HOUSE OF LORDS

Library Note

Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill (HL Bill 50 of 2013–4)

This Note provides background reading on the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill, which is due to have its second reading in the House of Lords on 22 October 2013. It summarises the key provisions, background and proceedings in the House of Commons for each of the Bill's three main parts, with a focus on report stage and third reading. Part 1 creates a statutory register of consultant lobbyists, and establishes the post of Registrar to enforce the registration requirements. Part 2 deals with non-party campaigning; it changes the legal requirements for people or organisations who campaign in relation to elections but are not standing as candidates or a registered political party. Part 3 changes the existing legal requirements in relation to trade unions' obligations to keep their list of members up to date.

Maxine James, Nicola Newson & Sarah Tudor
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1. Introduction

The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill (HL Bill 50 of session 2013–14) was introduced into the House of Commons on 17 July 2013, the day before the summer recess. It had its second reading in the House of Commons on 3 September, and was considered by a committee of the whole House over three days on 9 to 11 September. The Bill completed its remaining stages over two days on 8 and 9 October. It was introduced into the House of Lords on 9 October and is scheduled to receive its second reading on 22 October.

Part 1 of the Bill creates a statutory register of consultant lobbyists, and establishes the post of Registrar to enforce the registration requirements. Part 2 deals with non-party campaigning; it changes the legal requirements for people or organisations who campaign in relation to elections but are not standing as candidates or a registered political party. Part 3 of the Bill changes the existing legal requirements in relation to trade unions' obligations to keep their list of members up to date. Sections 3 to 5 of this Note cover each of these parts of the Bill, summarising the key provisions, policy background and proceedings in the House of Commons (up to and including report stage).[1] The final section of this Note summarises the third reading debate on the Bill in the House of Commons.

The House of Commons Library has produced two briefings on the Bill: *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill*, 27 August 2013, RP 13/51, which provides detailed background on the policy areas covered by the Bill, and *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration: Progress of the Bill*, updated 15 October 2013, SN/PC/06734, which briefly summarises the House of Commons proceedings on the Bill.

The Government has published several key documents alongside the Bill:

- Cabinet Office and Department for Business, Innovation and Skills (BIS), *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill: Explanatory Notes*, 9 October 2013
- Cabinet Office, *Impact Assessment: A Statutory Register of Lobbyists*, 9 July 2013
- Cabinet Office, *Impact Assessment: Third Party Campaigning in Elections*, 15 July 2013
- BIS, *Impact Assessment: Amendment to the Trade Union and Labour Relations (Consolidation) Act 1992: Trade Unions' Register of Members*, 3 September 2013
- Office of the Leader of the House of Commons, *Memorandum on ECHR Issues for the Joint Committee on Human Rights*, 24 September 2013

2. Timetabling and Pre-Legislative Scrutiny

Since the Bill's publication, the Opposition and several parliamentary select committees have raised concerns about the lack of consultation or pre-legislative scrutiny of the Bill and the speed with which it was being taken through Parliament.

[1] Part 4 of the Bill contains supplementary provisions and is not covered separately in this Note.

Political and Constitutional Reform Committee

The House of Commons Political and Constitutional Reform Committee described the scheduling of the Bill as "contemptuous of Parliament" (House of Commons Select Committee on Political and Constitutional Reform, *The Government's Lobbying Bill*, 5 September 2013, HC 601–i of session 2013–14, para 2). The Committee "regret[ted] the unnecessarily rushed way in which this Bill is being proceeded with, without pre-legislative scrutiny or adequate consultation" (para 5). In a letter to the Committee written on the day the Bill was introduced into the House of Commons, Chloe Smith, the then Minister for Political and Constitutional Reform, said:

> The timetable for introduction of that Bill has not, regrettably, allowed for formal pre-legislative scrutiny of the provisions. The proposals for a statutory register of lobbyists have, however, been subject to a full consultation and detailed scrutiny by the Committee and we will be undertaking targeted stakeholder engagement over the summer to ensure that all aspects of the Bill are subject to thorough examination. In parallel, we are also responding to the Committee's report on *Introducing a Statutory Register of Lobbyists*[2][…]
>
> (House of Commons Select Committee on Political and Constitutional Reform, *Introducing a Statutory Register of Lobbyists: Government Response to the Committee's Second Report of Session 2012–13*, HC 593 of session 2013–4, 19 July 2013, Appendix 1)

The Committee felt it was:

> […] utterly unacceptable that the Government took more than a year to respond to our report on *Introducing a Statutory Register of Lobbyists* and that when it finally responded it did so in the form of a letter of a page and a half that does not engage with any of the detailed points made in the report. We consider that this shows a lack of respect for Parliament and for the many people who contributed to our inquiry.
>
> We are further dissatisfied that we have been denied the opportunity to carry out pre-legislative scrutiny on a draft Bill on lobbying.
>
> (paras 9–10)

At report stage, Graham Allen (Labour MP for Nottingham North), the chair of the Political and Constitutional Reform Select Committee, claimed that:

> They responded only when they were forced to do so, because, as a result of their own timetable, they were trying to rush the progress of the Bill, which was then subjected to the hysterically fast progress that has meant that it has not been considered properly by the House. Given the time that has elapsed between the issuing of the consultative paper and now, it would have been perfectly possible for us to engage in a proper process of pre-legislative scrutiny[...]
>
> (HC *Hansard*, 8 October, col 65)

[2] The House of Commons Select Committee on Political and Constitutional Reform's report *Introducing a Statutory Register of Lobbyists*, HC 1809–i of session 2012–13, was published on 13 July 2012. It was a response to the Government's earlier consultation paper on *Introducing a Statutory Register of Lobbyists*, January 2012.

Joint Committee on Human Rights

The chair of the Joint Committee on Human Rights (JCHR), Dr Hywel Francis (Labour MP for Aberavon), wrote to Andrew Lansley, the Leader of the House of Commons, twice about the Bill. The first letter expressed his committee's concern that the Bill was "being rushed unnecessarily through the House of Commons". It went on:

> It is not acceptable that a committee tasked by Parliament with the analysis of human rights implications of legislation should not easily or not at all be able to report on a Bill until it has left the first House on account of the unnecessary speed at which the Bill is being taken, there being no grounds for considering this to be an emergency or fast-track legislation.
>
> (Letter from the Chair of the JCHR to the Leader of the House, 12 September 2013)

The second letter asked questions specifically on the human rights issues raised in all three parts of the Bill. The Leader of the House of Commons included with his response letter a separate memorandum giving further detail on the human rights issues that the Bill raised. The Leader of the House of Commons also noted the Committee's concerns regarding the time available to consider the Bill and said that the Bill was introduced before the summer recess, "significantly further in advance of second reading in calendar terms than would often be the case". He added that further opportunity for debate was provided as the Bill was considered in committee of the whole House. He then went on to say:

> I have no doubt that scrutiny by Peers and Committees of the House of Lords, and the Joint Committee on Human Rights, will also make an important contribution to the legislative process.
>
> (Letter from Andrew Lansley to Dr Hywel Francis, 24 September 2013, p 1)

During the report stage debate, Dr Francis said that the JCHR was working on a report on the Bill, and noted that "the Committee feels strongly that we need far more time" (HC *Hansard,* 8 October 2013, col 104). The Report will be published on 18 October 2013.

Committee on Standards

The House of Commons Select Committee on Standards also had some concerns about the way the Bill would affect MPs in particular (see section 3.4 of this Note). The Committee stated:

> In normal circumstances, we could have explored our concerns with Government, and with the Political and Constitutional Reform Committee. In view of the limited time available to discuss the Bill we have decided to make this urgent report[…]
>
> (House of Commons Select Committee on Standards, *The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill*, 3 September 2013, HC 638 of session 2013–14, para 2)

Second Reading Motion

The Opposition tabled a reasoned amendment to the Bill's second reading motion, arguing that despite "the need for greater transparency in the lobbying industry and in British politics" the Bill should not be given a second reading because:

> [...] the proposals on lobbying cover only a tiny minority of the industry and will make lobbying less transparent, and the proposals on third-party campaigning amount to a gag on charities and campaigners who have a democratic right to participate in important debates in the run up to elections; and [this House] strongly believes that the publication of such a Bill should have been preceded by a full process of pre-legislative scrutiny and consultation with affected parties.
>
> (HC *Hansard*, 3 September 2013, col 186)

This motion was defeated by 313 votes to 243, and the Bill was given its second reading by 309 votes to 247 (cols 272–76).

Report stage

Gareth Thomas, the then Shadow Cabinet Office Minister, urged the House of Commons to vote against the Government's programme motion at report stage (HC *Hansard*, 8 October 2013, col 64). He was concerned that "[g]iven how little time is set out in the programme motion, it is unlikely that we will be able to carry out line-by-line scrutiny". He alleged that a Bill which had "attracted huge concern from across the third sector about the chilling impact it will have on the perfectly legitimate campaigning activities of charities" was being "rushed through Parliament". Graham Allen described this as "an abuse" of Parliament, and said that he would be opposing the programme motion for the first time in his political life (cols 65 and 69). Hywel Francis said he shared Mr Allen's "deep concern about the timetable" (col 67).[3] The programme motion was agreed by 317 votes to 249 (col 70). During the subsequent report stage debate, Graham Allen expressed the hope that "colleagues in the other place will find an open door and be allowed more give and take so that the Bill evolves and gets better" (col 102).

3. Part 1: Registration of Consultant Lobbyists

3.1 Key Provisions

Part 1 of the Bill establishes a register of professional consultant lobbyists and creates the position of Registrar to supervise and enforce the registration regime. According to the Explanatory Notes to the Bill:

> The main purpose of the provisions on lobbying is to ensure that people know whose interests are being represented by consultant lobbyists who make representations to Government. The Bill enhances transparency by requiring consultant lobbyists to disclose the names of their clients on a publicly available register and to update those details on a quarterly basis. The register will complement the existing transparency regime whereby Government ministers and permanent secretaries of Government departments voluntarily disclose information about who they meet on a quarterly basis.

