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

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# EXPLANATORY NOTES

## INTRODUCTION

1. These explanatory notes relate to the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill as brought from the House of Commons on 9th October 2013. They have been prepared by the Cabinet Office and the Department for Business, Innovation and Skills in order to assist the reader of the Bill and to help inform debate on it. These explanatory notes do not form part of the Bill and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the clauses. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

## SUMMARY AND BACKGROUND

3. The Bill makes provision in three areas:

- It establishes a register of professional lobbyists and a Registrar of lobbyists to supervise and enforce the registration requirements.
- It changes the legal requirements for people or organisations who campaign in relation to elections but are not standing as candidates or a registered political party.
- It changes the legal requirements in relation to trade unions' obligations to keep their list of members up to date.

4. The Bill gives effect to the Government's proposals. In relation to lobbying the Government's initial proposals were published in a White Paper in January 2012 http://www.official-documents.gov.uk/document/cm82/8233/8233.pdf. 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 ofgovernment departments voluntarily disclose information about who they meet on a quarterly basis. The register will be hosted by the Registrar of Consultant Lobbyists, who will be independent from the lobbying industry and government.

5. In relation to campaigning by people or organisations who are not political parties, the Bill changes the spending limits that such people or organisations can spend in an election campaign and the level of spending at which they are required to register with the Electoral Commission. The Bill also changes the way in which spending above a specified level by a non-party is treated for the purpose of party spending limits when it is targeted at achieving the electoral success of a political party. The Bill introduces geographical limits on the amount that non-party campaigners can spend in a particular constituency. The Bill also increases transparency in relation to spending by non-parties by requiring them to publish and record more information about their spending, donations, accounts and board members. Lastly the Bill clarifies and extends the Electoral Commission's duty to monitor and take all reasonable steps to secure compliance with regulatory requirements, including those inserted by the Bill.

6. Part 3 of the Bill introduces new statutory obligations on every trade union which is subject to the duty under section 24 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("TULRCA") to compile and maintain a register of their members and to keep this register accurate and up to date. These trade unions will be required to supply an annual membership audit certificate to the Certification Officer (CO) in respect of this requirement. Unions with more than 10,000 members are required to appoint an assurer who will provide a certificate stating whether, in the assurer's opinion, the union's systems are satisfactory for the purposes of complying with section 24 of TULRCA; other unions will self-certify. The CO has powers to require the production of documents where he thinks there is good reason to do so and can appoint an inspector to investigate whether there is a breach of section 24(1) TULRCA. The CO also has powers to declare that a union has failed to comply with these duties and to issue an enforcement order if the union is not compliant. The declaration or order can be enforced as a declaration or order of the High Court or Court of Session in Scotland ("the court"). The CO also has power to issue an enforcement order if a union or any other relevant person has failed to comply with a requirement to produce documents or a duty to cooperate with an investigation. The order can be enforced as an order of the court.

7. Section 24(1) of TULRCA contains a union duty to maintain a register of members' names and addresses. It provides that "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."

8. The CO is the Registrar of trade unions and is responsible for maintaining a list of trade unions. The CO is responsible for issuing certificates of independence. He also acts in a judicial capacity, for example in relation to breach of rule disputes. The CO's decisions, as

well as further information about the CO's functions and annual report can be found on the website: http://www.certoffice.org/.

9. The current remedy for a union's failure to comply with the existing duty in section 24(1) of TULRCA is by way of an application to the CO, or to the court, for a declaration to that effect. An application to the CO or court can only be made by a member of that trade union. For the purposes of certain types of complaint (where, for example, the union refuses to allow a member to ascertain whether there is an entry about the individual member, or refuses to supply a copy of this entry, or charges unreasonably to do so), this remedy is appropriate. The position is more problematic as a remedy for failure to comply with the general duty to maintain the register. Under the current regime, the CO can only act where a member has made a complaint. Under the new regime, it will be easier for the CO to make a determination as to the accuracy of a register of members as a whole.

10. On 4th June 2013, the Government announced its intention to bring forward legislation to introduce a statutory register of lobbyists, and that this Bill would also include measures regarding the appropriate assurance and certification of trade unions' registers of members. The Government announced an intention to amend TULRCA to require trade unions to keep fully audited and up-to-date lists of their members by:

    a. Enhancing the regulatory powers of the CO,
    b. Requiring unions to undertake an annual audit of union membership,
    c. Requiring unions to provide evidence of how they will store and monitor membership data effectively.

## OVERVIEW OF THE STRUCTURE OF THE BILL

11. The Bill consists of four parts and four schedules arranged as follows:

Part 1 – Registration of Consultant Lobbyists

Part 2 – Non-Party Campaigning etc

Part 3 – Trade Unions' Registers of Members

Part 4 – Supplementary

Schedule 1 – Carrying on the business of consultant lobbying

Schedule 2 – The Registrar of Consultant Lobbyists

Schedule 3 – Controlled Expenditure: qualifying expenses

Schedule 4 – Requirements of quarterly and weekly donation reports.

12. Part 1 and Schedules 1 and 2 are new free-standing statutory provisions. Part 2 and Schedules 3 and 4 amend and insert new provisions into the Political Parties, Elections and Referendums Act 2000 ("PPERA"). Part 3 amends and inserts new provisions into TULRCA.

## TERRITORIAL EXTENT AND APPLICATION

13. Part 1 of the Bill extends to the whole United Kingdom. The requirement to register applies to all consultant lobbyists engaged in lobbying UK Government Ministers and Permanent Secretaries, regardless of where the lobbying takes place or where the consultant lobbyist is based.

14. Part 1 does not make any provision in relation to those who lobby the Devolved Administrations. It deals only with reserved matters and does not require the consent of the devolved legislatures.

15. Part 2 of the Bill extends to the whole of the United Kingdom, deals only with reserved matters and does not need the consent of the devolved legislatures. Certain amendments also extend to Gibraltar.

16. The provisions on Trade Unions' registers of members which are inserted into TULRCA by Part 3 will extend to England and Wales and to Scotland but not to Northern Ireland, where it is a devolved matter.

## COMMENTARY ON CLAUSES

### Part 1 – Registration of Consultant Lobbyists

#### Clause 1: Prohibition on consultant lobbying unless registered

17. Clause 1 prohibits any person from carrying on the business of consultant lobbying unless they are entered on the register of consultant lobbyists. Breaching this prohibition is made a criminal offence by clause 12 of the Bill. Alternatively, breach of this prohibition could result in the imposition of a civil penalty under clause 14.

#### Clause 2: Meaning of consultant lobbying and Schedule 1: Carrying on the business of consultant lobbying

18. Clause 2 defines the activity of "carrying on the business of consultant lobbying". Schedule 1 provides further detail about the meaning of some terms used in that definition and provides that certain types of activity are excluded from the definition.

19. The main defining characteristics of being a consultant lobbyist are that 'in the course of a business' (which requires the person concerned to be engaged in a commercial activity, and so therefore excludes things such as the public duties of elected officials) the person makes communications (either in writing or orally):

- personally to a UK Government Minister or Permanent Secretary (including specified equivalent positions),
- about government policy, legislation, the award of contracts, grants, licences or similar benefits, or the exercise of any other government function such as the exercise of the prerogative,
- on behalf of another person, and
- in return for payment.

20. A person carries on the business of consultant lobbying (and is therefore required to register) only if the person is VAT-registered. This means, in particular, that businesses with a turnover below the VAT registration threshold will not be required to appear on the register of lobbyists (unless they are voluntarily VAT-registered). It also means that employees of a company or firm will not be required to appear on the register of lobbyists in their own names, because they will not be VAT-registered: their activities as employees will be covered by the VAT registration (if any) of the company or firm.

21. Paragraph 1 of Schedule 1 describes an exception to the definition of "carrying on business of consultant lobbying". It provides that where a person's business mostly consists of activities other than the lobbying of Governments, and any communication that they make on behalf of someone else to Ministers and Permanent Secretaries of the UK government is incidental to those non-lobbying activities, then they will not be carrying on the business of consultant lobbying and so will not be required to register.

22. Paragraphs 2 and 3 provide for further exceptions which will not come within the scope of "consultant lobbying". These exceptions include persons who act generally as representatives of people of a particular class or description and who make lobbying communications only as an incidental part of their representative function, and officials or employees of governments of other countries or international organisations who make communications on behalf of those bodies.

23. Paragraphs 4 and 5 of Schedule 1 make it clear that any kind of payment given to a person for them to engage in lobbying will bring them within the definition of "consultant lobbyist" if the other conditions are engaged, and this includes both direct and indirect payment. So it will not be possible for lobbyists to avoid the need to register by for example structuring their business so as to receive payments from clients via a third party, or to be paid for periods of service rather than for specific communications, or in some non-monetary form. Paragraph 4(2) excludes the salaries or expenses paid to Parliamentarians for the exercise of their Parliamentary duties from the definition of payment, with the result that the usual activities of

Parliamentarians are not captured by the definition of consultant lobbying. This provision therefore ensures that, even if Parliamentarians when carrying out their official role were to be regarded as carrying on a business under clause 2, and even if they do not benefit from the 'incidental' exception in paragraph 1, they would not be required to register as consultant lobbyists.

24. Paragraph 6 of Schedule 1 explains that communications should not be considered 'in return for payment' where the person conducting the lobbying is not wholly or mainly funded by, and does not receive payments for conducting the lobbying from, the person or persons on whose behalf the lobbying is done. Such communications are therefore excluded from the scope of the definition of consultant lobbying. This could for example cover bodies who lobby on a pro-bono basis or who are funded altruistically to undertake work that seeks to benefit others.

25. Paragraph 8 of Schedule 1 excludes certain types of communication from the scope of consultant lobbying where it is required to be made under a statutory provision or a rule of law.

