

LOBBYING (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Lobbying (Scotland) Bill introduced in the Scottish Parliament on 29 October 2015. It has been prepared by the Scottish Government to satisfy Rule 9.3.3 of the Parliament's Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 82–EN.

POLICY OBJECTIVES OF THE BILL

2. This Bill is being brought forward to fulfil the Government's objective of increasing the public transparency of elected representatives' activity. The Bill takes account of the findings of the recent Inquiry by the Scottish Parliament's Standards, Procedures and Public Appointments Committee ("the Committee") into lobbying in Scotland. The Committee concluded that legislation in this area was necessary and appropriate, and invited the Government to consider the proposals set out in its report dated 6 February 2015¹ as the basis for legislation. The Government welcomed the report produced by the Committee ("the Committee's report"), which has informed its approach to this Bill to a significant extent. The overarching objective of the Bill is to introduce a measured and proportionate register of lobbying activity. The register would then complement existing parliamentary and governmental transparency mechanisms.

3. The main policy components of the Bill are:

- Establishment of a lobbying register containing information about certain regulated lobbying activity of both 'consultant lobbyists' (those engaged to lobby on behalf of another individual or organisation) and in-house lobbyists (e.g. employees who lobby as part of their work).
- A trigger for registration focused on *paid* lobbying, in the sense of a consultant being paid to lobby or individuals in commercial or other organisations who lobby as part of their paid work.
- An obligation focused on *organisations* to register (i.e. both 'lobbying firms' and commercial or other organisations with 'in-house lobbyists') following their lobbying of MSPs and Ministers.

¹ http://www.scottish.parliament.uk/S4_StandardsProceduresandPublicAppointmentsCommittee/Reports/stpR-15-01w.pdf

- Defining ‘regulated lobbying’ in this context as face to face oral communication with MSPs and Ministers (e.g. ‘in person’, meetings, events, other hospitality), in line with the Committee’s report.
- Lobbyists will require to register after a first instance of lobbying MSPs and Ministers, or may apply to register in advance if they believe they are likely to trigger the registration requirement in future.
- Thereafter lobbyists will be required to submit periodic (six-monthly) returns of lobbying activity.
- The Parliament will have the ability, via resolution, to alter elements of the framework for the operation of the lobbying register.
- Register to be kept and maintained by the Clerk of the Parliament (“the Clerk”) with a suite of proportionate oversight and enforcement provision (including scope for independent investigations by the Commissioner for Ethical Standards in Public Life in Scotland (“the Commissioner”) who reports to the Parliament and offences provided to promote and secure compliance with the requirements in the Bill.
- The Parliament will be able to produce guidance on the operation of the regime and must publish a code of conduct for persons lobbying its members.

4. The Government consulted on its proposals between 29 May and 24 July 2015, with a majority of respondents indicating that they were in favour of the introduction of a register.

BACKGROUND

5. The Government believes that the existing probity-based frameworks which offer guidance on contact between lobbyists and elected representatives are robust - in particular, the Code of Conduct for Members of the Scottish Parliament² and the Scottish Ministerial Code³. The Government notes that these frameworks have not been challenged in terms of how they deal with lobbying activity.

6. The Government recognises the significance of public access to the Parliament. One of the Parliament’s founding principles was that it should be “accessible, open, responsive, and should develop procedures which make possible a participative approach to the development, consideration and scrutiny of policy and legislation”⁴. The Government is clear that provision on lobbying transparency should not infringe on this principle, which it deems both essential and beneficial to policy making in Scotland.

7. The Scottish Government agrees with the view expressed in the Committee’s report that “lobbying is a legitimate and valuable activity”⁵. During a survey conducted by PA Advocacy in January 2014, four-fifths of MSPs said that direct contact with or correspondence from organisations was useful in their role⁶. The Government also recognises that Scotland’s

² www.scottish.parliament.uk/msps/code-of-conduct-for-msps.aspx

³ <http://www.gov.scot/About/People/14944/684>

⁴ White Paper - Scotland’s Parliament (Cm 3658) 24 July 1997

⁵ <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/86491.aspx#a3>

⁶ Holyrood Magazine, 20 January 2014 - p9

constitutional position is changing. Increased responsibility and greater powers for the Scottish Parliament will naturally lead to increased intensity in the conduct of Scottish public affairs, with the potential for an increase in the amount of lobbying that takes place in Scotland. In that context, the Government considers that it is of fundamental importance to ensure that elected representatives continue to have access to as wide a range of information and perspectives as possible.

