Standards, Procedures and Public Appointments Committee

Lobbying (Scotland) Bill

Written submission received from CIPR

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

We agree. Some CIPR members have questioned whether the introduction of a new statutory register is necessary given the insufficient evidence of poor lobbying practice in Scotland, but the Institute broadly believes mechanisms promoting transparency can help build public confidence in lobbying. We suggest the Government includes a sunset clause within the bill to review the legislation and its impact after three years.

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

How the bill affects the CIPR

The impact of the bill on the CIPR will depend largely on the scope of the legislation. The CIPR has held face-to-face discussions with MSPs and Scottish Government representatives and would be required to register and declare all such meetings in future. Registering and ensuring the Institute’s record remains up-to-date would inevitably impact on staff time. The burden of compliance would be limited based on our current levels of engagement but that this may change over time. If, however, the scope of the legislation was expanded to include other forms of communication, the compliance burden would increase significantly. Further resources would need to be allocated to ensure a record of all communications with the Scottish Government (emails, letters and telephone calls) was accurately maintained. These administrative responsibilities would reduce the amount of time staff could spend on other areas of work. Quantifying the overall costs associated with lobbying activity carried out by staff, for whom lobbying is not their sole responsibility, would be complicated and unproductive.

How the bill affects CIPR members

Given the level of detail within the bill, it is difficult to predict the impact any legislation will have on members. Some CIPR members working for public affairs consultancies primarily advise clients and facilitate political engagement, rather than actively lobby face to face. The impact of the bill on these members may be limited, but the impact on those who directly engage in lobbying activity is likely to be significant.

If the scope of the legislation is broadened to include various forms of communication, the impact would be far greater. Many large consultancies have electronic time recording systems which can be used to accurately record and maintain all lobbying activity via email, but such systems are unlikely used by the majority of in-house and charity organisations. Therefore, the requirement to
declare all forms of communication is likely to impact significantly on organisational resources including staff time and associated costs. Costs associated with lobbying within in-house teams are often “sunk” unless they can be allocated to a specific campaign investment, contract or invoice. As a result, predicting the financial impact of the bill for those members would be particularly challenging.

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?

No. Individuals exercising their democratic right to lobby should not be required to register but exempting unpaid lobbyists may create an invitation to avoidance. There is a possibility full-time, unpaid volunteers and agencies may run campaigns “pro bono” to avoid registration. Drawing a distinction between individuals lobbying parliamentarians on their own accord and agencies “employing” unpaid staff to run campaigns is a challenge for the Scottish Government. We have suggested the Government consider a mechanism to review the impact of this measure as a potential loophole, within a reasonable period of time. Limiting the number of exemptions will be crucial to ensuring the register’s credibility. The Institute strongly believes that in order for a level playing field to be maintained, all lobbyists must be required to register.

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?

In its current form, the bill strikes a fair balance between capturing information of value and ensuring that parliamentary participation is not discouraged. There is a risk that any kind of regulation could be perceived as a constraint on access.

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?

There are two main issues which remain unclear.

- Incidental contact - Stakeholders are often invited to party conferences, roundtables and other receptions with dozens or hundreds of other attendees where MSPs and Ministers will be present. These meetings may present occasions where issues of government policy are raised. Although this MSP/Ministerial engagement was not pre-planned, it is not clear if this activity would require declaration.

- Non-UK engagement - It is unclear how requirements would be enforced in relation to companies and NGOs from non-UK countries. There should be a level playing field for all lobbyists
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?

We agree this is a sensible approach.

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

Public affairs practitioners not required to register may suffer reputational damage as a result of any future legislation. There is a danger that their legitimacy as public affairs specialists may be called into question. Registration may become confused with a „licence to practice”, which could result in clients becoming reluctant to take advice from „unlicensed” consultancies.

The exemption of unpaid lobbyists outlined in the response to question three could also inadvertently promote avoidance. Additionally, there may be a significant increase in Freedom of Information (FoI) requests to Government and Parliament triggered by the disclosure of contact with lobbyists.

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

Disclosure responsibilities should be evenly balanced between lobbyists and MSPs. The bill would be enhanced if it compelled MSPs to publish diaries and details of their meetings with lobbyists. Section 5.1.5 of the MSP code of conduct already requires MSPs to “consider keeping a record of all contact with lobbyists”. We welcome the fact that an accurate record of ministerial engagements is already published on the Scottish Government Website, but feel this obligation should be extended to all MSPs. Requiring this would help spread the burden of the bill equally between lobbyists and parliamentarians. This information should also be more easily accessible from the Scottish Parliament website’s homepage, so that members of the public are able to quickly access information about MSPs engagements. Initiatives such as these that can help „open up” Parliament and promote transparency should be carefully considered by policy makers. Furthermore, we feel that communication with officials of an equivalent rank to minister shoul d also be covered.

In general, we would view the addition of any clauses requiring the disclosure of financial information related to lobbying activity as unhelpful. In our view to do so could be commercially disadvantageous, particularly to smaller businesses and may potentially provide misleading information about lobbying. Existing legislation covering bribery and corruption should be invoked where there is any suggestion of improper activity. As stated in our previous consultation response, we would also welcome a system that allows „self-referral”.

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Koray Camgoz
Public Relations and Policy Officer
CIPR
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