

*These notes relate to the Lords Amendments to the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill, as brought from the House of Lords on 21 January 2014.*

# **TRANSPARENCY OF LOBBYING, NON-PARTY CAMPAIGNING AND TRADE UNION ADMINISTRATION BILL**

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## **EXPLANATORY NOTES ON LORDS AMENDMENTS**

### **INTRODUCTION**

1. These explanatory notes relate to the Lords Amendments to the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill, as brought from the House of Lords on 21 January 2014. They have been prepared by the Cabinet Office in order to assist the reader of the Bill and the Lords Amendments and to help inform debate on the Lords Amendments. They do not form part of the Bill and have not been endorsed by Parliament.
2. These notes, like the Lords Amendments themselves, refer to HL Bill 50 the Bill as first printed for the Lords.
3. These notes need to be read in conjunction with the Lords Amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the effect of the Lords Amendments.
4. All the Lords Amendments were in the name of the Minister except for Amendments 1, 26, 27 and 108 which were opposed by the Government. (In the following Commentary, an asterisk appears in the heading to each of the paragraphs dealing with non-Government amendments.)

### **COMMENTARY ON LORDS AMENDMENTS**

#### ***\*Lords Amendment 1***

5. Lords Amendment 1 would extend the scope of the definition of consultant lobbying provided by clause 2 to include those who lobby special advisers, in addition to those who lobby Ministers or Permanent Secretaries. As such, there would be a prohibition on persons carrying on the business of consultant lobbying by making lobbying communications to special advisers on behalf of others and in return for payment, unless registered (if none of the exemptions apply). “Special adviser” is not defined in this amendment. Without a definition, there would be uncertainty about the meaning and the scope of the obligation to register. Clause 23 (further provision) provides a power by which further provision could be made, for example to add such a definition.

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***Lords Amendments 2 and 3***

6. Lords Amendments 2 and 3 are drafting improvements and would clarify, and provide greater consistency in the use of, terminology used in clause 2 in relation to the recipients of the lobbying communications and the communications themselves.

***Lords Amendment 4***

7. Lords Amendment 4 would clarify that the term ‘Minister of the Crown’ used in clause 2 does not, in the context of the Bill, include two bodies of persons, the Defence Council and the Board of Trade.

***Lords Amendments 5, 6 and 7***

8. Lords Amendments 5, 6 and 7 would require each consultant lobbyist to declare, in its entry in the register, whether it subscribes to a publicly available code of conduct in relation to its lobbying activity and, if so, where a copy of the code can be accessed.

***Lords Amendments 8, 10 and 11***

9. These minor Lords Amendments are drafting improvements and would ensure consistency in the language used in the provisions relating to the cancellation of an information notice or the variation or cancellation of a penalty notice. Amendments 8 and 10 also increase the procedural protection for recipients of information or penalty notices, by requiring the Registrar to serve (in accordance with clause 25(2)) any notice to vary and/or cancel such notices on the person on whom the original notice was served.

***Lords Amendment 9***

10. This Lords Amendment would provide that any individual, not just employees, can commit the offence of carrying on the business of consultant lobbying while unregistered if their organisation is unregistered.

***Lords Amendment 12***

11. This minor Lords Amendment would clarify the provision in clause 21 allowing the Registrar to revise or replace the guidance that he or she has published (including replacement guidance).

***Lords Amendment 13***

12. This minor Lords Amendment would make clear that the charges associated with registration will be set to ensure that the sums received offset the total costs of all the Registrar’s activities, including in relation to enforcement.

***Lords Amendment 14***

13. This Lords Amendment would remove provision in clause 22 relating to the netting-off of moneys from the Consolidated Fund for the funding of the Registrar. This will instead be arranged administratively between the Cabinet Office and the Treasury.

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***Lords Amendment 15***

14. This Lords Amendment would implement the recommendations of the Delegated Powers and Regulatory Reform Committee. Specifically, that regulations under clauses 4(5)(a) or 5(4), the first regulations to be made under clauses 11(3) and 17(3), and any regulation which amends or modifies the provisions of the Part must be made by the affirmative procedure.

***Lords Amendments 16, 104, 105, 106 and 107***

15. These Lords Amendments would alter what amounts to “controlled expenditure” for the purposes of Part 6 of the Political Parties, Elections and Referendums Act 2000 (“PPERA”).

16. Lords Amendment 16 would amend section 87 of PERA to remove certain matters from the list of expenditure which is not controlled expenditure currently in section 87(2) of PERA. They would be reinserted into Schedule 8A by Lords Amendment 107.

17. Lords Amendment 107 would insert a list of exclusions from controlled expenditure in Schedule 8A. Some of these exclusions were previously in section 87 of PERA (see Lords Amendment 16). The additional exclusions would be:

- Expenses in respect of, or in consequence of, translating materials from English to Welsh or from Welsh to English.
- Expenses reasonably attributable to an individual’s disability. Disability has the same meaning as outlined within the Equality Act 2010.

