

**National Assembly for Wales**  
Research paper

**Transparency of Lobbying, Non-party  
Campaigning and Trade Union  
Administration Bill**

September 2013

Cynulliad  
Cenedlaethol  
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National  
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Wales



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Enquiry no: 13/2333  
Paper number: 13/067

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Administration Bill**

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# **Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill**

## **1. Introduction**

*The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill* (“the Bill”) was introduced to the House of Commons on 17 July 2013. It received its Second reading on the 4 and 5 September 2013 and was considered by a Committee of the Whole House on 9, 10 and 11 September 2013. Report Stage in the House of Commons is on 8 October 2013.

The Bill is intended to introduce a statutory register of consultant lobbyists and establish a Registrar to enforce the registration requirements. Election campaign spending by those not standing for election or registered as political parties would be more heavily regulated. The legal requirements placed on trade unions in relation to their obligation to keep their list of members up to date would be strengthened.

This paper is intended to provide background to the Bill and to highlight issues that will impact on Wales.

## 2. Policy Background

### 2.1. UK proposals

The UK Government committed to introducing a **statutory register of lobbyists** as part of the *Coalition: Programme for Government*.<sup>1</sup> In January 2012 it launched a consultation on its proposals which closed on the 13 April 2012. Further information on this can be seen in the [\*\*House of Commons Standard Note, Lobbying:\*\*](#)

The UK Government aimed to:

increase the information available about lobbyists without unduly restricting lobbyists' freedom and ability to represent the views of the businesses, groups, charities and other individuals and organisations they represent or to deter members of the public from getting involved in policy making.<sup>2</sup>

On 20 January 2012 the Government launched a consultation paper, *Introducing a Statutory Register of Lobbyists*. In July 2012 the UK Government published a summary of responses to the consultation, with an indication of next steps in developing the policy.<sup>3</sup> The Introduction stated that revised policy proposals "will be published in the form of a White Paper and draft Bill during this session of Parliament." The UK Government went on to reiterate its commitment to introducing a statutory register, while not "unduly restricting lobbyists' freedom and ability to represent the views" of the groups they represent, nor deterring the public from getting involved in policy making.<sup>4</sup>

On 13 July 2012 the House of Commons Political and Constitutional Reform Committee ("the Westminster Committee") published a report entitled, *Introducing a statutory register of lobbyists*, the evidence-gathering process which had run in parallel to the UK Government's consultation.<sup>5</sup> The Westminster Committee recommended that **the proposal for a statutory register of third-party lobbyists be dropped in favour of a wider register of anybody lobbying professionally in a paid role, thus including in-house lobbyists.**<sup>6</sup>

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<sup>1</sup> UK Government, *The Coalition: Our programme for government, May 2010* [accessed 10 June 2013]

<sup>2</sup> Cabinet Office, *Introducing a Statutory Register of Lobbyists: A Consultation*, CM8233, January 2012 [accessed 10 June 2013]

<sup>3</sup> *A Summary of Responses to the Cabinet Office's Consultation Document Introducing a Statutory Register of Lobbyists*, July 2012, Cm 8412 [accessed 12 June 2013]

<sup>4</sup> HC Standard Note, *Lobbying: June 2013 update*, SN06660, 7 June 2013 [accessed 11 June 2013]

<sup>5</sup> HC Political and Constitutional Reform Select Committee, Second report 2012-2013, *Introducing a Statutory Register of Lobbyists*, HC153, 13 July 2012 [accessed 12 June 2013]

<sup>6</sup> HC Standard Note, *Lobbying: June 2013 update*, SN06660, 7 June 2013 [accessed 11 June 2013]

On the first weekend in June 2013 allegations emerged that four parliamentarians had potentially breached codes of conduct in the Commons and Lords by agreeing to act as paid advocates and/or providing services such as asking parliamentary questions. The claims were made in a BBC Panorama report, investigating jointly with the *Daily Telegraph*, about Patrick Mercer MP and his response to approaches by an apparent lobbying company representing Fijian business interests. On 31 May 2013, ahead of the TV broadcast, Mr Mercer resigned the Conservative whip, referred himself to the Parliamentary Commissioner for Standards, and said that he was taking legal advice.

Panorama also made allegations about Lord Laird. Shortly afterwards, the *Sunday Times* made allegations that Lord Laird and two other peers, Lord Cunningham of Felling and Lord Mackenzie of Framwellgate, had given inappropriate undertakings to another fake company, this time involved in solar energy. The three peers denied any wrongdoing. Lord Cunningham and Lord Mackenzie were suspended by the Labour Party, while Lord Laird resigned the Ulster Unionist Party whip pending the outcome of investigations. The three cases are being investigated by the House of Lords Commissioner for Standards.

Further allegations merged about Tim Yeo MP on 9 June in the *Sunday Times*, which have also been referred to the Parliamentary Commissioner for Standards.<sup>7</sup> Mr Yeo stood down as chair of the Energy and Climate Change Select Committee prompting the Speaker, John Bercow MP, to write to the chair of the standards committee at Westminster asking him to consider whether select committee chairs should have any outside commercial interests.<sup>8</sup>

Writing in the *Daily Telegraph*, Deputy Prime Minister Nick Clegg responded to the allegations by reiterating his support for a power of recall of MPs<sup>9</sup>, and for a statutory register of lobbyists. However, he made the point that “we need to be realistic: there is no single, magical protection against an individual politician determined to behave unethically or inappropriately.<sup>10</sup> Indeed, it is not certain that a statutory register of lobbyists would prevent the kind of behaviour alleged against Mr Mercer and the three peers, since the allegations concern behaviour that would be in breach of existing codes in any case.

