

Standards, Procedures and Public Appointments Committee

1st Report, 2015 (Session 4)

Proposal for a register of lobbying activity

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The Scottish Parliament
Pàrlamaid na h-Alba

**Standards, Procedures and Public
Appointments Committee**

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activity**

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Pàrlamaid na h-Alba

Standards, Procedures and Public Appointments Committee

Remit and membership

Remit:

1. The remit of the Standards, Procedures and Public Appointments Committee is to consider and report on—

(a) the practice and procedures of the Parliament in relation to its business;

(b) whether a member's conduct is in accordance with these Rules and any Code of Conduct for members, matters relating to members' interests, and any other matters relating to the conduct of members in carrying out their Parliamentary duties;

(c) the adoption, amendment and application of any Code of Conduct for members; and

(d) matters relating to public appointments in Scotland.

2. Where the Committee considers it appropriate, it may by motion recommend that a member's rights and privileges be withdrawn to such extent and for such period as are specified in the motion.

(Standing Orders of the Scottish Parliament, Rule 6.4)

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Cara Hilton (From 19 December 2013 - 8 January 2015)

Richard Lyle (Until 27 November 2014)

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Fiona McLeod (Until 18 December 2014)

Gil Paterson (From 8 January 2015)
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Standards, Procedures and Public Appointments Committee

1st Report, 2015 (Session 4)

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The Committee reports to the Parliament as follows—

CONCLUSIONS AND RECOMMENDATIONS

The Committee believes that the information in a new register of lobbying activity, based on its recommendations, would constitute a substantial new body of information which would make a notable contribution to increasing transparency.

The Committee invites the Scottish Government to consider the proposals set out in this report as the basis for its proposed legislation.

The Committee also invites the Scottish Government to work closely with the Scottish Parliamentary Corporate Body on any proposals that would impact on Parliamentary resources.

Finally, the Committee invites the SPCB to consider the recommendations on information produced by the Parliament.

Designing a Register

Recommendation 1 – There should be an online register of significant lobbying activity in Scotland.

Recommendation 2 – The register would be launched with an awareness campaign clearly detailing who would and who would not be required to register.

Recommendation 3 – The register would be promoted by the Parliament on an on-going basis.

Recommendation 4 – The Parliament must be assured that the registration process does not inhibit engagement with Parliament. The Parliament must be able to change this new system readily if it considers this is the case.

Recommendation 5 – Registering, and updating the register, should be free.

Recommendation 6 – Individuals acting in a personal capacity should never need to register. This includes those engaging with MSPs as part of their constituency

work. Collections of individuals such as those involved in campaigns also would not need to register.

Recommendation 7 – The proposed register is simple and targeted at organisations who have significant contact with MSPs or who invest significant amounts of money into lobbying MSPs on behalf of others.

Recommendation 8 – Only organisations that undertake significant lobbying activity involving MSPs, need to register. Specifically, if an organisation is/does one of the following, it needs to register—

- a) is an organisation that includes commercial lobbyists;
- b) regularly arranges meetings with and/or holds events involving MSPs (more than a prescribed number of times in the previous 12 months).

Recommendation 9 – The register should detail lobbying activity as opposed to simply being a list of names of lobbyists. The register should detail who is lobbying, how and why, including—

- a) the name of the organisation;
- b) names of individual lobbyists working for the organisation (if the organisation includes commercial lobbyists);
- c) names of clients of organisations including commercial lobbyists on whose behalf lobbying of MSPs or other support work aimed at influencing MSPs is taking place;
- d) meetings that have been pre-arranged by the organisation with MSPs including detailing the issues discussed;
- e) events, including meals, arranged by the organisation that involve MSPs, including details of the purpose of the event;
- f) secretary or other support to Cross-Party Groups valued above the threshold for disclosure in CPG annual returns (currently £500);
- g) hospitality, visits or material support for an MSP (in line with the financial thresholds in the Register of Interests for MSPs);
- h) details of the aims of the lobbying.

Recommendation 10 – Updating the register should not be a disproportionate burden. For example organisations could be required to update their register on a quarterly, six-monthly or annual cycle. A distinction could be made between commercial lobbyists and in-house lobbyists, requiring commercial lobbyists to register more frequently.

Recommendation 11 – The Committee has heard from organisations who are very keen to publicise their work so the new register could—

*Standards, Procedures and Public Appointments Committee, 1st Report, 2015
(Session 4)*

- allow organisations that are not required to register under recommendation 8 to register on a voluntary basis;
- allow organisations to update their register more regularly than the required timescales; and
- allow organisations to detail more information than that required in recommendation 9.

Compliance

Recommendation 12 – The Committee proposes this possible model for a compliance regime—

- Upkeep and oversight of the register by a registrar should have a very limited impact on the public purse. This is a priority.
- There should be a new duty requiring organisations that meet the criteria listed in recommendation 8 to register and to periodically update the register.
- The emphasis of the compliance system should be on assisting organisations in correcting unintended transgressions. The system should promote transparency and co-operation from organisations as opposed to seeking to punish unnecessarily.
- The role of the registrar would be to proactively support and encourage information sharing from organisations. For example prompts and advice would be given on: whether to register; what to register; and when to update the register. The responsibility to register would remain with the organisation.
- There should be a complaints system that allows anyone to highlight where an organisation may not have complied with the requirements of the register.
- The register should have proportionate sanctions. It should give organisations a fair opportunity to address inadvertent breaches before considering any public censure. Stronger sanctions should only be considered where there is evidence of any of the following—
 - a) financial impropriety;
 - b) deliberately providing misleading information;
 - c) deliberately withholding information; and/or
 - d) repeated failures to comply with the requirements of the register.
- The following steps could be taken in the event of transgressions—
 - a) confidential prompts from the registrar to an organisation seeking resolution;

- b) referral by the registrar to the Commissioner (or a complaint could be made direct to the Commissioner by any member of the public). The Commissioner could then investigate the matter and, depending on the findings—
- i. dismiss the complaint / decide to take no further action;
 - ii. refer to the SPPA Committee for consideration of parliamentary sanctions; or
 - iii. report the organisation to the Procurator Fiscal for possible criminal prosecution, for example if an organisation is suspected of—
 - deliberately providing misleading information on the register; or
 - bribery (any interested person can report to the Procurator Fiscal on the grounds of bribery under existing legislation).
- On receipt of findings from the Commissioner, parliamentary sanctions available to the Committee could include a report to Parliament recommending—
 - i. exclusion of an organisation from Cross-Party Groups;
 - ii. exclusion of an organisation from hosting events in the Parliament; and/or
 - iii. that MSPs do not engage with a particular organisation.

Recommendations for the SPCB

Recommendation 13 –The Parliament should introduce a code of practice for those who lobby that includes advice on expected standards of behaviour. This would mirror the rules on lobbying in the Code of Conduct for MSPs.

Recommendation 14 – The Code of Conduct for MSPs should be revised to reflect how lobbying has evolved in recent years, ensuring the rules sufficiently cover contact with in-house lobbyists as well as those lobbying on behalf of third parties.

Recommendation 15 – The Committee reminds MSPs of the need to keep sufficient records which they must provide to the Commissioner on request.

Recommendation 16 – The Committee recommends that the Parliament should publish more information on events that have been held within the Parliament complex.

Recommendation 17 – Information published by the Parliament should be made more easily accessible to the citizen. The Committee supports the work of the Scottish Parliament's *Digital Parliament Programme* that has an emphasis on this aim. The Committee considers that—

or those who have regular, targeted, contact with MSPs. The Committee considers that this kind of activity can result in significant influence and therefore is of public interest.

7. The Committee is determined to ensure that any requirements placed on those lobbying on a concerted basis should represent a low administrative burden. Essentially, the “multiplicity of sources and information”³ that contributes to policy formulation in Scotland must not be inhibited by disproportionate regulation.

UK legislation on lobbying

8. The UK Government’s Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill⁴ was introduced soon after coverage in the media of an MP offering to receive money from undercover journalists who were posing as representatives of an organisation seeking to lobby him⁵. The provisions in the resulting Act were strongly criticised during our evidence taking, for example one witness described the Act as “a sham”⁶ and another stating “I hope that it is repealed”⁷.

9. The Committee has heard absolutely no evidence of wrongdoing by politicians in Scotland involving lobbyists. The Scottish Parliament has taken a measured and consultative approach to considering what improvements could be made as opposed to making fast changes in response to a particular problem.

10. Of fundamental importance, in seeking to have more information publicly available, is that the approach taken needs to be tailored to ensure it is a good fit for Scotland’s lobbying community, be it commercial lobbyists or policy advocates for particular organisations, and also for its citizens. The Committee is proposing a distinct way forward for the Scottish Parliament.

11. The Committee believes that the information in a new register of lobbying activity, based on its recommendations, would constitute a substantial new body of information which would make a notable contribution to increasing transparency.

12. The Committee invites the Scottish Government to consider the proposals set out in this report as the basis for its proposed legislation.

³ Scottish Parliament Standards, Procedures and Public Appointments Committee, *Official Report* 27 February 2014, Col 967

⁴ <http://services.parliament.uk/bills/2013-14/transparencyoflobbyingnonpartycampaigningandtradeunionadministration.html> [accessed 5 February 2015]

⁵ House of Commons Committee on Standards report on Patrick Mercer MP, available at: <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmstandards/1225/122503.htm> [accessed 5 February 2015]

⁶ Scottish Parliament Standards, Procedures and Public Appointments Committee, *Official Report* 16 January 2014, Col 858

⁷ Scottish Parliament Standards, Procedures and Public Appointments Committee, *Official Report* 27 February 2014, Col 950

13. The Committee also invites the Scottish Government to work closely with the Scottish Parliamentary Corporate Body on any proposals that would impact on Parliamentary resources.

14. Finally, the Committee invites the SPCB to consider the recommendations on information produced by the Parliament.

BACKGROUND

15. On 17 May 2013 Neil Findlay MSP lodged a final proposal for a member's bill to require certain individuals and organisations who lobby MSPs, Scottish Ministers or relevant public officials, either on their own account or on behalf of third parties, to record relevant information about their lobbying activity in a published register.⁸

16. The Minister for Parliamentary Business, Joe FitzPatrick MSP, wrote to Neil Findlay MSP on 13 June 2013, indicating, under Rule 9.14.13 of the Parliament's Standing Orders, that the Scottish Government would initiate legislation, within this parliamentary session (ie by 2016), to give effect to Neil Findlay's proposal. This had the effect of preventing a member's bill on the proposal from being introduced.

17. The letter to Neil Findlay MSP from the Minister for Parliamentary Business informing him of the Government's decision stated—

“...it is important that we act now to put beyond doubt any question of a lack of transparency in respect of lobbying activities in Scotland.”⁹

18. In announcing its intention to legislate the Scottish Government acknowledged that parliamentary probity is a matter for the Parliament and that it envisaged the Parliament playing a central role in policy development. The news release it issued on 13 June stated—

“...the end product must be something that everyone can stand behind...we will seek to obtain cross-party consensus for improving the transparency of lobbying practice, working with all political parties, Mr Findlay and a wide range of stakeholders...the Government envisages the Standards, Procedures and Public Appointments Committee taking a central role throughout the development and scrutiny of this Bill.”¹⁰

19. In September 2013 the Committee decided to conduct an inquiry into lobbying with the following remit—

“To examine whether there is a problem, either actual or perceived, with lobbying and, if so, how this can most effectively be addressed; to what extent a register of lobbyists would help with this process, who such a

⁸ Proposed Lobbying Transparency (Scotland) Bill

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/52990.aspx>

⁹ [Letter from the Minister for Parliamentary Business to Neil Findlay MSP, 13 June 2013](#) [accessed 5 February 2015]

¹⁰ Scottish Government news release 13 June 2013, Available at:

<http://www.scotland.gov.uk/News/Releases/2013/06/lobbying-transparency13062013> [accessed 5 February 2015]

register should cover and how it would be operated in practice; and whether other steps might be needed to improve probity and transparency in this area.”

The value of hearing the views of stakeholders

20. The Committee offers its sincere thanks to those who have shared their views to inform the inquiry. All views shared with the Committee are available in full on the Parliament’s website and linked from annexes B and C. This input has been invaluable in informing our thinking. The lively discussion on the inquiry has included: written views; evidence in person in Committee; Facebook comments; twitter debates; 100 word statements; and speeches from MSPs in our Chamber debate. From individual citizens to big organisations, all views submitted to us have been carefully considered. In addition, informal events set up by external organisations have carried on the debate outside of the Parliament. Our recommendations are largely based on suggestions and comments from the outside world, which aptly demonstrates the value of lobbying in informing decision making.

21. It must be acknowledged that views differ inside and outside the Parliament on how best to proceed. We asked those submitting detailed views to also sum up their position in 100 words. The compilation of the statements received concisely captures the many and varied perspectives that people have on this issue¹¹. Constructing a way forward based on this evidence has been a fascinating and, at times, unenviable task. The hesitancy and reservations of those concerned about inhibiting engagement or imposing burdens on smaller organisations have been carefully taken into account in the development of the proposed register. As an additional safeguard, the Committee is proposing that some of the detail of the register could be revisited and adjusted should there be any unintended consequences in its implementation.

What is lobbying?

22. A fundamental question to consider when embarking on this inquiry was ‘what is lobbying?’. The answer is one of the most contested in political science. Adopting a broad definition can seem a straightforward approach. For example *lobbying is a communication with a public office holder, whether directly or indirectly, in an attempt to influence*. What is far more complex is deciding what forms of communication fall under such a definition. How do you decide, if you want to record lobbying activity and publish it, what activities should be captured? How do you identify the point at which information sharing becomes lobbying?

23. A further consideration is what information can effectively be captured? Lobbying activities are evolving. Advances in technology have allowed lobbying to become more sophisticated, not least as a result of the growth of social media. For example, there are methods that involve third parties such as ‘astroturfing’ and ‘grass roots mobilisation’¹². In these forms of lobbying it is not immediately

¹¹ [100 word statements](#) [accessed 5 February 2015]

¹² <http://www.theguardian.com/commentisfree/2012/feb/08/what-is-astroturfing> [accessed 5 February 2015]

apparent who instigated a piece of work or campaign. The more lobbying develops, the more complex capturing some forms of it will become.

Who should the onus be on for recording lobbying activity?

