The Government’s lobbying bill

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GLB 66 North West Community Network
GLB 67 Playboard NI
GLB 68 Royal College of Nursing and Chartered Society of Physiotherapy
GLB 69 Greenpeace UK
GLB 70 SCOPE
GLB 71 Women’s Aid Federation Northern Ireland
GLB 72 Friends of the Earth
GLB 73 The National Union of Students
GLB 74 Sami Wannell
GLB 75 Compact Voice
GLB 76 Joe Egerton
GLB 77 The National Association for Voluntary and Community Action
GLB 78 Sheila McKechnie Foundation
GLB 79 National Federation of Women’s Institutes (NFWI)
GLB 80 The Salvation Army
GLB 81 The Board of Deputies of British Jews and the Jewish Leadership Council
Introduction

1. The House of Commons Political and Constitutional Reform Committee is conducting an inquiry on the lobbying aspects of this Bill and is seeking comments by 23 August. This paper comprises personal comments from someone who has been heavily involved in the political process over the years as chief executive of five trade associations, a regulator, a politician and author of a number of papers on representation.

Executive summary

2. 
   - The Bill is not capable of achieving its objective of introducing greater transparency into the lobbying process.
   - The Bill is based on a false understanding of the nature of lobbying.
   - The definition of “consultant lobbyist” is so tightly drawn that few, if any, public relations firms would be caught by it.
   - Subject to the definition of “lobbyist” being widened, the information to be included on the register is satisfactory.
   - The Registrar’s role seems purely mechanical. It is not clear who is responsible for checking the accuracy of the information provided or of policing the offences created by the Bill.
   - The Impact Assessment, like that for the consultation paper, is not fit for purpose.
   - The proposal does not meet government policy in respect of the micro business exemption, One-in, One-out or clearance by the Regulatory Policy Committee.
   - If it is intended to continue with the policy of registering lobbying organisations then a register should cover -
     - Companies that for reward provide a public affairs service, who should be required to identify their clients.
     - Trade associations that have a representative role, who should be required to identify their members.
     - Interest groups that have as one of their functions seeking to influence public policy, which should be required to give details of their membership.

The nature of lobbying

3. As the Bill seeks to regulate lobbying it is necessary to understand the nature of lobbying. It is defined in the Bill as “oral or written communications made personally to a Minister of the Crown or permanent secretary” relating to policy-making or other functions of the government, such as awarding contracts and regulation. This definition and the content of the Bill generally fail to understand how policy-making or regulatory functions work. On any significant issue good government requires extensive contact between the decision takers and the people affected. Frequently those affected can deal directly with the decision takers, particularly if they are large organisations such as big businesses or trades
unions. But in practice most people, and indeed organisations, prefer to seek to influence policy through a third party which can devote the necessary resources to dealing with the issue and which has expertise to do so. These organisations include pressure groups, locally ("save our hospital") or nationally (eg RSPCA or Greenpeace); trade associations; chambers of commerce; and the media. Frequently, people and businesses pay for such a service through a membership subscription, although generally the lobbying service is packaged with other services such as information or support services (eg the RAC and AA).

4. The lobbying function is much more than making representations. It includes –
   - Analysis of the issue.
   - Analysis of the policy making process.
   - Gathering evidence.
   - Drafting policy submissions.
   - Building alliances.
   - On occasion seeking media support.
   - Individual or group meetings.

5. Much of this is very specialist and needs people with the necessary experience and expertise. Even representative organisations such as trade associations will frequently use a specialist company for advice and support, for example advising on the political climate, who the key influencers are, possible allies etc. Rarely does that support extend to hiring a specialist lobbyist to make personal representations to anyone, let alone a Minister or Permanent Secretary. A lobbyist may draft a communication to a Minister but it would always be sent by the principal. And a lobbyist may help to set up a meeting but would rarely if ever be the principal spokesman. More generally, the vast majority of communications are not to Ministers or to Permanent Secretaries, but rather to the relevant officials.

The definition of consultant lobbyist

6. "Consultant lobbying” is defined in Clause 2 of the Bill as –
   - “oral or written communications made personally to a Minister of the Crown or permanent secretary”, in effect on any function of the government
   - “in the course of business and in return for payment”.

7. There are numerous exemptions in Part 1 of Schedule 1 –
   - MPs.
   - A “business which is mainly a non-lobbying business” and where payment for lobbying “is an insubstantial proportion of that business”.
   - Government bodies.
   - “The person acts generally as a representative of persons of a particular class or description”.
   - Other countries and international organisations.

8. The definition is such that in practice probably no organisation would fall within it. Trade associations and pressure groups are all excluded by the “representative of a persons of a particular class or description” exclusion. The vast majority, if not all, of public relations
firms are excluded because the making of personal representations to Ministers or permanent secretaries is an insubstantial part of their business. It is assumed that the “Ministers and permanent secretaries” definition has been used because the appointments of these people are already published.

9. It should also be noted that lobbying of organisations such as the Bank of England, regulators generally and Commissions such as that currently headed by Sir Howard Davies on London’s airports are not included in the scope of the Bill. Similarly, lobbying of MPs and Peers is not included.

10. If the Bill is to be meaningful there needs to be a significant change in its scope. Rather than seek to define a “consultant lobbyist” it should cover those engaged in “lobbying business” which should be defined as: “seeking to influence public policy or other functions of government and government-established agencies, in exchange for payment, on behalf of third parties.

Information to be included on the register

11. Ignoring the fact that with the current proposals the register would be empty the proposals for the information required of businesses seem reasonable save in one respect. The register seeks information about “clients”, and although it is not specified this presumably means clients who are provided with the specific service of making personal representations to Ministers or Permanent Secretaries. Again, this would be very sparse. There is also a requirement for each entry to give details of persons in a three month period on whose behalf lobbying for payment was done. This assumes that there is a distinct “lobbying” service whereas in fact public affairs companies provide a complete package of services and would not seek to levy a charge for a particular communication or other actions.

The role of the Registrar

12. The Registrar’s role is entirely mechanical. It is difficult to see how the role can be financed through charges when there will be no way of knowing how many businesses will register – assuming that that the Bill is amended to ensure that at least some businesses are covered. The Registrar appears to be under no duty to ensure that any information that is provided is accurate or to “police the perimeter”. It is not clear who is going to enforce the offence of not registering.

The impact assessment

13. The rationale for the policy being adopted should be set out in the Impact Assessment. The Assessment for the consultation document on the proposal was judged not fit for purpose by the Regulatory Policy Committee (RPC). The RPC said that the driver for the policy was market failure but that the Impact Assessment did not explain how significant this was or how the proposal would address the problem. It is unlikely that the present Impact Assessment will fare any better.

14. The IA has a number of errors –
• It is stated that no micro businesses are in scope. Assuming that a proper definition of lobbying emerges then many of the businesses would be micro businesses. (In fact at the bottom of the first page the IA suggests that no businesses are in scope – correct as it stands but perhaps not what was intended.) In respect of micro businesses the IA contradicts itself by saying that 50% of “consultant lobbyists” have an income below the VAT threshold of £79,000, all of which would be micro businesses.

• It is estimated that 1,000 businesses would be caught by the proposal. This figure is based on international comparison, but these seem worthless in the UK context. There are not 1,000 lobbying firms that make personal representations to Ministers or permanent secretaries, or arguably who are lobbying firms under any definition. There seems to be confusion here between individuals and companies.

• In section 4 it is stated that “organisations who are VAT registered” will however be exempt from the fee. The word “not” is missing from this sentence.

Government regulatory policy

15. The proposals seem to fall foul of government regulatory policy in three respects –

• There is no assessment by the Regulatory Policy Committee of the Impact Assessment – unsatisfactory bearing in mind that the Assessment for the original proposal was judged “not fit for purpose”.

• There is no exemption for small businesses.

• The best estimate for transition costs is £0.7m and for annual costs £0.3m. The IA correctly notes that the proposal is in scope of “One-in, One-out” but no compensating deregulation has been identified.

Proposal

16. The current proposals are badly thought through and serve no useful purpose. They misunderstand the nature of the representational process and invent a function of “consultant lobbyist” who makes personal representations to Ministers or Permanent Secretaries for payment on behalf of third parties. If such people exist they are very small in number. Clearly, major modification will be needed to the definition of “consultant lobbyist”. In my comments on the consultation paper I made the following suggestion –

“The definition of “lobbyist” must be narrowed so as to exclude people acting on their own behalf and there should be no attempt to identify employees engaged in lobbying activity, as this would be a bureaucratic nightmare. Registration could be confined to -

• Companies that for reward provide a public affairs service, who should be required to identify their clients.

• Trade associations that have a representative role, who should be required to identify their members.

• Interest groups that have as one of their functions seeking to influence public policy, which should be required to give details of their membership.”
This still seems a sensible suggestion.

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Mark Boleat has been Director General of the Building Societies Association, the Council of Mortgage Lenders and the Association of British Insurers and Executive Chairman of the Council of Property Search Organisations and the Association of Labour Providers. He founded the Trade Association Forum and has written widely on representation and policy making. He has also been the Claims Management Regulator and a member of the Gibraltar Financial Services Commission. He is currently Chairman of the Channel Islands Competition and Regulatory Authorities and of the Policy and Resources Committee of the City of London Corporation.

14 August 2013
Written evidence submitted by the UK Public Affairs Council (UKPAC) (GLB 02)

The UK Public Affairs Council (UKPAC) welcomes the opportunity to respond to the call for evidence on the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill.

UKPAC operates a register of lobbyists. It was set up by the leading representative bodies in the sector. It is currently funded by the Chartered Institute of Public Relations (CIPR) and the Association of Professional Political Consultants (APPC). The Register is supported by a set of Guiding Principles and self-regulatory arrangements run by the bodies that support UKPAC. The register is open to entities and individuals who are not in CIPR or APPC membership on the basis that they commit to a set of Guiding Principles of conduct.

UKPAC was set up in response to calls from the Public Administration Select Committee for a public register with wide coverage. The UKPAC register has run successfully for two years. It is published online and updated quarterly. The website contains an archive of previous editions.

The register currently details 300-400 employers of approximately 1,400 people working in lobbying and the 2,500 organisations currently listed as clients by lobby firms who offer services to third parties.

As such the register addresses conventional lobbying consultancies and their staff and employees, individuals who offer services in a personal/freelance capacity and hundreds of staff who see lobbying as their core “in-house” service. The in-house staff publish details of their employers and the coverage includes charities, unions, trade bodies, leading corporate entities, universities and other public bodies.

The register is currently voluntary but it has grown consistently and its coverage reflects the broad community of individuals and entities that seek to inform and influence Government.

UKPAC believes there is a case for maintaining broad coverage under any statutory regime. We believe transparency over who lobbies and who they lobby for is a valuable counter-part to the rules of conduct governing the public sector and parliamentarians and existing laws on bribery, deception and fraud and corporate governance.

UKPAC believes this value goes beyond filling minor gaps in the reporting of ministerial meetings. 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”. UKPAC does not believe a register on this basis is sustainable or something it could support, still less operate.

UKPAC is worried that the process will undermine rather than build on the existing and expanding regime of voluntary registration and self-regulation. If asked, we would be willing in principle to continue to deliver a voluntary register in support of industry bodies and others who value transparency.

A shell of a statutory register and a parallel and fuller voluntary register cannot be seen as progress of any substance.
We have made clear to Government that we believe a statutory register with workable definitions that achieve sensible coverage can be achieved and could be delivered most effectively and
economically by a non-statutory body as happens with other registers and with regulation in telecommunications, broadcasting and legal services.

UKPAC believes we have much to offer as such a delivery vehicle. We could build on IT investments made and our understanding of the sector and relationships with the industry. UKPAC has delivered a robust register at very low cost and is confident it could do the same in relation to a statutory regime – and at far lower cost than any public sector model.

The issues with a delivery mechanism go beyond cost, important though that issue is. Any delivery vehicle would need the powers necessary to address non-compliance, most particularly those who might seek intentionally to avoid declaration. But we fear a conventional body with conventional legal powers and no understanding of the sector will do little to build a culture of compliance. We fear it would fail to engage with those who lobby or drive registration as a benefit and social responsibility; not as some “homework that must be done” for fear of punishment.

The Bill, as drafted, proposes a conventional bureaucratic model, presumably with “off the shelf” civil servants. This is an outmoded approach that has been set aside in many other parts of Government and that is singularly inappropriate in a dynamic field like lobbying. We believe it is possible to create a model with far greater adaptability.

It seems likely that there will be changes in the definition of lobbying as the Bill proceeds. These may or may not extend to a coverage as wide as is proposed by groups from lobbying, charities and those who advocate far greater transparency. The use of a non-statutory body could allow the Registrar to operate a voluntary regime alongside the coverage of the statutory arrangements if there was industry interest in the idea.

This would allow those who are not bound to register by statute to do so on a voluntary basis, maximising transparency and supporting self-regulatory arrangements. This happens in a way with advertising regulation – where the statutory duty to regulate broadcast advertising has been passed formally from DCMS/Ofcom to the ASA and where the statutory regime sits alongside the ASA’s self-regulatory arrangements for print and internet advertising.

This issue of coverage and the parallel issue of funding a register will matter a lot if, for example, the government definition is revised but the statutory duty remains limited to those acting for third parties in a wider capacity than provided for in the Bill as presented. It is easier to persuade a community of the benefits and social responsibility of registration if the cost of registration is not excessive. 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 voluntary basis. A limited duty to register means high registration fees – and incentives for legal challenge and avoidance action.

The role of Registrar is one UKPAC believes it is well placed to perform. Taking the role on any statutory basis would require governance and accountability changes for UKPAC. We have made clear that we are ready to make the changes necessary to UKPAC governance, independence and accountability to meet our responsibilities if asked to deliver the statutory register.

1. Is the definition of “consultant lobbyist” in clause 2 of the Bill likely to lead to a register that enhances transparency about lobbying?
If we are to address lobbying from whatever source on equal terms, a definition needs to cover all who, in a professional (paid) capacity, seek to influence public policy, government decisions or legislation, or provide advice to those who seek to inform and influence.

The definition must be framed in a way that allows it to be applied in practice: that is to say, it must take account of the diversity of the services that public affairs professionals generally provide and the difficulty of making a precise distinction between those that do and do not constitute “lobbying”.

Any definition is fraught with difficulty and it is likely, within sensible parameters that a Registrar would have to have some discretion and power of interpretation in the exercise of her or his role.

The current UKPAC register contains all lobby firms within APPC membership and details of the companies, their staff and their client lists. The register also lists some lobby companies and freelance lobbyists who are not in APPC membership but who have CIPR affiliations. It also contains well over 200 organisations that employ staff who are in CIPR membership and who see informing and influencing Government as core to their roles. These organisations include leading charities, trade unions, individual companies, trade associations, law firms and educational and other bodies.

The Government Bill is based on a definition that only addresses “consultant lobbyists” who work for third parties and only if those consultants engage in direct communications with Ministers or Permanent Secretaries. The Bill also contains an exclusion for those for whom lobbying is not a significant part of their commercial activity. This Bill is drafted in these terms on the basis that its principal or sole purpose is to counter an element of opaqueness in relation the Departmental report of meetings, where some of those meeting are with consultant entities acting for third parties.

The public information on departmental meetings with outside interests suggests that each department has literally a handful of such meetings annually. On this basis a register would seem likely to contain tens of entities rather than hundreds or thousands.

This is a complete distortion of what is happening in the real world in terms of lobbying and risks stigmatising the handful of firms that might meet the definition.

A narrow definition, which only covers those who actually meet and make representations and only when in relation to third party clients may prompt those who are considered lobbyists to restructure their services to avoid registration. 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.

If the definition were to be relaxed to cover all “consultant lobbyists” going about their business as they do today with advice, strategy and so on as part of the definition of lobbying and not as an exclusion, the register would probably extend to perhaps 300-400 entities and freelancers/sole-traders. Such a statutory duty would undoubtedly be a valuable aid to
transparency insofar as it would address those whose core activity is offering advice and support to third parties but who are not prepared to register on a voluntary basis.

It would be wrong to under-estimate the challenge in identifying and securing registration by an uncertain and variable number of ex Civil Servants, parliamentarians, lawyers, media and communications gurus and others who populate the “Westminster Bubble” and who seek to market their know-how on a very ad hoc basis. This is why we argue registration should be seen to carry benefits (access and status?) and to be socially responsible – and not rely on sticks in the form of civil penalties and other sanctions delivered by bureaucratic means.

2. Are the definition of “consultant lobbyist” in clause 2 of the Bill and the list of exceptions in schedule 1 of the Bill likely to have any unintended consequences?

We make reference to the diverse range of people and employers on our current register. A definition that continues to exclude those who are lobbying in an in-house capacity would still deliver a register which was an incomplete representation of those who lobby and those they lobby for. We argue that information on those who lobby is a valuable counter-part to rules of conduct for those who are lobbied. If this is true it is equally true of those who work for third parties and those who make direct representations on their own account.

If a statutory register is set up and excludes the “in-house” community it is open to question whether a separate register of these players is sustainable. It would be unfortunate if action to deliver a statutory register led to less transparency amongst those excluded from that register. We refer to the way in which a Registrar working outside the public sector could deliver a register that covered those with a statutory duty to register and provide a vehicle for those who are under no duty to register but wish to do so to demonstrate transparency.

3. Is the information that the Bill requires to be listed on the register sufficient to enhance transparency about lobbying?

UKPAC believes that limiting a statutory register to third party lobbyists with “direct communications” will not go far enough in bringing transparency and consequently public trust in the lobbying industry as a whole. The proposals by the Political and Constitutional Reform Committee would go much further in addressing the issues of concern in lobbying.

We do, however, believe that the big gains in terms of transparency in relation to individual issues lobbied about sit with Ministers, Departments and public bodies.

Much of the responsibility for dispelling the cloud of suspicion rests on those who are the subject of lobbying and eventually take the decisions. There is no doubt that a register of those engaged in lobbying services provides an aid to public bodies and addresses any suggestion that those who lobby are doing so from a position of anonymity. However, a register of names, client information, issues lobbied about is no substitute for open Government and those being lobbied being required to comply with rules of conduct that deliver real transparency.
The reporting on Ministerial meetings is slow and limited in content. Posting “Welsh Affairs” as the one and only descriptor of dozens of meetings by the Welsh Secretary is not illuminating. Departments posting “Introductory meeting” or “Follow up Meeting” are hardly shedding light on ministerial dialogue. Freedom of Information powers and other tools are available to those with an interest in the conduct of Government but we would argue that a spirit of openness would reduce the need for recourse to this somewhat combative approach to finding out what is going on.

We would argue that anyone with an interest in departmental or other engagements on a specific issue would get a proper picture if the department shared information on all meetings rather than seek to piece a jigsaw together by searching for declarations by any and all of those who seek to inform and influence government. The Transport department, for example, would be the place to ask about all ministerial or other meetings with interested parties (those lobbying) on the issue of a second Channel Tunnel. If there had been 50 contacts on this all 50 would be known to the department. It is hard to see how an interested party could get this same picture by searching a register of those who lobby and trying to piece together a picture by that means. This would have even less purpose if the register in question only listed consultants who lobbied direct or consultants generally but excluded in-house people.

4. Are there any potential problems with the role envisaged for the Registrar?

Sanctions and the publicity that might attach to their imposition clearly create a form of leverage. We agree, therefore, sanction in the form of some financial penalty is appropriate. But we are anxious not to create a “Gotcha” culture with a Registrar more interested in catching people out than in advising on registration and building a culture in which registrants wish to be on the register and do so willingly.

Half of the provisions in the Bill relate to payment arrangements, enforcement, civil penalties and the definition of “working days” vis a vis quarterly reporting. The approach is traditional, prescriptive, hard-wired and likely to drive bureaucracy, not transparency and compliance. That is not to criticise the bureaucrats who will have the job as the legislation stands, but to point out that this is the inevitable consequence of this sort of legislative approach.

The body responsible needs to be able to distinguish between accidents, carelessness, recklessness and wilful behaviours. It needs to be able to exercise common sense and discretion. It needs to be able to perform its duties based on an understanding of the activity of lobbying and not simply a recitation of statute. A non-statutory body might be far more effective in delivering compliance through education, dialogue and influence, than a statutory body with the legalistic and mechanical sanctions that come with this status.

The existing rules on Departments and Parliamentarians are robust in many regards but do not bring enough transparency in areas such as ministerial meetings. It is for others better placed, to comment on the circumstances in which for example payment for parliamentarians or others in public office may be made and how these should be reported.

However, we would warn against trying to establish a rule for every conceivable scenario and every possible form of engagement for those in public life and those with whom they interact.
Not only is this impossible, but it would detract focus from the guiding principles that should apply.

The UKPAC approach in dealing with the lobbyist rather than the lobbied has been to focus on guiding principles which, while short and simple, define what is and is not acceptable and provide a basis from which individuals and self-regulatory bodies or others can judge matters that might come before them.

5. Does the absence of provision for a statutory or hybrid code of conduct in the Bill present any problems?

UKPAC believes that registration of lobbyists should be linked to principles of ethical conduct. 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 http://www.publicaffairsCouncil.org.uk/en/resources/.

The Guiding Principles address both the conduct of those who lobby and the need to respect the rules and regulations that apply to the lobbied.

There is no substantive evidence-base demonstrating misconduct on the part of those who lobby. We comment above on the range of existing safeguards over the conduct of those in public life and the robust laws against misconduct by others. The same applies to the rules of conduct and tender procedures in the public sector – where it seems fair to say the UK has national and local standards for preventing corrupt practice that are much admired elsewhere.

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. This view is also informed by the range of self-regulatory and regulatory safeguards that exist in the lobbying sector and that apply to lawyers, charities, unions and others as they go about their business.

6. Are there any further issues raised by Part 1 of the Bill, including drafting issues, that you would like to draw to the Committee’s attention?

Not at this time. We have highlighted the case for a different approach to delivering a Register through a non-statutory body. Sections 120 and 121 of the Communications Act 2003 offer a practical example of how this can be delivered. The same will be true of enabling legislation in relation to the Architects Registration Board.

August 2013
Summary

• The Whitehouse Consultancy’s position is that there should be a statutory register of lobbyists underpinned by a code of conduct, applying to all individuals paid to advise others on political lobbying – with an independent body empowered to enforce the code of conduct.

• Our view is that the legislation has an incredibly narrow definition and misunderstands the nature of lobbying. It should apply to those who lobby professionally and who provide advice on how to lobby. It should apply to a wider range of officials and include non-Ministerial Parliamentarians.

• The “mainly non-lobbying business” exception is a significant loophole as public affairs agencies also provide services such as event management or public relations. Large PR companies could set up a small public affairs arm which would not be covered by this legislation as currently drafted.

• It is essential that there is a code of conduct. It seems bizarre the Registrar could issue a stronger penalty for submitting information a few days’ late but do nothing about grossly unethical behaviour.

• We also make further points regarding the Association of Professional Political Consultants’ conflicted role; the nature of current “lobbying scandals”; the timeframe for submitting information; the background of the Registrar; privileged access to the Parliamentary Estate; and the inappropriateness of Parliamentarians having a financial interest in a lobbying company or undertaking lobbying work.

Introduction

1. The Whitehouse Consultancy was established in 1998 as a specialist public affairs agency, and has since expanded to deliver integrated communications and events services for our clients across the fields of public affairs and political communications, EU political and policy engagement, public relations, media relations, and events management.

2. The Whitehouse Consultancy has a range of clients including global brands, pan-European alliances, national trade associations, companies, charities and campaign groups. These are from a range of sectors including food and nutrition through media and communications to infrastructure and project finance.

3. The Whitehouse Consultancy is a member of the Association of Professional Political Consultants (APPC), and rigorously upholds the highest ethical standards in all of our activities. In particular, when our staff are carrying out communications listed in clause 2(3),
we have a company policy of referencing both our own company name and the relevant client, to any individual or organisation we approach.

4. However, we continue to be concerned by the inherent conflict of interest held by the APPC acting as holding a code of conduct by which members should abide (a regulatory role), and as the trade body responsible for promoting the commercial interests of the sector.

5. Our position is that there should be a statutory register of lobbyists, underpinned by a code of conduct, which should apply to all individuals who are paid to advise others on political lobbying. An independent body should be empowered to enforce the Code of Conduct.

**Answers to questions**

**Is the definition of “consultant lobbyist” in clause 2 of the Bill likely to lead to a register that enhances transparency about lobbying?**

6. Our view is that the definition in the bill is incredibly narrow, which will cover only consultant lobbyists whose business is predominantly lobbying, and who themselves lobby only the most senior civil servants – permanent secretaries or equivalent – or Ministers.

7. 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. Thus, while we advise and coordinate our clients’ relationships with Ministers and senior civil servants, such as by preparing draft letters or advising on topics to discuss in a face-to-face meeting, the letter or email would be sent in the client’s name and it would be the client discussing their concerns with the Minister or official.

8. 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 House of Lords who are not ministers. Such people are not covered by clause 2(3). Our clients would also want to make contact with leaders of relevant executive agencies, non-departmental public bodies, local authorities, and other senior officials.

9. 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”, in Schedule 1, paragraph 3(1)(a), despite still carrying out work which would be conventionally understood as “lobbying”. Conversely, a large public relations company establishing a new public affairs arm would not be covered despite potentially having revenues significantly larger than small agencies that only provide public affairs services.

10. 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 members 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.

Are the definition of “consultant lobbyist” in clause 2 of the Bill and the list of exceptions in schedule 1 of the Bill likely to have any unintended consequences?

11. The scope of the definitions is too narrow. Their scope does not cover “in house” or trade association lobbyists (it does not seem unlikely that some large companies or trade associations would employ more public affairs staff than the smallest public affairs agencies). Thus, the statutory register would cover fewer organisations and individuals than are currently registered in the self-regulatory regime operated by the Association of Professional Political Consultants.

12. We understand the Government’s position is that such people would not be included as it is more clear on whose behalf they are lobbying – i.e. their employer. But, typically agencies provide professional advice on lobbying and the Government’s position raises the question of why, if a consultant lobbyist were to communicate with a Minister or permanent secretary, the target of that approach would not seek clarity on whose behalf the person is lobbying before or during any exchange of information.

13. An additional issue, relating to the relative size of public affairs services, is raised in paragraph 9 above.

14. We note that the recent “lobbying scandals” have rarely involved consultant lobbyists, as they are defined in the Bill. They have instead been instances of unethical behaviour by politicians.

Is the information that the Bill requires to be listed on the register sufficient to enhance transparency about lobbying?

15. It might theoretically enhance transparency about lobbying for those who register and are not currently registered. It will do nothing to enhance transparency about lobbying for the majority who carry out lobbying or give professional advice on lobbying who would not be required (or even permitted) to register. It would reduce transparency in cases where companies are currently registered but would not meet the criteria for registration in the future.

16. We also note that the timeframe for submitting information would, at its longest point, be up to 14 weeks after a new client signs a contract, given the requirement for quarterly returns with a two week deadline for submission. Conversely, All Party Parliamentary Groups are required to register changes – including financial benefits – within 28 days. We see no reason why the Register of Consultant Lobbyists should not operate a similar timeframe.
Are there any potential problems with the role envisaged for the Registrar?

17. We note the requirement in Schedule 2, paragraph 4(1) for the Registrar to not have carried out in the previous five years the business of consultant lobbying. We agree that it is essential that the Registrar does not give the impression that they are too close to the public affairs industry, but it will be important that such a person is thoroughly aware of current lobbying practices which are in general based around giving professional advice to clients rather than meeting Ministers or permanent secretaries on their behalf.

Does the absence of provision for a statutory or hybrid code of conduct in the Bill present any problems?

18. Yes, it poses a fundamental problem in that without any code of conduct the only requirement that a company must meet is a financial one. There is no mechanism for removing consultants who act in an unethical manner. 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.

19. In the event of a media storm about unethical practices carried out by an actual consultant lobbyist, it remains unclear what the Government or Registrar would be able to do about such a lobbyist remaining on the statutory registrar and continuing to benefit from the implied endorsement of being on a statutory register.

Are there any further issues raised by Part 1 of the Bill, including drafting issues, that you would like to draw to the Committee’s attention?

20. We would invite the Committee to consider a recommendation that no person involved in the commercial provision of lobbying or public affairs consultancy services should be permitted to hold an official pass giving privileged access to the Parliamentary Estate.

21. Whilst outside the scope, perhaps, of the Committee’s current focussed inquiry, we would take the opportunity to reiterate our view that it is inappropriate for Members of either House of Parliament to have a financial interest in a lobbying company and/or to undertake paid lobbying work for any client.

August 2013
Summary

1. This submission deals with Part 2 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill (‘the Bill’). Part 2 amends the rules covering ‘non-party campaigners’ – people and organisations other than political parties and candidates – in the run-up to UK Parliamentary general elections. Many of the changes will also affect future elections to the Scottish Parliament, Welsh Assembly and Northern Ireland Assembly, and elections after 2014 to the European Parliament.

2. It is important that where non-party campaigning takes place on a scale that could have a significant impact on elections, it is transparent and controlled. Inadequate controls could ultimately result in voters losing trust in the fairness and effectiveness of the UK’s overall framework for regulating political campaigning.

3. The Bill both widens the scope of the current rules on non-party campaigning that affects parties and groups of candidates, and imposes some additional controls on such campaigning. We regulate these rules, and have said to the Government that we are ready to advise it on how to help the Bill achieve the Government’s policy objectives in a proportionate way. We have also noted that the Bill as drafted raises some significant concerns, which we set out in this submission. In summary our view is that:

- the Bill creates significant regulatory uncertainty for large and small organisations that campaign on, or even discuss, public policy issues in the year before the next general election, and imposes significant new burdens on such organisations

- the Bill effectively gives the Electoral Commission a wide discretion to interpret what activity will be regulated as political campaigning. It is likely that some of our readings of the law will be contentious and challenged, creating more uncertainty for those affected. While we as the independent regulator should be free to decide when the rules have been broken, and how to deal with breaches of the rules, we do not think it is appropriate for us to have a wide discretion over what activity is covered by the rules
• some of the new controls in the Bill may in practice be impossible to enforce, and it is important that Parliament considers what the changes will achieve in reality, and balances this against the new burdens imposed by the Bill on campaigners

Introduction

The current rules on non-party campaigning, and our role

4. The Electoral Commission welcomes the opportunity to submit written evidence to the Committee on the Bill. 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 voters confidence that political campaigning is appropriately controlled and transparent.

5. As the independent body that regulates the controls on political party and election finance in the Political Parties, Elections and Referendums Act 2000 (PPERA), we are responsible for monitoring and enforcing compliance with the current rules on non-party campaigning that promotes or prejudices the electoral success of political parties and groups of candidates.

6. We do not regulate the rules on non-party campaigning for or against individual candidates, which are dealt with by the police.

7. Earlier this year we published a briefing note setting out the scope of the current rules, how we regulate them and how much regulated activity has taken place at recent elections.

8. In June 2013 we published a regulatory review of the current party and election finance rules which recommended some changes to the rules on non-party campaigning, including widening the scope of the activities covered by the rules. Our review also emphasised the need for any such changes to be carefully defined, and for the PPERA spending limits to be reassessed alongside any change to the scope of the rules. This is because changes to the rules on non-party campaigning need particularly careful consideration, as discussed in paragraph 13 below, and it is important that spending limits are sufficient to enable freedom of expression.

Our assessment of the impact of the Bill
9. We share the concerns that the Committee expressed in July about the timing of the Bill and the absence of pre-legislative scrutiny. 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.

10. In our view the Government has not yet set out clearly 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.

11. We were not consulted on the detail of the Bill’s provisions before the Bill was published, although we were shown some draft clauses shortly before publication. In this submission we have set out to assess its potential impact on the basis of our experience as the regulator. Since the Bill extends the rules to cover activity that we do not currently regulate, we have also discussed the Bill with over 40 organisations across the UK including campaign groups, charities, trade unions, political parties, legal advisers, umbrella bodies and other regulators. We are grateful to these organisations for giving us their time. Our comments on the Bill do not of course represent the views of anyone other than the Commission.

12. We have said to the Government that we are ready to advise it on how to help the Bill achieve the Government’s policy objectives in a proportionate way, but that the Bill as drafted raises some significant concerns. These are summarised below under the headings ‘Uncertainty and burdens for campaigners’, ‘Discretion and the risk of challenge’ and ‘Enforcing the rules’. Where possible we have suggested possible ways of dealing with our concerns, although in the limited time available we have not been able to consider or test these fully. We have also touched on some other issues relating to Part 2 of the Bill at the end of this submission.

Uncertainty and burdens for campaigners

Context – the current rules

13. Non-party campaigners are inherently more complex to regulate than political parties. Political parties have to register with us in order to stand candidates at elections, and naturally have a strong focus on election campaigning. They are therefore relatively
simple to regulate. In contrast, non-party campaigners often have many other objectives beyond expressing views on political and policy issues. In effect, they are regulated under PPERA because of what they do, and not because they are a particular type of organisation. It is therefore particularly important that the rules on what activity is regulated are clear, so that those affected by them can tell whether and how they will be regulated.

14. 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 produce guidance that builds on the legislation. However, it can still be hard for campaigners to understand what activity is regulated. For instance, activity by charities (which are not allowed to be party political under charity law) can be covered. A common example is where an organisation invites prospective candidates at an election to say whether they support its views, and then issues a leaflet setting out the names of candidates who have expressed support. This will be controlled as election material if it is distributed to the public, even though those producing the material may argue that their aim is only to comment on public policy, or to influence politicians’ agendas, rather than to persuade the public to vote in a certain way.

The changes in the Bill

15. The Bill makes major changes to the current rules. The new rules are closely modelled on those that currently apply to political parties, but will have to be read and applied in a quite different context because third parties are so different from political parties. 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” (see ‘Interpreting the legislation’, below)
  - all the related costs of the activity will count against spending limits, including staff costs
- **reduces the thresholds** for registering with us 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

**The impact on campaigners**

16. 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 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 (see paragraphs 23 on below). These factors will create a lot of complexity and uncertainty for those who may be covered by the rules.

17. It may be helpful to give brief examples of the sort of issues that may emerge under the Bill as drafted:
• a small community organisation in Wales intends to campaign about a local planning issue in the year before the election. The organisation has a part-time employee whose work includes organising meetings, writing publicity material and liaising with the media. How much of this person’s work will count as ‘for election purposes’? The organisation will need to register with us if its regulated spending exceeds £2,000 and must keep within spending limits of £24,000 within Wales and £9,750 within any one constituency.

• a voluntary organisation is seen as having expertise in a policy area on which several political parties make policy announcements in the run-up to the election. The media frequently ask the organisation for its views on the issues and the parties’ policies, and sometimes invite it to provide interviewees for broadcast coverage. Will the cost of reactively setting out the organisation’s views count as ‘for election purposes’? If so, a proportion of the salaries of the organisation’s press and policy teams would be regulated and will require the organisation to register with us.

• three national organisations plan a protest march and rally to draw attention to concerns about a policy issue on which political parties have different positions. Will the event be judged to be ‘for election purposes’? If so, the associated costs (including publicity, transport, media work, and infrastructure costs such as policing and first aid) could easily exceed a national spending limit for the year before the election, and the total spending of all the organisers could count against each organiser’s individual spending limit.

• a website includes a blog which comments on the activities and views of politicians from various parties in the run-up to the election. Some politicians believe the blog is biased against them or their party. Will the cost of producing the blog, and a proportion of the cost of maintaining and promoting the website and associated social media activity, count as ‘for election purposes’? Our current view is that it is doubtful that the blog’s website is covered by the PPERA exemption from the non-party rules for “the publication of any matter relating to an election, other than an advertisement, in a newspaper or periodical”.

18. The uncertainty created by the Bill seems likely to affect a wide range of organisations. Small campaign organisations with a local or regional focus that are not currently affected by the rules on non-party campaigning will face significant new regulatory burdens, even if spending only a few hundred pounds a month over the year before the election on
controlled activities. Larger organisations with a variety of activities and objectives will face several challenges:

- the need to assess whether each type of activity they undertake during a regulated period is ‘for election purposes’ will be a new requirement, and if their assessment is found to be inaccurate (whether by us or by the courts) they may breach the rules unintentionally
- even if the large majority of what they do is not regulated, they will only need to spend a few thousand pounds on regulated activity over the year to be drawn into the regulatory regime
- if it is judged that one substantial activity, such as an event, is ‘for election purposes’, this could use up or exceed the relevant spending limit. It is not clear that the new spending limits have been based on any evidence of the costs that campaigners incur in carrying on the activities that are to be regulated. The new spending limits for the UK general election are also inconsistent with existing limits for other elections in the UK.

It has been suggested to us that these effects could be particularly significant in Scotland, Wales and Northern Ireland, where civil society has often had a prominent role in the development and discussion of new policy and legislation in recent years.

19. 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. This assumes among other things that campaigners will need two hours to become familiar with the new definition of regulated activity since it is “a relatively clear and simple requirement”, and that a day of additional information recording will suffice to deal with the new requirement. 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.

20. The Impact Assessment also estimates that the changes to registration thresholds will lead to between zero and 30 additional campaigners needing to register in 2015 compared to 2010. It is difficult to estimate the likely level of additional registration given the uncertainty around the scope of activity covered by the Bill, but again this appears likely to be a severe under-estimate on the basis of our recent discussions with campaigners.

21. The uncertainty and burdens that the Bill will create for campaigners could be mitigated by recasting the Bill’s definitions of what is covered, in a way that provides
more clarity about Parliament’s expectations of when each type of regulated activity should be seen as being ‘for election purposes’. This will not be straightforward given the complexity of the issues, and would require careful testing with those potentially affected by the definitions.

22. It has been suggested to us in discussions on the Bill that where it is difficult to set precise rules to regulate activity, imprecise legislation can still have a ‘dampening effect’ and deter activity that might be caught by the rules. Such arguments are for Parliament to consider. However, in our view it is important that the law should be certain and predictable, particularly in the context of elections.

**Discretion and the risk of challenge**

23. As noted above, the Bill’s new definition of regulated activities is closely modelled on the equivalent definition for political parties. However, when the definition is applied to organisations with a wide range of objectives other than political campaigning it has to be read in that new context.

24. The new definition no longer includes some significant elements of the current definition of election material. Instead, the Bill simply provides that spending on a relevant activity is controlled if it is incurred “for election purposes”, which are defined as “for the purpose of or in connection with” promoting electoral success for a party or group of candidates.

25. The explanatory notes to the Bill state that this wording “does not rely solely on the intent of the third party; the effect of the expenditure must also be considered”, and that spending can be controlled “regardless of whether those incurring the expenditure intended it for another purpose”.

26. Our view, and the view of others with whom we have discussed the definition of “election purposes”, is that in the context of non-party campaigning it is capable of a very wide range of reasonable interpretations. 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. A wide reading could cover many types of activity that are not currently regulated.
27. It is part of our regulatory role to provide those who may be affected by the law with clear guidance on our view of what it means. We have done this for the current rules on election material, setting out a 'purpose test' and 'publicity test' that campaigners can use to determine whether we would regard their material as regulated. We also provide advice on specific cases on request.

28. As noted above, we will also produce guidance to try to help campaigners understand our interpretation of the scope of the new regime. However, we think that the breadth of the new definition means that there is a high risk of our interpretations being challenged, particularly in the early years of the new regime before case law develops. For instance, taking one of the examples outlined above, a march and rally on a policy issue:

- if we advise the organiser before the event takes place that we consider the event to meet the definition of 'for election purposes', that could effectively amount to prohibiting the event, depending on its cost and the amount of other regulated spending that the organiser has already incurred during the regulated period. The organiser might choose to mount a legal challenge on the basis that the event could reasonably be seen as not being for election purposes, or to proceed with the event with a view to challenging any regulatory action we might then seek to take.

- if we take the view that the event is not 'for election purposes', we might equally be challenged by others who believe that the event should be regulated.

29. There is also scope for challenges to our interpretation of other aspects of the Bill that are new or will need to be read in a new context, such as the provisions on spending focused on particular constituencies (see paragraph 38 below).

30. We aim to take careful and reasonable decisions about our guidance on regulatory issues, and would not therefore expect most challenges to succeed. However, the prospect of a series of challenges to our decisions during an election campaign clearly adds to the uncertainty for campaigners discussed earlier in this submission, and may not improve public confidence in the effectiveness of the rules. Where a challenge on a key point remains unresolved during the intense final stage of an election campaign, this would cause severe and ongoing uncertainty for campaigners, and indeed for political parties.

31. In our view there is also an issue of principle here. 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.

32. We are independent of Government and directly accountable to Parliament, and it is important that an independent body should be responsible for deciding when the rules on party and election finance have been broken, and how breaches should be dealt with. It follows that we have a role in advising those affected by the rules how we interpret the law, and how to comply. But 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. Electoral law avoids giving a wide discretion to unelected officials, whether those who run elections or those who regulate campaigning, precisely because of the high risk of being drawn into political controversy and challenge.

33. There is a possible parallel here with the power that the Charities Act 2006 gave to the Charity Commission to define the concept of ‘public benefit’ in guidance. This is in some respects a politically contentious definition and the guidance has been the subject of debate and challenge over a number of years, despite substantial case law and precedent predating 2006. We think the present structure of the Bill has the potential to create problems in a similar vein, particularly since the legislation will be new and initially untested.

34. As with the issue of uncertainty for campaigners discussed earlier in this submission, these concerns could be addressed to some degree by specifying more clearly in the Bill the intended scope of the new definition of regulated activity.

Enforcing the rules

35. The Bill’s changes to the controls on non-party campaigning raise some significant practical issues about enforcement, and Parliament may wish to consider what impact it expects these changes to have in practice.

36. For example, where a campaign appears to be at risk of exceeding a spending limit if an activity is considered to be ‘for election purposes’, would Parliament expect us to intervene to stop that activity happening, for instance by telling an organisation to cancel an event (as in the illustration above) or take down a website? We already take some steps to monitor campaigning at major elections, and have powers to issue ‘stop notices’ in cases where we think that a potential breach could pose “a significant risk of seriously damaging public confidence in the effectiveness” of the PPERA controls. However, this
test of “significant risk” is intentionally high for obvious reasons, and we expect that Parliament would want us to act only in cases where it is quite clear that this high test has been met. In practical terms, even with significant additional resources we would not be able to identify every case of potential non-compliance in advance.

37. At the other end of the scale, the wider scope of the new regime and the lower registration thresholds mean that campaigners could be in breach of the rules even if spending only a small amount each month on staff costs relating to policy or media work. We would expect to take a proportionate approach to minor breaches, but the resources needed to identify campaigners that may be affected, and help to bring them into compliance, will be substantial. Parliament may want to consider the balance between the benefits of bringing small-scale campaigners into the regime, and the associated burdens and costs. The balance could readily be adjusted by raising the proposed registration thresholds.

38. We see particular enforcement challenges in the new controls on spending targeted at particular constituencies. These rely on the concept of spending having ‘no significant effect’ in other constituencies. As with the definition of ‘for election purposes’, the concept of ‘no significant effect’ is capable of a wide range of reasonable interpretations in the context of non-party campaigning at constituency level, and our interpretation may be challenged accordingly. Most non-party campaigners are not of course organised on a constituency basis. 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.

**Other issues**

**Minimising regulatory burdens**

39. As already noted, the scope of the new rules is likely to bring many more organisations into the regulatory regime. Organisations that expect to exceed the registration threshold will have to register with us, and will then have to record and report their spending (including spending by constituency and spending that supports a single party, which will have to be managed in conjunction with that party), check the permissibility of donations they receive towards regulated spending, and report such donations periodically before the election, rather than afterwards as at present.
40. 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 or other complex structures. These new donation reporting rules are modelled on those that apply to political parties. Our recently published regulatory review included recommendations to simplify the reporting rules for parties, and if these are adopted for the proposed new regime they would help to reduce the new burdens imposed on campaigners.

41. The Bill also requires organisations to submit a statement of accounts covering the regulated period with their post-poll spending return, unless other legislation already requires them to publish accounts of a certain standard (it seems likely that charities will benefit from this exemption, but that companies publishing abbreviated accounts may not). The new requirements appear onerous, in that the accounts will have to be produced within a few months of polling day and will cover a period of time that is not a standard accounting period. The Bill provides for us to mandate common standards for these accounts, but we do not expect to be able to do this in time for 2015, given the timing of the Bill and the diverse organisations that will be affected by the new requirements.

The Commission’s regulatory remit

42. 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. We are particularly concerned that the introduction of a “duty … to take all reasonable steps” to ensure compliance will increase the risk of challenge to any of our regulatory decisions, including those involving political parties. This in turn will affect our ability to deal promptly with spurious or politically motivated unfounded allegations.

The Commission’s resources

43. The Impact Assessment acknowledges that the Electoral Commission is likely to need additional resources in order to regulate the new rules. We think its resource estimates are significantly understated, and will discuss this with the Speaker’s Committee on the Electoral Commission which is responsible for our funding.

August 2013
Endnotes


iii The current PPERA rules provide that campaigning at the next UK Parliamentary general election will be regulated from January 2014 onwards, under a combined regulated period that also covers the 2014 European Parliament elections. The Bill provides that the current rules will apply to the period from January to May 2014, and the new rules in the Bill will apply to the period from 23 May 2014 until May 2015.

iv In this respect the Bill differs from the rules on political parties, whose staff costs are not regulated.

v For example: the spending limit for the four month regulated period for Scottish Parliament elections is £75,800 whereas the new limit on spending in Scotland for the twelve months before a UK general election will be £35,400.

vi The current definition states among other things that something is to be treated as election material if it is “made available to the public” and “can reasonably be regarded as intended” to promote electoral success, “even though it can reasonably be regarded as intended to achieve any other purpose as well”

vii Paragraphs 3.9 – 3.20.
The Information Commissioner has responsibility in the UK for promoting and enforcing the Data Protection Act 1998 (DPA) and the Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations (EIR) and the Privacy and Electronic Communications Regulations. The Information Commissioner’s Office (ICO) is the UK’s independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Commissioner does this by providing guidance to individuals and organisations, solving problems where he can, and taking appropriate action where the law is broken.

In 2012 The Information Commissioner responded to the Cabinet Office consultation document on the proposal to introduce a statutory register of lobbyists. In our response we focussed on those issues that had data protection and privacy implications and which were also relevant to the provisions of the FOIA. A copy of that response is available at [http://www.ico.org.uk/~media/documents/consultation_responses/ICO_response_to_consultation_on_register_of_lobbyists_20120413.ashx](http://www.ico.org.uk/~media/documents/consultation_responses/ICO_response_to_consultation_on_register_of_lobbyists_20120413.ashx)

We now welcome the opportunity to provide written evidence to the Committee relating specifically to transparency considerations.

We have noted that the Committee seeks views in response to a series of six questions. Our response relates solely to the third of those questions.

Is the information that the Bill requires to be listed on the register sufficient to enhance transparency about lobbying?

In his response to the Cabinet Office consultation last year the Information Commissioner welcomed the introduction of a UK register of lobbyists in order to increase transparency by making available to the public and other interested parties authoritative and easily – accessible information about lobbying activities.

We note that sections 4 and 5 of the Bill specify both the information required to form the entry on the register, and also the nature of the information to be submitted quarterly by those engaged in lobbying activities – to include:

- For companies engaged in lobbying, the name, address and registered number, also the names of directors and any secretary or shadow directors
- For partnerships, the names of partners and the address of the main office or place of business
- In the case of an individual, their name and address of the main place of business (or if none the individual’s residence)
- For any other person the equivalent information
- For all entries the client information for every quarter in which the person has been entered in the register
- If payment received, the name of the person(s) on whose behalf the lobbying was done
- Notification each quarter of client information and changes
Based on our responsibilities in relation to the FOIA we are aware of the public’s interest in the role of lobbyists and their activities in seeking to exert influence on public policy. 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.

Whilst it is difficult to gauge the number of FOI requests currently made about lobbying, and the number of complaints received by the Commissioner there is enough evidence to suggest that the legislation is used to a significant extent to hold lobbyists to account or find out more about their activities.

We would expect that the introduction of a register of lobbyists detailing the information identified above will enable interested members of the public to refer to the register and in some cases then make a specific freedom of information request in order to seek additional information. At this point any sensitivities relating to the information requested would be properly assessed and a decision made regarding the whether the information should be released, or an exemption applied. The important point is that the register, combined with other available information, should be sufficient to flag the potential interest in making an FOIA request.

Our response to the Cabinet Office consultation makes reference to the Information Tribunal decisions in the cases of Department for Business, Enterprise and Regulatory Reform v Information Commissioner’s Office and Friends of the Earth and also Evans v Information Commissioner’s Office and Ministry of Defence. In those cases the Tribunal upheld that there is a public interest in understanding the role of lobbyists and their relationship with government; scrutinising the probity of public officials and providing the opportunity for others to present opposing views during the policy development process. Case law highlights a strong public interest in disclosure but has recognised some strictly defined circumstances in which information can be withheld, recognising that lobbying can be a legitimate and potentially beneficial activity, which may be deserving of confidentiality in respect of certain information and certain timeframes. It is however clear that lobbyists should not have an expectation of general confidentiality under FOIA.

The Information Commissioner considers that the FOIA regime plays a significant role in providing transparency about lobbying activities - in disclosures made in response to requests, sometimes following Commissioner and Tribunal rulings, and also the proactive disclosure requirements of publication schemes as required under section 19 of the Act. There is clear evidence that transparency brought about by FOIA can modify behaviour and provide incentives for public authorities to operate in a certain manner.

The Information Commissioner further considers that a statutory register and disclosure regime for lobbying organisations and Ministers / public officials will be most effective when underpinned by the right to both request more detailed information under FOIA and publication scheme requirements.

As a final point the Information Commissioner plans to develop new external guidance on handling FOIA requests relating to lobbyists in 2013 / 2014. We will wish to consider regulatory and other developments in relation to lobbying at that time.

*August 2013*
Introduction

1. MHP Communications is one of the UK’s largest communications agencies, employing 175 people in offices in London, Brussels, Edinburgh, the Middle East and Washington DC. Our clients are drawn from the private, public and third sectors; our employees have backgrounds in industry, finance, the media and public bodies, including Westminster and Whitehall.

2. With around 55 people working in the discipline MHP has the biggest public affairs practice in the United Kingdom. We are long-standing members of the Association of Professional Political Consultants (APPC), and I personally served for many years on its management committee, including as its Deputy Chair. We are also members of the PRCA and other bodies.

3. Those of us involved in public affairs and lobbying are often frustrated by the quality of debate on this subject. It is deeply regrettable that some of the serious issues our industry faces are seemingly only talked about when the Government wants to distract attention from other concerns. It is therefore extremely helpful that the Committee is now engaging seriously with this subject, and I am delighted to respond to the inquiry.

4. Finally, although I am responding as an individual, I also speak for my colleagues in MHP Communications. I am particularly grateful to my colleagues Nick Laitner, Jennifer Hall and Sarah Barbut for their help in compiling this written response.

Questions

Is the definition of “consultant lobbyist” in clause 2 of the Bill likely to lead to a register that enhances transparency about lobbying?

5. Developing an effective definition of ‘a lobbyist’ has been the stumbling block to many attempts to regulate the public affairs sector over the years. It is not easy. The definition set out in the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill (the ‘Lobbying Bill’) is not good enough. Most public affairs consultants will fall through loopholes in the Bill’s provisions; at the same time, large numbers of third party ‘lobbyists’ will be specifically excluded from coverage. If anything, transparency will diminish, not get better.
6. I want to stress above all that MHP Communications is committed to transparency. We already declare publicly our public affairs staff and clients on a regular basis in the registers of the APPC and PRCA. What is perhaps most regrettable about the Bill as it stands is that it will not replicate the level of transparency to which we are subject already. It will not extend the transparency that exists already to those who are not currently covered. It is worse than what exists now.

7. To explain my concerns it is perhaps worth setting out why, in our view, MHP Communications would not be covered by the register proposed by the Bill:

- We are a full service communications consultancy, not simply a public affairs firm. We operate a single bottom line, and so do not break out the work of our public affairs division. There is no ‘MHP Public Affairs Ltd’ which employs a certain group of people. This means that MHP is very clearly a ‘mainly non-lobbying business’ for the purposes of Schedule 1 of the Bill. This will also be the case for all of the larger firms.

