



Library Note

Lobbying and Political Campaigning: Charities and Trade Unions

This House of Lords Library briefing sets out the legislation that regulates the statutory register of lobbyists, and outlines the rules governing the ability of charities and trade unions to engage in political activity and to campaign in relation to elections. This briefing has been written in preparation for the debate in the House of Lords on 8 September 2016 on the role that charities, trade unions and civil society groupings play in a democracy and the case for regulating lobbying activities.

Lobbying

Part 1 of the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014 established a compulsory statutory register of third party lobbyists, and created the post of registrar to enforce the registration requirements. The legislation has been subject to criticism for not being comprehensive enough to regulate all forms of lobbying, and there have been calls for the scope of the statutory register to be expanded. The Conservative Party's 2015 general election manifesto did not mention the issue of lobbying. However, the Conservative Government announced in February 2016 that it would be inserting a new clause into all new and renewed grants agreements which would ban organisations from using government grants to lobby government or Parliament.

Political Campaigning and Activity

Charities and trade unions are able to undertake campaigning and political activity under certain restrictions. Charities are able to engage in political activity as long as it is in the context of supporting the delivery of its charitable purposes, and if there is a reasonable likelihood of its being effective. However, they must not give support to any one political party. Trade unions may spend money on 'political objects' in furtherance of its political objectives, such as contributing funds to a political party or engaging in certain political activities. However, they must establish a separate political fund. Since 2016, new union members cannot contribute to a political fund unless they have opted-in.

Third Party Election Campaigning

Campaigning by third parties at elections is regulated by the Political Parties, Elections and Referendums Act 2000 and part 2 of the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014. There have been criticisms of the rules governing spending on regulated activity, and suggestions that it has had a negative impact on charities and trade unions because the regulations encompass issue-focused campaigns. In January 2015, Lord Hodgson of Astley Abbots was appointed to conduct an independent review of the impact of part 2 of the 2014 Act. He published his report in March 2016 and suggested a package of reforms, including a recommendation for the revision of the statutory definition of regulated activity. The Government is currently reviewing the proposals.

Table of Contents

- I. Regulation of Lobbying Activities 1
 - 1.1 Legislation 1
 - 1.2 Further Reform..... 3
- 2. Campaigning and Political Activity: Charities and Trade Unions 5
 - 2.1 Charities 5
 - 2.2 Trade Unions..... 6
- 3. Third Party Election Campaigning..... 11
 - 3.1 Existing Regulations 11
 - 3.2 Criticisms of the Regulations..... 12
 - 3.3 Hodgson Review..... 13

I. Regulation of Lobbying Activities

I.1 Legislation

Part I of the Transparency of Lobbying, Non-party Campaigning and Trade Union Act 2014 established a compulsory registration system for third party lobbyists, which came into operation in March 2015. The legislation has been subject to some criticism for not being comprehensive enough to regulate all forms of lobbying.¹

Background

In January 2009, the House of Commons Public Administration Committee published the report, [Lobbying: Access and Influence in Whitehall](#), which examined the lobbying industry, and the contact between those working in the public sector and those attempting to influence their decisions.² It found that lobbying activity in the UK was not subject to specific external regulation,³ and that there was “very little self-regulation of any substance”.⁴ The report recommended that the “ethics of the activities” of lobbyists should be overseen and regulated by a “rigorous and effective” single body with “robust input” from outside the industry. It also proposed that there should be a register of lobbying activity provided for in statute.

The then Labour Government responded to the report stating that it believed that voluntary self-regulation was the “preferred approach”, but that it would keep the issue under review to ensure that progress was made in “developing an effective system of voluntary self-regulation”.⁵ The Government also agreed that any system of regulation, “whether it is voluntary self-regulation or statutory regulation”, required a register of lobbyists to “ensure that lobbying activity is transparent”.⁶ In December 2009, the Committee published a further report on the issue, and reiterated its call for a statutory register.⁷ In March 2010, the then Leader of the House of Commons, Harriet Harman, stated that the Government would introduce measures to establish a legal register of lobbyists which would require people to register as lobbyists and to register the identity of the clients on whose behalf they were acting.⁸

Following the general election in May 2010, the Coalition Government stated that it would “regulate lobbying through introducing a statutory register of lobbyists and ensuring transparency”.⁹ However, it said that it would not be seeking to create a statutory code of conduct, because it would “potentially impose costly and unnecessary regulation” on the industry.¹⁰ On 20 January 2012, the Government published the consultation paper, [Introducing a Statutory Register of Lobbyists](#).¹¹ Launching the paper, the then Minister for Political and

¹ For example, see: House of Commons Political and Constitutional Reform Committee, [Introducing a Statutory Register of Lobbyists](#), 13 July 2012, HC 1809–i of session 2012–13.

² House of Commons Public Administration Committee, [Lobbying: Access and Influence in Whitehall](#), 5 January 2009, HC 36 of session 2008–09, p 6.

