 2017 and 2019 elections gives some comfort to organisations, noting that activity before a snap election was called would not be considered regulated activity. But of course this proposed legislation would give ministers the power to direct Electoral Commission guidance (as set out above) so this may be rescinded.

documented “chilling effect” that leads organisations to self-exclude from elections campaigning.

5.3 Chris Weavers of the teaching union NASUWT said in his recent evidence to PACAC:

*“We have certainly been more cautious around joint campaigning since the introduction of legislation. It has not precluded being involved at all, but there is certainly a concern that when expenditure is potentially outside our direct control, we may become liable for expenditure that we were not aware of and could not actively be controlled, so it does have an effect. The smaller organisations that are less able to manage those relationships actively will be more fearful than us, but it is a concern across the board.”*<sup>3</sup>

5.4 Adding political parties into the rules about joint campaigning is likely to have a significant impact on unions’ willingness to undertake electoral campaigning and to interact with politicians during elections, for fear of falling foul of the rules – another example of the “chilling effect”. In particular, unions often seek to influence parties’ manifestoes, policy and spending proposals: we are concerned about the impact on this entirely legitimate union activity.

5.5 The TUC believes that this proposal unfairly targets unions (both affiliated and non-affiliated) and the Labour party. Unions share a history and an ethos with the Labour party. The TUC itself and many of our member unions are not affiliated to the Labour party, but we have productive relationships with many of the party’s elected representatives. The extension of joint campaigning rules could lead to non-affiliated unions feeling that they can no longer work with or be seen to work with the Labour party or indeed any politicians or parties, which would be a huge loss to the quality of the UK’s policymaking and national debate. And these proposals will have a significant impact on the right of affiliated unions to campaign freely and publicly on their own agenda, as they could see – by virtue of the close constitutional ties to the Labour party – their expenditure limits taken up by accounting for spending by the Labour party, with its much larger spending allowance.<sup>4</sup>

5.6 We would urge the committee to recommend the deletion of Part 4, clause 25, and to urge further clarification of the existing definition of “joint campaigning”, to reassure campaigners.

## **6. Conclusion**

6.1 The Elections Bill contains further restrictions that will impact on the legitimate activity of already highly-regulated trade unions. They undermine freedom of speech and association, appear targeted at unions, will impose further regulatory burdens and are unnecessary given the reporting requirements that already apply to unions.

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<sup>3</sup> Oral evidence: The work of the Electoral Commission, HC 43, Public Administration and Constitutional Affairs Committee, 20 July 2021, <https://committees.parliament.uk/oralevidence/2616/pdf/>

<sup>4</sup> Some TUC member unions are formally affiliated to Labour; their concerns as affiliated unions will be covered in the submission to the committee from Tulo rather than that from the TUC.

6.2 The TUC believes that Part 3, clauses 12 and 13, and Part 4, clauses 22, 23, 24 and 25 should be removed from the elections bill.

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