Standards, Procedures and Public Appointments Committee

Lobbying (Scotland) Bill

Written submission received from the Information Commissioner's Office

Lobbying (Scotland) Bill

1. The Information Commissioner’s Office (the ICO) is the UK’s independent public authority set up to uphold information rights. We do this by promoting good practice, ruling on complaints, providing information to individuals and organisations and taking appropriate action where the law is broken.

2. The ICO enforces and oversees the Data Protection Act 1998 (the DPA) and the Privacy and Electronic Communication Regulations 2003, as well as the UK Freedom of Information Act 2000 and the UK Environmental Information Regulations 2003, both of which apply to reserved matters in Scotland.

3. The ICO welcomes the opportunity to comment to the Standards, Procedures and Public Appointments Committee on aspects of the Lobbying (Scotland) Bill (the Bill) that are relevant to our work in relation to the DPA.

4. We note that a similar register of those lobbying the UK Government was established by the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014. In responding to the Cabinet Office’s proposals, we welcomed the intention to introduce that register to increase transparency by making information easily accessible to the public about who is lobbying and for whom.

Publication of the register

5. Section 3 of the Bill will establish a register of lobbyists and the Clerk of the Parliament (the Clerk) must publish details of active registrants in such manner as he considers appropriate. The Clerk may also choose to publish information about inactive and voluntary registrants as he considers appropriate. The Clerk must also have regard to any parliamentary guidance issued under section 43.

6. Section 5(a) of the Bill requires registrants to provide certain information. If the registrant is an individual, they are to provide their name and, if they do not have a business address, their residential address. Section 5(d) requires any other person to provide their name and main office address. In the case of a self-employed person, their office may be their residential address. This information is personal data and consideration should be given to whether it should be made publicly available.

7. The second data protection principle says that personal information must only be processed for one or more specified and lawful purposes. According to the policy memorandum, the objective of the Bill is “increasing the public transparency of elected representatives’ activity”. This does not necessarily require that
members of the public have access to the addresses of registered lobbyists for
the register to achieve its stated purpose.

8. We recommend that the Committee consider whether residential addresses
should be published at all or, if they should, in what manner they should be
published. For example, should an individual’s residential address be published
in an online version of the register? Should it be restricted to those viewing the
register in person, or only made available upon request?

9. We would be happy to enter into further discussions with the Committee to
consider these issues in more detail, particularly at the point when any
parliamentary guidance to the Clerk is being drafted.

Accuracy of personal information

10. Section 11 of the Bill allows an active registrant to advise the Clerk at any time if
any of their details on the register are inaccurate. The Clerk must then update
them as soon as practicable. This is a welcome provision as it gives effect to the
right under the fourth data protection principle to ensure personal data is
accurate and, where necessary, kept up to date.

11. However, we could not see an equivalent provision for voluntary registrants. To
give full effect to people’s rights under the DPA, we recommend that the Bill
contains such an equivalent provision.

Kept no longer than is necessary

12. We note the provision that a lobbyist may be reclassified as inactive either by
application or on the decision of the Clerk. Consideration should be given to an
additional procedure through which the lobbyist, having been inactive for a
specified period, can be removed from the Register.

Privacy impact assessment

13. We welcome the Scottish Government’s publication of a privacy impact
assessment (PIA) on the provisions of this Bill. However, we believe this would
have benefitted from consultation with relevant stakeholders, including the ICO,
as it should then have identified the issues in this response and incorporated
solutions into the Bill. The ICO is always willing to assist the Parliament and the
Government in considering the impact of legislation on personal privacy.

We trust the Committee finds this response helpful. We would be happy to discuss
any aspect of it further at the Committee’s convenience if required.

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