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<sup>7</sup> [Tim Yeo denies claims he offered to advise solar energy lobbyists for cash, \*Guardian\*, 9 June 2013 \[accessed 10 June 2013\]](#)

<sup>8</sup> [Guardian, Speaker John Bercow raises concerns over MPs' commercial interests, 12 June 2013 \[accessed 13 June 2013\]](#)

<sup>9</sup> For further information on this see the [Research Service paper Recall of MPs Draft Bill, 2012 \[accessed 12 June 2013\]](#)

<sup>10</sup> [Daily Telegraph, Cash for access: Clegg pledges new regulation to tackle lobbying, 2 June 2013 \[accessed 11 June 2013\]](#)

The UK Government confirmed that it would bring forward legislation on lobbying before the summer recess. Chloe Smith MP, Parliamentary Secretary at the Cabinet Office, said:

The Government have repeatedly made very clear their commitment to introducing a statutory register of lobbyists. The events that have unfolded over the weekend demonstrate just how important transparency in political life is. We will therefore introduce legislation to provide for a lobbying register before the summer recess. The register will go ahead as part of a broad package of measures to tighten the rules on how third parties can influence our political system.<sup>11</sup>

The *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill* ("the Bill") was introduced to the House of Commons on 17 July 2013.

## 2.2. *The Welsh context*

In the original consultation paper on the statutory register of lobbyists the UK Government made reference to a "UK Statutory Register for Lobbyists" and stated that "we will now be taking forward discussions with a view to including the Devolved Administrations and Legislatures within the scope of a statutory register."<sup>12</sup>

On 15 March 2012 the Presiding Officer wrote on behalf of the Assembly to the then Secretary of State for Wales, the Rt.Hon. Cheryl Gillan MP, stating that:

In my view the Assembly should be responsible for making any decisions on further governance arrangements [...]

We already have in place, in Wales, robust measures to govern the relationships Members have with outside organisations, but we must never be complacent. I believe that the Assembly's Committee on Standards of Conduct is likely to want to consider whether any further safeguards are needed, in conjunction with the Assembly's Commissioner for Standards, and, if so, whether these would require legislation.<sup>13</sup>

Furthermore, the Assembly's Standards Committee concurred with the view of Standards Commissioner that:

the arrangements currently in place for regulating lobbying, as it relates to Members of the National Assembly, are essentially sufficiently robust and fit for purpose.<sup>14</sup>

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<sup>11</sup> [HC Debates Col 1363 4 June 2013 \[accessed 12 June 2013\]](#)

<sup>12</sup> [Cabinet Office, \*Introducing a Statutory Register of Lobbyists: A Consultation\*, CM8233, January 2012 \[accessed 10 June 2013\]](#)

<sup>13</sup> Quoted in [Standards Committee's Report 03-13 to the Assembly on Lobbying and Cross-Party Groups, May 2013 \[accessed 11 June 2013\]](#)

<sup>14</sup> [Standards Committee's Report 03-13 to the Assembly on Lobbying and Cross-Party Groups, May 2013 \[accessed 11 June 2013\]](#)

The Standards Committee's recommendation for strengthened guidance on lobbying was agreed by Plenary on **26 June 2013**.<sup>15</sup>

*The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill does not contain a requirement for devolved bodies to have register of lobbyists.* However, other provisions in the Bill will have an impact in Wales.

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<sup>15</sup> [RoP, 26 June 2013 \[accessed 6 September 2013\]](#)

### 3. The Bill

#### 3.1. Aim and Structure

The Bill makes provision in three areas:

- It establishes a **register of professional lobbyists** and a **Registrar of lobbyists** to supervise and enforce the registration requirements.
- It changes the **legal requirements for people or organisations who campaign in relation to elections** but are not standing as candidates or a registered political party.
- It changes the **legal requirements in relation to trade unions' obligations** to keep their list of members up to date.

The Bill consists of **four parts** and **four schedules** arranged as follows:

- Part 1 – Registration of Consultant Lobbyists
- Part 2 – Non-Party Campaigning etc
- Part 3 – Trade Unions’ Registers of Members
- Part 4 – Supplementary
- Schedule 1 – Carrying on the business of consultant lobbying
- Schedule 2 – The Registrar of Consultant Lobbyists
- Schedule 3 – Controlled Expenditure: qualifying expenses
- Schedule 4 – Requirements of quarterly and weekly donation reports.

Part 1 and Schedules 1 and 2 are new free-standing statutory provisions. Part 2 and Schedules 3 and 4 amend and insert new provisions into the *Political Parties, Elections and Referendums Act 2000* ("PPERA"). Part 3 amends and inserts new provisions into *Trade Union and Labour Relations (Consolidation) Act 1992* ("TULRCA").

#### 3.2. Territorial Extent

**Part 1** of the Bill extends to **the whole United Kingdom**. The requirement to register applies to all consultant lobbyists engaged in lobbying UK Government Ministers and Permanent Secretaries, regardless of where the lobbying takes place or where the consultant lobbyist is based.

However, **Part 1 does not make any provision in relation to those who lobby the Devolved Administrations and Legislatures**. It deals only with reserved matters and **does not require the consent of the devolved legislatures**.

**Part 2** of the Bill extends to **the whole of the United Kingdom**, deals only with reserved matters and **does not need the consent of the devolved legislatures**. Certain amendments also extend to Gibraltar.

