The Association of Professional Political Consultants is the self-regulatory and representative body for professional political practitioners in the UK. APPC’s main role is to ensure the highest standards of honesty, integrity and professionalism amongst its members.

The basis for APPC’s self-regulatory regime lies in its Code of Conduct and its Register of members, their consultants and their clients is updated quarterly and published on the APPC’s website.

Taken together, the Code and the Register provide an effective and transparent regime. Any MP, MSP, AM, MLA or official can be assured that any APPC member company will be honest and ethical. Equally, the APPC’s members’ clients know that they will be advised against any public affairs activity that is unethical or illegal. APPC membership brings clear benefits for both clients and politicians.

The APPC has three main roles:
1. To ensure transparency and openness by maintaining a register of political practitioners
2. To enforce high standards by requiring members to adhere to a code of conduct
3. To promote understanding of the public affairs sector, and the contribution made by political practitioners to a properly functioning democracy
Response to the consultation questions issued by the Standards, Procedures and Public Appointments Committee on the Lobbying (Scotland) Bill as introduced on 29th October 2015.

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

APPC has been clear from the very start of the committee’s considerations that we see no great evidence base for legislation, and even those most vociferous advocates of legislation accept that action is required only on a preventative basis, rather than in response to any identified problem. Furthermore, both the Committee and the Scottish Government have made clear that lobbying is not only an entirely legitimate process, but is important and one which supports the work of Parliament, informing MSPs and government. In that context, APPC believes it to be vital that any legislative proposal does not discourage lobbying in future.

Whilst we do not accept therefore that a Bill is necessary, we are keen to ensure that any regulations introduced are fit for purpose and that transparency is at the heart of any regulatory regime introduced. In that context, we want to support Parliament in arriving at legislation that strikes the right balance between increasing transparency and not over-burdening lobbyists with regulations that unduly inhibit their everyday lobbying activities.

If lobbying regulation is to be agreed, then it should focus on high standards and transparency - APPC therefore supports the establishment of a register in that context, providing that its cost and administrative requirements do not place an unreasonable burden on those registering.

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

IMPACT ON APPC

APPC is a membership organisation representing primarily consultant lobbyists, and has not lobbied the Scottish Parliament, until now. We have sought to lobby Parliament on the contents of this Bill, in our representative role where we seek to speak on behalf of our membership. Therefore, the Bill itself would not place any great requirement on APPC on an ongoing basis. However, our membership will be very significantly affected by the terms of the legislation.

APPC was established on the fundamental principles of openness and transparency. Therefore we have nothing to fear and everything to gain from further clarity - providing it can be introduced fairly and in a way which does not impose unreasonable burdens on those registering.

APPC members are already required to declare on a quarterly basis those clients for whom they provide lobbying services and make a declaration of those staff and subcontracted consultants who undertake those services. It is our belief that this quarterly declaration provides for a spirit of openness that has been welcomed in all quarters since the establishment of APPC over 20 years ago.
Therefore, our members will be affected by the introduction of an additional administrative burden over and above that which they already have. Depending on the organisation, some will already be required to complete regulatory statements in Brussels and at Westminster, as well as comply with the APPC code of practice. The burden of new legislation at Holyrood will therefore be incremental in nature, although the size of that incremental burden is the key issue for our membership.

That incremental burden would be minimised if the registration cycle were to be synchronised with the Westminster ORCL registration cycle. APPC believes that the current proposal for a rolling registration deadline, individual to each registrant, will add complexity to the registration routine, and may well be the least efficient process for screening registration details by the Clerk.

Clearly, the scope of the proposed legislation is the key to determining the burden on our members in complying. However, we believe that it is equally important that the legislation is genuinely transparent, and in that spirit we are of the view that meetings initiated by MSPs or the Scottish Government should be subject to registration by the lobbyist, in the same way as if the lobbyist had initiated the meeting.

APPC believes these extensions to scope would not add significantly to the burden of registration, and where it does so would be more than compensated for by increased transparency.

CODE OF PRACTICE

APPC members already agree to abide by our code of practice, which is widely regarded as the “gold standard” for the lobbying industry. It is robustly and independently enforced, and every member is required to make a quarterly return, review and declare compliance on an annual basis, as well as ensure on an ongoing basis that all staff and freelance contractors are trained on the code and have the APPC code written into their contracts of employment.

In that context, APPC members have little to fear from being subject to a Parliament code of practice, although we note that the new code will not be identified, consulted upon or agreed to before the likely date when the Bill will become law. As a result, it is difficult to confirm what impact being subject to another code of practice will be. However, self-evidently, it will be another code of practice and will therefore have some impact on the complexity of staff training programmes.

We would be happy to share our experience of devising, reviewing and enforcing our code with Parliamentary authorities when they come to consider a new statutory code.

The impact of the register on our members will also be that they will be able to confirm in their registration that they are subject to another industry code of practice. APPC would recommend that ability does not extend to providing “official” recognition for in-house codes of practice - we are aware of some registering with ORCL at Westminster who indicate that they subscribe to an industry code of practice, which is effectively an in-house one and not independently enforced. The Parliament should preclude this in Scottish legislation.
We would also recommend that the Parliament precludes the use of Regular Visitor passes for the Holyrood building by anyone undertaking lobbying activity. Our view is that such use is completely inappropriate.

COST ARGUMENTS

APPC believes that there is already a significant issue of cost in implementing the Bill as drafted. Over the course of a five year Parliamentary term, administering the proposed scheme of regulation is already projected to cost significantly over £2m. Whilst recognising that a case has been made for regulating lobbying, we believe that there is already a danger that the cost of doing so will become disproportionate.

