

A CONSULTATION ON PROPOSALS FOR A LOBBYING TRANSPARENCY BILL: ANALYSIS OF WRITTEN RESPONSES



PUBLIC SERVICES AND GOVERNMENT

**A CONSULTATION ON
PROPOSALS FOR A LOBBYING
TRANSPARENCY BILL**

**ANALYSIS OF WRITTEN
RESPONSES**

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EXECUTIVE SUMMARY

This report presents the findings of an analysis of written responses to the Scottish Government's consultation on proposals for a lobbying bill. The consultation ran from 29th May 2015 to 24th July 2015.

Background

The Scottish Government is currently proposing the introduction of a register of lobbyists who engage directly with Members of the Scottish Parliament (MSPs) and Scottish Ministers.

The Scottish Parliament's Standards, Procedures and Public Appointments Committee held an inquiry into lobbying, and reported in February 2015. This Scottish Government consultation was carried out to explore the key issues further, and to inform the provisions of a lobbying bill.

A total of 68 written submissions to the consultation were received, of which over a third (26) were from Third Sector organisations and around a fifth (14) from private sector Trade Associations / membership groups. Responses were also received from a number of lobbying industry organisations (9); Trade Unions / professional organisations (7); and campaigning organisations / groups (6). A small number of responses were received from public bodies (3) and other private sector companies (2). One individual submitted a response.

Most respondents offered comments on most questions. Comments commonly stated potential benefits of, and concerns with the issue raised by each question, as well as offering suggestions. The detail of these is contained in the full report, but the main findings are highlighted below.

The basis of a register

The majority of respondents expressed support for three core principles which the Scottish Government suggested should underpin the introduction of any register of lobbyists (Question 1). In summary, these related to the need for a register to: avoid the erosion of the Scottish Parliament's principles of openness, ease of access and accountability; complement existing frameworks; and be proportionate, simple and able to command broad support. Some issues and concerns were identified (e.g. about the overall nature of the principles and their links to the proposals, or wording issues). A number of suggestions were made about additional principles or issues for emphasis.

The majority of respondents expressed agreement with the Scottish Government's proposal that a publicly available register of lobbyists should be introduced in Scotland (Question 2). Most respondents identified benefits of a register. The most commonly identified benefits were that a register could uphold and promote transparency, accountability, public trust and understanding of lobbying. Most respondents also identified some issues and concerns, however, particularly around the lack of evidence of current problems with lobbying in Scotland. Other concerns included a lack of clarity in some aspects of the proposals, and their potential impact. Suggestions included having clear definitions and

guidance (relating, for example, to the definition of “lobbyist” and “lobbying activity”; the purpose of a register; obligations; and resource implications); and promoting transparency in other ways (with a role for MSPs and Ministers in this).

The majority of respondents expressed agreement with the Scottish Government’s proposal that no fee should be payable by lobbyists for registering or updating the register (Question 3). The most common reasons given for this related to the need to prevent barriers to engagement, and to ensure openness. Few concerns were identified, though a small number were raised about general cost issues for organisations (discussed at Question 19).

The majority of respondents expressed the view that the onus to register should lie with organisations (rather than individuals) who lobby (Question 4). The benefits of this, identified most commonly, related to reducing the level of demand on, and practical difficulties for, those involved. A small number of respondents identified some benefits of placing the onus to register on individuals (e.g. greater transparency; equity; and compliance), but most of the comments related to concerns with this.

Who should be covered by a register

The majority of respondents expressed agreement with the Scottish Government’s proposal that both consultant and in-house lobbyists should be required to register. (Question 5.) Transparency and fairness were mentioned frequently among the reasons for, or benefits of, this. Several respondents commented specifically on the need to include in-house lobbyists (e.g. because of the level and importance of their involvement in lobbying). There were some questions raised about what would constitute an “in-house” lobbyist, with a common suggestion that there should be a clearer definition both of a lobbyist and of lobbying activity.

In terms of the possible exemption of some in-house lobbyists, **the most commonly expressed view was that there should not be any types of in-house lobbyist exempt from registration (Question 6).** Among the reasons for, or benefits of, this were that it would help to ensure a “level playing field” and avoid a “two-tier” system, potential loopholes and confusion. There were some variations in views by type of respondent. Most of the respondents from lobbying industry organisations and campaigning organisations / groups expressed disagreement with exemption of any types of in-house lobbyist. There were more mixed views among Third Sector; Trade Association / membership group; and Trade Union / professional organisation respondents (with these respondents’ views, where expressed, fairly evenly split on this issue).

The majority of respondents expressed agreement with the Scottish Government’s view that paid lobbyists should be required to register (Question 9). There were more mixed views on whether only paid lobbyists should be required to register, or whether paid and other lobbyists should be required to register. The benefits identified for including only paid lobbyists focused on avoiding a “burden” on volunteers, and being able to exclude them from a need to register. The benefits identified for including paid and other lobbyists focused on issues such as fairness and transparency and the importance of recognising volunteers’ role in

lobbying. Concerns were raised about what would constitute “voluntary” lobbying, with a suggested need for clarity.

The majority of respondents expressed agreement with the Scottish Government’s proposal that the register should allow for voluntary registration by lobbyists not required to register (Question 10). The promotion of increased transparency and provision of a more complete picture of lobbying were the benefits identified most frequently. The most common issue raised was that there would be no need for voluntary registration if the register included all lobbyists.

What should be covered by a register

The majority of respondents expressed agreement with the Scottish Government’s view that the register should cover the lobbying of MSPs and Scottish Ministers (Question 7). The most commonly identified benefits were that this would enable transparency, clarity and openness. Some respondents, however, identified reasons for including only MSPs (e.g. that Ministers’ activity would be covered already). Some identified reasons for including only Ministers (e.g., that this would be the area of most public interest, and this would be consistent with the UK. It was also argued that there had been no problems with backbenchers’ activities in Scotland). Most of the additional suggestions focused on the need to include lobbying of others (most commonly Special Advisers and Civil Servants) in the register’s coverage.

A majority of respondents who addressed the question of what types of communication should be covered, and around half of all respondents, made comments that were supportive of a register covering direct face to face communication through pre-arranged meetings and events (Question 8). Among these respondents, several expressed the view that these should be the only types of communication included (e.g. to be proportionate, simple, workable, balanced and practical). Many of the concerns raised focused on “grey areas” about the types of meetings and events and face to face communication that might be included, and the need to define this. There were also many comments on the potential extension of coverage to include other types of activities and communication (e.g. to increase transparency and reflect the range of methods used to lobby).

Although the consultation did not ask a question about whether “minor, infrequent lobbying” should be included in the coverage of the register, comments were made both on the benefits of a “threshold” approach, and issues and concerns with this. Views, where expressed, were found to be relatively evenly split.

Information, reporting and conduct

Respondents’ views were sought on the kind of information each lobbyist should be required to provide on registration. **Types of information respondents commonly felt should be provided were: information on the lobbyist and / or their organisation or employer; who the lobbying was being undertaken for; the nature of lobbying activities; and financial information (such as the source of funds for, and spend on, lobbying) (Question 11).** Suggestions were made about the nature of the information in each case. Some concerns were also raised about

the inclusion of some information (relating, for example to: the scale of the task in providing this; or concerns about personal, organisational or client confidentiality).

Respondents' views were sought on the appropriate frequency of returns detailing lobbying activity to a register. There were mixed views and variations by respondent type. **A slightly higher proportion of respondents identified benefits of a six month period for returns than for other periods (Question 12).** More Third Sector; Trade Associations / membership groups; and Trade Unions / professional organisations favoured six monthly returns than other frequencies. Arguments included that this would be "proportionate" and "balanced". Positive views on three monthly returns were also common and most (but not all) lobbying industry and campaigning organisations / groups appeared to favour this frequency. Arguments included that it would be manageable, accord with other registers and provide up to date information.

The majority of respondents expressed agreement with the Scottish Government's view that Parliament should introduce a Code of Practice for lobbyists (Question 13). The benefits identified most commonly included that this would promote general improvements in lobbying activity and provide guidance and clarity for lobbyists. A small number of respondents identified issues and concerns (e.g. that this: would not be required; may be misused; or may lower standards).

The majority of respondents expressed agreement with the Scottish Government's view that a register should include the facility for lobbyists to indicate if they already subscribed to any industry Codes of Conduct (Question 14). Among the benefits were that this could: allow organisations to display their commitment; support transparency and information-sharing; and increase public confidence in, and awareness of, lobbying. Among a small number of concerns identified were that this was not required and may put pressure on lobbyists to subscribe.

Maintenance, enforcement and changes to the register

There were mixed views on who should have responsibility for upkeep and oversight of the register (Question 15). Opinion was split between those who believed that the Clerks to the Standards, Procedures and Public Appointments Committee should perform this function, and others who preferred an alternative approach. Benefits of the Clerks doing this were that they would be independent, and already had appropriate expertise, while there were also concerns this may not be the case. The most common alternative suggestions about who should be responsible for the upkeep and oversight were the Public Standards Commission and the Commissioner for Ethical Standards in Public Life in Scotland.

Respondents' views were sought on what enforcement mechanisms and sanctions should be available in connection with the registration regime. **A slightly larger proportion of respondents made comments on the overall need for, or benefits of, enforcement mechanisms and sanctions than identified concerns with these (Question 16).** Arguments about the need for enforcement mechanisms and sanctions included to enable the register to function effectively, ensure compliance and prevent abuse. Several respondents, however, raised specific concerns about criminal sanctions (e.g. as disproportionate; unnecessary; and deterring

engagement). Many respondents suggested specific types of sanction for inclusion (e.g. prevention of lobbying; civil sanctions).

Respondents' views were sought on whether the legislation should be flexible to allow the registration regime to be changed in the light of experience. **The most commonly expressed view was that Parliament should have, by resolution, the ability to adjust the scope and operation of the registration regime, once established (Question 17).** The most common reasons for this related to the potential for issues to emerge post-implementation. A common suggestion was that there should be a process of review following the introduction and operation of registration.

Equality and business impacts

Around a third of respondents (particularly Third Sector respondents) identified a potential impact of the proposals on equalities groups (Question 18).

The most common comments were about a potential negative impact on small community groups and those lacking financial resources (and on the groups they worked with). Concerns were also identified about a potential negative impact on: women; children and young people; community groups which did not have English as their first language; people unable to use some forms of communication; and homeless people. It was argued that these groups may be disadvantaged because they may: have fewer resources to deploy to lobbying; be unsure of their obligations and apprehensive about seeking advice; rely on particular forms of lobbying activity; and be deterred from engagement.

Most respondents made comments about additional costs or other implications for businesses as a result of the proposals (Question 19). A few provided evidence (e.g. reference to a report; or their own calculation of potential costs) to support their views. Where respondents identified a particular impact, the most common was financial (particularly staff time and administration costs).

Some identified a cost impact on specific types of businesses or organisations. These included views that: Third Sector organisations already faced financial constraints; small to medium enterprises may face a greater burden with a low number of staff; and public sector organisations may face an increased number of Freedom of Information requests. Cost implications were also identified for: organisations working across multiple jurisdictions; consultant lobbyists; and the body charged with administering and enforcing the regulations.

Several respondents, however, expressed the view that the proposals would not have additional costs or implications for businesses, or that these would be limited or manageable. A few identified a potential positive impact (e.g. better access to information; better knowledge of activities; and a more transparent political process).

1. INTRODUCTION AND BACKGROUND

- 1.1. This report presents the findings of an analysis of written responses to the Scottish Government's consultation on proposals for a lobbying bill.

Background

- 1.2. The Scottish Government is currently proposing the introduction of a register of lobbyists who engage directly with Members of the Scottish Parliament (MSPs) and Scottish Ministers.
- 1.3. In considering this issue, and developing proposals, the Scottish Government is not aware of any allegations of impropriety about the lobbying of MSPs since the Scottish Parliament conducted its last inquiry into the subject in 2002. It has also made it clear that both the Scottish Government and Scottish Parliament recognise lobbying as a legitimate democratic activity, and one which is likely to lead to improved government, as a result of a wider range of voices being channelled into legislative processes.
- 1.4. The Scottish Government believes, however, that the time is right to consider whether there is a need to increase the transparency of lobbying activity in Scotland. One of the reasons for this, identified in the consultation document¹, is that Scotland's constitutional position is changing. It is suggested in the document that increased responsibility and greater powers for the Scottish Parliament could lead to increased lobbying.
- 1.5. The Scottish Government considers that increased transparency of lobbying activity, by making available information not currently in the public domain, could lead to:
- Increased public understanding of the nature of lobbying in Scotland.
 - Increased public confidence in decision making.
 - Further strengthening of the integrity and reputation of the Scottish Parliament and Scottish Government.
- 1.6. The Scottish Parliament's Standards, Procedures and Public Appointments Committee² held an inquiry into lobbying, and reported in February 2015³. This consultation was carried out to explore these issues further. The Committee's recommendations were considered in the development of the Scottish Government's proposals and the consultation document.

¹ Scottish Government (2015). *A Consultation on Proposals for a Lobbying Transparency Bill* Edinburgh: Scottish Government. <http://www.gov.scot/Publications/2015/05/9306>

² Referred to in the remainder of this report as "the Committee".

³ The Scottish Parliament Standards, Procedures and Public Appointments Committee (2015) First Report 2015 (Session 4) Proposal for a Register of Lobbying Activity *SP Paper 664* Edinburgh: The Scottish Parliament. Http://www.scottish.parliament.uk/S4_StandardsProceduresandPublicAppointmentsCommittee/Reports/stpR-15-01w.pdf

1.7. It is anticipated that the consultation findings, summarised in this report, will help to inform the provisions of a future lobbying bill.

The Consultation

1.8. The consultation ran from 29th May 2015 until 24th July 2015. The consultation document was published online on the Scottish Government website. It asked 20 questions. Some of these questions asked respondents to express their agreement or disagreement with the Scottish Government's proposals, while others asked for their more general views on a particular issue. All of the questions were open, providing an opportunity for respondents to give further information.

1.9. The consultation explored views on:

- The basis of a register (Qs 1-4)
- Who and what should be covered by the register (Qs 5, 6, 7, 8, 9 and 10).
- Information, reporting and conduct (Qs 11, 12, 13 and 14).
- Maintenance, enforcement and changes relating to the register (Qs 15, 16 and 17).
- The impacts on equalities groups and businesses (Qs 18 and 19) and other relevant issues not covered by the specific questions (Q 20).

1.10. A full list of the questions is provided at Appendix 1.

1.11. A response form was provided on which respondents could record their answers, and they were also asked to complete a Respondent Information Form (RIF) giving their own details.

Submissions and respondents

1.12. A total of 68 written submissions⁴ were received to the consultation⁴. The types of respondent are set out in Table 1 (below).

Table 1. Respondents by category

Category	No.	% ⁵
Third sector	26	38
Private sector Trade Associations / membership groups ⁶	14	21
Lobbying industry	9	13
Trade Unions / professional organisations	7	10
Campaigning organisations / groups	6	9
Public bodies	3	4
Private sector companies ⁷	2	3
Individuals	1	1
Total	68	

⁴ All non-confidential (67) responses are publicly available on the Scottish Government website: <http://www.gov.scot/Publications/2015/08/2246/downloads>

⁵ Table does not sum to 100% due to rounding.

⁶ Excluding lobbying industry respondents.

⁷ Excluding lobbying industry respondents.

- 1.13. As is clear from the table, the largest number of responses was from Third Sector organisations, with more than a third (26) from this type of respondent. Responses from private sector Trade Associations / membership groups were also common, with around a fifth of responses (14) received from them. Responses were also received from a number of lobbying industry organisations (9); Trade Unions / professional organisations (7); and campaigning organisations / groups (6). A small number of responses were received from public bodies (3) and other private sector companies (2). One individual submitted a response.
- 1.14. The majority of respondents addressed the specific questions and followed the format of the response form, although not all of them addressed all of the questions. A total of 10 respondents did not follow the form, and provided their response either at Question 20 or in a separate document. One respondent requested that their response be treated as confidential. The material from the response has been included anonymously in the analysis. In line with Scottish Government policy, the name of the respondent has been included in the list at Appendix 2.
- 1.15. There was a high level of response to each of the questions, with over three quarters of respondents addressing almost all of them. Most of the questions were addressed by around four in five (or more) of the respondents. There was a particularly high level of response (around nine in ten) to:
- Question 1 (the core principles).
 - Question 2 (the introduction of a register).
 - Question 4 (the onus for registration).
 - Question 6 (possible exemptions).
 - Question 8 (the types of communication that should be covered by a register).
 - Question 9 (the registration of paid lobbyists).
- 1.16. The question addressed by the lowest number of respondents was Question 18 (the identification of any equalities impacts of the proposals).

Structure of the report

- 1.17. Chapter 2 provides a brief description of the approach taken to the analysis.
- 1.18. The remainder of the report then presents the findings of the analysis relating to each of the following areas:
- The basis of a register (Chapter 3).
 - Who and what should be covered by the register (Chapter 4).
 - Information, reporting and conduct (Chapter 5).
 - Maintenance, enforcement and changes (Chapter 6).
 - Equalities and business impacts and other issues (Chapter 7).

