



House of Commons
Political and Constitutional
Reform Committee

**The Government's
lobbying Bill**

Seventh Report of Session 2013–14

Volume I: Report, together with formal minutes

Volume II: Oral evidence

*Written evidence is contained in Volume III,
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The Political and Constitutional Reform Committee

The Political and Constitutional Reform Committee is appointed by the House of Commons to consider political and constitutional reform.

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The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the internet at www.parliament.uk/pcrc. A list of Reports of the Committee in the present Parliament is at the back of this volume.

The Reports of the Committee, the formal minutes relating to that report, oral evidence taken and some or all written evidence are available in a printed volume.

Additional written evidence may be published on the internet only.

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Summary

We support the aims of increasing transparency in lobbying, and effectively and fairly regulating third-party campaigning. However, Parts 1 and 2 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill are seriously flawed. This reflects the fact that the Bill has been introduced without adequate consultation with those it affects and without the proper involvement of Parliament, not least through pre-legislative scrutiny. As proposed, the Bill would do little, if anything, to impact upon the scandals that led to all parties supporting legislation. This will disappoint the public and reduce further their trust in politics. If Parliament is listened to, this unnecessary outcome is avoidable. The creation of good law requires the effective participation of the legislature and the executive, and this has been sadly lacking on lobbying.

Part 1

If the Government wants only to make it clear whom third-party lobbyists represent when they meet Ministers and Permanent Secretaries, it does not need a statutory lobbying register to achieve this: such details could be included with the current information that is published about these meetings.

The definition of “consultant lobbying” in Part 1 is so narrow that not only would it exclude in-house lobbyists, which was the Government's intention, it would also exclude the vast majority of third-party lobbyists, and particularly the larger organisations. Many companies undertake lobbying as part of a wider communications and public relations business, and they spend very little of their time meeting directly with Ministers and Permanent Secretaries, meaning they could argue they were exempt from registering under the exclusion in Paragraph 3 of Schedule 1. The Government should amend the Bill to:

- expand the definition of a lobbyist to include those who lobby on behalf of an organisation for which they work (in-house lobbyists);
- expand the definition of what constitutes lobbying to include the provision of lobbying advice;
- extend the list of people with whom contact counts as lobbying to include Senior Civil Servants and special advisors. We think that the House should consider carefully the inclusion or exclusion of Members of both Houses in this context, because there are some difficult problems associated with this issue.

The list of information to be provided on the register should be expanded to include the subject matter and purpose of the lobbying, where this is not already clear from a company's name.

Part 2

We do not believe that the Government has clearly communicated the need for Part 2 of the Bill, or has provided a satisfactory account of the basis on which the new levels for registration and expenditure by third parties have been set. The definition of spending “for electoral purposes”, in particular, is confusing. It is unsatisfactory that its interpretation should be left largely to the Electoral Commission—a state of affairs the Commission itself has criticised. Many charities and other organisations contacted us to express concern about the combined effects of new lower thresholds for registration, new lower limits for expenditure, and a wider, vague definition of what will count as controlled expenditure.

We have suggested some amendments to Parts 1 and 2 of the Bill, which we think would improve it, but our main recommendation is that the Government should withdraw the Bill following its Second Reading, and support a motion in the House to set up a special Committee to carry out pre-legislative scrutiny, using the text of the existing Bill as a draft. The Committee should be charged with producing an improved Bill within six months. That Bill should then be re-introduced to the House and complete its passage onto the statute book as soon possible.

1 Introduction

1. We carefully considered the Government's consultation paper on lobbying and produced a report, but our report did not receive a reply from the Government for more than a year, and when we did receive a reply, on 17 July 2013, it was cursory.

2. The Government published the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill on 17 July 2013: one day before the House of Commons started its summer recess. The Bill's Second Reading was scheduled for 3 September: one day after the House returned from its summer recess. For Government to push through legislation in this way is contemptuous of Parliament. The rush does not end there. The Bill is due to be considered in Committee, by the whole House, from 9 to 11 September. The Government misled us in referring to the publication of a draft Bill on lobbying, but then failing to publish a draft Bill.¹ None of the organisations or individuals we heard from during the course of our inquiry had been consulted about the Bill. None of the lobbying trade associations were consulted about Part 1; neither were the transparency campaigners, the House of Commons Committee on Standards, or the Parliamentary Commissioner for Standards. The Electoral Commission and the National Council for Voluntary Organisations were not consulted on Part 2. One of our submissions, from a group of campaigners, researchers, social activists and social entrepreneurs commented: "Law made without engaging those affected will fail."²

3. This is an object lesson in how not to produce legislation. All parties agree on the need to address lobbying and we think a consensus could be achieved, although the late addition of Parts 2 and 3 of the Bill has introduced an unfortunately partisan element.

4. Despite the very tight timetable for the Bill's consideration, we decided to undertake a short inquiry, which will necessarily be published after Second Reading, but which we hope will aid Parliament's scrutiny of the Bill during the remaining stages in the House of Commons, and subsequently in the House of Lords. We announced terms of reference on 18 July, and took oral evidence from the Minister for Political and Constitutional Reform, Chloe Smith, the same day. We took oral evidence again on 29 August and 3 September. The initial focus of our inquiry was on Part 1 of the Bill, on lobbying, but after we had issued our call for written evidence, it became clear that a number of organisations had serious reservations about Part 2 of the Bill, on non-party campaigning, so we widened the focus of the inquiry to include Part 2. We also touch briefly on Part 3 of the Bill.

5. The creation of good law requires the effective partnership of the legislature and the executive. This has been sadly lacking on lobbying. **We regret the unnecessarily rushed way in which this Bill is being proceeded with, without pre-legislative scrutiny or adequate consultation. In the limited time available, we have focused on the principal concerns that have been raised with us in order to draw them to the attention to Members of Parliament and peers who are scrutinising the Bill as it makes its rapid progress through the House of Commons and House of Lords. In doing so, we hope to ensure that an improved Bill makes its way onto the statute book.**

¹ See *Introducing a statutory register of lobbyists: Government Response to the Committee's Second Report of Session 2012-13*, Sixth Report of Session 2013-14

² Ev w99

2 Part 1: Registration of consultant lobbyists

Purpose

6. The Government's purpose in Part 1 of the Bill is extremely limited. The Impact Assessment for Part 1 explains:

The Government has greatly increased the transparency of decision-making by publishing unprecedented amounts of information, including about whom ministers and senior officials meet. Despite that information, though, it remains unclear exactly whose interests are being represented when consultant lobbyists meet with government. The current system of self-regulation does little to address the issue due to the voluntary nature of the industry-hosted register of lobbyists. Removing this information asymmetry will hence require a statutory register of consultant lobbyists.

The Leader of the House, Rt Hon Andrew Lansley MP, explained this as the difference between a regulator of “lobbying” and a register of “lobbyists”, with the latter being much more narrowly focused.³

7. Both the lobbying trade associations and the transparency campaigners from whom we received evidence were united in arguing that this should not be the Government's priority for lobbying reform. The Association of Professional Political Consultants commented:

The Government's justification for the Bill's narrow scope is that it only seeks to deal with the issue of consultant lobbyists who lobby Ministers and Permanent Secretaries directly without declaring their clients. If this is really the problem that the Government asserts, it would be perfectly possible to deal with it effectively without primary legislation, but rather by changing the rules for Ministers and Permanent Secretaries, imposing a requirement on them to ask consultant lobbyists whom they meet, on whose behalf they are advocating—and then to publish this information in the public available notes of their meetings with external stakeholders.⁴

Alexandra Runswick, Director of Unlock Democracy, stated: “I think that transparency in lobbying is a significant problem. I do not think that the specific issue of consultant lobbyists meeting Government Ministers and permanent secretaries is a problem.”⁵

8. If the Government wants only to make it clear whom third-party lobbyists represent when they meet Ministers and Permanent Secretaries, it does not need a statutory lobbying register to achieve this: such details could be included with the current information that is published about these meetings.

³ Q 317

⁴ Ev w28

⁵ Q 160

Definition of lobbying

9. Our report on the Government's consultation paper on lobbying, *Introducing a Statutory Register of Lobbyists*, stated that the definition of "lobbying" would be "key to the success and effectiveness of any future register".⁶ It is therefore regrettable that the definition of "consultant lobbying" appears to be the main flaw in Part 1.

10. Clause 1 prohibits any person from carrying on the business of consultant lobbying unless they are entered on the register of consultant lobbyists. The meaning of "consultant lobbying" is found in Clause 2, which provides that

A person carries on the business of consultant lobbying if –

- (a) in the course of a business and in return for payment, the person makes communications within subsection (3) on behalf of another person or persons, and
- (b) none of the exceptions in Part 1 of Schedule 1 applies.

Clause 2(3) makes it clear that the Bill only addresses communications made personally to Ministers or Permanent Secretaries, relating to 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.

11. The approach adopted by the Government—defining those who lobby rather than lobbying—means that it has had to provide a detailed list of exceptions to the general rule, because its definition could catch people not normally considered "lobbyists" in the conventional way. These exceptions are found in Schedule 1 of the Bill and are as follows:

- MPs who lobby on behalf of people eligible to vote in their constituency;
- persons whose main business is not lobbying and for whom directly communicating with Ministers and Civil Servants is an "insubstantial proportion" of their business;
- 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 functions;
- officials or employees of Governments of other countries;
- international organisations who make communications on behalf of those bodies.

