Introduction

The British Medical Association (BMA) is a registered trade union and professional association representing doctors from all branches of medicine. The BMA has a total membership of around 150,000 representing around two-thirds of all practising doctors in the UK. In Scotland, the BMA represents around 16,000 members.

We welcome the opportunity to submit written evidence to the Standards, Procedures and Public Appointments Committee’s scrutiny of the Lobbying (Scotland) Bill.

1. **Do you agree that the Bill is necessary and that the establishment of a Lobbying Register is desirable?**

The BMA is supportive of the principal aims of transparency in lobbying that appear to be motivating the proposal to introduce a register of lobbyists, but is not convinced that a register is required.

Since devolution, there has been an open and transparent approach to engagement of the public and professions in the development of policy by all administrations, past and present. The consultation process is often set out very publicly and many organisations, including the BMA allow responses to be published. The legislative process too is very open, particularly during stage 1 with the publication of evidence received by external organisations and the public forum in which the Scottish Parliament Committees meet.

In our submission to the Scottish Government’s consultation on the proposals for this bill, we argued that a robust and enforceable code of conduct around lobbying that covers MSPs and all lobbyists would be a more meaningful and effective development than a register. We are therefore pleased to see that a code of conduct has been included in the bill as currently drafted, although consideration should be given to what – if any – enforcement mechanism will be attached to it as this has not yet been made clear.

2. **How will the Bill affect you or your organisation?**

The BMA is an active participant in Scottish public life and regularly meets with MSPs and Ministers to discuss health matters and issues that are of concern to doctors. This bill will therefore require the BMA to monitor and log any face to face contact members of staff have with MSPs or Ministers and submit appropriate details of such meetings in regular returns.
While this will undoubtedly create an added administrative burden to the BMA, we recognise and welcome the fact that some steps have been taken to minimise this burden since the Scottish Government’s consultation ahead of the bill being drafted.

The fact that the bill as currently drafted envisages an organisation based approach to the register in particular is a welcome one. While the register will still create an additional administrative burden for organisations like the BMA, that additional burden would be significantly greater if an individual approach was adopted.

In our submission to the Scottish Government, we made the point that organisations would still need to be actively involved in ensuring individual employees comply with the legislation under an individual approach, creating significant duplication of effort and greatly increasing the administrative burden involved in complying with the register. We therefore reiterate that an organisation based approach to the register is the correct one if the register is to avoid creating a disproportionately heavy burden.

Similarly, taking the approach of returns not being required when an MSP or Minister initiates the request for a meeting is a sensible one. Many organisations, including the BMA, are often asked to provide expert views on a particular policy by Ministers or MSPs. In the case of the BMA, this expert input will often be provided by a practising doctor. Excluding meetings where an MSP or Minister has sought out a meeting with an organisation from the register will help to ensure that there is no risk of people becoming unwilling to participate in providing such expertise. Additionally, it will cut down on the risk of organisations inadvertently submitting an incomplete return because staff who have little contact with politicians and therefore may be unaware of the register’s requirements were at a meeting or event where an MSP or Minister attended without being specifically asked to by an organisation.

3. Registration is triggered only when lobbying is being done in exchange for payment (either as a consultant or an employee) and does not capture lobbying carried out in the course of voluntary work or when it is done by an individual on his or her own behalf. Do you agree with this approach?

The BMA believes that it is vital that the ability of individuals to meet MSPs on their own behalf or to campaign voluntarily on issues is not compromised in any way. As such, limiting registerable activity to those who are paid by an organisation is a sensible approach to take.

It is uncontentious that the work of BMA Scotland’s Public Affairs Office whose staff are paid to engage politicians would fall within the scope of the register and should therefore be contained within submissions. However, consideration should be given to the status of other members of staff who are not expected to lobby for their organisation as part of their job description, but could potentially find themselves in contact with an MSP or Minister.

If being paid by an organisation – even when that payment is for a purpose other than lobbying - is sufficient to trigger a need to include meetings in a return, then organisations will need to put procedures in place to train and monitor all staff members in order to comply with this bill’s requirements. For larger organisations, this could be quite a significant undertaking.
If this is the approach that is taken, then the clause that is currently in the bill stating that meetings initiated by an MSP or Minister are exempt takes on an additional importance as it minimises the risk of organisations submitting inaccurate returns because a member of staff who was unfamiliar with the need to register found themselves in contact with an MSP or minister.

While staff from outside an organisation’s public affairs office (or equivalent) may on occasion find themselves at meetings or events attended by MSPs or Ministers, it is unlikely that they would seek to initiate such meetings without involvement from an organisation’s public affairs office who should be aware of the need to submit returns.

Some clarification is also needed around the status of meetings that were not initiated by either a lobbying organisation or an MSP or Minister. An example of this could be a chance discussion at a public conference where both an MSP and a representative of a lobbying organisation were on a panel. If neither party had initiated such a meeting, would it trigger the need to register it or not?

Consideration should also be given to the status of membership organisations and their members. While in general the doctors who hold elected positions in the BMA do work on behalf of the organisation on a voluntary basis and therefore would not trigger the reporting requirements of this legislation, some members who are particularly active on behalf of the BMA do receive honoraria payments in recognition of the time they have given up. Although these payments are ex gratia, it seems likely that they would trigger a need for any meetings with MSPs or Ministers they may decide to initiate to be included in the BMA’s returns. As these individuals are members of the BMA as an organisation rather than employees, monitoring their potential activity to include in returns may be challenging.

An alternative approach that could be considered would be to stipulate that registration is only required when lobbying is carried out by representatives of an organisation who are specifically paid to carry out lobbying activity, rather than any contact from someone who is paid by an organisation being enough to trigger reporting requirements regardless of what their actual job is.

