

# Lobbying (Transparency) Bill [HL]

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[AS AMENDED IN COMMITTEE]

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Schedule – The Registrar of Lobbyists



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**B I L L**

[AS AMENDED IN COMMITTEE]

TO

Establish a Registrar of lobbyists, a register of lobbyists and a Code of Conduct for lobbyists; and for related purposes.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**1 Registrar of Lobbyists**

- (1) There is to be a Registrar of Lobbyists (“the Registrar”).
- (2) The Registrar is to be appointed by the Minister.
- (3) The functions of the Registrar are to—
  - (a) establish and maintain a register of lobbyists (see sections 4 to 6); 5
  - (b) monitor compliance with the requirements to register and file returns, and with the code, including investigation of possible breaches; and
  - (c) report to Parliament on the operation of this Act (see section 20).
- (4) The Schedule makes further provision about the Registrar.
- (5) The Secretary of State may— 10
  - (a) provide financial support to the Registrar, including to provide for remuneration, allowances and pensions for the Registrar and the staff appointed by the Registrar; and
  - (b) provide premises, facilities or other assistance to the Registrar.

**2 Definition of lobbyist** 15

- (1) For the purposes of this Act, “lobbyist” means a person who, for payment, undertakes lobbying activity.
- (2) The definition of lobbyist in subsection (1) includes—

- (a) a “consultant lobbyist”, meaning a person who engages in lobbying activity on behalf of a third party client; and
- (b) an “in-house lobbyist”, meaning any employee, officer, director, partner, proprietor or controlling shareholder (but not unpaid volunteer) of an organisation, who engages in lobbying activity on behalf of that organisation. 5
- (3) A person is engaged in “lobbying activity” if the person –
- (a) arranges or facilitates a formal or informal meeting with a public official;
- (b) communicates with a public official; 10
- (c) advises others in a professional capacity in respect of the activities set out in paragraphs (a) and (b);
- (d) works to support the activities set out in paragraphs (a) and (b); or
- (e) undertakes to do any of the activities set out in paragraphs (a) to (d); with a view to influencing any of the matters set out in subsection (4). 15
- (4) The matters are –
- (a) the holding of a debate or tabling of questions in either House of the United Kingdom Parliament, the introduction of any Bill, motion or resolution in either House of the United Kingdom Parliament or the passage, defeat or amendment of any Bill or resolution that is before either House of the United Kingdom Parliament; 20
- (b) the formulation, modification, or adoption of regulation, policy, or position of Her Majesty’s Government;
- (c) the awarding of any contract, grant or other financial benefit by or on behalf of Her Majesty’s Government. 25
- (5) “Public official” means –
- (a) Members of either House of the United Kingdom Parliament and their staff;
- (b) individuals employed by or working in or on behalf of – 30
- (i) Government departments;
- (ii) executive agencies, non-ministerial government departments and non-departmental public bodies;
- (iii) regulatory bodies.
- (6) “Organisation” includes any of the following – 35
- (a) a company incorporated under the Companies Act 2006, a partnership or a sole trader;
- (b) a business, trade, industry, enterprise or professional organisation;
- (c) a non-profit organisation, association, charity, or interest group;
- (d) a trade union or staff association;
- (e) a chamber of commerce or board of trade; 40
- (f) a foreign government, British Overseas Territory or Crown Dependency;
- (g) a coalition or group of organisations.
- (7) Subject to section 3(3), “communicate” means – 45
- (a) to contact by oral or written communication, including electronic communications such as email or text messaging;
- (b) the circulation of information material or position papers; or

- (c) the organisation of events or any promotional activity in support of a lobbying position.
- (8) “Payment” means any gift, contract, promise, or agreement to pay money or sponsorship to the organisation or the provision otherwise than on commercial terms of any property, services or facilities for the use or benefit of the organization, including the services of any person. 5
- (9) 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, 10
  - (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.

### 3 Exemptions

- (1) This Act does not apply to – 15
- (a) a constituent contacting or communicating with their Member of Parliament;
  - (b) a public official acting in an official capacity;
  - (c) elected members or officials working in international bodies of which the United Kingdom is a member; 20
  - (d) a person contracted to, or on secondment to, government or otherwise acting in an official capacity on behalf of a government organisation;
  - (e) diplomats, consular officials or official representatives of foreign governments when acting in their official capacity.
- (2) This Act does not apply in respect of – 25
- (a) any oral or written submission made to either House of the United Kingdom Parliament, or any of its committees, in proceedings that are a matter of public record;
  - (b) a public response to an invitation by government to submit information or evidence, or a public response to a government consultation exercise, or a formal response to a public invitation to tender; 30
  - (c) any communication which is required to be made by, or under, any statutory provision or other rule of law;
  - (d) administrative requests made by lobbyists, where no attempt is made to influence. 35
- (3) For the purposes of this Act, “communicate” does not include –
- (a) any oral or written communication that is made 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;
  - (b) communication made through publicly accessible media, including press and broadcast media. 40
- (4) Nothing in this Act shall be construed as requiring the disclosure of the name or identity of any individual where that disclosure could reasonably be expected to threaten the safety of that individual.