[3] See letter from Dr Hywel Francis to Andrew Lansley, 12 September 2013

> The register will be hosted by the Registrar of Consultant Lobbyists, who will be independent from the lobbying industry and Government.
>
> (Cabinet Office and Department for Business, Innovation and Skills (BIS), *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill: Explanatory Notes*, 9 October 2013, para 4)

Part 1 of the Bill applies to the whole of the United Kingdom. Consultant lobbyists who lobby UK Government ministers and permanent secretaries will be required to register, no matter where the lobbyist is based, or where the lobbying takes place. However, the Bill does not make any provision regarding the lobbying of the devolved administrations.

Under the Bill, "a person must not carry on the business of consultant lobbying unless the person is entered in the register of consultant lobbyists" (clause 1). The meaning of "consultant lobbying" is defined in clause 2 and schedule 1. The main defining characteristics are:

> [...] that in 'in the course of a business' (which requires the person concerned to be engaged in a commercial activity, and so therefore excludes things such as the public duties of elected officials) the person makes communications (either in writing or orally):
>
> - personally to a UK Government minister or permanent secretary (including specified equivalent positions),
> - about Government policy, legislation, the award of contracts, grants, licences or similar benefits, or the exercise of any other Government function such as the exercise of the prerogative,
> - on behalf of another person, and
> - in return for payment.
>
> (Explanatory Notes, para 19)

Clause 2 provides that only those who are VAT-registered fall within this definition, thereby exempting lobbying businesses with a turnover below the VAT threshold from the requirement to register. This also means that for VAT-registered companies, it is the company that will appear on the register, not individual employees. Other exceptions are given in schedule 1. Paragraph 1 of schedule 1 provides that where a person's business consists mostly of non-lobbying activities, and that any activities involving the lobbying of Government are "incidental" to the person's main non-lobbying business, the person will not be classed as a consultant lobbyist and will therefore not be required to register. Paragraph 2 exempts from registering people who are paid to act "generally as a representative of persons of a particular class or description" but for whom lobbying Government is "no more than an incidental part of that activity". Paragraph 3 exempts officials or employees of foreign governments and international organisations who lobby the UK Government. Paragraph 4 clarifies that salaries or allowances paid to members of either House of Parliament for the exercise of their parliamentary duties do not count as a payment under the terms of the Bill, "with the result that the usual activities of parliamentarians are not captured by the definition of consultant lobbying" (Explanatory Notes, para 23).

Clauses 3 to 10 and schedule 2 establish the position of an independent Registrar of Consultant Lobbyists and set out the Registrar's powers and duties to maintain the register. Clause 4

provides that each register entry must contain the lobbyist's name; company number, address and names and addresses of partners or directors of the company; and names of clients for whom the lobbyist has engaged in consultant lobbying (or been paid to do so). Registered lobbyists will be obliged to update their entry each quarter (clause 5).

Under clause 12, it is a criminal offence to carry on the business of consultant lobbying without an accurate and up-to-date register entry, to fail to supply an information return, or to supply inaccurate or incomplete information. However, clauses 14 and 16 allow the Registrar to choose to impose a civil penalty of up to £7,500 instead of undertaking a criminal prosecution for people who have committed these offences. This option is intended for "less serious instances of non-compliance, for example due to administrative oversight" (Explanatory Notes, para 48).

Clause 22 enables the Registrar to impose fees for registration. The Government intends that "these charges recover the full cost of all the activities of the Registrar" (Explanatory Notes, para 56). The Impact Assessment for Part 1 of the Bill estimates that:

> Each consultancy lobbying firm is conservatively estimated to incur an administrative cost burden of £120 for initial registration and £100 each subsequent year for quarterly updates. Furthermore, the firms will pay an annual fee that [is] estimated to be between £320 and £497 on average. As small firms who do not pay VAT are exempt from the fee however the smallest 50 per cent of firms will only pay compliance costs and no fees while the larger firms also pay £640–£994.
>
> (page 2)

The Impact Assessment also notes that: "international comparisons suggest that there are only around 1,000 consultant lobbyists in the UK which would register and UKPAC, the current self-regulating body, similarly estimates that the statutory register would cover around 1,000 consultant lobbyists" (page 6).

3.2 Background

David Cameron said before the 2010 General Election that lobbying was "the next big scandal waiting to happen" (Andrew Porter, 'David Cameron Warns Lobbying is Next Political Scandal', *Telegraph*, 8 February 2010). The coalition agreement promised that the new Government would "regulate lobbying through introducing a statutory register of lobbyists and ensuring greater transparency" (HM Government, *The Coalition: Our Programme for Government*, May 2010, page 21). In January 2012, the Government produced a consultation paper, *Introducing a Statutory Register of Lobbyists*, which proposed that:

> A register should be a public record of who is lobbying and for whom, not a complete regulator for the industry.
>
> The Government believes that this should be sufficient to address concerns about a lack of transparency. It does not believe that there should be a statutory code of conduct for lobbyists linked with the register. This would potentially impose costly and unnecessary regulation on the industry, their clients and the Government.
>
> (page 10)

The House of Commons Political and Constitutional Reform Select Committee was "not convinced" that the Government's proposals would "do much to increase the transparency of lobbying in the UK", as the definition of a lobbyist was considered to be too narrow and potentially unworkable by lobbyists, academics, charities and transparency campaigners (House of Commons Select Committee on Political and Constitutional Reform, *Introducing a Statutory Register of Lobbyists,* 13 July 2012, HC 1809–i of session 2012–13, para 89). The Committee also believed that "[i]mposing a statutory register on a small part of the lobbying industry without requiring registrants to sign up to a code of conduct could paradoxically lead to less regulation of the lobbying industry" (para 48).

Similar criticisms have been levelled against the present Bill. In its report on the Bill, the Political and Constitutional Reform Select Committee concluded that the definition of consultant lobbying was "flawed" because it would exclude in-house lobbyists as well as the "vast majority" of third-party lobbyists, many of whom "undertake lobbying as part of a wider communications and public relations business" and who "spend very little of their time meeting directly with ministers and permanent secretaries" (House of Commons Select Committee on Political and Constitutional Reform, *The Government's Lobbying Bill*, 5 September 2013, HC 601–i of session 2013–14, para 27).

Industry bodies have also criticised the Bill for similar reasons. For example, the Association of Professional Political Consultants (APPC) stated:

> This is a muddled mistake. As currently drafted, it will do precisely nothing to increase lobbying transparency...
>
> The APPC wants to see all professional lobbying governed by a statutory lobbying register. The APPC has been operating our own register for nearly 20 years and yet we had absolutely no engagement with the Government until this Bill was produced. This is despite the fact that the industry had worked hard to produce a definition and a framework that would be workable and a registration process to provide proof of concept as to how a system could operate effectively.
>
> (APPC press release, "A Muddled Mistake'—APPC's Response to Lobbying Bill', 3 September 2013)

Similarly, the UK Public Affairs Council (UKPAC) stated ahead of the Bill's second reading in the Commons that efforts to increase trust in the political process:

> [...] have to be based on a definition of lobbying that would deliver a register that added to the levels of transparency already in place on a voluntary basis. The approach being taken by the Government risks creating a "white elephant" register with almost no-one listed and, in so doing, undermining existing voluntary arrangements that list thousands of organisations, clients and individuals and the self-regulatory arrangements that industry bodies operate.
>
> (UKPAC press release, 'UKPAC Urges Amendments to Lobbying Bill to Build on Transparency', 2 September 2013)

However, speaking at the Bill's second reading, Andrew Lansley, Leader of the House of Commons, sought to point out that the Bill was addressing one specific issue, not trying to

regulate the whole industry. He said he wanted to "be clear… that lobbying is a necessary—indeed an inevitable and often welcome—part of policy making and the parliamentary process" (HC *Hansard*, 3 September 2013, col 172). The Government did not "seek to prevent lobbying, but to make it transparent who is lobbying whom and for what". He explained that:

> […] there is a gap in the current transparency regime. When ministers meet consultant lobbyists, it is not always clear on whose behalf they are lobbying. We want to rectify that, and the specific aim of the register is to put the information in the public domain.
>
> (col 173)

Labour had called for the register of lobbyists to be expanded to include in-house lobbyists, but, said Mr Lansley "what is not clear is what problem such an expansion would resolve" (col 179). He argued that when in-house lobbyists from a company or a non-profit organisation met ministers, it was clear whose interests they were representing.

For further information on the background to the Bill's measures on lobbying, see the House of Commons Library research paper *Transparency of Lobbying, Non-Party Campaigning on Trade Union Administration Bill*, 27 August 2013, RP 13/51. For further background about the lobbying industry, current self-regulation and recent allegations of improper behaviour by members of both Houses of Parliament, see the House of Commons Standard Notes *Lobbying*, 25 January 2012, SN4633, and *Lobbying: July 2013 Update*, 17 July 2013, SN6660.

3.3 Committee Stage

At committee stage, Government amendments were accepted which meant that only individuals or organisations that were VAT-registered would be required to register as consultant lobbyists. Chloe Smith, the then Minister for Political and Constitutional Reform, explained that this would ensure "that small businesses are not subject to disproportionate burdens" (HC *Hansard*, 9 September 2013, col 766). The Government accepted an amendment tabled by Graham Allen (Labour MP for Nottingham North), the Chair of the Political and Constitutional Reform Select Committee, to ensure that parliamentary salaries and allowances paid to MPs and members of the House of Lords would not count as payment for lobbying (see below for further discussion of how the Bill applies to members of both Houses). Miss Smith said that the Government supported Mr Allen's amendment "because we believe that that important area of the Bill needs further clarification" (col 789). Opposition amendments—none of which were successful—included efforts to establish a code of conduct, to require disclosure of financial information by consultant lobbyists and to widen the registration requirement to all lobbyists.

