

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

INQUIRY INTO LOBBYING

SUBMISSION RECEIVED FROM SCOTTISH RETAIL CONSORTIUM

The Scottish Retail Consortium (SRC) is the leading voice of the retail sector, representing small and independent stores through to the large multiples, selling food and non-food products and services, and operating on the High Street, out of town, in community and rural shops and online.

The SRC represents over 80% of the retail market by value and in conjunction with our sister organisation, the British Retail Consortium, and we have 180 members. For a full list please visit:

http://www.brc.org.uk/downloads/Retail_Membership_Information.pdf

We support the aim of achieving greater transparency and accountability in government decision making both to ensure all views are given a proper weight, and to secure full public confidence in the decision making process. However, we remain unconvinced by the argument for a statutory register of lobbying.

We believe that the input of external organisations is fundamental to a democratic process of decision making. It is our view that organisations such as trade associations and other representative bodies make important contributions to the quality of policy making providing supplementary evidence and information on how proposals will impact on business and the economy. This evidence is essential in ensuring proportionate, well targeted and outcome focused legislation, minimising financial and employment costs and other unintended consequences whilst maximising social, environmental and other benefits to society.

As part of this transparency we support the publication of consultation responses and information about ministerial meetings whilst we believe that the MSP Code of Conduct should be amended so that there is a presumption in favour of MSPs publishing a record of their meetings with lobbyists. It is our view that Section 5.1.5 could be amended so that “consider keeping a record of all contacts with lobbyists” might read “should keep a record of all contact with lobbyists”, or even “must keep a record of all contact with lobbyists”.

It is also our view that the importance and effectiveness of the Freedom of Information (Scotland) Act 2002 should not be neglected in this debate. On balance the FoI legislation has provided a powerful and effective tool for increasing the transparency of decision making in Scotland, including how decisions were reached and which individuals or organisations influenced those decisions. Greater transparency, more often than not, leads to more accountability. Good governance demands that policy makers consider how best to utilise existing tools and legislation before creating additional and burdensome levels of new regulation.

To that end, and cognisant of the process already in train at Westminster, we also believe that it is important that both the UK and Scottish governments give careful

consideration of how legislation governing lobbying at Westminster and at Holyrood would best articulate for the many representative organisations which operate throughout the UK. Adhering to multiple regimes, all trying to achieve similar outcomes would create a lot of unnecessary differences, duplication and increased administrative costs and burdens for these organisations.

Finally, and in keeping with the Scottish Government's better regulation agenda, we would urge that the proposed Bill be subject to a full Business and Regulatory Impact Assessment.

I would like to take this opportunity to thank the Committee for providing us with this opportunity to respond to the inquiry and have taken the liberty of providing in Annex A, attached, a copy of the SRC submission to the Neil Findlay MSP consultation on a proposed Lobbying Transparency (Scotland) Bill which outlines in further detail the SRC position on this matter.

The SRC would be delighted to assist the Committee further on this issue if required.

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HEAD OF POLICY AND PUBLIC AFFAIRS
SRC
10 JANUARY 2014

Annex A: Proposed Lobbying Transparency (Scotland) Bill Consultation Response

1. Do you support the general aim of the proposed Bill?

As outline above, the SRC is committed to transparent and accountable government and this includes a policy making process which is inclusive, balanced and beyond reproach. However, as we understand it, the consultation proposes a Bill which seeks to ensure improved lobbying practices in Scotland without offering any robust examples of existing inappropriate lobbying practices in Scotland, offering a clear definition of what it is that it seeks to regulate, nor offer a solution which would be open to any less abuse than existing and robust safeguards which currently regulate the interactions between stakeholders and elected representatives.

It is also important to note that although “scandal has in the main been absent from Holyrood” , any corrupt practice which has been hitherto reported, either from within Scotland or at Westminster, has emanated from the inappropriate behaviour and misconduct of the elected official rather than any inherent problem with the way in which lobbying, in the vast majority of cases, is conducted. To what degree a statutory register would have combated previous incidents, over and above existing safeguards, is open for debate.

Questions 2 &3 have been answered together.

2. Do you agree that legislation is a necessary and appropriate means of improving lobbying transparency?

3. Is there any specific international approach to the regulation of lobbyists that represents a good model for developing an approach appropriate for Scotland?

We do not believe there are any inherent problems with the existing ways in which stakeholders engage in the policy making process in Scotland and believe that, in the absence of any robust examples to the contrary, that existing safeguards appear to operate effectively. Therefore, we would question any requirement to consider legislative or other comparative approaches to lobbying.

4. What robust, comprehensive and sufficiently explicit definitions of lobbying and lobbyist can be developed and applied that will ensure all who lobby are captured under the proposals?

It is our view that the definition of lobbying should be drawn wide enough as not to prejudice one organisation or individual over the other but also be sufficiently focused in order to ensure that all stakeholders, regardless of size or resources, can have access to the political process and participate fully in policy decisions

Questions 5 & 11 have been answered together.

5. Who should register on a lobbying register in Scotland?

11. Which organisations should be exempted from registering and why should they be exempted?

We have significant concerns about the proposal to include not-for-profit trade bodies within the scope of the register. It is clear that associations such as the SRC represent their sectors. We operate with complete transparency, publishing our membership on our website. We consider there is nothing to be gained from imposing additional requirements on small, low cost and single purpose operations such as ourselves. We believe that in-house public affairs functions should be excluded since it is perfectly clear who they represent.