³ *ibid*, p 16.

⁴ *ibid*, p 3.

⁵ House of Commons Public Administration Committee, [Lobbying: Access and Influence in Whitehall—Government Response to the Committee’s First Report of Session 2008–09](#), 23 October 2009, HC 1058 of session 2008–09, p 5.

⁶ *ibid*, p 8.

⁷ House of Commons Public Administration Committee, [Lobbying: Developments Since the Committee’s First Report of Session 2008–09](#), 16 December in 2009, HC 108 of session 2009–10, p 3.

⁸ [HC Hansard, 22 March 2010, col 26](#).

⁹ HM Government, [The Coalition: Our Programme for Government](#), May 2010, p 21.

¹⁰ HM Government, [Introducing a Statutory Register of Lobbyists](#), January 2012, p 10.

¹¹ *ibid*.

Constitutional Reform, Mark Harper, stated that the Government's initial proposal was to establish a register for "any individual or firm who lobbies for a third party for money".¹² Mr Harper further said that:

The Government are clear that it is not our intention to propose that individuals taking up issues with ministers, or companies discussing matters of mutual interest with government should be covered by the requirement to register.

[...]

Any proposals for a statutory register should not impinge on the ability of charities to lobby or on a constituent's ability to lobby their own MP.¹³

On 13 July 2012, the House of Commons Political and Constitutional Reform Committee published a report which examined the Government's proposals for a statutory register. It stated that it was "not convinced" that the Government's proposals would increase the transparency of lobbying activity in the UK.¹⁴ It further suggested that the Government's definition of a lobbyist was too narrow and potentially unworkable by lobbyists, academics, charities and transparency campaigners. It recommended that the proposal for a statutory register of a third party be dropped in favour of a wider register of anybody lobbying professionally in a paid role, including in-house lobbyists.¹⁵ In addition, it stated that the Government should clarify whether its definition of lobbying included lobbying advice, or only direct representation.¹⁶

The Committee considered three options: no registration; medium regulation; and a highly regulated system. A scheme for medium regulation, it suggested, should have a broader definition of lobbyist to include anyone who lobbied professionally in a paid role, therefore incorporating in-house lobbyists, trade associations, trade unions, think tanks, campaign groups and charities.¹⁷ It also stated that it should be accompanied by either a statutory code of conduct or a hybrid code of conduct (organisations and individuals would be required to sign up to their industry's relevant code of conduct). For a highly regulated system, the Committee suggested that a statutory register should be established and run by an independent regulatory body.¹⁸

The Committee concluded that medium regulation was the "most desirable, and most feasible form", and would be an improvement on the register proposed by the Government.¹⁹

On 5 June 2013, the then Prime Minister, David Cameron confirmed that the Government would legislate to introduce a statutory register of lobbyists.²⁰ On 17 July 2013, the then Minister for Political and Constitutional Reform, Chloe Smith, responded to the Political and Constitutional Reform Committee report, stating that the Government's proposals would

¹² [HC Hansard, 20 January 2012, col 47WS.](#)

¹³ [ibid.](#)

¹⁴ House of Commons Political and Constitutional Reform Committee, [Introducing a Statutory Register of Lobbyists](#), 13 July 2012, HC 1809-i of session 2012–13, p 31.

¹⁵ [ibid.](#), p 16.

¹⁶ [ibid.](#), p 11.

¹⁷ [ibid.](#), p 19.

¹⁸ [ibid.](#), p 22.

¹⁹ [ibid.](#), p 24.

²⁰ [HC Hansard, 5 June 2013, col 1513.](#)

address the “specific problem” that it was “not always clear whose interests are being represented by consultant lobbyists when they communicate with government”.²¹ She explained that:

Our proposals will identify those interests and enhance transparency by requiring consultant lobbyists to disclose details about their clients on a publicly available register.²²

Ms Smith also stated that while the Government recognised that some would consider the scope of the register “too narrow”, it had “yet to see a clear articulation of the problem that will be addressed by expanding it”.²³

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

The Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill was introduced in the House of Commons on 17 July 2013, and received royal assent on 30 January 2014.

Part I of the Act introduced a statutory register of consultant lobbyists, and established the post of registrar to enforce the registration requirements. It defined a consultant lobbyist as a person who, in the course of a business and in return for payment, personally makes communications on behalf of someone else to a minister of the Crown or a permanent secretary. There is also a measure for a ‘special advisor’ to be treated as an equivalent position to that of permanent secretary or minister. Under the provisions of the Act, consultant lobbying covers communications with ministers of the UK Government, permanent secretaries or equivalents; organisations that only lobby officials of devolved administrations are not required to register.

The Registrar of Consultant Lobbyists, Alison White, published the first register in March 2015, with 53 organisations in the initial tranche. There are currently 131 registrants (as at July 2016).²⁴

1.2 Further Reform

Prior to the 2015 general election, the Labour Party made a commitment to repeal the 2014 Act, and to create a “tougher” statutory register of lobbyists.²⁵ However, the Conservative Party manifesto did not contain any proposals which focused on lobbying.

