



Northern Ireland  
Assembly

## Research and Information Service Briefing Paper

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# Developments related to lobbying in the UK and Ireland

## 1 Introduction

This paper has been prepared following a request from the Committee on Standards and Privileges. It sets out the position in the House of Commons, House of Lords, Scottish Parliament, National Assembly for Wales and the Oireachtas for regulating lobbying. It also provides information on the *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill* currently before the UK Parliament and summarises the key findings from the Committee on Standards in Public Life's (CSPL) report on lobbying.

Although the research was not asked to examine the issue of lobbying in respect of the Northern Ireland Assembly, it is worth noting that section 43 of the Northern Ireland Act 1998 requires Standing Orders of the Assembly to prohibit Members from advocating an issue in return for payment or other benefit, or from urging a colleague to engage in such activity.

## 2 Key points

- The Scotland Act 1998 and the Government of Wales Act 2006 prohibit Members from advocating a cause in return for payment or any other benefit, or urging a colleague to engage in such activity.
- Paid advocacy is also prohibited by Resolutions of the House of Commons and the Standing Orders of the Commons and House of Lords.
- A Bill currently before the UK Parliament aims to regulate lobbying in respect of Ministers and Permanent Secretaries.
- Following the introduction of a Private Member's Bill, the Scottish Government indicated in June 2013 its intention to legislate on the issue of lobbying in this mandate. The Standards, Procedures and Public Appointments Committee is currently undertaking an inquiry into lobbying. Some of the consultation Committee's inquiry make it clear that Members' staff should be included in any future legislation aimed at regulating lobbying.
- The National Assembly for Wales has taken a different approach to lobbying. The Standards of Conduct Committee did not see a need to legislate for a register of lobbyists, but it did propose (and the Assembly subsequently approved) a resolution outlining what constitutes an appropriate relationship between elected Members and lobbyists.
- The National Assembly for Wales' Resolution makes it clear that Members' staff should be aware of the guidance contained in the Resolution.
- A Bill is expected to come before the Oireachtas with the aim of regulating lobbying activity. This will extend to, among others, Ministers, Ministers of State; TDs, Senators and members of their staff

## 3 OECD and GRECO

### **OECD's Principles for Transparency and Integrity in Lobbying**

In 2010 the Organisation for Economic Co-operation and Development (OECD) published its *Principles for Transparency and Integrity in Lobbying*, aimed at helping decision makers address concerns about lobbying practices. OECD produced 10 principles<sup>1</sup>:

#### **Building an effective and fair framework for openness and access**

- 1 Countries should provide a level playing field by granting all stakeholders fair and equitable access to the development and implementation of public policies.

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<sup>1</sup> <http://www.oecd.org/gov/fightingcorruptioninthepublicsector/44641288.pdf>

- 2 Rules and guidelines on lobbying should address the governance concerns related to lobbying practices, and respect the socio-political and administrative contexts
- 3 Rules and guidelines on lobbying should be consistent with the wider policy and regulatory frameworks
- 4 Countries should clearly define the terms 'lobbying' and 'lobbyist' when they consider or develop rules and guidelines on lobbying

#### **Enhancing transparency**

- 5 Countries should provide an adequate degree of transparency to ensure that public officials, citizens and businesses can obtain sufficient information on lobbying activities
- 6 Countries should enable stakeholders – including civil society organisations, businesses, the media and the general public – to scrutinise lobbying activities

#### **Fostering a culture of integrity**

- 7 Countries should foster a culture of integrity in public organisations and decision making by providing clear rules and guidelines of conduct for public officials
- 8 Lobbyists should comply with standards of professionalism and transparency; they share responsibility for fostering a culture of transparency and integrity in lobbying

#### **Mechanisms for effective implementation, compliance and review**

- 9 Countries should involve key actors in implementing a coherent spectrum of strategies and practices to achieve compliance
- 10 Countries should review the functioning of their rules and guidelines related to lobbying on a periodic basis and make necessary adjustments in light of experience

### **GRECO report**

In March 2013 the Group of States Against Corruption (GRECO) published its report *Corruption prevention in respect of members of Parliament, judges and prosecutors*. In relation to lobbying, the report recommended that:

GRECO recommends that the Codes of Conduct and the guidance for both the Commons and the Lord be reviewed in order to ensure that the Members of both Houses (and their staff) have appropriate standards/guidance for dealing with lobbyists and others whose intent is to sway public policy on behalf of specific interests. The devolved institutions of Wales and Northern Ireland should be invited similarly to take action in accordance with the recommendation<sup>2</sup>.