8. The broad overall policy aim of the Bill is to deliver a public benefit: to increase transparency of direct face to face *paid* lobbying (communication) with MSPs and Ministers. Improved transparency will facilitate improved awareness and understanding of lobbying activity, improved public scrutiny of the work of the Parliament and Government, improved public accountability and trust in that work and improved outcomes. In this context ‘*paid* lobbying’ is used in the sense of a consultant paid to lobby or individuals in commercial or other organisations who lobby as part of their paid work.

9. It is hoped that, in so doing, the Bill will serve to further strengthen the integrity and reputation of both the Scottish Parliament and the Scottish Government and demonstrate the positive democratic climate that exists in Scotland. It is also hoped that it will lead to an increased understanding of the nature of lobbying activity in Scotland.

10. The Bill seeks to strike a balance between ensuring that important relevant information about lobbying activity is publicly available while at the same time ensuring that the obligations on those communicating with MSPs and Ministers are not unduly burdensome. Accordingly, the Bill focuses on face to face lobbying of MSPs and Ministers and not, for example, written communications in the form of emails and letters. This reflects the view that communication made orally and in person is a particularly significant and effective form of communication and that it is important that the public have information about that form of lobbying.

11. The Bill ensures communications with MSPs and Ministers by individuals on their own behalf and communications made by individuals because they choose to associate themselves with a particular ‘cause’, are not caught by the requirements to register and submit returns of regulated lobbying activity. Rather, as noted above, it is concerned with *paid* lobbying of MSPs and Ministers, in the sense of a consultant paid to lobby or individuals in commercial or other organisations who lobby as part of their paid work. This reflects the public’s legitimate interest in money paid to influence the political process by this means. It strikes an appropriate balance between the wider interest of society in having information about lobbying activity publicly available on the one hand and in not imposing reporting obligations in connection with personal or voluntarily made communications with MSPs and Ministers.

12. The Bill catches ‘*consultant lobbying*’ on behalf of third parties and ‘*in-house lobbying*’ by organisations on their own behalf. This provides for wider transparency and also ensures equitable treatment of lobbying where payment is involved, whether it is carried out for an organisation by individuals within that organisation who lobby as part of their paid work or for a third party by an external ‘consultant’ paid to lobby.

13. The Government detects a strong willingness on the part of those who engage with MSPs and Ministers to embrace this reform.

14. To reflect the context as outlined above, the Government has used three core principles to assess the merits of any lobbying registration regime:

- Avoiding any erosion of the Parliament's principles of openness, ease-of-access and accountability. Reforms must adhere to the Parliament's founding principles and not restrict the legitimate activities of non-party political organisations engaging in public policy.
- Any proposed measures must complement the existing framework - for example, the Interests of Members of the Scottish Parliament Act 2006, the Code of Conduct for Members of the Scottish Parliament, the Scottish Ministerial Code and public registers of ministerial meetings.
- The need for a proportionate solution, simple in its operation and which commands broad support within and outwith the Parliament.

15. Finally, the Government notes that lobbying registers, and particularly registers illustrating lobbying activity, are increasingly commonplace worldwide. Notable statutory regimes include those in Austria, Canada, USA and Ireland. The UK Government has also recently legislated to introduce a statutory registration regime in its Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014. The Government sees merit in the establishment of a lobbying register, designed to reflect Scottish circumstances, as an example of its ongoing commitment to openness in the conduct of its affairs.

BILL CONTENT- GENERAL

16. The Bill is separated into five parts:

- *Part 1* sets out the core concepts underpinning the registration regime, including the concept of engaging in regulated lobbying and the related concepts of Government and parliamentary functions and, in the schedule, communications which are not lobbying for the purposes of the regime.
- *Part 2* sets out the framework for the operation of the lobbying register including duties to register and submit returns of regulated lobbying activity, the content of the register and the role and functions of the Clerk in operating the register.
- *Part 3* sets out the oversight and enforcement regime including the role of the Clerk, the role of the Commissioner and offences.
- *Part 4* contains provision related to the publication of parliamentary guidance and a code of conduct for persons lobbying MSPs.
- *Part 5* contains final provisions relating to interpretation, the process for making parliamentary resolutions, ancillary provision and other technical matters.