24. Who should be responsible for making information about lobbying public – the organisation lobbying or the person being lobbied? The answer is both. Politicians and lobbyists share responsibility to apply the principles of good governance, in particular transparency and integrity, in order to maintain confidence in public decisions. The source of debate is deciding to what degree each side should contribute.

ASSESSING THE NEED FOR CHANGE

25. It is for the Parliament, and Government, to seek to ensure—

- sufficient transparency for citizens seeking information on how lobbyists seek to influence policy formulation and scrutiny processes; and
- sufficient controls to prevent or expose any lobbyists seeking inappropriate access to, or to exert undue influence over, politicians or officials.

26. In considering whether change is required in this regard, it is important to remember all of the ways in which the Parliament and Government already strive to ensure that the work of politicians is transparent and that we are accountable for our actions. It is also important to take into account the amount of information already published by those lobbying either due to existing regulation or information offered up on a voluntary basis. The new proposals add to an already valuable system of checks and balances on lobbyists and politicians. The existing checks and balances on lobbyists and on those being lobbied, to seek to ensure propriety of behaviour, are extensive (summarised in appendix 1). This is followed by a summary of the information that is already in the public domain in relation to lobbying activity (appendix 2).

27. The Group of States against Corruption (GRECO), was established in 1999 by the Council of Europe to monitor States' compliance with the organisation's anti-corruption standards¹³. GRECO "helps to identify deficiencies in national anti-corruption policies, prompting the necessary legislative, institutional and practical reforms." In a recent review of the legislatures within the United Kingdom, GRECO made recommendations for changes to rules governing lobbying in other Parliaments and Assemblies but found no cause to recommend reforms in Scotland¹⁴.

28. Having mapped all of the elements of the existing regime, the Committee was keen to ascertain the extent to which there were—

¹³ GRECO's objective is to "improve the capacity of its members to fight corruption by monitoring their compliance with Council of Europe anti-corruption standards through a dynamic process of mutual evaluation and peer pressure."

¹⁴[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round1/GrecoEval1\(2001\)8_UnitedKingdom_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round1/GrecoEval1(2001)8_UnitedKingdom_EN.pdf) [accessed 5 February 2015]

- issues with a lack of accountability for lobbying activity, and therefore scope for inappropriate lobbying activity at present;
- concerns that with additional powers for Scotland additional safeguards on lobbying could be required; and/or
- limitations in the transparency of legitimate lobbying practices.

Accountability at present

29. A number of those giving evidence argued that the case for a register has not been made because there have been no instances of wrongdoing since the establishment of the Scottish Parliament in 1999, either from those lobbying or from the politicians being lobbied. The Federation of Small Businesses warned of the dangers of introducing a statutory register of lobbying without first having identified what problem it is trying to solve—

“...we are pleased that the Committee is asking the fundamental question of whether or not a problem exists that needs to be addressed. Establishing what problem one is trying to solve before proceeding to evaluate solutions is firmly in keeping with the spirit of better regulation... We are certainly not aware of any evidence that inappropriate lobbying has been a problem at Holyrood and, in the absence of such, do not believe the case for statutory registration or regulation has been made.”¹⁵

30. The then Commissioner for Ethical Standards in Public Life, Stuart Allan, confirmed in evidence that there had been a very limited number of complaints made to him in relation to politicians being lobbied and that none of these had been upheld¹⁶.

31. The Scottish Council for Voluntary Organisations (“SCVO”) suggested that the ethos and culture in Scotland is open and accessible, in line with the Parliament’s founding principles¹⁷. This is in contrast to perceptions of secrecy and closed doors at Westminster¹⁸. One argument that flows from this is that there is much less opportunity or need for lobbying to be undertaken in an inappropriate way in Scotland, and therefore less need for a register. Another is that a register could build on this positive culture, increasing openness and accessibility.

32. The narrative from advocates for reform linked the issue of assessing inappropriate activity with a lack of transparency in lobbying practices (detailed further below). Spinwatch argued that, due to a lack of a register and a relative

¹⁵ Federation of Small Businesses written submission

¹⁶ Scottish Parliament Standards, Procedures and Public Appointments Committee, *Official Report* 13 March 2014, Col 992

¹⁷ SCVO written submission

¹⁸ The UK Parliament Public Administration Select Committee in its 2009 report *Lobbying: Access and Influence in Whitehall* stated: In the current climate of public mistrust, voluntary self-regulation of lobbying activity risks being little better than the Emperor’s new clothes. Solutions need to be adapted to different constitutional arrangements and political cultures. In the case of the United Kingdom, where there is a culture of discretion and where deals are traditionally done behind closed doors, an element of external compulsion will be needed to provide for meaningful transparency. Available at:

<http://www.publications.parliament.uk/pa/cm200809/cmselect/cmpublic/36/36i.pdf> [accessed 5 February 2015]

dearth of investigative journalism, it is not clear whether there is a problem with inappropriate lobbying in Scotland¹⁹. In addition, Spinwatch argued that some of those lobbying are sometimes not as open as they could be—

“...[it’s] difficult to establish with any certainty how the practices and techniques used in the organised lobbying of the Scottish Parliament may have changed in the last decade, as lobbyists are often reluctant to openly discuss or publicise the precise tactics and mechanics of how influence is brought to bear on political policy and decision making.”²⁰

33. To an extent, the arguments put forward by Spinwatch are analogous with elements of the case put forward for freedom of information legislation, that the right to know is the starting point. The exposure of possible impropriety can only follow on from the publication of this information.

34. The balance of evidence suggests that the current picture in relation to accountability is broadly positive, with no specific evidence of inappropriate activity, such as undue access to politicians, and an open culture existing for those actively seeking to engage with the Parliament.

The case for preventative action

35. A number of organisations suggested that the existence of a register and an associated compliance regime could act as a deterrent for any inappropriate activity in the future²¹.

36. Neil Findlay MSP set out a scenario where a register was not in place, some evidence of wrongdoing emerged, and politicians needed to respond (as was the case at Westminster)—

“Imagine that there was a scandal. What would happen afterwards? There would be a major party-political dogfight, and people would attempt to gain advantage through a scandal emerging. It is better to take action to prevent a scandal from happening in an atmosphere of relative calm, when there has been no major problem. The proposal is all part of the preventative action agenda that we are probably all signed up to.”²²

37. The Committee is not persuaded that these arguments, when taken as stand-alone points in the current climate, are sufficient to justify a register. Arguably, given the positive picture painted above of an open culture with no apparent revelations emerging, then an additional deterrent is not necessary. In addition, it would seem disproportionate to legislate purely to mitigate the risk of reactionary legislation. If there were no register when an issue came to light, it would be for

¹⁹ Scottish Parliament Standards, Procedures and Public Appointments Committee, *Official Report 16 January 2014*, Col 854

²⁰ Spinwatch written submission

²¹ Scottish Parliament Standards, Procedures and Public Appointments Committee, *Official Report, 27 February 2014*, Col 944

²² Scottish Parliament Standards, Procedures and Public Appointments Committee, *Official Report 16 January 2014*, Col 853

the politicians to balance the need to act with the need to construct credible changes.

38. The Committee completed its evidence sessions in March 2014, but further information was required before proceeding to making recommendations to Parliament. The Committee agreed there was a need for a debate in the Chamber to gauge the views of MSPs outwith the Committee²³, and a need to road-test recommendations with some stakeholders given the impact on them of any new register. It was also prudent to await the outcome of the Referendum, given the likelihood of additional powers of some form following it. The foreword of the Report of the Smith Commission for Further Devolution of Powers to the Scottish Parliament details the scale of change—

“Within these overarching improvements to the devolution settlement, the Parliament will also assume a range of new, important, individual powers in policy areas such as taxation, welfare, employability, transport, energy efficiency, fuel poverty, and onshore oil and gas extraction. This agreement will increase substantially the powers of the Parliament in general and around its financial accountability in particular.”²⁴

39. Professor William V Luneberg from the University of Pittsburgh School of Law stated—

“...history does suggest that the more that is at stake in legislative and administrative decision making, the more temptation exists to stray from appropriate to inappropriate means of influence.”²⁵

40. The Smith Commission report highlighted the need for the Parliament’s processes to change and grow to ensure it is fully equipped to scrutinise and hold to account a more powerful Government²⁶. The Committee acknowledges that there may be an increased risk of inappropriate activity, but in doing so wants to make clear that that does not increase the likelihood of any such attempts to influence being in any way successful. In addition, an increased risk does not necessarily mean that a situation such as the one alluded to by Professor Luneberg will necessarily come to pass. However, the Committee accepts that, as the Government and Parliament gain additional responsibilities, the safeguards on the appropriate use of these responsibilities could require to increase, including checks and balances on those undertaking lobbying.

Transparency

41. Many of those advocating reform on behalf of the citizen consider that, arguments on accountability now and in the future aside, the increase in

²³ Scottish Parliament, Standards, Procedures and Public Appointments, *Official Report*, 6 November 2014, Col 37

²⁴ Report of the Smith Commission for further devolution of powers to the Scottish Parliament, 27 November 2014, Available at: http://www.smith-commission.scot/wp-content/uploads/2014/11/The_Smith_Commission_Report-1.pdf [accessed 5 February 2015]

²⁵ Professor William V Luneberg written submission

²⁶ Report of the Smith Commission for further devolution of powers to the Scottish Parliament, 27 November 2014

transparency that a register of lobbying would generate is a sufficient justification for introducing one²⁷.

42. Professor Luneberg contends that it is not about addressing a problem, it is simply that the public living in a democracy have the right to know—

“the proven existence or strong suspicion of impropriety is, given the representative nature of the Scottish government, irrelevant to the need for lobbying transparency; the public, whose government this is, has an inherent right to know who is seeking to influence the operation of governmental decision-making.”²⁸

43. A number of those arguing that there is no need for change, that a register would be a disproportionate response to an unproven problem, have judged this from an informed position (i.e. on the basis of active involvement in political decision-making processes or an awareness of how to take part in them as required)²⁹. From this perspective, it might seem rash to respond to a suspicion or a perception that inappropriate lobbying practices have undue influence on decision making.

44. The Association of Accredited Policy Advocates to the European Union (AALEP) sets out the basis for such a perception and how it can have a tangible impact on public understanding of, and confidence in, decision making—

“The exclusive purpose of lobbying by individuals or groups with different interests is to influence decisions taken at political and administrative level. There is, therefore, a strong public interest in knowing who is lobbying whom about what. Unregulated lobbying can give rise to significant public concern about the role of vested interests in policy making and risk that privileged or excessive influence may result in sub-optimal public policy decisions which might be made to suit private agendas to the overall detriment of the community and society at large.”³⁰

45. A number of those giving evidence to the Committee supported the premise that making decision making processes more transparent would make them more democratic. The Alliance for Lobbying Transparency stated—

“A robust statutory register of lobbying activity would help to remedy the situation by improving knowledge about lobbying and the accountability of

²⁷ The Alliance for Lobbying Transparency (ALT) written submission. The ALT is an alliance of civil society groups who are “concerned about the growing influence of lobbying on decision-making in the UK”. Members include: Friends of the Earth; National Union of Journalists; SPEAK Network; Corporate Watch; and Platform.

²⁸ Professor William V Luneberg written submission

²⁹ See [100 word statements](#) from organisations including those opposing a register [accessed 5 February 2015]

³⁰ Article by Christian D. de Fouloy, Chairman of the Association of Accredited Public Policy Advocates to the European Union entitled *The case for the regulation of lobbying*, Available at: <http://www.aalep.eu/case-regulation-lobbying> [accessed 5 February 2015]

those involved. It is an essential first step in helping to make decision-making more transparent and accountable, or in other words, more democratic.”³¹

46. The Electoral Reform Society showed support for the Alliance for Lobbying Transparency’s position and suggested that providing the public with more information on the system could increase faith in it and, as a result, the willingness to engage with it—

“All the research that the Electoral Reform Society has done through focus groups and our democracy max inquiry shows that the general public feel that there is secrecy and an opaqueness in politics. They would like there to be more transparency, which would improve their confidence in the process and therefore potentially increase their involvement in the political sphere. We are very worried about the lack of such involvement.”³²

47. The Hansard Society’s findings in its *Audit of Political Engagement 2014*³³, an opinion poll for the whole of Great Britain, pointed towards a desire from the public for increased transparency where there are ‘concentrations of power’—

“48% of the public would like to ‘make politics more transparent so that it is easier to follow’...

...as we have regularly found in focus groups, the public are suspicious of perceived concentrations of power and interests whether that be European bureaucrats, the media, business and finance, or lobby groups.”

48. It should be noted that the argument on whether additional transparency is needed is not split down the middle with those lobbying considering it is not required and those looking in on decision making processes considering that it is. This would be an overly simplistic view. Some of those lobbying, specifically commercial lobbyists, would welcome increased transparency on the grounds that dispelling mistrust would improve the perception of their industry. The Public Relations Consultants Association (PRCA) stated it is—

“...in favour in principle of the introduction of a statutory register of lobbyists and our members are committed to transparency. We believe that lobbying should be open and transparent. A proper statutory register would allow anyone to properly view the offices that offer lobbying, the employees conducting lobbying and the clients on whose behalf this lobbying takes place.”³⁴

³¹ The Alliance for Lobbying Transparency (ALT) written submission

³² Scottish Parliament Standards, Procedures and Public Appointments Committee, *Official Report 27 February 2014*, Col 944

³³ The Audit is described by Hansard as an annual “health check on our democratic system”, Available at: <http://www.hansardsociety.org.uk/research/public-attitudes/audit-of-political-engagement/> [accessed 5 February 2015]

³⁴ The Public Relations Consultants Association written submission

49. Invicta Public Affairs added—

“As a company we believe that legislation will help address perceived problems even if in reality there is not the same issue with lobbying at the Scottish Parliament. We also believe that standards of professional practice and the value of our services to our clients can be improved through proportionate regulation.”³⁵

50. Of central importance to Parliament is improving confidence in political institutions and their interactions with those seeking to influence them. From the Committee’s vantage point, any lack of confidence in Parliament and/or Government from civic Scotland is based on unfounded negative perceptions which in no way reflect the reality of the institutions³⁶. While the Scottish Government and the Scottish Parliament are not the source of the problem, identifying ways of improving this perception falls to these institutions.