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<sup>2</sup> [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4\(2012\)2\\_UnitedKingdom\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4(2012)2_UnitedKingdom_EN.pdf)

## 4 UK Parliament

There is currently considerable attention focused on the issue of lobbying within the UK Parliament. The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill is proving to be a controversial attempt to regulate the activity of lobbyists and this is discussed further below. However, there is existing guidance for MPs regarding lobbying and what activities would constitute a breach of the Code of Conduct.

### House of Commons

#### *What are the rules?*

The House of Commons Code of Conduct states that “no Member shall act as a paid advocate in any proceeding of the House”.

Concerns over lobbying and paid advocacy date back a considerable amount of time. A 1947 Resolution of the House prohibited Members from entering into any “contractual arrangement which fetters the Member’s complete independence in Parliament by any undertaking to press some particular point of view on behalf of an outside interest”<sup>3</sup>. The same resolution also stated that an outside body or person could not use any contractual arrangement with a Member to seek to control or influence the conduct of a Member in Parliament or punish that Member for any action taken in Parliament.

Therefore a Member cannot engage in paid advocacy. Nor may they, for payment, vote, ask a Parliamentary Question, table a Motion, introduce a Bill or table or move an Amendment to a Motion or Bill or urge colleagues or Ministers to do so.

However, the “Resolution **does not** prevent a Member from holding a remunerated outside interest as a director, consultant, or adviser, or in any other capacity, whether or not such interests are related to membership of the House. Nor does it prevent a Member from being sponsored by a trade union or any other organisation, or holding any other registrable interest, or from receiving hospitality in the course of his or her parliamentary duties whether in the United Kingdom or abroad. However, if a financial interest is required to be registered in the Register of Members’ Financial Interests, or declared in debate, it falls within the scope of the ban on lobbying or consideration”<sup>4</sup>.

The 1947 Resolution was updated in 1995 and 2002. The 2002 modifications reflected recommendations made by the Committee on Standards in Public Life in a report published in 2000. As part of that report, the CSPL received evidence that the changes put in place in 1995, particularly with regard to initiation of proceedings, were unduly harsh and were unnecessarily inhibiting Members’ ability to become well informed and to use their expertise and experience effectively. The subsequent modifications relaxed the restrictions on initiation to enable a Member with a personal interest to initiate

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<sup>3</sup> House of Commons, *Guide to the rules relating to the Conduct of Members*

<sup>4</sup> As above

proceedings on the same basis as that on which they were already allowed to participate<sup>5</sup>.

The CSPL provided the following guidelines on the application of the rule:

- i. Parliamentary proceedings:** When a Member is taking part in any parliamentary proceeding or making any approach to a Minister or servant of the Crown, advocacy is prohibited which seeks to confer benefit exclusively upon a body (or individual) outside Parliament, from which the Member has received, is receiving, or expects to receive a financial benefit, or upon any registrable client of such a body (or individual). Otherwise a Member may speak freely on matters which relate to the affairs and interests of a body (or individual) from which he or she receives a financial benefit, provided the benefit is properly registered and declared.
- ii. Constituency interests:** Irrespective of any relevant interest which the Member is required to register or declare, he or she may pursue any constituency interest in any proceeding of the House or any approach to a Minister or servant of the Crown, except that:
- where the Member has a financial relationship with a company in the Member's constituency the guidelines above relating to parliamentary proceedings shall apply;
  - where the Member is an adviser to a trade association, or to a professional (or other representative) body, the Member should avoid using a constituency interest as the means by which to raise any matter which the Member would otherwise be unable to pursue.

The Committee on Standards has made it clear that it would regard it as a very serious breach of the rules if a Member failed to register or declare an interest which was relevant to a proceeding he or she had initiated<sup>6</sup>.

The CSPL also agreed to the following parameters to the operation of the rule:

- 1. Registrable interests:** The ban on lobbying for reward or consideration is to apply with equal effect to any registrable or declarable financial benefit irrespective of the source of that benefit (ie no distinction is drawn between financial benefits received from a company, a representative organisation, a charity, a foreign government or any other source). Similarly, no distinction should be drawn in the application of the advocacy rule to different categories of registrable or declarable benefit (except for the provision below relating to ballot bills, to overseas visits, and to membership of other elected bodies). Nonfinancial interests registered by Members do not fall within the scope of the Resolution agreed by the House on 6th November 1995 and the rule does not apply to them.
- 2. Past, present, and future benefits:** Unlike the Register, which lists current benefits, or benefits received in the immediate past, the Resolution on lobbying of 6 November 1995 also refers, as does the rule on declaration, to past and expected future benefits and to indirect benefits. It is difficult to contemplate circumstances where any benefit received some time in the past, particularly an interest which has not been current in the past twelve months could be sufficiently relevant to be taken into account under the rule (see (4) below). Expected future interests, on the other hand, may be more significant. For example, Members expecting to derive direct financial benefit from particular legislation should, as well as declaring the interest in debate as appropriate, not seek to move Amendments to advance the expected future interest. The same consideration applies to other proceedings.
- 3. Continuing benefits:** Continuing benefits, i.e. directorships, other employment, and sponsorship, can be divested to release a Member with immediate effect from the restrictions imposed by the rule, providing that the benefit is disposed of and there is no expectation of renewal.
- 4. "One-off" benefits:** The rule applies to "one-off" registrable benefits, both visits and gifts, from the day upon which the interest was acquired until one year after it is registered.
- 5. Family benefits:** The rule includes relevant payments to a Member's family, but any payment to a member of the family of any Member which arises out of the family member's own occupation is not regarded as a benefit for the purposes of the Resolution, although it may be declarable.

<sup>5</sup> House of Commons, *Guide to the rules relating to the Conduct of Members*

<sup>6</sup> As above

<p><b>6. Ballot Bills:</b> Private Members successful in the Ballot for Bills are not prevented from introducing and proceeding with a Bill by reason of the fact that they receive free or subsidised assistance from an organisation connected with the purposes of the Bill provided the Member had no pre-existing financial relationship with the organisation which is registered, or is required to be registered.</p>
<p><b>7. Overseas Visits:</b> Although, except as set out in paragraph 47, overseas visits must be registered and declared, such visits shall not be taken into account when applying the rule.</p>
<p><b>8. Membership of other elected bodies:</b> Membership of the Scottish Parliament, the National Assembly for Wales, the Northern Ireland Assembly, the European Parliament and local authorities in the United Kingdom shall not be taken into account when applying the rule.</p>
<p><b>9. Ministers:</b> The restrictions imposed by the rule do not apply to Ministers when acting in the House as Ministers.</p>

The Guide to the Rules Relating to the Conduct of Members recognises that the “financial interests of Members are extremely varied, as the Register demonstrates. Each Member will need to apply the rule and the Guidelines to his or her particular circumstances. When in doubt, Members will be able to seek the advice of the Registrar, the (Parliamentary Standards) Commissioner, or the Committee on Standards and Privileges”<sup>7</sup>.

#### *Consideration of the GRECO report*

In March 2013 the Committee on Standards published a report *Guide to the Rules relating to the conduct of Members: GRECO Report and other developments*<sup>8</sup>. The Committee’s report addressed the recommendation made in the GRECO report and noted that:

At present, we consider that if Members conscientiously abide by the requirements of the Code and the Guide to the Rules about registration and declaration they will deal appropriately with lobbyists. The revised Guide will increase transparency still further by:

- Clarifying the rules on the registration of gifts and hospitality, including benefits given to third party organisations;
- Requiring Members to register family members involved in lobbying the public sector;
- Extending the requirement to register interests when functions are held in dining rooms to all occasions when significant hospitality is offered at a function in a room booked on the Parliamentary Estate<sup>9</sup>.

## House of Lords

### *What are the rules?*

The Code of Conduct states:

<sup>7</sup> House of Commons, *Guide to the rules relating to the Conduct of Members*

<sup>8</sup> <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmstandards/724/72402.htm>

<sup>9</sup> As above

14. A Member must not act as a paid advocate in any proceeding of the House; that is to say, he or she must not seek by parliamentary means to confer exclusive benefit on an outside body or person from which he or she receives payment or reward.

The accompanying guidance to the Code explains what is meant by paid advocacy:

**Paid advocacy**

23. Paragraph 8(d) of the Code states that a Member "must not seek to profit from membership of the House by accepting or agreeing to accept payment or other incentive or reward in return for providing parliamentary advice or services." Paragraph 14 of the Code states that a Member "must not act as a paid advocate in any proceeding of the House; that is to say, he or she must not seek by parliamentary means to confer exclusive benefit on an outside body or person from which he or she receives payment or reward."