PART 1

CORE CONCEPTS

Policy objectives

17. The provisions contained in Part 1 of the Bill set out the core concepts underpinning the registration regime, including the concept of engaging in regulated lobbying and the related concepts of Government and parliamentary functions and, in the schedule, communications which are not lobbying for the purposes of the regime.

Regulated lobbying

18. In the Committee's report, it suggested that a lobbying register should include details of pre-arranged meetings and events rather than all forms of communication between lobbyists and MSPs⁷. The Committee also suggested that capturing all communication, although positive in terms of increasing transparency, would risk placing too great a burden on lobbyists⁸.

19. The Government agreed with the Committee's conclusion that there is a need to strike a balance between increasing transparency, and introducing a system that requires "a sensible amount of information"⁹. The Government also believes that capturing direct, face-to-face communication – being a particularly significant and effective form of communication - is a reasonable and proportionate measure given the evidence received by Committee. Therefore, the Bill captures as regulated lobbying communications made "orally and in person" to an MSP or a Minister in relation to their functions (Government or parliamentary functions, a concept which does not include the retained functions of the Lord Advocate within the meaning of section 52(6) of the Scotland Act 1998: communications to the Lord Advocate and Solicitor General in relation to the Lord Advocate's retained functions will not therefore trigger requirements to register and submit returns of lobbying activity under the Bill.). Other forms of communication such as letters, e-mails and telephone calls are not captured which minimises the burden placed on registrants.

20. The Committee proposed that organisations should be required to register as lobbyists. The Government's consultation mooted the possibility of a register operating on the basis of each individual lobbyist registering separately to offer more transparency around individual instances of lobbying activity. However, following respondents' strong preference for the adoption of the Committee's approach, which they deemed to be more proportionate and less burdensome, the Government also agreed with the Committee's conclusion that the onus for registration should be placed on organisations rather than individuals. The Bill therefore provides that when an individual undertakes regulated lobbying activity as part of their paid work for another individual or organisation (e.g. as an employee), the communication is treated as being made by that other individual or the organisation. That other individual or the organisation will require to register and submit returns of the regulated lobbying activity under the Bill.

⁷ <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/86491.aspx#a21>

⁸ <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/86491.aspx#a19>

⁹ <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/86491.aspx#a21>

21. In focussing on lobbying undertaken as part of *paid* work, *paid* refers to payment of any kind but in particular does not include the payment of reasonable expenses, and so on.

Communications which are not lobbying

22. The Government considers that communications with MSPs and Ministers by individuals on their own behalf and communications made by individuals in a voluntary capacity, because they choose to associate themselves with a particular ‘cause’, should never be caught by the registration and reporting requirements imposed by the Bill. The Government position is that only lobbying activity undertaken by those who are paid to do so should be caught. This is reflected in the Bill. The focus of the Bill is, as noted above, on *paid* lobbying, in the sense of a consultant paid to lobby or individuals in commercial or other organisations who lobby as part of their paid work. It is that which triggers the Bill’s requirements to register and submit returns. The intention is to capture this significant lobbying activity in a simple and straightforward manner, a key aim highlighted in the Committee’s report being to capture significant lobbying activity¹⁰. The Bill therefore exempts any communication made by an individual on their own behalf, or a communication by individual who is not making it in return for payment. Such communications do not trigger the Bill’s requirements to register and submit returns.

23. The intention is to improve the transparency of face to face (in person) oral communications between paid lobbyists and elected representatives, whether at meetings or in other forums, the fact and purpose of which would not otherwise generally enter the public domain. The Bill therefore provides that communications made during parliamentary proceedings are not regulated lobbying which will trigger the requirements in the Bill to register and report lobbying activity.