Expanding the Scope of the Statutory Register

Industry bodies have expressed concerns about the coverage of the statutory register, and a number have established their own. For instance, the Chartered Institute of Public Relations (which represents public relations firms) has stated that because of the “narrow scope” of the

²¹ House of Commons Political and Constitutional Reform Committee, [Introducing a Statutory Register of Lobbyists: Government Response to the Committee’s Second Report of Session 2012–13](#), 19 July 2013, HC 593 of session 2013–14. p 4.

²² *ibid.*

²³ *ibid.*, pp 4–5.

²⁴ Office of the Registrar of Consultant Lobbyists, ‘[Register of Consultant Lobbyists](#)’, accessed 15 July 2016.

²⁵ Labour Party, [The Labour Party Manifesto](#), April 2015, p 63.

statutory register, and in “an effort to deliver greater transparency”, it has launched a “new universal voluntary lobbying register” available to all professionals engaged in lobbying within the UK.²⁶ The register was opened in July 2015. The Association of Professional Political Consultants (APPC) has also introduced a register which lists all the clients and consultants of APPC member firms.

In September 2015, the think tank, Transparency International UK, published the report, [Accountable Influence: Bringing Lobbying out of the Shadows](#), which reviewed the regulation of lobbying in the UK.²⁷ It suggested that the current register was too limited in scope, and recommended that it was widened to increase the transparency of lobbying.²⁸ It noted that the register does not include non-governmental bodies, industry associations, trade unions and law firms; and also noted that it does not cover lobbyists who target mid-level civil servants and parliamentarians.²⁹

The Council of Europe’s Committee on Legal Co-operation has also examined the issue of regulating lobbying in the context of public decision-making, and in March 2016 published a draft recommendation. It proposed that consultant lobbyists acting on behalf of a third party, in-house lobbyists acting on behalf of their employer, and organisations or bodies representing professional or other sectoral interests should all be subject to regulation.³⁰ It also suggested that a register of all lobbyists should be maintained by public authorities. The Committee is currently reviewing responses to its consultation on the draft recommendation, before submitting it to the Committee of Ministers.³¹

Government Grants and Lobbying

In February 2016, the Government announced that it would be inserting a new clause into all new and renewed grant agreements which would ban organisations from using government grants to lobby government and Parliament.³² It stated that the new clause would ensure that “taxpayers funds are spent on improving people’s lives and good causes” rather than lobbying for “new regulation or using taxpayers’ money to lobby for more government funding”. Organisations would not be prevented from using their own privately-raised funds to campaign as they choose. In April 2016, the Government stated that it would be pausing the implementation pending a review of the representations made, and that it would take a decision on the form of the clause following this review.³³

In response to the announcement in February 2016, Sir Stuart Etherington, Chief Executive of the National Council for Voluntary Organisations (NCVO), said that the policy would not work.³⁴ He further argued that the “draconian” move was “tantamount to making charities take a vow of silence”. The chair of the House of Commons Health Committee, Dr Sarah Wollaston (Conservative MP for Totnes), also expressed concern about the proposal, stating that the “balance was already distorted in favour of the industry”.

²⁶ Chartered Institute of Public Relations, ‘[Lobbying](#)’, accessed 15 July 2015.

²⁷ Transparency International UK, [Accountable Influence: Bringing Lobbying out of the Shadows](#), September 2015.

²⁸ *ibid*, pp 4–5.

²⁹ *ibid*, pp 14–15.

³⁰ European Committee on Legal Cooperation, [Draft Recommendation of the Committee of Ministers to Member States on the Legal Regulation of Lobbying Activities in the Context of Public Decision-making](#), 22 March 2016, p 4.

³¹ The Committee of Ministers is the Council of Europe’s decision-making body and comprises foreign ministers of all member states, or their permanent diplomatic representatives in Strasbourg.

³² Cabinet Office, ‘[Government Announces New Clause to be Inserted into Grant Agreements](#)’, 6 February 2016.

³³ Cabinet Office, ‘[Update on a New Clause to be Inserted into Grant Agreements](#)’, 27 April 2016.

³⁴ BBC News, ‘[Charities ‘Will be Silenced’ by New Grant Rules](#)’, 6 October 2016.

However, the Institute of Economic Affairs welcomed the announcement, stating that it was “delighted” that the Government was “making public sector funding conditional on it not being used for lobbying, which is profoundly undemocratic”.³⁵

2. Campaigning and Political Activity: Charities and Trade Unions

2.1 Charities

Public Benefit Requirement

As set out by the Charity Commission, “to be a charity an organisation must be established for charitable purposes which must be for the public benefit”.³⁶ The Charities Act 2011 calls this the ‘public benefit requirement’.³⁷

A purpose must be beneficial in a way that is identifiable and capable of being proved by evidence, where necessary, and which is not based on personal views; and any detriment or harm that results from the purpose (to people, property or the environment) must not outweigh the profit.³⁸ It must benefit the public in general, or a “sufficient section of the public”, and not give rise to more than incidental personal benefit.