24. The "exclusive benefit" principle would mean, for instance, that a Member who was paid by a pharmaceutical company would be barred from seeking to confer benefit exclusively upon that company by parliamentary means. The way in which the benefit is conferred should be interpreted broadly. All proceedings of the House are included, for instance:

- tabling a motion or an amendment to legislation;
- voting in a division;
- speaking in debate;
- asking written or oral questions; and
- deliberation within a Select Committee.

25. The nature of the "exclusive benefit", on the other hand, should be interpreted narrowly. The same Member would not be debarred from tabling an amendment, speaking or voting on matters relevant to, for instance, the pharmaceutical sector as a whole; National Health Service spending on drugs; or Government policy on drug licensing and patents.

26. The term "outside body" includes any registrable client of such a body.

## 5 Scottish Parliament

### *What are the rules?*

Section 39 of the Scotland Act 1998 places a duty on the Parliament to prohibit MSPs from engaging in paid advocacy:

(4) Provision shall be made prohibiting a member of the Parliament from:

(a) advocating or initiating any cause or matter on behalf of any person, by any means specified in the provision, in consideration of any payment or benefit in kind of a description so specified, or

(b) urging, in consideration of any such payment or benefit in kind, any other member of the Parliament to advocate or initiate any cause or matter on behalf of any person by any such means<sup>10</sup>.

Failure to observe the requirements of the Act may constitute a breach of the Act or a criminal offence.

<sup>10</sup> Section 39, Scotland Act 1998

Volume 2, section 5 of the Code of Conduct for MSPs provides details on what Members should and should not do in relation to representing the interests of persons or groups. The key points of the Code are:

- A Member should not, in relation to contact with any person or organisation who lobbies, act in any way which could bring discredit upon the Parliament
- The public must be assured that no person or organisation will gain better access to, or treatment by, any member as a result of employing a commercial lobbyist either as a representative or to provide strategic advice. In particular, a Member should not offer or accord preferential access or treatment to commercial lobbyists or their employers
- Before taking any action as a result of being lobbied, a Member should be satisfied about the identity of the person or organisation who is lobbying and the motive for lobbying
- Members should:
  - Consider whether a meeting with one group which is making representations on an issue should be balanced by offering another group with different views an opportunity to make representations
  - Consider keeping a record of all contacts with lobbyists
  - Consider arranging for an assistant or researcher to take notes at any meetings with lobbyists

The Code of Conduct also provides background and guidance to MSPs on the issue of lobbying. It emphasises the need for transparency in any relationship between lobbyists and MSPs, “in line with the Parliament’s core principles of accessibility and openness. This is particularly important where commercial lobbyists are employed to advise organisations or companies in the presentation of their arguments”<sup>11</sup>.

### **Proposals for a statutory register of lobbyists**

In 2013 Neil Findlay MSP introduced a Bill to regulate organisations that lobby MSPs, Scottish Ministers and relevant public officials. However in June 2013 the Minister for Parliamentary Business gave the following indication under Rule 9.14.13(a):

I hereby indicate that the Scottish Government will introduce a Bill, within the current session of the Parliament. This will include provisions which require certain individuals and organisations who lobby MSPs, Scottish Ministers or relevant public officials, either on their own account or on behalf of third parties, to record relevant information about their lobbying activity in a published register. Accordingly, the Bill will give effect to Neil Findlay’s final proposal for a Lobbying Transparency (Scotland) Bill.

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<sup>11</sup> Code of Conduct for Members of the Scottish Parliament, 2011



As a result, Neil Findlay has no right to introduce a Bill to give effect to the proposal<sup>12</sup>.

Following this announcement by the Scottish Government, the Standards, Procedures and Public Appointments Committee (SPPA) initiated an inquiry to consider what steps might be needed to improve transparency and whether the introduction of a statutory register of lobbyists would help address any such problem.

The remit for the SPPA inquiry is:

- To examine whether there is a problem, either actual or perceived, with lobbying and, if so, how this can most effectively be addressed;
- To what extent a register of lobbyists would help with this process, who such a register should cover and how it would be operated in practice, and;
- Whether other steps might be needed to improve probity and transparency in this area.

The deadline for inquiry responses was 10 January 2014<sup>13</sup>.

## 6 National Assembly for Wales

*What are the rules?*

As in Scotland, Members of the National Assembly for Wales are prohibited from engaging in paid advocacy. Section 36 of the Government of Wales Act 2006 states:

The standing orders must include provision prohibiting an Assembly member from:

(a) advocating or initiating any cause or matter on behalf of any person, by any means specified in the standing orders, in consideration of any payment or benefit in kind of a description so specified, or

(b) urging, in consideration of any such payment or benefit in kind, any other Assembly member to advocate or initiate any cause or matter on behalf of any person by any such means<sup>14</sup>.