26. Part 3 of Schedule 1 gives a list of positions which are considered to be equivalent a permanent secretary for these purposes, so that communicating with them about government policy etc. will, if the other conditions for being a consultant lobbyist are fulfilled, mean that a person must register as a consultant lobbyist.

**Clause 3: The Registrar of Consultant Lobbyists, Clause 4: The register and Schedule 2: The Registrar of Consultant Lobbyists**

27. Clauses 3 to 7 and Schedule 2 establish a Registrar of Consultant Lobbyists ("the Registrar") and require them to keep a register with specified information on it and to make that register publicly available. The Registrar will be an independent statutory office-holder appointed by the Secretary of State or the Lord President of the Council ("the Minister") and Schedule 2 sets out more detail about how the Registrar is to be constituted.

28. Clause 4 sets out the obligation to keep the register. In particular it provides that each register entry must contain the name of the relevant registered consultant lobbyist, together with its registered company number (where relevant), its address, the names of any partners or directors (or equivalent), and any other information specified by regulations. Each entry must also contain the names of the clients for whom the entity has engaged in consultant lobbying for (or has received pre-payment to do so) for every quarter that person has been registered. It must also contain the names of any clients from whom pre-payment has been received in the three months immediately preceding the person's application to join the register.

29. Schedule 2 provides that the Registrar will be a corporation sole. Being a corporation sole will ensure that the Registrar is able to enter into contracts, and to sue and be sued, in his or her capacity as an office holder rather than in any individual capacity and so allows for continuity from one Registrar to the next.

30. The Registrar will be appointed by the Minister after a process of fair and open competition. The Registrar may be appointed for an initial term of up to four years and for one or two further terms of up to three years. The Registrar may resign from the post by giving the Minister written notice. During a term the Minister may dismiss the Registrar if satisfied that he or she is unable, unwilling or unfit to perform his or her functions.

31. Any individual who has been a Minister or permanent secretary or has carried on the business of a consultant lobbyist (or has been the employee of a consultant lobbyist) at any time in the previous 5 years is not eligible to fill the post of Registrar.

32. The Registrar may pay remuneration and other amounts to the Registrar but the amounts will be controlled by the Minister. The Minister may make grants or loans to the Registrar.

33. It is not expected that the Registrar will engage staff directly but may make arrangements for staff to be seconded by the Minister or other persons. Those staff may be paid by the Registrar either directly or via the Minister or other persons.

34. The Registrar is required to prepare a statement of accounts for each financial year, reported on by the Comptroller and Auditor General and laid before Parliament. The Registrar is also required to abide by the requirements of the Public Records Act 1958 and will be subject to the provisions of the Freedom of Information Act 2000. The Registrar is also an authority which is subject to investigation by the Parliamentary Commissioner (who is also known as the Parliamentary and Health Service Ombudsman).

**Clause 5: Notification of client information and changes**

35. Registered lobbyists must update their register entry each quarter by providing details of any clients for whom they have engaged in consultant lobbying in the previous quarter (whether or not the payment for it has actually been received) or from whom they have received payment in that quarter to engage in lobbying in the future (whether or not the lobbying has actually been done). Registered lobbyists must also update their register entry by notifying the Registrar of any changes to the particulars outlined in clause 4 (i.e. company name, number, address, directors etc). These updates must be made within 2 weeks of the end of the quarter to which the update relates.

36. If registered persons have not engaged in consultant lobbying nor received payment to lobby in the future in the previous quarter, they must submit a statement to that effect (see subsection (5) of clause 5). If they have ceased to act as a consultant lobbyist, they can seek to discontinue their registration (see clause 6(6)). In the former case the lobbyist may be listed as inactive but remains registered and so can still return to lobbying at any time with immediate effect as they remain on the register. They also remain obliged to provide any updates necessary in relation to the company name, number, address, directors etc information for their registration. In the latter case the lobbyist's register entry will be discontinued (though the historic record will remain) and they will no longer be obliged to provide updates

regarding their business and clients. As such, they will be prohibited from lobbying unless they apply to register again and are entered on to the Register.

**Clause 6: Duty to update the register and Clause 7: Duty to publish the register**

37. The Registrar must keep the register up to date by processing register entries, and updates to entries, within 4 working days of receiving them if they are received by the Registrar within the 2 week period set by clause 5(6), or within 8 working days where updates are received after that deadline.

38. If the Registrar considers that a registered person is no longer a consultant lobbyist, the Registrar may mark the entry as inactive or remove it from the register.

39. The Registrar must publish the register online and in any other format he or she thinks appropriate. The Registrar may also publish the historic entries, in part or in full, of persons who were previously entered on the Register but who are no longer registered.

**Clause 8: Duty to monitor**

40. This clause places a duty on the Registrar to monitor the compliance of consultant lobbyists with the registration requirement and the other obligations imposed by this Part.

**Clauses 9 and 10: Notice to supply information and limitations on duty to supply information and use of information supplied**

41. The Registrar has the power to issue an information notice in order to obtain from a consultant lobbyist, or someone he or she reasonably believes is a consultant lobbyist, information relating to compliance with the requirements imposed by this Part.

42. The information notice must specify what information must be supplied and by what date, and must contain details of the appeals procedure. Regulations may make provision prohibiting certain descriptions of information from being requested under an information notice, such as information engaging legal professional privilege.

43. Clause 10 sets limitations on the information which may be demanded under an information notice, and limits the use which may be made of that information. These limits give effect to the existing privilege against self-incrimination. However, subsection (2) of clause 10 provides in effect that the privilege against self-incrimination does not apply in relation to offences under this Part and various false statement offences that could be used in relation to false responses to information notices. This is justified and proportionate because the purpose of the power to issue an information notice is to investigate possible offences under this Part and so applying the principle against self incrimination to those offences would render the information notice power pointless.

**Clause 11: Right to appeal against information notice**

44. If served with an information notice, a person may appeal against the notice to the Tribunal. If they do so, they will not be required to provide the information until the appeal is finally determined or withdrawn.

**Clauses 12: Offences and Clause 13: Bodies corporate and Scottish partnerships**

45. It is an offence to carry on the business of consultant lobbying without an accurate and up to date register entry. This offence may be committed by an organisation or its employees. It is also an offence to fail to supply an information return required under clause 5, or information required by an information notice under clause 9, or to supply inaccurate or incomplete information. It is a defence to demonstrate that the person exercised all due diligence to avoid committing any of these offences.

46. The offences in clause 12 may be tried in either the Magistrates Count or the Crown Court. A person guilty of either offence is liable to a fine not exceeding the statutory maximum on summary conviction (currently £5000) or an unlimited fine if convicted in the Crown Court. When section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force, the fine on summary conviction in England and Wales will be unlimited.

47. These offences can also be committed by senior individuals within a company (such as directors or managers) or partners of a partnership in Scotland if the individuals have consented to, planned, or allowed through their neglect, the criminal behaviour to take place.

**Clause 14: Civil penalties**

48. This clause enables the Registrar to choose to impose a civil penalty instead of prosecuting a person for committing any of the offences set out in clause 12. The defence of due diligence does not apply in relation to a penalty. 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.

**Clause 15: Notice of intention to impose civil penalty**

49. Before imposing a civil penalty the Registrar must serve a notice of intent detailing the suspected breach, the reasons the Registrar is satisfied that the person did engage in that conduct and the anticipated amount of the associated penalty. The notice must also provide details of the period in which the person may make written representation in response to the notice and the Registrar must consider any such representation before proceeding with the imposition of the penalty.

**Clause 16: Imposition of penalty**

50. Where the Registrar decides to impose a civil penalty, he or she must serve a penalty notice detailing the transgression committed, the reasons the Registrar is satisfied that the person did engage in that conduct, the amount of the penalty (which must not exceed £7,500), the time period within which it should be paid, and details of the appeals procedure. The Registrar may vary or cancel a penalty notice.

**Clause 17: Right to appeal against imposition of a civil penalty**

51. Both the decision to impose a penalty and the amount of that penalty may be appealed to the Tribunal, as may any decision to vary a penalty notice. If an appeal is brought, the person will not be required to pay the penalty until the appeal is finally determined or withdrawn. Regulations may make further provision about the determination of such appeals.

**Clause 18: Civil penalties and criminal proceedings**

52. The Registrar may not impose a civil penalty on a person who is currently subject to criminal proceedings for the same offence or who has been convicted of an offence under this Part. Nor may a person who has had a civil penalty imposed on them be convicted of a criminal offence under this Part for the same conduct.

**Clause 19: Enforcement**

53. This clause makes provision to ensure that penalties can be enforced if they are not paid. It also provides that any sum received in response to a penalty notice is to be paid in to the Consolidated Fund, rather than being retained by the Registrar.

**Clause 20: Further provision about civil penalties**

54. This clause allows regulations to make further provision in relation to civil penalties.

**Clause 21: Guidance**

55. This clause provides that the Registrar may issue guidance regarding compliance with the requirement to register and the Registrar's functions under the Part more generally, particularly in relation to who may, or may not, be considered to be carrying on the business of consultant lobbying. The Registrar may also issue guidance in relation to the circumstances in which the Registrar would consider removing or making inactive a consultant lobbyist's entry on the register, the circumstances where it would be appropriate to impose a civil penalty, and the method by which the amount of a civil penalty is determined. The Registrar may revise or replace any such guidance issued, and the Registrar must publish the guidance by making it available online and in other such forms as they think appropriate.

**Clause 22: Charges**

56. This clause includes a power for the charges to be imposed by the Registrar. It is intended that these charges recover the full cost of all of the activities of the Registrar.

57. The charges will either be specifically set by the regulations or the regulations will set the method for determining the charges.

**Clause 23: Power to make further provision, Clause 24: Regulations and Clause 25: Interpretation**

58. There is also a general power for the Minister to make regulations to give effect to provisions of this Part. Wherever regulations are made which amend a provision of this Part, the affirmative resolution procedure must be used. In other cases a negative resolution procedure is to be used.