The provisions on Trade Unions' registers of members which are inserted into TULRCA by **Part 3** will extend to **England and Wales and to Scotland** but not to Northern Ireland, where it is a devolved matter.

### **3.3. Content of the Bill**

The Bill gives effect to the Government's proposals on lobbying set out in Section 2 of this paper. 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 the UK Government. The Bill will require 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 arrangement whereby government ministers and permanent secretaries of government departments voluntarily disclose information about who they meet on a quarterly basis. The register will be hosted by the **Registrar of Consultant Lobbyists**, who will be independent from the lobbying industry and government.

In relation to **campaigning by people or organisations who are not political parties**, the Bill changes the **spending limits** that such people or organisations can **spend in an election campaign and the level of spending at which they** are required to register with the Electoral Commission. The Bill also changes the way in which spending above a specified level by a non-party is treated for the purpose of party spending limits when it is targeted at achieving the electoral success of a political party. The Bill introduces geographical limits on the amount that non-party campaigners can spend in a particular constituency. The Bill also requires non-party campaigners to publish and record more information about their spending, donations, accounts and board members. Lastly the Bill clarifies and extends the Electoral Commission's duty to monitor and take all reasonable steps to secure compliance with regulatory requirements, including those inserted by the Bill.

Part 3 of the Bill introduces **new statutory obligations on every trade union which is subject to the duty** under section 24 of the TULRCA **to compile and maintain a register of their members and to keep this register accurate and up to date**. These trade unions will be required to supply an annual membership audit certificate to the **Certification Officer (CO)** in respect of this requirement. Unions with more than 10,000 members are required to appoint an assurer who will provide a certificate stating whether, in the assurer's opinion, the union's systems are satisfactory for the purposes of complying with section 24 of TULRCA; other unions will self-certify. The CO has powers to require the

production of documents where he thinks there is good reason to do so and can appoint an inspector to investigate whether there is a breach of section 24(1) TULRCA. The CO also has powers to declare that a union has failed to comply with these duties and to issue an enforcement order if the union is not compliant. The declaration or order can be enforced as a declaration or order of the High Court or Court of Session in Scotland ("the court"). The CO also has power to issue an enforcement order if a union or any other relevant person has failed to comply with a requirement to produce documents or a duty to cooperate with an investigation. The order can be enforced as an order of the court.

## 4. Opinion

### 4.1. *Second Reading of the Bill*

The Second Reading of the Bill took place on **3 September 2013**. Key issues raised during the debate were:

- The timing of the Bill and the lack of pre-legislative scrutiny. Many MPs contributing to the debate also thought the Bill is poorly drafted.
- In Part 1 contributers argued that in-house lobbyists for large companies are not included on the proposed register.
- In Part 2 there was a widely held view that this would constrain the activities of charities.
- In Part 3 Labour MPs questioned the rationale for the requirements in the Bill on Trade Unions.
- Welsh, Scottish and Northern Irish MPs questioned the impact of Part 2 where there are multiple electoral cycles.

In response to a point by Chris Bryant MP, the Leader of the House, the **Rt.Hon. Andrew Lansley MP**, explained the Government's rationale for who is to be included, and not included, in the proposed register of lobbyists in **Part 1** of the Bill:

**Chris Bryant:** I am deeply grateful to the Leader of the House for giving way. He says this is all about transparency, but if I have got it right every single member of the public affairs team in-house at BSkyB will be able to visit as many Ministers as they want and every single lawyer employed by BSkyB to advance its case will be able to do so without any need to register. The only person who would have to register would be an independent consultant in a company that solely lobbies. How does that possibly afford greater transparency?

**Mr Lansley:** It promotes transparency because if a representative of Sky visits a Minister in order to discuss that business, it is transparent that they are doing so in order to represent the interests of Sky. However, if somebody from "XYZ Corporation", a consultant lobbying firm, visits a Minister in order to discuss somebody else's business but it is not transparent through the ministerial diary publication who they are representing, that is not transparent. We propose to remedy that by making it transparent. [...]

Our proposal addresses a specific problem. It is designed to capture professional consultant lobbyists, and that will include multidisciplinary firms that run consultant lobbying operations.<sup>16</sup>

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<sup>16</sup> [HC Debates, 3 September 2013, Cols.178-9 \[accessed 9 September 2013\]](#)

Responding for the Opposition, **Angela Eagle MP** stated:

I have two key points to make about the proposals on lobbying set out in part 1. The first relates to the laughably narrow definition of “consultant lobbyist”. Under the Government’s definition, someone will count as a lobbyist only if they lobby directly Ministers or permanent secretaries and if their business is mainly for the purposes of lobbying. It is estimated that that will cover less than one fifth of those people currently working in the £2 billion lobbying industry, and the Association of Professional Political Consultants estimates that only 1% of ministerial meetings organised by lobbyists would be covered. Moreover, it would be extremely easy to rearrange how such lobbying is conducted to evade the need to appear on the new register at all. The Bill is so narrow that it would fail to cover not only the lobbyist currently barnacle-scraping at the heart of No.10, but any of the lobbying scandals that have beset the Prime Minister in this Parliament.