For further information about the Bill's second reading and committee stages in the House of Commons, see House of Commons Library, *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration: Progress of the Bill*, 15 October 2013, SN/PC/06734.

3.4 Report Stage

Parliamentary Privilege

The most significant amendment to Part 1 of the Bill at the Commons report stage was the removal of two paragraphs from schedule 1. The Government's intention in drafting the Bill

was to ensure that no provision "could be infringing parliamentary privilege and that, specifically, the normal activities of MPs representing their constituents are explicitly excluded from amounting to the carrying on of the business of consultant lobbying" (Explanatory Notes to the Bill as introduced in the House of Commons, para 22). Paragraphs 1 and 2 of schedule 1 of the Bill as originally introduced in the House of Commons contained exemptions relating to parliamentary privilege and to the constituency work of MPs, but a number of concerns were raised about the possible unintended consequences of these exemptions.

There are two main components to parliamentary privilege: freedom of speech in parliamentary proceedings and "exclusive cognisance" (Parliament's exclusive right to regulate its own affairs). Article 9 of the Bill of Rights 1689 declares: "That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament". Bernard Jenkin (Conservative MP for Harwich and North Essex), who had been a member of the Joint Committee on Parliamentary Privilege, expressed concern that paragraph 1 of schedule 1 borrowed some of this language without making explicit reference to the Bill of Rights. He argued that there was a possibility that the courts could in future be faced with interpreting this paragraph and that by "drawing the courts into adjudicating on these words, we would be devaluing the 1689 Bill of Rights" (HC *Hansard,* 8 October 2013, col 79). He reminded the House that the Joint Committee on Parliamentary Privilege had concluded that "legislation [on parliamentary privilege] should only be used when absolutely necessary, to resolve uncertainty or in the unlikely event of Parliament's exclusive cognisance being materially diminished by the courts" (Joint Committee on Parliamentary Privilege, *Parliamentary Privilege*, 3 July 2013, HL Paper 30 of session 2013–14, para 47). Mr Jenkin did not believe that either of those conditions existed in the present case (col 79).

Gareth Thomas, the then Shadow Cabinet Office Minister, referred to the House of Commons Select Committee on Standards' "helpful" report on the Bill (col 83). The Committee had concluded that this provision "should be unnecessary, since the protection of Article 9 in the Bill of Rights is absolute". Although the Committee believed that the provision was "intended to be helpful in the context of this Bill", it feared that "[t]he exception may have the unfortunate effect of calling into question whether or not other legislation relating to Members without such explicit provision does affect privilege" (House of Commons Select Committee on Standards, *The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill*, 3 September 2013, HC 638 of session 2013–14, paras 11–12).

Andrew Lansley, Leader of the House of Commons, said that the Government was "committed to ensuring that the provisions do not intrude on Parliament's exclusive cognisance". He explained that following careful consideration, the Government had concluded that "the inclusion of a reference to parliamentary privilege in the Bill... could invite examination, discussion and judgement from sources external to Parliament" and could "prompt unhelpful rulings by the courts regarding the nature or extent of privilege or its interaction with other statute" (col 90). The Government therefore proposed an amendment to delete paragraph 1 of schedule 1. Mr Jenkin said he was "greatly reassured" that this amendment put the Bill "back in the normal category of all Bills, that privilege applies and that the unstated presence of the 1689 Bill of Rights looms over this Bill as it does over any Act and our privileges are therefore secure" (col 80). He withdrew his proposed new clause 1 (which would have made explicit that nothing in the Bill could be construed by the courts as affecting the rights guaranteed by Article 9) (col 94). The Government amendment was accepted without division and paragraph 1 of schedule 1 was deleted (col 129).

Members of Parliament

Paragraph 2 of schedule 1 of the Bill as introduced in the House of Commons specified that communications made by an MP to ministers or permanent secretaries on behalf of person(s) resident in the MP's constituency would not be classed as consultant lobbying. In their reports on the Bill, both the Select Committee on Standards and the Political and Constitutional Reform Select Committee identified a number of difficulties arising from this paragraph and recommended removing it altogether.

The House of Commons Political and Constitutional Reform Select Committee firstly observed that because the Bill defined a constituency "resident" as a person entitled to be registered as a parliamentary elector, certain groups of people "whom an MP may nonetheless legitimately represent" would fall outside the definition (House of Commons Select Committee on Political and Constitutional Reform, *The Government's Lobbying Bill*, 5 September 2013, HC 601–i of session 2013–14, paras 31–33). Examples might include people involved in immigration disputes without the right to reside, young people below voting age, individuals who lacked legal capacity for other reasons, or companies based in the MP's constituency. The Committee noted that paragraph 2 could therefore be interpreted as requiring an MP to register as a consultant lobbyist in order to contact a minister or permanent secretary on behalf of anyone who was not eligible to vote in the MP's constituency. This was, argued the Committee, "very unlikely to be what the Government intended". Secondly, paragraph 2 could be taken to imply "that it may be permissible for an MP to accept money in return for making communications to ministers or permanent secretaries". Again, the Committee thought it "very unlikely" that this was the Government's intention, pointing out that the House of Commons Code of Conduct bans paid advocacy.

Thirdly, the Committee suggested that:

> It could be argued that paragraph 2 is not necessary, since MPs could already be said to be exempt on the grounds that their main business is not lobbying (Paragraph 3 of schedule 1)[4] and also that they are acting generally as representatives of... "persons of a particular class or description and lobbying is only "an incidental part of their general activity" (Paragraph 4 of schedule 1)[5].
>
> (para 34)

The Committee concluded that "by attempting to be particularly clear that Members of Parliament are excluded from the Bill, the Government has in fact achieved the opposite effect". The Committee recommended deleting paragraph 2 of schedule 1 (paras 36–7).

The Select Committee on Standards reached similar conclusions, arguing that "paradoxically, the scope of the legislation would be clearer without this exception" (House of Commons Select Committee on Standards, *The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill*, 3 September 2013, HC 638 of session 2013–14, paras 14 and 17). This Committee also recommended deleting paragraph 2 of schedule 1. In order to "make clear that Members' ordinary work is not caught by the Bill", the Committee recommended the addition of a new sub-paragraph "stating that a reference to payment does not include a reference to the salary an MP receives as a member of the House of Commons". An amendment—originally

[4] Paragraph 1 of schedule 1 in the Bill as introduced in the House of Lords.
[5] Paragraph 2 of schedule 1 in the Bill as introduced in the House of Lords.

proposed by Graham Allen (Labour MP for Nottingham North), the Chair of the Political and Constitutional Reform Select Committee, and supported by the Government—was made to the Bill at committee stage, adding a provision (paragraph 4(2) of schedule 1 of the Bill as introduced in the House of Lords) which specifies that parliamentary salaries and allowances paid to MPs and members of the House of Lords do not count as payments for the purposes of Part 1 of the Bill.

At report stage, Andrew Lansley, Leader of the House of Commons, proposed a Government amendment to delete paragraph 2 of schedule 1 from the Bill. He explained that the exemption for MPs' constituency work had originally been included "out of an abundance of caution" because of MPs' "uniquely high level of communication with ministers and permanent secretaries" (HC *Hansard*, 8 October 2013, col 91). However, he accepted that the inclusion of this provision "created an unnecessary and unhelpful confusion". Members of Parliament were already covered under other exemptions since they "are not engaged in the course of a business and the payment that they receive is not regarded as payment for the purposes of the Bill". Mr Lansley said that the Government believed this gave "a cast-iron, belt-and-braces exemption for Members of Parliament", and that paragraph 2 was now "redundant" (cols 92–3). The amendment was welcomed by Gareth Thomas, speaking for the Opposition, and by Kevin Barron (Labour MP for Rother Valley), Chair of the Select Committee on Standards (cols 81 and 87). The Government amendment was accepted without division and paragraph 2 of schedule 1 was deleted (col 129).

Members of the House of Lords

A number of speakers at report stage questioned how the Bill would apply to members of the House of Lords. Gareth Thomas, speaking for the Opposition, pointed out that because members of the House of Lords are not paid a salary, "there is an expectation that [they] can earn a living beyond their work there" (col 84). Paul Flynn (Labour MP for Newport West) suggested that some paid lobbying work outside Parliament which "would be condemned in this place as reprehensible" might be permitted under House of Lords rules—a situation he described as "a matter of public scandal" (col 82). Andrew Lansley explained that: "A Member of the House of Lords, in exercising their public duty, would not be regarded as carrying on a business and would therefore be exempt" (col 91). However, he acknowledged that, while the Commons Code of Conduct prohibited MPs from receiving payment for contacting ministers or permanent secretaries, the situation could be different for members of the House of Lords:

> The code in the House of Lords makes it clear that nobody can undertake paid advocacy in the House of Lords or advise somebody on the proceedings of the House, but it does not preclude somebody engaging in lobbying activity in the course of a business and in return for payment. My reading is that it is not inconceivable that some Members of the House of Lords would be required to register as consultant lobbyists as a consequence of their business activities. They would certainly not be required to register by virtue of their activities as Members of the House of Lords.
>
> (col 93)

Other Government Amendments

A number of other Government amendments were accepted without division. These clarified drafting on: the Registrar's ability to make direct payments to staff seconded from the civil service; information to be included in the register; the periods for which consultant lobbyists

are required to provide information; the Registrar's duties; offences and penalties for not complying with the register; the appeals process; and the definition of "government" in Northern Ireland (cols 114–15 and 129–30).