Standing Order 2.8 states:

A Member must not advocate or initiate any cause or matter on behalf of any body or individual in any Assembly proceedings, or urge any other Member to advocate or initiate any cause or matter in any such proceedings, in return for any payment or benefit in kind, direct or indirect, which the Member, or to the Member's knowledge

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<sup>12</sup> If the Scottish Government indicates to the Member who proposed the Bill that it will legislate to give effect to the provisions of the Bill, then the Member has no right to proceed with his or her Bill.

<sup>13</sup> <http://www.scottish.parliament.uk/newsandmediacentre/68111.aspx>

<sup>14</sup> Section 36, Government of Wales Act 2006

his or her partner or any dependent child of the Member, has received or expects to receive<sup>15</sup>.

The Code of Conduct also prohibits paid advocacy on the part of Members<sup>16</sup>.

In June 2012 the Presiding Officer of the National Assembly for Wales wrote to the Standards of Conduct Committee asking it to review the arrangements for the regulation of lobbying activity:

I think it would be very useful if the Standards of Conduct Committee would undertake a review to consider the regime that we have in place as it relates to Members and, if necessary, make recommendations to me about any additional arrangements that might be necessary to strengthen them. I will consider any recommendations in the context of other related issues such as arrangements for cross-party groups and the need to protect the culture of the Assembly as an open and accessible institution.

The Committee subsequently reported in May 2013 on lobbying and cross-party groups. It highlighted that the Standards Commissioner for the National Assembly for Wales was “firmly of the view that the arrangements currently in place for regulating lobbying, as it relates to Members of the National Assembly, are essentially sufficiently robust and fit for purpose”<sup>17</sup>. The Committee noted that the Commissioner had never received a complaint in relation to lobbying and as far as he was aware, no complaint of this nature had been made since the Assembly was established. Furthermore, the Commissioner noted “that it was the unanimous view of all those consultees who operate in Wales and/or in the National Assembly, that lobbying practices are essentially transparent and adequately policed and regulated”<sup>18</sup>, and that “that the criminal law provides for the improper receipt or giving of gifts or bribes from or to those in public office”<sup>19</sup>.

Stating its own view, the Committee did not consider it appropriate to simply accept the status quo of current arrangements. Equally it did not see evidence of the need to move towards legislating for a system of statutory registration at this time.

The Committee also drew a distinction between lobbying Ministers and Assembly Members and stated that it wanted to:

avoid a situation where the requirements on individual Assembly Members would be significantly greater than those on Welsh Ministers...the obligations on individual Assembly Members and Welsh Ministers are different. Any differences should always be justified, and this Committee would be concerned about any further

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<sup>15</sup> Standing Orders of the National Assembly for Wales: [http://www.assemblywales.org/clean\\_sos.pdf](http://www.assemblywales.org/clean_sos.pdf)

<sup>16</sup> <http://www.assemblywales.org/memhome/pay-expenses-financial-interests-standards/cod-ymddygiad.htm>

<sup>17</sup> <http://www.senedd.assemblywales.org/documents/s16949/Report%2003-13%20to%20the%20Assembly%20on%20Lobbying%20and%20Cross-Party%20Groups-%20April%202013.pdf>

<sup>18</sup> As above

<sup>19</sup> As above

widening of the existing two-tier system of scrutiny of the conduct of individual Members and Ministers...the lobbying of Ministers, rather than individual Assembly Members, represents the greatest reputational risk to the Assembly going forward, particularly in the context of the Assembly gaining financial powers in the future<sup>20</sup>.

Furthermore, it invited the First Minister for Wales to consider its findings and recommendations in relation to lobbying activity and Welsh Ministers.

The Committee recommended that guidance on lobbying and access to Members is adopted by Assembly resolution. The Committee drafted a resolution which was approved by the Assembly in June 2013<sup>21</sup>.

The final paragraph of the Resolution states that "Members should ensure that staff working for them are aware of and apply these rules and guidelines when acting on a Member's behalf or in any National Assembly for Wales connection<sup>22</sup>.

## 7 Oireachtas

The Code of Conduct for TDs prohibits paid advocacy:

6. Members may not solicit, accept or receive any financial benefit or profit in exchange for promoting, or voting on, a Bill, a motion for a resolution or order or any question put to the Dáil or to any of its committees<sup>23</sup>.

