Standards, Procedures and Public Appointments Committee

Lobbying (Scotland) Bill

Written submission received from the Royal Society of Edinburgh

[Clerks note: The Royal Society of Edinburgh have provided the submission they provided to the Scottish Government’s consultation on the Lobbying Transparency Bill and asked for it to be included as a submission for the Standards, Procedures and Public Appointments Committee call for views.]

Introductory Remarks

The Royal Society of Edinburgh (RSE) is Scotland’s National Academy, established in 1783 by Royal Charter and also a Scottish Charity. As part of its Royal Charter, the RSE is committed to the Advancement of Learning and Useful Knowledge. The RSE seeks to fulfil this Charter requirement in many ways, including providing advice on public policy issues to the Scottish Government and the Scottish Parliament. This advice is always offered on a non-partisan basis and is based on the expertise and knowledge of our diverse Fellowship.

The RSE is pleased to have the opportunity to respond to the consultation and individual comments on the questions posed are below, however the Society would ask if there is a proven need to legislate. The Minister in his foreword observes, “Lobbying is a vital part of a healthy democracy, and democracy has never been healthier in Scotland than now.” Further on in Chapter One the consultation states that “no allegations of impropriety about the lobbying of MSPs have arisen since the Scottish Parliament conducted its last Inquiry into the subject in 2002.” This raises the question, is legislation at all required?
CONSULTATION QUESTIONS

**Question 1 – Do you agree that the Government's three core principles are appropriate to inform the delivery of an effective and proportionate lobbying registration regime in Scotland?**

If there is to be a statutory register of lobbyists, then all three of the core principles outlined are essential. To achieve these means that any register and regulations established must be light touch, as is suggested in the third of the principles.

If introducing a Bill, it is also essential that the Government clearly defines what constitutes lobbying, particularly as the Bill will potentially introduce new criminal sanctions. Many people and organisations have differing interpretations on what constitutes lobbying and this could result in confusion for organisations on whether or not they are regarded as a lobbying organisation. For example would a professional body providing expert advice to MSPs or Ministers be regarded as a lobbying organisation?

**Question 2 – Do you agree that a publicly available register of lobbyists should be introduced in Scotland?**

If the Scottish Government wishes to introduce a statutory register, the RSE has no fundamental objection, providing the three core principles are adhered to. The Society would also ask that, in framing and scrutinising the Bill, the Government and the Parliament look at the various international models that are referenced and consider what evidence exists on the impact that they have had.

**Question 3 – Do you agree that no fee should be payable by lobbyists for registering or updating the register?**

The RSE agrees that there should be no fee on the organisation or individual registering.

**Question 4 – What are your views on whether the onus to register should lie with individuals who lobby as part of their work, or organisations who lobby?**

The view of the RSE is that the Scottish Parliament Committee was correct in recommending that organisations should register rather than individual members of staff – we would strongly urge the Scottish Government to reconsider its proposed approach of requiring individuals to register. This approach would result in one organisation having multiple registrations. It would also mean that there would be more administration involved in the register, as each time someone changed jobs the register would need to be amended.

This could also create administrative difficulties for organisations, on deciding how many of their staff to register as the degree of interaction with parliamentarians will vary depending on individuals’ remit.

As well as there being a need to define clearly what is meant by lobbying, it is also
essential that the threshold of lobbying activity at which an organisation or individual should register is clearly set out.

**Question 5 – Should both consultant lobbyists and in-house lobbyists be required to register?**

The RSE doesn’t see that there should be a distinction between consultant lobbying and in-house lobbying, so if a register is established, both should be treated equally for consistency.

Otherwise, certain types of lobbyists could be perceived as having privileged status when lobbying on similar issues.

**Question 6 – Should any types of in-house lobbyist be exempt from registration?**

The Society is not aware of any specific exemptions that should be made for in-house lobbyists.

**Question 7 – Do you agree that the register should cover the lobbying of MSPs and Ministers?**

We agree that lobbying of MSPs and Ministers should both be included, if a register is established.

Both groups play key roles in the legislative process. In addition, if Ministers as MSPs were to be excluded from consideration in the proposed Lobbying Transparency Bill, this would create an inconsistency between Ministers and other MSPs.

**Question 8 – What types of communication do you think should be covered by a statutory register?**

We agree that the primary forms of lobbying that should be covered would be arranged face to face meetings and also involvement of MSPs in events arranged by the organisations concerned.

**Question 9 – Do you agree with the Government’s view that paid lobbyists should be required to register?**

If a register is to be established, the RSE agrees that it should only cover the work of paid staff or consultants. It should certainly not require registration by volunteers.