2. APPROACH TO ANALYSIS

2.1. This chapter describes the approach taken to the analysis and presentation of the data. The method involved the following elements:

- Design of an Access database and verbatim input of the material.
- Quantitative analysis and presentation of the data (where appropriate).
- Qualitative analysis and presentation of the data.
- Preparation of this report.

Database design and input of the material

- 2.2. An Access database was designed, containing a field for each question. There was also an additional field for any other observations made at any point in a response which, while relevant, did not relate directly to any of the questions posed in the consultation.
- 2.3. Each respondent was given a code and a number, which identified their category (within those agreed with the Scottish Government and used in Table 1 in Chapter 1). These codes allowed any patterns of responses, and areas of agreement or disagreement to be highlighted by type of respondent, as well as providing a clear audit trail for each point made.
- 2.4. The responses were transferred verbatim to the database at the appropriate question. Any responses which did not follow the questions asked, or were in “non-standard” format were read carefully to identify which of the questions were being addressed by the material. The material was put into a separate field, but the content was analysed along with the rest of the information for the relevant questions.

Quantitative analysis and presentation of the data

- 2.5. The consultation required a small amount of quantitative analysis, and some limited quantitative summary of qualitative data in terms of patterns of views (although most of the analysis was qualitative and is discussed later in this chapter).
- 2.6. The main quantitative information was extracted from the database in the first instance. A numerical count of respondents by category was carried out, as well as an initial count of those who responded directly to each question.
- 2.7. Given the qualitative nature of the data, however, some respondents made relevant comments at other points in their responses. Additionally, as noted in para 1.14, some did not follow the question format. In order to avoid overlaps and repetition in the report, the material in these responses was considered at the most relevant questions, alongside the comments from those who addressed each question directly.
- 2.8. The number of these respondents was added to the overall count for each question. This gave the total number of respondents who addressed a question

at some point in their response (giving a more meaningful indication of the level of response to each issue). It should be noted, however, that this was reliant on some subjective judgement, and cannot be taken to be an exact figure.

- 2.9. As noted in Chapter 1, a number of questions asked respondents whether they agreed with a particular suggestion, or invited them to choose between two options. These were “open” questions, however, insofar as they did not contain a “tick box” for the answer. This left respondents to indicate their preference in the text of their response. This meant that respondents did not always give a straightforward “yes” or “no” answer (or similar), although some did.
- 2.10. In order to determine the pattern of views at these questions, some subjective judgement was needed in order to identify whether each respondent had stated or implied a clear view, or whether this was impossible to ascertain from their comments. This was undertaken for each of the questions of this type. The numbers who appeared to be expressing a clear view were counted. Again, this should not be taken as an exact figure.
- 2.11. The quantitative data presented includes the number of respondents overall, and the number / proportions of different types of respondents overall (Chapter 1, Table 1). The broad proportion of respondents who answered each question is also given (although not as an exact figure, for the reasons given at para 2.8). The general balance of views expressed at the “do you agree” questions (and similar questions offering a “choice”) is also given, again in broad terms (for the reasons given at para 2.10).

Qualitative analysis and presentation of the data

- 2.12. The qualitative analysis involved working systematically through the detailed comments made at each question. To facilitate this, a two column Word table was generated for each of the qualitative questions, with one column containing the respondent identifier, and the other containing the verbatim material from each respondent (with a separate row for each).
- 2.13. This material was then analysed to identify the themes and sub-themes at each question. This allowed the detailed arguments to be identified, along with any suggestions made. It also allowed any contradictions or anomalies to be highlighted. The actual themes for each question were generated from the data received.
- 2.14. The detailed comments made at each question (in the fully “open” questions and where respondents were asked to give the reasons for their answer, or provide their more general views) generated a large amount of qualitative material.
- 2.15. It was inappropriate to attempt to quantify these detailed views for a number of reasons, including that:
 - Many points were made at different questions. To avoid repetition, some judgement was required to group and present these at the most relevant question.

- Some responses represented the views of a number of individuals or organisations.
- The focus was on the identification of the range and detail of views, rather than a “weighing” of responses.
- The respondents were self-selecting and it is not possible to generalise from these findings. The consultation is not a survey of the population.

2.16. The qualitative nature of the information is reflected in the terms used to present this in the report (e.g. “a small number”; “a few”; “several”; “many”; etc.), highlighting the overall themes and the range and depth of views. It should also be recognised that some detailed points were made by small numbers of respondents, but it was important that these views were reflected in the analysis.

2.17. The material was examined for any clear variations in overall patterns of views by respondent type. Where this was the case, these are highlighted in the report, although it would be inappropriate to list the types of respondents identifying each theme in each case, and would make the report difficult to read. It should also be noted that the numbers of respondents in some of the categories were very small, making it inappropriate to identify any patterns in these cases.

2.18. The wording used in the presentation of the qualitative material sometimes follows the wording of a response closely. This ensures that respondents’ intended messages are reflected (although not presented as a “quote”). Quotations have not been used, as this might imply that the view of one respondent carried more weight than another.

2.19. The term “respondent” refers to one response, even if this represents the views of more than one contributor.

The findings chapters

2.20. The remainder of the report presents the findings.

2.21. For each question, the report provides an outline of the key issue which the question set out to explore, as well as a brief summary of the material contained in the consultation document.

2.22. The level of response to the question is identified, along with a summary of respondents’ overall views, giving the balance of views (where relevant).

2.23. The detailed views expressed at the question are then summarised, and the themes and sub-themes highlighted.

The full responses

2.24. This report cannot provide a compendium of the consultation material, nor can it present every individual point made at each sub-theme, as there was a large volume of detailed information. It does, however, summarise the overall themes and issues raised, even where specific issues were raised by only a small

number of respondents. The full text of the non-confidential responses can be viewed on the Scottish Government website⁸.

⁸ <http://www.gov.scot/Publications/2015/08/2246/downloads>

3. THE BASIS OF A REGISTER

3.1. This is the first of five chapters presenting the findings of the consultation analysis. This chapter presents the findings relating to Questions 1-4 of the consultation, covering the basis of a register.

Question 1: Core principles

3.2. Question 1 explored respondents' views on three core principles set out in the consultation document (para 2) which the Scottish Government suggested should underpin the introduction of any register of lobbyists. The Scottish Government stated in the document that these principles had been used to assess the merits of a possible registration regime in Scotland (para 3).

3.3. The three principles identified were:

- That any erosion of the Parliament's principles of openness, ease of access and accountability must be avoided. Reforms should not restrict how stakeholders and members of the public engage in public policy issues.
- That the proposed measures must complement the existing frameworks without compromising their effective operation – for example, the Interest of Members of the Scottish Parliament Act 2006, the Code of Conduct For MSPs, the Ministerial Code and public registers of ministerial meetings. The proposed measures must be clear and transparent in their purpose and operation.
- That the proposed measures must be proportionate, simple in their operation, and able to command broad support within and outwith the Parliament.

3.4. Question 1 asked respondents to express overall agreement or disagreement with these principles, as follows:

“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?”

Overall views

3.5. Almost all of the respondents (around nine in ten) made comments on the proposed principles (either at Question 1 and / or elsewhere in their response⁹).

3.6. **The majority of respondents expressed support for these core principles.** Almost all of those who expressed a clear view and around two thirds of all respondents stated or implied agreement. Several other respondents expressed partial agreement, while several qualified their agreement (e.g. by suggesting that there should be additional principles; or identifying the need for

⁹ Where reference is made in the remaining questions to the proportion of respondents who made relevant comments, this includes both those who commented in response to the particular question and those who made relevant comments elsewhere in their submission.

the principles to reflect the nature and purpose of the current proposals). Only a small number expressed or implied disagreement (with no pattern by category among these). The remainder (around one in five) did not express specific agreement or disagreement, or did not address the question.

Benefits of the core principles

- 3.7. Many respondents (largely, but not only those supporting the proposed principles) made additional positive comments, either expressing general support for the principles overall, or commenting on specific individual principles.
- 3.8. Positive comments on the first principle were very common. Specific comments included:
- The value of the current accessibility of MSPs and Scottish Ministers.
 - The links between this principle and the Scottish Parliament's principles.
 - The need for accountability and integrity.
 - The overall benefits of lobbying to the working of Parliament and to decision making.
- 3.9. Several respondents commented specifically on the need to support, or to avoid eroding, access to engagement for: individuals and members of the public outside the lobbying industry; communities of interest; organisations representing specific groups; smaller organisations; and Third Sector organisations generally.
- 3.10. Positive comments on the need for “transparency” (referred to in the second principle) were also common. Many respondents stressed the overall importance of transparency, identifying the need for this in parliamentary engagement and public life. Comments were also made about the need for the measures themselves to be clear and transparent. Fewer comments were made on the need for the proposed measures to complement existing frameworks, although a small number of respondents made specific reference to the need for this, and for the need for the register to enhance existing rules and regulations.
- 3.11. There were many positive comments about the third principle. The main focus of these comments was on the importance of the measures being “proportionate” (e.g. to reflect the scale of lobbying; avoid inappropriate requirements and costs; avoid unnecessary “burden”; and avoid increasing workloads unreasonably). Some Third Sector respondents made specific reference to the need for this in relation to organisations in their sector.
- 3.12. Several respondents expressed specific support for a simple framework (i.e. one that was straightforward to access; clear; and simple to operate). A few expressed specific agreement that the system should be able to command broad support, and one stated that this should be borne in mind when developing consultation and legislative proposals.

Issues and concerns with the core principles

- 3.13. Some issues and concerns were also identified with the proposed core principles, including by some respondents who supported the principles overall. Some of these issues and concerns were about general issues, such as respondents' views on whether there was a need for legislation, or whether the proposals themselves were in line with these principles. Some were about a lack of "clarity" of some of the definitions used (a theme raised at other points). All of these issues are discussed at Question 2.
- 3.14. Other general issues, raised by a small number of respondents included views that: these were not principles, but general factors for consideration; and that they did not successfully define the purpose and impact of the register.
- 3.15. Few issues and concerns were raised about specific individual principles. A small number of respondents expressed concern about the statement in the first principle that reforms should not restrict how stakeholders and members of the public engage in public policy issues. It was argued, for example, that the principle implied that nothing needed to change (while there may actually be lobbying practices identified that needed to be modified). It was also suggested that the tone of this principle did not reflect the transparency obligations that should apply to professional lobbying (and the need to comply with effective rules and reporting obligations).
- 3.16. One respondent, in relation to the need for proportionality to reflect the scale of lobbying in Scotland, stated that the Scottish Government was potentially underplaying this. Another stated that proportionality was difficult to define. A further respondent stated that full transparency may prove difficult.

Suggestions relating to the core principles

- 3.17. A number of suggestions were made about the core principles, by a range of respondents with differing overall views on these. A few, for example, suggested using the five principles of better regulation which have been endorsed by the Scottish Government (i.e. that any regulation should be: transparent; accountable; proportionate; consistent; and targeted where needed). It was suggested that these should be used either instead of, or alongside the core principles. One respondent suggested using a different three core principles (transparency, ethics and fair access).
- 3.18. Several respondents suggested additional principles, or identified issues for emphasis in setting out the core principles. Suggestions included a commitment to:
- Provision of useful, sufficient and meaningful information.
 - Promotion of fairness and equality.
 - Promotion of transparency.
 - Increasing public confidence and promoting citizens' rights.
 - Free registration.
 - A register with broad scope.

3.19. Other suggestions included making further reference to:

- The purpose, aims and benefits of the register.
- The value and legitimacy of lobbying.
- The lobbying industry's commitment to transparency and the promotion of high standards.

3.20. A small number of other suggestions were made about the principles. These included, for example, a few suggested changes to the wording of the first principle. One respondent suggested considering the role of voluntary registration schemes and codes of conduct in the context of the second principle. Another suggested a commitment, in the third principle, to having a low burden of compliance.

3.21. One respondent suggested that a shared understanding of the term "proportionate" should be developed. Another suggested the need for promotion of consistency with UK Government requirements, and to build upon current structures.

Question 2: Introduction of a register

3.22. The key issue identified in the consultation document for exploration at Question 2 was whether a register of lobbyists should be created by a lobbying bill. The consultation document (para 5) noted that the Committee had concluded that there should be an online register of significant lobbying activity in Scotland. The Scottish Government proposed that a publicly available register of lobbyists should be established through legislation, and accessible online (para 6 of the consultation document).

3.23. Question 2 asked respondents to express overall agreement or disagreement with the introduction of a publicly available register, as follows:

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

Overall views

3.24. Almost all of the respondents (around nine in ten) made comments on the introduction of a publicly available register of lobbyists in Scotland.

3.25. **The majority of respondents expressed agreement that a publicly available register of lobbyists should be introduced in Scotland.** Most (over two thirds) of those who expressed a clear view stated or implied agreement, and over half of all respondents did so. Several qualified support for the register with comments about the nature of this (e.g. that it must be "proportionate"; equitable and fair; universal; balanced by other measures; compliant with the core principles; not burdensome; focused on organisations; and covering "lobbying" rather than just "lobbyists". (This distinction was a recurring issue.)

3.26. Approaching a third of those who expressed a clear view, and around a quarter of respondents overall, expressed disagreement, or suggested that this was not

their preferred option (although a small number stated that they would support a register, if introduced). Around a fifth of respondents did not express clear overall agreement or disagreement, or did not address the question.

3.27. There were some variations in overall views by type of respondent¹⁰. It was found that there was a high level of agreement among lobbying organisations and campaigning organisations / groups that a publicly available register of lobbyists should be introduced in Scotland. A majority of Third Sector respondents also expressed agreement. There were more mixed views among Trade Association / membership groups and Trade Union / professional organisation respondents (although no more than a third of respondents in either category expressed disagreement). The remaining categories were too small for inclusion in this analysis.

3.28. Many additional comments were made, focusing on: perceived benefits of a register; issues and concerns; and additional suggestions.

Benefits of the introduction of a register

3.29. Most of the respondents (particularly, but not only those supporting the introduction of a register) identified benefits of this. The most common were that it could uphold and promote:

- Transparency and accountability (linked to the integrity of the process and perceived requirements of democracy).
- Public trust, confidence, understanding of lobbying, and the right to know about lobbying activity and professionals.

3.30. One Third Sector respondent identified a specific benefit as being about meeting a specific need for transparency in the private sector. Additional benefits, or reasons in support of the need for a register included that it could:

- Address limitations to existing mechanisms for obtaining information (including a lack of updated information about Ministerial engagements).
- Improve standards of professional practice and the quality of lobbying practices.
- Prevent abuse (and the potential for better resourced organisations to have better access to decision makers).
- Address the risks of “revolving door” activities (i.e. where people move from politics to lobbying) and “astroturfing” (i.e. where the sponsors of a message or organisation are masked, to make it seem to come from, and be supported by, grassroots participants).

3.31. A few respondents identified the existence of lobbying registers in other countries and institutions, or the opportunity for Scotland’s approach to align with the position in the rest of the UK. A few mentioned the increase in the

¹⁰ Analysis of the overall pattern of responses by respondent type, where undertaken, excluded the smallest categories (public bodies, private sector companies and individuals) where there were very small numbers of respondents. It should be noted that, even among the respondent types which were included, some of the numbers were small.

Scottish Parliament's powers and responsibilities, and a perceived need for scrutiny.

Issues and concerns with the introduction of a register

- 3.32. Most respondents (including a range of respondents with different overall views) identified some issues and concerns with the introduction of a register.
- 3.33. The most common issue raised focused on the lack of evidence of current concerns or problems with lobbying in Scotland, or with the behaviour or conduct of professionals and / or organisations. Many respondents made reference to this (including some who supported the proposed register) and a few contrasted this with the position for the UK Government. Comments were also made about the open and transparent approach to engagement currently in Scotland, and to existing measures to promote this (e.g. the publication of Ministers' meetings; the Code of Conduct for MSPs; and voluntary registers).
- 3.34. A further common issue raised with the introduction of a register was a concern about a perceived lack of clarity in some aspects of the proposals. There were particular concerns about: a lack of clear definition of "lobbyist" and "lobbying activity" (a recurring theme); whether one or both would be the focus of the register; and the interrelationships between them. Detailed concerns about these definitions are discussed further in Chapter 4. Other issues identified as requiring clarity included: the purpose, impact and potential benefits of a register; the means of use of a register; the obligations it would bring; the resource implications; and the responsibility for its enforcement.
- 3.35. Several respondents expressed concerns about the potential impact of the proposals. Comments included, for example, that: the proposals did not currently reflect the core principles; would not promote greater openness and transparency; or would not necessarily prevent inappropriate practice. One respondent stated that there was a risk of confusion with existing arrangements in the UK. Some respondents raised concerns about the potential burden on organisations (particularly in the Third Sector) or the potential to deter engagement and reduce the quality of decision making. One respondent suggested that it may be difficult to implement, while another argued that no other options (e.g. publishing MSPs' diaries) had been tested. Another stated that having only an online register could discriminate against some organisations.