- Even MHP Public Affairs, if it existed as a separate entity, would be likely to qualify as a ‘non-lobbying business’. Our staff do not ‘mainly’ spend their time directly lobbying the Government officials defined in Schedule 1 (see also Clause 2 for the definition of ‘lobbying ’). The same will surely be the case for our competitors.

- There is a further exclusion if ‘lobbying’, as defined in Clause 2, is an ‘insubstantial’ part of our business. I can say with absolute certainty that direct, personal, communications made to a Minister of the Crown or Permanent Secretary is an insignificant part of our business – and an insignificant part of the work of any professional consultancy.

8. What is particularly galling about the Bill is that officials appear to have gone out of their way to exclude from its provisions many of those involved in providing services akin to those offered by professional public affairs firms. These include many law firms, management consultancies, think tanks, trade bodies and others, all of which can and will argue that they are ‘non-lobbying businesses’, no matter whether they provide lobbying services. This is wrong.

9. As I have said, companies like MHP do not see any difficulty in registering our clients. What is of vital interest to us is that those who offer competing services to ours should be
subject to the same regulatory regime we face. It is commercially unfair and morally wrong to differentiate between different classes of ‘consultant lobbyist’. It also undermines transparency and harms democracy to allow some companies to hide behind limp claims of client confidentiality, and so not reveal for whom they are working.

10. In passing, I want to clarify another point. There has been some suggestion that consultancies might do the Government a favour and sign up for the register even if the companies concerned are convinced that strictly-speaking they are not covered. Let me make it clear that MHP, as the largest public affairs firm in the UK, will not do so: unless and until all of our competitors are covered by the Bill and its provisions we will abide only by the letter of the law.

11. Finally, the idea that in-house lobbyists should also be covered by the Bill. This is unnecessary and impractical. The purpose of this legislation (if it has a point at all) is to make it easier to identify on whose behalf a third party lobbyist is speaking. In-house lobbyists arrange and attend meetings as representatives of their organisations, so there is no ambiguity about their motives or interests. Extending the Bill to in-house practitioners would also open up difficult to resolve questions about who is a lobbyist and who is not. This whole argument is a distraction.

12. 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. After all, Ministers and others quite rightly do not want to hear from lobbyists when they can hear directly from leaders of the companies, campaign groups, trade associations and others. This fact, the unresolved difficulty in defining a ‘lobbyist’, and the fact that in-house lobbyists will not be covered makes clear how much more important is the register of Ministerial meetings, for example, compared to a statutory register of lobbyists.

**Is the definition of “consultant lobbyist” in clause 2 of the Bill and the list of exceptions in schedule 1 of the Bill likely to have any unintended consequences?**

13. As already mentioned, the Bill is likely to result in fewer firms registering their clients. If public affairs companies decide that the existence of a statutory register means that membership of the APPC or PRCA is now otiose, transparency will have been inhibited, not enhanced. Above all, the definition needs to be changed better to represent the activity of consultant lobbyists, and to include all those involved in lobbying Government including law firms, management consultancies, think tanks, trade bodies and others.
Is the information that the Bill requires to be listed on the register sufficient to enhance transparency about lobbying?

14. The Bill requires similar information to be declared as is already required by the APPC and PRCA registers. The issue is not what information is declared but who is asked to declare it: as I have said already, the register must cover all those involved in lobbying Government including law firms, management consultancies, think tanks, trade bodies and others.

Are there any potential problems with the role envisaged for the Registrar?

15. There are two problems with the current proposals for the role of the Registrar. First, the costs of the register and the Registrar are envisaged to be £500,000 initially and £300,000 per annum to keep it up. Having been involved in the management of the APPC and its register, I cannot understand how these figures have been calculated. There is also a risk that if only a handful of consultancies sign up the fees for each will be very high.

16. My second concern is with respect to compliance. The Bill provides little detail on this point, beyond stating it will be the responsibility of the Registrar. It is not clear what powers there will be to investigate firms suspected of wrongdoing. Again, this risks being less effective than what already happens in respect of the APPC and PRCA registers.

Does the absence of provision for a statutory or hybrid code of conduct in the Bill present any problems?

17. I believe the Government needs to look seriously at some form of minimum standards for those on the register. There is a real danger that a register by itself may make the situation worse, since it is likely those on the register will describe themselves as a ‘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.

18. There are several minimum requirements worthy of consideration: I would like to focus on two. The first is for registered lobbyists to have no financial relationship whatsoever with a politician: clearly, this would encompass actually employing the politician, as well as payments for specific services, the giving of gifts, and so on. Whether or not a politician is paid to lobby is beside the point – any sort of financial relationship brings risks, and should be prohibited.
19. The second requirement concerns parliamentary passes. Given the need for relationships between lobbyists and the lobbied to be open and transparent I am strongly opposed to any sort of preferential access to ‘the corridors of power’, no matter the reason. In my view no registered lobbyist should be entitled to a pass under any circumstances.

20. My strong view is that no-one not currently employed by or a member of a public institution should hold a pass to access that body. At the moment Parliament, for example, allows former members and the spouses of members to hold passes: at the last count 348 ex-parliamentarians held passes to the Palace of Westminster. This holds out the risk of abuse, or at the very least the perception of abuse, particularly when the passholder claims to be a lobbyist or works for a lobbying firm. All such passes should be withdrawn.

21. In addition, there has to be some incentive to sign up for the register – otherwise some less reputable practitioners will not bother. In my view this can be achieved quite simply by changes to the Ministerial code, to guidance offered to officials, and to decisions made by Parliament and other legislatures, under which those affected commit not to deal with unregistered lobbyists. Adherence with these strictures and with the requirements of the register can easily be policed by the media and by the institutions themselves.

Are there any further issues raised by Part 1 of the Bill, including drafting issues, that you would like to draw to the Committee’s attention?

22. There are without question a range of other issues of concern with the Bill, many of which have been flagged up by others including the APPC and PRCA. Important though these are, we think they do not go to the heart of the concern about the Bill, and raising them potentially distracts attention from its worst failings.

23. We therefore urge the Committee to focus its attentions on a small number of key points of principle that, if they are not resolved, mean that the Bill has no chance of being effective, as well as morally and commercially fair:

   a. The Bill **must** cover all those who offer third party support for lobbying; and

   b. The register must be associated with certain minimum standards, so that it does not become a kitemark without any substance.
24. With or without these changes I hope that Parliament will be open-minded enough to ask whether this legislation is needed at all. The existing APPC and PRCA structures work effectively already – albeit they should be extended to law firms, management consultancies, think tanks and others. In my view the best way to ‘police’ lobbying is to rely on these existing structures, to beef up the register of Ministerial meetings, and to enforce existing Parliamentary and other rules. There is a perfectly effective system in place already, and we should not put in place a deeply flawed Bill as a cynical, knee-jerk, response to the latest ‘lobbying scandal’.

25. We hope that our evidence is of interest to the Committee. I would of course be delighted to provide further explanation or additional information if that would be of use.

20 August 2013
The Royal College of Midwives (RCM) is the trade union and professional organisation that represents the vast majority of practising midwives in the UK. It is the only such organisation run by midwives for midwives. The RCM is the voice of midwifery, providing excellence in representation, professional leadership, education and influence for and on behalf of midwives. We actively support and campaign for improvements to maternity services and provide professional leadership for one of the most established clinical disciplines.

The RCM welcomes the opportunity to submit evidence to this Inquiry we are happy for our submission to be published.

Summary of key points

- The definition of a ‘consultant lobbyist’ in the Bill is too narrowly focused on direct communications between lobbyists and decision-makers and overlooks the role of lobbyists in advising clients.
- Restricting influencing to just ministers and permanent secretaries is also very narrow and excludes, for example, select committee chairs or senior office holders in political parties.
- The list in Schedule 1 of positions equivalent to a permanent secretary is inadequate, inconsistent and overlooks key non-governmental public bodies.
- The information that the Bill requires to be listed does little to inform interested parties about, for example, the issues on which clients are seeking to lobby or the nature of the lobbying that has taken place.
- It is unclear what the register will achieve.

Is the definition of ‘consultant lobbyist’ in clause 2 of the Bill likely to lead to a register that enhances transparency about lobbying?

1. There are significant flaws in the bill’s definition of a consultant lobbyist. Such individuals do not necessarily, as the bill assumes, conduct oral or written communications direct with decision-makers themselves; instead they might simply advise their clients on how to do this. As the bill currently reads, an individual who, say, drew up talking points for a client attending a ministerial meeting, or coached them in how to conduct such a meeting, or who even attended the meeting with the client but did not speak, would not fall within this definition.

2. The definition is so weak that it could make registration little more than optional even for firms that exclusively conduct public affairs work.

3. Additionally, restricting influencing to just ministers and permanent secretaries seems very narrow indeed. A consultant lobbyist could draft soundbites for a client giving oral evidence to a select committee, write their written evidence to a select committee, orally and in writing brief a raft of MPs and peers who were not ministers (e.g. chairs of select committees or those holding important party offices), set up and administer all-party parliamentary groups; they could do all of that and not fall within the definition of a consultant lobbyist, at least as we read clause 2 of the bill.
4. Indeed, if one recalls the recent spate of examples of journalists ensnaring politicians with offers of lucrative lobbying work, none of the examples that come to mind would even be registerable under the bill as presently worded.

5. The list in Schedule 1 of positions equivalent to a permanent secretary is woefully inadequate. Why only the PM’s Advisor for Europe and Global Issues, but not his Director of Strategy or, say, his advisor on health policy? Why the Chief Medical Officer but not the Chief Nursing Officer? What about each party’s in-house people: the Director of the Conservative Research Department, say, or the head of the Liberal Democrat Policy Unit, to give just two examples of what could be dozens? Why isn’t the Registrar of Consultant Lobbyists itself on the list? What about public bodies that are highly influential but non-governmental; think of the Airports Commission and the fact that its work could affect where tens of billions of pounds are spent – they do not crop up on this list.

6. We could go on. The definition does not stand up to the mildest of examination and the extent and scale of the loopholes are so blindingly obvious that their existence is frankly bizarre.

Are the definition of ‘consultant lobbyist’ in clause 2 of the Bill and the list of exceptions in schedule 1 of the Bill likely to have any unintended consequences?

7. The flaw in the definition does not rest with the exceptions, but with the definition, as set out in our answer to Q1.

Is the information that the Bill requires to be listed on the register sufficient to enhance transparency about lobbying?

8. It is hard to see how the information requested will add greatly to the transparency of the lobbying process. Basic information about business addresses and directors’ names must surely already be in the public domain. Simply naming clients does little to inform an interested person in what those clients are lobbying on and how they are lobbying. 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)? Perhaps the number of days’ work conducted could also be listed; there is a world of difference between a client paying a retainer for occasional snippets of advice and a client pouring money into a large scale effort to swing a strategic decision.

Are there any potential problems for the role envisaged for the Registrar?

9. The role seems fine.

Does the absence of provision for a statutory or hybrid code of conduct in the Bill present any problems?

10. What the register will achieve is a genuine question. There is a slight increase in transparency – a list of consultant lobbyists would possibly be a step forward, although a
few hours’ desk research would probably result in the same list – although that depends on the firms in question not interpreting the definition of consultant lobbying very strictly and possibly not even registering. The list of clients may be mildly informative, but it will not tell us how much lobbyist time they are buying, what their lobbying objectives are and what has been done for them.

11. Beyond that, what will it achieve? The regulator will not have any kind of fitness to practise function, as is the case with regulators in other professions, so there will not be any bringing to book of dodgy lobbying practices. Is this a missed opportunity?

Are there any further issues raised by Part 1 of the Bill, including drafting issues, that you would like to draw to the Committee’s attention?

12. No

August 2013
Written evidence submitted by Tamasin Cave, SpinWatch (GLB 08)

Summary

1.1. Since its pledge to introduce lobbying transparency in 2010, the government has shown a weak commitment to the policy, with long delays, proposals that lack a seriousness of purpose, and scant regard for the views of external interests;

1.2. The register of lobbyists, as proposed in the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill is not fit for purpose. It will not deliver on its stated aim of increasing transparency in lobbying and allowing public scrutiny to improve government accountability and public trust.

1.3. It fails for two central reasons:
   • The register will cover a tiny fraction of the lobbying industry;
   • The register will include no meaningful information on the activities of those lobbyists it does cover, merely a list of clients.

The government’s rationale for such a weak register does not stand up to scrutiny.

1.4. A register of lobbyists that would deliver on the government’s stated aim must include as a minimum:
   • All paid lobbyists operating in the UK (above a minimum threshold);
   • Information on who is lobbying whom, what they are lobbying for, and a good faith estimate of how much they are spending.

Spinwatch and Unlock Democracy have drafted an alternative bill to provide a starting point for discussions and to stimulate a proper debate about what a genuine register of lobbyists should look like.

Introduction

SpinWatch gave evidence to the Committee when it first examined the government’s proposals for a statutory register of lobbyists in early 2012. Spinwatch, as we told the Committee then, has been engaged in a programme of research into the public relations and lobbying industry in the UK and Europe for more than a decade. In September 2007, we established the Alliance for Lobbying Transparency (ALT), a coalition of NGOs and unions who are concerned about the growing influence of lobbying on policy-making in the UK. Many of these groups are engaged in lobbying and believe that their activity should be covered by a register of lobbyists.

Last year we expressed our concerns to the Committee over the government’s weak commitment to a robust lobbying register. Despite a clear pledge in the Coalition Agreement to make lobbying transparent, progress on this issue has been extremely disappointing and the proposed Lobbying Bill will do little to improve transparency, promote accountability, or raise ethical standards.

Initial proposals and consultation

Initial proposals for a register were published in its consultation document of January 2012, nearly two years after the government made its commitment. These proposals, as the Committee quite rightly concluded, were not fit for purpose. We had serious concerns about the very narrow framing of the issues: limiting
disclosure to lobbying consultancies and then requiring minimal disclosure. The consultation document in our view contained some serious errors, in terms of both data and analysis, and was in parts highly misleading.

The consultation drew a wide range of responses from industry, charities, trade unions and members of the public. They sent a clear message to the government, showing:

- Strong support for a statutory register of lobbyists;
- A clear understanding of the need for a robust definition of lobbying, to determine who should be required to register;
- Widespread support for the definition to include all lobbyists, including in-house lobbyists;
- Significant support for the register to include more information, including crucially what issues are being lobbied on;
- A majority of respondents in favour of disclosure of financial information alongside other basic information;
- A majority in favour of the register being run by an independent body.

Tens of thousands of people took part in the consultation, including 74,000 people who signed a petition calling for a robust register and over 1,300 members of the public who submitted full consultation responses to the government through Unlock Democracy's website. These submissions were not counted by the government in its summary of responses, but were relegated to an Appendix at the end. This clearly contradicts assurances from the Cabinet Office that the views of the public would be heard.

Following the consultation, the Cabinet Office has taken more than a year to publish a Bill for a register. It appears that this was only brought forward after a number of media scandals involving politicians and some lobbyists. During this time, the Cabinet Office and its Minister chose not to engage with us. Only very recently has an opportunity for discussion opened up with the Cabinet Office through the Open Government Partnership, a global initiative co-chaired by the UK, and the development of the UK’s National Action Plan.1

The current proposals published in the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill reflect a lack of engagement (with key democratic principles, and with concerned civil society organisations, as well as industry groups) and as a consequence we believe the objective of securing lobbying transparency is unlikely to be realised unless the current proposals are thoroughly revised.

The proposals in the Bill

The Committee asks: is the definition of “consultant lobbyist” in clause 2 of the Bill likely to lead to a register that enhances transparency about lobbying?

As currently defined, the proposed register would have the opposite effect. It would reduce the amount of information that is publicly available on the activities of lobbyists. Spinwatch has been a strong critic of the

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1 The Open Government Partnership is a multilateral initiative that aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. The UK is a founding government and lead co-chair in 2012-13. The UK is currently developing its OGP National Action Plan with members of an active civil society network: www.opengovernment.org.uk
system of self-regulation operated by lobbyists, which has a number of serious failings.\(^2\) To be clear, it does not provide transparency in lobbying. However, as it stands, the voluntary system of disclosure provides more information than would be revealed under the government’s proposals.

The government has proposed the very narrowest definition of who should register. It would include only consultant lobbyists, which make up a minority of the industry, and then only a fraction of them. The Bill limits who should register in two key ways.

First, it excludes all lobbyists who operate in a mainly ‘non-lobbying business’. This would conceivably include most lobbying consultancies, particularly the large agencies who offer a range of communication services to clients. It would also exclude all law firms, management consultancies, accountancy firms and think tanks: many of these firms and organisations offer third party lobbying. There is no tangible difference between the lobbying services a law firm provides compared with those provided by commercial lobbying agencies.

Second, it restricts disclosure to only those consultant lobbyists who themselves lobby the most senior officials and ministers. This is to misunderstand, or deliberately misrepresent, the nature of commercial lobbying. Consultant lobbyists invariably only advise clients on lobbying. It is rare that they will actually attend lobbying meetings. Both the industry’s own statements and the ministerial meeting logs bear this out. It is also the case that the vast majority of contact between lobbyists and government is with mid-ranking civil servants and special advisers. Evidence from the Leveson Inquiry detailing the close and frequent communication between News international’s lobbyist, Fred Michel and Jeremy Hunt’s adviser, Adam Smith is a good illustration of this.

It is highly likely that the number of consultant lobbyists that are required to register will fall far below those anticipated by the government. Those that are captured are most likely to be small and medium sized businesses, not the large agencies that undertake the majority of third party lobbying. Such tiny numbers would make the funding of the register all but impossible.

The justification for not including in-house lobbyists, whether corporate, union or charity, is unsustainable and undermines the credibility of the government’s proposals. As the Committee discovered, it does not stand up to scrutiny. The government has narrowly defined the problem as a lack of transparency in whom an agency is representing when it meets with a Minister. Official meeting lists reveal that this would apply to only a handful of meetings. It is the case that the government is seeking to find a problem to which this very limited register is the solution.

Are the definition of “consultant lobbyist” in clause 2 of the Bill and the list of exceptions in schedule 1 of the Bill likely to have any unintended consequences?

Both exemptions detailed above are an invitation to avoid disclosure. It is conceivable too that lobbying work will be taken in-house rather than contracted to an agency, if that agency is required to disclose its clients and clients would prefer to avoid disclosure or scrutiny. It is probably more appropriate for the commercial

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\(^2\) For a full critique of lobbying self-regulation see PASC (2009), and Dinan & Miller (2012)
lobbying industry and its trade bodies to comment further on the consequences to their businesses from this proposal.

However, it is also necessary to remember the primary purpose of a register of lobbyists. This is to make publicly available information on who is attempting to influence government, so that those involved can be held more accountable for their actions. A register is one step towards rebuilding public trust – David Cameron billed it as such. However, as the Bill is currently drafted, it will have the opposite effect. Its lack of serious purpose will undermine public confidence in policy-makers.

There is a danger that we see any proposal as being better than the one put forward in this Bill and that we end up with a system of disclosure that is far below what is necessary. Both this Committee and the Public Administration Select Committee have called for robust registers. There is wider Parliamentary support for an effective system, with 65 per cent of MPs calling for a register to include in-house lobbyists (rising to 68 per cent of Conservative MPs and 75 per cent of Liberal Democrat MPs polled).³ Public unease over lobbying has also increased, with 59 per cent of respondents to a recent poll saying they see it as an issue of growing concern.⁴ A recent survey by Transparency International revealed that 90 per cent of those polled believe that the UK government is run by a few big entities acting in their own interest.⁵

It is imperative that the government is reminded of the widely-held, public perception of how decisions are taken by government, a view summed up by David Cameron in his pitch to the electorate as ‘a cosy club at the top making decisions in its own interest’. A register of lobbyists is a measure that should enable scrutiny and accountability by serving the public’s need for information, not the interests of the lobbying industry or government.

Is the information that the Bill requires to be listed on the register sufficient to enhance transparency about lobbying?

The Bill proposes that the very few who will be covered by the narrow definition of registrable lobbyists will only have to declare their clients on the register. This is not sufficient information to deliver transparency in lobbying, nor to achieve the government’s stated aim. It says that the measure is ‘designed to increase the transparency of the lobbying industry by opening it up to government and public scrutiny which will increase public accountability and public trust in the UK system of government, improving the efficiency of government policy outcomes’.⁶

The minimal information required from lobbyists – merely a list of their clients – is wholly insufficient to meet this aim (several lobbyists already declare this information, and more, on their own websites). 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

⁴ Survey of 2,000 members of the public conducted by global research agency OnePoll, published in PR Week, 4 July 2013: www.prweek.com/uk/features/1188888
⁵ Transparency International’s Global Corruption Barometer 2013 surveyed 114,000 people in 107 countries: www.transparency.org.uk/news-room/blog/12-blog/679-global-corruption-barometer-2013
⁶ A Statutory Register of Lobbyists: Impact Assessment. 9 July 2013
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.

Government accountability comes from being able to see with whom government is dealing and what topics are being discussed. With this Bill, government has largely exempted itself from the transparency measure. A register of lobbyists is perhaps not a comfortable thing for government, much like Freedom of Information law. But it is a necessary measure for dealing with declining public trust.

The Minister suggests that the requirements on the disclosure of ministerial meetings will be strengthened to provide more detailed information on the topics discussed with outside interests. However, this runs into two problems. First, only information on ministerial meetings is available, which ignores the substantial amount of lobbying of other officials for which there is no disclosure. Second, the government’s record on publishing an accurate and timely log of ministerial meetings is quite patchy, and in some instances, very poor. It is an open secret that these logs are not a complete record of ministers’ contact with outside interests. It is far easier to make it a requirement that lobbyists disclose basic information on what they are seeking to influence than ask every official who has been lobbied to record the activities of lobbyists.

For the register to be credible it must as a minimum include information on who is lobbying whom and what they are lobbying for. Financial disclosure would also provide a more complete and accurate account of lobbying in the UK, which has the third largest commercial industry in the world. The graphic below illustrates the information a robust register would contain compared to the government’s proposals.

<table>
<thead>
<tr>
<th>A STATUTORY REGISTER of LOBBYISTS</th>
<th>What the government has proposed</th>
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<tbody>
<tr>
<td>Lobbying agency: Political Consultants Inc.</td>
<td>Lobbying agency: Political Consultants Inc.</td>
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<td>Lobbyists:</td>
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<td>John Smith</td>
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<td>Jean Smith (ex-Treasury)</td>
<td>Jean Smith (ex-Treasury)</td>
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<td>Jim Smith</td>
<td>Jim Smith</td>
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<tr>
<td>Client(s): Supermarkets R Us</td>
<td>Client(s): Supermarkets R Us</td>
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Issues lobbied on:
- Relaxation of planning laws
- Taxation, particularly in relation to the top rate of tax
- Minimum pricing of alcohol proposals
- Food labelling legislation
- National minimum wage increases
- Competition inquiry
- etc

Gov department(s) / agencies lobbied:
- Treasury
- No10 / Cabinet Office
- Department for Communities and Local Government
- Department for Environment, Food and Rural Affairs
- Department of Work and Pensions
- Food Standards Agency
- Competition Commission
- etc

Client income / lobbying expenses:
- Q1: £100,000

5
Are there any potential problems with the role envisaged for the Registrar?

The Bill proposes to charge registrants a fee for making an entry on the register. Notwithstanding the concern that with insufficient lobbyists required to register the system is unsustainable, it would in principle be preferable that the register be publicly funded.

The Bill proposes creating a new body to oversee the register. Given the very limited information lobbyists will be required to submit, this appears an unnecessary cost, particularly if, in addition, very few lobbyists register.

However, we agree with the principle that an external regulator that is independent of both the lobbying industry and government is a necessity. Such a regulator could be created along the lines of the Office of the Information Commissioner. It is important that such a regulator has powers to compel witnesses and disclosures to ensure the system of lobbying regulation is as effective as possible. The regulator should be protected from party political influence, and should not be accountable to any committee (as is the Parliamentary Commissioner for Standards, who reports to the Committee on Standards).

In creating such an external regulator, it may make sense to try to bring together some of the different offices and committees that currently handle different aspects of the relationships between government, Parliament and outside interests. For example, some or all of the scattered ethical and transparency functions the Committee for Standards in Public Life, the Serjeant at Arms office, the Advisory committee on Business Appointments (ACoBA) could be combined to create a powerful and independent ethics and transparency regulator. The Canadian model, which comprises an independent Commissioner of Lobbying, and an Office of the Commissioner of Lobbying of Canada, seems to us to be a system that has many commendable features (notably, the Commissioner is appointed for a seven year term, and oversees both the registration of lobbyists, as well as having significant investigatory functions).

Costs associated with such a system are not substantial. In Canada an annual budget of C$1.1 million (£706,682) is spent on the administration of the detailed national register. This includes salaries for the equivalent of six full-time employees dedicated primarily to providing registration assistance to lobbyists. The budget covers between C$400,000 to C$500,000 invested annually in technical work to maintain and upgrade the system.

The European Union also operates a relatively detailed lobbying register. The 2013 operating budget of the Joint Transparency Register, serving the Commission and Parliament, is €130,000 (£110,430). According to Commission estimates, excluding IT maintenance and development as well as European Parliament accreditation procedures, the equivalent of four full-time staff (two per institution) are employed to carry out the work associated with the register.

Are there any further issues raised by Part 1 of the Bill, including drafting issues, that you would like to draw to the Committee’s attention?

The Bill as presented is fundamentally flawed, both from the perspective of increasing transparency and the possible impact it may have on the industry.
Attached to this submission is an alternative draft bill written by Spinwatch and Unlock Democracy that could provide a starting point for discussions around a more robust and effective register of lobbyists. While we are not expert in drafting legislation, it is an attempt to draw from the experience of lawmakers overseas in Canada, US, New Zealand, and Ireland, while creating a register relevant to the UK. The draft bill is intended to stimulate a proper debate about what a genuine register of lobbyists should look like.


_August 2013_
Written evidence submitted by Transparency International UK (TI-UK)

Summary

1. TI-UK is concerned that democratic processes in the UK face an increased risk of corruption. It should not be possible for an individual or organisation to buy favourable laws or regulation.

2. The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill, as proposed, is inadequate and needs to be replaced by a Bill that is fit for purpose.

3. Lobbying is one of a number of areas in which special interests, backed by money, can subvert democracy. Others include the revolving door and party political funding. They need to be considered collectively otherwise the tightening of regulation in one area will lead to the exploitation of loopholes in another.

4. All political parties seem to be in denial about the public perception that they, and parliament, are corrupt. Though political leaders may dispute whether it is fair, such perceptions themselves damage democracy, and an adequate response is required.

5. There needs to be, among other actions, a cap on donations to political parties; regulation of lobbying that extends beyond the proposed register; proper regulation of the revolving door of employment; reform of the honours system; a renewed emphasis on ethical conduct, with stronger sanctions for breaches.

6. Regulation needs to address both those who seek to influence inappropriately and those who are being lobbied.

7. In each of these areas greater transparency is required; but in many of them, transparency must be supplemented by other measures.

Introduction

0.1 Transparency International UK (TI-UK) research indicates that there are serious and systemic problems with access to politics and policy-making in the UK; in practice, in oversight and in public trust. Lobbying cannot be considered in isolation. It is one of a number of ways in which democracy can be subverted by those with large financial resources at their disposal. According to TI research, the British public perceive the government's response to these problems to be inadequate'. TI's overall assessment is that recent proposed reforms, including the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill, fail to address the scale, nature and breadth of the problem.

0.2 The 2013 Global Corruption Barometer, published by Transparency International, revealed that:
90 per cent of UK respondents believe that the UK Government is 'run by a few big entities acting in their own interest'.

67 per cent of UK respondents polled in the survey said they thought political parties in the UK were corrupt or extremely corrupt.

55 per cent felt that the UK Parliament is corrupt or extremely corrupt.

62 per cent of UK respondents think that the Government's actions in tackling corruption are ineffective.

0.3 In 2010-11, TI-UK carried out a comprehensive survey on corruption in the UK. In a Report divided into three parts, entitled respectively National Opinion Survey, Assessment of Key Sectors, and a National Integrity System Assessment ('NIS Assessment'), the nature and extent of corruption in the UK was examined. The Report was accompanied by an overview entitled Overview and Policy Recommendations. The research indicated that UK political parties and parliament were two of four areas that were particularly vulnerable to corruption — alongside sport and the prison service.

0.4 Weaknesses and ambiguities in rules are exploited and the rules are poorly enforced. The proposed legislation does not address the scale of the problems of corrupt and untransparent influence in British politics and policy.

**Question 1.** Is the definition of "consultant lobbyist" in clause 2 of the Bill likely to lead to a register that enhances transparency about lobbying?

1.1 TI-UK assesses that the definition of the "consultant lobbyist" in clause 2, given schedule 1 part 1 exceptions, will not provide greater effective transparency about lobbying.

1.2 Regarding a statutory register, which TI-UK believes is only one small component required to address the challenge to public trust in politics, the Bill falls short. At a basic level, considering the Bill as a register of consultant lobbyists only, it exempts the vast majority of lobbyists. Indeed there are strong arguments that 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. The Bill does not even address the nature of the most recent scandals, which did not involve consultant lobbyists but did involve unethical politicians and conflicts of interest.

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2 Transparency International '2013 Global Corruptions Barometer', UK specific data.

2 The Bill (http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0097/14097.pdf) exemptions include: That "A person does not carry on the business of consultant lobbying if— (a) the person (or, where the person is an employee, the person's employer) carries on a business which is mainly a non-lobbying business, and (b) the making of communications within section 2(3) on behalf of another person or persons in return for payment is an insubstantial proportion of that business.
1.3 The definition of what is used as the basis for regulated lobbying should be expanded. TI-UK recognises that the definition of lobbying and of lobbyists is a complex issue. Any definition should be simple, capture the broad range of lobbying activity, not disincentivise citizen lobbying and be easy to implement in practice. Based on these criteria, a definition might include anyone paid to: (i) arrange or facilitate contact with policy makers, legislators or their advisors; (ii) communicate with policy makers, legislators or their advisors to influence legislation, regulation, or government policy, and for government contracts and grants; and (iii) work in support of (i) and/or (ii).

1.4 The definition should capture the range of individuals that are liable to be lobbied, including Ministers, Parliamentarians, their advisors and civil servants, regulators, local authorities and those in other public services.

1.5 Any definition used for the purposes of identifying a threshold for lobbying reporting requirements should minimise the barriers to access to politics and participation from a citizen or constituent point of view. TI-UK is not against trade unions, think tanks and charities being covered by the definition, but notes that the barriers should also be minimised for groups operating in the public interest with small resources.

Question 2. Are the definition of "consultant lobbyist" in clause 2 of the Bill and the list of exceptions in schedule 1 of the Bill likely to have any unintended consequences?

2.1 See answer to question 1. TI-UK assesses that the schedule 1 exemptions and the limited and narrow nature of the legislation risks creating less transparency not more and does not address the key problems of corrupt access and influence in British politics.


"(2) The entry for each registered person must include—
(a) in the case of a company—
(i) its name, its registered number and the address of its registered office, and
(ii) the names of its directors and of any secretary or shadow directors;
(b) in the case of a partnership (including a limited liability partnership), the names of the partners and the address of its main office or place of business;
(c) in the case of an individual, the individual’s name and the address of the individual’s main place of business (or, if there is no such place, the individual’s residence);
(d) in the case of any other person (including persons outside the United Kingdom), the equivalent information as specified in regulations;
(e) any name or names, not included under paragraphs (a) to (d), under which the person carries on business as a consultant lobbyist;
(f) such other information regarding the identity of the person as may be determined by the Registrar;
(g) such other information as may be specified in regulations.
(3) Each entry must also include—
(a) the registered person’s client information for every quarter in which the person has been entered in the register (see section 5(3)), and
(b) if the person received payment in the relevant pre-registration period to engage in lobbying, the name of the person or persons on whose behalf the lobbying was or is to be done.
Question 3. Is the information that the Bill requires to be listed on the register sufficient to enhance transparency about lobbying?

3.1 No. The Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill information requirements are inadequate as a means to restore public trust in politics and government. Based on the scale of its shortcomings, TI-UK believes the government should replace the Bill with a more satisfactory Bill after engaging in a thorough review of access and transparency in British politics, responding to public disaffection with the political process and its vulnerability to abuse.

3.2 TI-UK believes that lobbying legislation should not solely consider a statutory register. However, any legislation that includes a register should:

- Apply consistently to lobbying of the UK Government, Parliament, devolved legislatures or administrations, regional or local government or other public bodies.
- Cover all organisations and self-employed persons that engage in substantial lobbying activity targeted at public officials. This includes organisations that are not specialist lobbyists but have in-house lobbying capacity and engage in lobbying activity.
- Require that registration should include information such as lobbyists' names, their client list (where appropriate), the subject of their lobbying (respective to their client where appropriate); details of any advisors or practitioners who have held any public office during the previous five years and their expenditure on lobbying (respective to their client where appropriate) on a quarterly basis.
- Be maintained and monitored by an independent body that is empowered to carry out investigations and audits of the information it receives and to maintain a whistleblowers' hotline to receive complaints about violations of the rules.
- Failure to disclose accurate information should be a criminal offence, as is the case in the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill.

3.3 TI-UK notes that the costs of the register could be met by a system for fees proportionate to the annual lobbying budget of organisation, with an exemption for organisations whose spend is below a certain threshold or that are demonstrably operating in the public interest (for example, registered with the Charity Commission).

3.4 However, a register is not enough to meet the scale of the problem. Even if a statutory register of lobbying activity with the above features were to be implemented it would not be sufficient to curb abuses of entrusted power for private gain that take place through other means. The recent scandals on lobbying have provided evidence of politicians willing to stretch or break the rules, something that the proposed lobbyist register would do very little to counter. In the US where a register of lobbyists exists, by the admission of the several Presidents and Presidential candidates, a desirable level of transparency and control of the influence of lobbying has not been achieved.

3.5 The end objective should be for money not to be a distorting factor in forming policy or gaining access to decision makers, and for lobbying on any particular issue or decision to be
visible, have an audit trail and for the information to be presented in a manner that is accessible and comparable for the public, media and civil society to scrutinise.

3.6 Both the practices of lobbyists and those being lobbied are unsatisfactory. For both lobbyists and those being lobbied the following reforms need to be considered:

- Conduct guidelines and transparency reporting requirements need to be strengthened;
- Counter-corruption awareness training needs to be made obligatory;
- Independent authorities should be resourced to audit, investigate and initiate sanctions for breaches of guidelines; and
- Sanctions should be put in place that provide a meaningful deterrent to unethical behaviour.

3.7 Further, lobbying must be considered within a broader framework of transparency and ethical shortcomings in order to tackle the problems of opaque ‘access’ in UK politics and policy and to address the widespread public dissatisfaction with the political process. Required broader reforms to the governance of political access in the UK include:

- The revolving door of employment between Whitehall, Westminster and the private sector.
- Political Party Funding.
- The granting of honours.
- Public information on Ministerial meetings.
- All-Party Parliamentary Groups.

3.8 Regulation will only be part of the solution; it will also rely on good practice and leadership from the public affairs industry. Organisations are exposed to reputational risk in terms of the potential for their activity to be perceived as unethical. TI-UK believes that all organisations that lobby should aim to perform their lobbying activities to a high ethical and transparency standard, putting pressure on those who do not welcome transparency into their lobbying strategies. Organisations that wish perform lobbying at a robust ethical level should meet at least the following standard:
• Publish membership of trade associations and other representative bodies;
• Publish details of the issues on which it lobbies;
• Publish details of its lobbying expenditure;
• Report on its participation in registers of lobbyists (globally);
• Publish the internal oversight mechanism of the organisation's corporate political activities and reputational risk;
• Publish whether outside auditors or independent experts provide periodic review of the company's political activities;
• Publish how the organisation’s controls to ensure that political financial contributions (globally) are not a subterfuge for bribery;
• Publish details of policies and procedures to ensure that those lobbying on the company's behalf are required to comply with the company's policies on political contributions and responsible lobbying (globally); and
• Have in place a specified committee that reviews the company's memberships of and payments to trade associations and other organisations.

Question 4. Are there any potential problems with the role envisaged for the Registrar?

4.1 As above, any oversight body should have the funding and resources to take forward investigations.

Question 5. Does the absence of provision for a statutory or hybrid code of conduct in the Bill present any problems?

5.1 Yes. A feature of recent scandals is that in many cases, the behaviour falls within the existing rules, even though they are at times stretched to breaking point. This suggests that the imposition of more rules may work to an extent, but at heart is a greater issue and a greater concern. This is the willingness and ability of UK politicians to act in an unethical manner and put their private interests ahead of the public interest, showing scant regard for the Nolan Principles of Public Life (these are: Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership).

5.2 If politicians are to have legitimacy as lawmakers, they need to be exemplars of personal integrity. Rules must be complied with, not merely because there are penalties for not doing so, but because public servants are expected to have a system of values in which integrity is required for all aspects of their conduct.

5.3 Overall, the rules relating to the ethical conduct of policy makers and legislators therefore need to be revised, and such revisions should consider the following issues:
• Whether there should be an over-arching rule that any public servant should declare any interest or asset, financial or non-financial, that might reasonably be thought by others to influence, or be capable of influencing, his or her actions or words.
• Although clarification of rules is important, recent history suggests that rules can be exploited or ignored. Indeed the more complex rules become, the easier it can be to evade
them or create loopholes. A principles-based system is therefore important to sit alongside the rules, based on the Nolan Principles. This may require additional effort to reinforce an ethical culture within parties, their leaders and individual MPs—for example by appropriate ethical training or mentoring.

- Disclosure of financial interests and relationships, and indirect interests, which can be as important as direct financial interests in influencing behaviour. Likewise, some business relationships in which the financial value is negligible, such as frequent low-level hospitality with an influential business person in a constituency, can be highly important. Therefore, financial value alone should not be the test of a rule's relevance and the proposed minimum thresholds should take into account these other factors
• The inclusion, as a default option, of third parties, including children, siblings and close associates within the rules. This would be similar to the presumption when dealing with 'politically-exposed persons' overseas in, for example, anti-money laundering regulations.
• Inclusion of overseas assets, income and activity in the revisions of the appropriate rules.
• Guidance on foreign hospitality and visits outside the UK.
• Although it is understandable that there is a reluctance to impose new administrative burdens on the relevant people and institutions, more reporting or administration may be a necessary step in the re-building of public trust in politicians. It is important that the growing deficit in public trust is weighed against the views of those who oppose additional administration.
• Sanctions, including consideration of the right to recall, must be considered with penalties for non-compliance with the law/rules. Punishment of offenders is critical to help to deter attempts to circumvent the rules. An oversight body with investigative powers should be in a position to designate or initiate the sanctions process and have the resources to investigate claims.

August 2013

Annex I

Transparency International UK (www.transparency.org.uk), the UK national chapter of TI, fights corruption by promoting change in values and attitudes at home and abroad, through programmes that draw on the UK’s unique position as a world political and business centre with close links to developing countries.

TI-UK:
• Raises awareness about corruption;
• Advocates legal and regulatory reform at national and international levels;
• Designs practical tools for institutions, individuals and companies wishing to combat corruption; and
• Acts as a leading centre of anti-corruption expertise in the UK.

TI-UK’s vision is for a world in which corruption is greatly reduced and the UK has zero tolerance for corruption both at home and abroad.
The Association of Professional Political Consultants (APPC) is pleased to have the opportunity to contribute to the Committee’s Inquiry.

Our current membership of 80 includes 79 consultancies and one trade association. We have been operating a publicly available register of our members’ lobbying activities, together with an associated code of conduct, for nearly 20 years. Our register covers advice to clients on lobbying as well as lobbying itself. It also includes a complete list of PA practitioners. All complaints relating to the code of conduct are adjudicated by an independent body, the Centre for Effective Dispute Resolution (CEDR). We also participate in the register set up more recently by the UK Public Affairs Council (UKPAC).

Below you will find our response to your specific questions:

1. **Is the definition of consultant lobbyist in Clause 2 likely to lead to a register that enhances transparency about lobbying?**

   It is impossible to answer this question with absolute certainty, but we see a very real risk that the overall effect will be to reduce transparency.

   It is true that a small number of consultancies who do not currently declare their clients will be required to do so for the first time, but the total number required to join the statutory register will be very greatly restricted by the narrow scope of the Bill, since it will apply only to direct lobbying of Ministers and Permanent Secretaries by consultancies with “substantial” lobbying business. Those who carry on a business which is mainly a non-lobbying business and where the making of communications with Ministers and Permanent Secretaries is an insubstantial part of that business will not be covered by the register. Direct lobbying of civil servants below the rank of Permanent Secretary is excluded, as is direct lobbying of special advisers and advice on lobbying. The Bill does not cover lobbying of Parliament or other public bodies. Whether the Bill enhances transparency about lobbying will depend on the reaction of consultancies who currently participate in voluntary registration schemes, such as our own. Were they 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.

   We had proposed a statutory register that would cover all those who lobby public bodies professionally. This register would also have encompassed advice on lobbying (the principal activity of our members). Such a register, comparable to those already established in other jurisdictions, would have led to a substantial increase in lobbying transparency. We had previously commissioned drafting of an appropriate definition and legal requirement by a Parliamentary Counsel, and submitted it to the Government in April of this year, before the Government published its proposals. It is at Annex 1.

   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 publicly available notes of their meetings with external
stakeholders.

2. Are the definitions of consultant lobbyist in Clause 2 of the Bill and the list of exceptions
in Schedule 1 of the Bill likely to have any unintended consequences?

The answer to this question depends on some assumptions about the Government’s
intentions.

As we state above, the register as proposed could lead a reduction in transparency.

The Government’s impact assessment estimates that 1,000 consultant lobbyists will be
captured by the scope of the Bill. We think it very likely that this will prove to be a massive
over-estimate, based partly on the Government’s apparent failure to distinguish between
businesses and individuals. If we are right about this, an unintended consequence would be
that the cost of registration per company would greatly exceed the Government’s estimates. A
survey of our own members suggests that few of them will be captured by the statutory
register, partly because the Bill only covers direct lobbying (which is not what most of our
members do most of the time) and partly because of the exclusion of those with substantial
non-lobbying businesses. We anticipate that these exclusions will mean that the register will
not capture a single law firm, management consultancy or accountancy firm (though this may
be an intended consequence).

We are also aware that some MPs are concerned that the Bill as drafted would capture them,
should they engage in anything other than constituency lobbying.

3. Is the information that the Bill requires to be listed in the register sufficient to enhance
transparency about lobbying?

We think that the register should include not just the names of clients but also the names of
consultancy staff. We further think that, wherever possible, Government meeting notes
should indicate the subjects discussed at particular meetings. We are not persuaded that the
register should include information about fees paid by clients. Our members do not cost
separately fees for meetings with Ministers and Permanent Secretaries. Since, in most cases,
these would represent a small proportion of total public affairs spend, any numbers given
would be likely to be both misleading and unverifiable.

4. Are there any potential problems with the role envisaged for the Registrar?

We are concerned that when Ministers have been asked about the detail of how the register
will work they have responded that this would be a matter for the Registrar. We do not think
that this is a satisfactory way of legislating. In particular we are very concerned that the
Government envisages leaving it to the Registrar to decide the meaning of the words
“substantial” and “not insubstantial”. It cannot be fair or appropriate that consultant lobbyists
should be required to guess how the Registrar might rule in particular cases and that they
would be committing a criminal offence if they guess incorrectly. We have already referred to
the danger that the Registrar will only be able to be adequately funded by the imposition of
proportionately high fees on the small number of firms that we expect will be required to
register.

We are also 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.
This would seem to be time-consuming and thus expensive, putting yet another cost burden
on the small number of registrants.

5. **Does the absence of provision for a statutory or hybrid code of conduct in the Bill present
any problems?**

We think that a hybrid code of conduct would have merit. By this we mean that the Bill would
include a requirement on firms that register to indicate whether they are a member of an
existing regulatory body (such as the APPC) and, if so, which one. This would make it easier
for other stakeholders to make a complaint about a firm, without the need for an expensive
new bureaucracy. We think that a statutory code of conduct is inappropriate in a Bill whose
declared objective is only to increase transparency. We also note that voluntary codes are
easier to update in the light of new circumstances and can be enforced according to their
spirit, as well as the letter of the codes. By contrast, of necessity, a statutory code could only be
based on the letter of its exact provisions.

APPC believes that all those who lobby professionally should be subject to independently
enforced codes of conduct, such as our own (attached in Annex 2).

6. **Are there any further issues raised by Part 1 of the Bill, including drafting issues that you
would like to draw to the Committee’s attention?**

In general, we think that this Bill is both ill-conceived and badly drafted and that the public
policy benefit, if any, will be extremely limited. We are particularly concerned about the likely
disproportionate cost that will fall on the small number of firms that will be captured by the
register and the uncertainties that they will face until the Registrar decides on such issues as
the meaning of “substantial” and “not insubstantial”. We are of the opinion that the Bill as
drafted discriminates between particular types of business model and, in particular, against
small and medium sized enterprises, who are the ones most likely to be captured by the
proposed register.

**ANNEX 1**
Definition of lobbying drafted on behalf of APPC, CIPR and PRCA and submitted to the
Cabinet Office, April 2013

**ANNEX 2**
APPC Code of Conduct, July 2013

*August 2013*
1.1 The TUC welcomes this opportunity to submit evidence to the Committee. The TUC is the national umbrella body for Britain’s trade unions. We have 53 member unions representing nearly six million workers, and are Britain’s biggest voluntary organisation.

1.2 The Committee will recall our written and oral evidence to the Committee’s earlier inquiry into the government consultation on a register for lobbyists. In that we said that it was unfair and unjustified for the register to be confined to three groups: consultant lobbyists, trade unions and charities. Making unions and charities register, while excluding commercial interests, secretive campaigns or employer organisations would be partisan.

1.3 Unions are already highly regulated by statute, need to publish detailed accounts and have to account to the Certification Officer. Charities also have their own regulatory structure. Of course some will disagree with unions, but it hard to claim there is any mystery about our views, finances or activities.

1.4 We also argued that there needed to be a greater emphasis on making the decision-makers who are lobbied more open about who they met and what was talked about, and were glad to see the Committee’s recommendations in this area.

1.5 While we recognise that the Committee wish to concentrate on part one of the Bill, which deals with consultant lobbyists, we believe that the unfair and unjustified singling out of trade unions persists in the Bill, but has been moved out of the lobbying part of the Bill and into the other sections. Both of these have significant implications, while the weak and limited proposals in part one will have little or no impact.

1.6 Part three explicitly deals with trade union internal affairs by adding extra regulation of membership to the statute book, although little justification for this is given in government statements. Part two restricts the spending of third party campaign groups during election campaigns, and appears again to be directed at trade unions, though in practice will severely limit the activities of many other organisations. We believe that it could mean that we would not be able to have our annual Congress in the year before an election, or hold a national demonstration as either would take us – and all of our member unions – over the limit for third party spending.

1.7 The Committee has rightly been critical of the government for not publishing a draft bill and not allowing pre-legislative scrutiny as ministers promised. But at least measures to regulate lobbying (part one of the Bill) have been the subject of a consultation and a thorough Select Committee investigation. This cannot be said of the proposals in parts two and three of the Bill. They have not been introduced in a response to calls made by the organisations who regulate these areas, and it is hard to pin down the government’s reasons for introducing them. There has been no consultation before the Bill has been published (although BIS is now consulting on part three). Nor has the government yet published a regulatory impact statement for part three of the Bill.

1.8 As the Bill’s second reading is due early in September, and is closely followed by a committee stage on the floor of the House (coincidentally – or not - coinciding with the TUC’s annual Congress) this Select Committee investigation provides the only opportunity to air wide concerns about parts two and three. We have therefore commented on these parts in this submission – as they seem to be the real purpose of the Bill - as well as part one.

Part one – Transparency of Lobbying

2.1 The Committee asks a number of specific questions and we deal with these in turn.

Is the definition of “consultant lobbyist” in clause 2 of the Bill likely to lead to a register that enhances transparency about lobbying?

2.2 Clause 2 reflects the government’s decision only to regulate ‘lobbyists for hire’, rather than in-house lobbyists directly employed by lobbying organisations. As the vast majority of consultant lobbyists already
sign up to codes of practice that require disclosure up to or beyond that set out in the Bill, the practical impact of part one of the Bill will be negligible.

2.3 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. Neither policy development nor detailed implementation is much done by Permanent Secretaries.

Are the definition of “consultant lobbyist” in clause 2 of the Bill and the list of exceptions in schedule 1 of the Bill likely to have any unintended consequences?

2.4 Schedule 1 further limits the scope of the Bill by establishing a series of loopholes that would allow consultant lobbyists that do not wish to register to avoid doing so. In particular a legal partnership or public relations firm with a lobbying arm could claim to be a business that mostly relates to activities other than lobbying.

Is the information that the Bill requires to be listed on the register sufficient to enhance transparency about lobbying?

2.5 The register only requires a client list to be recorded, not any information about charges or activities on behalf of the client. The vast majority of consultant lobbyists already make this information public. Those that don’t will presumably use the loopholes described above to avoid doing so and be chosen by lobbyist clients that wish to maintain secrecy. As the register will make almost no new information available, it is hard to see why the Government is bothering to pursue part one of this Bill other than to tick a box in the coalition agreement.

Are there any potential problems with the role envisaged for the Registrar?

2.6 As the register will add so little to the sum of human knowledge we cannot imagine that this will be a very taxing role, nor be difficult to carry out.

Does the absence of provision for a statutory or hybrid code of conduct in the Bill present any problems?

2.7 As the Bill will make little difference to the practice of lobbying, those looking to legislative action to regulate lobbying in some way, introduce greater transparency about what lobbyists do, or improve disclosure by those being lobbied will be disappointed. There is of course a wider debate about what controls or standards should be expected by lobbyists and those being lobbied, but this Bill passes that by.

Are there any further issues raised by Part 1 of the Bill, including drafting issues, that you would like to draw to the Committee’s attention?

2.8 No

Part two – non-party campaigning

3.1 The Political Parties, Elections and Referendums Act (2000) (PPERA) regulates spending by third parties (ie groups other than political parties) in election and referendum campaigns. It sets limits on what can be spent, and requires organisations to register with the Electoral Commission and to declare through the Commission what they spend.

3.2 Part two of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill introduces major changes to the relevant sections of PPERA which will severely limit third party campaigning.

3.3 There was no public consultation in advance of this Bill. As the Bill was published in mid-July and is due to complete its Commons Committee state in the second week of September there will be little or no public debate about the implications of this part of the Bill in advance of its Commons stages.

3.4 It is unclear what problem the government thinks needs resolving by this part of the Bill. Its inclusion makes the Bill “constitutional” and thus triggers the convention that the committee stage of such Bills should be taken on the floor of the House. But 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 the
third-party civil society organisations that will be affected. This is why it should be withdrawn in order to allow proper cross party, cross civil society consultation and consensus seeking.

3.5 There are three major changes outlined in the bill:

- **A broader definition of activity** – the test of what counts as third party activity will be broadened. Instead of the intent of an activity, the new test will be its effect. Anything that enhances (or distracts from) the reputation of a party will count as regulated activity. This means that any policy work that is even indirectly critical of government, campaign activity on a government proposal in the 12 months before an election or even campaigns against racism could count as they may discourage support for extremist parties. The Northern Ireland Committee of the Irish Congress of Trade Unions is concerned that its activities in support of the peace process could be now face regulation – although as one of the few cross-community mass membership organisations it has been widely recognised as playing a crucial non-sectarian role. Many activities carried out perfectly lawfully by charities or by unions who do not have a political fund, which is required for directly party-political or election oriented campaign work, would find that many of their activities would count as election spending.

- **A consequent broader definition of spending** – currently third parties have to account for the extra cost of adverts, leaflets, and other obvious election materials and staff time involved in the direct production of such material. By broadening the definition of what counts as “election purposes” much more staff time will need to be included, though the vagueness of the definition will make this extremely hard to measure. The Bill requires spending on media work and report writing to be counted which have obvious staff time implications and look like limits on freedom of speech. Political parties however 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.

- **Much tighter limits** – the amount that can be spent on third party campaigning in the year before a general election is to be reduced by up to 70 per cent. The limit in England is to be reduced from £793k to £320k. In Wales the total is reduced to £24k. Breaching the limits will be a criminal offence.

3.6 We support the principle of limiting expenditure by political parties and third party supporters during election campaigns. We want to keep big money out of elections. But these proposals cross over into limiting free speech.

