

# STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

## INQUIRY INTO LOBBYING

### SUBMISSION RECEIVED FROM ELECTORAL REFORM SOCIETY

#### **About the Electoral Reform Society**

Founded in 1884, the Electoral Reform Society operates on a simple premise – that our politics can be better than it is. We seek a living democracy where every vote and every voice is valued, where power is fairly distributed and those who exercise power can be held to account. Our policy is developed in consultation with our elected Council and our membership.

The Electoral Reform Society's main funding source is in the form of an annual dividend from Electoral Reform Services Ltd, the UK's leading independent supplier of ballot and election services. The Society has a small team of staff based in London, Cardiff and Edinburgh.

#### **SPPA Committee Inquiry into Lobbying**

##### **The Need for Change**

*Have there been significant changes over the last decade in the way that lobbying is carried out?*

It cannot be argued that there is not continuing disengagement with formal politics both in terms of voting at elections where turnout remains very low, but also in the various public opinion surveys conducted by the likes of the [Hansard Society](#) (for instance, only 41% of people say they will vote if a General Election was called tomorrow) and the Economist magazine ([Democracy under threat](#)). Recently, the [Guardian published polling indicating nearly half of those surveyed are 'angry' at politicians](#). These and numerous other pieces of research and commentary are indicative of a growing mistrust and disillusionment with our politics.

Part of that mistrust is because of the sense of business being done behind closed doors, of the interests of the few being pursued at the expense of the many, and of a lack of transparency about how policy is developed.

As Raj Chari, John Hogan and Gary Murphy point out in their book, 'Regulating Lobbying: a global comparison': "studies have shown that, without doubt, the work carried out by interest groups (or lobby groups – we use the two terms interchangeably throughout the book) is a central and legitimate part of the democratic process within all liberal democratic systems. Although the term has often had negative connotations, throughout the democratic world the work of lobbyists is essential when policy is formulated. Lobbyists are an accepted element within society, providing the necessary input and feedback into the political system, thereby helping to develop the policy outputs which drive political and economic aspects of our daily lives."

They go on; “However, because of issues surrounding the openness of the policymaking process, some countries have sought to regulate the activities of lobbyists. ... The basic rationale behind implementing regulations is that the public should have some insight into, as well as oversight of, the mechanisms that draw lobbyists into the policy-making environment, in order to better understand how they influence policy outputs.”<sup>i</sup>

The fact that it is not currently possible to find out who met who and why, and that money and favours are still being exchanged for access to politicians,<sup>ii</sup> suggests that legal direction is required. Regulation should be about helping those regulated to make the right decisions. They are more likely to do this if they are aware others are watching their actions. ‘Light touch’ regulation and self-regulation has failed in many areas of social, public and commercial life including the financial sector and the mass media.

If policy decisions are made because of arguments made by one set of concerns or another, or advocates of one set of interests or another, then that influence should be apparent. If any organisation or body is contacting public officials with the intention of influencing a decision, policy development or legislation, then the public should be able to find this easily and quickly.

*Is there a problem or perceived problem with lobbying in Scotland? If so, how can this best be addressed? If not, do steps still need to be taken to address any problem arising in future?*

Active and informed participation is an essential aspect of democracy – no matter how well set up systems are, or how accessible decision makers make themselves, citizens must have access to the information they need to make judgments about their lives, their government and their democracy. Without accurate information, and the knowledge to access and interpret it, citizens will be unable to play their role in a functioning healthy democracy, with the deterioration of the democracy as a consequence.

ERS Scotland recently completed a thirteen month long, citizen-led inquiry into ‘what makes a good Scottish democracy’. The findings and analysis are available here <http://www.electoral-reform.org.uk/democracy-max/>

During the inquiry there was a very strong sense from participants that the only way to ensure power is not subverted is for everyone to have access to information and for them to be provided with the knowledge to assess it. This provision of knowledge included; how the system works, how you can engage with the system, information on what decisions are being made, by whom, and how. It was felt that an informed, confident society would be better equipped to hold those with power to account.

Equally, there was strong support that at least secretive corporate influences on government policies and decisions should be outlawed, and organisations who lobby registered.

There were also suggestions that politicians should publish their diaries, including details of those they have met, both virtually and in person, or had discussions with

as part of their work. There is no reason, in principle, why virtually all the work of elected representatives, including their correspondence, their emails, their texts and their memos should not be made publicly available. This kind of information is already, at least in theory, available to anyone who requests it under freedom of information law.

However, it is not just politicians who have to open up. When the Scottish Parliament was founded, it was meant to have been so open and easy to access, that a register of lobbyists wouldn't be necessary. Experience has suggested otherwise, particularly since the onset of one-party majority government, unexpected with the electoral system in place at the Scottish Parliament, which is widely seen as having shut down constructive cross-party debate on legislative plans in committees.