It is important to keep in mind the main objective of the proposed Bill i.e. the desire to increase transparency when deciding which organisations and individuals should be caught but the regulation. We consider any individual or organisation representing themselves or the interests of the membership they clearly represent should be excluded from the register. This would include businesses' in-house teams, charities, civic groups, trade associations and other levels of government.

In other words, we believe that if there is a case for a register, it should be restricted to individuals and organisations acting on behalf of third parties on a commercial or 'client' basis, where the identity of the beneficiary of the lobbying activity would not otherwise be transparent.

6. Is it necessary or desirable to develop a Code of Conduct for lobbyists to accompany a lobbying register? If so, what key elements should this code include?

We do not support the development of a Code of Conduct for lobbyists believing that this will only create additional administrative and cost burdens and is unnecessary given that the MSP and Ministerial Code of Conducts already regulate these relationships.

7. Are the current arrangements, whereby lobbyists are governed only through self-regulatory schemes, adequate or is a statutory regime required in order to regulate lobbying?

We believe that current arrangements are adequate.

8. What do you think is the appropriate and necessary information to be disclosed in order to make lobbying transparent and how regularly should entries be updated?

While we consider the case for a register has not been clearly articulated, we support the Government's overall aim to achieve transparency in its decision making processes. If the proposals are pursued we believe a light touch approach providing the minimum information necessary to achieve that transparency should be sought.

For commercial lobbyists acting for clients, we agree that the aim should be to understand better the identities of individuals and firms, any previous role within government, and some measure of the financial value of the relationship.

However, if not-for-profit membership organisations were to be caught within the scope of the legislation we do not believe that financial information should be included. Membership fees are commercially sensitive data for both individual members and the membership body and should be given absolute protection. Also, if not-for-profits are included it should be on as light a touch basis as possible, with much lower reporting requirements, given the greater impacts on operating costs.

While there is some merit in providing quarterly updates, consistent with other transparency measures, were not-for-profit membership organisations included we believe an annual return would be sufficient. Membership turnover is generally low and the interests of the organisation abundantly clear.

Questions 9 & 10 have been answered together

9. Should there be a threshold for inclusion in the lobbying register? If so, what should it be (in terms of time / resources devoted to lobbying, size of organisation, budget, etc.)?

10. Should it only be contact with MSPs, Ministers and civil servants which should require to be recorded on the register, or should all public officials, including from NDPB's, be included?

We do not believe that financial information should be included in any proposed register for the reasons outlined above. We would also argue that a proposal for thresholds would not be a workable solution to the problems inherent in presenting financial information. In the example of a trade body, separating out how resources are being used in general advancement of the membership or on specific issues and campaigns would require significant administrative resources and additional costs. From our perspective it would seem disproportionate to detail every single contact and meeting, given the huge number organisations like ours undertake, and deciding what is and what is not of consequence.

The more expensive it becomes to comply with the register the more disenfranchised smaller and less resourced organisations will become. As we argue below, if the cost of compliance becomes too arduous we very quickly end up in, quite literally, a cash for access situation.

12. Is an independent body required to oversee the register? If so, which organisation should be responsible for administering the register?

We agree that an independent third party would have greater credibility in running a proposed register but do not believe this necessarily requires a new organisation to be created. We believe very strongly that any organisation running the register should be demonstrably efficient and accountable to the fee payers in providing value for money. We question whether any existing Parliamentary body could meet

this test as presently operated. We have no views on a particular candidate organisation.

13. How will compliance be policed and what investigative and enforcement powers would the overseeing body require?

We understand the wish to ensure compliance with the legislation envisaged, but would be extremely concerned were criminal sanctions to be adopted since this would be disproportionate. Were not-for-profit membership organisations to be included we consider that the threat of de-registration would be sufficient, since it would effectively remove the organisation's selling point to members. In view of the severe impact of this sanction, we consider that a warning would be sufficient for minor infringements and first time offences where the trade association clearly intended to be compliant.

14. How should the administration of a statutory register be paid for? And what is your assessment of the likely financial implications (if any) of the proposed Bill to you or your organisation? What (if any) other significant financial implications are likely to arise?

We agree that it would be inappropriate to ask the taxpayer to fund the register. However, if not-for-profit membership organisations were included we consider that a much reduced rate should be available, recognising the simpler nature of the information that would need to be held and the much lower capacity of such organisations to bear the cost.

15. Is the proposed Bill likely to have any substantial positive or negative implications for equality? If it is likely to have a substantial negative implication, how might this be minimised or avoided?

We believe that the proposals take a somewhat over-simplified view of how relatively straightforward it would be to comply with a statutory register as proposed in the consultation document. Very quickly we can see the additional burdens created by a statutory register, despite the absence of evidence that it is even required, undermining one of the stated aims delineated in the consultation: to facilitate and enable more access and participation. This is because by placing a cost, both in terms of funding a register or derived from the administrative burden through compliance, such a Bill would disadvantage those individuals and organisations which have fewer resources but can currently still play a full and active part in the policy making process.