Regulation of Charities

The Charity Commission is the regulator and registrar of charities in England and Wales. It is responsible for deciding if organisations are charitable and should be added to and in some cases removed from the register of charities.³⁹ If a charity is registered, its trustees’ annual report must explain how it has carried out its purpose for the public benefit. A detailed report is only required if the charity’s gross income exceeds £500,000; otherwise only a brief summary is required.⁴⁰ The Commission states that its regulatory approach is to concentrate on “promoting compliance by charity trustees with their legal obligations, holding charities accountable, and upholding the definition of charity under charity law, and therefore promoting public trust and confidence in charity”.⁴¹

As at 31 March 2016, there were 165,334 charities (and 16,455 subsidiaries) on the register, and the Commission regulated £70.93 billion of charity income in the 2015/16 financial year.⁴²

Guidance on Campaigning and Political Activity by Charities

Charities are able to undertake campaigning and political activities.⁴³ However, it must only be in the context of supporting the “delivery of its charitable purposes”. Furthermore, political campaigning must not be the continuing and sole activity of the charity. A charity cannot have political activity as any of its charitable purposes.⁴⁴

³⁵ Institute for Economic Affairs, ‘[IEA Welcomes the End of State-funded Lobbying](#)’, 6 October 2016.

³⁶ Charity Commission, ‘[How to Set Up a Charity](#)’, 4 November 2015.

³⁷ Charity Commission, ‘[Public Benefit: Rules for Charities](#)’, 14 February 2014.

³⁸ *ibid.*

³⁹ Charity Commission, [Annual Report and Accounts 2015–16](#), 6 July 2016, HC 321, p 4.

⁴⁰ Charity Commission, ‘[Public Benefit: Rules for Charities](#)’, 14 February 2014.

⁴¹ Charity Commission, [Annual Report and Accounts 2015–16](#), 6 July 2016, HC 321, p 4.

⁴² *ibid.*

⁴³ Charity Commission, [Speaking Out: Guidance on Campaigning and Political Activity by Charities](#), March 2008, p 2.

⁴⁴ *ibid.*, p 8.

The Charity Commission has published guidance on the legal and regulatory framework for charities wishing to engage in campaigning and political activity. The guidance defines campaigning as awareness-raising activities and efforts to educate or involve the public by “mobilising their support on a particular issue, or to influence or change public attitudes”.⁴⁵ The Commission states that the word is also used to refer to campaigning activity which aims to ensure that existing laws are observed. The Commission distinguishes this from an activity which “involves trying to secure support for, or oppose, a change in the law or in the policy or decisions” of central government, local authorities or other public bodies, whether in the UK or abroad, and refers to in this in the guidance as “political activity”.

A charity may carry out campaigning and political activity in order to further or support its charitable purposes, and if there is a reasonable likelihood of it being effective.⁴⁶ The activities it undertakes must be a legitimate and reasonable way for the trustees to further those purposes, and must never be party political.

A charity must not give support to any one political party.⁴⁷ However, it may seek to influence government or other public bodies, and express support for particular policies which will “contribute to the delivery of its own charitable purposes so long as its independence is maintained” and perceptions of its independence are not “adversely affected”.⁴⁸ They are also permitted to engage with individual politicians. However, the guidance states that they must remain “politically neutral and should consider working with other parties to help ensure public perceptions of neutrality”.⁴⁹

2.2 Trade Unions

A trade union is an organisation whose membership usually comprises workers or employees.⁵⁰ A trade union’s role includes:⁵¹

- Negotiating agreements with employers on pay and conditions.
- Discussing big changes like large scale redundancy.
- Discussing members’ concerns with employers.
- Attending disciplinary and grievance meetings with members.

Subject to certain restrictions, trade unions can also ballot their members and initiate industrial action, and can contribute to political parties and engage in certain political activities.⁵²

The Trade Union Bill, which received royal assent on 4 May 2016, made a number of changes to the way in which trade unions can operate. The measures included:⁵³

- A ballot turnout of at least 50 percent is required for industrial action to be sanctioned.

⁴⁵ Charity Commission, [Speaking Out: Guidance on Campaigning and Political Activity by Charities](#), March 2008, p 4.

⁴⁶ *ibid*, p 7.

⁴⁷ *ibid*, p 15.

⁴⁸ *ibid*, pp 13–15.

⁴⁹ *ibid*, p 15.

⁵⁰ Gov.uk, [‘Joining a Trade Union’](#), accessed 18 July 2016.

⁵¹ *ibid*.

⁵² Gov.uk, [‘Taking Part in Industrial Action and Strikes’](#), accessed 18 July 2016; and House of Commons Library, [Trade Union Bill](#), 7 September 2015, p 52.