12. The Minister, Chloe Smith MP, further explained in evidence to us that the term "consultant" was deliberately used by Government to distinguish between third-party and in-house lobbyists:

⁶ *Introducing a Statutory Register of Lobbyists*, Second Report of Session 2012-13, para 25

By “consultant” we mean what some people would call “third party lobbyists”. It means lobbyists who are conducting business on behalf of a client, and that client might not necessarily be named in their own right were it not for this register.⁷

13. The evidence that comments on Part 1 is critical of the definition of “consultant lobbying”. Industry bodies, individual companies, trade unions, academics and transparency campaigners alike were united in their criticism of the definition. There was remarkable consistency in the problems that they cited. The definition was criticised for excluding in-house lobbyists, but also for failing to cover the vast majority of third-party lobbyists: the very people the Minister told us it was the Government’s intention to include. The Royal College of Midwives neatly summed up the twin reasons why most third-party lobbyists would fall outside the scope of the Bill: “the Bill is too narrowly focused on direct communications between lobbyists and decision-makers and overlooks the role of lobbyists in advising clients” and “restricting influencing to just ministers and permanent secretaries seems very narrow indeed”.⁸ These points were made again and again, and we think it is worth underlining the extent of the consensus by setting out some of these views below.

14. The UK Public Affairs Council, which currently operates a voluntary register of lobbyists, commented: “We believe the definition in the Bill as published could result in a statutory register that is all but empty and that risks being a costly ‘white elephant’.” It added:

If all lobbying firms, law practices and others offering services to third parties choose to focus all of their activities on advising, coaching and briefing clients on strategy and communications etc and do not seek to represent or accompany clients in person or in writing the Register could, in principle, be completely blank.⁹

15. The Public Relations Consultants Association, a trade association, stated: “The definition of a ‘consultant lobbyist’ in clause 2 and the list of exceptions in Schedule 1 are likely to reduce, rather than enhance, the amount of transparency currently available to the public around lobbying in the UK.”¹⁰ It commented that “fewer than 1% of meetings [with Ministers]...take place by consultancies without the client present.”¹¹ This figure is borne out by the evidence from Who’s Lobbying, which ran a website with data about ministerial meetings, and which commented that between May 2010 and July 2011, only 11 lobbying firms were declared as having a met a Minister.¹² Francis Ingham, Director General of the Public Relations Consultants Association, said the register would “have a tiny number of organisations on it, conceivably none.”¹³

16. The Chartered Institute of Public Relations, a trade association, stated: “The Government’s proposed definition of a consultant lobbyist would not only fail to capture many of those who would identify themselves as such, but would also render the vast

⁷ Q11

⁸ Ev w19

⁹ Ev w3

¹⁰ Ev w41, para 3.1

¹¹ Ev w41, para 3.6

¹² Ev w54

¹³ Q 109

majority of non-consultant lobbyists, including those serving in-house and in various other capacities, as non-registrable.”¹⁴ It commented:

The Government's lack of engagement with the industry is reflected in a poorly drafted and narrow definition which does not accurately reflect the work undertaken by lobbyists, including those the Government perceive to be acting in the capacity of a consultant lobbyist.¹⁵

Jane Wilson, Chief Executive of the Chartered Institute of Public Relations, stated that, by excluding in-house lobbyists from the need to register, the Government was creating a potential loophole, particularly for large organisations:

as it stands, the Bill is an invitation to avoidance. One can be employed by a consultancy, but if that consultancy is doing very long-term work for a corporate, it is quite easy to make arrangements whereby a member of staff transfers in-house for a period of time. That is very easy to do if you are a big organisation. It would be extremely easy to get around this, if you had the resources to do so.¹⁶

17. The Association of Professional Political Consultants, a trade association, which also runs a voluntary register, states:

Were they [consultancies] to decide to limit their registration in future to the statutory register, the result would be an overall decline in transparency, since the statutory register covers a narrower range of activity than the voluntary registers and requires the declaration of less information.¹⁷

Iain Anderson, the Deputy Chair of the Association of Professional Political Consultants, stated: “The vast majority of lobbying is not about meeting Ministers or permanent secretaries; the vast majority of lobbying activity is advising organisations about the political process, the political meteorology—what is taking place and what is likely to take place.”¹⁸

18. Written evidence from individual public affairs companies bears out the trade association's views of how third-party lobbyists spend their time. The Whitehouse Consultancy stated:

As a consultancy, our practice is that we advise our clients on how to lobby and support them in doing so, rather than lobbying directly ourselves... Our clients would also want to develop relationships with other officials and policymakers, such as those at Director-General level or below, and with Members of both the House of Commons and the House of Lords who are not Ministers... Public affairs agencies, including the Whitehouse Consultancy, increasingly offer other related services including political event management or public and media relations, so it becomes less likely that they would be included under the exception of being ‘mainly a non-lobbying business’.

¹⁴ Ev w44

¹⁵ Ev w44

¹⁶ Q 121

¹⁷ Ev w28

¹⁸ Q 114

They continued:

If the register is to enhance transparency about lobbying, it must cover those who lobby professionally and also those who provide professional advice on how to lobby. It would cover meetings with all officials at Senior Civil Servant (SCS) rank and above, as well as member of both Houses, and should include an absolute income test for inclusion on the register—whereby any company or individual that receives more than £10,000 in one quarter from professional lobbying or providing professional advice about lobbying should be included.¹⁹

19. Gavin Devine, Chief Executive of MHP Communications, stated that defining lobbying was “not easy”, but said that the Government’s definition was “not good enough” and commented: “If anything, transparency will diminish, not get better.”²⁰ He cited the following reasons for his view that MHP Communications, despite having what he describes as “the biggest public affairs practice in the United Kingdom”, would not be required to register. They are very similar to the points made by the Whitehouse Consultancy. MHP Communications is “a full service communications consultancy” rather than simply a public affairs firm, therefore it is “very clearly a ‘mainly non-lobbying business’ for the purposes of Schedule 1 of the Bill” and, even if MHP existed as a separate public affairs consultancy, its staff would not mainly spend their time directly lobbying Ministers and Permanent Secretaries. Gavin Devine commented: “The only conclusion one can reach about the Bill is that the Cabinet Office has no understanding of what companies like MHP Communications actually do. Put simply, our role is primarily about advising clients, helping them to construct their arguments and make their case, and not about lobbying directly on their behalf.”²¹

20. Political Lobbying and Media Relations, another company, also did not believe that it would be required to be on the register, as “due to the proportion of public relations vs. public affairs our agency undertakes, we could be considered a ‘mainly non-lobbying business’” and, in addition: “we do not make personal representations to Ministers or Permanent Secretaries.”²²

21. The TUC stated: “Restricting the definition of government officials with whom contact counts as lobbying to permanent secretaries and equivalent misses out the vast majority of lobbying meetings with civil servants.”²³ The National Union of Journalists commented: “In many cases it will be lower-ranking officials and civil servants, who will be working on the nitty-gritty of the wording of legislation, rather than their permanent secretary, who will be targeted by lobbyists.”²⁴

22. The Committee on Standards in Public Life, which is carrying out its own inquiry into lobbying, commented that it was “particularly concerned that the definition of ‘consultant lobbyists’ in clause 2 of the Bill is so narrow as to exclude a large proportion of those who are paid to lobby on behalf of others.” It added: “In fact the proposed register could

¹⁹ Ev w8, paras 7 to 10

²⁰ Ev w16, para 5

²¹ Ev w17, para 7 and 12

²² Ev w38

²³ Ev w31, para 2.3

²⁴ Ev w52

diminish transparency, particularly if the effect is that the lobbying industry ceases to maintain its own more detailed voluntary register.”²⁵

23. Transparency International stated: “there are strong arguments that the Bill, because of its minority coverage of the public affairs industry, would result in less transparency than the current self-regulation arrangements, which are themselves inadequate.”²⁶ Unlock Democracy commented first that “by focusing on consultant lobbyists the government have excluded 80% of the lobbying industry” and then stated: “The government is not even going to capture the 20% of the industry that they have identified as the reason for the register.”²⁷

24. SpinWatch, an organisation that campaigns for a register of lobbyists, stated that the Bill proposes “the very narrowest definition of who should register”, also citing the twin points that most lobbyists offer advice to their clients, rather than lobbying directly themselves and that “the vast majority of contact between lobbyists and government is with mid-ranking civil servants and special advisers.” They commented: “Consultant lobbyists invariably only advise clients on lobbying. It is rare that they will actually attend lobbying meetings.”²⁸

25. Who's Lobbying suggested that the definition should be more akin to that employed in the US Lobbying Disclosure Act of 1995:

LOBBYIST—The term “lobbyist” means any individual who is employed or retained by a client for financial or other compensation for services that include more than one lobbying contact, other than an individual whose lobbying activities constitute less than 20 percent of the time engaged in the services provided by such individual to that client over a 3-month period.²⁹

However, Gavin Devine, Chief Executive of MHP Communications, said: “as you put in thresholds then immediately people will try to find ways around them.”³⁰

26. In order genuinely to enhance transparency and confidence, a lobbying register would have to cover all those who lobby professionally and all those who offer professional advice on lobbying, whether they are third-party or in-house lobbyists, including those working for law firms, trade associations and think tanks.

27. The Bill's definition of “consultant lobbying” is flawed. Not only does it exclude in-house lobbyists, which was the Government's intention, but as currently drafted it would also exclude the vast majority of third-party lobbyists, and particularly the larger organisations. The reasons for this were the subject of widespread agreement among our witnesses: many companies undertake lobbying as part of a wider communications and public relations business, and in addition they spend very little of their time meeting directly with Ministers and Permanent Secretaries, meaning they could argue

²⁵ Ev w61

²⁶ Ev w25, para 1.2

²⁷ Ev w34, paras 8 to 9

²⁸ Ev w20

²⁹ Ev w54

³⁰ Q 260

they were exempt from registering under the exclusion in Paragraph 3 of Schedule 1. An effective way to determine whether a business is mainly a non-lobbying business could be to have a financial threshold above which people should have to register, if they meet the other requirements in the Bill. One suggestion would be that any company or individual that spends more than £10,000 in one quarter on lobbying, as defined in the Bill, or the provision of lobbying advice, should be required to register.