### **Register of lobbyists**

*To what extent will the introduction of a register of lobbyists address any problem or perceived problem with lobbying?*

The Society holds good governance and fair access to power as key values. It is our experience and our opinion formed from research and study that transparency is an important facilitator of those values. A mechanism whereby the public, voters, and those who communicate information to them, the media and others, can see when organisations meet with politicians *with the intention of influencing policy* is the simplest way to meet these requirements.

Policy development and lobbying is a complex process and depends upon balancing often competing priorities and sets of interests. Making this process transparent to those affected by these decisions will improve trust and understanding.

A lobbying register would not change the way lobbyist and policy makers interact, it would simply expose these interactions to the public.

It has to be remembered that lobbying 'scandals' are hidden. They are revealed through investigative journalism, Freedom of Information requests and so forth. The aim of a lobbying register is to prevent these scandals before they arise, rather than to expose them once they have happened. Without a register, we would never know if there was a problem until a scandal emerged. A scandal is often not an extraordinary event but exposure of something secretive that has been seen as 'ordinary', 'customary' or 'the way things are done'. For instance with the abuse of MPs expenses; the details of this wouldn't have come to light had Westminster been allowed to suppress the information. Whether there is undue influence on debates, policy and legislation is not the question – there may well not be - but we should be sure that there isn't.

*To whom should such a register apply? Should it be voluntary or compulsory?*

Legislation and a compulsory register are necessary because the interests and incentives involved in lobbying are not always conducive to self-regulation. The example in the Annex of the workings of the EU register demonstrate the weaknesses of a voluntary system.

The easiest way to introduce a register would be to have a broad definition of lobbying, with exemptions set out as exceptions from this definition. We would suggest that such a definition should include any set of interests or undertaking that seeks to influence the content or form of legislation or policy decision of political, government or public agents.

With regard to exemptions the principle to apply should be that they are exempt if lobbying on behalf of a clear public interest through the merit of being an employee of a public body. This would not include where a paid consultant is undertaking the lobbying activity – in this case the paid lobbyist should register and declare the public body as a client.

*How should it be maintained and who should maintain it? What level of information should be on it? Should thresholds be set for registration? If so what should they be? What are the likely cost implications of registration for groups that lobby?*

- a) It would seem proper that the Standards Commissioner for Scotland should take on the administration and oversight of the register.
- b) We think the following information should be disclosed:
  - The name of the organisation lobbying
  - The name of the organisation or set of interests that the lobbying is being done on behalf of – if relevant
  - The name of the individuals meeting or involved in the campaign
  - Employment history of the individual lobbying
  - The budget allocated to the particular campaign
  - The total budget spent on lobbying by either and both of the lobbying organisation or the organisation they are lobbying on behalf of
- c) We found the thresholds suggested in the private members bill introduced by Neil Findlay MSP to be appropriate and would suggest these thresholds, along with adequate exemptions and an annual reporting requirement would not lead to excessive financial or administrative burden.

*What sanctions should there be for failure to register lobbying activity? How will the register sit alongside the UK register? How will compliance be monitored?*

MSPs and public officials would be expected to check details of the organisation and individuals they meet with against the register, and would have a duty to report where they think there is a failure to comply. Ideally there should be some staff time dedicated to compliance and administration. The Standards Commissioner should have the power to request registration and there should be enforcement notices and fines for those who fail to comply.

Given the ongoing debate over the adequacy and complexity of the UK Government's Lobbying Bill we suggest proceeding with a stand-alone Scottish register for those organisations and individuals who lobby the Scottish Parliament, Government and policy departments. The current drafting of the UK legislation would not cover most of the organisations or individuals we envision being included in the

Scottish lobbying register. Part II of the current Bill would probably apply, but only to campaigning in an election year, rather than to ongoing lobbying activity.

*What are the implications of a register for (a) the Parliament, (b) MSPs, (c) organisations that lobby and (d) Ministers and civil servants?*

- a) Improved reputation for transparency and openness
- b) Requirement to abide by Code of Conduct Vol2: Section 5 will be made easier
- c) Administrative requirements to register. Being able to see which other organisations are lobbying on their issues.
- d) Our understanding is that communications by Ministers and civil servants are already subject to Fol so records should be being kept of all meetings.

### **Other measures**

*Whether other changes could be made to improve transparency in lobbying in Scotland? What, if any, changes should be made to Section 5 of the Code of Conduct for Members of the Scottish Parliament?*

The Code of Conduct for MSPs regarding lobbying is clear and appropriate. It should be considered that one of the reasons for introducing a register of lobbyists would be to facilitate MSPs in complying with the Code of Conduct.

Including a lobbyist's employment history in the lobbying register would ensure any ex-MSPs, party or parliamentary staff were clearly identified as such and their previous responsibilities clarified.

