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

Bill No 97 of 2013-14

RESEARCH PAPER 13/51 27 August 2013

The *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill* was introduced to the House of Commons on 17 July 2013.

The Bill would introduce a statutory register of consultant lobbyists and establish a Registrar to enforce the registration requirements. Election campaign spending by those not standing for election or registered as political parties would be more heavily regulated. The legal requirements placed on trade unions in relation to their obligation to keep their list of members up to date would be strengthened.

This briefing has been prepared to inform the Second Reading debate on the Bill which is scheduled to take place on 3 September 2013.

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ISSN 1368-8456

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Summary

The *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill* seeks to regulate the effect of third parties on politics. It would do so by increasing transparency in the lobbying industry, increasing the regulation of third parties campaigning during elections, and strengthening the legal requirements on unions in relation to their obligation to keep their list of members up to date.

The Bill would establish a register of consultant lobbyists. Lobbying is defined as direct communication, orally or in writing, on behalf of someone else with UK Government Ministers or permanent secretaries in return for payment. Only those individuals or companies whose "main business" is lobbying would be required to register. There are exceptions for Members of Parliament lobbying on behalf of registered electors in their constituency, and for those who act as a representative of persons in a particular class or description.

Offences are created for failure to register or providing inaccurate or incomplete information. The register will be administered by a Government-appointed Registrar, who will be funded through fees levied on those registering. The Registrar will have the power to impose civil penalties in respect of the offences, although this would remove the possibility of criminal proceedings and is intended to apply only to minor breaches.

The Government has stated that its proposals will increase transparency. However, some lobbyists have commented that the definitions of lobbying used in the Bill mean that some large lobbying companies will not be required to register. Others have argued that the requirement to register should also apply to those who carry out similar functions "in house". The Bill does not include a requirement for registered lobbyists to follow any code of conduct.

The clauses of the Bill that relate to lobbying apply to the whole of the United Kingdom, but the requirements to register only apply to those who lobby UK ministers and permanent secretaries, not officials of the Scottish Government, Welsh Government or Northern Ireland Executive, or local government officers or councillors.

The Bill also affects campaigning activities by 'third parties' that is, people or organisations who campaign at elections, other than those standing as candidates or registered political parties. The Government stated that the changes are designed to prevent unregulated spending by vested interests having an undue influence in the outcome of elections. The Bill lowers the limits for spending by each third party in the UK from £988,800 to £388,080. It also broadens the definition of expenditure considered to count as campaign expenditure to include activities such as canvassing and rallies as well as the production of electoral material. The Bill also regulates third party spending targeted in support of political parties above a certain limit and ensures that this spending is counted towards the party expenditure limit. It creates new forms of regulation for third parties at constituency level. The Electoral Commission is given new powers of enforcement. These clauses apply to the whole of the UK, and in some instances, to Gibraltar.

Since the mid-1980s every trade union has been under a duty to compile and maintain a register of the names and addresses of its members. An independent regulator, the Certification Officer, oversees compliance with the duty, although only investigates the register if a member of the union applies for a declaration of non-compliance. The duty is currently provided in the *Trade Union and Labour Relations (Consolidation) Act 1992.* The Bill would amend the 1992 Act to require unions to annually provide the Certification Officer with membership audit certificates. It would also introduce new investigatory and enforcement powers. These clauses extend to the whole of the UK.

1 Introduction

1.1 The Bill

The *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill 2013-14* was introduced in the House of Commons on 17 July 2013 as Bill 97 of the Session. The Bill's Second Reading is scheduled to take place on 3 September, with its Committee stage to follow on the Floor of the House on 9, 10 and 11 September.

The Bill falls into three main parts:

- Part 1 establishes a register of consultant lobbyists and a Registrar of lobbyists to supervise and enforce the registration requirements. It also sets out a definition of lobbying for the purposes of the Bill, with certain exclusions from the requirements, including for Members of Parliament lobbying on behalf of registered electors in their constituency.

- Part 2 changes the legal requirements for people or organisations that campaign in relation to elections but are not standing as candidates or are not registered political parties (third party campaigning), and provides the Electoral Commission with relevant powers of enforcement.

- Part 3 changes the legal requirements in relation to trade unions' obligations to keep their list of members up to date.

The publication of the Bill was accompanied by Explanatory Notes, and two impact assessments: one on the lobbying provisions of the Bill and the other on third party campaigning.

The lobbying clauses of the Bill extend to the whole of the United Kingdom, but the requirement to register applies only to consultant lobbyists lobbying UK Government Ministers and Permanent Secretaries. Part 2 also extends to the whole of the United Kingdom, with some clauses relating to European elections applying to Gibraltar. Provisions on the Trade Unions' registers of members will extend to England and Wales, and to Scotland, but not to Northern Ireland where it is a devolved matter.

The Bill's Committee stage is to take place on the floor of the House. A Parliamentary Information List provides details of the Bills that were considered by a Committee of the whole House in the period since 1997.[1] Any Bill can be referred to a Committee of the whole House, but Erskine May states that such Bills have generally fallen into one of the following categories:

> ...bills of major constitutional importance; emergency or either expedited legislation; bills of a very uncontroversial nature such as Consolidated Bills; or private Members' bills which are unopposed and of which all the stages are taken without debate.[2]

1.2 The Government's proposals, relevant reports and consultation documents

The parts of the Bill regarding the regulation of lobbying were preceded by a consultation paper, *Introducing a Statutory Register of Lobbyists*, the responses to which were published in July 2012.[3] These proposals were considered by the Political and Constitutional Reform

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1 House of Commons Library Standard Note, *PIL: Bills whose Commons committee stage has been taken in Committee of the Whole House*, SN/PC/5435

2 Erksine May, *Parliamentary Practice,* Twenty-fourth edition, 2011, p566

3 HM Government, *Introducing a Statutory Register of Lobbyists,* Cm 8233, January 2012

Select Committee in their report, also called *Introducing a statutory register of lobbyists*, published in July 2012.[4]

On 4 June 2013, the Deputy Prime Minister confirmed that the Government intended to bring forward proposals to address third party funding. The following day, the Prime Minister stated that the Government would legislate to introduce a statutory register of lobbyists, and indicated that the legislation would cover other sorts of third party influence in politics:

> What the Bill on lobbying should do is introduce a register for lobbyists, which has been promised and should be delivered. What the bill on lobbying will also do is make sure that we look at the impact of all third parties, including the trade unions, on our politics.[5]

The Department for Business, Innovation and Skills published a discussion paper on the certification of trade union membership clauses of the Bill on 17 July 2013. The Government has said that they would be open to accepting amendments to this part of the Bill from the Official Opposition. At Business Questions on 18 July 2013, Andrew Lansley, Leader of the House of Commons, stated that:

> I wrote to the Leader of the Opposition earlier this week because he said in a speech that he wanted the participation of trade union members in the political funds of trade unions to be a deliberate choice. If that is what he wants, the Bill is available as a legislative framework to enable it to happen. If he believes in it, he should be willing to legislate for it. We have made him that offer and he should respond to it. In practical terms, if he wants to take up that offer and demonstrate that he means what he says, he needs to come back to us in the next three or four weeks to enable those amendments to be available for the Committee stage in September.[6]

Following the introduction of the Bill, the Political and Constitutional Reform Committee took evidence from Chloe Smith, the Parliamentary Under Secretary of State in the Cabinet Office.[7] The Committee then announced a short inquiry into the provisions in the Bill. They are expected to publish the evidence they have received before Second Reading in the Commons, and to publish their report before the Bill has its Committee stage.

2 Registration of Consultant Lobbyists

Lobbying can be defined broadly as seeking to influence decisions made by public office holders or officials; such decisions can include the scope or content of legislation, the letting of a contract, or the broad direction of public policy. Lobbying can therefore involve a wide variety of activities and motivations, and it can be targeted at a range of persons. Many organisations lobby on their own behalf, others employ multi-client lobbying firms to seek to influence on their behalf. Such firms may also offer other services under the banner of 'public affairs,' such as media monitoring or media strategies. Bodies which lobby or employ lobbyists can include companies, charities, public bodies, trade associations and professional membership organisations, as well as individuals who may "lobby" their MP.

At present, Government departments publish quarterly lists of external meetings held by Ministers and Permanent Secretaries. It is usually fairly obvious what interests were represented in a meeting with a group lobbying on its own behalf. The Government argues

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4 Political and Constitutional Reform Committee, *Introducing a statutory register of lobbyists,* 13 July 2012, HC 153 2012-13

5 HC Deb 5 June 2013 c1513

6 HC Deb 18 July 2013 c1320

7 Political and Constitutional Reform Committee, uncorrected transcript of oral evidence, to be published as HC 601-i 2013-14, 18 July 2013

that the Bill will "address the problem of information asymmetry" by requiring openness by lobbying firms over the clients they represent in similar meetings.[8]

2.1 Background to the legislation

Regulation of the lobbying industry has been under consideration for some time. Issues that arise include:

- who should be registered (consultants, in-house lobbyists, or anyone who engages in lobbying activity, paid or otherwise?);
- what information should be included on the register (dates of meetings with Ministers, clients represented, subjects discussed?);
- whether regulation should cover only lobbying of government, or should include Parliament, devolved administrations, local government or other agencies;
- whether regulation should cover lobbying of just ministers and permanent secretaries, or of a wider group of civil servants and special advisers;
- whether there should be a code of conduct;
- who should administer the register and who should fund that administration;
- what penalties there should be for breaches and how they should be applied.

Labour Government

In June 2007 the Public Administration Select Committee launched an inquiry into the lobbying industry. Its report, published in January 2009, recommended the introduction of a statutory register of lobbying activity to "bring greater transparency to the dealings between Whitehall decision makers and outside interests".[9]

The Labour Government's response was published in October 2009.[10] It did not accept the Committee's case for a statutory register, but did accept recommendations on some other matters. The Committee published a follow-up report in December 2009 reiterating its call for a statutory register.[11]

Following allegations about the lobbying activities of some former ministers in March 2010, the Government announced that it would introduce a statutory register of lobbyists, although this did not happen before the May 2010 General Election.[12]

Self-regulation

Before the PASC inquiry into lobbying, some self-regulation was provided by the three main umbrella groups which represented those in the lobbying industry and ran their own codes of conduct. The Association of Professional Political Consultants (APPC) was established in 1994 with its own code of conduct and a publicly available register of clients and a complete

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8 *A Statutory Register of Lobbyists (as part of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill)*, Impact Assessment, 9 July 2013

9 Public Administration Select Committee, *Lobbying: Access and influence in Whitehall*, 5 January 2009, HC 36 2008-09

10 Public Administration Select Committee, *Lobbying: Access and influence in Whitehall: Government response to the Committee's first report of session 2008-09*, 23 October 2009, HC 1058 2008-09

11 Public Administration Select Committee, *Lobbying: Developments since the Committee's first report of session 2008-09*, HC 108 2009-10, 16 December 2009

12 HC Deb 22 March 2010 cc25-26

ban on any financial relationship with politicians. There is also a Public Relations Consultancy Association (PRCA) which also operates a Code of Conduct. The Chartered Institute of Public Relations (CIPR) also has a Code of Conduct for individuals working in public relations.

Following the PASC inquiry, the UK Public Affairs Council (UKPAC) was established by the APPC, the PRCA and the CIPR who were joined by three independent members, including the Chairman, Elizabeth France. The UKPAC maintains a register of organisations and individuals who provide lobbying services, and holds a set of Guiding Principles covering those who lobby. In December 2011, the PRCA decided to leave the UKPAC.[13]

Conservative-Liberal Democrat Government

The Coalition Agreement published by the Conservative-Liberal Democrat Government in May 2010 said that it would introduce a statutory register of lobbyists and ensure greater transparency.[14]

The Conservative Party manifesto had stated that the lobbying industry "must regulate itself to ensure its practices are transparent – if it does not, then we will legislate to do so".[15] The Liberal Democrat manifesto had gone further, stating that the party would introduce a statutory register of lobbyists. It also stated that it would change the Ministerial Code so that ministers and officials were forbidden from meeting MPs on issues where the MP is paid to lobby, require companies to declare how much they spent on lobbying, and introduce a statutory register of interests for parliamentary candidates based on the current Register of Members' Interests.[16] The Labour Party had stated that it would also create a statutory register of lobbyists, as well as ban MPs from working for lobbying companies, and require those who wanted to take up paid appointment outside to seek approval from an independent body to avoid jobs that conflicted with their responsibilities to the public.[17]

The Government launched its consultation paper, *Introducing a Statutory Register of Lobbyists,* on 20 January 2012.[18] The then Minister in the Cabinet Office, Mark Harper, told the House of Commons that:

> We believe the introduction of a statutory register will be an important step towards increasing transparency and rebuilding public trust in politics. Our initial proposals are that any individual or firm who lobbies for a third party for money must put themselves on the register and disclose their clients. We think it is important that the public should be able to see who is lobbying Ministers, and for whom. That is why there is already a requirement that Ministers should publish details of who they are meeting, at least quarterly. We believe it is right that lobbying companies should disclose who is paying them to lobby Government.
>
> We suggest that individuals or companies lobbying for themselves should not be covered by a register because the disclosure requirements on Ministers will show this activity already. We hope for a wide range of responses on all our proposals, but we are particularly interested to hear views on whether organisations like NGOs and charities, which do not lobby for others for money but are advancing agendas, should be covered. We are also consulting as to how, if at all, trade union activities should be covered.

