



House of Commons
Political and Constitutional
Reform Committee

**The Government's
lobbying bill: follow-
up: Government
Response to the
Committee's Tenth
Report of Session
2013–14,**

**Second Special Report of Session
2014–15**

*Ordered by the House of Commons
to be printed 10 July 2014*

HC 535
Published on 14 July 2014
by authority of the House of Commons
London: The Stationery Office Limited
£0.00

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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Publications

Committee reports are published on the Committee's website at www.parliament.uk/pcrc and by The Stationary Office by Order of the House.

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Committee staff

The current staff of the Committee are Joanna Dodd (Clerk), Edward Faulkner (Committee Specialist), Ami Cochrane (Legal Assistant), Tony Catinella (Senior Committee Assistant), Jim Lawford, (Committee Assistant) and Jessica Bridges-Palmer (Media Officer).

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Special Report

The Political and Constitutional Reform Committee published its Tenth Report of Session 2013–14, *The Government's Lobbying Bill: follow-up* on 24 January 2014, as House of Commons Paper HC 891. The Government Response to this Report was received on 1 July 2014 and is published below.

Appendix: Government response

The Government is grateful to the Committee for its report, which provided scrutiny of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act as it neared the end of its Parliamentary passage. The Government acknowledges the work that the Committee has undertaken to gather opinions from a wide range of sources in the creation of this report and throughout the debates in Parliament.

The Act received Royal Assent on 30 January 2014. The Government engaged with many different organisations during the course of the Act's parliamentary passage and introduced and accepted a number of amendments, including several put forward by the Political and Constitutional Reform Committee, in order to improve the future operation of the Act's measures.

The following sections include responses to each recommendation of the Committee, regarding Parts 1 and 2 of the Act.

Introduction

1. The six-week pause announced by the Government fell far short of the six-month pause for which we called in our original report and it related only to Part 2, not to the whole Bill, as we suggested. It is also clear that some of those who participated in the consultation that took place during the pause would have appreciated much more of a dialogue with Government. Nonetheless, we are pleased that the Government decided to have the pause. Six weeks was not long enough to solve all the problems with the Bill, but it was at least an indication that the Government recognised that there were problems and it was better than nothing.

During the six week period before Report Stage in the House of Lords, the Government met with over 50 organisations to discuss the measures within Part 2 of the Act. This period was productive and the Government reflected on suggestions made and tabled a number of amendments, which are discussed in more detail in the following paragraphs.

Part 1 – Registration of consultant lobbyists

2. Our original report stated that there would be merit in requiring lobbyists on the register to sign up to a code of practice and recommended as a starting point that, under the information required on the register, registered lobbyists should have to list any codes of practice to which they subscribe. A Government amendment that was made at Report Stage in the House of Lords changes the Bill so that registered lobbyists

will have to record whether they have signed up to a relevant code of conduct. We support this amendment.

The Government welcomes the Committee's support for its amendments that will require lobbyists to declare whether they subscribe to a publicly available code of conduct.

3. We still maintain that in order genuinely to enhance transparency, 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. We also believe that 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 the company's name.

As the Government has made clear, the Part 1 provisions are designed to complement the existing Government transparency regime and to address a specific problem – that it is not always clear whose interests are being represented by consultant lobbyists. The provisions are a proportionate and appropriate solution to that identified problem. The register will enhance transparency without restraining or hindering the important dialogue between decision-makers and those who will be affected by policy or legislative decisions.

4. In addition, we continue to argue that the list of people with whom communication or advising on communication counts as lobbying should include Senior Civil Servants and special advisers, as well as Ministers and Permanent Secretaries. Lord Tyler tabled an amendment at Report Stage in the House of Lords to add special advisers to the list of people with whom communication counts as lobbying. This amendment was made. We support the amendment as it goes some way towards widening the scope of the Bill. We recommend that this Lords amendment be amended to include Senior Civil Servants. We have tabled the following amendment to achieve this:

Agree with Lords Amendment 'Page 2, line 7, after 'secretary' insert 'or special adviser'."