⁵³ Department for Business, Innovation and Skills, [‘Trade Union Act Becomes Law’](#), 4 May 2016.

- In a number of public services, including in the health, education, transport, border security and fire sectors, an additional threshold of 40 percent of support to take industrial action from all eligible members must be met for action to be legal.
- A six month time limit between the ballot and industrial action taking place (which can be increased to nine months if the union and employer agree) so that mandates are always recent.
- A description of the trade dispute and the planned industrial action on the ballot paper is required, so that all union members are clear what they are voting for.
- Creation of a new opt-in process for trade union subscriptions.
- More powers to the Certification Officer to ensure new and existing rules are always followed by unions.

The following sections focus on the role of the Certification Officer in relation to regulating trade unions and on the rules which govern how trade unions can engage in certain political activities.

Regulation of Trade Unions

The Certification Officer (CO) is an independent officer and has a statutory duty to oversee a range of administrative matters relating to trade unions and employers' associations.⁵⁴ The CO is appointed by the Secretary of State, following consultation with the Advisory, Conciliation and Arbitration Service, and reports annually on the trade unions' activities.

The Certification Officer's responsibilities include:⁵⁵

- Maintaining a list of trade unions and employers' associations.
- Ensuring compliance with statutory requirements for annual returns from trade unions and employers' associations, and keeping them available for public inspection.
- Determining complaints concerning trade union elections, certain other ballots and certain breaches of trade union rules.
- Ensuring observance of statutory requirements governing mergers between trade unions and between employers' associations.
- Overseeing the political funds and the finances of trade unions and employers' associations.
- Certifying the independence of trade unions.

⁵⁴ Certification Officer, '[About Us](#)', accessed 18 July 2016. An employer's association is an organisation whose principle purposes include the regulation of relations between employers and workers or trade unions.

⁵⁵ *ibid.*

- Acting as the ‘prescribed person’ under the Public Interest Disclosure Regulations 1999, so that workers or employees of trade unions and employers associations are protected if they report fraud or financial irregularities (whistleblowing) to the CO.

The Trade Union Act 2016 conferred further investigatory and enforcement powers on the CO.⁵⁶ For instance, under the provisions of the Act, the CO is enabled to determine whether or not trade unions, and where relevant employer’s associations, have complied with their statutory obligations.⁵⁷ The list includes obligations relating to unions’ registers of members, compliance with rules as to ballots on political resolutions, and the use of union funds for political purposes. The 2016 Act allows the CO to exercise a number of its existing enforcement powers without having to first receive an application from a trade union member.⁵⁸ Under the provisions of the Act, the CO would also be able to impose financial penalties where they have the power to issue an enforcement order.⁵⁹

Trade Unions and Political Funds

A trade union wishing to spend money on ‘political objects’ in furtherance of its political objectives, such as contributing funds to a political party or engaging in certain political activities, must establish a political fund.⁶⁰ Political activities might, for example, include campaigns against racism, child poverty and the costs of education.⁶¹ Unions which are affiliated to a political party may also make payments to the party in the form of affiliation fees, donations and other support. The Trade Union and Labour Relations (Consolidation) Act 1992 defines political objects as the union expenditure of money:

- On any contribution of the funds of, or the payment of expenses incurred directly or indirectly by, a political party.
- On the provision of any service or property for use by or on behalf of any political party.
- In connection with the registration of electors, the candidature of any person, the selection of any candidate or the holding of any ballot by the union in connection with any election to a political office.
- On the maintenance of any holder of a political office.
- On the holding of any conference or meeting by or on behalf of a political party or of any other meeting the main purpose of which is the transaction of business in connection with a political party.
- On the production, publication or distribution of any literature, document, film, sound recording or advertisement the main purpose of which is to persuade people to vote for

⁵⁶ [Trade Union Act 2016: Explanatory Notes](#), para 69. The provisions are not yet in force.

⁵⁷ *ibid*, para 74.

⁵⁸ *ibid*, para 81.

⁵⁹ *ibid*, para 89.

⁶⁰ House of Commons Library, [Trade Union Bill](#), 7 September 2016, p 52.

⁶¹ House of Lords Trade Union Political Funds and Political Party Funding Committee, [Report of Session 2015–16](#), 2 March 2016, HL Paper 106 of session 2015–16, p 4.

a political party or candidate or to persuade them not to vote for a political party or candidate.⁶²

A resolution to adopt the political objects must be passed by a ballot of the union's members. A union which has a political fund resolution in force, and wishes to continue to spend money on political objects, is required to hold a further ballot of their members at least once every ten years.