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13 PRCA, *PRCA withdraws from UKPAC,* 9 December 2011
14 HM Government, *The Coalition: Our programme for government,* May 2010, p21
15 Conservative Party, *Invitation to join the Government of Britain: The Conservative Manifesto 2010*, April 2010
16 Liberal Democrats, *Liberal Democrat Manifesto 2010*, April 2010
17 Labour Party, *A future fair for all: the Labour Party manifesto 2010*, April 2010
18 HM Government, *Introducing a Statutory Register of Lobbyists,* Cm 8233, January 2012

> 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. These are vital democratic functions and covered by the disclosure requirement on Government Departments. We are interested in views on whether our definitions meet this objective.
>
> 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.[19]

In July 2012 the Government published a summary of responses to the consultation, with an indication of next steps in developing the policy.[20] This stated that revised policy proposals "will be published in the form of a White Paper and draft Bill during this session of Parliament."[21] The Government went on to reiterate its commitment to introduce a statutory register, while not "unduly restricting lobbyists' freedom and ability to represent the views" of the groups they represent, nor deterring the public from getting involved in policy making.[22]

Political and Constitutional Reform Committee

On 13 July 2012 the Political and Constitutional Reform Committee published a report entitled, *Introducing a statutory register of lobbyists.* The Committee recommended that the proposal for a statutory register of third-party lobbyists be dropped in favour of a wider register of anybody lobbying professionally in a paid role, thus including in-house lobbyists.

The Committee also addressed the question of a code of conduct to which lobbyists would be held, an option not favoured by the Government. The Committee saw some benefit in what is known as a "hybrid code of conduct." In this model, rather than having one overarching code, each lobbying group (which could be a business, a charity, or a union), is bound by the code of its own professional body. The Committee stated:

> If the Government is convinced that a statutory code of conduct would be burdensome, a hybrid code of conduct is a viable alternative, as it would make it clear to whom organisations on the register could be held accountable. However, the main disadvantage of a hybrid model would be that organisations on the register would be held accountable to different sets of professional standards. There may be some organisations, such as think tanks, and campaign groups, which might not be members of a professional body that require them to sign up to a code of conduct. **We recommend that Government looks further at the hybrid model for a code of conduct for lobbyists. If Government decides on a hybrid model, it needs to consider what provision it will make for organisations that are not already a member of a professional body with a code of conduct.**[23]

The Committee recommended what it called a medium level of regulation:

> Option 2 encompasses the Government's proposals for a statutory register of third party lobbyists, including disclosure of client lists, and whether or not the lobbyist is a former Minister or senior official, but includes the following additional features:

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19 HC Deb 20 January 2012 c47WS

20 *A Summary of Responses to the Cabinet Office's Consultation Document "Introducing a Statutory Register of Lobbyists"*, July 2012, Cm 8412

21 Ibid, p4

22 Ibid, p5

23 Political and Constitutional Reform Committee, *Introducing a statutory register of lobbyists,* 13 July 2012, HC 153 2012-13, p16

- a broadened definition of a lobbyist, to include anyone who lobbies professionally in a paid role (thus in-house lobbyists, trade associations, trade unions, think tanks, campaign groups and charities may be required to register);
- disclosure of the issues being lobbied on;
- disclosure of when lobbying services have been provided on a pro bono basis;
- a statutory code of conduct or a hybrid code of conduct (whereby organisations and individuals must indicate that they have signed up to their industry's relevant code of conduct, so it is clear where complaints can be addressed); and
- incorporation of published data on whom Ministers are meeting.[24]

Private Member's Bill

In June 2012, Thomas Docherty presented the *Commercial Lobbyists (Registration and Code of Conduct) Bill 2012-13*, which had a Second Reading debate on 1 February 2013 and was then withdrawn. This sought to establish a statutory register, with fines for non-registration, administered by a Lobbying Registration Council, which would be funded by those registering. There would be a code of conduct, with fines for non-compliance. The Bill extended to all those who lobbied for financial gain, and was not explicitly restricted to third-party lobbyists. The Bill did not specify the information to be included on the Register, except that it must include the names of clients. It was for the Secretary of State to decide what other information, if any, should be included.

Developments immediately before the present Bill's publication

In early June 2013 the media alleged that four parliamentarians had potentially breached codes of conduct in the Commons and Lords by agreeing to act as paid advocates and/or providing services such as asking parliamentary questions. The parliamentarians, one MP and three peers, denied the allegations, which are under investigation by the Parliamentary Commissioner for Standards (for the Commons) and the House of Lords Commissioner for Standards.

Writing in the *Daily Telegraph,* Deputy Prime Minister Nick Clegg reiterated his support for a power of recall of MPs and for a statutory register of lobbyists, although he made the point that there was "no single, magical protection against an individual politician determined to behave unethically or inappropriately".[25] Indeed, it is not certain that a statutory register of lobbyists would have prevented the kind of behaviour alleged, insofar as it would be in breach of existing codes in any case.

Nevertheless, the affair prompted the Government to take action. Chloe Smith, Parliamentary Secretary at the Cabinet Office, said:

> The Government have repeatedly made very clear their commitment to introducing a statutory register of lobbyists. The events that have unfolded over the weekend demonstrate just how important transparency in political life is. We will therefore introduce legislation to provide for a lobbying register before the summer recess. The register will go ahead as part of a broad package of measures to tighten the rules on how third parties can influence our political system.[26]

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24 Ibid, p19, see recommendation on p24

25 *Daily Telegraph*, "Nick Clegg: Sadly, I'm not surprised by these revelations. Westminster is crying out for reform", 3 June 2013

26 HC Deb 4 June 2013 c1363

In response to a question as to the possible combination of measures on lobbying and on third-party funding in legislation, Ms Smith replied,

> This is about third parties more generally, and it is right to understand how third parties can influence the political process in general. It is something in which the general public will take a great interest.[27]

The Prime Minister also stated that the Bill would cover lobbying as part of a wider look "at the impact of all third parties, including the trade unions, on our politics."[28]

On 25 June 2013 there was an Opposition Day debate in the House of Commons on lobbying.[29] Leading for the Labour Party, Jon Trickett criticised what he saw as slowness in the Government's approach.[30] Responding to the prospect of legislation, he said:

> The Bill should do four things. It should create a clear definition of professional lobbying; a statutory register of all those who lobby professionally; a clear code of conduct that forbids inappropriate financial relations between lobbyists and parliamentarians; and a strong system of sanctions when the code is breached.[31]

Leader of the House of Commons Andrew Lansley expressed the philosophy behind the Bill:

> There are two ways in which we can go about regulating conduct in political life. We can create a comprehensive rules-based system backed up by intrusive enforcement, to try to specify what everyone should and should not do pretty much all the time. That would be immensely bureaucratic and costly, and would involve a constant effort to keep up. It would create not a culture of openness but a "see what you can get away with" approach.
>
> The other way forward is to be clear about the standards expected, based on the Nolan principles, and to ensure that all those who exercise responsibilities—and all those who seek to influence them—are subject to the necessary transparency in their actions and contacts, and held accountable for their actions, so that we can see who is doing what, and why. For those who seek to influence the political system without the necessary transparency, there will be clear sanctions available.[32]

Mr Lansley also alluded to the relationship between the regulation of lobbyists and the behaviour of Members in respect of the Code of Conduct:

> We have made it clear that we are going to introduce a statutory register that makes third-party influence clear, so that people will know on whose behalf lobbyists with third-party clients who are seeking to influence us are working. I listened with care to some of the interventions on the hon. Member for Hemsworth, and I acknowledge that there are important issues about the relationships between lobbying companies—and lobbyists who act on their own behalf rather than on behalf of third parties —and parliamentarians. But, frankly, is it not up to Parliament itself to be very clear about this? Contrary to what has been suggested, I am not planning to legislate within Parliament. For example, the issues that the standards code is rightly looking at in relation to the interests of the Chairs of Select Committees and the interests of all-party

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27 HC Deb 4 June 2013 c1365
28 HC Deb 5 June 2013 c1513
29 HC Deb 25 June 2013 cc165-227
30 Eg, HC Deb 25 June 2013 c168
31 HC Deb 25 June 2013 c171
32 HC Deb 25 June 2013 c175

> parliamentary groups and how they are represented are important ones, but they are matters for the House to determine, as I shall explain.[33]

He identified the purpose of the Government's intended legislation:

> when Ministers meet consultant lobbyists, it is not always clear to the public on whose behalf those consultants or companies are lobbying. The purpose of the measures we will introduce is to rectify that deficiency.[34]

The Government's response to the Political and Constitutional Reform Committee's report was published shortly after the introduction of the present Bill, on 19 July 2013.[35] The response took the form of a letter from Ms Smith apologising for the delay in responding and setting out the general purpose of the Bill. The Committee gave the following reaction:

> 9. It is 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 urge the Government to provide us with a revised response that addresses our original report.
>
> 10. We are further dissatisfied that we have been denied the opportunity to carry out pre-legislative scrutiny on a draft Bill on lobbying. As recently as February 2013, the Deputy Prime Minister referred to his intention to publish a Bill in draft. We are unclear what has changed since then and why the timetable has suddenly become so tight. As we noted in our reports on *Improving standards in the quality of legislation* and *Revisiting 'Rebuilding the House': the impact of the Wright reforms,* pre-legislative scrutiny is a vital part of the legislative process. Bills which do not receive pre-legislative scrutiny should be the exception not the rule. There should always be a good reason for dispensing with pre-legislative scrutiny. In the case of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill there is no good reason.[36]

The Political and Constitutional Reform Committee launched an inquiry on the Bill on 18 July 2013, with a deadline of 23 August 2013 for submission of written evidence. It has announced a series of oral evidence session on 29 August and 3 September. The Committee on Standards in Public Life called for evidence on transparency in lobbying before the Government published the Bill. The deadline for submissions was 31 July 2013.

2.2 Part 1 of the Bill

Briefly, the Bill covers lobbyists who work for lobbying firms, referred to as "consultant lobbyists", and it makes them subject to requirements to register and to reveal their clients, if lobbying is their "main business". It creates offences for failure to register or providing inaccurate or incomplete information. The register will be administered by a Government-appointed Registrar, who will be funded through fees on those registering. The Registrar will have the power to impose civil penalties in respect of the offences, although this would remove the possibility of criminal proceedings and is intended to apply only to minor breaches.

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33 HC Deb 25 June 2013 cc176-7

34 HC Deb 25 June 2013 c178

35 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 2013-14

36 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 2013-14, para 9-10

The Bill covers only the lobbying of UK Government Ministers and Permanent Secretaries by means of personal communications orally or in writing. The lobbying provisions in Part 1 of the Bill apply to the whole of the UK since they relate to lobbying of the UK Government, not because of any requirement on those lobbying the devolved administrations.[37] The Bill does not create a code of conduct for lobbyists, and it does not cover the lobbying of members of either House of Parliament outside of ministerial responsibilities.

There is an exemption for the work of Members of Parliament on behalf of individual constituents.

The Register

Persons to be included

The Bill concerns those who work as "consultant lobbyists," and requires them to register if they wish to carry out this business.

Clause 2 defines 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 (including equivalent positions specified in Schedule 1) about government policy, legislation, the award of contracts, grants, licences or similar benefits, or the exercise of any other government function. This applies to communications made abroad as well as in the UK, so that the offences created by the Bill have an extra-territorial dimension.

The lobbying does not have to be on behalf of the person making the payment, nor does payment have to be linked to a particular communication.[38] It appears to follow that if payment is received to engage in lobbying on behalf of a person, the person receiving the payment will need to register, whoever is paying (so long as the other conditions, such as lobbying being the main business, apply).

Clause 1 of the Bill prohibits any person from carrying out the business of consultant lobbying unless they or their employer are entered on a register of consultant lobbyists. **Clause 12 (1)** makes it an offence for a person to act as a consultant lobbyist without being registered.

Schedule 1 sets exceptions that will not come within the scope of consultant lobbying. These include:

- Members of Parliament who make communications with Ministers or Permanent Secretaries on behalf of someone resident in their constituency. Resident is defined as it is under section 4 of the *Representation of the People Act 1983* (entitlement to be registered as a parliamentary elector). (The question of Members of Parliament is discussed on page 15 below.)

- Those whose business is mainly a non-lobbying business and, where lobbying is part of the business, it is an "insubstantial proportion".

- Those who act generally as representatives of a category of persons, who derive their income mainly from those persons, and who make communications as an incidental part of their representative function (this could cover unions, trade associations or other cases

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37 The Scottish Government announced in June 2013 that it intends to introduce a bill on lobbying transparency. See Scottish Government, *Lobbying Transparency*, news release, 13 June 2013.

38 Schedule 1, para 6

where a person is not employed by those they represent, but is not a consultant whose business could cover a range of clients).

- Representatives of other countries or international organisations when acting on their behalf.

In addition, Schedule 1 gives two other qualifications: a communication does not count as lobbying if it is required to be made by law, and a person does not have to register if their communications are on behalf of their employer.[39] The latter appears to be quite a wide provision. The exact wording is: "an individual does not make communications on behalf of another person if the individual is an employee of that person." There is no qualification as to whether the communications have to be restricted to the capacity in which the person is employed, nor to the business of the employer. There is no restriction as to the nature or permanency of the employment.