24. The Bill also provides for exceptions to ensure that communications made in the day to day conduct of affairs within the public sector are not regarded as ‘lobbying’. This reflects the principle that such communications are a natural and expected part of everyday public discourse and that, accordingly, the benefit of capturing such activity did not outweigh the extra administrative burden that would arise for public bodies and offices in the conduct of their affairs. Should a member of the public wish to access information held by the public sector it is open to them to request such information through freedom of information arrangements. Examples of communications excepted under the Bill are those made by other arms of government within the United Kingdom, those made by representatives within the Scottish public sector, foreign states, international organisations and so on. The Government believes that this will have an indirect positive effect on transparency by ensuring that the register focuses on providing information on lobbying activity that would be of most interest to members of the public.

¹⁰ <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/86491.aspx#a20>

PART 2

THE LOBBYING REGISTER

Policy objectives

25. The Register will in practice be operated and maintained by the Scottish Parliamentary Corporate Body (“the SPCB”), reflective of the fact that the register will capture lobbying directed towards Members of the Scottish Parliament in relation to their functions (as well as Ministers in relation to their functions). The Clerk, an employee of the SPCB, is to establish and maintain the lobbying register and monitor compliance with the registration regime. The focus of the Bill framework is on the educative and light-touch approach favoured by the Committee in its report.

26. The Bill places obligations on organisations and individuals (including ‘consultant lobbying firms’, self-employed ‘consultant lobbyists’ paid by others to lobby on their behalf and commercial or other organisations and individual employers with paid individuals who lobby ‘in-house’) to register and submit regular information returns of regulated lobbying activity following lobbying of MSPs and Ministers. But, as noted above, the Bill provides that when an individual undertakes lobbying activity as part of their paid work for another individual or organisation (e.g. as an employee), the communication is treated as being made by the other individual or the organisation. The Government is persuaded, having consulted on whether the regime should adopt an individual or organisation-focused approach, that this organisation-focused approach to registration carries significant benefits in terms of resource implications and ease, for both registrants and the Parliament.

27. Lobbyists will require to register within 30 days after a first instance of regulated lobbying of MSPs and Ministers and thereafter submit periodic information returns (every six months from the point of the first instance) of regulated lobbying activity. This approach is designed to avoid creating a barrier between lobbyists and elected representatives, which an alternative approach of requiring lobbyists to register *before* engaging in any regulated lobbying activity might be argued to do and which the Government believes would risk infringing on the openness and accessibility of the Parliament. It will create flexibility for lobbyists and remove the risk of unintended transgressions, while at the same time ensuring that the register still captures all relevant lobbying activity with an emphasis on a light-touch approach.

28. Nevertheless, lobbyists who believe they are likely to trigger the requirement to register in the future because they will engage in regulated lobbying have the option to apply to register in advance under the Bill (following which they will require to submit periodic information returns every six months from the point of application). The Government believes that the Bill should provide maximum flexibility for lobbyists, and this feature will allow those who believe they are likely to trigger the registration requirements in the future to register in advance. This also has attractions in terms of the openness and transparency of the information contained within the register – the public will be able to gauge how many organisations intend to carry out regulated lobbying activity, as well as how many have already done so.

29. On registering in either of these ways, a person becomes an “active registrant” for the purposes of the registration regime established by the Bill and therefore is under a duty to submit

six monthly returns of regulated lobbying activity. An active registrant may, though, apply to the Clerk to be reclassified as an “inactive registrant”, in particular if they do not intend to engage in further regulated lobbying. Additionally, the Clerk may reclassify an active registrant as an inactive registrant without an application where the Clerk has reasonable grounds to believe they are no longer engaged in regulated lobbying. As above, the primary purpose of these provisions is to provide maximum flexibility for lobbyists, who will be able to indicate that they no longer expect to engage in regulated lobbying activity and wish to be reclassified as an active registrant. This will remove the requirement to provide six monthly information returns detailing lobbying activity, removing any unnecessary burden on the lobbyist, and also reducing the burden on the Clerk. In the event an inactive registrant engages in further lobbying activity they would require to re-register as an active registrant under the scheme following which the requirement to submit six monthly information returns is triggered again.

30. A facility for registration by a “voluntary registrant” (i.e. a person who does not trigger the statutory registration requirements because they are not engaged in regulated lobbying) is included in the Bill. This offers such person the ability to proactively declare what lobbying activity they undertake, thus enhancing transparency, without imposing disproportionate *requirements* to register. The operational detail of how that voluntary process should operate is to be left to the Parliament’s discretion (the Parliament may, by resolution, make provision about Part 2 of the Bill including voluntary registration).