In its 2015/16 annual report, the CO noted that as at 31 March 2016, there were 24 unions which had political fund resolutions in force, out of a total of 158 unions covered by the report.⁶³ In its 2014/15 annual report, the CO had reported that there were 25 unions which had a political fund, out of a total of 163 unions covered by the report. The 2015/16 report also summarised fund income and expenditure derived from annual returns with accounting periods which mainly end in December 2014:

The relevant annual returns show the total income of political funds as £24.55 million compared with £23.97 million reported during period 2014–15, an increase of 2.42 percent. The total expenditure from political funds was £20.65 million compared with £19.89 million in the preceding year, an increase of 3.82 percent. The returns received within the period also show that the total value of political funds during the reporting period was £33.03 million. This is an increase of £3.89 million (13.35 percent) from the £29.14 million reported in 2014–2015.⁶⁴

Regarding the number of members that contributed to funds, the report stated that:

The number of union members contributing to a political fund was 4,859,578 compared with 4,954,606 reported in 2014–15, a decrease of 95,028 members or 1.9 percent.⁶⁵

Prior to the enactment of the Trade Union Bill in 2016, union members were able to opt-out of contributing to these funds, but they were contracted in by default. However, the Conservative Party's 2015 general election manifesto made a commitment to "legislate to ensure trade unions use a transparent opt-in process for union subscription".⁶⁶ The measures were introduced under the provisions of the Trade Union Act 2016.⁶⁷

Section 11 of the 2016 Act has amended section 84 of the 1992 Act, which contained the contracting-out notification requirements. New section 84 provides that members cannot contribute to a political fund unless they have opted-in.⁶⁸ This requirement will apply to all people who join a union after commencement, and after a transition period to be decided by regulations (but not to be less than twelve months). Having opted-in, a member may give notice at any time to cancel their contribution.

Under the provisions of the 2016 Act, unions are required to send information to all new members who join after the transition period about their right to withdraw their opt-in

⁶² House of Commons Library, [Trade Union Bill](#), 7 September 2016, p 52.

⁶³ Certification Officer, [Annual Report of the Certification Officer 2015–16](#), 14 July 2016, p 37.

⁶⁴ *ibid.*

⁶⁵ *ibid.*

⁶⁶ Conservative Party, [The Conservative Party Manifesto](#), April 2015, p 19.

⁶⁷ The provisions have yet to be brought into force.

⁶⁸ [Explanatory Notes](#), para 41.

decision.⁶⁹ This information must be sent every year, no later than eight weeks after the annual return is sent to the Certification Officer. Unions will also be required to provide information about their political expenditure in their annual return which is sent to the CO.⁷⁰ This information must be provided where a union spends more than £2,000 per annum from its political fund.

During the Trade Union Bill's passage through the House of Lords, concern was expressed about the potential impact of these provisions, in particular the requirement that in future union members would have to be asked to opt-in to contributing to their union political fund. Baroness Smith of Basildon, the Leader of the Opposition in the House of Lords, tabled a motion to set up a select committee to examine the implications of implementing the measures. In moving the motion, Baroness Smith commented that:

[O]ur genuinely held concern is that this aspect of the Bill will have a significant impact on the resources of one major political party—my party, the Labour Party. In doing so, that will both disrupt the political balance in the UK and have a damaging effect on the electoral process and on our democracy.⁷¹

Responding on behalf of the Government, Baroness Neville-Rolfe, Parliamentary Under Secretary of State at the Department for Business, Innovation and Skills, said that the provisions related to trade union reform and not to party funding reform. She explained that:

The Bill requires members of trade unions explicitly to opt-in to a political fund. That is not the same as requiring opt-in to union donations made to a political party. Political funds are used for all sorts of campaigns, some of which are not at all party political.⁷²

She further stated that the provisions “embrace[d] the good democratic values of choice, transparency and responsibility”.⁷³

The motion was agreed on division by 327 votes to 234.⁷⁴ The House of Lords Committee on Trade Union Political Funds and Political Party Funding was appointed on 28 January 2016 and published its report on 2 March 2016. It stated that although the Committee was not in a position to make a “robust” estimate of the costs, the “financial burden on unions will be considerable [...] at a time when it is expected that the number of participants in political funds will have fallen”.⁷⁵

⁶⁹ [Explanatory Notes](#), para 43.

⁷⁰ *ibid*, para 47.

⁷¹ [HL Hansard, 20 January 2016, col 765](#).

⁷² *ibid*, col 778.

⁷³ *ibid*, col 780.

⁷⁴ *ibid*, cols 783–6.

⁷⁵ House of Lords Committee on Trade Union Political Funds and Political Party Funding, [Report of Session 2015–16](#), 2 March 2016, HL Paper 106 of session 2015–16, p 22.

3. Third Party Election Campaigning

3.1 Existing Regulations

Third parties, or non-party campaigners, are individuals or organisations who campaign in relation to elections but are not standing as candidates or a registered party.⁷⁶ This includes, for example, trade unions, charities and voluntary organisations. The Political Parties, Elections and Referendums Act 2000 (PPERA) introduced rules on what non-party campaigners could spend on regulated campaign activity in the run-up to certain elections.⁷⁷ There is a set time when the rules on spending and donations apply, which is called the ‘regulated period’.⁷⁸ The regulated period will differ depending on which election is being held. Part 2 of the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014 amended the definition set out in PERPA for controlled expenditure for third parties; changed the spending limits that third party campaigners can spend; and changed the threshold at which they are required to register with the Electoral Commission.