When this matter was debated in both Houses, the Government was not persuaded to alter the definition of consultant lobbying outright in the manner suggested by Lord Tyler and the Committee because the register is designed to complement the existing transparency regime around the publication of ministers' and permanent secretaries' diaries. However, we did recognise the strength of feeling on the issue of including those who lobby special advisers within the definition of consultant lobbying. The Government therefore amended the Bill to introduce a power for ministers to amend the definition of consultant lobbying to extend the scope of the register to include communications with special advisers in the future.

5. Much of the attention in recent months has been on Part 2 of the Bill. Part 2 is certainly problematic, but we wish to emphasise that we continue to have serious concerns about the very narrow scope of Part 1. Without the changes that we recommended in our original report to broaden the register, Part 1 of the Bill will do little to increase transparency about who is lobbying whom and for what purpose.

We recognise that there are those that consider the scope of the Government's proposals for a statutory register of lobbyists to be too narrow. However, the Government's proposals are designed to address a specific problem - that it is not always clear whose interests are being represented by consultant lobbyists. We are yet to see a clear articulation of the problem that would be addressed by expanding the scope and therefore do not see any justification for a broader register that would pose a significant administrative burden for no clearly identifiable gain.

6. We are pleased that the Government accepted our suggested amendment to make it clear that Members of Parliament are exempt from the need to register as consultant lobbyists under Part 1 of the Bill.

The Government was grateful for the Committee's suggested amendment that clarified that the salaries or expenses paid to Parliamentarians for the exercise of their Parliamentary duties are excluded from the definition of payment for consultant lobbying, with the effect that the usual activities of Parliamentarians are not captured by the definition of consultant lobbying in the Act.

Part 2 – Non-party campaigning

7. We are pleased that the Government has decided not to exempt charities from Part 2 of the Bill. We do not support such an exemption.

The Government welcomes the Committee's view that charities should not have been exempted from Part 2 of the Transparency of Lobbying, Non Party Campaigning and Trade Union Administration Act 2014. The Government is of the view that the Political Parties, Elections and Referendums Act (PPERA) 2000 correctly provides for regulation to be dependent on the type of activities which a third party undertakes, and not depend upon the type of organisation. This view is also supported by the Electoral Commission and the Charity Commissions.

8. We support exempting security-related expenditure from Part 2 of the Bill and therefore support the Government amendment to this effect which was made at Report Stage in the House of Lords.

The Government welcomes the Committee's view that security-related expenditure should be excluded from the calculation of controlled expenditure. The Government believes that the costs associated with organising public rallies or events which seek to influence voting intentions should be considered as controlled expenditure; however, it is right that costs associated with ensuring such events are run safely should be excluded.

9. We support the Government's new clause, agreed at Report Stage in the Lords, to reduce the regulatory burden on minor campaigners that campaign in coalition with other third parties.

The Government welcomes the Committee's view that campaigners contributing small amounts of controlled expenditure to a campaigning coalition should not be subject to overly burdensome reporting requirements. This new provision allows a lead campaigner to account for the expenditure of smaller campaigners. By participating in such an arrangement, a small campaigner – in other words, one that only incurs limited amounts

of expenditure – may therefore still campaign as part of one or more coalitions, and not have to account for its expenditure (provided that its total expenditure does not of course exceed the registration thresholds). This allows small third parties to engage in the democratic process, without fear of being overwhelmed by administrative burdens.

10. We are pleased that the Government has agreed to shorten the regulated period for the next general election, so that it begins on 19 September 2014 rather than 23 May 2014. This will give third parties time to understand the new guidance and to plan their activities accordingly. We therefore support the Government amendment to this effect that was made at Report Stage in the House of Lords.

The Government welcomes the Committee's support for shortening the regulated period for the 2015 General Election. The regulated period has been shortened to allow the Electoral Commission sufficient time to produce clear and enhanced guidance for the revised regulatory regime. The shortened regulated period will also, as the Committee notes, allow third parties more time to understand the new guidance. The guidance is of crucial importance so that campaigners are fully aware of whether their activities fall within the regulatory regime, and what reporting requirements they may then have to fulfil.

