

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

INQUIRY INTO LOBBYING

SUBMISSION RECEIVED FROM FSB SCOTLAND

Introduction

The FSB is Scotland's largest direct-member business organisation, representing around 19,000 members. The FSB campaigns for an economic and social environment which allows small businesses to grow and prosper.

Not only does the FSB represent a number of small public affairs consultancies, some of our activities as a representative organisation and some of our staff and activists could be covered by any regulation of lobbying. We are also long-standing contributors to the better regulation debate and thus have a keen interest in any measures which would impact on the regulatory environment in Scotland.

Accordingly, this submission includes observations and thoughts from all these points of view.

Questions

The need for change

The FSB is not best placed to comment on whether lobbying in Scotland has changed in the last decade, but we are pleased that the Committee is asking the fundamental question of whether or not a problem exists that needs to be addressed. Establishing what problem one is trying to solve before proceeding to evaluate solutions is firmly in keeping with the spirit of better regulation.

While the remit of this inquiry covers lobbying activity in Scotland, as distinct from the lobbying of Scottish institutions, references in the call for evidence to the Code of Conduct for Members of the Scottish Parliament suggest that the Committee's primary focus is on lobbying of MSPs and Scottish Government Ministers.

Thus, we should state at the outset our firm view that the Scottish Parliament is one of the most modern, open and transparent legislatures in the world. It is possibly because of this that the high-profile lobbying scandals at Westminster have not been replicated at Holyrood. We are certainly not aware of any evidence that inappropriate lobbying has been a problem at Holyrood and, in the absence of such, do not believe the case for statutory registration or regulation has been made.

Register of lobbyists

As noted above, we don't believe that a problem has been highlighted which would merit the imposition of extra regulation. However, were a register to be introduced, a number of issues of particular relevance to us and our members would emerge.

- **To whom should the register apply?**

This is a key question. It is a principle of better regulation that rules should be unambiguous, leaving those who are regulated absolutely clear about their responsibilities. Definitions which intentionally rely on official interpretation, or do so unintentionally through poor drafting, cause confusion and result in measures being over-zealously applied (“gold-plated”) as regulators and the regulated seek to err on the side of caution. This obviously has time and cost implications for both parties.

Were a register of lobbyists to be introduced, there may be some for whom inclusion would be fairly clear cut, such as those who are paid by an employer or client to carry out advocacy on public policy issues. Then there are others – for example, members of a church, trade union, charity or campaign group who sign a petition or send a standard email to their MSPs on a particular issue – who obviously should not be required to register. In between these two, however, there are grey areas, particularly for membership organisations, which would need to be clarified.

Although the arguments outlined below will doubtless equally apply to many charities, campaign groups, churches and other faith groups, trade unions etc., for ease of reference we can take the FSB as an example.

We have a dedicated policy, public affairs and field staff team representing around 19,000 members in Scotland. All these staff have at aspects of advocacy in their job role. Being member-led, some of the aforementioned 19,000 members will also be office-holders who, although not employees, may speak on behalf of the FSB to local MSPs, Ministers, Councillors, MPs, MEPs and a range officials. Thus, if the scope of any regulations was sufficiently wide to include organisations such as the FSB, there would need to be a clear decision – effectively, unambiguously articulated in the regulations themselves – on which of these staff and members were required to register.

We submit that this would represent something of a challenge. Indeed, while it would be difficult enough to determine the status of each member of staff, the issue becomes far more complicated when looking at the *members* of a campaigning organisation.

To take the FSB as an example again, as outlined above, although not employed by us, some of our members will represent the FSB’s views to officials and elected representatives. Some of our office-holders may do this fairly regularly with their local MSP. Other members may only get in touch with an elected representative very occasionally to express support for a particular FSB campaign. Others may be regular correspondents on issues which affect their own business but who rarely, if ever, mention FSB policy. And others might be office-holders who go to their MSP with a point relating to their business which is quite apart from FSB policy.

Aside from the practical questions of quite how all such meetings with all of these members or office-holders could be recorded and registered centrally, it seems

an almost impossible job to determine, with the clarity required to render any regulation satisfactory, which of the above members should be required to register as a lobbyist.