Statutory Code of Conduct

A number of other Opposition and backbench amendments were discussed, but none was successful. Gareth Thomas moved new clause 4, which would have required all registered lobbyists to comply with a code of conduct prepared by the Registrar. Without a code of conduct, he argued, "we will be in the rather odd position in which the Registrar can punish lateness in providing or submitting information, but cannot punish lobbyists who deliberately hide who they are working for from those they are lobbying" (col 96). He argued that once consultant lobbyists had registered, there was a risk that they would no longer comply with the existing voluntary codes of practice within the industry. For example, the fact of being registered "might enable lobbyists to imply they had a kitemark or some sort of endorsement", or they might not wish to continue to pay to belong to a voluntary body if they had to pay to be on the statutory register. Mr Thomas also felt that having a single code of conduct would "offer clarity about the minimum standards lobbyists should meet" and "avoid confusion about which voluntary register was the best one" (col 96). Mr Thomas explained that Labour's amendments were inspired by other countries with statutory codes of conduct for lobbyists where "our research suggests that such measures have had a positive impact in making lobbying more transparent" (col 100). Labour hoped the Government would come round to the view that in-house lobbyists should be brought within the scope of the Bill; a code of conduct as provided for in Labour's new clause would then "require all lobbyists to adhere to clearer standards of behaviour" (col 101).

In its report, the Political and Constitutional Reform Select Committee had stated its belief "that there would be merit in requiring lobbyists on the register to sign up to a code of practice", but the Committee did "not think that a statutory code [was] necessary" (House of Commons Select Committee on Political and Constitutional Reform, *The Government's Lobbying Bill*, 5 September 2013, HC 601–i of session 2013–14, para 54).

In response to the Opposition's proposed new clause, Andrew Lansley declared that Labour was trying to "create a full-blown general regulator of the industry" (cols 109–10). The Government's approach, said Mr Lansley, sought to "shine the light of transparency on key issues in lobbying and the impact on key decision makers", not to "introduce a bureaucratic monster" to oversee the whole industry. Mr Lansley said the Government was confident that the industry's own existing voluntary codes of conduct, which contained "laudable principles and good practice guidance" would continue. He contended that the experience of other countries, such as the United States, had shown that "statutory codes of conduct for lobbying [were] effectively unworkable and unenforceable" as well as expensive.

Mr Thomas pressed the new clause to a vote. It was defeated by 292 votes to 224 (col 116).

Registering subject and purpose of lobbying

Graham Allen (Labour MP for Nottingham North), the Chair of the Political and Constitutional Reform Select Committee, spoke to his amendment 100, which would have required registered consultant lobbyists to provide details of the purpose and subject matter of the lobbying they

had carried out on behalf of their clients. This would have implemented his Committee's recommendation that:

> The information that the register requires to be listed should be expanded to include the subject matter and purpose of the lobbying, when this is not already clear from a company's name. To be clear, this should not involve the disclosure of detailed information about the content of the meeting—just a broad outline of the subject matter and intended outcome. For example: Subject matter—lobbying; Purpose: change the Transparency of Lobbying etc Bill.
>
> (House of Commons Select Committee on Political and Constitutional Reform, *The Government's Lobbying Bill*, 5 September 2013, HC 601–i of session 2013–4, para 45).

Mr Allen said that "on the basis of good faith" that the Government would consider the issue further, he would not press his amendment to a vote (col 109).

Lady Hermon (Independent MP for North Down) agreed it was "essential that the subject matter of the lobbyist group… is noted" (col 106). Mark Durkan (SDLP MP for Foyle) argued that registering the subject matter of the lobbying activity would not only satisfy the public's need for transparency but would also protect consultant lobbyists and their clients from "any accusations of ulterior motives" (col 107). In response, Andrew Lansley contended that it was not necessary to publish details of the subject and purpose of lobbying in the register, because information about meetings between consultant lobbyists and ministers was already released by the Government when it published ministers' diaries. He explained that:

> If one has the register, which discloses who the consultant lobbyist is and their clients, and ministers' diaries, which are clear about the purpose of a meeting, one should be able to see the character of the relationship—who is lobbying whom, and for what.
>
> (col 111)

Gareth Thomas dismissed this as "a complete red herring" since "so few consultant lobbyists actually go to meet ministers directly" (col 111). Lady Hermon questioned whether all officials at the equivalent level of a permanent secretary, such as the Director of Public Prosecutions, the Chief Medical Officer or the Chief Executive of Her Majesty's Revenue and Customs, were obliged to publish their diaries (col 113). Mark Durkan felt that obliging people to cross-reference between ministerial diaries and the register of consultant lobbyists "clearly impose[d] more difficulty". He did not believe that Mr Lansley had "made any convincing case for why the register should not specify the topic of the lobbying" (col 113). However, Mr Lansley maintained that transparency was "delivered through the publication of ministers' diaries". The Bill was simply intended to remedy "the gap in transparency that we have identified", namely "the gap in understanding, if ministers or permanent secretaries meet consultant lobbyists, who their clients are" (col 114).

Exemptions

Chi Onwurah, the Shadow Cabinet Office Minister, moved new clause 7, which she said was intended to ensure that "some critical groups and individuals" were not caught up in the Bill (col 122). New clause 7 would have given an explicit exemption from registration to people who were: communicating with their own MP; making communications solely on their own behalf; responding to a government consultation exercise; submitting evidence to a

parliamentary committee; acting in an official capacity on behalf of a government organisation; making communications without remuneration; or responding to a court order. Ms Onwurah thought that both sides of the House could agree that "those scenarios should not be caught up by the Bill simply because of poor drafting" (col 123). Mr Lansley acknowledged that the Opposition was making some "sensible exclusions", but maintained that "all those sensible exclusions are already provided for in the Bill" (col 128).

Scope of registration

For the purposes of the Bill, only communications made to ministers or permanent secretaries count as consultant lobbying. A number of amendments were tabled that sought to widen this definition. Simon Hughes (Liberal Democrat MP for Bermondsey and Old Southwark) spoke to his amendment 116, which would have added special advisors to that list. He said:

> They are clearly a group of people known to be part of the political system operating out there as a bridge between ministers, departments and the public. It seems to me that they are naturally perceived to be people who can receive messages from lobbyists and pass them on to their political bosses. It would be good politics and not a complication to add these people to the list.
>
> (col 124)

Chi Onwurah briefly mentioned Labour amendments 74 and 75 which would have widened the scope of who it was possible to lobby under the Bill, and amendments tabled by Graham Allen which would have added all senior civil servants, special advisors and potentially all members of both Houses of Parliament to the list (col 124). Andrew Lansley again argued that the purpose of the Bill was to "complement the existing Government transparency regime whereby ministers and permanent secretaries proactively publish details of their meetings with external organisations". He suggested that these individuals were "the key decision makers in Government", and officials below this level were merely "intermediaries". He questioned whether there was "really value in collecting and publishing data on every meeting of every one of almost 5000 senior civil servants" (col 128).

4. Part 2: Non-Party Campaigning

4.1 Key Provisions

Part 2 of the Bill seeks to make changes to the legal requirements for people or organisations who campaign in relation to elections but are not standing as candidates or a registered party. According to the Explanatory Notes, Part 2 of the Bill would "increase transparency in relation to spending by non-parties by requiring them to publish and record more information about their spending, donations, accounts and board members" (Cabinet Office and Department for Business, Innovation and Skills, *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill: Explanatory Notes*, 17 July 2013, para 5).

Part 2 extends to the whole of the United Kingdom, and does not need the consent of the devolved legislatures. Certain amendments also extend to Gibraltar.

Clause 26 and schedule 3 amend the definition of "controlled expenditure" for third parties so that it is more closely aligned with the definition of campaign expenditure for political parties as

set out in the Political Parties, Elections and Referendums Act 2000 (PPERA): clause 26 amends the existing definition in PPERA of what is regarded as controlled expenditure for recognised third parties, for the purpose of regulation; and schedule 3 makes changes to the list of qualifying expenses that would need to be accounted for as controlled expenditure, when incurred by third parties for election purposes (Explanatory Notes, paras 58–60).

Clause 27 makes provision to change the spending limits that third-party campaigners can spend in an election campaign, and lowers the threshold at which they are required to register with the Electoral Commission. At present, the registration threshold for spending in England is £10,000, and £5,000 in each of Scotland, Wales and Northern Ireland. Clause 27 reduces these limits to £5,000 and £2,000 respectively. Clause 27 also sets new limits of spending so that a recognised third party can only spend two percent of the maximum campaigning expenditure limit for political parties in each of England, Scotland, Wales or Northern Ireland. Therefore, if the campaign limits for political parties are altered, the third party maximum campaign limits will also change (Explanatory Notes, paras 63–5).

Clause 28 introduces geographical limits on the amount that non-party campaigners can spend in a particular constituency during the regulated period. It requires that where a third party campaigner incurred "controlled expenditure" in one or more constituency and had no significant effect in others, the level of spending attributed to each parliamentary constituency should be in equal proportions. It also introduces a limit per constituency on such controlled expenditure to 0.05 percent of the maximum campaign expenditure totals for political parties at the UK level. Therefore, the total spending in any constituency must not exceed £9,750; of this limit, "controlled expenditure" can only be incurred at a level of 0.03 percent (or £5,850) of the total of the maximum campaign expenditure limits, in the period after the dissolution of Parliament (Explanatory Notes, paras 66–9). Clause 34 amends the Representation of the People Act 1983, and introduces an increase in the level of expenditure that a third party can incur, when campaigning for or against a particular candidate in a constituency, from £500 to £700. The clause also allows the returning officer or the Electoral Commission to request a record of expenditure up to six months after the date of the poll (Explanatory Notes, paras 123–25).

Clause 29 establishes the limit up to which a third party can support a registered party without authorisation from that party. A third party can spend in support of a registered party up to 0.2 percent of the maximum campaign expenditure limits for registered parties in the various parts of the UK. Beyond these limits, the third party has to obtain authorisation from the registered political party (Explanatory Notes, paras 73–9). Expenditure above these limits, provided it is authorised, will then count against the political party's limit (Cabinet Office, *Third Party Campaigning in Elections (as part of the Transparency of Lobbying, Non-Pary Campaigning and Trade Union Administration Bill: Impact Assessment*, 15 July 2013, p 7). These limits apply for the regulated period of 365 days. (*Explanatory Notes*, paras 73–9). Under clause 30, the Secretary of State may amend the percentages creating the limits by order, on recommendation of the Electoral Commission (Explanatory Notes, para 88).