The Fine Gael/Labour Coalition made a commitment in their Programme for Government and the Public Service Reform Plan 2011 to introduce a regulatory system for lobbying. Subsequently, the Department of Public Expenditure and Reform published a consultation inviting views on how a system to regulate lobbying might work in practice.

On the 30th April, 2013 the Government approved the drafting of the Regulation of Lobbying Bill 2013. The General Scheme of the Bill, published in April 2013, classifies designated public officials or officeholders as including (among other categories):

- Ministers, Ministers of State,
- TDs, Senators and members of their staff

It also defines lobbying as:

<sup>20</sup> <http://www.senedd.assemblywales.org/documents/s16949/Report%2003-13%20to%20the%20Assembly%20on%20Lobbying%20and%20Cross-Party%20Groups-%20April%202013.pdf>

<sup>21</sup> The guidance can be accessed at: <http://www.senedd.assemblywales.org/documents/s18881/%20Guidance%20on%20Lobbying%20and%20Access%20to%20AMs%20-%2026%20June%202013.pdf>

<sup>22</sup> As above

<sup>23</sup> <http://www.sipo.gov.ie/en/Codes-of-Conduct/TDs/>

...all communication, whether directly or indirectly communicated, including the management or direction of grass-roots communication,

(i) by organisations or by an individual, relevant to his or her capacity as an employee in or shareholder of an organisation, or

(ii) by an individual, relevant to his or her capacity as an officeholder of a body at national level including those in a purely voluntary capacity (other than officeholders of a purely voluntary body with no remunerated officers or employees), or

(iii) by organisations or by an individual receiving fees or remuneration from a third party for making or organising or planning that communication on specific policy, legislative matters or prospective decisions with designated public officials or officeholders<sup>24</sup>.

As with the Bill before the UK Parliament, the register of lobbyists in the Republic of Ireland will be enforced by a Registrar. However, unlike its UK equivalent, the proposed Bill envisages a Code of Conduct for lobbyists in relation to the following matters:

- (a) General professional obligations
- (b) Transparency
- (c) Confidentiality
- (d) Conflict of interest
- (e) In the case of Lobbyists acting on behalf of clients, specific professional obligations towards:
  - (i) Clients / employers,
  - (ii) Public opinion and the information media,
  - (iii) Fellow practitioners,
  - (iv) The profession,
- (f) Improper influence,
- (g) Such other matters as the Registrar considers appropriate.

On 29 November 2013 the Joint Committee on Finance, Public Expenditure and Reform released a report on the Draft General Scheme of the Regulation of Lobbying Bill. The report is a summary of the issues raised in the consultation responses to the

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<sup>24</sup> <http://www.oireachtas.ie/parliament/media/committees/finance/Final-Report.pdf>

Department and it makes clear that it should not be viewed as the definitive report on the Bill from the Committee<sup>25</sup>.

The Standards in Public Offices Commission has also commented on the proposals:

The Standards Commission considers that the enactment of such legislation has the potential to enhance the existing and developing framework of legislation ensuring transparency throughout the public service<sup>26</sup>.

In response to a Parliamentary Question in November 2013, the Minister for Public Expenditure and Reform advised that the office of Parliamentary Counsel was in the process of drafting the Bill<sup>27</sup>.

## 8 Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill

The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill contains a number of elements aimed at regulating third-party influence on politics. Part 1 of the Bill would establish a register of consultant lobbyists. A House of Commons Library paper provides a summary of the intention of Part 1:

The Bill covers lobbyists who work for lobbying firms, referred to as “consultant lobbyists”, and it makes them subject to requirements to register and to reveal their client, if lobbying is their “main business”. It creates offences for failure to register or providing inaccurate or incomplete information. The register will be administered by a Government appointed Registrar, who will be funded through fees on those registering. The Registrar will have the power to impose civil penalties in respect of the offences, although this would remove the possibility of criminal proceedings and is intended to apply only to minor breaches.

The Bill covers only the lobbying of UK Government Ministers and Permanent Secretaries by means of personal communication or in writing. The lobbying provisions in Part 1 of the Bill apply to the whole of the UK since they relate to lobbying of the UK Government, not because of any requirement on those lobbying the devolved administrations. The Bill does not create a code of conduct for lobbyists, and it does not cover the lobbying of members of either House of Parliament outside of ministerial responsibilities<sup>28</sup>.

