

Standards, Procedures and Public Appointments Committee

11th Meeting 2015 (Session 4), Thursday 18 June 2015

Lobbying inquiry: responses from the Scottish Government and the SPCB

Introduction

1. The Committee's [report](#) on its inquiry into lobbying included a model for a lobbying register for the Scottish Government's consideration. The Committee's report also included a number of recommendations for consideration by the SPCB.
2. The [Scottish Government's bill consultation](#), which details the Government's position in relation to the Committee's recommendations, was published on 29 May (paper 2). This forms the basis of the Government's formal response when read in conjunction with the letter from the Minister for Parliamentary Business (annexe A).
3. The SPCB's response to the Committee's recommendations is attached at annexe B. The SPCB has also given early consideration to the potential resource implications for the Parliament of the proposals set out in the Government consultation. The letter to the Government resulting from this discussion is attached at annexe C.
4. A summary of all the recommendations made by the Committee is at annexe D.

Scottish Government response

5. The Government's proposed model for a register of lobbying largely draws on the Committee's model for a register. Specifically, it proposes:
 - a register controlled by the Parliament, with the power to amend how some elements of the register operate resting with the Parliament;
 - an online register that would require to be updated by lobbyists periodically (potentially every 6 months);
 - upkeep of the register in-house at the Parliament in the form of a registrar function sitting with the standards clerks;
 - an emphasis on recording what lobbying activity takes place as opposed to just reflecting who the individuals involved in lobbying are; and
 - the ability of Parliament to use 'soft sanctions' that could impact on an organisation's reputation where necessary.
6. There are a few areas where the proposed Government policy is distinct to the model envisaged by the Committee. Specifically:
 - the register would require individuals to register as opposed to organisations;
 - there is no threshold for registering that would ensure only what the Committee described as 'significant lobbying activity' is captured (meaning all those falling within the definition of 'lobbyist' would be required to register);
 - it requires people to register in advance of meeting an MSP; and

- it may have more associated criminal offences for failure to comply than the Committee had envisaged.

7. The SPCB has raised the distinctions in policy proposals with the Government as it is of the view that the Government's proposals would have a higher impact on the Parliament's and the Commissioner's resources than the Committee's proposals. The letter, in annexe C, states:

"While it is for the Committee and the Parliament as a whole to scrutinise the resulting legislation from a policy perspective, the SPCB takes a close interest in the potential resource implications of the Government policy...

...the SPCB assumes that the Government intends to undertake some form of assessment of the level of demand to use the register. This is the starting point for further detailed modelling of how the system would operate in practice, and then estimating the associated costs.

From the SPCB's perspective, the potential for the proposed model from the Government to have a greater impact on parliamentary resources than the Committee's model makes the need for a detailed assessment of the level of demand for the register more pronounced."

8. In relation to further scrutiny from a policy perspective, it is highly likely that this Committee would be appointed lead committee on a bill resulting from the consultation. Should the Committee wish to feed in initial thoughts to the Government on its proposals in advance of a bill's introduction, it has a number of options available to it including: writing to the Minister for Parliamentary Business to feed in the Committee's perspective to the consultation; and/or to arrange for the Convener to meet with the Minister to convey the Committee's perspective.

SPCB response

9. The SPCB effectively accepts all of the recommendations by the Committee and, for each of the recommendations, either already has undertaken work or will undertake work to implement the Committee's proposals.

Recommendation

10. The Committee is invited to consider the responses from the Scottish Government and the SPCB and decide whether it wishes to undertake any further work in this area in advance of the introduction of a Government bill on lobbying. Options include writing to the Government to highlight the Committee's position on the consultation proposals and/or seeking a meeting between the Minister and the Convener.

ANNEXE A: RESPONSE FROM THE SCOTTISH GOVERNMENT

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Standards, Procedures and Public Appointments Committee
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June 2015

**STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
REPORT - PROPOSAL FOR A REGISTER OF LOBBYING ACTIVITY (1st
REPORT, 2015)**

I wrote to you on 1 April to confirm that the Government would shortly be bringing forward a public consultation which would contain proposals for establishing a register of lobbyists. As set out in that letter, the intention was for the consultation to serve as a response to Committee's conclusions, and set out the Government's thinking on the issues raised, in line with the protocol between the Scottish Parliament and the Scottish Government in relation to the handling of Committee business.