Clauses 31 to 33 introduce new reporting requirements on the third parties when reporting to the Electoral Commission. Clause 31 requires further information to be provided of the names of relevant participators; clause 32 imposes more detailed requirements on third parties to submit quarterly and weekly donation reports to the Electoral Commission; and clause 33 introduces a new requirement for statements of accounts in standard formats (Explanatory Notes, paras 89–122).

Clause 35 also extends the Electoral Commission's remit to monitor compliance by non-party campaigners with regulatory requirements, including those inserted by the Bill (Explanatory Notes, paras 126–7).

The Impact Assessment for Part 2 of the Bill stated that the proposals would provide a "greater degree of transparency by making the spending, donations and reporting regime more comprehensive ... By introducing spending controls the policy is also intended to curb perceptions of undue influence" (Cabinet Office, *Third Party Campaigning in Elections: Impact Assessment*, 15 July 2013, p 1). The Impact Assessment also estimated that:

> [...] around 10 percent of third party organisations will see their expenditure capped reducing expenditure by a total £650,000 in general election years. There will also be a small administrative cost to registered third party organisations (between £0–£800) and some small third party organisations may further be brought into regulatory regime creating further compliance costs.
>
> (page 2)

Further background information on the provisions contained in Part 2 of the Bill can be found in the House of Commons Library research paper *Transparency of Lobby, Non-Party Campaigning and Trade Union Administration Bill*, 27 August 2013, RP 13/51.

4.2 Background

The Bill as introduced into the House of Commons at first reading on 17 July 2013 amended the existing definition in electoral law of "controlled expenditure" for recognised third parties, for the purposes of regulation. Clause 26 defined "controlled expenditure" as expenses incurred by, or on behalf of, a third party which fall within schedule 3 of the Bill and are for "election purposes". According to the Explanatory Notes, the definition for the term "for electoral purposes" was broad in its scope so as to include all expenditure by a third party that was incurred for the purpose of, or in connection with, promoting or procuring electoral success or enhancing the standing of a registered political party or candidates: the definition for "election purposes" did not rely solely on intent, the effect of the expenditure would also be considered (*Explanatory Notes*, paras 58–60).

On 5 September 2013, the House of Commons Political and Constitutional Reform Select Committee published their report on the Bill. The Committee heard evidence from a number of charities, including the National Council for Voluntary Organisations (NCVO), who expressed concerns that a lot of their activities would come under the scope of the definition of expenses incurred for "electoral purposes" (House of Commons Select Committee on Political and Constitutional Reform, *The Government's Lobbying Bill*, 5 September 2013, HC Paper 601–i of session 2013–14, paras 72–3). In addition, the Electoral Commission told the Committee that the "uncertainty created by the Bill seem[ed] likely to affect a wide range of organisations" (para 71). The report proposed a number of amendments to Part 2, which included a recommendation that the definition of "electoral purposes" should be "defined relatively narrowly, so that it relates clearly to promoting a particular political party or candidate, or the intent to damage a particular political party or candidate" (para 74). The report also raised concerns about the new lower thresholds for registration with the Electoral Commission and lower thresholds for expenditure.

On 6 September 2013, the Cabinet Office published a press release which stated that the Government, following discussions with the NCVO and other groups, intended to amend the definition in the Bill and "revert to the situation as set out under existing legislation, which defines controlled expenditure as expenditure which "can reasonably be regarded as intended to promote or procure electoral success" (Cabinet Office press release, 'Government to Act on Transparency Bill Amendments after NCVO Meeting', 6 September 2013). The Cabinet Office issued a further press release on 26 September, which confirmed that the Government intended to table amendments for consideration at report stage (Cabinet Office press release, 'Andrew Lansley, Leader of the House of Commons, Has Announced that the Government Will Publish Amendments to the Transparency of Lobbying Bill', 26 September 2013). The Electoral Commission welcomed the commitment from the Government. However, they cautioned that it was "important that this is done carefully, and in particular that the new definition is properly applied to each of the new categories of regulated activity in schedule 8A" (Electoral Commission, *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill 2013—House of Commons Committee Stage: Amendment Briefing*, 10 September 2013).

4.3 Committee Stage

The debate on Part 2 at committee stage in the House of Commons focused on clause 26, which defines the meaning of "controlled expenditure"; schedule 3, which lists the type of activity that would have to be accounted for as controlled expenditure during the regulated period; and clause 27, which sets new registration and spending limits. The Deputy Leader of the House of Commons, Tom Brake, made a further commitment to table amendments at report stage to address concerns about the definitions in the Bill relating to "controlled expenditure" (HC *Hansard*, 10 September 2013, col 857). No amendments were made to clause 26 and 27, or schedule 3. However there were some Government drafting amendments to clauses 29 and 32. Further information can be found in the House of Commons Library Note, *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill: Progress of the Bill*, 15 October 2013, SN/PC/06734.

4.4 Report Stage

Part 2 of the Bill was debated in the House of Commons on 9 October 2013, on the second day of report stage. Prior to the debate, the Electoral Commission published two briefings which examined the amendments that were to be debated. The Commission stated that the Government amendments had taken steps in the right direction; however, they maintained that they would "now need careful testing with campaigners" (Electoral Commission, *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill 2013: Statement on Government Amendments at Report Stage*, 4 October 2013, p 2 and *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill 2013—House of Commons Report Stage and Third Reading: Amendment Briefing*, 9 October 2013, p 1–3). The Commission also argued that the Government amendments did not address other issues, such as the impact of reducing the registration and spending thresholds (Electoral Commission, *Statement on Government Amendments at Report Stage*, 4 October 2013, p1) and recommended that once the revised definition of controlled spending was confirmed, the Government and Parliament should consider what spending limits would provide "the appropriate balance between freedom of expression and controls on undue influence" (Electoral Commission, *House of Commons Report Stage and Third Reading: Amendment Briefing*, 9 October 2013, p 7).

The following sections of the Note will focus on the amendments that were debated and those that were pressed to a division on 9 October 2013.

Post-legislative Reports and Commencement Schedules

Wayne David (Labour MP for Caerphilly) tabled new clauses 2 and 3, which would have required post-legislative reports to be laid before Parliament, assessing the impact of Part 2: new clause 2 would have required the Electoral Commission and the Minister to assess the impacts of Part 2 on third-party engagement in elections to the devolved legislative authorities and to the House of Commons, in respect of Scotland, Wales and Northern Ireland, before it could come into force; and new clause 3 would have required the Electoral Commission to lay before Parliament, within one month of Royal Assent, a full cost projection of the impact of Part 2 on the Commission's running costs, and an assessment of the administrative impact on third parties.

Opening the debate, Mr David said that the purpose of new clause 2 was to draw "focus on devolved institutions and the referendum, so that proper consideration is given to the Bill's impact" (HC *Hansard*, 9 October 2013, col 171). Mr David argued that the relationship between the Bill and the devolved institutions was not "straightforward":

> [...] some of the provisions will apply to them and others will not. There will inevitably be some confusion, but it is vital to ensure that there is no excessive confusion about what does and does not apply to the devolved institutions, and about how the legislation will work in practice. We therefore call for a report to be laid before both Houses with a proper assessment of the impact that Part 2 will have on third-party engagement with the devolved institutions.
>
> (col 172)

He argued that the regulated periods of the Scottish referendum and the UK general election were bound to overlap, and would result in a "great deal of confusion about which measures apply, what moneys may be spent, what moneys apply to one campaign but not to another and what moneys apply to both campaigns". Mark Durkan (Social Democratic and Labour Party MP for Foyle), speaking in support of the new clauses, stated that it must be recognised that "even in a separately designated Westminster election year, politics still continues" (col 188). He surmised that:

> Should a legislative proposal come before the Assembly in the same year as a Westminster election, will people argue that is really a way of groups advertising where they stand on how Northern Ireland Members—possible candidates in that Westminster election—voted on same-sex marriage when that Bill was being considered by the House of Commons?
>
> If the Government are serious that the point of this Bill is to make sure that non-party campaigning cannot be done in a way that is prejudicial to people or parties in Westminster elections, they really have not come up with an answer to that. The proposals need to give further consideration to how any valid issues and concerns are addressed without giving rise to other serious problems.
>
> (col 189)

Responding for the Government Tom Brake, the Deputy Leader of the House of Commons, confirmed that the Bill would not have an impact on referendums:

> Although the regulated period for the 2015 UK parliamentary election will overlap with the regulated period for the 2014 Scottish independence referendum, spending in the Scottish referendum is a matter for the Scottish Parliament. Such expenditure could not, in our view, reasonably be regarded as intended to promote electoral success and would therefore not be controlled under the Political Parties, Elections and Referendums Act 2000 or regulated by the Bill.
>
> (col 194)

Mr Brake highlighted that on the Bill's introduction to the House, the Government had published a "thorough" impact assessment to accompany it, and therefore a further analysis at a later date would serve "no purpose" (col 194). In addition, he stated that the Electoral Commission had a statutory function to report on the conduct of elections under current legislation, which would include an examination of the impact of the changes to the rules on third-party campaigning at future elections. He argued that it was not for the "Government to duplicate the role of the independent regulator".

Commenting on new clause 3, Mr Brake reiterated that the analysis in the impact assessment, which considered the impact of the Bill on both the Electoral Commission and third parties, was "comprehensive", and therefore he did not see the "need to repeat it after the Bill ha[d] received Royal Assent" (col 195). He also stated that under PPERA, the Electoral Commission was required to submit an estimate of its income and expenditure to the Speaker's Committee each financial year, and consequently there was already provision under existing legislation for the commission to provide the "information that the amendment seeks".