31. As noted in the preceding paragraph, the Bill provides for the Parliament to be given the power, by resolution, to make provision about Part 2 of the Bill on the register. The power will allow the Parliament to make additional provision and modify certain existing provision (e.g. the power could be exercised to make provision about the information to be provided by registrants, the removal of information from the register etc.). The Committee’s report concluded that “the Parliament must be assured that the new registration process does not inhibit those seeking to legitimately lobby Parliament and Government. The Parliament must be able to change this new system if it considers this is the case.”¹¹ The Government agrees that there should be a role for the Parliament to make provision about the operation of the regime, including to make changes in light of practical experience of how the regime is operating and the resolution making power provides for this. The Bill requires that parliamentary resolutions be published in the same way as Scottish Statutory Instruments to ensure appropriate publicity.

PART 3

OVERSIGHT AND ENFORCEMENT

Policy objectives

32. The focus of the Bill framework is on the educative and light-touch approach favoured by the Committee’s report.

33. Reflecting the recommendations in the Committee’s report, the Bill provides for a three-tier oversight and enforcement system, as follows:

- *Tier 1* - The Clerk oversees compliance.

¹¹ <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/86491.aspx#a15>

- *Tier 2* - By way of further oversight, the Commissioner investigates possible breaches / the Parliament has power to censure lobbyists.
- *Tier 3* - Criminal offences and penalties, provided for as a last resort.

34. As a starting point, oversight of the regime will be by the Clerk. As mentioned above, the Bill provides that the Clerk must establish and maintain the lobbying register and monitor compliance with the registration regime. If necessary, the Clerk will be able to issue information notices to require provision of information for example where, in exercise of the Clerk's duty to monitor compliance, the Clerk considers that information in the register is inaccurate or incomplete (the Bill provides a right of appeal to the sheriff against information notices). It is envisaged that Clerk's duty to monitor compliance will mainly consist of checking and processing information received, and addressing any relevant issues raised by potential registrants or from the public. The intention is also for the Clerk to have the flexibility to pursue corrections, missing information, or unintended oversights on a relatively informal basis, using measures short of the formal oversight machinery.

35. However, as this is a statutory regime, which places clear duties on individuals and organisations the Government believes it is appropriate to make provision for further oversight and enforcement which will give the Parliament and members of the public assurance that wilful non-compliance can be addressed. The Government does not believe that provision for further oversight and enforcement is at odds with the intention that the overall lobbying framework should be light touch in nature. It is the Government's hope and expectation that the day-to-day focus of ensuring compliance will firmly remain on the educative and administrative role of the Clerks, as envisaged in the Committee Report.

36. The oversight and enforcement framework is designed so that any instance of non-compliance can be addressed at an appropriate level, with a strong emphasis on the oversight aspects and in particular on encouraging compliance with a light touch registration scheme in the most effective and proportionate manner, the policy intention being as follows:

- Minor or inadvertent transgressions would be addressed via informal exchanges between the Clerk and a lobbyist.
- The Clerk would have the option to issue information notices where initial informal exchanges failed to rectify omissions.
- If compliance was still not achieved, the Clerk could escalate complaints to the Commissioner (the Commissioner is also able to receive complaints directly from members of the public). Following investigation of complaints the Commissioner will report the outcome to the Parliament. It would then fall to the Parliament to consider whether to censure the lobbyist. The role of the Commissioner is intended to complement the Clerk's oversight role.
- If the preceding measures failed to rectify any omissions from the register, and there was evidence of wilful non-compliance, there would be the prospect of prosecution in the Courts.

37. In respect of the role of the Commissioner, the Government is considering whether an Order under section 104 of the Scotland Act 1998 may be required to extend the Commissioner's power to call witnesses and documents to the rest of the UK.

PART 4

GUIDANCE AND CODE OF CONDUCT

Policy objectives

38. The Parliament may publish guidance on the operation of the regime which will be key to the educative focus of the regime and in helping lobbyists to understand their obligations under the Bill. The Parliament must also publish a code of conduct for those lobbying MSPs more generally, i.e. including but not restricted to those engaged in regulated lobbying.