51. The Committee considers that having more information in the public domain on the lobbying activity that informs decision making by Government and Parliament in Scotland would contribute to the already open and accessible culture in Scotland’s political institutions, enhance democracy (including power sharing) and encourage more engagement from civic Scotland.

52. In summary on the case for change, the Committee believes that, primarily in the interests of increased transparency, publishing more information on lobbying activity would be a valuable step.

WHAT FORM OF CHANGE IS NECESSARY?

53. Having established that more information on lobbying activity should be accessible for public inspection, the next questions are - what forms of information should be published and who by?

54. As stated above, politicians and lobbyists share responsibility to apply the principles of good governance, in particular transparency and integrity, in order to maintain confidence in public decisions.

55. There was no consensus during evidence taking as to who the onus should rest on to publish additional information. A number of organisations argued that the onus should be on the politician. It was suggested that MSPs publishing reports on contact with those lobbying them would suffice. Many others argued that the onus should be on those undertaking the lobbying.

56. The Organisation of Economic Co-operation and Development (OECD) considers that—

“As lobbying is a relationship between two actors, a lobbyist and a public office holder, the first question raised concerns which of these actors should

³⁵ Invicta Public Affairs written submission

³⁶ The UK Parliament Committee for Standards in Public Life’s report *Standards Matter* concluded that the perception of all public office holders are impacted upon whenever any senior figures behave in a disreputable way.

bear the formal responsibility for achieving transparency. Since lobbyists initiate the relationship, it is generally assumed that they should be primarily responsible for the publicity of their endeavour to influence public office holders on behalf of the particular or vested interests they represent.”³⁷

57. On the basis that the primary onus for disclosing information rests with the lobbyist, the Committee considers that the most effective means to improve transparency and strengthen accountability is to establish a register of lobbying activity to be updated by those undertaking the lobbying.

58. The Committee recommends that there should be an online register of significant lobbying activity in Scotland.

Concerns over inhibiting engagement

59. A narrative pursued by a number of witnesses who considered that creating a register was unnecessary, centred around a new register having a negative impact on engagement. The SCVO suggested that the existence of a register could act as a deterrent to those legitimately seeking to engage with politicians³⁸. Professor Susan Deacon pursued this further with the Committee—

“There are many examples in which a legislative route has been chosen and MSPs have subsequently started perhaps not to regret that they embarked on the journey but to see a lot of problems and pitfalls...

We can and should create multiple opportunities for views and opinions to be shared and have confidence in our elected politicians, trusting that they have the good sense to judge what view they will take, for which they will be held to account.”³⁹

“...if the Parliament’s aim and aspiration is to encourage openness and access and a free flow of information, and to build understanding, the last thing that we want is people worrying about how they are labelled and whether they have complied with the rules before they speak to politicians...”⁴⁰

60. Epilepsy Consortium Scotland reminded the Committee of the need to tread carefully in this exercise—

“...any regulation of lobbyists in Scotland should be specifically formed to reflect the culture of political participation in Scotland, and the particular working practices of the Scottish Parliament. We believe it must not create

³⁷ OECD 2009 publication entitled *Lobbyists, Governments and Public Trust, Volume 1: Developing a Legal Framework for Lobbying and Lobbyist Registration*

³⁸ SCVO written submission

³⁹ Scottish Parliament Standards, Procedures and Public Appointments Committee, *Official Report 27 February 2014*, Col 965

⁴⁰ Scottish Parliament Standards, Procedures and Public Appointments Committee, *Official Report 27 February 2014*, Col 981

a barrier to parliamentary engagement for organisations representing the most vulnerable and disadvantaged members of society.”⁴¹

61. These perspectives have been carefully considered by the Committee in its construction of recommendations for change. It has trodden carefully in designing a new system that avoids individuals, campaigns and also small organisations that are undertaking limited lobbying from being impacted upon at all.

62. The Parliament values its reputation for openness and accessibility. It also takes pride in the focus placed on ensuring anyone’s voice can be heard. An obvious example of this is the petitions system whereby any individual can lodge a petition. Many of these have brought important issues into the public eye, and to the attention of politicians, and real change has come about as a result. Very small organisations with limited resources being able to hold events in the Parliament complex is also something to be proud of. This can involve anything from setting up awareness raising stalls by the MSPs’ entrance to the Chamber to conferences in the Chamber itself.

63. The Committee appreciates that there will need to be an awareness raising campaign to accompany the launch of a register, not only for those who are likely to be required to register, but also to reassure those who are not required to register. This could naturally form part of the Parliament’s increased efforts to raise awareness of how the Parliament operates and all of the very real opportunities to engage with it. The Parliament, and the MSPs within it, aspire to be accessible to all. But we know this is only possible if citizens hear, and believe, that message.

64. Effective awareness raising is very challenging but the Parliament is channelling significant efforts towards this at present. One example of this work is the Young Women’s Conference due to take place at the Parliament in March 2015. The Committee believes that improving the awareness of the potential the Parliament holds for its citizens could more than offset the potential for people to view a new register as a deterrent to engagement.

65. The register would be launched with an awareness campaign clearly detailing who would and who would not be required to register.

66. The register would be promoted by the Parliament on an on-going basis.

Willingness to register information

67. There was also a suggestion in evidence that there might not be a willingness from those currently engaging in concerted lobbying to share information on a register⁴². However the clear message coming from those who engage in lobbying was that they had no issue whatsoever with sharing additional information on their activities with the outside world. Indeed a number of organisations made the point that much of the information that may be required on a register was already in the public domain (albeit in lots of different places

⁴¹ ECS written submission

⁴² Spinwatch submission

depending on the nature of the organisation). For example there are voluntary registers in existence for umbrella bodies such as the Association of Professional Political Consultants which detail the names of lobbyists for public affairs firms and other communications consultants⁴³. In addition the point was made that it is in the interests of some organisations to make the extent of their lobbying activity known, not least to demonstrate their worth to their members and to promote awareness of their progress on policies that they advocate. For example Scottish Environment Link publishes letters to the Government following meetings with Ministers.⁴⁴ In addition the BMA's policy and lobbying page highlights how it ensures "your voice is heard at Holyrood"⁴⁵.

68. The Committee does not consider that being included in a register of lobbying activity should be misinterpreted as being 'caught' in any way. The Committee's changes should contribute to a culture shift away from this idea. This in turn will help those with reservations about sharing information to become more open, ideally moving towards a presumption to share information wherever possible. Lobbying is a legitimate and valuable part of the decision making process. The Committee is encouraged that those lobbying, in making representations to the Committee, appear happy to share information. It was the logistics and potential administrative burden of collating the relevant information and keeping the register updated that was the source of some concern. There was also some nervousness about the potential to inadvertently break the rules if all necessary information was not captured on their register entry and that the legislation would have unintended consequences with some organisations being unnecessarily 'caught' by the rules. Zero Tolerance highlighted specific considerations for small charities—

"We also need to be careful that we are realistic about the difference between an organisation whose primary purpose is to lobby, which is well-resourced and which is able to comply with a regime because that is its job, and a very small charity, community group or grass-roots group that might forget or that might not get the paperwork because it does not have an office. It might be acting in the best faith but might not keep up to date with the register. It is important to have a way of trying to distinguish between a situation where there has been an administrative oversight or a change of staff or that kind of thing and deliberate evasion."⁴⁶

69. The Committee accepts the concerns set out above and, in recognition of these concerns, the Committee's model register places an emphasis on simple, easy to follow rules. It also accepts that tailoring a system to the distinct lobbying landscape in Scotland may take time. We envisage that the system will need to be adjusted over time, just as the rules on adhering to the MSP Register of Interests needed to be streamlined following a review of its operation.⁴⁷

⁴³ APPC register <http://www.appc.org.uk/members/register/> [accessed 5 February 2015]

⁴⁴ <http://www.scotlink.org/> [accessed 5 February 2015]

⁴⁵ <http://bma.org.uk/working-for-change/policy-and-lobbying/scottish-parliament>

⁴⁶ Tolerance, Scottish Parliament Standards, Procedures and Public Appointments Committee, *Official Report 30 January 2014*, Col 983

⁴⁷ Standards, Procedures and Public Appointments Committee report entitled

70. The Parliament must be assured that the registration process does not inhibit engagement with Parliament. The Parliament must be able to change this new system readily if it considers this is the case.

DESIGNING A REGISTER

71. Having established the case for a register, the Committee set about modelling what a register might look like. Professor Raj Chari, Associate Professor at the Department of Political Science at Trinity College Dublin, reminded the Committee that there was no need to devise a new system from scratch. There are an increasing number of examples elsewhere to base a new register upon—

“The international experience shows that, increasingly, countries and political systems are adopting lobbying regulations. Four did so in the 1990s, and the number has tripled today. If there is a will to pursue legislation and it is deemed necessary, it would be consistent with what many political systems in the world are doing. The final word is that it is easy to draw policy lessons from those political systems and to use their legislation and experiences when you draft your bill.”⁴⁸

72. Central features of the Committee’s model would be a low-burden register with an emphasis on increased transparency not over-regulation. To provide a useful picture of significant lobbying activity, it needs the relevant organisations to register and to keep the register updated with accurate, complete and meaningful information.

73. The statutory register in Canada was held up in evidence as an exemplar of transparency. The Committee has used it as a basis to consider the merits and potential drawbacks of establishing a statutory register.⁴⁹ Canada has a Commissioner of Lobbying, with the role of ensuring transparency and accountability in the lobbying of public officers. Its register is a web-based database accessible by the public. It includes details of the individuals undertaking lobbying, including consultant lobbyists and in-house lobbyists. It details lobbying activity, updated monthly, including who the lobbyists are contacting and on what issues.⁵⁰

Registration fee

74. The Canadian system does not charge an initial registration fee, or any additional fee for updating the register. The idea of charging a fee to register was almost entirely rejected in evidence to the Committee on the basis that this would create a definite deterrent to those seeking to engage with the Parliament.

MSPs’ Registrable Interests: Proposed Changes to the Code of Conduct, 9th Report, 2010 (Session 3), Available at: <http://archive.scottish.parliament.uk/s3/committees/stanproc/reports-10/stpr10-09.htm> [accessed 5 February 2015]

⁴⁸ Scottish Parliament Standards, Procedures and Public Appointments Committee, *Official Report 27 February 2014*, Col 983

⁴⁹ Scottish Parliament Standards, Procedures and Public Appointments Committee, *Official Report 16 January 2014*, Col 861

Scottish Parliament Standards, Procedures and Public Appointments Committee, *Official Report 27 February 2014*, Col 960

⁵⁰ <http://www.ocl-cal.gc.ca/eic/site/012.nsf/eng/home> [accessed 5 February 2015]

75. ASPA expressed a concern that paying for registration could be interpreted as payment for access to public figures.⁵¹ The Scottish Grocers Federation argued that the cost of registration should be publicly funded, as additional costs incurred on organisations would reduce access and participation.⁵² Epilepsy Consortium Scotland described requiring individuals to pay for access to elected members and officials as “undemocratic”.⁵³

76. The Committee recommends that registering, and updating the register, should be free.

The inclusion of details of lobbying activity

77. The Canadian system includes an emphasis on recording lobbying activity. It is the activity undertaken as opposed to the names of the lobbyists that is vital in providing a useful understanding of how organisations seek to influence, and in what numbers, on particular issues. The Alliance for Lobbying Transparency emphasised this—

“The crucial thing is that the lobbying activity is captured. The register that is proposed in the Westminster bill is a list of names and clients. It does not show any information about their interaction with Government bodies. A register needs to include what people are lobbying on and whom in Government they are lobbying; otherwise, you just have a list of names. If you are going to have transparency in lobbying, you need to capture the lobbying activity, not just who is lobbying.”⁵⁴

Who needs to register - thresholds for registration and exemptions

78. The Canadian system is also founded on the principle of proportionality, that only those undertaking ‘significant’ lobbying activity should be captured by the legislation that the register is based upon. Thresholds for registration and exemptions from registration have been established to seek to reflect this.

79. The Canadian approach of setting a registration threshold relating to the overall percentage of activity undertaken appears to be problematic. A review by the Office of the Commissioner of Lobbying of Canada observed—

“At the federal level, the ‘significant part of duties’ provisions has long been interpreted as 20 percent of one person’s duties. With the coming into force of the Lobbying Act, the provisions have been interpreted to mean 20 percent of one person’s duties over a one-month period. This means that organizations and corporations must register when combined lobbying activities conducted by all employees reach the equivalent of 20 percent of one employee’s duties over a one-month period. The Commissioner is of the view that there are challenges in enforcing the ‘significant part of duties’

⁵¹ Scottish Parliament Standards, Procedures and Public Appointments Committee, *Official Report* 16 January 2014, Col 879

⁵² Scottish Grocers’ Federation written submission

⁵³ Epilepsy Consortium Scotland written submission

⁵⁴ Scottish Parliament, Standards, Procedures and Public Appointments Committee, *Official Report*, 16 January 2014, Col 862

provisions of the Lobbying Act. This is all the more problematic given that the concept is applied in a number of areas.”⁵⁵

80. Neil Findlay MSP’s consultation paper suggested a time threshold of 20% of a person’s workload devoted to lobbying over a 6-month period, and a financial threshold of income of £2,000 or more over a 6-month period for consultant lobbyists, and £9,000 or more over the same period for in-house lobbyists.⁵⁶

81. A number of other means of setting thresholds were proposed to the Committee, all aimed at catching the relevant information while not imposing too onerous a requirement on those that only occasionally undertake lobbying activities or have very limited resources to allocate to updating a register. Ideas included setting thresholds based on how much an organisation spent on lobbying, how much time was spent on lobbying, size of organisation, and/or on the overall income of an organisation.

82. None of the suggestions for thresholds were devoid of practical complications including the potential to create loopholes that would require organisations that could not reasonably be considered as undertaking significant lobbying activities to register or excluding clear candidates for registration. In addition, establishing whether an organisation exceeds some of the proposed thresholds seemed complex and time consuming.⁵⁷ For example assessing the time taken or cumulative value of lobbying would be labour intensive and this is against the Committee’s intention of keeping a register low-burden (see paragraphs 91 to 102 below for the basis of recommendations on thresholds).