3.7 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 limit, even though political parties annual conferences are exempt from limits.

3.8 Similarly the kind of demonstration that TUC has organised in recent years would take every union over its limit. Not everyone agree with the TUC, but to to deny us the right to demonstrate for a full twelve months before a general election smacks of authoritarian regimes.

3.9 Unions back national and local campaign groups that seek to limit support for racist extremist parties. Such initiatives gain wide backing from supporters of mainstream parties, faith groups and non-aligned voters. The Bill as it is currently drafted because of its low constituency caps and rigorous reporting standards would make organisations such as Hope not Hate, despite wide support from the political mainstream, close to impossible.

3.10 It is hard to tell which of the consequences of part 2 of the Bill are intended or are unintentional consequences of the lack of consultation and rushed drafting. But whatever was intended the Bill as presented to the House adds up to a serious attack on free speech.

Part three – Trade Union Administration

4.1 Part three of the Bill requires unions with more than 10,000 members to appoint an independent “assurer” of their membership lists, gives the Certification Officer wider powers to investigate union
membership and allows third parties, other than trade unions, to complain to the certification officer. Unions with fewer than 10,000 members can self-certify, but will still need to be able to demonstrate that they comply with the rules.

4.2 As with part two we are unable to discern the problem that this part of the Bill is meant to remedy. Unions are autonomous voluntary organisations and the state should have a clear rationale before interfering in their internal affairs. Unions already have a statutory duty under section 24(1) of the Trade Unions and Labour Relations Consolidation Bill (TULRCA) to maintain a register of members’ names and addresses so far as is reasonably practicable, accurate and up-to-date. Neither ACAS nor the Certification Officer have received or made representations for this change.

4.3 No membership organisation of any size can ever have perfect membership records. People move, die and change jobs without telling their trade union and probably other organisations of which they are members. Unions are workplace based organisations and many need information from employers to maintain accurate membership lists. This is why in the BIS consultation accompanying this section of the Bill they are asking whether the duty on employers to provide necessary information to unions will need to be extended. The answer to this is undoubtedly yes, and this measure will therefore result in a regulatory burden on employers. Yet the government has not yet provided a regulatory impact statement for this section of the Bill.

4.4 There are two possible motives for this section of the Bill that we can see – to make industrial action more difficult and/or to regulate trade unions that are affiliated to the Labour Party.

4.5 Industrial Action Ballots Unions need to follow strict procedures to carry out a valid ballot to authorise industrial action. A common legal challenge by employers is that ballot papers have either gone to the wrong members or not gone to all the relevant members. The courts in recent judgements have been more ready to accept union arguments that minor errors are inevitable in any membership system and have not upheld employer challenges when it would be unreasonable to expect perfect records. 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. If the government wants to make it more difficult to go on strike, it would be more honest to bring direct measures to do that, but would have to make the case that change was needed.

4.6 Trade unions affiliated to Labour There is also evidence that this part of the Bill has been introduced to regulate the membership of unions that choose to affiliate to the Labour Party. The Constitutional Affairs spokesman of the Liberal Democratic Party, Lord Tyler, has written:

> The third arm of the Bill is about ensuring that trade unions have accurate membership lists. We will listen carefully to what people have to say about how the detail of this is set up, but the principle seems beyond dispute. The membership numbers of a trade union have a bearing on how much money they can give to a political party through their political funds. In this sense, the trade unions have a unique role in UK politics. It is therefore important for transparency’s sake that the membership lists are accurate. [http://www.paultyler.libdems.org/coalitions-transparency-bill](http://www.paultyler.libdems.org/coalitions-transparency-bill)

This raises two issues.

4.7 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 per cent of trade unions that do not – and are very unlikely ever – to affiliate to the Labour Party.

But even if it were thought appropriate for the state to regulate matters internal to a political party, why should this requirement not extend to the membership systems of all political parties? The BIS consultation on this section has this as the rationale part 3:

> Trade union activity has the potential to affect the daily lives of members and non-members. The general public should be confident that voting papers and other communications are reaching union members so that they have the opportunity to participate, even if they choose not to exercise it. As a result, unions also have a responsibility to give public assurance that they are keeping up-to-date registers.
This paragraph makes as much sense – if not more – if you substitute the words “Political party” for “Trade union”.

4.8 Inevitably any time there is a controversial selection by the Labour Party, their political opponents will call on the Certification Officer to investigate the membership lists.

4.9 The new powers given to the Certification Officer, each union’s assurer and any investigator appointed by the CO will require unions to make membership data available to people outside the union in breach of data protection principles and privacy rights. Recent revelations about blacklisting will worry many union members that their membership will be available to outsiders.

4.10 Putting costly and unnecessary administrative burdens on trade unions will reduce their ability to carry out their proper role. Despite the inevitable interest in Westminster and the media with the legitimate party-political role that one in ten unions choose to carry out, unions spend most of their time engaged in representing and serving their members, spreading skills and bargaining with employers. A recent MORI-IPSOS poll found that there is 78% to 14% support for the statement "Trade unions are essential to protect workers’ interests".
Written evidence submitted by Unlock Democracy (GLB 12)

About Us

Unlock Democracy is the UK’s leading campaigning organisation for democracy, rights and freedoms. A grassroots movement, we are owned and run by our members. In particular, we campaign for fair, open and honest elections, a stronger Parliament and accountable government, and a written constitution. We want to bring power closer to the people and create a culture of informed political interest and responsibility. Unlock Democracy is a founding member of the Alliance for Lobbying Transparency, set up in 2007 with a number of organisations including Spinwatch, Friends of the Earth and Greenpeace.

Executive Summary

1. Unlock Democracy welcomed the government’s commitment to introduce a statutory register of lobbying interests. However, we are disappointed that proposals that took so long to produce are so limited in scope. When the government consulted on its draft proposals in January 2012 the response from transparency campaigners and lobbying industry alike, was to call for a comprehensive register. We are disappointed that having taken over a year to think about the consultation responses, including 1,337 from individual Unlock Democracy supporters, these proposals are even narrower than initially suggested.

2. Unlock Democracy is not opposed to lobbying - indeed we lobby Parliament, the UK and devolved governments and local government. Lobbying is an important part of the democratic process, the problem is when it’s done in secret so the public have no way of knowing who has been putting pressure on the government to do what, or how much money they are spending on exerting that pressure.

3. The perception that companies and wealthy individuals can buy access and influence is undermining trust in our political system. There have been a number of scandals that have demonstrated this, from the Fox/Werrity affair¹, to the allegations of Bell Pottinger² boasting about their access to the Prime Minister and McKinsey’s alleged influencing of the Health and Social Care Bill³. David Cameron’s prediction that lobbying was the next big scandal waiting to happen has been repeatedly proven correct, indeed these proposals were published in the aftermath of a scandal, yet these proposals would do nothing to prevent another scandal.

4. The primary purpose of a register of lobbyists is to make information on who is attempting to influence government publicly available so that voters can hold the government of the day to account for the decisions it takes. Unlock Democracy sees this as an important step towards rebuilding public trust in politics. However, the Bill as currently drafted will have the opposite effect. The proposed register will capture very little lobbying activity and the broad exemptions are effectively an invitation to avoid disclosure.

5. Unlock Democracy wants an open and transparent lobbying system. We believe that the purpose of any lobbying register should be to capture lobbying activity rather than individual lobbyists. This means that both in-house and agency lobbyists should be covered by the register and that the register must include information not just on who the lobbyist’s client is, but also who is being lobbied, the policy area that is being lobbied and the amount of money that is being spent on lobbying. This does not have to be an arduous or overly bureaucratic process. Unlock Democracy has completed a mock registration form for the first quarter of 2012 to demonstrate how this could be achieved without putting an undue burden on the organisations concerned. Together with Spinwatch, we published a draft Lobbying Transparency Bill show how we believe lobbying transparency should operate in the UK. You can find the bill on our website http://test.unlockdemocracy.com/page/-/publications/130617%20Draft%20Lobbying%20Transparency%20Bill%20FINAL%20PUBLIC.doc

6. We are also seriously concerned about the provisions on third party campaigning in Part 2 of the bill. While we support the desire for transparency, the way that these proposals are drafted is so broad that we believe it would have a chilling effect on campaigning and political participation in the UK. The coalition has failed to present convincing evidence that this is a problem which requires urgent attention. There has been no consultation on these proposals, no attempt to build cross-party consensus and the exceptionally short timescale for the bill means that there is very little opportunity for scrutiny but they could do real damage to the health of our democracy. It is no exaggeration to suggest this could go down in history as the Dangerous Dogs Act of election law.

Is the definition of “consultant lobbyist” in clause 2 of the Bill likely to lead to a register that enhances transparency about lobbying?

7. No. The extremely narrow definition of lobbying combined with the definition of consultant lobbyist in clause 2 risk making lobbying in the UK less transparent.

8. There are a number of problems with the government’s definition of consultant lobbyist. The first is that by focusing on consultant lobbyists the government have excluded 80% of the lobbying industry. Unlock Democracy previously submitted evidence to the committee showing that the government’s consultation had grossly underestimated the number of in house lobbyists. In a paper published in 2009 the lobbying industry cites academic evidence suggesting that there are four in-house lobbyists for every agency lobbyist. It is common practice for large companies and voluntary sector organisations to employ large teams of public affairs professionals. We know for example, that Tesco alone employs six in-house lobbyists and they are certainly not the only company to do so. It is standard practice on the telecommunications industry to use in-house lobbyists for example. The industry’s 2009 figures also put the total number of dedicated

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4 Towards a Public Affairs Council PAC working party May 2009
5 http://www.publicaffairsnews.com/no_cache/home/uk-news/news-detail/newsarticle/mobile-giant-o2-snare-ex-t-mobile-man-as-new-top-lobbyist/2/?tx_ttnews%5Bpointer%5D=5&&Hash=950cebd82b
lobbyists working in the UK at between 3500 and 4000\textsuperscript{6}. None of the lobbying activity carried out by in house lobbyists will be captured by the proposed register.

9. The second is that in practice very few lobbying agencies are going to be required to register. The government is not even going to capture the lobbying activity of the 20% of the industry that they have identified as the reason for the register. This is because they have limited the definition of lobbying to direct contact with government ministers and permanent secretaries. Very few lobbying agencies do this and the industry umbrella bodies have already indicated that only a tiny number of the organisations that are currently registered, would be required to do so under the government’s proposals. In most cases contact between lobbyists and government is with mid-ranking civil servants and special advisers, rather than ministers and permanent secretaries. The Leveson Inquiry provided an important illustration of this with the extensive communication between Jeremy Hunt’s the special adviser, Adam Smith and News international’s in house lobbyist, Fred Michel\textsuperscript{7}. None of this activity would be covered by the government’s proposals for a register of lobbyists or improving the publication of details of ministerial meetings.

10. The third issue with focusing solely on consultant lobbyists is that the government risks stigmatising lobbying activity. Lobbying is an important part of a democratic culture, it allows different views and experiences to be heard, but we need to be open and honest about who lobbies and what they are lobbying for. This means acknowledging that it is not just large agencies who lobby, but also charities, voluntary sector organisations, trade bodies, companies, trade unions, media organisations and universities. The purpose of a lobbying register is to bring transparency to lobbying in the UK, not to classify certain sectors lobbying as good and others as bad.

11. The problems with the definition of consultant lobbyist are further exacerbated by the narrow definition of lobbying activity. The government proposals only seek to identify communication with government ministers and permanent secretaries. This simply does not reflect the nature of the work that most lobbyists, whether they work in house or for an agency do. Consultant lobbyists advise clients on lobbying and communications strategies more generally. It is rare that they will actually attend lobbying meetings. This has been made clear by industry bodies and can also be seen from the evidence of ministerial meeting logs. The details of a proposed lobbying campaign by Philip Morris International against plain cigarette packaging are a good example of this\textsuperscript{8}. The proposed activities included:

- commissioning opinions poll research including specific research in the constituencies of specific MPs,
- building a coalition with supermarkets and trade bodies to campaign against plain packaging,
- commissioning law firms and think tanks to build a case against the proposals,
- commissioning independent research,
- identifying journalists who would be willing to make the case in the media.

\textsuperscript{6} Towards a Public Affairs Council PAC working party May 2009

\textsuperscript{7} http://www.theguardian.com/media/blog/2012/may/24/leveson-inquiry-adam-smith-frederic-michel
http://www.theguardian.com/politics/2012/apr/25/adam-smith-frederic-michel-correspondence
accessed 20 August 2013

\textsuperscript{8} http://www.theguardian.com/business/2013/jul/28/philip-morris-plain-packaging accessed 20 August 2013
12. These are all standard practices, used by both in house and agency lobbyists but none of these activities would be covered by the government’s proposals. For a statutory register of lobbyists to be effective at increasing transparency, it has to focus on lobbying activity and not who the lobbyist is employed by.

Are the definition of “consultant lobbyist” in clause 2 of the Bill and the list of exceptions in schedule 1 of the Bill likely to have any unintended consequences?

13. Unlock Democracy is concerned that the exceptionally narrow definition of lobbying combined with the exemptions mean that very little lobbying activity in the UK is likely to be captured by the register. Indeed they could be considered and invitation to avoid disclosure. The danger of a very limited register is that lobbying activity will move from agencies to think tanks, accountancy firms and lawyers or simply move in house. This would make lobbying in the UK less, not more, transparent.

14. We believe that the exemption for those companies where lobbying is an “insubstantial proportion of that business” is particularly problematic. Given the narrow definition of lobbying used by the government, namely communicating with ministers and permanent secretaries, we believe that the vast majority of lobbying agencies would be able to argue that this forms an insubstantial part of what they do. As it would also be left to the registrar to interpret what constituted an “insubstantial proportion” it would be far from clear for organisations whether or not they should register and leave them open to sanction. There is also no mechanism under the current proposals for lobbyists to choose to register, even if they are not required to do so. So those companies that currently choose to publish their client lists but are not captured by the government’s definition of lobbying would be excluded.

Is the information that the Bill requires to be listed on the register sufficient to enhance transparency about lobbying?

15. No. The only additional information the proposed register would provide is that agencies would have to publish their client lists. Whilst this information should certainly be in the public domain, it does not go nearly far enough to bring transparency to lobbying.

16. Unlock Democracy believes that for a lobbying register to be effective it must include who is lobbying whom, what they are lobbying for and crucially how much money is being spent on lobbying. The specific information that we think should be included in the register and that we have included on our draft filing is:

- The organisation lobbying;
- The name(s) of individual lobbyist(s);
- Information on any public office held by the lobbyist in the past 5 years (the so-called ‘revolving-door’);
- The public body being lobbied;
- The name of public official with whom contact has been made;

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9 Schedule 1 Part 1 3(b)
• A summary of what is being lobbied on, whether legislation, regulation, policy or government contract;
• The amount of money spent on lobbying (a good faith estimate).

17. This goes considerably further than the government’s proposals but is the level of information necessary to bring transparency to lobbying. The ultimate purpose of a lobbyists’ register is to increase government accountability, by putting lobbyists’ dealings with officials in the public domain. Therefore, it must include information on who is being lobbied in government and what issues they are being lobbied on. The amount of money that is being spent on lobbying is particularly important. This would bring out into the open the different amounts being spent by businesses and civil society organisations for example. After all, lobbying is an investment for organisations; US figures suggest that for every dollar spent on lobbying, a company can expect a $100 return, while in the UK it is estimated that for a lobbyist knowing a cabinet minister is worth £113,000 a year.¹⁰

18. As part of our submission to the government consultation on a lobbying register Unlock Democracy drafted a mock registration form showing the level of information that we think should be made public. This does not need to be overly bureaucratic and took us approximately 20 minutes to complete. We have included this form as an appendix to our evidence.

Are there any potential problems with the role envisaged for the Registrar?

19. One of the main problems with the role of the Registrar is that the government proposes that it should be funded by those required to register. However as the narrow definition of lobbying means it is likely that very few agencies will actually be required to register, it is difficult to see how this model with work in practice. The very high level of fees required to support the Registrar would simply act as another incentive for companies to avoid having to register.

20. Unlock Democracy believes that the lobbying register should be maintained by an independent body and not the industry itself as is currently the case. We would be happy for it to be added to the remit of an existing body, such as the Electoral Commission or Certification Officer. This would help to minimise both the costs and bureaucracy associated with the new regulatory regime, whilst at the same time reassuring the public that the register signals a new era of independence, openness and transparency in lobbying in the UK.

Does the absence of provision for a statutory or hybrid code of conduct in the Bill present any problems?

21. Unlock Democracy agrees that all lobbyists should abide by a code of conduct but do not feel it has to be statutory necessarily. We are open to the suggestion of self-regulation backed up by a statutory requirement to sign up to a code of conduct.

Are there any further issues raised by Part 1 of the Bill, including drafting issues, that you would like to draw to the Committee’s attention?

22. This bill focuses on those who lobby government. In terms of openness and transparency agenda, one issue that this Committee and Parliament may wish to consider is the criteria for issuing parliamentary passes. Those who have a parliamentary pass have privileged access to the parliamentary estate and those who work in it, including MPs. UKPAC have already highlighted this as an area of lobbying activity that needs to scrutinised - they don’t allow people who use parliamentary passes to be registered. This is to minimise the ‘revolving door’ phenomenon whereby former MPs or parliamentary staff use passes for lobbying purposes.

23. The lobbying register that operates in the European Parliament includes provisions whereby if a lobbyist breaches the terms of the register then their pass is removed. This is considered a considerable sanction. While it would not have been appropriate for the government consultation to explore this issue, as the committee is already examining these proposals, it may be something you wish to consider.

Unlock Democracy’s concerns about Part 2 of the Bill

24. In addition to the proposals for a lobbying register the government has also included a section in this bill on third party campaigning expenditure. While we recognise this is beyond the scope of the committee’s current inquiry, we believe these proposals could have an extremely damaging chilling effect on campaigning and political participation in the UK.

25. A key part of Unlock Democracy’s mission is to promote participation in democratic processes. We are a non-aligned organisation and do not campaign for or against any particular candidate or party. However we do campaign, including during election periods, and we have networks of activists up and down the country who also do so. At the last general election we produced a manifesto of our key policy asks in the election and how the different political parties matched against them. Our local groups also held events in their constituencies - some hustings, some single issue meetings. We were advised by the Electoral Commission that did not need to register. If the proposed rules had been in place we not only would have had to register but we may not have been able to do this activity. We recognise that regulating third party campaigning is necessary and that it is important that third parties can’t be used a means of bypassing rules on party funding or election expenditure. However these proposals could stifle debate at the time when the public is most likely to engage with politics.

26. Of particular concern is the new definition of the term ‘for election purposes’. Currently the intent of the third party is taken into account. The bill as currently drafted will instead will 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. This will include charities, think tanks, trade associations and even blogs and websites.
27. We are also concerned about the inclusion of staff costs and office costs in the spending limits. Presently only the costs of election directed materials and activities such as leaflets and advertisements are regulated. The bill proposes that staff time and other costs should now be included in the limit, at a time when it is also suggested that the limits should be drastically reduced. It is far from clear why third parties are being put under far greater restrictions that political parties in this regard, particularly as political parties were specifically excepted from including staff costs as it was considered too burdensome.

28. These proposals would also restrict our ability to build coalitions for with other organisations, as any costs accrued by a coalition will need to be “aggregated” (meaning that Unlock Democracy would have to declare within our reported expenses the full amount spent on the joint campaign, regardless of how much we contribute). As we are a member of a number of coalitions, two of which have over 100 organisational members, ranging from small community groups to trade unions and large charities and campaigning organisations, it is difficult to see how this would work in practice.

29. As currently drafted these proposals would limit the ability of a wide range of organisations to campaign and comment on public policy both in the run up to the general election and during the campaign itself. The TUC and NCVO have already published details of how it would adversely affect their members. What is far harder to quantify is the chilling effect that this would have on local campaigning. Unlock Democracy works with a large number of activists and small community groups who wish to hold public meetings or run local campaigns on specific issues. Current regulations about holding hustings can be intimidating, particularly if the group does not want to invite a particular party such as the BNP. We fear that these proposals would increase the regulatory burden on smaller organisations and we fear would prevent some local campaigns from getting off the ground.

30. The reality of election campaigning is that in a contested seats parties regularly issue legal threats to each other for both real and mischievous reasons throughout the course of an election campaign. Political parties will have every incentive to intimidate community groups they consider unhelpful with these new regulations.

31. Whilst we are supportive of efforts to increase transparency, these proposals are fundamentally flawed. The coalition has failed to present convincing evidence that this is a problem which requires urgent attention. There has been no consultation on these proposals, no attempt to build cross-party consensus and the exceptionally short timescale for the bill means that there is very little opportunity for scrutiny but they could do real damage to the health of our democracy. It is no exaggeration to suggest this could go down in history as the Dangerous Dogs Act of election law.

August 2013
Written evidence submitted by Political Lobbying and Media Relations (PLMR) (GLB 13)

1. Executive Summary

i. PLMR fully supports the Select Committee’s decision to hold a further inquiry into the Government’s Transparency of Lobbying Bill.

ii. The Government’s proposals as they stand are too narrow. A simple, statutory register must cover anyone practicing the act of lobbying, including in-house practitioners, law firms that lobby, management consultancies, not just selected ‘third-party’ lobbyists which make up a minority of all activity.

iii. The bodies that currently administer self-regulation in the industry do good work and the majority already subscribe to their code of practice. Signing up to one of the existing codes of conduct should go hand in hand with registration. This would bring the minority of lobbyists who still operate outside of normal practices into the same ethical framework as the majority of the industry.

iv. At a minimum, a statutory register that covers the entirety of the industry, including in-house practitioners, must be implemented. In addition, membership of a self-regulatory body and, as such, commitment to a code of conduct should be required alongside statutory registration.

v. Political Lobbying and Media Relations (PLMR) already meets these requirements of transparency and ethics. There are no longer any excuses for similar measures not to be introduced across the Public Affairs industry. PLMR has extensive experience in the sector and this qualifies us to say that compliance is neither difficult nor onerous. However, we are concerned about the proposed costs of the new register and Registrar.

vi. Individual responsibility and transparency are part and parcel of the responsibilities of public office. Those being lobbied must remain accountable for their interactions with lobbyists.

vii. Lobbying does not deserve the opprobrium currently attached to it. There are a large number of companies active in the sector carrying out work that makes a real difference to people’s lives, improving health, promoting charitable objectives (within all proper Charity Commission boundaries), supporting educational institutions, philanthropic ventures, and conveying their messages to Government. Alongside the purely commercial lobbying, which is equally valid, this cannot be allowed to stop.

2. Introduction to PLMR and our credentials

i. PLMR commenced trading on 1st May 2006 and its founder and Managing Director Kevin Craig has, from the very start, been committed to building an agency that has the very highest professional standards, providing first class consultancy advice to clients, outstanding career opportunities and rewards to staff, and maintaining a commitment to philanthropic work and charitable donations.
ii. PLMR is a member of the Association of Professional Political Consultants (APPC), Public Relations Consultants Association (PRCA), and UK Public Affairs Council (UKPAC). In addition, several staff are individual members of the Chartered Institute of Public Relations and Kevin Craig and Associate Director Elin Twigge are members of the Institute of Directors. Elin Twigge is currently Vice Chair at the PRCA Public Affairs Group.

iii. PLMR declares all of its clients on the registers of the APPC, PRCA and UKPAC. We also publicise clients and causes on our website. MD Kevin Craig has spoken regularly on national broadcast media about the need for openness and transparency in political lobbying.

iv. PLMR pledges 5 per cent net profit to charities every year. To date we have donated £60,598 to causes chosen by our staff. We also carry out pro bono work for charities such as Elizabeth’s Legacy of Hope, HEAL, 21st Century Legacy, Earlybird Diabetes Trust and the Rape and Sexual Assault Support Centre. In 2012-13 this constituted over 1,000 hours of manpower, completely free of charge.

v. PLMR is an SME proudly contributing to the UK economy. We will have paid £329,390 in corporation tax for the period 1 May 2006 to 30 April 2013 to HMRC.

3. Response to Questions

1. Is the definition of “consultant lobbyist” in Clause 2 of the Bill likely to lead to a register that enhances transparency about lobbying?

The definition of “consultant lobbyists” in Clause 2 is deficient in encompassing the majority of professional lobbyists and therefore will not enhance transparency about lobbying significantly. The Bill’s interpretation of lobbying is so specific that we expect it to cover only a tiny proportion of the lobbying industry and will lead to a partial-register, as it excludes the vast majority of lobbying activity. In its current form the definition would not cover the huge percentage of lobbying by in-house teams, trade bodies, unions, charities, all of whom work should be included if the Bill wants to achieve complete transparency.

Moreover, the majority of professional lobbyists work in organisations that have other functions apart from lobbying, which would mean they are not classed as consultant lobbyists although lobbying is an important part of their business. Political Lobbying Media Relations may not even be eligible to join the register as it stands. Schedule 1, Part 1, Exceptions 3. (2) suggests that due to the proportion of public relations vs. public affairs our agency undertakes, we could be considered a a “mainly non-lobbying business” as our agency also provides media relations, crisis communications, digital strategy, media training and campaign advice.

Furthermore, the fact we do not make personal representations to Ministers or Permanent Secretaries, but in nearly all cases advise our clients how to best communicate to them and other political stakeholders, would disqualify us from inclusion in Clause 2. (3) as we are not ‘directly engaging’ in lobbying.
We also agree with the PRCA that the Government is wrong to only capture the direct lobbying of ministers and permanent secretaries. It would be far more appropriate to register employees and organisations that speak to MPs, SpAds, and a broader range of civil servants.

2. Are the definition of “consultant lobbyist” in clause 2 of the Bill and the list of exceptions in schedule 1 of the Bill likely to have any unintended consequences?

Given the issues with the definition, listed in part one, it is highly likely there will be unintended consequences with the definition.

The definition of lobbying taken by the Bill only covers a narrow range of consultant lobbyists. As discussed above, consultants make up a minority of people that lobby in the UK and the current legislation falls far short of what is required to address the perceived issues and problems around lobbying. We believe the current definition would result in a less vigorous system than the self-regulatory one currently in place and we call for a register that covers more than just the minority of lobbyists.

It is our view that if regulation is enforced onto Lobbying companies exclusively, this will merely steer practices in-house and encourage law firms and management consultancies to create unregulated practices that serve the same function. The lobbying industry wants increased transparency, but it also wants a level-playing field. The Government has yet to answer successfully why a small section of the industry should be legally required to pay significant costs for the Register and to declare its clients and not its competitors in management consultancies, law firms and in-house teams.

3. Is the information that the Bill requires to be listed on the register sufficient to enhance transparency about lobbying?

As discussed above, PLMR supports the introduction of a register but there needs to be detailed and meaningful consultation with the appointed Registrar before guidelines for lobbyists are published. As the draft Bill stands there is real ambiguity.

A register of all lobbyists, including consultants and in-house practitioners, which notes the client lists of consultancies, combined with a commitment to signing up to a code of conduct for lobbyists, the current rules on reporting Ministers’ meetings, and the Freedom of Information Act should prove sufficient to ensure transparency and accountability. However, it must again be noted that the current proposed legislation does not achieve this. Should we be able to improve the proposed legislation to reflect universality, this would restore the public’s trust in lobbying and contribute to ethical growth of this important industry.

Another issue about the criteria of registration is that the Bill also does not require pro bono clients to be registered by focussing on “return for payment” in clause 2 (1(a)). This will also reduce the number of clients on the Statutory Register compared to industry models. We have a number of pro-bono clients and to achieve complete transparency, we feel these should be listed along with all our clients, as they still benefit from our advice.

It is also necessary that commercial sensitivities of clients must remain protected. The confidentiality between client and lobbyists does not represent a smokescreen to underhanded lobbying practices. It serves to protect commercial interests. Financial disclosure would only damage the market. It would
also over-simplify the nature of the lobbying industry. Different clients across different sectors require different services, and these vary markedly in delivery when comparing the approaches of various Public Affairs Consultancies.

4. Are there any potential problems with the role envisaged for the Registrar?

As the legislation stands, the role of the Registrar lacks specific detail and it is therefore difficult to envisage potential problems. It is essential that any appointed Registrar embarks on meaningful consultation with the industry as a priority to prevent problems emerging.

PLMR believes the funding of both the register and Registrar should come from within the Public Affairs industry and at no cost to the taxpayer. It is not unreasonable to ask organisations that lobby to dedicate a set amount for the administration of the Register. However, the cost of such a framework should be kept to a minimum so as not to cripple small businesses and employers in the sector. Simplicity must be at the heart of this process and bureaucracy has to stay at a bare minimum in order for it to be effective and not onerous.

5. Does the absence of provision for a statutory or hybrid code of conduct in the Bill present any problems?

Promoting ethical standards in the industry is something PLMR has always been committed to and we proudly declare our clients and ask all of staff to sign up to industry Codes of Conduct.

The bodies that currently administer self-regulation in the industry do good work and the majority of professional lobbyists already subscribe to their codes of practice. Signing up to one of the existing Codes of Conduct should go hand in hand with registration. This would bring the minority of lobbyists who still operate outside of normal practices into the same ethical framework as the majority of the industry. In short, it should be stipulated in the Bill that it is a requirement of Registration to also sign up to an existing industry code.

6. Are there any further issues raised by Part 1 of the Bill, including drafting issues, that you would like to draw to the Committee’s attention?

We would also like to reiterate our following concerns about the wider issues of the proposed bill, that:

i. 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. Having to disclose the nature of all meetings will stop many from being able to meet at all. Ministers will be the poorer for it as they will not receive input from parties relevant to their areas of responsibility. We believe knowing a meeting took place is enough for the public to scrutinise the relationship between lobbyists and Ministers.

ii. The responsibility for fair and transparent lobbying lies as much with those that are likely to be lobbied as much as those who do the lobbying. It is clearly a responsibility of those in public office to act, and be seen to act, in an open and honest fashion. Political transparency is as important as lobbying transparency.
iii. The public’s negative view of lobbying harms the industry. Lobbyists have a commercial as well as moral incentive to be the ones seeking solutions. The widespread acceptance of self-regulation in the industry tells of how willing lobbyists are to make the changes necessary to restore the public’s trust in the industry. Moreover, the push for a universal regulator is embraced by all representative industry bodies, so it is disappointing that this is not the path the Government is proposing.

In summary, PLMR remains in favour of a statutory register of lobbyists, but it does not support this Bill. Nor do we believe that we, an agency called ‘Political Lobbying and Media Relations,’ would be covered by it.

August 2013
Written evidence submitted by Public Relations Consultants Association (PRCA) (GLB 14)

Executive summary

1.1 In the absence of pre-legislative scrutiny, the PRCA fully supports the Select Committee's decision to hold a further inquiry into the Government's Transparency of Lobbying Bill.

1.2 The PRCA is deeply disappointed with the Bill, which we see as unfair and unfit for purpose. It is unfair as it targets a tiny number of lobbyists that will have to pay significant costs to register. It is unfit for purpose as it will reduce, rather than enhance, transparency by covering fewer organisations, employees, and clients than are currently covered on existing voluntary models.

1.3 The PRCA strongly supports in principle a statutory register of lobbyists that increases transparency. Therefore we are strongly against this Bill for failing to achieve this aim, and because it will unnecessarily harm the industry's reputation in the process.

1.4 We believe that no statutory register is a better outcome for transparency and for the industry than this Bill.

PRCA Code of Conduct and Voluntary Register

2.1 The PRCA is the professional body that represents around 500 corporate members from the UK public relations and public affairs industry, in the public, private and charitable sectors, as well as individual and freelance practitioners.

2.2 Members of the PRCA that conduct public affairs or lobbying services are bound by a Public Affairs Code of Conduct, and must submit their details to a Public Affairs Register that is updated quarterly and posted to the PRCA website.

2.3 The Register is retrospective, covering those who have conducted lobbying activity in the three months prior to publishing, and includes the following details: an office address and contact information, a list of all staff that conduct lobbying services, and a list of all clients who benefit from these services.

2.4 The latest copy of the Register can be found at www.prca.org.uk/pareqister. Currently there are a total of 83 organisations represented on the PRCA Public Affairs Register, with 1,093 individuals and 1,330 clients. This includes 55 public affairs consultancies and 28 in-house lobbying departments.

Is the definition of "consultant lobbyist" in clause 2 of the Bill likely to lead to a register that enhances transparency about lobbying?

3.1 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.

3.2 The parts of the definition likely to reduce transparency are as follows:

Clause 2
(1) ...a person carries on the business of consultant lobbying if-
(3) ...communications... are oral or written communications made personally to a Minister of the Crown or permanent secretary.

Schedule 1, Clause 3
(1) A person does not carry on the business of consultant lobbying if —

(a) the person... carries on a business which is mainly a non-lobbying business, and (if) the making of communications...

(b) is an insubstantial proportion of that business.”

3.3 First, the vast majority of professional lobbyists work in organisations that are “mainly a non-lobbying business”, which the Government seeks to exclude. In our previous submissions to the Government and this Committee we called for the Bill to capture the 80% of the industry that work in-house. They are all automatically excluded by Schedule 1, clause 3(1(a)). However, it also excludes a great deal of lobbyists who work "in return for payment" and "on behalf of another" that the Government seeks to include in clause 2(a).

3.4 For example, a majority of the consultancies on the PRCA Public Affairs Register conduct lobbying services for clients, but lobbying is just one of a number of services our members perform. The most common is public relations or communications. In some of our largest members the lobbying function is not the main function of that business. This also applies to other businesses that perform consultant lobbying on behalf of a client in return for payment including management consultancies, think tanks, trade bodies, lawyers and accountancy firms. If these organisations were captured on the Register it would undoubtedly increase transparency. Therefore the PRCA strongly holds that this exception is unnecessary and counter-productive to the Government's stated aim to increase transparency.

**Case Study** - PLMR has 27 employees and 32 clients listed on the PRCA PA Register. It would like to appear on the Statutory Register, but cannot do so: "(The proposed register) is so narrow that we, a company called 'Political Lobbying & Media Relations, wouldn't even be eligible to be on it. Why? Because we do media relations too, and crisis communications, digital strategy, media training and campaign advice. So that makes us a 'mainly non lobbying business' in line with the Bill's definition. And that means we can't sign up.”

3.5 Second, even if the "mainly non-lobbying" exception is removed, none of the organisations in 3.4, including public affairs consultancies, would be captured due to Schedule 1, clause 3(1(b)). The PRCA has yet to see evidence that any "consultant lobbyist" spends a substantial amount of its business communicating personally (oral or written) with Ministers or permanent secretaries.

3.6 Lobbying consists of a range of skills, services and strategies. Lobbyists that are employed by public affairs consultancies may contact Ministers sporadically, but these organisations are hired by clients primarily for their expertise and advice. Anecdotal evidence suggests it is more likely to be the in-house lobbyist, working for the client who will be contacting the minister personally. If the key aim of this bill is transparency, then it is wrong to focus solely on the fewer than 1% of meetings that take place by consultancies without the client present'. The Bill fails to understand this important point, which again demonstrates why the "mainly a non-lobbying business" exception is flawed.

**Case Study** - Connect Communications has 19 employees and 49 clients listed on the PRCA PA Register, but would not be covered on the Statutory Register for this reason: 'Connect provide a range of services to clients to help them monitor the political environment and analyse its impact on their organisation. We work with our clients to research and test political analysis, develop strategy, design programmes of activity geared to communicating and developing their messages. We organise events, produce research, arrange meetings, and advise on broader corporate communications programmes for clients.
"We believe in the principle that the client is the best advocate, which is why all of our strategy is geared around supporting the client to lobby. We facilitate or prepare our clients for meetings with Ministers and if we attend a meeting with the client it is in a supportive capacity — usually taking a note of the meeting. We do not usually directly lobby on behalf of a client. Engaging with Ministers and permanent secretaries is by no means the focus of the vast majority of our work with clients.

"Under the Bill as published we believe we would be considered a 'non-lobbying' business, both because of the lack of direct lobbying we actually undertake and because activity focused on Ministers and permanent secretaries is an 'insubstantial' proportion of our work.

"For these reasons, and whilst we are a dedicated political communications agency based in Westminster, we do not believe that we would be required to register under the Government's proposals for a statutory register of lobbyists."

3.7 The Government is therefore wrong to only capture the direct lobbying of Ministers of the Crown and permanent secretaries. It would be far more appropriate to declare employees and organisations that speak to MPs, SpAds, and a broader range of civil servants. The PRCA, Chartered Institute of Public Relations (CIPR) and Association of Professional Political Consultants (APPC), produced a definition of lobbying, which captures influencing "government" including:

(a) central government, devolved government, local government,
(b) members and staff of either House of Parliament or of a devolved legislature,
(c) Ministers and officials, and
(d) public authorities (within the meaning of section 6 of the Human Rights Act 1998).2

3.8 This would undoubtedly cover more organisations and increase transparency. Simultaneously, we produced sensible exceptions such as residents lobbying a local MP on a constituency issue, which could not be described as professional lobbying.

3.9 Consequently, the Bill's interpretation of lobbying is so specific that we expect it to cover only a tiny proportion of the lobbying industry. The PRCA conducted a snap poll of the 83 organisations on our Public Affairs Register after the Bill was published, with fewer than 25% agreeing that they might be required to Register.3 The 28 in-house teams recognised they are automatically excluded, and we have yet to have a member confirm to us that they would be required to register as the Bill stands. Therefore it is 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. Instead of increasing transparency, it is likely to capture fewer organisations than are covered already by existing voluntary models.

Is the definition of "consultant lobbyist" in clause 2 of the Bill and the list of exceptions in schedule 1 of the Bill likely to have any unintended consequences?

4.1 The Bill produces two harmful, unforeseen consequences to the industry: it unfairly distorts the market, and it potentially prevents legitimate organisations from lobbying.

4.2 It unfairly distorts the market by capturing only a few consultancies that are already signed up to existing voluntary models, such as the PRCA Public Affairs Register. The lobbying industry wants increased transparency, but it also wants a level playing field. The Government has yet to answer successfully why a small section of the industry should be legally required to pay significant costs (see 6.4) to declare its clients and not its competitors in management consultancies, law firms etc., as well as in-
house teams. The Government failed to recognise that it will distort the lobbying market in Annex G (1) in its Impact Assessment, where it did not see any ‘available substitutes’ that might affect demand.4

Case Study - MHP Communications, which is the largest organisation on the PRCA Public Affairs Register with 160 employees and 129 clients registered, said: “It is commercially unfair and morally wrong to differentiate between different classes of ‘consultant lobbyist’. It harms democracy to allow some organisations to hide behind claims of client confidentiality and so not reveal for whom they are working. If the Government is going to change its flawed Bill, it should start here: make sure everyone involved in consultant lobbying is actually covered by its provisions.”

4.3 The second unintended consequence is that the Bill could potentially prevent legitimate organisations from performing their lobbying activities. The Bill states:

Clause 1: Prohibition on consultant lobbying unless registered
(1) A person must not carry on the business of consultant lobbying unless —
   (a) the person, or
   (b) the person’s employer,
   is entered in the register of consultant lobbyists.

Clause 12
(1) It is an offence for a person to carry on the business of consultant lobbying in breach of section 1(1) (lobbying whilst unregistered).

4.4 The PRCA agrees that sanctions are necessary to deter non-compliance. However, due to the Bill’s narrow definition there are likely to be legitimate lobbyists and their organisations being prevented from performing their professional services. If they are ignored by policymakers because they do not appear on the Register then it could also have an adverse effect on free speech, which in turn will lead to policymakers taking increasingly uninformed decisions.

1 A recent study has shown that out of 6,700 ministerial meetings between May 2010 and June 2011, fewer than 20 were with multi-client consultancies: Who’s Lobbying Blog
2 PRCA, CIPR, APPC Definition of Lobbying
Definition of Lobbying FAQ
Is the information that the Bill requires to be listed on the register sufficient to enhance transparency about lobbying?

5.1 No. Further to 3.9, it is likely that there will be a smaller number of organisations, employees and clients on the Statutory Register than available on existing voluntary models. There will be fewer organisations and clients due to the narrow definition. There will be fewer employees because the Bill stipulates:

Clause 4
(2) The entry for each registered person must include —

(a) in the case of a company—
(ii) the names of its directors and of any secretary or shadow directors.

5.2 This means that only directors that spend a substantial part of their time directly communicating with Ministers or permanent secretaries will be required to register. This will take out a significant majority of the 1,093 employees currently on the PRCA Public Affairs Register.

5.3 The Bill also does not require pro bono clients to be registered by focussing on "return for payment" in clause 2 (1(a)). This will also reduce the number of clients on the Statutory Register compared to industry models.

Are there any potential problems with the role envisaged for the Registrar?

6.1 The PRCA has two fundamental concerns with the role envisaged for the Registrar: its ability to decide who should go on the Register, and its cost.

6.2 The Bill is right to create a Registrar that is independent of government and industry. This is the only way to ensure public confidence in the Register. However, the Registrar must not have the power arbitrarily to decide who should and should not be required to register:

Clause 21
(1) The Registrar may give guidance about how the Registrar proposes to exercise the functions under this Part.

(2) The Registrar may do so, in particular, by publishing guidance—
(a) as to cases which the Registrar would, or would not, regard as falling within any of the exceptions in Part 1 of Schedule 1;
(b) otherwise as to the circumstances in which the Registrar would, or would not, consider that a person is carrying on the business of consultant lobbying;

6.3 Guidance from Parliament by this Bill must make it clear to the Registrar who should be required to register. The PRCA does not wish to see a Registrar take a unilateral decision to require certain organisations that do not necessarily comply to register. In particular, this could lead to unfair "offences" and corresponding sanctions.

6.4 The potential cost of the Registrar is alarming. As stated above (3.13), the PRCA believes that the Government will fall well below the central estimate of 720 organisations it expects to register. This has a serious impact on its calculations on how much it will cost each organisation to register. The PRCA agrees with the Government that the Register should be paid for by the industry (i.e. those on the Register). However, the Government expects the Register to cost £500,000 in its first year to set up and then £200,000 annually thereafter. Therefore we cannot support a system that may require a small number of consultancies to pay thousands of pounds annually for the simple act of registration. The PRCA made clear in its consultation submission that the cost of registration must act as an incentive to register.

6.5 It should also be noted that in the Impact Assessment it states that in-house lobbyists might have to pay £20 to ascertain that they do not have to register (and then £10 annually thereafter). It is absurd that an in-house team would have to pay this for not registering. Instead such a fee level should be used as an incentive for all lobbyists to register.

**Does the absence of provision for a statutory or hybrid code of conduct in the Bill present any problems?**

7.1 The Bill has failed in its only aim of increasing transparency. We also do not see any evidence to suggest that lobbying (especially public affairs consultancies) requires external regulation in addition to a statutory register. Thus the PRCA is concerned that proposals for a statutory code of conduct would distract the Bill from achieving increased transparency. Returning to the Government’s narrow definition of lobbying, it would be unfair to regulate one section of the industry and not others.

7.2 The PRCA is committed to raising ethical standards, and welcomed the suggestion by the Committee of a hybrid code, which we do not envisage would create an added regulatory burden, but may serve to encourage more lobbying organisations on a statutory register to sign up to existing, robust voluntary codes. On the other hand it would be a great concern to see consultancies join a statutory code of conduct, which could have the adverse effect, particularly in regards to cost, of consultancies leaving voluntary models, which would reduce transparency and reduce the high ethical standards set by existing codes.

7.3 It should also be noted that the PRCA is currently updating its own code of conduct to include the definition of lobbying it produced with the APPC and CIPR (see 3.7) following a consultation with our membership earlier this summer. An advantage of voluntary codes - compared to a potential statutory code - is their flexibility; we can change our code to reflect the changing lobbying and political environment relatively quickly. They also nurture high ethical standards — our members join the PRCA to demonstrate to their boards and/or to their clients that they uphold these standards.

**Are there any further issues raised by Part 1 of the Bill, including drafting issues, that you would like to draw to the Committee’s attention?**

8.1 The PRCA is disappointed that the Bill has been drafted, without pre-legislative scrutiny, in response to a series of Parliamentary scandals, none of which involved "consultant lobbyists".

8.2 The PRCA still strongly supports in principle a statutory register of lobbyists that increases transparency. However, this Bill fails in this aim, and has been drafted in a way that appears to have ignored the views of the industry and interested stakeholders. We fear that the industry's reputation will suffer as a result if the Register is not seen to increase transparency or prevent further Parliamentary scandals.
8.3 The lobbying industry is united in favour of a universal statutory register and our members already disclose their staff and clients. We believe that transparency can be increased if a statutory register covers all lobbyists not currently on the existing voluntary models.

8.4 Therefore the PRCA remains in favour of a statutory register of lobbyists, but it does not support this Bill. We believe that no statutory register is a better outcome for the industry and for transparency than what is currently proposed.

*August 2013*
The Chartered Institute of Public Relations (CIPR) is the professional body for public relations practitioners in the UK. With over 10,000 members involved in all aspects of public relations, it is the largest body of its kind in Europe. The CIPR advances the public relations profession in the UK by making its members accountable through a code of conduct, developing best practice, representing its members and raising standards through professional development. The CIPR, through the PR Academy, provides the CIPR Public Affairs Diploma, a professional qualification specific to lobbying.

The CIPR has several sectoral groups, the largest of which is the CIPR Public Affairs Group. It has more than 890 members and is made up of communications professionals who have regular dealings with Government, or the institutions of Government, in its very widest sense. The Group meets regularly to discuss key issues relating to UK politics — including any potential statutory register of lobbyists.

The CIPR, along with the Association of Professional Political Consultants (APPC) and the Public Relations Consultants Association (PRCA), founded the UK Public Affairs Council (UKPAC) after a recommendation from the House of Commons Public Administration Select Committee for a public register of lobbyists. (The PRCA resigned as a member of UKPAC in December 2011). Each member body in UKPAC (currently APPC and CIPR) has a code of conduct to which its members must adhere and a disciplinary process to be used in the event of any breach of its code. Members of the APPC and CIPR that meet the UKPAC definition of lobbying are required to register.

1. Is the definition of "consultant lobbyist" in clause 2 of the Bill likely to lead to a register that enhances transparency about lobbying?

No. 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 majority of non-consultant lobbyists, including those serving in-house and in various other capacities, as non-registrable.

Any definition of lobbying, or of a lobbyist, included in legislation to introduce a statutory register will determine how successful that register will be - that is to say, it will determine who is and is not required to register and whether or not it genuinely increases transparency in lobbying.

The CIPR has consistently called for a universal register. To this end we have worked in partnership with the APPC and PRCA to seek legal advice and produce a draft definition of lobbying which may serve as a basis for any legislation (attached here) and was intended to encourage dialogue between the Government and the industry.

The CIPR believes that the definition used should be drawn to create a universal register of lobbyists to ensure the Government can meet its original aim, as set out in the consultation in 2012, of increasing
transparency in lobbying.

However in its most recent Impact Assessment the problem being addressed is defined thus: "...it remains unclear exactly whose interests are being represented when consultant lobbyists meet with government." The Government has therefore re-drawn the problem with a far narrower focus than was set out in 2012 and accordingly has proposed a register that would capture only those consultancy lobbyists who directly engage in communication with Ministers or Permanent Secretaries on behalf of a client. This is information that could conceivably be made available to the public by changing the regime of reporting of Ministerial and other meetings, without the expense of a new register of consultant lobbyists.

It would seem unlikely that a limited register of lobbyists could achieve the original stated aim of increasing transparency in lobbying and the current Bill could actively reduce transparency. It also seems possible that such a limited range of registrable activity will not do anything to usefully increase public information on the subject. Also, having first raised this issue as one of "lobbying" the Government has redrawn the problem so tightly that the register will now not cover areas such as lobbying in Parliament, perhaps leading to a gap between the expectations for the register and what it will actually achieve.

2. Is the definition of "consultant lobbyist" in clause 2 of the Bill and the list of exceptions in schedule 1 of the Bill likely to have any unintended consequences?

As set out in 01 (above), the biggest unintended consequence of the definition and accompanying exemptions is the number of registrants who would be reasonably expected to submit to the register. It appears possible that the numbers envisaged in the impact assessment are substantial over estimates, which will have consequences for the sustainability of the register. Leaving the criteria for registration to the discretion of the registrar at this stage also builds in an unacceptable level of uncertainty for many, often small or freelance, businesses.

There are three other unintended consequences that we envisage as a result of this Bill.

The first is that the narrow definition of a consultant lobbyist, in addition to the exemptions to registration, will create an invitation to avoidance for those who see registration as overly burdensome. With the cost of a register being divided by a small number of those who are required to register, it is not unlikely that some will seek to alter their practices in order to avoid the heavy cost implications which we envisage will accompany a statutory register.

Secondly, by exempting lobbyists in one employment context, but not in others, the Government is creating questionable legislation which discriminates against a small minority of professionals and could easily distort the market. This not only reduces transparency as fewer people are obliged to register but may also be in contravention of EU law. The CIPR, along with the PRCA and APPC has already sought legal advice with respect to the legislation which could potentially breach the EU principle of non-discrimination.

The third unintended consequence of the Bill is that it will drive signatories away from existing voluntary registration. For those who are forced to sign the register it is foreseeable that the cost
implications will be so burdensome that registered parties will not wish to incur additional costs from a voluntary register. The current voluntary registers, including the UKPAC register, are publicly searchable, easy to use and hold numerous entities and individuals to account for their actions. If lobbyists were to move away from existing set-ups to sign up on a statutory register only then the current high bar set for professional standards, transparency and accountability would be undermined and we would paradoxically create a profession where fewer people were signed up to register and transparency would decrease.

3. Is the information that the Bill requires to be listed on the register sufficient to enhance transparency about lobbying?

The information required will provide some transparency but it will not enhance it. It is, in fact, asking for less information than is currently provided by the UKPAC register, where the names of individuals employed in registered consultancies are available.

Subsections (f) and (g) of Section 4 (2) provide little detail and grant decision making power to the registrar. For those being forced to comply with legislation, it is not clear what such legislation would mean and it gives far too much power to an unspecified body.

We are currently surveying our membership to gauge how many CIPR members who have signed the UKPAC register would be required to register under the government's proposal. In addition we have asked members of the CIPR's public affairs group if they felt the Bill, in its current form would increase transparency and overwhelmingly 85% of our members disagreed and felt it would actually decrease transparency.

The information that would be supplied on any register should be publicly searchable and freely available and should include the individual's name, place of work, details of employment and registered clients. The register should not be overly burdensome in the information it requires and should avoid duplication elsewhere.

4. Are there any potential problems with the role envisaged for the Registrar?

The Registrar would be part of the substantial start up and running costs of, due to the narrow nature of the definition, a register that may not be financially sustainable.

Also, the Registrar needs to maintain confidence in the register. At the moment, much of what is ambiguous in the Bill, including the exemptions, are likely to be left to the Registrar to explain or interpret. This is creating uncertainty over who exactly will be required to register and what, for example, constitutes a "non-lobbying business" and "incidental lobbying". It is not acceptable that the potential subjects of this legislation are left guessing as to its possible impact on their business.

The Registrar will also have a considerable job in terms of monitoring compliance, under an ambiguous piece of legislation. It would be helpful if they were to have access to the industry as a means of engaging with potential registrants to set out how the register will operate.
5. Does the absence of provision for a statutory or hybrid code of conduct in the Bill present any problems?

Introducing a statutory code would introduce a regulatory regime and in this sense we welcome its absence from the Bill.

It is possible that a statutory code would offer a weaker standard of professional conduct than currently in existence. The structure provided by the representative bodies requires adherence to a level of professional conduct which we identify as being in the public interest in line with the requirements of our Royal Charter. Codes enforced by representative bodies are also flexible and the ease with which they can be changed allows them to keep up with professional practice, something that could not be achieved should a code be written in statute.

As one of the representative bodies for the UK public affairs industry, it is our objective to ensure that individual lobbyists are held to the highest standards of professional conduct, and that those who bring our profession into disrepute should be appropriately disciplined. We believe that the existing voluntary codes of conduct to which our members are accountable set a higher standard of professional conduct than could be introduced in a statutory code.

We also believe that statutory regulation through a code of conduct would replace the voluntary system provided by the industry at our own expense. Currently, complaints can be brought forward by anyone who suspects a professional of wrongdoing or improper practice and efforts are made to ensure that the disciplinary processes are in line with established best practice. The investment made by the industry and its expert knowledge could be lost.