39. Whilst a matter entirely for the Parliament, the Government envisages the parliamentary guidance offering potential registrants an overview of the registration scheme, how to negotiate the process of initial registration and how to ensure compliance on an ongoing basis. It could offer examples of what types of engagements with MSPs and Ministers would, or would not, trigger the requirements to register and report and outline best practice.

40. It is anticipated that the code of conduct for persons lobbying MSPs would most probably set down the key standards of conduct the Parliament would expect lobbyists to adhere to when engaging with its Members. There is also the option for the code of conduct for persons lobbying MSPs to provide linkage with the Code of Conduct for Members of the Scottish Parliament. The code of conduct for persons lobbying MSPs could also cover any wider issues relating to lobbying that the Parliament saw fit to include.

41. It is assumed the Parliament would develop both documents during its preparations for the registration regime to go live, following commencement of the legislation.

PART 5

FINAL PROVISIONS

42. The provisions set out in Part 5 of the Bill relate to interpretation, the process for making parliamentary resolutions, ancillary provision and other technical matters.

ALTERNATIVE APPROACHES

43. The main alternative approaches to the Bill are:

- Maintenance of the status quo.
- A register of the details of consultant lobbyists only.
- A register which includes a threshold based on frequency of lobbying activity.
- A register containing details of wider lobbying activity.

Maintenance of the status quo

44. This option has been discounted as it would not fill the gaps which currently exist in the transparency of lobbying activity in Scotland. Taking no action would therefore have no effect in improving awareness and understanding of lobbying activity, improved public scrutiny of the work of the Parliament and Government, improved public accountability and trust in that work and improved outcomes. Taking no action would also be contrary to the position adopted by both the Committee and the Government.

Register of the details of consultant lobbyists only

45. This option would involve legislating for a simple register of basic identification details of consultant lobbyists only and who they work for. It would not require consultant lobbyists to regularly supply information about their engagements with “lobbyees”. It would not require any information to be provided by those who lobby through “in-house” lobbyists.

46. This would establish a low burden model for consultant lobbyists and the SPCB. But as the Committee report did not recommend that details of MSP’s engagements with external lobbyists should be published (which, in addition to already published information on ministerial engagements, could have complimented such a registration-only approach), the Government considers that adopting this model would leave an unwelcome gap in transparency that would undermine the integrity of the proposed reform. It is clear from evidence to the Committee’s Inquiry into lobbying and the Government’s own consultation, that there is also an attraction to improved understanding of lobbying activity undertaken by both consultant lobbyists and “in-house” lobbyists and to capturing that in an accessible form. Although therefore such a register of consultant lobbyists might have some impact on improving public understanding of the nature of the lobbying industry, the Government does not consider that it would be effective in securing the aims of the reform – to generally increase transparency of direct face to face paid lobbying (communication) with MSPs and Ministers to facilitate improved awareness and understanding of lobbying activity, improved public scrutiny of the work of the Parliament and Government, improved public accountability and trust in that work and improved outcomes. The Government therefore considers that this option would fail certain key aims for legislation.

Register including a threshold based on frequency of lobbying activity

47. A threshold based on frequency of lobbying activity was proposed in the Committee’s report¹². The Government recognises that creating a registration threshold of this nature would be a legitimate way of ensuring that infrequent lobbying does not trigger a requirement to register and would help to minimise the impact of the regime on infrequent lobbyists. However, the Government believes that there would be drawbacks to this approach. It would create an arbitrary threshold below which lobbying activity would not need to be disclosed, despite the fact that it could be of significant interest to the public and in relation to substantive policy issues. Such a threshold approach would also create a potential loophole whereby registration could be avoided by management of the frequency of direct engagement with MSPs and Ministers.

¹² <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/86491.aspx#a20>

48. The Government also considers that including a threshold of this nature may risk introducing ambiguity to when registration requires to be undertaken and could increase inadvertent non-compliance. Simplicity to the end-user is a key principle followed by the Government in bringing forward its preferred legislative model, the importance of which is amplified when there is strong evidence of lobbyist wishing to embrace any registration requirement that is introduced. The Government's aim is therefore to keep the regime simple, clear and consistent in how it deals with lobbyists, but also proportionate in its impact. The Government acknowledges why the Committee suggested the use of thresholds of this nature (reflective of a shared aim of keeping the register proportionate), but believes the approach set out in the Bill is preferable for the reasons above.