**Part 2 – Non-Party Campaigning etc.**

**Clause 26: Meaning of "controlled expenditure"**

59. Clause 26 amends the definition of what is regarded as controlled expenditure for third parties in section 85 of PPERA to take account of the extension in the range of activities which count as controlled expenditure outlined in new Schedule 8A.

60. *Subsection (2)* amends the definition of controlled expenditure to mean expenses incurred by on behalf of a third party which fall within Part 1 of new Schedule 8A to PPERA (see below) and which can reasonably be regarded as intended to promote or procure the electoral success of a party or candidate. The second part of this test largely replicates the current PPERA test. However, expenditure which would only be regarded as "otherwise enhancing the standing" of parties or candidates is no longer regulated. This is a small change, but ensures that the activity must have a connection with "electoral success" at a relevant election. The new section 85(4)(c) and (4A) of PPERA (inserted by *subsections (4)(c) and (5)*) contain provision similar to provision formerly in section 85(3) and (4); the restructuring is in consequence of the changes to section 85(2).

**Schedule 3: Controlled expenditure: qualifying expenses**

61. Schedule 3 inserts a new Schedule 8A into PPERA. Paragraph 1 of new Schedule 8A lists matters on which expenses may be incurred for the purposes of controlled expenditure. The list of activities is set out so as to be more closely aligned with the list of matters for political parties as set out in Schedule 8 to PPERA. Any expenditure on a matter set out in this list during the regulated period for an election (which meets the test in section 85(2)(b) of PPERA, as inserted by *clause 26(2)*) will need to be accounted for as controlled expenditure. Qualifying expenses include expenses incurred in respect of material (paragraph 1(1)). This replaces "election material" which is controlled expenditure under section 85(3) of PPERA, and is described in largely the same terms. Paragraphs 1(2) to (5) add new matters expenditure in respect of which may be controlled expenditure and hence regulated.

62. Thus, for example the full fees and costs in the 365 days before a UK general parliamentary election associated with any materials made available to the public, or with the organisation of any press conference or organised media events or public rallies or events, would count as controlled expenditure. The matters listed do not cover material or activities unless they involve the public in a specified way. Material or activities which do not (for example material available only to members of the third party or meetings to which the public are not admitted) will accordingly not be regulated. Section 87 of PPERA sets out some exclusions for material or activity which is not to be regarded as controlled expenditure, including in particular an exclusion for articles in the press and television programmes.

63. *Paragraph 2* of new Schedule 8A provides for the Electoral Commission to prepare a code of practice giving guidance on the types of expenditure which may be captured by Part I of new Schedule 8A. Before a code of practice comes into effect it must 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 applies so that either House of Parliament may resolve not to approve the draft code.

64. *Paragraph 3* of new Schedule 8A empowers the Secretary of State to amend Part 1 of the Schedule by order. An order made under this provision may only be made so as to give effect to a recommendation of the Electoral Commission or after consulting them.

**Clause 27: Changes to existing limits**

65. *Subsection (1)* amends section 94(5) of PPERA so that a third party wishing to spend £5,000 in England or £2,000 in each of Scotland, Northern Ireland and Wales must register as a recognised third party with the Electoral Commission in accordance with section 88 of PPERA. The previous limits where a third party would be required to register as a recognised third party with the Electoral Commission were £10,000 in England or £5,000 in each of Scotland, Wales and Northern Ireland.

66. *Subsection (2)* amends paragraph 3(2) of Schedule 10 to PPERA so that a recognised third party can only spend 2% of the maximum campaign expenditure limit in each of England, Scotland, Wales or Northern Ireland. The maximum campaign expenditure limit is defined as the limit imposed by paragraph 3 of Schedule 9 to PPERA and currently amounts to a total of £19.5 million (£30,000 x 650 constituencies). Consequently, the table below outlines the 2% of the maximum campaign expenditure limit for a recognised third party in each part of United Kingdom.

| | |
|---|---|
| England | £319,800 |
| Scotland | £35,400 |
| Wales | £24,000 |
| Northern Ireland | £10,800 |

67. The amendment of paragraph 3(2) of Schedule 10 means that any changes in the future to the limits in paragraph 3 of Schedule 9 (maximum campaign expenditure) will automatically flow through to the limits in paragraph 3(2) of Schedule 10.

**Clause 28: Constituency limits**

68. *Subsection (2)* amends section 94 of PPERA to place limits on the amount of controlled expenditure a recognised third party can spend within an individual constituency during the regulated period.

69. *Subsection (3)* amends section 96 of PPERA to require recognised third parties to include as part of their return as to controlled expenditure under section 96, a statement listing each constituency, if any, where the recognised third party has incurred, at any time during the

regulated period, controlled expenditure of an amount greater than the amount of the limit for the "post-dissolution part" of the regulated period (£5,850, see subsection (6) below). A statement prepared under subsection (3) of section 96 of PPERA should include all payments made in respect of controlled expenditure in that constituency during the regulated period.

70. *Subsection (5)* deals with the attribution of controlled expenditure to a constituency or constituencies by amending Schedule 10 to PPERA. *Subsection (5)* inserts a new paragraph, paragraph 2A into Schedule 10 and states that where a recognised third party has incurred controlled expenditure it should be attributed to each parliamentary constituency in equal proportions. The exception to this is where the effects of controlled expenditure are confined to a single or to a number of constituencies and have no significant effects in any other constituency or constituencies. Where this occurs, the recognised third party shall attribute the controlled expenditure incurred, in equal measures, to the constituencies substantially affected (if there is more than one) or solely to an affected constituency.

71. *Subsection (6)* inserts sub-paragraphs (2A) and (2B) into paragraph 3 of Schedule 10 to PPERA. These place a limit on the controlled expenditure which can be incurred in a constituency of 0.05% (£9,750) of the total maximum campaign expenditure limits in England, Scotland, Wales and Northern Ireland (as defined in new paragraph 3(4) of Schedule 10, as inserted by clause 27). Of this limit, controlled expenditure can only be incurred at a level of 0.03% (£5,850) of the total of the maximum campaign expenditure limits in England, Scotland, Wales and Northern Ireland in the period commencing with the date Parliament is dissolved and ending with the date of the poll ("post-dissolution part" of the regulated period).

72. *Subsection (8)* amends paragraph 9 of Schedule 10 to PPERA, which is about combined limits where a UK general parliamentary election and another election are pending. For the purposes of the combined period (of the two regulated periods), new sub-paragraph (3B) in paragraph 9 specifies that the relevant constituency limit can be calculated by dividing the number of days in the combined period, by the number of days in what is ordinarily the regulated period for a UK parliamentary general election, and multiplying the amount by the constituency limit – £9,750, as in new paragraph 3(2A) of Schedule 10. For example:

$$\frac{\text{Combined period 470 days x £9750 (new paragraph 3(2A))}}{\text{Regulated period 365 days.}}$$

73. The constituency limit in this instance would be £12,555. New sub-paragraph (3C) of paragraph 9 stipulates that the post-dissolution constituency limit will not be affected by the combined period, remaining as £5,850 (new paragraph 3(2B)) from dissolution of Parliament to date of poll.

74. New sub-paragraph (5A) in paragraph 9 of Schedule 10, new sub-paragraph (3A) in paragraph 10 and new sub-paragraph (4A) in paragraph 11 provide, in a similar manner, for a

proportion of the constituency limit to be calculated for other combined regulated periods involving UK general parliamentary elections and other elections.

**Clause 29: Targeted expenditure limits**

75. *Subsection (2)* amends section 79 of PPERA to identify the new provision in Part 6 of that Act under which certain controlled expenditure incurred by or on behalf of a recognised third party, which is targeted at a registered party, must be counted towards that registered party's overall campaign expenditure limit.

76. *Subsection (3)* amends section 80(4) of PPERA so that returns as to campaign expenditure must also include a declaration by the treasurer or deputy treasurer where authorised expenditure has been incurred. The requirement to make the declaration is provided by new section 94D(5).

77. *Subsection (8)* inserts new sections 94A to 94F into PPERA. These sections impose limits on, and make other provisions relating to, controlled expenditure incurred by or on behalf of a third party where the expenditure is targeted at a particular registered party.

78. New section 94B(1) defines when controlled expenditure is regarded as targeted at a registered party – when it is intended to benefit that party or its candidates, and no other party or its candidates.

79. New section 94B(3) provides that targeted controlled expenditure limits apply during the regulated period for a UK general parliamentary election.

80. New section 94B(4)(a) introduces limits on the targeted controlled expenditure a recognised third party can incur in parts of the United Kingdom during what is ordinarily the regulated period for a UK general parliamentary election. These are 0.2% of the maximum campaign expenditure limits for each part of the UK, and are as follows:

| | |
|---|---|
| England | £31,980 |
| Scotland | £3,540 |
| Wales | £2,400 |
| Northern Ireland | £1,080 |

81. New Section 94B(4)(b) refers to combined limits where a UK general parliamentary election and another election are pending. For the purposes of the combined period (of the two regulated periods), subsection (4)(b) specifies that the relevant targeted controlled expenditure limit can be calculated by dividing the number of days in the combined period, by the number

of days in what is ordinarily the regulated period for a UK parliamentary regulated period and multiplying the amount by the limit for the relevant part of the United Kingdom. For example:

$$\frac{\text{Combined period 470 days x £31.980 (subsection 4(a))}}{\text{Regulated period 365 days.}}$$

82. The targeted controlled expenditure limit in this instance would be £41,180.

83. New section 94C provides that where a recognised third party is not authorised by the registered party to incur targeted controlled expenditure in excess of the limits outlined in new section 94B and it still does so, it (and, in the case of a third party that is not an individual, the responsible person) is guilty of an offence. A third party is also guilty of an offence if it is authorised to incur targeted controlled expenditure, but exceeds any cap specified in the authorisation. The penalties for the offences are inserted into Schedule 20 to PPERA by *subsection (9)).*

84. New section 94D provides that where a recognised third party incurs authorised targeted controlled expenditure, only the amount of controlled expenditure incurred above the limit specified in new section 94B and up to any specified cap, will count towards the overall campaign expenditure limit of the registered party.