My second point is that there is a real risk that the proposals will make lobbying less transparent than it is now. The Government’s proposed register would cover fewer lobbyists than the existing voluntary register run by the UK Public Affairs Council.<sup>17</sup>

**Graham Allen MP**, Chair of the Political and Constitutional Affairs Select Committee, stated that:

[The] lobbying Bill [...] is very limited, not what we expected and, even more importantly, not what the public expect of us. We will seek to redefine issues such as those concerning who is lobbied. People who lobby the civil service do not go to the permanent secretary but talk to the desk officer or the director general. Those people are outwith the concept of the Bill. Let us also redefine who the lobbyists are. At the moment, estimates vary that between 1% and 5% of lobbyists will be caught by the Bill. Surely nobody out there will accept that as the basis of a lobbying Bill.

I have a pertinent and specific question for all Members of the House about their role and function as lobbyists. I hope we are the best lobbyists that can be found, particularly on behalf of our constituents. However, we should tread in that area carefully because as soon as we start putting the rights of Members of Parliament in statute per se, we allow justiciability to take place and people to say, “You did or you didn’t perform under your legislative duties.” That could have severe consequences, and we must explore that in great detail in Committee.<sup>18</sup>

In respect of Part 2 of the Bill, **Mr Lansley** stated:

It is good that people are motivated to campaign for what they believe in, whether they do it inside or outside a political party. Campaign groups play an important role in the political process. That will continue and it has never been in doubt. The intention of this Bill is to bring greater transparency when third parties campaign in an election. Relevant expenditure on such campaigns will now be more fully recorded and disclosed. To avoid the situation we see in some other countries, where vast amounts of money are spent without any bar or regulation [...] the Bill strengthens the existing limits on the campaign spending of third parties. We have spending limits on parties at elections. That ensures a degree of equality of arms, and we should not see it undermined by distorting activity of disproportionate

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<sup>17</sup> [HC Debates, 3 September 2013, Cols.193-4 \[accessed 9 September 2013\]](#)

<sup>18</sup> [HC Debates, 3 September 2013, Col.205 \[accessed 9 September 2013\]](#)

expenditure by third parties. The limits we are setting [...] will allow organisations that want to campaign still to do so. The expenditure thresholds at which third parties are required to register with the Electoral Commission are being lowered. That will allow members of the public better to identify the great number of organisations that exert influence in political campaigns.

The Government's clear view is that nothing in the Bill should change the basic way in which third parties campaign and register with the Electoral Commission. Currently, third parties register if they are campaigning to promote the electoral success, or otherwise enhance the standing, of a party or candidates. That will stay the same, so the argument made by the campaign group 38 Degrees that the changes stop campaigning on policy areas is not correct. The requirement to register applies only if the spending is for electoral purposes. The Bill does change the activities in respect of which spending may count towards the third parties' spending limits. Those activities are being more closely aligned with the type of expenditure that is regulated for political parties, a change that the independent regulator, the Electoral Commission, advocated to us in June. I understand that that particular provision has caused concern within the charitable sector. Charity law prohibits charities from engaging in party politics, from party political campaigning, from supporting political candidates and from undertaking political activity unrelated to the charity's purpose. The Bill does not change that.

Charities will still be able to give support to specific policies that might also be advocated by political parties if it helps to achieve their charitable purposes. The Bill does not seek to regulate charities that simply engage with the policy of a political party. It does not prevent charities from having a view on any aspect of the policy of a party and it does not inhibit charities attempting to influence the policy of a party. Such activity would be captured only if it was carried out in such a way that it could be seen also to promote the election of a political party or candidate or otherwise to enhance their standing at an election. The situation is the same as under the current legislation and remains unchanged by this Bill. That is a key point to allay charities' concerns.

I recognise that the wording of the clause has caused representative bodies to be concerned, and I am keen to continue the discussions with campaigners in which colleagues and I have already taken part. I can reassure them that we are not proposing a substantive change in the test of whether third party spending is considered to be for electoral purposes.

A number of third parties campaign in a way that supports a particular political party or its candidates. That is entirely legitimate, but it must not be allowed to become a vehicle for evading party spending rules. We believe that it is right that the political party should be able to oversee which organisations offer it significant campaign support. The Bill introduces a new measure that will require third parties that spend significant sums campaigning in a way that can reasonably be regarded as supporting a particular political party or its candidates to be specifically authorised by the political party to campaign in that manner. That spending will then be counted towards both the third party and the political party's spending limits.

The transparency of the regulatory regime is enhanced by the Bill. When third parties campaign to support political parties, expenditure will now be more fully recorded and disclosed. Donations to third parties will now have to be published in advance of an election, rather than after it. Third parties will have to provide a statement of accounts. Those measures can only be good for maintaining public trust in our political system.<sup>19</sup>

**Ms Eagle stated:**

Part 2 covers third-party campaigning in the run-up to an election. All hon. Members will remember how the Prime Minister used to evangelise about the big society, but in one of the most sinister bits of legislation that I have seen in some time, this Bill twists the rules on third-party campaigning to scare charities and campaigners away from speaking out. It is an assault on the big society that the Prime Minister once claimed to revere. I say this because part 2 broadens significantly what activities will be caught by the phrase “election campaign”. That is set out in detail in new schedule 8A to the Political Parties, Elections and Referendums Act 2000.