Simon Hughes (Liberal Democrat MP for Bermondsey and Old Southwark) also observed that new clause 3 was not supported by the Electoral Commission.[6] Nevertheless, he did urge the Government to give time for the Joint Committee on Human Rights and "any other committees" to report, and for their "deliberations to be considered and that, when the Electoral Commission expressly supports the Government's proposals or proposed changes, the Government should be responsive" (cols 191–2).

Graham Allen (Labour MP for Nottingham North), the Chair of the House of Commons Political and Constitutional Reform Select Committee, also commented on the significance of the Electoral Commission's view, stating that:

> If we are in the business of accepting the views of the Electoral Commission... perhaps we should accept its views on virtually every other paragraph in the Bill, which, almost to a clause, have been disparaged in the most polite civil service language by the Electoral Commission.
>
> (cols 175–6)

[6] The Electoral Commission's briefing of 9 October 2013 stated that the Commission did not support the amendment "since there are more appropriate vehicles for consideration of these issues", Electoral Commission, *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill 2013—House of Commons Report Stage and Third Reading: Amendment briefing*, 9 October 2013, p 12.

Speaking to his amendments 4 to 6 and 10 to 12, Christopher Chope (Conservative MP for Christchurch) said that while he advocated "proper pre-legislative scrutiny, consultations and exchanges of views with bodies such as the Electoral Commission" (col 182), he was concerned that new clauses 2 and 3 would not "provide an effective remedy". He stated that the intention of his amendments was to bring clarity to the question of commencement of Part 2 of the Bill. Mr Chope stated that amendments 4 to 6 would mean that clauses 30, 34 and 35 would come into effect on the day the Act was passed "rather than on a subsequent day when a Minister might decide to bring forward a commencement order".[7] He argued that:

> [...] our democracy would be enhanced if we were able to have greater clarity so that the provisions enacted were actually implemented from the commencement of the Act, alongside all the other provisions.
>
> (col 183)

Amendments 10 to 12 would have removed the provision for a "bespoke regulated period" (the transitional period) in clause 42. According to the Bill's Explanatory Notes, the bespoke regulated period would apply "only in relation to the next UK general parliamentary election" to deal with the period of overlap between the European Parliament elections in May 2014 and the next parliamentary general election, "the date for which has been fixed as 7 May 2015 by s1(2) of the Fixed-term Parliaments Act 2011" (*Explanatory Notes*, para 148). Mr Chope stated that he was "instinctively suspicious of 'bespoke' regulated periods or of anything brought into statute in order to deal with a particular scenario" (col 183).

However, Tom Brake maintained that the purpose of the provisions was to allow preparations to take place and the people involved to be "brought up to speed". He also argued that the amendments would delay the Act's measures rather than have them "swiftly implemented":

> I know that he was seeking to bring clarity, but the effect of amendments 10, 11 and 12, together with amendments 4, 5 and 6, is that the measures in Part 2 would not come into effect before the 2015 General Election. Amendments 10, 11 and 12 would remove the transitional provision of clause 42 altogether, with the result that the Part 2 provisions would come into effect only at the commencement of the next regulated period after Royal Assent, which is unlikely to be the regulated period for the 2015 General Election. The Government are committed to enhancing the transparency of spending by third parties, and that includes enacting the measures within Part 2 in time for the regulated period of the 2015 General Election. I therefore do not consider it appropriate to delay their implementation until after the 2015 General Election.
>
> (col 197)

Amendments 4 to 6 and 10 to 12 were not moved to a division.

Concluding the debate on the opening group of amendments, Wayne David (Labour MP for Caerphilly) stated that the Opposition's intention was not to press new clauses 2 and 3, on the "basis of the commitment the Deputy Leader of the House has given to have further discussions, particularly in the House of Lords" (col 198).

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[7] Clause 30 relates to the extension of power of the Secretary of State to vary specified sums; clause 34 relates to third party expenditure in respect of candidates; and clause 35 relates to the functions of the Electoral Commission with respect to compliance.

Meaning of "Controlled Expenditure"

Following the Government's commitment at the committee stage of the Bill (HC *Hansard*, 10 September 2013, col 857), and in a subsequent press statement dated 26 September 2013 (Cabinet Office press release, 'Andrew Lansley, Leader of the House of Commons, Has Announced that the Government will Publish Amendments to the Transparency of Lobbying Bill', 26 September 2013), the Government tabled a number of amendments to change the meaning of "controlled expenditure" defined in clause 26, and to revise the definitions of existing and new categories of activity that would be regulated as "controlled expenditure" under schedule 3.

Speaking for the Government, Tom Brake stated that:

> Clause 26 sets out the test that third parties need to meet in order to incur controlled expenditure. There has been extensive comment from a number of bodies, such as charities and voluntary organisations, that the Bill will capture their ordinary campaigning activities. That was not the case. However, the Government gave an undertaking in Committee to revert to a test based on the wording of the existing legislation, which provides that controlled expenditure is only that "which can reasonably be regarded as intended" to promote or procure the electoral success of parties or candidates. The Government's amendments meet that commitment.
>
> (HC *Hansard*, 9 October 2013, col 199)

He also stated that in regard to schedule 3, the amendments tabled would take forward a recommendation made by the Electoral Commission to align the activities by which third parties incurred controlled expenditure with the situation for political parties (col 204). He argued that the amendments made it clear that: public rallies and events were regulated in line with the current publicity test for election material set out in existing Commission guidance; that there was an explicit exception for annual conferences; and that in relation to dealings with the media, the amendments meant that only press conferences and other organised media events would be regulated—third-party campaigners who responded to ad hoc media questions on specific policy issues would not be covered by the Bill. He said:

> [...] let me emphasise that in all these cases only activities that can reasonably be regarded as intended to promote or procure electoral success of a party or candidate will be subject to regulation.
>
> (col 199)

Stephen Twigg, the Shadow Minister for Political and Constitutional Reform, said that he had heard "very little... to change the view... that Part 2 of the Bill is little more than a gag on charities and campaigners" (col 207). He stated that if an activity was likely to make people think favourably of parties or candidates who supported an issue, it would potentially be covered by the scope of the Bill. Mr Twigg argued that as a consequence, "one risk" was that the Bill would "result in litigation and a shift in the use of moneys that charities would otherwise use to fulfil their charitable objectives" (cols 209–10).

However, Stephen McPartland (Conservative MP for Stevenage) said that he would "be interested to hear what such litigation would be" as "we are moving back towards the

definition in the Political, Parties, Elections and Referendums Act 2000, since when there have been three general elections" (col 213). He further argued that the amendments demonstrated that ministers had listened in the committee stage and the second reading of the Bill, when the concerns of charities had been discussed (col 214).

Responding to the Opposition's comments, Tom Brake reiterated the Government's position, stating that:

> [...] charities and voluntary organisations do not campaign for the electoral success of a party or candidates, and therefore will not be caught by controlled expenditure.
>
> (col 213)

Following the debate on the Government's amendments, Graham Allen moved amendment 101, which would have introduced an alternative rewording of clause 26. The amendment would have required that "the primary purpose" of the expenditure should "reasonably be regarded as intended" to promote or procure electoral success. Mr Allen stated that he "hope[d] the House would vote in favour of amendment 101... not that the words of the amendment should be added to the Bill, but that the Government should go away, think again, listen and do the consultation they should have done over a year ago" (col 219).

Speaking in support of the amendment, Jenny Chapman (Labour MP for Darlington) declared:

> I would vote against anything that frustrated this part of the Bill, so I want to speak in support of amendment 101. All the problems with this provision stem from one mistake, which is that it is rushed and has not been consulted on.... There has been no consultation and no time to consider the amendments. This is doing more than anything else I can imagine to damage the relationship with our voluntary and community sector that was starting to be built up in Government and in local government across the country.
>
> It is a matter of huge regret that the Government have managed carelessly to stir up a massive amount of distrust in the third sector at a time when we are, rightly, asking more and more of its organisations.
>
> (col 226)

However, concerns were also raised that the wording of the amendment added a subjective element to clause 26. Tom Brake stated that while the amendment sought to revise the definition of "for election purposes along broadly similar lines to the Government amendment 32, the amendment would also introduce a new primary purpose test", which the Government could not support (col 206), and John Thurso (Liberal Democrat MP for Caithness, Sutherland and Easter Ross) argued that the amendment would introduce "something that worries me greatly in legislation—that is, a subjective as opposed to an objective test" (col 221).

The Government amendments were divided on and agreed to. Graham Allen (Labour MP for Nottingham North) also pressed amendment 101 to a division. It was defeated by 298 votes to 261 (col 230).

Registration Threshold

Graham Allen moved amendment 102, which would have removed the threshold changes contained in clause 27 of the Bill. Clause 27 would lower the current spending thresholds above which campaigners are required to register with the Electoral Commission from £10,000 to £5,000 in England, and from £5,000 to £2,000 in each of Scotland, Wales and Northern Ireland. Clause 27 would also set the maximum limit that a recognised third party could spend on regulated activity, during the regulated period before a UK parliamentary general election, to two percent of the overall maximum campaign limit in each of England, Scotland, Wales or Northern Ireland. Amendment 102 would have restored the registration thresholds to £10,000 rather than £5,000 in England, and to £5,000 rather than £2,000 in each of Scotland, Wales and Northern Ireland. It would have also restored the current spending limits for registered campaigners during the regulated period before a general election. Allen explained that the amendment would "allow every Member of Parliament to make a simple statement" by answering a "straightforward" question:

> They could state that the activity that charities have hitherto enjoyed in interacting with our democracy in an election year is fine and that they should continue to be able to do so, and that whatever else we have said about the Bill, the expenditure limits set out before clause 27 are okay. Alternatively, they could endorse the provisions in clause 27.
>
> (col 238)

Mr Allen argued that the Government had not yet presented evidence that clause 27 was required and stated that the House of Commons Political and Constitutional Reform Select Committee, who had examined the clause "pretty hard", also "could not find the reason for it".[8] He argued that "no case has been made, and certainly no case has yet been made about the figures" (col 239). Lady Hermon (Independent MP for North Down) also questioned the "justification" for reducing the threshold in Northern Ireland, Scotland and Wales "by more than half to £2,000 for no good reason at all" (col 241).