49. Finally, the Government notes that there was no significant support for taking a threshold-based approach in the public consultation.

50. Instead, the focus of the Bill is on establishing a registration trigger based on a threshold of paid lobbying, a position which received support from a majority of respondents to the public consultation which is designed to deliver transparency of this significant lobbying activity in a clear and straightforward way, but without the attendant risk of compromising the transparency of regulated lobbying activity.

Register containing details of wider lobbying activity

51. The Committee Report reinforced the importance of establishing a registration scheme that was proportionate in the Scottish context. The Government recognises calls for a registration scheme which is wider in scope, for example in terms of the type of communications which would trigger registration and reporting requirements (e.g. written communications with MSPs and Ministers) or in terms of the range of 'lobbyees' (e.g. imposing requirements to register and report not just in relation to communications made to Ministers and MSPs but also communications made to civil servants). But it agrees with the Committee's view that a light touch regime is merited at this time. The Government considers the establishment of a register as proposed under the Bill will deliver a proportionate level of transparency.

CONSULTATION

52. The issue of whether measures should be introduced to deliver transparency in respect of lobbying activity in the devolved Scottish context has been consulted upon widely during the current parliamentary session. In July 2012 a consultation was launched on a Member's Bill proposal to establish a public register of lobbying activity. This was followed in September 2013 by the Standards, Procedures and Public Appointments Committee Inquiry on Lobbying, which involved a call for written evidence.

53. On 29 May 2015 the Scottish Government published a public consultation on proposals for lobbying register. The consultation was open for 8 weeks and closed on 24 July 2014, with a wide range of stakeholders being invited by e-mail or letter to respond.

54. A total of 68 written responses were submitted to the Scottish Government, and the policy set out in the Bill has taken account of the perspectives raised during the public

consultation. As is usual for this topic, there was a wide range of opinions from respondents, however more than two-thirds of respondents were in favour of the introduction of a register. The responses are available in full on the Scottish Government website using the link below:

<http://www.gov.scot/Publications/2015/08/2246/0>

55. A full independent analysis of consultation responses was undertaken by Reid Howie Associates, and published on the Scottish Government website on 21 October 2015. The report is available at the link below:

<http://www.gov.scot/Publications/2015/10/2647>

56. The 68 respondents can be broken down into the following groups:

Category	No.
Third sector	26
Private sector Trade Associations and membership groups	14
Lobbying industry	9
Trade Unions and professional organisations	7
Campaigning organisations and groups	6
Public bodies	3
Private sector companies	2
Individuals	1
Total	68

57. The Government has maintained engagement with stakeholders on an ongoing basis during the development of the policy. The Government has met with stakeholders including lobbying industry groups such as ASPA, APPC and CIPR, lobbying firms such as PRCA and CBI, the third sector (SCVO), the Law Society, and campaign groups such as Electoral Reform Society, Unlock Democracy and Spinwatch.

58. The headline policy issues arising from the consultation were as follows:

- A preference for an organisation-focussed approach to registration.
- A clear reinforcement of the view that regulatory measures should not impact on the openness of the Parliament or in any way constrain or inhibit lobbyists engagement with elected representatives.
- That any registration regime should be not be unduly burdensome in terms of the expectations placed on lobbyists in terms of compliance.
- That registration should be free to the lobbyist.

Proposals changed following public consultation

Organisational registration

59. In the public consultation, the Government had proposed that individual lobbyists should be required to register. The Government's proposals were based on maximising clarity and

accountability, but were contrary to Committee's report, which had recommended that organisations should be responsible for registering.

60. An organisation-focused model for registration was widely supported in the consultation, with around two thirds of respondents in favour. Resourcing and the potential burden of an individual-focused model was a primary concern for stakeholders. The Government was therefore persuaded to adjust its initial proposals and provide for an organisation-focused model for registration.

