

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

INQUIRY INTO LOBBYING

SUBMISSION RECEIVED FROM SCOTTISH LAND AND ESTATES

Scottish Land & Estates is a member organisation that uniquely represents the interests of both land managers and land-based businesses in rural Scotland. Scottish Land & Estates members have interests in a great variety of land uses, as well as being fully committed to ensuring that we have vibrant rural communities. We welcome the opportunity to respond to this consultation.

As important contributors to the rural economy our members are very interested in the decision-making processes across Scotland.

The Need for Change

- **have there been significant changes over the last decade in the way that lobbying is carried out?**
- **is there a problem or perceived problem with lobbying in Scotland? If so, how can this best be addressed? If not, do steps still need to be taken to address any problem arising in future?**

The most significant change is the increasing number of former Parliamentary based political employees and MSPs now working in “lobbying”. Accessibility to MSPs has increased, particularly since the advent of social media. Many campaign groups use twitter as a lobbying tool. We understand that there has been a restriction on the number of passes automatically issued by Parliament to certain outside organisations and welcome this.

It is our view that the Scottish Parliament has not, certainly in contrast with some of the experience at Westminster, had a significant problem with “lobbying” since its creation 15 years ago. While there is never room for complacency we are conscious that by introducing a register or other mechanisms, there is the potential for problems to be created which do not currently exist and in particular if the register were to become a “tick box” exercise a reduction in overall transparency.

We see no evidence of a fundamental problem with lobbying necessitating regulatory intervention.

Register of lobbyists

- **To what extent will the introduction of a register of lobbyists address any problem or perceived problem with lobbying?**

While a register with clear and unambiguous rules which are expressly applicable is a method to ensure parity of treatment, the existence itself of a register will not necessarily deal with any problem or guarantee transparency. This would be dependent upon enforcement and a variety of other factors, including whether there is the available infrastructure to maintain and update any register and the financial resources for this.

In considering the introduction of a register there requires to be a balance between the key principle of transparency and the requirement for clear and unrestricted access of communication between those interested in, and those making, policy and legislative decisions.

Registration of contact with parliamentary officials, civil servants and other public officials would present an enormous burden on organisations to whom the register applies, as well meaning additional work for the Parliamentary authorities. It is also important that a register does not undermine existing professional codes of practice and self-regulation.

The effectiveness of the register will also be partly dependent upon the extent to which MSPs will seek to rely on it prior to speaking to a “lobbyist”. At this time a statutory register would appear to be disproportionate and unnecessary and adherence by Ministers and MSPs to their existing codes of conduct and the founding principles of the Scottish Parliament would be more in point.

- **To whom should such a register apply? Should it be voluntary or compulsory? How should it be maintained and who should maintain it? What level of information should be on it? Should thresholds be set for registration? If so what should they be? What are the likely cost implications of registration for groups that lobby?**

If a register was introduced it would be helpful to have some form of alignment with the UK register to reduce any uncertainty across jurisdictions. To ensure clarity for both businesses and the wider public, terminology would also require to be carefully considered. There would need to be a clear definition of a “lobbyist” and “lobbying”. It would also be confusing to have separate requirements for different types of body e.g. trade unions, charities, private businesses etc. as this would potentially have the effect of reducing transparency. There needs to be parity of treatment of organisations involved in lobbying.

The application of the register would be particularly pertinent for bodies of a professional or regulatory nature. We have various Committees and Sub-Groups within our organisational structure. Would each of these require to be registered? Also, presumably it would be the professional body which is registered and not the individual employees or consultants whose role may be included within the definition of “lobbying”.

Any information recorded on the register would require to be cross checked for accuracy. A responsibility would therefore need to sit with an appropriate individual to check this. This may fall within the remit of the Scottish Parliament’s Chief Executive or the Corporate Body which has a secretariat. We would suggest the updating of the register should be retrospective and quarterly or half yearly would be sufficient monitoring.

The stage at which an action becomes “registerable” is important and this would need to be clearly established and exactly what is exempt. For instance participation in the legislative process in Parliament may be exempt, such as the giving of oral evidence formally to Committee, but would this encompass an organisation meeting

members of the Committee in advance to discuss the legislation on which they are subsequently giving evidence.