Tom Brake began his response by declaring that the Bill's intention was to ensure greater transparency of campaign finance, and "so provides that a third party must register with the Electoral Commission as a 'recognised third party' if it wishes to spend more than the revised threshold" (col 242). He argued that as a result of the new thresholds, "more third parties will account for their expenditure and provide details of the donations they receive". He also highlighted that:

> Evidence from recent elections shows that the third-party spending limit for UK parliamentary elections, which applies separately for each of England, Scotland, Wales and Northern Ireland, is so high that third parties are effectively unrestricted in their level of spending. That renders the limit ineffective as a spending control...
>
> The Bill lowers the thresholds to increase transparency by identifying third parties that campaign in the political process, and I should have thought that Opposition Members would support that.
>
> (col 243)

[8] The House of Commons Select Committee on Political and Constitutional Reform published its report, *The Government's Lobbying Bill*, on 5 September 2013.

Mr Brake stated that the reason for the figures set out in clause 27 was "simply that the Government wanted to arrive at some straightforward figures... and we felt that given the size of those nations spending £2,000 had a significant impact on election campaigning".

Speaking for the Opposition, Angela Smith, Shadow Deputy Leader of the House of Commons, stated that they supported "taking the big money out of politics and having sensible controls on the money spent by third parties" (col 247). However, she said that clause 27 had caused "huge consternation" in the third sector, and if passed into law, it would "play a major part, along with other clauses in Part 2, in effectively gagging the third sector in election periods". Ms Smith concluded that the Opposition were:

> [...] committed to proper consultation and scrutiny of proposals as they emerge in relation to party political funding and funding for the third sector, but the two must go together. That is why today we will support amendment 102.
>
> (col 248)

The Chair of the Joint Committee on Human Rights, Dr Hywel Francis, stated that his committee's view was that the "overall effect" of Part 2 on lower spending limits, lower threshold for registration and increased numbers of campaigners' activities, "may well be a chilling and adverse effect on free speech and freedom of assembly" (col 225).

The amendment was divided on, and defeated by 312 votes to 261 votes (col 248).

Clause 31: Peerages and donations

Pete Wishart (Scottish National Party MP for Perth and North Perthshire) spoke to his amendments 2 and 3, which would have made provisions for notifying the Electoral Commission of donations to a registered party after an individual had received a peerage. Amendment 2 would have required an individual who had received a peerage within the last six months to notify the Electoral Commission of any donations made to a registered party within the last ten years, and amendment 3 would have required a participator of a third party, who had received a peerage within the last six months, to declare details of any donations made by that third party to a political party within the last ten years.

Mr Wishart expressed "surprise" that there had been "very little talk about big money and the House of Lords" (col 246). He stated that:

> We cannot have this as a feature of our democracy. The fact that someone can donate to a political party and then be rewarded with ermine in the unelected House of Lords ... is absurd. Is that any way to run a democracy in what is the fifth or sixth largest economy in the world? There will soon be 1,000 of these people if we do not do something about it. I do not know how much money that would bring in for the UK parties, but I suggest that it would be a lot.
>
> (col 246)

He said that he would not press the amendments to a vote. However, he urged the House to "look at what goes on with big money and cash for honours".

5. Part 3: Trade Unions' Registers of Members

5.1 Key Provisions

Part 3 of the Bill was not amended at either committee or report stage in the Commons. The Explanatory Notes to the Bill describe the purpose of Part 3 as to "change the legal requirements in relation to trade unions' obligations to keep their list of members up to date" (para 3). Trade unions currently have a duty to compile and maintain a register of their members under section 24 of the Trade Union and Labour Relations (Consolidation) Act 1992.The Bill would amend the 1992 Act and:

- Introduce new statutory obligations on all trade unions to annually provide an independent regulator, the Certification Officer (CO), with an accurate membership audit (clause 36).
- Require unions with more than 10,000 members to appoint a "qualified independent person" to act as an assurer, provide the union membership audit certificate and carry out such inquiries that they deem necessary to provide the certificate (clause 37).
- Introduce new investigatory powers to the CO including: requiring the production of relevant documents and explanations of the documents from the person by whom they are produced; and appointing an inspector to investigate compliance with the duty to maintain a register of members' names and addresses (clause 38).
- Introduce new enforcement powers to the CO, giving them the authority to make a declaration of non-compliance with duties relating to the register and also make an enforcement order that would require steps to be taken to remedy the failure (clause 39).

For further details on the Trade Union and Labour Relations (Consolidation) Act 1992, the origin of the duty to maintain a register of members' names and addresses and additional information on Part 3 of the Bill, see the House of Commons Library briefing *Transparency of Lobbying, Non-Party Campaigning an Trade Union Administration Bill*, 27 August 2013, RP 13/51.

Opening the second reading debate, Andrew Lansley, Leader of the House of Commons, said that Part 3 of the Bill built on "an existing duty for unions to maintain an accurate and up-to-date register of members' names and addresses", adding that he was "confident that the burden on trade unions will be very modest" (HC *Hansard*, 3 September 2013, col 184). Speaking for the Opposition, Angela Eagle, Shadow Leader of the House, said that "the proposals seem deliberately designed to burden trade unions with additional cost and bureaucracy" and that "the Government have to date failed to provide any evidence or rationale for these changes." (col 198).

The progress of the Bill at Commons second reading can be found in House of Commons Library, *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration: Progress of the Bill*, 15 October 2013, SN/PC/06734.

5.2 Background

When the Bill was introduced, the Department for Business, Innovation and Skills (BIS) issued a consultation document, *Certificate of Trade Union Membership Details: Discussion Paper*, seeking views on the effective implementation of the measures on trade union membership records and also on what guidance should be provided to ensure that unions met the new requirements.

The consultation was launched on 17 July 2013 with a closing date of 16 August 2013. A Government response has not yet been published.

Several of those responding to the consultation paper expressed concerns that the Bill had been tabled before public consultation had been completed and an impact assessment published. The impact assessment was issued on 3 September 2013, and stated:

> We do not believe that the current statutory obligations provide an adequate mechanism for all the parties involved to obtain assurance that the register is accurate and up-to-date. The proposed policy change will provide information to members, the general public and employers to assure them that membership lists are accurate.
>
> (BIS, *Amendment to the Trade Union and Labour Relations (Consolidation Act 1992): Trade Unions' Registers of Members, Impact Assessment*, September 2013, p 1)

Responding to the consultation, the union Unite argued that the document could not be regarded as a consultation due to the limited time for responses over the summer period (Unite, *Unite Response to BIS Discussion Paper on Certification of Trade Union Membership Details*, 20 August 2013). Similar views were expressed by the union FDA who described the timing and length of the consultation process as "completely inadequate" (FDA, *FDA Response to BIS Consultation on Certification of Trade Union Membership Details*, 19 August 2013). Unite further went on to say that "no justification is made as to why such a significant change in the law is necessary and views are only sought on limited aspects of its effect and operation". They maintained that the consultation paper failed to present evidence to demonstrate that union members were not receiving communications or that existing law was insufficient in ensuring the maintenance of a register of members. They continued:

> The lack of any rationale or evidence for the changes suggests that, rather than being about improving union administration or public confidence in union ballots, this is a move to assist employers mount injunction proceedings when union members have voted for industrial action.
>
> (Unite, *Unite Response to BIS Discussion Paper on Certification of Trade Union Membership Details*, 20 August 2013, p 1)

Also responding to the consultation, the campaigning organisation Liberty said they had "serious concerns" about the proposals set out in Part 3 of the Bill as they believed that they "undermine the ability of trade unions to successfully advocate on behalf of their members without fear of intimidation" (Liberty, *Liberty's Response to the Department for Business, Innovation and Skills Discussion Paper on Certification of Trade Union Membership Details*, August 2013, para 1). They concluded that the measures in the Bill:

> [...] clearly go beyond what is necessary and proportionate to achieve any legitimate aim behind the proposals, if indeed there is one at all, and as such constitute a breach of Article 11 of the ECHR. Liberty therefore strongly urges the Government to abandon the proposals set out in Part 3 of the Bill in their entirety.
>
> (para 29)

Similar concerns were raised by a number of trade unions, including Unite, who called the Bill an "unprecedented intrusion into the privacy of union members and an attack on trade union

freedoms" (Unite, *Unite Response to BIS Discussion Paper on Certification of Trade Union Membership Details*, 20 August 2013, p 1). They concluded that the Bill contravened Articles 11 and 8.1 of the European Convention on Human Rights (ECHR).

The TUC's criticisms of the consultation process went further. In a press release they said the Bill would "make organising its 2014 annual Congress, or organising a TUC national demonstration in the 12 months before the 2015 General Election, criminal offences" (TUC press release, 'Lobbying Bill is an 'Outrageous Attack on Freedom of Speech Worthy of an Authoritarian Dictatorship', says TUC', 19 August 2013). At the Trade Union Congress 2013 a motion was tabled that expressed their belief that the Bill "is a clear attack on democracy" (TUC, 'Congress 2013 Emergency Motion 05: Lobbying Bill', 10 September 2013).