28. *The Government should amend the Bill as follows:*

- *expand the definition of a lobbyist to include those who lobby on behalf of the organisations for which they work (in-house lobbyists);*
- *expand the definition of what constitutes lobbying to include the provision of lobbying advice;*
- *extend the list of people with whom communication, or advising on communication, counts as lobbying to include Senior Civil Servants and special advisors. We think that the House should consider carefully the inclusion or exclusion of Members of both Houses in this context, because there are some difficult problems associated with this issue.*

29. *We call on the Government to bring forward amendments to the following effect. Failing that we urge the House to make the following amendments:*

- **Page 1, Line 11, Clause 2, leave out subsection (1) and insert the following -**

(1) For the purposes of this Part, a person carries on the business of lobbying if in the course of a business and in return for payment,

- (a) the person makes communications within subsection (3), or advises another person on the making of communications within subsection (3), and**
- (b) none of the exceptions in Part 1 of Schedule 1 applies.**

- **Page 2, Line 7, Clause 2, leave out subsection (3) and insert the following -**

(3) The communications within this subsection are oral or written communications made personally to a Member of either House of Parliament, a Minister of the Crown or permanent secretary or senior civil servant or special advisor relating to—

- (a) the development, adoption or modification of any proposal of the government to make or amend primary or subordinate legislation;**
- (b) the development, adoption or modification of any other policy of the government;**
- (c) the making, giving or issuing by the government of, or the taking of any other steps by the government in relation to,—**
 - (i) any contract or other agreement,**
 - (ii) any grant or other financial assistance, or**

(iii) **any licence or other authorisation; or**

(d) **the exercise of any other function of the government.**

- Page 2, Line 23, Clause 2(5)

After ('positions equivalent to permanent secretary') insert the following –

“senior civil servant” means a person holding a position of Grade 5 or above in the civil service of the State.

“special advisor” has the same meaning as in the Constitutional Reform and Governance Act 2010.

- Page 50, Line 17, Schedule 1, leave out paragraph 3.

Part 1 and Members of Parliament

30. Schedule 1 sets out the exceptions to the meaning of “consultant lobbying” in clause 2. Paragraphs 1 and 2 deal specifically with Members of Parliament. Paragraph 1 provides an explicit disclaimer that nothing in the Bill affects the application of parliamentary privilege or freedom of speech in Parliament, as protected by Article IX of the Bill of Rights 1689, or otherwise affects the scope of the exclusive cognisance of Parliament.

31. Paragraph 2 then provides that:

A Member of Parliament who makes communications within section 2(3) on behalf of a person or persons resident in his or her constituency does not, by reason of those communications, carry on the business of consultant lobbying.

“Resident” in this paragraph carries the same definition as that set out in section 4 of the Representation of the People Act 1983, which sets out entitlement to be registered as a parliamentary elector. There are groups of people who fall outside the scope of that narrow test, but whom an MP may nonetheless legitimately represent. A non-exhaustive list of such groups includes:

- individuals in their constituency involved in immigration disputes, currently without a legal right to reside, and therefore ineligible to register to vote;
- individuals in their constituency not of voting age;
- individuals who lack legal capacity to vote for other reasons;
- a non-natural legal person such as a company based in their constituency.

32. The effect is to exempt from registration only an MP's lobbying activities on behalf of persons entitled to be registered as parliamentary electors. One possible interpretation of Paragraph 2, as currently drafted, would be that an MP contacting a Minister or Permanent Secretary on behalf of someone who was not eligible to vote in their constituency may be

required to register as a consultant lobbyist. This is very unlikely to be what the Government intended.

33. Paragraph 2 carries the added implication that it may be permissible for an MP to accept money in return for making communications to Ministers or Permanent Secretaries on behalf of someone who is eligible to vote in their constituency. This would be a breach of the House of Commons Code of Conduct for Members, which bans paid advocacy. Again, it seems very unlikely that this was what the Government intended. The point was raised in the evidence session with Chloe Smith:

Q22 Paul Flynn: ...You are introducing a loophole here that means that if people out to buy influence and access are blocked in some way by the Bill, all they have to do is slip a bung to their local MP, and they can do it without any fear of coming under attack.

Miss Smith: It will not be possible for me to comment on things that will be matters for the House authorities in relation to other rules that apply to MPs. What we have tried to do in the Bill is to set out an exemption for the activities of constituency MPs.

34. It could be argued that Paragraph 2 is not necessary, since MPs could already be said to be exempt on the grounds that their main business is not lobbying (Paragraph 3 of Schedule 1) and also that they are acting generally as representatives of a “persons of a particular class or description” and lobbying is only “an incidental part of their general activity” (Paragraph 4 of Schedule 1). We put this point to Chloe Smith:

Q93 Mr Chope: May I follow up on one of your questions? This business about Members of Parliament—paragraph 2 of schedule 1 makes a specific reference to Members of Parliament making communications not amounting to lobbying business. Surely, a Member of Parliament will be excluded under the exceptions in paragraph 3 of schedule 1, because a Member of Parliament is engaged in a business that is mainly a non-lobbying business. Would you not accept that?

Miss Smith: I am not sure that I accept the broader point you are trying to make. We have worked very hard to exclude constituency MPs.

Q94 Mr Chope: The point is that MPs are already excluded, surely, from the Bill by reason of the fact that whatever we are engaged in is mainly a non-lobbying business.

Miss Smith: I am so sorry; I see your point. Yes, I agree.

Q95 Mr Chope: So if we are excluded already, why do we need to have a specific alternative exemption set out in paragraph 2 of schedule 1?

Miss Smith: We sought to be particularly clear on this point, because it has come over extremely strongly in almost every conversation I have had with fellow parliamentarians on this. You might remember that at the recent Opposition day debate on lobbying, various points were made to the same effect. Frankly, I look forward to your support in making it clear that constituency MPs are excluded.

35. When the same point was put to Rt Hon Kevin Barron MP, the Chair of the Standards Committee, he said that “common sense” would say that an MP was engaged in a mainly non-lobbying business, but added it was a matter of interpretation:

I think that for the past 30 years, I have been doing lobbying on behalf of individuals and some organisations...Would that fall within the ambit of the Bill? As common sense interprets it, no, but the Bill does not say that it could not.³¹

He emphasised that the it was not only the Government's intent in drafting the provisions that was crucial; it was the way in which they could be interpreted: "We also ought to make an effort to ensure that the Bill cannot be interpreted in a way that is not intended."³²

36. Kevin Barron suggested one effective way of ensuring that MPs were excluded from the Bill: "Could we not say in the Bill that any moneys from IPSA are nothing to do with and cannot in any way be interpreted as payment for a business as defined under the Act?"³³ Nowhere in the Bill currently does it state that an MP's salary does not count as "payment" under the Bill.

37. We are concerned that, by attempting to be particularly clear that Members of Parliament are excluded from the Bill, the Government has in fact achieved the opposite effect. We are encouraged that the Leader of the House indicated in oral evidence that he was willing to revisit this issue if there was any doubt that Members of Parliament were excluded.

38. *If the Government want to exclude Members of Parliament from the Bill, on the basis that paid advocacy is already banned by the House of Commons Code of Conduct for Members, then it should delete Paragraph 2 of Schedule 1, which has unintended consequences as currently drafted, and instead include a provision stating that a Member of Parliament's salary from IPSA does not count as "payment" under clause 2(1)(a) of the Bill.*

39. *We call on the Government to bring forward amendments to the following effect. Failing that we urge the House to make the following amendments:*

- **Page 50, Line 11, Schedule 1, leave out Paragraph 2**
- **Page 51, Line 35, Schedule 1, Paragraph 6**

After 'kind,' insert 'but a reference to payment does not include a reference to the salary a Member of the House of Commons receives in that capacity.'

- **Page 51, Line 43, Schedule 1, Paragraph 6, after 'communications' insert (4) In this section –**

"salary of a Member of the House of Commons" has the same meaning as in the Parliamentary Standards Act 2009

³¹ Q 233

³² Q 234

³³ Q 230

Information provided in the register

40. Clause 4 sets out that the register must contain the name of each registered lobbyist, together with its registered company number (where relevant), the address, the names of any 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 lobbying (or has received pre-payment to do so) in the previous quarter.

41. Some of those who submitted written evidence thought that the information required by the Bill was sufficient. Mark Boleat, a former chief executive of five trade associations, stated: "Subject to the definition of 'lobbyist' being widened, the information to be included on the register is satisfactory."³⁴ The Information Commissioner's Office commented: "It is clear that the nature of the information to be provided for inclusion on the register by those engaged in lobbying activities will provide a useful source of information not previously available on a routine basis."³⁵

42. Others argued that the register should include more information. There was a significant degree of agreement that the additional information should include disclosure of the subject matter of the lobbying, and some agreement around the idea of including the purpose of the lobbying and a list of who had been lobbied. Some of the evidence also argued for financial disclosure. SpinWatch stated that the information required under the Bill was "wholly insufficient", adding:

For a register to meaningfully allow public scrutiny of lobbying, it must include information from lobbyists on their interactions with government. In other words: whom they are meeting and what issues they are discussing. Members of the public wanting to see which outside organisations are exerting influence on a particular policy area, for example, will be unable to do so under this proposal.³⁶

A joint submission from three academics, Dr Hogan, Professor Murphy, and Dr Chari, argued for the inclusion on the register of "the subject matter and purpose of the lobbying".³⁷ The Royal College of Midwives commented:

It is hard to see how the information requested will add greatly to the transparency of the lobbying process...Would it be too burdensome, at the very least, to ask for the register also to spell out the issues on which clients are seeking to lobby (e.g. improved conditions for farm animals), and the nature of the lobbying that has taken place (e.g. all-party group on road hauliers established)?³⁸

43. Iain Anderson, the Deputy Chair of the Association of Professional Political Consultants supported publishing information about the purpose and subject matter of lobbying, but suggested that this could be done most effectively and efficiently when details of ministerial and official meetings were published, rather than in the register.³⁹ The

³⁴ Ev w1, para 1

³⁵ Ev w15

³⁶ Ev w20

³⁷ Ev w49

³⁸ Ev w19, para 8

³⁹ Qq 127-28

Committee on Standards in Public Life also argued that information on the subject matter could be included either on the register or in the details that were published of meetings. The difficulty with including the information in the data about ministerial and official meetings is that, if the definition of lobbying is expanded to encompass contact with the rest of the Senior Civil Service, special advisors and others, who do not necessarily publish details of their meetings, such information would be patchy at best.