To that end, and as far as possible, the consultation document lays out our response to each of Committee's recommendations that were directed towards the Government, identifying where appropriate relevant passages from the report. As you will appreciate, however, a key aim of the consultation process is to gauge public reaction to the proposals. As such, we have taken the opportunity to seek wider views on some points. Once the responses to the consultation have been considered, I will return with a full response to Committee detailing the Government's final position ahead of the introduction of the forthcoming legislation.

I attach a copy of the consultation document, as published on 29 May. I hope that you will find it useful as an indication of the Government's position on Committee's findings.

JOE FITZPATRICK

[NB The consultation document referred to in the letter is reproduced as paper SPPA/S4/15/11/2]

ANNEXE B: RESPONSE FROM THE SPCB

Stewart Stevenson MSP
 Convener, Standards, Procedures and
 Public Appointments Committee
 TG.01

9 June 2015

Thank you for your letter highlighting the relevant recommendations from the SPPA Committee's lobbying inquiry to the SPCB. The SPCB considered these, along with the Government's consultation on its proposal to establish a lobbying register, at its meeting on 3 June.

I intend to focus on the recommendations directed at the SPCB in this letter but, for reference, I attach a letter to the Minister for Parliamentary Business on the potential resource implications of the Government's proposals and the need to closely assess the level of resources required to implement this policy before any bill is introduced to Parliament. I should be grateful if you would share this with the rest of the Committee.

Turning to the recommendations on the accessibility and usability of information produced by the Parliament, the SPCB is encouraged to read that the Committee's review of information held by the Parliament found that there is no information held by the Parliament that is not published that could usefully be put in the public domain. As you know, we are committed to transparency and accountability. Ensuring relevant information is available to the citizen is a crucial part of this. We are also always happy to review our processes with a critical eye to see what can be changed to ensure we continue to fulfil our core values such as openness and accessibility. The Committee's work is a valuable part of that.

Specific responses to each of the Committee's recommendations are set out below—

Events*Committee recommendation*

"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 published¹."

¹ 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.

SPCB response

The SPCB appreciates the references included in the report to the restrictions imposed by the SPCB on events held in the Parliament complex. In particular that events cannot be held on matters currently being scrutinised in Parliament and that organisations can only be associated with two events a year to ensure there is no suggestion of undue access to members. The information requested for publication in the Committee's recommendation is already published on the Parliament's website, albeit for a limited period of time during the week in which the event takes place. The SPCB is happy to endorse the publication of this information in the terms the Committee requests and will commence this immediately after the Summer Recess.

Accessible information*Committee recommendation*

"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."

SPCB response

The Parliament has undertaken sustained work this session to ensure technological advances are incorporated into the Parliament's processes, including to ensure we make information easier to locate and consume.

In relation to the searchability of the website, information on lobbying activity contained in a register would be of interest to the citizen and on that basis the SPCB will ensure it is one of the focuses of any future work on its online information channels. As any lobbying register will most likely not be in place until well into next session, this provides sufficient time for such work to be undertaken.

In relation to open data, as you are aware, the Digital Parliament Programme includes an open data project and, as part of this, the [open data site](#) was launched on 4 June. This site already includes, and will be increasingly populated with, information in open data format to ensure the citizen can use the Parliament's information for whatever purpose they wish. On the basis of the Committee's report, the project has prioritised, amongst other things, the publication of information that could be deemed to be lobbying activity such as information on cross party groups.

The pilot for this site received very positive feedback, including highlighting ways in which open data can be used to enhance valuable lobbying activity. For example the provision of committee agendas, Chamber business motions and cross party group meeting dates in open data format would allow interest groups to produce apps that highlight to interested organisations and individuals when the Parliament or CPGs will consider issues of relevance to them. This increased convenience increases the opportunity for interested parties to highlight their views to members in advance of proceedings. This is just one example. Given the Parliament's wholesale approach, to publish as much information in open data format as possible, this project has real potential and the SPCB welcomes the Committee's recognition of its importance.

I trust this response is helpful.

Yours sincerely

TRICIA MARWICK

ANNEXE C: LETTER FROM THE SPCB TO THE MINISTER FOR PARLIAMENTARY BUSINESS

Joe FitzPatrick MSP
Minister for Parliamentary Business
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9 June 2015

Thank you for your recent correspondence highlighting the imminent publication of the Government's consultation on a proposal to establish a lobbying register. Given the likely notable impacts on the resources of the Scottish Parliament and the Commissioner for Ethical Standards in Public Life in Scotland, the SPCB gave the consultation early consideration at its meeting on 3 June.