*Should there be a Code of Conduct for lobbyists? Should it be statutory or voluntary?*

It is highly desirable to develop a statutory Code of Conduct for lobbyists, however such a Code of Conduct is not as fundamental as a register of information and should not jeopardise the possibility of legislating for a statutory register. The development of such a Code of Conduct would mean public representatives could consider and define what sort of activity and behaviour they feel is in the public interest and what might be threatening to it, outside of what is currently controlled. There may be lobbying practices which the wider population are not aware of, but should they be described, they would be of concern. The debate and discussion of these matters in the Parliament, enabled by reference to a Code of Conduct would be welcome.

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ERS SCOTLAND  
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## Annex – Lobbying registers in other states

### **The EU Transparency Register<sup>iii</sup>**

The voluntary register in use at the EU level – the EU Transparency Register – is failing to provide true transparency in lobbying activities. A recent report<sup>iv</sup> from the Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU) identifies over 100 unregistered companies (105) with a representative office in Brussels or known to have been lobbying the EU.<sup>11</sup> The list includes major companies like ABN-Amro Bank, Adidas, BBVA Group, Apple Inc., Belfius (formerly Dexia), Heineken, Porsche, Rio Tinto plc, Disney, Shanks Group, SAP, Time Warner, Nissan, Northrop Grumman and many others. Of the unregistered companies listed in the previous report, only a minority – 15 of the 120+ listed – have since registered. The chemicals and biotechnology firm Monsanto re-joined the register in May 2013, after being absent from the register since Spring 2012.

The Monsanto example reveals that under the current voluntary model companies are free to register and de-register as they please. This shows that it is unrealistic to expect the voluntary model to paint an accurate picture of lobbying activities in Brussels. It also reinforces the criticism of the EU's register by the Center for Responsive Politics, which notes that the voluntary register, while not delivering full transparency, nonetheless gives the public 'false confidence' that there is oversight of lobbying.<sup>v</sup>

The report also finds that absent from the EU register are numerous consultancies, lobby groups and MEP-industry forums. Law firms that lobby continue to boycott the register, with the meaningful participation of law firms actually having decreased in the last year. Additionally, ALTER-EU conclude that the financial information in the register continues to be far too unreliable, with many of those that appear to be the biggest spenders in fact being small players. At the same time, there remains a big problem with large players under-reporting on the size of their lobby expenditure. The result is that the register gives a misleading picture of who is lobbying and with what resources. Numerous entries in the register provide incomplete and outdated information, demonstrating that the register's monitoring and enforcement remains far too unambitious.

### **US Mandatory Register<sup>vi</sup>**

In contrast, possibly because such massive amounts of money are spent in and on American politics, the USA has adopted regulations that try to make the relationships between lobbyists and politicians transparent.

Introduced by The Lobbying Disclosure Act of 1995,<sup>vii</sup> (as amended by the Honest Leadership and Open Government Act of 2007),<sup>viii</sup> the US register provides the names of 12,300 lobbyists (and other very relevant information about the activities of these lobbyists, including former public offices held in the previous two years).

Critics point to a lack of enforcement of the US register, and claim that there is a trend of de-registration after recent stricter ethics rules were introduced. However, there is at least the existence of an enforcement mechanism, and some

commentators have suggested the modest decline in the number of registered lobbyists is largely due to the economic crisis.<sup>ix</sup>

This certainly doesn't mean that the US lobby disclosure system is perfect; organisations such as the American Bar Association and Public Citizen's Congress Watch are advocating further improvements. It does however represent a strict and enforceable model.

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<sup>i</sup> Raj Chari, John Hogan and Gary Murphy, *Regulating Lobbying: a global comparison*, Manchester University Press, 2010 And online here <http://www.regulatelobbying.com/index.html>

<sup>ii</sup> <http://www.telegraph.co.uk/news/politics/conservative/10091179/Patrick-Mercer-MP-resigns-over-lobbying-scandal.html>

<sup>iii</sup> <http://europa.eu/transparency-register/>

<sup>iv</sup> Rescue the Register. How to make EU lobby transparency credible and reliable, ALTER-EU, June 2013 [http://www.alter-eu.org/sites/default/files/documents/Rescue\\_the\\_Register\\_report\\_20June2013.pdf](http://www.alter-eu.org/sites/default/files/documents/Rescue_the_Register_report_20June2013.pdf)

<sup>v</sup> [http://www.theparliament.com/no\\_cache/latestnews/news-article/newsarticle/eu-lobby-register-fails-toincrease-transparency/](http://www.theparliament.com/no_cache/latestnews/news-article/newsarticle/eu-lobby-register-fails-toincrease-transparency/)

<sup>vi</sup> <http://lobbyingdisclosure.house.gov/>

<sup>vii</sup> [http://www.senate.gov/legislative/Lobbying/Lobby\\_Disclosure\\_Act/TOC.htm](http://www.senate.gov/legislative/Lobbying/Lobby_Disclosure_Act/TOC.htm)

<sup>viii</sup> <http://www.fec.gov/law/feca/s1legislation.pdf>

<sup>ix</sup> <http://thehill.com/business-a-lobbying/286159-kst-lobbyists-predict-a-big-rebound-in-2013>