Suggestions relating to the introduction of a register

- 3.36. Many respondents made additional suggestions relating to the introduction of a register. These included providing clear and unambiguous definitions of "lobbyist" and "lobbying" and providing information and guidance to address the other issues identified at para 3.34 above. Some respondents also stressed the need for the core principles to be reflected in the nature of the provisions, and to avoid unintended consequences.
- 3.37. A common suggestion was to promote transparency in other ways (either instead of, or along with, a register). These included continuing to use existing measures, and making additional provisions. The most common suggestions

related to ensuring that MSPs and Ministers had a role in promoting transparency. Suggestions included that there should be a requirement, for example, to:

- Declare relevant meetings and engagement (e.g. by making an amendment to the MSPs' Code of Conduct).
- Publish their diaries and relevant minutes and / or reports of meetings regularly.
- Ensure that published information is accurate and up to date.

3.38. Some respondents suggested that senior civil servants and special advisers should also make information available about their official meetings. One suggested having guidance for Ministers, MSPs and relevant staff, to advise them to inform anyone contacting them to arrange a meeting or event about the need to provide details to the register.

3.39. A few comments were made about the nature of the register itself, and the means of providing it. These included that it should be: mandatory; easily available; in an open and accessible format; fully searchable, sortable and downloadable; linked to other publicly available registers; able to be cross-referenced; and able to be shared. A few referred specifically to a need to have not only online provision, but also an option of hard copy information.

3.40. A few respondents from campaigning organisations / groups made additional suggestions about particular issues they considered should be addressed in developing overall transparency. These included having a policy on the "revolving door" issue (mentioned at para 3.30 above). It was also argued that there should be a requirement for a "footprint" of legislative development and policy proposals. This would track internal and external input (either as it happened, or in an annex to documentation). A further suggestion was to consider international practice in promoting transparency in developing the way forward in Scotland.

Question 3: Fees

3.41. The key issue identified in the consultation document for exploration at Question 3 was whether there should be a fee for registration. The consultation document (para 8) noted that the Committee had concluded that registering and updating the register should be free, and the Scottish Government proposed that this should be the case (para 9 of the consultation document).

3.42. Question 3 asked respondents to express overall agreement or disagreement with having no fee, as follows:

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

Overall views

3.43. Most of the respondents (more than four in five) made comments on the issue of whether or not there should be a fee payable by lobbyists for registering or updating the register.

- 3.44. **The majority of respondents expressed agreement that no fee should be payable by lobbyists for registering or updating the register.** Almost all (around nine in ten) of those who expressed a clear view, and around two thirds of respondents overall stated or implied their agreement with this proposal. There was little disagreement with this.
- 3.45. A small number of respondents qualified their view (e.g. by stating that they would not be opposed to paying if it led to a more effective register; or that a “no fee” approach would be appropriate for updating information, or for Third Sector organisations). Around a quarter of respondents did not express clear agreement or disagreement, or did not address the question.

Benefits of having no fee

- 3.46. Most of the additional comments were about the benefits of, or reasons for having no fee for registering or updating the register. The issue raised most frequently was the need to prevent barriers to engagement and to ensure openness.
- 3.47. Many comments were made about these issues, including that imposing a fee could create such barriers, and deter or restrict participation by some organisations or individuals (e.g. by disadvantaging those facing financial constraints, diverting resources from other work, or complicating the process).
- 3.48. Some respondents (particularly from the Third Sector; Trade Unions / professional organisations; and Trade Associations / membership groups) identified particular types of organisations that might be deterred from participation by a fee. Those identified included: Third Sector organisations; small organisations; those representing specific groups; and Trade Associations. A small number of respondents also argued that many of those individuals entering the lobbying industry were young, or working part-time, and should not be discouraged.
- 3.49. It was also suggested that imposing a fee, and the related barriers, would be anti-democratic, detrimental to the Scottish Parliament and against its principles. A few respondents argued that the integrity of, and confidence in the system depended on financial independence from lobbyists. Some stated that a “no fee” approach was linked to keeping the requirements of the register proportionate.

Issues and concerns with having no fee

- 3.50. A small number of respondents identified issues or concerns relating to cost issues for organisations, rather than to the principle of having no fee per se. These issues are discussed further at Question 19.
- 3.51. One respondent argued specifically, however, that private organisations should not be subsidised by the public purse, and that responsibility for maintaining standards should fall to those organisations requiring to be on the register.

Suggestions relating to fees and costs

3.52. Several respondents made additional suggestions relating to fees and costs. A few suggested, for example, that, if there were to be registration fees, these should be tiered and linked to factors such as an organisation's financial means and profit. A few suggested that Third Sector and non-profit-making organisations should be exempt from any fees, or that any fees required should be paid by professional and consultant lobbyists only. One respondent stated specifically that they believed the cost of the register could be met from the public purse, and another argued that the register could be self-funding on the basis of cost recovery. One respondent suggested an annual flat fee for all registered organisations, with organisations able to carry their membership across different registration bodies without having to pay duplicate fees.

3.53. Some respondents argued that there would be a need for resources to support the register, including for:

- Maintenance of the register.
- Adherence to its requirements.
- Provision of advice and guidance.
- Monitoring, administration, audit and investigation.
- Enforcement action.

3.54. Some expressed a specific view that the register should have minimal impact on the public purse, and one respondent stated that registration systems in other countries showed that this could be achieved. A few suggested that the costs of operating the proposed system should be reviewed regularly. One respondent stated that a full regulatory impact assessment should be carried out.

Question 4: Onus for registration

3.55. The key issue identified in the consultation document for exploration at Question 4 was whether the onus to register should lie with organisations or individuals. The consultation document (para 13) noted that the Committee considered that responsibility for registering should be placed on organisations involved in lobbying activity. The Scottish Government's preferred approach (also identified in para 13), was that responsibility for registration should be placed on individuals involved in lobbying activity as part of their work.

3.56. Question 4 asked respondents to express a preference between these two options, as follows:

“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.”

Overall views

3.57. Almost all of the respondents (around nine in ten) made comments on this issue.

- 3.58. **The majority of respondents expressed the view that the onus to register should lie with organisations who lobby.** This view was stated or implied by a large majority (around four in five) of those who expressed a clear view, and around two thirds of all respondents. A small proportion (under a fifth of those whose views could be ascertained and around 1 in 8 overall) believed that the onus should be either on the individual or on the individual and organisation (with no clear pattern by type among these respondents). Around a quarter of respondents did not express a clear overall view on this issue, or did not address the question.
- 3.59. Most of the additional comments focused on the perceived benefits of the onus to register lying with organisations (or related issues and concerns with the onus being on individuals). Only a small number of comments focused on perceived benefits of placing the onus on individuals.
- 3.60. A few respondents made more general comments. These included, for example, views that: the current proposals differed from the Committee's view; there were pros, cons and difficulties with both approaches; the decision about the preferred approach would depend on definitional clarity; and the decision would impact on the scope of the register and the level of resources required. It was also suggested that there should be clear guidance, whatever the decision.

Benefits of placing the onus to register on organisations

- 3.61. Most of the comments made (largely by those who favoured this approach) focused on the benefits of placing the onus to register on organisations. These included views on positive benefits of this approach, as well as disadvantages and concerns about the alternative (placing the onus to register on individuals).
- 3.62. The benefits identified most frequently for an approach which put the onus to register on organisations were about reducing the level of demands on, and practical difficulties for, those involved. Linked to this, the main problems with placing the onus to register on individuals were seen to be the high level of demand and practical difficulties this would involve.
- 3.63. Several respondents commented on the range and number of individuals whose role in organisations may require registration, and the range of roles that some people performed in the course of their work (e.g. in Third Sector organisations). It was suggested that, if the onus to register was on an individual, there could be: multiple registrations in one organisation; multiple members of staff reporting on the same event or meeting; potential for duplication of entries; complexity; and potential confusion. There were also concerns about the bureaucracy, administration, time, resources and staff training that may be involved, and about the potential general "burden". A number of examples were given of those who might be required to register, and some concerns were raised about the definition of who would be covered. These issues are discussed further in Chapter 4.
- 3.64. It was argued that placing the onus on the organisation would reduce the likelihood of duplication, would be less onerous, and would reduce the burden of administration, time and resources. A few respondents stated specifically

that it would also be simpler and more proportionate, including for Third Sector organisations.

3.65. A further common reason for having the onus to register on organisations was the view that individuals (whether lobbying on a commercial or an in-house basis) would generally be representing an organisation's views rather than their own, and working to meet the organisation's objectives. It was also noted that individuals (e.g. in the Third Sector) did not gain personally from lobbying activity.

3.66. A number of other perceived benefits were suggested for the onus being on organisations to register. These included:

- Consistency with industry models, company law and employers' responsibilities.
- Existence of organisational record-keeping, structures and processes.
- Completeness of information and better tracking of activity.
- Greater clarity of the organisations and interests involved in lobbying.
- Improved accountability.
- Promotion of corporate responsibility for compliance and sanctions.
- Protection of individual confidentiality and personal details.

Benefits of placing the onus to register on individuals

3.67. A small number of respondents (not only those who favoured this approach) identified some benefits of placing the onus to register on individuals. It was suggested, for example, that this would:

- Provide a clear picture of lobbying, and greater transparency.
- Provide equity and cover all lobbyists.
- Incentivise lobbyists to be familiar with the regulations, and potentially promote greater compliance.

3.68. One respondent stated that, as corporate registration would have to be based upon an accurate compilation of individuals' activities, there may not be much difference in terms of the compliance burden.

3.69. A small number of respondents identified potential practical difficulties with placing the onus for registration on an organisation which had many individuals who were not necessarily employed, but acting in its name (whose activity may need to be recorded).

Suggestions relating to registration

3.70. Many respondents made additional suggestions about registration. Several, for example, commented on additional provisions that could be made, if organisational registration were to be adopted. These included the suggestion that, where an organisation had to register, those staff involved in lobbying (or, in the view of some respondents, those involved in "significant" lobbying) could be identified. It was argued that this could include identifying in-house or consultant lobbyists, and providing information about their position.

3.71. Some respondents expressed the view that appropriate arrangements should be made for independent lobbyists, and a few stated specifically that self-employed, freelance or consultant lobbyists should be required to register themselves. Detailed comments about who should be included in the register are discussed in the following chapter, and suggestions about the information that respondents believed should be provided are discussed in Chapter 5.

3.72. A few respondents argued that clear and straightforward compliance regimes should be included in an individual's terms of employment and / or in staff training. One respondent argued that organisations should nominate a "responsible person" for compliance.

3.73. A few respondents suggested particular requirements if individual registration were to be adopted, including that:

- Organisations should have some responsibility to ensure that their employees were appropriately registered, or should encourage this.
- It should be possible for electronic disclosures by individuals to be sorted and aggregated, to provide a cumulative picture.
- Organisations should use only registered lobbyists.
- Individuals should not have to register when making representations to their own MSPs.

3.74. Several respondents identified the need for clarity about who would be considered to be a lobbyist, and this is discussed further in Chapter 4.

4. 'WHO' AND 'WHAT' SHOULD BE COVERED BY A REGISTER

- 4.1. This chapter presents the findings from Questions 5-10 relating to *who* and *what* respondents believed should be covered by a register. There were clearly overlaps within and between these issues.
- 4.2. The findings on 'who' should be covered by a register (i.e. the types of lobbyist) are presented in the first part of this chapter. The findings on 'what' should be covered by a register (i.e. the type of activity) are presented in the second part of this chapter.

Who should be covered by a register

- 4.3. Questions 5, 6, 9 and 10 focused on 'who' should be covered by a register.

Question 5: Inclusion of consultant and in-house lobbyists

- 4.4. The key issue identified in the consultation document for exploration at Question 5 was which categories of lobbyist should be required to register. The consultation document (para 16) noted that the Committee had concluded that only organisations that undertake significant lobbying activity should need to register.
- 4.5. The Scottish Government proposed that the following should be required to register (paras 17 and 18 of the consultation document):
 - An individual who is a consultant lobbyist (defined in the consultation document as an individual engaged to lobby MSPs or Scottish Ministers on behalf of another individual or organisation).
 - An individual who is an in-house lobbyist (defined in the consultation document as an individual within an organisation who lobbies MSPs or Ministers as part of their work).
- 4.6. Question 5 asked respondents to express overall agreement or disagreement with the inclusion of both of these categories, as follows:

“Should both consultant lobbyists and in-house lobbyists be required to register? Please provide reasons in support of your response.”

Overall views

- 4.7. Most of the respondents (around four in five) made comments on whether both consultant and in-house lobbyists should be required to register.
- 4.8. **The majority of respondents expressed the view that both consultant and in-house lobbyists should be required to register.** This view was stated or implied by a large majority (around four in five) of those who expressed a clear view, and over half of all respondents. Under a fifth of those who expressed a clear view, and around one in eight of all respondents stated or implied disagreement with this. Around a third of respondents did not express clear

agreement or disagreement, or did not address the question. Although there was a low level of disagreement overall, there were more mixed views among Trade Association / membership group respondents than other categories.

- 4.9. Many respondents made additional comments, most of which focused on the benefits of including both types of lobbyist. Several respondents, however, also raised issues or concerns. Many of these were not about whether or not both types of lobbyist should be included, but were about definitional issues.
- 4.10. Some respondents expressed a general view that this question was linked to the decision about the onus to register (and that in-house lobbyists would be covered by organisational registration) or argued specifically that all sectors should be included.

Benefits of inclusion of consultant and in-house lobbyists

- 4.11. Many respondents made comments on the perceived benefits of, or reasons for, including both consultant and in-house lobbyists. Common themes were the need for transparency (giving a more comprehensive picture of those involved) and fairness (parity, equality, consistency and a “level playing field”). Other comments included that: without including both there would be a two tier system; there was often little distinction between the two types of lobbyist or their activities; and it was necessary to include both to prevent loopholes and confusion.
- 4.12. Several respondents made specific comments about the need for, or benefits of, including in-house lobbyists. These were:
- The high level of in-house lobbying being carried out by a range of diverse organisations.
 - The importance of the work of Third Sector organisations in influencing public policy.
 - The role of lobbying in achieving charitable purposes.
 - Lessons from problems experienced with the exclusion of in-house lobbyists from the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014 and the UK lobbying register.
 - Potential discrimination against organisations without the resources to employ in-house lobbying staff.

Issues or concerns with the inclusion of both consultant and in-house lobbyists

- 4.13. Some issues and concerns were also raised about including both consultant and in-house lobbyists (largely, but not only, by respondents who did not support this).
- 4.14. A small number of respondents, for example, expressed a specific view that registration should be limited to consultant lobbyists. Among the suggested benefits of this were that it would be more proportionate and would avoid an unnecessary burden upon organisations. A few respondents argued that including both types of lobbyist did not reflect the purpose of the register (to

prevent undue influence by third party lobbyists, and to identify those lobbying on behalf of a range of clients). A small number of respondents argued that it was already apparent who was represented by in-house lobbyists.

- 4.15. As noted above (para 4.9), some more general concerns were also raised about definitional issues (including by some respondents who agreed with covering both types of lobbyist).
- 4.16. Many of these comments focused on what was meant by “in-house” lobbyists, and those who lobby “as part of their work”. It was suggested, for example, that this was too vague, and that, while it may be clear for those in public affairs roles, it was less clear for others. There were also concerns (as noted in responses to Question 4) about the number of people whose roles may potentially be covered by this. There were a number of related concerns about types of activity which may be included, and the range of staff that may be involved. (Issues relating to the types of activities for inclusion are discussed at Question 8.)
- 4.17. Some specific concerns and / or questions were raised about whether particular roles would be included as “in-house” lobbyists or those who lobby “as part of their work”, such as:
- Elected members of local authorities acting on a constituent's behalf.
 - Local authority staff and other government officials.
 - Technical experts and subject specialists (e.g. who may accompany a lobbyist).
 - Events management staff or teams who may arrange some events for, or involving MSPs.
 - Staff in Third Sector organisations and consultants collating comments from others and / or submitting comments to public bodies.
 - Members of a trade body, Trade Union or professional organisation attending meetings or events as part of that organisation's business.
 - Staff whose main role was not to lobby, but who may be involved, as part of their work (and sometimes a small part), in activities that might be considered to constitute lobbying. (See Question 8 below.)
- 4.18. A few respondents argued that some of those who would be included may not consider themselves lobbyists, and may be unaware of the requirement to register. One argued that the proposal would not bring clarity in terms of current lobbying activity by organisations that were not professional lobbying organisations, given the variation in the level of contact between them and Parliamentarians at different times (reflecting particular policy developments relevant to them). Another argued that consultant, freelance or agency lobbyists may have many clients seeking different outcomes.

Suggestions relating to the inclusion of consultant and in-house lobbyists

- 4.19. A common suggestion was a need for a clearer definition of a lobbyist (linked, for some respondents, to a perceived need for a robust definition of lobbying

activity). One respondent suggested generally that there should be a more nuanced approach to different organisations.

