

Lobbying (Transparency) Bill [HL]

MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

[Amendments marked ★ are new or have been altered]

Amendment
No.

Clause 1

LORD LANSLEY

- 1 Page 1, line 3, leave out “Secretary of State” and insert “Minister”
- 2 Page 1, line 6, leave out paragraph (b)
- 3 Page 1, line 11, leave out subsection (4) and insert –
“(4) Schedule (*The Registrar of Lobbyists*) makes further provision about the Registrar.”

Clause 2

LORD LANSLEY

- 4 Page 2, line 4, after “or” insert “controlling”
- 5 Page 2, line 22, leave out “, policy, or position” and insert “or policy”
- 6 Page 3, line 6, at end insert –
“() For the purposes of subsection (8), payment does not include any sums payable to a member of either House of Parliament –
(a) under section 4 (determination of MPs’ salaries) or 5 (MPs’ allowances scheme) of the Parliamentary Standards Act 2009,
(b) pursuant to a resolution of the House of Lords, or
(c) otherwise out of money provided by Parliament or out of the Consolidated Fund.”

Clause 3

LORD LANSLEY

- 7 Page 3, line 24, at end insert—
 “() any communication which is required to be made by, or under, any statutory provision or other rule of law;”
- 8 Page 3, line 28, leave out “widely and publicly available, such as a speech” and insert “to audiences which primarily include those who are not public officials, or to audiences in respect of which public officials are amongst a wider audience”
- 9 Page 3, line 30, leave out paragraph (b)
- 10 Page 3, line 34, leave out from “communication” to end and insert “made through publicly accessible media, including press and broadcast media”

Clause 5

LORD LANSLEY

- 11 Page 4, line 30, leave out paragraph (e)
- 12 Page 4, line 37, leave out paragraph (h)

Clause 7

LORD BROOKE OF ALVERTHORPE

- 13★ Page 5, line 26, leave out subsection (3) and insert—
 “(3) The Secretary of State must lay a draft of the Code of Conduct, or of revisions to the code, before Parliament.
 (3A) When the Secretary of State has laid a draft of the code, or of the revisions to the code, before Parliament the Secretary of State may bring the code or the revisions into operation by order made by statutory instrument.
 (3B) No order may be made by the Secretary of State under subsection (3A) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.”

LORD LANSLEY

Lord Lansley gives notice of his intention to oppose the Question that Clause 7 stand part of the Bill.

Clause 8

LORD LANSLEY

- 14 Page 5, line 44, leave out paragraph (b)

After Clause 8

LORD LANSLEY

15 Insert the following new Clause –

“Duty to monitor

The Registrar must monitor compliance with the obligations imposed by or under sections (*Notice to supply information*), (*Limitations on duty to supply information and use of information supplied*) and (*Right to appeal against information notice*).”

16 Insert the following new Clause –

“Notice to supply information

- (1) In connection with the duty under section (*Duty to monitor*), the Registrar may serve a notice (an “information notice”) on a person mentioned in subsection (2) requiring the person to supply information specified in the notice.
- (2) The persons are –
 - (a) any registered person;
 - (b) any person who is not entered in the register but whom the Registrar has reasonable grounds for believing to be a consultant lobbyist.
- (3) Regulations may specify descriptions of information which the Registrar may not require a person to supply under this section.
- (4) An information notice must –
 - (a) specify the form in which the information must be supplied,
 - (b) specify the date by which the information must be supplied, and
 - (c) contain particulars of the right to appeal under section (*Right to appeal against information notice*).
- (5) The date specified under subsection (4)(b) must not be before the end of the period within which an appeal under section (*Right to appeal against information notice*) can be brought.
- (6) Section (*Limitations on duty to supply information and use of information supplied*) sets out limitations on –
 - (a) what information is required to be supplied under a notice, and
 - (b) how information which is supplied may be used.
- (7) Where an information notice has been served on a person, the Registrar may cancel it by serving written notice to that effect on the person.”