Other notable features include the definition in Schedule 1, para 3 (2) and (3) of a "non-lobbying business": in effect, a lobbying business extends more widely than consultant lobbying. A non-lobbying business is defined as consisting mainly of activities other than communicating on behalf of someone else with government members and office-holders, or with government officials and staff. "Government" includes the UK Government, the devolved administrations, local government, foreign governments and the EU. The list of government members and office holders used to define a "non-lobbying business" is wider than that used to define those who would have to register in clause 2 (5) (UK Government Ministers, Permanent Secretaries and a small number of specified equivalents). The Schedule ensures that those to whom the Bill is relevant (businesses which are mainly lobbying businesses) are defined in broad terms as those who lobby a wide range of policy-makers. The Schedule thus excludes those who lobby only as a minor part of their work. The registration requirement then applies only to those within the "mainly lobbying business" category who actually lobby UK Ministers and Permanent Secretaries.

The scope of the register has been criticised within the lobbying industry. Some have argued that the requirement for lobbying as defined by the Bill to be the "main business" of the person concerned will mean many public affairs firms will not be required to register, as they also carry out a range of communications work. The Chief Executive of MHP Communications, Gavin Devine, has suggested that his company will not have to register as it will fall into the category of those whose main business is not lobbying. He has also stated that the lobbying of Ministers and Permanent Secretaries "is not a substantial part of our business." Peter Bingle, formerly of Bell Pottinger, said, "I will not be covered by the bill as it is drafted and nor will most of the major players in the public affairs consultancy world."[40] Aidan O'Neill QC, commissioned by lobbying trade bodies, argued that the Bill could be discriminatory and therefore could fall foul of EU law, since it imposes obligations on only one type of lobbyist.[41]

The APPC currently runs a non-statutory industry registration scheme. They have argued that the Government proposals are "likely to result in less transparency with fewer organisations and individuals actually having to register than under the current self-regulatory regime the lobbying industry operates". The APPC has stated that recent research they had undertaken found that ministers and the Department of Business, Innovation and Skills had 988 meetings with lobbyists in 2012, but just two were with consultant lobbyists. They state

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39 Schedule 1, para 9 and 10

40 "Top consultancy to snub lobbying register," *Public Affairs News*, August 2013. Similar points were made in an article by Oliver Wright, "The scandal of a lobbying law that will make a bad situation even worse," *Independent*, 14 August 2013

41 "Loophole means we won't have to sign register, claim lobbyists," *Times*, 5 August 2013

that they would "welcome a statutory register, but only one which means all professional lobbyists are included".[42]

The Government's rationale for the restricted definition of lobbyist used in the Bill is that information about ministerial meetings with in-house lobbyists is already available in a transparent form. Departments publish quarterly reports of external meetings by Ministers and Permanent Secretaries, and if a meeting is with a representative of, say, a campaign group or a trade body, the interests represented will be obvious. An entry for a meeting with a consultant lobbyist will not be transparent in the same way:

> 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.[43]

The campaign group Unlock Democracy argued in evidence to the Political and Constitutional Reform Committee that it lobbies the Government on a range of issues.[44] It may be clear who a Minister has met, but the issue on which the organisation made representations may not be evident, especially in the case of larger corporations with complex operations and interests.

Information to be included

Clause 4 provides for the register and its contents. The entry for each person on the register must include:

- Companies

  Name, registered number and registered address

  Names of directors, company secretaries and shadow directors

- Partnerships

  Names of partners and address of main office

- Individuals

  Name and address of main office (or home if no office)

For all persons the entry must include any other names under which they do business as a consultant lobbyist and their "client information." The latter, which is to be submitted in a quarterly "information return," is defined in **Clause 5** as the names of anyone on whose behalf they lobbied in that quarter in return for payment (regardless of whether the payment was actually received) and anybody who paid them to lobby during the quarter (regardless of whether the lobbying took place). Lobbyists must also include the names of anyone on whose behalf they were paid to lobby in the three months preceding registration.

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42 APPC, *Statement on Lobbying Transparency Bill,* 17 July 2013

43 Explanatory Notes, para 4

44 Political and Constitutional Reform Committee, *Introducing a statutory register of lobbyists,* 13 July 2012, HC 153 2012-13, para 31

There is scope for this information to be broadened. Under Clause 4 (2)(f) the Registrar may determine additional information regarding the identity of the lobbyist that should be included. Under Clause 4 (2)(g) further information may be specified in regulations. Clause 4 (5) allows regulations which may make "further provision in connection with the register," in particular specifying additional information about clients during the three months before registration, and about the format of applications to be registered. Clause 5 (4) provides for regulations to specify other information about clients that must be included. Finally, clause 23 (2) provides for regulations to be made on, among other things, the form and content of information returns.

A registered lobbyist may make a "statement" under Clause 5 (5) that they neither lobbied nor received payment to lobby during a quarter.

The register is supposed to be self-financing.[45] **Clause 22** allows charges to be made (registration fees); regulations will either set the fees or set out a method for determining them. The regulations must specify that, subject to any exceptions, fees are payable only by those registered under the *Value Added Tax Act 1994*.[46] According to the Explanatory Notes, the fees are likely to be £200 - £450 per year. Businesses registered for VAT are in general those with an annual turnover exceeding £79,000.[47]

The exact value of the fees will depend not only on the costs of administering the register, but also on the number of persons registering who are also registered for VAT. The fewer such persons, the higher the proportion of the administration costs they each will pay. The Government estimates that about 1,000 lobbyists will register.[48] These figures were discussed by the Political and Constitutional Reform Committee,[49] while the cost implications according to different projections of the numbers registering are discussed at length in the Impact Assessment accompanying the Bill.

As mentioned above, there are already non-statutory registers maintained by the APPC, the CIPR and the PRCA. The APPC register lists all the client and consultants of APPC member firms.[50] The PRCA publishes a register of all members who practice public affairs, and in the case of consultancies the list of clients for whom they conduct public affairs, every quarter.[51] The CIPR maintains a public relations register listing those subject to their Code of Conduct.[52] The UKPAC register draws on the APPC and the CIPR registers to allow a search for organisations or individuals who are registered as lobbyists, and also to search by client. Staff listed may be employed or providing consultancy services. The register also details organisations that employ individuals who are registered under their CIPR membership.[53]

The Registrar

Clause 3 establishes the position of Registrar of Consultant Lobbyists, and Schedule 2 sets out further details of the post. The Registrar is responsible for monitoring compliance with the lobbying provisions in the Bill, under **Clause 8**.

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45 Clause 22 (4), and Explanatory Notes, para 56
46 Clause 22 (3)
47 Explanatory Notes, para 171
48 Impact Assessment, pp5-6
49 Political and Constitutional Reform Committee, *Introducing a statutory register of lobbyists,* 13 July 2012, HC 153 2012-13, para 26-8
50 APPC Register
51 PRCA Register
52 CIPR Register
53 UKPAC Register

Clause 6 imposes a duty on the Registrar to keep the register up to date and to register proper applicants within four working days. Information returns from those required to register are supposed to be submitted within two weeks of the quarter to which they relate.[54] For such returns, the Registrar must update the register within four working days. Where returns are made later than two weeks after the quarter to which they relate, the Registrar has eight working days to make the necessary updates. The Registrar may remove a person from the register, or mark their entry, if s/he believes them not to be working as a consultant lobbyist any longer. Regulations may make further provision on removal of entries either in this way, or in other circumstances.[55]

Under **Clause 7** the Registrar must publish the up-to-date register, and may include entries or parts of entries for persons formerly registered. The register must be published on a website and in such other forms as the Registrar thinks appropriate.

Clause 9 sets out a system by which the Registrar can conduct the duty to monitor compliance. This consists of "information notices," requiring recipients to reveal certain information, which the Registrar may serve on registered lobbyists and on those whom the Registrar has reasonable grounds to believe are consultant lobbyists. A notice will specify the information to be provided, as well as the form in which it should be supplied, and the date by which it should be supplied. A right to appeal against an information notice is created under **clause 11**.

Clause 10 sets out limitations on what may be required by an information notice, and, under Clause 9 (3), regulations may add to this by specifying types of information which may not be subject to a notice. A person does not have to provide information that would be self-incriminating and would expose the person to prosecution for that offence. This addresses human rights concerns which might otherwise arise, under Article 6 of the *European Convention on Human Rights*.[56] Offences under the lobbying provisions of the Bill are excepted from this, as are offences under section 5 of the *Perjury Act 1911*, and equivalents for Scotland and Northern Ireland, concerning false statements made other than on oath.[57] A statement made in response to an information notice may be used in prosecutions under the lobbying provisions of the Bill only if the lobbyist relies on it but contradicts it in evidence. There is one exception to this: statements made in response to information notices may be used in prosecutions for offences under Clause 12 (4), which are failure to provide the information, or providing false information.[58]

Under **clause 21** the Registrar may issue guidance, for instance about who would qualify as a consultant lobbyist, who would be subject to an exception, or the circumstances under which penalties might be imposed.

Schedule 2 makes the Registrar a corporation sole, able to enter into contracts, to sue and to be sued as an office holder, rather than as an individual. It provides for the Registrar to be appointed by a Minister (rather than Parliament) on a four year term. According to the Explanatory Notes, the appointment will be made "after a process of fair and open competition," although this is not reflected on the face of the Bill.[59] There can be up to two re-appointments, for a maximum of three years each. Former Ministers, Permanent Secretaries and consultant lobbyists are ineligible if they held these offices within five years of

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54 Clause 5 (6)
55 Clause 23 (2)(c) – (d)
56 See Explanatory Notes, para 167-9.
57 Clause 10 (1) and (2)
58 Clause 10 (3) – (5)
59 Explanatory Notes, para 31

appointment as Registrar. The Minister may dismiss the Registrar without parliamentary involvement, but only for specified reasons, such as unfitness to perform the office.

The Registrar would not be a civil servant, but the office holder may make arrangements for staffing and office facilities from the civil service, and obtain funding from the minister. The Registrar's office will be subject to the *Freedom of Information Act 2000,* the *Public Records Act 1958* and the *Parliamentary Commissioner Act 1967* (parliamentary ombudsman). The accounts will be audited by the NAO.

There is a measure of parliamentary involvement in the appointment, dismissal and funding of other regulators thought of as constitutional watchdogs, such as the Comptroller and Auditor General, the Electoral Commission and the Civil Service Commission. For background, see Standard Note 4720, *Officers of Parliament: recent developments*.

Offences

Offences under the Bill are set out in **clause 12**, while penalties are in **clauses 14 to 20**. There are two routes for dealing with offences, criminal proceedings under the Director of Public Prosecutions, or civil penalties imposed by the Registrar. The imposition of a civil penalty will preclude criminal proceedings.

It is an offence:

- to carry out the business of consultant lobbying while unregistered;[60]
- to lobby if there is material inaccuracy or incompleteness in that person's entry in the register and they have failed to correct this in an information return;[61]
- to fail to submit a return within two weeks of the end of a quarter, or to provide a materially inaccurate or incomplete return;[62]
- to fail to supply information required in an information notice by the stipulated date, or to supply materially inaccurate or incomplete information.[63]

There is a defence that due diligence was taken to avoid the offence, but this applies only in the case of criminal proceedings. It consists of "sufficient evidence of the fact" of due diligence being adduced "to raise an issue with respect to it," and "the contrary is not proved beyond reasonable doubt."[64]

The penalty is a fine. This is unlimited in cases tried in the Crown Court. It will be a fine not exceeding the statutory maximum on summary conviction, although this will switch in England and Wales to an unlimited fine once section 85 of the *Legal Aid, Sentencing and Punishment of Offenders Act 2012* comes into force.[65]

Clause 13 creates liability for individual directors and other officers, and for partners in Scottish partnerships, alongside corporate/partnership responsibility. Thus, if an offence is committed with consent or connivance, or as a result of negligence, then the individuals concerned are also guilty of the offence and may be prosecuted and punished along with the corporation.

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60 Clause 12 (1)
61 Clause 12 (2)
62 Clause 12 (3)
63 Clause 12 (4)
64 Clause 12 (5) – (6)
65 Clause 12 (7) – (8)

In addition to the possibility of criminal proceedings, the Registrar may impose a civil penalty for any of the offences mentioned above. In this case, the defence of due diligence does not apply. The power to impose a penalty is created in **clause 14**, and the details are set out in **clauses 15 to 20**.

Under **clause 15** the Registrar must serve a notice of intention to impose a penalty on the person. This sets out the conduct at issue, the amount of the penalty and a time period within which the person may make representations to the Registrar against the notice. If the Registrar goes ahead with the penalty, this is served in a "penalty notice," under **clause 16**. This sets out the conduct, the amount of the penalty, the period within which it must be paid, and particulars of the right of appeal.

These penalties may not exceed £7,500.[66] They are mutually exclusive with criminal proceedings, under **clause 18**. Thus the Registrar may not impose a civil penalty while criminal proceedings are under way or after a person has been convicted. Likewise, a person may not be convicted of an offence under this part of the Bill for conduct which has been penalised by the Registrar. According to the Explanatory Notes, "it is anticipated that the Registrar will wish to pursue this option for less serious instances of non-compliance, for example due to administrative oversight."[67]

Clause 17 creates a right of appeal to a tribunal over the decision to impose a penalty or the amount of the penalty. Regulations will make provision for the determination of appeals.

Clause 20 sets out a list of matters that may be the subject of regulations. This includes circumstances in which a civil penalty may not be imposed, steps which the Registrar must take before imposing a penalty, a process to review a decision to impose a penalty, time periods for payment and between the notices of intent and of penalty, and interest, or additional penalties, for late payment.