- 4.20. A small number of respondents stated that they envisaged a two-stage registration process (which involved registering as a lobbyist, then registering activity), although they argued that this was unclear. As such, they suggested that all lobbyists would be required to register, but only to register the activity when this took place. One respondent argued that all references to “commercial lobbyists” should be replaced with references to “lobbyists”, to remove any false distinction between types of lobbying or types of employees.
- 4.21. Other specific suggestions (made by small numbers of respondents in each case) included a perceived need for a register to cover:
- Organisations that included commercial lobbyists.
 - Those (individuals or organisations) with the sole purpose of campaigning or lobbying.
 - Those taking part in clearly defined lobbying activity.
- 4.22. The issue of whether or not to include paid lobbyists is discussed at Question 9.
- 4.23. One respondent argued that the definition must ensure that some lobbyists were not excluded, and that there were not disproportionate registration requirements (e.g. on Third Sector organisations). A few identified specific types of organisations whose in-house lobbyists they believed should be covered, citing, for example: businesses; business groups; Trade Associations; Trade Unions; Third Sector and civil society organisations; umbrella organisations; legal firms; accountancy firms; management consultancies; and “think tanks”. A small number of respondents stated specifically that they would seek assurance that client confidentiality would not preclude full declaration by those in the legal and accountancy fields.
- 4.24. One respondent provided details of the Australian model and definition of a lobbyist, and suggested a specific exemption for in-house lobbyists (in accordance with the Australian and UK approaches). Another suggested that there should be consistency with existing UK Government provision. A further respondent suggested that voluntary registration should be offered to in-house lobbyists in the first instance, with the potential to make this a requirement if this was necessary in the future.
- 4.25. Views on whether or not there should be any exemptions are discussed at Question 6 below. Some comments were also made about the types of information that lobbyists should be required to provide. This is discussed at Question 11.)

Question 6: Possible exemptions

- 4.26. Question 6 explored respondents’ views on whether any type of in-house lobbyist should be exempt from registration. The Scottish Government did not make any proposals, but invited views on whether there was a case for

exempting particular types of in-house lobbying (e.g. that undertaken by charities or Trade Unions) (para 21 of the consultation document).

4.27. Question 6 was an open question, which asked:

*“Should any types of in-house lobbyist be exempt from registration?
Please provide reasons in support of your response.”*

Overall views

4.28. Almost all respondents (around nine in ten) made comments on whether any types of in-house lobbyist should be exempt from registration.

4.29. **The most commonly expressed view was that there should not be any types of in-house lobbyist exempt from registration.** This view was stated or implied by approaching two thirds of those who expressed a clear view, and almost half of all respondents. Around a third of those who expressed a clear view, and around a quarter of respondents overall, stated or implied that there should be some exemptions. Just over a quarter of all respondents did not express a clear view, or did not address the question.

4.30. There were some variations in overall views on this issue by type of respondent. Most of the respondents from lobbying industry organisations and campaigning organisations / groups expressed disagreement with exemption of any types of in-house lobbyist. There were more mixed views among Third Sector; Trade Association / membership group; and Trade Union / professional organisation respondents (with these respondents' views, where expressed, fairly evenly split on this issue).

4.31. Several respondents expressed the view that this question was closely linked to whether the onus for registration should be upon the organisation or individual (Question 4); definitional issues (Question 5); the distinction between voluntary and paid lobbying (Question 9) and the nature of lobbying activity (Question 8).

Benefits of no exemptions

4.32. The most common theme for additional comments was the benefits of, or reasons for having no types of in-house lobbyist exempt from registration. Some respondents, for example, expressed the general view that the register should apply to all (with a few suggesting other qualifications, such as the receipt of payment, level of involvement or type of activity). A few respondents argued that there was no evidence to support exempting some, but not others from registration. Many stated that there was a need for a “level playing field”, or argued that exemptions may lead to inequality, unfairness and concerns about impartiality.

4.33. A small number of respondents expressed concerns that having exemptions would imply that there were “good” and “bad” lobbying or lobbyists and / or that the work of one “type” of lobbyist was more influential, useful or legitimate than another. It was argued that this could create a “two-tier” system. It was also argued that exemptions could provide a loophole for those wishing to hide lobbying activity, and could lead to anomalies, definitional problems and confusion. Several respondents stated that exemptions would not provide

transparency and could be misleading. One stated that exemptions could reduce the range of voices in a debate.

4.34. The possibility of making charities and Trade Unions exempt was mentioned specifically in the consultation document, and several respondents expressed views about the need to include them. Some of the benefits of, or reasons for including charities (and the Third Sector more generally) and Trade Unions were seen to be:

- A lack of rationale for their exemption.
- The importance of their role.
- The level of power and resources in some organisations in these categories, and the high level of their lobbying activity.
- The receipt, by some, of significant public funding.
- The nature of some of the activity (e.g. as similar to that of other organisations with in-house lobbyists).
- The potential, with their exemption, for only lobbying carried out on behalf of one “side” of an issue to be visible.

4.35. Some specific comments were made about a need to include Third Sector organisations. For example, it was suggested that:

- Some lobbied for financial support for their own organisations.
- Lobbying may be in keeping with charitable aims and objectives.
- Lobbying may be on contentious issues.
- Different Third Sector organisations may have opposing views or purposes.
- Small charitable organisations could be influenced by larger non-charitable ones providing funding.
- There needs to be public trust in the sector.

Benefits of exemptions

4.36. Several respondents (generally but not only those in favour of exemptions) made comments on benefits of, or reasons for, exemption of some types of in-house lobbyist.

4.37. Some comments were made, particularly by Third Sector respondents on perceived benefits of exempting, or reasons to exempt, Third Sector organisations. These included:

- Existing regulation of charities by the Office of the Scottish Charity Regulator (OSCR).
- Existing publication of materials (e.g. annual reports).
- Existing accountability (e.g. to funders, members etc.).
- The nature and purpose of activity that may be included as lobbying (e.g. representing specific interests; and / or being for public benefit rather than private gain).
- The non-political nature of organisations.

4.38. Some respondents (particularly from the Trade Associations / membership groups; and Trade Unions / professional organisations) made comments on perceived benefits of exempting, or reasons to exempt, Trade Associations and / or Trade Unions. These included:

- The basis of Trade Associations' income (as derived from membership and publicly available).
- The nature and purpose of activity that may be included as lobbying (as often incidental to general activity and representing what is perceived to be an industry / public interest).
- The lack of structure for Trade Associations to undertake lobbying on behalf of a specific third party client.
- Existing transparency of who was represented, and a lack of public or media concern about activities.

4.39. One respondent commented on the possible exemption of local authorities, stating that communications between officers and elected members and MSPs / Ministers already fell within the Freedom of Information (FOI) scheme, making an additional regime unnecessary. Another argued specifically that Credit Unions should be exempt, as it was clear on whose behalf they were acting, and their lobbying activity had no commercial motive (with their priority being to help deliver a broader social benefit).

4.40. A few respondents made more general comments, such as the need for a proportionate solution which would not impose a burden on some types of organisation, or the need to avoid deterring their engagement.

Suggestions about exemptions

4.41. Several respondents made specific suggestions about the basis of exemptions. Small numbers in each case suggested that exemptions should include: Third Sector organisations (including, but not limited to, charities); Trade Associations; Trade Unions; membership organisations; local authorities (elected members and staff); NDPBs; think tanks; and those representing a known business sector / organisation. One respondent stated that it was not clear whether an exemption for charities would cover any wholly-owned subsidiaries.

4.42. As noted previously (Question 5), some respondents believed that registration should not include in-house lobbyists. Suggestions were also made relating to exemptions based on the nature of activity (discussed at Question 8) or on the level of involvement in lobbying (discussed at the end of this section). Other suggestions included to:

- Ensure that registration was proportionate and not burdensome.
- Include some flexibility in the system.
- Exempt some lobbyists from some reporting requirements.
- Acknowledge differences between Third Sector, Trade Association and private sector lobbying.
- Include exemptions in any review process.

Question 9: Registration of paid lobbyists

- 4.43. The key issue identified in the consultation document for exploration at Question 9 was whether minor, infrequent lobbying activity should be covered by a statutory register.
- 4.44. The Scottish Government stated its view that only lobbying activity undertaken by those paid to do so (and not lobbying on behalf of others by individuals who are volunteers) should be captured (paras 36 and 37 of the consultation document).
- 4.45. Question 9 asked respondents to agree or disagree with a requirement for paid lobbyists to register, as follows:

“Do you agree with the Government’s view that paid lobbyists should be required to register? Please provide reasons in support of your response.”

Overall views

- 4.46. Almost all of the respondents (around nine in ten) made comments about whether paid lobbyists should be required to register.
- 4.47. **The majority of respondents expressed agreement that paid lobbyists should be required to register.** Almost all of those who stated or implied a clear view, and approaching two thirds of respondents overall, expressed agreement that they should. It became clear, however, on examination of the additional comments, that there were differences in the interpretation of this question. It was evident that there was a high level of agreement that all paid lobbyists should be required to register.
- 4.48. There appeared, however, to be mixed views on whether only paid lobbyists should be required to register, or whether paid and other lobbyists should be required to register. As the question did not explore this issue specifically, it was difficult to determine the overall balance of views on this issue, but most of those who addressed this question did express a view of this issue. Among these, there appeared to be a fairly even split between those who expressed the view that only paid lobbyists should be required to register, and those who expressed the view that paid and other lobbyists should be required to register.
- 4.49. The ambiguity in the question, however, made it inappropriate to determine the overall level of support for requiring only paid lobbyists to register. It also made the analysis of any pattern by category of respondent inappropriate.
- 4.50. Where additional comments were made, these reflected the different interpretations of the question, with comments made about the benefits of including, variously: paid lobbyists; only paid lobbyists, and unpaid lobbyists along with paid lobbyists. Some grey areas and definitional issues relating to these issues were also highlighted and are discussed below.

Benefits of the inclusion of paid lobbyists

4.51. Some comments focused on the need to include all paid lobbyists (whether or not others should be included). Views were reiterated, for example, that both consultant and in-house lobbyists should be covered (as discussed in detail at Question 5) for the types of reasons identified previously. A few respondents also expressed concerns about this (again, as noted previously).

Benefits of inclusion of only paid lobbyists

4.52. Comments suggested that many respondents favoured including *only* paid lobbyists. This view was expressed specifically by just under a third of those who responded to Question 9. The problems of using this figure to determine the overall level of support for such an approach, however (as highlighted in para 4.49), should be borne in mind.

4.53. The perceived benefits of, or reasons for, the inclusion of only paid lobbyists were:

- Being able to exclude particular types of people carrying out lobbying activity (e.g. Board members; Trustees; members of a membership organisation; secretariat of a membership organisation; volunteers and individuals).
- Avoiding placing a burden on volunteers and / or discouraging engagement.
- Providing consistency with the core principles.

4.54. One respondent argued that volunteers' involvement would be small and infrequent (and issues relating to the use of a "threshold" are discussed later).

Benefits of inclusion of unpaid lobbyists

4.55. Comments suggested that many respondents favoured including some unpaid lobbyists alongside paid lobbyists. This view was expressed specifically by just over a third of those who responded to Question 9 (but, again, the problems highlighted at para 4.49 should be borne in mind).

4.56. The benefits of, and reasons for, this view focused on perceived problems with including only paid lobbyists. It was argued that this may lead to:

- Unfairness and inequality, and the creation of a two-tier system.
- Limited transparency and the avoidance of registration.
- Lack of identification of the lobbying function of particular individuals and groups (e.g. Board members and Trustees; lobbyists doing "pro bono" work; organised campaign groups).
- Provision of a misleading picture of the balance of lobbying resources, activity and influence, and of the engagement and conduct of MSPs in relation to a particular issue.
- The use of individuals or groups to lobby (instead of more formal means).

4.57. Several respondents mentioned that volunteers (and volunteer campaign groups) could have an important and effective role in lobbying, as well as

having significant influence. Examples were given of organisations having (sometimes full-time) volunteers carrying out lobbying activity, and well-resourced and active volunteers at a national level.

Definitional issues and “grey areas”

4.58. Several respondents raised issues and concerns relating to “grey areas” and the potential for loopholes or confusion about who would be covered by the concept of voluntary lobbying on behalf of others. Specific examples included:

- Members (elected and other) lobbying on behalf of a membership organisation in a voluntary capacity.
- Nominally remunerated activists in a campaign group.
- Board Members, Trustees (and other volunteers in governance positions or office holders) carrying out lobbying on behalf of the organisation.
- Interns.
- Groups of citizens being co-ordinated by a professional / paid lobbyist.
- Groups of volunteers accompanying a member of paid staff or consultant lobbyist.
- Individuals nominated by their community or community of interest.
- Organisations recruiting volunteers to engage with Ministers, MSPs and civil servants, or unpaid individuals having the encouragement and resources of an organisation.
- Paid lobbyists and advocates in full-time employment who voluntarily join a group in a voluntary / personal capacity, where that group has similar policy aims to their employer.
- Pro bono work, where a professional gives their lobbying work free of charge, but is paid for providing another service.

Suggestions relating to the inclusion of paid and / or unpaid lobbyists

4.59. Several respondents made additional suggestions. It was argued, for example, that there should be a clear definition of the coverage of the proposals, a specific definition of volunteers, and clarity of why volunteers should not be required to register. Some respondents made specific suggestions about types of lobbyist they believed should be included or exempted, reflecting the issues raised above.

4.60. Several respondents commented specifically on the need to exclude individuals lobbying on their own behalf (or, as one respondent stated, on behalf of their friends, family and community) or engaging with MSPs as part of their constituency work. One respondent suggested making a specific distinction between individuals or groups who engage on their own behalf on a single issue, and volunteers who lobby on behalf of an organisation, with the latter required to register. A small number of respondents suggested exempting only engagement between a constituent and their own MSP, or an individual making representation solely on their own behalf. One respondent suggested exempting constituents lobbying their MSPs through letters and petitions as part of a campaign.

4.61. A few respondents offered a definition of a lobbyist which made reference to their being paid (and some referred, for example, to the overall purpose and / or nature of their lobbying role and activity, and receipt of specific payment for this).

4.62. A number of additional, more general suggestions were made, including to:

- Require registration by organisations, to cover the involvement of relevant volunteers.
- Require “campaign-led” registration where individual volunteers worked together.
- Publish details of MSPs’ and Ministers’ meetings (noted previously).
- Include consideration of whether volunteers should be included or excluded, and the impact of this, as part of the review process.
- Address directly the issue of lobbying power and the resources devoted to influencing policy, and questions of transparency of resources and finance (see Question 11).
- Consider whether “lobbying activity” or transparency of who was represented (rather than “lobbyists” or employment status) should form the basis of registration.

Question 10: Voluntary registration

4.63. The key issue identified in the consultation document for exploration at Question 10 was whether the register should also allow for voluntary registration. The consultation document noted that the Committee had heard from organisations which were keen to publicise their work (para 41). The Scottish Government expressed its support for the principle of voluntary registration.

4.64. Question 10 asked respondents to express overall agreement or disagreement with the register allowing for this, as follows:

“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.”

Overall views

4.65. Around three quarters of respondents addressed this question.

4.66. **The majority of respondents expressed agreement that the register should allow for voluntary registration by lobbyists not required to register.** Almost all (around nine in ten) of those who expressed a clear view, and over half of all respondents stated or implied agreement with this. A small number stated or implied that they did not agree with this (with no pattern by category). More than a third of respondents either did not express a clear view, or did not address the question.

4.67. Most of the additional comments focused on the benefits of allowing this, although several respondents also identified issues and concerns, and a small number identified a need for further detail on other aspects of the proposals

prior to addressing this question. A few respondents qualified their overall view (e.g. by suggesting that: most lobbyists would already be covered by a registration requirement, but this should be the case if there were exemptions; or that this should supplement mandatory registration requirements and information provision).

Benefits of allowing voluntary registration

4.68. Many respondents identified perceived benefits of, or reasons for, allowing voluntary registration. The most common related to promoting increased transparency and providing a more complete picture of lobbying.

4.69. Other benefits identified included to:

- Enable registration by those not currently involved in lobbying activity, but who may be in the future.
- Provide an indication of probity.
- Drive up standards in the industry and decrease risks for clients.
- Enable registration by individuals who may be uncertain about whether they needed to do so, or whether actions would be included.
- Help protect the integrity and reputation of organisations and / or individuals and increase public confidence.
- Avoid a disproportionate duty on small groups and individuals.
- Avoid exclusions.
- Enable organisations to publicise their activity and increase their recognition.
- Demonstrate the possibility of a more expansive register in the future.

Issues and concerns

4.70. The most common issues and concerns (identified by respondents with differing types of overall views on this aspect of the proposal) related to the lack of perceived need for this provision (e.g. if the register covered all lobbyists and did not include thresholds).

4.71. Other issues and concerns included a risk of:

- Creating two simultaneous definitions of a lobbyist and inconsistent approaches which may devalue the register.
- Suggesting legitimacy, standards and approval for those who registered, which would be beyond the scope of the register.
- Cutting across the work of voluntary regimes to promote professional standards, and lowering standards.
- Complicating the register, leading to less transparency and to inconsistency with the core principles.
- Creating pressure on others to register.
- Developing a culture of “one-upmanship” and the potential for embellishment of activity.