17 Insert the following new Clause –

“Limitations on duty to supply information and use of information supplied

- (1) An information notice does not require a person to supply information if –
 - (a) doing so would disclose evidence of the commission of an offence, other than an offence excluded by subsection (2), and
 - (b) the disclosure would expose the person to proceedings for that offence.
- (2) The following offences are excluded from subsection (1) –
 - (a) an offence under section 9 of this Act;

After Clause 8 - continued

- (b) an offence under section 5 of the Perjury Act 1911 (false statements made otherwise than on oath);
 - (c) an offence under section 44 of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath);
 - (d) an offence under Article 10 of the Perjury (Northern Ireland) Order 1979 (SI 1979/1714 (NI 19)) (false statutory declarations etc).
- (3) Any relevant statement made by a person (“P”) in response to a requirement in an information notice may not be used in evidence against P on a prosecution for an offence under section 9 unless the conditions in subsection (4) are met.
- (4) The conditions are that in the proceedings –
- (a) in giving evidence P provides information inconsistent with the relevant statement, and
 - (b) evidence relating to the statement is adduced, or a question relating to it is asked, by P or on P's behalf.
- (5) In subsection (3) “relevant statement”, in relation to a requirement in an information notice, means –
- (a) an oral statement, or
 - (b) a written statement made for the purposes of the requirement.”

18 Insert the following new Clause –

“Right to appeal against information notice

- (1) A person on whom an information notice has been served may appeal to the Tribunal against the notice.
- (2) If an appeal is brought under this section, the person is not required to supply the information until the date on which the appeal is finally determined or withdrawn.
- (3) Regulations may make provision for and in connection with the determination of appeals under this section.”

Clause 9

LORD LANSLEY

19 Page 6, line 19, at end insert –

- “(2A) It is a defence for a person charged under this section to show that the person exercised all due diligence to avoid committing the offence.”

After Clause 9

LORD LANSLEY

20 Insert the following new Clause –

“Civil penalties

- (1) The Registrar may impose a civil penalty on a person (in accordance with sections (*Notice of intention to impose civil penalty*), (*Imposition of penalty*), (*Right to appeal against imposition of civil penalty*) and (*Civil penalties and criminal proceedings*)) if the Registrar is satisfied that the person's conduct amounts to an offence under section 9.
- (2) For this purpose –
 - (a) section 9(2A) is to be ignored, and
 - (b) a person's conduct includes a failure to act.”

21 Insert the following new Clause –

“Notice of intention to impose civil penalty

- (1) Before imposing a civil penalty on a person, the Registrar must serve on that person a notice stating that the Registrar proposes to impose the penalty.
- (2) The notice must –
 - (a) set out the conduct on which the proposal to impose the penalty is based,
 - (b) set out the reasons why the Registrar is satisfied that the person has engaged in that conduct,
 - (c) state the amount of the proposed penalty, and
 - (d) inform the person that the person may, within a period specified in the notice, make written representations in relation to the proposal.
- (3) The Registrar must not impose the penalty before the end of the period specified under subsection (2)(d).
- (4) The Registrar must consider any written representations received before the end of that period.”

22 Insert the following new Clause –

“Imposition of penalty

- (1) If the Registrar decides to impose a civil penalty, the Registrar must serve on the person a notice to that effect (a “penalty notice”).
- (2) The notice must –
 - (a) set out the conduct on which the decision to impose the penalty is based,
 - (b) set out the reasons why the Registrar is satisfied that the person has engaged in that conduct,
 - (c) state the amount of the penalty,
 - (d) specify the period within which and the form in which the penalty must be paid, and
 - (e) contain particulars of the right to appeal under section (*Right to appeal against imposition of civil penalty*).

After Clause 9 - continued

- (3) The amount specified in a penalty notice must not exceed £7,500.
- (4) Regulations may amend subsection (3) by substituting a different maximum figure.
- (5) The period specified under subsection (2)(d) must not end before the end of the period within which an appeal under section (*Right to appeal against imposition of civil penalty*) can be brought.
- (6) The person must pay the amount before the end of that period (but this is subject to section (*Right to appeal against imposition of civil penalty*)(2)).
- (7) Where a penalty notice has been served on a person, the Registrar may vary or cancel it by serving written notice to that effect on the person.”

23 Insert the following new Clause –

“Right to appeal against imposition of civil penalty

- (1) A person on whom a penalty notice has been served may appeal to the Tribunal against –
 - (a) the decision to impose the penalty;
 - (b) if the penalty notice has been varied, the decision to vary it;
 - (c) the amount of the penalty.
- (2) If an appeal is brought under this section, the person is not required to pay the penalty until the date on which the appeal is finally determined or withdrawn.
- (3) Regulations may make provision for and in connection with the determination of appeals under this section.”