Members of Parliament

In order to ensure that the rights of both Houses are not infringed by the Bill, **Schedule 1, paragraph 1** offers a general saving to the effect that the freedom of speech guaranteed to both Houses under Article 9 of the *Bill of Rights 1688* is not to be affected. In addition, the other main aspect of parliamentary privilege, the right of self-regulation ("exclusive cognisance"), is specifically protected. Section 1 of the *Parliamentary Standards Act 2009* contained a similar provision protecting Article 9 but not exclusive cognisance.

Schedule 1, paragraph 2 excludes from the definition of consultant lobbyist an MP who communicates on behalf of people resident in the constituency:

> A Member of Parliament who makes communications within section 2 (3) on behalf of a person or persons resident in his or her constituency does not, by reason of those communications, carry on the business of consultant lobbying.[68]

Constituency work by MPs is not considered to fall within the formal definition of parliamentary proceedings and so is not covered by parliamentary privilege.[69] As mentioned above, this exception covers only communications by a Member on behalf of persons resident in the constituency, where "resident" has the meaning which it has in section 4 of the *Representation of the People Act 1983*, on entitlement to be registered as a parliamentary

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66 Clause 16 (3). The maximum may be changed by regulation.
67 Explanatory Notes, para 49
68 Schedule 1, para 2 (1)
69 *Joint Committee on Parliamentary Privilege*, Report 2013-14, HL 30/HC 100, Chapter 1, *Introduction and Background*

elector.[70] It is therefore not clear if constituency work on behalf of companies, charities or other bodies based in a constituency would be covered by the Bill. It also would appear not to exempt Members who lobby on behalf of those unable to register to vote such as under 18s, asylum seekers who do not have leave to remain, non-Commonwealth citizens, and convicted prisoners. There is also the issue of representations made on behalf of those living outside the constituency, such as when a group of Members campaigns on an issue arising from the circumstances of one or more individuals.

There is a question as to whether the exception in Schedule 1, paragraph 2 is necessary. On the one hand, Schedule 1, paragraph 4 also excludes from the definition of consultant lobbyist anyone acting as a representative of persons of a particular class or description who makes lobbying communications only as a incidental part of their representative functions. Conceivably MPs in their constituency role might fall within this exception. On the other hand, MPs might be regarded as carrying out work that is not mainly a lobbying business. Christopher Chope took this up in questioning of Chloe Smith, Parliamentary Secretary at the Cabinet Office, during an evidence session of the Political and Constitutional Reform Select Committee on 18 July 2013:

> **Q93 Mr Chope:** ... [The Bill] makes a specific reference to Members of Parliament making communications not amounting to lobbying business. Surely, a Member of Parliament will be excluded under the exceptions in paragraph 3 of schedule 1, because a Member of Parliament is engaged in a business that is mainly a non-lobbying business. Would you not accept that?
>
> ***Miss Smith:*** I am not sure that I accept the broader point you are trying to make. We have worked very hard to exclude constituency MPs.
>
> **Q94 Mr Chope:** The point is that MPs are already excluded, surely, from the Bill by reason of the fact that whatever we are engaged in is mainly a non-lobbying business.
>
> ***Miss Smith:*** I am so sorry; I see your point. Yes, I agree.
>
> **Q95 Mr Chope:** So if we are excluded already, why do we need to have a specific alternative exemption set out in paragraph 2 of schedule 1?
>
> ***Miss Smith:*** We sought to be particularly clear on this point, because it has come over extremely strongly in almost every conversation I have had with fellow parliamentarians on this. You might remember that at the recent Opposition day debate on lobbying, various points were made to the same effect. Frankly, I look forward to your support in making it clear that constituency MPs are excluded.[71]

Mr Chope also raised the question of peers:

> **Q96 Mr Chope:** How does this apply to peers?
>
> ***Miss Smith:*** The point stands. In the early part of the Bill, we are defining consultant lobbyists who are paid for their duty. It may well be that a peer could fall into that category.

At the same session, Paul Flynn raised the possibility that the MP exemption might be a loophole:

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70 Schedule 1, para 2 (2)

71 Political and Constitutional Reform Committee, uncorrected transcript of oral evidence, to be published as HC 601-i 2013-14, 18 July 2013

> You are introducing a loophole here that means that if people out to buy influence and access are blocked in some way by the Bill, all they have to do is slip a bung to their local MP, and they can do it without any fear of coming under attack.
>
> ***Miss Smith:*** It will not be possible for me to comment on things that will be matters for the House authorities in relation to other rules that apply to MPs. What we have tried to do in the Bill is to set out an exemption for the activities of constituency MPs. We have applied an exemption in particular so that the salary of an MP should not count as money received in exchange for lobbying activity.

The exemption, quoted above, does not relate to an MP's salary from IPSA, but to the residency of the person on whose behalf they make communications.

Paid advocacy by MPs (as against representation in their constitutional capacity) is already banned in most circumstances under the House of Commons Code of Conduct. There is further detail on this in Standard Note 5127, *The Code of Conduct for Members – recent changes*.

Lack of code of conduct

There are various voluntary codes of conduct within the lobbying industry and in other sectors which might lobby on their own behalf. The main professional bodies for lobbyists have standards to which members sign up. The UKPAC maintains a set of "Guiding Principles" which are intended to complement its member organisations' own codes. These principles require transparency and openness, accuracy and honesty, integrity, and propriety.[72]

The Bill does not place any such code on a statutory footing. The Government defended this position in its consultation paper in 2012:

> The Government supports the industry's efforts to improve lobbying practice, and to develop a code of conduct that helps lobbyists perform to the highest possible standards. However, it thinks that this is a matter for the industry itself, not for the operator of the register. The register should be a register of activity, not a complete regulator for the industry.[73]

The Political and Constitutional Affairs Committee cited evidence against this approach:

> Elizabeth France, Chair of the UK Public Affairs Council, agreed that the lack of a statutory code of conduct could lead to less regulation of lobbying:
>
> > "let's assume there is a fee to pay to join the statutory register, and you are a small lobbying firm and you have to decide whether you can afford both to go on the statutory register, which you must go on, and join a professional body that has a professional set of standards and a code of practice you must adhere to. If we are not careful, the second is going to become a luxury and we are going to end up with fewer people. However, an unintended consequence could be that you get fewer people signing up to bodies that have ethical standards and codes of practice."[74]

There is more information about industry standards in Standard Note 4633, *Lobbying*.

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72 UKPAC, *Guiding Principles*

73 *Introducing a Statutory Register of Lobbyists,* Cm 8233, January 2012, p15

74 Political and Constitutional Reform Committee, *Introducing a statutory register of lobbyists,* 13 July 2012, HC 153 2012-13, para 35

3 Third party campaign spending

3.1 Background

Since the *Corrupt and Illegal Practices Prevention Act 1883,* there have been limits on the amounts candidates can spend in promoting their election in a constituency. Without further controls the limits on expenditure by a candidate or party might be evaded by friends of the candidate or by a party campaigning on their behalf in an unregulated manner, so these were introduced in the *Representation of the People Act 1918*. However, such regulation raises issues about rights to freedom of expression in an election campaign.

As a result of a 1998 European Court of Human Rights case, *Bowman v United Kingdom*,[75] the Government took the opportunity in the *Political Parties Elections and Referendums Act 2000* (PPERA) to amend section 75 of the *Representation of the People Act 1983* (RPA). The amendment increased the amount a third party could spend in support of or opposition to an individual candidate in a constituency to £500 from £5.[76] The £5 limit had been criticised by the ECtHR as inadequate for freedom of expression rights. In parliamentary elections the limit is £500, in local government elections the limit is £50 plus 0.5 pence for every entry on the local register for the electoral area concerned.[77] Further detail is given below under the heading *Expenditure at constituency level.*

Controls on donations to third parties

There is no limit on the amount of donations that can be received by third parties, but these must be from a permissible source if the amount is over £200. Donations have to come from UK sources and not be anonymous. Donations over £7,500, including non-cash donations and sponsorship, must be identified in the third party's return to the Electoral Commission and are published in a separate register.[78] The Electoral Commission publishes guidance for non-party campaigners on the rules governing campaign expenditure.[79]

National expenditure limits and registration for third parties

The main purpose of PPERA was to introduce the regulation of national party election expenditure. For the first time, an overall limit was set for the expenditure by each registered party on general elections. PPERA also regulated what is known as 'controlled expenditure' by pressure groups, trades unions, and other organisations which campaign during election periods, establishing national expenditure limits for such 'third parties' in Schedule 10.

There is no overall limit on total third party spending either at constituency or national level for parliamentary elections; that is, each third party may spend up to the specified PPERA limit, but the number of third parties choosing to campaign is not limited by law.[80] Comparative studies of election finance and regulation indicate that where parties

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75 (1998) 26 E.H.H.R 1. For background see Library Research Paper, 00/1, *Political Parties Elections and Referendums Bill - electoral aspects (Bill 34 1999/2000)*

76 Home Office, *The Funding of Political Parties in the United Kingdom – The Government's proposals for legislation in response to the Fifth Report of the Committee on Standards in Public Life*, July 1999, Cm 4413, para 7.36,

77 *Political Parties, Elections and Referendums Act 2000* s131 inserted 1ZA into s75 of the *Representation of the People Act 1983*

78 *Political Parties, Elections and Referendum Act 2000* (chapter 41), Schedule 11, paragraph 10 (as amended)

79 Electoral Commission, *Managing non-party campaign spending*, undated

80 Committee on Standards in Public Life, *The Funding of Political Parties in the United Kingdom,* Cm 4057, 1998, paras 10.54-10.71

themselves are regulated, there is a tendency for third parties to increase in importance, as other methods are used to finance campaigning.[81]

Third parties are regulated for the same time period as political parties, that is, 365 days prior to polling day for UK Parliamentary elections and 4 months for elections to the European Parliament, Scottish Parliament, Northern Ireland Assembly and National Assembly for Wales.[82] Campaigning at local elections is only controlled where it falls within the regulated period for one of the above elections. Third parties who wish to campaign nationally must register with the Electoral Commission, which maintains a register of third parties, accessed from its Party and Election Finance Online home page.

Third parties are permitted to spend up to specific maximum amounts.

Third party expenditure limits, by country

	England	N Ireland	Scotland	Wales	UK total
UK Parliament	£793,500	£27,000	£108,000	£60,000	**£988,500**
European Parliament	£159,750	£6,750	£18,000	£11,259	**£195,759**
Northern Ireland Assembly		£15,300			**£15,300**
Scottish Parliament			£75,800		**£75,800**
National Assembly for Wales				£30,000	**£30,000**

Source: *Political Parties, Elections and Referedums Act 2000*

The *Explanatory Notes* to the PPERA Bill explained that these limits were 5 per cent of the limit which would apply to a registered party if it contested all the seats in the election in question.[83] These limits have not been increased since PPERA came into force.

The Electoral Commission report *Election 2005: campaign spending* found that 24 third parties reported spending for the 2005 general election and none came close to their overall spending limit of almost £1m.[84] The largest amount declared was from the trade union UNISON, at £682,115, followed by the Conservative Rural Action Group at £550,370. The Electoral Commission found that there was greater awareness of regulation than in 2001, but there continued to be instances where third parties had failed to register. In 2010, 23 third parties reported total spending of £2.8 million, more than £1 million more than that reported in 2005 and around 9% of the £31.5 million spent by political parties on national campaigning.[85] The *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill* would reduce the limits on third party spending for the whole of the UK from £988,800 to £388,080.

The charts below show the amounts spent by the five highest third party spenders in the 2005 General Election and in the 2010 General Election, and the current and proposed limits for third party spending. None of the third parties spent more than 70 per cent of the current statutory limit in 2010. The spending limit proposed in the Bill of £388,080 was exceeded at

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81 See for example Kevin Casas-Zamora, *Paying for democracy*, 2005; and, in a study on *International Comparisons*, prepared by Michael Pinto-Duschinsky, for the Committee on standards in Public Life's inquiry into Political Party Funding, the Canadian experience of limiting campaign spending by lobby groups or third parties is described [Michael Pinto-Duschinsky, *International Comparisons*, Study prepared for the Inquiry into Party Funding, United Kingdom Committee on Standards in Public Life, July 2011]

82 Electoral Commission, *Third parties*

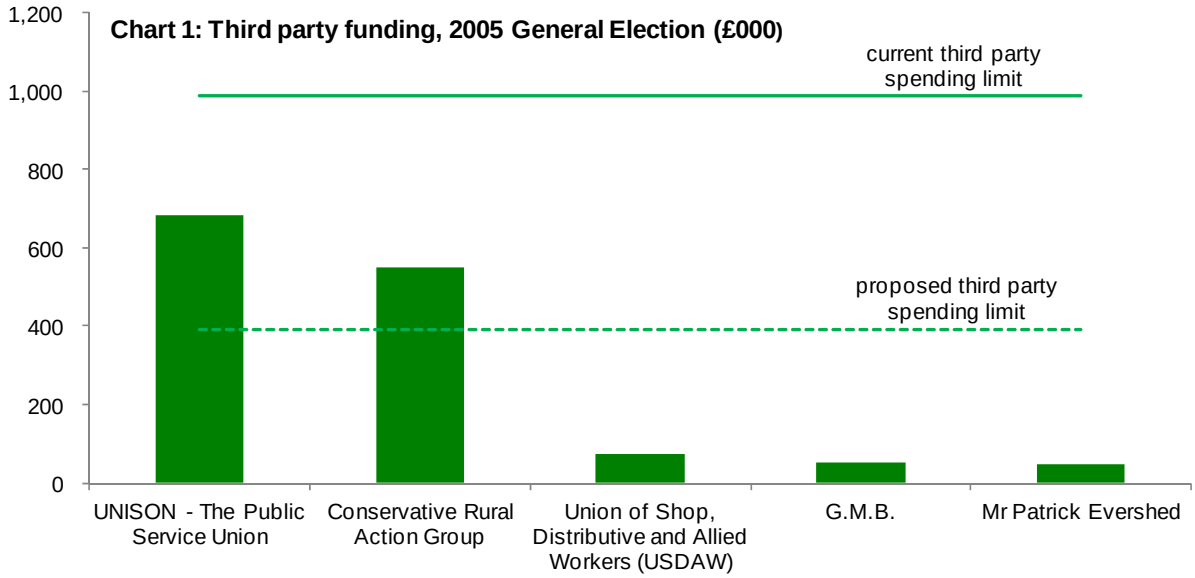
83 *Explanatory Notes* to Schedule 9 of Bill 34 1999-2000, paras 171 and 172