18. Lords Amendment 104 would remove the reference to “public meetings” as it would be unnecessary; “other public events” includes public meetings.

19. Lords Amendment 105 would exclude any public procession or protest meeting notified under sections 6 and 7 of the Public Processions (Northern Ireland) Act 1998; such events are regulated by the Parades Commission for Northern Ireland.

20. Lords Amendment 106 would exclude from controlled expenditure, on a rally or event any costs associated with providing protection of persons or property.

***Lords Amendments 17 and 42***

21. Lords Amendment 17 would amend the defence, currently in the Bill, for a person or third party charged with an offence of incurring controlled expenditure in excess of a spending limit (ie above the limit in a part of the UK or the constituency limit) to show that they complied with the relevant code of practice. The defence would also be available in relation to a charge of exceeding a spending threshold. There would also be drafting changes to reflect the changes to the reporting requirements in Lords Amendment 75 (no spending return if threshold not reached), and to also be available in appropriate circumstances where expenditure is incurred on

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behalf of a third party. Lords Amendment 42 would introduce a similar defence for third parties who are charged with an offence of exceeding the targeted expenditure limit.

***Lords Amendments 18, 38 and 39***

22. Lords Amendment 18 would introduce a regime under which a recognised third party could notify the Electoral Commission that it had agreed to be a ‘lead campaigner’ in a common plan. The notice to the Electoral Commission must identify other third parties that would be considered ‘minor campaigners’ in respect of that arrangement. The minor campaigners’ expenditure would be included in the lead campaigner’s spending return (under section 96). The expenditure must be incurred as part of an arrangement after a notification in relation to that minor campaigner has been given. A ‘minor campaigner’, provided it spends less than the registration threshold (either in Part of the UK or a constituency, where relevant), would not be subject to any administrative requirements, including registration. The regime would allow several lead campaigners reporting for different minor campaigners. The Electoral Commission must enter details of the notification into its register of third parties, and identify the relevant minor campaigners.

23. Lords Amendments 38 and 39 would be minor consequential amendments to section 96 of PPERA that would be needed as a result of Lords Amendment 18.

***Lords Amendments 19, 21, 22, 23, 41 and 43***

24. Lords Amendment 19 would increase the registration thresholds for third parties that wish to campaign during the regulated periods of relevant elections. The limits would increase from £5,000 in England, and £2,000 in Scotland, Wales and Northern Ireland, to £20,000 and £10,000 respectively.

25. Lords Amendment 19 sets a further registration limit equivalent to the constituency limit – 0.05% of the maximum campaign expenditure limit. This amounts to £9,750. This threshold would apply in all parts of the United Kingdom only apply in regulated periods involving a UK Parliamentary general election and has been introduced in order to provide alignment with the offence of exceeding the constituency limit. If a third party incurred expenditure in a constituency in excess of £9,750, it would be committing an offence; either the offence for a recognised third party of exceeding the constituency limit, or of exceeding the constituency threshold without being a recognised third party. Lords Amendment 43 would be a minor amendment consequential on (in particular) Lords Amendment 19.

26. Lords Amendments 21, 22, 23 and 41 would be amendments consequential to Lords Amendment 19.

***Lords Amendment 20***

27. Lords Amendment 20 would increase the spending limits for Scotland, Wales and Northern Ireland from the levels they are set at in the Bill, by £20,000 each. The spending limits would be as follows:

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<b>Limits on controlled expenditure</b>	<b>England</b>	<b>Scotland</b>	<b>Wales</b>	<b>Northern Ireland</b>
<b>Original Bill limits</b>	£319,800	£35,400	£24,000	£10,800
<b>Lords Amendment</b>	£319,800	£55,400	£44,000	£30,800

28. The spending limits for England would remain unchanged.

***Lords Amendment 24***

29. Lords Amendment 24 requires that a recognised third party that must submit a section 96 return need only report for its constituency spending if it had spent more than £7,800 in a constituency. This is equivalent to 0.04% of the maximum campaign expenditure limit for political parties.

***Lords Amendments 25, 28, 29 to 37, 40 and 44 and 59***

30. Lords Amendment 28 would remove the post-dissolution constituency limit in the Bill. This is set at £5,850. There would be a single constituency limit of £9,750 for the entire regulated period.

31. Lords Amendments 25, 29 to 37, 40 and 44 and 59 would be minor amendments, consequential on Lords Amendment 28.

***\*Lords Amendments 26 and 27***

32. Lords Amendment 26 would require that only expenditure on material addressed or otherwise distributed to electors, or unsolicited telephone calls to households with a view to ascertaining voting intentions, are considered controlled expenditure for the purposes of constituency limits.