Part 2 creates in clause 26 a new and extremely wide definition of “electoral purposes”. It is clear that these changes will have wide-ranging implications for many hundreds of charities and campaigners local and national, large and small. Some of them have told us that they will have to pull back from almost all engagement in debates on public policy in the year before the election. These changes have created massive uncertainty for those who may fall within the regulations in a way that the Electoral Commission has deplored. The changes will mean that third-party campaigning will be restricted even if it was not intended to affect the outcome of an election—for example, engaging in public policy debate. Staff costs and overheads will also have to be included in what has to be declared—something that does not apply in this way to political parties. The Electoral Commission has said that these changes could have a “dampening effect” on public debate. The National Council for Voluntary Organisations has said that the changes will “have the result of muting charities and groups of all sorts and sizes on the issues that matter most to them and the people that they support.”<sup>20</sup>

**Mr Allen stated:**

On part 2 of the Bill, one of the most wonderful parts of my life experience as a Member of Parliament is when we come towards a general election, and all those different bodies start to get hold of us, lobby us, knock on our doors, phone us and send letters—“Come to our meeting. You will not get our vote unless we know exactly what you are doing on this.” Someone on the opposite side then says exactly the same thing: “What do you do? How do you think those issues through? Let’s understand those issues.” That is the lifeblood and rich diversity of our democracy, and we should be doing everything we can to improve and increase it, not to diminish and cast a shadow over it.

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<sup>19</sup> [HC Debates, 3 September 2013 Cols.180-3 \[accessed 9 September 2013\]](#)

<sup>20</sup> [HC Debates, 3 September 2013 Cols.192-3 \[accessed 9 September 2013\]](#)

I do not believe for a moment that the Leader of the House is trying to chill the voluntary and charitable sectors. However, in this case, I speak as a trustee of a charity. I will not put the money in that charity, which is for doing great things for kids, at risk. I will not authorise anything that even remotely possibly could risk that money—we are not sure what the Government mean or what they are trying to do. I will not do that, which dampens and inadvertently chills.[...]

[...] Who are we trying to constrain? I shall tell the House of just a few organisations that have sent evidence to my Committee. They include fringe organisations such as Citizens Advice, the Howard League for Penal Reform, the Royal British Legion and Oxfam. Those organisations have written to the Committee in the past week or so. Others include the Voluntary Sector North West, the Joseph Rowntree Foundation, Roald Dahl's Marvellous Children's Charity, the British Youth Council, the National Trust, the Women's Support Network, Christian Aid, the Stroke Association, Girlguiding and—this is the real hardcore—the Woodland Trust. Mencap and the Royal Society for the Protection of Birds have also written to the Committee. Surely we intend to make those organisations believe they have an increasing rather than a diminishing part in our democracy.

I ask the Government to think again and to do so seriously. The Committee will propose amendments on redefining terms. A number of colleagues have asked what the Government mean by "electoral purposes". What does that capture? We want to give people reassurance on that.

The Committee has taken evidence from the Electoral Commission. The last thing the Electoral Commission wants is to be given responsibility for the measures and to be made the judge. It wants clarity and to remain impartial. It does not want to be drawn into arguments on freedom of speech. It does not want to be the arbiter of what is or is not quasi-political and of what is perfectly legitimate[...]

[...] I made a point briefly—I will not make it at length—about expenditure on campaigning. If that expenditure must also include staffing and a number of other things—material costs and so on—that it did not previously include, the pot for actual campaigning for charities and other organisations is diminished. We need to be clear about that but, having briefly studied it, I am not clear. Friends who have lobbied me, the Leader of the House and others are also not clear. If we make them risk-averse, we will diminish our democracy, not improve it.<sup>21</sup>

**Jonathan Edwards MP, for Plaid Cymru, questioned the impact of the Bill in Wales:**

As others have noted, part 2 will impede the ability of third parties such as charities, think-tanks and other groups to campaign in the year prior to a Westminster election. I would like to highlight the potential for chaos among civil society groups operating in Wales and the negative impact on Welsh democracy. We live in a state of near-permanent elections—local, European and Westminster elections, and, of course, those for the devolved legislatures. Yet, again, we have a Westminster Government proposing legislation that does nothing to consider its impact on Wales.

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<sup>21</sup> [HC Debates, 3 September 2013 Cols.205-6 \[accessed 9 September 2013\]](#)

My previous employer is an England and Wales body, and in that post I would have been responsible for simultaneous UK-wide and Welsh campaigns, which often crossed over each other. How can organisations possibly dissect what aspects of campaigning work come under the provisions of the Bill, and how can the Electoral Commission regulate campaigning activity?

The rules would be far more wide-ranging than reducing the annual expenditure. Regulations would cover a wide range of activities carried out for election purposes, such as controls on spending on events, media work, polling, transport, policy documents, discussing party policies, election material distributed to the public, and staff costs. The only things missing are staples and Blu Tack. Welsh democracy could suffer as a result, as charity and campaign groups may have their campaigning activities restricted all because of a Westminster election, while the same rules will not apply during an Assembly election year.

**Wayne David (Caerphilly) (Lab):** Does the hon. Gentleman share my concern that part 2 applies not just to Westminster elections, but to elections for devolved institutions as well?

**Jonathan Edwards:** The hon. Gentleman makes a very important point. There has been little consultation in Wales, as reflected by the very strong correspondence we have received from bodies in our country.