85. In determining whether the treasurer or a deputy treasurer commits an offence where the registered party exceeds its campaign expenditure limit as a result of this new rule, references in section 79(2) of PPERA to the authorisation of expenditure by the treasurer or a deputy treasurer will be treated as references to the signing of the authorisation (of targeted controlled expenditure) under new section 94E.

86. New section 94D(5) specifies that the treasurer or a deputy treasurer of the registered party must make a declaration of the amount of the expenditure and of the amount of that expenditure that counts towards the registered party's limit under Part 5 of PPERA and will commit an offence if a false declaration is knowingly or recklessly made (new section 94D(6)). The penalty for the offence is inserted into Schedule 20 to PPERA by *subsection (9).*

87. New section 94E makes provision about how a registered party may give authorisation to a recognised third party, so it may incur spend above the limits in 94B. Authorisation must be in writing, signed by the party treasurer or deputy treasurer, and must specify the part of the UK it relates to. The authorisation may also stipulate a cap, above which targeted controlled expenditure cannot be incurred. Authorisation will only come into effect once a copy has been provided by the registered party to the Electoral Commission.

88. A registered political party may withdraw authorisation at any time, provided it is in writing, signed by a relevant officer and will only come into effect on registration with the Electoral Commission.

89. New section 94F defines for the purposes of this new regime what it is to exceed a targeted expenditure limit, or a cap specified by the registered party when authorising expenditure. Whether or not any item of expenditure incurred by or on behalf of the third party exceeds a limit or cap depends on the cumulative amount incurred by or on behalf of that recognised third party in the regulated period in question and in the relevant part of the United Kingdom. The definition makes clear that a separate cumulative total needs to be calculated of expenditure targeted at separate registered parties.

**Clause 30: Extension of power to vary specified sums**

90. This clause amends section 155 of PPERA to allow the Secretary of State (or, by virtue of section 159A of that Act, the Lord President of the Council) to amend, by order, the percentages set out in new section 94B of PPERA, which sets out the limit for targeted expenditure, and in Schedule 10 which sets the limit for controlled expenditure in each part of the United Kingdom and for controlled expenditure in an individual constituency during the regulated period of a UK general parliamentary election. The Secretary of State can only amend the percentages upon the recommendation of the Electoral Commission.

**Clause 31: Notification requirements for recognised third parties**

91. Where a third party intends to incur controlled expenditure in excess of £5,000 in England or £2,000 in each of Scotland, Wales or Northern Ireland during a regulated period for an election, it must provide the Electoral Commission with a notification as required under section 88 of PPERA. The notification must specify the name and address of the third party and, in the case of a company or unincorporated association, the person who will be responsible for ensuring compliance with the accounting and disclosure provisions contained within Part 6 of PPERA.

92. Clause 31 amends the notification requirements under section 88 of PPERA by including a new provision, section 88(3)(c)(ia) into that Act, stating that the notification should include the names of relevant participators of the body.

93. Relevant participators of a body are defined by the new section 88(3B) as:
- For companies – the body's directors;
- For trade unions – the body's officers;
- For building societies – the body's directors;
- For limited liability companies – the body's members;
- For friendly societies – the members of the body's committee of management; and
- For unincorporated associations – the body's members or the members of its governing body.

**Clause 32 and Schedule 4: Reporting of donations to recognised third parties**

94. This clause inserts new sections 95A to 95H into PPERA. The new sections impose requirements on recognised third parties and their responsible persons to prepare a quarterly report on donations, which they are obliged to submit to the Electoral Commission within 30

days of the end of the reporting period. There are additional requirements for more frequent reporting during a general election period.

95. New section 95A provides for the responsible person for the recognised third party to provide quarterly donation report for each reporting period which falls within the regulated period for UK general parliamentary elections. Subsection (4) of new section 95A states that the quarterly report must comply with the requirements of the new Schedule 11A and must include all details of all accepted donations of more than £7,500, as well as any donation which, when added to other donations from the same source during the regulated period for UK general parliamentary elections, brings the amount up to more than £7,500. Subsequent accepted donations from the same source must be reported if more than £1,500 (either alone or in aggregate).

96. New section 95A(6) provides for quarterly reports to be delivered to the Electoral Commission within 30 days of the end of the reporting period to which it relates. The quarterly return must be accompanied by a declaration signed by the responsible person stating that all reportable donations accepted by the recognised third party are from permissible donors, that no reportable donations have not been recorded, or where a nil return is given this is accurate.

97. The provisions of new section 95A do not extend to a party which is registered with the Electoral Commission (other than a minor party) or to a recognised Gibraltar third party.

98. New section 95B outlines exemptions from the requirements to undertake quarterly reports. A recognised third party can seek an exemption if it intends not to incur any controlled expenditure during the regulated period. The recognised third party would have to make an exemption declaration, which is signed by the responsible person and sent to the Electoral Commission within 30 days of the start of the regulated period. This exemption will be deemed to be withdrawn if the responsible person of the recognised third party signs a notice which is sent to the Electoral Commission before the end of the regulated period or if the recognised third party incurs controlled expenditure during the regulated period. Where an exemption declaration is withdrawn the recognised third party will be subject to the reporting requirements outlined in new section 95A. Where an exemption declaration is withdrawn, the recognised third party cannot seek another exemption declaration during the same regulated period.

99. New section 95C provides for the responsible person for the recognised third party to provide weekly donation reports for each period of 7 days falling within the period beginning with the date on which Parliament is dissolved and ending with the date of poll for the UK general parliamentary election. New section 95B states that the weekly report must comply with the requirements of the new Schedule 11A and must include all donations of £7,500 or more.

100. New section 95C(7) provides for weekly reports to be delivered to the Electoral Commission within 7 days of the end of the reporting period to which it relates.

101. The provisions of new section 95C do not extend to a party which is registered with the Electoral Commission (other than a minor party) or to a recognised Gibraltar third party.

102. New section 95D outlines exemptions from the requirements to undertake weekly reports. A recognised third party can seek an exemption if it intends not to incur any controlled expenditure during the general election period. The recognised third party would have to make an exemption declaration, which is signed by the responsible person and sent to the Electoral Commission within 7 days of the start of the general election period. This exemption will be deemed to be withdrawn if the responsible person of the recognised third party signs a notice which is sent to the Electoral Commission before the end of that period or if the recognised third party incurs controlled expenditure during that period. Where an exemption declaration is withdrawn the recognised third party will be subject to the reporting requirements outlined in new section 95C. Where an exemption declaration is withdrawn, the recognised third party cannot seek another exemption declaration during the general election period.

103. New section 95E provides for the related offences to which a responsible person of a recognised third party may be subject.

104. New section 95F provides for a court, on an application made by the Electoral Commission, to require the forfeiture of a relevant donation by a recognised third party.

105. New section 95G provides for supplementary provisions to new sections 95A to 95F. New section 95G provides that where a recognised third party's notification under section 88(1) of PPERA lapses during the regulated period (and it therefore ceases to be a "recognised" third party), it must still provide reports under new sections 95A or 95C which cover the period during which the notification lapses and any previous reporting periods falling within the regulated period. If a recognised third party's notification lapses at or after the end of the regulated period, the recognised third party must still provide reports as required under new sections 95A or 95C for that period.

106. New section 95H provides that the Electoral Commission must make quarterly and weekly reports available for public inspection, but ensuring that these documents do not include the donor's address if the donor is an individual. The Electoral Commission may destroy these reports or return them to the recognised third party after a period of 2 years beginning with the date when the report was received by the Electoral Commission.

107. *Subsection (3)* amends section 96 of PPERA to exclude those recognised third parties who have provided reports under the new section 95A in respect of the regulated period in question from providing donation information as part of their return for that period outlining controlled expenditure as required by section 96 of PPERA.

108. *Subsection (4)* makes a consequential amendment to section 99 of PPERA to reflect that change.

109. *Subsection (5)* amends section 149 of PPERA so that it applies to the quarterly and weekly reports which are open to inspection under new section 95H in the same way as it applies to other documents which the Electoral Commission are required to make available for inspection.

110. *Subsection (6)* amends section 155 of PPERA to include new section 95C and Schedule 11A, in the list of provisions to which subsection (4) of section 155 applies. The effect is that in each Parliament the Secretary of State or Lord President of the Council must make an order changing the £7,500 and £1,500 figures specified in new section 95C and Schedule 11A to take account of inflation or lay a statement before Parliament explaining why no order is being made.

111. *Subsection (7)* amends Schedule 1 to PPERA to ensure that an Electoral Commissioner will cease to be a Commissioner should they appear as a donor to a recognised third party in a quarterly or weekly report.

112. *Subsection (8)* amends the heading in Part 3 of Schedule 11 to PPERA to "Reporting of donations in section 96 return".

113. *Subsection (9)* inserts a new Schedule 11A into PPERA. Part 1 of the new Schedule 11A sets out various definitions which apply for the purposes of the Schedule.

114. Part 2 of the new Schedule 11A deals with quarterly reports. It provides that quarterly reports must contain a statement about each reportable donation of a substantial value accepted by the third party during the reporting period. The statement must contain details about the donor, the date the donation was accepted, where the donation is not money, the nature of the donation and its value and any other information required by regulations made by the Electoral Commission. Paragraph 4 of new Schedule 11A defines when a donation is "of a substantial value" i.e. donations of more than £7,500 (either alone or in aggregate) from the same donor which are accepted during the regulated period; and subsequent donations accepted from the same donor in later reporting periods which are more than £1,500 (either alone or in aggregate). Provision is made in paragraph 2(2) of new Schedule 11A to ensure that where an individual who has an anonymous entry in the electoral register is a donor, their name is not to be provided in any quarterly report. The report must also include a statement of the total value of all reportable donations not of a substantial value which are accepted during the reporting period. A recognised third party who did not accept any reportable donations during the reporting period, must outline this in their return.

