This paper is a response to the Standards, Procedures & Public Appointments Committee call for further evidence to support its role at Stage 1 scrutiny of the general principles of the Lobbying (Scotland) Bill 2016. The responses below are informed by independent research undertaken for over a decade on lobbying in Scotland, the UK and the EU. It is also informed by the deliberations of an expert lobbying regulation seminar held at the University of Stirling on 20 November 2015.¹

**General Principles**

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

   Yes. The introduction of a lobbying register at the Scottish Parliament is a necessary and appropriate measure to help safeguard the probity of Scottish public life and to contribute to the accountability of the Scottish Parliament and Scottish Government. Lobbying registers are becoming increasingly common² and the introduction of such a well designed register will help keep the Scottish Parliament at the forefront of acknowledged good governance practice.

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

   N/A

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?**

   There are some problems with this approach, particularly in relation to lobbying that might be undertaken by a person, or coalition of persons, who are not paid directly by the group or organisation (for example a charity, trust, or private company) that they are acting or volunteering on behalf of, but who may be lobbying for a contract, subvention or other payment from the Scottish Government or Parliament. In that context the attempt to secure a favourable decision that impacts on the public purse should fall within the scope of a lobbying register.

   It is not clear from the draft bill if the term 'person' applies to coalitions or incorporated bodies.

   There appears to be something of a contradiction running throughout the Bill, which

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¹Regulator and Expert Lobbying Seminar, Stirling Court Hotel, University of Stirling, 20 November 2015.
recognises payment as a trigger for disclosure, but fails to try to make any information regarding the quantum of that payment public.

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 Parliament is right to ensure that its practices and procedures are such that they encourage participation and engagement. The regulatory burden of compliance with the provisions of the proposed Lobbying (Scotland) Bill 2016 appear to be very light, and the volume and detail of information to be disclosed under the current proposals is unlikely to capture much information of value if the intention of the Bill is to promote lobbying transparency.

The focus of the SPPA Committee approach in the report published in January 2015 appears preferable, where lobbying activity is captured. The current Bill could be improved significantly if senior civil servants (above grade 7) and special advisers were included. In terms of disclosure, email and written communications must be included in some way (elements of each of these are provided for in the UK Register of Consultant Lobbyists, it is regrettable that the Scottish system will not go as far as the Westminster register in this regard).

The precise nature and detail of lobbying disclosures has not yet been fully elaborated. It is striking that the Scottish register seems at odds with the kinds of disclosures a majority of legislators in other OECD countries favour and expect (including 'whether the lobbyists was previously a public official', 'the name of parent or subsidiary company that would benefit' from lobbying activity, 'the source and amount of any government funding received', and 'lobbying expenses').

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?

It is very difficult to understand why regulated lobbying activity is so defined by the Scottish Government. The claims that this reflects the concerns expressed in the recent consultation do not bear scrutiny. The fact that the Scottish Government consultation in May 2015 invited comments on whether respondents agreed that a 'register should cover the lobbying of MSPs and Ministers' (Q. 7) cannot be read as 'proof' that this is properly the exclusive focus of a lobbying register. It is quite clear from reading the responses submitted that few respondents are aligned with the Government's preferred reading of the consultation responses in terms of the proposed scope of a register. The research commissioned by the Scottish Government to analyse the responses to their consultation suggests that 'Most of the additional suggestions focused on the need to include lobbying of others (most commonly Special Advisers and civil servants) in the register’s coverage'. There is clearly widespread agreement that the scope of then proposed register is too narrow, but this is something the Scottish Government have chosen to ignore. Moreover, I am unaware of any empirical support to suggest that oral requests are honoured more

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than requests made by some other means.

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?

It appears to many observers (including to many of those who attended the regulator seminar in Stirling) that the so-called “light touch” of the proposed legislation is insufficient. Indeed what is striking is how light the touch is in terms of the substance of the disclosure obligations and yet how elaborate the enforcement provisions turn out to be. In particular there is a concern that the range of covered activities (communications made orally and in person, instigated by the outside interest) and covered persons (Ministers and MSPs) in the proposed Bill is far too narrow to deliver meaningful lobbying transparency.

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

There is broad agreement that the introduction of a lobbying transparency register is both desirable and achievable. This consensus appears to rest on the belief that while lobbying is a legitimate activity there does need to be increased transparency to enable scrutiny and accountability. There has been quite a change in emphasis since the initial private members bill to introduce a lobbying register at Holyrood was first mooted early in this parliamentary session. In particular the emphasis has shifted from transparency around lobbying and outside interests to transparency of relations with MSPs. This tendency is also evident in the current government proposals. While at the end of this process there may well be a lobbying register, it is clear that as currently configured this will not capture the many aspects of lobbying that do not involved face-to-face communication. This may well lead to either a false sense of transparency around lobbying in Scotland, it may also discourage direct meetings with ministers and MSPs in favour of other lobbying practices that do not need to be disclosed, and the limited nature of the current proposals may mean that the register fails to attract respect or command compliance, and could well fall into disrepute.

Parliament can modify parts of this scheme (but apparently not sections 1-3 which determine coverage) by resolution if necessary. Is it realistic to think that that power will be exercised in a timely fashion? Will it be used to improve the system or, rather, undercut its usefulness? And the power to change is clearly not a sufficient justification for failing to enact the most effective scheme that can be formulated at this time. There is widespread consensus about the key flaws of the current government proposals in terms of scope and covered activities – this can and should be changed before the Bill passes into legislation.

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

Yes. One suggestion (drawn from regulatory experience in other jurisdictions5) would be to include statutory provision to review the legislation within a defined period (e.g. 2 years) of it coming into force. The emphasis placed on section 15 of the Bill by the Scottish Government to enable Parliament to revisit and revise the functioning of the lobbying register is welcome but insufficient. Sections 1-3 of the Bill should also be subject to future mandatory review and revision if deemed necessary.

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5The new Irish lobbying legislation has this explicit provision in the Act, with the intention that ‘It is intended that provisions regarding the Registrar’s powers of sanction will not be commenced until a review of the implementation of the legislation has been carried out one year after the commencement of the legislation.’

Ensure that there is sufficient trial period (up to 6 months) before the act takes force to ensure those covered fully understand their disclosure obligations. This would be well-aligned with the educative approach favoured by the Scottish Government, and would allow clerks responsible for oversight to promote awareness and compliance with the provisions of the legislation.

Finally, consideration should be given to including some disclosure of the financial resources devotes to lobbying. The logic of the definition of regulated lobbying activity adopted clearly recognises that payment is an important factor that helps distinguish organised and professionalised lobbying from constituent petitioning. However, the proposals make no effort to disclose financial information related to lobbying activity.

Dr Will Dinan
30 November 2015