Standards, Procedures and Public Appointments Committee

Lobbying (Scotland) Bill

Written submission received from RSPB Scotland

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

Although we do not believe that it has been sufficiently demonstrated that there is a ‘problem’ with lobbying in Scottish politics, with the impending expansion of power of the Scottish Parliament, it is likely that lobbying pressure will increase. Consequently, it may be desirable to have some form of lobbying register. However, we feel that it has not been sufficiently shown that the form of register outlined in the Bill has been shown to properly or proportionately deal with the issue.

Further, it is not clear why the diaries of MSPs could not simply be published, which would deliver the same amount of information, without putting excessive reporting burden on charities. This would increase transparency with the expectancy of propriety incumbent upon politicians, rather than that of any private company or other third sector organisation.

- How will the Bill affect you or your organisation?

The Third sector’s recent experience of the UK Government’s Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act (2014) has caused a ‘chilling’ effect upon the activities of non-party campaigning in the electoral periods. The implication of this Bill could potentially be more ‘chilling’, since its scope, although different in focus, spans the whole parliamentary cycle.

As it stands, the Bill will have a considerable impact on the legitimate activities of our, and many other, charitable organisations. The definition of ‘regulated activity’ would likely cover the activities of nearly all staff that ever come into contact with MSPs. The role of these members of staff vary greatly, but at some point during their working year, they will engage with parliamentarians. In particular, there is very little that would be included in conversation that could not be considered as in ‘relation to a Government or parliamentary function’, as stated in the definition of regulated lobbying in Part 1(1) (iii). The likely impact of this on staff is to make them adverse to engaging with MSPs or Ministers, due to increased reporting obligations, or from the prospect of leading the organisation into disrepute owing to a lack of familiarity with lobbying regulations.

RSPB Scotland has two full time members of staff whose job description primarily involves advocacy and campaigning work. We believe that a well designed regulatory system would cover the activities of these staff. The main concern is that the current definition prescribes the activities in such a way to cover any member of staff that may meet an MSP, of which there could be in the region of 100 in any year. This is a considerable increase in the scope of the regulation which will raise the administrative costs exponentially and undoubtedly have the ‘chilling’ effect seen
from the UK Government’s Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act (2014). We believe that the Bill team should work to ensure that not all work of the members of staff of charitable organisations will be covered.

Another concern is that of members of staff attending events. There will many serval instances of events not organised, but are attended by, RSPB Scotland, which will also be attended by parliamentarians. RSPB have staff based around Scotland that will attend many events that will also have MSPs as guests. There are many situations, where the definition of regulated activity will cover an extensive amount of activity. Instances such as Q&A sessions at public events, opening ceremonies, photo opportunities, visits to Schools and other educational institutions and public exhibitions. It may be deemed that it is in the public interest for these activities of Charitable organisations to be publicly stated. What should be also be considered is whether it is in the public interest to place the drastic administrative obligation of reporting these perfectly legitimate activities upon charitable bodies.

It should be noted that whilst working in the Charitable sector, you are employed to further the aims of the charity, and therefore it is likely that if a member of staff meets and MSP, they would engage them in ways that would relate to ‘Government or parliamentary function’. Consequently they would have to register this activity.

- 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?

In principle, yes, but the Bill does not enshrine this principle to an acceptable extent. It allows considerable leeway for influential processes to go unregistered. The fact that it does not require any declaration of any non-face-to-face communication is a considerable omission that limits the Bill achieving its objective. One situation, for example, such as an individual meeting a Minister on one occasion, followed up with telephone calls, emails, letters and text messages to the same Minister would result in only the initial meeting stated with the other activity completely omitted from the regulatory process. Considering that the purpose of the Bill was to bring transparency to the lobbying activity in Scotland, it is most likely to capture the more ‘public’ side to a parliamentarian’s engagement such as visits to businesses or to a nature reserve- but none of the other highly influential aspects of lobbying activity as the example illustrates.

Further, it would impugn the RSPB from pursuing it’s charitable objectives owing to the current definition of regulated lobbying being so extensive as to encompass almost any person working in the charitable sector that comes across an MSP. In general terms, anyone working for a charity can be expected to be an ‘advocate’ for that organisation, therefore it is conceivable that nearly every paid member of staff of charitable organisations could be forced to register, (or the individual actions of every member of staff, on behalf of one organisation) should they come across an MSP as part of their work throughout the year. The charitable sector has stated that if anyone working on behalf of a charity should be registered, it should be parliamentary officers, or those who job focuses on engagement with the parliamentary process. If
this was achieved, it would mean that only charities sizeable enough to resource Parliamentary engagement posts would have to engage with the regulation, avoiding smaller charities being discouraged from parliamentary activity.

- **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?**

No. The same amount of information could be made public through the publishing of MSP’s diaries without any of the cost to charitable bodies. Alternatively, there could be a clear exemption from the obligation to register for charitable bodies. Alongside this exemption, The Scottish Government could easily change the guidance for charitable organisations, and advise them to either become voluntary registers (through an amendment allowing charitable bodies to become automatic voluntary registrants) or to submit separate annual reports of all their engagement to the Clerk.

This approach, would allow charities to continue to carry on their usual work, but those with dedicated advocacy teams to report their activities in the same fashion, to the clerk.

- **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?**

No. It does not appear to be clear whether RSPB Scotland would be considered as an ‘Active Registrant’, or simply the parliamentary officer, or all members of staff that would come into contact with an MSP. Considering the range of implications from these three scenarios, it does not seem that the implications, or layout of the bill have been correctly considered in terms of the potential effects on the charitable sector. The definition of regulated lobbying activity is so broad that it could encompass almost any employee from a charitable organisation.

Unfortunately, the approach taken in the bill appears that it will be extremely burdensome on the charitable sectors who work to influence the political process in a way that is already transparent and regulated by charitable law.

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