Charities and campaign groups working in Wales could have their ability to interact with and make representations to the Welsh Government and the National Assembly for Wales curtailed, which could affect the quality of legislation designed in Wales. Critically, plurality in Welsh political life could be undermined. We have a very weak civil society as it is and many of the bodies in Wales are UK-wide or England and Wales bodies.<sup>22</sup>

A similar point was made by **Stephen Doughty MP:**

I also remain deeply concerned and confused about the differential impact this Bill will have in the nations of the UK, as we have heard from other colleagues, and especially in Wales, subject as we are now to multiple election cycles, different periods of purdah and regulated periods. We have also heard concerns about the run-up to the referendum vote. Can Ministers provide any assurance that campaigning by civil society and charities in Wales, Scotland and Northern Ireland will not be hampered by these measures even more than they appear likely to hamper that work in England?<sup>23</sup>

On **Part 3** of the Bill Mr Lansley stated:

I am confident that the burden on trade unions will be very modest. As far as the certification officer is concerned, we are talking about only three additional members of staff as a consequence of all this. In future, unions will provide a membership audit certificate to the certification officer alongside their annual financial return. Unions with more than 10,000 members [...] will be required to appoint an independent third party, an assurer, to provide the certificate, which will state whether the union's systems for maintaining the register meet the statutory requirements. That independent assurance will be important to provide confidence in large and complex membership records.

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<sup>22</sup> [HC Debates, 3 September 2013 Cols.228-9 \[accessed 9 September 2013\]](#)

<sup>23</sup> [HC Debates, 3 September 2013 Cols.263 \[accessed 9 September 2013\]](#)

It will be the responsibility of the certification officer to make inquiries and to appoint an inspector to investigate possible discrepancies, if there are circumstances suggesting that a union has not complied with those requirements. That will complement the existing responsibilities for investigating complaints made by individual members. We expect that in most cases the inspector will be a member of the certification officer's staff, but it could be an expert third party.

The Bill sets out how assurers and appointed inspectors will be bound by duties of confidentiality in their handling of member data. Of course, existing safeguards in data protection and human rights legislation will apply in this case as they do elsewhere. Should the certification officer find a union to be non-compliant with these duties, he will make a declaration to that effect specifying where the union has failed to comply and the reasons for the declaration. In addition, he will be able to make a civil enforcement order, requiring the union to take steps to remedy the issue. However, prior to making a formal declaration and order, the certification officer will give the union an opportunity to make representations. This is not about making it harder for trade unions to operate. We are not requiring unions to collect more data or change the way in which they keep membership registers. Nor are we amending the requirements on industrial action ballots. The requirement to keep a list of member names and addresses is distinct from information that a union must supply to an employer when balloting for industrial action.

I have heard the claim that these measures represent an intrusion into trade unions' right to autonomy. Rules of operation will vary from one union to another. We are not interfering with that. Unions will continue to choose how they define a member, and we are deliberately not prescribing the processes that a union should adopt in their compilation and maintenance of member data. All we are doing is asking unions to provide an annual assurance that they are doing everything that they can to ensure that they know who their members are and how to contact them. I think members would be concerned if their unions felt unable to comply with that.<sup>24</sup>

**Ms Eagle stated:**

These proposals seem deliberately designed to burden trade unions with additional cost and bureaucracy from a Government who claim they are against red tape. This is despite the fact that unions already have a statutory duty to maintain registers of members. I understand from the TUC that neither the certification officer nor ACAS has made any representations to suggest that that was not already sufficient. The Government have to date failed to provide any evidence or rationale for these changes, so I can only conclude that this is a deliberate attempt to hamper unions with red tape because a minority of them have the temerity to support the Labour party.

I have serious concerns about the implications of these changes for the security of membership data. We all know that the blacklisting of trade union members may well still exist in our country. Blacklisting has ruined many lives and these changes could have some very dangerous implications, especially in the construction industry, where many are afraid to declare their membership of a trade union openly for fear of the repercussions.

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<sup>24</sup> [HC Debates, 3 September 2013 Cols.184-5 \[accessed 9 September 2013\]](#)

The Government have arbitrarily singled out trade unions for this attack but have given no reason why other membership organisations should not be covered by these costly and disruptive requirements [...] This is another in a long list of anti-employee proposals from a Government who always seem to want to make it easier to fire rather than hire workers and to weaken rather than strengthen their security at work. We will table a range of amendments to this part of the Bill to address concerns.<sup>25</sup>

**Mr Allen** stated:

We need to look again at part 3. I am mystified as to why trade unions would not know where their members are—their lifeblood is ensuring they know where their members are because their members pay the subs and the wages and keep those organisations going. They have to know who their members are for industrial relations ballots, so it is in their interests to keep those records up to date.<sup>26</sup>

**Mr Doughty** addressed the question of whether the position of the Wales TUC could be affected by the Bill.

I want to draw the House's attention to the concerns expressed by the Wales TUC, which has spoken out very clearly this week. It is deeply concerned that not only could the Wales TUC conference cease to be lawful in 2014, but that this Bill's provisions could undermine the special social partnerships the Wales TUC has with the Welsh Government, as enshrined in the Government of Wales Acts, and that it could damage their anti-racism campaigning work in constituencies across Wales from May 2014. That point has been made by Hope not hate and many other organisations.<sup>27</sup>

#### 4.2. Stakeholders

The **Electoral Commission**, which is given an enhanced monitoring role in Part 2 of the Bill is of the view that, "as drafted, the Bill raises some significant issues of workability". It also expressed concerns about the timing of the Bill in the context of regulating non-party campaigning at the 2015 UK General Election, because if it 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.

Areas that the Electoral Commission considers of concern are:

- 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. It also expresses concern that **this would be a particular issue in Wales, Scotland and Northern Ireland**.

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<sup>25</sup> [HC Debates, 3 September 2013 Cols.198-9 \[accessed 9 September 2013\]](#)

<sup>26</sup> [HC Debates, 3 September 2013 Col.206 \[accessed 9 September 2013\]](#)

<sup>27</sup> [HC Debates, 3 September 2013 Cols.263 \[accessed 9 September 2013\]](#)

- 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 its readings of the law will be contentious and challenged, creating more uncertainty for those affected. While it considers that as the independent regulator it should be free to decide when the rules have been broken, and how to deal with breaches of the rules, the **Electoral Commission does not think it is appropriate for it 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.<sup>28</sup>

It further added that “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”.