### What does the Bill do?

The Explanatory Notes of the Bill state:

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<sup>25</sup> <http://www.oireachtas.ie/parliament/media/committees/finance/Final-Report.pdf>

<sup>26</sup> <http://www.sipo.gov.ie/en/Reports/Annual-Reports/2012-Annual-Report/AnnualReport2012/chapter2.html>

<sup>27</sup> Written answer, 5 November 2013

<sup>28</sup> House of Commons Research Paper 13/51

The main purpose of the provisions on lobbying is to ensure that people know whose interests are being represented by consultant lobbyists who make representations to Government. The Bill enhances transparency by requiring consultant lobbyists to disclose the names of their clients on a publicly available register and to update those details on a quarterly basis. The register will complement the existing transparency regime whereby Government ministers and permanent secretaries of Government departments voluntarily disclose information about who they meet on a quarterly basis.

The register will be hosted by the Registrar of Consultant Lobbyists, who will be independent from the lobbying industry and Government<sup>29</sup>.

## Offences

Under the Bill it is an offence:

- to carry out the business of consultant lobbyist while unregistered
- to lobby if there is material inaccuracy or incompleteness in that person's entry in the register and they have failed to correct this in an information return
- to fail to submit a return within two weeks of the end of a quarter, or to provide a materially inaccurate or incomplete return
- to fail to supply information required in an information notice by the stipulated date, or to supply materially inaccurate or incomplete information

In addition to the possibility of criminal proceedings, the Registrar may impose a civil penalty for any of these offences. The Registrar may not impose a civil penalty while criminal proceedings are under way or after a person has been convicted.

## How does the Bill define lobbying?

The Bill provides that “a person must not carry on the business of consultant lobbying unless the person is entered in the register of consultant lobbyists”. The main characteristics of a consultant lobbyist are:

...that in the course of a business (which requires the person concerned to be engaged in a commercial activity, and so therefore excludes things such as the public duties of elected officials) the person makes communications (either in writing or orally):

- personally to a UK Government minister or permanent secretary (including specified equivalent positions)

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<sup>29</sup> Explanatory Notes to the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill

- about Government policy, legislation, the award of contracts, grants, licenses or similar benefits, or the exercise of any other Government function such as the exercise of the prerogative
- on behalf of another person
- in return for payment<sup>30</sup>

### **How has the Bill been received?**

The Bill has proven to be controversial both for the way it was introduced and for its perceived deficiencies. The Opposition and several parliamentary select committees raised concerns about the lack of consultation or pre-legislative scrutiny of the Bill and the speed at which it was being taken through Parliament. The Joint Committee on Human Rights, the Committee on Standards and the Political and Constitutional Reform Committee all highlighted areas where they were unhappy. For example, the Political and Constitutional Reform Committee concluded that “the definition of consultant lobbying was flawed because it would exclude in-house lobbyists as well as the vast majority of third-party lobbyists, many of whom undertake lobbying as part of a wider communications and public relations business and who spend very little of their time meeting with ministers and permanent secretaries”<sup>31</sup>.

The Opposition tabled a reasoned amendment to the Bill’s second reading, but this was defeated.

Industry bodies have criticised the Bill along similar lines. The Association of Professional Political Consultants (APPC) commented:

This is a muddled mistake. As currently drafted, it will do precisely nothing to increase lobbying transparency...

The APPC wants to see all professional lobbying governed by a statutory lobbying register. The APPC has been operating our own register for nearly 20 years and yet we had absolutely no engagement with the Government until this Bill was introduced. This is despite the fact that the industry had worked hard to produce a definition and a framework that would be workable and a registration process to provide proof of concept as to how a system could operate effectively<sup>32</sup>.

### **Parliamentary privilege**

The Bill as originally introduced attempted to ensure that no provision would infringe parliamentary privilege and that the normal activities of MPs in representing their constituents would be specifically excluded from the definition of carrying on the business of consultant lobbying.

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<sup>30</sup> Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill

<sup>31</sup> House of Lords Library Note, Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill

<sup>32</sup> APPC Press release, 3 September 2013

However, concerns were raised that the inclusion of a provision seeking to protect parliamentary privilege could actually undermine that very concept.

There are two fundamental aspects of parliamentary privilege: freedom of speech in parliamentary proceedings and exclusive cognisance (the right of Parliament to regulate its own affairs). The Bill borrowed some of the language from the 1689 Bill of Rights that guarantees parliamentary privilege, but did not refer to the Bill of Rights. A former Member of the Joint Committee on Parliamentary Privilege argued that there was a possibility that the courts could in future be tasked with interpreting this paragraph, thereby potentially undermining the Bill of Rights.