24 Insert the following new Clause –

“Civil penalties and criminal proceedings

- (1) The Registrar may not impose a civil penalty on a person in respect of any conduct –
 - (a) at any time after criminal proceedings for an offence under section 9 have been instituted against the person in respect of that conduct and before those proceedings have been concluded, or
 - (b) after the person has been convicted of an offence under section 9 in respect of that conduct.
- (2) If the Registrar has imposed a civil penalty on a person in respect of any conduct, the person may not be convicted of an offence under section 9 in respect of that conduct.”

25 Insert the following new Clause –

“Enforcement

- (1) An amount payable to the Registrar as a civil penalty may be recovered by the Registrar as a debt.
- (2) In proceedings for the enforcement of a civil penalty no question may be raised as to –

After Clause 9 - continued

- (a) liability to the imposition of the penalty, or
 - (b) the amount of the penalty.
- (3) The Registrar must pay into the Consolidated Fund any sums received by virtue of a penalty notice.”

26 Insert the following new Clause—

“Further provision about civil penalties

Regulations may make further provision about civil penalties; and in particular may—

- (a) specify circumstances in which a penalty may not be imposed;
- (b) specify steps that the Registrar must take before imposing a penalty;
- (c) set a minimum for the period which must be specified under section (*Notice of intention to impose civil penalty*)(2)(d) or (*Imposition of penalty*)(2)(d);
- (d) require other matters to be specified in a notice under either of those sections;
- (e) specify a maximum period that may elapse between the service of a notice under section (*Notice of intention to impose civil penalty*) and the service of a penalty notice under section (*Imposition of penalty*);
- (f) provide for the reviewing of a decision to impose a penalty;
- (g) make provision about the variation or cancellation under section (*Imposition of penalty*)(7) of penalty notices;
- (h) impose duties on the Registrar about the keeping of accounts and other records in relation to penalties;
- (i) allow for the charging of interest, or an additional penalty, if a penalty is paid late.”

After Clause 10

LORD LANSLEY

27 Insert the following new Clause—

“Guidance

- (1) The Registrar may give guidance about how the Registrar proposes to exercise the functions under this Act.
- (2) The Registrar may do so, in particular, by publishing guidance—
 - (a) as to the circumstances in which the Registrar would, or would not, consider that a person is carrying on the business of consultant lobbying;
 - (b) as to the circumstances in which the Registrar would remove a person's entry from the register;
 - (c) as to the circumstances in which the Registrar would consider it appropriate to impose a civil penalty;
 - (d) about how the amount of a civil penalty will be determined.
- (3) The Registrar may publish—

After Clause 10 - continued

- (a) revisions to any guidance published under this section;
 - (b) replacement guidance.
- (4) Publication under this section is to be –
- (a) on a website, and
 - (b) in such other form or forms as the Registrar considers appropriate.”

28 Insert the following new Clause –

“Charges

- (1) The Registrar may impose charges for or in connection with the making, updating and maintenance of entries in the register.
- (2) The charges are to be determined by or in accordance with regulations.
- (3) In making the regulations, the Minister must seek to ensure that the total paid to the Registrar in charges is sufficient to offset the total of the costs incurred by the Registrar in exercising the functions under this Part (whether or not those costs are directly connected with the keeping of the register).
- (4) If a charge imposed for making an application or a return to the Registrar is not paid, the Registrar may treat the application or return as not having been made.
- (5) The Registrar must pay into the Consolidated Fund any sums received in respect of charges under this section.”

29 Insert the following new Clause –

“Regulations

- (1) Any reference in this Act to regulations is to regulations made by the Minister.
- (2) Regulations under this Act may make such consequential, supplementary, incidental or transitional provision as the Minister considers appropriate, including provision amending or modifying the provisions of this Act.
- (3) Regulations under this Act may make different provision for different purposes or cases.
- (4) Regulations under this Act are to be made by statutory instrument.
- (5) A statutory instrument containing any of the following regulations may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament –
 - (a) the first regulations to be made under sections (*Right to appeal against information notice*)(3) and (*Right to appeal against imposition of civil penalty*)(3);
 - (b) regulations under this section or section (*Charges*) which amend or modify the provisions of this section or that section.
- (6) Any other statutory instrument containing regulations under this Act is to be subject to annulment in pursuance of a resolution of either House of Parliament.”