The National Council for Voluntary Organisations (NCVO) briefed MPs prior to the Second Reading that the Bill as the drafted was “entirely unworkable and may limit charities’ and other groups’ ability to speak out on issues of concern”. It said that:

- The provisions of the Bill are very broad in scope and was concerned that legitimate day to day activities of charities and voluntary organisations engaging with public policy would be caught by these rules.
- The Bill is complex and unclear. It may be difficult for charities and other voluntary groups to understand if any of their activities would be caught, and this runs the risk of discouraging campaigning activity.
- The Bill gives substantial discretion to the Electoral Commission. This creates an unnecessarily burdensome regulatory regime and may leave charities, voluntary organisations and the Electoral Commission open to legal challenge.
- The Bill introduces a number of excessive reporting requirements and stringent spending limits for those caught within the scope of the bill.<sup>29</sup>

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<sup>28</sup> [Electoral Commission, The Transparency of Lobbying, Non Party Campaigning and Trade Union Administration Bill, House of Commons Second Reading Briefing, 3 September 2013 \[accessed 9 September 2013\]](#)

<sup>29</sup> [NCVO, Parliamentary Briefing, Second reading of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill, September 2013 \[accessed 12 September 2013\]](#)

Legal opinion provided to the NCVO suggests the new rules are so complex and unclear that they are “likely to have a chilling effect on freedom of expression, putting small organisations and their trustees and directors in fear of criminal penalty if they speak out on matters of public interest and concern.”<sup>30</sup>

Following a meeting between the NVCO chief executive and the Leader of the House of Commons, the UK Government has committed to change the definition of the term ‘for electoral purposes’. The revised definition should ensure that charities operating within charity law will not be subject to registration with the Electoral Commission, and therefore their activities should not come within the regulation outlined in part two of the Bill. The NVCO welcomed this but remained concerned about other issues highlighted.

The NCVO represents English voluntary organisations, however, the **Wales Council for Voluntary Action** (WCVA) is working closely with it in regard to the Bill. The WCVA suggested that the fact that Part 1 of the Bill did not extent to devolved administrations:

may have created the misleading impression that the bill will not apply to Assembly elections. However, Part 2 of the bill does directly affect devolved administrations, both in terms of (1) campaigning during Westminster election periods; and (2) campaigning during devolved and EU election periods.

This means that the involvement of civil society in elections to the devolved administrations will potentially be seriously curtailed by a bill passed in Westminster, with little or no consultation with those administrations. It is very possible that more Welsh organisations will have to register with the Electoral Commission, and account for their spending, including events, policy manifestos and the staff time spent on these.<sup>31</sup>

On Part 3 of the Bill the TUC told the House of Commons Political and Constitutional Reform Committee:

**Nigel Stanley:** Part 3 is a bit like part 2, because we cannot quite work out what exactly the problem is that it is meant to solve. We have asked BIS, the certification officer and ACAS through freedom of information requests whether they have received or made representations that we need to amend current powers to regulate union membership, which are there with a very strong duty in the Trade Union and Labour Relations (Consolidation) Act 1992. We cannot find any demand for part 3.

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<sup>30</sup> [In the matter of part II of the Transparency of Lobbying, Non-party campaigning and Trade Union Administration Bill and the Voluntary sector, Legal Opinion provided to NCVO by Helen Mountfield QC, Matrix Chambers, 30 August 2013 \[accessed 12 September 2013\]](#)

<sup>31</sup> [WCVA News, Lobbying Bill Latest, 9 September 2013 \[accessed 12 September 2013\]](#)

Again, there is a suggestion that the Bill is about Labour party internal union affiliation and the fact that a recent selection conference was all over the newspapers. Well, fair enough, but only 15 trade unions affiliate to the Labour party. There are 166 unions that make returns to the certification officer. I am sure that the Association of Somerset Inseminators, to take one name at random from that rather wonderful list, are completely perplexed as to why they now have to go through this legal process.

It is a legal process in which three new groups gain access to individual membership details, which we think should be confidential. The three bodies who will have access to union personal membership details are the certification officer, anyone appointed by the certification officer as an investigator and the assurer that unions have to appoint from a list published by the Government. It is not to say that the certification officer would have any intention of doing anything wrong with that data, but people are still concerned.

I am sure that members of the Committee will be aware that there have been recent debates about blacklisting, where employers have not wanted to employ people because of their union record. That has been widely condemned across the political spectrum and is not just a concern for unions. It is not surprising that unions are very worried about the implications of this section of the Bill, especially when they cannot find any reason why it is there. When you do not know what the problem is, it is very hard to come up with an alternative response to it. I am sure unions would be prepared to do that, if it was felt that there was a genuine public policy issue that required some kind of response, but we cannot see an issue.