The Electoral Commission has already indicated it will produce new guidance in time for the 2015 UK Parliamentary general election. The Electoral Commission has also previously stated that it is committed to consulting third parties to ensure the guidance meets their needs. The Commission will also work with the UK's three charity regulators to ensure that charities have clear and reliable guidance about how to comply with the rules.

11. The Bill has been rushed through Parliament without proper consultation or pre-legislative scrutiny. It has been improved slightly during its consideration by both Houses, but in the time available it has not been possible to solve all the problems that have emerged. It is vital that the Bill is reviewed after the next general election. For this reason, we are pleased that the Government tabled a new clause at Report Stage in the House of Lords to provide for a post-election review. We support the new clause. We emphasise to the Government that evidence gathering for the review will need to begin during the regulated period.

The Government does not accept that the legislation has been rushed through Parliament without proper consultation. The Government had hoped that reform of third party campaigning would be taken forward alongside reform of political party funding. It became clear in July 2013 that there was no possibility of cross-party agreement to such reforms going forward in this Parliament. The Government then took the decision to proceed with improvements to the regulation of third party campaigning. At that stage, it was not possible for pre-legislative scrutiny to be undertaken as the reforms were to come into force in time for the 2015 UK Parliamentary general election.

The Government discussed the impact of the Act's provisions during its Parliamentary passage with many stakeholders: over 50 of which were met during the six week period between Committee and Report Stage in the House of Lords.

The Government provided in the legislation for a review of the third party regulatory regime to take place, in order to assess its effectiveness at the next earliest opportunity - the

2015 UK Parliamentary general election. The Government welcomes the support of the Committee for this review.

A reviewer will be appointed in good time so that he or she has sufficient time to assess fully the operation of the rules, gather evidence and take representations from the relevant individuals and organisations during the regulated period.

12. We are pleased that the Government listened to the concerns we and many others expressed about the definition of controlled expenditure in clause 26. Reverting to the existing definition under PPERA is not an ideal solution, because the existing definition is itself problematic, but it is the best solution that could be achieved in the time available. We recommend that the person who conducts the review of the legislation after the next general election should be charged with producing an improved definition of controlled expenditure.

The test for controlled expenditure is now the same as the existing test in the Political Parties, Elections and Referendums Act 2000 – namely expenditure “which can reasonably be regarded as intended to promote or procure the electoral success” of a party or candidates. This test operated at the 2005 and 2010 UK Parliamentary general elections – campaigns which did not see charities or other campaign groups prevented from engaging with, commenting on or influencing public policy.

The Government has also clarified the definition by removing the additional test of “otherwise enhancing the standing of a party or candidates”. The Government recognised that this additional limb of the existing PPERA test was unclear. This change provides further clarity and reassurance to campaigners as to the test they have to meet in order to incur controlled expenditure.

13. In principle, we think that staffing costs should be regulated for both third party campaigners and political parties. However, we note that the Electoral Commission would support exempting staffing costs for the 2015 general election alone, on practical grounds. We support the non-Government amendment, which was made at Report Stage in the House of Lords, to exempt certain background staffing costs, on the grounds of reduced bureaucracy. We recommend that the person charged with conducting the review of the legislation should be tasked with devising a workable proposal for including staff costs within controlled expenditure after the 2015 general election.

Controlled expenditure will be incurred by third parties on an extended range of activities. Alongside election materials, controlled expenditure will now be incurred on activities such as market research/canvassing, public rallies and events, press conferences and organised media events and transport. The extended range of activities takes forward a recommendation of the Electoral Commission in its June 2013 Regulatory Review. As under the previous regime, staff costs will continue to be included for third parties in their calculation of controlled expenditure. The Act does not change this.