The Leader of the House of Commons assured Members that the Government was “committed to ensuring that the provisions do not intrude on Parliament’s exclusive cognisance”<sup>33</sup> and that following consideration the clause would be removed.

### **Other potential impacts on Members of the House of Commons**

The Bill as introduced specified that communications made by an MP to ministers or permanent secretaries on behalf of person(s) resident in the MP’s constituency would not be classed as consultant lobbying. Several difficulties were identified with this. The Bill identified a constituency resident as a person entitled to be registered as a parliamentary elector, certain groups of people whom an MP may nonetheless legitimately represent would fall outside the definition. This could include people involved in immigration disputes without the right to reside, people too young to register to vote, people who lacked legal capacity for other reasons, or companies based in the MP’s constituency. Therefore this could be interpreted as requiring an MP to register as a consultant lobbyist in order to contact a minister or permanent secretary on behalf of anyone who was not eligible to vote in the MP’s constituency. At report stage, the Leader of the House proposed a Government amendment to delete the relevant clause, which was accepted without division.

### **Statutory Code of Conduct**

The Bill has also been criticised for its failure to provide for a statutory code of conduct, maintained by the Registrar, with which all registered lobbyists would have to comply. It was argued that once lobbyists registered under the new scheme, they may no longer adhere to the existing voluntary codes of practice within the industry. Reference was made by the Opposition to the existence of codes of conduct for lobbyists in other countries and asked the Government to make provision for such a code in the UK.

In response, the Leader of the House accused Labour of attempting to establish a “full-blown regulator of the industry”. The Government’s aim, he said was to “shine the light of transparency on key issues in lobbying and the impact on key decision makers”, rather than “introduce a bureaucratic monster” regulating the entire industry<sup>34</sup>.

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<sup>33</sup> House of Lords Library Note, *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill*

<sup>34</sup> House of Lords Library Note, *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill*



A proposed new clause giving effect to the Opposition's view was defeated on a vote.

## 9 Committee on Standards in Public Life

In November 2013 the Committee on Standards in Public Life published its report *Strengthening Transparency around Lobbying*<sup>35</sup>. The following is a summary of the key points and findings from that report:

- Credible and effective reform of lobbying needs to address...broader issues of public concern...these are issues that go beyond a statutory register of lobbyists and the regulation of the lobbying industry to much wider questions of how those with vested interests seek to influence decision makers; and to issues of transparency, accountability and equality of access.
- The CSPL felt that a culture of openness and transparency would only come through a package of measures that would include:
  - Adoption of codes or guidance to cover lobbying activity
  - Revisions to existing codes of conduct and guidance for public office holders
  - Increased transparency through proactive and accessible disclosure by public office holders
  - Increased transparency and a review of the arrangements for post-public employment and secondments and interchange to and from the public sector
  - Ethics training
  - An annual certification by accounting officers of the adequacy of their organisation's arrangements for safeguarding high ethical standards
- The CSPL doubts that the creation of a register would be enough to allay public concern
- Public office holders need to be exposed to a range of views and expertise. They need to converse, debate and discuss. There is also a need to take account of the fundamental principles of freedom of expression and association. However, not everyone has the same access to policy or decision makers or legislators.
- The Committee wished to encourage maximum transparency about lobbying activities, by both organisations and individuals, with rules which are clear and consistent and with simple mechanisms for disclosing information. It recognised that there will be limits to this – for reasons of public interest, policy, and

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<sup>35</sup> [http://www.public-standards.gov.uk/wp-content/uploads/2013/11/2901376\\_LobbyingStandards\\_WEB.pdf](http://www.public-standards.gov.uk/wp-content/uploads/2013/11/2901376_LobbyingStandards_WEB.pdf)

practicality. The Committee wished to avoid excessive administrative burden and information overload. Nevertheless, public bodies and office holders which make information about the lobbying to which they have been subjected routinely available will demonstrate transparency, increase accountability and as a consequence improve public trust.

- The Code of Conduct for Members of Parliament should be revised to allow complaints to be made against an MP who is a former Minister and who takes on outside paid employment but does not follow advice provided by the Advisory Committee on Business Appointments (ACoBA).
- The Committee was not presented with evidence of widespread systematic abuse of lobbying but recurring individual cases around the manner of lobbying, and access to policy makers, recent media stings involving legislators and perceptions of conflicts of interest have raised public concern and seemingly contributed to a growing public cynicism of the democratic process. This can result in a lack of trust and confidence in the ethical standards of holders of public office, and in political decision making and leads to disengagement from the political process.