Response from ICAS to the Scottish Government consultation

‘A Consultation on Proposals for a Lobbying Transparency Bill’

24 July 2015
A Consultation on Proposals for a Lobbying Transparency Bill

About ICAS

1. The Institute of Chartered Accountants of Scotland (ICAS) is the oldest professional body of accountants. We represent over 20,000 members who advise and lead businesses. Around half our members are based in Scotland, the other half work in the rest of the UK and in almost 100 countries around the world. Nearly two thirds of our members work in business, whilst a third work in accountancy practices. ICAS members play leading roles in around 80% of FTSE 100 companies.

2. ICAS has a public interest remit, a duty to act not solely for its members but for the wider good. Evidence provided by ICAS representatives aims to inform in a positive and constructive manner. ICAS is apolitical and will not take a stand for or against a particular political position. From a public interest perspective, our role is to share insights from ICAS members in the many complex issues and decisions involved in system design, and to point out operational practicalities. Our representatives also contribute based on the collective experience of decades of work which ICAS members and staff have undertaken with both the UK and Scottish Parliaments on the shared agenda of a better-balanced outcome for all stakeholders.

General comments

3. ICAS welcomes the opportunity to comment on ‘A Consultation on Proposals for a Lobbying Transparency Bill’ issued by the Scottish Government on 28 May 2015.

4. We should also like to note that we appreciate the existing levels of access which Ministers and MSPs offer to ICAS and its members, and the opportunities offered to provide the views of our members and the wider public interest in written evidence and in oral evidence before the Scottish Parliament’s committees.

5. We have some reservations about the proposals in the consultation. Whilst we can see perceived benefits of increased transparency in having a register it has to be borne in mind, as the introduction to the consultation paper notes that there is no question at issue about the conduct of either lobbyists or politicians in Scotland. Furthermore, other than having a register, it is not clear how this will provide benefits to the Scottish public or indeed where the responsibility for enforcement will lie.

6. The information to be recorded in the lobbying register will revolve around the definitions of ‘lobbying’, ‘lobbying activity’ and ‘lobbyist’. It is not clear from the consultation paper how these terms will be defined or indeed what they are. Clarity is a pre-requisite for such a scheme and it is therefore essential that definitions are included. Registration will place a burden on business and it is therefore vital that any scope for misinterpretation should be minimised.

7. For example, ICAS has members of staff who may well be caught by a definition of “a lobbyist” and it will use the services of external lobbyists, but it will also have various other members of staff such as technical and regulatory staff who may attend a meeting with a minister to add their technical expertise. Would the latter category of person be deemed to be lobbying? Would consideration of that situation be impacted depending on whether it was the ICAS member of staff who requested the meeting? ICAS will also have to consider the deemed status of chartered accountants, who are not members of staff, but who voluntarily represent ICAS on various matters, does that make that individual a lobbyist? ICAS also hosts occasional events at Holyrood, would ICAS staff, and indeed CAs attending, be considered lobbyists in this context? We are concerned that there could be unintended consequences arising from this proposed legislation which may impact on the ability of Scottish parliamentarians to gain access to the level of expertise that they require. Whilst conceptually a register of lobbyists would appear a good idea, it is the practical implications that require appropriate consideration.
The proposals suggest that voluntary lobbying will be excluded. Without a clear definition of scope, however, it is not possible to form a view as to whether this is a principle that can be supported. We support a proportionate approach, but any exemptions from registration need to be justifiable and in line with the scope of the regime.

8. If a register is introduced, as seems likely, then this needs to be a straightforward register whereby organisations such as ICAS would be recorded as an organisation that is engaged in the lobbying process. The focus needs to be on making the information simple to register. We would also propose that MSPs have a role in increasing the current level of transparency by making public their diaries. This approach would also link more closely to the current MSPs code of conduct.

9. It is vital that any changes must not be allowed to impact upon the principle of openness and accessibility, on which Holyrood has built a very positive track record. We do not think that individuals or organisations responding to public consultations or calls for evidence should be considered to be a lobbying activity. It will be essential in order to avoid uncertainty that any law should be drafted in a way that excludes these activities.