- **What should be registered and who should maintain the register?**

If, as the foregoing suggests, it proves impractical to designate clearly those classes of employee or campaign group member who are required to register as lobbyists, an easier solution may lie in recording certain types of meeting.

It would be far simpler, it is submitted, to determine whether the character of a particular meeting was such that it merited recording – i.e. whether the object was to lobby an elected representative or official on a policy issue within their remit. Thus, the MSP's surgery appointment with a local business person (whether s/he was a senior office-holder in a business organisation or not) about an issue relating specifically to his or her business would not be recorded, as this would be clearly a confidential meeting with a constituent. But, the meeting about amendments to forthcoming legislation with the chairman and head of public affairs from a major campaigning charity obviously would be registered.

With this approach, it would not be necessary to go to the time and expense of codifying the status of a vast range of individuals. Rather, with some common-sense guidelines about what sort of meetings should be recorded (including the obvious grounds for exemption, such as constituent confidentiality), it would be a simple matter for MSPs (or others subject to the regulations) to maintain a public register of their relevant meetings.

We reiterate that we have seen no evidence to suggest the need for regulation in this area; in our experience, our elected representatives and officials are honest and know their own mind. However, should the Scottish Parliament be concerned that there is a problem with decision-makers in Scotland who are too easily influenced, we would suggest that the onus should be on those decision-makers to maintain this register of meetings. This could be done fairly easily through existing mechanisms – such as an enhanced MSPs' Register of Interests – and existing administrative support.

Such an approach would deliver the transparency desired, but would not subject small businesses to extra regulation. Neither would it impose further costs on small charities, community-based campaign groups or others for whom they may be prohibitive. It further has the advantage of not disclosing any commercially sensitive market information.

- **Should monetary values of lobbying work be registered?**

There has in the past been some debate over whether the amounts spent lobbying should be included on any register. The obvious question of commercial confidentiality aside, there are particular difficulties in calculating and allocating the financial value of work done by in-house staff. Would it, for example, include staff salaries, pension contributions and other contractual benefits? And, if a

salary plus on-costs hourly rate could be agreed, which staff would have to record what hours?

If, say, a public affairs manager attends a meeting, it could be assumed that the value of his / her time spent in that meeting should be calculated and recorded. But should the monetary value of preparation time be included? And, if so, should the PA who set the meeting up, or the policy advisor who developed the policy being advocated (along with the chief executive and directors who agreed it) also seek to add up, price and record the hours they spent?

- **Jurisdiction and interaction with other registers / regimes**

The Scottish Parliament is not, of course, the only legislature in the UK considering this question. While different parliaments may take slightly different approaches to deal with any particular issues they identify, any system developed for Scotland must take cognisance of the benefits of consistency and the dangers of duplication. Developing a system which can work and integrate well with other systems and avoid unnecessary complication and bureaucracy for those working across more than one parliamentary area would be sensible.

The development of four completely different, distinct registers for the constituent parts of the UK, each with its own cost and administrative burdens, would be a classic example of poor business regulation and undermine much of what the Scottish Parliament has been seeking to achieve in this area of late.

Other measures

A theme of this submission has been the need to ensure that any legislative proposals are in line with the principles of better regulation. We would therefore seek an assurance that any proposals that may be brought forward to improve transparency in lobbying undergo a full Business Regulatory Impact Assessment (BRIA) to ascertain the true cost – to government, other decision-makers and business. It may also be prudent to invite the expert views of the Scottish Government's Regulatory Review Group on how to deliver the broader policy aims without unnecessarily burdening business in tough economic times.

Conclusion

The openness of the Scottish political process and integrity of our elected representatives means that the FSB in Scotland sees no need to introduce new regulations on lobbyists.

However, should the Committee take the contrary view, we submit that requiring a series of individuals to register personally and record their activity would prove impractical. Thus, we believe that a less burdensome, more cost effective solution lies in elected representatives maintaining a public register of their meetings with individuals or organisations who are seeking to advocate a particular policy to them. Doing this through an enhanced MSPs' Register of Interests would seem to be a neat, cost-neutral option.

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