44. One of our witnesses expressed concern about too much information being revealed. Political Lobbying and Media Relations stated: “Explicit information on the details of meetings between lobbyists and ministers should not be published. This removes the right of privacy to individual organisations who often have sensitive information that they wish to share with elected representatives.”⁴⁰ Alexandra Runswick, Director of Unlock Democracy, said of this concern:

I think that misrepresents the nature of the information we are looking for in the register. We are not expecting a transcript of the meeting, but what policy area it is that is being lobbied on. There are already individual MPs who publish their diaries and say, for example, ‘I met Unlock Democracy about the Lobbying Bill.’ That is the level of information that we are looking at—the policy that is being lobbied about, not the exact information that was shared with the person whom you are lobbying.⁴¹

45. *The information that the register requires to be listed should be expanded to include the subject matter and purpose of the lobbying, when this is not already clear from a company's name. To be clear, this should not involve the disclosure of detailed information about the content of the meeting—just a broad outline of the subject matter and the intended outcome. For example: Subject matter—lobbying; Purpose—change the Transparency of Lobbying etc Bill. We also suggest that there could be a financial threshold above which companies are required to provide information about the subject matter and purpose of lobbying.*

46. *We call on the Government to bring forward an amendment to the following effect. Failing that we urge the House to make the following amendment:*

Page 3, Line 47, Clause 5, at end of subsection (3) insert:

(c) if the registered person engaged in lobbying in the quarter in return for payment (whether or not the payment has been received), the purpose and subject matter of the lobbying services provided by the registered person; and

(d) if the registered person received payment in the quarter to engage in lobbying (whether or not the lobbying has been done) the purpose and subject matter of the lobbying services provided by the registered person.

47. Mirko Draca of the University of Warwick, and Who's Lobbying, drew attention to what Mirko Draca described as “the mundane issue of how the lobbying data is reported and provided to the public”. Both emphasised the importance of ensuring that the data was presented in a way that enabled it to be scrutinised as easily as possible. Mirko Draca

⁴⁰ Ev w38

⁴¹ Q 172

commented that individual PDF documents, for example, do not make the analysis of a bulk of information easy. He stated:

The proposed Bill is vague on practical reporting requirements. Under 'Duty to publish register' in Section 7 the Bill only specifies that publication be 'on a website' and makes no provisions for the format of this publication. I would suggest that this be expanded to 'published on a website, including in formats suitable for the extraction of bulk, formatted spreadsheet files.'⁴²

48. *Either in the Bill, or in regulations, there should be a specific requirement that the register is published in a format that is suitable for the extraction of bulk, formatted spreadsheet files, to enable people to make easy use of the data that is available.*

Who will run the register?

49. Clauses 3 to 7 and Schedule 2 establish a Registrar of Consultant Lobbyists. The Chartered Institute of Public Relations was one of several organisations to submit written evidence that noted that "much of what is ambiguous in the Bill, including the exemptions, are likely to be left to the Registrar to explain or interpret."⁴³ Under clause 8, the Registrar has a duty to monitor the compliance of lobbyists with the registration requirements. The Registrar will be an independent statutory office-holder, who will be appointed, and may be dismissed, by the Minister. A joint submission from three academics, Dr Hogan, Professor Murphy, and Dr Chari, expressed "concerns as to the independence of the Registrar", in this context.⁴⁴

50. Clause 9 gives the Registrar the power to issue an information notice in order to obtain from a lobbyist, or someone the Registrar "has reasonable grounds" to believe to be a lobbyist, the information necessary to determine whether they are complying with the requirements in the Bill. The Law Society of Scotland described the phrase "reasonable grounds" as "very wide and ambiguous."⁴⁵ The Association of Professional Political Consultants was "concerned as to how the Registrar will monitor compliance and will identify persons believed to be consultant lobbyists to whom an information notice may be issued."⁴⁶ Who's Lobbying also asked: "How is the Registrar expected to establish reasonable grounds for believing [someone] to be a consultant lobbyist?"⁴⁷ Gavin Devine, Chief Executive of MHP Communications, stated that it was "not clear" what powers the Registrar would have "to investigate firms suspected of wrongdoing".⁴⁸

51. *The Government must clarify, in the course of proceedings on the Bill, what would constitute "reasonable grounds" for the Registrar believing someone to be a consultant lobbyist.*

⁴² Ev w60

⁴³ Ev w44

⁴⁴ Ev w49

⁴⁵ Ev w81

⁴⁶ Ev w28

⁴⁷ Ev w54

⁴⁸ Ev w18, para 16

Who will fund the register?

52. The register will be funded entirely from the charges payable by consultant lobbying firms. Clause 22 gives the Registrar the power to charge for “the making, updating and maintenance of entries in the register”. The Impact Assessment for Part 1 of the Bill outlines the estimated cost of registration. The Government estimates that the costs of implementing the register will range from £0.6 million to £0.9 million over two years, with its best estimate at £0.7million. It estimates that the following charges will apply to those groups covered by the registration requirement:

- £120 for initial registration
- £100 for each subsequent year for quarterly updates
- An annual fee estimated to be between £320 and £497 on average, and between £640 - £994 for the larger firms.

53. The Public Relations Consultants Association, however, said that it was “impossible to agree with the Government’s Impact Assessment that there will be ‘approximately 1,000 consultant lobbyists’ (circa 720 organisations) affected by the Statutory Register.”⁴⁹ They thought the number of organisations affected would be lower. The Chartered Institute of Public Relations also argued that the Government’s figures for the number of consultant lobbyists who would be required to register were likely to be an overestimate and drew attention to the consequences this would have for the registration fee.⁵⁰ The UK Public Affairs Council stated in their written evidence:

Any Registrar will have a significant percentage of fixed costs. Accordingly, the registration fee will be tied closely to the number and nature of registrants—on a statutory or/and voluntary basis. A limited duty to register means high registration fees—and incentives for legal challenge and avoidance action.”⁵¹

Gavin Devine, Chief Executive of MHP Communications, also stated: “There is also a risk that if only a handful of consultancies sign up the fees for each will be very high.”⁵² SpinWatch considered that the “tiny numbers” that would have to register under the current definition in the Bill “would make the funding of the register all but impossible.”⁵³

54. We are concerned that the defective definition of “consultant lobbying” in the Bill means that the Government’s Impact Assessment may over-estimate the number of lobbyists who will be required to register, and that the cost of registration for those who are covered will be correspondingly high. We again urge the Government to modify the definition of “consultant lobbying” to reflect what consultant lobbyists actually do.

⁴⁹ Ev w42, para 3.9

⁵⁰ Ev w44

⁵¹ Ev w3

⁵² Ev w18, para 15

⁵³ Ev w20

Code of conduct

55. The Bill contains no mention of a code of conduct for lobbyists. This is in line with the proposals in the Government's consultation paper, which stated:

The Government supports the industry's efforts to improve lobbying practice, and to develop a code of conduct that helps lobbyists perform to the highest possible standards. However, it thinks that this is a matter for the industry itself, not for the operator of the register. The register should be a register of activity, not a complete regulator for the industry.⁵⁴

The consultation paper stated that a statutory code of conduct was unnecessary because it “would potentially impose costly and unnecessary regulation on the industry, their clients and the Government”.⁵⁵

56. During our original lobbying inquiry, in 2012, a number of witnesses raised concerns about the absence of a statutory code of conduct from the Government's proposals. Elizabeth France, the then Chair of the UK Public Affairs Council, told us that a hybrid model of conduct, whereby registered lobbyists abide by the code of conduct of their profession, but make it clear which professional body can be contacted if there is an allegation of improper behaviour, could help to ensure that those who lobby could be held to account without a statutory code of conduct:

one way would be to have a hybrid where the register showed whether a particular entrant on the register was signed up to a code of practice, which code of practice and who enforced it. So if you were a member of the APPC or the CIPR, or perhaps if you were a lawyer regulated by the Solicitors Regulation Authority but you were a public affairs consultant, maybe you could put that on the register and then it would be clear to people which body was making sure you behaved ethically and held you to account.⁵⁶

Our report described a hybrid code of conduct as “a viable alternative” to a statutory code, as it would make it clear to whom organisations on the register could be held accountable.⁵⁷

57. Among witnesses to our current inquiry, there was support for some form of code of conduct, and some agreement that it did not have to be a statutory code. The Whitehouse Consultancy argued that the lack of a statutory or hybrid code of conduct in the Bill “poses a fundamental problem”. They stated:

There is no mechanism for removing consultants who act in an unethical matter. It seems bizarre that the Registrar could issue a worse penalty for submitting information to the Registrar a few days' late—though we agree that doing so is of concern—than carrying out thoroughly unethical behaviour which is not technically illegal.⁵⁸

⁵⁴ HM Government, *Introducing a statutory register of lobbyists*, January 2012, p 15

⁵⁵ *Introducing a statutory register of lobbyists*, p 10

⁵⁶ *Introducing a statutory register of lobbyists*, Second Report of Session 2012-13, para 38

⁵⁷ *Introducing a statutory register of lobbyists*, Second Report of Session 2012-13, para 39

⁵⁸ Ev w7

The Association of Professional Political Consultants argued that “a hybrid code of conduct would have merit”, but a statutory code would be “inappropriate in a Bill whose declared objective is only to increase transparency”.⁵⁹ The Public Relations Consultants Association was of the same view, as was the Chartered Institute of Public Relations.⁶⁰

58. Gavin Devine, Chief Executive of MHP Communications, stated that the Government needed “to look seriously at some form of minimum standards for those on the register.” He commented:

There is a real danger that a register by itself may make the situation worse, since it is likely that those on the register will describe themselves as ‘registered’ or ‘approved’ lobbyists without having to meet at least some minimum standards. In short, there is a risk that the register will give a kitemark or endorsement to some who do not deserve it.⁶¹

He did not support the idea of a hybrid code of conduct, stating that it would be “a mess” because it would be “absurd to have people conforming to different standards on one register.”⁶²

59. In their written evidence, the UK Public Affairs Council, which currently operates a voluntary register, stated: “Our preferred approach would be that all registrant lobbyists should be required to subscribe at least to a basic set of principles broadly equivalent to the Guiding Principles of Conduct which appear on the UKPAC website.” However, it added: “On balance, we believe that the current mix of laws and rules of conduct on Ministers and others provide an adequate framework and that the focus of any Registrar should be on transparency and not regulating conduct.”⁶³ Unlock Democracy stated: “Unlock Democracy agrees that all lobbyists should abide by a code of conduct but does not feel it has to be statutory necessarily.”⁶⁴

60. We continue to believe that there would be merit in requiring lobbyists on the register to sign up to a code of practice. We do not think that a statutory code is necessary. As a starting point, under the information required on the register, registered lobbyists should have to list any codes of practice to which they subscribe.