Finally, a statutory code would require a registrar to commit to enforcing the code and leading any disciplinary action. Since the representative bodies would not allow this to replace their own structures, it would at least duplicate effort unnecessarily.

We would therefore recommend that if a code were to be a part of any legislation, that a hybrid code of conduct should be considered as an alternative to a statutory code of conduct. A hybrid code of conduct would require the register of lobbyists to demonstrate that they have signed up to one of the representative bodies' existing codes of conduct. This would 'nudge' those outside the professional codes to join them, would reduce the burden on the registrar and would promote the highest professional standards among public affairs practitioners. A hybrid code could be an opportunity to support professional self regulation.

6. Are there any further issues raised by Part 1 of the Bill, including drafting issues that you would like to draw to the Committee’s attention?

The Bill as it stands is extremely poor and risks weakening accountability and transparency within the public affairs profession. The register of lobbyists could be an opportunity to establish an enhanced level of transparency and reflect the positive role of lobbying within the democratic process. However, the Bill offers an incredibly narrow focus and will thus leave out the majority of UK lobbyists. The Bill has therefore failed to meet the Government’s own original objective of increasing transparency.
The narrow definition of a consultant lobbyist underpinning the Bill will create an environment where the vast majority of lobbyists are excluded from a statutory register. The definition will act as an invitation to avoidance to all those who do not wish to be placed on a register and will thus result in a greater number of practitioners being unregistered than currently exists within voluntary registration.

The definition of a consultant lobbyist, including the activities they undertake, used in the Bill shows a distinct lack of understanding on the behalf of the Government with regards to how the lobbying profession works in practice. The CIPR along with other industry bodies and numerous other key stakeholders responded to the Government's original consultation document on a statutory register of lobbying in 2012. Since then, we have continually sought to engage with Ministers to assist in developing an adequate definition of lobbying. 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.

The lack of understanding shown by the Government with regards to who a consultant lobbyist is will inevitably lead to very few people being forced to sign up to a statutory register, certainly less than the estimated number of 1,000 suggested in the Cabinet Office's Impact Assessment. With so few signatories to a register, questions must be asked as to the financial sustainability of the model proposed. The current proposal is that the cost of any register "would be recovered by a fee charged to each lobbying firm'', yet estimated costs for the first year are set at a minimum of £900,000 and such a large figure will be incredibly burdensome for a small number of signatories who must shoulder the cost. We would express genuine concern about the cost of such a register in presenting yet another incentive to avoid registration.

The final point we would wish to make is that this Bill could lower the existing standards of transparency, accountability and professional practices that those in the industry have worked so hard to establish.

There is no evidence to show that the abuse of lobbying is widespread and most notably, the most recent cases of unethical behaviour have largely involved Members of Parliament and journalists posing as lobbyists. Few professional lobbyists, if any have been involved in these much publicised scandals.

Lobbying is an essential and inevitable part of the democratic process and as such it is important that public trust in the activity, as well as the openness and accountability of the profession is promoted and enhanced. This Bill does not do that. A statutory register with a broader definition of the act of lobbying could provide the public genuine transparency and greater understanding into the process of influencing public policy.

Existing standards of accountability and transparency are largely as a result of the work of industry bodies in conjunction with the UK Public Affairs Council who have overseen a successful publicly searchable register since its inception in 2010. This register, linked to the codes of conduct of professional industry bodies ensures that signatories demonstrate transparency, and that they are held accountable for any actions through the robust complaints procedures set in place for their respective membership body.

By introducing a register that will only capture a small number of lobbyists; discourage those on a statutory register to stay signed up to an existing register (due to cost implications) and actively encourage others to avoid registration, we believe that the existing standards of accountability and transparency will suffer with more lobbyists seeing registration as a burden rather than an active establishment of professional activity.

We would support wider registration and have welcomed the opportunity presented by a register, whether
statutory or otherwise, to add greater transparency to the role of lobbying in our democracy and increase
the level of public understanding. We believe this would be best served by a universal register that would encourage people to sign up with a low burden of compliance.

August 2013
Written evidence submitted by the British Dental Association (GLB 16)

1. The British Dental Association is the representative membership body and registered trade union for dentists in the United Kingdom and it is a company limited by guarantee. We negotiate and lobby on behalf of dentists working in general dental practice, the hospital service, the salaried primary dental care service and universities, as well as represent dentists in the Armed Forces and in private practice. We also provide a wide range of services for dentists including scientific and news journals, scientific events and advice on all aspects of their practice. The majority of our funding is through membership subscriptions.

2. We believe that the intention of the Bill is not to include within the scope of 'consultant lobbying' organisations such as the BDA but, if that is the case, we do not understand the definitions and scope and believe that the drafting is unclear. We therefore seek clarification of the extent of the effect of the proposals on our activities and we explain our concerns below.

Meaning of consultant lobbying

3. The current definition in clause 2(1) is 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.

4. Clause 2(3) then defines communications as

The communications within this subsection are oral or written communications made personally to a Minister of the Crown or permanent secretary 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.

5. The Association is a business receiving funding in the form of subscriptions from members on whose behalf we make communications as defined in 2(3).

6. Schedule 1 Part 1 provides for the following exceptions in paragraph 3:

3(1) A person does not carry on the business of consultant lobbying if—
(a) the person (or, where the person is an employee, the person's employer) carries on a business which is mainly a non-lobbying business, and
(b) the making of communications within section 2(3) on behalf of another person or persons in return for payment is an insubstantial proportion of that business.

3(2) In sub-paragraph (1)(a) a business is mainly a "non-lobbying business" if it consists mainly of activities other than making, on behalf of another person or persons, communications which—
(a) relate to any of the matters mentioned in section 2(3)(a) to (d), and
(b) are made to any of the persons within sub-paragraph (3).

7 Schedule 1 Part 1 paragraph 4 then says

A person does not carry on the business of consultant lobbying if—
(a) the person (or, where the person is an employee, the person's employer) acts generally as a representative of persons of a particular class or description,
(b) the income of the person (or employer) derives wholly or mainly from persons of that class or description, and
(c) the making of communications within section 2(3) on behalf of those persons is no more than an incidental part of that general activity.

8 Schedule 1 Part 2 paragraph 7 says

(1) But a communication is not made in return for payment if—
(a) a person makes the communication on behalf of persons of a particular class or description,
(b) the income of the person making the communications derives wholly or mainly from persons who are not of that class or description, and
(c) the person does not receive payment, from persons of that class or description, in return for making that communication.
(2) If the person making the communication is an employee, the references in subparagraph (1)(b) and (c) to the person are to be read as references to the person's employer.

9 Paragraph 9 says

A communication is not within section 2(3) if it is required to be made by or under any statutory provision or other rule of law.

10 Although the Association engages in many other activities, we would not be able to say whether or not we are 'mainly a non-lobbying business' and that communications as defined are 'an insubstantial proportion' of our business or 'an incidental part of that general activity'. We can be certain that we lobby only on behalf of our members and we do not lobby on behalf of third parties; nor do we support in any way any one political party.

11 Arguably a very small component of our lobbying could be covered by
statue in that the Secretary of State is obliged to consult with the profession on dentists’ pay.

We should be grateful for any clarification the Committee can elicit and will be seeking to ensure that our lobbying activities do not fall within the Bill’s ambit.

23 August 2013
The Committee today issues a call for written evidence on the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill

Terms of reference for the inquiry

The Committee is seeking answers to the following questions:

1. **Is the definition of “consultant lobbyist” in clause 2 of the Bill likely to lead to a register that enhances transparency about lobbying?**

   - We feel that the first gap in the proposed legislation is the use of the phrase “in return for payment”. This should be extended to “or other benefit or benefits”. As the current definition leaves open the possibility of the consultant lobbyist performing certain lobbying duties for a client for no fees (pro-bono) and then subsequently charging more for other duties they might perform for that client. In this manner, the lobbyist might avoid having to register under the legislation as it pertains to the requirement for “payment”. This situation might arise where a lobbyist, for whatever reason, does not wish to appear on the lobbyists register.

   - We are a little unclear as to whether “in return for payment” also means salary or concerns fees only. If payment is taken to mean fees, does that mean that in-house lobbyists, the lobbyists who are employed by, and paid a salary by, large concerns – like Boeing, Airbus, Apple and Microsoft will not need to register as lobbyists?

   - Does the focus on “consultant lobbyists” by definition, or interpretation, exclude in-house lobbyists? We are a little unclear as to what exactly is meant by “consultant lobbyist”. For instance, the Manitoba Lobbyist Registration Act is much clearer in terms of what a consultant lobbyist is in that it specifies “‘consultant lobbyist’ means an individual who, for remuneration or other benefit, undertakes to lobby on behalf of a client.” If you are not going to require that in-house lobbyists register a very high percentage of all lobbyists will not have to register – which defeats the transparency objective of the legislation.

   - If this is the case, then this is a serious oversight. Small lobbying firms, that employ one or two people, will have to register, and large corporate concerns, employing teams of in-house lobbyists, will not. The result will be that a large proportion of
lobbying will remain “under the radar.” Such legislation might sow discord within the lobbying industry and greater cynicism from the public.

- Does “written communications” include electronic communications – via text messaging, email, Facebook and Twitter etc? This is left vague and open to interpretation.

- Does oral or written communications include grassroots communication? Because, as far as we can see, there is nothing much here about indirect lobbying.

- The targets of lobbying seem to be restricted to just Ministers of the Crown or permanent secretaries. This also looks like a serious oversight to us, as MPs and members of the House of Lords can also be lobbied and there are far more MPs and Lords, than there are ministers. What is more, now that Ministers and permeate secretaries are part of the definition of what it means to be a lobbyist, ordinary MPs will more than likely find themselves the focus of increased attention by those lobbyist who do not wish to go on the register.

- What is the reasoning behind saying that lobbying only takes place when Ministers of the Crown and permanent secretaries as are approached by a lobbyist? These two categories of public office holders are very few in number in comparison to all of the others in the Parliament.

- The Irish government, in its draft lobbying bill, has opted for a much broader definition of what it calls “public officials or officeholder”. This definition even includes special advisors to the government as public office holders.

- In Israel, the failure to include special advisors and parliamentary assistants as persons who can be lobbied, has been found to be a huge oversight in their 2010 lobbying regulations. It has meant that they are regularly approached by lobbyists and in some cases have actually been employed by lobbyists.

- Thus, there is a failure here to also include officials employed by either house of the British parliament, and the politicians’ own personal staffs, as the possible focus of lobbyists’ attentions.

- Unfortunately, we feel that this definition of “consultant lobbyist”, although a start for a country that has never had legislation regulating lobbying, falls far short of what would be desirable - and fails to capture most of those who will be the focus of lobbyists’ attention.

- To develop a stronger, more encompassing and transparent definition of what a lobbyist is, the UK government should look to examples from the US federal and state
governments, or the Canadian federal and provincial governments. There are many good examples out there of definitions of lobbyist, consequently it is difficult to understand how this one, which is both narrow and opaque, contributes to transparency.

- There seems to have been an omission in relation to cooling off periods. We see no time period wherein a former public office holder is prevented from becoming a lobbyist. Most jurisdictions with lobbying regulations in place have some restriction to interfere with what is referred to as the “revolving door” problem. This prevents former public office holders from assisting private concerns to profit from information they gained while in the public’s employ.

2. Are the definition of “consultant lobbyist” in clause 2 of the Bill and the list of exceptions in schedule 1 of the Bill likely to have any unintended consequences?

- In terms of unintended consequences, we feel that first of all, you may end up with small lobbying concerns being the only ones having to register. The large corporations, with the teams of in house lobbyists, may not have to register.

- As we pointed out above, the fact that payment is defined as central to lobbying may mean that a lot of pro bono work is suddenly being engaged in by lobbyists than was previously the case.

- Because only consultant lobbyists will have to register – the register will be much smaller than it should be – and will give a false impression as to the size of the UK lobbying industry.

- You may find an increase in the level of lobbying of MPs and members of the Lords who are not ministers as defined in the legislation. Ministers’ special advisors and secretaries may also be the targets of increased lobbying by lobbyist who do not wish to be on the register. A consequence is that other politicians, apart from ministers, and other civil servants, apart from permanent secretaries, may find themselves lobbied a lot more than before. In fact, there is a danger that only a few lobbyists will end up on the register!

- As lobbying is integral to any democracy, and provides valuable information for ministers and governments, this legislation could have the unintended consequence of driving lobbyists away from ministers. The result may means that some of the country’s senior decision makers are left under informed on matters of critical national importance.
• Exception 3 is somewhat unclear. By saying that “A person does not carry on the business of consultant lobbying if— (a) the person carries on a business which is mainly a non-lobbying business” a number of potential problems arise. Most large businesses are not lobbying firms. However, most large non-lobbying businesses lobby – Microsoft, Apple and Verizon. They lobbying either through consultant lobbyists, or through their own teams of in house lobbyists. The problem with this exception is that it will be seen a giving a green light to in house lobbyist, working for all sorts of firms that are not lobbying companies, to lobby and not have to ever consider registering as lobbyists. This could constitute a serious loophole.

• The exception that “A person does not carry on the business of consultant lobbying if the making of communications within section 2(3) on behalf of another person or persons in return for payment is an insubstantial proportion of that business”. This is problematic. First of all, if you are a consultant lobbyist, with a large business, one more client might be so small in terms of your overall client base, adding so little extra to your extant business, that their fees might fall under “insubstantial proportion of that business”. Also, of course, in-house lobbyists, for a large corporation like Apple, might be in a similar situation.

• The exception that “a business is mainly a “non-lobbying business” if it consists mainly of activities other than making, on behalf of another person or persons, communications which—
  (a) relate to any of the matters mentioned in section 2(3)(a) to (d), and
  (b) are made to any of the persons within sub-paragraph (3).”
This exception means that professionals who lobby all public officials and officeholders, apart from Ministers of the Crown or permanent secretaries, will not have to register as consultant lobbyists. Therefore, professionals, who by any reasonable definition are lobbyist, will not have to register as such. This exception is also flawed as “mainly” is not clearly defined. This means that large law firms, which might lobby Ministers of the Crown or permanent secretaries on behalf of their clients, but that can justifiably argue that they mainly are engaged in other activities concerning the law, will be able to avoid having to register as lobbyists. Of course, any large firm with a team of in-house lobbyists will also fall outside this definition.

3. Is the information that the Bill requires to be listed on the register sufficient to enhance transparency about lobbying?
• There should be final dates for the filing of returns each quarter – such as 15 or 20 working days after specific dates.
• In addition to looking for the names, registration numbers and business addresses; the Bill should also require the lobbyists to provide their business email address, business telephone number, and website address.
• The same information should be provided by the lobbyist about their clients, as it is the client who is directing the activities or the lobbyist and has a direct interest in the outcome of the duties the lobbyist is undertaking for them.
• The subject matter and purpose of the lobbying should be recorded. This may be a specific policy or legislative issue that is of interest to the lobbyist and of course their client. Included here may be the name of a Bill in relation to which the lobbying was conducted.
• The information provided should include the name of the public official/officials who have been the subject of the lobbyist’s attention.
• The actual lobbying technique employed should be recorded.
• There is also the absence of a requirement to provide financial information. By this we mean any details as to financial contributions given by a lobbyist to a public official that they are lobbying. The absence of a requirement for financial information stands in contrast to the stronger regulatory regimes found in the US. This absence may also negatively impact upon the public’s confidence in this legislation.
• None of the various types of information that I discuss above should be difficult for a lobbyist to provide – as this is material that they will be recording themselves, in order to be able to bill their clients in the most efficient manner possible.

4. **Are there any potential problems with the role envisaged for the Registrar?**
• We have concerns as to the independence of the registrar. While they are appointed by the minister they can equally be removed from office by the minister. What role does parliament play in their appointment, ensuring their independence and guaranteeing that they cannot be removed from office by a minister due to political expedience?
• The registrar needs to be protected from the party political whims of the minister and government in office. As such, there should be an impeachment procedure created for removing a registrar that is difficult to initiate.
• Thus, it is unclear as to what guarantees the registrar’s independence.
• The minister also seems to hold the purse strings of the registrar – weakening the registrar’s position vis-a-vie their minister.
• The title of the office “Registrar of Consultant Lobbyists” is restrictive in and of itself.
• It is unclear where the registrar’s office will be based? Will it operate from an extant FOI institution, or from its own purpose built facilities? One of the problems we have heard about in the UK, in relation to political transparency, is that transparency
information is stored in information silos. Rob McKinnon, founder and operator of Who’s Lobbying website said as much when he appeared before the PCRC in late April 2012. Transparency data is collected by a variety of government bodies, but each stores this information, and permits access to this information in a discrete fashion. There has been a failure to link up the information that is being collected. If the registrar of lobbying was to be based in some extant transparency facility, and the register of lobbyists was linked to extant transparency databases it would be a very positive development.

5. Does the absence of provision for a statutory or hybrid code of conduct in the Bill present any problems?

- The establishment of such a code would be advantageous for the lobbying industry, the politicians they lobby as well as the general public.
- Such a code would need to focus on transparency, accountability, conflict of interest and professionalism. The code should be clear about how it benefits the lobbying industry, politicians, the polity, and in that manner ultimately benefits the public. By generating confidence in the lobbying profession such a code can help create confidence in politics more generally.
- The code could also supplement and compliment some of the weaknesses in the proposed legislation – it could seek to ensure greater transparency.
- Ultimately a code of conduct, like industry self regulation, need to be implemented and adhered to. But, a strong code of conduct could go a long way towards improving the standards of conduct in the lobbying industry. This would help to improve the perceptions of ethical behaviour by lobbyists.

6. Are there any further issues raised by Part 1 of the Bill, including drafting issues, that you would like to draw to the Committee’s attention?

- The title of the Bill “Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill” is misleading. It should actually be “The Registration of Consultant Lobbyists, Non-Party Campaigning and Trade Union Administration Bill.” To use the phrase “Transparency of Lobbying” is actually misleading, as this Bill is clearly not that.
- It is disappointing that this draft of the legislation does not seem to have taken on board any lesions from other countries, particularly from the United States of America which has been regulating the lobbying industry for the past 150 years. Even if there might be compatibility issues between the presidential system of government found in the US and parliamentary system found in the UK, there are also important lesson that the UK could learn from the Canadian experience of regulating lobbying.
Canada has been regulating the lobbying industry at both the federal and provincial levels since the 1980s.

- We have seen something similar to what is now happening in the UK happen in Australia between 2006 and 2009, when the federal and state governments introduced codes of conduct for lobbyists with little reference to the experience of other countries in regulating lobbying. The result has been weak regulations that satisfy no one. If the regulations are widely perceived to be weak then is does little to improve the public’s perception of the lobbying industry – something we noticed in Easter Europe.

- However, if the legislation is perceived to work, then is can improve perceptions of the lobbying industry and of politicians – as political transparency and accountability are seen to be better. Where legislation works we have seen that lobbyists themselves strongly support it. In fact, they regard online registers – where they have to input their details and their client lists – as a form of free advertising.

- Maybe it is the case that this draft legislation was created in this from in order to ensure the path of least resistance. But, if so, it seems to be particularly weak legislation that captures very little of what goes on in the lobbying business as currently conducted.

- The absence of reference to in-house lobbyists is a serious oversight. The danger is that this Bill will only succeed in identifying a small proportion of the lobbyists actually active in the UK.

- The weak information provision requirements may, in the longer term, undermine confidence in the legislation, the lobbying profession, political transparency, politicians more generally and the wider polity. There is a danger that weak lobbying legislation, as opposed to no lobbying regulations at all, may generate a greater level of cynicism – if the increased transparency promised by that legislation proves to be illusionary.

August 2013
The National Union of Journalists (NUJ) (GLB 18)

The National Union of Journalists is the voice for journalism and for journalists in the UK and Ireland, representing all sectors of the media, including freelances, casuals and staff in newspapers, news agencies, broadcasting, magazines, online, book publishing, in public relations and photographers.

The NUJ represents members in the PR industry who may be involved in lobbying, journalists who investigate lobbying issues, press officers responsible for answering queries on an organisation’s policy and the union lobbies on behalf of its members.

The union is deeply concerned that this a rushed piece of legislation, which has not benefited from consultation with the industry it intends to regulate, nor those organisations which will be affected by it and has not been subject to pre-legislative scrutiny. Hasty legislation is dangerous legislation.

A motion passed by the NUJ’s policy-making Delegate Meeting 2008 called for all lobbying organisations to be registered “including a mandatory system of electronic registration with full financial transparency; enforceable ethical rules for lobbyists and an end to the ‘revolving door’ by the introduction of a cooling off period of one year before ministers, elected members and senior official across the public sector can start working for lobby groups or lobbying consultants”.

In her ministerial statement from the Cabinet Office, Chloe Smith said: "This bill will ensure that we know who lobbyists lobby for; how much money is spent on third party political campaigning; and to make sure trade unions know who their members are."

Yet the overwhelming response from the industry is that it will do nothing to regulate lobbyists and nothing to prevent the scandals, such as money for questions, ministers offering themselves as "taxis for hire" and leading lobby companies promising unsavoury regimes access to the UK government.

This consultation is restricted to questions concerning the definition of "consultant lobbyist" and on the function of the register. However, the NUJ would like to put on record its concern about other parts of the bill which will have dire consequences on the 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. Bloggers could also find themselves on the wrong side of the law. One consequence of the proposals could be to prevent demonstrations or rallies for a year before an election as organisations would find themselves over the limit for third-party spending. Press officers carrying out their job by answering journalists’ questions could find themselves having to log and cost their work as "political" and therefore be counted towards third-party spending.

Questions

Is the definition of “consultant lobbyist” in clause 2 of the Bill likely to lead to a register that enhances transparency about lobbying?
As the definition of consultant lobbyist chosen by the government does not include in-house lobbyists, the register will comprise less than 20 per cent of the 2,500-3,000 in-house lobbyists (Alliance for Lobbying Transparency figures). On this basis, the register would exclude a whole host of organisations, such as law firms, accountants, think tanks and management companies which engage in lobbying activity.

The blog of Gavin Devine, chief executive of MPH communications, is instructive. He said: "What the government should be worried about is that it has delivered a total dud. The definitions are complicated, but my reading of the bill is that few lobbyists will be covered by its provisions. Which means that Clause 2(3) will rarely apply – and so I am not a 'consultant lobbyist' for the purposes of the bill. Which is a shame for the Cabinet Office officials: whoops!

"Law firms, management consultancies, think tanks, trade bodies and others who lobby on behalf of others can and will argue that they are 'non-lobbying businesses', just in the same way that I can make that case for MHP Communications. This is wrong.

"As I’ve made clear many times, companies like MHP do not see any difficulty in registering our clients. We have been members of the Association of Professional Political Consultants for years, and we are very happy to declare our public affairs clients openly on its register. Our only demand is that others who offer competing services to ours are subject to the same regime. It is commercially unfair and morally wrong to differentiate between different classes of ‘consultant lobbyist’. It harms democracy to allow some organisations to hide behind claims of client confidentiality and so not reveal for whom they are working. If the Government is going to change its flawed bill, it had better start here: make sure everyone involved in consultant lobbying is actually covered by its provisions."

The bill fails to distinguish between companies which lobby for profit and NGOs, campaigning organisations and trade unions representing members.

The list of government officials and ministers provided is far too narrow to have any effect. During the Leveson Inquiry, we heard that News Corporation’s lobbyist Fred Michel targeted special adviser Adam Smith in Jeremy Hunt’s office and not the Culture Secretary during the inquiry into the acquisition of BSkyB shares. 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.

*Are the definition of “consultant lobbyist” in clause 2 of the Bill and the list of exceptions in schedule 1 of the Bill likely to have any unintended consequences?*

The main consequence is that the bill will miss its target, if its purpose is to regulate lobbying activity and provide greater transparency in outlining the extent of access of special interest groups to government.

It may lead to organisations moving their public affairs activities in-house in order to escape scrutiny under the bill if it outsources the work to a "consultant lobbyist".
Is the information that the Bill requires to be listed on the register sufficient to enhance transparency about lobbying?

The information that the bill requires to be listed is not sufficient to enhance transparency about lobbying. It will fail to capture the vast majority of lobbying activity by organisations which will not be included in the bill’s definition of a lobbyist. It requires organisations to declare their clients and not the business they are conducting on their behalf. Many lobbyists already provide a list of clients on their websites. Merely providing the name of the client will not be sufficient information for the public to determine the nature of the discussions.

Are there any potential problems with the role envisaged for the Registrar?

The NUJ believes the register the registrar will be presiding over will be meaningless.

The registrar must be independent from the lobbying industry and the government, if this is not the case then the registrar’s role will be compromised.

Are there any further issues raised by Part 1 of the Bill, including drafting issues, that you would like to draw to the Committee’s attention?

The NUJ is concerned that the register and accompanying costs could be extra bureaucracy for small PR organisations and sole traders. One member said: "I have just finished doing a job for someone which involved letting MPs and councillors know about the organisation and what it was doing. Nothing major, but emailed letters, some tweets and phone calls and mentioned it to an MP or two I know in passing. That was a small part of what I have been doing, but it would it be construed as lobbying and would it require me to register it as such?"

The main concern the NUJ has is that it believes this part of the bill is indeed a dud and will not meet the minister’s criteria of allowing us to "know who lobbyists lobby for". The other parts of the bill are equally flawed and represent a danger to democracy – it will need a major revision if it is to be fit for purpose.

- Lobbying Bill: Damp squib, dud or damaging? Gavin Devine: http://www.mhpc.com/blog/lobbying-bill-damp-squib-dud-or-damaging/

23 August 2013
Written evidence submitted by Who's Lobbying - whoslobbying.com (GLB 19)

Introduction

The Who’s Lobbying project was an experiment to collate publicly available data on lobbying and public affairs in the UK.

Between Sept 2010 and April 2012, Who’s Lobbying actively managed a publicly available website, containing information derived from government and Parliament reports, and other publicly available sources.

The website is still available, however it proved too manually intensive to continue updating ministerial meetings due to inconsistencies in the formats and locations of the government’s ministerial meeting publications.

The Who’s Lobbying website url is: http://whoslobbying.com/

Motivations for the Who’s Lobbying project include:

Public Transparency - to give the public easy access on the Web to collated information about who is trying to influence government and public affairs.

Government Policy - to inform government as to what information is and is not available, at a time when it is proposing to create a statutory register of lobbying activity.

Government Implementation - to show government how to put this type of information on the Web in an easy to browse, consistent format.

Currently the Who’s Lobbying website has separate pages on over 10,000 entities that have been reported to either have met a minister, been a lobbying firm client, or given oral evidence to Parliament.

Of those 10,000 entities, only 11 were lobbying firms declared as having met a minister in the period May 2010 to July 2011.
1. Is the definition of “consultant lobbyist” in clause 2 of the Bill likely to lead to a register that enhances transparency about lobbying?

The government is not significantly enhancing public transparency of lobbying activities with its very narrow definition of “consultant lobbyist”, and that its Bill only seeks to regulate consultant lobbyists who communicate with ministers or permanent secretaries.

To enhance transparency about lobbying the Bill must regulate lobbying activities.

To adequately enhance transparency about lobbying the government’s bill should be changed to require the same level of lobbying disclosure as the US Lobbying Disclosure Act of 1995 (the US Act). [https://www.senate.gov/legislative/Lobbying/Lobby_Disclosure_Act/TOC.htm](https://www.senate.gov/legislative/Lobbying/Lobby_Disclosure_Act/TOC.htm)

In all senses the US Act uses broader definitions than in the UK bill (see Annex B for full definitions). The US Act:

a) Defines Lobbyist to all cover all those employed by a Client where more than 20% of the time for that Client is spent on lobbying contact over a 3 month period.

b) Defines a Lobbying Client in such a way to include entities that have “in-house” lobbyists.

c) Defines Lobbying Activity to include effort to support lobbying contacts, in addition to direct lobbying contact.

d) Defines Lobbying Contact to be any communication to a covered executive or legislative branch official that is made on behalf of a client.

e) Defines of lobbying contact to include: communications with any officer or employee serving in a position of a confidential, policy-determining, policy-making, or policy-advocating character.

So “in house” lobbyists spending more than 20% of their time on lobbying activities are required to register in the US. Lobbying activities includes preparation and planning for lobbying contact.

In Section 2(3) of the Bill the definition of “communications” is too narrow.
It covers only “communications made personally to a Minister of the Crown or permanent secretary”.

The definition of communications in the Bill should be extended to cover communications with any officer or employee serving in a position of a confidential, policy-determining, policy-making, or policy-advocating character.

The definition of communications in the Bill should be extended to define a broader set of “lobbying activities”, including efforts to support lobbying contacts, in addition to direct lobbying contact.

In Schedule 1, Part 1 of the Bill, the exceptions for a “non-lobbying business” in 3(1)(a) and (b) are too broad.

The “non-lobbying business” exception should be replaced with a definition of exception for those who spend less than 20% of their time for a client on lobbying activities.

This would mean in-house staff spending more than 20% of their time on lobbying activities would be required to register.

If the definition of lobbying activities and lobbyist are not broadened, then only a handful of companies will be required to register.

Of over 7,000 meetings reported by departments that occurred in the first year of government, May 2010 to June 2011, Who's Lobbying identified only 19 of those meetings were declared with lobbying firms.

In total only 11 lobbying firms were declared as being met by ministers between May 2010 to June 2011. - See Annex A for details or visit: http://whoslobbying.com/uk/lobbying_firms

2. Are the definition of “consultant lobbyist” in clause 2 of the Bill and the list of exceptions in schedule 1 of the Bill likely to have any unintended consequences?
The Bill does not require lobbyists working in a mainly “non-lobbying business” to register. This excludes in-house lobbyists from having to register. A public relations firm that does not exclusively perform public affairs work may also be excluded from registration by the Bill.

Lobbyists who for a client engage in lobbying activity other than communicating with ministers or permanent secretaries are be excluded from registration by the Bill.

An unintended consequence of the Bill may be to generate a preference on behalf of lobbying clients to choose to retain lobbyists in a manor that does not require registration.

Lobbying clients to avoid appearing on the register may choose to retain law firms, or public relations firms with small public affairs arms.

Lobbying clients, to avoid appearing on the register, may choose to engage, support, or facilitate lobbying activities not covered by the Bill, through:
- communication with government officers other than permanent secretaries
- communication with Members of Parliament, and their staff
- anonymous donations to think-tanks
- funding of Parliament All Party Groups
- holding private functions or dinners for minister’s to attend in their “personal capacity”
- obtaining parliament staff passes from a Lord or MP
- paying a Lord or MP to be a non-executive director or consultant
- hiring former senior civil servants as employees
- paying former Ministers or PMs for consultancy.

_Law firms had almost double the number of meetings with government ministers as lobbying firms from May 2010 to June 2011_, with at least 32 government meetings: [http://whoslobbying.com/uk/law_firms](http://whoslobbying.com/uk/law_firms)

The Bill will deny public knowledge of who retained law firms for lobbying activities.

_Political and economic think tanks had almost ten times as many government ministerial meetings as lobbying firms from May 2010 to June 2011_, with at least 157 government meetings: [http://whoslobbying.com/uk/political_and_economic_think_tanks](http://whoslobbying.com/uk/political_and_economic_think_tanks)

The Bill will deny public knowledge of who fund think-tanks to engage in lobbying activities.
Another unintended consequence of the Bill is that it may undermine the public affairs industry’s own attempts to self-regulate, which are already cover a broader number of lobbyists than the proposed Bill. Currently APPC and PRCA require member firms to declare their clients in a register.

3. Is the information that the Bill requires to be listed on the register sufficient to enhance transparency about lobbying?

The information the Bill requires to be listed on the register is insufficient to adequately enhance transparency about lobbying activities.

Section 5(3)(a) of the Bill only requires registered client information to include “the name of any person on whose behalf the lobbying was done”.

Only the “name” of the lobbying client is inadequate to unambiguously identify the legal entity of the lobbying client.

The Bill should be changed to require that each lobbying client be identified with the same identification details as required to register the lobbyist, as defined in Section 4(2).

If a lobbying client is a company, then the Bill should require the register to include the lobbying client company’s registered name, and registered company number. This is similar to the Electoral Commission requiring a donors company number to be included in the register of donations to political parties.

If a lobbying client is an association or group, then the Bill should require the register to its name, and also include details of the individual members, including their registered company numbers if companies.

The Bill should be extended to report the amount Lobbying Clients spend on Lobbying Activity.

Also the name, company number, and principal place of business of any organisation, other than the client, that contributes more than £5,000 to the registrant or client in the quarterly period to fund the lobbying activities of the registrant, OR actively participates in the planning, supervision
or control of such lobbying activities. These requirements are in the US Lobbying Disclosure Act of 1995.

The Bill should require all registrants to regularly report their lobbying activity, in the same manor as the US Lobbying Disclosure Act of 1995, i.e. from the US Act:

2) for each general issue area in which the registrant engaged in lobbying activities on behalf of the client during the quarterly period—

   (A) a list of the specific issues upon which a lobbyist employed by the registrant engaged in lobbying activities, including, to the maximum extent practicable, a list of bill numbers and references to specific executive branch actions;

   (B) a statement of the Houses of Congress and the Federal agencies contacted by lobbyists employed by the registrant on behalf of the client;

   (C) a list of the employees of the registrant who acted as lobbyists on behalf of the client; and

   (D) a description of the interest, if any, of any foreign entity identified under section 4(b)(4) in the specific issues listed under subparagraph (A);

4. Are there any potential problems with the role envisaged for the Registrar?

The Bill is proportion to be “establishing and maintaining a register of persons carrying on the business of consultant lobbying and to require those persons to be entered in the register”.

Due to the exceptions in Part 1 of Schedule 1, it leaves a grey area as to whether public relations firms with a small public consultancy arm need to register.

How is the Registrar expected to establish reasonable grounds for believing to be a consultant lobbyist?

There are no specifications or expectations set on the usability of the website. The whole objective should be on easy public access. However this is left out of the bill.

The register should be a website operated on the Web, updated via the Web.
The register website should have a separate page for the activity for each entity engaged in lobbying or public affairs activity.

There should be a separate page for each organisation with in-house lobbyists.

A history of all registered activity should be left on the website. Deleting previous periods of activity would reduce public trust in the register.

5. Does the absence of provision for a statutory or hybrid code of conduct in the Bill present any problems?

Transparency of lobbying activities should be the objective of the Bill.

Including a code of conduct in the Bill seems inconsequential given the small number of lobbyists required to register. The definition of lobbyist in the bill covers such a small fraction of the people engaged in lobbying activities. It would be inappropriate to have a code of conduct in place for only this small fraction of lobbyists.

6. Are there any further issues raised by Part 1 of the Bill, including drafting issues, that you would like to draw to the Committee’s attention?

The public are interested in the timely disclosure of who is lobbying government on what issues, on behalf of whom, and how much is spent to do so.

The legislation consultation’s Impact Assessment describes the benefits to government from a register as: ‘greater transparency in their interactions with lobbyists, leading to greater public confidence in decision-making process’.

**Essential to this is information on government’s interaction with lobbyists:** whom is being lobbied in government, and which policies, legislation, regulation and government contracts are being lobbied on. Without these key pieces of information the register would be a relatively meaningless list of names.

**The register must reveal in a timely fashion who is lobbying whom in government and on what issues.**
Activity where there is a legitimate public interest includes the drafting of legislation, the drafting and negotiation of procurement tenders, and the drafting of policy.

Any contacts involved in drafting or influencing the text written by drafters, should have their meetings, including phone conversations, with government disclosed, ideally within a week of them occurring.

Lobbying covers a range of activities, not just meeting ministers.

August 2013

Annex A: Department published government meetings with Lobbying Firms

As at April 2012, Government departments had declared only 19 ministerial and senior civil servant meetings with lobbying firms, out of over 7,000 meetings the government had reported between May 2010 and June 2011.

Those meetings involved only 11 lobbying firms.

If government wanted to let the public know who those lobbying firms were representing it should release the minutes of these 19 meetings. A register is not a proportionate solution to solving this particular transparency problem.

June 2011

Dept. for Business, Innovation and Skills

- Hanover Communications met with Judith Wilcox, Parliamentary Under Secretary of State, to discuss Intellectual Property
- Hanover communications met with David Willetts, Minister of State, to discuss Intellectual Property
- Portland Communications met with Judith Wilcox, Parliamentary Under Secretary of State, to discuss Intellectual Property

Dept. for Transport

- Freshwater UK met with Theresa Villiers, Minister of State for Transport, to discuss Rail freight issues

May 2011

Dept. for Business, Innovation and Skills

- Edelman met with David Willetts, Minister of State, to discuss Higher Education, dinner provided by Pearson

Dept. for Work and Pensions
Westminster Advisers met with David Freud, Minister for Welfare Reform, to discuss Childcare seminar
Westminster Advisers met with Maria Miller, Minister for Disabled People, to discuss Childcare seminar
Westminster Advisers met with Iain Duncan Smith, Secretary of State for Work and Pensions, to discuss Childcare seminar

Her Majesty's Treasury

• Bell Pottinger met with Mark Hoban, Financial Secretary to the Treasury, for Dinner.

April 2011

Dept. for Business, Innovation and Skills

• Grayling met with Edward Davey, Minister for Employment Relations, Consumer and Postal Affairs, to discuss employment relations

Dept. for Culture, Media and Sport

• Grayling met with Adam Smith, special adviser, special adviser, for Breakfast.

Her Majesty's Treasury

• Edelman met with James Sassoon, Commercial Secretary to the Treasury, for Dinner.

March 2011

Dept. for Culture, Media and Sport

• Good Relations met with Sue Beeby, special adviser, special adviser, for Lunch.

Dept. for Education

• Whitehouse Consultancy met with Sarah Teather, Minister of State, to discuss Green Paper Proposals NASS issues

January 2011

Dept. for Business, Innovation and Skills

• Edelman met with Edward Davey, Minister for Employment Relations, Consumer and Postal Affairs, to discuss corporate governance.

Dept. for Transport

• Weber Shandwick Public Affairs met with Norman Baker, Parliamentary Under Secretary of State for Transport, to discuss urban transport and economic growth.

November 2010

Cabinet Office

• Blue Rubicon met with Matt Tee, Permanent Secretary, Government Communications, to discuss Govt Communications.

October 2010
Dept. for Business, Innovation and Skills

Edelman met with Ed Vaizey, Minister for Culture, Communications and Creative Industries, for introductory meeting.

Dept. for Education

Whitehouse Consultancy met with Sarah Teather, Minister of State, to discuss improving speech and language services through the Special Education Needs Green Paper.

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.

CLIENT.—The term "client" means any person or entity that employs or retains another person for financial or other compensation to conduct lobbying activities on behalf of that person or entity. A person or entity whose employees act as lobbyists on its own behalf is both a client and an employer of such employees. In the case of a coalition or association that employs or retains other persons to conduct lobbying activities, the client is the coalition or association and not its individual members.

LOBBYING ACTIVITIES.—The term "lobbying activities" means lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others.

LOBBYING CONTACT.—
(A) DEFINITION.—The term "lobbying contact" means any oral or written communication (including an electronic communication) to a covered executive branch official or a covered legislative branch official that is made on behalf of a client
Annex C: USA lobbying disclosure by organisations lobbying in the UK

The table below shows organisations with disclosed US lobbying spend over $10,000,000 that have also had disclosed UK based lobbying or public affairs activity in the UK. US data is from April 2012 and is sourced from InfluenceExplorer.com. Figures are based on lobbying activity reported to the Senate Office of Public Records. Reported dollar amounts are required to be accurate only to the nearest $20,000. For organizations that are not primarily lobbying firms, we display total amount spent on lobbying.

<table>
<thead>
<tr>
<th>Organisation</th>
<th>US lobbying spend and most frequently disclosed US lobbying issues covers through to end of Q3 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Northrop Grumman</strong></td>
<td>$163,518,093 Transportation, Trade, Government Issues, Energy &amp; Nuclear Power, Aviation, Airlines &amp; Airports</td>
</tr>
<tr>
<td><strong>Boeing Co</strong></td>
<td>$151,144,310 Taxes, Homeland Security, Foreign Relations, Labor, Antitrust &amp; Workplace, Transportation</td>
</tr>
<tr>
<td><strong>General Motors</strong></td>
<td>$117,371,000 Fed Budget &amp; Appropriations, Trade, Finance, Transportation, Radio &amp; TV Broadcasting</td>
</tr>
<tr>
<td><strong>Pfizer Inc</strong></td>
<td>$112,520,000 Pharmacy, Consumer Product Safety, Fed Budget &amp; Appropriations, Agriculture, Torts</td>
</tr>
<tr>
<td><strong>Microsoft Corp</strong></td>
<td>$100,585,000 Copyright, Patent &amp; Trademark, Consumer Product Safety, Science &amp; Technology, Labor, Antitrust &amp; Workplace, Health Issues</td>
</tr>
<tr>
<td><strong>ConocoPhillips</strong></td>
<td>$78,182,717 Natural Resources, Foreign Relations, Clean Air &amp; Water, Transportation, Marine, Boats &amp; Fisheries</td>
</tr>
<tr>
<td><strong>Royal Dutch Shell</strong></td>
<td>$71,508,339 Natural Resources, Clean Air &amp; Water, Trade, Chemical Industry, Foreign US Chamber of Commerce Relations</td>
</tr>
<tr>
<td><strong>Bp</strong></td>
<td>$65,520,584 Foreign Relations, Clean Air &amp; Water, Natural Resources, Transportation, Chemical Industry</td>
</tr>
<tr>
<td><strong>Raytheon Co</strong></td>
<td>$60,844,188 Science &amp; Technology, Trade, Foreign Relations, Transportation, Aerospace</td>
</tr>
<tr>
<td><strong>Bristol-Myers</strong></td>
<td>$60,776,355</td>
</tr>
<tr>
<td>Organisation</td>
<td>US lobbying spend and most frequently disclosed US lobbying issues covers through to end of Q3 2011</td>
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<tr>
<td>------------------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Squibb</td>
<td>Pharmacy, Trade, Agriculture, Consumer Product Safety, Clean Air &amp; Water</td>
</tr>
<tr>
<td>Abbott Laboratories</td>
<td>$53,296,000</td>
</tr>
</tbody>
</table>
Written evidence submitted by Mirko Draca*, Lecturer (Economics), University of Warwick (GLB 20)

OVERVIEW

I previously made a submission on lobbying disclosure in response to the Cabinet Office Consultation Paper “Introducing a Statutory Register of Lobbyists” (January 2012). Examining the proposed “Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill” I have found that the main issues I raised in response to the Cabinet Office Consultation Paper are still relevant to the Bill as presented.

Specifically, these issues relate to (1) the financial reporting of lobbying (2) the inclusion of in-house lobbyists and other ‘non-consultant’ lobbyists in the register, and (3) practical issues with the public reporting of the register data.

I agree with the point raised by many in public debate on this bill. A weak Bill is not in anyone’s interests, including the corporate lobbying industry. It is inevitable that another major lobbying scandal will emerge after the implementation of this Bill. In turn, this will only increase public demand for a very strong system of disclosure.

This submission is based on my experience working with data reported as part of the 1995 US Lobbying Disclosure Act (LDA). I have been working with this data since 2009 and have completed a major research paper (‘Revolving Door Lobbyists’ with Jordi Blanes i Vidal and Christian Fons-Rosen, published in the American Economic Review 2012). The paper measures the value of political connections to Washington lobbyists where connections are defined in terms of a past employment relationship with a Congressional politician. Our main finding was that a political connection to a Senator or senior House politician was worth approximately 24% of lobbyist revenue which equals $177,000 for a typical staffer-turned lobbyist.

The main argument of this submission is that information on all three of the above issues is needed to foster effective scrutiny of the lobbying process. The type of research my co-authors and I conducted for the US would not be feasible under the current proposed structure of the UK lobbying register. While it is too early to accurately quantify the benefits of political transparency there is a clear argument that these benefits are potentially large. A robust lobbying register would provide a significant incentive for disciplined and rigorous policy development. In turn, this could lead to major efficiency gains across a range of policy areas. A well-designed lobbying register therefore has the potential to be one of the most cost-effective methods available for improving the policy development process.

MAIN POINTS

(1) Reporting of Financial Information

As with the Consultation Paper, the Bill falls short of requiring the reporting of financial information on how much a lobbyist is paid to represent a particular interest. In contrast, data available as part of the US LDA reports the basic details of the client being served by a lobbying firm for a given lobbying
contract or engagement; the names of the lobbyists working on the contract/engagement, and the total amount paid for the service.

The reporting of financial information is vital for maximizing the effectiveness of the lobbying register. Specifically, as the attached study shows, financial information gives the public the chance to evaluate the price of access. The government’s proposal document makes a brief argument that it is ‘more important to know who is lobbying and for whom than to know the cost’. This ignores the fact that the knowing the cost of lobbying is important for judging the equality of access. There is an understandable public concern that interest groups are able to ‘buy access’ to the policy process. It is not possible to address this concern without the reporting of financial information. In terms of details, the US model of reporting provides a good baseline for the reporting of financial information.

The government’s previous consultation document raised concerns about the potential burden of reporting financial information. However, it does not put forward any evidence that the US model of financial reporting has imposed significant burdens on registrants. The government therefore needs to put forward more detail on why it has arrived at this ‘minimal’ position on financial reporting. There is a public demand for scrutiny of payments designed to get access to the political process and this demand can only be met with the reporting of financial information within the proposed register.

(2) Inclusion of In-House and other Non-Consultant Lobbyists.

The Bill puts forward a framework that leans more closely to the Australian model for the reporting of in-house lobbying activities than to the US model. The main argument put forward previously is that there are difficulties in applying the US model, which defines lobbyists as anyone whose activity takes up more than 20% of their working time over a three month period.

While it is true that lobbyists in the US seem to have made efforts to circumvent reporting requirements – see for example the recent controversy over the activities of former House Speaker Newt Gingrich (McIntire and Rutenberg 2011) – this is not a good argument for completely dropping the reporting of in-house lobbying activity from the proposed UK register. The data produced as part of the LDA in the US indicates that in-house lobbying accounts for approximately 40% of total lobbying spending. Omitting in-house lobbying activity from the UK register therefore has the potential to significantly reduce the information the register could provide on lobbying activity conducted in the UK.

The government’s previous consultation document also raises issues regarding the reporting requirements for non-government organisations such as charities, think tanks and trade unions. Again, these types of groups also report their lobbying activities in the US model when employees in these organisations cross the 20% threshold for time spent on lobbying activity. These groups should also be required to report under a UK register. In particular, debates over potential exemptions for non-government organisations should not be used as an excuse to drop the coverage of in-house activities in the lobbying register.

(3) Practical Issues

Finally, the mundane issue of how the lobbying data is reported and provided to the public needs to be specifically addressed. There have been recent cases in the US and the UK where public agencies have disclosed data in impractical formats, for example, individual PDF documents rather than databases suitable for the extraction of spreadsheet-formatted information. This seems to be a step designed to
avoid easy scrutiny of data. The government should explicitly avoid such strategies and commit to
provide lobbying register information in an electronic format as well as providing scans of original
forms (that is, if it chooses to adopt a hard copy approach to reporting).

The proposed Bill is vague on practical reporting requirements. Under “Duty to publish register’ in
Section 1 (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”

In any case, advances in technology mean that it is straightforward for researchers, the media and
others to compile PDF information into electronic databases. If the government adopts a PDF
reporting strategy, firstly, it will not work for long as a barrier to access and secondly, it will be a
further clear sign of bad faith in its commitment to transparency.

REFERENCE LIST

Review. Forthcoming.

Times, November 29th.

23 August 2013
WRITTEN EVIDENCE SUBMITTED BY THE COMMITTEE ON STANDARDS IN PUBLIC LIFE (GLB 21)

The Committee on Standards in Public Life is pleased to have an opportunity to respond to the Committee’s call for written evidence on the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill.

Background

The Committee’s Fourteenth Report *Standards Matter*: A review of best practice in promoting good behaviour in public life highlighted that lobbying remains a “significant and continuing risk to ethical standards”. Lobbying is a legitimate and potentially beneficial activity when exercised responsibly but public concerns around lobbying are longstanding. At the heart of the concern is the confluence of money, influence and power: it is not known who is influencing decisions or what may have been done to achieve that influence. These concerns about lobbying have been amplified following a number of individual cases linked to the manner of lobbying over recent years and have arguably contributed to a growing public cynicism of the democratic process. Convincing reform of lobbying needs to address these issues as a matter of urgency.

During 2012–13 the Committee carried out its fifth biennial survey of public attitudes to conduct in public life, in order to analyse the standards of behaviour the British public feel public office holders should be kept to, the extent to which these standards are believed to be upheld, and the perception of how well the systems put in place to enforce them are operating. The result of the survey will be published in September 2013 but we thought it might be helpful to share one of the emerging findings here. That is that the evidence suggests that public responses to events and to their reporting can become more negative or positive. This suggests that the public’s perceptions of standards in public life can be repaired as well as damaged. It is therefore all the more important, as the Committee argued in *Standards Matter* that high standards of behaviour are understood by public office holders as a matter of personal responsibility, embedded in organisations and actively and consistently demonstrated, especially by those in leadership positions.

The Committee issued a call for evidence in June⁵, examining the transparency issues around lobbying, to look at what more could be done to bring greater integrity to existing lobbying arrangements. Since

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then the Government has introduced the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill. This response takes account of the Committee’s earlier response to the Government’s consultation paper on the introduction of a statutory register of lobbyists. The Committee is disappointed that contrary to earlier indications, the Bill was not published in draft, to enable pre-legislative scrutiny and an opportunity to build a broad consensus.

The Committee through its call for evidence and an evidence gathering seminar on 19 September is currently exploring issues including the extent to which a statutory register of lobbyists will address the problems around lobbying; the transparency and disclosure of information; standards of conduct; and the extent to which solutions should be focused on those being lobbied. With the evidence gathered the Committee aim to produce a report with recommendations in the early autumn.

Questions and response

1. Is the definition of “consultant lobbyist” in clause 2 of the Bill likely to lead to a register that enhances transparency around lobbying?

The Explanatory Notes to the Bill set out that:

“The main purpose of the provisions on lobbying is to ensure that people know whose interests are being represented by consultant lobbyists who make representations to Government. The Bill enhances transparency by requiring consultant lobbyists to disclose the names of their clients on a publicly available register and to update those details on a quarterly basis. The register will complement the existing transparency regime where government ministers and permanent secretaries of government departments voluntarily disclose information about who they meet on a quarterly basis.”

The Committee doubts that a register of third party lobbyists is the key to reform around lobbying but in the general interest of transparency the Committee welcomes in principle that third party lobbyists should be obliged to register and disclose the names of the clients on behalf of whom they act. However, the Committee considers that if there is to be a statutory register it should be an inclusive definition and include “in-house” lobbyists. The Committee is 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 being paid to lobby on behalf of others. Third party lobbyists will not be required to register if the business they work for is mainly a non-lobbying business.

The Committee also notes that communications within the meaning of consultant lobbying are limited to those made to Ministers and Permanent Secretaries and not for example special advisors or other key officials. The Committee questions the extent to which lobbyists only seek to influence government in this way, particularly given the breadth of the industry definition of lobbying and lobbyists3. Whilst the Committee would acknowledge there is a gradation of decisions and decision

3 On the 29 April 2013 UKPAC published their definition of lobbying and lobbyists:
makers, all holders of public office encompassing all those involved in the delivery of public services not solely those appointed or elected to public office⁴, will be taking a wide range of decisions on which they may be lobbied and should be expected to operate at the highest ethical standards.

The Select Committee may therefore wish to consider the extent to which the current scope of the provisions is meaningful and achieves the stated purpose. In the Committee’s view the narrow definition of “consultant lobbyist” significantly limits the Bill’s potential to enhance transparency around lobbying. In fact the proposed register could diminish transparency, particularly if the effect is that the lobbying industry ceases to maintain its own more detailed voluntary register.

2. Are the definition of “consultant lobbyist” in clause 2 of the Bill and the list of exceptions in schedule 1 of the Bill likely to have any unintended consequences?

Given the narrow definition of “consultant lobbyist” the Committee considers there must be a risk, although the Committee is unable to comment on the extent of that risk, that those lobbyists who fall within the definition will be placed at competitive disadvantage as a result of:

   a) the administrative and regulatory burden imposed; and / or
   b) clients moving their business to a lobbyist who falls outside of the definition to avoid disclosure in the register.