In-house lobbyists

83. Another approach to capturing those of interest and sparing others the effort of registering is to introduce exemptions. Some systems only require consultant lobbyists to register and all others are exempt. In-house lobbying is increasingly prevalent in Scotland, with lobbying being integrated into an organisation’s standard communication functions. ASPA confirmed that there has been an increase in the amount of in-house lobbying taking place in Scotland in the last ten years and that any register would have to reflect that the majority of lobbying activity is now undertaken in-house⁵⁸. APPC Scotland added—

“...were a statutory register of lobbying to be introduced, APPC Scotland would be supportive of such a register, providing that it applies equally to all those who engage in lobbying on a professional basis...

This means that, as well covering lobbying activity undertaken by those who work as public affairs or political communications consultants, the far larger number of people who undertake lobbying in a professional capacity – those who work for law firms, management consultancies, planning consultancies, think tanks, trade associations, trade unions, charities, NGOs and in-house

⁵⁵ Office of the Commissioner of Lobbying of Canada website <http://www.ocl-cal.gc.ca/eic/site/012.nsf/eng/home> [accessed 5 February 2015]

⁵⁶ http://www.scottish.parliament.uk/S4_MembersBills/20120706_Lobbying_Transparency_consultation_revised.pdf [accessed 5 February 2015]

⁵⁷ Oxfam Scotland written submission

⁵⁸ ASPA written submission

for businesses – should also be covered by the register. Any register that failed to incorporate the broadest possible range of those undertaking lobbying in a professional capacity would fail to achieve its objective of improving transparency and building public confidence.”⁵⁹

84. As stated above, the evidence was that the UK Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014 was not considered to be a good template for legislation, in part because it singles out consultant lobbyists to feature on the new UK register when 80% of lobbying in the UK is in-house⁶⁰. Professor Raj Chari considered that—

“It is also dangerous to grant exemptions. The narrow definition of lobbyists in the UK 2014 act exempts a variety of in-house corporate lobbyists and NGO consultants who are in effect lobbyists. That creates an uneven playing field and shows that some lobbyists are different from others. Some might have different public goods in mind, but lobbyists who seek to influence are lobbyists all the same, whether they work for corporates or for NGOs.”⁶¹

Third sector

85. The SCVO argued that the third sector should be exempt from having to register, highlighting the difference in purpose and motivation between commercial and third sector lobbyists. It also argued that there is a case for exempting the third sector because charities are already regulated and act within guidelines set by the Office of the Scottish Charity Register⁶².

86. Neil Findlay MSP set out why he believed the third sector should not be exempt—

“Organisations such as the Scottish Council for Voluntary Organisations have argued that the voluntary sector exists only to perform public good, but that is a matter of opinion. One charity may deem its activities to be good and in the public interest whereas another organisation, which may also be a charity, might take completely the opposite view. When we get into the area of exemptions, that issue becomes difficult.”⁶³

87. The Committee reiterates the sentiments expressed above, that lobbying is a positive legitimate and democratically valuable activity that is to be encouraged. The purpose of a register is to share information. For this reason, the Committee is not minded to exclude the third sector.

⁵⁹ APPC Scotland written submission to the consultation on the Lobbying Transparency (Scotland) Bill

⁶⁰ Scottish Parliament Standards, Procedures and Public Appointments Committee, *Official Report* 16 January 2014, Col 872

⁶¹ Scottish Parliament Standards, Procedures and Public Appointments Committee, *Official Report* 27 February 2014, Col 982

⁶² Scottish Parliament, Standards, Procedures and Public Appointments Committee, *Official Report*, 30 January 2014, Col 906

⁶³ Scottish Parliament Standards, Procedures and Public Appointments Committee, *Official Report* 16 January 2014, Col 870

88. The Committee considers that the identification of what should be a small number of exemptions is a matter for the Government's consultation and then for careful consideration in drafting a bill.

89. The Committee recommends that individuals acting in a personal capacity should never need to register. This includes those engaging with MSPs as part of their constituency work. Collections of individuals such as those involved in campaigns also would not need to register.

Criteria for registration - significant time or money is spent on lobbying activities

90. The Committee has concluded that, whilst all thresholds and exemptions are problematic, there is a strong logic for requiring registration based on the type of activity undertaken. Using an activity based threshold creates a level playing field, requiring those that lobby in-house to register as well as those that represent third parties. Organisations would need to register based on what they do, not who they are. To keep the threshold high enough to avoid small or under resourced organisations from being caught, it should be only those undertaking 'significant lobbying activity' that need to be on the register.

91. The Committee considers that a significant lobbying activity is where there is a significant cost to the organisation associated with it or a significant amount of time is spent in contact with politicians. Deciding what is and is not significant is a subjective assessment.

- **Criterion 1: Commercial lobbyists**— the clearest candidates for registration are organisations that include commercial lobbyists. Individuals who are employed to spend their time lobbying for third parties, or supporting third parties in their lobbying, must be considered to be undertaking 'significant lobbying activity', not least because of the significant amounts of money spent with the specific intention of influencing. The Standards Committee in the first parliamentary session undertook an inquiry into lobbying and this included giving close consideration as to what constitutes a commercial lobbyist. The Committee invites the Government to take this definition into account in defining which types of organisation should be captured by a register. The relevant extract of the Committee's 2002 report is in appendix 3.⁶⁴
- **Criterion 2: Level of contact with MSPs**— there also needs to be a threshold that relates to the level of contact an organisation, who would not fall within the definition of a commercial lobbyist, has with MSPs. This is to ensure that significant amounts of lobbying in-house is covered. This would

⁶⁴ Commercial lobbyist was defined in the Standards Committee report as:

"any individual, partnership, company or other undertaking which:

(a) attempts, on behalf of a third party, to influence the conduct of members in carrying out their Parliamentary duties; or,

(b) provides assistance (which may include or consist of strategic advice) to a third party in connection with attempting to influence the conduct of members in carrying out their Parliamentary duties,

on a commercial basis".

be the only element of the system that would place any additional administrative burden on organisations assessing whether they need to register. Lobbying activity still places great value on face-to-face communication over emails, phone calls or teleconferencing of any kind. The regularity with which representatives of organisations meet MSPs, would seem to be a simple threshold for registration.

92. The Committee has deliberately not specified the number of meetings or events required to meet the registration threshold for criterion 2 as setting this threshold requires careful consideration through a consultation to inform the Government bill. This consultation should seek to establish the level of contact that would capture only organisations undertaking significant lobbying activity on the register. There would need to be careful consideration as to what the number of meetings per year should be as this would largely determine the number of organisations that are required to register under the new system. The number of meetings prescribed in the first manifestation of the register would need to be set through careful assessment of the scale and type of organisation captured, and doubtless this figure would be kept under close review and revised up or down if required.

93. The Committee is well aware that any threshold set that relates to lobbying activity will be, to some extent, arbitrary in that it will not capture every single organisation that lobbies on a concerted basis, nor will it avoid every small organisation. Realistically, any threshold set may well need to be adjusted in light of experience. The Electoral Reform Society noted that this has been the case elsewhere—

“There should probably be some exemptions and thresholds but, as Austria has learned, it is necessary to be quite flexible about where they sit, and to come back and make changes as we learn how the system works.”⁶⁵

94. In considering criteria for registration the Committee carefully assessed whether being a Secretary to a Cross-Party Group (CPG) or providing valuable goods/services for an MSP that are captured on the MSP Register of Interest should be amongst the criteria.

Support to Cross-Party Groups

95. Where an organisation provides support for a CPG in the role of secretary, this can involve regular contact with MSPs, specifically the convener and MSPs attending CPG meetings. Under the rules of the Code of Conduct for MSPs, the time spent supporting groups in this role is declared in CPG annual returns where it constitutes, solely, or alongside other financial support from the same organisation, more than £500.⁶⁶ The Committee considers that, given the access provided to MSPs and the value of support provided by an organisation in the role of secretary, there is an argument for these organisations to feature on the register.

⁶⁵ Scottish Parliament, Standards, Procedures and Public Appointments Committee, *Official Report* 27 February 2014, Col 961

⁶⁶ Code of Conduct for MSPs, Volume 2, Section 6
<http://www.scottish.parliament.uk/msps/42779.aspx> [accessed 5 February 2015]

96. However the Committee is aware that CPGs are already regulated on the basis that they provide organisations with this access to MSPs. Information on the number of CPG meetings involving MSPs and the amount of financial support provided is already in the public domain including in annual returns. In addition, based on the CPGs in existence this parliamentary session, a number of the organisations that would be required to register using this criterion would be small organisations with a low level of funding. Therefore registering information on their activities would not, most likely, be as significant and of as much public interest as other organisations that the register could perhaps more usefully cover. In addition, including this criterion might have an unintended consequence, namely making secretaries from small organisations consider whether to continue providing valuable support to Groups if the administrative burden of updating the register proved a disproportionate effort (when combined with complying with the CPG monitoring system). As stated above, the Committee is determined that this new system will not deter engagement.

97. The Committee is not recommending that being in contact with MSPs through secretary support for a CPG is sufficient to require an organisation to be on the register. The Committee does consider that the read-across between the new register and CPG annual returns would be useful in providing a picture of lobbying activity in the Parliament as CPG activity can reasonably be considered to be within the broad definition of 'lobbying'. It recommends that the details of CPG activity and financial support for it is highlighted on the register's front page including a hyperlink to all of this information. The Committee also considers that the level of access provided for organisations acting as secretary to MSPs should not be entirely discounted from the register. Meetings held between just the secretary and the Convener of a CPG should contribute towards the threshold under criterion 2.⁶⁷

Hospitality and gifts

98. When organisations provide gifts, hospitality, overseas visits or other significant financial support to MSPs this is recorded in the Register of Interests for MSPs. This requires the MSP to assess the cost of the goods/services, usually based on an estimate from the organisation, to establish whether it exceeds the thresholds for registration.

99. The Committee is not convinced that cross referring to the MSP Register is the right approach to take in seeking to capture lobbying activity with significant financial backing. Firstly, this information is already publicly available and a number of smaller organisations might inadvertently be captured using this criterion. For example organisations providing prizes for children who win constituency Christmas card competitions would need to register if the current MSP Register entries are used. This is not the type of activity that the Committee's register is seeking to capture. The Committee recommends that, in a similar approach to that suggested for CPGs, the Register of Interests should be referred to on the front page of the register of lobbying activity. Meetings related to any MSP Register entry should also count towards an organisation's tally under criterion 2 above.

⁶⁷ It is not intended that the full CPG meetings should contribute to this tally.

100. Should an organisation meet either of the criteria above and so be required to register, financial support for lobbying activity detailed in the MSP Register of Interests or in CPG annual returns should be included in an organisation's updates on lobbying activity (see paragraphs 103 to 113 below). The Committee considers that this approach strikes the right balance between ensuring relevant activities are detailed on the register and ensuring small organisations with low levels of funding or who cannot reasonably be considered to be undertaking significant lobbying are not required to register.

Recommendations on who needs to register

101. The proposed register is simple and targeted at organisations who have significant contact with MSPs or who invest significant amounts of money into lobbying MSPs on behalf of others.

102. The Committee recommends that only organisations that undertake significant lobbying activity involving MSPs, need to register. Specifically, if an organisation is/does one of the following, it needs to register—

a) is an organisation that includes commercial lobbyists;

b) regularly arranges meetings with and/or holds events involving MSPs (more than a prescribed number of times in the previous 12 months).

What needs to be registered and when?

103. As conveyed in evidence to the Committee, registration systems become increasingly complex and challenging to abide by the broader the definition adopted of what forms of lobbying activity should be captured. For example, there is an ease to registering details of pre-arranged meetings or events when compared to the prospect of registering details of all communication.

104. A number of organisations set out the level and type of information that they would want to see in a register. The Alliance for Lobbying Transparency wanted communication with public officials to be recorded, specifically—

“We define ‘public officials’ as: MSPs and their staff; individuals working in government departments, officials in the Scottish Parliament, executive agencies, quangos and regulatory bodies; paid or unpaid secondees to government, special advisors, and members of the government advisory groups. We define ‘communication’ as: telephone conversations; electronic communication; circulating and communicating letters, information material or position papers; organising events and attendance of events as a lobbyist, meetings (formal and informal), or promotional activities in support of a lobbying position.”⁶⁸

105. Whilst this level of detail is doubtless positive in terms of transparency, in the interests of keeping a register low-burden, recording all oral communication,

⁶⁸ Alliance for Lobbying Transparency written submission

including chance meetings or quick conversations at events, would prove a daunting prospect. In addition, with such wide requirements, the chance of inadvertently missing a particular communication out when updating the register is high.

106. It should also be noted that there are limitations as to what detail of financial information organisations can be expected to offer up. The Chartered Institute of Public Relations (CIPR) argued that it should not be necessary for a register to include commercially sensitive information such as client fees or spending relating to contracts.⁶⁹

107. The proposed register does not seek to capture all contact from organisations that are required to register. The Committee wants to increase transparency, but considers that a system that requires “a sensible amount of useful information”⁷⁰ from organisations can be established. The register should provide any interested party with an idea of the kinds of lobbying undertaken by an organisation, and why.

108. The Committee’s preference for updating the register would be a cycle of updates. This could be quarterly, six-monthly or annual for example. The predictability of a cycle would allow whoever oversees the register to prompt organisations who don’t register on time. The cycle could require commercial lobbyists to update the register entry more frequently than in-house lobbyists as they may have a greater volume of information to provide, or arguably be of more interest to some citizens⁷¹.

109. The Committee believes that the information that would be published in a new register based on the recommendations above would constitute a substantial new body of information which will make a notable contribution to increasing transparency. The register could doubtless evolve in the future to contain more information but only if the case for the value of publishing this information versus the burden placed on registering organisations is clearly made.

110. The Committee has tried to keep the criteria for lobbying activity to be included in the first manifestation of the register simple but did give careful consideration to a wide range of additional criteria. A means of deciding what to exclude from the list was to assess whether there were existing transparency or accountability measures in place for a particular piece of lobbying activity. For example it considered whether to require details of individuals employed to lobby who have previously been politicians (the ‘revolving door’). The Committee noted that the Ministerial Code currently prevents ex-Ministers from taking up posts as lobbyists for a period of at least two years. On the other side of the revolving door, MSPs who have previously held paid positions which they consider could be of public interest are required to detail these in their Register of Interests on becoming an MSP.

⁶⁹ CIPR written submission

⁷⁰ CIPR written submission

⁷¹ The intention would be for the cycle of updates to begin from the date of the organisation’s first register entry.