115. Part 2 of the new Schedule 11A also sets out the details which must be included in a quarterly report of reportable donations from impermissible or unidentifiable donors dealt with during the reporting period. Paragraph 5 of new Schedule 11A provides that the quarterly report must include details of the name and address of the donor (where the donor is identifiable), the amount of the donation (where the donation is not money, the nature and value of the donation), the date the donation was received and the date and manner in which the donation

was dealt with in accordance with section 56(2) of PPERA. If no reportable donations were dealt with in accordance with that provision during the reporting period, the report must state that.

116. Part 3 of the new Schedule 11A deals with weekly reports. It states that weekly reports must contain a statement recording the appropriate details in relation to each substantial donation received by a recognised third party during that period. Appropriate details to be included within the weekly report include information about the donor, where the donation is money, the amount of the donation, where the donation is not money, the nature of the donation and its value, the date the donation was received and any other information required by regulations made by the Electoral Commission.

**Clause 33: Statements of accounts by recognised third parties**

117. *Subsection (2)* inserts a new section, section 96A into PPERA. This section states that a recognised third party, as part of the return on controlled expenditure incurred during the regulated period for a UK general parliamentary election prepared under section 96 of PPERA, will have to provide a statement of accounts for the regulated period subject to the exceptions in subsections (8) and (9) of new section 96A.

118. The new section 96A outlines that the statement of accounts give a true and fair view of the income and expenditure of the recognised third party, alongside a statement outlining the recognised third parties assets and liabilities. The statement of accounts prepared under this section must comply with any requirement as to form and content which may be prescribed by the Electoral Commission. The new section 96A states that the requirement to prepare a statement of accounts does not apply if the recognised third party is an individual, a recognised Gibraltar third party, or the Electoral Commission is satisfied that the recognised third party prepares accounts under another enactment.

119. *Subsection (3)* amends section 97 of PPERA to provide where a recognised third party incurs gross income or total expenditure over £250,000 during the regulated period, the statement of accounts must be audited. The statement of accounts must also be audited where a report is required to be prepared under section 97(1) on a section 96A(1)(a) return.

120. *Subsection (4)* amends section 98 of PPERA and provides for a statement of accounts, which is required to be audited, to be delivered to the Electoral Commission within 6 months of the end of the regulated period.

121. *Subsection (5)* amends section 98(4) to include the offence of failing to prepare or deliver a statement accounts within the requirements of the new section 96A within the current offence in section 98 of PPERA.

122. *Subsection (6)* inserts a new section, section 99A, into PPERA which requires that the statement of accounts must be accompanied by a declaration by the responsible person of a recognised third party stating that the statement of accounts is a complete and correct record.

123. *Subsection (7)* amends section 100 of PPERA to require statements of accounts to be made available to the public by the Electoral Commission alongside spending returns under section 96. After a period of two years, beginning with the date when the return is received by the Commission, the return, and any accounts accompanying it, may be destroyed or, if requested by the responsible person of a third party, be returned to that person.

124. *Subsection (8)* amends Schedule 20 to PPERA by providing for the penalties applicable for any offences committed under section 98 or the new section 99A. *Subsection (9)* states that if section 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force before this Act is passed, then it applies to penalties under the new sections 98 and 99A.

**Clause 34: Third party expenditure in respect of candidates**

125. *Subsection (1)* amends the "permitted sum" in section 75(1ZA)(a) of the Representation of the People Act 1983 ("the 1983 Act") so that the level of expenditure a third party can i**n**cur when campaigning for or against a candidate without being authorised by the agent increases from £500 to £700. This figure has been increased to £700 in order to take into account the level of inflation since 2000.

126. *Subsection (2)* inserts a new section, section 75ZA of the 1983 Act, which allows for the returning officer or the Electoral Commission to request a record of the expenditure of a third party at a candidate level up to six months after the date of poll. Where over £200 has been spent, a full return must be made outlining all incurred expenditure. If an individual incurs expenditure of less than £200, they can state this in their return and they will not have to provide a full record of the expenditure they incurred.

127. Subsection (2) inserts a further new section, section 75ZB of the 1983 Act, which requires a person to comply with a request for a record of expenditure from the returning officer or Electoral Commission within 21 days and that the return must be accompanied by a declaration and contain details as to what expenses were incurred. A person who fails to provide a return or declaration will be guilty of an illegal practice. A person who knowingly makes a false declaration will be guilty of a corrupt practice.

**Clause 35: Functions of Electoral Commission with respect to compliance**

128. This clause amends section 145 of PPERA to provide that the Electoral Commission must monitor, and take all reasonable steps to secure, compliance with the restrictions and other requirements imposed by or by virtue of sections 24, 31 and 34 (in Part 2), Parts 3 to 7, and section 143 and 148 (of Part 10) of that Act.

129. This clause also extends the Electoral Commission's regulatory remit to cover provisions in Parts 2 and 10 of PPERA where civil sanctions are already available to it. This clause also extends the Electoral Commission's regulatory remit into areas concerning party registration and renewal requirements in Part 2 of PPERA as well as the rules for using imprints in election material in Part 10 of that Act.

**Part 3 - Trade Unions' Registers of Members**

**Clause 36: Duty to provide membership audit certificate**

130. The clause inserts new *section 24ZA* into TULRCA which creates the duty on unions to provide a membership audit certificate.

131. This clause introduces additional requirements to the existing duty in section 24(1) of TULRCA to maintain an accurate and up-to-date register of members. Those additional requirements are that unions must send, annually, to the CO a membership audit certificate that covers the reporting period. The clause defines the reporting period as the same period in relation to which the union must submit an annual return. If a federated trade union is subject to the duty in section 24ZA but is not required to send an annual return, it is to be treated as though it is required to send an annual return for the purposes of sending the membership audit certificate. Where the trade union has more than 10,000 members the membership audit certificate will be provided by an assurer. In all other cases the membership audit certificate will be provided by an officer of the union. Any union branch or section that is subject to the duty in section 24ZA by reason of being a trade union will be treated as having discharged the duty to the extent to which the union of which they are a branch or section discharges the duty instead of it. The CO must at all reasonable hours keep copies of all membership audit certificates sent to the CO available for public inspection and must provide a copy of any certificate to a person on request – either free or on payment of a reasonable charge. The union must supply a copy of its most recent membership audit certificate on request – either free or on payment of a reasonable charge.

**Clause 37: Duty to appoint assurer etc**

132. This clause inserts new *sections 24ZB to 24ZG* into TULRCA which concern the appointment, removal, rights and duties of an assurer.

133. Under section 24ZB a union must appoint a qualified independent person to be an assurer if it has more than 10,000 members. A qualified independent person is someone who satisfies the conditions set out in an order made by the Secretary of State or who is listed by name in the order. They must also be someone the union believes will act competently and independently. The assurer's terms of appointment will require the assurer to provide the membership audit certificate and require the assurer to make whatever enquiries are necessary to do this. Section 24ZD provides that the certificate must state whether, in the assurer's opinion, the union's system for compiling and maintaining the register was satisfactory for the purposes of complying with its duty to compile and maintain a register under section 24(1) throughout the reporting period. The assurer must also state whether, in the assurer's opinion, the assurer was able to obtain in accordance with section 24ZE all the information or explanations needed to carry out the assurer's task. The assurer has powers under section 24ZE to request access to the register of members and other documents the assurer considers may be relevant and to require union officers to provide information or explanations the assurer considers necessary for the performance of the assurer's functions. Section 24ZG imposes a duty on the assurer to treat the register of members as confidential by incorporating that duty into the terms of an

assurer's appointment. This clause will make consequential changes to sections 24A(3) and 299 of TULRCA to make clear that the meaning of "duty of confidentiality" in those sections is confined to the context of a scrutineer or independent person. The union's own rules must provide for the appointment and removal of an assurer. The appointment will continue until the assurer is removed in any of the circumstances set out in section 24ZC. Any union branch or section that is subject to the duties in sections 24ZB and 24ZC by reason of being a trade union will be treated as having discharged the duties to the extent to which the union of which they are a branch or section discharges the duties instead of it. Section 24ZF requires that an assurer who produces a negative audit certificate must send a copy to the CO as soon as is reasonably practicable after it is provided to the union. A negative certificate states that the system for compiling and maintaining the register is unsatisfactory, or the assurer has failed to obtain the information and explanations the assurer considers necessary. The negative certificate must state the assurer's reasons for making the statement and provide a description of the information or explanations and state whether that information or those explanations were required by the assurer under section 24ZE.

**Clause 38: Investigatory powers**

134. This clause inserts new sections 24ZH to 24ZK into TULRCA to provide for the CO to require the production of documents and appoint inspectors to investigate.

135. Section 24ZH gives power to the CO, if the CO thinks there is good reason to do so, to require a union, or any person who appears to be in possession of them, to produce its membership register or any other documents relevant to whether the union has complied with its duties under section 24(1) regarding the register, to the CO, to a member of the CO's staff or anyone else the CO has authorised. The CO or CO's agent has powers to take copies of the documents or to require the person who supplied the documents, an official or ex-official of the union, or an agent or ex-agent of the union (including an assurer), to provide an explanation. If the documents are not produced, the person required to supply them can be required to state, to the best of their knowledge and belief, where the documents are.

136. Under section 24ZI the CO may appoint a member of the CO's staff or a third party to investigate whether a union has complied with its duties under section 24(1) to maintain a membership register and to report back to the CO as required. This power can only be exercised where it appears to the CO that there are circumstances suggesting the union has failed to comply with its duties under that section or under section 24ZA or 24ZB. Officials or agents of a union (including an assurer) or any person who the inspector believes has relevant information may be required to cooperate with the inspector and to produce the membership register or any other documents the inspector considers may be relevant to whether the union has complied with its duties regarding the register. Such persons may also be required to meet the inspectors and to provide all reasonable assistance. Inspectors who are not members of the CO's staff are placed under a duty to treat the register of members as confidential.