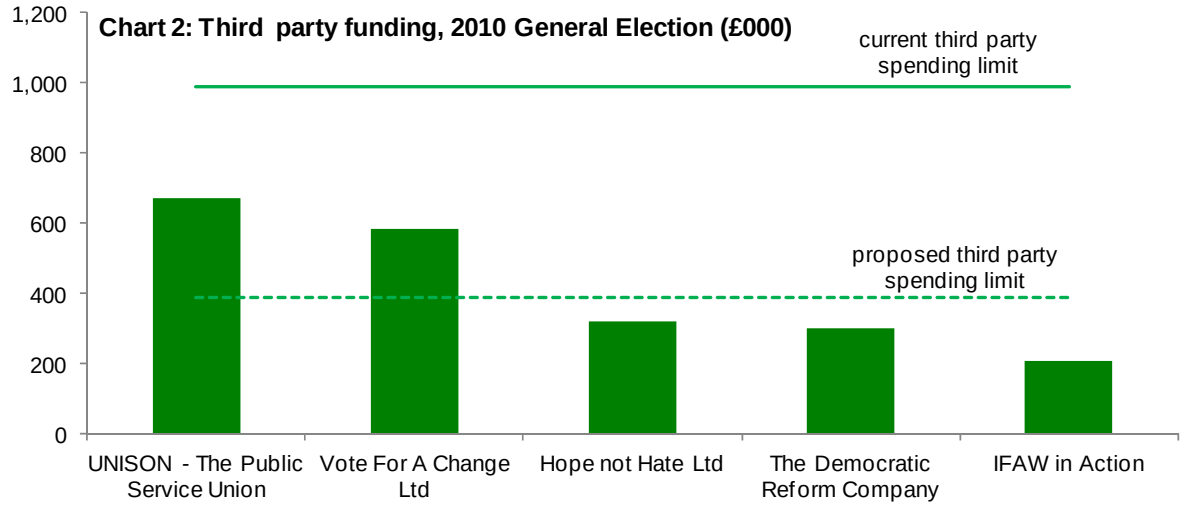
84 Electoral Commission, *Election 2005 Campaign Spending: the UK Parliamentary General Election,* March 2006, Table 9

85 Electoral Commission, *UK General Election 2010 Campaign spending report,* February 2011, Chart 3

both general elections: in 2005, by both Unison and the Conservative Rural Action Group; and in 2010 by both Unison and Vote for Change Ltd.[86]

In 2005, the top five third parties accounted for 82 per cent of third party funding. In 2010, the top five third parties accounted for 70 per cent of third party funding. Spending by third parties has increased from £1.7m in 2005 to nearly £3m in 2010.





Full details of the amounts spent by third parties in 2005 and 2010 general elections, in the United Kingdom and in England, Scotland, Wales and Northern Ireland, are set out in the Appendix.

Expenditure at constituency level

As mentioned above, PPERA amended section 75 of the RPA 1983 so that the there is a limit of:

- £500 at a UK Parliamentary, Scottish Parliamentary, Northern Ireland Assembly or National Assembly for Wales election;

[86] Vote for a Change Ltd was a body designed to promote tactical voting at the 2010 general election

- £5,000 for, third parties which campaign for individual candidates at an European Parliament election;

- £50 + 0.5 pence per elector in the electoral area for local elections (including London Mayor and constituency and London members of the London Assembly, other elected mayors and parish and community elections).[87]

These limits apply only during the election period, and not in the months before an election is called. The election period will be the electoral timetable in operation for the relevant legislative body or local authority.

Where a group of people – whether a formal or informal group – undertake campaign activities as a concerted plan of action, the limit applies to the group as a whole, not to each individual member of the group. At a local level third party campaigners do not have to submit election returns (whether donations or expenditure), either to the Returning Officer or the Electoral Commission.[88]

The *Electoral Administration Act 2006* amended the wording of section 75 of the RPA to provide more clarity. The changes:

- widened the range of expenditure permitted for third parties to include public meetings or organising any public display and issuing advertisements, circulars or publications;

- ensured that third parties which had not registered could nevertheless spend up to £500 on any item regulated in the RPA 1983 as election expenses;

- clarified that the controls were not intended to restrict the publication of matters about the election in newspapers or periodicals or broadcasting;

- clarified that expenditure incurred by a third party will count if it is incurred in connection with anything which is used or takes place after the candidate becomes a candidate, even if the expenditure is incurred before that date.[89]

However, there is still no requirement for a third party to complete an election expenses return under the RPA at constituency level. The Electoral Commission noted in June 2013:

> There are no controls on the donations these campaigners receive, and they are not required to submit a spending return. We do not have any role in monitoring or ensuring compliance with the spending limits on local non-party campaigners. Any suspected breach of these spending limits is a matter for the police.[90]

The Commission sounded a note of caution over the potential cost of the changes:

> Any proposed change to the current arrangements would need careful consideration of the resource implications for the Commission and the potential regulatory benefits. Since we do not regulate local non-party campaigning, we do not hold any data on

87 Electoral Commission, *Third parties*
88 Section 75 (1ZA). See also the Electoral Commission website for more information about third parties
89 Section 25(2)(a) of the *Electoral Administration Act 2006* amended s 75 of the RPA 1983
90 Electoral Commission, *A regulatory review of the UK's party and election finance laws: recommendations for change*, June 2013, para 5.6

> current levels of activity or compliance with the rules, and are not able to assess the implications at present.[91]

At a constituency level, trade unions and others may support local parties through constituency development plan agreements, where funds are supplied to assist the local party. These plans developed after new rules on sponsoring MPs were adopted following the first (Nolan) Committee on Standards in Public Life report in 1995.[92]

In a forthcoming study Ron Johnston and Charles Pattie have calculated overall constituency spending at the 2010 general election by candidates:

> According to the Electoral Commission, a total of £25.2 million was spent by all candidates on constituency campaigning between 1 January 2010 and the election itself on 6 May: £14 million of that was spent in the 4 weeks after the dissolution of Parliament on 12 April.[93]

Johnston and Pattie also found that 43 per cent of donations to the Labour Party constituency accounting units were from trade unions, in an analysis of each party's local accounting unit over the period 2001-2011.[94]

Expenditure limits for political parties and candidates - changes in 2009

In response to continuing concerns about levels of campaigning before people officially became a candidate, the *Political Parties and Elections Act 2009* introduced new controls on pre-candidate spending and donations for UK Parliamentary general elections. These applied where a Parliament has sat for more than 55 months and were designed to regulate pre-candidacy spending and donations in the context of uncertainty over the day of poll. They created a new, separate regulated period which imposes a separate pre-candidacy spending limit, known as the 'long' campaign. These limits were first in operation for the 2010 general election.

Subsequently, the *Fixed-term Parliaments Act 2011* provided for fixed elections every five years; in consequence, pre-candidacy spending limits will also be in operation for the scheduled general election in May 2015. The Electoral Commission's review highlighted the two separate campaign periods as causing confusion and recommended their merger into one:

> Our experience from the 2010 UKPGE (UK Parliamentary General Election) and the 2011 Scottish Parliament elections shows that having two separate regulated periods confuses candidates and agents. For example, out of over 4,000 candidates who submitted returns for the 2010 UK general election, more than 1,000 candidates' agents appear to have had problems understanding the new rules, which could have led to unintentional breaches of the law. Based on analysis of spending returns, we think these problems were caused largely by having to comply with two separate spending limits in respect of a single election campaign[95]

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91 Electoral Commission, *A regulatory review of the UK's party and election finance laws: recommendations for change*, June 2013, para 5.11

92 See for example information on plans from the CWU union on their website

93 `*Money and Electoral Politics: Local Parties and Funding at General Elections* Ron Johnston and Charles Pattie, forthcoming. The authors note that all of the data on spending at the 2010 election analysed were obtained from the Electoral Commission website: *UK General Election 2010: Parties and Third Parties*

94 Ibid, Chapter 4 Table 4.7

95 Electoral Commission *A regulatory review of the UK's party and election finance laws: recommendations for change*. Para 4.83. The limits are set out in Schedule 9, para 3 of PPERA. A party receives an allowance of £30,000 for each constituency contested, subject to a minimum threshold

The current Bill does not address this question.

Party general election expenditure

The table below shows how much each political party, which returned MPs at the 2010 general election, spent in both the 2005 and 2010 general elections.

Party expenditure, 2005 and 2010 general elections (£000)

Party	2005	2010
Alliance (NI)	21	24
Conservative Party	17,852	16,683
Democratic Unionist Party	107	59
Green Party	160	325
Labour Party	17,946	8,016
Liberal Democrats	4,325	4,788
Plaid Cymru	39	145
Scottish National Party	194	316
SDLP (Social Democratic & Labour Party)	154	52
Sinn Fein	44	64
Other	1,482	1,021
Total	**42,325**	**31,493**

Source: Electoral Commission, *UK General Election 2010 - Campaign spending report* , February 2011

The national spending limits (£30,000 per constituency) applied in both elections.[96] The country limits were as follows:

National spending limits at the the 2005 and 2010 general elections, £m

England	15.99
Scotland	1.77
Wales	1.20
Northern Ireland	0.54
Total UK	**19.50**

Total expenditure by parties in general election campaigning declined between 2005 and 2010, mainly because the Labour Party expenditure was significantly lower. The trend to targeting resources to marginal constituencies has nevertheless increased. Ron Johnston and Charles Pattie have summarised trends in party spending at local level, as follows:

> As local party organisations wither in many parts of the country – with few members and little money – so more of the work preparing for General Elections has been undertaken at the parties' London and regional headquarters, usually involving paid staff rather than volunteer helpers and with some of the work 'outsourced'. Given the greater attention paid at elections over the last three decades to the importance of local campaigning, however, especially in targeted marginal constituencies, this is a somewhat paradoxical situation: party officials, operating at some distance from the grassroots, have had to take greater responsibility for delivering effective constituency campaigns – including the mobilisation and management of local workers.[97]

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[97] Ron Johnston and Charles Pattie, *Money and Electoral Politics: Local Parties and Funding at General Elections* , *In Conclusion,* Forthcoming - 2014

3.2 Third parties and party funding reform proposals

There have been a series of attempts since PPERA to achieve further reform of party funding. Details are given in the Library Standard Note 6123 *Party funding: background and developments*. Most recently, the all-party talks set up following a report from the Committee on Standards on Public Life have been wound up. One feature of the talks was the emphasis placed on reaching an overall package of reform and a focus on achieving a cap on donations.

Until recently, the question of further regulation of third party spending has not been a major subject of debate. The Committee on Standards in Public Life 2011 report *Political Party Finance: ending the big donor culture* focused more attention on the question of capping donations to political parties, including from trade unions.[98] The report did note that a donation cap could be expected to lead to funding being diverted to other ways of influencing the political process, including non-party campaigns.[99]

The Labour Party's structure as a political party is unusual, in that it includes institutional members which themselves have individual members. As well as affiliated trades unions, a number of parties and societies are also affiliated, including the Co-operative Party and the Fabian Society. Under PPERA, affiliation fees are treated as donations to a political party and are reported to the Electoral Commission.

Under legislation introduced in 1984, unions must ballot their members every ten years on the continuance of political funds. Individual union members can contract out of paying the political levy. Those who remain contracted-in cannot decide on the use of their individual contribution. The use of political funds (including whether to contribute to any political party) is a matter of union policy, subject to approval at the union's annual conference. This subject is dealt with in more detail in Library Standard Note 593, *Trade Union Political Funds and Levy*.

One of the areas which has proved most challenging in regulating third party spending is the fact that there is no overall limit on third party spending. Although PPERA has a provision to prevent third parties acting in concert to evade a cap,[100] there can be unlimited numbers of third parties each genuinely independent and able to spend up to the appropriate limit. Ewing and Rowbottom have argued that the growth of social media sites, such as Mumsnet, has made it easier for opinion designed to influence electoral behaviour to reach a wide audience, as the marginal costs are low.[101]

Another issue is the temporary nature of third party campaigning bodies. As detailed in the Appendix, several third parties which campaigned in 2005 general election have no longer maintained a registration and may no longer exist. The largest spender in England in 2005, the Conservative Rural Action Group, spent no money at the 2010 General Election, for example.[102] Where bodies only have a temporary existence enforcement action may be challenging. Trade unions tend to have a more stable existence, but a number of mergers have taken place in recent years.