⁵⁹ Ev w28

⁶⁰ Ev w44, para 7.2; Ev w44

⁶¹ Ev w16

⁶² Q 261

⁶³ Ev w3

⁶⁴ Ev w36, para 21

3 Part 2: Non-party campaigning

Purpose

61. The Political Parties, Elections and Referendums Act 2000 regulates spending by third parties (people or organisations who are not standing as candidates or are not registered as political parties) in election campaigns. Third parties are regulated for 365 days before a general election and four months before elections to the European Parliament, the Scottish Parliament, the Northern Ireland Assembly and the National Assembly for Wales. Campaigning in the run-up to local elections is not regulated unless they take place during the regulated period for one of the aforementioned elections. Part 2 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill makes changes to the rules for third-party spending.

62. The Electoral Commission described the provisions in Part 2 as “major changes” and summarised them as follows:

The Bill:

- widens the range of activities that are regulated, to include rallies and events, media work, market research such as polling, and transport for the purpose of obtaining publicity
 - all these activities will be regulated if they are carried out for “election purposes” ...
 - all the related costs of the activity will count against spending limits, including staff costs (in this respect the Bill differs from the rules on political parties, whose staff costs are not regulated)
- reduces the thresholds for registering with us [the Electoral Commission] as a campaigner by 50% or more, to £5,000 in England and £2,000 in Scotland, Wales and Northern Ireland
- reduces the limits on what a campaigner can spend on regulated activity in each part of the UK in the year before a UK general election by 60% or more, to £320k in England, to £35k in Scotland, to £24k in Wales and to £11k in Northern Ireland
- places new controls on spending that only has a ‘significant effect’ in particular constituencies, or supports a single political party, and new or amended reporting requirements on donations towards regulated spending, and on campaigners’ finances.⁶⁵

63. The Electoral Commission stated:

Campaigning by organisations that are not political parties in the run-up to elections is an important and established part of the UK democratic process. But it is also important that it is regulated effectively, under clear and enforceable rules, to give

⁶⁵ Ev w9

voters confidence that political campaigning is appropriately controlled and transparent.⁶⁶

It commented: “the Bill as drafted raises some significant concerns”.⁶⁷ It was not consulted about the detail of the Bill’s provisions, but was “shown some draft clauses shortly before publication”.⁶⁸ The timing of the Bill and the lack of pre-legislative scrutiny caused the Commission particular concern:

This is a particular issue in the context of regulating non-party campaigning at the 2015 UK Parliamentary general election, because if the Bill is enacted the changes will take effect by May next year, which will allow only a matter of weeks for organisations to prepare prior to the introduction of the new regime.⁶⁹

The TUC stated: “it seems extraordinary that constitutional changes should be made with so little consultation and without any attempt to find a consensus between the political parties and third-party civil society organisations that will be affected.”⁷⁰

64. The Electoral Commission commented: “In our view the Government has not yet clearly set out the rationale for many of the changes in the Bill, and it is therefore hard to assess whether the Bill delivers the Government’s policy objectives.”⁷¹ The TUC also commented that it was “unclear what problem the government thinks needs resolving by this part of the Bill.”⁷² Unlock Democracy commented that Part 2 of the Bill would have “a chilling effect on campaigning and political participation in the UK.” It, too, criticised the “exceptionally short timescale for the Bill”, expressed concern that the Government had “failed to present convincing evidence that this is a problem which requires urgent attention” and added: “It is no exaggeration to suggest this could go down in history as the Dangerous Dogs Act of election law.”⁷³ The National Union of Journalists commented that the Bill would have “dire consequences on freedom of speech and will severely restrict the activity of charities and voluntary organisations, religious groups, trade unions and community groups from disseminating their policies, pursuing campaigns and representing their members.”⁷⁴

65. Emphasising the scale of the unease, Karl Wilding, Director of Public Policy at the National Council for Voluntary Organisations stated: “I have worked in the charity sector for 15 years, and in those 15 years I have seen two, possibly three, occasions when members and the wider sector have come together and united in rage about a proposal. This is one of those occasions.”⁷⁵ He said that 200 organisations had signed a letter to Chloe Smith expressing concern. The Cambridge Council for Voluntary Service noted that the National Council for Voluntary Organisations should be regarded “not ... as one organisation with

⁶⁶ Ev w10, para 4

⁶⁷ Ev w9, para 3

⁶⁸ Ev w10, para 11

⁶⁹ Ev w10, para 9

⁷⁰ Ev w32, para 3.4

⁷¹ Ev w10, para 10

⁷² Ev w32, para 3.4

⁷³ Ev w34, para 6

⁷⁴ Ev w52

⁷⁵ Q 195

one voice, but as a multitude of organisations with one voice”.⁷⁶ We also received submissions critical of Part 2 from a wide range of individual charities and voluntary organisations, both large and small, local and national. Karl Wilding stated that the existing regulations worked quite well and he was not sure what problem Part 2 was intended to address:

Lord Hodgson's review of the Charities Act has shown that regulation in this area is working quite well. The Cabinet Office, in their response to Lord Hodgson's review, said that the regulations were working quite well. The Charity Commission's guidance on campaigning and political activities is very clear.⁷⁷

66. Under “What is the problem under consideration? Why is government intervention necessary?”, the Impact Assessment for Part 2 states:

There is a perception of a lack of transparency in the way that third parties campaign in elections including a view that not all expenditure is captured, undermining public confidence in the democratic system. In 2010 the largest 10% of third party organisations spent more than the remaining 90% combined, fuelling a perception of undue influence. Without stronger reporting and spending regulations, the behaviours underlying this perception will continue to damage the legitimacy of the system of government.

In 2010, eight third-party organisations spent more than £100,000 campaigning during the general election, whereas in 2005 only two third party organisations spent more than £100,000 campaigning, indicating that substantial spending by third parties during general election campaigns may be on the increase.⁷⁸

67. We do not believe that the Government has clearly communicated the need for Part 2 of the Bill, or has provided a satisfactory account of the basis on which the new levels for registration and expenditure by third parties have been set. Part 2 of the Bill in particular would have benefitted from much more consultation with those it affects and with the Electoral Commission, which will have to operate its provisions.

Spending for “electoral purposes”

68. As with Part 1, the problems that were drawn to our attention in Part 2 are, at least partly, related to definitions. In Part 2, it is the definition of spending for “electoral purposes” in clause 26 that is causing concern. Currently, only third-party spending on “election material” is regulated, as the Electoral Commission explained:

The current PPERA rules on non-party campaigning are relatively narrow in scope (only covering ‘election material’) and the definition of what is covered is relatively clear, so we are able to produced guidance that builds on the legislation. However, it can still be hard for campaigners to understand what activity is regulated.⁷⁹

⁷⁶ Ev w87

⁷⁷ Q 200

⁷⁸ House of Commons Library, *Transparency of Lobbying, Non-party campaigning and Trade Union Administration Bill*, pp. 40-41

⁷⁹ Ev w11, para 14

The Electoral Commission itself, in its June 2013 report on party and election finance laws, called for a broadening of the types of expenditure that should be regulated:

the rules on PPERA non-party campaigning that is intended to influence voters should be changed to encompass a broader range of campaigning activities. They should more closely reflect the scope of rules for political parties by covering events, media work and polling, as well as election material.⁸⁰

However, crucially, they added: “this would need careful consideration”. This careful consideration appears to have been lacking.

69. The introduction of spending for “electoral purposes” in the Bill is intended to broaden the kinds of spending that are regulated, but, as currently drafted, the definition is capable of multiple interpretations:

(3) “For election purposes” means for the purpose of or in connection with—

(a) promoting or procuring electoral success at any relevant election for—

(i) one or more particular registered parties,

(ii) one or more registered parties who advocate (or do not advocate) particular policies or who otherwise fall within a particular category of such parties, or

(iii) candidates who hold (or do not hold) particular opinions or who advocate (or do not advocate) particular policies or who otherwise fall within a particular category of candidates, or

(b) otherwise enhancing the standing—

(i) of any such party or parties, or

(ii) of any such candidates,

with the electorate in connection with future relevant elections (whether imminent or otherwise).