137. Section 24ZJ provides for the provision of written interim and final reports to the CO. A final report is to be produced unless the CO directs the inspector to take only specified further steps

or no further steps in the investigation and that a final report is not required. An inspector can inform the CO of anything coming to their knowledge as a result of the investigation and must do so if the CO asks.

138. Section 24ZK contains limitations on the duties of disclosure contained in sections 24ZH and 24ZI. Information subject to legal professional privilege is not subject to the disclosure requirements although a lawyer could be required to disclose the name and address of their client. A person cannot refuse to provide an explanation or make a statement on the grounds that it may expose them to proceedings for an offence but any explanation or statement provided can only be used in evidence against them in a prosecution for an offence where that person makes a statement which is inconsistent with it. This clause will also make a consequential change to section 24A(4)(b) of TULRCA to provide that one of the permitted circumstances for the disclosure of a member's name and address under that section is where it is required by the CO.

**Clause 39: Enforcement**

139. This clause inserts *new sections 24B and 24C* into TULRCA to provide for the enforcement of the new duties on unions and of the new requirements imposed.

140. Section 24B gives the CO power to make a declaration that a trade union has failed to comply with the duties relating to the register of members under section 24(1) and the new duties imposed by section 24ZA to 24ZC. Before doing so, the CO may make enquiries and may give the union an opportunity to make oral representations. He must give the union the opportunity to make written representations and must also give written reasons for making the declaration. If, having given an opportunity for written representations, the CO determines not to make a declaration that the union has failed to comply with a duty the CO must give the union written notice of that determination.

141. Where the CO makes a declaration that the union has failed to comply with a duty, the CO must also make an enforcement order, unless he considers it would be inappropriate to do so.

142. If the CO requests a person to provide information in connection with the CO's enquiries under section 24B the CO must specify a date by which the information must be provided. If that deadline is not met, the CO must proceed to determining whether to make a declaration unless it would be inappropriate to do so. Declarations and enforcement orders made by the CO under the powers contained in section 24B can be relied upon and enforced as though they were an order of the court. They are enforceable by the CO and by any person who is a member of the union and was a member when the enforcement order was made.

143. Section 24C gives the CO power to make an enforcement order requiring a union or person to comply with any requirement to produce documents, to supply information or to cooperate with inspectors under section 24ZH or 24ZI. Any order made must specify what it is that the union or individual has failed to do and the date by which they must comply and can be enforced in the same way as an order of the court. Before making such an order the CO must

give the union or any other person an opportunity to be heard and can only make the order if the CO is satisfied that it is reasonably practicable for the union or person to comply with the duty and, where the order is for the production of documents, if the CO is satisfied that the documents are in the possession of that union or person.

144. Section 25 of TULRCA gives the CO a power to determine whether a union is complying with the requirements in section 24 if a member of the union applies for a declaration that the union has failed to do so. The CO is required to ensure that any such application is determined within six months of it being made, insofar as this is reasonably practicable. Clause 39(4) amends this section so that circumstances in which it may not be reasonably practicable to fulfil this requirement include those where delay is caused by the exercise of powers under sections 24ZH or 24ZI.

145. Clause 39(5) amends section 26 of TULRCA to provide that, where a person applies to the court alleging failure of the union to comply with its duties the court must have regard to any declaration or order regarding that failure made under section 24B. Clause 39(6) amends section 45D of TULRCA so that any decision of the CO under section 24B or 24C can be appealed on a question of law to the Employment Appeal Tribunal. Clause 39(3) amends section 24(6) of TULRCA to highlight the CO's new powers under section 24B. Clause 39(7) extends the power of the CO under section 256(1) of TULRCA so that the CO may regulate the procedure to be followed with respect to new sections 24B and 24C.

**Part 4 - Supplementary**

**Clause 40: Financial provision**

146. This clause authorises, out of money provided by Parliament, any expenditure incurred by a Minister of the Crown under the Bill. It also authorises any additional expenditure incurred under any other Acts, where that additional expenditure results from this Bill.

**Clause 41: Commencement**

147. Some of the provisions of the Act are to be commenced by order; the others come into force on Royal Assent:
    - Commencement of Part 1 will be by order made by the Secretary of State or the Lord President of the Council, except that powers to make regulations will commence on Royal Assent.
    - In Part 2, clauses 30, 31, 34 and 35 are to be commenced by order made by the Secretary of State or the Lord President of the Council; the remainder on Royal Assent. The amendments made in Part 2 that come into force on Royal Assent are subject to the transitional provision in clause 42.
    - Commencement of Part 3 will be by order made by the Secretary of State, other than the order-making power in clause 37 which will commence on Royal Assent.

**Clause 42: Transitional provision**

148. The Bill amends the third party controlled expenditure limits (clause 27), impacts on expenditure which counts towards the spending limit of a registered political party (clause 29), introduces constituency spending limits (clause 28), widens the scope of campaign expenditure (clause 26 and Schedule 3) and requires third parties to publish a statement of their accounts (clause 33). This clause ensures that these changes will apply for future regulated periods (which operate in relation to parliamentary general elections and general elections to the European Parliament and the devolved legislatures) and also will apply for the regulated period for the next UK parliamentary general elections.

149. Ordinarily, the regulated period for a UK parliamentary general election starts 365 days before the election. However, where that period overlaps with a regulated period for an election to the European Parliament or a devolved legislature, a longer combined period is substituted. In the absence of this clause, this would happen for the next parliamentary general election, the date for which has been fixed as 7th May 2015 by s1(2) of the Fixed-term Parliaments Act 2011, as an election for the European Parliament is due to be held between 22nd and 25th May 2014. Clause 42 makes provision to deal with this situation by creating a bespoke regulated period ("the transitional period") that will apply only in relation to the next UK parliamentary general election.

150. The transitional period will begin the day after the date of poll of the European election or, if that poll has already taken place, the day after Royal Assent, and will run until the date of the parliamentary general election.

151. This will have the effect that third party campaigners would not be subject to a new definition of controlled expenditure, or to changes to the limits applying to it (including the introduction of new limits) in the midst of a regulated period in which expenditure would have already been incurred.

152. Clause 42 also allows the Minister to disapply, by order, the provisions for a transitional period should a poll for an extraordinary general election to the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly take place during the course of the regulated UK parliamentary general election period. In that instance, the Minister may make, by order, alternative transitional provisions.

**Clause 43: Extent**

153. This clause sets out the territorial extent of the various provisions in the Bill. Part 1 of the Bill extends to the whole of the United Kingdom. Parts 2 and 3 of the Bill operate by amending existing legislation. In order to ensure that they work coherently with that legislation, the clause provides that they have the same extent as the enactment that they are amending or repealing. In most cases this means they will extend to the United Kingdom, but in some instances in Part 2 they will extend to Gibraltar as well. Part 4, which includes supplementary provision about the Bill, extends to the United Kingdom and Gibraltar.

**Clause 44: Short title**

154. This clause sets out the short title of the Bill.

## FINANCIAL EFFECTS

155. The provisions relating to the statutory register of lobbyists will establish a Registrar of Consultant Lobbyists who will administer the register, make it publicly available and supervise compliance with the registration requirement. It is estimated that the total cost of the Registrar will be £500,000 in the first, start-up, year and £200,000 in subsequent years (2013/2014 price terms). It is anticipated that these costs will be recovered via the subscription fee.

156. The provisions relating to third parties will result in additional enforcement and compliance activities to be undertaken by the Electoral Commission. It is estimated that this will result in an increase to the Electoral Commission's running costs of a maximum of £390,000 per annum.

157. The net average annual cost of the provisions relating to trade union administration is estimated to be £130,000 – £150,000.

## PUBLIC SECTOR MANPOWER

158. The provisions have no substantial effect on public sector manpower.

## IMPACT ASSESSMENT

159. Provisions on Trade Unions' Registers of Members have no direct negative impact on business. However, a full draft Impact Assessment has been developed and published. An initial Equalities Impact Assessment has been conducted and cleared as fit-for-purpose. Full Impact Assessments on Lobbying and Third Party Campaigning have been conducted.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

160. There are a number of provisions in the Bill which may give rise to European Convention of Human Rights (ECHR) issues. In the assessment of the Cabinet Office and Department for Business, Innovation and Skills the Bill complies with the UK's obligations arising under the ECHR. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement before Second Reading about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act).

161. Having considered the possible implications, Lord Wallace of Saltaire has made a statement saying that in his view the provisions of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill are compatible with the Convention rights. There are some areas where it would be helpful to provide further comments for clarification, and these are set out below.

**Part 1 – Registration of Consultant Lobbyists**

*Personal information in the register of consultant lobbyists*

162. The register of consultant lobbyists will contain personal information such as the lobbyist's name, address, list of clients etc. The Register will be publicly available (including on a website). Article 8 ECHR (the right to respect for private and family life) protects personal data as part of the subject's private life. The obligation to provide personal data[1], and the collection and storage of personal data will engage Article 8 rights.

163. The information which the legislation requires to be provided and published in the Register is not of a highly personal or sensitive nature. It consists of client information (clause 4(3)), the individual's name and the address of the individual's main place of business (or, if there is no such place, the individual's main residence) (clause 4(2)(c)) and any other name or names under which the person carries on business as a consultant lobbyist (clause 4(2)(e)). There is also a power (in clause 4(5)) to require the inclusion of such information as may be specified in regulations and, in accordance with section 6 of the Human Rights Act, this must be exercised in a way which is compatible with Convention rights, including Article 8 rights. This regulation-making power might be exercised to require the inclusion of for example, the particular projects of a client which lobbying is in relation to or the particular communications which related to that client.