3. Is the information that the Bill requires to be listed on the register sufficient to enhance transparency round lobbying?

The information currently required to be listed in the register includes which lobbyist is lobbying for whom, but no information on who they are lobbying, when they are lobbying or what they are lobbying for.

The Committee have previously welcomed the Government’s decision at the beginning of the current Parliament to publish quarterly details of ministers’ and permanent secretaries’ official meetings with outside interest groups, as well as information about hospitality received by ministers and members of departmental boards. The Government has made clear that the register is intended to complement this regime.

To make it more meaningful, the Committee remains of the view that the published information should also include details of actual contacts and the subject discussed – whether that is provided

“Lobbying means, in a professional capacity, attempting to influence, or advising those who wish to influence, the UK Government, Parliament, the devolved legislatures or administrations, regional or local government or other public bodies on any matter within their competence.”

The UKPAC definition of lobbyists refers to working to influencing legislative measures but also more generally public programmes, or policies including the negotiation, award or administration of public contract, grant, loan, permit or licence.

⁴ See the clarification of the Committee’s terms of reference at Hansard (HC) 5 February 2013, col. 7WS
through the register or in the separate lists of ministerial meetings; and also contact which has a bearing on the ministers official duties however that contact occurs, not just official meetings. The Committee also suggested that the information about lobbyists in the register should also identify former legislators, even where they have not been ministers, and any individuals who are close relatives of ministers.

In its response to the Government’s consultation on the statutory register the Committee supported the proposal that the names of those engaged in carrying out the lobbying, including whether those individuals were formerly ministers or senior civil servants should be included in the register. The Committee also supported the idea of including information on the broad value of the work carried out in a banding scheme suggested in the Government’s consultation paper. The Committee is disappointed that these proposals have not been taken forward into the Bill.

The Committee intends to consider the interaction between the register and the publication of official meetings and the accessibility of information in its ongoing inquiry.

4. **Are there potential problems with the role envisaged for the Registrar?**

5. **Does the absence of provision for a statutory or hybrid code of conduct in the Bill present any problems?**

As the Committee re-emphasised in Standards Matter in terms of knowing what works best in practice to promote high standards of conduct within regulated public organisations and regulators, the basic building blocks for promoting high standards are:

- a set of broadly expressed values that everyone understands;
- codes of practice elaborating what the principles mean in the particular circumstances of an organisation;
- effective internal processes to embed a culture of high standards, leadership by example; and
- proportionate, risk-based external scrutiny.

In the response to the Government’s consultation the Committee said that it doubted a register is likely to be very effective without a (single) accompanying code of conduct, however implemented, and some form of monitoring. The Committee also considered it important for credibility and public confidence that lobbyists who fail to register should face civil sanction, not excluding removal of their access to Government. We note that the latter is not expressly provided for in the Bill.

The Committee intend to consider further standards of conduct and external scrutiny, in its ongoing review and the extent to which solutions should be focused on those being lobbied.

6. **Are there any further issues raised by Part 1 of the Bill, including drafting issues, that you would like to draw to the Committee’s attention?**

*August 2013*
Executive Summary

- We recognise that there is a need to regulate lobbying activity in order to prevent further ambiguity and mistrust in the political system.
- However, the current proposals to introduce a statutory register of lobbyists present a number of problems. In particular we are concerned that the proposals are unlikely to achieve their aim to increase the transparency with which Government policy is formulated.
- The purpose of any proposal must be to ensure that the process of lobbying takes place in a way that is as clear, open and transparent as possible. The aim should be to inform the public about how decisions are made and how policy is influenced, by showing who is lobbying whom, on whose behalf, and on what issues.
- The current provisions for a Statutory Register of Lobbyists are too narrow, and in our view Government has missed an opportunity to address the full issue. Merely listing multi-client agencies does not contribute to increasing transparency, or to ensuring a level playing field between different lobbying sectors.
- NCVO’s preference is for a statutory system of registration that would apply to all lobbyists, regardless of sector (lobbyists working for multi-client consultancies, ‘in-house’ and for charities).
- The absence of a supporting code of conduct, against which behaviour can be measured, means that it is unlikely standards will rise.
- NCVO is seriously concerned about the new rules proposed in Part II of the Bill, on non-party campaigning.
- We are particularly worried about the broad scope of the proposed changes to the Political Parties, Elections and Referendums Act, and by their lack of clarity.
- This is causing increasing concerns among charities, voluntary organisations and community groups that the new rules proposed could apply to a range of normal and legitimate awareness-raising activities that they undertake, despite them being intended to be party-politically neutral. This will have a huge impact on charities’ and other groups’ day-to-day work.
About NCVO

Founded in 1919, the National Council for Voluntary Organisations (NCVO) is the largest membership organisation for the voluntary sector in England. With over 10,000 members, NCVO represents all types of organisations, from large ‘household name’ charities to small voluntary and community groups involved at the local level.

For many of these, campaigning and lobbying are important activities that enable them to speak up for their beneficiaries and influence public policy in a valuable way.

We recognise that there is a need to regulate lobbying activity in order to prevent further ambiguity and mistrust in the political system.

As a move towards transparency, we support in principle the introduction of a statutory register of lobbyists. However, the scope of the current proposals is too narrow and therefore they present a number of problems. In particular we are concerned that the proposals are unlikely to achieve their aim to increase the transparency with which Government policy is formulated.

NCVO’s preference is for a statutory system of registration that would apply to all lobbyists, regardless of sector (lobbyists working for multi-client consultancies, ‘in-house’ and for charities).

Answers to specific questions on the inquiry

1. Is the definition of “consultant lobbyist” in clause 2 of the Bill likely to lead to a register that enhances transparency about lobbying?

1.1 The Government has proposed the very narrowest definition of who the register should cover: it will include only consultant lobbyists, a minority in the industry. In-house lobbyists are excused, firms whose main business is not lobbying are excluded, and it restricts disclosure only to consultants who lobby senior officials and ministers.

1.2 In our view this is a missed opportunity to address the broader issues of public perception, unequal access to decision makers and inadequate transparency. Merely listing multi-client agencies and their clients does not amount to properly regulating lobbying activity in a way that is comprehensive and likely to prevent further lobbying scandals.

1.3 The current proposals fail to increase transparency, level the playing field between multi-client consultancies, in-house lobbyists and charities, and to drive-up standards across the board.

2. Are the definition of “consultant lobbyist” in clause 2 of the Bill and the list of exceptions in schedule 1 of the Bill likely to have any unintended consequences?

2.1 The narrow definition of “consultant lobbyist”, combined with the list of exceptions, causes major loopholes in the proposed legislation. Despite the aim of increasing transparency, lobbying firms will still be able to keep their clients secret should they wish to, for example by limiting their meetings to special advisers and mid-ranking civil servants.

3. Is the information that the Bill requires to be listed on the register sufficient to enhance transparency about lobbying?

3.1 Merely listing the names of clients for whom the consultant lobbyists has acted is not in itself sufficient to enhance transparency.
3.2 We believe that the aim of regulating lobbying activity should be to ensure that the process of lobbying takes place in a way that is as clear, open and transparent as possible. This can be achieved by informing the public about how decisions are made and how policy is influenced, by showing who is lobbying whom, on whose behalf, and on what issues.

4. Does the absence of provision for a statutory or hybrid code of conduct in the Bill present any problems?

4.1 Simply introducing an element of transparency is unlikely to impact on behaviour. A code of conduct, setting out acceptable professional conduct, alongside the register is essential to the proper working of the new system. It would set out clear expectations outlining how outside interests should interact with Government and this would act as a powerful nudge, driving standards up across the board.

4.2 We remain concerned that the proposals neither seek to influence behaviour through a code of conduct, nor highlight the financial backing of different lobbies, nor enable the public to understand the impact lobbyists are having on the public policy process.

Additional comments of Part II – Non-Party Campaigning Rules

NCVO is also concerned about the new rules on non-party campaigning and their potential impact of charities’, voluntary organisations’ and community groups’ legitimate day to day activities. In particular 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.

Range of regulated activities

Under the Bill a wider range of activities will be regulated by the Electoral Commission than under existing PPERA: the list in new Schedule 8A to PPERA includes not only election material (such as leaflets, adverts, etc.) but other campaigning activities such as events, media work and manifestos. Furthermore, the new definition of the term ‘for election purposes’ is cast in such broad terms that it captures all expenditure incurred for the purpose of, or in connection with, promoting or procuring the electoral success or enhancing the standing of a political party or candidate. The definition of ‘for election purposes’ doesn’t rely only on the intent of the third party: the effect is also taken into account even if the activity was carried out for other purposes.

The concern is that, as the definition is currently drafted, legitimate day to day activities of charities and voluntary organisations engaging in public policy for non-political purposes would be considered ‘for election purposes’ and caught by the rules. 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.

It also means that charities’ ability to react to important public policy developments on issues relevant to their mission and beneficiaries will be severely undermined, as this could be seen as potentially coming within the meaning of ‘activity for election purposes’.

Expenditure thresholds

The existing limits of how much a third party can spend have been considerably lowered. Under the Bill, if a non-party campaigner spends more than £5,000 in England (£2,000 in Scotland, Wales and
Northern Ireland) then it must register with the Electoral Commission as a ‘recognised third party’. This is a significant reduction from the current £10,000 in England (£5,000 in Scotland, Wales and Northern Ireland).

The Bill will also reduce the total that registered campaigners can spend on regulated activity in the year before the general election by 60%-70%. All relevant spending on the defined activities will count towards these thresholds. While a lower limit may seem reasonable, because of how the total expenditure is calculated over the course of year and how broad the definition of ‘for election purposes’ is drawn it is inevitable many organisations will reach this threshold unless they stop their campaigning activities entirely.

Such low levels are likely to cause problems for campaigning organisations, especially those involved in coalitions given that expenditure by coalitions is aggregated (this means that each member has to account for the full amount spent for the joint campaign, regardless of the individual contribution).

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 smaller charities and voluntary organisations to work together for fearing of dealing with the financial and administrative burden.

**Staff costs**

All relevant costs are considered, including staff costs. However the list of items that this would potentially cover is long and complex, making the provisions excessively burdensome, particularly on smaller organisations.

It is disproportionate to expect charities and voluntary organisations to comply with such a requirement, especially considering that political parties’ staff costs related to campaigning are explicitly excluded from the definition of campaign spending.

**Reporting requirements**

The Bill increases the regulation of reporting by introducing a requirement for quarterly reports of donations to recognised third parties. During ‘regulated periods’ (i.e. after Parliament is dissolved) more frequent weekly reports of donations to recognised third parties will be required. Even if no reportable donation has been received, there is still a requirement to submit a nil return for the relevant period.

*August 2013*
Written evidence submitted by John Hemming MP (GLB 23)

The Bill in Schedule 1 Part 1 Exceptions makes it clear that Members of Parliament are required to register if they are writing about something which is not at the request of a constituent. This makes it clear that Members of The European Parliament and councillors and elected mayors are intended to be within the ambit of the bill. I was a Councillor for 18 years and I do not think anything is achieved by having councillors required to register as paid lobbyists. As a Member of Parliament I have, for example, raised concerns about the banning of the US Journalist Leah McGrath Goodman from the UK. She has now been unbanned and has a visa, but I do not think anything is achieved by requiring me to register on such a lobbying register merely to write about this issue.

Clearly considerable extra thought is needed about the bill.

August 2013
Action for Children’s position on the Bill
A leading children’s charity, we work directly with more than 250,000 children, young people, parents and carers each year, running more than 650 services in 148 Local Authorities across the UK. Our campaigns and public affairs work is vital in ensuring they are represented on the political agenda.

We engage with parliamentarians and elected representatives from all political parties, both in Government and Opposition.

Part II of the Bill seeks to amend the rules on non-party campaigning, set out in the Political Parties, Election and Referendums Act 2000 (PPERA). The new expenditure thresholds will seriously affect our ability to represent and involve some of the UK’s most vulnerable children and young people in our campaigning activities.

Key Issues

Redefining campaigning
- The definition “for election purposes” has been set in such broad terms that it captures all expenditure by third party campaigns in connection with electoral success. This includes promoting success for more than one political party who advocate or have particular opinions about certain policies.
- The definition does not rely solely on our intent to influence political attitudes; the effect of the expenditure must also be considered. It would therefore not be possible for us to predict whether our campaign messages would be adopted by political parties or election candidates, making it impossible to plan future work.
- There are a number of upcoming elections which we hope to directly participate in including; the Scottish Independence Referendum in 2014; the General Election in 2015 and the 2016 devolved elections. Only some elections are necessarily predictable in terms of when they will take place making it difficult to estimate expenditure, and some election periods will overlap.

Cap on spending
- Whilst we are very concerned about the proposed spending cap on our campaigning in England, a 2% cap on the maximum campaigning expenditure in Scotland and Wales would certainly force us to drastically reduce our activities during an election year and remove our Campaigns and Public Affairs staff from the devolved nations.
- We would be required to predict whether or not our campaign activities will fall into an election period in order to inform the Electoral Commission beforehand. This goes against the nature of our campaigns which develop over time.
- The continued use of aggregated expenditure for coalitions under the new spending caps will place an even bigger strain on our campaigning activities, resulting in coalition activity overtaking our spending limits, or forcing us to abandon this type of work.
Citizenship
- The proposed spending limits will challenge our ability to engage young people in the democratic process which we are pleased to dedicate our resources to, but will be subject to the new caps.
- We are already planning a series of events and activities in the run up to the Scottish Independence Referendum in September 2014 aimed at empowering young people’s participation as first time voters. This work will span across our services to include engagement with young offenders, young carers, young people in care and disabled young people.
- The Scottish Independence Referendum period will overlap with the General Election period.

Recommendations
- Exclude 'citizenship' activities from the definition of activity “for election purposes”
- Maintain current levels of expenditure and ensure aggregated costs for members of coalitions are exempt
- Measure controlled expenditure per election to avoid election periods overlapping and for elections where a start date cannot be predicted, begin the time frame from when the election is announced

August 2013
Written evidence submitted by Richard Heller (GLB 25)

I hope that the Committee might be interested in my recent suggestion to the government that it should take the opportunity to replicate the American Foreign Agents Registration Act of 1938. (I received a totally non-committal reply).

This Act was introduced in the Roosevelt administration to counter the pre-war activities of Nazi and Soviet agents. This purpose has of course vanished, but the legislation remains in place and is enforced by the Department of Justice. It serves to provide all Americans with a public register of all individuals or firms that have taken money to promote the interests of any foreign ruler or government or state agency. It adopts a very broad definition of what it means to be an agent of a foreign state, which might be of interest to the Committee. Several British-based lobbying firms are registered under FARA and are familiar with its requirements. If they are prepared to declare themselves in the United States, why not in our country? Britons have as much right as Americans to know who is working among them on behalf of a foreign state.

It is too easy for politicians to turn themselves into lobbyists

This is an edited version of an article published in www.politics.co.uk on 4 November 2011

I am incurably inquisitive about politicians’ money. Yes, I know I should get out more. But in a modern democracy I think it vital for citizens to know which outside interests have any politician in their pocket. I think that is especially true when outside interests recruit politicians – and senior public servants – to lobby for them directly or to help them to understand the inner workings of the political system. Watching the American “revolving door” relationship between politicians, officials, military leaders and special interests has convinced me that these issues need rigorous scrutiny and control in our country.

At present we have neither. It is easier to find the source of the Nile than to find the source of ex-politicians’ money. The official watchdog on these matters is rather less fierce than the Andrex puppy.

This is the Advisory Committee on Business Appointments. It likes to style itself ACOBA, which sounds like a fashionable healthy nut or berry. It was created in 1975, and ex-ministers and senior civil servants are expected to notify it before they take up any paid appointment. More recently, special advisers were added to its remit.

ACOBA’s website leaves an unfortunate impression. Its guidance begins with a remarkable statement: “it is in the public interest that former ministers with experience in government should be able to move into business.” That statement is not self-evident and it has never been debated in Parliament or endorsed by voters. Many might disagree. It is at least arguable that British politicians should see ministerial rank as the summit of a career not as a stepping stone to wealth in another life. That is how they used to behave, and it had its advantages. It kept ministers’ minds on their job of running the country, it helped to maintain barriers between government and corporate interests, and, above all, it boosted public trust in politicians. Whatever their other failings, no one believed that they were in politics to make money.
To give just one example of how ex-ministers used to behave, when Labour’s great postwar Premier, Clem Attlee, died in 1967 his estate was valued at only £7,295.

In my view, ACOBA has a number of fundamental weaknesses, which make it far too easy for ministers and senior civil servants to turn themselves into lobbyists or otherwise serve the special interests which in government they are meant to control. The Committee might usefully scrutinize this body in the context of the Lobbying Bill.

One weakness is that ministers and civil servants escape its scrutiny two years after they leave office, even though their influence and special knowledge may persist for many years longer. For example, Tony Blair does not have to notify ACOBA about any new appointment, nor do the other two surviving former Prime Ministers, Sir John Major and Gordon Brown.

Second, as my quotation suggests, ACOBA appears to have a bias in favour of new business appointments by ministers, senior officials and special advisers. The membership is drawn from the political parties and the “great and the good”. I could not find one example of a recommendation against any appointment.

In fairness, ACOBA often sets conditions for approving a proposed appointment, but these are frequently opaque. For example, ACOBA regularly suggests that applicants should not make use of “privileged information” or become “personally involved” in lobbying current UK government ministers or Crown servants. What is “privileged information”? If it means information subject to the Official Secrets Act, then ACOBA’s condition is supererogatory: it is simply re-stating the law which ex-ministers and officials have to obey like anyone else. The meaning of “personally involved” is equally obscure. If applicants cannot lobby people themselves, what stops them advising their new colleagues on whom to lobby and how to set about it?

Above all, ACOBA, as the name suggests, is only an advisory body. Its advice can be overridden by the government of the day – and there are no sanctions against any ex-ministers (or former civil servants or special advisers) who ignore it.

ACOBA serves little useful purpose either as a watchdog or as a source of public information. As to the latter, it should ascertain – and publish – far more information about the intended business of former ministers, civil servants and special advisers, the nature of the services they are expected to contribute, and the scale of reward they expect. It should also publish annually their actual earnings from any business or employment which it has approved. As to its watchdog powers, these will be effective only if it is turned into a regulator rather than an advisory body. A powerful preliminary step would be a change in the law to ensure that ministers, civil servants and special advisers are lifelong servants of the Crown, and require its permission for any subsequent occupation other than Crown service. Accompanying this should be criminal sanctions against those who ignore their obligations to the new regulator.

I also believe that any new regulator should have no criteria other than the national interest and maintaining confidence in public life, and that it should contain at least one representative who has not held a senior appointment in government, public service, the armed forces or business.

August 2013
Written evidence submitted by the Citizens Advice Bureau (GLB 26)

Part 2 of the Transparency, Non-Party Campaigning and Trade Union Administration Bill

Citizens Advice is seeking legal advice on the consequences for Citizens Advice and for individual bureaux of the Transparency, Non-Party Campaigning and Trade Union Administration Bill, which introduces new rules on non-party campaigning.

Citizens Advice’s charitable aim is to make society fairer by providing the advice people need for the problems they face; and improving the policies and practices that affect people’s lives. Every year 338 Citizens Advice Bureaux, operating from 3500 locations across England and Wales help over 2 million clients to solve over 7 million problems. Our policy, campaigning and influencing work is a hugely important part of the work we do for our clients. This year alone we estimate that our campaigning work positively impacted on 8.3 million people.

Many voluntary sector organisations have raised concerns that the new rules contained in Part 2 of the Bill will impose additional regulatory burdens on charities and prevent them from campaigning for policy changes during election periods. This applies in particular where a policy a charity is campaigning for is supported or opposed by one or more candidates in a local election or one or more parties at a national level. Although we appreciate the Government’s reassurances in recent days that it is not the intention of the legislation to restrict the normal campaigning activities of independent charities, Citizens Advice is seeking clarity regarding whether our expenditure on “normal” policy and campaigning work could be interpreted as “for election purposes” under the broad definition in Clause 26 and associated Schedule 3.

The policy and campaigning work of the Citizens Advice service includes using the evidence of our clients experiences to improve legislation, regulations, implementation and practice, and working to get issues affecting our clients onto the policy agenda.

As members of the Citizens Advice service, bureaux are required to undertake national and local social policy work for the fulfilment of our charitable aims. Bureaux therefore campaign on local issues and join in with our national campaigns.

The Bill will reduce the total that registered campaigners can spend on regulated activity in the year before the general election by 60%-70%. Where a campaigning organisation is campaigning in coalition the expenditure of the coalition will be aggregated. This means that each member has to account for the full amount spent for the joint campaign, regardless of the individual contribution.

In the case of Citizens Advice Bureaux we are seeking clarity regarding the impact of Citizens Advice national influencing work on the reporting requirements of individual bureaux. Bureaux are inherently involved in Citizens Advice campaigning and policy work because our policy work is often premised on our advice issue statistics which are generated by advisers who code each client and the nature of their problem. Advisers also provide qualitative case studies to Citizens Advice when a client’s problems is indicative of a policy problem. We also encourage bureaux to participate in national campaigns by communicating with local decision makers and providing information about the local impact of policy changes.

Bureaux may also work together in coalitions to pursue issues of shared concern beyond their immediate area. Many bureaux are part of self-organised social policy cluster groups which coordinate policy work which can cut across local authority and constituency boundaries. The expenditure on these would be low, but it’s not
impossible that if the costs were aggregated (e.g. including staff costs), they could exceed the £5,000 and £2,000 limits the Bill sets for constituencies in England and Wales respectively.

Aggregation may also affect bureaux working in more structured coalitions. For example 11 bureaux lead consumer empowerment partnerships (CEPs), local networks including bureaux, trading standards and other community stakeholders which lead consumer empowerment initiatives in their areas. This work involves running joint campaigns on topical issues affecting consumers in the local community. CEPs are strategically led by Citizens Advice, but are operationally independent. It is through these structures that the Citizens Advice service delivers on its duty for local delivery of consumer advocacy and education.

Citizens Advice has co-signed a joint letter (enclosed) to Chloe Smith MP Parliamentary Secretary to the Cabinet Office outlining the concerns we share with many other voluntary sector organisations. This letter was coordinated by NCVO, a representative of which has been invited to give oral evidence to your Committee tomorrow.

We welcome the additional scrutiny the Committee is bringing to bear on the Bill and the opportunity this creates to ensure that Part 2 does not create unintended consequences for charities.

28 August 2013
Written evidence submitted by the Association of Charitable Foundations (GLB 27)

Summary

Provisions in Part 2 of the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill 2013, introduced to Parliament on 17 July 2013, if enacted, could substantially restrict charities' ability to act freely in furtherance of their charitable objectives. This would be achieved by classing a wider range of activity than currently counts as being 'for election purposes'.

We believe that charities engaging in a wide range of public awareness activities would now be regulated, face (reduced) limits on what they can spend and be required to shoulder heavy reporting requirements.

1. The Association of Charitable Foundations

1.1. ACF is the umbrella body and membership organisation for grant-making charitable trusts and foundations in the United Kingdom. ACF's priorities include enabling trusts and foundations to achieve good practice in grant-making, in their investments for charitable purposes and the way in which they manage their endowments.

1.2. ACF has over 330 members. They range in size from large foundations with paid staff distributing over £20 million a year each, to small, often local, volunteer-run trusts distributing less than £100,000 a year. Together they give over £1.7 billion a year to a wide range of charitable causes. Across the UK, trusts and foundations provide about 5% of the total funding of the charitable and wider voluntary sector.

2. Introduction

2.1. The Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill 2013 was introduced to Parliament on 17 July.

2.2. Part Two of the Bill, which will apply to the whole of the UK, includes changes to what counts as activity 'for electoral purposes' and limits the expenditure permitted on such activity.
2.3. We believe that these changes will adversely affect charities and charitable trusts and foundations, potentially restricting their work and inhibiting the flow of funding to organisations who seek to influence policy on behalf of their beneficiaries but with no intent to affect the outcome of elections.

3. The current position

3.1. As things currently stand, Charity Commission guidance on elections and referenda is clear that charities are encouraged to have a strong independent voice, and to give their views and opinions on issues of the day in pursuit of their charitable objectives.

3.2. Rules permit charities to engage in campaigns as long as they do not produce material which is intended to affect the electoral success of one or more specific parties. It means that they shouldn't produce anything which could be classed as 'election material' which 'promotes or procures the electoral success at any relevant election for a party, or candidate who shares or does not share the views of the charity on a particular issue!'

3.3. At times the precise line between pursuing the charity's objectives and of political activity will be difficult to draw, and sometimes charities may produce material that could be seen as indicating to the public that particular candidates or parties support or oppose their policies. In this case, if the charity intends to spend more than £10,000 in England (and £5,000 in the rest of the UK) it will have to register with the Electoral Commission as a 'third party' in order to continue their action. Their activity must still fall within their charitable objectives and total expenditure is capped. (In England £793,500; Scotland £108,000; Wales £60,000; and Northern Ireland £27,000.) Not all costs are included in this framework, for example staff costs are excluded from calculations.

3.4. These current rules apply during the 365 days running up to a General Election.

4. How the new provisions will apply to charities

4.1. Widened definition of electoral activity: The provisions tabled considerably widen the definition of what constitutes electoral activity. Restrictions will apply not only to obviously electoral material, but will capture any activity which might be regarded as being for "electoral purposes" including - as a result of Schedule 8A of the Bill - any policy documents, manifestos, market research, public rallies, or demonstrations and also use of social media. Additionally the bill brings a much tighter focus onto the effect of an organisation's activities and not the intention behind them. The explanatory notes to the Bill state explicitly that the Electoral Commission will consider the effect of activity. This means that something could come under the rules even if the authors had no intention of promoting the success of particular parties.

I Section 85: (3) Political Parties, Elections and Referendums Act 2000
4.2. **Reduced thresholds for registration and spending limits for activity:** The threshold for compulsory registration is cut dramatically to £5,000 in England and to £2,000 in the rest of the UK and staff costs are now included in the calculation. This makes it more likely that charities will have to register as a 'third party'. The spending limits for those who have registered are also dramatically reduced, by something in the region of 60-70%, and are now equal to £319,800 in England; £35,400 in Scotland; £24,000 in Wales; and £10,800 in Northern Ireland. Additionally new limits are introduced capping spending within a particular constituency area to approximately £9,480 per constituency. This figure is further reduced during the post dissolution of Parliament phase of a General Election. The Bill makes it a criminal offence to exceed the limits on regulated activity. The Bill also means that coalitions' costs would be aggregated and attributed to each member individually.

4.3. **Increased regulation** The reforms also affect the sort of monitoring required from those who will now have to register. During certain reporting periods around elections, they will have to file a number of reports with the Electoral Commission on whether they have or have not received donations. This must be done every three months before an election and **every week** following dissolution of Parliament.

5. **How the new provisions will affect charities**

5.1. Given the nature of UK elections and referenda, which are not definitely fixed, this could leave some charities in a perpetual state of uncertainty and so restrict their ability to pursue their charitable objectives. The widened definition especially means that, during election periods, a question mark could be raised against the dissemination of a wide range of evidence and research as well as other awareness-raising campaigns. The inclusion of staff costs in the calculation means, and the proposed provisions on coalitions, mean that it will be even easier to meet the thresholds. New constituency limits will particularly hit organisations who are limited to working within specific geographical areas.

Example:

a. Trust for London is the largest independent charitable foundation funding work which tackles poverty and inequality in the capital. The Trust supports work providing greater insights into the root causes of London's social problems and how they can be overcome; activities which help people improve their lives; and work empowering Londoners to influence and change policy, practice and public attitudes. The Trust was founded in 1891 and was previously known as City Parochial Foundation.

b. During the mayoral elections of 2012, with a coalition of child poverty organisations, the Trust worked with a dozen charities, many of which they fund, to produce a manifesto which they asked mayoral candidates to endorse. The Trust acted because Trustees felt the levels of child poverty in London were unacceptable, with 4 in 10
living below the poverty line. It took up a large amount of staff time from a number of the organisations. This work now looks as though it come under the remit of the proposed changes. More detail at: http://familyfriendlylondon.org.uk

6. We believe the proposals could substantially restrict the ability and confidence of foundations’, and those they fund, to engage in the public or policy sphere in the pursuit of their charitable objectives. This not only threatens the way charities have traditionally operated, but potentially constitutes a severe restriction on the quality of public debate on issues which relate to all the areas where charities and foundations work. We therefore believe that, as far as charities are concerned, the Bill should be amended to reflect the status quo.

August 2013
1. The Howard League is pleased to submit comments on the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill

2. The Howard League works for less crime, safer communities and fewer people in prison. In common with other charities it is guided by a vision of a better society.

3. The charity has extensive experience of working with young people in the penal system which gives us a unique insight into how public policy shapes our society and young lives. Since 2002 the Howard League has provided the only legal service dedicated to representing children in custody. We have therefore drawn upon our lawyers’ experience in practice as well as our expertise in the youth justice system for this submission. For example, on 22 August 2013 the charity launched legal proceedings to challenge the government over its failure to implement an effective and independent complaints procedure for children detained in privately run Secure Training Centres.

4. We view lobbying as being closely linked to improving service delivery and national policy. In order to keep democracy alive and changing the role of civil society is essential. It is right that independent interests act to inform the public policy process. Earlier this year the Howard League supported a judicial review taken by Just for Kids Law that found that seventeen-year-olds who are arrested and taken into police custody should be treated as children. The charity had held meetings with police chiefs, children’s charities, and with Parliamentarians as part of the development of this piece of work. A national conference was held which was addressed by front bench MPs. A meeting in Parliament for MPs is being planned for later in the year.
5. Charities working as lobbyists can offer a beneficial source of information, improve debate, and strengthen the law-making process. This lobbying by charities is quite different to businesses advancing private interests as it is for the public good not for commercial gain. The dividing line between providing information to politicians and political parties based on charitable activities and expertise drawn from service delivery and what could be termed lobbying under the proposed legislation would be difficult to discern. There is already ample guidance on this from the Charity Commission.

6. The Howard League is concerned that including charities in the register currently proposed by Government would not add to the overall transparency and accountability of the charity sector. This is because it is already clear who charities represent and because the Government has been clear that the purpose of the register would be to introduce an element of transparency to the commercial sector.

7. The Howard League recommends that any system should be easy to understand, easy to administer and proportionate and not overly bureaucratic.

8. The Howard League would be concerned if organisations, particularly smaller organisations, were being discouraged from engagement with the political system as a result of any register.

9. In conclusion, the Howard League contends that these proposals put at risk the energetic, creative and expert contribution to the fabric of British democracy that is provided by an independent charitable sector.

26 August 2013
Written evidence submitted by Crisis (GLB 29)

Crisis is pleased to submit evidence to this inquiry and has significant concerns about how the Lobbying, Non-Party Campaigning and Trade Union Administration Bill as drafted would affect our ability to campaign.

Summary

- We are deeply concerned that the proposed definition of ‘electoral purposes’ and the new spending caps in the bill would limit the legitimate campaigning activity we can undertake on behalf of single homeless people.
- We do not believe that this is the government’s intention and urge the Cabinet Office to amend the bill as a matter of urgency.
- We have provided examples of our campaigning work which could be affected by the bill which we hope will be useful for the committee.

1. Our Concerns about Part II of the Bill

1.1 Part II of the bill will redefine the meaning of ‘electoral purposes’ for third party campaigners. There is widespread concern that the legitimate campaigning work of a large number of charities will now fall into the scope of this regulatory framework. The new definition is vague – the Electoral Commission, responsible for enforcing the law, have said that it is ‘unenforceable’ and that ‘it will often be hard for campaigners to identify with a reasonable level of confidence’ whether their activities are for electoral purposes. ¹

1.2 If charity campaigning does come into the scope of the bill, charities would be limited to spending £390,000 on electoral activities in the 12 months preceding a general election, including all staff costs and overheads. Shockingly, only £35,000 of this can be spent in Scotland – which alone would be exceeded by the costs of our single policy officer based in Scotland. This could significantly limit the work that charities are able to do.

1.3 The total spend of coalition campaigns will be counted against the spend of each individual member. This will discourage charities from working together to campaign on issues of common interest. Working in a coalition is an important way for charities to pool their resources and allows them to work together efficiently where there are shared goals. Indeed successive Governments have encouraged organisations to work together when pushing for policy change to ensure a coherence and consistency of voice.

1.4 We are also concerned about how this part of the Bill would play out in the event of an election being called earlier than expected. Despite the fixed term parliament legislation it remains a real possibility that a government could fall mid-term. If the effect would be a retrospective cap on all spending in the previous 12 months then charities may have to restrict their campaigning as if it is always an election year, rather than risk being in breach of the law.

2. Crisis and the importance of Campaigning

2.1 Crisis is the national charity for single homeless people. Alongside service delivery, political campaigning has always been a core element of our work. Crisis was founded by Conservative MPs William Shearman and Ian Macleod as a campaigning organisation and since then we have worked with people of goodwill of all parties and of none to make the case for change to policy, practices and services to prevent and resolve single homelessness. We were set up in response to the hard-hitting Ken Loach film _Cathy Come Home_, which led to widespread anger about the treatment of homeless people. Working with other homelessness organisations at the time we were successful in persuading the government to pass the 1977 Housing Act, guaranteeing a right to accommodation for certain categories of homeless people.

2.2 We have continued to campaign on behalf of single homeless people throughout our 46 year history, with many of the reforms we campaigned on becoming a reality. We are non-partisan and are not party political. As a charity we are already banned from engaging in party politics or supporting a particular candidate or party and work closely with politicians of all parties. For example, the Prime Minister, David Cameron visited Crisis when in opposition to launch the Conservative Homelessness Foundation and Ed Milliband has given out awards to our clients.

2.3 We are a transparent organisation. Our independent board of trustees agree the scope of our campaigning work. The majority of our funding comes from donations from members of the public, trusts and corporates – and indeed all of our campaigning work is funded independently from these charitable sources. Our annual report and accounts (available on our website) clearly state how our money is spent and raised and highlights our campaigning work.

2.4 Our campaigning, and the resources we spend on it, is a crucial part of the work we do for single homeless people. Because of our history and track record as an organisation, our frontline staff, our thousands of volunteers, other homelessness organisations and single homeless people themselves expect us to use our voice to campaign on issues that affect homelessness. Smaller organisations that we partner with locally are usually not able to afford to conduct campaigning themselves. There are few organisations with the capacity to campaign directly around single homelessness, so a cap on Crisis as one organisation would have ramifications much wider for the issue and client group as a whole.

2.5 The government has now said it is not their intention to restrict the campaigning activity of charities such as ours. In a recent letter, Minister for Political and Constitutional Reform Chloe Smith confirmed that she does not want to prevent ‘attempts to engage with the policy of any political party, having a view on any aspect of the policy of a party, or any attempt to influence the policy of a party’. However, as drafted, the bill does not provide enough clarity to reassure us that we will be able to continue our campaigning work.

2.6 We believe that the existing framework of regulation of charities and their campaigning activities worked well and struck the right balance. If the Government wishes to proceed with part II of the Bill we strongly recommend that the government as a minimum amends it to more clearly define the types of activity which should be regulated and will contribute to the spending cap.

3. Examples of activity that could be affected
Below are two examples of work that Crisis has carried out which could in future be affected by this bill:

3.1 2008 London Mayoral Election
While we appreciate that Mayoral elections are not covered in the scope of the bill, the example below shows a successful campaign of a kind that would be unrestricted under the current law in the year before an election.

Ahead of the 2008 London Mayoral election, Crisis campaigned on the issue of rough sleeping in London. We called for all candidates to make rough sleeping a priority and to commit to a target to end rough sleeping in the capital by 2012. During the election campaign, together with three other housing organisations we arranged a hustings attended by the three main candidates. We arranged for each of the main candidates to be challenged on the issue of rough sleeping and as a result all publicly agreed to the pledge. We followed the hustings up by getting our supporters to email all of the candidates which resulted in clear written commitments from them all to make ending rough sleeping a priority if they were elected Mayor. This activity directly meant that on becoming Mayor Boris Johnson carried this commitment into office, appointing one of his inner team to take the agenda on and then committing resources to deliver. It should go without saying that at no point did we intend to support any particular candidate in the election. Yet it is of course possible that the policies adopted by candidates could affect how members of the electorate voted, and that some of these policies will in turn have been influenced by organisations such as Crisis, meaning they would fall in the scope of the proposed cap. Bearing in mind the considerable staff time it took to organise the event and follow up with media, campaigning and policy work, this is deeply worrying.

3.2 2010 ‘wash-up’
When the 2010 election was called, Crisis worked with a group of other housing organisations to lobby for the passage of a private members bill aimed at protecting tenants’ rights in the event of their landlord being repossessed. This followed a long campaign we had been jointly running for over a year before. During the ‘wash up’ period, government and opposition support were gained and the legislation was passed. It now provides a valuable part of the legal framework for private tenants. This legitimate work to influence parliament immediately before an election could easily be considered ‘electoral activity’ under the new definition. In addition, the legislation was secured as a result of campaigning that had been carried out for over a year jointly by Crisis, Citizens Advice, Shelter and the Chartered Institute of Housing. The campaign had involved considerable staff time and resources involved in research, lobbying MPs, meeting with officials and influencing the media – all things that would be limited and restricted by any proposed cap, yet the measure it resulted in has been welcomed by all.

3.3 For further information on Crisis’ policy and campaigning work please see: www.crisis.org.uk.

August 2013
Written evidence submitted by The Royal British Legion (GLB 30)

I. Executive Summary

The Royal British Legion (the Legion) is concerned that provisions in the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill will:

i. Significantly and, in our view, unacceptably widen the scope of activities which are likely to be caught by the new rules.

ii. Dramatically reduce expenditure thresholds.

iii. Significantly increase the regulatory burdens placed on charitable organisations.

The Legion consequently proposes that the Government reconsiders its proposals and:

i. Provides a clearer definition of what constitutes ‘activity for election purposes’ and therefore reduce the need for the Electoral Commission to exercise discretion and discuss individual campaigning actions with charitable organisations;

ii. Maintains existing and workable limits on how much money can be spent on non-party campaigning;

iii. Removes the disproportionate and burdensome requirement for charities which receive no reportable donations to have to submit nil returns;

or, in the alternative-

iv. Reduces the period of control of expenditure to coincide with the traditional period of pre-electoral purdah;

v. Revises the proposed expenditure controls to relate to a percentage of total annual expenditure of the charity; and

vi. Requires reports on donations to be made within 35 days of the declaration of the result of a general election.

II. About The Royal British Legion

The Legion aims to be, ‘The No. 1 provider of welfare, comradeship, representation and Remembrance for the Armed Forces community’. We are one of the UK’s largest membership organisations and provide financial, social and emotional support to millions who have served and are currently serving in the Armed Forces, and their dependants. In 2011/12 the Legion awarded grants to 25,300 beneficiaries and spent on average £1.6m per week on its welfare work.

III. Introduction

The Legion works tirelessly to promote the interests of the Armed Forces community through high profile lobbying of government and other policymakers. Throughout our history our voice has helped to ensure that the nation provides a fairer deal for its Service personnel, veterans and their families, and this was most famously demonstrated when the principles of the Armed Forces Covenant were written into law in 2011. Other campaign successes include saving the post of Chief Coroner from the
Public Bodies Bill in 2010/11 and installing the new Chief Coroner in his post in 2012; defending funding for Disabled Facilities Grants; and ensuring that Armed Forces injury compensation payments are ignored when calculating entitlement for Universal Credit.

The Legion is deeply concerned that provisions in Part II of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill will severely restrict our ability to carry out our charitable function and campaign on behalf of the interests of our beneficiary community. We have outlined below our views in relation to the proposed amendments to the rules on non-party campaigning, and we urge the Government to reconsider its proposals to ensure that charities are not prevented from undertaking legitimate campaigning in the run up to future elections.

IV. Scope of the Bill

The Legion is concerned by the broad scope of the proposed changes to the Political Parties, Elections and Referendums Act 2000, and by their lack of clarity in particular. The new definition of the term ‘for election purposes’ is cast so broadly that it captures all expenditure incurred for the purpose of, or in connection with, promoting or procuring the electoral success or enhancing the standing of a political party or candidate. The intention of the third party, i.e. the campaigning organisation, is irrelevant - only the effect is taken into account.

We are concerned that in widening the range of activities which are regulated by the Electoral Commission, to include not only published materials but also events, media work and manifestos, the proposed new rules could apply to normal and legitimate awareness-raising activities which were intended to be party-politically neutral. To ensure that charitable organisations do not find themselves caught out by the new rules, the Electoral Commission will be required to analyse and discuss individual campaign actions with the organisations concerned, thereby increasing the bureaucratic burden placed on both the Electoral Commission and individual charities. We seriously doubt that the Electoral Commission has the resources to undertake this responsibility in timely fashion. If that proves to be the case, affected charities would almost certainly feel forced to suspend otherwise perfectly legitimate activity.

The Legion is always careful not to align itself with any one political party or particular party’s policy, and we pride ourselves on our ability to work with all parties to advance our charitable objectives. However, as the example below demonstrates, had we conducted some of our campaigns under the new rules, it is highly likely that we would stand accused of influencing a candidate’s election result, despite our campaign being entirely party politically neutral.

### ‘Time to do your bit’ Campaign

In the build up to the 2010 general election, the Legion successfully persuaded almost three quarters of MPs, including the leaders of the three leading political parties, to sign up to our ‘Time to do your bit’ campaign. The campaign was not policy-specific; rather it simply invited candidates to pledge to do their bit – whatever that might be – on behalf of the Armed Forces. MPs that made a pledge had their photo taken with a pledge card and this was then used as publicity in constituency media. A list of those candidates who had signed up to the campaign was also published on the Legion’s website.
The Legion has also previously produced General Election Manifestos outlining our key policy asks and suggestions for action. In keeping with our policy and practice, these documents are party-politically neutral and do not endorse any one party’s policy over another’s. Under the terms of the new rules, however, should the Legion decide to produce a similar document for the next general election, we would first need to determine whether any of our policies are likely to become political during the election period, or adopted by any one particular party. If there is any chance that they will, it is likely that the Legion would have to refrain from producing a manifesto or else stand accused of producing material ‘for election purposes’ or trying to influence the voting intentions of the electorate by endorsing a particular party. We believe this would be a nonsense and find it difficult to believe that it is the intention of the government to regulate such activity by charities and particularly those charities, like the Legion, where campaigning activity represents only a relatively minor part of its annual expenditure.

In light of the above, the Legion urges the Government to reconsider its proposal to expand the definition of ‘activities for election purposes’. The definition as it is currently drafted will encompass charitable activities which are intended to advance the interests of our beneficiaries and severely hamper our ability to react to important public policy developments during an election period defined as the period of 12 months prior to a general election. So that charitable campaigning is not discouraged in the run up to an election, we urgently call on the Government to clarify its definition of ‘activities for election purposes’ and reduce the definition of ‘election period’.

V. Restrictions on spending

The Legion is concerned by the Bill’s proposal to dramatically reduce existing limits on how much a third party can spend on campaigning activities in the twelve months prior to an election. Under the terms of the Bill, non-party campaigners who spend more than £5,000 in England or £2,000 in Wales, Scotland and Northern Ireland, will now have to register with the Electoral Commission as a ‘recognised third party’. Previously this has been set at £10,000 in England, or £5,000 in Wales, Scotland and Northern Ireland.

The Legion maintains that such a significant reduction will result in many more charitable organisations being required to register with the Electoral Commission, thereby unnecessarily increasing the bureaucratic burden placed on both the Electoral Commission and individual charitable organisations.

The Bill will also restrict the spending of registered campaigners on regulated activity deemed to be ‘for election purposes’. In England, the proposed changes to spending limits will result in a 60% reduction in permitted expenditure on campaigning activities, whilst in Scotland the reduction is nearer 70%. This is all at a time when what is deemed to constitute ‘activity for election purposes’ is being broadened.

Given that total expenditure is calculated over the course of a year and all relevant costs associated with these activities, including staff costs, will count towards the new thresholds, it is inevitable that
the Legion should expect to exceed them. Whilst the Legion has a relatively small campaigning budget and advocacy team compared to other comparable charities, staffing costs alone would force us to halt our campaigning activities in the run up to an election, lest we risk falling foul of the new rules. It would not only be our mid to high profile work which would be halted. The proposals may also result in us being unable to play an active role with Government. It may, for example, mean that we are unable to respond to Government consultations or attend departmental or Ministerial working groups as there is a risk that our support for a particular policy or proposal may become public, and our activities therefore be deemed to be ‘for election purposes’. If this were the case, it would potentially render our small Public Policy and Public Affairs team redundant for one year in five.

The Legion further maintains that the Bill’s new rules on expenditure will discourage cooperation between charitable organisations. Under the new proposals, expenditure by charitable coalitions will be aggregated, meaning that each member has to account for the full amount spent for the joint campaign, regardless of the individual contribution, thus misrepresenting the level of activity. Had these rules been in place when we ran our highly successful ‘Leave it out, Ken!’ campaign, it is unlikely that we would have been able to rely on the invaluable support and expertise of the specialist organisation, Inquest, as they would have been deterred from working with us out of fear of the financial burdens incurred.

In light of the above, the Legion urges the Government to reconsider its unworkable reduction in expenditure levels, and in particular its inclusion of staff costs within the scope of its revised spending controls. The current proposals concerning spending restrictions impose excessive burdens on charities and the Legion therefore calls for the current reasonable levels of permitted expenditure to be maintained.

VI.  Regulatory Burdens

The Legion is concerned by the Bill’s assumption that an election period is certain and definite. Despite the introduction of fixed term parliaments, the precise date of an election is still more often than not the decision of the government of the day. This makes it difficult for charitable organisations to understand how and when the rules would apply. The Legion is therefore concerned that the proposals in the Bill will increase the administrative burdens placed on charities as it will be hard to know with any degree of certainty whether or not they are acting within the law.
The Legion is also concerned by the Bill’s requirement that reports of donations to recognised third parties be submitted quarterly. During ‘regulated periods’, namely once Parliament has been dissolved, the frequency of reporting increases substantially to once every week. Even if charities do not receive a reportable donation, the regulations require them to submit a nil return for the relevant period. What is the purpose of this proposed requirement? How is it anticipated that the data will be used? The Legion maintains that such requirements are disproportionate and unnecessarily burdensome, and especially at a time when the Government has committed itself to reducing regulation.

The Legion therefore urges the Government to reconsider the introduction of extra administrative and regulatory burdens, in particular those relating to reporting requirements. The Legion maintains that charities should not have to submit nil returns, and instead argues that reports should only be necessary when there is actually something to report and that, in common with the requirement for candidates at elections to submit returns on electoral expenses incurred, such returns should only be required to be made within 35 days of the declaration of the result of an election. Further, the period within which activity is regulated should be limited to the traditional period of pre-electoral purdah i.e. the period between the calling of a general election and the formation of a new government. This will reduce unnecessary costs and red tape for charities, freeing them up to pursue their charitable objectives.

VII. Conclusion

The Legion calls on the Government to reconsider its proposals in Part II of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill. In particular it urges the Government to make the rules clearer and less restrictive, so that charities are able to undertake legitimate campaigning in the run up to elections, and thereby fulfil their charitable function.

August 2013
Written evidence submitted by Oxfam (GLB 31)

1. Oxfam welcomes the opportunity to make a submission to the Committee’s inquiry on the Government’s Lobbying Bill.

2. Oxfam undertakes advocacy and campaigning in order to further our charitable objects of “the prevention and relief of poverty...” This activity is regulated by the Charity Commission who have published guidance for charities on the benefits and limitations of this activity. The Charity Commission have also published additional guidance on campaigning during elections which establish principles and good practice on campaigning during an election period.

3. We wish to restrict our submission to Part 2 of the Bill dealing with Non-Party Campaigning. In relation to Part 2 we have serious concerns that the Bill as currently drafted could effectively curtail Oxfam’s ability to undertake its role as a campaigning organisation and voice for ending poverty during “election periods” which might be up to 12 months before an election.

Definition and range of regulated activities

4. Oxfam recognises a desire to regulate third party spending and activities which are intended to enhance the electoral success of a particular party or candidate. However, it is our understanding that the Bill amends the definition of the term “for election purposes”, and removes the concept of “intent” in the current Act which is replaced by an assessment of effect. By widening this definition to such a degree – and without sufficient clarity - there is the very real danger that any campaigning materials or activities promoting our policy proposals during an election period could become “for election purposes” simply by one or more parties subsequently deciding to agree with us. This represents a fundamental misunderstanding of the aim of charity campaigning during a pre-election period which is to attain broad support for our policy proposals – in the hope that sufficient political consensus can be obtained so that our recommendations are adopted whoever forms the next government.

5. We are also concerned by the proposal to broaden the scope of campaigning activities that are to be regulated to include the publication of manifestos, holding events or undertaking media work. This appears to capture quite legitimate commentaries on political issues and public views which may be used to provide political context for a policy proposal and have nothing to do with promoting or procuring the electoral success of one or more political parties, especially during a prolonged election period. For example Oxfam’s UK programme includes working with local third sector organisations who work to eradicate domestic poverty in communities and amplify the voices of people in poverty. We will often use evidence from this work and from our local partners to issue research and commentary to help inform political and public debate. Should we wish to issue research next year into the impact on families in the UK of the first year of Universal Credit, for example, this could well be deemed “for electoral purposes”.

6. *The range of activities considered to be ‘for election purposes’ and the definition of this term needs to be defined more clearly so that organisations are able to identify and forecast what activities count towards their controlled expenditure. The proposed definition is so widely drawn as to capture otherwise independent non party campaigning activity. The existing*
**Expenditure limits**

7. The Bill proposes to significantly lower the spending limit at which third parties are required to register with the Electoral Commission. In addition, and more importantly, the Bill reduces the total that registered third parties can spend on regulated activity in the year before the general election by 60%-70%. This spending limit is all the more restrictive because it includes:

   i) Costs of materials provided on a Pro-Bono basis: Should a celebrity donate their time to travel to Africa with Oxfam and undertake media work in the UK to highlight the effect of climate change (something that then may subsequently become an electoral issue) this could take up a significant total of Oxfam’s expenditure limit on regulated activity.

   ii) Aggregated coalition costs: Many charities work together to promote common concerns. Current guidance from the Electoral Commission is that the entire aggregate spending of any coalition deemed to be for electoral purposes will be applicable to each individual organisation and each member of the coalition should report total coalition expenditure as their individual contribution even if none is made. The ability to work in coalition is an important part of charity campaigning in the UK and is often welcomed by policy makers who like to see a combined and coherent voice. Current guidance on this Bill and the reduction in the overall levels of allowable expenditure could effectively make coalition working unfeasible. It could also be detrimental to real transparency - if there were ten members of the coalition which spend 390k in total then it would be reported to the Electoral Commission that £3.9m was spent on the campaign.

8. **The significantly reduced expenditure limits are problematic because of the wide and unclear definition of what activity they would cover. It is hard to recommend an appropriate limit until the definition of activity “for election purposes” has been clarified and revised. However in any case we would suggest that organisations that join coalitions should only be accountable for their direct financial contribution and that the cost of materials on a pro-bono basis are not covered.**

**Example of possible impact**

9. Oxfam will remain publicly and firmly in support of maintaining aid spending at the current level of 0.7% in the run up to the election, a policy that currently enjoys broad cross-party support. As we head towards the global 2015 deadline for meeting the Millennium Development Goals (MDGs), Oxfam and our partners are very likely to hold events, publish material and speak out in the media in the UK to promote the role of aid in meeting these MDG deadlines, and the need for good quality aid to continue. In the event of this campaign carry over into an “election period” and in the event of any party or parties, or individual candidates then decide to support or oppose the 0.7% aid policy in its manifesto we would be very unclear if we there then undertaking activity

*definition in the Political Parties, Elections and Referendum Act (as well as charity commission guidance) is more than sufficient to cover activity that has the intent to promote electoral success for a particular party.*
“for election purposes”. Whilst the Electoral Commission may in this case allow this situation, the fact that it is open to so much interpretation rather than clear guidance is problematic.

On proportionality and the Bill’s intent

10. Our understanding is that the Charity Commission received very few complaints with regard to campaigning by charities during the last General Election and of the complaints received very few required regulatory action. Given that charities cannot by the nature of their constitutions actively seek to procure the electoral success of political parties or candidates it seems excessive for the Political Parties, Elections and Referendum Act 2000 to be amended in such as way as to require charities (or other independent, non charitable and not for profit organisations) to register with the Electoral Commission and report expenditure “for election purposes” when they, by the very nature of their constitutions, cannot carry out such activities.