70. The Electoral Commission commented of this definition:

It could be read narrowly, so that activity is only covered if it is quite clearly promoting a particular party or group of candidates. Or it could be read very widely, so that activity is covered if it relates to or discusses a policy that someone could see as being associated with a party or group of candidates, and even if the activity is not directed at the public.⁸¹

Karl Wilding, Director of Public Policy at the National Council for Voluntary Organisations, made it clear that charities would already be prohibited from promoting a particular party or group of candidates.⁸² However, charities could well be encompassed by

⁸⁰ Electoral Commission, *A regulatory review of the UK's party and election finance laws: Recommendations for change*, June 2013, p 56

⁸¹ Ev w13, para 26

⁸² Qq 206-209

the alternative, wide reading of “for electoral purposes” given by the Electoral Commission above. The Electoral Commission noted:

The new definition has been framed in a way that leaves a great deal of scope for us to interpret the meaning of the legislation, subject to being over-ruled by the courts as the result of a challenge. This effectively gives the Electoral Commission a wide discretion in deciding what the new regime means in practice ... we do not think it is appropriate for us to have the sort of wide discretion over the meaning and scope of the regulatory regime that the Bill as drafted appears to provide.⁸³

When we asked Jenny Watson, Chair of the Electoral Commission, how likely it was that there would be a legal challenge to the interpretation of “for electoral purposes”, she said: “very likely”.⁸⁴ She commented:

In election law, it is very rare for officials to be given a wide discretion, and there is a reason for that. It is because certainty is a helpful thing. That gives us significant concerns, and we would appreciate understanding more about Parliament's expectations about when we might intervene and in what way we might intervene, because that will help us in working through the role that Parliament expects us to have.⁸⁵

71. The concerns expressed by the Electoral Commission were focused principally on the risk of confusion arising from definition, taken in conjunction with the new thresholds for registration and new limits on spending. It stated that “the uncertainty created by the Bill seems likely to affect a wide range of organisations”, both small and large. It commented:

For campaigners to understand whether and how the Bill will affect their activity in the year before May 2015, they will have to:

- (1) assess whether any of their planned activity will fall into the new list of categories covered by the Bill and the new definition of ‘for election purposes’,
- (2) estimate the likely costs of those activities, including staff costs etc, and how far the costs relate to activity in particular constituencies,
- (3) consider whether their plans include coordinated campaigning with other organisations, because under both the current law and the Bill, the total coordinated spending will count towards the individual spending limit of each campaigner, and
- (4) decide whether their plans will require them to register with us, and how to ensure they stay within the reduced spending limits.

This will be particularly challenging for campaigners because of the need to apply the definition of ‘election purposes’, which is new and untested in the context of non-party campaigning. In the limited time available we will aim to produce guidance to assist with this, and will offer advice on particular queries where possible, but our

⁸³ Ev w13, paras 31 to 32

⁸⁴ Q 286

⁸⁵ Q 302

experience strongly suggests that it will not be straightforward to apply the new rules to many specific types of activities. Campaigners will face additional uncertainty if there is a legal challenge to our interpretation of the law. These factors will create a lot of complexity and uncertainty for those who may be covered by the rules.⁸⁶

72. Unlock Democracy were also concerned about the definition of “for election purposes”. They stated:

Currently the intent of the third party is taken into account. The Bill as currently drafted will instead regulate activity that may affect the result of an election. Under these new proposals every organisation which seeks to influence public opinion, whether through campaigning or advocacy work in the 12 months before the General Election—either directly or as a consequence of its actions—will now be covered.⁸⁷

73. The National Council for Voluntary Organisations stated: “we have major concerns that the provisions of the Bill are very broad in scope, due to a new definition of ‘activities for election purposes’. Furthermore, they are highly complex and unclear and run the risk of discouraging charity campaigning.”⁸⁸ They also commented on the issue of intent: “A charity’s activities which are intended to advance the interests of its beneficiaries, for example by raising public awareness of issues in connection with the election, could be regarded as being ‘for election purposes’ even if it doesn’t refer to specific policies or candidates.”⁸⁹ A wide range of individual charities and other organisations and people contacted us to express concerns about the lack of clarity arising from the definition of “for electoral purposes”.⁹⁰ Many of them gave specific examples of the sorts of campaigns that they were worried would be affected. For example, Christian Aid expressed concern that the “Make Poverty History” campaign, which took place in an election year, “would not have been permissible under the new provisions”.⁹¹ Roald Dahl’s Marvellous Children’s Charity commented: “We cannot rely on verbal assurances that the Bill will do this [protect legitimate activity]—the wording of the Bill needs to be clear and, indeed, transparent.”⁹² The Government may say that it is not its intent to restrict charities in this way, but this is not enough. The Bill itself must clearly reflect the Government’s intentions.

74. The definition of spending “for electoral purposes” as currently drafted is likely to cause confusion. It is unsatisfactory that its interpretation should be left largely to the Electoral Commission—a state of affairs that the Commission itself has criticised. The Government must define clearly in the Bill itself what it means by “for electoral

⁸⁶ Ev w11, para 16

⁸⁷ Ev w37, para 26

⁸⁸ Ev w65, para 5.2

⁸⁹ Ev w65, para 5.5

⁹⁰ See, for example, written evidence from Oxfam, Crisis, Royal British Legion, Association of Charitable Foundations, Institute of Fundraising, Open Rights Group, National Housing Federation, MACC, Voluntary Sector North West, Joseph Rowntree Foundation, Northern Ireland Council for Voluntary Action, Wales Council for Voluntary Action, British Youth Council, National Trust, Women’s Resource and Development Agency, Women’s Support Network, Foyle Women’s Information Network, Newcastle Council for Voluntary Action, New Economics Foundation, Christian Aid, Girlguiding, Mencap, RSPB, Chartered Institute of Housing, British Medical Association, North West Community Network, Royal College of Nursing and Chartered Institute of Physiotherapy, SCOPE, National Union of Students, Sami Wannell, Joe Egerton, National Federation of Women’s Institutes, Salvation Army.

⁹¹ Ev w96

⁹² Ev w89

purposes". We recommend that it should be defined relatively narrowly, so that it relates clearly to promoting a particular political party or candidate, or the intent to damage a particular political party or candidate.

Staff costs

75. Although the changes in Part 2 as a whole are intended to bring the rules for spending by third parties more in line with the rules for political parties, the TUC commented on two exceptions: "Political parties ... do not have to account for staff time in their returns, nor for the costs of an annual conference—an exemption not available to organisations such as the TUC which also have such events."⁹³ Unlock Democracy also expressed concern about the inclusion of staff costs and offices costs, "particularly as political parties were specifically excepted from including staff costs as it was considered too burdensome."⁹⁴ The National Council for Voluntary Organisations also drew attention the fact that staff costs were included. Karl Wilding, Director of Public Policy at the National Council for Voluntary Organisations, stated: "That obligation would be an extremely difficult exercise for many organisations to fulfil because their staff tend to work on multiple functions and issues."⁹⁵

76. The Electoral Commission argued in its June 2013 report on party and election finance laws that the scope of the Political Parties, Elections and Referendums Act 2000 should be broadened "to cover political parties' staff costs related to campaigning, and a wider range of non-party campaigning activity." They added: "However, we recognise that these are complex and potentially controversial changes that would need further thought and consultation before they are implemented."⁹⁶ Again, there has not yet been time for this further thought or consultation.

Thresholds for registration

77. The Bill lowers the level at which third parties have to register with the Electoral Commission from £10,000 to £5,000 in England, and from £5,000 to £2,000 in each of Scotland, Wales and Northern Ireland. Jenny Watson, Chair of the Electoral Commission, suggested that one practical way of improving the Bill would "to raise the thresholds at which people have to register."⁹⁷

78. In the absence of any evidence that there is a need to lower the threshold for third parties to register with the Electoral Commission, we recommend that the Government revert to the existing levels. To this end, we recommend that clause 27(1) is removed from the Bill.

⁹³ Ev w30

⁹⁴ Ev w37, par 27

⁹⁵ Q 205

⁹⁶ *A regulatory review of the UK's party and election finance laws*, p 8

⁹⁷ Q 292

Spending limits

79. There was concern about the new lower limits for expenditure, particularly taken in conjunction with the wider definition of what counts as regulated expenditure, and the requirement to aggregate spending when two or more organisations work together. The TUC was of the view that the new limits on spending would significantly curtail their activities and those of their affiliated unions:

The TUC Congress would probably count as election spending under this bill. Its cost is greater than the total limit for third party spending, and would thus take the TUC over its limit. The law requires organisations that work together to add up their combined spending and count this total against each organisation's cap. The annual TUC congress could thus take every affiliated union over its limits, even though political parties annual conferences are exempt from limits.⁹⁸

80. Unlock Democracy stated that the new rules would “restrict our ability to build coalitions with other organisations, as any costs accrued by a coalition will need to be ‘aggregated’”.⁹⁹ The National Council for Voluntary Organisations also commented on the possible consequences of the new lower spending limits, taken in conjunction with the requirement to aggregate expenditure by coalitions:

The requirement to account for the whole expenditure of a coalition is particularly burdensome: it will force the larger organisations to leave many joint campaigns, while also deterring small charities and voluntary organisations to work together for fear of dealing with the financial and administrative burden.¹⁰⁰

81. The Joseph Rowntree Foundation commented: “The cost limits are reduced in a way that is neither explicable, nor relevant”.¹⁰¹ Karl Wilding, Director of Public Policy at the National Council for Voluntary Organisations, said that he did not know the basis on which the Government had decided on the new limits for expenditure, adding: “One may suggest that they are arbitrary.”¹⁰² When we asked the Leader of the House about the basis for deciding on the new limits on expenditure, he said:

Because we wanted to set it at a level which we felt was appropriate in relation to the overall spending and would not, of itself—when you looked at third party spending, it is not actually set at a level which will constrain spending for electoral purposes generally, compared to previous elections, but would pretty much not permit large numbers of organisations to join the cohort we have seen up to now who are engaging in large-scale election spending on a national basis. We wanted to pretty much say, “Okay, this is where we are and we don't think we should really go beyond this sort of level in the future.”¹⁰³