164. Any interference by the state in relation to the rights set out in Article 8(1) must be justified under Article 8(2). Given the statutory basis for the scheme, there is no doubt that any interference is in accordance with the law and this is in pursuance of a legitimate aim of the protection of the rights and freedoms of others because the aim is to safeguard the democratic process from undue and secret influence by consultants who are receiving payment to influence government policy. This is a pressing social need which is central to a well-functioning democratic society. The Government is satisfied that it is necessary and proportionate for such information to be collected and published because it is essential to identifying who relevant lobbyists are and ensuring transparency in this aspect of the political system.

[1] *X v UK*, App No. 9702/82 (concerning the obligation to give data in response to a compulsory public census)

*Personal information which the Registrar may require to be supplied*

165. Article 8 rights may be engaged by a requirement to provide public bodies with personal information. Therefore an issue arises in respect of the requirement on a lobbyist to supply information under a notice under clause 9, which could potentially include personal information such as correspondence and telephone records.

166. However, the Government considers that the obligation to provide information is capable of being justified and proportionate in accordance with the provisions of Article 8(2). There is some analogy to the case of *M.S. v. Sweden*[2] in which the medical records of an individual were obtained without the consent of that individual by the Social Insurance Office in the course of assessing the individual's entitlement to compensation. This was recognised as a legitimate aim by the court. Here, the information which the Registrar may require will not be sensitive personal information such as medical records. The information demanded must be in connection with the Registrar's duty to monitor compliance with the obligations under Part 1. We consider that there is no reasonably practicable way to monitor the activities of lobbyists unless the relevant individuals are required to provide information about their activities. There is a strong public interest in the activities of lobbyists who are trying to influence Government policy and the awarding of contracts etc being transparent. Clause 10 of the Bill limits the duty on a person to supply information if doing so would disclose evidence of the commission of a criminal offence (other than an offence under Part 1 or perjury) and prevents any statement made by a person in response to a requirement in an information notice being used in evidence against that person on a prosecution for an offence under Part 1 unless specified conditions are met.

167. The Data Protection Act 1998 (DPA 1998) regulates the processing of personal information about individuals and, in effect, places limits on the type of information which the Registrar may request and how the Registrar deals with it. The Registrar must process such information in accordance with the data protection principles. This means that information will only be able to be processed fairly and lawfully and it must be adequate, relevant and not excessive in relation to the purpose or purposes for which it is processed. It must also be accurate and, where necessary, kept up-to-date.

*Right to silence and right to be protected against self-incrimination*

168. When the Bill is commenced it will be an offence for a person to carry on the business of consultant lobbying whilst unregistered. The Registrar may serve a notice on a person requiring them to supply specified information. If provided, such information may reveal that the person is guilty of an offence under this Bill or indeed any other criminal offence e.g. bribery, and if the person fails to comply with the notice, this is an offence. Although Article 6 does not include an express reference to the right not to be compelled to testify against

[2] (1999) 28 EHRR 313

oneself or to confess guilt, the European Court of Human Rights has held in *Funke v France*[3] that a person charged with an offence within the meaning of Article 6 has the right to remain silent and not to contribute to incriminating himself. Therefore an issue arises as to whether the imposition of an offence in respect of a refusal to comply with a notice served by the Registrar is compatible with Article 6.

169. An information notice may not require a person to supply information if doing so would disclose evidence of the commission of a criminal offence, other than an offence under Part 1 of the Bill or a limited range of perjury offences, and expose the person to proceedings for that offence; the level of penalty may, in serious cases, be a fine imposed after criminal proceedings or may be only a civil penalty; there is no reason to think that there would be any improper coercion or oppression. It is also relevant that the power to require the supply of information and accompanying enforcement regime, are crucial to the ability of the Government to ensure that lobbying is regulated. We consider that there is no other practicable way to ensure that the relevant information is produced. In that connection we note that the enforcement regime is similar to that which applies in the DPA 1998 context and this is perfectly legitimate. In particular, the Commissioner may investigate the way in which personal data has been handled and may serve the data controller with an information notice requiring him to supply specified information (see section 43 of the Act).

170. In the Government's view, in all the circumstances, the requirement and enforcement regime are proportionate.

*Requiring payment for registration*

171. Article 1 of Protocol No. 1 (protection of property) is engaged by the power of the Registrar to charge fees in connection with the making, updating, and maintenance of entries in the register. "Contributions" within the meaning of the second paragraph have been held to include, for example, compulsory contributions to state benefit schemes[4] and employers' associations[5]. The payment of a fee contributing to the administration of the Register would probably be regarded as a "contribution" for these purposes. States are accorded a very wide margin of appreciation in this field.

172. Fees are to be imposed simply to ensure that the maintenance of the Register of Consultant Lobbyists is not a drain on the public purse. The level of fee is to be set at an amount which covers the costs incurred by the Registrar in exercising his functions so should not be excessively high.

173. We estimate that this will be £200-£450 per annum so this will not therefore be a bar on someone carrying out their business activity particularly in light of de minimis exclusion

[3] (1993) 16 EHRR 297 (para 44).
[4] E.g. *Van Raalte v Netherlands* (1997) 24 EHRR 503 (paras 34 and 35)
[5] *X Co v Netherlands*, App No 7669/76

which means that only lobbyists who are VAT registered are required to register as lobbyists (generally businesses working in the UK whose annual turnover exceeds £79,000 are required to be VAT registered). It is not unusual to impose fees to require people to contribute to the cost of operating a scheme (see for example, section 26 of the DPA 1998). In all the circumstances, the Government considers that this strikes a fair balance.

**Part 2 – Non-Party Campaigning etc.**

*Spending limits*

174. There are some general principles relevant to spending limits applicable to third parties during an election.

175. Under Article 10, political expression attracts the highest level of protection because freedom of political debate is at the heart **of the creation and development of** a democratic society. In *R (ProLife Alliance) v BBC* [2004] 1 AC 185 (para 8), Lord Nicholls said:

"Freedom of political speech is a freedom of the very highest importance in any country which lays claim to being a democracy. Restrictions on this freedom need to be examined rigorously by all concerned, not least the courts."

176. In *Bowman v UK*[6] the applicant (who was the director of an anti-abortion campaign group) distributed leaflets prior to a parliamentary election and was prosecuted for an offence that prohibited expenditure of more than £5 by unauthorised persons before an election in the conveyance of information to electors. The applicant challenged the prosecution on human rights grounds. A majority of the court held that the limitation on the amount of money that could be spent amounted to a restriction on freedom of expression. This was prescribed by law and pursued the legitimate aim of securing equality between elections candidates. However, the restriction was not proportionate to the aim pursued since it was not necessary to limit her expenditure to as low an amount as £5 in order to achieve the aim of securing equality between the candidates, particularly in view of the fact that there were no restrictions placed on the freedom of the press to support or oppose the election of any particular candidate or upon political parties and their supporters to advertise at national or regional level provided that such advertisements were not intended to promote or prejudice the electoral prospects of any particular candidate in any particular constituency. There had therefore been a violation of Article 10.

177. In assessing whether the restriction was necessary in a democratic society and proportionate, the Court considered freedom of expression in the light of the right to free elections protected by Article 3 of Protocol 1. It emphasised that free elections and freedom of expression, particularly freedom of political debate, together form the bedrock of any democratic system. Freedom of expression is one of the "conditions" necessary to "ensure the free expression of

[6] Application No. 24839/94, (1998) 26 EHRR 1

the opinion of the people in the choice of the legislature"[7]. It was therefore of particular importance that in the period preceding an election, opinions and information of all kinds are able to circulate freely. However, as is recognised in *Bowman*, in certain circumstances it is possible for the right under Article 3 of Protocol 1 to come into conflict with the right under Article 10. In the run up to an election it may therefore be necessary to place restrictions on freedom of expression, in order to secure the "free expression of the opinion of the people in the choice of legislature" as is protected by Article 3 Protocol 1. In that case, the limitation on expenditure was disproportionately low.

178. States have a wide margin of appreciation when it comes to the organisation of their electoral systems[8] and the Court has recently demonstrated a similar allowance in the related context of paid political advertising. In *Animal Defenders International v UK*[9], the Court had to decide whether a restriction on advertising on TV and radio went too far in restricting the right to participate in public debate. It weighed in the balance, on the one hand, the applicant NGO's right to impart information and ideas of general interest which the public is entitled to receive, with, on the other hand, the authorities' desire to protect the democratic debate and process from distortion by powerful financial groups with advantageous access to influential media. The Court allowed the UK a considerable margin of appreciation[10] in relation to its regulatory regime in this context and, amongst other things, noted that there was no European consensus on how to regulate paid political advertising in broadcasting. The Court considered that convincing reasons had been given for the ban on political advertising in the United Kingdom and that it had not amounted to a disproportionate interference with the applicant NGO's right to freedom of expression.

179. Applying these principles, we consider that all of the spending limits in this Bill are compatible with Article 10. We have taken into account the amount that third parties are still permitted to spend under the reduced limits, the amount that they spend now and the sizeable amount of campaigning that they will be able to do well within the new limits. The limits will in no way deprive third parties of the ability to make a contribution to the political debate. For all these reasons the Government is therefore satisfied that they are a proportionate response.

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[7] *Mathieu-Mohin and Clerfayt v Belgium* (judgment of 2 March 1987), series A no. 113, p24, para 54 as referred to at para 42 in *Bowman*.

[8] *Bowman* at para 43.

[9] Application no. 48876/08 (judgment of the Grand Chamber April 2013), in which Animal Defenders International complained that it had been unjustifiably denied the opportunity to advertise on TV or radio and the Grand Chamber found that there had been no violation of Article 10.