**Question 10 – Do you agree that the register should also allow for voluntary registration by lobbyists not required to register?**

We see no harm in this proposal, but would expect that the vast majority of people engaged in lobbying on a paid basis would already be covered.
Question 11 – What are your views on what kind of information each lobbyist should be required to provide on registration?

As indicated earlier, our preference is that the registration should be on an organisational basis, in which case the information supplied would be:

- The name of the organisation
- A description of its main activities and areas of interest
- The FTE number of staff engaged in lobbying activity
- Contact details of the organisation

For consultant lobbying organisations, they should also list their recent clients.

Question 12 – How often should lobbyists be required to provide a return detailing their lobbying activity?

An annual report would seem appropriate. This would be consistent with the ‘light touch’ approach that we have advocated earlier and would not place an undue burden on the organisation.

Question 13 – Do you agree that the Parliament should introduce a Code of Practice for lobbyists setting out guidance on the registration regime and expected standards of behaviour?

It would be important to set out such a Code of Practice, as people engaging with MSPs on a professional basis need to have a clear understanding of what is expected of them, particularly as it is proposed that there will be sanctions against either the organisation or the individual for failure to comply with the regulations once enacted.

Such a Code of Practice should be in accessible language in order to make the lobbying process accessible to all and not just a select group. The RSE wonders whether, in the first instance, a Code of Conduct would be sufficient, with tougher regulation to be introduced only where there is evidence of serious breaches of the Code.

Question 14 – Do you agree that a register should include the facility for lobbyists to indicate if they already subscribe to any industry Codes of Conduct?

It would seem sensible for organisations to indicate if their staff are covered by any professional Codes of Conduct as this would add to the confidence of the public.

Equally, organisations should be able to indicate if they are already required to comply with existing requirements, for example if an organisation has a Royal Charter, or is registered with a body such as OSCR.
Question 15 – Do you have any views on the Committee’s proposals for who should be responsible for upkeep and oversight of the Register?

The RSE is of the view that the Scottish Parliament should be the custodian of the register.

Question 16 – Do you have any views on what enforcement mechanisms and sanctions should be available in connection with the registration regime?

The RSE is comfortable with the proposals regarding the role of the Registrar and the Commissioner for Ethical Standards in Public Life. Backing this up with civil sanctions, such as a period of exclusion from providing evidence in Parliament, or the withdrawal of Parliamentary passes, would seem appropriate; however the Society is concerned about the proposed inclusion of criminal sanctions.

The consultation on the proposed Bill itself does not provide any evidence of a significant problem that requires new criminal sanctions associated with the lobbying of Parliament. It is our view that new criminal law should only be introduced where there is a proven need for it, so in this case we would advise against introducing criminal sanctions.

Question 17 – Do you have any views on whether Parliament, by resolution, should be able to adjust the scope and operation of the registration regime once established?

We are satisfied that adjusting the scope of the regime should be by statutory instrument, providing that it is enshrined in the legislation and this is done through the affirmative procedure. It would also seem appropriate for the process to be reviewed after one year to assess whether it was causing any difficulties and whether it had added any value to the interaction of civic Scotland with the Parliament.

Question 18 – Do you have any views on whether there could be impacts on equalities groups as a result of the proposals outlined?

The RSE does not have any specific evidence on the impact of the proposals outlined upon equalities groups, but it does have a concern that a very strict registration regime may place the very small charities or organisations at a disadvantage. They may find it more challenging to comply than large companies or charities would. As many of the organisations campaigning on equalities issues have small staffing numbers, this could present an issue. It would be best though for the Government and Parliament to engage directly with organisations whose primary focus is on equalities to ascertain their views.
Question 19 – Do you have any views on whether there could be any additional costs or other implications for businesses as a result of the proposals outlined?

If the legislation does adhere to the core principles discussed in question one, there should not be a problem. If however the regime is expanded either now or in the future, then there could be an impact on the costs to business and other organisations, for example, if organisations were required to provide reports of any correspondence with an MSP or Minister. We would therefore encourage the Government and Parliament to respect the three core principles set out in the consultation.

Question 20 – Do you have any other comments on the general operation of a register of lobbyists, or on any of the proposals put forward by the Committee or the Government?

The core concern that the RSE has is that the proposed Bill seeks to resolve an issue for which there has been no evidence brought forward of any misconduct or impropriety. As a result, with the best of intentions, there is a risk that a bureaucratic system emerges either now or in the future, that may put at risk the open nature of engagement between the Scottish Parliament and civic Scotland, currently widely admired.

Additional Information

Consultation responses are produced on behalf of RSE Council by an appropriately diverse working group in whose expertise and judgement the Council has confidence. This Advice Paper has been signed off by the General Secretary.

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