#### 4 The register of lobbyists

- (1) The Registrar shall establish and maintain a register of lobbyists (“the register”).
- (2) Subject to subsection (3), a lobbyist must complete a registration, and file quarterly returns, containing the information set out in sections 5 and 6, in the form and manner required by the Registrar. 5
- (3) An in-house lobbyist whose total expenditure in connection with lobbying activity does not exceed or is not expected to exceed £5000 over a three month period is not required to register.
- (4) If the Registrar requests a lobbyist to clarify any information that has been provided under sections 5 or 6, the lobbyist shall provide the Registrar with the requested clarification, within 30 days of the request being made. 10
- (5) The register must contain the information provided by lobbyists under sections 5 and 6.
- (6) The register must be publicly available at all times, without charge, via a website. 15

#### 5 Registration

- (1) A lobbyist must register with the Registrar –
  - (a) in the case of a consultant lobbyist, within 14 days of agreeing to engage in lobbying activity on behalf of a third party client; 20
  - (b) in the case of an in-house lobbyist, within 30 days of the commencement of lobbying activity.
- (2) The registration must set out the following information, to the extent relevant to that registrant –
  - (a) the name and business address of the registrant, and a general description of its business or activities; 25
  - (b) in the case of a consultant lobbyist, the name and business address of the registrant’s client, and a general description of its business;
  - (c) the name of each employee of the registrant who has acted or whom the registrant expects to act as a lobbyist; 30
  - (d) if any such employee has served as a public official in the ten years before the date on which the employee first acted as a lobbyist on behalf of the organisation or client, the position in which such employee served, and whether that employee is a United Kingdom Parliament pass-holder; 35
  - (e) the subject-matter of the lobbying activity;
  - (f) any relevant legislative proposal, Bill, resolution, regulation, policy, program, grant, contribution, financial benefit or contract which is or is planned to be the subject of lobbying activity;
  - (g) the name of any Government department or other governmental institution in which any public office holder is employed or serves at whom the lobbying activity is directed; 40
  - (h) any communication technique that the registrant uses or expects to use in connection with any lobbying activity.
- (3) A registrant who is no longer engaged in lobbying activity may notify the Registrar and the Registrar must then terminate the registration. 45

- (4) An organisation that has more than one employee engaged in lobbying activity shall file a single registration on behalf of and listing such employees.
- (5) In the case of an organisation or an individual engaged in lobbying activity on behalf of more than one third party client, the organisation or individual shall file a separate registration under this section for each such client. 5

## 6 Quarterly reports by registered lobbyists

- (1) For any quarterly period (1 January to 31 March; 1 April to 30 June; 1 July to 30 September; 1 October to 31 December) during which a lobbyist is registered under section 5, the registrant must file a report no later than 20 days after the end of that period. 10
- (2) Each quarterly report must reconfirm (if the same), or set out (if there are any changes), the information required under section 5, and in addition provide –
- (a) in the case of an in-house lobbyist, an estimate of the total expenditure that the registrant incurred in connection with lobbying activity during the quarterly period; 15
- (b) in the case of a consultant lobbyist, an estimate of the total amount of all income from the client (including any payments to the registrant by any other person for lobbying activities on behalf of the client) during the quarterly period, excluding income for matters unrelated to lobbying activities. 20
- (3) Estimates under subsection (2) above £10,000 shall be rounded to the nearest £10,000; and if an estimate is under £10,000 it must be reported as being less than £10,000.
- (4) For the purpose of subsection (2)(a), “expenditure” means monies spent, including salary costs, on lobbying activity. 25

## 7 Investigations by the Registrar

- (1) The Registrar must conduct an investigation if the Registrar has reason to believe it necessary in order to determine whether a lobbyist has breached the requirement to register and file quarterly returns.
- (2) Before making a finding that a lobbyist has breached the requirement to register and file returns, or breached the Code, the Registrar must provide the lobbyist with a reasonable opportunity to present its views to the Registrar. 30
- (3) Where the Registrar finds that there has been a breach of the requirement to register or file returns, or a breach of the Code, the Registrar may suspend or remove permanently from the register any individual involved in the breach. 35
- (4) When an individual is suspended or removed from the register under this section the Registrar must, without delay, submit a report to the Speaker of each House of Parliament.
- (5) The Registrar may publish a report on any investigation conducted under this section. 40
- (6) The Secretary of State must lay before each House of Parliament any report published by the Registrar under subsection (1).