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98 Committee on Standards in Public Life, *Political Party Finance,* Thirteenth report, Cm 8209, November 2011

99 Ibid, para 5.6

100 S94(6)(b) of PPERA

101 "The role of spending controls" by Keith Ewing and Jacob Rowbottom in K Ewing et al ed, *The Funding of Political Parties: Where now?,* 2012

102 Electoral Commission, *Party and Election Finance Online Registers* (see Appendix)

Trade union mergers and political funds

In 2007, Amicus merged with the Transport and General Workers Union to form UNITE union. Amicus had been formed in 2001 by the merger of the Manufacturing, Science and Finance (MSF) union and the Amalgamated Engineering and Electrical Union (AEEU). UNISON: was formed in 1993 when three public sector trade unions, the National and Local Government Officers Association (NALGO), the National Union of Public Employees (NUPE) and the Confederation of Health Service Employees (COHSE) merged. UNISON as a result has two political funds, the Affiliated Political Fund which is used for Labour Party activities and the General Political Fund, which is used for campaigning. (NALGO had not been affiliated to the Labour Party and had a general political fund.)

Attention has recently focused on the activities of the UNITE union in funding campaigns in marginal constituencies during the 2010 election.[103] Nicholas Allen and John Bartle stated that UNITE spent £2m not on supporting candidates, but on mobilising its members in key marginal constituencies to vote.[104]

In June 2013 the Electoral Commission published *A regulatory review of the UK's party and election finance laws: recommendations for change*. This reviewed the current rules on campaign spending for both political parties and third parties set out in PPERA, among other topics and recommended change. The detailed recommendations of the review will be referred to where relevant in the rest of this Paper.

3.3 Part 2 of the Bill

On 4 June 2013, the Deputy Prime Minister, Nick Clegg, confirmed that the Government would bring forward proposals to address third party funding:

> **John Stevenson (Carlisle) (Con):** Does the Deputy Prime Minister agree that the political fee paid by trade union members should not automatically go to one party, and that trade union members should have the opportunity to decide for themselves which party that fee should go to?
>
> **The Deputy Prime Minister:** The whole issue of opt-in and opt-out for trade union members and of donations from the trade union movement, which is now pretty well single-handedly bankrolling the Labour party, has of course come up in the cross-party talks on party funding, which unfortunately have proved somewhat elusive. One of the measures that we want to bring forward —it does not apply to trade unions alone— relates to the way in which a number of campaign groups, be they trade unions, animal welfare groups, tactical voting groups, rural campaign groups, religious groups or individuals, spend money to determine the outcome of campaigns in particular constituencies. At the last election, those major groups and individuals spent £3 million—a full 10% of what the major parties spent. We want to make sure that this increasingly important type of campaigning is fully transparent and is not allowed to distort the political process. That is what proposals that we will come forward with soon will do.[105]

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[103] "Comment: The obsession with swing voters is strangling politics: Targeting marginals is logical sense for Ashcroft and Whelan. But the system sucks all fire and clarity from party lines", *Guardian,* 15 March 2010

[104] Nicholas Allen and John Bartle eds, *Britain at the Polls 2010,* 2010, p235

[105] HC Deb June 2013 c1373

In a press release issued on 22 July 2013 on the publication of the Bill, the Government set out the intended policy objective as follows:

> [The Bill will] bring a new degree of openness and tighter control over the amount organisations spend on political campaigning. The measures cover individuals and organisations who are not political parties or candidates, but campaign during parliamentary elections. The amount an organisation can spend campaigning will be limited to £390,000 across the UK. There will be further limits on organisations who campaign for or against a specific party or target their spending at a particular constituency. Limiting such spending is intended to avoid the situation we see in other countries, where unregulated spending by vested interests means that it might not always be the best candidate who wins an election, but the one with the richest supporters.[106]

In brief, Part 2 of the Bill seeks to amend existing electoral law in PPERA and the RPA 1983, inserting several new provisions. To make the changes accessible to campaigning groups, some clear guidance would be required. For several years, the Electoral Commission and the Law Commission have called for consolidation of a particularly difficult set of statutes on elections.[107] The Law Commission has begun work on a review of electoral law with a view to consolidation.[108]

Part 2 begins with a new definition of expenditure considered to count as campaign expenditure for the purposes of regulation, then lowers the limits for third party spending and creates new forms of regulation for third parties as well as reforming the law at constituency level and providing the Electoral Commission with new powers of enforcement. These are discussed below.

The *Explanatory Notes* issued with the Bill discuss European Convention of Human Rights (ECHR) issues in relation to spending limits for third parties, due to the Article 10 provisions on political expression. The Government considered that the spending limits in the Bill were compatible with the Article, and were a proportionate response.

The Cabinet Office published its *Impact Assessment Third Party Campaigning in Elections* which provides background for part 2 of the Bill on 15 July 2013. Before the Bill was published, there was some concern that legislating on third party expenditure did not represent a full package of reform to party finance:

> "David Cameron is simply wrong to attempt to conflate the issues of party funding and cleaning up the lobbying scandal," said Jon Trickett, shadow Cabinet Office minister. "It's a shabby and panicked way to deal with such an important issue facing our democracy.The best way to proceed if you want to take big money out of politics and clean up the lobbying scandal is to act on a cross-party basis." [109]

Subsequently, Frances O' Grady, the TUC General Secretary has complained that part 2 of the Bill would severely inhibit general campaigning activities of trade unions and charities:

> It is an open secret around Westminster that the proposals in this bill are a highly partisan attack on trade union relations with the Labour party. But as leaders of charities, churches and faith groups return from their holidays, they are starting to realise it could redefine activities they have always regarded as being far above party

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106 Cabinet Office Press release, *New bill to bring more transparency to politics,* 17 July 2013
107 Electoral Commission, *Electoral legislation: principles and practice: a comparative analysis*, September 2012
108 Electoral Commission, *The Law Commission's review of electoral law*, 26 June 2013
109 "Backlash grows against lobbying attack on unions", *Politics.co.uk,* 4 June 2013

> politics as election campaigning – and that if they fail to comply with the spending limits, they will be committing a criminal offence.
>
> How will this gag work? At present the law restricts the spending of non-party groups on election campaigning. But the proposed law goes from providing reasonable rules to keep big money out of politics into a chilling attack on free speech.[110]

According to media reports the Electoral Commission has expressed concern in a private briefing that the clauses in part 2 may be unenforceable and spell uncertainty for charities:

> The briefing says: "In our view, it is not at all clear how that test will apply in practice to the activities of the many third parties that have other purposes beyond political campaigning. For instance, it seems arguable that the new test could apply to many of the activities of charities, voluntary organisations, blogs, thinktanks and other organisations that engage in debate on public policy.
>
> "In contrast, the current definition of third party campaigning sets out quite clearly both the type of activity that may be covered (material directed at the public that promotes electoral success), and the fact that such activity is controlled whatever the intentions of those carrying it out.".[111]

The Electoral Commission has launched an urgent consultation on part 2 of the Bill for interested third parties. Further details are available from the website[112]

Definition of controlled expenditure

Clause 26 and Schedule 3 make changes to the meaning of controlled expenditure so that the definition of third party spending more closely reflects that used for political parties.

The Electoral Commission recommended a consistent approach to the definition of campaign expenditure in *A regulatory review of the UK's party and election finance laws: recommendations for change*. It summarised the complexities:

> 4.39 The controls on PPERA party campaigning apply only to election material, and not to other campaigning activity such as events, media work or market research on polling intentions. However, such activity is covered by the rules on local non-party campaigning, election campaigning by candidates and political parties, and campaigning at referendums.[113]

The report then recommended alignment with the rules for political parties:

> 4.43 To address these issues, the rules on PPERA non-party campaigning that is intended to influence voters should be changed to encompass a broader range of campaigning activities. They should more closely reflect the scope of rules for political parties by covering events, media work and polling, as well as election material. However, this would need careful consideration, as discussed below.[114]

The report warned that that any new definition would need to focus on spending relating to campaigning activities rather than other activities and that spending limits on PPERA non-

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[110] "This Government attack on unions will gag charities and campaign groups too", *Guardian,* 18 August 2013
[111] "New lobbying bill will affect charities ability to campaign on political issues" 26 August 2013 *Guardian*
[112] Legislation on non-party campaigners 17 August 2013 Electoral Commission
[113] Electoral Commission, *A regulatory review of the UK's party and election finance laws: recommendations for change*, June 2013, paras 4.34 to 4.43. see also chapter 7 of KD Ewing, *The Cost of Democracy: Party Funding in Modern British Politics*, 2007
[114] Electoral Commission, *A regulatory review of the UK's party and election finance laws: recommendations for change*, June 2013, paras 4.34- 4.43

party campaigning would need to be reviewed if the scope of activities covered by the rules were widened.[115]

The *Explanatory Notes* to the Bill set out a broad definition of third party expenditure:

> *Subsection (2)* defines controlled expenditure as expenses incurred by on behalf of a third parties which fall within Part 1 of new Schedule 8A to PPERA (see below) and are for election purposes. The definition of the term "for electoral purposes" which is inserted into section 85(3) of PPERA by *subsection (3)* is cast in broad terms so as to capture all expenditure by a recognised third party that is incurred for the purpose of, or in connection with promoting or procuring the electoral success or enhancing the standing of a registered political party or parties or candidates. The definition of "for election purposes" does not rely solely on the intent of the third party; the effect of the expenditure must also be considered. Any campaign expenditure which satisfies the definition outlined by new section 85(3) will be counted as controlled expenditure, regardless of whether those incurring the expenditure intended it (or also intended it) for another purpose.[116]

Costs associated with advertising, unsolicited material to voters or organisation of rallies would count as controlled expenditure. However, unsolicited material about the recognised third parties' activities and objectives addressed to relevant supporters would be excluded from the definition. The Electoral Commission is given the power to produce a code of practice giving guidance on what would be considered controlled expenditure. The code would need to be approved by the Secretary of State and laid before Parliament. Although the code of practice is not made by statutory instrument, an equivalent of the negative resolution procedure would apply so that either House could resolve not to approve the draft code. If the Secretary of State made any modifications to the code, he would be required to set out the reasons before each House.[117] In practice, the Electoral Commission may prefer to issue guidance not in the form of a formal Code. It has done this in respect of its guidance which is not on what is campaign expenditure for political parties.[118]

New spending controls on third parties

At present campaign groups need only register when they plan to spend £10,000 in England or £5,000 in Scotland, Wales or Northern Ireland. **Clause 27** reduces these limits to £5,000 and £2,000 respectively. It is important to note that notional expenditure in kind is also regulated, that is, use of resources at below cost price.[119]

The current limits were set out in Schedule 10 of PPERA.[120] **Clause 27** also sets the new limits as two per cent of the overall maximum campaign limits for political parties in each part of the UK, so that if the campaign expenditure limits for parties are altered, the third party maximum campaign limits will also change without the need for further legislation. The clause does not in itself alter the maximum expenditure limits for political parties.

The following table sets out the new limits for third parties compared with the current ones.

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115 Ibid, para 4.47

116 *Explanatory Notes* para 59

117 *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill,* Schedule 3, para 3

118 The power to issue a code of practice on qualifying expenses for campaign expenditure by political parties is in Part II of Schedule 8 to PPERA

119 Section 85 Notional controlled expenditure PPERA. See also Electoral Commission, *Managing non-party campaign spending*

120 Para 3(2) of Schedule 10 PPERA

The existing and proposed limits on third party spending

	England	Scotland	Wales	Northern Ireland	**Total UK**
Current limits	£793,000	£108,000	£60,000	£27,000	£988,800
Bill proposals	£319,000	£35,000	£24,000	£10,080	£388,080

Clause 28: Constituency limits

Clause 28 introduces a new form of control. It requires third parties to include as part of their return of national expenditure for section 96 of PPERA spending in each parliamentary constituency attributed in equal proportions, except where the effects are limited to a single or number of constituencies. Where this is the case, the third party is required to attribute its spending in equal measures to the constituencies substantially affected.

There is a new limit per constituency on such controlled expenditure which is 0.05 per cent of the maximum campaign expenditure totals for political parties at the UK level. This gives a total of £9,750, £5,850 of which (or 0.03 per cent) may be incurred for the period after the dissolution of Parliament. Further detail is given in the *Explanatory Notes.*

Additional spending is allowable where there is another election pending during the 365 days of regulated spending. For the 2015 general election there will be another regulated election during the 365 days, namely the European Parliamentary elections on 22 May 2014.[121] The total limit would be increased but still only £5,850 could be spent after the dissolution of the UK Parliament.[122] Similar provisions will apply for other elections in the 365 day period, apart from local elections. It should be noted that referendum expenditure is also excluded from regulation.

The Cabinet Office *Impact Assessment* notes that 'there is no data currently available for third party spending by constituency." It then makes an impact assessment as follows:

> As there is no data presently available for third party spending by constituency the impact of this has been estimated by drawing on the expenditure returns from England, Scotland, Wales and Northern Ireland, the only current geographies for which this information is recorded. The smallest reporting geography in the UK, Northern Ireland, has 18 constituencies but only one third party organisation in 2010 spent more than £5,850 in all Northern Ireland suggesting a limited concentration of spending. If this was spread evenly across all 18 constituencies no campaign would breach the threshold and we therefore assume for the lower estimate that no campaigns will be affected in 2015. For the central estimate it is assumed that 10% of campaigns are affected (as in 1 in 10 campaigns in Northern Ireland in 2010 could have breached the limit if they were perfected concentrated in one constituency).
>
> As Northern Ireland may not be representative of the whole of the UK however we assume, for the higher limit, that 50% of campaigns would be affected by this measure because 50% distinctly recorded geographical campaigns across the whole UK are known to spend over £5,850 in 2010.[123]

Since Northern Ireland has a separate party system from the rest of the UK, it might be argued that that expenditure patterns there are not typical of the rest of the UK. One other aspect of interest is how these new limits might affect the growing tendency of third parties to focus on marginal constituencies.