10. A lobbying register should include organisations only; however, if it is felt more detail is essential then registration should be for specific posts, rather than named members of staff. Caution will be required in setting the parameters, for example, in a member organisation such as ICAS it would be impractical, and unhelpful to the public, to include a list of all staff posts on a register who may undertake activities which could be deemed as lobbying (obviously subject to the scope of any definition). If this was extended to volunteer members who represent ICAS and who bring further expertise this would lead to extensive work to maintain the register and reporting requirements. It is also the case that both staff and volunteers sometimes wear different hats on different occasions so it is questionable how that would play out on a register.

Specific Questions

Question 1 – Do you agree that the Government’s three core principles are appropriate to inform the delivery of an effective and proportionate lobbying registration regime in Scotland?

We find it surprising that reference is not made to the five principles which form the cornerstone of better regulation i.e. that any regulation should be transparent; accountable; proportionate; consistent; and targeted where needed.

However, if the Government decides to go ahead on the basis of its three proposed principles then we would advocate expressing the first principle in a slightly different way:

*The Parliament’s principles of openness, ease-of access, and accountability must be maintained; any reforms should assist and support how stakeholders and members of the public engage in public policy.*

Question 2 – Do you agree that a publicly available register of lobbyists should be introduced in Scotland?

We have some reservations about the proposals in the consultation. Whilst we can see perceived benefits of increased transparency in having a register it has to be borne in mind, as the introduction to the consultation paper notes, there is no question at issue about the conduct of either lobbyists or politicians in Scotland. Furthermore, other than having a register, it is not clear how this will provide benefits to the Scottish public or indeed where the responsibility for enforcement will lie.

It is essential that the benefits of such a registration scheme outweigh the related costs. Therefore, there is a clear need for any uncertainty to be minimised. This will require a
carefully and clearly defined scope i.e. there is a need to include a definition of what is meant by “lobbying” in this context.

**Question 3 – Do you agree that no fee should be payable by lobbyists for registering or updating the register?**

Yes, if there is to be a register, we agree with the proposal that no fee should be payable by lobbyists for registering or updating the register.

We would however advise that the costs of operating the proposed system are reviewed at regular intervals to ensure that the running costs are indeed relatively minor in nature, and are capable of being met from existing parliamentary budgets. A full regulatory impact assessment needs to be undertaken to ensure that all of the related costs are given due and proper consideration.

**Question 4 – What are your views on whether the onus to register should lie with individuals who lobby as part of their work, or organisations who lobby?**

We consider that it should be the organisation that should be required to register, not individuals i.e. the view of the Scottish Parliamentary Committee. However, we appreciate the reasoning for wanting individuals to register and therefore consider that a compromise position might be to register organisations and the staff positions within the organisation who would conduct any lobbying. So, for example, the position of ‘Director of Policy’ might be included on the register, rather than a named individual.

In our view the important factor is the body on whose behalf the lobbying is being undertaken as opposed to the identity of the individual concerned. There may on occasion also be valid reasons for a lobbyist’s name to remain confidential e.g. on grounds of personal safety.

**Question 5 – Should both consultant lobbyists and in-house lobbyists be required to register?**

Lessons have undoubtedly been learned from the somewhat flawed narrow scope of the Lobbying Act at Westminster in which only consultant lobbyists have to register, and only when they lobby a Secretary of State or a Permanent Secretary. Defining the scope of the proposals is therefore absolutely key. If the register is to be a register of lobbying, it is certainly questionable whether someone who is contracted externally to deliver engagement with an MSP, or is paid as part of their job in-house, do exactly the same task. The substance of the role would appear to be the defining factor and therefore the public interest would appear to be better served by a level playing field.

We would, however, reiterate our view that registration should rest with the organisation, and we do not see the need for individuals to register.

**Question 6 – Should any types of in-house lobbyist be exempt from registration?**

In line with our previous responses we believe that the focus of registration should be on the entity as opposed to the individual.

For the avoidance of doubt, however, ICAS does not consider that as a representational body the majority of its staff undertake lobbying; they are simply representing what they perceive to be in the public interest. Furthermore, responding to public consultations or calls for evidence should not be considered to be a lobbying activity and in order to avoid uncertainty any law should be drafted in a way that excludes these activities.

**Question 7 – Do you agree that the register should cover the lobbying of MSPs and Ministers?**

Yes, we believe that this increases transparency.
Question 8 – What types of communication do you think should be covered by a statutory register?