4. Do the provisions set out in the Bill succeed in striking a balance between capturing information of value and ensuring that access and participation with the work of Parliament and Government is not discouraged?

The BMA is not convinced that a register of face to face meetings is required or that it would provide a particularly meaningful measure of all lobbying activity that takes place. However, we are strongly of the view that seeking to extend the register to include other forms of communication such as every email, social media or phone conversation would be an unworkable bureaucratic burden that would deter many organisations from engaging with the Scottish Parliament and Scottish Government.

If a register is to be created, then the approach being taken in the bill as currently drafted is largely the correct one, however the code of conduct included in the legislation should also be a robust and enforceable part of these plans.
5. Do you feel that the definitions and exclusions are sufficiently clear? Do they, for example, allow individuals and organisations to easily know whether their activity requires to be registered?

In our submission to the Scottish Government we stressed the need for a clear and unambiguous definition of what constitutes lobbying activity.

The approach taken by the bill as drafted – that any face to face meeting with an MSP or Minister to discuss a parliamentary or government related matter, by someone who is paid by an organisation and who initiates the meeting triggers the need for inclusion in reporting – is a relatively clear one.

While organisations may need some clarification around some of the specific cases already mentioned in this submission, there is no reason to believe that these could not be dealt with through publishing clear guidance to organisations rather than by amending the bill.

6. The Bill’s Policy Memorandum states the Bill aims for a “light touch, educative approach” and that “criminal offences and penalties [are] provided for as a last resort”. What are your views on this approach?

The BMA believe that this is the right approach to take if a situation is to be avoided where an organisation’s concerns about compliance leads to reduced political engagement. While we recognise the need for criminal offences and penalties to exist, in practice few if any organisations would be willing to endure the reputational damage that would accompany continued failure to comply with the register’s requirements.

Taking an educative approach, particularly in the years immediately following the register’s introduction, will help to ensure that organisations are not punished for genuine mistakes.

7. Are there any unforeseen consequences of the Bill as currently drafted?

In general, the bill as currently drafted strikes a balanced approach that would introduce the register while avoiding some of the most burdensome suggestions that have been mooted in relation to a lobbying register.

However, one unintended consequence from the bill as drafted may arise from the fact that it appears to be largely drafted with the way that lobbying consultancies and smaller organisations work in mind. Larger organisations that employ significant numbers of staff will find it difficult to monitor the day to day activity of every employee to ensure that they do not trigger a requirement to report contact with an MSP or Minister.

A consequence of this may be that instead of trying to monitor contact and include it in lobbying returns, the alternative approach of instructing staff who are not employed specifically to lobby to have no contact with MSPs or Ministers may be taken. This could deprive MSPs and Ministers of local perspectives affecting an
organisation that they might otherwise be offered and increase the ‘professionalisation’ of lobbying in Scotland.

8. Are there any amendments that would, in your view, enhance the Bill?

As has already been highlighted in this submission, the BMA believes that a robust and enforceable code of conduct on lobbying activity covering MSPs, Ministers and all lobbyists would be a far more meaningful development than a register of meetings.

While provision for such a code is included in the bill as drafted, the bill currently does not contain any reference to how that code would be enforced or what penalties would exist for breaching it. Additionally, the bill as drafted stipulates that the code of conduct will only apply to lobbyists, not to MSPs or Ministers. While MSP and Ministerial codes of conduct do set out how they should behave in relation to lobbyists, including statements of the behaviour expected of MSPs and Ministers in a code of conduct specifically on lobbying would reflect the fact that lobbying is a two way street and that the public expects probity from politicians as well as lobbyists.

Amending the bill to widen the code of conduct to cover the conduct of both lobbyists and politicians and to explicitly set out the consequences for non-compliance would be welcome improvements.

Additionally, a specific exemption should be included in the bill for negotiating activity around terms and conditions of employment.

When a trade union holds meetings with MSPs or Ministers to discuss policy or legislation then clearly that is lobbying that would fall within the scope of the bill and would need to be registered. However, Scottish Ministers also hold a role as employers who trade unions will at times negotiate with over the terms and conditions of public sector employees. It would be wrong for a trade union engaged in collective bargaining activity as defined in the Trade Union and Labour Relations (Consolidation) Act 1992 to be considered to be lobbying. If such negotiations were considered lobbying, it would invite third parties to involve themselves in setting public sector employee terms and conditions in a way that would not be acceptable in any other walk of life and would diminish the status of employees in relation to their employer. The conduct of trade union negotiations is already heavily regulated and should not fall within the scope of this bill.

While in practice such negotiations would usually be conducted with civil servants and therefore normally not trigger the reporting requirements in the bill as it is currently drafted, it is not uncommon for a meeting with ministers to be requested if there are difficulties reaching a settlement. As such, a specific exemption for collective bargaining activity should be added to this bill to prevent any possibility of negotiating activity being classed as lobbying – particularly if any consideration is given to widening the scope of the legislation to include meetings with civil servants.

Lastly, as outlined previously in this submission, consideration should be given to limiting the ‘paid lobbying’ definition to individuals who are specifically paid to carry out that function so as to avoid non-lobbyist staff who are unfamiliar with the
legislation from failing to report meetings and thereby triggering an incomplete return for an organisation.

The motivation behind introducing this register is to publish information around where regular, organised, paid lobbying is taking place. Capturing one-off, potentially inadvertent, meetings with an organisation’s staff members who are not employed to lobby is presumably not the motivation behind this bill, but ensuring that these meetings are not mistakenly excluded from an organisation’s return will be a significant source of the increased administration required by organisations.

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