Registration prior to lobbying

61. In the consultation the Government had proposed a model which required lobbyists to register before engaging in lobbying of MSPs and Ministers. The Government noted significant concern from respondents about this approach, it being perceived as creating a prior bar on lobbying. The Government has therefore sought to address that concern by adopting a model in the Bill in which lobbyists are not required to register in advance of engaging in regulated lobbying but are instead required to register within 30 days of an initial instance of lobbying.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

62. A full Equality Impact Assessment (EQIA) has been undertaken for the Bill. The Government considers that the Bill does not have an adverse impact on the basis of age, sex, race, gender reassignment, pregnancy and maternity, disability, marital or civil partnership status, religion or belief or sexual orientation. The Government is satisfied that the policy as contained within the Bill applies to all 'consultant' and 'in-house' lobbyists equally. One area that has been highlighted, which the Government believes will be the responsibility of the parliamentary authorities in due course, is that consideration will have to be given to the design, form and structure of the register to ensure it is appropriately accessible to all. The Government has communicated this consideration to the parliamentary authorities.

Human rights

63. The Bill will engage the Article 8 (right to private life) ECHR rights of lobbyists as it will require lobbyists to submit personal information to be held in public register. It is also important to consider the Article 10 (freedom of expression) rights of lobbyists so far as that protects the form and manner, rather than content, of expression and potential Article 1 of Protocol 1 (right to property) economic rights of consultant lobbyists. So far as these rights are engaged it is considered that any interference with them will be in accordance with law and proportionate.

64. The interference with Articles 8(1) and any interference with Article 10(1) is considered justified having regard to the aims of the Bill summarised in paragraph 8 above. The measures will be in accordance with law under the legal framework in the Bill, and necessary in a democratic society for the protection of the rights and freedoms of others, or in the case of Article 1 of Protocol 1 any control of use justified as in the general interest.

65. The regime is proportionate under these Articles in light of the legitimate aim summarised in paragraph 8 above. In particular:

- The registration regime is rationally connected to that aim, as it will result in information about lobbyists and regulated lobbying activity being publicly available to be scrutinised by members of the public.
- It is not considered that, taking account of the aim before the legislature, this could be achieved by less intrusive measures. To provide the necessary transparency an alternative to meet the same aim would still require publication of information about lobbyists and their activity.
- The investigatory authorities and low-level sanctions are necessary to obtain the information required for the authorities to have adequate information to satisfy the aims of the system fairly.
- Lobbyists, and those on whose behalf they lobby, must provide limited information only about themselves after engaging in regulated face to face lobbying activity of Ministers and MSPs, and subject to exemptions, e.g. for lobbying on individuals' own behalf and other lobbying not involving payment. In all the circumstances, the registration regime strikes a fair balance between the interests of lobbyists on one hand and the interests of society as a whole.

66. The oversight arrangements in the Bill are also compatible with Article 6 ECHR fair trial rights (determination of civil rights and obligations or of a criminal charge), so far as they are engaged. The arrangements which allow the Clerk to issue information notices do not determine an individual's civil rights or any criminal charge. The same applies to the oversight arrangements involving investigation by the Commissioner and report to the Parliament (as with the Commissioner's existing investigatory regimes). So far as the Clerk's or the Commissioner's powers engage the protection against self-incrimination (or 'right to silence') in Article 6, they do not breach that protection, particularly in view of the safeguards provided, e.g. on the use of evidence obtained.

Island communities

67. The Bill has no specific effect on island communities in Scotland, covering all regulated lobbying activity equally.

Local government

68. The Bill has no effect on local government in Scotland.

Sustainable development

69. It is considered that the Bill would be likely to have no effect in relation to the environment and, as such, is exempt for the purposes of section 7 of the Environmental Assessment (Scotland) Act 2005. A pre-screening report has been completed. This confirmed that the Bill would have no impact on the environment and consequently that a full Strategic Environmental Assessment did not need to be undertaken.

This document relates to the Lobbying (Scotland) Bill (SP Bill 82) as introduced in the Scottish Parliament on 29 October 2015

LOBBYING (SCOTLAND) BILL

POLICY MEMORANDUM

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.scottish.parliament.uk

Produced and published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish Parliament website at: www.scottish.parliament.uk/documents