Spending Limits

Third parties must register with the Electoral Commission if they intend to spend more than £20,000 in England, or £10,000 in Scotland, Wales or Northern Ireland.⁷⁹ During the regulated period, registered third parties can spend up to the limit of £319,800 in England, £30,800 in Northern Ireland, £55,400 in Scotland and £44,000 in Wales. However, they can only spend up to £9,750 within any one constituency.

Purpose and Public Test

The rules apply to spending on regulated activity, which is public activity intended to influence voting behaviour. The Electoral Commission provides the following definition:

The non-party campaigning rules apply to spending on what we call ‘regulated campaign activity’. The following will be ‘regulated campaign activity’ if they can reasonably be regarded as intended to influence voters to vote for or against political parties or categories of candidates, including political parties or categories of candidates who support or do not support particular policies or issues (we call this the ‘purpose test’):

- press conferences or other media events that you organise
- transport in connection with publicising your campaign

As well as meeting the purpose test, spending on the following activities is only regulated if the activities are also aimed at, seen or heard by, or involve the public (we call this the ‘public test’): This applies to:

- the production or publication of election material (such as leaflets, adverts and websites)
- canvassing and market research (including the use of phone banks)

⁷⁶ Electoral Commission, [Overview of Regulated Non-party Campaigning](#), October 2015, p 3; and House of Commons Library, [Political Party Funding: Controversies and Reform](#), 24 March 2016, p 16.

⁷⁷ Electoral Commission, [Overview of Regulated Non-party Campaigning](#), October 2015, p 2.

⁷⁸ *ibid*, p 3.

⁷⁹ *ibid*.

- public rallies and public events.⁸⁰

The Electoral Commission further explains that campaign activity can meet the purpose test even if it does not name a particular party or candidate.⁸¹ For instance, campaigning for a policy that is closely and publicly associated with one or more political parties can meet its scope. For example, even if the intention is to achieve something else, such as raising awareness of an issue, it can still meet the purpose test if it can also reasonably be regarded as intended to influence how people vote.

3.2 Criticisms of the Regulations

Part 2 of the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014 has received some criticism for targeting charities and trade unions.⁸²

During the Bill's progress in Parliament, the House of Commons Political and Constitutional Reform 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".⁸³ The Electoral Commission also told the Committee that the "uncertainty created by the Bill seem[ed] likely to affect a wide range of organisations".⁸⁴

The Commission on Civil Society and Democratic Engagement, chaired by Lord Harries of Pentregarth, former Bishop of Oxford, was set up in October 2013 following concerns that the Bill was likely to have a "chilling effect" on campaigning.⁸⁵ It published two reports during the Bill's passage through Parliament, both of which criticised the definition of regulated non-party campaigning. The Commission called for an "improved" definition which would ensure that the "most purely issue-focused campaigning is not drawn within the scope of electoral regulation", while still ensuring that the "rules are not easily evaded by groups focused on issues with the intent to influence election outcomes".⁸⁶

The Commission published a further report in September 2015, after the legislation had come into force, examining the impact of part 2 on the "democratic engagement" of charities and campaign groups during the regulatory period of the May 2015 general election. It stated that the 2014 Act had been tested and "considerable evidence" had shown that it had a "negative impact" on charities and campaign groups "speaking out on crucial and legitimate issues ahead of the election".⁸⁷ The report reiterated the Commission's recommendation that the test for regulated activity should be amended to clarify that campaigning should be regulated only when it is "clear that the subjective intention is to influence the outcome of an election, rather than

⁸⁰ Electoral Commission, [Overview of Regulated Non-party Campaigning](#), October 2015, p 4.

⁸¹ *ibid*, p 5.

⁸² Polly Toynbee, '[The Lobbying Bill will Save Corporate PRs but Silence the Protestors](#)', *Guardian*, 3 September 2013; House of Commons Political and Constitutional Reform Committee, [Introducing a Statutory Register of Lobbyists](#), 13 July 2012, HC 1809–i of session 2012–13; and House of Commons Library, [Political Party Funding: Controversies and Reform](#), 24 March 2016, p 16.

⁸³ House of Commons Political and Constitutional Reform Committee, [The Government's Lobbying Bill](#), 5 September 2013, HC 601-i of session 2013–14, p 27.

⁸⁴ *ibid*.

⁸⁵ Commission on Civil Society and Democratic Engagement, '[About](#)', accessed 19 July 2016.

⁸⁶ Commission on Civil Society and Democratic Engagement, [Non-Party Campaigning Ahead of Elections](#), October 2013, p 8.

