



Commercial Lobbyists (Registration and Code of Conduct) Bill 2012-13 [Bill 39 2012-13]

Standard Note: SN/PC/06541

Last updated: 31 January 2013

Author: Paul Bowers

Section Parliament and Constitution Centre

The [Commercial Lobbyists \(Registration and Code of Conduct\) Bill 2012-13](#) is a Private Member's Bill promoted by Thomas Docherty. It seeks to create a statutory register for commercial lobbyists and a legally enforceable code of conduct. It was presented on 25 June 2012, and is scheduled for second reading on 1 February 2013.

There has been discussion of lobbying and possibilities for regulation for some time. The Government ran a consultation on whether and how to introduce a statutory register in 2012, which led to a commitment to publish a White Paper and draft Bill in this session of Parliament.

The background to the debate about lobbying is covered in detail in Standard Note 4633, [Lobbying](#), some of the text of which is reproduced below. This Note concentrates on Mr Docherty's Bill and the Government consultation.

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1 Background

In June 2007 the Public Administration Select Committee launched an inquiry into the lobbying industry. The Committee published its report in January 2009. The recommendations included a call for a statutory register of lobbying activity to “bring greater transparency to the dealings between Whitehall decision makers and outside interests”.

The Labour Government’s response was published in October 2009. 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.

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. 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.

In January 2012 the Government launched a consultation on this statutory register, publishing the responses in July 2012, at which point it gave a commitment to publish a White Paper and draft Bill in the present session of Parliament. Also in July 2012 the Political and Constitutional Reform Committee published a report on the subject, urging modifications to the Government’s proposals.

Lobbying of ministers and Members of Parliament is currently regulated through a number of non-statutory codes of conduct. In addition, certain categories of relevant information are routinely published by the Government and the House of Commons.

2 The Coalition Agreement and further developments

Lobbying featured in each of the Labour, Liberal Democrat and Conservative Party manifestos for the 2010 General Election. The Labour Party’s manifesto stated that:

We will create a Statutory Register of Lobbyists to ensure complete transparency in their activities. We will ban MPs from working for generic lobbying companies and require those who want to take up paid outside appointments to seek approval from an independent body to avoid jobs that conflict with their responsibilities to the public.¹

The Liberal Democrat manifesto stated that they would:

Curb the improper influence of lobbyists by introducing a statutory register of lobbyists, changing the Ministerial Code so that ministers and officials are forbidden from meeting MPs on issues where the MP is paid to lobby, requiring companies to declare how much they spend on lobbying in their annual reports, and introducing a statutory register of interests for parliamentary candidates based on the current Register of Members’ Interests.²

The Conservative Party’s manifesto 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.³

¹ Labour Party, *A Future Fair for All*, 2010, p9:2

² Liberal Democrats, *Manifesto 2010*, 2010, p89

³ Conservative Party, *Invitation to Join the Government of Britain*, 2010, p66

On 20 May 2010 the Conservative-Liberal Democrat Government published its full coalition agreement, *The Coalition: our programme for government*.⁴ Under the heading of “Government transparency” this stated that:

We will regulate lobbying through introducing a statutory register of lobbyists and ensuring greater transparency.⁵

On 18 January 2011 the Cabinet Office Minister, Mark Harper, was asked:

Rehman Chishti (Gillingham and Rainham) (Con): What progress he has made on plans to introduce a statutory register for lobbyists.

The Parliamentary Secretary, Cabinet Office (Mr Mark Harper): My hon. Friend should know that the Government plan to carry out a wide-ranging consultation later this year and then to bring forward legislation in the second Session of this Parliament.

Rehman Chishti: Does the Minister agree that for the statutory register to be effective and fit for purpose, it must be robustly transparent?

Mr Harper: I do, and that is a very important point. Lobbying is a perfectly reputable industry for making sure that the voices of charities and businesses are heard, but it should be transparent so that people know who is talking to those in Parliament. That is what the Government intend to do—mainly to clean up the dreadful behaviour that we saw last year...⁶

2.1 Government consultation

On 20 January 2012 the Government launched a consultation paper, *Introducing a Statutory Register of Lobbyists*, Cm 8233. Mr Harper made the following statement:

The Parliamentary Secretary, Cabinet Office (Mr Mark Harper): Today the Government have launched a consultation on initial proposals to introduce a statutory register of lobbyists. The consultation will run until 13 April 2012 and a consultation paper (Cm 8233) is available on the Cabinet Office website. A copy of the consultation document will also be placed in the House Library.