111. The register should detail lobbying activity as opposed to simply being a list of names of lobbyists. The register should detail who is lobbying, how and why, including—

- a) the name of the organisation;**
- b) names of individual lobbyists working for the organisation (if the organisation includes commercial lobbyists);**
- c) names of clients of organisations including commercial lobbyists on whose behalf lobbying of MSPs or other support work aimed at influencing MSPs is taking place;**
- d) meetings that have been pre-arranged by the organisation with MSPs including detailing the issues discussed;**
- e) events, including meals, arranged by the organisation that involve MSPs, including details of the purpose of the event;**
- f) secretary or other support to Cross-Party Groups valued above the threshold for disclosure in CPG annual returns (currently £500);**
- g) hospitality, visits or material support for an MSP (in line with the financial thresholds in the Register of Interests for MSPs);**
- h) details of the aims of the lobbying.**

112. Updating the register should not be a disproportionate burden. For example organisations could be required to update their register on a quarterly, six-monthly or annual cycle. A distinction could be made between commercial lobbyists and in-house lobbyists, requiring commercial lobbyists to register more frequently.

113. The Committee has heard from organisations who are very keen to publicise their work so the new register could—

- allow organisations that are not required to register under recommendation in paragraph 102 to register on a voluntary basis;**
- allow organisations to update their register more regularly than the required timescales; and**
- allow organisations to detail more information than that required in the recommendation in paragraph 113.**

SHOULD LOBBYING ACTIVITY TARGETED TOWARDS THE GOVERNMENT
BE REFLECTED IN THE NEW SYSTEM?

114. This Committee's remit covers the practice and procedures of the Parliament and also the conduct of MSPs, including in relation to members interests and 'any other matters relating to the conduct of members in carrying out their Parliamentary duties'. The Committee's remit does not extend to the conduct of MSPs when acting in their capacity as Ministers. Outwith its role in relation to public appointments, the Committee also has no locus in relation to making recommendations to change Government procedures. Given this, and the fact that it is the Scottish Government that has stated that it will legislate in this area (see paragraph 16 above), the Committee has not included lobbying activity in the register that relates to contact with MSPs when acting in their capacity as Ministers.

115. The extent to which policy formulation falls to Ministers as opposed to backbenchers means there is no doubt that Ministers are generally a greater source of interest to those seeking to influence at the decision making stage. The evidence received by the Committee reflects this focus on interaction with the Government.⁷²

116. The Committee believes that the Scottish Government should give serious consideration to introducing a register that sets a threshold for registration based on an organisation's contact with MSPs, including when the MSPs are acting as Ministers. For the information in the register to reflect where lobbying activity is often focused, and therefore to provide a meaningful body of information on potential lobbying influence, the Committee believes that meetings with, and events involving, Ministers should be included.

117. The Government already publishes details of meetings between Ministers and outside organisations, thereby actively endorsing lobbying transparency in its working practices.⁷³ On that basis the Committee would assume that the Government would not have any issue, in principle, for a register to include this type of information.

118. The evidence received by the Committee pointed to details of lobbying of ministers being of particular interest to the public. The Committee notes that the Government has previously committed to legislate in line with Neil Findlay's proposal for a bill, which included details of the lobbying of ministers, and expects that any bill should include such a provision.

CONFORMING TO THE REQUIREMENTS OF A REGISTER

119. International experience demonstrates that, to be effective, a register requires sufficient incentives to comply.

⁷² The ALT submission places particular emphasis, when listing information that should be covered by a register, on lobbying activity towards the Government including lobbying of ministers and civil servants.

⁷³ <http://www.scotland.gov.uk/About/People/14944/Events-Engagements/MinisterialEngagements/2014-15Engagements> [accessed 4 February 2015]

120. One possible approach considered by the Committee was a voluntary register with non-statutory sanctions and incentives designed to achieve compliance. The EU Joint Transparency Register is a voluntary register with an associated Code of Conduct for those seeking to influence the European Commission and the European Parliament. It was criticised in evidence for lacking sufficient incentives to encourage organisations to register and it was suggested that this resulted in lower levels of compliance.⁷⁴

121. In acknowledgement of these concerns, in December 2013 a full review of the Register was completed which made 30 recommendations for change including “strong incentives to encourage organisations to register”. These incentives include sanctioning organisations by preventing access to politicians. For example—“Commissioners will no longer accept to be patrons of events where the event organisers should be registered but aren’t.”⁷⁵

122. As the Committee is recommending a register that does not seek to over-regulate, there is an appeal in this element of the EU Register, namely a register featuring sanctions that are simple and could be easily imposed by the Scottish Parliament itself. Concern of reputational damage from such public censure could be enough to secure registration. The desire for organisations to protect their reputation is powerful and can certainly be used as a motivating factor.

123. The big negative of a voluntary register is its lack of teeth should organisations resist registration or provide incomplete information. The balance of evidence from those seeking a register was that, to ensure compliance, a system needs to have statutory sanctions (even if these powers are used infrequently) in order to give it credibility and to generate public trust.

124. The House of Commons Public Administration Committee report of 2009, *Lobbying: Access and Influence in Whitehall* made the argument for statutory regulation, suggesting trust from the public could not be achieved with a voluntary approach—

“In the current climate of public mistrust, voluntary self-regulation of lobbying activity risks being little better than the Emperor’s new clothes. Solutions need to be adapted to different constitutional arrangements and political cultures. In the case of the United Kingdom, where there is a culture of discretion and where deals are traditionally done behind closed doors, an element of external compulsion will be needed to provide for meaningful transparency”.⁷⁶

125. The Committee accepts that a statutory element is needed, where there are notable transgressions, such as providing deliberately misleading information on a register. However it is wary of an over-reliance on criminal sanctions such as fines

⁷⁴ Spinwatch written submission

⁷⁵ European Parliament library briefing on the Review of the European Transparency Register, Available at:

[http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130538/LDM_BRI\(2013\)130538_REV1_EN.pdf](http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130538/LDM_BRI(2013)130538_REV1_EN.pdf) [accessed 5 February 2015]

⁷⁶ <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmpublic/36/36i.pdf> [accessed 5 February 2015]

or even imprisonment (as is available in Canada and the United States). The register is not being proposed in response to evidence of inappropriate activity, and the Committee attaches weight to the potential that organisations will be willing to comply and, if not, public criticism following Parliamentary sanctions would be sufficient redress for most situations where organisations fail to conform.

Sanctions

126. There is appeal in an increasing scale of sanctions depending on the nature of the transgression. Neil Findlay MSP supported this principle—

“There should be a system of sanctions that increase in accordance with whatever had happened. There might be a slap on the wrist to begin with, right up to suspension or exclusion from the register, depending on the severity of the problem. A range of sanctions would be logical.”⁷⁷

127. The Committee places value on the light-touch approach being adopted wherever possible, with an emphasis on educative measures and informal resolution. The Committee’s work in relation to Cross-Party Group compliance with rules in the MSP Code of Conduct substantiates this view.

128. At present Cross-Party Groups are required to provide an annual return detailing financial support and activity throughout the year to the Standards Clerks. Compliance with this requirement was low at the end of Session 3 (2011). The Committee then reworked the system at the start of Session 4 and introduced—

- a published 6-monthly monitoring report which details any non-compliance;
- a detailed complaints process; and
- regular awareness raising with organisations providing support to CPGs on the rules from the Standards Clerks (with an emphasis on correcting unintended transgressions on a confidential basis).

129. Compliance with the rules has markedly improved and is now close to 100%. In addition to technical compliance, the average quality of the information has improved. The detail provided in annual returns now tends to give a much more expansive picture of the activity of CPGs. All annual returns are published on the Parliament’s website.

130. A register of lobbying activity is a distinct construct with a larger and more varied ‘client base’ than the CPG system, but the principle of improving compliance through co-operation and support has proved effective. There are examples of the same approach proving effective in other organisations.

131. The Electoral Commission enforcement policy has an emphasis on proactively seeking out potential non-compliance and on educating people on the rules to prevent transgressions. In relation to sanctions it takes “only the action we

⁷⁷ Scottish Parliament, Standards, Procedures and Public Appointments Committee, *Official Report*, 16 January 2014, Col 866

need to in order to achieve our objectives". The sanctions range from a letter encouraging compliance to referral to the Procurator Fiscal.⁷⁸

How could the compliance system operate?

132. One approach to monitoring the register would be the creation of a registrar role to oversee the register and proactively seek out organisations to encourage compliance. In addition, since one of the intentions of the register is to encourage public interest and involvement, there would need to be a complaints system allowing people to raise compliance concerns. As in any compliance regime, it would be important to have clarity as to who is responsible for which stage in the process to ensure appropriate separation of roles and to avoid duplication of effort.

133. There was no strong sense from witnesses as to which organisation should oversee the register, with several respondents to the consultation expressing no view.⁷⁹ Those who stated a view argued that, if there were to be a register, it should be maintained independently of Government and the industry⁸⁰. Neil Findlay MSP added that it should be independent of politicians and political influence.⁸¹

134. There is certainly no scope to create a new body to oversee the register, primarily because of the associated cost. The Commissioner for Ethical Standards in Public Life or the Standards Clerks at the Parliament were cited by a number of witnesses as the obvious candidates to be involved in the monitoring and compliance process.⁸² The Commissioner and the Clerks currently perform distinct roles including in relation to the Register of MSPs' significant financial interests. There are some parallels with these roles and the roles required for a lobbying register.

135. The Standards Clerks currently oversee the operation of the Register (independent of political influence) including providing advice to MSPs on what needs to be registered and by when. In terms of compliance, amongst other things the Commissioner currently investigates complaints against MSPs for failing to maintain an accurate and up to date Register and other aspects of the Code. Where required the Commissioner reports to this Committee (SPPA Committee) which, where it considers the rules have been breached, can recommend Parliamentary sanctions. The Standards Clerks support the Committee in its consideration of any such complaints. This complaints process is designed to provide for an appropriate separation of roles between those advising MSPs on compliance with the rules and those considering whether an MSP has complied.

136. The Standards Clerks also oversee other elements of the MSP Code of Conduct including the Cross-Party Group system. This system is designed to ensure these interest groups operate in a transparent manner. The Clerks engage

⁷⁸ <http://www.electoralcommission.org.uk/> [accessed 5 February 2015]

⁷⁹ Law Society of Scotland written submission

⁸⁰ Scottish Parliament, Standards, Procedures and Public Appointments Committee, *Official Report, 16 January 2014*, Col 865)

⁸¹ Scottish Parliament, Standards, Procedures and Public Appointments Committee, *Official Report, 16 January 2014*, Col 866

⁸² Scottish Land and Estates written submission

regularly with outside organisations, which act as secretaries to CPGs, to encourage an understanding of the rules and to prompt them when they are due to submit information on a periodic basis such as annual returns.

137. The Committee agrees that, given their current roles and responsibilities, the Clerks and the Commissioner are the obvious candidates to take on additional responsibilities in relation to the new register. It is hesitant about being overly prescriptive about who should do what in relation to the compliance regime at this stage as doubtless, in the drafting of legislation on a register, the detail of the regime will be set out in greater detail. At that stage it may become clearer as to exactly which elements of the regime might better sit with the Commissioner or with the Standards Clerks. The Parliament, including the SPCB given the impact on parliamentary resources, would want to be closely involved in deliberations as to who assumes responsibility for which element of the regime.

138. The broad parameters of the roles for the Commissioner and a registrar, and a possible structure of a compliance process are set out below. It is based on the principle that organisations should be encouraged, educated and prompted to register by the registrar to provide them with every opportunity to ensure their register entries are up to date. However, where the registrar has been unable to generate compliance through prompts and encouragement, they would refer the matter to the Commissioner for investigation. The Commissioner's findings could then determine whether the matter is referred to the SPPA Committee for Parliamentary sanctions or potentially to the Procurator Fiscal for criminal proceedings. The system should also allow the Parliament to impose Parliamentary sanctions where the Procurator Fiscal decides that it is not in the public interest to prosecute.

139. The Committee proposes this possible model for a compliance regime—

- **Upkeep and oversight of the register by a registrar should have a very limited impact on the public purse. This is a priority.**
- **There should be a new duty requiring organisations that meet the criteria listed in recommendation 102 to register and to periodically update the register.**
- **The emphasis of the compliance system should be on assisting organisations in correcting unintended transgressions. The system should promote transparency and co-operation from organisations as opposed to seeking to punish unnecessarily.**
- **The role of the registrar would be to proactively support and encourage information sharing from organisations. For example prompts and advice would be given on: whether to register; what to register; and when to update the register. The responsibility to register would remain with the organisation.**

- **There should be a complaints system that allows anyone to highlight where an organisation may not have complied with the requirements of the register.**
- **The register should have proportionate sanctions. It should give organisations a fair opportunity to address inadvertent breaches before considering any public censure. Stronger sanctions should only be considered where there is evidence of any of the following—**
 - a) **financial impropriety;**
 - b) **deliberately providing misleading information;**
 - c) **deliberately withholding information; and/or**
 - d) **repeated failures to comply with the requirements of the register.**
- **The following steps could be taken in the event of transgressions—**
 - a) **confidential prompts from the registrar to an organisation seeking resolution;**
 - b) **referral by the registrar to the Commissioner (or a complaint could be made direct to the Commissioner by any member of the public). The Commissioner could then investigate the matter and, depending on the findings—**
 - i. **dismiss the complaint / decide to take no further action;**
 - ii. **refer to the SPPA Committee for consideration of parliamentary sanctions; or**
 - iii. **report the organisation to the Procurator Fiscal for possible criminal prosecution, for example if an organisation is suspected of—**
 - **deliberately providing misleading information on the register; or**
 - **bribery (any interested person can report to the Procurator Fiscal on the grounds of bribery under existing legislation).**
- **On receipt of findings from the Commissioner, Parliamentary sanctions available to the Committee could include a report to Parliament recommending—**
 - i. **exclusion of an organisation from Cross-Party Groups;**

- ii. **exclusion of an organisation from hosting events in the Parliament; and/or**
- iii. **that MSPs do not engage with a particular organisation.**

OTHER MEASURES TO COMPLEMENT A REGISTER

Code of Practice for lobbyists

140. The Committee's consultation asked whether there should be a voluntary or statutory code of conduct for those undertaking lobbying.