11. The Bill requires significant amendment to clearly identify what sort of third party activity is undesirable and to introduce regulations which address those concerns. As currently drafted the impact of the Bill could be detrimental not just to third party campaigning by charities but also to public engagement in elections, should “third sector” campaigning be inhibited and reduced by the effect of the Bill’s proposals.

August 2013
Written evidence submitted by Institute of Fundraising (GLB 32)

The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill requires further work and clarity so that fundraising organisations are able to properly understand the implications of the proposals.

As currently drafted, the Bill requires charities to report on expenditure related to ‘election purposes’, but the definitions are so loose that we don’t know what would be caught by this and what wouldn’t. There is a requirement in the Bill for charities to report quarterly on donations which go towards regulated activities – but we need further clarity on what this means. For example, would a general donation to a charity need to be reported on if the charity used some of that money to campaign, or would it only be if a donor explicitly gives money for ‘election purposes’?

We are also concerned that some aspects of the Bill seem to put disproportionate burdens on charities. All relevant costs, including staff costs, are to be reported on – would that include the costs of fundraisers? The list of things that could potentially come under this category seems endless, and could put an unnecessary burden on charities. It also seems disproportionate that the Bill would require all charities to report quarterly, even if they have not received any donations which would be eligible. We believe that the Bill requires further work to provide greater clarity and less burdensome requirements on fundraising organisations and we support the concerns and recommendations that NCVO have raised.

August 2013
Written evidence submitted by Gavin Talbot (GLB 33)

I am writing to voice my concerns with the lobbying and transparency bill which seems to have the inherent risk of politicising community campaigning.

The NCVO blog (link below) explains some of the concerns and I was particularly concerned by the example they give of a campaign around a proposed bypass.


This example is of a similar nature to a campaign I am running to protect some important open space in my town. Our campaign is totally non partisan politically but we have sought political support from various parties to try and get them to advocate on our behalf or support our campaign. All parties actually support our campaign locally and it is important that on local issues that people standing for election are able to say what they support especially on local community matters (for example I would not be voting for any candidate that advocated building on our open space).

Now the true impact of this extremely poorly thought through draft legislation is the impact it would have on community campaigns because often there can be time critical deadlines which would potentially slow down or even totally destroy the ability of a local campaign to actually "campaign" just because a local candidate may have expressed support.

I am unclear about some of how this bill would work but in the case of the recent Suffolk County Council election I have an example that particularly concerns me because the local liberal democrat party put our campaign in their election leaflet without asking us. Would this count as them expressing a view and be detrimental to us in our campaign work? I sincerely hope that this would not be the case as at the same time as local elections we were working on an extremely important legal challenge which we may not have been able to put in had we had to wait for elections to be over. I hate to think that I would have to avoid my MP and even specifically ask them not to say anything about our campaign as surely part of the job of an MP is to support their constituents with local issues and they should be allowed where relevant to express their own view. I know for example that a quick look at my MP Tim Yeo's website shows he is supportive of a few local campaigns so effectively it seems this bill may also effectively neuter an MP from expressing what they stand for, for fear of prejudicing a campaign or issue people care about.

I am not totally averse to the need for doing more to aid transparency in lobbying as certainly we have seen in recent years a total abuse of lobbying by businesses which needs cracking down on, however, where charities or local community organisations are concerned you risk doing severe damage to the big society as in most cases these types of organisations are trying to do the right thing for society, not the right thing for their balance sheet or their political ideology.

To conclude I urge that this poorly constructed bill is rethought taking into account the views expressed by organisations like NCVO and 38Degrees as I know both of these organisations have sought legal advice which is how they have identified these issues.

August 2013
Written evidence submitted by Open Rights Group (GLB 34)

Open Rights Group would like to raise some serious concerns about the proposed Lobbying and Transparency Bill. We will not go into detail to repeat the general points made by NCVO and others.

ORG campaigns on human rights in the digital sphere. Past campaigns include the Digital Economy Act and copyright reform (Hargreaves Review). One of our current campaigns focuses on the proposed Communications Data Bill. After the PRISM scandal, it is quite possible that surveillance and privacy of electronic communications may become electoral issues. We very much hope that all politicians will take a stand on this, but in reality it is likely that it will be mainly the Lib-Dems who will use this to differentiate themselves nearer the election. ORG does not support any party, but we would be deemed to be favouring the Lib-Dems.

Our local supporters regularly visit their MPS and we have even carried out "hustings" events where local candidates explain their positions on digital policy issues. While it is unlikely that a small group like ORG would hit the national cap, we could be affected by the local limits.

I hope this bill is sent back to the drawing board to be rewritten with input from civil society.

August 2013
At yesterday’s evidence session, you asked any voluntary sector organisations concerned about the contents of the Lobbying Bill to come forward. The National Housing Federation is a member of NCVO and put its name to the open letter to the Minister for Political and Constitutional Reform, Chloe Smith MP.

In general terms, we share NCVO’s concerns that the Bill’s Part 2 provisions are:

**Overly complex and very unclear** – it risks discouraging legitimate and desirable campaigning

**Bureaucratic** – the substantial discretion given to the Electoral Commission will create a huge burden on organisations trying to anticipate how they will meet unclear legal requirements

**Excessive in reporting requirements** – registration, reporting and recording expenditure are likely to cause a significant bureaucratic burden, even for larger organisations

**Unclear regarding timing** – organisations will not be able to predict when activity will come under the regulated period and may be forced to limit campaigning activity in perpetuity.

We have concerns on our own behalf and that of our members, over a thousand housing associations operating across England.

**National Housing Federation**

The Federation runs campaigns on issues that affect housing associations and their tenants. In recent years, this has included fair charging for pre-payment energy meters, rural housing, capping interest rates charged by doorstep lenders and preserving the right of tenants to take complaints directly to the housing ombudsman.

Our current campaign, Yes to Homes, brings back into the debate local people who want and need more homes to be built. It is only natural that we are contemplating how people might make their voices heard during national elections. We have no intention of singling out particular parties or candidates. However, the Bill is so vaguely drafted that we cannot predict when our work to empower local people will suddenly be defined as having the effect of supporting a particular party or candidate, simply because our views do or do not coincide.

We often appear in the media to comment on a wide range of policy issues. Would any media coverage we get on an issue that becomes relevant to an election campaign be counted? Does that include the staff costs, research, web hosting costs, phone calls associated with putting the story out? Are we expected to record all such spending in minute detail in case it becomes relevant in hindsight during the 12 months running up to an election?

**Housing associations**

Our members cover a wide range of sizes, specialisms, locations and approaches. Many are vocal on issues that affect their tenants.
In a recent example, a group of housing associations in Merseyside worked together to raise the problems caused to tenants by the Bedroom Tax, with research, a report and media coverage supporting meetings with local MPs and councillors.

In an election period, those housing associations could risk being accused of benefiting a party or candidate’s election despite their material being entirely party politically neutral. This collective action could also lead each of them to hit the constituency limit and curtail any further activity for the year.

Coalitions

The National Housing Federation and individual housing associations work as part of many coalitions. The Bill requires each organisation to account for the expenditure of all. This double counting and additional administrative burden, combined with the new lower thresholds, mean that many organisations will be discouraged from working together for fear of breaching spending limits.

The complexity and lack of clarity in this legislation, plus the heavy bureaucratic requirements, will mute many aspects of our civil society. We support transparency and fairness in our electoral process, but believe the Lobbying Bill as drafted could actually work against informed political debate.

August 2013
I write to you as the Chief Executive of Macc, the local support and development organisation which works with the 3000 voluntary and community sector groups in the city of Manchester.

Macc fully supports the representations made to the Committee by NCVO. We believe strongly that the campaigning role of charities and community groups must not be eroded as a side effect of increasing transparency over corporate influence.

To take up the smoking campaign example used by NCVO, suppose a political party agrees with the position of the charity and says so in its manifesto – must the charity then stop campaigning and potentially breach its charitable objects? Suppose the party manifesto actually names the charity as an influence? Would that not actually be a good thing from a democratic point of view? This bill would seem to regard it as something which requires close scrutiny but surely it is just part of the democratic process. The charity concerned will already be required by charity law to report on its expenditure so what is to be gained by placing further reporting requirements which can only create additional costs?

Community organisations from informal voluntary groups to large national and international charities need to be able to challenge politicians, ask difficult questions and say what they are seeing happening in communities around them. The ambiguities in this bill will leave many organisations uncertain over what they are allowed to say and when. There is already difficulty for the sector in establishing clear boundaries concerning campaigning on “political” issues. This bill does nothing to address them, rather it makes matters considerably more complex – again, for no discernible benefit. This will serve only to suppress the voices of organisations working to support some of the most marginalised and voiceless people in society. I cannot believe this is an intended consequence of the Bill.

I should also like to draw your attention to the local implications of these proposals: in areas where there is a virtually unshakeable party majority, it is only by influencing political processes that any kind of campaigning can be done. The learning and insight from community groups and charities needs to be able to influence the formation of policy, not just the implementation. All of this can and should be done openly and transparently: and there is surely sufficient weight in the current body of charity law to enforce this.

I urge you to consider carefully, the history of charitable influence upon policymaking in this country: think of all the legislation and change which has been initiated as a result of the campaigning work of charities and this must be valued, not stifled. Some years ago, I was involved in supporting the patients and families of the older people who suffered mental and physical abuse on Rowan Ward. What change came about as a result of that was due to the campaigning approach taken by the relatives support group who banded together to air their concerns and demand answers at local, regional and national level. Their cause was taken up...
by politicians and issues of elder abuse subsequently appeared in party manifestos. Imagine having to tell that group that they were not allowed to spend more than a fixed amount of money before being accused of breaching the laws on lobbying. Could you do it?

I would ask you to reflect on the overlap with the Charities Act and find ways to protect the democratic right to challenge any institution (political or otherwise) of groups working on a not-for-profit basis for statutorily defined charitable objectives.

One final point: we have recently been meeting with groups to discuss democratic engagement of young people. What hope do we have of persuading them that political involvement is part of being an active member of society the Government is at the same time implementing legislation which stifles a key means of public debate? These campaigning groups are signs that democracy is alive and kicking and not just something we do on a Thursday every five years or so.

*August 2013*
Written evidence submitted by The Law Society of Scotland (GLB 37)

Introduction
The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interests of our solicitor members but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes.

This paper is intended to inform of our comments on the proposed bill. If you would like to discuss the paper further, or if you would like more information on points we have raised, please do not hesitate to contact us. Contact details can be found at the end of the paper.

Background
The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill (the bill) was introduced at First Reading in the House of Commons by the Leader of the House of Commons, Andrew Lansley MP, on 7 July 2013. The bill is due to receive its Second Reading on 3 September 2013. The bill follows the earlier Government consultation ‘Introducing a Statutory Register of Lobbyists’ published in January 2012¹, to which the Society responded² and reflects the Governments public commitment to introduce a statutory register for lobbyists.

Summary of main provisions
Part 1 of the bill seeks to prohibit any person from engaging in consultant lobbying activity directed to a Government Minister or permanent secretary unless that person, or in the case of an employee their employer, is entered in the proposed register of consultant lobbyists. The bill creates an offence for a person to carry on consultant lobbying activity unless registered. Where an offence is committed, the courts can impose a fine up to the statutory maximum. The Registrar, as an alternative may impose a civil penalty.

² http://www.lawscot.org.uk/media/483253/law%20reform_introducing_a_statutory_register_of_lobbyists.pdf
The bill defines the business of lobbying activity as making direct (oral or written) communications, in return for payment and on behalf of another person. The provisions of the bill will apply to any direct communications, regardless of the fact that either the person or the Government Minister or permanent secretary concerned may be outside of the United Kingdom when that communication is made.

The bill also sets out the requirements for the register, including what information the registered person will be required to provide on a quarterly basis. This will include, as well as basic information such as the person’s name and address, client information and details of any payment received. The Registrar may issue a notice requiring any person entered on the register or any other where there are reasonable grounds for believing a person is a consultant lobbyist, to provide information. The bill provides that it will be an offence to fail to provide such information as required under the notice. The Registrar will be under a duty to update, monitor compliance and publish the register.

The Society’s position

Introduction

The Society recognises that lobbying is a necessary, important and legitimate activity in a democratic society, providing interested parties with the opportunity to engage with politicians in generating effective and considered public policy and legislation, and is a fundamental part of the political and legislative process. To fulfil its statutory obligations to both its members and public, the Society regularly engages with the Scottish Government, the United Kingdom Government, and both the Scottish and United Kingdom Parliaments, providing comment and advice on policy and legislative proposals and raising key issues and points for further consideration and debate. Supporting the principles of transparency, which the bill has as its core objective, the Society is voluntarily registered on the European Commission’s Transparency Register, which provides the public with access to information of those who are actively engaged in guiding and influencing the EU decision-making process.

The Society recognises the importance of ensuring the public’s trust and confidence in the political process and legislative system, and agrees that transparency provides effective oversight and scrutiny of the political process and is a central element of good governance.
The Scottish Government has indicated that they too shall shortly be introducing a bill for a statutory register of lobbyists. The Society suggests that to ensure equal transparency, public understanding and appreciation by organisations and businesses, who engage in lobbying, of their responsibilities, the Scottish and United Kingdom Governments should ensure any registers are aligned to minimise potential business and public uncertainty.

The Society notes that although the bill places a duty on the Registrar to publish the register, it is not clear to what purpose and use the register will be put, other than conveying information on who is lobbying on behalf of whom. Should not Ministers of the Crown or permanent secretaries be required to refer to the register prior to any meeting with lobbyists or to notify the Registrar of any direct and unsolicited lobbying communications they receive?

**Specific Clauses and comments**

**Clause 1 – Prohibition on consultant lobbying unless registered**

Clause 1 provides that a person must not carry on the business of consultant lobbying unless he or she, or his or her employer, is entered in the register of consultant lobbyists.

The effect of this clause is that only consultant lobbyists (effectively third party lobbyists) those who lobby direct on behalf of clients, and for whom this is their main business activity will be required to be registered. Persons, or businesses, where lobbying is incidental to their normal business activities will not be required to register. This will include in-house lobbyists, trade unions and charities, all of whom may conduct lobbying activity without the need to register. The Society is of the view that to apply different rules to different ‘levels’ of lobbyists may obscure the desired transparency which the United Kingdom Government is seeking to achieve, and may give rise to confusion by the general public, who are unlikely to differentiate between consultant lobbyists on one hand and in-house and other lobbyists on the other.

**Clause 2 – Meaning of consultant lobbying**

Clause 2 provides that a person carries on the business of consultant lobbying if in the course of a business and in return for payment, the person makes communications on behalf of another person with a Minister of the Crown or permanent secretary.
In seeking to define ‘consultant lobbying’ the bill fails to define ‘business’. The Society suggests that for clarity, it would be appropriate for this too to be defined within the bill.

Clause 2(1) (a) makes reference to ‘person or persons’. The Interpretation Act 1978 provides that the singular includes the plural. Therefore, the Society suggests that it is not necessary for reference to be made to “persons”.

Clause 2(3) limits the provisions of Part 1 to communications which are oral or written and made personally to a “Minister of the Crown or permanent secretary” only. The requirement to register will not apply where communications are directed to backbench MP’s, Peers, Parliamentary Committees or civil servants below the rank of permanent secretary. In addition, they do not refer to party structures or to communication with opposition leadership MP’s, who may equally be in a position to influence legislation, policies, contracts and other matters or functions of Government. The Society is aware that there is a significant amount of lobbying communications with all those mentioned, and to narrowly restrict communications to only Government Ministers and permanent secretaries may dilute the objective of true transparency.

However, if the proposals were to extend to lower levels of lobbying activity, for example at a lower Government level or middle ranking civil servants, then careful consideration should be given to the resource impact, as a significant amount of lobbying is conducted at this level.

Clause 2(4) provides that it does not matter whether the Minister or permanent secretary or the person making the communication is outside of the United Kingdom when the communication is made.

The Society believes that any proposal to make non-registration an offence (under clause 12 of the bill) may only be applied effectively to lobbyists having a place of business in the United Kingdom. The Society suggests that Article 16(2) (b) of the Services Directive would appear to preclude the imposition of a mandatory registration requirement upon lobbyists from elsewhere in the European Union that have chosen to refrain from establishing a United Kingdom branch.

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3 The Interpretation Act 1978 s6. In any Act, unless the contrary intention appears…
(c) words in the singular include the plural and words in the plural include the singular.
4 Services Directive 2006/123 EC Article 16(2) Member States may not restrict the freedom to provide services in the case of a provider established in another Member State by imposing any of the following requirements: … (b) an obligation on the provider to obtain an authorisation from their competent authorities including entry in a register or registration with a professional body or association in their territory, except where provided for in this Directive or other instruments of Community law;
Clause 4 – The register

Clause 4(2)(g) provides that the entry for each registered person must include "such other information as maybe specified in regulations". The Society suggests that this is very wide and ambiguous and provides no specification, guidance or indication of the kind of information which may be required. The Society suggests that there needs to be further clarity about the kind of information to be covered by sub-ordinate legislation under this sub section.

Clause 4(5) (a) provides that regulations may make further provision for “...other information about the person". The Society suggests that, as with Clause 4(2)(g) above, the term “other information" is very wide, and further clarity on this should be provided.

Clause 5 – Notification of client information and changes

Clause 5(5) concerns information to be contained in the client information for a quarter which includes the statement that “in the quarter in question, the registered person neither engaged in lobbying in return for payment, nor received payment to engage in lobbying". Clause 5(5) does not refer to payments for past lobbying which may only be paid some months or indeed years after the lobbying activity has been completed.

Clause 6  Duty to update register

Clause 6(6) provides that if the Registrar has reasonable grounds for believing that a registered person is not, or is no longer, a consultant lobbyist, the registrar may decide that:

“(a) the person’s entry should include a statement to that effect; or
(b) the persons should be removed from the register”

The Society notes that Clause 6 does not provide any provision for the registered person to make representations to the Registrar concerning the basis upon which the Registrar may act.

Clause 6(7) defines “working day” and excludes weekends and certain public holidays from this definition. For completeness, the Society suggests that days of public mourning and public celebration should be included.

Clause 9 Notice to supply information

Clause 9 provides that the Registrar may serve an “information notice” on:

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9(2) (b) “…any person who is not entered in the register but whom the Registrar has reasonable grounds for believing to be a consultant lobbyist”

The Society suggests that “has reasonable grounds” is very wide and ambiguous. What will constitute reasonable grounds and what shall be taking into account in determining these? The Society suggests that further clarity should be given on this.

Clause 10 Limitations on duty to supply information and use of information supplied

The Society notes that Clause 10(5) provides that a “relevant statement” in relation to a requirement in an information notice can mean 10(5) (a)… “an oral statement”. The Society suggests and believes that such a relevant statement as defined in Clause 10(5) (a) should not be used in evidence on a prosecution against the maker of that statement unless that person had the benefit of access to legal representation at the time the statement was made.

Clause 12 Offences

Clause 12 provides that it shall be an offence for a person to carry on the business of consultant lobbying unless they are registered, or to engage in lobbying activities if their details, as entered in the register, are inaccurate or incomplete. Clause 12 creates a strict liability offence.

The Society is seriously concerned with regard to the strict liability offence provision in Clause 12. In particular, and notwithstanding the due diligence defence as provided in Clauses 12(5) of the bill, the Society notes that a mere omission, error or inadvertency can result in an offence being committed in respect of Clauses 12(2), 12(3) and 12(4).

Clause 13 Bodies corporate and Scottish partnerships

Clause 13 extends liability for an offence beyond the legal entity (body corporate and Scottish partnerships) to officers or partners of that legal entity where that offence has been committed with their consent, and to any individual whose neglect has contributed to the commission of the offence.

The Society notes that Clause 13(3) specifically relates to offences committed by partnerships constituted in Scotland. The Society also notes the terms of the Partnerships (Prosecution)(Scotland) Act 2013, which
provides that dissolved partnerships shall remain liable for the commission of any offence alleged for a period of 5 years following dissolution.\footnote{Partnerships (Prosecution) (Scotland) Act 2013 Section 1(3)}

The Society suggests that Clause 13(3) be amended, in keeping with the terms of the Partnerships (Prosecution) (Scotland) Act.

**Clause 14 Civil penalties**

Clause 14 provides that the Registrar may impose a civil penalty where the persons conduct amount to an offence under Section 12(1) - (4).

The Society questions why, as an alternative to prosecution, the Registrar is entitled to impose a civil penalty on a person and can, in so doing, ignore a due diligence defence, as available to those prosecuted for a criminal defence under Clause 12(5).

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

Clause 15 provides that before imposing civil penalty, the Registrar must serve a notice on a person of their intention to do so.

The Society suggests that any notice of intention should refer specifically to a recommendation to take legal advice before considering any written representations, or indeed acceptance of the civil penalty.

**Clause 16 Imposition of penalty**

Clause 16(3) provides that the statutory maximum of any penalty notice must not exceed £7500.

On the basis that the civil penalty is an alternative to prosecution, the Society notes that the highest fine which can be imposed in Scotland for a summary offence is a level five fine of £5000\footnote{Criminal Procedure Scotland Act Section 225}. The effect of this is that a person who is found liable for an offence may be subject to a lower maximum fine, than if they opted to accept a civil penalty under any notice of intention. The Society accordingly questions the reasoning behind the amount of £7500 being the statutory maximum for the civil penalty.

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Clause 17 Right to appeal against imposition of civil penalty
Clause 17 provides a person, on whom a penalty notice has been served, with a right of appeal.

The Society notes that Clause 17(3) provides that “regulations may make provision for and in connection with the determination of appeals under this section”

It is vital that the appeal procedure in its entirety should be included on the face of the bill.

Clause 18 Civil penalties and criminal proceedings
Clause 18 provides that the Registrar may not impose a civil penalty where criminal proceedings have been commenced or a criminal penalty imposed.

The effect of Clause 18 is to prevent a “double penalty” being imposed (civil and criminal). However, the Society notes that professional bodies may impose civil penalties on members in respect of professional misconduct. Accordingly the Society believes, and suggests, that no civil penalty should be imposed by the Registrar upon a person subject to such disciplinary procedure.

Clause 21 Guidance
Clause 21 provides that the Registrar may give, and publish, guidance on how the Registrar proposes to exercise the functions under Part 1.

The Society believes that the Registrar should be under an obligation to consult on any proposed guidance before this is finalised and published. Clause 21(3) provides that the Registrar may publish revisions or replacement guidance. Again, the Society believes this should only be done after full consultation on the proposed revisions or replacements.

Clause 22 Charges
Clause 22 provides that the Registrar may impose charges in the making, updating and the maintenance of entries in the register.
Although Clause 22(1) provides for charges in relation to the "making, updating and maintenance of entries in the register" there is no provision for the recovery of set-up costs. The Society asks how these are to be recovered.

**Clause 23  Power to make further provision**

Clause 23 provides that the Minister may make provision by way of regulations for the purposes of carrying into effect any provision of part 1, in particular regulation relating to the register and Registrars powers.

The Society suggests that before finalising any regulation under this clause, the Minister should be under an obligation to consult.

**Clause 24 Regulations**

Clause 24 provides the Minister with the power to make such consequential, supplementary, incidental or transitional provision as the Minister thinks appropriate.

The Society suggests that before finalising any regulation under this clause, the Minister should be under an obligation to consult.

**Part 2 Non-Party Campaigning Etc.**

**Clause 26 Meaning of “controlled expenditure”**

Clause 26 amends *Section 85 of the Political Parties, Elections and Referendums Act 2000 (PPERA)* controlled expenditure by third parties and the definition of what amounts to controlled expenditure. PPERA sets out rules relating to third party election campaigns and imposes reporting requirements (with the Electoral Commission) on third parties who conduct campaign activity with the intention to promote electoral success for one or more political party.

S85 currently defines controlled expenditure as "...expenses incurred...by a third party in connection with the production or publication of election material..." Section 85 then defines ‘election material’ as “material...intended to promote or procure electoral success" s85(3).
Clause 26(2) amends S85 PPERA to define controlled expenditure as expenses incurred which fall within Part 1 Schedule 8 (advertising, market research, manifests etc.) for election purposes which have been incurred for the “… purpose of or in connection with promoting or procuring electoral success …” and Clause 26(8) widens the definition of election material to “…material which can reasonably be regarded as being for election purposes…”

The Society notes that the practical effect of Clause 26 is to widen the definition of controlled expenditure so as not to be solely reliant on the intention of the third party in producing that material. Clause 26 allows the effect of the expenditure to be taken into account. This is the desired objective of the Government, as clearly set out in the accompanying explanatory notes 7.

The widening of the definition of ‘election purposes’ and ‘election material’ will increase the number of activities caught by the rules and increase the number of third parties required to register with the Electoral Commission. The Society is concerned that this may deter third party organisations, including charities and other non-political organisations, from actively engaging in public policy discussion, even where this is for non-political purposes, and may therefore stifle legitimate public debate.

Clause 27 Changes to existing limits.

Clause 27 amends Section 94(5) PPERA, which sets the limits on controlled expenditure, expenditure incurred in the production of election material, and this being the amount beyond which a third party must register with the Electoral Commission. In England, this is currently £10,000 and in Scotland, Wales and Northern Ireland £5,000.

Clause 27 reduces these thresholds to £5,000 and £2,000 respectively.

Part 1 Schedule 8A defines expenditure as, costs associated with advertising, unsolicited material including printing cost and “…any manifesto or other document setting out the policies or the third party’s view on the policies…” of one or more registered party.

The Society believes that proposed reduction under Clause 27 of the thresholds limits will, as with Clause 26, impact on third party non-political organisations and may deter the raising of public awareness of issues that

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7 Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill- Explanatory Notes Paragraph 59.
in any way may be connected with an election, even though these may not make specific reference to political party policies or candidates.

Clause 27(2) also amends Schedule 10 of the PPERA, reducing limits of what recognised third parties (those registered with the Electoral Commission) may spend in the year before an election, and introducing ‘constituency limits’ being the maximum amount a recognised third party can spend in a particular ‘constituency.

In calculating the expenditure incurred, staff costs are now to be taken into account.

The Society believes that lowering the threshold limit will increase the regulatory burden on recognised third parties, and the administrative burden of the Electoral Commission. It may also deter many smaller recognised third parties (such as charities) from working together as their accumulative expenditure will be more likely to exceed the reduced threshold limits.

The Impact Assessment

Measure 2, assesses that only 2 hours should be assumed for familiarisation with the legislation as the change to the definition of election material is a “relatively clear and simple requirement”. We believe that this is an underestimation of the time required to be properly familiarised with the law affecting this area.

Furthermore in relation to Measure 4, the Impact Assessment suggests that a further 30 organisations will be registered bringing the total to 60. The basis for this assessment is not set out and the number may be significantly more. Similarly around 5 days are estimated for familiarisation with the regulatory framework. This does not include continuing familiarisation nor updates required because of subsequent changes in the law.

Part 3 Trade Unions’ Registers of Members

The Society is not in a position to comment on this part of the bill.

Schedule 2

Schedule 2 Paragraph 3(6) sets out the grounds under which the Minister may dismiss the Registrar.
In addition to the circumstances as set out in Paragraph 3(6), the Society suggests that the grounds for dismissing the Registrar should include other grounds, such as insolvency, absence from office and conviction of a criminal offence.

August 2013
I have been persuaded to contact you following your concern that only two charitable organisations had raised concerns about the above bill.

Firstly I would like to support NCVO and the evidence that they gave you recently. As a membership organisation they speak for and on behalf of us; they have far greater expertise and more time to engage with you on ensuring that unforeseen consequences do not occur from badly worded and ill thought out legislation than organisations such as mine do. However following your comments I feel that I have to take the time to add my voice to the growing chorus of concern about the impact that this legislation would have on the work of many community groups and charities.

CCVS exists to empower and champion community groups and charities at a local level. The majority of our members have an income below £10,000 a year and are frankly unaware of this legislation and how it might affect them. To this end I am going to give a number of examples of how our members might be affected as well as the potential impact the bill may have on the work of CCVS.

A key strand of the work that we do is representing and championing our members and the wider voluntary sector with statutory partners in the area where we operate. This might be local government, health or the Police and the Police and Crime Commissioner. As such we regularly express an opinion or promote an issue to ensure that the sector does not lose out and that its interests are best served. This might be trying to reduce the impacts of cuts and stopping grant programmes being closed, or campaigning and lobbying to ensure that the sector is able to play a meaningful role in commissioning. It is highly likely that these issues, and many other areas where we raise our voice on behalf of the sector, could form part of an election manifesto and we could find ourselves unwittingly falling foul of the new regulations. Are we simply being expected to stop representing our members in the run up to an election in order to safeguard any inadvertent wrongdoing?

Two examples of where our members or those we represent might be affected by the legislation are.

1. During the run up to the recent election of the Police and Crime Commissioner we worked closely with a number of organisations to raise awareness of the changes, the new role and who was standing. Some of our members were involved with promoting their work and the work of the sector to candidates and generally trying to raise awareness of the importance of the work that was going on around women’s issues within the police and crime agenda, this included issues of domestic abuse and sexual violence as well as the need to work with female ex-offenders. This loose coalition of organisations could well have found themselves covered by the legislation had it been in place then as a number of candidates quite rightly expressed an opinion on these topics.

2. There is a growing campaign in our area of local groups opposed to development on the green belt. These local, often village based, groups are coming together to share resources and expertise and raise awareness of their concerns. These groups are purely voluntary with no paid staff but they are undoubtedly involved with an issue that were there to be an election tomorrow would be something that candidates would be expected to have a position on. Would these groups and the wider coalition be subject to the rules within the bill as it is currently drafted?
Community groups and charities at a local level have a long history of campaigning on local issues and fighting for change. These are often run by passionate volunteers who would be unaware of the fact that they may be breaking the law, and whose voice you might silence if they thought that by forming such a group they could be arrested. As a general rule these local campaigns are not Political, they may well however be promoting a viewpoint that fits more with one political party than another and as such they could be seen to be promoting the views of one candidate or party over another, even if this was never a consideration.

I am sure that this legislation is not about silencing the local voices, or stopping the campaigning that takes place at all levels of the community sector from the ultra-local of the groups we work with to the national level of groups such as Shelter, Greenpeace and many others.

I also know that just because you have not heard from hundreds of organisations it means that most organisations are not, or would not be, concerned about the implications of this bill. We rely on those closest to government, with the time and expertise to comment (such as NCVO) to speak on our behalf. To be fair we at a local level have enough on our plate to engage with local government without trying to engage at a national level. In future I suggest that you do not see NCVO as one organisation with one voice, but as a multitude of organisations with one voice and that the power of that is recognised.

August 2013
Written evidence submitted by Voluntary Sector North West (GLB 39)

Voluntary Sector North West seeks to support the voluntary and community sector in the region. This often involves working with the sector to highlight concerns of the impact of policies, both local and national, on some of the most vulnerable people in our society.

We use the evidence from groups that we work with to identify positive improvements to policy that can enable the sector to support and empower individuals and the communities they live in.

We are concerned that there may grey areas from the work we do that could create problems for all concerned in the future. A small example may be that we want all Health & Wellbeing Boards to have a VCS representative on them, my understanding is that if one party used this as a reform they would undertake our promotion of this cause could come under scrutiny.

This may seem a minor example but there are issues greater than this on a daily basis relating to health reform, public service delivery and welfare matters that could all cause concern but we believe it is legitimate for us to promote an highlight.

August 2013
Written evidence submitted by the Joseph Rowntree Foundation (GLB 40)

I am writing to express my deep concerns at the likely impact of some of the provisions of Part 2 of the Lobbying and Transparency Bill on both the operation and effectiveness of the Joseph Rowntree Foundation. I fully support the representations already made by NCVO, and will not repeat their concerns in detail.

JRF is a UK wide endowed foundation, with a charitable purpose of influencing social change through the commissioning of research evidence and promotion of that evidence. As a funder of social policy research we have three strategic aims which are to:

- Identify the root causes of poverty and injustice
- support resilient communities where people can thrive
- Respond positively to the opportunities and challenges of an ageing society.

In order to achieve these aims we commission research, publish summaries, brief the media, hold events, meet officials and politicians and do this in the four countries of the UK. As a registered charity with a very clear view about electoral priority we have always operated with strict protocols to ensure that none of our material can be interpreted as seeking to influence the outcome of a general election. It is our view that endowed foundations, like other charities, should maintain the highest standards of propriety.

The elements of the Bill before your committee that give me particular concern are:

1. The fact that for a UK wide organisation there can be an election in prospect at almost any time and the provisions do not specify or limit the time sufficiently. With a referendum in Scotland, local elections, general elections and EU elections it is hard to identify a time outside election period in which a UK wide body could publish or promote with impunity.

2. The definition of activity that might be seen as relevant for election purposes is extremely wide. As part of our normal business we would use social media, brief people, companies and politicians, and stage events in order to promote our research. The promotion of that research for public benefit is, after all, the reason that we are deemed charitable.

3. The cost limits are reduced in a way that is neither explicable, nor relevant and whether or not gifts in kind are considered part of the expenditure, such financial restrictions both present an accounting burden, and so add to the degree of regulation to which we are subject, and at the same time bear no relation to real costs.

4. We seek at all times to work in partnership or coalition with others, and believe that is the most effective way of using our charitable resource. The provisions within the bill which penalise all members of a coalition for the activities of that body will only serve to inhibit this approach.
In short, it is my view that the provisions of the bill, if enacted, will reduce significantly the effectiveness of the endowed foundation I lead, make it difficult for us to achieve our purpose, and divert charitable funds to responding to legal challenge in a way that is wholly inappropriate. While I am entirely committed to ensuring that lobbying is transparent, and accountable, these provisions stifle charitable endeavour, empower antagonistic and hostile challenge, and do not contribute in any way to the proper and needed regulation of lobbying. They will be expensive to administer, have unforeseen consequences, and stifle public debate.

August 2013
Written evidence submitted by Roald Dahl’s Marvellous Children’s Charity (GLB 41)

We are very concerned to ensure that the lobbying and transparency bill clearly sets out that legitimate charitable activity that we might undertake, eg, talking to the Department of health about a particular policy issue affecting children, would be protected from being deemed party political or related to electioneering. We think it is vital that the bill is clearer in protecting this type of legitimate activity. We cannot rely on verbal assurances that the bill will do this – the wording of the bill need to be clear and, indeed, transparent.

I would be grateful if you could look at the bill again.

August 2013
Written evidence submitted by the British Youth Council (GLB 42)

We are therefore submitting our example, as a charity that campaigns as part of its work, as a case study against which the new Bill could be tested to raise questions and perhaps reassurance about both the intention and impact of the Bill on our work as highlighted by recent media reporting of lobbying by NCVO and the Electoral Commission’s response.

We are charity, whose mission is to give a platform and voice to young people in society. We do this through supporting information skills and volunteering opportunities to young people – who self organise, campaign and get involved in democracy projects. Our initiatives include the UK Youth Parliament, Local Youth Councils network and Young Mayors. We hold elections, ballots and even have our own debate in the House of Commons and a Youth Select Committee – all with cross party support in Westminster and the devolved nations.

Our funding is mixed from trusts, grants, and some public money including a grant from the Cabinet Office to support youth scrutiny of Government, and who want us to engage more young people with a view to increasing the youth participation in adult democracy. The Office for Civil Society and Nick Hurd MP is our current supporting Dept and Minister.

We are also supporting engagement in the political process through youth participation and representation projects to Europe and the Commonwealth. We are the official Youth Council of the UK and our members include NUS, Girl Guiding Scouts, and many others who have an interest in promoting youth views. Our Board are all elected young people.

Although we are careful to comply with Charity Commission rules on political involvement (and we have no party affiliation and do not campaign for any party at any time - we do make a point, during the general election run up, to take this opportunity to raise awareness amongst young people about democracy, to use their vote, to campaign on issues.

We also target politicians and the media in general to pay attention to youth issues - and raise awareness about what young people want from decision makers. To do this we

1/ produce a manifesto and ask candidates to sign up to it.
2/ promote campaigns eg include Votes at 16, Curriculum for Education, Transport to candidates and the media.
3/ We publish information about parties and candidates who agree or disagree with the manifesto or campaigns. This informs young people about how to vote for.
4/ We intend to host panels, debates and questions times with politicians (which we already do at other times of the year, including visiting Party conference to host seminars on popular youth topics.

All this involved staff time and materials and, we believe, is actively encouraged by our funders and our purpose. I stress that we are not party political and make a point of checking in and sharing our plans with the Electoral Commission, who have cleared us, especially as the amounts of money involved were below previous limits. We don’t really campaign at constituency level.

We are concerned HOW the Bill affects, us and since we don’t have the legal expertise we are reliant on others to advise us. Our issues are CLARITY.
NCVO and the media reporting has raised our anxiety and we are therefore sharing our case study with you, to in turn raise with Government. We have written direct to the Cabinet Office and are awaiting a formal response.

As I say we have not had time or expertise to unpack more detailed evidence for you – but hope that the Bill writing team will help clarify issues. We wrote to them last week and await their response.

August 2013
Written evidence submitted by The Northern Ireland Council for Voluntary Action (NICVA) (GLB 43)

The Northern Ireland Council for Voluntary Action (NICVA) is the umbrella body for the voluntary and community sector in Northern Ireland. We have just over one 1,000 members drawn from a broad range of organisations from right across Northern Ireland. I am writing to share NICVA’s concerns about some of the proposals in Part ii of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill.

As you will be aware charities are already bound by charity law and therefore cannot be party political. However if the proposals included in the draft Bill were to become law then many charities would be curtailed from getting involved in campaigning and advocacy work on issues that are important to the people they work with.

The proposals in the bill are complex and unclear. However the definition of the scope of the bill is so broad it could capture a range of the day-to-day activities charities carry out, entirely legitimately, as part of their campaigning and advocacy work.

In addition the bill proposes a regulation and reporting framework which would place a vastly disproportionate administrative burden on both charitable organisations and the regulatory bodies.

We share the concerns already detailed by our sister organisation NCVO in its written and oral evidence to you. In addition we are deeply worried by the extremely low rates of allowable expenditure proposed for Northern Ireland. We are also concerned about the complexity and uncertainty of how the proposed changes will work in relation to NI Assembly elections.

We recognise that there is a need to regulate lobbying activity in order to prevent further ambiguity and mistrust in the political system. However in NICVA’s opinion the proposals in the Bill will have far reaching and unintended consequences for voluntary and community organisations, if it becomes law in this format.

04 September 2013
Written evidence submitted by The Children's Media Foundation (GLB 44)

I should like to register the unequivocal support for the NCVO position, expressed by Karl Wilding of the NCVO at your committee hearing on the 29th August, on the problems perceived by charitable and other voluntary organisations in the drafting of Part 2 of the Transparency of Lobbying Bill.

The Children’s Media Foundation is an organisation entirely funded by public donations, with the aim of protecting and improving the media choices for UK children and ensuring the public, press and politicians are kept informed of research connected with the various issues arise around children and their use of media so that informed and reasonable decision might be taken by parents in their media choices for their children, by the press in their reporting of the issues and by politicians in their decisions on regulation and legislation.

Our organisation almost exactly fits the description of a voluntary body in one of the Electoral Commission’s examples of lack of clarity in the drafting of the Bill, which they submitted as a briefing to MPs:

A voluntary organisation is seen as having expertise in a policy area on which several political parties make policy announcements in the run-up to the election. The media frequently ask the organisation for its views on the issues and the parties’ policies, and sometimes invite it to provide interviewees for broadcast coverage. Will the cost of reactively setting out the organisation’s views count as ‘for election purposes’? If so, a proportion of the salaries of the organisation’s press and policy teams would be regulated and will require the organisation to register with us.

We are frequently called upon to comment in the press and other media on matters relating to content made for children or the media they access. We are also occasionally asked for briefings by MPs on available research. We will on occasions take positions in these comments and briefings, and it concerns us that as a result we may be required to register and our activities may be restricted by the funding rules.

September 2013
Written evidence submitted by the National Trust (GLB 45)

Introduction

1. The National Trust welcomes the opportunity to provide evidence to the Political and Constitutional Reform Committee on the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill.

2. The National Trust is Europe’s largest conservation charity with over 4 million members and an annual turnover of more than £430 million. We currently manage over 250,000 hectares of countryside, several hundred historic houses, gardens and parks and more than 700 miles of coastline across England, Wales and Northern Ireland.

3. We note that the Committee has largely sought evidence around Part 1 of the Bill. We support NCVO’s submission on this area of the Bill and make no further comments on this part of the bill. However, we believe that the Committee should also closely examine Part II of the Bill and our submission focuses on our concerns in this area, building on points made by NCVO in their submission.

Policy advocacy and the purposes of the National Trust

4. Throughout the history the National Trust we have sought to share our expertise, developed from the practical experience of looking after places in pursuit of our purpose, as first set out in the National Trust Act 1907 as:

“…promoting the permanent preservation for the benefit of the nation of lands and tenements (including buildings) of beauty or historic interest and as regards lands for the preservation (so far as practicable) of their natural aspect features and animal and plant life.”

5. In performing this role we have always taken a broad view. Our work therefore has involved direct acquisition of places to enable their permanent care through public ownership under the National Trust as well as advocating more broadly on behalf of special places, including those within and beyond our care.

6. Our history of informed policy advocacy is long-standing. Many of the policies on which we worked earlier in our history, which might now be seen as politically non-contentious (and viewed as having delivered substantial public benefits), were more contentious at the time of their origin. By way of example the National Trust was involved in:

- negotiating the establishment of The Country House Scheme linked to the 1937 National Trust Act, which allowed owners to transfer property in lieu of inheritance tax into the ownership of the National Trust for ongoing benefit of the Nation.

- serving as a member on the Standing Conference on National Parks, a collection of institutions that sought to promote the idea of National Parks, and which eventually resulted in the National Parks and Access in the Countryside Act of 1949 and the establishment of the nation’s National Parks.
7. We continue to advocate policies which advance the protection and enjoyment of places of beauty and historic interest today, using our expertise across a wide range of policy areas commensurate with our broad role. Most recently the National Trust has:

- **Sought changes to the Planning Bill through a “Planning for People” campaign.** Over 200,000 members of the public showed their support by signing our petition, resulting in changes to the Bill by the government. Our work was grounded in our experience as a champion for a strong, effective land use planning system since the 1920s.

- **Supported calls for rethink of the government's proposed changes to the arrangements for the ownership and management of the public forest estate.** This was grounded in our experience as one of the largest public owners of forests and woods in the UK.

- **Challenged the government to go further in the designation of Marine Protection Zones** following the decision to downscale the extent of the new network of MPZs. Our advocacy was based on our experience of direct engagement in the process for identification of potential MPZs and as a partner in establishing the first MCZ in UK waters off Lundy.

- **Have proactively engaged in the design and routing of HS2,** working with local authorities, parish councils, communities and HS2 Ltd to improve the quality of the scheme and to ensure that the future needs of the communities and places affected are taken into account.

- **Have been involved in founding of a coalition of organisations, under the umbrella of “The Wild Network”**. This will bring together a wide range of organisations, large and small, who want to work together to promote more opportunities for children to play outdoors and experience more of the health, wellbeing, educational and personal benefits of time spent playing in nature.

8. The National Trust is therefore concerned that the scope of the Bill and the uncertainty of definitions it introduces on ‘lobbying’ could limit this work. Indeed, we believe that some of the considerable public benefits we have won in the past through engaging with politicians would not be possible if they had been regulated by the terms of the Bill currently before Parliament.

**Our Concerns**

9. We entirely support the need for transparency. We ensure that we are transparent in our activities through detailed reporting via our Annual Report and statutory accounts and through using our varied communication channels to keep the public informed around our work. We also support this through scrutiny by our Board of Trustees who have oversight responsibilities under existing charity law, and are supported by the National Trust Council which has 52 members, 26 elected by the members of the National Trust and 26 appointed by organisations whose interests coincide with the role of the National Trust.

10. However, we have serious concerns about the proposals in Part II of the Bill, which stem from the tremendous uncertainty created by the range of new ambiguous definitions and regulations introduced, and to which our work could become subject. We believe that Part II of the Bill is likely to have the unintended consequence of regulating core and everyday policy activities of
charities that are already regulated by the Charity Commission and which are undertaken for non-political purposes. The primary danger arises in simultaneously:

- introducing a new loose definition of what is defined as being ‘for election purposes’ - which even removes the need for the intent for activities to be for election purposes for them to fall into this category;
- broadening of the regulated activities which fall within this new definition - so that they span beyond production of ‘election material’ (such as leaflets, adverts, etc.) and will include other activities such as events, media work and manifests;
- lowering the spending limits on regulated activities within an election year - if our activities were deemed to fall within the definition of ‘for election purposes’ the proposed spending limit would equate to c. 1% of our annual turnover;
- introducing constituency level spending limits - for regulated activities deemed to be ‘for election purposes’;
- including all staff costs in the calculation of spend - for activities deemed to be ‘for election purposes’ under the new definitions;
- adding new reporting requirements for charities - around donations and spending for charities which add burden and largely duplicate the transparency provided by Annual Returns required under charity law; and
- including the aggregated costs of partnership/coalition policy influencing activities deemed to represent political lobbying – so that groups of charities working together are required to account for the total costs of the entire range of activities in any partnership coalition within each of their own individual budgets for such activity.

11. So loose, uncertain and ambiguous is Part II that we suspect that:

- by merely stating a view on a contentious public issue during an election year charities could be defined as having undertaken political lobbying;
- the costs of commissioning and publishing research on public policy issues around which there are political differences of opinion (even subtle differences) could be redefined as spend on political lobbying;
- by opposing or supporting a planning application at the local level (something we might do in pursuit of the National Trust’s core purpose to ensure positive outcomes for the places in our care), in cases where prospective parliamentary candidates have differing views, could be deemed as political lobbying. Consequentially any expenditure on research, staff time and expert input in relation to such cases could be deemed as political lobbying costs;
- working proactively on sensitive large scale infrastructure or development projects (again something we might need to do in pursuit of our core purpose and statutory responsibilities to ensure positive outcomes for the places in our care, as is the case with HS2) could be redefined as political lobbying. Again, all costs on research, staff time and expert input would then be deemed as political lobbying costs.

12. It is likely for charities such as the National Trust that the spending limits would soon be reached under the ambiguities of Part II of the Bill because they could act cumulatively across the wide-ranging areas which our statutory and charitable purposes require us to act upon across England, Wales and Northern Ireland.

13. We therefore believe that the lack of clarity and uncertain interpretation of definitions in Part II of the Bill will create a system of regulation which would:
• be unworkable in interpretation and counter to the public interest;
• be open to mendacious or spurious challenges that would divert time and attention away from the legitimate pursuit of charitable policy advocacy of organisations like the National Trust;
• appear to allow retroactive judgements of what is political lobbying in a way which would be inherently uncertain, hazardous and unfair;
• add considerable ‘red-tape’ and regulatory costs to charities which would have to be diverted away from charitable activity;
• duplicate roles for regulation on political campaigning between the Charity Commission and Electoral Commission and create unhelpful uncertainties in the regulatory landscape for charities; and
• reduce the likelihood for large and small charities to collaborate through partnership or coalition arrangements.

14. We believe that Part II of the Bill is fundamentally flawed and entirely unworkable. If implemented the Bill could dramatically diminish the positive role that charities like the National Trust have played for more than a century in supporting access to democracy and informed public policy and decision-making in areas linked to our cause.

*September 2013*

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1 The retroactive nature of the Bill is of concern in cases where a Charity has taken a position or campaigned on a policy issue which is then subsequently adopted or spotlighted within the cut and thrust of electoral debate by an individual candidate or political party. This could mean that the Charity is retrospectively judged to have engaged in political lobbying even though its intent was to influence transparently through the normal channels of policy development in an apolitical way.
I am writing to you in connection with the 'Transparency, Non-Party Campaigning and Trade Union Administration Bill'. The Second Reading of this Bill is timetabled for the 3 September 2013, to be followed by a Committee Stage on 9, 10 and 11 September, so this matter is extremely urgent. The scope of activities contained within the Bill are extremely wide, and as it stands it will include activities carried out by charities as part of their work in representing the interests of their members. The complexity regarding registration of activities, financial thresholds, having to account for staff time in addition to other expenses, and a bureaucratic burden in terms of reporting will mean that civil society groups will be forced to curtail their activities, to the detriment of their members and of wider society.

The Women’s Resource and Development Agency works collaboratively with a number of organisations in the 'Women’s ad hoc Policy Group’. Before elections the group produces a ‘Women’s Election Manifesto’, containing demands that represent key concerns of women across Northern Ireland. The group also organises election events, to which female candidates from all political parties are invited to speak. In this way the group works to give a public platform to women who might otherwise have little exposure, given the male-dominated nature of public life and media in Northern Ireland. This initiative has been undertaken before every election and we believe that it has been significant in raising women’s issues and highlighting the inadequate representation of women in our political institutions. As the terms of the Bill stand currently, the Women’s ad hoc Policy Group would no longer be able to engage in this work, to the detriment of our developing democracy.

When the terms of this Bill are being scrutinised we would ask MPs to look again at the status of unaligned civil society groups and their need for registration. The rules must be made less restrictive so that charities are able to undertake legitimate campaigning in furtherance of their aims.

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The Women’s Support Network works collaboratively with a number of organisations for example in the ‘Women’s ad hoc Policy Group’. Before elections the group produces a ‘Women’s Election Manifesto’, containing demands that represent key concerns of women across Northern Ireland. The group also organises election events, to which female candidates from all political parties are invited to speak. In this way we work to give a public platform to women who might otherwise have little exposure, given the male-dominated nature of public life and media in Northern Ireland. This initiative has been undertaken before every election and we believe that it has been significant in raising women’s issues and highlighting the inadequate representation of women in our political institutions. As the terms of the Bill stand currently, the Women’s ad hoc Policy Group would no longer be able to engage in this work, to the detriment of our developing democracy.

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2 September 2013
Written evidence submitted by Wales Council for Voluntary Action (WCVA) (GLB 48)

Introduction to WCVA

Wales Council for Voluntary Action (WCVA) represents, campaigns for, supports and develops voluntary organisations, community action and volunteering in Wales. We represent the sector at UK and national level; and together with a range of national specialist agencies, County Voluntary Councils, Volunteer Centres and other development agencies, provide a support structure for the third sector in Wales.

We have 3,000 members, and are in touch with many more organisations through a wide range of national and local networks. Our mission is to provide excellent support, leadership and an influential voice for the third sector and volunteering in Wales.

Overall summary

• We believe that the new rules proposed in Part II of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill will have a significant impact on the day-to-day work of organisations within Wales’ third sector.

• We fear that the rules, as they are currently drafted, are unworkable practically.

• We understand Government’s desire to legislate in order to promote transparency in this area. We hope you will consider our concerns and ensure the bill does not damage the work of Wales’ thousands of charities and community groups. With our colleagues at the National Council of Voluntary Organisations in England, we are keen to work constructively to achieve the objectives of the bill without imposing burdensome unintended and unnecessary consequences on a vitally important sector of society.

Key concerns

• The bill introduces a definition of ‘activities for election purposes’ which is so broad and unclear that it could capture a range of the day-to-day activities charities carry out, entirely legitimately, as part of their campaigning and policy/advocacy work.

• Under the Bill a wider range of activities will be regulated by the Electoral Commission, not only election material (such as leaflets, adverts, etc) but other campaigning activities such as events, media work and manifestos.

• The new definition of the term ‘for election purposes’ is cast in such broad terms that it captures all expenditure incurred for the purpose of, or in connection with, promoting or procuring the electoral success or enhancing the standing of a political party or candidate.

• The definition of ‘for election purposes’ doesn’t rely only on the intent of the third party: the effect is also taken into account even if the activity was carried out for other purposes.

• Subsequently, legitimate day to day activities of charities engaging in public policy for non-political purposes could be considered ‘for election purposes’ and caught by the rules.
• 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 an election, could be regarded as being ‘for election purposes’ even if it doesn’t refer to specific policies or candidates.

• It also means that charities’ ability to react to important policy developments on issues relevant to their mission and beneficiaries could be undermined, as this could be seen as potentially coming within the meaning of ‘activity for election purposes’.