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.

⁴ HM Government, *The Coalition: Our programme for government*, May 2010

⁵ *Ibid*, p21

⁶ HC Deb 18 January 2011 c683

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.

This is a complicated area, and we are hoping for a wide range of consultation responses to help us produce proposals which are proportionate and practical.⁷

In July 2012 the Government published a [summary of responses](#) to the consultation, with an indication of next steps in developing the policy.⁸ The Introduction stated that revised policy proposals "will be published in the form of a White Paper and draft Bill during this session of Parliament."⁹ The Government went on to reiterate its commitment to introducing 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.¹⁰

The summary of responses stated that there were 260 responses "from stakeholders who answered the consultation questions."¹¹ The majority of respondents welcomed the aim of achieving greater transparency and supported a statutory register. There were some concerns, however, over the proposed definition of lobbyists as third-party only, and over the scope of the register to exclude charities or NGOs advancing agendas without being paid by specific clients:

The overarching theme that emerged was that the proposed definition was narrow and it was also stressed by a number of respondents that until the definition is clear, it would be difficult to determine other factors raised by the subsequent questions, especially scope.

A wider scope was preferred by the majority:

In keeping with the emerging theme on definitions, the predominant view expressed under the question of scope was that a wider scope was preferred but that this should not result in disproportionate burdens.

While these two questions compromised the ability of respondents to comment on other matters, there was consensus that the information to be provided should include financial information as well as basic details. There was a majority of opinion behind quarterly returns, although some preferred an annual return.

Opinions were roughly evenly split on the option of a code of conduct and on whether the system should be publicly funded or funded by the industry. The majority favoured an independent body to run the register, while there was strong support for sanctions for non-compliance.

⁷ HC Deb 20 January 2012, c47WS

⁸ [A Summary of Responses to the Cabinet Office's Consultation Document "Introducing a Statutory Register of Lobbyists,"](#) July 2012, Cm 8412

⁹ Cm 8412, p4

¹⁰ Cm 8412, p5

¹¹ The following account is from the section 4 of Cm 8412, pp7-8. Quotations are from that place unless otherwise stated.

Section 6 of the summary document was entitled “Next Steps”:

Taking into account this evidence, the Government will now develop revised policy proposals with the intention of publishing a White Paper and draft Bill during this session of Parliament. As part of this process, Government officials intend to meet with a number of respondents to make sure that their points have been fully understood and would be open to meeting any other respondents if they request to do so.¹²

There was an exchange in the House of Lords, broadly on the next steps, on 12 December 2012, which began with a response by Lord Wallace to a question by Baroness Hayter:

My Lords, we are certainly intending to move on this but as the noble Baroness will appreciate if she has looked through the replies to the consultation document and the companion report of the Political and Constitutional Reform Committee in the other place, there is a quite remarkable dissensus among respondents. The Government's summary of replies to the consultation document remarks at one point, in effect, that a lot of those consulted regard themselves as a legitimate part of the political process but regard everyone else as lobbyists. That is part of the problem. The paid lobbyists are a small part of those with whom we are talking, and they wish charities, think tanks, trade unionists and others also to be included on any register of lobbyists.¹³

2.2 Report of the 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 evidence-gathering process for which had run in parallel to the Government's consultation.¹⁴ 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 raised a difficulty with the consultation, in that, in seeking views on the definition and scope, it had failed to define exactly what it was seeking to regulate:

It has been difficult to ascertain the Government's intent on lobbying regulation from the consultation paper, *Introducing a statutory register of lobbyists*, published on 20 January 2012. The Government's proposals attempt to shed light on whom third-party lobbyists and lobbying firms represent when they meet Ministers. The proposals are limited to third party lobbyists, as the Government has made it very clear that it prefers a limited register of activity to a regulator for the whole industry.

The consultation paper also questions whether the scope of the register should be expanded to include all those who lobby professionally, which could include charities, trade unions, trade associations, think tanks and campaign groups. Many of these groups are already subject to regulations in their own sectors. Charities who wish to lobby must follow strict guidance laid down by the Charity Commission, and trade union activities are regulated by the Certification Office.