33. Lords Amendment 27 would be a minor amendment related to Lords Amendment 26.

***Lords Amendments 45 to 50***

34. Lords Amendment 45 would allow a body incorporated by Royal Charter, a Charitable Incorporated Organisation, a Scottish Charitable Incorporated Organisation and Scottish Partnerships to register as a recognised third party with the Electoral Commission.

35. Lords Amendment 46 would be a technical amendment relating to the notification requirements for third parties concerning “relevant participators”.

36. Lords Amendment 47 would provide that a body incorporated by Royal Charter, a Charitable Incorporated Organisation, a Scottish Charitable Incorporated Organisation and a Scottish Partnership that wishes to register as a recognised third

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party must provide relevant details in relation to the body (see Lords Amendment 49) and the name of the person responsible for ensuring compliance with the requirements of PPERA. Lords Amendment 48 would be a technical amendment consequential to Lords Amendment 47.

37. Lords Amendment 50 would be a technical amendment consequential to Lords Amendment 47.

***Lords Amendments 51, 57, 58, 61, 66, 74, 109, 115 and 116***

38. These Lords Amendments would mean that a recognised third party only has to provide a donations report to the Electoral Commission if it receives, or deals with, a reportable donation during the relevant period. The requirement to provide a nil report is removed. This applies to both quarterly reports (Lords Amendment 58) and weekly reports (Lords Amendment 66).

39. Lords Amendment 60 would remove new section 95B and Lords Amendment 68 would remove new section 95D. In consequence of the provision that third parties would no longer have to provide a quarterly or weekly donations report where they do not receive, or deal with, a reportable donation, provision allowing a third party to request an exemption (as set out in new section 95B and new section 95D) has been removed.

40. Lords Amendment 51, 57, 61, 109, 115 and 116 would be minor consequential amendments.

41. In light of the revised ambit of quarterly reports, and the removal of nil reporting, Lords Amendment 74 would remove the exemption on providing details of donations in a return under section 96 of PPERA where the third party was required to prepare a quarterly report.

***Lords Amendments 52, 53, 54, 55, 69 to 73 and 110 to 114***

42. Lords Amendments 52, 53 and 54 would replace the “qualifying regulated period” with a “pre-dissolution period”; quarterly reports would only be required in the part of the regulated period before the dissolution of Parliament; from that point weekly reports would become due, and the two periods would no longer overlap.

43. Lords Amendment 55 would define “pre-dissolution period”. It is the period from the first day of the regulated period to the day before the day Parliament is dissolved.

44. Lords Amendments 69 to 73 and Lords Amendments 110 to 114 would be technical amendments replacing the term “qualifying regulated period” with “pre-dissolution period”.

***Lords Amendment 56, 62, 63, 64, 65 and 67***

45. Lords Amendment 56 would remove the requirement for quarterly

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reports to be provided by a recognised third party (where they receive, or deal with, a reportable donation) where an early parliamentary general election is called.

46. Lords Amendments 62, 63 and 64 would be technical amendments to ensure that the provisions for weekly reports apply correctly in circumstances in which there may be both an ordinary and an early parliamentary general election.

47. Lords Amendment 65 would be a technical amendment to correct an incorrect reference to the poll taking place during the qualifying regulated period.

48. Lords Amendment 67 would be a technical amendment to take into account the proposal that the definition of “qualifying regulated period” in relation to weekly reports does not exclude a regulated period in relation to an early parliamentary general election.

***Lords Amendment 75***

49. Lords Amendment 75 would provide that a spending return (and an associated statement of accounts) would not be required where a third party registers with the Electoral Commission but incurs controlled expenditure under the registration thresholds.

***Lords Amendments 76, 78 and 83 to 86***

50. Lords Amendments 76 and 78 would be a minor drafting amendments to the statement of accounts provisions. Lords Amendments 83 to 86 would be minor drafting amendments consequential on Lords Amendment 82 described below.

***Lords Amendment 77, 79, 80 and 81***

51. Lords Amendment 77 would clarify the information that accounts prepared in accordance with section 96A of PPERA must contain.

52. Lords Amendments 79 to 81 would provide that third parties (eg trade unions or companies) who are required to prepare accounts containing equivalent information under another enactment would not need to prepare accounts under section 96A. The requirement as introduced was that any such accounts must be published, which rendered the exemption ineffective for some potential third parties that should be able to benefit from it. Lords Amendment 80 would be a minor technical amendment consequential on Lords Amendment 79.

53. Lords Amendment 79 would also remove the need for a third party to apply for an exemption. The exemption would apply if the Electoral Commission were satisfied that the information contained within a statement of accounts prepared under another enactment provides equivalent information regarding the income and expenditure of the third party during the regulated period and of the assets and liabilities at the end of the regulated period.

