CONSULTATION 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?

Yes.

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

No. The idea of creating such a register is flawed, and it will not achieve the intended objectives. Registration as a lobbyist does not answer the key questions that are necessary for openness and transparency:

- in what capacity a particular representation is being made
- whether the representation is made on behalf of a third party,
- whether that representation is a service for payment and if so who has made the payment.

A registration would only capture the general status of the person making the registration, not the content of particular submissions. In every representation there needs to be some record of who is commenting, the basis on which the comment is made, and the interest of the person submitting. That information is essential to decision-makers as well as to the integrity of the lobbyist.

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

Yes. There is a very basic problem in determining when and whether someone who engages with decision-makers is actually engaged in lobbying. Imposing a fee would act further to create barriers between the Parliament and those seeking to make representations.

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?

Please provide reasons in support of your response.

As a university professor, I take different roles at different times. I frequently make submissions on an individual basis. My university is paid for my services as a consultant by a major third-sector service provider. I serve voluntarily on a range of other third sector committees. In other cases I may be invited to submit comments; I am preparing such a submission currently. I have briefed Parliamentary Committees in private session. I have had extended discussions with MSPs of different parties. If either frequency of contact or the nature of my work is the test, I will need to register.

In every case where I make a contribution, I seek to specify what my role is, what the status of my comments is and whether there are other interests involved. That kind of statement is fundamental to openness, transparency and accountability, and it is important for the integrity of my contributions that these issues are openly

identified and recorded. Nothing that can be done by means of a register of lobbyists would consistently satisfy those requirements.

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

Please provide reasons in support of your response.

A duty on people who work directly for interested organisations would be no less difficult to interpret. Throughout Scotland, there are people who work in public service organisations, both in local government and the third sector. If they submit comments to public bodies, they are lobbying; this may be "part of their work". Many third sector organisations collate comments from a wide range of smaller organisations; they become "organisations who lobby' in the process. Some of my work as a consultant has been done to collate disparate concerns, comments and experiences from local groups and practitioners so that they can be presented in a clear and ordered way. You threaten to cut off essential channels of communication between the Parliament and the public.

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

Please provide reasons in support of your response.

Registration will only work if people know that they are 'in house lobbyists'. Often those making representations - for example, people who work for charities or local authority practitioners - would not identify themselves in these terms.

Creating an onus to register before contact also seems to imply that lobbying is initiated by the lobbyist. Often this is not the case. Often comments are solicited by MSPs or Parliamentary committees. Many potential witnesses to Parliamentary committees are asked in a preliminary discussion to outline their positions. There is no clear borderline that defines when people start to be thought of as 'lobbying' rather than expressing an informed view.

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

Please provide reasons in support of your response.

All representations made with a public purpose should be open to public scrutiny and accountability. A register will not achieve that.

Question 8 – What types of communication do you think should be covered by a statutory register?

A process of prior registration is not capable of governing contact transparently and accountably. There needs to be a different kind of system. The consultative document notes that "The Committee has also suggested that capturing all communication, although positive in terms of increasing transparency, would risk placing too great a burden on lobbyists." It is not asking too much to require people to act with integrity. All persons making representations on behalf of others should disclose their interests.

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

Please provide reasons in support of your response.

I think this misunderstands the nature of the lobby. Very few people making representations are lobbyists for hire. Most 'paid lobbyists' in Scotland will be people representing the organisation they work for.

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

Please provide reasons in support of your response.

If there is a register, and there is no scope for voluntary registration, many people will feel excluded and may be restrained in their access to the democratic process.

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

Please provide reasons in support of your response.

The key information that needs to be revealed is not a matter of prior registration but rather information of relevance to a current submission. It is not helpful to know in general terms that someone has previously registered as a professional advocate. .

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

Please provide reasons in support of your response.

Every representation, of whatever kind, should detail the capacity that a person is acting in and disclose any interests served by the representation. If a previous disclosure is not immediately available to the person or persons receiving the representation, it cannot inform their judgment, and so it is not adequate.

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?

Please provide reasons in support of your response.

There should be guidance on expected behaviour, in the terms laid out in questions 1 and 12.

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?

Please provide reasons in support of your response.

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

Question 16 – Do you have any views on what enforcement mechanisms and sanctions should be available in connection with the registration regime?

Please provide reasons in support of your response.

Sunlight is the best disinfectant. If lobbyists do not have to disclose interests at the time when they make a submission, the Register itself will be meaningless.

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?

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

Please draw on specific evidence and/or wider knowledge, experience and expertise.

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?

Please draw on specific evidence and/or wider knowledge, experience and expertise.

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?

The proposals reflect the priorities of a different kind of parliamentary system from the one we have in Scotland. Registration is appropriate in circumstances where lobbying is the province of a cadre of people with privileged access. In an open system, that does not apply. There is however a risk that the process of an open system can be distorted by professional advocates exerting undue influence, and that is the process that the government needs to safeguard. The emphasis needs to fall on integrity and openness, and all persons making representations in the public sphere should be required to disclose interests.