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[121] See Library Standard Note 6707 *Moving the date of local elections in England in 2014*
[122] Explanatory Notes, para 71
[123] Cabinet Office, *Impact Assessment*, p11

Clause 29: Targeted expenditure limits

Clause 29 introduces a second new form of control which the *Impact Assessment* states is designed to make third party assistance to registered political parties more transparent. A third party can support a registered party without authorisation from that party up to 0.2 per cent of the maximum campaign expenditure limits for registered parties in the various parts of the UK as follows:

Targeted expenditure limits, by country	
England	£31,980
Scotland	£3,540
Wales	£2,400
Northern Ireland	£1,080
Total UK	**£38,960**

This is one tenth of what registered third parties can spend nationally under clause 27. Beyond these limits, the third party has to obtain authorisation from the registered political party. These limits apply for the regulated period of 365 days.

The Cabinet Office *Impact Assessment* gives further background:

> The third party must therefore seek permission if it wishes to campaign in support of a political party and incur spend above £31,980 in England, £3,540 in Scotland, £2,400 in Wales and £1,080 in Northern Ireland; expenditure above these limits, provided it is authorised, will then also count against the political party's limit. If a registered party does not wish the third party's campaigning activities to count towards their limit, they would not authorise them to do this.[124]

Clause 29 also allows for higher limits when there is another election during the 365 day regulated period. It creates a number of offences in respect of unauthorised expenditure or false declarations. In **Clause 30** Secretary of State may amend the percentages creating the limits by order, but only on the recommendation of the Electoral Commission.

Both in respect of clause 28 and clause 29, these forms of expenditure also count towards the overall expenditure limit for third parties of two per cent of overall campaign expenditure for political parties. Professor Keith Ewing has commented that the freedom of expression of trade unions would be compromised by the need to secure permission from the registered political party for campaigns to be launched.[125]

Reporting requirements and donations for third parties

Third parties are currently required to notify the Electoral Commission when they intend to incur expenditure over the limit for registration (£10,000). **Clause 31** requires further information of the names of the relevant participators of the third party: for trade unions, this would be the officers and for companies, the directors.

Clause 32 imposes more detailed requirements on third parties to submit quarterly and weekly donation reports to the Electoral Commission. Quarterly reports are required during the 365 day regulated period and weekly reports during the post-dissolution of Parliament period. A third party may make an exemption declaration to the Commission, if they do not intend to incur expenditure during the regulated period, or the general election period.

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[124] Cabinet Office, *Impact Assessment*, p7

[125] UK Constitutional Law Blog, *Another Political Attack on Free Speech,* 8 July 2013

Clause 33 introduces a new requirement for statements of accounts in standard format from third parties to be submitted to the Electoral Commission. The Commission will be able to prescribe the form of the statements. Third parties which are individuals are exempt from these requirements.

Third party expenditure in individual constituencies

Clause 34 amends section 75(1ZA)(a) of the *Representation of the People Act 1983* to increase 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. This is the first increase since PPERA came into effect in 2001 and takes into account the level of inflation since then.

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. In any case, where there was expenditure over £200, a full return must be made. Failure to make the return will be an illegal practice and a false return would be a corrupt practice. These provisions take account of recommendations made by the Electoral Commission in *A regulatory review of the UK's party and election finance laws: recommendations for change*. The Commission warned that if its recommendations were accepted, clear guidance would be necessary to ensure local campaign groups were aware of the new requirements.

Regulatory powers of Electoral Commission

The Electoral Commission is responsible for ensuring that organisations and individuals comply with the registration and financial regulatory requirements of PPERA. In a report published in 2003 the Commission examined the working of PPERA and questioned whether it had been given sufficient powers to ensure compliance with the provisions of the Act and called for financial penalties for a wider range of offences. In 2007 the Committee on Standards in Public Life (CSPL) reviewed the mandate, governance and accountability of the Electoral Commission and recommended that PPERA should be amended "to make it clear that the Electoral Commission has a duty to investigate proactively allegations or suspicions of failures to comply with the regulatory framework".[126]

The *Political Parties and Elections Act 2009* subsequently amended PPERA to give the Electoral Commission greater investigative powers and the ability to impose a variety of sanctions.[127] The Commission summarised these in its report, *Use of new investigatory powers and civil sanctions*, published in July 2012:

> 2.3 As a result of the PPE Act, [the Commission is] now able to:
>
> - require information (through a disclosure notice) from anyone where we suspect there has been a breach of the law
> - require witnesses to attend for interview
> - take action if we do not receive co-operation with these requirements in certain circumstances, enter premises (through an inspection warrant which must be obtained from a Justice of the Peace)
>
> 2.4 We are also now able to impose a variety of flexible sanctions including
>
> - fines ranging from £200 to £20,000

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[126] Committee on Standards in Public Life, *Review of the Electoral Commission, 11th report of the Committee on Standards in Public Life*, January 2007, Cm 7006

[127] For further background to the provisions of the *Political Parties and Elections Act 2009* see Library Research Paper 08/74

- compliance and restoration notices, by which we can require particular actions to be taken to achieve compliance or rectify non-compliance

- stop notices, by which we can require that a particular action or intended action be stopped.[128]

As at July 2012 the Commission has not used any of its new investigatory powers since they were introduced on 1 December 2010 and it noted that the majority of cases to date had involved the late delivery or non-delivery of reports such as statements of accounts and that the parties and their treasurers had been willing to come forward to explain mitigating circumstances. The Commission commented that its ability to make clear that it has 'the power to require information is however valuable in providing an incentive to voluntary cooperation.'[129]

In the period 1 December 2010 to 31 March 2012 the Electoral Commission imposed four sanctions for non-compliance with PPERA; its report gives further details. The Commission gave a number of reasons for the low number of sanctions:

- compliance rates had improved since the new sanctions came into effect;

- a higher standard of proof is required before sanctions can be imposed;

- the 'reasonable excuse' provision means that the Commission has to be satisfied beyond reasonable doubt that an offence has occurred;

- in some cases further enquiries would have been disproportionate;

- the Commission has been satisfied that there were mitigating or aggravating factors when an offence has occurred.

Clause 35 of the Bill amends PPERA by imposing a new requirement for the Commission to have a duty to monitor and take all reasonable steps to secure compliance with controls imposed by that Act and extends the Commission's regulatory remit to cover parts 2 and 10 of PPERA (party registration and the election material imprints respectively). The Electoral Commission has solicited these changes in regulatory powers in *A regulatory review of the UK's party and election finance laws: recommendations for change* published in June 2013.

The Cabinet Office *Impact Assessment* estimated that the Electoral Commission might need to expand its enforcement team at a cost of up to £390,000 from 2014 as a result of the total regulatory changes in the Bill. [130] In 2008 the Commission had estimated that the additional costs arising as a result of the changes to its powers and governance in the *Political Parties and Elections Act 2009* would amount to approximately £650,000 per annum.[131]

4 Trade Unions' Registers of Members

Since the mid-1980s every trade union has been under a duty to compile and maintain a register of the names and addresses of its members. The duty is currently provided in section 24 of the *Trade Union and Labour Relations (Consolidation) Act 1992.* An independent regulator, the Certification Officer, oversees compliance with the duty, although only investigates the register if a member of the union applies for a declaration of non-compliance. Additionally, before an election or ballot is held, a trade union must appoint an

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[128] Electoral Commission, *Use of new investigatory powers and civil sanctions*, July 2012, p2
[129] Ibid, p3
[130] Cabinet Office, *Impact Assessment,* p5
[131] *Explanatory Notes to Bill 141*, para 98

independent person to act as a scrutineer. The scrutineer is required to inspect the register whenever it appears to him to be appropriate to do so or when asked to by a member or the union who has a well-founded suspicion that the register is inaccurate.[132]

Part 3 of the Bill would amend the 1992 Act. It would require unions annually to provide the Certification Officer with membership audit certificates and would introduce new investigatory and enforcement powers. The amendments would extend to the United Kingdom.

4.1 Origin of the duty to maintain a register of members' names and addresses

The duty to maintain a register of members' names and addresses was introduced by section 4 of the *Trade Union Act 1984* as a means of enabling another aspect of the Act: a requirement for unions to post voting papers to all members entitled to vote in elections. The Act formed part the Thatcher Government's incremental reforms to collective bargaining and trade union organisation.[133] Unlike earlier reforms brought in by the *Employment Act 1980* and the *Employment Act 1982*, which addressed support for collective bargaining and strike action, the focus of the 1984 Act was the regulation of trade unions' internal affairs, including their electoral arrangements. The Government's case for reforming union elections was set out in a 1983 Green Paper, *Democracy in Trade Unions*:

> There is undoubtedly widespread concern about the electoral arrangements of trade unions. This concern, felt by many trade unionists as well as the public, stems in part from the fact that decisions which it is claimed are reached on behalf of the members and in their interests can in practice be contrary to the wishes of those concerned. Time and again union leaders are seen to be out of touch with their rank and file and often appear to be neither representative of the majority of their members nor directly responsible to them.[134]

The Conservative Government made its argument for union electoral reform on the basis that many union elections had low turn-outs, that leaving the rules on election procedures to union rule books served the interests of union governing bodies seeking re-election, and that legislation could limit malpractice, such as ballot-rigging and forgery.[135] Postal balloting was seen as a partial remedy for these problems, but to work it required unions to maintain a register of all their members, which the Government recognised as being difficult to achieve:

> *The return of ballot papers through the post* can remove many of the problems previously described; but some remain. Ballot papers issued by union workplace representatives or union officials may be distributed wrongly and returned either by non-members or on behalf of members known not to be intending to vote. And when the ballot papers are returned to an office of the trade union to be counted, suspicions may arise about the accuracy of the count.
>
> The assistance of an independent scrutineer to despatch the ballot papers to the homes of individual members and to count them can further ensure secrecy and the avoidance of any interference. It is recognised, however, that at the outset many trade unions would find that there were practical difficulties to be overcome. The system would require an accurate and up-to-date record of the private addresses of the membership, posing particular difficulties for unions with a high membership turnover. Some occupations involve extended absences from home. Union members may prefer not to give their home addresses to their union. Postal ballots and the maintenance of records could add considerably to union expenditure.

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132 Sections 49(3)-(3A), 75(3)-(3A), 100A(3)-(4), *Trade Union and Labour Relations (Consolidation) Act 1992*
133 Deakin & Morris, *Labour Law*, 2012, pp.793-795
134 *Democracy in Trade Unions*, Cmnd 8778, January 1983, p3
135 Ibid, pp3-4

> Despite these difficulties, a number of trade unions have successfully introduced postal balloting arrangements. And it may be thought that the desirable aim should be to achieve full secret ballots in elections to the union's governing body. Although further considerations may emerge during these consultations, it is hard not to believe that what is lacking in unions who have not done so is the will to adopt more democratic and fairer voting procedures. Once an accurate record of the membership and their home addresses is available and arrangements made for its maintenance, it should eventually be possible for fully postal ballots to be held at most levels within a union. However, it may be thought that to require such an extension from the start would place an undue burden on some unions.[136]

The *Trade Union Bill* did not, as introduced, propose a requirement for trade unions to maintain registers of members.[137] The requirement resulted from an amendment moved in the House of Lords.

During debate on the Bill their Lordships referred to the practical difficulties of maintaining a register,[138] although advances in computing and the fact the Electrical, Electronic, Telecommunications and Plumbing Union had already compiled a centralised register, were seen as demonstrating that these difficulties were surmountable.[139] Their Lordships expressed support for postal balloting and agreed to an amendment moved by a backbench Conservative peer which would have required voting papers to be "sent to all members recorded as being eligible to vote in the latest available central register of membership".[140] The Government responded by moving its own amendment on the issue:

> Amendment No. 9 ... imposes an entirely new statutory duty on all trade unions to compile and maintain an accurate and up-to-date register of their members' names and addresses. Without such a register, no union can operate a fully postal ballot, so this is a giant step forward. Indeed, it was and remains part of the Government's case that without registers of union members' addresses an immediate and universal requirement for postal ballots would be quite ineffective.[141]

The amendment was agreed to on division by 142 votes to 44.[142] When the Bill returned to the Commons the amendment was opposed by the Opposition on the grounds that it would disrupt trade unionism, would be practically difficult to implement and would impose an "intolerable burden upon the voluntary officers" of trade unions.[143] Notwithstanding these concerns, the House agreed on division to the Lords' amendment by 341 votes to 169.[144]

The duty introduced by the *Trade Union Act 1984* was repealed and replaced by an identical duty in section 24 of the *Trade Union and Labour Relations (Consolidation) Act 1992.*

4.2 The current position

The main duty to maintain registers of members' names and addresses is contained in section 24(1) of the *Trade Union and Labour Relations (Consolidation) Act 1992* (TULRCA):

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136 Ibid, p.9-10
137 Bill 43, 1983-84; see Celia Nield, *Trade Union Bill*, House of Commons Library Reference Sheet No.83/16, 3 November 1983
138 HL Deb 15 May 1984 c1318; HC Deb 25 April 1984 c847
139 HL Deb 19 June 1984 c274
140 Ibid, c255
141 HL Deb 12 July 1984 c1078
142 HL Deb 12 July 1984 cc1097-1098
143 HC Deb 24 July 1984 cc913-917
144 Ibid, c930

> A trade union shall compile and maintain a register of the names and addresses of its members, and shall secure, so far as is reasonably practicable, that the entries in the register are accurate and are kept up-to-date.