4.72. One respondent argued that the usefulness of the register would depend on only relevant information being included. Another stated that it seemed

inappropriate that a statutory register, with sanctions for non-compliance, should also serve as a voluntary scheme and a platform for publicising activity.

4.73. A few respondents stated that there should be a clear definition which would capture all of those required to register. One stated that there should be no ambiguity about the nature of the register (e.g. either as a scheme of voluntary declarations, or a compulsory, statutory register with sanctions). Another respondent argued that the focus of concern should be with those organisations which were carrying out lobbying but were not committed to voluntary disclosure.

Suggestions relating to voluntary registration

4.74. A few respondents made specific suggestions about what should be permitted with, or in addition to, voluntary registration. These included to be able to:

- Update entries more frequently than required.
- Provide more information that required.

4.75. One respondent stated that a register in Scotland should not go beyond the UK provision already operating (suggesting, if possible, a single UK register).

What should be covered by a register

4.76. Questions 7 and 8 focused on 'what' should be covered by a register.

4.77. It should be noted that, although there was not a specific question about whether or not minor, infrequent lobbying should be included in the coverage of the register, the consultation document made reference to this issue in the narrative at Question 9. Comments on this issue (which were made by several respondents at various points) have been presented below (after the presentation of the findings on Question 8), as these also relate to respondents' views on 'what' should be covered by a register.

Question 7: Inclusion of lobbying of MSPs and Scottish Ministers

4.78. The key issue identified in the consultation document for exploration at Question 7 was whether a statutory register should cover the lobbying of MSPs and Ministers. The consultation document noted that the Committee had concluded that the register should cover the lobbying of MSPs. It also encouraged the Scottish Government to include the lobbying of Ministers. The Scottish Government expressed the view that covering the lobbying of MSPs and Ministers equally was a sensible approach that seemed proportionate (para 24 of the consultation document).

4.79. Question 7 asked respondents to express overall agreement or disagreement with this approach, as follows:

“Do you agree that the register should cover the lobbying of MSPs and Ministers?” Please provide reasons in support of your response.”

Overall views

4.80. Most respondents (around four in five) addressed this issue.

4.81. **The majority of respondents expressed agreement that the register should cover the lobbying of MSPs and Scottish Ministers.** Almost all of those who expressed a clear view (around nine in ten) and around two thirds of all respondents stated or implied agreement with this. A small number expressed or implied disagreement (with no identifiable pattern by type). Around a third of all respondents did not express clear agreement or disagreement, or did not address the question.

4.82. Most of the additional comments focused on benefits of this, or reasons to include the lobbying of both MSPs and Ministers, although several respondents also identified issues and concerns with this. Additional suggestions were also common, particularly in relation to the inclusion of lobbying of others.

Benefits of the inclusion of lobbying of MSPs and Scottish Ministers

4.83. Many respondents made additional comments about the benefits of including, or reasons to include the lobbying of both MSPs and Ministers. The most common theme was that this would enable and increase transparency, clarity and openness (with the related argument that the omission of Ministers, for example, could undermine this).

4.84. Additional perceived benefits of covering the lobbying of both MSPs and Ministers included to:

- Cover all engagement with national elected representatives.
- Reflect accurately the nature of policy and law making in Scotland.
- Avoid the creation of a grey area, errors of interpretation, inconsistency, or a competing register.
- Avoid encouraging organisations to change their lobbying practice to focus on those not covered.
- Recognise the overlaps and differences in the roles of MSPs and Ministers.
- Avoid undermining the purpose of the register.
- Avoid perceived problems with the UK legislation.

Issues and concerns with the inclusion of lobbying of MSPs and Scottish Ministers

4.85. Several respondents (some of whom agreed that both MSPs and Ministers should be included) identified issues and concerns with this. These focused on potential benefits of including only one group.

4.86. Views expressed about the benefits of, or reasons for, including MSPs rather than Ministers were that:

- All Ministerial activity would be captured anyway.

- Public information was already provided on Ministerial meetings, with a risk of duplication (although a few respondents noted that this was out of date).
- The existing Ministerial Code already covered this.

4.87. Views expressed about the benefits of, or reasons for, including Ministers rather than MSPs were that:

- Contact with Ministers would be of the most public interest.
- Scotland had not experienced the same problem as the UK, where high profile backbenchers provided freelance services to firms and third parties.
- Including MSPs could be detrimental to their constituency work.
- There should be consistency with UK Government provision (which reports on Government Minister or Permanent Secretary contact).

Suggestions relating to the inclusion of lobbying of MSPs and Scottish Ministers

4.88. Many respondents made additional suggestions, most of which focused on the need to include lobbying of others (along with MSPs, Ministers or both). The most common additional comments, made by several respondents in each case, were that coverage should include the lobbying of Special Advisers and Civil Servants (or, in the view of some respondents, senior Civil Servants). Among the suggested benefits of, or reasons for this were:

- Their significant role in policy and legislation.
- Their involvement as common “targets” of lobbying.
- The provision of a complete picture and greater transparency.

4.89. One respondent stated that they would want reassurance that this would not affect their ability to share information with Civil Servants, nor other informal correspondence and partnership working.

4.90. Additional suggestions for inclusion were the lobbying of:

- Other public officials, or specifically Scottish Parliament and Scottish Government officials.
- Local government elected members.
- Regulators / officials in NDPBs or agencies.
- The Scottish Permanent Secretary.

4.91. Some respondents made more general comments, such as the need to include anyone with the potential to influence decision making, policy and legislation, although a small number of respondents argued that such a requirement could impose a burden. One respondent stated specifically that they believed a register should be limited to engagement with elected national politicians.

4.92. One respondent offered a definition of lobbying which they suggested would cover the “influencing” of government, which included central, devolved and local government; members of staff of the legislature; Ministers and officials;

and public authorities. Another respondent stated that, although wider than the scope of the UK's current system, an extension of coverage should not cause confusion, and may potentially raise standards in the rest of the UK.

4.93. A small number of additional suggestions were made. A few respondents reiterated the need to avoid impeding access, while one suggested a specific need for the implementation of World Health Organisation guidance relating to transparency. A small number suggested that the focus should be on lobbying activity and its purpose (discussed below), rather than its targets. A few reiterated their view that MSPs and Ministers should have a role in promoting transparency.

Question 8: Types of communication

4.94. The key issue identified in the consultation document for exploration at Question 8 was what types of communication should be covered by a statutory register. The consultation document noted that the Committee had suggested that a register should include details of pre-arranged meetings and events rather than all forms of communication between lobbyists and MSPs (para 26 of the consultation document).

4.95. The Scottish Government expressed the view that direct face to face communication should be captured, and stated that this would mean that a lobbyist would be required to register before engaging with an MSP or Minister (in relation to their functions) at a pre-arranged meeting or before meeting the MSP or Minister in any other circumstances. It would require registration before engaging with an MSP or Minister by writing a letter, e-mailing, taking part in a video conference or speaking on the telephone (paras 27 and 28 of the consultation document).

4.96. Question 8 was an open question which asked:

“What types of communication do you think should be covered by a statutory register?”

Overall views

4.97. Almost all respondents (around nine in ten) made comments on the types of communication that should be covered by a statutory register. Many detailed comments were made.

4.98. A majority of respondents who addressed this question, and around half of all respondents, made comments that were supportive of a register covering direct face to face communication through pre-arranged meetings and events.

4.99. There were also many comments on the extension of coverage to include other activities and forms of communication; and many additional suggestions were made.

4.100. A few respondents suggested, more generally, that the number of different types of communication and the different types of individuals involved in such

activity made it difficult to clarify what should be covered. One argued that framing the question in terms of “types of communication” rather than activity was restrictive.

4.101. There were many comments about the definition of types of communication and lobbying activity that may be covered by a register, and the overall need to define “lobbying. Most concerns related to the nature of meetings and events and face to face communication, and these are described below.

Inclusion of pre-arranged meetings and events

4.102. Many respondents (and around half of all respondents) made comments that were supportive of the register covering pre-arranged meetings and events. Among these, several expressed the view that these should be the only types of communication to be included. Among the benefits of, or reasons, were that this would be proportionate, simple, workable, balanced and practical. Some respondents, while not stating specifically that these should be the only forms of communication covered, expressed support for their inclusion. One respondent argued that face to face meetings were the type of communication that differentiated a consultant lobbyist from a citizen.

4.103. Many respondents also raised issues or concerns relating to the inclusion of pre-arranged meetings or events. Some of these were general issues or concerns, such as that meetings would already be recorded, and that this might create a burden and / or duplication. Additional comments included that it could be difficult to separate out different forms of communication, and that such an approach could be detrimental to the Third Sector.

4.104. Some respondents’ concerns focused on problems with including *only* these types of communication, and excluding other potentially influential methods. Some stated, for example, that this would be limited or illogical, and may make the register less meaningful. It was also argued that lobbyists may then use other means of communication to avoid registration.

4.105. The most common theme among the issues and concerns, however, was the identification of specific questions, or “grey areas” relating to types of meetings and events and face to face communication that may be included. One respondent suggested a lack of clarity about what was meant by “in any other circumstances” (see para 4.95 above). Some other respondents identified general difficulties in identifying what would be covered by pre-arranged meetings and / or events (or the sorts of meetings or events in which participation would lead to someone being identified as a “lobbyist”).

4.106. Many specific questions or concerns about such issues were raised. These included examples of contact with MSPs or Ministers through:

- Participation in social events, receptions and discussion dinners.
- Participation in launch events, conferences, seminars and celebrations.
- Participation in acts of worship attended by MSPs or Ministers.
- Provision of evidence to Parliamentary Committees or Inquiries and preliminary discussions relating to this activity.

- Provision of specialist or technical advice or expert opinion on proposals (e.g. legal guidance and advice, technical expertise).
- Participation in cross-party groups.
- Performance of secretariat functions.
- Participation in corporate events.
- Provision of information to an MSP on a site or organisation visit, or on a fact-finding visit.
- Participation (e.g. as part of an audience, speaker, questioner or panel member) in a meeting or event which had an MSP or Minister as a guest or speaker.
- Attendance at third party events.
- Attendance at events arranged by an MSP or Minister.
- Meetings between lobbyists and their MSPs on personal issues.

4.107. A number of concerns were raised about the potential burden of including a wide range of face to face contacts involving a large number of individuals. Questions were also raised about whether the role of the person requesting or arranging a meeting or event would affect requirements (for example, if it was arranged at the instigation of an MSP or Minister). Some respondents raised questions about who would be required to register the information in different situations, and what would need to be recorded. One respondent questioned whether the obligation to register would extend to engagement which took place outside Scotland.

4.108. A small number of respondents commented on a lack of reference to exemptions, or raised concerns about the inclusion of meetings about sensitive or confidential matters (e.g. competition or investment; workforce issues, or matters for an organisation's members). A few respondents stated that there was not a clear distinction between expressing informed views or imparting information, and lobbying.

4.109. Several respondents made comments on, or expressed concerns about, the reference to "pre-arranged" contact. It was suggested, for example, that this was unclear, and would not lead to transparency and accountability. It was also argued that it could hamper engagement. A few respondents stated that it implied that contact was initiated by the lobbyist, which, it was argued, was often not the case. One respondent stated that meetings could be held with very little notice, and that the matter under discussion may change at the last minute. Another identified that urgent issues may arise. It was also suggested that the proposal could lead to errors of omission.

4.110. A specific grey area was identified in cases where MSPs may "dip in and out" of an event, without pre-registration. One respondent questioned whether MSPs would be required to refer to the register before agreeing to meet with an organisation or individual. They also raised a question of how (and by whom) pre-registration would be monitored.

Extension of coverage

4.111. Many comments were made on the potential extension of coverage of the register, and some respondents, for example, suggested that this should

include not only pre-arranged meetings and events, but also other forms of communication or activity. A few expressed the view that all types of communication should be covered, while a few others stated generally that coverage should be extended.

- 4.112. Several respondents made comments about potential benefits of, or reasons for extension of coverage (whatever their overall view of whether this should be undertaken). These included providing increased transparency, and the need to reflect the range of methods used to lobby. A few respondents suggested that imposing a limit on the communications covered could attract criticism, or lead to the use of other forms of engagement.
- 4.113. Several respondents commented on particular forms of communication which they considered should be covered. Suggestions were made about including, for example, written communication (e.g. email, letters, briefing documents, position papers, suggested texts of amendments, and text messages). Suggestions were also made about including telephone or video communication, and a few respondents stressed the increasing use of methods such as video and audio conferencing. A small number of respondents commented generally on the increasing use of social media as a means of engaging with Parliamentarians.
- 4.114. A small number of respondents argued specifically that recording other forms of communication should not impose significant administrative burdens, and one noted that many lobbying organisations already kept a record of these. They also argued that this would help to “future-proof” the register.
- 4.115. Several respondents identified issues or expressed concerns, however, with extending coverage to other forms of communication. These included that this would: hinder transparency; create a burden (time and cost); and / or be difficult to achieve and impractical. Some respondents stated that some of this information was already publicly available.

Additional suggestions

- 4.116. Many additional suggestions were made, some of which focused on clarifying the definitional issues and grey areas identified (e.g. what would constitute lobbying activity and pre-arrangement; what would be covered by “other circumstances”; and when registration or recording would be required). Some suggested that there should be a definition of lobbying based on activity or communication, while others suggested a definition based on “influencing”. One respondent identified the definition of “lobbying services” used in the UK lobbying register.
- 4.117. One respondent suggested that a register should focus on areas of policy rather than types of activity. Another suggested that inclusion should be principles-based, rather than specifying all means of communication. A few suggested issues for consideration in identifying activity for inclusion (e.g. that which: was linked to a vested interest; involved “significant” activity; or was consistent with the core principles and / or the purpose of the register).

4.118. Some respondents suggested specific types of communication for exclusion, and some related directly to concerns identified above. Others included:

- Public responses to consultations and / or calls for (or invitations to provide) information or evidence.
- Responses to invitations to tender.
- Administrative requests by lobbyists where there is no attempt to influence.
- Anything done in response to, or compliance with a court order.
- Anything done for the purpose of complying with a requirement under enactment.
- Contract negotiation.
- Making information public through advertising or newspaper articles.

4.119. One respondent suggested that work carried out to assist contact and communications should require registration. Another suggested that, while all forms of communication should trigger registration, not all should be recorded on the register.

4.120. A few suggestions were made relating to registration (by small numbers in each case) including:

- Provision to allow meetings arranged at short notice to be registered retrospectively.
- Provision of a requirement to register soon after, rather than in advance of communication.

4.121. A few respondents suggested providing guidance and / or examples of the types of activity for inclusion. Comments were also made on the types of information which should be recorded, and these are covered in Chapter 5 (Question 11).

The inclusion of minor, infrequent lobbying

4.122. As noted at para 4.77, the consultation document did not ask a specific question to seek respondents' views on whether or not minor, infrequent lobbying should be included in the coverage of the register. The Scottish Government stated that there may be some difficulties with setting a "threshold", but recognised the importance of addressing this issue when constructing a registration regime (paras 33-35 of the consultation document).

4.123. Many respondents made comments on this. These comments focused both on the perceived benefits of having a "threshold" for inclusion in the register, and on issues and concerns with such an approach, with views fairly evenly split.

4.124. It would, however, be inappropriate to take this material as indicative of an overall pattern of views on a "threshold" approach (in the absence of having asked a specific question about this to all respondents).

Benefits of a “threshold” for inclusion

4.125. Where views were expressed, several respondents suggested that a “threshold” could have benefits, or suggested that this should be introduced. Among comments made were that this could:

- Provide a pragmatic approach.
- Help ensure proportionality.
- Provide consistency with the core principles.
- Minimise the impact on small organisations.
- Avoid undue burdens and potential deterrence from engagement.

4.126. A small number of respondents suggested that lobbying expenditure could provide the basis of a threshold. One suggested the use of the number of hours or posts, or the percentage of time spent lobbying as a threshold. Another respondent argued that a threshold would only be reasonable with straightforward and clear registration requirements.

Issues and concerns with a “threshold” for inclusion

4.127. Several respondents raised issues and concerns relating to the use of a threshold. A few stated, for example, that this lacked clarity, including of how it would be measured and monitored. A small number stated that levels of lobbying may vary from year to year, depending on the issues arising. A few others suggested that some “minor infrequent lobbying” could have a significant impact on outcomes.

4.128. Other concerns included that a threshold would:

- Not be workable, and would be difficult to set and regulate.
- Impede transparency (e.g. through the use of vague exceptions).
- Risk a “threshold loophole” and lead to the use of other, less transparent forms of lobbying activity.
- Be unfair and create a two-tier system.

4.129. A small number of additional suggestions were made about the use of a threshold. Most focused on providing more clarity about: the definition of “significant” lobbying; the sort of contact that would be considered regular or frequent; and how (and by whom) this would be measured. One respondent suggested that there could be a strict view of inclusion, but no fee for registration. Another suggested that there should be wide consultation on the level of any threshold.

5. INFORMATION, REPORTING AND CONDUCT

5.1. This chapter presents the findings relating to Questions 11-14, relating to information, reporting and conduct requirements.