**8 Duty to monitor**

The Registrar must monitor compliance with the obligations imposed by or under sections 9, 10 and 11.

**9 Notice to supply information**

- (1) In connection with the duty under section 8, 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. 5
- (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 or an in-house lobbyist. 10
- (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 – 15
  - (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 11.
- (5) The date specified under subsection (4)(b) must not be before the end of the period within which an appeal under section 11 can be brought. 20
- (6) Section 10 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. 25

**10 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. 30
- (2) The following offences are excluded from subsection (1) –
  - (a) an offence under section 12 of this Act;
  - (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); 35
  - (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 12 unless the conditions in subsection (4) are met. 40
- (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.

## **11 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. 10
- (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. 15

## **12 Offence of lobbying without being registered**

- (1) It is an offence for a person to engage in lobbying activity without being registered in accordance with the requirements of section 5 and filing quarterly returns in accordance with section 6. 20
- (2) It is an offence for a person to provide materially incomplete or inaccurate information in a registration under section 5 or a return under section 6.
- (3) 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.
- (4) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale. 25

## **13 Civil penalties**

- (1) The Registrar may impose a civil penalty on a person (in accordance with sections 14, 15, 16 and 17) if the Registrar is satisfied that the person's conduct amounts to an offence under section 12. 30
- (2) For this purpose –
- (a) section 12(3) is to be ignored, and
  - (b) a person's conduct includes a failure to act.

## **14 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. 35
- (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. 5
- (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.
- 15 Imposition of penalty 10**
- (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, 15
- (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 20
- (e) contain particulars of the right to appeal under section 16.
- (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 16 can be brought. 25
- (6) The person must pay the amount before the end of that period (but this is subject to section 16(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. 30
- 16 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; 35
- (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. 40

**17 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 12 have been instituted against the person in respect of that conduct and before those proceedings have been concluded, or 5
  - (b) after the person has been convicted of an offence under section 12 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 12 in respect of that conduct. 10

**18 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— 15
- (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. 20

**19 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; 25
- (c) set a minimum for the period which must be specified under section 14(2)(d) or 15(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 14 and the service of a penalty notice under section 15; 30
- (f) provide for the reviewing of a decision to impose a penalty;
- (g) make provision about the variation or cancellation under section 15(7) of penalty notices; 35
- (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.

**20 Reports on the performance of the Registrar's functions 40**

- (1) Each year, the Registrar must prepare and publish a report concerning the performance of the Registrar's functions for the preceding year.

- (2) The Registrar may, at any time, prepare and publish a special report concerning any matter under this Act if, in the opinion of the Registrar, the matter is of such urgency or importance that a report on it should not be deferred until the next annual report.
- (3) The Secretary of State must lay before each House of Parliament any report published by the Registrar under this section. 5

## 21 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 – 10
- (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; 15
  - (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 – 20
- (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.

## 22 Charges 25

- (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). 30
- (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. 35
- (5) The Registrar must pay into the Consolidated Fund any sums received in respect of charges under this section.

## 23 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. 5
- (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 11(3) and 16(3); 10
  - (b) regulations under this section or section 22 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. 15

## **24 Repeals**

Part 1 of, and Schedules 1 and 2 to, the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 are repealed.

## **25 Extent, commencement and short title**

- (1) This Act extends to the whole of the United Kingdom. 20
- (2) Sections 1 to 24 come into force on such day or days as the Secretary of State may by regulations, made by statutory instrument, appoint.
- (3) This section comes into force on the day on which this Act is passed.
- (4) This Act may be cited as the Lobbying (Transparency) Act 2016.

## SCHEDULE

Section 1

## 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. 5

*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. 10
- (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. 15
- 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 or was an in-house lobbyist. 20
- (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 – 25
- (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; 30
- (iii) Chief Medical Officer;
- (iv) Director of Public Prosecutions;
- (v) First Parliamentary Counsel;
- (vi) Government Chief Scientific Adviser; 35
- (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. 5

*Remuneration and staffing*

- 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 – 10
- (a) remuneration;
  - (b) allowances;
  - (c) pension.
- (2) The sums paid under sub-paragraph (1) are to be determined by the Minister. 15
- 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. 20

*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. 25
- (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 – 30
- (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 – 35
- (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. 40

- 
- (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 –<br>“The Registrar of Lobbyists”.                              | 5  |
| 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 –<br>“The Registrar of Lobbyists”. | 10 |
| 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 –<br>“The Registrar of Lobbyists”.                             |    |



# Lobbying (Transparency) Bill [HL]

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[AS AMENDED IN COMMITTEE]

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*Lord Brooke of Alverthorpe*

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