Electoral Commission guidance is very clear on how staff costs should be calculated – an honest assessment should be made. This does not mean that staff have to provide detailed breakdowns of how their time was spent. This is not what is intended, or what has operated for the last two UK Parliamentary general elections. The Government believes that the

inclusion of staff costs aids transparency and is not overly bureaucratic. The review, provided for under the Act, will look at the operation of the whole third party regime during the 2015 UK Parliamentary general election.

14. In our first report on the lobbying Bill we called for clause 27(1) to be deleted so that registration thresholds could be restored to their current levels. The Government has amended clause 27(1), at Report Stage in the House of Lords, so that registration thresholds are not simply restored to their current level, but increased. We very much welcome this change and are pleased that the Government listened to us and others.

The Government welcomes the support of the Committee in relation to the revised registration thresholds contained within the Act.

15. At Report Stage in the House of Lords, the Government made an amendment to raise the maximum expenditure limits in Scotland, Wales and Northern Ireland from those originally proposed in the Bill. In the case of Scotland and Wales, the new limits still fall short of the current limits, as they do in England. The changes are an improvement on what was originally proposed. However, we are still not clear about the rationale for altering the current limits. We therefore recommend...[an]...amendment.

The limits outlined in the Act are at a level that even few political parties, accounting for the same range of activities, ever exceed. The Act's limits still allow a large amount of campaigning to be undertaken by third parties.

The Government believes that the spending limits in the Act are proportionate and does not accept the Committee's recommendation that they should be raised further, almost back to their original levels.

16. We welcome the Government amendments made at Report Stage in the House of Lords to remove the sub-limit on constituency spending for the period after the dissolution of Parliament. They go some way towards simplifying the new regime.

The Government welcomes the support of the Committee in relation to removing the limit on constituency spending for the period between the dissolution of Parliament and polling day.

17. We continue to be concerned about the enforceability of the constituency level limits on spending by third parties. We see merit in the suggestion of keeping the constituency spending limit, but restricting it to spending on election material that is addressed to or directed to electors or households in a particular constituency, or spending on unsolicited phone calls to electors or households in a particular constituency. This strikes us as a workable solution that could be enforced by the Electoral Commission.

The Government believes that the introduction of constituency limits is an important addition to the regulatory regime. It is an important and necessary element of democracy that members of the public know when a third party is campaigning in their constituency, and how much money they are spending.

The Government does not support limiting constituency costs solely to certain activities – such as the production of election materials. To do so would exclude activities such as events, press conferences, rallies and business supporters, which are all significant aspects of campaigning.

The Government disagrees that constituency limits are unworkable. Their operation is based on existing PPERA rules and Electoral Commission guidance that set out how third parties should attribute their costs between the parts of the United Kingdom.

18. At Report Stage in the House of Lords, the Government made a series of amendments to simplify the reporting and accounting requirements. In particular, third parties that register with the Electoral Commission but do not receive any reportable donations during the reporting period will no longer need to send in a nil return. We support these amendments, as does the Electoral Commission. However, like the Electoral Commission, we believe further changes are necessary.

Prior to the Act, recognised third parties had to report donations of over £7,500 within the three months following the date of poll. The Act provides that recognised third parties will now report donations of over £7,500 to the Electoral Commission on a quarterly basis between the start of the regulated period and the dissolution of Parliament, and then weekly between dissolution and the date of poll.

A recognised third party must also submit a statement of accounts as part of their post election report to the Electoral Commission. Individuals, who are a recognised third party, are excluded from having to provide any statement of accounts. Additionally, recognised third parties (e.g. trade unions or companies) who prepare accounts under another enactment do not need to prepare accounts if such accounts contain equivalent information, and can be inspected by the Commission.

The Government believes these provisions enhance transparency. However, to ease unnecessary reporting requirements a recognised third party will not have to provide a spending return, or a statement of accounts where they have registered with the Electoral Commission but have not incurred controlled expenditure in excess of the registration threshold. Additionally, where a recognised third party does not receive a reportable donation, they will not have to provide a donations report. The Government welcomes the Committee's support in relation to this change which takes forward recommendations from the Electoral Commission.