Section 24 provides additionally that the union must allow any member on reasonable notice to ascertain whether the register contains an entry relating to him and, if requested, supply a copy of any such entry. A number of decisions by the Certification Officer have clarified the duty:

- the duty includes an obligation to remove from the register names of those no longer wishing to be members;[145]
- the primary responsibility for informing a union of a change of address is that of the member;[146]
- the duty does not require the register to be held in a central location; it is permissible for the union to split it across separate branches;[147]
- the duty is to secure an accurate register "so far as reasonably practicable", which permits a margin of error.[148]

The remedy for failure to comply with these requirements is by way of complaint to the Certification Officer or the courts. Section 25 of TULRCA provides that:

> A member of a trade union who claims that the union has failed to comply with any of the requirements of section 24 ... may apply to the Certification Officer for a declaration to that effect.

The Certification Officer must make such enquiries as he thinks fit and give the applicant and the union an opportunity to be heard. He may then make a declaration specifying the provisions with which the union has failed to comply. If he makes a declaration he must make an enforcement order requiring the union to take steps to remedy the failure or avoid similar failures in future. The order may be enforced in the same way as a court order.

Section 49 of TULRCA requires a union to appoint a scrutineer if it holds an election. The scrutineer must be an independent person that satisfies the requirements of the *Trade Union Ballots and Elections (Independent Scrutineer Qualifications) Order 1993*, as amended.[149] In overview, this can be one of six named organisations, a practising solicitor or a qualified auditor. The scrutineer must inspect the register whenever it appears to him to be appropriate to do so or when asked to by a member of the union or a candidate in the election who has a well-founded suspicion that the register is inaccurate. Sections 75 and 100A provide similar requirements in respect of political fund ballots and ballots on union amalgamation or transfer of engagements. This additional scrutiny of the register over and above that carried out by the Certification Officer was introduced by the *Trade Union Reform and Employment Rights Act 1993*.[150] Thus, although the Certification Officer's investigation

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145 *Re Complaints Against the Manufacturing, Science and Finance Union* CO decision No. D/I-5/98, 1998

146 *Lynch v UNIFI* CO decision No. 1964/18, 2004

147 *Re A Complaint Against the Association of University Teachers* CO decision No. D/3-5/93, 1993

148 See *Lynch v UNIFI* CO decision No. 1964/18, 2004, where 2.3% of entries in a union's register were inaccurate or not up to date.

149 SI 1993/1909, amended by the *Trade Union Ballots and Elections (Independent Scrutineer Qualifications) Order 1993 (Amendment) Order 2002/2267* and the *Trade Union Ballots and Elections (Independent Scrutineer Qualifications) (Amendment) Order 2010/436*

150 Section 1; section 4; and Schedule 1, para 2(b)

of a register of members is only activated by a trade union member's complaint, unions' registers are also open to scrutiny during elections and ballots.

On 17 July 2013, the date on which the Bill was introduced to Parliament, the Government issued a discussion paper outlining its case for changing the current law:

> As membership organisations, it is important that trade union decisions reflect the will of all their members. Knowing who their members are and being able to engage them is intrinsic to a union's democratic accountability.
>
> The Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA) reflects this by including under Section 24(1) a duty to maintain a register of members' names and addresses that is, so far as reasonably practicable, accurate and up-to-date.
>
> However, at present complaints to the Certification Officer (CO) about the register can only be made by trade union members and no-one else. In addition, members only have a right to see whether and how their own details are recorded. This means it is difficult for members to make a complaint in relation to the accuracy of the membership register as a whole. The CO can investigate and issue a declaration and/or enforcement order against the individual union but that process will be limited to the member's complaint.
>
> Trade union activity has the potential to affect the daily lives of members and nonmembers. The general public should be confident that voting papers and other communications are reaching union members so that they have the opportunity to participate, even if they choose not to exercise it. As a result, unions also have a responsibility to give public assurance that they are keeping up-to-date registers.
>
> Government has decided therefore to revisit the formal requirements surrounding unions' existing responsibility to keep their records up to date. Unions should be able to visibly demonstrate that they know who their members are and can communicate with them.[151]

The closing date for responses to the discussion paper was 16 August 2013.

4.3 Part 3 of the Bill

Duty to provide membership audit certificate

Clause 36 would insert a new section 24ZA into TULRCA requiring unions to submit to the Certification Officer membership audit certificates covering each "reporting period". The reporting period would be the period in relation to which the union is required to submit an annual return.[152] Federated trade unions which are not required to send annual returns would be treated for these purposes as if they are.[153] The membership audit certificate would have to be signed by an officer of the union who is authorised to sign on its behalf, state the officer's name and state whether, to the best of the officer's knowledge, the union has throughout the reporting period complied with the section 24 duty. In cases of unions with 10,000 or more members the membership audit certificate would have to be provided by an assurer.

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[151] Department for Business, Innovation and Skills, *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill - Certification of trade union membership details: discussion paper*, July 2013, p4

[152] See section 32, *Trade Union and Labour Relations (Consolidation) Act 1992*

[153] See section 118, *Trade Union and Labour Relations (Consolidation) Act 1992*

Duty to appoint an assurer

Clause 37 would amend TULRCA to require unions with 10,000 or more members (as at the end of the previous reporting period) to appoint a "qualified independent person" to act as an assurer. The assurer's duty is to provide the union membership audit certificate and carry out such enquiries as the assurer considers necessary in order to provide the certificate.

A "qualified independent person" is not defined in the Bill. The Bill provides that a qualified independent person is a person that either satisfies conditions that would be specified by the Secretary of State or would be specified by name in secondary legislation. In either case the person must be someone the union believes will carry out their functions competently and independently. The Government's discussion paper provides an indication of what the order may require:

> As the quality of the assurance will rely on the assurer's credibility, we believe that it should be a recognised professional, such as a solicitor, accountant or auditor or an independent scrutineer from the statutory list of scrutineers able to monitor trade union ballots. It would be for each union to select and contract with the assurer.[154]

Trade unions required to appoint assurers would be required to include in their rules provisions for the appointment or removal of assurers, although clause 37 would make additional provisions on this notwithstanding anything in those rules:

- the person must not be removed from office except by resolution passed at a general meeting of the members of the union or of delegates of its members;
- the person must be reappointed for following reporting periods unless:
    - a resolution has been passed at a general meeting of the union appointing someone else or providing that the person is not to be reappointed;
    - the person has ceased to act through incapacity;
    - the person is no longer a qualified independent person; or
    - the person has given notice to the union of unwillingness to be reappointed;
- the person need not be automatically re-appointed if he is retiring, has been given notice of an intention to appoint somebody else and that appointment cannot be proceeded with because of the death or incapacity of the replacement.

The assurer would have the right to access the register of members and any other documents which the assurer considers relevant to the section 24(1) duty, and would be entitled require such information and explanations from union officers as the assurer considers necessary. The assurer would be subject to a duty of confidentiality.

The assurer's certificate would have to state whether the union's system for compiling and maintaining the register was satisfactory throughout the reporting period and whether the assurer had been provided with adequate information and explanation to perform his functions. If the assurer comments negatively on these matters he would be required to state his reasons for doing so and send his certificate to the Certification Officer as soon as reasonably practicable after it is provided to the union.

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[154] Department for Business, Innovation and Skills, *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill - Certification of trade union membership details: discussion paper*, July 2013, p6

Investigatory powers

Clause 38 would amend TULRCA to give substantial new investigatory powers to the Certification Officer in relation to the section 24(1) duty. The Certification Officer would be entitled to:

- require the production of relevant documents or authorise another person to require the production of documents;
- require explanations of those documents from the person by whom they are produced or any person who is or has been an official or agent of the union (including assurers);
- appoint an inspector to investigate compliance with the section 24(1) duty if circumstances suggest the union has failed to comply with that duty or the duties relating to the membership audit certificate; the investigator must then report in writing to the Certification Officer.

Enforcement

Clause 39 would amend TULRCA to give new enforcement powers to the Certification Officer to support the new investigatory powers.

Where the Certification Officer is satisfied that a union has failed to comply with any of the duties relating to the register of members he would be empowered to make a declaration to that effect. Before making a declaration the Certification Officer would be required to afford the union an opportunity to make written and oral representations. The Certification Officer would have to give written reasons for making a declaration.

Where he makes a declaration the Certification Officer would have to make an enforcement order unless he considers this inappropriate. The order would have the same force as an order of the court and would impose requirements to take steps to remedy the declared failure and/or abstain from acts that may lead to a similar failure in future. Where an enforcement order has been made a member of the union would be entitled to enforce obedience to the order as if the order had been made on the application of that person.

Appendix 1 – Third party spending at the 2005 and 2010 general elections

Third Party Spending at the 2005 General Election (£000)

	England	Scotland	Wales	N Ireland	Total UK
UNISON - The Public Service Union	534.92	120.24	24.73	2.22	**682.12**
Conservative Rural Action Group	550.37	-	-	-	**550.37**
Union of Shop, Distributive and Allied Workers (USDAW)	57.86	7.79	6.16	-	**71.81**
G.M.B.	53.16	-	-	-	**53.16**
Mr Patrick Evershed	48.46	-	-	-	**48.46**
Hope not Hate Ltd	42.76	-	-	-	**42.76**
Vote-OK	36.21	-	-	-	**36.21**
Waging Peace	26.63	1.50	2.21	-	**30.34**
TMVO Ltd	20.95	3.20	-	-	**24.16**
Muslim Friends Of Labour	15.44	4.00	2.01	-	**21.45**
The League Against Cruel Sports	17.96	0.90	2.09	-	**20.94**
Community	20.66	-	-	-	**20.66**
Unite Against Fascism	17.63	1.69	1.02	-	**20.34**
Transport and General Workers' Union	20.13	-	-	-	**20.13**
National Autistic Society [The]	12.12	1.65	0.92	0.41	**15.10**
British Declaration Of Independence [The]	12.78	-	-	-	**12.78**
Uncaged Campaigns Ltd	9.95	1.06	0.72	0.32	**12.05**
Transport Salaried Staffs' Association	8.35	0.86	0.05	-	**9.26**
Howard's End Ltd	7.98	-	0.42	-	**8.40**
Society for the Protection of Unborn Children	2.76	0.37	0.23	-	**3.36**
Unite	0.50	0.09	0.07	-	**0.66**
Working Hound Defence Campaign	0.47	-	-	-	**0.47**
Mr Zaccheus Gilpin	0.41	-	-	-	**0.41**
Campaign for an Independent Britain	0.19	0.02	0.01	-	**0.23**
Total by country	**1,518.65**	**143.37**	**40.63**	**2.96**	**1,705.61**

Source: Electoral Commission, Party and Election Finance Online registers

Third Party Spending at the 2010 General Election (£000)

	England	Scotland	Wales	N Ireland	Total UK
UNISON - The Public Service Union	671.2	-	0.7	-	**671.9**
Vote For A Change Ltd	478.4	53.0	35.9	16.2	**583.5**
Hope not Hate Ltd	310.6	4.1	4.5	-	**319.2**
The Democratic Reform Company	241.4	21.0	33.1	4.5	**300.0**
IFAW in Action	169.4	18.8	12.7	5.7	**206.6**
Political Animal Lobby Limited	149.8	9.7	13.0	-	**172.5**
Dr Brian Harold May	151.9	-	-	-	**151.9**
National Union of Teachers	107.6	-	14.3	-	**121.9**
Public and Commercial Services Union	55.5	20.7	5.2	3.4	**84.8**
The League Against Cruel Sports	47.3	10.5	3.6	1.6	**62.9**
The Young Britons' Foundation	45.5	5.0	3.4	1.5	**55.4**
Unite Against Fascism	30.6	2.9	1.4	-	**34.9**
The Young Britons' Foundation	22.3	2.5	1.7	0.8	**27.2**
The Young Britons' Foundation	19.1	2.1	1.4	0.6	**23.3**
Vote-OK	18.2	-	1.0	-	**19.1**
The Young Britons' Foundation	16.9	0.7	-	-	**17.6**
Unite	11.8	2.5	2.5	-	**16.9**
Vote Cruelty Free	12.6	1.4	0.9	0.5	**15.3**
Mr Patrick Evershed	14.1	-	-	-	**14.1**
The Young Britons' Foundation	9.4	1.0	0.7	0.3	**11.4**
A Minority Pastime Limited	11.0	-	-	-	**11.0**
Union of Construction, Allied Trades and Technicians	10.8	-	-	-	**10.8**
38 Degrees	7.7	0.7	0.4	0.2	**9.0**
Uncaged Campaigns Ltd	6.5	0.5	0.7	-	**7.7**
Mr Robin Wight	6.0	-	-	-	**6.0**
The Campaign to End all Animal Experiments	4.9	0.5	0.4	0.2	**6.0**
Union of Shop, Distributive and Allied Workers (USDAW)	4.1	0.5	0.3	-	**4.9**
Wales TUC	-	-	4.3	-	**4.3**
Total third party spending by country	**2,634.5**	**158.1**	**142.2**	**35.4**	**2,970.2**

Source: Electoral Commission, Party and Election Finance Online registers