• Campaigning against a proposed new motorway, or to shape forthcoming legislation, for example - which a charity may have been doing for a good few years, well before an election - may be caught by the new rules. It is deeply worrying that large numbers of organisations would be unable to know with any degree of certainty whether they were acting within the law, leaving them open to the risk of prosecution.

• The bill also stipulates that if a non-party campaigner spends more than £2,000 on election material in Wales in the year before an election, then it must register with the Electoral Commission as a ‘recognised third party’. It will also reduce the total that registered campaigners can spend on regulated activity in the year before the election - down from £60,000 to £24,000 in Wales. All relevant spending on the defined activities will count towards these thresholds, including staff costs. Because of the way the total expenditure is calculated over the course of year and how broad the definition of ‘for election purposes’ is drawn, it is likely many organisations will reach this threshold. It is a criminal offence to exceed a spending limit.

• This reduction in permissible spend will cause problems for campaigning organisations, especially those involved in coalitions, as expenditure by coalitions is aggregated; this means that each member has to account for the full amount spent for the joint campaign, regardless of the individual contribution. There are also to be limits on spending in individual constituencies, and new regulations concerning reporting requirements.


September 2013
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August 2013
I’m writing as Chief Executive of a local infrastructure charity based in Newcastle upon Tyne. We have over 555 member organisations. We are a typical busy infrastructure organisation in active city and we would object on the following grounds:

- It isn’t clear which elements of our work could be classified as campaigning – for instance we are involved in research on the impact of welfare reforms – is that campaigning? We regard campaigning as one of our legitimate activities as our focus is about using voluntary and community action to improve the lives of people in Newcastle
- It would be impossible to designate / attribute an economic value to this element of our work
- There would be potentially disproportionate amounts of administration involved
- The Act would effectively be a deterrent as there could be confusion over what was classified as campaigning. Obviously we are bound by Charity Law and do not engage in party political campaigning, but we have signed up to campaigns previously which want change or strengthen policy during election time eg support for housing homeless people (Shelter Campaign)
- It is sometimes difficult to attribute exact staff costs to different workstreams
- Would we be deterred from joining in partnerships and working in collaboration with others as wouldn’t be clear if a joint piece of work was subject to the New Act and we could be unintentionally drawn into this?
- As part of our general work, we try to engage in public policy discussions, this could inhibit us from doing so in future

For instance, we promoted the hustings sessions around the election of the Police and Crime Commissioners locally; in particular the sessions aimed at the voluntary sector. Would this count as campaigning under the Act in the future?

3 September 2013
On behalf of the New Economics Foundation I am writing to you in your capacity as Chair of the Political and Constitutional Reform Committee to express concern about The Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill. In particular we are concerned about the second part of the Bill, regarding ‘non-party campaigning’.

Changes to the definition of ‘regulated election material’ in the Bill could bring into its scope many aspects of our work not currently regulated under electoral law - regardless of whether they were intended to influence the result of an election or not. This could limit our ability to campaign on political and economic issues in the 12 months before an election, but could also affect our ability to produce policy or research papers connected to issues being debated over the same time.

The Electoral Commission themselves have raised significant concerns about the ‘regulatory uncertainty’ that the Bill creates around campaigning on, or even discussing public policy issues in the year before an election, and have specifically asked that they are not given as wide a discretion as this Bill allows them to interpret the definition of political campaigning.

We hope that you will be able to draw the Government’s and Parliament’s attention to these and related concerns.

September 2013
Christian Aid welcomes the principle of Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill to enhance the transparency and oversight of lobbying in the UK. But we hold serious reservations about the potential impact of Part 2 of the Bill on the campaigning and advocacy activities of charities, particularly in the context of ‘regulated’ periods ahead of elections which are already governed by legislation under charity law.

Like many charities, Christian Aid undertakes lobbying and campaigning in line with charity law and guidance from the Charity Commission. We also publicly campaign for our policy recommendations and issues during an election period, in line with guidance from the Charity Commission. Our aim in doing so is to gain the widest possible support from all parties and candidates and the public for policies that are in line with our charitable objectives.

The provisions of the Bill are highly complex and unclear, and run the risk of severely limiting charity campaigning to promote policies in line with our charitable objectives without regard to partisan politics or electoral outcome. They have been described by the Electoral Commission as “flawed” with “unworkable content”.

The legal advice we have received in interpreting the Bill gives rise to the following, non-exhaustive, list of concerns:

- **Definition of regulated activities**: The range of activities has been extended from election material such as leaflets and television adverts to cover a wider range of activities. Additionally, the definition of ‘for election purposes’ has been expanded and includes consideration not of the intent but the effect of the activities. This could cause charities to silence themselves on issues of key public concern, for fear that their position could subsequently be adopted and used for the benefit of a particular party – with no intent to endorse or promote this party. **The range of activities considered to be ‘for election purposes’ and the definition of this term needs to be defined more clearly so that organisations are able to forecast what would count towards their controlled expenditure. The proposed definition is so widely drawn as to capture otherwise independent non-party campaigning activity.**

- **Staff costs**: Many staff roles are split across different functions, the campaigning component of which will fluctuate over time, and may be working to service a global campaign, the UK function being only one part. In addition, many staff work overtime, or volunteer extra time during busy periods such as elections, and it would be unclear as to whether such activities would have to be included as ‘in kind’ contributions. **Staff costs related to campaigning should not be covered by the spending rules without further consideration, particularly as political parties do not need to include this in their own spending rules.**

- **Aggregate spending**: The application of the entire aggregate spend for any coalition campaigning to each individual organisation will harm civil society ability to inspire people through campaigning. It may force the larger organisations to leave many joint campaigns as allocating total coalition expenditure to each member organisation may push them over spending limits, while also deterring smaller charities to work together for fear of the regulatory, financial and administrative consequences. As an example, the
Make Poverty History campaign, which took place in an election year, would not have been permissible under the new provisions set out in this campaign. As recently as June the UK public showed its enthusiasm for popular public campaigning through coalitions with 1.4 million people offering their support for the Enough Food for Everyone If campaign. **Organisations that join coalitions should only be accountable for their own direct financial contribution.**

- **Levels of Expenditure:** The proposed Bill lowers spending limits for third parties both for registering with the Electoral Commission and in absolute terms. While there may be arguments for reducing spending limits, given the extension of the regulated period and the broader definition of regulated activities, this requires further thought. This is particularly the case in the devolved regions where Christian Aid has a presence and where the new spending limits would make all bar the most minimal of campaigning regulated and consequently subject to unreasonable limitations, especially as the activities caught are not intended to promote or procure the electoral success of any party or candidate. **Appropriate levels of expenditure are impossible to determine given the new broader range of activities captured and should be reconsidered in this light.**

2 SEPTEMBER 2013
At the Stroke Association, we believe the bill (as currently drafted) is not clear. One of the areas we are most uncertain about is how/if the involvement of charities (such as my own) in coalition working would contribute to the revised spending limits (controlled expenditure) proposed by the bill.

As an example, we do a lot of work on benefits issues – both within our team here but also with coalitions of other charities. I have included a current “real world example” to try and illustrate our uncertainty about whether the legislation would affect us:

- Many of those who live with stroke previously received Disability Living Allowance to meet some of the extra costs associated with disability.
- The move to Personal Independence Payment (PIP) has seen some stroke survivors lose this benefit.
- Many other survivors (and their carers) have told us they are now feeling acute anxiety as to whether they may also be deemed ineligible for PIP.
- We believe speaking out about these experiences (as well as providing a platform for survivors and carers to do the same) to the media and politicians is valid and demanded by the situation.
- We have always lobbied on an apolitical/cross party basis.

Within an election period:

- If PIP were mentioned by a party or candidate (during the run up to an election) our understanding is that this would then become an election issue.
- The Stroke Association’s Campaigns and Policy team comprises only 4 people so it is probably unlikely that we would go above any proposed spend threshold in terms of our own campaigning work during an election.
- However we are also part of the 80 charity Disability Benefits Consortium.
- This consortium works on PIP, among other issues.
- We are unclear as to whether the Stroke Association’s work on PIP would be calculated not just in terms of our own work but the sum total of all Disability Benefits Consortium charities’ work on PIP.

We believe this lack of clarity has not been foreseen or intended by the government and hope you will bear our points in mind as the committee examines the legislation.

*September 2013*
Written evidence submitted by The Northern Ireland Council for Ethnic Minorities (GLB 54)

The Northern Ireland Council for Ethnic Minorities is an independent umbrella organisation, representing the views of black and minority ethnic communities in Northern Ireland. We are deeply concerned about the potential impact of the 'Transparency in Lobbying, Non Party Campaigning and Trade Union Administration' Bill currently making its way through Westminster.

The Bill will have serious implications for long-standing and essential freedoms and for organisations in the community and voluntary sector to effectively campaign on issues of social importance. Every day, groups and individuals in Northern Ireland come together to raise awareness on issues that concern them and get support from MLAs and MPs to make positive changes in their communities. This Bill would severely curtail our ability to do so.

We are asking for further clarifications on a number of issues, and that an exemption is put forward for charitable organisations.

Attached is a copy of the letter we sent to all Northern Ireland MPs and other contacts within government. Several have expressed support for our position.

September 2013
About Girlguiding

Girlguiding is the leading charity for girls and young women in the UK, with 546,406 members. Thanks to the dedication and support of 100,000 amazing volunteers, we are active in every part of the UK, giving girls and young women a space where they can be themselves, have fun, build brilliant friendships, gain valuable life skills and make a positive difference to their lives and their communities. We build girls’ confidence and raise their aspirations. We give them the chance to discover their full potential and encourage them to be a powerful force for good. We give them a space to have fun. We run Rainbows (5–7 years), Brownies (7–10 years), Guides (10–14 years) and The Senior Section (14–25 years).

Our Concerns

Girlguiding is the leading voice for girls and young women in the UK. We are concerned that when we raise issues on behalf of girls and young women, a voice that traditionally struggles to be heard, the proposed ‘non-party campaigning’ rules will limit or prohibit our ability to advocate effectively.

In the recent past we have spoken out on a wide range of topics important to girls’ lives that could easily become political issues, including the sexualisation of childhood, the review of the National Curriculum, the Equality and Human Rights Commission, civil society and the Protection of Freedom Bill. We are concerned that the proposed changes introduce regulatory uncertainty and may hamper or prevent us from introducing the voices of girls into these important debates.

Our legitimate and non-partisan activities could be deemed to be ‘for election purposes’ or coincidentally have the effect of supporting a particular party or candidate under the proposed rules and this would adversely affect our normal activities. We are also specifically concerned about limitations to coalition working. For example:

‘Activity for election purposes’

- Girlguiding voiced its support for amendment of Clause 20 of the Children and Families Bill concerning mandatory sex and relationship education. Under the new rules, had this fallen in an election period it could have been deemed to be ‘for election purposes’ even though it is one of Girlguiding’s on-going concerns and entirely party politically neutral. We may plan work on this issue next year, and this work, in the lead-in period to the 2015 general election would be likely to be curtailed under the new rules.

- Each year we publish research on girls’ attitudes across many topics, some that would be deemed political, and often suggest policy directions to improve girls’ lives as a result. If these suggested action points could be seen to support one candidate over another, will the rules on ‘non-party campaigning’ be applied and will the costs of the research be included in any consideration of spending? We are concerned that the Bill would hamper the survey as is it not always possible to foresee what issues may become political during an election period.

Coalitions

- Girlguiding supported the campaign for body confidence. This campaign had cross party support but was led by one MP and we worked closely with her as part of it. The new
proposals would make it unclear as to whether we could continue to support this campaign or not, for fear of seeming to support and endorse the views of one potential candidate. In addition, the campaign consists of many charities working together in coalition, headed by Central YMCA and we would like reassurance that the proposed new rules would not affect the viability of this campaign or our capacity to work with other charities and civil society groups.

Girlguiding asks the Government to make the rules of this Bill clearer and less restrictive so that we, and other charities, are able to undertake legitimate advocacy and campaigning activities.

*September 2013*
Written evidence submitted jointly by Dr Andy Williamson, Esther Foreman and colleagues (GLB 56)

We are a group of experienced campaigners, researchers, social activists and social entrepreneurs and we are writing to you to register our strongest possible concerns over the proposed Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill.

This letter is addressing Part 2 of the bill, namely third-party campaigning.

Third party campaigning in the UK has been increasingly regulated since 1988. This bill attempts to further increase this and imposes far more stringent non-party campaign regulations along with lower thresholds. Non (or third) party campaigns are a relevant concern for legislation, as noted by the Hansard Society,

the perpetual campaigns being mounted by political parties and representatives in the UK mean that the less predictable online behaviours during elections are likely to be associated with third-party and independent supporters rather than the major political parties.¹

However, this bill will create a legal framework that appears draconian, unworkable and fundamentally anti-democratic. This is unfortunate for a number of obvious reasons but not least because, as the Hansard Society report notes, third party campaigns raise interest in elections, can increase voter turnout and draw otherwise disenfranchised citizens into the democratic process. They are not simply a citizen’s right, they are a good thing.

1. **The proposed bill will seriously erode the ability of charities, campaigning groups and local communities to exercise their democratic right to campaign.**

   This bill represents an unacceptable continuation of the creeping regulation of democratic action. It is poorly drafted, confused and confusing. It is also almost impossible to see how it could be enforced.

   Mis-guided attempts to constrict third parties are not new. The New Zealand Electoral Finance Act 2007 (EFA) attempted to limit third-party activity during elections. The EFA 2007 extended the regulatory period for campaign material and required all political advertising to carry an authorisation message. The effect was a number of attempts to prosecute individuals and small community organisations who were deemed to have created ‘political messages’, all of which were abandoned after significant public outcry. The Act was ‘replaced’ two years later. We are right now at grave risk of repeating this mistake only the impact of the proposed bill is of a considerable magnitude higher than New Zealand’s failed and flawed EFA.

   To highlight our concerns we wish to draw your attention to some of the key technical failings in the bill. However, our objection to this bill is as much philosophical and structural as it is with the detail. These specific issues simply highlight the serious overall failings in the bill.

2. **The definition of third party is vague and confusing.**

First of all, what is a third party, or ‘non-party campaigner’ (depending which legislation you read)? The Political Parties, Elections and Referendums Act 2000 defines a third party campaigner ‘for election purposes’ as ‘promoting or procuring electoral success at any relevant election’ or ‘otherwise enhancing the standing’ of a political party. Since the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill, Part 2 is amending this Act the definition is critical. However, the Electoral Commission, in its advice to third parties, states that registration as a third party might be required:

*If you are campaigning for or against political parties, policies, issues or types of candidates you may need to register with us and follow the rules and reporting requirements on campaign spending and donations.*

In other words, doing anything. The US Library of Congress’ interpretation of a third party under UK electoral law is much more straightforward (and perhaps helpful for where we should go):

*Individuals or groups that aim to promote or disparage electoral candidates.*

The sheer volume of UK electoral law, both primary and secondary\(^1\), makes activity around elections confusing even for experts, this bill does nothing to improve this, rather its poor drafting makes the situation worse.

3. **The bill is regulating the whole campaign sector by stealth.**

The definition of ‘relevant election’ is a significant cause for concern. When read in conjunction with PPERA 2000, the bill creates a campaigning black-out period for the period of the long campaign ahead of any election in the UK, except for Scottish Local Government elections. This includes:

a. parliamentary elections;
b. elections to the European Parliament;
c. elections to the Scottish Parliament;
d. elections to the National Assembly for Wales;
e. elections to the Northern Ireland Assembly;
f. local government elections; and
g. local elections in Northern Ireland.

Given the frequency of elections, and that the long campaign period for parliamentary elections is 12 months and for European and national-level legislatures four months, the bill is in effect creating on-going restriction on the freedom of charities to campaign. It is creating a complex climate of confusion, fear and enormous potential for misunderstanding.

4. **The bill imposes unrealistically onerous requirements and undemocratic penalties on campaigners.**

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\(^1\) See: loc.gov/law/help/campaign-finance/uk.php

\(^2\) The Electoral Commission estimates that elections are governed by 32 primary pieces of legislation and more than 100 secondary pieces (see: www.electoralcommission.org.uk/__data/assets/pdf_file/0004/150565/Our-response-to-Law-Commission-consultation.pdf)
The reporting threshold and expenditure limits for a third party campaign have been lowered significantly whilst at the same time the scope for inclusion within the requirements appears to have been widened. There is no rationale for this. It generates a 'perfect storm' that will inhibit free speech and democracy:

a. Campaign coalitions are treated as a single entity, so costs cannot be spread across multiple organisations. Yet coalitions are the bedrock of the social campaigning sector, particularly amongst small charities and networked organisations who lack the resources, reach and skills to promote their aims independently: the bill effectively risks making coalitions illegal.

b. The limits are extended to staff costs, thereby significantly lowering the relative threshold at which a campaign will become liable: this is unrealistic and unfair.

c. It places reporting requirements at a constituency level yet it is virtually impossible for most campaigns to determine whether expenditure was local, regional or national in many cases: If a march is held in central London, does this need to be apportioned and reported against the constituencies it goes through? If protestors congregate outside a specific venue, how is this to be treated?

d. The bill effectually restricts charities by imposing the threat of criminal prosecution and by placing unduly harsh penalties on breaches, including imprisonment. No consideration has been given to the implications of this for trustees who must act in the best interests of the charity.

5. A review of electoral law is already underway.

The timing of this bill is anomalous given that the Law Commissions of England and Wales, Scotland and Northern Ireland are undertaking an exhaustive tri-partite review of what they describe as the UK’s “complex, voluminous, and fragmented” electoral law. It makes no sense to amend one section of electoral law and to change campaign controls in isolation ahead of this review. Indeed, given the well documented complexity of electoral law this bill serves to do little other than increase confusion and risk of error.

6. There has been no consultation or pre-legislative scrutiny period.

The bill was presented before Parliament as it rose and is due to be pushed through the House the moment it returns. No consultation took place before the bill was presented, none of the key actors in the sector appear to have been consulted or to have been involved in drafting the scope or content of the legislation. The government does not even appear to have consulted the Electoral Commission, who are currently and will remain responsible for policing election campaigning.

This is not only a gross oversight, it is fundamentally unacceptable to the core principles of democracy and the commitment to open government that a bill which fundamentally alters and regulates citizens’ basic democratic rights should be passed into law without regard to them through public and expert scrutiny. Law made in isolation is bad law. Law made without engaging those affected will fail. This bill is both of those.

* See: lawcommission.justice.gov.uk/areas/electoral-law.htm
We recommend in the strongest possible terms that this bill is struck out for the reasons cited above.

It is our opinion that if this bill is passed into law it will do serious harm to democracy. We welcome the Committee’s concerns over this bill and would like to engage further with it over how the situation can be rectified. **We urge Parliament to reject this bill in its entirety in its current form.** However, as a bare minimum and notwithstanding the serious flaws inherent in the bill, we ask the Committee to urgently consider the following amendments to the bill:

a. **Exclude registered charities and coalitions** formed of or clearly led by registered charities from registration as a third party under PPERA 2000 so long as the campaigning or lobbying that they are carrying out is within the charitable aims of the organisation(s) (an exception being if the campaign is directly targeted at a registered political party or parties rather than a policy issue).

b. This still exposes informal groups, community associations and loose coalitions to an excessively onerous regulatory overhead and leaves them at potential risk of prosecution. We further recommend that your Committee **consider a formal definition of ‘third party’ in an electoral context to be limited solely to a person or organisation directly endorsing, supporting or opposing a political party or candidate during an election period and that this activity must be directly in the context of that election to be considered eligible.**

c. **Specific exclusion from the requirement to register should extend to informal information sources, such as blogs, and should explicitly exclude satirical comment.**

d. **Review the reporting thresholds** so that they are consistent across the entire United Kingdom but significantly higher than those proposed and higher than those currently in place in Scotland.

e. **Remove the requirement for a coalition to be counted as a single third-party** for reporting and registration purposes, each autonomous member of an informal coalition should be assessed in its own right, as at present.

f. **Reject the changes to the elements that constitute campaign expenditure** retaining the definitions in PPERA 2000, in particular we ask that you **reject the inclusion of staff costs and the change to constituency level reporting** as these are deeply problematic and likely to cause significant confusion creating a significant increase in inadvertent breaches of the law.

As experienced campaigners and researchers with deep knowledge of a wide range of organisations and communities, as well as an in-depth understanding of the campaigning landscape from both a hands-on and a theoretical perspective we are alarmed by what this bill sets out to do. It marks a fundamental challenge to the basic democratic right of citizens to organise protest. It presents serious legal exposure for charities and campaigning groups and as such acts as a deterrent to legal protest.

We are not the only ones to be alarmed, your own Committee has received overwhelming evidence against it, the campaigning sector as a whole is extremely concerned. There is widespread public
concern that their democratic rights are being curtailed, witnessed by an independent e-petition which has garnered over 10,000 signatures in only a matter of days.\(^5\)

We appreciate the attention and concern given to this issue by your Committee and would welcome the opportunity to speak to the Committee and support its efforts to ensure that this proposed legislation does not do as we fear – destroy democratic campaigning in the UK.

31 August 2013

\(^5\) See:.com/793/727/418/stop-uk-lobbying-bill-that-may-criminalize-campaigning
I noted with great interest your comment in PCRC Committee yesterday about not hearing from Charity bodies about the Transparency of Lobbying Bill.

I can confirm that we fully share the concerns of NCVO (they are supported by over 100 charities on this matter) that the Bill’s proposals to restrict non-party campaigning will have the unintentional impact of ending legitimate policy campaigning by charities and third sector bodies in the year before a general election, as well as creating significant regulatory uncertainty.

We certainly don’t feel it is the intent of the Bill to restrict legitimate campaigning in this way, as confirmed in the recent letter by Chloe Smith MP to 38 degrees and believe that through (much) improved drafting it can still deliver its core aim, to prevent unrestricted vast amounts of money being spent on political campaigning of individual parties / candidates, without the wider negative impacts on the Charity Sector to engage legitimately in the political process.

September 2013
Written evidence submitted by the Royal Mencap Society (GLB 58)

About Royal Mencap Society
We support the 1.5 million people with a learning disability in the UK and their families and carers. We fight to change laws and improve services and access to education, employment and leisure facilities, supporting thousands of people with a learning disability to live their lives the way they want. See www.mencap.org.uk for more information.

We are also one of the largest providers of services, information and advice for people with a learning disability across England, Northern Ireland and Wales.

About learning disability
A learning disability is caused by the way the brain develops before, during or shortly after birth. It is always lifelong and affects someone's intellectual and social development. It used to be called mental handicap but this term is outdated and offensive. Learning disability is not a mental illness. The term learning difficulty is often incorrectly used interchangeably with learning disability.

Our comments on the Bill
We wish to focus our comments on part 2 of the Bill which covers non party campaigning. The definition of 'activities for election purposes' causes us particular concern, as we believe it could, inappropriately, categorise legitimate and non party political engagement activity by national and local charities above the new spending limits as coming under regulation by the Electoral Commission. New Schedule 8A (listed within Schedule 3 of the Bill) includes events, media work and manifestos, all of which we believe are legitimate non party political activities that charities should be able to have involvement in, supporting their members, service users and supporters to engage in debate on issues of national and local policy with sitting MPs and, nearer the election, candidates. Burdensome obligations, depending on their spending, could then fall on charities, which the government's impact assessment shows may amount to thousands of pounds in the case of third parties who have not previously had to register with the Electoral Commission as third parties.

We are concerned at the potential for serious confusion as to how spending on 'activities for electoral purposes' is to be calculated, when it is set out so broadly as including staff time, media work and production of materials. This is likely to make it very hard for organisations to work out whether they need to be registered as third parties and where they are in relation to spending limits. We are also concerned that the spending threshold above which registration becomes required is being halved in England, from £10,000 to £5,000 which will bring more organisations within regulation. We question whether this is a proportionate requirement, when in reality it means that a charity could face thousands of pounds of costs in newly registering with the Electoral Commission.
The kinds of activity the Bill will impact on
Royal Mencap Society and many Mencap local groups, once parliament rises for the election campaign, will want to engage with prospective parliamentary candidates to raise their awareness of learning disability, and issues affecting people with a learning disability and their families nationally and locally, and hear from candidates about their priorities. These are all perfectly legitimate activities, where charities are engaging in campaigning or non-party political activity that relates to their charitable purposes. In these situations groups make significant efforts to engage with candidates across the parties, to ensure their engagement is non-party-political and is about wider awareness raising. Engagement with candidates might include meetings at local groups’ offices, at services or other forums. Local groups might want to engage in media work around events, both in the local press and also through social media, to raise awareness of their work and how they are supporting people with a learning disability and their families to speak up and be heard by those standing for election. This is particularly important in the case of people with a learning disability, who are a marginalised group, many of whom face significant barriers to taking part in elections and understanding political debate.

What constitutes ‘activities for electoral purposes’ is poorly defined, potentially very wide in scope and hard to anticipate in operation. We believe that this will cause significant concern to many groups, who may want to organise meetings or other events with candidates, and potentially deter them from engaging in important and legitimate awareness raising activity in the year prior to the 2015 general election, and future elections. The wide definition may also impact on their confidence to engage in important work locally in the year before an election, such as supporting people with a learning disability and their families to make their views known on important issues that are likely to be raised during election campaigns—benefits and welfare reform, social care and support services, support for children and young people with special educational needs or issues relating to the NHS.

The impact on charities working in coalition together
As an organisation that works in partnership across our sector, we are very concerned by the proposals on how spending of coalitions would be calculated. Many of our key areas of campaigning activity are developed through working in formal or informal coalitions with other charities. Some of these coalitions may seek to engage in activity in the run up to the general election. The potential double counting that is proposed in relation to how organisations will have to calculate their spending within coalitions has the potential to further restrict legitimate non party political awareness raising activities by charities who wish to work together for the mutual benefit of their charitable objectives.

September 2013
The role of charities in the political sphere

1. The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill poses a serious threat to legitimate non-party campaigning work during election periods, possibly as an unintended consequence of wider moves to change lobbying legislation.

2. Alongside our direct environmental work, the RSPB often speaks out on behalf of our members to influence political decisions in order to further our charitable objective of promoting the protection and enhancement of our natural world for people and for nature. The Society has a wealth of experience and expertise that can helpfully inform political debate.

3. The RSPB started with a mission to change attitudes and legislation around the shooting of wild birds for fashion accessories and has achieved major societal and legislative change in the subsequent 124 years. We are proud that our work has contributed to new laws for the protection of nature – such as the Marine and Coastal Access Act 2009, banning of DDT and control of oil pollution – and to changing public attitudes on topics as diverse as feathers for fashion and climate change.

4. We are open about the fact that in sharing our expertise and convincing others of the value of nature, it is necessary to engage in activities in the political domain in pursuit of our charitable purposes: we offer briefings to politicians and we mount public campaigns to raise the profile of political questions. While we undertake political activities, we never undertake party political activities. Our work is focused on securing positive outcomes for nature, regardless of which political party is involved.

5. It is right that significant spending that could influence the outcome of elections is clearly accounted for, so that no undue sway can be brought to bear; we therefore have some sympathy with the intentions behind Part 2 of the bill.

6. However, there appears to be a serious lack of clarity and forethought behind the new, broader definition of campaigning for electoral purposes. The Government estimated that the new rules would curtail spending by £650,000 in General Election years. However, the true impact of the bill could dwarf that figure, both in terms of direct limitations on spending (when organisations reach the cap) and indirect limitations on spending (as organisations take a deliberately precautionary approach, because of new uncertainty caused by the nebulous definition of spending for election purposes).

7. In particular, we are concerned that the Government has not properly accounted for the impacts the bill would have on collaborative work and local work.
8. We are also concerned 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. The time and technical commitment implied by new accounting requirements for donations and spending could be debilitating, particularly for small charitable organisations. In an era when deregulation is the mantra this seems inconsistent.

**Recommendations**

9. The RSPB supports the sentiments set out by the National Council for Voluntary Organisations in its letter to Chloe Smith MP on 22 August 2013. In addition, we make four specific recommendations.

10. The bill would widen the definition of controlled election expenditure for third party campaigners, but reduce the amount of money that can be spent on such activities to just 40% of the current limit. As the Electoral Commission noted in its call for an improved definition of political spending, the Government must “ensure that spending limits on non-party campaigning are sufficient to enable freedom of expression”.

**Recommendation 1:** if the definition of spending for election purposes is widened, the amount that can be spent on such activities should be increased, not slashed by 60%.

11. The bill would also halve the threshold for registration of third parties with the electoral commission (from £10,000 to £5,000 in England, from £5,000 to £2,000 in Scotland, Wales or Northern Ireland). The Government estimated that this would affect up to 30 organisations, at a cost of up to £2,187 per organisation. Not only is that a substantial cost for small organisations, it is also unclear that the estimate for the number of organisations affected would take into account the new, wider definition of controlled expenditure.

**Recommendation 2:** The threshold for registration with the Electoral Commission should also be raised, not lowered, to accommodate the new definition or controlled expenditure.

12. Under Section 94(6) of *The Political Parties, Election and Referendums Act 2000*, when partnerships undertake campaign activities as a concerted plan of action, the limit applies to the group as a whole, not to each individual member of the group. Charitable groups in particular rely on this kind of partnership work to pool limited resources and to speak with a united voice on the most important issues. With a wider definition and a lower limit, this vital partnership work would be curtailed.

**Recommendation 3:** If the definition of spending for election purposes is widened, Section 94(6) of PPERA should be repealed to allow charities’ collaborative work to continue.

13. Often environmental issues have a significant local component and are best highlighted through political work focused on a certain area. The bill would also impose specific limits for spending on specific constituencies: £9,750 in the year before a General election and £5,850 after Parliament is

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dissolved. This constituency limit is new and arbitrary. It could hamper our attempts to focus our work where it is most effective and to cater for the needs of particular communities or face particular environmental problems.

**Recommendation 4:** Clause 28(6) should not stand part of the bill.

14. The Government must consider carefully the role it wishes charities to play. We believe that the political voice of a charity is an important contribution to our democracy and helps to enhance the work of Parliament. As it stands, the bill is incompatible with that role.

*September 2013*
Written evidence submitted by Julie Park (GLB 60)

You must revise this proposed bill it penalises genuine non political organisations such as charities - the devil as they say is in the detail! Very concerned campaigning for awareness of mental health issues.

I wish it to be known that any Bill that penalises freedom to lobby by Charities who are non political is a travesty, for how else are the general public to be made aware of inhuman practices affecting humans and animal welfare in this country and beyond. Therefore I feel this bill must be repealed and be rewritten with charities and other non political campaign groups such as Oxfam, RSPCA, WWF, green peace, 38 Degrees, RSPB to name but a few excluded.

August 2013
The Chartered Institute of Housing (CIH) was pleased to learn that the scope of your inquiry into the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill has been expanded to cover Part II of the Bill. We would like to take this opportunity to share our opinions on Part II for your consideration.

CIH is the independent voice for housing and the home of professional standards. Our goal is simple – to provide housing professionals with the advice, support and knowledge they need to be brilliant. CIH is a registered charity and not-for-profit organisation. This means that the money we make is put back into the organisation and funds the activities we carry out to support the housing sector. We have a diverse and growing membership of more than 22,000 people who work in both the public and private sectors, in 20 countries on five continents across the world. CIH has significant concerns about the new rules proposed in Part II of the Bill, on non-party campaigning.

We are worried that the new rules proposed could apply to a range of normal and legitimate awareness raising activities that we undertake in our day to day work as the professional institute for the housing industry, despite our work being entirely politically neutral. As the institute for housing professionals our members want and expect us to be engaged in discussions and debates about the current policy environment for the housing industry and any future policy developments that might affect the industry and the professionals that work in it.

We are particularly concerned that the definitions of ‘for electoral purposes’ and of ‘relevant expenditure’ are both proposed to be amended in such a way that there is a significant risk that our day to day engagement in public policy discussion will now be caught by the amended rules in election years.

In our view these changes combined with the fact that the definition of ‘for election purposes’ takes into account not only the intent of the third party, but also the effect of their even if the activity was carried out for other purposes, makes it extremely likely that our legitimate work on behalf of the interests of our members and beneficiaries could well be detrimentally affected. The proposed new Schedule 8A to Political Parties, Elections and Referendums Act (PPERA) is now drawn so broadly that it includes not only election material (such as leaflets, adverts, etc.) but other campaigning activities such as events, media work and manifestos, making it more likely that our work might be interpreted as being “for electoral purposes” and that we exceed the expenditure limits.

In addition we are concerned that the combination of the reduced expenditure thresholds, the revised definition for how total expenditure is calculated over the course of year, and the broad definition of ‘for election purposes’ makes it inevitable that we and many other organisations will reach this
threshold in an election year unless we stop our policy and campaigning activities. In particular the fact that expenditure by coalitions must be aggregated, meaning that each member has to account for the full amount spent for the joint campaign regardless of the individual contribution, further increases the likelihood that our legitimate policy and campaigning work will be impacted by the measures set out in the Bill. We are also concerned that the lowering of the limit requiring registration with the Electoral Commission to £5,000 in England (and £2,000 in Scotland, Wales and Northern Ireland) will place an additional burden of registration and reporting on us (as a UK wide organisation that engages equally with governments and policy issues in all four countries) which has not previously been required.

Finally, we are also concerned that many landlord organisations in the housing industry who also engage in work on the public policy agenda will see their work captured by the definitions contained in the Bill. This will have the potential of severely limiting the work they are able to do to raise awareness of how public policy impacts on the work they do and the client group they serve, and could also lead to an increased registration and reporting requirement.

2 September 2013
The British Medical Association (BMA) is an independent trade union and voluntary professional association which represents doctors from all branches of medicine across the UK. It has a total membership of over 152,000.

We welcome the opportunity to submit our views on the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill. Whilst we are aware that the Committee is primarily considering part 1 of the Bill, we understand there you are also aware of wider issues with part 2, which is where our main concerns lie.

Part 2 of the Bill changes the legal requirements for organisations that raise concerns, provide commentary and seek to influence public policy or impartially campaign on issues in the year before a general election. A combination of changes to the definition of election material (to 'election purposes') and the new spending limits mean that many organisations, including non-political organisations, registered charities, pressure groups, faith groups and think tanks, will have their ability to speak on issues of public interest dramatically curtailed.

The Bill (clause 26) provides a very broad definition of what activities will count for 'election purposes', including staff time, media appearances and material posted on websites. This is much wider than election material currently regulated by the Electoral Commission (under the Political Parties Elections and Referendums Act 2000). Furthermore, the new definition does not rely on the intention of the body producing what may be entirely non-party political material, but the effect. What was formerly legitimate comment on matters of public interest will become regulated and restricted.

It also lowers the threshold for spending in the year before a general election that would trigger the need to be registered with the Electoral Commission, from £10,000 (in England) to £5,000 (and from £5,000 to £2,000 in each of the devolved nations). The Bill (clause 27) also reduces by 60-70 per cent the amount that registered bodies can spend on raising issues or concerns or commenting on issues which are, or might be, caught by the definition of 'election purposes' in the year before a general election. It is a criminal offence to exceed this limit.

For example, the recent reviews by Robert Francis QC, Professor Sir Bruce Keogh and Professor Don Berwick have all outlined the key role healthcare professionals and organisations play in ensuring patient safety. However, if the BMA, which is a non-party political organisation, were to comment on, or raise concerns about, patient safety or standards of patient care at any time in the 12 months before a general election, this could be caught by the new definition of election purposes, counting towards campaign expenditure and inhibiting the promotion of patient safety. If the new financial threshold had been reached, then the BMA in speaking up on patient safety would be breaking the law.

One of the difficulties with the Bill is that whether raising an issue is or is not caught by the definition of material produced for election purposes might not be immediately apparent – depending on whether the issue became an electoral issue during the year leading up to a general election. The lack of clarity about exactly what would be caught means that the administrative and regulatory burden would be immense. It has been widely reported that the Electoral Commission has significant concerns about the workability of the proposals.

The Bill in its current form would have a real and significant impact on the ability of non-party political organisations to raise matters of public concern. We do not believe it is the government’s intention to stifle debate and freedom of expression in this way. We believe the government needs to think again and Parliament to reject these proposals.

2 September 2013

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1 From £793k to £320k in England; from £108k to £35k in Scotland; from £60k to £24k in Wales and from £27k to £11k in Northern Ireland
I am writing to you in connection with the 'Transparency, Non-Party Campaigning and Trade Union Administration Bill'. The Second Reading of this Bill is timetabled for the 3 September 2013, to be followed by a Committee Stage on 9, 10 and 11 September, so this matter is extremely urgent.

The scope of activities contained within the Bill are extremely wide, and as it stands it will include activities carried out by charities as part of their work in representing the interests of their members. The complexity regarding registration of activities, financial thresholds, having to account for staff time in addition to other expenses, and a bureaucratic burden in terms of reporting will mean that civil society groups will be forced to curtail their activities, to the detriment of their members and of wider society.

As an active community group-WOMEN’STEC, we frequently lobby for better provision and representation of women at all levels and this Bill will have an extremely negative on our activities. We believe that we would no longer be able to engage in lobbying as this bill stands in its current format, further alienating women who we represent.

When the terms of this Bill are being scrutinised we would ask MPs to look again at the status of unaligned civil society groups and their need for registration. The rules must be made less restrictive so that charities and small organisations like ours are able to undertake legitimate campaigning in furtherance of their aims.


September 2013
Written evidence submitted by Northern Visions (GLB 64)

I am writing to you in connection with the 'Transparency, Non-Party Campaigning and Trade Union Administration Bill'. The Second Reading of this Bill is timetabled for the 3 September 2013, to be followed by a Committee Stage on 9, 10 and 11 September, so this matter is extremely urgent.

The scope of activities contained within the Bill are extremely wide, and as it stands it will include activities carried out by charities as part of their work in representing the interests of their members. The complexity regarding registration of activities, financial thresholds, having to account for staff time in addition to other expenses, and a bureaucratic burden in terms of reporting will mean that civil society groups will be forced to curtail their activities, to the detriment of their members and of wider society.

As an active digital arts and media literacy organisation working in some of the city's poorest areas, Northern Visions frequently lobbies for better provision and representation of marginalised and under represented groups and this Bill will have a negative effect on our activities. We believe that we would no longer be able to engage in lobbying as this bill stands in its current format, further alienating the people we strive to represent.

When the terms of this Bill are being scrutinised we would ask MPs to look again at the status of unaligned civil society groups and their need for registration. The rules must be made less restrictive so that charities and small organisations like ours are able to undertake legitimate campaigning in furtherance of their aims.

September 2013
I write to inform you that the Local Works coalition are seriously concerned about and opposed to the various restrictions to campaigning activity that the government’s lobbying bill would place on coalitions such as ours.

We are a coalition that came together to encourage the public to lobby their MPs to pass the Sustainable Communities Act in 2007. Our coalition is made up of over one hundred national organisations including the Women’s Institute, Age UK, the Woodland Trust, NCVO, the Federation of Small Businesses, CAMRA and Friends of the Earth.

The Sustainable Communities Act aims to reverse community decline and put local people and their councils in the driving seat on what help and action central government gives and takes to reverse it. It only exists because we were able to continuously campaign for over five years in order to tell people about it and ask that they request support from their MPs.

Since the Act became law we have worked with councils and community groups to help them use it. The exciting new ‘bottom-up’ process that the Act has set up has led to local people and their councils working together to set local priorities and to put considered proposals to the government. This is a new way of doing governance and many citizens that have got involved have described their experience as positive and engaging. Given that disillusionment in politics is currently at worryingly low levels this involvement and engagement in a new democratic process is very welcome and needed.

Following the expert legal opinion regarding the bill that we have seen, we are very concerned that if it was passed it would seriously restrict us from doing the work described above that helps involve people in an exciting new ‘bottom-up’ democratic process for the benefit of their local communities.

Please include our objections in the committee’s written evidence. Thank you.

*September 2013*
Written evidence submitted by North West Community Network (NWCN) (GLB 66)

I am writing in connection to the ‘Transparency, Non-Party Campaigning and Trade Union Administration Bill’ and to express the concerns of the North West Community Network (NWCN) about some of the proposals contained in Part 2 of the bill.

As the bill is due for its 2nd reading on September 3rd to be followed by the Committee Stages on 9, 10, 11 September, it is a matter of urgency that this issue is addressed.

Our primary concern is that the definition of the term ‘for election purposes’ currently contained within the draft bill is so broad that it could include a range of day to day activities that many charities carry out as part of their legitimate campaigning and advocacy work. Charities are already bound by charities legislation and cannot be party political but the provisions within this draft bill may mean that a community organisation’s ability to act on public policy developments on issues relevant to their mission and beneficiaries will be severely undermined. This could have a major impact not only on the lobbying and campaigning activities/courses of the NWCN but also on the 74 groups we represent.

In addition, the regulation and reporting framework as proposed within the bill would place a huge administrative burden on organisations to comply with in respect to: registration of activities, financial thresholds, having to account for staff time and other expenses.

NWCN asks that the provisions within Part II of the Bill are made less restrictive and defined more clearly so that charities, community and voluntary organisations are able to undertake legitimate campaigning relevant to their missions and for the advancement of the interests of their beneficiaries.

While NWCN is aware that no MPs from Northern Ireland sit on the PCRC committee, we feel it is important that we make our local MPs aware of our concerns about this bill.

These concerns have also been sent to the Political and Constitutional Reform Committee at the House of Commons.

September 2013
Written evidence submitted by PlayBoard NI (GLB 67)

PlayBoard NI and its membership wish to express concern regarding the proposals contained within Part 2 of the ‘Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill’ which is due to have its second reading in Westminster on 3rd September.

PlayBoard is the lead agency for the development and promotion of children’s and young people’s play in Northern Ireland. As a membership organisation we work to promote, create and develop quality play opportunities to improve the quality of children’s lives. PlayBoard offers a range of innovative support and capacity building services, each designed to strengthen capacity, service delivery and deliver outcomes.

Our pursuit of influencing outcomes includes using advocacy and lobbying to inform public-policy, resource allocation decisions within political, economic, and social systems and institutions. As you will be aware charities are already bound by charity law and therefore cannot be party political. However, if the proposals included in the draft Bill were to become law then many charities like PlayBoard would be curtailed from getting involved in campaigning and advocacy work on issues that are important to the people and stakeholders they work with and on behalf of.

The proposals in the bill are complex and unclear and the definition of the scope of the bill is so broad it could capture a range of the day-to-day activities charities carry out, entirely legitimately, as part of their campaigning and advocacy work.

In addition the bill proposes a regulation and reporting framework which would place a vastly disproportionate administrative burden on both charitable organisations and the regulatory bodies.

We have asked our members to follow our lead and to urgently contact their MPs and alert them to the dangerous proposals contained within this Bill.

2 September 2013
Written evidence submitted jointly by the Royal College of Nursing and Chartered Society of Physiotherapy (GLB 68)

1. Introduction

2. With a membership of more than 410,000 registered nurses, midwives, health visitors, nursing students, health care assistants and nurse cadets, the Royal College of Nursing (RCN) is the voice of nursing across the UK and the largest professional union of nursing staff in the world. RCN members work in a variety of hospital and community settings in the NHS and the independent sector. The RCN promotes patient and nursing interests on a wide range of issues by working closely with the Government, the UK parliaments and other national and European political institutions, trade unions, professional bodies and voluntary organisations.

3. The Chartered Society of Physiotherapy (CSP) is the professional, educational and trade union body for the UK’s 51,000 qualified physiotherapists, physiotherapy students and support workers. 97 per cent of qualified physiotherapists are CSP members.

4. The RCN and CSP have many mutual concerns with the Bill as it currently stands, most substantially with regard to proposals as set out in Part 2 of the Bill. It is to the extent that we have issued a joint letter to all Members of Parliament to express these concerns.

5. The RCN and CSP welcome the opportunity to submit evidence to the Committee at this stage.

6. Submission

7. The RCN and CSP are extremely concerned that Part 2 of the Bill, Non-Party Campaigning etc, will place unwarranted restrictions on many organisations that seek to legitimately and impartially campaign, provide commentary and influence political party policy in the period prior to a general election.

8. The Bill seeks to reduce the financial cap on how much money a “third party” can spend “for electoral purposes” by more than half, to £390,000, and vastly broadens the scope of what activities are included within that definition.

9. The CSP and RCN are both trade unions and professional organisations, which have no affiliation to any political party, but we legitimately may wish to raise concerns about political issues which affect health care and/or our patients and members. Over the years, our organisations have steadfastly guarded our non-partisan positions and political independence. This Bill would essentially prevent us from raising important issues on behalf of our members without accruing costs which must be compiled and reported to the Electoral Commission. Once the upper threshold of £390,000 is reached we would be prevented from carrying out any other action for the duration of the protected period. Given the new scope of “electoral purposes” we would (for the most part because of the inclusion of staff time costs) hit the threshold easily, and be prevented from further publicly raising member concerns and priorities through national campaigns.
10. There is widespread recognition that the expertise of our members and organisations raises the quality of the discussion and leads to better services for the public; this must be allowed to continue.

11. Any comments made by RCN or CSP spokespeople with regard to any political party’s policies would fall within the new definitions and accrue costs. This would include even the most neutral and non-partisan of press releases, briefings or messaging to our members. If, for example, a new Government policy was announced in the protected period before an election, we would not be able to make a comment without it counting towards our limited campaign expenditure, and if we were at the threshold already we would be breaking the law in speaking out. Similarly, if any party made any announcement on health care policy we would find ourselves in the same position. We would, in effect, be unjustly censored by this Bill.

12. The effects of this legislation, should it be passed, would be that national organisations would no longer be able to freely raise concerns, campaign, criticise and support, not political parties per se, but even specific policies. This would significantly restrict the freedom of speech of non-political organisations, charities, think tanks, trade unions, faith groups and any group with a national following and a desire to be heard. We hope this is not what was intended.

13. We share the concerns raised by charities, lobby groups and trade unions that this combined impact of reducing the financial cap and extending the definition of what is considered ‘election material’ is disproportionate and wholly undemocratic.

14. In the run up to the general election of 2010, our respective organisations campaigned on behalf of our members on health care issues, such as maintaining investment in services, improving care for older people and a focus on public health. Campaigns such as these, aimed at raising standards of care in the NHS, would not be possible if this Bill was passed.

15. The RCN and CSP firmly believe that the current level of regulation for third party campaigning ahead of a general/national election is appropriate and proportionate for a healthy pleural democracy.

September 2013
Greenpeace Ltd (Greenpeace UK) is the autonomous regional office of Greenpeace, a campaigning organisation which has as its main object the protection of the natural environment. Greenpeace has regional offices in 40 countries, 2.8 million supporters worldwide and around 100,000 in the UK. It is independent of governments and businesses, being funded entirely by individual subscriptions.

Greenpeace has a long history in campaigning for protection of the environment in many different jurisdictions. For example Greenpeace has offices in China, India, Russia, Brazil, USA, Mexico, Indonesia, Philipines and others. Its history of campaigning has touched a wide range of issues including oceans protection and whaling, agriculture, chemical use, sustainable energy, nuclear power, forest protection and climate change. On all these issues it has built up considerable knowledge and research in areas of science, economics, politics, technology and law. We campaign via communications with politician, supporters, journalists, policy-makers, companies, as well as distinctive events and direct action.

We view the proposed Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill as both a missed opportunity and a threat to ordinary campaigning activity.

Part I is a missed opportunity because, in contrast to promises made before the election the Bill proposals in no way bring transparency to what goes on. In-house corporate lobbyists are not catered for, and only contacts with senior Government officials or ministers will be registered. Most lobbying will, therefore, be missed.

Part II represents a significant threat. We remain unclear about the government motivations for Part II of the Bill. However, we have seen a QC legal opinion that says “the provisions of Part II of the Bill are likely to have a chilling effect on the expression of views on matters of public interest by third sector organisations”. If it can be interpreted as such by expert legal opinion, it seems to us of no significance what Government thought they were going to do or what they hoped to achieve: as it stands this is dangerous and bad legislation.

Our own sampling of legal opinion shows a rather sharp contrast between its effects on Greenpeace activity and that of major corporations like big oil companies. Remember this Bill was originally conceived to bring transparency to lobbying which threatened to be the “the next great political scandal” as David Cameron put it. However, the impact on, say, a large oil company is likely to be very limited – needing to register specific contacts with very senior Government players by paid-for lobbying consultants on their behalf in relation to specific policy, legislation contracts or licenses. This almost certainly covers a negligible part of their lobby activity. Whereas for Greenpeace, if the current Bill were to become law, we would face considerable uncertainty and the threat of legal action over a range of previously legitimate activities which may be included under a spending limit. At the very least we would face a large increase in bureaucratic burden. We routinely engage in a whole variety of communication activities including events, websites, media work, communications with activists etc. These activities would be, as they always have been in our previous more than 35 years in UK, be dedicated to fighting for a public interest values in getting environmental issues taken more seriously within the policy-making apparatus of the UK. It is never to do with siding with a political party. Yet
Greenpeace are the ones facing restrictions, not Shell or BP, despite the origins of the Bill being in the political scandal that corporate lobbying represents.

Of note, the Greenpeace International legal unit is unaware of any legal restriction in other countries the like of which is being proposed in UK under part II of the Bill. We therefore believe it should be rejected, or, given the short time available before Second Reading, at least be held up for proper consideration rather than being rushed though as is the current proposal.

*September 2013*

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Written evidence submitted by Scope (GLB 70)

About Scope
1. Scope exists to make this country a better place for disabled people and their families. We do this by running a range of services, raising awareness of the issues that disabled people face and influencing change across society. We provide support, advice and information for more than a quarter of a million disabled people and their family members every year.

Overview
2. Scope delivers a range of social care, education and employment services. As well as being a service provider, a crucial aspect of Scope’s work is public campaigning on matters of local and national importance to disabled people. This work is vital in contributing to our charitable objective of improving the lives of disabled people and their families.

3. Scope has a wealth of experience and expertise that is often used to inform political debate and Government policy. We work to present practical solutions to Government Departments on policy issues affecting disabled people, and offer briefings to politicians on relevant legislation.

4. We have significant concerns that Part II of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill contains a number of measures that will restrict our ability to publically campaign alongside disabled people and their families.

5. Our specific concerns revolve around the provisions contained in the Bill that broaden the definition of ‘activities for election purposes’.

6. As such, our comments will be restricted to Part II of the Bill.

Comments on Part II – Non-Party Campaigning Rules

7. The Bill redefines the range of activities that are to be regulated by the Electoral Commission as contained Political Parties, Elections and Referendums Act, 2000 (PPERA). The new list in Schedule 8A to PPERA includes campaigning activities such as events, media work and manifestos in addition to existing activities such as leaflets and adverts.

8. Furthermore, we are concerned that the new definition of the term ‘for election purposes’ is too broad. The fact that the definition does not rely on the intent of the third party means that the impact of campaigning work is taken into account even if the activity was carried out for other purposes.
9. This means that should our campaigning activities, intended to advance the interests of disabled people and their families, are construed as being ‘for election purposes’, they would fall into the remit of the regulation. This would be the case even if our work does not refer to specific policies or candidates.

10. Any comment on public policy that Scope may make in the run up to an election could be construed as impacting on how the electorate may view the policies of a particular party. This would restrict our ability to promote new policy solutions to Government as well as publically highlight the impact of certain policies on the lives of disabled people and their families.

11. Scope is concerned that our legitimate day to day campaigning activities to engage in public policy for non-political purposes would be considered ‘for election purposes’ and caught by the rules.

The impact on charities working in coalition

12. Scope works in partnership across our sector in a range of coalitions. As such, we are very concerned by the proposals on how spending of coalitions would be calculated under the Bill.

13. A number of these coalitions may seek to engage in activity in the run up to the General Election. There is a concern that potential ‘double counting’ of campaign expenditure will take place for organisations who are working in coalition. This has the potential to further restrict legitimate non-party political campaigning activities by charities who wish to work together for the mutual benefit of their charitable objectives.

Case Study: Polls Apart

14. Polls Apart is a long running Scope led campaign which aims to improve the accessibility of voting for disabled people. The campaign has been running for over a decade in the period running up to the General Election and a number of national disability organisations supported the campaign. There are over ten million disabled people in the UK and on average each parliamentary constituency contains 15,000 disabled voters.

15. Polls Apart achieved real success in improving the democratic process for disabled people and led to dramatically improved accessibility of polling stations.