⁸⁷ Commission on Civil Society and Democratic Engagement, [Non-Party Campaigning Ahead of Elections](#), September 2015, p 6.

to raise awareness and generate discussion amongst competing parties and candidates”.⁸⁸ It also called for the definition of controlled expenditure to be narrowed, including removing staff costs as counting towards regulated activity, shorter regulated periods, and for the definition of an ‘active supporter’ to be revised in consultation with civil society organisations.

3.3 Hodgson Review

In January 2015, the Coalition Government appointed Lord Hodgson of Astley Abbots (Conservative) to conduct an independent review into the operation of third party campaigning provisions, in relation to the 2015 general election. The review was sponsored by the Cabinet Office and established under section 39 of the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014.⁸⁹

Recommendations

Lord Hodgson’s report, [Third Party Election Campaigning: Getting the Balance Right](#), was published on 17 March 2016. He stated that he did not advocate a repeal of the Act, because it was “necessary” to regulate third party spending to prevent individuals or organisations from “unduly” influencing an election through “excessive spending”.⁹⁰ He also emphasised the importance of there being transparency about “who third party campaigners are and what they are spending”.

However, Lord Hodgson stated that he did not “believe the right balance has been struck in the rules as presently drafted”, and he set out a series of recommendations “which interlock so they form part of a package which will better reflect the realities of third party campaigning”.⁹¹ His proposals included:

- A revision of the statutory definition of regulated activity. The report argued that the current definition of regulated activity captured activity that could be “reasonably regarded” as intended to influence voters, which created “too much ambiguity” about what expenditure on campaigning activity was regulated. Therefore the statutory definition should be changed to “one of actual intention”.
- A reduction of the regulated period before a general election from twelve months to four.
- Clarification on how staff costs should be regulated to ensure that work undertaken on electoral campaigning that is ‘incidental’ to a person’s normal job does not count.

⁸⁸ Commission on Civil Society and Democratic Engagement, [Non-Party Campaigning Ahead of Elections](#), September 2015, p 8.

⁸⁹ At committee stage in the House of Lords of the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill, debate was had on whether there should be a review into the operation of the provisions in part 2 of the Bill. In response to these discussions, and following a commitment made at committee stage, the Government tabled an amendment at report stage requiring that within twelve months of the Bill receiving royal assent, the Minister must appoint a person to review the workings of part 2 of the Bill in relation to the first relevant parliamentary general election.

⁹⁰ Third Party Campaigning Review, [Third Party Election Campaigning: Getting the Balance Right](#), 17 March 2016, Cm 9205, p 5.

⁹¹ *ibid*, p 6.

- Registration with the Electoral Commission which is published on their website should provide greater transparency about each individual third party campaigner, and therefore more information should be provided as to the purpose of the campaign, where that campaigning is planned to take place, and broad estimates of likely expenditure.
- The Government and the regulator to monitor the use of social media to ensure that the regulatory framework continued to strike the right balance.⁹²

In response to the report's publication, John Penrose, the then Minister for Constitutional Reform, welcomed a number of the recommendations, and stated that the Government would consider the package of proposals.⁹³

Third Party Campaigning at the 2015 General Election

The Hodgson review also analysed the number of third parties that registered with the Electoral Commission during the 2015 general election. It found that:⁹⁴

- At the 2015 general election 68 third parties were registered with the Electoral Commission, of which 47 were registered specifically for the 2015 general election. These included trade unions, charities, individuals, companies and others. The report stated that “while for some of the third parties registered with the Electoral Commission the general purpose of their campaign was immediately clear, that was not the case for all of them, in particular the six individuals that were registered”.
- There were 23 third parties that submitted spending returns, with a total expenditure of £1.8 million.
- None of those that registered spent over £250,000 or “anywhere close to the spending limit”.
- The reported total national spend of all the political parties was £37.3 million. Reported third party expenditure was therefore only 4.8 percent of the sums spent by all the political parties combined.
- There were 33 campaigners registered at the 2010 general election, compared with 25 in 2005. After the 2010 election, 23 of these campaigners reported total expenditure of £2.8 million—around 9 percent of the £31.5 million spent by political parties on national campaigning.

⁹² Third Party Campaigning Review, [Third Party Election Campaigning: Getting the Balance Right](#), 17 March 2016, Cm 9205, pp 6–8.

⁹³ [HC Hansard, 17 March 2016, col 44WS](#).

⁹⁴ Third Party Campaigning Review, [Third Party Election Campaigning: Getting the Balance Right](#), 17 March 2016, Cm 9205, p 14.

House of Lords Library Notes are compiled for the benefit of Members of the House of Lords and their personal staff, to provide impartial, politically balanced briefing on subjects likely to be of interest to Members of the Lords. Authors are available to discuss the contents of the Notes with the Members and their staff but cannot advise members of the general public.

Any comments on Library Notes should be sent to the Head of Research Services, House of Lords Library, London SW1A 0PW or emailed to purvism@parliament.uk.