This should be principles-based, and therefore simply refer to communications. Common sense would indicate that any organisation on a lobbying register would be communicating in a number of different ways and so there is no need to attempt to specify all means of doing so. Also, any list lends itself to some individuals looking for items that are not on the list.

Question 9 – Do you agree with the Government’s view that paid lobbyists should be required to register?

This is a very tricky area that requires detailed consideration. Is the defining factor “whether someone is paid” or is it the mere act of “lobbying”? Members of ICAS may lobby on behalf of ICAS in a voluntary capacity: would they not be considered in scope or would “others” exclude an organisation with which they share a close affiliation? To avoid such complexities is why registration might be better targeted at the entity, as opposed to the individual level.

Question 10 – Do you agree that the register should also allow for voluntary registration by lobbyists not required to register?

Yes, on the grounds of increased transparency.

Question 11 – What are your views on what kind of information each lobbyist should be required to provide on registration?

Given that we recommend that registration should be required by the organisation, the information required would be the name of the organisation (trading name or name used to undertake its activities, if different), registered/main office, directors or equivalent senior management and staff authorised to lobby, plus the areas of expertise in which the organisation specialises.

Question 12 – How often should lobbyists be required to provide a return detailing their lobbying activity?

Annually or six monthly would appear reasonable.

Question 13 – Do you agree that the Parliament should introduce a Code of Practice for lobbyists setting out guidance on the registration regime and expected standards of behaviour?

Yes.

Question 14 – Do you agree that a register should include the facility for lobbyists to indicate if they already subscribe to any industry Codes of Conduct?

It can do, however, they should also be required to comply with the Parliamentary Code of Practice.

Question 15 – Do you have any views on the Committee’s proposals for who should be responsible for upkeep and oversight of the Register?

The proposal for the Scottish Parliament’s Standards, Procedures and Public Appointments Committee Clerk to be responsible for the upkeep and oversight of the Register appears to be a sensible one, which we would support.

It is not clear, however, who will be responsible for enforcement, and any attempts to discipline lobbyists or to remove lobbyists from the register will need a full disciplinary procedure that is human rights compliant given that people’s livelihoods may be at stake. And of course, a register cannot retain its integrity if there is not a means of disciplining or removing those who are unfit or transgress.
Question 16 – Do you have any views on what enforcement mechanisms and sanctions should be available in connection with the registration regime?

The key sanction for a consultant lobbyist who fails to operate with the registration scheme is to prevent that organisation from undertaking any further lobbying for a specified period. As discussed under question 15 though, there is the question of who would exercise such sanctions.

If individuals are to be registered, would sanctions be against the individual or their organisation, or both? In our view if they are acting in their capacity as a business, it should be the business that is subject to any sanctions.

Question 17 – Do you have any views on whether Parliament, by resolution, should be able to adjust the scope and operation of the registration regime once established?

ICAS does not support the use of secondary legislation to change primary legislation, particularly when this relates to the exercise of powers in relation to a sensitive activity, and to the ability of citizens to earn their living as lobbyists. The granting of powers, duties and functions are an important exercise of Parliament’s duties and therefore should only be exercised through primary legislation so that there is full consideration before doing so. Secondary legislation should be used for administrative purposes only, such as how the powers in primary legislation are to be exercised and accounted for.

Question 18 – Do you have any views on whether there could be impacts on equalities groups as a result of the proposals outlined?

We have no comments on this.

Question 19 – Do you have any views on whether there could be any additional costs or other implications for businesses as a result of the proposals outlined?

The additional costs and burdens will depend on the nature of the register and associated requirements. However, costs will increase in relation to the level of information required on the register, and the level of updating and compliance reports. Clarity of definition should also help to minimise the cost burden i.e. it will reduce the level of legal expertise that will be required to help ensure compliance, particularly at the outset of such a regime.

We would also emphasise that detailed Business and Regulatory Impact Assessments (BRIA) should be completed for this proposed legislation.

Question 20 – Do you have any other comments on the general operation of a register of lobbyists, or on any of the proposals put forward by the Committee or the Government?

Any registration scheme should aim to be minimalist, until there is a demonstrable case for requiring further detailed information either about those registering, or about compliance reports.

If such a regime is introduced then it should be the subject of a detailed review not later than five years after its implementation date to ensure that it remains fit for purpose.