5.3 Select Committee Comments

In looking at Part 3 of the Bill, the House of Commons Political and Constitutional Reform Select Committee's report chiefly drew on evidence submitted by the TUC who suggested two possible motives for the inclusion of this part of the Bill: "to make industrial action more difficult and/or to regulate trade unions that are affiliated to the Labour Party" (House of Commons Select Committee on Political and Constitutional Reform, *The Government's Lobbying Bill—vol III: Written Evidence*, 5 September 2013, Ev w33, para 4.2–4.5). Responding on the first of these issues in oral evidence to the Committee, Nigel Stanley, Head of Campaigns and Communication at the TUC, said that unions who do engage in industrial action already "have many strong incentives to keep their membership records accurate—it is how they get their income" (Ev 31). Further, the TUC said that unions currently had "strict procedures" regarding industrial action ballots, and a "common legal challenge" by employers facing industrial action was that ballot papers had gone to the wrong members or had not gone to all the members. Furthermore:

> The changes in the Bill would allow employers to complain directly to the Certification Officer to make further challenges to union membership systems, which could make industrial action ballots even more complex.
>
> (Ev w33, para 4.5)

Of their second suggested motive for Part 3 of Bill, the TUC said:

> Only 15 trade unions affiliate to the Labour Party. The Certification Officer's list of registered trade unions contains 149 unions. Most of these do not have a political fund. It does not seem appropriate to impose a regulatory burden on the 90 percent of trade unions that do not—and are ever unlikely—to affiliate to the Labour Party.
>
> (Ev w33, para 4.7)

Finally, the Committee's report quoted a letter from UNISON to the Leader of the House of Commons, which the Committee was copied into. Based on legal advice received by UNISON, the letter stated that this advice was clear that the Bill "probably infringes both Article 8 of the ECHR with regards to the right to a private life and Article 11 of the ECHR with regards to the freedom of association" (Letter to the Leader of the House of Commons, quoted in the House of Commons Select Committee on Political and Constitutional Reform, *The Government's Lobbying Bill*, 5 September 2013, HC 601–i of session 2013–14, para 95). The Committee noted

these concerns raised by UNISON and the TUC and recommended that "the Government must address these concerns during the course of proceedings on the Bill" (para 95).

In a letter to the Leader of the House, Dr Hywel Francis (Labour MP for Aberavon), the Chair of the Joint Committee on Human Rights, asked the Government to provide its analysis of the compatibility of the measures in Part 3 of the Bill with the requirements of both Article 8 and 11 ECHR (Letter from the Chairman of the Joint Committee on Human Rights to the Leader of the House, 12 September 2013). In the response letter to the Committee, the Leader of the House said that the Certification Officer is a public authority under the Human Rights Act 1998 and "is subject to the obligation in section 6 of the Act to act consistently with Convention rights, including articles 8 and 11 ECHR". He concluded his letter saying:

> […] we consider that the measures introduced by Part 3 of the Bill are consistent with the rights conferred by Articles 8 and 11 ECHR, as they are prescribed by law and pursue the legitimate aim of the introduction of effective enforcement measures to ensure that the duty in section 24 is complied with. This enforcement regime is only workable if the CO, assurer and inspectors have access to the register of members and related information so there is a pressing social need to introduce powers to permit this.
>
> (Letter from the Leader of the House of Commons to the Chairman of the Joint Committee on Human Rights, 24 September 2013, p 9)

6. Third Reading

Opening the third reading debate, Andrew Lansley, the Leader of the House of Commons, set the Bill in the context of the Government's wider transparency agenda:

> The Government made a commitment that we would be the most open government ever and that we would promote transparency in public life. We have sought to improve public confidence in our political system. We have been the first government to publish details of the meetings that ministers and permanent secretaries have had with external organisations. We have published details of our meetings with media editors and the like. We have published details of hospitality, departmental business plans and procurement processes... We have always sought to take transparency further.
>
> The purpose of the Bill is to achieve transparency by fulfilling our coalition commitment to introduce a statutory register of lobbyists so that the public know who lobbyists represent when they meet decision makers, and by making it clearer how money is being spent by third parties at elections to influence the outcomes of those elections. We are also seeking transparency by giving the public, and members of trade unions, the confidence that they know who their members are. Together, those measures will increase transparency in the political system.
>
> (HC *Hansard*, 9 October 2013, col 254)

Speaking of the concerns that were raised prior to the day's debate regarding possible contravention of the ECHR, Mr Lansley said:

> I wrote to the Chair of the Joint Committee on Human Rights on Monday to explain in detail why I believe the Bill to be compatible with the European Convention on Human Rights. I look forward to the Committee's report. My colleagues and I will take full account of its conclusions, which I hope it will reach soon.
>
> (col 253)

A copy of the letter has now been made available on the Joint Committee for Human Rights' webpages.

Mr Lansley said that the Government had fully answered the issues raised by the Bill, which had been improved by virtue of the amendments tabled during its passage through the House of Commons (cols 254–5). Speaking for the Opposition, Angela Eagle, Shadow Leader of the House, disagreed with this, and said that "nothing that has happened during this process" had changed her opinion that "this was one of the worst bills any government had brought before the House in a very long time" (col 257). Having criticised the timetabling of the Bill and the lack of consultation of campaigners, trade unionists and charities, she concluded: "It is badly drafted and in places unworkable; it lets vested interests proceed unchecked in the shadows, while it gags charities and civil society". She urged the House to vote against it (col 260).

Stephen McPartland (Conservative MP for Stevenage) and John Thurso (Liberal Democrat MP for Caithness, Sutherland and Easter Ross), however, both agreed with Mr Lansley that the Bill had been improved through amendments (cols 260 and 262). Mr Thurso suggested that Ms Eagle's speech had been full of "maximum hyperbole". He expressed disappointment that "a dampening effect may come from a complete misunderstanding of both the intentions of the Bill and what it will actually do" (col 262).

With specific regard to the Bill's provisions on lobbying, Andrew Lansley said the Government had looked at the approach preferred by Labour and the Political and Constitutional Reform Select Committee—namely, creating what he termed "a large-scale bureaucracy listing everybody who engages in any kind of lobbying activity"—and concluded that "frankly, it is not remotely justified" (col 256). Angela Eagle regretted that the Bill would "do nothing to shine the light of transparency on lobbying" (col 257). She said that the Bill defined lobbying "in such excruciatingly narrow terms that it renders all claims by the Government to achieve transparency completely laughable". She stated that the Bill had "achieved the previously unheard-of feat of uniting the transparency campaigners and the lobbying industry in opposition to it" (col 258).

A number of concerns raised about Part 2 of the Bill at report stage were repeated at third reading. Simon Hughes (Liberal Democrat MP for Southwark) declared that there could be "no serious objection to Parts 1 and 3 of the Bill, but there are clearly continuing concerns about Part 2". He urged the Leader of the House to confirm that the Government would "work to ensure that the misrepresentations" were dealt with, and the "concerns—and some uncertainties" would be discussed between ministers, the voluntary sector and the Electoral Commission (col 255).

Angela Eagle argued that Part 2 had "caused the most outrage and worry in civil society", and maintained that it would "place a sinister gag on the Government's critics as the election approaches" (col 258). She highlighted a number of areas where she felt that the amendments moved in committee had "barely scratch[ed] the surface of what would be needed to make the Bill workable". Ms Eagle observed that the Bill had "slash[ed] the amounts" that could be spent by third-party campaigners, "leaving the political parties untouched, despite the fact that third parties spent only one tenth of what political parties spent at the last general election". She also argued that the Bill would make regulation far more "onerous" for third-parties, "creating a massive burden for them, further increasing the incentive for them simply to keep quiet" (col 259).

However, Stephen McPartland (Conservative MP for Stevenage) said that he had a "real concern about this theme of gagging". He argued that:

> As we have identified at every stage of the Bill, Government amendment 32 has pretty much changed the definition so that it is much closer to that in the Political Parties, Elections and Referendum Act 2000... For me, we are taken back to a position in which charities can campaign in a way that it was proven they could campaign.
>
> (col 260)

He concluded that overall the Bill had moved in "the right direction" (col 261).

Mr Lansley reiterated that it was not Government's intention to "change in substance the test for what constitutes expenditure for electoral purposes", but they intended to "introduce greater transparency". He argued that it was "important to get big money out of trying to influence electoral outcomes", and that it was therefore "important to bring down the threshold and for it to be disaggregated so that it cannot be spent disproportionately in individual constituencies or small geographic areas" (col 255). Mr Lansley also insisted that:

> Charities, voluntary organisations and third parties who want to campaign on policies and issues will continue to be free to do so, as long as they do not step over the line and set out to influence electoral outcomes directly.
>
> (col 256)

Mr Lansley acknowledged that the group of amendments on Part 3 of the Bill was not discussed at report stage due to the length of the day's debates (cols 253 and 256). He stressed his view that the Bill did not attack trade unions, prevent unions from taking industrial action or make it harder for unions to operate. He explained that:

> Instead, it provides the public with reassurance that trade unions are fulfilling the duties to which they are already bound. Part 3 of the Bill strengthens requirements in existing legislation to ensure that unions can demonstrate that they keep an up-to-date and accurate membership register.
>
> (col 256)

Responding on behalf of the Opposition, Angela Eagle said that Part 3 of the Bill:

> [...] seeks to punish all trade unions by burying them in pointless and expensive administrative requirements for their membership lists because some of them have had the temerity to be affiliated to the Labour party.
>
> (col 259)

Summarising his views on Part 3 of the Bill, John McDonnell (Labour MP for Hayes and Harlington) warned:

> Government members... who may have voted for Part 3—possibly think that the measure is innocuous, but it will have consequences for our industrial relations climate. There will be industrial action, and it will be described as wildcat industrial action, because people will not tolerate the interference of employers in the democratic processes of trade unions. It is extraordinary that trade union membership lists are the only lists with which we are dealing. We are not dealing with party membership lists, CBI membership lists, or any other membership lists, and in my view that is evidence that the Bill constitutes a hostile attack on trade unionism in this country.
>
> (cols 261–2)

The Bill was given its third reading by 304 votes to 260 (col 264).