As you are aware, the SPCB has already considered the resource implications of the SPPA Committee's model for a lobbying register and I wrote to you to highlight the importance of keeping the SPCB closely involved in any assessment of the likely resource requirements should the Government adopt the Committee's recommended model. I am grateful for the responsive approach your officials have taken in informing and involving Parliament officials thus far. Needless to say it would be extremely valuable from the Parliament's perspective, as the Government's legislative proposal gains more shape and detail, for this involvement to continue and intensify.

The SPCB also welcomes the extent to which its views, expressed in my correspondence dated March 2015, on the appropriate roles and responsibilities of the Parliament's Standards team and of the Commissioner have been taken into account.

The SPCB would wish to highlight two broad issues to you at this early stage in the consultation. Firstly, the SPCB has analysed where the Government's policy goes further than the model outlined by the Committee. The SPPA Committee considered that its suggested approach would improve transparency around significant lobbying activity, and promote information-sharing and co-operation from organisations. The Committee considered that such a proportionate approach would ensure that upkeep of a register would have a "very limited impact on the public purse".

A number of the policy proposals set out by the Government, that are distinct from the proposals set out by the Committee, appear to notably increase the work involved in creating, maintaining, publicising and enforcing a lobbying register, meaning on-going costs for the Register would certainly be higher. Specifically:

- the register would require individuals to register as opposed to organisations, meaning multiple entries where lots of individuals work for the same organisation;
- there is no threshold for registering that would ensure only 'significant lobbying activity' is captured, meaning all those falling within the definition of 'lobbyist' would be required to register;
- it will potentially involve more criminal offences for failure to comply than the Committee had envisaged.

While it is for the Committee and the Parliament as a whole to scrutinise the resulting legislation from a policy perspective, the SPCB takes a close interest in the potential resource implications of the Government policy including the impact of the bullet points above. These elements of the Government's policy would most likely create greater resource implications on the SPS and the Commissioner than the lower burden model proposed by the Committee. Specifically:

- a larger number of register entries, and associated register updates would be received which would mean—
 - more staff time would be required to maintain the register;
 - the online register would need to be designed with a greater capacity; and
 - the launch and associated on-going awareness raising would need to have a wider reach to seek to capture all relevant individuals not just organisations; and
- the Commissioner would consider more complaints as, given the likely higher number of associated criminal offences, more behaviours could constitute non-compliance that may lead to referral to the Procurator Fiscal.

In the absence of a threshold for registration, if a broad definition is adopted as to what constitutes a "lobbyist" the SPCB could envisage a large number of people erring on the side of caution and registering in case the definition could be perceived to apply to them. The SPCB is mindful of other complexities that lead to a high demand to register, such as individuals who only ever intend to attend one meeting with a member, being required to register (and then presumably seeking early removal from the register).

As highlighted in my last letter, the extent of the work involved in keeping a register is of course largely dependent on the number of registrations required. To that end, the SPCB assumes that the Government intends to undertake some form of assessment of the level of demand to use the register. This is the starting point for further detailed modelling of how the system would operate in practice, and then estimating the associated costs.

From the SPCB's perspective, the potential for the proposed model from the Government to have a greater impact on parliamentary resources than the Committee's model makes the need for a detailed assessment of the level of demand for the register more pronounced.

In addition, with the new powers for Scotland, and the associated increase in lobbying of the Parliament and Government, the demand to register is certain to increase in the future. It is imperative that an assessment of the current level of demand for the register is made as this will form a valuable baseline financial estimate from which the cost of future demands on the register can be extrapolated.

The SPCB is seeking assurances from you that the Government intends to undertake a specific piece of work to assess the level of demand for the register to be followed by a modelling exercise to ensure the financial and other resource implications for the Parliament and Commissioner are as evidence based as possible.

The SPCB also considers that it is essential for this assessment to be complete in advance of the bill's introduction to enable effective scrutiny of the Financial Memorandum by the Finance Committee and the lead committee at Stage 1. I would therefore be grateful if, in your response, you could provide a timescale for the completion of this work. Officials from the Parliament are available to assist at any stage of this process wherever helpful.

Yours sincerely

TRICIA MARWICK

ANNEXE D: COMMITTEE REPORT RECOMMENDATIONS



The Scottish Parliament
Pàrlamaid na h-Alba

Standards, Procedures and Public Appointments Committee

1st Report, 2015 (Session 4)

Proposal for a register of lobbying activity

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—

- 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—

- 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.