141. There did not appear to be strong momentum in the evidence heard to establish a statutory code of conduct. The British Heart Foundation was strongly opposed to the idea, fearing that this could disrupt interactions between third sector organisations and public officials.⁸³ Unlock Democracy was broadly in favour of such a code, but expressed no strong opinion as to whether it should be statutory or voluntary.⁸⁴ The Electoral Reform Society wanted a statutory code but highlighted that—

“...such a Code of Conduct is not as fundamental as a register of information and should not jeopardise the possibility of legislating for a statutory register.”⁸⁵

142. The establishment of a new lobbying register, with statutory elements to it, appears the most effective mechanism for improving transparency and, in turn, accountability of those undertaking significant lobbying activity. A statutory code in addition to this seems an excessive level of regulation in a new system primarily aimed at improving transparency not at increased regulation. The British Heart Foundation's concern appears valid, that concerns over “breaking the rules” if people have not familiarised themselves with a statutory code before meeting politicians could be sufficient to deter people from engaging. A statutory code could also add weight to the incorrect and unhelpful perception that politicians only engage with professional lobbyists.

143. The Committee considers that there is an argument for providing those who regularly lobby politicians with a non-binding code including guidance that mirrors the rules in the MSP Code of Conduct. This could prove useful in providing advance notice of what forms of approach would or would not be deemed appropriate.

144. This form of code would not be a prescriptive set of rules so there is no justification for making it binding. A non-statutory approach also reflects the fact that it is ultimately the responsibility of the MSP to decide whether to meet with people seeking to lobby them, and to be familiar with the binding rules of their Code in deciding which offers to accept.

⁸³ British Heart Foundation written submission

⁸⁴ Unlock Democracy written submission

⁸⁵ Electoral Reform Society written submission

145. A code for lobbyists could appraise organisations of these sensitivities so they do not, unintentionally, ask MSPs to do something in contravention of the MSPs' Code. So a lobbyists' code could have an emphasis on advice and guidance to help those lobbying to navigate the rules.

146. The guidance volume of the Code for MSPs emphasises why it is important for every MSP to abide by the rules. MSPs are responsible for upholding their reputation, and as a result the public's view of the way in which the Parliament conducts its business—

“It is important, therefore, to ensure that those relationships are handled with complete propriety so as to maintain the confidence of the public in the decision-making and integrity of its representatives in the Parliament.”⁸⁶

147. The scale of the sanctions available to Parliament if an MSP does not abide by these rules reflects this responsibility. Sanctions span up to the removal of salary, expenses, access to the Parliament building and the withdrawal of all rights and privileges such as participating in parliamentary proceedings.⁸⁷ More seriously, should a member undertake paid advocacy, also covered in the MSP Code, this is a criminal offence and they could be fined or imprisoned.⁸⁸

148. The Committee recommends that the Parliament should introduce a code of practice for those who lobby that includes advice on expected standards of behaviour. This would mirror the rules on lobbying in the Code of Conduct for MSPs.

Revisions to the Code of Conduct for MSPs

Reflecting the increasing amount of in-house lobbying

149. ASPA and APPC Scotland stated that they wished to see the references in sections 5.1.3, 5.1.4 and 5.1.6 of the Code to “commercial lobbyist” to be amended to “lobbyist” so as not to exempt contact with in-house lobbyists from the rules. The Committee definitely accepts that the sections on *Lobbying and Access to MSPs* in Volumes 2 and 3 of the Code require to be brought up to date to reflect that the majority of lobbying activity is now undertaken in-house.

150. However there are certain rules that should continue to relate specifically to those representing third parties. For example 5.1.4 states that—

“5.1.4 Before taking any action as a result of being lobbied, a member should be satisfied about the identity of the person or organisation who is lobbying and the motive for lobbying. A member may choose to act in response to a commercial lobbyist but it is important that an MSP knows the basis on which

⁸⁶ Scottish Parliament, Code of Conduct for MSPs, Available at: <http://www.scottish.parliament.uk/msps/42837.aspx> [accessed 4 February 2015]

⁸⁷ Scottish Parliament, Code of Conduct for MSPs, Available at: <http://www.scottish.parliament.uk/msps/42777.aspx> [accessed 4 February 2015]

⁸⁸ The Committee is currently in the process of introducing a committee bill that would broaden the scope of the criminal offence to include where a member has not committed paid advocacy but has agreed to undertake it or is in receipt of money or other benefits in anticipation of undertaking it.

the member is being lobbied in order to ensure that any action the member takes complies with the standards set out in this Code.”

151. In addition, some of the guidance in Volume 3 of the Code relates specifically to contact with commercial lobbyists and is still current—

“It is essential that there is transparency in the relationships between members and lobbyists, in line with the Parliament’s core principles of accessibility and openness. This is particularly important where commercial lobbyists are employed to advise organisations or companies in the presentation of their arguments.”

152. The Committee recommends that the Code of Conduct for MSPs should be revised to reflect how lobbying has evolved in recent years, ensuring the rules sufficiently cover contact with in-house lobbyists as well as those lobbying on behalf of third parties.

Contact reports

153. The Committee received numerous representations, including from the Federation of Small Businesses and CBI Scotland, to suggest that the publication of MSP diaries or, more practically, of reports of MSP contact with lobbyists would be preferable to the introduction of a register. These ‘contact reports’ would exclude details of confidential work undertaken for constituents but could usefully include details of contact with lobbyists in relation to MSPs’ work as parliamentarians.⁸⁹

154. The Scottish Ministers currently publish details of their meetings involving external organisations on a rolling 3-monthly basis, which includes details of the organisation(s) at a meeting and the subject area discussed.⁹⁰

155. The British Heart Foundation and the SCVO drew attention to Malcolm Harbour MEP’s lobbying contact report. Malcolm Harbour periodically publishes a log detailing his contacts with lobbyists, showing the date, the name of the lobbyist, the company, the client (where appropriate) and the context.⁹¹

156. The Committee is recommending a register as opposed to requiring diary publication from MSPs as standard for a number of reasons, not least because the primary onus for disclosing information rests with those doing the lobbying and there is currently nothing provided in a standardised way that records lobbying of MSPs.

157. Lobbyists are responsible for initiating lobbying activity and MSPs are responsible for deciding what constitutes an appropriate response to it. The Committee’s approach is based on the principle that the organisations seeking to influence should be responsible for recording and publishing their lobbying activity. As stated above, the OECD explains that—

⁸⁹ FSB written submission, CBI written submission

⁹⁰ <http://www.scotland.gov.uk/About/People/14944/Events-Engagements/MinisterialEngagements/2014-15Engagements> [accessed 4 February 2015]

⁹¹ British Heart Foundation written submission, SCVO written submission

“Since lobbyists initiate the relationship, it is generally assumed that they should be primarily responsible for the publicity of their endeavour.”⁹²

158. International experience reflects this perspective. There are no examples to be learned from in other countries where the onus for publishing information on lobbying activity rests solely with the politicians.

159. Suggesting MSP diaries would be an alternative approach to a register can give the impression that one is a substitute for another. MSP contact reports and entries in a lobbying register would record very different types of information. Infrequent meetings with small organisations and charities on single issues would feature in MSP diaries, whereas the thresholds in the register mean it would focus in on significant levels of lobbying activity, in the main by commercial lobbyists and in-house lobbyists for big organisations.

160. The latter is of much more interest to citizens seeking a picture of the potential influence of frequent contact with MSPs or of lobbying work that has a significant financial cost associated with it. There is also a simplicity to viewing information from the lobbyist’s perspective for those accessing the information, as opposed to accessing a large number of MSP contact reports to get a sense of an organisation’s activity. Under the Committee’s proposals information would be made available in one place for interested parties to inspect and to gain a more holistic view of lobbying across the Parliament. Spinwatch argued that—

“...an MSP would not know what other activities the lobbyists were engaged with; they could declare only what they were conscious of. One benefit of a wider disclosure regime would be that we would have a much broader awareness of what was going on across the entire Parliament and where influence was being brought to bear.”⁹³

161. Oxfam Scotland, amongst others, felt that whilst contact reports were not a substitute for a register, the publication of information by MSPs could be a useful complementary measure, putting more information into the public domain than a register alone.⁹⁴ The Chartered Society of Physiotherapy stated—

“We...support openness and transparency in lobbying. However, this cannot be the sole responsibility of the lobbying industry or those seeking to make representations, there must also be transparency from those being lobbied.”⁹⁵

162. As highlighted by the then Commissioner, Stuart Allan, should the Commissioner require to investigate a formal complaint on contact with lobbyists, an MSP could be asked for details of this under section 5 of the Code of

⁹² OECD 2009 publication entitled *Lobbyists, Governments and Public Trust, Volume 1: Developing a Legal Framework for Lobbying and Lobbyist Registration*

⁹³ Scottish Parliament Standards, Procedures and Public Appointments Committee, *Official Report 16 January 2014*, Col 871

⁹⁴ Oxfam Scotland written submission

⁹⁵ Chartered Society of Physiotherapy written submission

Conduct.⁹⁶ The Code states that "...members should consider keeping a record of all contacts with lobbyists". At present this rule specifically relates to commercial lobbyists.⁹⁷

163. At present, should there be a complaint, a member would need to be able to demonstrate their contact with a commercial lobbyist in response to the Commissioner's request for information. Keeping a record of contact could in practice be as simple as keeping a back catalogue of electronic calendars or hard copy diaries.

164. The Committee reminds MSPs of the need to keep sufficient records which they must provide to the Commissioner on request.

Disclosure of more information by the Parliament

165. The recommendations below are for consideration by the Scottish Parliamentary Corporate Body. The SPCB is in charge of decisions on parliamentary resources and policy.

166. The Committee undertook an audit of sources of information held by the Parliament to ensure that all details held of activity that could reasonably be perceived to involve lobbying are published. The result was confirmation that the vast majority of this information is available on the Parliament's website, or associated websites (such as the Futures Forum and the Scottish Parliament Business Exchange sites)⁹⁸. This is to be expected since the Parliament has placed an emphasis since its inception on being open in its culture. This is embedded in its processes for deciding what information to make publicly available - the presumption has always been to publish.

Events

167. The only area the Committee found where there may be some room for improvement related to events held in the Parliament complex. At present, events taking place are highlighted on the *What's Happening* part of the Parliament's website during the relevant week. There is no lasting record of the events held provided on the website.

168. Events fall into two categories, those hosted by the Scottish Parliament Corporate Body and those organised by outside organisations and sponsored by a particular MSP. All MSPs are invited to all events held as standard.

169. Events and exhibitions, whether within or outwith the Parliament, are an increasingly popular means of seeking to inform and influence. ASPA stated—

⁹⁶ Scottish Parliament Standards, Procedures and Public Appointments Committee, *Official Report 13 March 2014*, Col 997

⁹⁷ Scottish Parliament, Code of Conduct for MSPs, Available at: <http://www.scottish.parliament.uk/msps/42778.aspx> [accessed 4 February 2015]

⁹⁸ Scotland's Futures Forum, <http://www.scotlandfutureforum.org/> and Scottish Parliament and Business Exchange, <http://www.spbe.org.uk/> [accessed 4 February 2015]

“The focus of ‘lobbying’ activity has changed significantly and is now focused more on the organisation of profile raising events and exhibitions rather than primarily on ‘direct’ communication.”⁹⁹

170. In acknowledgement of this, there are clear rules on what events can and cannot be held within the Parliament which removes the potential for organisations to be perceived as receiving undue access to MSPs. For example an organisation can only have two events a year and no event can relate to current parliamentary business. Event organisers—“Must respect the wide range of existing channels for influencing parliamentary business, by not lobbying on parliamentary business under current consideration.”¹⁰⁰

171. Given the level of access afforded to MSPs by holding an event in the building, and the increasing focus on events as a means of lobbying, the Committee considers that the names of the organisations holding the events and the nature of the events held would be of interest to the public.

172. The Committee recommends that the Parliament should publish more information on events that have been held within the Parliament complex. Specifically, it should publish a record on its website of every event held, the date, the organisation that supported the event and the type of event. The record should be updated monthly so the information is current when published¹⁰¹.

Accessible information

173. There is a big difference between just being open and being open and accessible. For published information to be of any worth people need to know it is published and to be able to find it easily. Information is more valuable still if people can easily compile all relevant information of interest to them on a particular topic.

174. The format of such information depends on what the citizen wants to know. One person might be interested in the lobbying activity of one particular organisation; another might be interested in lobbying activity taking place by lots of organisations on a particular bill; a third might want to know which organisations a particular MSP has engaged with.

175. The Committee envisages that the information on the register would be readily searchable alongside all of the other relevant information held on the Parliament’s website. For example a search for a particular organisation’s work on a bill could generate information sourced from: its register entry; evidence to a committee; accompanying documents to the bill detailing engagement with the Government during the policy’s formulation; events or visits for MSPs captured in the Register of Interests; attendance at Cross-Party Group meetings; and

⁹⁹ ASPA written submission to the consultation on the Lobbying Transparency (Scotland) Bill

¹⁰⁰ Scottish Parliament, Events and Exhibitions Criteria, Available at: <http://www.scottish.parliament.uk/Eventsandexhibitions/EAEcriteria.doc.pdf> [accessed 4 February 2015]

¹⁰¹ There is no intention for this recommendation to cover the hiring of space in the Parliament on a commercial basis as these events do not involve MSPs and occur when the Parliament is not sitting.

references to the organisation in the *Official Report* of Chamber debates (possibly based on briefings issued to MSPs to inform the debate).

176. There is also value in producing information in a format that allows it to be viewed alongside details of lobbying activity elsewhere. For example *Who's Lobbying*, which describes itself as a parliamentary monitoring organisation, combines datasets from different sources on a website (including the UK Parliament and the UK Government) to “give us easy access to information about who is trying to influence government.”¹⁰² If this type of website incorporated information from the new register of lobbying activity, this could provide the citizen with a picture of a particular organisation's activity across more UK political institutions.