54. Lords Amendment 81 would define “equivalent information” for the



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purposes of the exemption (Lords Amendment 79). It takes account of the fact that accounts prepared under other enactments will not directly correlate precisely with that required under section 96A.

***Lords Amendment 82***

55. Lords Amendment 82 would provide additional time for a statement of accounts to be submitted to the Electoral Commission. A statement of accounts would be able to be submitted to the Electoral Commission within 9 months of the end of the regulated period (where they do not have to be audited) or 12 months (where they do have to be audited).

***Lords Amendments 87 and 90***

56. Lords Amendment 87 would exclude personal expenses from being considered towards candidates' expenses limits at local elections in England and Wales. This would bring the consideration of personal expenses at those polls in line with the exclusion of personal expenses from candidates' election expenses limits at UK Parliamentary, Police and Crime Commissioner and Greater London Authority elections.

57. Lords Amendment 90 would allow Lords Amendment 87 to be commenced by order.

***Lords Amendments 88 and 100***

58. Lords Amendment 88 would require the Minister to appoint a person to review the operation of the provisions of Part 6 of PPERA, as amended by Part 2 of the Bill, at the first UK Parliamentary general election at which amendments made by Part 2 of this Bill will have effect. This is expected to be the 2015 Parliamentary general election.

59. The reviewer would be required to provide a written report of their findings to the Minister, who must publish it, and lay a copy before Parliament.

60. Lords Amendment 100 would ensure that as the review would only apply to the next UK Parliamentary general election, the review provision would not extend to Gibraltar.

***Lords Amendments 89, 92, 93 and 98***

61. Lords Amendment 89 would mean that that the revised definition of election material in Part 10 of PPERA (revised in consequence of the change in the definition of "controlled expenditure") comes into force by order. Lords Amendments 92 and 93 would be minor and technical amendments to amend the drafting of the clause 42 transitional provision.

62. Lords Amendment 98 would be consequential to Lords Amendments 89, 92 and 93 which remove the need to define the concept of 'relevant election'.



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***Lords Amendments 91, 94, 95, 96 and 97***

63. Lords Amendments 91 is a technical amendment dealing with the commencement of the amendments made by Part 2 in relation to provisions of PPERA that operate otherwise than in relation to regulated periods (for example, section 92 (restriction on incurring controlled expenditure)).

64. Lords Amendments 94, 95 and 96 would shorten the regulated period for third parties, so that rather than applying from 23<sup>rd</sup> May 2014 (as the transitional provision under clause 42 would currently require), the regulated period would instead commence on 19<sup>th</sup> September 2014. The regulated period for political parties would still commence as provided by the transitional provision, on the day after the 2014 European Parliamentary elections. Lords Amendment 97 ensures that the transitional periods do not apply in relation to the next parliamentary general election if that election takes place before May 2015.

***Lords Amendment 99***

65. Lords Amendment 99 would introduce a power to make consequential provision by order. An order may amend PPERA, but would be subject to the affirmative resolution procedure if it were to amend primary legislation. An order would not be able to be made after the date of the poll of the next scheduled parliamentary general election.

***Lords Amendments 101 and 102***

66. Lords Amendments 101 and 102 are minor amendments that would clarify the position of employees who make lobbying communications as a part of their employment. Specifically, they provide that employees will not be considered as carrying on the business of making lobbying communications if those communications are made on behalf of the employer (the result being that for the purposes of the Bill the employer “carries on business”, not the individual). Additionally provision is made so that where an individual makes a communication in the course of the business of another then both the individual and that other business/person are treated as making the communication. If the individual in these circumstances happens to be an employee (as opposed to a contractor or partner etc) then the employee is not to be regarded as making the communication on behalf of their employer, but rather only on behalf of their employer’s client.

***Lords Amendment 103***

67. Lords Amendment 103 is a minor amendment which would clarify the wording which limits the term for which the Registrar may be appointed to three years.

***\*Lords Amendment 108***

68. Lords Amendment 108 would exclude from the calculation of controlled expenditure staff costs in relation to transport, press conferences or organised media events and public rallies or other public events for staff who are directly employed by

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the third party.

## **FINANCIAL EFFECTS OF THE LORDS AMENDMENTS**

69. Lords Amendment 88 would include provision for the Ministers to pay (and provide expenses to) the person appointed to carry out the review of Part 6 of PPERA.

# LORDS AMENDMENTS TO THE TRANSPARENCY OF LOBBYING, NON-PARTY CAMPAIGNING AND TRADE UNION ADMINISTRATION BILL

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[HL Bill 50]*

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*Ordered, by The House of Commons,  
to be Printed, 21 January 2014.*

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LONDON — THE STATIONERY OFFICE LIMITED  
Printed in the United Kingdom by The Stationery Office Limited  
£x.xx