The other theory is that it is about industrial action ballots, but I can tell you one thing: anyone who knows anything about the law surrounding industrial action ballots knows that they are most often challenged in the courts by employers who dispute the union's membership records for the members who are being balloted. There is an idea that there is some problem with that. Unions have very many strong incentives to keep their membership records accurate—it is how they get their income, for a start—but if they are one of those unions that engages in industrial action, they know that they have to have absolutely cast-iron membership lists in order to do that. Again, there is no suggestion that there is a problem here, but unions worry about privacy, and they worry about the fact that third parties will now be able to complain to the certification officer, which may result in all kinds of spurious and trivial complaints. As I say, they do not know what the problem is.<sup>32</sup>

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<sup>32</sup> HC Political and Constitutional Reform Committee, Uncorrected transcript of oral evidence To be published as HC 601-iii, 29 August 2013 [accessed 16 September 2013]

#### *4.3. The Political and Constitutional Reform Committee Report*

The House of Commons Political and Constitutional Reform Committee took evidence on the Bill over the summer and published a Report on 5 September 2013.<sup>33</sup> The Committee was highly critical about the way in which the Bill was introduced. It stated that “the Bill has been introduced without adequate consultation with those it affects and without the proper involvement of Parliament, not least through pre-legislative scrutiny.”<sup>34</sup>

The Committee considers Parts 1 and 2 of the Bill to be “seriously flawed”. On Part 1 it stated:

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

The Government should amend the Bill to:

- expand the definition of a lobbyist to include those who lobby on behalf of an organisation for which they work (in-house lobbyists);
- expand the definition of what constitutes lobbying to include the provision of lobbying advice;
- extend the list of people with whom contact counts as lobbying to include Senior Civil Servants and special advisors.

We think that the House should consider carefully the inclusion or exclusion of Members of both Houses in this context, because there are some difficult problems associated with this issue.

The list of information to be provided on the register should be expanded to include the subject matter and purpose of the lobbying, where this is not already clear from a company’s name.<sup>35</sup>

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<sup>33</sup> [House of Commons Political and Constitutional Committee, \*The Government’s Lobbying Bill\*, Seventh Report, 2013-14, 5 September 2013\[accessed 12 September 2013\]](#)

<sup>34</sup> [House of Commons Political and Constitutional Committee, \*The Government’s Lobbying Bill\*, Seventh Report, 2013-14, 5 September 2013\[accessed 12 September 2013\]](#)

<sup>35</sup> [House of Commons Political and Constitutional Committee, \*The Government’s Lobbying Bill\*, Seventh Report, 2013-14, 5 September 2013\[accessed 12 September 2013\]](#)

On Part 2 it stated:

We do not believe that the Government has clearly communicated the need for Part 2 of the Bill, or has provided a satisfactory account of the basis on which the new levels for registration and expenditure by third parties have been set. The definition of spending “for electoral purposes”, in particular, is confusing. It is unsatisfactory that its interpretation should be left largely to the Electoral Commission—a state of affairs the Commission itself has criticised. Many charities and other organisations contacted us to express concern about the combined effects of new lower thresholds for registration, new lower limits for expenditure, and a wider, vague definition of what will count as controlled expenditure.<sup>36</sup>

However, the Committee’s main recommendation is that the Government should withdraw the Bill following its Second Reading, and support a motion in the House to set up a special Committee to carry out pre-legislative scrutiny, using the text of the existing Bill as a draft. The Committee should be charged with producing an improved Bill within six months and the Bill should then be re-introduced to the House and complete its passage onto the statute book as soon possible.

#### *4.4. House of Commons Standards Committee Report*

The House of Commons Select Committee on Standards has an interest in the way in which the Bill will interact with the Code of Conduct and the Guide to the Rules relating to the Conduct of Members, and it expressed concerns over the drafting of the Bill. The Committee prepared an urgent Report to draw these concerns to the attention of the House of Commons prior to Second Reading.

The Committee’s concerns revolved round the drafting of the Bill and its ambiguity about whether the activities of MPs could fall under the definition of “consultant lobbying” in the Bill. It concluded:

We accept the Leader of the House's assurance that the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill was never intended to capture the normal work of Members as Members. Nevertheless we consider the approach the Government has taken to drafting the definition of consultant lobbying is unsatisfactory. The Bill is unclear in its definition of consultant lobbying and, in particular, about the way in which its provisions would apply to Members. The sweeping powers to refine this definition delegated to the Registrar of Consultant Lobbyists are unacceptable. It is perfectly possible that the courts and the Registrar of Consultant lobbyists will clarify that the definition does not extend so far. But primary legislation should be unambiguous about such matters.

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<sup>36</sup> [House of Commons Political and Constitutional Committee, \*The Government's Lobbying Bill\*, Seventh Report, 2013-14, 5 September 2013 \[accessed 12 September 2013\]](#)

In our view, the difficulties about the way in which this legislation applies to Members of Parliament would be swept away if paragraph 2 of Schedule 1 was removed. We consider it is necessary to make clear that Members' ordinary work is not caught by the Bill. A new subparagraph should be added to paragraph 6, stating that a reference to payment does not include a reference to the salary an MP receives as a Member of the House of Commons. We would be happy to work with the Government on this. We anticipate amendments at the Committee stage in the House of Commons.<sup>37</sup>

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<sup>37</sup> [House of Commons Select Committee on Standards, \*The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill, First Report, 2013\* HC638, 3 September 2013](#) [accessed 9 September 2013]

## 5. Next Steps

The Bill was considered by a Committee of the Whole House on 9, 10 and 11 September. **Report Stage** will take place on **8 and 9 October 2013**. The Leader of the House has indicated that the UK Government will bring forward amendments to change the definition of spending which is 'for electoral purposes' in Part 2 of the Bill.<sup>38</sup>.

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<sup>38</sup> [The Guardian, Lobbying bill U-turn after charities' campaign – but unions still concerned, 6 September 2013 \[accessed 16 September 2013\]](#)