[10] See for example, para 111: Accordingly, it is relevant to recall that there is a wealth of historical, cultural and political differences within Europe so that it is for each State to mould its own democratic vision (*Hirst v. the United Kingdom (no. 2)* [GC], § 61; and *Scoppola v. Italy (no. 3)* [GC], § 83, both cited above). By reason of their direct and continuous contact with the vital forces of their countries, their societies and their needs, the legislative and judicial authorities are best placed to assess the particular difficulties in safeguarding the democratic order in their State (*Ždanoka v. Latvia* [GC], cited above, § 134). The State must therefore be accorded some discretion as regards this country-specific and complex assessment which is of central relevance to the legislative choices at issue in the present case.

180. Article 11 protects the right to freedom of association and peaceful assembly, primarily a right not to be prevented or restricted by the state from meeting and associating with others, save to the extent permitted by Article 11(2).

181. The right to freedom of association with others includes the right to associate with political parties and groups pursuing particular aims. The imposition of limits on what a third party may spend in relation to an election in support of a political party may restrict their freedom to associate with particular political parties and, conversely, members of political parties are restricted in their freedom to campaign. We therefore consider that Article 11 rights are engaged by the imposition of spending limits in relation to campaign funding.

182. Such spending limits are "prescribed by law" because they are based in statute and are prescribed in a way which is sufficiently precise and accessible to enable the individual to foresee, to a degree that is reasonable in the circumstances, the consequences which a spending over the limits would have. As noted above in relation to Article 10, the provisions pursue a legitimate aim of securing equality between elections candidates, preventing distortion of system by powerful interest groups and preventing the circumvention of spending limits lawfully imposed on political parties and we are content that the limits are high enough to be proportionate and do not act as a significant bar on the ability of groups to assemble and associate with others.

*Enforcement*

183. New section 95F in clause 32 introduces a power of forfeiture in connection with concealing the existence or true amount of a donation. Since someone might ultimately be deprived of their property as a result of this provision, it engages Article 1 of Protocol 1 but the Government thinks that such a measure is necessary and proportionate. It is essential to have a sanction underpinning the reporting provisions in new sections 95A and 95C to ensure that they are effective and there are comparable powers of forfeiture in related contexts already. The power is modelled on the forfeiture provision in section 58 of PPERA which applies for political parties and in relation to third parties where they receive an impermissible donation (paragraph 7 of Schedule 11 to PPERA).

**Part 3 – Trade Unions' Registers of Members**

184. These clauses in this Part require a trade union which is subject to the duty in section 24 of TULRCA and others to grant access to the union's register of members and other information which may be relevant to determine whether the union is compliant with statutory obligations in relation to that register. The names and addresses of union members are sensitive data for the purposes of the DPA 1998 so can only be processed consistently with that Act. The disclosure of this data in accordance with the new sections inserted into TULRCA engages the Convention rights discussed below.

185. Article 11 provides that everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join a trade union for the protection of his interests, subject to the derogation article 11(2). The essential object of Article 11 is to protect the individual against arbitrary interference by public authorities with the exercise of the right to freedom of association. In addition, national authorities may, in certain circumstances, be under positive obligations to secure the effective enjoyment of those rights (Demir and Baykara v Turkey, no 34503/97) (Grand Chamber, para 110).

186. The following essential elements of the right of association have been established: the right to form and join a trade union (see, for example, *Tüm Haber Sen and Çınar v. Turkey*, no. 28602/95, ECHR 2006 II, (2006) 46 EHRR 374), the prohibition of closed shop agreements (see, for example, *Sørensen and Rasmussen v. Denmark*, no. 52562/99 and 52620/99 ECHR 2006-1), the right for a trade union to seek to persuade the employer to hear what it has to say on behalf of its members (*Wilson, National Union of Journalists and Others v. the United Kingdom*, no. 30668/96, 30671/96 and 30678/96, EHRR 20) and the right to collective bargaining (*Demir and Baykara v. Turkey*, supra).

*Clause 36: Duty to provide membership audit certificate*

187. Under clause 36, trade unions which are subject to the obligation in section 24 of TULRCA to compile and maintain a register of members are subject to a requirement to provide annually a membership audit certificate. A union and other persons may be required to disclose details of the union's membership (including names and addresses) to persons other than individual members namely to the CO or any investigator appointed by the CO. In addition, if the union has over 10,000 members, it may have to disclose such details to its assurer. The assurer and any inspector who is not a member of staff of the CO are subject to obligations of confidentiality in relation to this information through section 24ZG and 24ZI(6) of TULRCA. The CO is a public authority for the purposes of the Human Rights Act 1998 and so he is subject to the obligation in section 6 of that Act to act consistently with Convention rights.

188. The DPA 1998 defines "sensitive personal data" as specifically including data relating to an individual's political opinions and membership of a trade union (section 2). Under the DPA 1998 data controllers (which would include the CO, an investigator appointed by the CO and the union's assurer) are required to comply with the data protection principles (as contained in Schedule 1) in relation to personal data held by them, including the first data protection principle, which requires that personal data must be processed fairly and lawfully. Nothing in the Bill will disapply the safeguards provided by UK data protection legislation.

189. In the light of these safeguards the Government considers that the provisions in the Bill regarding union membership lists should not undermine the right of individuals to join a trade union and do not negatively impact on an individual's right to freedom of association.

190. Article 8(1) of the ECHR provides that everyone has the right to respect for his private and family life. The name and address of each member on the register are personal details which

are within the scope of article 8(1) as they form part of the individual's private life. An assurer appointed by a trade union and an inspector appointed by the CO under section 24ZI are subject to the confidentiality obligations in section 24ZG and 24ZI(6). We consider that these protections on the use of a member's personal details, together with the protections conferred by the DPA 1998 and section 6 of the Human Rights Act 1998, are in accordance with law and the powers conferred to obtain and use these membership details are necessary and proportionate to enable the CO, assurer and inspector to carry out their functions under TULRCA and are therefore justified under article 8(2) of the ECHR.

*Clause 37: Duty to appoint an assurer and Clause 38: Investigatory powers*

191. Article 8(1) ECHR also provides that everyone has the right to respect for his correspondence. Trade unions and other persons can be required to answer questions in relation to documents produced to the CO under section 24ZH and in the course of an investigation carried out under section 24ZI. To the extent that these documents may be correspondence within the meaning in article 8(1), we consider that the powers to request them are consistent with the derogation under article 8(2) ECHR. The CO can only request documents under section 24ZH if he considers that there is good cause and an inspector can only be appointed under section 24ZI if it appears that there are circumstances suggesting that the union has failed to comply with the requirements which apply in relation to the register. The CO can only issue an order in relation to the production of a document to a person who possesses it and also if it is reasonably practicable for them to comply (see section 24C). The protections conferred by section 24ZK also apply and the protections in the DPA 1998 will apply to the extent that the documents contain personal data. We consider that sections 24ZH and 24ZI are necessary and proportionate powers to enable the CO to carry out his functions in the interests of ensuring that the membership of trade unions is correctly recorded and are therefore justified under article 8(2) ECHR.

192. Article 1 of the First Protocol to the ECHR provides that every person (natural or legal) is entitled to the peaceful enjoyment of his possessions and that no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. Article 1 Protocol 1 is a qualified right and it does not impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties. Documents which the CO or any inspector appointed by the CO may request or copy may be the property of the union or others and therefore relevant for the purposes of Article 1 Protocol 1. To the extent that this Article is engaged in relation to these powers, we consider that they are justified by the public interest in ensuring that a trade union's register of members is kept in accordance with the requirements of section 24 of TULRCA. The limitations on the duty to provide documents set out in section 24ZK are sufficient to ensure that derogation from Article 1 Protocol 1 is necessary and proportionate.

193. We consider that the requirements and duties placed on trade unions and others to answer questions on documents produced to the CO under section 24ZH and in the course of an

investigation under section 24ZI are consistent with the right to freedom from self-incrimination in relation to criminal proceedings which arises under article 6(1) ECHR. There is no criminal sanction under TULRCA for failure to answer these questions so there could only be a possibility of self-incrimination occurring as a result of the information being used in criminal proceedings under other legislation or the common law. The provisions in the Bill impose a duty to answer but this is qualified. Section 24ZK provides that legal professional privilege applies and where a person has been required to provide an explanation or make a statement through the exercise of the powers in section 24ZH or 24ZI, it can only be used in evidence against the person who made it to the extent that, when subsequently giving evidence, that person makes a statement that is inconsistent with it. The CO can only issue an enforcement order where a person has failed to provide an explanation or statement if he considers that it is reasonably practicable for the union or person to comply with that duty. These provisions do not by themselves interfere with the right to freedom from self-incrimination.

*Clause 39: Enforcement*

194. Under sections 24B and 24C of TULRCA (which are introduced by this clause) the CO can issue a declaration that a union is not compliant with its obligations in relation to the register of members or the new duties under sections 24ZA to 24ZC. He can also issue an enforcement order where he makes such a declaration or make an order where the union or a person has failed to supply information or documents when required to do so consistently with section 24ZH or 24ZI. Article 6(1) ECHR provides that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. This may be satisfied by a right of appeal on a point of law to a judicial body with limited jurisdiction as to matters of fact (Bryan UK (1995) 21 EHHR 342). Rights determined in public or administrative proceedings can be civil in character if the outcome is directly decisive of a right of a private nature. We consider that the CO's powers to issue declarations and orders are within the scope of article 6(1). The CO can only make a declaration or an order once he has given the union or person the opportunity to make representations. He must also give reasons if he issues a declaration. Any decision of the CO under section 24B or 24C can be appealed to the Employment Appeal Tribunal on a point of law. Consequently, in light of the right of a union or person to make representations before the CO makes determinations or orders; the duty on the CO to provide written reasons for his determinations; and the right of appeal to the EAT it is the view of the Government that these provisions are consistent with the right to a fair and impartial hearing.

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

# EXPLANATORY NOTES

*These notes refer to the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill as brought from the House of Commons on 9th October 2013 [HL Bill 50]*

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