⁹⁸ Ev w30

⁹⁹ Ev w34

¹⁰⁰ Ev w66, para 5.10

¹⁰¹ Ev w88

¹⁰² Q 202

¹⁰³ Q 348

82. We have stated already that we have not seen adequate evidence for setting the new thresholds for expenditure at the levels imposed by Part 2 of the Bill. The Government must explain the reasoning behind its decisions during the passage of the Bill. Even if the Government can make the case for imposing lower levels, it must be able to give a convincing account of why it has chosen these particular limits as opposed to any others. *If it cannot do so, we recommend that the existing levels continue to apply until such point as the case for change has been made.*

Reporting requirements

83. The Bill requires third parties to submit quarterly reports to the Electoral Commission during the 365 day regulated period and weekly reports during the period following the dissolution of Parliament. Third parties are also required to submit a statement of accounts to the Electoral Commission, although individuals are exempt from this requirement. The Electoral Commission stated:

The regulatory burden created by the Bill is likely to be significant. The Impact Assessment states that the estimated cost of compliance with the Bill changes for registered campaigners will be in the range from zero to £800 ... On the basis of our experience of the effort that campaigners need to make to comply with the current rules, and of our discussions with organisations that may be affected by the new rules, we do not think these estimates are credible.¹⁰⁴

It also commented that the Impact Assessment's estimate of the number of additional campaigners that would need to register as a result of the changes—between zero and 30—was likely to be “a severe under-estimate”.¹⁰⁵ The RSPB also expressed concern that “the administrative burdens that would be imposed by the bill would be far more onerous than the £0–£800 suggested by the Impact Assessment” and stated that it “is also unclear that the estimate for the number of organisations affected would take into account the new, wider definition of controlled expenditure.”¹⁰⁶

84. The Electoral Commission stated that “The new requirement for weekly reporting after Parliament has been dissolved is likely to be particularly onerous and potentially impracticable for large organisations with branches and other complex structures.”¹⁰⁷ Of the new accounting requirements, it remarked: “The new requirements appear onerous, in that the accounts will have to be produced with a few months of polling day and will cover a period of time that is not a standard accounting period.”¹⁰⁸

85. *We are concerned that the Electoral Commission does not think the figures in the Impact Assessment for the estimated cost of compliance with Part 2 of the Bill are credible, and that it thinks that the Government has severely underestimated the number of new campaigners who would need to register with the Electoral Commission as a result of the changes. We urge the Government to revisit its Impact Assessment and issue a*

¹⁰⁴ Ev w11, para 19

¹⁰⁵ Ev w12, para 20

¹⁰⁶ Ev w103, paras 8 and 11

¹⁰⁷ Ev w14, para 40

¹⁰⁸ Ev w14, para 41

revised version if necessary. The Impact Assessment is a useful tool when scrutinising a Bill, and it should be as accurate as possible.

Role of the Electoral Commission

86. Clause 35 of the Bill amends the Political Parties, Elections and Referendums Act 2000 by imposing a new requirement on the Electoral Commission to monitor and take all reasonable steps to secure compliance with the controls imposed by that Act. It extends the regulatory remit of the Electoral Commission in relation to party registration and rules for using imprints—information added to campaign material to show who is responsible for its production—in election material.

87. Of the change to its role, the Electoral Commission stated: “The Bill includes a change to the Commission’s regulatory remit. The Commission’s Board and Accounting Officer were not consulted on the change, and we are concerned that it has been brought forward without consultation and with no clear rationale.”¹⁰⁹

88. The Electoral Commission commented that there were “significant practical issues” about enforcement.¹¹⁰ It stated: “In practical terms, even with significant additional resources we would not be able to identify every case of potential non-compliance in advance.”¹¹¹ It was particularly concerned about the new controls on spending targeted at particular constituencies, stating: “Obtaining the information necessary to identify potential cases of non-compliance at constituency level, and particularly the evidence needed to be able to sanction breaches, is likely to be so difficult that these provisions may be unenforceable in practice.”¹¹²

89. It is extraordinary that the Government did not consult the Board and Accounting Officer of the Electoral Commission about the change it is making to the Commission’s role. We note also that the Commission has concerns about its ability to identify cases of potential non-compliance, particularly at a constituency level. We recommend that the Government remove Clause 35 from the Bill and consult with the Electoral Commission about its proposed changes and the rationale behind them.

¹⁰⁹ Ev w14, para 42

¹¹⁰ Ev w14, para 35

¹¹¹ Ev w14, para 36

¹¹² Ev w14, para 38

4 Part 3: Trade Unions' Registers of Members

Purpose

90. Part 3 of the Bill changes the legal requirements in relation to trade unions' obligations to keep their list of members up to date. The House of Commons Library Research Paper summarises Part 3 as follows:

Since the mid-1980s every trade union has been under a duty to compile and maintain a register of the names and addresses of its members. The duty is currently provided in section 24 of the Trade Union and Labour Relations (Consolidation) Act 1992. An independent regulator, the Certification Officer, oversees compliance with the duty, although only investigates the register if a member of the union applies for a declaration of non-compliance. Additionally, before an election or ballot is held, a trade union must appoint an independent person to act as a scrutineer. The scrutineer is required to inspect the register whenever it appears to him to be appropriate to do so or when asked to by a member or the union who has a well-founded suspicion that the register is inaccurate.¹¹³

91. The Bill would:

- require unions to submit annually to the Certification Officer a membership audit certificate (clause 36);
- require unions with 10,000 or more members to appoint a “qualified independent person” to act as an assurer, who will provide the union membership audit certificate and carry out such inquiries as they consider necessary to provide the certificate (clause 37);
- give substantial new investigatory powers to the Certification Officer, who would be entitled to: require the production of relevant documents or authorise another person to do so; require explanations of those documents from the person by whom they are produced or any person who is or has been an official or the union (including assurers); appoint an inspector to investigate compliance with the duty to maintain a register of names and addresses of members if circumstances suggest that the union has failed to comply with that duty or the duties relating to the membership audit certificate (clause 38);

¹¹³ House of Commons Library, *Transparency of lobbying, Non-party Campaigning and Trade Union Administration Bill*, p 33

- give new enforcement powers to the Certification Officer, who would be able to make a declaration of non-compliance with duties relating to the register, and, subsequently, to issue an enforcement order that would impose requirements to take steps to remedy the failure (clause 39).¹¹⁴

92. The TUC stated: “As with part two we are unable to discern the problem that this part of the Bill is meant to remedy.”¹¹⁵ Giving oral evidence, Nigel Stanley, Head of Campaigns and Communication at the TUC, said:

We have asked BIS, the certification officer and ACAS through freedom of information requests whether they have received or made representations that we need to amend current powers to regulate union membership, which are there with a very strong duty in the Trade Union and Labour Relations (Consolidation) Act 1992. We cannot find any demand for part 3.¹¹⁶

93. The TUC suggested two possible motives for Part 3 of the Bill: “to make industrial action more difficult and/or to regulate trade unions that are affiliated to the Labour Party.”¹¹⁷ It commented that a “common legal challenge” by employers facing industrial action was that “ballot papers have either gone to the wrong members or not gone to all the relevant members.” It stated: “The changes in the Bill would allow employers to complain directly to the Certification Officer to make further challenges to union membership systems, which could make industrial action ballots even more complex.”¹¹⁸ Of the second suggested motive, it commented:

Only 15 trade unions affiliate to the Labour Party. The Certification Officer’s list of registered trade unions contains 149 unions. Most of these do not have a political fund. It does not seem appropriate to impose a regulatory burden on the 90% of trade unions that do not—and are very unlikely ever—to affiliate to the Labour Party.¹¹⁹

94. Two principal concerns were raised by Nigel Stanley about the proposed new requirements. The first related to privacy:

It is a legal process in which three new groups gain access to individual membership details, which we think should be confidential. The three bodies who will have access to union personal membership details are the certification officer, anyone appointed by the certification officer as an investigator and the assurer that unions have to appoint from a list published by the Government.¹²⁰

¹¹⁴ House of Commons Library, *Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill*, pp 37-39

¹¹⁵ Ev w32, para 4.2

¹¹⁶ Q 190

¹¹⁷ Ev w33, para 4.4

¹¹⁸ Ev w33, para 4.5

¹¹⁹ Ev w33, para 4.7

¹²⁰ Q 190

He also raised a concern that “third parties will now be able to complain to the certification officer, which may result in all kinds of spurious and trivial complaints.”¹²¹ The TUC also noted that no Impact Assessment had been produced for Part 3 of the Bill, even though, in its opinion, the Bill would “result in a regulatory burden on employers” as “Unions are workplace-based organisations and many need information from employers to maintain accurate membership lists.”¹²²

95. A letter from UNISON to the Leader of the House, on 2 September, which we were copied into, raises concerns about Part 3 on the basis of legal advice received by UNISON. The letter states:

 this advice makes it clear that the Bill probably infringes both Article 8 of the European Convention of Human Rights (ECHR) with regards to the right to a private life and article 11 of the ECHR with regards to the freedom of association. Our legal advice also states that the provisions within the legislation appear to be both incompatible with EU data protection law and are likely to harm the neutrality of the Certification Officer (CO) by involving the CO in elements of industrial action from which they have so far been excluded.¹²³

96. In relation to Part 3, we note the concerns raised by the TUC about the confidentiality of membership details and the concerns raised by Unison in relation to the European Convention of Human Rights. *The Government must address these concerns during the course of proceedings on the Bill.*

¹²¹ Q 190

¹²² Ev w33, para 4.3

¹²³ Letter from Dave Prentis, General Secretary, UNISON, to the Leader of the House, 2 September 2013

5 Conclusion

97. We support the aims of increasing transparency in lobbying and effectively and fairly regulating non-party campaigning. However, Parts 1 and 2 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill are seriously flawed. There has been inadequate interaction between Government and Parliament to ensure that this Bill is fit for purpose. The Bill must not become law in its present form. It would benefit hugely from a proper process of consultation and pre-legislative scrutiny, both of which have been lacking so far. It has significant defects as it is currently drafted.