Question 11: Information required from lobbyists on registration

5.2. The key issue identified in the consultation document for exploration at Question 11 was what information lobbyists should be required to provide on registration. The consultation document noted that the Committee had made a range of recommendations about what kind of information each lobbyist should be required to provide on registration (para 44 of the consultation document).

5.3. The Scottish Government identified some basic requirements it considered should be provided on registration, if a register were to focus on individual lobbyists as opposed to organisations (para 45 of the consultation document) . These were:

- The name of the lobbyist.
- The lobbyist's employer.
- Details of who the lobbyist has recently lobbied on behalf of.

5.4. Question 11 was an open question, which asked:

“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.”

Overall views

5.5. Most respondents (around four in five) made comments about the types of information lobbyists should be required to provide on registration (or more generally). A few respondents made a specific distinction between information required on registration and information required for updates.

5.6. There were a number of types of information respondents commonly felt should be provided. These were:

- Information on the lobbyist and / or their organisation or employer.
- Who the lobbying was being undertaken for.
- The nature of lobbying activities.
- Financial information.

5.7. A small number of respondents commented specifically on the information outlined in the consultation document (some of whom expressed agreement with this, while others expressed the view that this would provide insufficient detail).

The lobbyist or employer

5.8. Many respondents identified a need for details to be given of the lobbyist and / or their employer. Some respondents linked their response to their overall view of the onus for registration, with several, for example, suggesting that the organisation should provide the information required.

5.9. Many respondents identified a need for information about the lobbyist's employing organisation, and some also made specific reference to the need to include lobbyists working on a consultancy or freelance basis. Suggestions for the types of information relating to the lobbyist's employer included the:

- Name and any trading names of the employing organisation / membership body, or consultant.
- Address (registered address and place of business), website and contact details.
- Directors, Chief Executive, Board members, Trustees or equivalent.
- Number of employees / number involved in lobbying activity.
- Charity, SCIO or company registration number.
- Compliance with any code of conduct.
- Objectives and areas of interest / expertise.
- Main activities or services.
- Links to any specific vested interests.

5.10. Additional suggestions relating to consultant or freelance lobbyists included:

- Career history (or details of recent jobs in government).
- The capacity a person was acting in.

5.11. In terms of personal information about individual lobbyists working in organisations, several respondents suggested that the names of individuals carrying out such activity within an organisation should be included. (As noted at Question 4, some suggested that this could be part of an organisation's registration.) A small number of additional suggestions were made about types of information which could be included about individual lobbyists, which were:

- Job titles / roles.
- Details of any secondments or advisers placed in government.
- Membership of any voluntary organisations.
- Any previous public office held.

5.12. There were mixed views on this, however, and some respondents expressed concerns or raised issues about including the names of individuals or personal details in a register (other than those of freelance and / or professional lobbyists). Some of these issues were raised at Question 4, and comments included that:

- Some may not wish to be identified, or the nature of their work may make this problematic.
- This could provide a misleading picture of individuals' views.

- The number of individuals for whom such details were provided could be large.
- An organisation's duty of care could be compromised if personal details were used maliciously.

5.13. One respondent stated that there would be a need for assurance that any such data was held securely.

Who lobbying was carried out for

5.14. Many respondents identified a need to include information about who the lobbying was carried out for. Suggestions included, for example, information about:

- Whether the lobbying was in-house or for a third party (linked, for those lobbying in-house, to details of their organisation or membership body, as noted above).
- Hospitality, visits or material support.
- Names of clients (if applicable) and recent clients.
- Any interests served by representation.
- Who was funding the activity (e.g. source of salary, fees or funding).

5.15. A small number of respondents raised concerns about the inclusion of information relating to clients. One respondent, for example, stated that the registration of client details would breach the organisation's regulations on confidentiality, and would require the client's permission to waive this. A small number questioned the need to include previous clients, or questioned how far back this should go. One respondent stated that disclosure of information should be on a case by case basis, with no routine disclosure of all clients. They argued that it was not reasonable for clients, linked only by their use of the same advisor, to be compared to each other. They also argued that such disclosure would go against the organisation's duty of care and confidence to clients.

5.16. Other specific questions raised were:

- If an individual had worked for several Third Sector organisations in recent years, whether they would have to identify former employers.
- If an individual lobbied on behalf of a membership body, but worked for another member organisation, which organisation would be the one named as the one on whose behalf they were acting.

The nature of lobbying activities

5.17. Suggestions were made about including information on particular types of lobbying activities, such as:

- General lobbying activity undertaken.
- Meetings and events.
- Secretariat or other support to Cross-Party Groups.
- Hospitality, visits or material support.

5.18. As noted, other suggestions were made at Question 8 about potentially including other forms of activity. Suggestions were also made about providing additional details of the activities, and these included information about the:

- Dates.
- Purposes and aims of the activity.
- Subject matter / issues discussed.
- Target(s) of lobbying, who was lobbied and contacts made.
- Means of communication.
- Sources of information.

5.19. One respondent, however, raised a concern about including details of the aims of the lobbying, suggesting that this would either be so vague as to be of little value, or would risk disclosing confidential information.

Financial information

5.20. As noted above (para 5.14), some respondents suggested including the source of resources for lobbying. Several respondents made additional suggestions about including particular types of financial information, such as:

- Funding streams (including any public funding).
- Annual income and expenditure of the employing organisation.
- Financial cost of lobbying activity during the relevant period (e.g. in band widths).
- Aggregate lobbying spending and lobbying spending per issue.
- Aggregate lobbying income and lobbying income per client (where applicable).
- Political spending / contributions.

5.21. A small number of respondents stated that they did not support disclosure of financial information, or raised concerns about this (e.g. that such information would be commercially confidential; disproportionate; not directly relevant to the aims; and could reduce standards).

Additional comments and suggestions about information required

5.22. Many respondents made further general comments or suggestions. Several commented on the overall level of detail required in the provision of information, with mixed views on this. Some argued that it should be sufficient to meet the purposes of the register or to enable understanding, while one argued that it should be “headline only”. Others argued that it should be meaningful, proportionate, balanced (e.g. between transparency and the disclosure of sensitive information), simple to register, not burdensome, and should avoid duplication. One respondent stated that the quality of the data should be high enough to enable real accountability.

5.23. A few respondents suggested a need for clarity of the registration and reporting requirements (including the position in relation to confidential or commercially sensitive issues). A small number gave examples of the information requirements in other parts of Europe. One suggested that the information

should be able to be linked to other published data about lobbyists' activities. Another respondent suggested that the requirements should not go beyond the demands of what was already operating in the UK.

Question 12: Frequency of provision of a return

5.24. The key issue identified in the consultation document for exploration at Question 12 was whether lobbyists should be required to provide regular returns detailing their lobbying activity and, if so, how frequently. The consultation document noted (para 47) that the Committee had concluded that lobbyists should be required to provide regular returns (which could be quarterly, six-monthly or annual), but did not recommend a particular time period.

5.25. The Scottish Government expressed its support for a requirement for lobbyists to provide such returns, and stated that a return every six months appeared appropriate (paras 48-50 of the consultation document).

5.26. Question 12 asked respondents to express their view of the specific timescale for the provision of a return, as follows:

“How often should lobbyists be required to provide a return detailing their lobbying activity? Please provide reasons in support of your response.”

Overall views

5.27. Around three quarters of respondents made comments about how often lobbyists should be required to provide a return detailing their lobbying activity.

5.28. **A slightly higher proportion of respondents identified benefits of a six month period for returns than for other time periods.** There were, however, clearly mixed views, and positive views on three monthly / quarterly returns were also common. Several respondents suggested benefits of having an annual return. A small number suggested a two month period for returns, and a few stated that they would be content with either one timescale or another. Some respondents made additional general suggestions.

5.29. By type, among those who expressed a clear view, most Third Sector; Trade Associations / membership groups; and Trade Unions / professional organisations appeared to favour either six monthly or annual returns. Most (but not all) lobbying industry and campaigning organisations / groups appeared to favour three monthly returns.

Provision of a return every six months

5.30. Many respondents identified benefits of, or reasons for six monthly returns. Some added qualifications (e.g. that this should be a maximum, or minimum period; or that more frequent voluntary updates should be allowed). While some respondents expressed general agreement with the benefits of six monthly returns outlined in the consultation document, more specific comments included that this period would:

- Enable a more accurate picture of lobbying.
- Represent a reasonable and proportionate approach (and avoid a burden of more frequent reporting).
- Balance transparency and costs.
- Reflect variations in activity at different times.
- Improve record keeping and accuracy.
- Promote familiarity with, and awareness of the system.

5.31. Issues or concerns about a six monthly return, included that this could: lead to a delay in the availability of the information; have a negative impact on transparency; or place a burden on some small organisations and deter engagement.

Provision of a return every three months / quarterly

5.32. Several respondents identified benefits of, or reasons for a three month return period. These included that this period would:

- Accord with other registers (e.g. the Association of Professional Political Consultants; the Public Relations Consultants Association; and the UK register).
- Provide a manageable timescale which was not a burden.
- Avoid loss of information through error or staff change.
- Increase transparency by providing up to date information.
- Make this a routine process.
- Provide information of interest to the public (e.g. at election times).
- Reduce the opportunity for misrepresentation (e.g. sensationalism).
- Promote familiarity with, and awareness of the system.

5.33. As noted above, some respondents were concerned that this timescale would impose a burden on some organisations.

Provision of an annual return

5.34. Several respondents identified perceived benefits of, or reasons for the provision of an annual return, including that this would:

- Accord with charitable and corporate reporting requirements.
- Impose less of a burden and deliver a “light touch” approach.

5.35. It was also argued, however, that this would leave too long a gap between lobbying activity and its disclosure.

General comments and other suggestions

5.36. A small number of respondents suggested that returns could be provided more often (e.g. no more than every two months), citing the sometimes fast-moving nature of parliamentary business. One respondent suggested providing information within a specified time of each meeting. A few made general comments about the need for information to be provided as soon after activity as possible. A specific question was raised about whether an organisation

would have to maintain an entry on the register, even if there had been no activity in the previous registration period (if lobbying might take place in the future).

5.37. A few respondents raised concerns about the demands of providing returns, or stated that there should be a balance between useful information and practicalities for those completing the register. One respondent argued that it would be difficult to verify the accuracy of individual returns, with a lack of information about how this would be resourced.

5.38. A small number of other suggestions were made about the process for returns, including that:

- Reminders should be issued by the Registrar.
- The online system should allow organisations to log lobbying activity in real time, and should be searchable.
- An organisation, not an individual should provide the return.
- Reporting could be less frequent for some (e.g. determined by level or nature of activity, expenditure or type of organisation).
- The system could be populated at greater frequency, but only published at compulsory intervals.

5.39. A small number of comments were made about the period that should be allowed for completion of returns, while one respondent suggested a timescale within which they believed registration should take place. Other specific suggestions included that commercial and in-house lobbyists should be required to provide information with the same frequency as others, and that the frequency of returns could be subject to review. A small number of respondents stated that experience elsewhere suggested the value of continued registration (rather than constant registration and de-registration with variations in workload).

Question 13: Code of Practice for lobbyists

5.40. The key issue identified in the consultation document for exploration at Question 13 was whether there should be a Code of Practice for lobbyists, including general guidance on the registration regime and expected standards of behaviour. The consultation document (para 52) noted that the Committee had concluded that Parliament should introduce a Code of Practice for lobbyists, which would mirror the rules on lobbying in the Code of Conduct for MSPs. The Scottish Government expressed support for the introduction of a Code of Practice, the detail of which would be determined by Parliament (para 53 of the consultation document).

5.41. Question 13 asked respondents to express overall agreement or disagreement with the introduction of such a Code, as follows:

“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.”

Overall views

5.42. Most respondents (around four in five) made comments about the introduction of a Code of Practice for lobbyists.

5.43. **The majority of respondents expressed agreement that Parliament should introduce a Code of Practice for lobbyists.** Almost all of those who expressed a clear view (around nine in ten), and over half of all respondents, stated or implied agreement with this. Only a small number expressed or implied disagreement (with no pattern by type).

5.44. A few respondents stated that it was difficult to comment on this at this stage, or that their view would depend on the nature of such a Code. Over a third of respondents either did not express clear agreement or disagreement, or did not address this question. Most of the additional comments focused on the benefits of, or reasons for the introduction of a Code of Practice. Some issues or concerns were also raised, and many additional suggestions made.

Benefits of a Code of Practice for Lobbyists

5.45. Among the perceived benefits of a Code of Practice, the most common themes were to promote general improvements; and to provide guidance and clarity for lobbyists. It was argued, for example, that such a Code would support the procedures, and help to achieve the aims and purposes of the proposals. It was also argued that it would: help ensure effective compliance and adherence to standards; enable development of professional industry standards; promote consistency of approach; and improve the quality of service for clients.

5.46. Comments were also made about the value of providing guidance to those involved (including in the Third Sector). It was argued that it would enable them to understand their obligations and the behaviour expected (particularly if there was a possibility of sanctions), and that it would provide examples of good practice. A few respondents suggested that a Code of Practice would help to ensure transparency and public confidence, and reinforce the Code of Conduct already in place for MSPs.

Issues and concerns with a Code of Practice for Lobbyists

5.47. A small number of respondents identified issues and concerns with the introduction of a Code of Practice for lobbyists. These included views that this may:

- Not be required (e.g. given existing codes or the aim of the proposals).
- Be used to prohibit certain kinds of activity or be counter-productive.
- Be misused (e.g. with vexatious complaints).
- Become a minimum standard, and lower overall standards.
- Undermine existing codes and commitments.

Additional suggestions relating to a Code of Practice for lobbyists

5.48. Several respondents made more general comments about existing codes, and some gave specific examples of these. A few stressed that a Code should not impede or replace such codes. A small number of respondents expressed a

specific preference for either a voluntary or statutory Code, and a few expressed a preference for a Code rather than a register.

5.49. Several respondents made suggestions about the content of a Code of Practice and / or guidance. These included that it should contain information on:

- Expectations for interaction with MSPs.
- Standards of behaviour.
- The operation of the register (with, for example, summary information in a flow chart).
- The registration process and requirements.
- The core principles.
- The nature and benefits of lobbying.
- The use and presentation of evidence to public officials (e.g. with a commitment to ensuring this was not distorted).

5.50. One respondent stated that a ban on paying Parliamentarians should be included.

5.51. Comments were also made on the general nature of the Code and / or guidance, including that it should:

- Mirror the rules on lobbying in the Code of Conduct for MSPs.
- Recognise the differences between organisations where paid lobbying was the chief or sole business activity, and Third Sector organisations, Trade Associations and other representative organisations.
- Support, complement and build upon existing codes.
- Be comprehensive, clear, unambiguous and robust.
- Not be onerous.
- Be accessible (including in its language and overall nature).

5.52. One respondent stated that the Code should aim to improve lobbying standards. Another suggested that it should be possible for those covered by the Code to “self-refer” to appropriate authorities, should allegations be made about them to an MSP or a Minister by a member of the public. A further respondent stated that there should be an advice service alongside a Code of Practice, to help deal with more complex enquiries from lobbyists.

5.53. Several respondents made comments about the process for development of a Code. A few commented on the need for effective monitoring, reporting and enforcement for a Code of Practice to be effective (or the resource implications of this). A few respondents raised questions about how a Code would be drafted, or suggested that this should be done in consultation with relevant organisations. A few expressed a willingness or wish to be involved in discussions about this.

Question 14: Inclusion of subscription to Industry Codes of Conduct

- 5.54. The key issue identified in the consultation document for exploration at Question 14 was whether lobbyists should be able to indicate if they subscribed to existing industry Codes of Conduct. The Scottish Government expressed the view that a register should include the facility for this (para 55 of the consultation document).
- 5.55. Question 14 asked respondents to express overall agreement or disagreement with the inclusion of this facility, as follows:

“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.”

Overall views

- 5.56. More than three quarters of respondents made comments on this issue.
- 5.57. **The majority of respondents expressed agreement that a register should include the facility for lobbyists to indicate if they already subscribed to any industry Codes of Conduct.** Almost all of those who expressed a clear view (around nine in ten), and more than half of all respondents stated or implied agreement with this.
- 5.58. Several qualified their view, with additional comments including, for example, that this should not be a requirement, and should not be a substitute for a Code of Conduct for lobbyists, or for the register. Other qualifications included that: the standards in these Codes should not be lower than a Parliamentary Code if this were to be developed; and only relevant Codes should be included. One respondent argued that an industry-wide Code of Conduct introduced by the Scottish Government should seek ultimately to replace individual Codes practiced by organisations.
- 5.59. A small number of respondents (around one in eight of those who expressed a clear view, and under one in ten of respondents overall) stated or implied disagreement with including the facility for lobbyists to indicate their subscription to industry Codes (with no pattern by type among these respondents). Over a third either did not express a clear overall view, or did not address this question. Most additional comments focused on the benefits of, or reasons for a register to include this facility.