Our report looks at the Government's proposals, and examines whether a statutory register of lobbyists would increase transparency about who is lobbying whom. We consider other options for statutory regulation, and finally identify ways in which Government could immediately improve transparency surrounding lobbying, through

¹² Cm 8412, p28

¹³ HL Deb 12 December 2012, c1056

¹⁴ HC 153 2012-13, 2nd report of 2012-13

publishing more details of ministerial meetings, irrespective of the type of statutory register it may eventually decide to implement.

It has been extremely difficult to scrutinise the Government's proposals for introducing a statutory register of lobbyists, as the consultation raises questions regarding the scope, breadth and resources needed if different definitions of lobbying were to be decided upon. Defining the activity of lobbying is fundamental to defining who is a lobbyist. The Government's consultation paper fails to do so.¹⁵

The Committee heard from a majority of witnesses that the Government's proposed definition, in which in-house lobbyists would be excluded, was too narrow. It declined to endorse any particular definition itself, but urged the Government to consider all the options raised in responses, as "the definition will be key to the success and effectiveness of any future register."¹⁶ It recommended that,

Government clarify whether its definition of lobbying includes lobbying advice, or only direct representation, to avoid confusion regarding who should, and should not register as a lobbyist if it goes ahead with its proposals.¹⁷

On the code of conduct, 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.**¹⁸

The Committee made a recommendation against a third-party only register. This was on the basis of evidence it heard that a register restricted in this way would not advance the objective of clarifying where and when influence is exerted, given the relatively slim role played by direct meetings between ministers and third-party lobbyists:

46. A statutory register would be likely to solve the problem the Government poses, as it would allow the public to see the clients of lobbying firms. However, we question whether a lack of transparency over third party lobbyists in particular is as great a problem as the Government claims. We consider that the current proposals for a statutory register of lobbyists will do nothing to resolve wider public concerns about a lack of transparency around who is meeting whom.

47. The consultation paper is lacking in clear intent from the Government, and only limited evidence is put forward to support its proposals. We conclude that a statutory register which includes only third party lobbyists would do little to improve transparency

¹⁵ HC 153 2012-13, p3

¹⁶ HC 153 2012-13, p12

¹⁷ HC 153 2012-13, p11

¹⁸ HC 153 2012-13, p16

about who is lobbying whom, as these meetings constitute only a small part of the lobbying industry. The Government's proposals only scratch the surface when it comes to tackling public concern about undue access and influence over the policy making process, and they are unlikely to prevent lobbying from becoming the "next big political scandal".

48. We recommend that the Government scrap its proposals for a statutory register of third party lobbyists. It is our view that the proposals in their current form will do nothing to improve transparency and accountability about lobbying. Imposing a statutory register on a small part of the lobbying industry without requiring registrants to sign up to a code of conduct could paradoxically lead to less regulation of the lobbying industry.¹⁹

The Committee considered the options of no registration, medium regulation and a highly regulated system. It felt that no register would be preferable to the proposed approach, although it did not favour continuing without a register.²⁰

For medium regulation, it gave the following suggested scheme:

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:

- 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.²¹

For a highly regulated system, the Committee suggested the following:

64. Option 3 encompasses the Government's proposals, and the features of medium regulation as outlined in option 2, but includes the following additional features:

- a statutory register run by an independent regulatory body either self-funded by subscriptions or funded by Government;
- financial disclosure of both money made as a lobbyist and the amount spent on lobbying activities in bands of £5,000; and
- stiff penalties for breaches of the rules, including large monetary fines, and possible jail sentences.

¹⁹ HC 153 2012-13, p18

²⁰ HC 153 2012-13, p19

²¹ HC 153 2012-13, p19

Option 3 would be considered to be a highly regulated system. Dr Raj Chari told us: “What distinguishes the high-regulated systems from the medium or the low is that there are full spending disclosures given by the lobbyists.”