98. Our main recommendation is therefore that the Government should withdraw the Bill, and support a motion in the House to set up a special Committee to carry out pre-legislative scrutiny, using the text of the existing Bill as a draft. The Committee should be charged with producing an improved Bill within six months. That Bill should then be re-introduced to the House and complete its passage onto the statute book as soon as possible. We suggest this not because we want to hinder the Government in pursuing its legislative programme, but because it is in all our interests—those of the Government, Parliament and the public—to produce an Act that works.

99. In the event that the Bill is not withdrawn, we have proposed some amendments to Parts 1 and 2, which we think would improve it.

100. There are some fundamental lessons to be learned from this Bill. One is that, other than in cases of emergency, all Bills should, as standard practice, go through pre-legislative scrutiny in Parliament. The Standing Orders of the House should be amended to include words similar to these: “No public Bill shall be presented unless a) a draft of the Bill has received pre-legislative scrutiny by a Committee of the House or a joint Committee of both Houses, or b) it has been certified by the Speaker as a Bill that requires immediate scrutiny and pre-legislative scrutiny would be inexpedient.”

Conclusions and recommendations

Introduction

1. We regret the unnecessarily rushed way in which this Bill is being proceeded with, without pre-legislative scrutiny or adequate consultation. In the limited time available, we have focused on the principal concerns that have been raised with us in order to draw them to the attention to Members of Parliament and peers who are scrutinising the Bill as it makes its rapid progress through the House of Commons and House of Lords. In doing so, we hope to ensure that an improved Bill makes its way onto the statute book. (Paragraph 5)

Part 1: Registration of consultant lobbyists

2. If the Government wants only to make it clear whom third-party lobbyists represent when they meet Ministers and Permanent Secretaries, it does not need a statutory lobbying register to achieve this: such details could be included with the current information that is published about these meetings. (Paragraph 8)
3. In order genuinely to enhance transparency and confidence, a lobbying register would have to cover all those who lobby professionally and all those who offer professional advice on lobbying, whether they are third-party or in-house lobbyists, including those working for law firms, trade associations and think tanks. (Paragraph 26)
4. The Bill's definition of "consultant lobbying" is flawed. Not only does it exclude in-house lobbyists, which was the Government's intention, but as currently drafted it would also exclude the vast majority of third-party lobbyists, and particularly the larger organisations. The reasons for this were the subject of widespread agreement among our witnesses: many companies undertake lobbying as part of a wider communications and public relations business, and in addition they spend very little of their time meeting directly with Ministers and Permanent Secretaries, meaning they could argue they were exempt from registering under the exclusion in Paragraph 3 of Schedule 1. An effective way to determine whether a business is mainly a non-lobbying business could be to have a financial threshold above which people should have to register. One suggestion would be that any company or individual that spends more than £10,000 in one quarter on lobbying, as defined in the Bill, or the provision of lobbying advice, should be required to register. (Paragraph 27)
5. We are concerned that, by attempting to be particularly clear that Members of Parliament are excluded from the Bill, the Government has in fact achieved the opposite effect. We are encouraged that the Leader of the House indicated in oral evidence that he was willing to revisit this issue if there was any doubt that Members of Parliament were excluded. (Paragraph 37)
6. If the Government want to exclude Members of Parliament from the Bill, on the basis that paid advocacy is already banned by the House of Commons Code of Conduct for Members, then it should delete Paragraph 2 of Schedule 1, which has unintended consequences as currently drafted, and instead include a provision

stating that a Member of Parliament's salary from IPSA does not count as "payment" under clause 2(1)(a) of the Bill. (Paragraph 38)

7. The information that the register requires to be listed should be expanded to include the subject matter and purpose of the lobbying, when this is not already clear from a company's name. To be clear, this should not involve the disclosure of detailed information about the content of the meeting—just a broad outline of the subject matter and the intended outcome. For example: Subject matter—lobbying; Purpose—change the Transparency of Lobbying etc Bill. We also suggest that there could be a financial threshold above which companies are required to provide information about the subject matter and purpose of lobbying. (Paragraph 45)
8. Either in the Bill, or in regulations, there should be a specific requirement that the register is published in a format that is suitable for the extraction of bulk, formatted spreadsheet files, to enable people to make easy use of the data that is available. (Paragraph 48)
9. The Government must clarify, in the course of proceedings on the Bill, what would constitute "reasonable grounds" for the Registrar believing someone to be a consultant lobbyist. (Paragraph 51)
10. We are concerned that the defective definition of "consultant lobbying" in the Bill means that the Government's Impact Assessment may over-estimate the number of lobbyists who will be required to register, and that the cost of registration for those who are covered will be correspondingly high. We again urge the Government to modify the definition of "consultant lobbying" to reflect what consultant lobbyists actually do. (Paragraph 54)
11. We continue to believe that there would be merit in requiring lobbyists on the register to sign up to a code of practice. We do not think that a statutory code is necessary. As a starting point, under the information required on the register, registered lobbyists should have to list any codes of practice to which they subscribe. (Paragraph 60)

Part 2: Non-party campaigning

12. We do not believe that the Government has clearly communicated the need for Part 2 of the Bill, or has provided a satisfactory account of the basis on which the new levels for registration and expenditure by third parties have been set. Part 2 of the Bill in particular would have benefitted from much more consultation with those it affects and with the Electoral Commission, which will have to operate its provisions. (Paragraph 67)
13. The definition of spending "for electoral purposes" as currently drafted is likely to cause confusion. It is unsatisfactory that its interpretation should be left largely to the Electoral Commission—a state of affairs that the Commission itself has criticised. The Government must define clearly in the Bill itself what it means by "for electoral purposes". We recommend that it should be defined relatively narrowly, so that it relates clearly to promoting a particular political party or candidate, or the intent to damage a particular political party or candidate. (Paragraph 74)

14. In the absence of any evidence that there is a need to lower the threshold for third parties to register with the Electoral Commission, we recommend that the Government revert to the existing levels. To this end, we recommend that clause 27(1) is removed from the Bill. (Paragraph 78)
15. We have stated already that we have not seen adequate evidence for setting the new thresholds for expenditure at the levels imposed by Part 2 of the Bill. The Government must explain the reasoning behind its decisions during the passage of the Bill. Even if the Government can make the case for imposing lower levels, it must be able to give a convincing account of why it has chosen these particular limits as opposed to any others. If it cannot do so, we recommend that the existing levels continue to apply until such point as the case for change has been made. (Paragraph 82)
16. We are concerned that the Electoral Commission does not think the figures in the Impact Assessment for the estimated cost of compliance with Part 2 of the Bill are credible, and that it thinks that the Government has severely underestimated the number of new campaigners who would need to register with the Electoral Commission as a result of the changes. We urge the Government to revisit its Impact Assessment and issue a revised version if necessary. The Impact Assessment is a useful tool when scrutinising a Bill, and it should be as accurate as possible. (Paragraph 85)
17. It is extraordinary that the Government did not consult the Board and Accounting Officer of the Electoral Commission about the change it is making to the Commission's role. We note also that the Commission has concerns about its ability to identify cases of potential non-compliance, particularly at a constituency level. We recommend that the Government remove Clause 35 from the Bill and consult with the Electoral Commission about its proposed changes and the rationale behind them. (Paragraph 89)

Trade Unions' Registers of Members

18. In relation to Part 3, we note the concerns raised by the TUC about the confidentiality of membership details and the concerns raised by Unison in relation to the European Convention of Human Rights. The Government must address these concerns during the course of proceedings on the Bill. (Paragraph 96)

Conclusion

19. We support the aims of increasing transparency in lobbying and effectively and fairly regulating non-party campaigning. However, Parts 1 and 2 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill are seriously flawed. There has been inadequate interaction between Government and Parliament to ensure that this Bill is fit for purpose. The Bill must not become law in its present form. It would benefit hugely from a proper process of consultation and pre-legislative scrutiny, both of which have been lacking so far. It has significant defects as it is currently drafted. (Paragraph 97)
20. Our main recommendation is therefore that the Government should withdraw the Bill, and support a motion in the House to set up a special Committee to carry out

pre-legislative scrutiny, using the text of the existing Bill as a draft. The Committee should be charged with producing an improved Bill within six months. That Bill should then be re-introduced to the House and complete its passage onto the statute book as soon as possible. We suggest this not because we want to hinder the Government in pursuing its legislative programme, but because it is in all our interests—those of the Government, Parliament and the public—to produce an Act that works. (Paragraph 98)

21. In the event that the Bill is not withdrawn, we have proposed some amendments to Parts 1 and 2, which we think would improve it. (Paragraph 99)
22. There are some fundamental lessons to be learned from this Bill. One is that, other than in cases of emergency, all Bills should, as standard practice, go through pre-legislative scrutiny in Parliament. The Standing Orders of the House should be amended to include words similar to these: “No public Bill shall be presented unless a) a draft of the Bill has received pre-legislative scrutiny by a Committee of the House or a joint Committee of both Houses, or b) it has been certified by the Speaker as a Bill that requires immediate scrutiny and pre-legislative scrutiny would be inexpedient.” (Paragraph 100)

Formal Minutes

Wednesday 4 September 2013

Members present:

Mr Graham Allen, in the Chair

Paul Flynn
Sheila Gilmore
Mrs Eleanor Laing

Mr Andrew Turner
Stephen Williams

Draft Report (*The Government's lobbying bill*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 100 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Seventh Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Thursday 5 September at 9.45 am.]

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Tamasin Cave, Spinwatch/Alliance for Lobbying Transparency, and **Alexandra Runswick**, Unlock Democracy Ev 24

Nigel Stanley, Head of Campaigns and Communications, Trades Union Congress Ev 30

Karl Wilding, Director of Public Policy, National Council for Voluntary Organisations Ev 32

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