Benefits of inclusion of subscription to industry Codes of Conduct

- 5.60. Among the benefits of, or reasons for the inclusion of the facility for lobbyists to indicate their subscription to industry Codes were that this would:
- Enable organisations to identify and display a commitment to standards.
 - Support transparency and accountability.
 - Support and encourage information sharing.
 - Improve public awareness and confidence in relation to standards.

- Support self-regulation and promote recognition of, and compliance with positive Codes of Conduct.

Issues and concerns with the inclusion of subscription to industry Codes of Conduct

5.61. A small number of respondents raised issues or concerns with the inclusion of the facility for lobbyists to indicate their subscription to industry Codes. These included that this:

- Was not required, or would not provide additional benefits.
- May put pressure on lobbyists to subscribe to other Codes (e.g. which may have financial costs).
- May infer that those who did not subscribe did not meet expected standards (although, for example, subscription may not be appropriate for a particular lobbyist).

5.62. One respondent stated that voluntary Codes had often been promoted as a means of putting off or minimising regulation, and that industry Codes generally primarily served the interests of the profession involved. The same respondent argued that the Scottish Parliament should avoid endorsing any particular professional Code, and should promote its own guidelines.

Additional suggestions relating to the inclusion of subscription to industry Codes of Practice

5.63. A small number of respondents made additional suggestions. These included that the register should link to relevant Codes, and that organisations should be able to indicate any other forms of regulation they were subject to. One respondent suggested that there should be increased promotion of industry Codes, and another that Codes should only be included if they met a certain standard of operation in terms of processing complaints.

6. MAINTENANCE, ENFORCEMENT AND CHANGES RELATING TO THE REGISTER

6.1. This chapter presents the findings for Questions 15-17 relating to maintenance and enforcement of, and changes to the register.

Question 15: Upkeep and oversight of the register

6.2. The key issue identified in the consultation document for exploration at Question 15 was who should be responsible for upkeep and oversight of the register. The consultation document (para 58) noted that the Committee had proposed that a Registrar should be responsible for the running of the register and that this should have a very limited impact on the public purse. The document noted that the Committee suggested that the Clerks to the Standards, Procedures and Public Appointments Committee would be a candidate to act as “Registrar”, and that the role would include giving prompts and advice on:

- Whether to register.
- What to register.
- When to update the register.

6.3. The Scottish Government expressed agreement that creation, upkeep and oversight of the register should have minimal impact on the public purse and that the Committee’s proposals would be considered (para 59 of the consultation document).

6.4. Question 15 was an open question which asked:

“Do you have any views on the Committee’s proposals for who should be responsible for upkeep and oversight of the register?”

Overall views

6.5. Around three quarters of respondents made comments on who should be responsible for upkeep and oversight of the register. Some respondents made general comments expressing their agreement that there should be a Registrar, or with the proposed system. Some expressed the specific view that the Registrar should be independent (e.g. of government, industry, and, in the view of some respondents, of Parliament).

6.6. **There were mixed views on who should have responsibility for upkeep and oversight of the register.** Opinion was split between those who believed that the Committee’s Clerks should perform this function, and others who preferred an alternative approach. A few respondents stated that they were not in a position to recommend how a register should be supported. Some additional comments were also made on the overall approach that should be adopted to the upkeep and oversight of the register.

The role of Committee Clerks in upkeep and oversight of the register

- 6.7. Many respondents made specific comments on the role of Committee Clerks in upkeep and oversight of the register. These included comments on benefits and concerns with the Clerks being responsible for this. Perceived benefits focused on views that they: would be impartial and independent of government; had existing expertise and a similar role; and were already familiar with the issues involved.
- 6.8. Issues and concerns with Clerks being responsible for upkeep and oversight of the register focused on views that: there may be a lack of independence; there could be potential for conflict of interest; the Clerks' role was different to maintaining a register; and there could be problems in the future if Parliamentary staffing structures were to change. One respondent expressed the view that the Scottish Government and Parliament underestimated the additional workloads these responsibilities would place on the Committee Clerks.

Other suggestions about responsibility for upkeep and oversight of the register

- 6.9. Many respondents made other suggestions about who should be responsible for upkeep and oversight of the register. Some, for example, expressed the general view that responsibility for this should lie with an independent body or impartial agency or Commissioner. One respondent stated that, in Canada, the register and Code of Conduct were overseen by an Office of the Commissioner of Lobbying of Canada.
- 6.10. Where specific suggestions were made, the most common were that the upkeep and oversight role should be undertaken through the Public Standards Commission and the Commissioner for Ethical Standards in Public Life in Scotland. The benefits of this were seen to be that this would offer a more independent approach; and would be consistent with the Commissioner's current remit, skills and experience. One respondent expressed the view, however, that, while this role was well-aligned to proposals to limit the scope of the register to interactions with MSPs and Ministers, they believed there was a need for a focus on lobbyists' activities.
- 6.11. A small number of respondents suggested that the upkeep and oversight role should be undertaken by the Scottish Information Commissioner, with suggested benefits including their independence, skills and experience.
- 6.12. A few respondents made other comments, suggesting that:
- Parliament should be the custodian of the register or its oversight and upkeep should be the responsibility of a dedicated unit.
 - The role should be undertaken by a government employee.
 - The Office of the Registrar of Consultant Lobbyists (the existing body in the UK) could take on this role in Scotland.

Additional comments relating to upkeep and oversight of the register

6.13. A few respondents made additional comments. Some expressed views on the role of the register's operator, including that this should involve:

- Administering the register.
- Providing a public registry of all disclosed lobbying information.
- Providing guidance and advice on registration.
- Overseeing the register (rather than, for example, making major interpretative decisions about who should and should not be required to register).
- Ensuring compliance with the law and Code of Practice (e.g. carrying out investigation and audit; maintaining a "whistle blowers' hotline").

6.14. A few respondents stated that the task would be challenging. One stated that, if the task were to be carried out by Clerks, there would be a need for training. A few expressed the view that the process for supporting the register may be different to the process for enforcement, and one argued that there would be a need for a full disciplinary procedure that was human rights compliant. (Enforcement issues are discussed at Question 16 below.)

6.15. One respondent stated that there should be a commitment to adopting and promoting a culture of lobbying transparency. Another argued that the Registrar should be connected to lobbyists in an open and positive manner. A further respondent stated that they would not support the creation of a new bureaucracy to act as Registrar. A small number of respondents suggested using existing records or registers to inform the establishment of the register in Scotland.

6.16. Some respondents stated specifically that the register should have minimal impact on the public purse, and several expressed the view that there would be a need for sufficient resources to support the system, and that such requirements should be considered. A small number of respondents stated that upkeep and oversight of the register should be subject to review.

Question 16: Enforcement mechanisms and sanctions

6.17. The key issue identified in the consultation document for exploration at Question 16 was what enforcement mechanisms and sanctions should be available. The consultation document noted (paras 61-63) that the Committee had proposed a possible model for a compliance regime, stressing that emphasis should be on assisting lobbyists in correcting unintended transgressions. The document noted that the Committee raised the possibility of a tiered process, including:

- Prompts from the Registrar to seek a resolution.
- Investigation by the Commissioner for Ethical Standards in Public Life (who would report to the Committee, and the Committee would consider whether to recommend that sanctions be imposed by Parliament).
- Criminal offences and penalties.

6.18. The Scottish Government expressed support for a registration regime where the emphasis was on assisting lobbyists to comply with registration requirements, but with stronger sanctions available. The Scottish Government expressed support for the inclusion of criminal sanctions (para 64 of the consultation document).

6.19. Question 16 was an open question, which asked:

“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.”

Overall views

6.20. Over three quarters of respondents expressed views about enforcement mechanisms and sanctions.

6.21. **A slightly larger proportion of respondents made comments on the overall need for, or benefits of, enforcement mechanisms and sanctions than identified concerns with these.** Many respondents also made additional suggestions.

The benefits of enforcement mechanisms and sanctions

6.22. Many comments were made about the overall need for, or benefits of enforcement mechanisms and sanctions (by over half of those who addressed this question). Many respondents expressed the view, for example, that these were required for the register to function effectively, as well as to ensure compliance and prevent abuse. Some respondents stated that evidence demonstrated the importance of enforcement and sanctions.

6.23. Several respondents expressed overall agreement with the proposed approach (either as outlined in the Committee recommendations or in the consultation document). Some expressed agreement with a particular aspect of this, such as having a tiered or progressive response to non-compliance (with more severe sanctions for more serious offences). Several expressed support for having a range of sanctions (including, for example, the option of criminal sanctions). Further common comments included agreement with: the need for enforcement mechanisms and sanctions to be proportionate; the emphasis on assisting lobbyists to correct unintended transgressions; and the promotion of co-operation from lobbyists, rather than being unnecessarily punitive.

6.24. A few respondents expressed specific support for the proposed role of the Registrar and / or the role of the Commissioner for Ethical Standards in Public Life.

Issues and concerns relating to enforcement mechanisms and sanctions

6.25. Many respondents (including some of those who identified a need for enforcement mechanisms and sanctions) also raised issues and concerns. These were identified by approaching half of those who addressed the question. Among these, over half (and around a quarter of those who addressed the question overall) raised specific issues and concerns with the

inclusion of criminal sanctions. A few expressed general disagreement with this, while some more specific concerns included views that criminal sanctions:

- Would not be proportionate, nor in the public interest.
- Were not needed when there was no evidence of a significant problem, and existing legislative provision (e.g. the Bribery Act 2010).
- Could follow from unintended transgressions.
- Could deter engagement with MSPs and Ministers.

6.26. One respondent stated that failure to adhere to a Code of Practice should be dealt with by civil sanction, and that criminal activity should be dealt with by the police and Procurator Fiscal.

6.27. A few issues and concerns were also identified relating to the use of deregistration, including that:

- The effectiveness of this would be limited against a lobbyist who had not registered.
- There may be difficulties about how contact with MSPs would be prevented.
- There may be difficulties with how this would be monitored (e.g. whether an MSP would be obliged to report any contact).
- It was not clear what would happen if a restricted lobbyist was contacted directly by an MSP.

6.28. A few other issues and concerns with enforcement mechanisms and sanctions were also raised. A small number of respondents focused on the overall approach, suggesting, for example, that the language used was heavy handed, or that the approach was disproportionate (including, in the view of one respondent, for the Third Sector). One respondent suggested that there were tensions between a system based on co-operation and voluntary disclosure, and a system of statutory regulation with criminal sanctions.

6.29. Additionally, a small number of respondents expressed views that:

- Sanctions were unlikely to be needed (with public censure or the risk of reputational damage likely to suffice).
- There was not sufficient detail about the proposed regime, with the potential for unintended transgressions.
- It may be difficult to identify breaches.
- The issue of sanctions was linked to the onus for registration, with concerns that an individual could be sanctioned (e.g. for acting on behalf of an organisation).

Additional suggestions relating to enforcement mechanisms and sanctions

6.30. Many respondents made additional suggestions about enforcement mechanisms and sanctions. Common views included that these should be proportionate, and that the approach should focus on co-operation, correcting

unintended errors, providing assistance and raising awareness of the rules and regulations.

6.31. Many respondents suggested specific types of sanction for inclusion, such as:

- Prevention of lobbying for a period; prevention of future access to decision makers; removal of Parliamentary passes; removal from the register of consultant lobbyists, or removal from the list of those allowed to lobby (with one respondent suggesting that the organisation removed should be named).
- Civil sanctions (e.g. fines and financial penalties; interdicts; compliance notices).

6.32. A number of specific suggestions were also made about the approach to using sanctions. Some expressed the view, for example, that sanctions (particularly financial and criminal sanctions) should be a last resort. It was also argued that enforcement mechanisms and sanctions should not create unintended barriers to the accessibility of the Scottish Parliament. A few respondents suggested that the size or type of an organisation should be taken into account in considering sanctions, while one argued that two-tier sanctions would be confusing. One respondent identified particular issues which they did not believe should be treated as non-compliance.

6.33. Other suggestions relating to enforcement mechanisms and sanctions included that:

- Sanctions should be commensurate with other requirements (e.g. the existing regime for charity regulation; the MSP Code of Conduct).
- Compliance should be dealt with in the same way as for comparable registers (e.g. Protecting Vulnerable Groups [PVG] scheme membership).
- The register should be part of the existing standards regime in the Scottish Parliament.
- The system should follow Hampton's principles of good regulation¹¹.
- Enforcement and sanctions should be upon organisations, not individuals.

6.34. One respondent argued that, if individual employees were at risk of sanctions, each employer would need to address this in their employment contracts, and offer indemnity insurance. They suggested that, if an employee did something wrong, it should be dealt with by their employer as a disciplinary issue (with other laws available if required). Another respondent suggested that they favoured penalties for non-compliance being available to charities' primary regulator.

¹¹ In 2004, Philip Hampton led a review of regulatory inspection and enforcement. The recommendations were published in March 2005 and the "Hampton Report" set out a series of principles which it recommended that all regulators adopt.

- 6.35. A few suggestions were made about the implementation of enforcement mechanisms and sanctions. These included, for example, having a “settling-in” period; providing support and advice (e.g. with an awareness campaign at the launch of the register); and undertaking further discussion of these issues.
- 6.36. A small number of respondents identified a need for clarification of aspects of the proposals, including, for example:
- How and by whom enforcement would take place.
 - What sanctions there would be for failure to adhere to the Code of Conduct.
 - Whether sanctions would differ for different sectors.
 - Whether MSPs would face parliamentary sanction for agreeing to meet with individuals or organisations where it had been recommended that they should not, and whether it would be a criminal offence for an individual or organisation to arrange such a meeting.
 - What sanctions could be imposed on those lobbying from outside the UK.
- 6.37. One respondent argued specifically that responsibility for compliance should not be separated out to different Parliamentary bodies. Another stated that the Scottish Government should identify gaps in current legislation that new criminal sanctions would seek to address. It was also stated that enforcement mechanisms and sanctions would require resources.

Question 17: Adjustment of registration regime

- 6.38. The key issue identified in the consultation document for exploration at Question 17 was whether the legislation should be flexible to allow the registration regime to be changed in the light of experience. The consultation document noted (para 66) that the Committee had concluded that Parliament must be able to change the new system if it were to inhibit those seeking to legitimately lobby the Scottish Parliament and Scottish Government.
- 6.39. The Scottish Government expressed the view that, following the establishment of the register, there should be the facility to adjust the scope and operation of the registration regime in the light of practical experience of its operation, with a role for Parliament to make any changes by resolution, which would be published as a Scottish Statutory Instrument (SSI) (paras 67 and 68 of the consultation document).
- 6.40. Question 17 asked respondents to express a view of whether this should be possible, as follows:
- “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?”*

Overall views

- 6.41. Over three quarters of respondents made comments on this issue.

6.42. **The most commonly expressed view was that Parliament should have, by resolution, the ability to adjust the scope and operation of the registration regime once established.** Almost all (around nine in ten) of those who expressed a clear view, and approaching half of all respondents stated or implied their agreement with this. A small number qualified their views by stating, for example, that: this should apply to minor changes (with suggestions about the nature of these); and that it should be subject to consultation and scrutiny.

6.43. A small number of respondents expressed or implied their disagreement (with no clear pattern among these). Over half of all respondents either did not express a clear overall view, or did not address the question. Most of the additional comments focused on the benefits of, or reasons for, this provision. A small number of issues or concerns were also raised. Many respondents made additional suggestions about the way forward.

Benefits of Parliament being able to adjust the regime by resolution

6.44. The most common benefits of Parliament being able to adjust the scope and operation of the registration regime by resolution related to the potential for issues to emerge following its implementation. Comments included, for example, that lobbying was a shifting industry, and that there could be changes in communication methods, public needs and awareness. It was also argued that there could be teething problems and difficulties in interpreting legislation in the early stages. It was also stated that the full implications, impact and consequences of a register could not be known until it was in place (with, for example the potential for: unforeseen problems; a negative impact on some issues; loopholes; or practical issues). One respondent argued that Parliament may wish to act quickly if a particularly urgent issue arose.

6.45. Among other comments, a few respondents stated that there should be an opportunity to learn and reflect on implementation (and one stated that the experience of other jurisdictions indicated that some lobbying registers needed to be revised in the light of experience). One respondent stated that Parliament would ideally take ownership of the Bill and the resulting structure. Another argued that it may be important for Parliament to examine the register without this taking undue time. A further respondent stated that the regime should be “future proof”.

Issues or concerns with Parliament being able to adjust the regime by resolution

6.46. A small number of respondents identified issues or concerns with Parliament having the scope to adjust the scope and operation of the registration scheme, once established, by resolution.

6.47. A few respondents expressed the views that:

- There should be little need for further amendments.
- Any important decisions should be made prior to implementation.
- The register should be right from the start (rather than, for example, relying on the potential for retrospective change).

- A flexible register could undermine its independence and credibility, and delay tackling fundamental points.

6.48. A few respondents expressed disagreement with the use of secondary legislation, or argued that any substantial changes might be better achieved through an amendment rather than an SSI. One stated that secondary legislation should be used only for administrative purposes.