16. We believe that public campaigning activity of the nature of the Polls Apart would be captured under the new legislation.

Recommendations

17. Scope supports the sentiment set out by the National Council for Voluntary Organisations (NCVO) in its letter to Chloe Smith MP, dated 22 August 2013.
18. Scope also supports the recommendation made by the Electoral Commission, and the Bill must “ensure that spending limits on non-party campaigning are sufficient to enable freedom of expression”.

19. Scope recommends that the Government should not proceed with the proposals contained in Part II of the Bill.

September 2013

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I am writing to you in connection with the ‘Transparency, Non-Party Campaigning and Trade Union Administration Bill’. The Second Reading of this Bill is timetabled for the 3 September 2013, to be followed by a Committee Stage on 9, 10 and 11 September, so this matter is extremely urgent.

The scope of activities contained within the Bill is extremely wide, and as it stands it will include activities carried out by charities as part of their work in representing the interests of their members. The complexity regarding registration of activities, financial thresholds, having to account for staff time in addition to other expenses, and a bureaucratic burden in terms of reporting will mean that civil society groups will be forced to curtail their activities, to the detriment of their members and of wider society.

Women’s Aid Federation Northern Ireland works collaboratively with a number of organisations in the ‘Women’s ad hoc Policy Group’ in Northern Ireland. Before elections the group produces a ‘Women’s Election Manifesto’, containing demands that represent key concerns of women across Northern Ireland. The group also organises election events, to which female candidates from all political parties are invited to speak. In this way the group works to give a public platform to women who might otherwise have little exposure, given the male-dominated nature of public life and media in Northern Ireland. This initiative has been undertaken before every election and we believe that it has been significant in raising women’s issues and highlighting the inadequate representation of women in our political institutions. As the terms of the Bill stand currently, the Women’s ad hoc Policy Group would no longer be able to engage in this work, to the detriment of our developing democracy.

When the terms of this Bill are being scrutinised we would ask MPs to look again at the status of unaligned civil society groups and their need for registration. The rules must be made less restrictive so that charities are able to undertake legitimate campaigning in furtherance of their aims.

2 September 2013
Written evidence submitted by Friends of the Earth (GLB 72)

The Government's new Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill will place extremely tight constraints on what work charities can do in the 12 months before the next UK general election. Friends of the Earth considers this a huge threat to our legitimate campaigning work: if the Bill passes unchanged it could shut down many of our activities as the election approaches.

Our submission here covers three areas:
1) Content of Part II of the Bill
2) Inadequacies of the process for debating the Bill
3) Inadequacies of the Bill's Impact Assessment

1) Content of Part II of the Bill

Existing rules
Charities and other non-party campaigning groups are already regulated on what they can do around election times by the Electoral Commission, under the PPERA 2000 legislation. Friends of the Earth is never party-political – we never support one party or candidate over another, and never tell supporters or the public how we think they should vote. But we do say what we think about important environmental policies that politicians and political parties also have an opinion about; and some of our campaigning involves drawing attention to the views of politicians or parties and saying whether we think they are right or not. This means that a lot of our work is subject to rules around election times limiting the amount of money that we can spend on distributing campaigning material to the public.

The new Lobbying Bill
The new Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill includes the following new constraints that would seriously affect Friends of the Earth's work:

- **Organisations will be subject to these rules for the whole year prior to the next general election** (May 2014-May 2015). Previously, non-party campaigners' activities have only been covered by these rules once an election has been called (with most election campaigns lasting 6 weeks or so). This is because in the past there have not been five year fixed term Parliaments. We feel this lengthy period of new regulation is far too long.

- **A much wider range of our activities will now be regulated.** The controls will now cover spending on a wide range of activities in the long election period that were previously not covered including: events, media work, polling, transport, and documents discussing policies - including the staff costs of all these activities. Combined with the drastically lowered cap (below), we believe this will seriously constrain our work in future.

The Electoral Commission themselves have said they have "significant concerns" about the Bill and have warned that the new rules "could apply to many of the activities of charities, voluntary organisations, blogs, thinktanks and other organisations that engage in debate on public policy".¹
• Friends of the Earth would now need to register with the Electoral Commission if we were to spend more than £5k in England - and £2k in Scotland, Wales and Northern Ireland - on these activities in the year prior to a UK general election. Previously, the limits had been much higher (£10k in England and £5k in the rest of the UK). If we exceed these spending limits, it will be a criminal offence not to register. We do not see why the existing rules need to be changed.

• The spending limits on campaigning by registered campaigners in the year before the election across the UK will be reduced by 60%, from £988,500 to £390,000. If we spent more than this, we would be committing a criminal offence. By expanding the definition of what activities fall under the spending cap - plus including, crucially, the staff costs of these activities - and simultaneously drastically cutting the size of the cap, it is easy to see how the cap could be breached. This is of considerable concern to us. The Electoral Commission has stated that “it is not clear that the new spending limits have been based on any evidence of the costs that campaigners incur in carrying on the activities that are to be regulated.”

• There will be new limits on spending focused in particular constituencies - if we wanted to campaign in all 632 constituencies in Great Britain (excluding NI), we could spend just £617 per MP during the whole year prior to an election. The amounts able to be spent in the last 2-3 weeks before an election are even stricter. We feel this imposes stringent new constraints on previously legitimate political debate.

• The new rules will also make it virtually impossible for organisations like Friends of the Earth to work in coalition with other groups, because spending by each member of a coalition would be aggregated and count towards a single cap. We believe our work is improved through collaboration, so are very concerned by this.

Legal opinion

Helen Mountfield QC of Matrix Chambers has stated about the Bill: "This uncertainty [the Bill creates] about what the law requires is likely to have a chilling effect on freedom of expression, by putting small organisations and their trustees/directors in fear of criminal penalty if they speak out on matters of public interest and concern... [the Bill’s] restrictions and restraints are so wide and so burdensome as arguably to amount to a disproportionate restraint on freedom of expression, notwithstanding the legitimate aim of ensuring equality between candidates so that all voices can be heard in an election".

Additionally, Bates Well Braithwaites, a law firm with expertise in charity law, have advised in a briefing: "We are concerned that the bill could severely restrict civil society campaigning activity and may even be in breach of Article 10 of the Human Rights Act."

Examples of the sorts of activities undertaken by Friends of the Earth that this could affect

The Electoral Commission has outlined some examples of the constraints and confusion the Bill could create in a recent briefing for MPs. Amongst its examples are ones that show clearly the threat to Friends of the Earth’s work; for instance:
• “A voluntary organisation is seen as having expertise in a policy area on which several political parties make policy announcements in the run-up to the election. The media frequently ask the organisation for its views on the issues and the parties' policies, and sometimes invite it to provide interviewees for broadcast coverage. Will the cost of reactively setting out the organisation’s views count as ‘for election purposes’? If so, a proportion of the salaries of the organisation’s press and policy teams would be regulated and will require the organisation to register with us.”

>> This could apply to almost any of FOE’s work talking to the media, our reports, briefings and documents assessing how different parties perform on environmental policies (such as the Green Standard reports).

• “Three national organisations plan a protest march and rally to draw attention to concerns about a policy issue on which political parties have different positions. Will the event be judged to be ‘for election purposes’? If so, the associated costs (including publicity, transport, media work, and infrastructure costs such as policing and first aid) could easily exceed a national spending limit for the year before the election, and the total spending of all the organisers could count against each organiser’s individual spending limit.”

>> This could apply to any demonstration or stunt that FOE helped organise in the year before the election – such as the March of the Beekeepers (2013), our Green Is Working stunt (2012), or The Wave, the large climate change march of late 2009.

2) Inadequacies of the process for debating the Bill

Friends of the Earth is concerned not only with the content of the Bill but with the way it is being pushed through Parliament at breakneck speed, with insufficient time for proper scrutiny.

The Bill was introduced into Parliament on the day before MPs broke up for summer recess. Its Second Reading is scheduled for 3rd September, just a few days after MPs have returned to Parliament. Its committee stage is to be held only a week later, over 3 days (9th-11th Sept). Unusually, it is a committee of the whole house, rather than a dedicated committee being granted adequate time to go through the Bill’s provisions line-by-line.

Finally, the Government is seeking to secure the passage of the Bill in time for it to be law by May 2014 and apply to the full year before the next General Election in May 2015.

Given the highly complex and controversial nature of what the Bill proposes, and the breadth and diversity of organisations that stand to be affected by its contents, it is completely inadequate that the Government should seek to force it through Parliament at such speed and with so little chance for scrutiny.

3) Inadequacies of the Bill's Impact Assessment
Given the breadth of organisations that this Bill will affect, and the potential severity of its impacts, we consider the Bill’s Impact Assessment to be inadequate, in ways we outline here:

- The evidence base for the IA is more or less non-existent. It consists in large part of a series of assertions, such as:
  - the IA states that there is a “perception” of a lack of transparency about the activities of third parties in connection with elections - no evidence provided;
  - the IA asserts that limiting spending will reduce this perception (p.4) – no evidence given;
  - the IA asserts that double counting spend in support of political parties will not restrict spending (page 7) – no evidence;
  - the IA admits there is no data currently available concerning third party spend by constituency (page 11). This fact comprehensively undermines the case for placing a ceiling on constituency spend and the allegation of “undue influence”.
  - Despite this, the IA still concludes that the constituency limit may (best case scenario) affect “no campaigns” at all (p.11).

- The Impact Assessment examines just one counterfactual, i.e. doing nothing, in other words the possibility of not enacting the Bill at all. This is not very helpful from the point of view of carrying out an effective Impact Assessment, as it would be logical to examine a halfway house eg: making some but not all of the changes, or imposing less harsh thresholds on spending etc.

- There is no commitment to review the policy – despite the fact that it imposes burdens on economically productive organisations (namely charities). Why not?

- The IA claims that there is no impact on small, medium or large businesses. This does not necessarily follow, since businesses could become “registered third parties” under the 2000 PPERA Act. This approach also ignores the fact that charities are economically productive organisations that employ people.

- The cost / benefit analysis ignores the “goods” which arise from the work which these organisations do in connection with their election campaigning. The fact that it is impossible to put a figure on these “goods” does not mean they should not be reflected in the IA, as other “non-monetised goods” are included (which is standard practice).

- The justification given for most of the reforms is that they will put campaigning organisations on the same footing as political parties. No rationale is given for this approach. The fact that the two types of bodies are quite different (e.g. in terms of legal status, objectives and activities) is ignored. This justification is also undermined by the fact that some of the changes will put non-party campaigning organisations in a worse position than political parties – for example spending limits and the requirement to publish details of board members (which does not apply to parties). The global spending limits (reduction £390K) therefore seem to lack any justification or explanation at all in the IA.
• The IA assertion that the changes are not new and are therefore insignificant is a flawed piece of reasoning, as amendments to existing legislation can (and in this case will) have huge consequences. The assertion that charities will incorporate changes into their “existing business models” (p.5) ignores the risk that some will go out of business, or have to drastically downsize.

• A number of proposals seem to amount to dual regulation which is contrary to better regulation principles, and likely to give rise to very real “regulatory burdens” which the IA does not seem to calculate:
  o requiring expenditure in support of political parties to be counted against the party’s account and the charities amounts to dual regulation (page 7) – why must it count against both?
  o requiring third parties to submit accounts on the same basis as political parties, even if they are already required to submit accounts under the Companies Act (page 15). Why are two sets of accounts needed?

• Little or no consideration seems to be given to the cost of organisations having to re-structure their activities so as to fit within the new limits – see for example the idea that it will take 4 hours to re-adjust to the new definition of “election material”.

• In places the IA is simply so vague as to provide an inadequate basis to assess impacts, e.g.:
  o the assertion that the constituency spending limit will require 0 – 50% of organisations to re-direct “some of their expenditure” (p.10) is very unclear;
  o the assertion that 4 hours will be required to submit reports between dissolution of parliament and polling day. Does this mean 4 hours each week?

• The Equality Assessment is completely inadequate: it is one paragraph long. It argues that because the bodies impacted are very varied there should be no equalities impacts. No consideration is given to the particular bodies impacted; the kinds of people who may work for them or who may benefit from their work; or whether they have “protected characteristics” under the Act.

September 2013


5 Electoral Commission, briefing for MPs, op. cit.
Introduction

1. The National Union of Students (NUS) is a voluntary membership organisation which makes a real difference to the lives of students and its member students’ unions. We are a confederation of 600 students’ unions, amounting to more than 95 per cent of all higher and further education unions in the UK.

2. Through our member students’ unions, we represent the interests of more than seven million students. Our mission is to promote, defend and extend the rights of students and to develop and champion strong students’ unions, including those in further education colleagues to ensure learners’ interests are represented.

3. This submission will look at part two of the bill, which has particularly stark implications for third sector and civil society organisations.

Part two of the bill – impact on campaigning

4. The proposal to change the rules in regard to campaigning in the year running up to a general election is deeply concerning – and risks significantly undermining NUS and students’ unions up and down the country from advocating on behalf of students and in working to engage students in our democratic processes.

5. Some have argued that charities will not be affected by the bill. However, Helen Mountford QC argues that that “the view of the Electoral Commission, the majority of charities, and my instructing solicitors (who are specialists in this field), is that many charities and VSOs do fall within the definition of a ‘third party’ for the purposes of election law, and will be caught by the provisions of the Bill.”

6. The bill provides for a much broader and extended definition of ‘regulated activity’ to cover all activities which are seen to be carried out ‘for election purposes’. The definition does not rely on the intent of the third party - the effect is taken into account even if the activity was carried out for other purposes.

7. This means that much of the day-to-day campaigning of students’ unions, NUS and many other civil society organisations in the year running up to the next general election, could become subject to the new, far lower expenditure limits.

8. The bill limits the overall spending by non-party campaigners to £320,000 in England, £35,000 in Scotland, £24,000 in Wales and £11,000 in Northern Ireland. The limits in Scotland, Wales and Northern Ireland are clearly particularly low – and given that they include staffing costs, would very quickly prevent many organisations from undertaking any activities whatsoever which could be seen to be ‘for election purposes’.
9. The requirement for non-party campaigners to produce quarterly reports on any donations towards their spending and every week in the ‘post-dissolution’ period, even if they do not receive any donations, would create a significant administrative burden, which would be particularly problematic for small and medium sized students’ unions, and could mean less resource being available for providing key services to students.

10. The bill would mean that individual members of formal coalitions will also be liable for the total spend of the coalition. This would act as a very significant disincentive to the development of effective, broad based campaigning coalitions – which would act to further undermine the strength of our civil society. It is also deeply problematic for local students’ unions, who frequently work in national and regional coalitions in order to advocate effectively for students on a wide range of issues.

11. The timing of the bill is also problematic. Given that the regulated period prior to the anticipated general election in 2015 starts this coming spring 2014, the lack of surety about the requirements makes effective organisational planning around general election activities extremely difficult for many organisations.

*September 2013*
I'm very concerned about what impact the proposed Lobbying Bill could have on grassroots campaigners not affiliated to any party.

If organisations plan a protest or petition to attention to a concern that happens to be a policy issue on which political parties have different positions. There's no guarantee that this new bill won't class this work as 'for election purposes'. Associated costs (for promotional emails, transport, media) could easily exceed a national spending limit for the year before the election.

This bill is far too vague!

*September 2013*
Introduction

1. This submission to the Political and Constitutional Reform committee is from Compact Voice, and is in response to the introduction of the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill.

2. Compact Voice represents the voluntary and community sector on the Compact. We are cosignatories on the national Compact, and negotiated its content on behalf of the sector, based on the views and opinions of our membership - which currently number over 3100 organisations across England. Compact Voice’s activities and output are determined both by our membership and board, which includes representatives from infrastructure organisations such as NAVCA, NCVO, ACEVO, Voice4Change England, Social Enterprise UK and others.

3. A full list of board members is available on the Compact Voice website. We provide information, training, support and advice on better working in partnership to both sectors nationally and locally, represent the voluntary and community sector’s interests to government, and champion the principles of the Compact. Further information about our work and the resources available, including a number of case studies, can be found on our website: www.compactvoice.org.uk.

4. The Compact is the agreement between government and the voluntary and community sector (often referred to as civil society). It sets out a way of working that aims to ensure that the Government works effectively in partnership with the voluntary and community sector to achieve common goals and outcomes for the benefit of communities and citizens in England.

5. It considers areas such as policy and service design and delivery, funding arrangements, promoting equality and strengthening independence. Every government department, as well as Non-Departmental Public Bodies, Arm’s Length Bodies and Executive Agencies, are signed up to the Compact. The Office for Civil Society is responsible for making sure that the Government is putting the Compact into practice. As well as the national Compact, most areas in England also have a local Compact. Local Compacts share many of their basic principles with the national Compact. Local Compacts will be developed and signed up to by a variety of partners which can include voluntary and community sector organisations, councils, health and social care organisations, police, fire, and housing, amongst others. By following the ways of working set out in local Compacts, communities have benefited from greater involvement in policy design, improved reach and understanding by local public bodies, better commissioning and procurement, and stronger support for the voluntary and community sector.

6. The full text of the Compact can be found here: www.compactvoice.org.uk/sites/default/files/the_compact.pdf

7. The Compact is accompanied by an Accountability and Transparency Guide, which outlines steps to take at a national and local level if Compact principles are not followed. The Guide can be found here: www.compactvoice.org.uk/sites/default/files/the_compact_accountability_guide.pdf

Submission

8. The Compact is the long-standing agreement setting out shared principles to strengthen the relationship between government and the voluntary sector. 2013 marks the 15th year of this agreement, which was renegotiated and renewed by the coalition government in 2010, and is supported at the most senior levels of the current administration.
9. During the process of updating the Compact in 2010, the importance of the independence of the voluntary sector was strongly emphasised by the many civil society organisations we spoke to. Indeed, in the first principle of the Compact, government commits to:
   “Respect and uphold the independence of civil society organisations to deliver their mission, including their right to campaign, regardless of any relationship, financial or otherwise, which may exist.”

10. Compact Voice is concerned about the provisions included in the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill which have the potential to place restrictions on this independence. The broad nature of this bill could adversely affect how voluntary sector organisations are able to campaign during election periods.

11. Compact Voice’s recent survey of local Compact groups suggested there continues to be high levels of support for the principles of the Compact, but respondents also raised genuine concerns that the independence of the sector to represent stakeholders, to offer voice, and to constructively campaign within the law to bring about positive improvements in communities is under threat.

12. The results from this survey indicated that only 1% of local Compact groups felt that support for the independence of the voluntary sector had improved in the previous twelve months.

13. 25% of respondents from both the voluntary sector and the statutory sector felt that support for the independence of the voluntary sector had declined in the last twelve months.

14. Both independence and the right to campaign are at the heart of thriving civil society; the role of the voluntary sector in the design and the delivery of policies and public services is of vital importance to the wellbeing of our society.

15. Compact Voice is aware that many local and national organisations’ perceptions of this vital independence is governed by how central government approaches it.

16. Simon Blake, Compact Voice’s Chair, has written to Chloe Smith to seek reassurance that this bill will not limit or restrict either the voice or activity of the voluntary sector.

17. He also copied in the Minister for Civil Society to also alert him to Compact Voice’s concerns, offering the opportunity to meet to discuss these issues further.

18. This letter was supported by additional Compact Voice Board members, including ACEVO, NAVCA, NCVO, Merton Voluntary Service, Social Enterprise UK, and Voice4Change England.

Conclusion

19. Compact Voice encourages the committee to specifically consider the potential impact on the independence of the sector that this Bill may challenge.

20. We also encourage the committee to consider whether this Bill is compatible with the first undertaking in the national Compact, as quoted above.

21. We are happy to provide any further information – either written or oral – should the committee require it.

September 2013
Written evidence submitted by Joseph Egerton (GLB 76)

Status of MPs

1. Andrew Lansley did not make any comment on the possibility of Paragraph 2 of Schedule 1 having an effect outside the area of the Bill – as it will be the only statutory definition of what an MP does and the only exemption it could well be read over. If that happens, it will completely change the position on Qualified Privilege from that set out by Lord Rodger of Eastferry, which was anything that was a continuation of an MP’s work in the Chamber.

2. There were an awful lot of ‘I think’s from Andrew Lansley. What he thinks is completely irrelevant. It is what a Lord Justice states to be the law that will ultimately count. If – as happened in the Rost litigation – a case settles there may be a period when a High Court Judge’s decision on a procedural matter which cannot be appealed effectively decides the law. In 1998, the Joint Committee on Privilege took evidence from the Lord Chief Justice and the Lord President of the Court of Session (Lord Rodger). They were of course both members of the House of Lords and appeared as such. I do not know whether it is still possible to ask a Lord Justice of the Supreme Court to give evidence, but it might be generally convenient to ascertain what the incisive mind of, say, Lord Justice Sumption would produce before a Clause or Paragraph is enacted rather than when a case reaches the Supreme Court. In the meanwhile anyone seeking to guess what a Judge will say should treat anything said by a Minister as having the same weight as anything said by any private citizen.

MPs and their Constituents

If a tax accountant (and these almost certainly are ‘consultant lobbyists’) living in Daylesford in the Witney constituency writes to his or her MP, complaining that he or she can never get home to read a story to their young children before bedtime thanks to the inordinate delays by HMRC in answering the phone, she or he is presumably communicating with a Minister. If a tax accountant living a few hundred yards away in Addlestrop (‘where the trains used to stop’) in the Cotswold constituency send the same letter to his or her MP, he or she is not communicating with a Minister. Presumably under this Bill, the first will have to register and the second will not.

Likewise, if at this moment an individual living in Brixton and who falls into the class of ‘consultant lobbyist’ writes to the local MP, then there is no need to register. But if Labour wins in May 2015, there will presumably be a need to register as Chuka Umunna will surely be a Minister. And David Cameron’s constituent can de-register.

Other Matters

‘The Special Adviser (Enhanced Employment Opportunity) Bill’

One absolutely certain consequence of such a narrow limit on who may not be approached will be to ensure that all corporate lobbyists go to Special Advisers.
Sitting in Committee Room 15 reminded me of many hours I spent there in 1975 listening to the Select Committee on a Wealth Tax as Maurice Macmillan’s Research Assistant and researcher to the Conservative Members of the Committee. (The name of the room – the Lloyd George Room – is singularly appropriate.) One of the repeated questions was ‘should the capital value of the index linked pension of civil servants be included in the assets on which the tax would be levied?’ The Permanent Secretaries had a very clear idea of the answer to that question; and when the chairman, Douglas Jay, was ill, and Maurice was in the chair, seized the opportunity to put the Revenue witnesses through a 90 minute interrogation (largely run by a QC Member of the Committee) on taxing pension rights. That was the effective end of the Wealth Tax.

This Bill has the opposite effect from the Wealth Tax. It will give a boost to the employment prospects of Special Advisers. Every consultant lobbyist firm that does not wish to register will communicate with the Special Adviser whenever that firm wants to get something in front of a Minister. They already do so to a great degree which is why so many of them are staffed by former Special Advisers and former party employees. Who you know has always mattered more than what you know. But this will institutionalise the system.

The system is arguably already dangerously corrupt – a Special Adviser who knows he or she may soon need a new employer (if his minister is sacked, or if the government loses the general election) is unlikely to be positively unhelpful to a lobbying firm that may be able to provide him with an income. But Bill will increase the problem considerably. The very narrow approach to the targets of lobbying will make things even worse if, as it all too easily foreseeable, the Bill is amended either in Committee or within a year of enactment, to strike out ‘consultant’ and extend registration to corporate lobbyists as well. Those of us who work in financial regulation are deeply concerned, for example, about the access the banks seem to have to No 11 and the potentially disastrous consequences of the banks weakening the PRA’s efforts to enforce the Vickers reforms.

It is asking a great deal of a young man or woman in their mid 20s to forego the opportunity of some very well paid years in one of the big financial institutions. The right response to a call from a lobbyist may well be two words – the second being ‘off’. But if you think you might get an entry to £100K a year or more, you are likely to say ‘How soon can you come round?’ or ‘I will get the Private Office to call you at 5.30.’ We live in a very different world from that of Harold Macmillan – whose Private Office was accustomed to turning ‘tell him to bugger off’ into an effusive expression of the Prime Minister’s gratitude for the interest that the person requesting a meeting was taking in the matter concerned followed by the suggestion that he might write to the relevant (often junior) minister – who received a crisp note telling him the response the PM requested (usually ‘No’).

Imagine what will happen if the Guardian or the Sunday Times or the Daily Telegraph lays its hands on emails between staff of a consultant lobbying firm or inside the PR department of a big bank recommending that particular Special Advisers be offered employment should they be available. The scandal will be immense. The country will be rightly very angry indeed. This Bill threatens to make that more likely.

A thought on Part 2
I have not studied Part 2 in depth, but listening to the evidence that the Bill is loosely drafted, that a number of key points are not defined, that a huge amount will depend on the discretion of the Electoral Commission, and that by reducing the financial thresholds a very large number of institutions will be caught, I wondered about the position of the Peace and Justice Group at Corpus Christi, Brixton, of which I am a (rather desultory) member.
Suppose in Lent in 2015 we give our usual support to CAFOD and repeat what we did last year for an appeal for funds to finance the provision of fresh water in Africa.

The parish is part of the Archdiocese of Southwark (a charity) and also receives support from the Society of Jesus (another, separate, charity). It also works with CAFOD. So three charities are involved.

The Lent Appeal for CAFOD was promoted on posters, in leaflets both from CAFOD and as a prominent part of four leaflets during Lent promoting parish events. These were generously given and were colour printed. The parish priest, the parish administrator, and various Jesuits put time into promoting this.

CAFOD provided a text to be read out. We did a shorter one – and because DFID was promising to add £1 for every £1 given to CAFOD it contained a short dramatic bit with a member of the congregation representing one George Osborne putting money into the collection.

If we do this in 2015, was this making some sort of political statement? Would it require some sort of return? If so, by which of three charities? The impression from the evidence was that it might or might not. A rapid glance at the Bill does not help.

And what about the parish’s support for London Citizens? This organises election meetings attended by the main party candidates – memorable in 2010 as the occasion on which Gordon Brown really came to life as a passionate human being. It runs campaigns against extortionate charges for credit (and again alongside other charities – the online Jesuit journal Thinking Faith carried an article by me pointing out Adam Smith’s endorsement of laws against usury). One of its campaign documents triggered a forceful exchange in the parish council over whether it was or was not fair on Ken Livingstone’s record on social housing.

Will or any of this have to stop in May 2014? If it goes on will every pound spent have to be identified, added up, attributed to one or more of three charities? As far as I can see nobody knows at present.

This is not an entirely theoretical or hypothetical problem – Westminster Council has attempted (I am not sure with what success) to prohibit the provision of food and hot drinks to the homeless sleeping on the streets.

Andrew Lansley said that the Bill had to be rushed through to give the Electoral Commission time to prepare new regulations before the [2015] election. It is not immediately clear what mischief will result from leaving things as they are for 2015 or perhaps making a modest reduction in overall limits and legislating later in this Parliament for the 2020 election. This rush threatens to produce rotten legislation and even low level civil disobedience as people refuse to suspend charitable activities commanded by the Divine Law.

A potential religious problem in Part 1
I suspect that Paragraph 4 of Schedule 1 is intended to avoid a situation in which the Archbishop of Canterbury or the Chief Rabbi is treated as a Consultant Lobbyist.

Sir Tony Baldry may have views on whether it does cover the Archbishop, as his stipend is paid by the Church Commissioners, not collections from his flock.
It should cover the Chief Rabbi, unless somebody chooses to suggest that making communications within S 2 is a main part of his activity (the same may of course apply to the Archbishop).

With regard to the Roman Catholic Church’s case, a Cardinal would undoubtedly be able to rely on Paragraph 5 – he is undoubtedly ‘an official of a sovereign Power’. Arguably the same exemption will cover, for instance, Archbishop Longley as he is Archbishop by the Grace of God and Favour of the Apostolic See. So while the Lord Bishop of Oxford risks the penalties under this Bill if he writes to that well known member of his flock, David Cameron, the Archbishop of Birmingham will not be similarly risk.

This is yet another are where consultation might have been a good idea.

Ten or twenty years ago this might not matter that much. But we seem in so many areas to have lost the ability to live with one another – the unedifying propaganda war over gay marriage being a case in point. To take another example, I think that it is an excellent thing that there should be public debate and challenging debate over the role of church schools but litigation is not the right way forward. The right places for this issue to be determined is Parliament and perhaps local councils.

And if we end up with the Supreme Court deciding that the Bishop of Oxford does have to register because he is paid by the Church Commissioners but the Archbishop of Birmingham does not because he is exempt under Paragraph 5, this Bill will have given a sharp prod to the sleeping dog, the reformation settlement. Nobody in the Catholic Church wants to wake this controversy, nobody in the Anglican Church wants to. But no churchman or church woman deserving of the name is going to be told that his or her ability to represent their flock in a letter to a Minister is a matter for a secular regulator.

*September 2013*
Written evidence submitted by The National Association for Voluntary and Community Action (NAVCA) (GLB 77)

NAVCA (The National Association for Voluntary and Community Action) is the national voice for local support and development organisations in England. NAVCA’s 375 members support a total of 160,000 local charities and community groups. As the national membership charity for local infrastructure charities, we wish to contribute our views on the proposed Lobbying Bill, in particular the impact on smaller charities and community groups. We would like to submit to your committee the attached document setting out our views on the bill.

Transparency in lobbying is entirely laudable. But NAVCA is concerned that the bill will inhibit legitimate campaigning activity by charities to the detriment of the democratic process. It should be noted that charity campaigning is already subject to charity law regulated by the Charity Commission. Campaigning is a completely legitimate and healthy activity for charities. Often it is charities who give a voice to those who otherwise would not be heard.

In relation to Part Two of the Bill (our main concern), we note that the Electoral Commission have stated that “the Bill creates significant regulatory uncertainty for large and small organisations that campaign on, or even discuss public policy issues in the year before the next general election, and imposes significant burdens on such organisations.” We fully support this view.

Further, we believe that the Bill could have a particular impact on smaller charities and community groups. These organisations are almost entirely volunteer led and often do not have the structures in place that this bill seems to require for regulation to be effective. A lack of resources will lead to uncertainty among smaller organisations as to what the law requires and this could result in greater inhibitions on campaigning than intended. It should be noted that charities registered with the Charity Commission are already prevented from undertaking party political campaigning.

In relation to Part One of the Bill, NAVCA wholeheartedly supports transparency and believes that it should be clear whom organisations are representing. However we are not aware of convincing evidence that charities are insufficiently transparent about what they do and what they are trying to achieve. The government say they don’t intend this to apply to charities but some lawyers say it will. And there is pressure from some MPs and even a few within our sector to explicitly include charities. As I have said, charity campaigning is already subject to charity law regulated by the Charity Commission. Widening the bill to include charities could bring in many more organisations than is intended. There are over 160,000 registered charities, mainly small and volunteer-led. NAVCA does not believe charities should be required to register but if they are then it is crucial that consideration is given to a de minimis limit based on, for example employing someone primarily as a lobbyist.

Charities are vital to giving a voice to individuals and communities who otherwise would not be heard. They can provide a counterweight to the interests of the powerful. Charity campaigning enhances democracy and is already regulated. We fail to understand the need for the measures within this bill.

The Transparency of Lobbying, Non Party Campaigning and Trade Union Administration Bill: NAVCA response
Part Two and Charity Campaigning

NAVCA believes that campaigning is a completely legitimate activity for charities. We are concerned that there, is in some quarters, a developing agenda against charity campaigning and moves to label it as problematic. This is evidenced by the Institute of Economic Affairs’ “Sock Puppet” report\(^1\) and the Public Administration Select Committee’s report on charity regulation that proposed the unworkable idea that charities should log all the time and money they spent influencing government.

Charity campaigning is a completely legitimate and healthy activity for charities. In particular we think it should be noted that:

1) Charities often represent groups and individuals who have the least say in society. Making it harder for charities to campaign and talk with politicians is bad for democracy.

2) Lobbying and campaigning scandals have centred around private businesses and lobbyists. That appears to be where the problem is and therefore where the solution should be focused.

3) There is a clear difference between a charity that campaigns to achieve the change it has been set up to achieve and a lobbying company that is set up to profit from helping its clients change government policy. To conflate the two is insulting and damaging to charities.

4) The Government has said that the bill is not intended to restrict charity campaigning. However, legal advice sought by charities\(^2\) says that even if not intended the confusion the bill could create will do this.

Part One and Transparency

NAVCA wholeheartedly supports transparency. It should be clear who organisations are representing and what they believe. However we are not aware of convincing evidence that charities are insufficiently transparent about what they do and what they are trying to achieve. Charities are already transparent through publishing the following on the Charity Commission website:

- Their objects and activities– it is clear what the organisation is set up to do.
- Annual reports which outline their activities – it is clear how they have set out to achieve their objectives\(^3\).

Furthermore being a charity means that organisations have to comply with charity law which sets legal requirements for behaviour and disclosure. Charity campaigning must be\(^4\):

- Solely in order to further or support its charitable purposes,
- Undertaken only where there is a reasonable likelihood of it being effective,
- A legitimate and reasonable way for the trustees to further those purposes,
- Non party political.

If there are issues with charity transparency this should be addressed through charity law or by the Charity Commission unless there is a really compelling case to introduce dual regulation. We are not convinced there is such a case.


\(^2\) [http://www.civilsociety.co.uk/governance/news/content/15983/legal_advisor_backs_up_ncvo_lobbying_bill_warning](http://www.civilsociety.co.uk/governance/news/content/15983/legal_advisor_backs_up_ncvo_lobbying_bill_warning)

\(^3\) For Charities with income over £25,000. Registered charities under the threshold do not need to send the Charity Commission their report but do need to prepare one.

NAVCA does not support inclusion of charities on a lobbyists’ register. Widening the register to include charities as some propose could potentially bring in many more organisations than is intended. There are over 160,000 registered charities. Only a very small proportion will actually be involved in systematic lobbying of Government. However there is a real risk that a much greater number could be affected in one or more of the following ways. They could be:

- Inadvertently brought under onerous regulations which require them to pay a substantial fee.
- Forced to spend time and effort trying to decide if they are covered or not
- Required to spending time fending off challenges that they should be registered
- Dissuaded from raising genuine issues for fear of contravening the law if not registered
- Persuaded that they have to pay for professional registered lobbyists as the only way to influence government.

We are particularly concerned about small and medium charities that could be “caught out” by changing circumstances. So for example if events thrusts their organisation or the issue they campaign on into the spotlight they may suddenly need to have significantly increased contact with Ministers (For example survivors’ charities post-Saville, local charities after a local news event). Alternatively an issue that was previously an issue of political consensus may suddenly become more divisive and there may be an increased need to engage with politicians. Organisations affected by changing circumstances in this may not be aware that this may mean they have to register.

If proposals are taken forward to include charities we think there should be consideration given to a de minimis based on turnover or employing someone whose primary role is that of a lobbyist.

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5 We would recommend using the UKPAC definition of lobbyist [http://www.publicaffairscouncil.org.uk/en/resources/lobbying-definition.cfm](http://www.publicaffairscouncil.org.uk/en/resources/lobbying-definition.cfm) when determining if this is an individual’s primary role.
About the Sheila McKechnie Foundation

The Sheila McKechnie Foundation (SMK) was established as a charity in 2005 to help develop a new generation of campaigners to tackle the root causes of injustice and inequality. We exist to connect, inform and support campaigners.

The scope of our briefing

SMK supports campaigners to be more effective. Gaining information about how political decisions are made underpins the work of many campaigners, whether they are campaigning on social, environmental or economic issues. Our briefing is therefore guided by a principle of creating greater transparency about the political process, and in doing so providing campaigners with a tool to understand and analyse who is influencing Government.

We would submit a fuller briefing but due to the short time period, we are limited to this short briefing. If the deadline is extended we will send a more detailed submission.

We signed NCVO’s recent open letter to Chloe Smith MP, voicing concerns from the voluntary sector about the implications of this Bill.

In this briefing we will provide evidence to show why the proposals are problematic.

Summary

The Cabinet Office has stated that the legislation will not prevent charities from supporting policies advocated by political parties, and that charities will not face major new restrictions on campaigning. However, the text of the draft Bill suggests otherwise, whereby charities, campaigning groups and others’ ability to campaign will be severely curtailed for a whole year in the run up to a general election, and affect a range of other elections and referenda, especially where the date isn’t known a year in advance.

Charities do not require further regulation relating to campaigning

We believe there are already sufficient rules in place that regulate charity campaigning:

- The voluntary sector’s work, including its campaigning work, is regulated by the Charity Commission.
- There is also specific regulatory guidance, CC9, which sets out clear rules for charity campaigning.
- All charities must prepare accounts and make them available on request. All registered charities whose gross income exceeds £25,000 have a duty to file accounts with the Charity Commission.
- Charities’ accounts are published online and are searchable on the Charity Commission website, ensuring transparency and probity.

We believe that CC9 sets out clear, sensible and balanced rules about campaigning and political activity, and that the guidance in its current form is adequate to ensure that charities do not undertake political campaigning.
The guidance is clear that charities can:

- Undertake campaigning and political activity as a positive way of furthering or supporting their purposes
- Undertake political activity only in the context of supporting the delivery of their charitable purposes
- Choose to focus most, or all, of their resources on political activity for a period but cannot do so on a permanent basis.

We think that these measures provide the right framework for enabling charities to campaign, and to prevent them acting like or becoming political bodies.

The guidance is clear that charities cannot:

- Exist for a political purpose
- Give their support to a political party
- Engage in any party political activity
- Undertake political activity
- Give support or funding to a political party, nor to a candidate or politician
- Be used as a vehicle for the expression of the political views of any individual trustee or staff member.

In addition, the Electoral Commission, an independent body set up by Parliament, publishes guidance on charity campaigning in the lead up to elections, including rules about supporting candidates and parties.

**The proposals do not sufficiently regulate the lobbying industry**

While having a drastic impact on charities and other civil society groups that campaign on behalf of vulnerable and marginalised groups, the proposals will not actually properly regulate private sector lobbying which is where regulation is actually needed.

The legislation will fail to strengthen or even equal current lobbying regulations. As the Association of Professional Political Consultants (APPC) says “The Government’s plans are likely to result in less transparency with fewer organisations and individuals actually having to register than under the current self-regulatory regime the lobbying industry operates.”¹

The Government has not appeared to have taken on board feedback from the consultation on ‘Introducing a Statutory Register of Lobbyists’, carried out in 2012. Many respondents pointed out then that those proposals lacked breadth and depth, and would fail to collect meaningful and sufficient information. In terms of regulating lobbying, the current Bill is actually a backwards step from what were already poor and inadequate proposals in 2012.

**Expenditure requirements**

The expenditure threshold has been lowered whilst the scope of activities that must be accounted for has been widened. This places unrealistic burdens on charities and organisations seeking to campaign on key issues.

Take the HOPE not hate campaign for example, a registered third party that spent £319,231 campaigning against the BNP in the 2010 General Election. The legislation would restrict HOPE’s expenditure to 2% of that available to the BNP; restrict their ability to build coalitions (costs would need to be aggregated); and ultimately place more restrictions on HOPE than the BNP, National Front or any other political party, dramatically reducing their ability to campaign against fascism and racism.²

Furthermore, the legislation would not only affect “large charities but little groups affiliated to national umbrella organisations whose spending will contribute to a national capped limit. So a Save Our Sure Start or Save Our Hospital in a small town finds every linked Sure Start or NHS campaign counted into its local spending for electoral purposes.”³

The expenditure requirements are particularly restrictive in the devolved nations.

The Bill is badly timed and at odds with other activity

The Bill appears at odds with some guidance from the devolved nations. For example, “Although the Bill would not impact on campaigning work in relation to the Scottish Parliament, there is concern that charities working on issues that are still controlled by Westminster, could fall foul of the laws if they campaign in Scotland. It comes just a few weeks after the Office of the Scottish Charity Regulator (OSCR) issued guidance saying that charities would be able to campaign for a specific ‘yes’ or ‘no’ vote in the Scottish Independence Referendum.”⁴

The Law Commissions of England and Wales, Scotland and Northern Ireland are already undertaking a review of the UK’s “complex, voluminous, and fragmented” electoral law.

Conclusion

Like the Bill itself, our briefing is rushed. If enacted, this legislation will not clean up the scandals we expected it to address, nor will it render private sector lobbying transparent. Instead, it will affect charities and other civil society voices, where there is already clear guidance, and which have not caused the scandals which was the purported reason for the Bill in the first place. It will restrict charities’ vital and legitimate voice in speaking out on key issues, injustices and public concerns.

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² http://www.hopenothate.org.uk/gagging-hope-not-hate/
³ http://www.theguardian.com/commentisfree/2013/sep/03/lobbying-bill-corporate-prs-silence-protest
I am writing on behalf of the National Federation of Women’s Institutes (NFWI) to set out our serious concerns regarding the impact that the government’s bill to introduce greater transparency into the lobbying process will have on the charitable sector.

The NFWI is the largest women’s organisation in the UK with some 212,000 members in 6,500 Women’s Institutes across England, Wales and the Islands. The NFWI is an educational, social, non-party political and non-sectarian organisation with a long history of campaigning with WI members on a diverse range of issues. The first NFWI mandate was passed in 1918, and since then the organisation has accumulated a wide-ranging portfolio of policy concerns. The NFWI resolution process means that local members play a central role in defining policy and bringing issues onto the organisation’s national agenda; informing engagement with parliamentarians and elected representatives from across the political spectrum.

The NFWI recognises that lobbying activity must be regulated effectively in order to raise ethical standards and ensure accountability, however we have particular concerns regarding the second part of the bill and its potentially grave implications for the NFWI’s representation of members’ concerns and our mission to encourage the participation of WI members in public debate.

Activities ‘for election purposes’

The bill proposes a wider range of activities will be regulated if they are carried out ‘for election purposes’ than presently required by the Political Parties, Elections and Referendums Act 2000. The broadening of the range of material included under the term, ‘for election purposes’ means staff time, media work and events undertaken as part of general campaigns and advocacy work could all be subject to regulation. The NFWI is concerned about the bureaucratic burden that would follow with the proposed widening of the list of activities that are included in spending thresholds. It is unclear why third parties should be placed under greater restrictions than political parties.

The NFWI frequently undertakes campaigns activities with the intention of raising awareness of different issues amongst members and the wider public. Given that the bill will introduce consideration of the effect of any campaigns activities, in addition to the intent, we believe that as the proposed legislation stands, many of the NFWI’s legitimate daily activities, engaging in public policy debates for non-political purposes, could be restricted. Regulation in this area must be delivered within a clear framework yet the proposals risk diluting the clarity of the current framework. The NFWI fears that the result would be to hinder our educational work and stifle our ability to encourage members to participate in public policy debates on a broad range of issues.

For example, the NFWI resolution process enables WI members to place a wide range of policy issues onto the agenda of the national organisation as resolutions for debate and potential campaigning, if they are successfully selected by members as NFWI mandates. The process means that the organisation regularly advocates and opposes policy positions on a broad range of issues - many of the mandates are subjects of party election manifestos. Thus legitimate NFWI comment on policy in a range of areas could well leave the organisation exposed to scrutiny for seemingly promoting a political party or candidate.
Expenditure thresholds and reporting requirements

The bill proposes that the threshold of third party expenditure before registration with the Electoral Commission is required is lowered significantly. This change would have the effect of capturing a much wider range of organisations, such as the NFWI, with relatively small campaigns budgets. While the NFWI recognises that regulation of third party campaigning is important, the fact that expenditure is calculated over the course of a year means there is a risk that some organisations would have to dramatically reduce activities in the run up to an election in order to avoid meeting threshold limits and the accompanying reporting burdens.

For example, in June 2012 80,000 WI members participated in resolution selection over a ten month period that eventually saw delegates at the AGM pass a mandate regarding gaps in the maternity workforce. Two full time employees spent a significant proportion of the year that followed undertaking research examining women’s experiences of maternity services. This informed a research report and the development of campaign material for members to assist discussion of the report with parliamentarians and other decision-makers. The staff are frequently called on to respond to media requests for comment on the report findings. It is not unreasonable to expect NHS workforce issues to be an issue for debate in the next election. We expect that this work will remain a priority campaign area for the NFWI, yet it is not clear to us, if we imagine that we were now in the 12 month period ahead of a General Election, what proportion of staff time would qualify as for election purposes and contribute to the expenditure threshold.

On a practical level it could well be tricky to accurately predict if campaigns activities would fall into an election period; this would have a detrimental impact on the NFWI’s ability to plan work.

Furthermore, the proposals would unduly increase administrative burdens. The lower threshold combined with the requirement for charities to account for the aggregate expenditure of any coalitions would have a detrimental impact with the additional administrative and reporting burden that would be required to ensure compliance. The NFWI is a member of a number of coalitions, some involving a wide range of civic society groups, campaigning organisations and charities of all sizes. It is difficult to see the value in requiring every organisation, regardless of the sum it contributes, to report individually.

The bill also provides what appear to be onerous and unnecessary burdens on local pre-election activity for federated organisations such as the NFWI. Government ministers have repeatedly stressed that the intention of the bill is not to deter charitable organisations from campaigns related work. However the advice from the Electoral Commission suggests that this could be the case and could subsequently be challenged in the courts. We are concerned as the Electoral Commission, who will be in charge of regulating this, has said of the bill “…the Bill creates significant regulatory uncertainty for large and small organisations that campaign on, or even discuss, public policy issues in the year before the next general election, and imposes significant new burdens on such organisations…” (emphasis added). Lack of clarity in this area is of particular concern given our extensive local network of 69 regional federations and 6,500 individual WIs.

Despite government assurances that the intention of the bill is not to deter democratic participation by capturing charitable organisations such as the NFWI, in its present incarnation we, along with a range of other charities and non-governmental organisations, fail to see how this would be the case. In
sum the NFWI has serious concerns about the potential for this legislation to impact the ability of organisations like ours to stimulate debate on matters of public concern.

Regrettably, the short time frame proposed for the bill and the lack of public consultation means there has been little opportunity for us to fully assess the implications of the bill.

September 2013
The Salvation Army speaks out on behalf of the poorest and most marginalised individuals in our society. Ensuring that their voice is heard and influences the policy process is fundamental to our work.

We are concerned that the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill risks diminishing the participation of charities and voluntary sector organisations such as The Salvation Army in the democratic process. This threatens to silence the voice of those who are represented by charities.

We are particularly concerned about the following points:

Whilst we agree with the principle that lobbying activities should be transparent and accountable, the requirement to register for consultant lobbyists (as set out in the Lobbying Bill – Part 1) risks excluding those who carry out the task of lobbying on behalf of their own organisation. We are concerned that this might make the work of in-house lobbyists seem illegitimate, and as such would severely constrain opportunities for charities and voluntary sector organisations to engage with public policy.

The substitution of “Election campaign” for “For election purposes” (as per section 26(3) of the Lobbying Bill) induces confusion regarding which activities should be regarded as party campaigning, as highlighted by the National Council for Voluntary Organisations (NCVO). The definition of “For election purposes” set out by the Lobbying Bill means that activities that were previously considered as non-party campaigning would fall under the remit of partisan campaigning, and would thus be severely restricted. The definition also leaves greater scope for individual interpretation – a concern which is also shared by the Electoral Commission.

The Lobbying Bill would affect some of our core activities, notably our work on the minimum pricing of alcohol. Our ability to speak out on these issues is inherent to the pursuit of our charitable objectives, and as such it is crucial to ensure that any new legislation protects this ability. We thus ask that the Lobbying Bill be revised to reflect this need and enshrine any activity pursued for an organisation’s charitable objectives as legitimate.

We ask that your Select Committee urge the government to protect the right and ability of charities and voluntary organisations to speak out on behalf of those they represent, and to fully participate in the policy process in the pursuit of charitable objectives.

We hope that you will be successful in persuading the government to delay the legislation for at least six months to allow for further consultation on the scope and wording of the Bill with all concerned organisations.

September 2013
Written evidence submitted by The Board of Deputies of British Jews and the Jewish Leadership Council (GLB 81)

We are writing to you regarding the Transparency of Lobbying, non-party Campaigning, and Trade Union Administration Bill.

The Board of Deputies is the representative organisation of the UK Jewish community and the Jewish Leadership Council (JLC) is an umbrella body which exists to strengthen the major institutions of British Jewry and promote cooperation between them. Together we are taking this opportunity to raise our deep concerns about the possible negative impacts of the Bill as it stands.

Before we express our concerns, we would like to articulate our support for transparency in the democratic process. However, we are concerned about the lack of clarity of definition and the levels of limitation that the new Bill will impose. Our fear is concentrated around the lack of clarity in the Bill that will doubtless, have a harmful effect on civic participation, particularly for smaller organisations.

Such organisations may be unprepared to risk inadvertently crossing the low financial bar which would bring them in to the scope of regulation, which it appears will require burdensome administration.

In our respective capacities as charities and organisations that help to support numerous other charities and voluntary organisations, we are keenly aware that the new proposed rules are likely to act as a considerable deterrent for people who have until now worked towards raising awareness of issues affecting the Jewish community.

Our main concerns are as follows:

1) Definition change for what constitutes campaigning
   - Legitimate awareness-raising activities which are designed to be politically neutral could become a party political issue in an election.
   - If a communal organisation campaigns for a policy change in a constituency and either as a by-product or coincidentally one of the local candidates expresses a sympathetic view on the issue, the community’s campaigning activity could be deemed to be aiding the candidate’s election campaign. In effect this means that campaigning against policies could become a criminal offence.
   - For example, both the JLC and the Board of Deputies campaign and give consultation on issues regarding religious freedom and faith schools. If a Party were to take a position in favour or against one of our longstanding positions on these issues, we could find ourselves being accused of taking a party-political position.

2) Reducing spending limits for third party campaigners
   - Restrictions on third parties will now be far more extensive than those on political parties. Campaigners will now be limited to just 2% of the expenditure available to political
parties. The amount that third party campaign groups can spend the year before an election under the new rules will be reduced by more than half.

- Under the proposed changes, the new and very low limits will result in the inclusion of numerous organisations; for example, synagogues and churches who do not wish to be thought of, or indeed are not, as political campaigners or lobbyist groups. However due to the changes in the Bill, they may now be considered in such terms. A tangible example of the impact this might have could include a reticence to host ‘hustings’ at synagogues and other faith institutions in the lead up to an election. This fundamental element of civic participation and democracy could come under threat because spending on such an event (including staff costs, publicity and refreshments) could conceivably cross the proposed £2,000/£5,000 threshold. Individual synagogues may not have the capacity to handle the weekly reporting during an election, and other reporting during the rest of the year, and so make a choice not to hold such an event, damaging local and/or national democracy.

3) Costs included in the expenditure limits

- The Bill’s proposal that staff time and other costs should now also be included in the limit further reduces the value of the £390,000 cap. In contrast, this cap is not applied to political parties, indicating that third parties - important for the checks and balances they provide for government and political parties - are being more heavily monitored and constrained than political parties.

- The cap in spending per constituency in the 12 months prior to an election would significantly impact the ability to participate in grassroots activity, especially given the inclusion of staff time in this figure. This is particularly significant for some minority groups whose preponderance in some areas may lead to more extensive campaigning in some constituencies over others. In practice this could result in us reaching our legal campaign limit very early on.

With regards to workability and efficiency we are deeply concerned that voluntary and charitable groups including Jewish communal organisations will just not be able to keep up with the sheer amount of bureaucracy that the new bill will create. The regulatory burdens will add considerable workload to bodies which do not have the capacity to handle additional administrative burden. We will feel that the knock on effects of such things will act as a deterrent and ultimately restrict legitimate and democratic participation in the political process.

Our concerns are compounded by the very narrow time frame that has been given for the consultation and discussion of the Bill. We understand that Government have stated their intention to have the Bill passed by the end of the year. The Bill proposes to make various significant changes to the regulation of campaigning by non-party organisations, in particular in the twelve-month period before a general election. We are appealing to you and your colleagues in Government to consider the very difficult and somewhat precarious situation that the Bill will create for third party groups who engage with any aspect of the political process, and to allow further time for consultation to get this important measure right.
We are asking that our concerns regarding this Bill be taken into consideration especially with regard to the ambiguity surrounding definitions and procedure. Our feeling is that this Bill will actively dissuade and further disempower organisations who have until now helped positively influence and participate openly and legitimately in UK politics and the democratic process.

*September 2013*