It should also be noted that contact with MSPs, Ministers and civil servants need not be at the initiation of an organisation. Parliamentarians cannot be expected to be experts in every field and will occasionally go to the “industry”. Frequently views are sought out as “experts” or as knowledgeable parties within an area by the MSP or civil servant. Consideration would need to be given as to where the onus of registration, if in fact required, falls in such circumstances. This is particularly pertinent where assistance is sought by members with private members’ bills.

Through the Community Empowerment (Scotland) Bill and other Bills we have been on stakeholder groups and we have met informally and formally at the request of civil servants to discuss legislation. Where such contact is at the instigation of civil servants we would assert that this should not require registration.

To ensure it was not unduly onerous and for transparency, the information required should be limited to that which is directly relevant, such as name, employer and brief record of dates of meetings held. There may be issues of client or commercial confidentiality or otherwise sensitive information, which need not be contained on a register. Disclosure of income generated from a “lobbying” activity, aside from being potentially difficult to calculate at times and verify, would not for instance be of any particular benefit if included within a register and the amount spent is not necessarily indicative of any outcome. Similarly it would be excessive for meeting notes or minutes to require to be produced for the register.

It would be too confusing to have a “threshold” for registration. Firstly, it is questionable how effective or accurate such a measurement would be and there could be significant inconsistency. Thresholds would in our view be difficult to set and would offer a “get out” for those who “lobby”, but who are determined to avoid appearing on the register. If there was a time threshold, would this include time spent preparing for the “lobbying” meeting; again there are issues with definition. If a cost threshold, there could also be annual variances in spend which may affect the register. If a register is to be established then it should apply to all.

The cost implications are more generally relevant than simply to the organisations which “lobby”. There may be costs to the public purse through for example start-up costs and employment of further staff to maintain the register and therefore an additional burden on the taxpayer. It is a fundamental point that the costs should not outweigh the intended benefits of having the register. We would be strongly opposed to fees which are burdensome to organisations and which discourage legitimate dialogue and communications with Ministers and MSPs. The costs involved therefore require to be kept affordable and a universal register would potentially spread the costs further.

- **What sanctions should there be for failure to register lobbying activity? How will the register sit alongside the UK register? How will compliance be monitored?**

It would be undesirable to have a register completely removed from the UK register. As mentioned earlier, for the avoidance of confusion it would be helpful to have terminology which is mirrored in both registers.

Non-compliance could be most easily enforced through removal from the register and hence the cessation of recognition as an established “lobbyist”, but we would question the effectiveness of that sanction on the basis that the “lobbyist” has not registered in the first place. Prior to any sanction there would in the interests of an equitable process need to be a reasonable time given to answer and rectify information.

There could be a range of sanctions, whether through omission to register or late registration or the supply of erroneous information. Consideration may also need to be given to EU Law in respect of lobbying from outwith the UK.

Non-compliance may be best governed by an independent body rather than from within Parliament. While it would presumably be less expensive to monitor through the Corporate Body there is a potential conflict if that Body was also responsible for maintaining the register.

- **What are the implications of a register for (a) the Parliament, (b) MSPs, (c) organisations that lobby and (d) Ministers and civil servants?**

This very much depends upon the nature of the establishment of the register and how it works in practice. However, the implications could be far-reaching and have unintended consequences weakening rather than strengthening the democratic process. We would reiterate that a statutory register is at present in our view not required in Scotland.

Other measures

- **Whether other changes could be made to improve transparency in lobbying in Scotland? What, if any, changes should be made to Section 5 of the Code of Conduct for Members of the Scottish Parliament?**
- **Should there be a Code of Conduct for lobbyists? Should it be statutory or voluntary?**

Part 5 of the Code of Conduct appears fairly comprehensive and we do not have any suggestions.

A Code of Conduct is a useful way to enhance a positive public identity, but if there is a register established, the Code should be voluntary. Lobbyists who are members of professional bodies are already regulated by Codes of Conduct and have to meet professional regulatory standards which give public assurance and what is already in existence should be promoted before introducing another Code. A statutory Code would require further policing in addition to the register and also further costs. We would have no objections to the introduction of a voluntary code of conduct for

lobbyists – indeed this would appear to be a more proportionate approach than the establishment of a register.

SCOTTISH LAND & ESTATES
10 JANUARY 2014