177. To be of use to these web projects, information needs to be produced by the Parliament as ‘open data’. Dr Andy Williamson, Democratise, states in his submission to the UK Parliament Speaker's Commission on Digital Democracy—

“Digital is a key enabler of public transparency and transparency helps increase trust and limit corruption. This doesn't simply mean providing digitised versions of existing documents but ensuring that content is machine readable, correctly tagged and indexed so that it can be found, matched, verified and re-used by third-parties: build it open and encourage others to use it, mash it up and repurpose it!”¹⁰³

178. As part of the Digital Democracy movement, the Scottish Government, local authorities and numerous other public bodies are pursuing an open data agenda to make information as usable as possible for the public. The Scottish Parliament has its own Digital Parliament Programme which has a focus on ensuring Parliament published information reflects the citizen's needs and interests.

179. Information published by the Parliament should be made more easily accessible to the citizen. The Committee supports the work of the Scottish Parliament's *Digital Parliament Programme* that has an emphasis on this aim. The Committee considers that—

- **once a register is established, Parliament website searches should generate information on lobbying activity in a way that is as responsive as possible to what the citizen wants to know; and**
- **the Parliament should seek to provide information on lobbying activity in open data format as this could help the public to look at the influence of lobbyists across a number of political institutions.**

¹⁰² whoslobbying.com [accessed 5 January 2015]

¹⁰³ UK Parliament Speaker's Commission on Digital Democracy, Democratise written submission, Available at: http://www.parliament.uk/documents/speaker/digital-democracy/Digi018_Andy_Williamson.pdf [accessed 4 February 2015]

Appendix 1 - Existing checks and balances in Scotland on those lobbying and those being lobbied

Checks and balances on those lobbying

Legislation

The 2010 UK Bribery Act provisions include the crimes of bribery and the failure of a commercial organisation to prevent bribery on its behalf. The penalties for committing a crime under the Act are a maximum of 10 years' imprisonment, along with an unlimited fine, and the potential for the confiscation of property under the [Proceeds of Crime Act 2002](#), as well as the disqualification of directors under the [Company Directors Disqualification Act 1986](#). The crime of bribery is described in Section 1 as occurring when a person offers, gives or promises to give a "financial or other advantage" to another individual in exchange for "improperly" performing a "relevant function or activity". "Financial or other advantage" is not defined in the Act, and so is open to wide interpretation, potentially encompassing items such as non-monetary gifts.

Voluntary codes of conduct for those lobbying

A number of submissions to the inquiry highlighted voluntary codes of conduct. For example, the Association for Scottish Public Affairs (ASPA) requires its members to agree, as a condition of membership, to abide by a code of conduct which governs their engagement with the Scottish Parliament and Government and its agencies and aims to reflect best practice and professional ethics. ASPA members may also have to adhere to standards and codes of conduct set within their own organisations or by professional bodies¹⁰⁴.

Charities

The Office of the Scottish Charity Regulator publishes the Scottish Charity Register which details all charities regulated by them in Scotland and provides details of income and activities undertaken by these charities, including campaign and communications work.

Trade unions

As noted in the BMA's submission, trade unions must comply with the Trade Union and Labour Relations (Consolidation) Act 1992 as amended by the Employment Relations Act 1999. These require them to adhere to a number of regulations and standards and to publish information to that effect.

Limitations on lobbying activities in the Scottish Parliament complex

Events

Guidance on member-sponsored events in the Parliament place certain restrictions on external organisations including that: events should not include lobbying on parliamentary business under current consideration; no organisation

¹⁰⁴ ASPA written submission

may be sponsored for more than two events in 12 months; and invitations, issued by the sponsoring member, must be issued to all MSPs.

SPCB policies

The SPCB has a number of published policies that, in part, seek to ensure that the Parliament could not be perceived to be allowing undue access to lobbyists or the promotion of one particular cause over another. For example there are restrictions on the use of meeting rooms, the issuing of security passes to external organisations and fundraising for causes other than those formally endorsed by the SPCB.

Checks and balances for those being lobbied

Scottish Government Ministers

The provisions of the Code of Conduct for Members of the Scottish Parliament apply to all Scottish Ministers. In addition, the Scottish Government Ministerial Code includes provisions on lobbying, such as:

- Ministers should publish details of their meetings with outside organisations three months in arrears on a rolling basis;
- Ministers need to consider the manner in which they conduct private meetings with outside organisations, for example an official should be present and minute the meeting;
- Ministers need to exercise caution in relation to commercial interests: “They should also bear in mind public sector procurement procedures and resist any attempt to influence them in favour of particular products or services. If such attempts are experienced, Ministers should report these to the Director of Procurement.”
- Ministers should be advised by officials on the appropriateness of accepting an invitation and informal approaches should be ‘treated with caution’ and reported to the appropriate Directorate where necessary.

In the first instance, complaints made under the terms of the Ministerial Code are considered by the First Minister. Where a complaint is deemed sufficiently serious, the First Minister may refer matters to a panel of independent advisers who publish a report on the complaint. This report informs the First Minister’s judgement on any action required in response to the complaint.

Scottish Government Civil Servants

The Civil Servants Code sets out broad principles on impartiality, honesty, integrity and objectivity to guide the behaviour of officials. There are no specific rules on contact with lobbyists.

MSPs

- The Code of Conduct

The Code of Conduct for Members of the Scottish Parliament sets out rules and guiding principles, many of which are underpinned by legislation, that individuals should follow when acting in their capacities as MSPs. The Code also details sanctions available for the Parliament to impose where a complaint is upheld against a politician.

With some exceptions, the Commissioner for Ethical Standards in Public Life for Scotland considers complaints made under the terms of the Code. Sanctions available under the Code include exclusion from formal proceedings or from the Parliamentary complex or withdrawal of allowances and/or salary.

- The Register of Interests

Under Section 2 of the Code, MSPs are required to register any significant financial interests that could influence, or could be perceived to influence, the manner in which they carry out their work as parliamentarians. Register entries include details of the organisation providing the goods or services which require to be registered.

Section 2 is underpinned by the Scotland Act 1998 which made failing to register a financial interest in the Scottish Parliament's Register of Interests, or to declare it when taking part in relevant parliamentary proceedings, a criminal offence. The decision on whether to prosecute any of these offences is a matter for the Procurator Fiscal.

Under Section 3 of the Code registered interests must be declared before an MSP takes part in proceedings of Parliament relating to an interest. That includes written questions and all committee and plenary proceedings.

- Paid Advocacy

Section 4 of the Code sets out rules that prohibit paid advocacy. The paid advocacy offence currently requires receipt of an inducement by an MSP (or by an MSP's partner, where this results in some benefit to the MSP). The Bribery Act 2010 goes further than this. It does not require an individual to *receive* inducements in order to commit an offence, but only to *agree* to receive such inducements.

This section is also underpinned by the Scotland Act 1998 which makes paid advocacy a criminal offence. The decision whether to prosecute any of these offences is for the Procurator Fiscal.

The Committee has agreed, as part of its upcoming committee bill, to amend the paid advocacy offence in the Scotland Act, and accordingly in the Code, for greater consistency with the Bribery Act 2010.

*Standards, Procedures and Public Appointments Committee, 1st Report, 2015
(Session 4)*

- Lobbying

Section 5 of the Code sets out rules to guide members in considering what constitutes appropriate contact with lobbyists. It also states that MSPs 'should consider' keeping a record of contact with lobbyists.

- Cross Party Groups

Section 6 of the Code provides rules on Cross Party Groups. The Committee has recently reviewed, and as a result strengthened, this section. Financial support to groups totalling over £500 in one year from the same source requires to be disclosed. In addition minutes and annual returns detailing attendees at meetings and issues discussed must be published.

Appendix 2 - Information currently publicly available on lobbying activity

Information on those doing the lobbying

Voluntary registers

A number of organisations cited in evidence to the Committee cited existing voluntary registers for lobbyists including: the Association for Scottish Public Affairs; the Association of Professional Political Consultants; the Public Relations Consultant Association; the Chartered Institute of Public Relations and the UK Public Affairs Council. These registers link in with the codes of conduct set out by these organisations. For example the PRCA publishes every quarter a list of all members who practice current affairs and a list of all clients of consultancies that conduct public affairs. Memberships of organisations are diverse, for example ASPA's membership is drawn from businesses, charities, consultancies, trade unions and trade associations.

Charities

As mentioned above, the Office of the Scottish Charity Regulator publishes the Scottish Charity Register which details all charities regulated by them in Scotland including providing details of income and activities undertaken by these charities, including campaign and communications work.

Trade unions

As noted in the BMA's submission, trade unions must comply with Trade Union and Labour Relations (Consolidation) Act 1992 as amended by the Employment Relations Act 1999 which requires them to adhere to a number of regulations and standards and to publish information to that effect.

In addition trade unions, as with many other organisations, actively seek to publicise the extent to which they are lobbying effectively on behalf of their membership. For example the BMA's policy and lobbying page highlights how it ensures 'your voice is heard at Holyrood'.

Information on contact between politicians and lobbyists

Scottish Government – Ministerial engagements

The Scottish Government has adopted the practice of publishing on a monthly basis and 3 months in arrears details of engagements carried out by all Ministers. The publication of ministerial engagements is a requirement of the Scottish Ministerial Code.

<http://www.scotland.gov.uk/About/People/14944/Events-Engagements/MinisterialEngagements/2014-15Engagements>

Scottish Government – stakeholder engagement and sources of advice

The Scottish Government publishes information as standard on stakeholder involvement in policy formulation, for example submissions to consultations,

participation event attendance and working group membership. In relation to bills, information on work involving stakeholders, and hyperlinks to all of the detail of this work, is provided as standard in policy documents that accompany legislation.

The Scottish Government also maintains a list of special advisers who provide specialist political advice to Ministers.

MSPs – register of financial interests

As stated above, MSPs are required to register any significant financial interests that could influence, or could be perceived to influence, the manner in which they carry out their work as parliamentarians.

The requirements to register: gifts; hospitality; benefits in kind; overseas visits; and remuneration from other work are all set out in Section 2 of the Code of Conduct for MSPs, which is based on the provisions in the Interests of Members of the Scottish Parliament Act 2006 (the Act). All registered interests are published on the Parliament's website on each MSP's page. This includes detailing the name of the organisation providing whatever the MSP is registering (for example which organisation has paid the expenses of an MSP undertaking an overseas visit).

MSPs - Electoral Commission

It should also be noted that all permissible donations for political activity received by politicians that meet certain criteria, including financial thresholds (and similarly donations received by political parties and party leaders) are registered with the Electoral Commission and are publicly available. Details of the organisation making the donation are detailed in this published information.

MSP - engagement with stakeholders

This section does not deal with MSPs' engagement with constituents as constituency casework tends to be confidential in nature as it deals with personal matters raised by constituents as individuals. There was no suggestion during evidence taking on the inquiry that this could be deemed to be lobbying and therefore the Committee considers this form of work to be exempt from any work to increase the transparency of lobbying activity.

Formal engagement during parliamentary proceedings

Parliamentary committees' main work is evidence taking in relation to: committee inquiries; primary and secondary legislation; budget scrutiny and petitions. This includes formal evidence taking in committee meetings, inviting written evidence including through social media, and undertaking fact-finding visits. Details of the role of all contributing stakeholders are detailed in the agenda, the minutes, the substantially verbatim record of proceedings (the *Official Report*) of formal meetings and in the notes from fact-finding visits. All written evidence is also published as are research briefings from the Parliament's Information Centre. All organisations and individuals contributing to these briefings are referenced. The reports produced by committees cite organisations that have informed the findings and recommendations.

There is also information published on committee advisers, employed by the Parliament to provide specialist advice. In addition information is available on any external research commissioned by committees.

There are details of all petitions and support for them on the Public Petitions Committee website.

Finally, all Chamber proceedings, are covered in the *Official Report* and all written questions and answers and motions lodged are also published.

Informal discussion forums

- Cross-Party Groups

Cross-Party Groups (CPGs) are groups that allow MSPs to share and collaborate with the policy community in order to inform their work. Over 1,000 organisations and 1,000 individuals engage with MSPs through these groups. CPGs are open to the public and groups are required, under the Code of Conduct, to publish minutes, lists of attendees at meetings, membership lists (including all non-MSP members), and also details of financial and material support in annual returns. These are all available on the Parliament's website.

- Scottish Parliament Business Exchange

The Scottish Parliament and Business Exchange (SPBE) is an organisation aimed at 'fostering understanding' between business and the Scottish Parliament. Its activities and membership are available on its website¹⁰⁵.

- Scotland's Futures Forum

Scotland's Futures Forum was created by the Scottish Parliament to: "help its Members, along with policy makers, businesses, academics, and the wider community of Scotland, look beyond immediate horizons, to some of the challenges and opportunities we will face in the future"¹⁰⁶. Again, details of its work are available on the website.

Information released following Freedom of Information requests

The Scottish Government and the Scottish Parliament both publish logs of FOI requests and information published as a result of these requests. The Scottish Government, including Ministers are subject to FOI, as is the Scottish Parliament. However individual MSPs who are not ministers are not subject to FOI. Information released can include information on contact with external organisations and individuals.

¹⁰⁵ <http://www.spbe.org.uk/>

¹⁰⁶ <http://www.scotlandfutureforum.org/>

Appendix 3 - Extract of the 2002 Standards Committee report entitled *Report on Lobbying*

Problems of Definition

24. From the outset of the inquiry the Committee recognised that 'there are difficulties in defining "lobbying"'¹³. In the Committee's initial consultation paper "lobbying" was defined as:

the representation of organised interests to MSPs by the interested parties themselves, or the professional representation of organised interests by a third party, with the intention of influencing the action of MSPs.

However, the efficacy of this definition emerged as one of the main concerns of respondents to the consultation exercise. In particular, the Committee's working definition of lobbying was criticised as being too narrow. The commercial lobbyists who responded were keen to point out that the vast majority of their members' work is advisory and it is only very rarely that they are asked by clients to act as advocates on their behalf with politicians or officials. The Association of Professional Political Consultants Scotland (APPCS) argued that: 'increasingly, it is unusual for professional political consultants to act as a third party advocates of a client's case' while the Institute of Public Relations (IPR) pointed out that: 'public affairs consultancies which play an advisory role for their clients might never contact the Parliament or an MSP to undertake "lobbying activity"'.

25. Mainly on the basis of this evidence the Committee agreed to revise its working definition of lobbying in relation to commercial lobbyists as follows:

the provision of advice and/or information to a third party on the workings of the Scottish Parliament or the direct representation of organised interests in return for remuneration with the intention of influencing the actions of MSPs¹⁴.