Additional suggestions relating to Parliament being able to adjust the regime by resolution

6.49. Many respondents made additional suggestions and general comments relating to adjustment of the regime. The most common theme was that there should be a process of review following the introduction and operation of registration. Some respondents argued that there should be regular review (particularly, in the view of one respondent, in the initial years of operation). Some suggested specific timescales for review (e.g. ranging from 1-5 years). One respondent argued that any registration regime which was introduced should be operational for the duration of a parliamentary term, with review no more than once per parliamentary term.

6.50. A few respondents identified specific issues for consideration on review of the regime. These included, for example: whether the system was causing any difficulties or burden; the costs and benefits; whether it was achieving its objectives and / or added any value; and whether there were any unintended consequences. A small number of respondents stated that it would be difficult to measure effectiveness (without a specific problem needing to be addressed by the system).

6.51. Several respondents commented on the process of change, including the view that there should be discussion of, and consultation on any changes and that these should be evidence-based. Another suggested that a voluntary pilot scheme should be tested prior to legislation. A few respondents argued that the process for adjustment should be enshrined in legislation and / or that any resolution should be subject to the affirmative procedure.

7. EQUALITIES AND BUSINESS IMPACTS AND OTHER ISSUES

7.1. This chapter summarises findings relating to the potential impact of the proposals on equalities groups and businesses (Qs 18 and 19) and other relevant issues not otherwise covered by specific questions (Q 20).

Question 18: Equalities impacts

7.2. Question 18 explored respondents' views on any equalities impacts that could arise from the proposals, to assist in the preparation of an Equalities Impact Assessment (EQIA) in connection with the legislation (para 69 of the consultation document).

7.3. Question 18 was an open question, which asked:

*“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.”*

Overall views

7.4. Over two thirds of respondents made comments on whether there could be an impact of the proposals on equalities groups, although, in just under half of these cases, this was only to say that they had no particular comment or view. Several stated that they did not believe there would be any impact on equalities groups. One respondent stated that it was unclear what was being referred to as “equalities groups”.

7.5. **Around a third of all respondents (particularly Third Sector respondents) identified a potential impact on equalities groups.** A few respondents were uncertain of the specific nature of the impact, but most comments focused on identifying the type of potential impact, and the actions needed to address any negative impact.

The nature of the equalities impact

7.6. In most cases, comments on the nature of the potential impact of the proposals related to concerns about a negative impact on equalities issues or groups. A few were at a general level (e.g. in terms of a potential barrier between equalities groups and MSPs). One respondent made reference to a “Common Weal” report (2013) that had identified that the type of people giving evidence to Parliament were likely to be white males in high income jobs¹².

¹² *Government by the People: The Final Report of the Commission on Fair Access to Political Influence* (2013) Biggar: The Reid Foundation
<http://www.allofusfirst.org/library/government-by-the-people-the-final-report-of-the-commission-on-fair-access-to-political-influence>

- 7.7. Concerns were also raised about a negative impact on particular groups or organisations, the most common of which were seen to be small community groups and those lacking financial resources. (As noted previously, concerns were also raised at different points about the potential impact of the proposals on Third Sector organisations.)
- 7.8. It was argued that wealthy and powerful organisations could deploy greater resources to lobbying than small organisations could (including some in the Third Sector). It was also argued that an onerous scheme could disadvantage those with fewer resources. Further concerns were expressed about the impact on those whose core business was not lobbying, but who were engaged in some public affairs work which may be covered. Concerns were also expressed about the impact on those unused to engaging with statutory organisations, and one respondent argued that smaller organisations may be unsure of their obligations, and apprehensive about seeking advice.
- 7.9. It was suggested that many organisations campaigning on equalities issues had small staff numbers, and that many community organisations would involve their members in lobbying. It was suggested that such organisations may find it more challenging to comply with requirements, may unintentionally fall foul of the register, and could potentially be exposed to sanctions.
- 7.10. It was argued that these issues could have a negative impact on groups which were already disenfranchised or disengaged. Some respondents stated that, if the types of organisations described were deterred from engagement, there would be a negative impact upon the groups they represented.
- 7.11. There was also seen to be a specific risk that the proposals could impact on women, children and young people. One respondent suggested, for example, that there could be an adverse impact on local Women's Aid groups (which provide a "voice" for women, children and young people experiencing domestic abuse) through having a requirement for individual workers to register.
- 7.12. Another respondent suggested that some organisations working with under-represented groups of young people may lack the time and resources to participate in lobbying with the new regulations (with increasing pressure to deliver services at a time of budget cuts and reductions in spending).
- 7.13. A further respondent expressed concern that the proposals may deter community groups that did not have English as their first language. It was also suggested that these groups may be unaware of their obligations, and reluctant to seek advice.
- 7.14. One respondent suggested a potential impact on people who were unable to use some forms of communication that would not fall within the scope of a register (e.g. email or telephone). These lobbyists would have to meet face to face, and may have to register more of their lobbying activity than others. As noted previously, it was also argued that having only an online register could discriminate against some organisations.

- 7.15. One respondent stated that there may be potential for discrimination against homeless people (particularly if there was a requirement for individuals rather than organisations to register).
- 7.16. For a few respondents, the potential equalities impact they identified was positive. It was suggested, for example, that this could be achieved through: improved equality of information or equality of access; and increased transparency and participation. One respondent argued that the potential negative impact appeared to be over-stated. Another argued that evidence from North America suggested that the information presented by a lobbying register could stimulate participation in politics.

Actions to address the equalities impact

- 7.17. Among the suggestions made about actions required to prevent or address any negative equalities impact were:
- Identification and removal of any barriers to engagement (including making any necessary adjustments and support to comply with existing equalities legislation; and keeping requirements at a level that would not prevent or restrict some organisations' activity).
 - Completion of an Equality Impact Assessment and direct engagement with organisations with a primary focus on equalities, to ascertain their views.
 - Provision of guidance to encourage consideration of equalities issues, and the inclusion of any equalities impact in the review process.
 - Open calls for applications to sit on advisory groups, and selection criteria to ensure a balance of interest groups.

Question 19: Business impact

- 7.18. Question 19 explored views on the potential impacts on businesses of the proposals, and sought general views to assist in the preparation of a Business and Regulatory Impact Assessment (BRIA) in connection with the legislation (para 70 of the consultation document).
- 7.19. Question 19 was an open question, which asked:

“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.”

Overall views

- 7.20. **Most respondents made comments about additional costs or other implications for businesses as a result of the proposals.** Around four in five did so. Many respondents (of different types) identified the nature of the perceived impact, and their comments are summarised below. A few provided specific evidence to support their view (e.g. reference to a report; or their own calculation of potential costs). Some made reference to the perceived implications for their own organisation.

- 7.21. Several respondents expressed the general view that the proposals would not have additional costs or implications for businesses. Several stated that the costs and impact would depend on the nature, scope and requirements of the register. A few expressed the view that, while there may be some business impact, the benefits would balance or outweigh this.
- 7.22. One respondent made reference to a US report (from the US Government Accountability Office) to suggest that, since 2010, compliance had been generally viewed by the lobbying industry as being “easy” or “very easy”¹³.
- 7.23. Where respondents identified a particular impact, the most common was financial, although a small number of other implications were suggested. Respondents also identified some actions seen to be required to prevent or address any business impact.

The nature of financial impact

- 7.24. Many respondents made comments on the potential financial implications for businesses, and the nature of the perceived impact of the proposals. The main themes related to the staff time and administration that could be involved. In terms of time, for example, costs were identified for: familiarising with reporting requirements; keeping a record of lobbying activity; logging activity on the register; completing and checking register entries; and completing updates.
- 7.25. In terms of administration, comments included that additional costs would come from: the need to create and administer internal compliance systems; and the development and monitoring of a new recording and reporting process. One respondent provided a calculated example of the anticipated costs of an application and return. One respondent stated that the cost of maintaining the regulatory body should fall on the organisations, but stated that the cost should be modest and the requirements proportionate.
- 7.26. Several respondents identified a perceived impact on specific types of businesses or organisations. These included views that:
- Many Third Sector organisations already faced financial constraints.
 - There would be a greater burden on small organisations and social enterprises (e.g. with a low number of staff covering wide remits).
 - There could be additional costs for small to medium enterprises (SMEs) in the property industry, and it could be difficult to be precise about costs per project.
 - The register could lead to an increased burden on the public sector by leading to an increase in Freedom of Information (FOI) requests.
 - There could be an additional impact on organisations working across multiple jurisdictions.
 - Consultant lobbyists may face significant costs.
 - There would be cost implications for the body charged with administering and enforcing the regulations within the register.

¹³ <http://www.gao.gov/assets/670/669270.pdf>

- 7.27. A few respondents argued that a focus on individuals would have a greater cost impact on businesses than a focus on organisations, or that a requirement for additional information or more frequent registration could increase the impact.
- 7.28. Several respondents expressed the view that there would be no significant cost impact, or that the costs would be limited or manageable if, for example, there were to be: exemptions for small organisations; straightforward online filing; organisational registration; proportionate requirements; and publication of MSPs' diaries. A few respondents stated that much of the necessary information would already be recorded by private companies and Third Sector organisations. One respondent provided a specific example of a charity already disclosing their political contacts and policy work.
- 7.29. One respondent argued that there was little reliable empirical data on the compliance costs of lobbying disclosure. One provided cost estimates for different types of its members completing an application. The same respondent stated that it could provide a variety of research which may be useful.
- 7.30. Another respondent described their experience of completing a sample quarterly return which covered: the Registrant's details; lobbying activity details; names of individuals who acted as lobbyists; and the financial value of lobbying. The respondent reported that it had taken approximately 20 minutes to do this.
- 7.31. A further respondent suggested that the Business Regulatory Impact Assessment (BRIA) could rely on good-faith estimates of the time required to comply.

Other types of impact

- 7.32. Several respondents identified other perceived implications of the proposals for businesses and organisations. A few suggested employment implications, particularly with an individual (rather than organisation)-based approach. It was argued, for example, that, in these circumstances, organisations would need to review and potentially revise contracts of employment to cover additional responsibilities. It was also argued that they would need to consider indemnity insurance to cover staff who may be affected while undertaking activities for the organisation. One respondent expressed concerns about the "duty of care" for employees who may become a target if they were involved in a campaign.
- 7.33. Other implications identified included that:
- There could be accidental transgressions, and reputational damage for non-compliance.
 - Any process that involved considerable staff time could impact on the ability of Third Sector organisations to lobby.
 - Some organisations would need to issue guidance to members.
 - There may be a reticence to employ or retain lobbyists until the impact of the register was clear.

7.34. A few respondents stated, however, that the proposals could have a positive impact on other issues for businesses. A small number, for example, argued that the system would enable access to more reliable information about other organisations' activities (e.g. public affairs and outreach), and would lead to greater knowledge and awareness. One respondent expressed a general view that businesses would benefit from a clear and transparent political process.

Actions to address the business impact

7.35. A number of suggestions were made about actions required to identify, prevent or address any negative business impact (some of which related to respondents' views on issues explored previously). Those identified were:

- Completion of a BRIA, with direct engagement with business.
- Organisational, rather than individual registration.
- Adherence to the core principles, or the principles for better regulation.
- Free registration (or a low fee if there was to be one), and no additional costs.
- Exemption of some types of organisations from registration.
- National investment in an online system which could be updated in real time.
- A requirement for MSPs to publish diaries or lists of meetings.
- Clarity of definition (to reduce the legal expertise required).
- Learning from, and providing consistency with other registration requirements.

Question 20: Other comments

7.36. Question 20 provided an opportunity for respondents to make any other comments. This was an open question, which asked:

“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?”

Overall views

7.37. Many respondents made comments at Question 20. Many of these comments covered issues already discussed earlier in response to specific questions, or reiterated their overall views.

7.38. Additional common themes were: the nature of the respondent and their response; the consultation process; and the way forward overall.

7.39. Comments on the issues already discussed have been included at the relevant points in this report, and will not be rehearsed again here. The issues raised in the additional themes are summarised below.

The nature of the respondent and their response

7.40. A large amount of additional information was provided about respondents. This included details of their:

- Purpose, aim, remit and services.
- Membership, coverage and representation.
- Size and composition.
- Structure and type of organisation.
- Ways of working.
- Contacts for further information.

7.41. Many respondents identified their own role in, and / or approach to lobbying. Several, for example, mentioned the importance to them of being able to lobby (e.g. to: inform MSPs; raise issues; represent the views of others; and influence policy and legislation). Some mentioned their general approach to lobbying (e.g. promoting their lobbying to their members; offering advice based on expertise; taking an open and transparent approach). A few made reference to their previous involvement in the issue of regulation of lobbying.

7.42. Several respondents commented on having a potential role in the future (e.g. offering to work with the Scottish Government on lobbying issues; offering to discuss their response further; or generally expressing a commitment to continuing to engage on the issues).

7.43. A few respondents made reference to their membership of other bodies, subscription to Codes of Conduct or similar, with examples including the:

- Association for Scottish Public Affairs.
- Market Research Society Code of Conduct and Guidelines.
- European Commission's transparency register.
- Chartered Institute of Public Relations.
- Association of Professional Political Consultants.
- Public Relations Consultants Association.
- UK Public Affairs Council.

7.44. Many respondents provided additional information about the nature of their response, including details of: the purpose; format; issues or questions covered; and views represented. Comments were also made about how responses were prepared or made available. A few respondents referred to, or endorsed another response.

The consultation process

7.45. Many respondents made comments on the consultation process itself, largely to welcome the opportunity to respond. A few made reference to having submitted views previously on the issues being explored (including a small number who made specific reference to having responded to a previous consultation and / or having provided evidence to the Standards, Procedures and Public Appointments Committee Inquiry).

7.46. A few made comments on the overall process, on the Scottish Government's proposals generally, and on the consultation document itself. A few respondents commented that aspects of the Scottish Government proposals differed from the recommendations of the Committee. One respondent suggested that a lack of clarity in the consultation document may impact on

submissions from some respondents. One respondent stated that the proposals appeared to have been drawn up primarily with consultant lobbyists in mind, along with consideration for in-house lobbyists hired to act on behalf of commercial enterprises and their representative bodies. Another stated that the register appeared restricted compared to other disclosure regimes. One respondent stated that the consultation would inform the development of the proposed lobbying bill in Scotland.

The way forward overall

7.47. Several respondents made further suggestions about the way forward. These included to:

- Learn from, and reflect on, experiences elsewhere.
- Design the register in collaboration with users from civil society.
- Pilot the approach ahead of legislation.
- Undertake further consultation prior to legislation.
- Undertake an awareness campaign.
- Provide information and guidance (including charitable guidance for Third Sector lobbying).

APPENDICES

APPENDIX 1 THE 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?

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

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

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.

Question 5 – Should both consultant lobbyists and in-house lobbyists be required to register? Please provide reasons in support of your response.

Question 6 – Should any types of in-house lobbyist be exempt from registration? Please provide reasons in support of your response.

Question 7 – Do you agree that the register should cover the lobbying of MSPs and Ministers? Please provide reasons in support of your response.

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

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.

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.

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.

Question 12 – How often should lobbyists be required to provide a return detailing their lobbying activity? Please provide reasons in support of your response.

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.

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.

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?

APPENDIX 2 THE RESPONDENTS

Aberlour
Alcohol Focus Scotland
Alliance for Lobbying Transparency
Ash Gupta
ASH Scotland
Association for Scottish Public Affairs
Association of British Credit Unions Limited
Association of Professional Political Consultants
British Medical Association Scotland
Cancer Research UK
Carers Trust Scotland
Chartered Institute of Public Relations
Chest Heart and Stroke Scotland
Children in Scotland
Cogitamus Ltd
Common Weal
Confederation of British Industry Scotland
Electoral Reform Society Scotland
Federation of Small Businesses
Forum of Scottish Claims Managers
Health and Social Care Alliance Scotland
Homes for Scotland
Inclusion Scotland
Institute of Chartered Accountants of Scotland
Interfaith Scotland
Invicta
Law Society of Scotland
Market Research Society
Melanoma Action and Support Scotland
Motor Neurone Disease Scotland
Mountaineering Council of Scotland
National Farmers Union Scotland
North Lanarkshire Council
Office of the Scottish Charity Regulator
PACT
Pagoda Porter Novelli
Professor Paul Spicker
Public Affairs Co-operative
Public Relations Consultants Association
Regulatory Review Group
Renewable Energy Systems
Road Haulage Association

Royal College of Psychiatrists Scotland
Scottish Churches Committee
Scottish Churches Parliamentary Office / Church and
Society Council of the Church of Scotland
Scottish Contractors Group
Scottish Council Development and Industry
Scottish Council for Voluntary Organisations
Scottish Council of Jewish Communities
Scottish Engineering
Scottish Environment LINK
Scottish Environment Protection Agency
Scottish Environmental Services Association
Scottish Grocers Federation
Scottish Property Federation
Scottish Sports Alliance
Scottish Trades Union Congress
Scottish Women's Aid
Shelter Scotland
Spinwatch
Stonewall Scotland
The Royal College of Midwives Scotland
The Royal Society of Edinburgh
The Salvation Army
Transparency International UK
Unlock Democracy
Youthlink Scotland
Zurich Insurance PLC



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