After Clause 12

LORD LANSLEY

30 Insert the following new Schedule—

“SCHEDULE

THE REGISTRAR OF LOBBYISTS

Status

- 1 The Registrar is a corporation sole.
- 2 The Registrar exercises the functions of that office on behalf of the Crown.

Appointment

- 3 (1) The Registrar is to be appointed by the Minister.
- (2) The Registrar holds office in accordance with the terms and conditions of that appointment; but this is subject to sub-paragraphs (3) to (6).
- (3) The term of office for which the Registrar is appointed must not be more than 4 years.
- (4) A person may be appointed for a second or third term; but the term for which a person is re-appointed must not be more than 3 years.
- (5) The Registrar may resign by giving written notice to the Minister.
- (6) The Minister may dismiss the Registrar if the Minister is satisfied that the Registrar is unable, unwilling or unfit to perform the functions of the office.
- 4 (1) A person is ineligible for appointment as the Registrar if, at any time in the previous 5 years, the person—
 - (a) was a Minister of the Crown or a permanent secretary, or
 - (b) carried on the business of consultant lobbying or was an employee of a person who carried on that business.
- (2) For the purposes of this paragraph—

“Minister of the Crown” means the holder of an office in the government, and includes the Treasury;

“permanent secretary” means a person serving the government in—

 - (a) the position of permanent secretary or second permanent secretary in the civil service of the State, or
 - (b) one of the following positions—
 - (i) Cabinet Secretary;
 - (ii) Chief Executive of Her Majesty's Revenue and Customs;
 - (iii) Chief Medical Officer;
 - (iv) Director of Public Prosecutions;
 - (v) First Parliamentary Counsel;
 - (vi) Government Chief Scientific Adviser;
 - (vii) Head of the Civil Service;
 - (viii) Prime Minister's Adviser for Europe and Global Issues.
- (3) Regulations may amend the positions in the list above by adding or removing a position.

- 5 A defect in the Registrar's appointment does not affect the validity of anything done by the Registrar.

Remuneration and staffing

After Clause 12 - continued

- 6 Service as the Registrar is not service in the civil service of the State.
- 7 (1) The Registrar may make arrangements for sums in respect of the following to be paid to or in respect of the person holding office as the Registrar –
- (a) remuneration;
 - (b) allowances;
 - (c) pension.
- (2) The sums paid under sub-paragraph (1) are to be determined by the Minister.
- 8 (1) The Registrar may make arrangements with the Minister or other persons –
- (a) for staff to be seconded to the Registrar;
 - (b) for accommodation or services to be provided to the Registrar.
- (2) The payments that may be made under arrangements under sub-paragraph (1)(a) include payments to the staff in addition to, or instead of, payments to the person with whom the arrangements are made.

Accounts

- 9 (1) The Registrar must keep proper accounts and proper records in relation to the accounts.
- (2) The Registrar must prepare a statement of accounts in respect of each financial year.
- (3) The Registrar must send a copy of the statement, within a period specified by the Minister, to the Comptroller and Auditor General.
- (4) After the Registrar has sent a copy of a statement of accounts to the Comptroller and Auditor General, the Comptroller and Auditor General must –
- (a) examine, certify and report on the statement, and
 - (b) arrange for a copy of the certified statement and the report to be laid before Parliament as soon as possible.
- (5) In this paragraph “financial year” means –
- (a) the period beginning on the day on which section 1 comes into force and ending on the following 31 March, and
 - (b) each successive period of 12 months.

Funding

- 10 (1) The Minister may make grants or loans to the Registrar.
- (2) The grants or loans may be subject to conditions (including conditions as to repayment with or without interest).

Amendment of other enactments

- 11 In Schedule 1 to the Public Records Act 1958 (definition of public records) at the appropriate place in Part 2 of the Table at the end of paragraph 3 insert –
- “The Registrar of Lobbyists”.
- 12 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments and authorities subject to investigation) before the entry for the “Registrar General for England and Wales” insert –
- “The Registrar of Lobbyists”.

After Clause 12 - *continued*

- 13 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (other public bodies and offices which are public authorities) at the appropriate place insert—
- “The Registrar of Lobbyists”.

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16 November 2016