26. The commercial lobbyists also emphasised that it is not only public affairs companies who lobby on a commercial basis for third party clients but that many professions such as lawyers, journalists, think tank representatives may seek to influence MSPs and public policy to varying degrees. The Public Relations Consultation Association (PRCA) argued that:

It is not just public affairs and public relations companies which have multiple clients and lobby. The media's focus on public relations and public affairs consultancies is based on an outdated interpretation of lobbying. Increasingly, professional services companies - eg law firms, management consultancies and investment and merchant banks - are offering, in house, public affairs advice and advocacy.

27. In support of this view the PRCA pointed to the recent recommendations of the Neill Committee on 'Standards of Conduct in the House of Lords'. In respect of mandatory disclosure of Peers' interests, the Committee stated that:

An examination of the Register shows that in almost every case, it is only peers associated with commercial lobbying companies who are actually registered as having financial interests in businesses involved in parliamentary lobbying on behalf of clients. Yet we heard it argued that this does not accurately reflect the full range of peers who are connected with parliamentary lobbying...These include some law, accountancy and management consultancy firms¹⁵.

28. Again, the Committee accepted this evidence and agreed to define 'commercial lobbyists' to be covered by its proposed registration scheme as follows:

any company or professional firm, partnership or individual working alone whose services include either in whole or in part, the provision of advice and/or information to a third party on the workings of the Scottish Parliament or the direct representation of organised or personal interests, in return for remuneration and with the intention of influencing the actions of MSPs.

29. The Committee invited views on its revised definitions in its consultation paper on *Statutory Registration of Commercial Lobbyists*. Considerable concern was expressed in relation to the workability of the proposed definitions. For example, the APPCS argued that the definition of lobbying is now 'so all-embracing that it is unlikely to stand up to legal scrutiny' and that 'it remains imprecise and potentially ineffective'.

30. The main concerns related to what is meant by "remuneration" and what is meant by "third party". In particular that remuneration could be interpreted to include income from subscriptions or membership fees and that third party could be interpreted to include members in the case of membership organisations. This would mean that many voluntary groups and membership organisations could be covered by the scheme.

31. However, the Committee had agreed at its meeting on 25 April 2001 that it is only "commercial lobbyists" that should be covered by the statutory registration scheme. The Committee had also agreed that the scheme is not intended to cover the voluntary sector, trade associations, representative and membership organisations, interest groups, in-house lobbyists and companies whose sole purpose is the provision of an information service on the work of the Parliament. The Committee's recommendation in relation to in house lobbyists is discussed in more detail at paragraphs 47 to 49 below.

32. On the basis of this further evidence the Committee agreed at its meeting on 21 November 2001 to conflate its previous two working definitions into a single definition of "commercial lobbyists" to be covered by the register.

33. The Committee, therefore, recommends that for the purpose of its proposed registration scheme that "commercial lobbyists" are defined as follows:

'any individual, partnership, company or other undertaking which

(a) attempts, on behalf of a third party, to influence the conduct of members in carrying out their Parliamentary duties; or,

(b) provides assistance (which may include or consist of strategic advice) to a third party in connection with attempting to influence the conduct of members in carrying out their Parliamentary duties,

on a commercial basis'.

ANNEXE A: EXTRACT FROM MINUTES

11th Meeting, 2013 (Session 4), Thursday 12 September 2013

Decision on taking business in private: The Committee agreed to take items 6, 7, 8 and 9 in private.

Work programme (in private): The Committee considered its work programme and agreed to hold an inquiry into lobbying and to consider a draft remit and call for evidence in private at its next meeting. The Committee also agreed to take evidence from the Ethical Standards Commissioner on his annual report at a future meeting.

12th Meeting, 2013 (Session 4), Thursday 26 September 2013

Lobbying inquiry (in private): The Committee considered a note by the Clerk and agreed its approach to its inquiry.

15th Meeting, 2013 (Session 4), Thursday 21 November 2013

Decision on taking business in private: The Committee agreed to take item 6 in private.

Work programme (in private): The Committee agreed its work programme.

1st Meeting, 2014 (Session 4), Thursday 16 January 2014

Decision on taking business in private: The Committee agreed that its consideration of the evidence heard on its inquiry into lobbying should be taken in private at this meeting and at future meetings.

Inquiry into lobbying - witness expenses: The Committee agreed to delegate to the Convener responsibility for arranging for the SPCB to pay, under Rule 12.4.3, any expenses of witnesses in the inquiry.

Inquiry into lobbying: The Committee took evidence from—

Neil Findlay;
Tamasin Cave, Campaigner, Alliance for Lobbying Transparency;
Dr William Dinan, Director, Spinwatch, Steering Committee, ALTER EU;
Alexandra Runswick, Director, Unlock Democracy;
Alastair Ross, Secretary, Association for Scottish Public Affairs;
Illiam Costain McCade, Chair, Association of Professional Political Consultants Scotland;
Andrew Watson, Chair of the Public Affairs Group, Chartered Institute of Public Relations.

Inquiry into lobbying: The Committee considered the evidence heard earlier in the meeting.

2nd Meeting, 2014 (Session 4), Thursday 30 January 2014

Inquiry into lobbying: The Committee took evidence from—

Sara Collier, Policy Officer, Children in Scotland;
John Downie, Director of Public Affairs, Scottish Council for Voluntary Organisations;
Dave Moxham, Deputy General Secretary, STUC;
Jenny Kemp, Coordinator, Zero Tolerance;
Richard Maughan, Head of Campaigns, CBI;
Colin Borland, Head of External Affairs in Scotland, Federation of Small Businesses;
Fraser Kelly, Social Enterprise Scotland.

Inquiry into lobbying (in private): The Committee considered the evidence heard earlier in the meeting.

3rd Meeting, 2014 (Session 4), Thursday 27 February 2014

Decision on taking business in private: The Committee agreed that its consideration of draft reports on Hybrid Bills and on Standing Order rule changes on EU Rules and the next steps for, and a draft report on, its inquiry into Lobbying should be taken in private at future meetings.

Inquiry into lobbying: The Committee took evidence from—

Juliet Swann, Campaigns and Research Officer, Electoral Reform Society;
Michael Clancy, Director of Law Reform, and Brian Simpson, Law Reform Officer, Law Society of Scotland;
David Robb, Chief Executive, Office of the Scottish Charity Regulator;
Robin McAlpine, Director, Jimmy Reid Foundation;
Professor Raj Chari, Department of Political Science, Trinity College Dublin;
and
Professor Susan Deacon, Assistant Principal, Corporate Engagement, University of Edinburgh.

Inquiry into lobbying (in private): The Committee considered the evidence heard earlier in the meeting.

4th Meeting, 2014 (Session 4), Thursday 13 March 2014

Inquiry into lobbying: The Committee took evidence from—

Stuart Allan, Commissioner for Ethical Standards in Public Life in Scotland.

Inquiry into lobbying (in private): The Committee considered the evidence and agreed to consider a further paper at a future meeting.

5th Meeting, 2014 (Session 4), Thursday 27 March 2014

Decision on taking business in private: The Committee agreed to take items 3 and 4 in private.

Inquiry into lobbying: The Committee considered the next steps on its inquiry. The Committee agreed to consider policy papers and evidence summaries in private at future meetings. The Committee also agreed to hold a chamber debate to gather the views of other MSPs.

7th Meeting, 2014 (Session 4), Thursday 8 May 2014

Inquiry into lobbying (in private): The Committee considered a note by the clerk and agreed to consider an evidence summary and further paper in private at future meetings.

8th Meeting, 2014 (Session 4), Thursday 29 May 2014

Inquiry into lobbying (in private): The Committee agreed to defer this item to a future meeting.

9th Meeting, 2014 (Session 4), Thursday 5 June 2014

Inquiry into lobbying (in private): The Committee considered an evidence summary on its inquiry and agreed to publish this on the Committee's webpage.

14th Meeting, 2014 (Session 4), Thursday 20 November 2014

Inquiry into lobbying (in private): The Committee considered an issues paper.

15th Meeting, 2014 (Session 4), Thursday 4 December 2014

Inquiry into lobbying (in private): The Committee considered an options paper.

16th Meeting, 2014 (Session 4), Thursday 18 December 2014

Inquiry into lobbying (in private): The Committee considered issues for a draft report.

1st Meeting, 2015 (Session 4), Thursday 15 January 2015

Inquiry into lobbying (in private): The Committee considered a draft report.

2nd Meeting, 2015 (Session 4), Thursday 29 January 2015

Inquiry into lobbying (in private): The Committee agreed a draft report.

ANNEXE B: ORAL EVIDENCE AND ASSOCIATED WRITTEN EVIDENCE

1st Meeting, 2014 (Session 4), Thursday 16 January 2014

Neil Findlay

[Tamasi Cave, Campaigner, Alliance for Lobbying Transparency \(48KB pdf\)](#)

[Dr William Dinan, Director, Spinwatch, Steering Committee, ALTER EU \(35KB pdf\)](#)

[Alexandra Runswick, Director, Unlock Democracy \(55KB pdf\)](#)

[Alastair Ross, Secretary, Association for Scottish Public Affairs \(23KB pdf\)](#)

[William Costain McCade, Chair, Association of Professional Political Consultants Scotland \(44KB pdf\)](#)

[Andrew Watson, Chair of the Public Affairs Group, Chartered Institute of Public Relations \(37KB pdf\)](#)

Supplementary evidence

[Alliance for Lobbying Transparency \(856KB pdf\)](#)

[Association of Professional Political Consultants Scotland \(280KB pdf\)](#)

[Joint supplementary evidence from Chartered Institute of Public Relations,](#)

[Association of Professional Political Consultants Scotland and Association for Scottish Public Affairs \(183KB pdf\)](#)

2nd Meeting, 2014 (Session 4), Thursday 30 January 2014

[Sara Collier, Policy Officer, Children in Scotland \(28KB pdf\)](#)

[John Downie, Director of Public Affairs, Scottish Council for Voluntary Organisations \(49KB pdf\)](#)

Dave Moxham, Deputy General Secretary, STUC

[Jenny Kemp, Coordinator, Zero Tolerance \(30KB pdf\)](#)

[Richard Maughan, Head of Campaigns, CBI \(40KB pdf\)](#)

[Colin Borland, Head of External Affairs in Scotland, Federation of Small Businesses \(37KB pdf\)](#)

Fraser Kelly, Social Enterprise Scotland

Supplementary evidence

[Scottish Council for Voluntary Organisations \(73KB pdf\)](#)

3rd Meeting, 2014 (Session 4), Thursday 27 February 2014

[Juliet Swann, Campaigns and Research Officer, Electoral Reform Society \(48KB pdf\);](#)

[Michael Clancy, Director of Law Reform, and Brian Simpson, Law Reform Officer, Law Society of Scotland \(157KB pdf\);](#)

[David Robb, Chief Executive, Office of the Scottish Charity Regulator \(98KB pdf\);](#)

Robin McAlpine, Director, Jimmy Reid Foundation;

Professor Raj Chari, Department of Political Science, Trinity College Dublin; and

ANNEXE C: OTHER WRITTEN EVIDENCE

On 17 May 2013 Neil Findlay MSP lodged a final proposal for a member's bill to require certain individuals and organisations who lobby MSPs, Scottish Ministers or relevant public officials, either on their own account or on behalf of third parties, to record relevant information about their lobbying activity in a published register.

[Consultation Paper – Purposed Transparency \(Scotland\) Bill – Neil Findlay MSP](#)

The Minister for Parliamentary Business, Joe FitzPatrick MSP, wrote to Neil Findlay MSP on 13 June 2013, indicating, under Rule 9.14.13 of the Parliament's Standing Orders, that the Scottish Government would initiate legislation, within this parliamentary session (ie by 2016), to give effect to Neil Findlay's proposal. This had the effect of preventing a member's bill on the proposal from being introduced

[Letter from Minister for Parliamentary Business to Neil Findlay MSP 13 June 2013 \(758KD pdf\)](#)

Following its call for evidence the following written submissions were received by the Standards, Procedures and Public Appointments Committee—

- [Alcohol Focus Scotland \(93KB pdf\)](#)
- [Jennifer Allan \(21KB pdf\)](#)
- [ASH Scotland \(54KB pdf\)](#)
- [Brian Balmain \(8KB pdf\)](#)
- [British Heart Foundation \(39KB pdf\)](#)
- [British Medical Association Scotland \(30KB pdf\)](#)
- [Cancer Research UK \(50KB pdf\)](#)
- [Chartered Society of Physiotherapy Scotland \(29KB pdf\)](#)
- [Epilepsy Consortium Scotland \(41KB pdf\)](#)
- [Friends of Craighouse \(254KB pdf\)](#)
- [David Greenlees \(7KB pdf\)](#)
- [House of Commons \(87KB pdf\)](#)
- [Invicta Public Affairs \(76KB pdf\)](#)
- [Professor William V Luneburg \(140KB pdf\)](#)
- [Allan Mackenzie \(22KB pdf\)](#)
- [MHP Communications \(31KB pdf\)](#)
- [National Assembly for Wales \(215KB pdf\)](#)
- [Northern Ireland Assembly \(158KB pdf\)](#)
- [Open University in Scotland \(30KB pdf\)](#)
- [Oxfan Scotland \(47KB pdf\)](#)
- [Pagoda PR \(61KB pdf\)](#)
- [Public Relations Consultants Association \(40KB pdf\)](#)
- [RCN Scotland \(18KB pdf\)](#)
- [RoSPA \(13KB pdf\)](#)
- [Salvation Army \(9KB pdf\)](#)
- [Scottish Council for Jewish Communities \(37KB pdf\)](#)
- [Scottish Environment LINK \(31KB pdf\)](#)
- [Scottish Grocers Federation \(27KB pdf\)](#)

*Standards, Procedures and Public Appointments Committee, 1st Report, 2015
(Session 4) — Annexe C*

[Scottish Information Commissioner \(269KB pdf\)](#)

[Scottish Land and Estates \(37KB pdf\)](#)

[Scottish Property Federation \(26KB pdf\)](#)

[Scottish Retail Consortium \(39KB pdf\)](#)

[Dr David Stansfield \(21KB pdf\)](#)

[Stop Climate Chaos Scotland \(26KB pdf\)](#)

[Bob Thomson \(22KB pdf\)](#)

[Mark Whittet \(298KB pdf\)](#)

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