65. A highly regulated UK system could also include a provision similar to the US 1938 Foreign Agents Registration Act (FARA). The Act requires that all lobbyists working on behalf of foreign governments must declare whom they are working for, how much is being spent on lobbying activity and who is being lobbied.²²

There was some support for an approach based on defining the activity of lobbying, rather than the individuals or groups who are lobbyists, and the Committee argued that this would provide an easier way to require registration, since anyone engaged in the defined activity of lobbying could be required to register.²³

The Committee concluded that, while it might be desirable to have a comprehensive register with full spending disclosure, as under the highly regulated system, the regulator needed to enforce this approach would be too expensive. Given the state of the economy, the Committee did not recommend this approach. Instead,

In our view, medium regulation is the most desirable, and most feasible form of a statutory register, and would certainly be an improvement on the register the Government currently proposes. We recommend that Government implement medium regulation as a starting point for a statutory register of lobbyists.²⁴

In addition, the Committee recommended various actions that the Government could take to increase transparency concerning ministerial meetings, regardless of progress on a register:

91. We believe that there is much the Government can do immediately to improve transparency around who is lobbying whom, through enhanced disclosure of ministerial meetings. We recommend that the Government:

publish information about ministerial meetings no more than a month after the month in which the meeting occurred;

standardize the format of meeting data, with a view to publishing all ministerial and official meetings on one website, rather than on 24 different Government websites;

improve the level of detail in meeting disclosures, so that the actual topic of a meeting is disclosed, rather than obscure terms like ‘general discussion’; and publish, where applicable, the company or charity number of any organisation that meets with Ministers or officials, so that the identity of the organisation can be properly verified.²⁵

3 The Present Bill

The [Commercial Lobbyists \(Registration and Code of Conduct\) Bill 2012-13](#) [Bill 39 2012-13] is a Private Member’s Bill promoted by Thomas Docherty, which was presented on 25 June 2012 and is scheduled for second reading on 1 February 2013. The Bill has six clauses. It seeks to establish a statutory register, with fines for non-registration. There will be a Lobbying Registration Council, appointed under regulations made by the Secretary of State, to administer the register, which will be funded by those registering. There will be a code of conduct, created by the Council, and fines for non-compliance. The Bill extends to all those

²² HC 153 2012-13, p22

²³ HC 153 2012-13, p21

²⁴ HC 153 2012-13, p24

²⁵ HC 153 2012-13, p31

who lobby for financial gain, and is not explicitly restricted to third-party lobbyists. The Bill does not specify the information to be included on the Register, except that it must include the names of clients. It is for the Secretary of State to decide what other information, if any, should be included.

3.1 Registration

Clause 1 creates a register and its administration. Clause 1 (1) provides that there will be a public register of organisations and individuals who lobby Parliament, Government and local authorities for financial gain. Clause 1 (2) provides for a Lobbying Registration Council to supervise the register, funded by fees charged on those registering. The Secretary of State may make regulations under Clause 1 (4) covering the appointment of the Council and its proceedings, the details to be entered on the register, and the fees to be charged (which should be designed to cover the costs of the Council). Under Clause 1 (5), registered lobbyists must report every three months the names of clients for which they have lobbied.

Clause 2 creates an offence of failing to register. Those engaging in lobbying as defined in Clause 1 (1) without being registered are liable to a fine not exceeding level 5 on the standard scale.

3.2 Code of Conduct

Clause 3 provides for an enforceable code of conduct for those on the register. This will be prepared under Clause 3 (1) by the Lobbying Registration Council, and it will be given statutory effect by the Secretary of State making an order. Clause 3 (3) creates a restriction on who may be a lobbyist, requiring that the code “shall” provide that nobody may undertake lobbying “who holds a pass conferring access to the Houses of Parliament other than as a spouse or civil partner of a member or former member of either House of Parliament.” Contraventions of the code by registered lobbyists will attract a fine not exceeding level 4 on the standard scale.

3.3 Definition of lobbying

Clause 4 defines lobbying for the purposes of the Bill. It includes any activity carried out in the course of business or employment, which is “undertaken for financial gain” and which is “designed to influence the Government of the United Kingdom, Parliament, any local authority in England or any member or employee of any of those bodies in formulating its official policy.” Under Clause 4 (2) lobbying does not include activities of MPs, members of the House of Lords, or local councillors in England undertaken in the course of their duties.

3.4 Other provisions

Clause 5 makes the orders and regulations under the Bill subject to the affirmative procedure. **Clause 6** gives the short title, commencement and extent. The Act would come into force six months after being passed, and it would extend to the whole of the UK.