As is the current practice, under section 96 of PPERA, a third party will have to provide a full report of reportable donations three months after polling day. This return is submitted to the Electoral Commission. The Government believes that the section 96 return provides an important safeguard where a full record of reportable donations is provided. This will allow both the Electoral Commission and the general public to ascertain the amount, and source of all reportable donations received by a third party during the regulated period. The Government does not believe that this requirement is overly burdensome – as the information will have already been prepared by the third party, but it also allows the opportunity for the third party to declare any reportable donations which it has failed to declare previously.

The Government believes that to require third parties to provide a declaration that they do not need to provide a spending return and/or a statement of accounts adds unnecessary additional bureaucracy for the third party.

19. We are still concerned that the Bill makes a change to the regulatory remit of the Electoral Commission which the Commission itself thinks could lead to uncertainty in the regime. We are disappointed that the Government has not removed clause 35 from the Bill.

The Government believes it is appropriate to emphasise the importance of the Electoral Commission's regulatory role. That is why the Act now requires the Electoral Commission to "take all reasonable steps" (where previously it only had the "general function") to secure campaigners' compliance with the regulatory rules.

The Government does not believe the change in the Electoral Commission's duties will increase the risk of legal challenge; rather, it removes any potential misunderstanding of what its responsibilities are. The provision also introduces a new requirement for the Commission to set out in its Annual Report what steps it has taken to secure compliance with the rules. This requirement makes clear to third parties the importance of the Commission's regulatory role.

It should also be noted that section 38 of the Act extends the Electoral Commission's regulatory function in section 145 of PPERA to cover Part 2 and Part 10 of PPERA. This implements a recommendation of the Electoral Commission made in its June 2013 Regulatory Review.

Conclusion

20. We continue to regard the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill as an example of how not to make legislation. It cannot be desirable that Parliament is put in the position of being asked to agree a Bill that is acknowledged to be imperfect, with the promise that it will be reviewed and improved at a later date. The Government and Parliament have a joint responsibility to ensure that legislation is got right the first time. This Bill should serve as a reminder to successive Governments that consultation and pre-legislative scrutiny are not mere formalities that can be dispensed with if the Government chooses, but essential elements of the process of producing good legislation. They need not take undue amounts of time, and they add genuine value.

A balance was sought between passing the legislation in good time to have new systems in place by 2015, and making sure Parliament has sufficient time to scrutinise and debate our proposals. Not every bill receives pre-legislative scrutiny. Both Houses of Parliament debated the Bill in the usual way – with introduction, second reading, committee stage, report stage and third reading debates. Parliament had several opportunities to vote and the Act was granted Royal Assent in January 2014.

The Political and Constitutional Reform Committee, the Joint Committee on Human Rights and the Constitution Committee of the House of Lords have all reported on the Bill; and there has been plenty of outside commentary. The Government engaged with many

stakeholders outside government during the course of the parliamentary passage – over 50 on Part 2 alone.

21. Significant changes have been made to the Bill during its passage through Parliament. It is far from perfect, but it is undoubtedly better than it was, thanks to the efforts of parliamentarians, Committees of both Houses, the Electoral Commission, the National Council for Voluntary Organisations, the Commission on Civil Society and Democratic Engagement and many others. We agree with many of the amendments that have been made in the House of Lords. In some instances, we think amendments to these amendments are necessary. In particular, in Part 1 we would like to see the Bill amended to include Senior Civil Servants within the list of people with whom contact counts as lobbying. In Part 2, we would like the maximum expenditure limits to be restored to their current levels in England, Scotland and Wales. We are content with the proposed increase in the limit for Northern Ireland. We would also like the reporting and accounting requirements in Part 2 of the Bill to be made less bureaucratic. We will be tabling amendments to this effect and urge Members to support them.

The Government is grateful to all of those who contributed to the debate on the Act, both those inside and outside of Parliament. The Government listened to concerns and the House of Lords made a number of amendments which improve the operation of the Act.