Further to that concern, APPC believes that any significant extension to the scope of lobbying as defined by the Bill would result in a further escalation in the cost of administration. We do not believe that the incremental cost would be justified, particularly as far as requiring registration of lobbying activity beyond face to face oral communications, as defined in the Bill. Particularly if the scope were extended to include registration of email correspondence, the administrative burden of registration will escalate significantly, without in our view any meaningful increase in transparency.

3. You would only have to register if you were lobbying in exchange for payment (either as a consultant or an employee). You wouldn't have to register if you lobby in the course of voluntary work or lobby on your own behalf. Do you agree with this approach?

APPC disagrees with this approach. We have always made the case for a level playing field approach, so that every lobbyist is treated the same under any new legislation. In that context, we completely accept the ability of any individual to contact their own MSPs - either constituency or regional list - about any issue of concern to them. That should not be captured by any requirement to register as lobbyist, or register any lobbying done.

However, the focus of the legislation on paid lobbying does allow a significant amount of intensive lobbying to be unregulated. Lobby groups formed on voluntary capacity - or indeed individuals lobbying beyond their elected representatives on an unpaid basis - should be subject to transparency as much as any other form of lobbying. To take an example, a group of parents campaigning for increased nursery provision across Holyrood, including contacts with MSPs and ministers - in our view any lobbying they do, above and beyond an individual parent speaking to their own MSPs, should be of equivalent public interest to any lobbying by, say, a nursery provider group, or by one of the nursery teachers organisations.

We appreciate that there is no intention on the part of the Parliament to prevent or inhibit voluntary lobbying of the Parliament, and we believe that providing the scope of the legislation is kept manageable, there would be limited impact on voluntary groups, or indeed anyone else. Given that registration is to be free of charge, and we believe should remain so, this would remove any financial burden on voluntary group registration. Furthermore, we would welcome confirmation within the Bill itself that there will be no cost to any registrant.
4. Does the Bill strike the right balance between capturing valuable information while ensuring that access to participation with the work of Parliament and Government is not discouraged?

In our view, the Bill as currently drafted is a good compromise between the desire for increased transparency and the administrative burden and resultant disincentive to lobby that would be inherent in a significantly wider definition of lobbying.

As we have indicated above in our response to Q2, APPC supports an extension to the Bill to require meetings organised by MSPs and the Scottish Government, to be registered. We further believe that unpaid lobbying should also be subject to the same level playing field approach as paid lobbying.

However, we do not believe that widening the requirement to register to include letters, emails or other electronic communications would be sensible. APPC believes that doing so would add hugely to the administrative burden, begin to deter legitimate lobbying of Parliament and also start to significantly increase the cost of compliance, as well as the cost to Parliament of administering the Register.

The Scottish Government has identified that face to face lobbying is the most high profile and effective means of lobbying Parliament, and that the transparency benefits of registering outweighs the compliance costs and risks of closing channels of communication between Parliament and the outside world. APPC supports that approach. Conversely, APPC believes that requiring registration of, for example, every email sent to an MSP would have the opposite impact - costs of compliance would far outweigh transparency benefits, and as a result communication between lobbyists and MSPs would reduce in a way that the Scottish Government has identified would be a step backwards.

It is a difficult balance to strike, but with the addition of the recommendations to widen scope that APPC has made above, we believe that the Bill is a reasoned and balanced compromise.

FINANCIAL DECLARATION

During the evidence session held with the Committee on 12th November, there was widespread discussion on the merits or otherwise in widening the scope of the legislation to include a requirement to register the financial value of lobbying contracts. APPC is completely opposed to widening the legislation to require financial disclosure. Our reasons are a combination of practicality and purpose.

Practically, it will be very difficult to identify the financial costs of lobbying as defined in the legislation. Given the integrated nature of the commercial arrangements reached between professional lobbyists and their clients, or indeed the wide range of services provided by in-house public affairs professionals, how is a figure to be arrived at that accurately reflects the cost of that lobbying meeting with an MSP? Even if a value is attributed by the lobbyist, how would it be verified by the administrators of the register?
Furthermore, the Parliament needs to satisfy itself that there is a purpose to declaring financial information. APPC believes that financial value is only one metric that can be used to quantify lobbying - and there is no evidence to show that more spent on lobbying results in more effective lobbying. Some of the most effective lobbying is undertaken by volunteers, without payment, and there is no evidence to show that the public is any less interested in the fact that it has happened. That is why we have also recommended that the scope of the Bill is extended to encompass unpaid lobbying - cost is of little bearing to effectiveness, as the Convener recognised in his related admiration of Mrs Madge Elliot for her (voluntary) efforts to lobby widely for re-instatement of the Borders Railway.

5. Do you feel that the Bill is sufficiently clear? Does it allow individuals and organisations to easily know whether their activity requires to be registered?

We are broadly content that the Bill is sufficiently clear in most respects. However, APPC believes that more work is required to provide more detail on the process for handling complaints.

In particular, we believe that greater detail is required on the process for making a determination on individual complaints. What fundamental tests will be applied in coming to a decision? At what stage will the enforcement approach change from “educative and light touch” onto robust enforcement? What frequency of inadvertent errors of registration will be allowed before enforcement is escalated? APPC believes that this is particularly relevant given:

1. the early evidence from the UK Registrar that demonstrates a higher level of typographical errors than had been anticipated
2. any suggested widening of scope to include written or email communications may exponentially increase the amount of data to be registered, with a significant increase in inadvertent errors.

APPC also believes that a more detailed process for dealing with vexatious complaints is required. Doing so will provide reassurance to registrants who are complying with new regulations in good faith, as well as reassurance to the taxpayer that costs will not be unnecessarily escalated.

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APPC
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