

INTRODUCING A STATUTORY REGISTER OF LOBBYISTS

Comments by Mark Boleat on Minister for Government Policy Consultation Paper

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Introduction

1. On 20 January 2012, the Minister for Government Policy published a consultation paper, *Introducing a statutory register of lobbyists* (Cmnd 8233). The paper aims to increase the information about lobbyists. Responses to the consultation are invited by 13 April.

2. This response is a personal one, albeit by someone who has substantial experience in this field as a former member of the National Consumer Council, a member of the Regulatory Policy Committee, Chairman or Chief Executive of a number of trade associations, significant experience as a regulator, consultancy work in this field and author of a number of relevant papers.

Executive Summary

- The proposals are not well thought through, their purpose simply seems to be to meet a Coalition requirement.
- There no easy definition of a “lobbyist”. “Lobbying” is generally not a stand-alone function but rather part of a package of services.
- Any register should not cover individuals deemed to be involved in “lobbying” but rather companies that for reward provide a public affairs service, who should be required to identify their clients, trade associations that have a representative role, who should be required to identify their members, and interest groups that have as one of their functions seeking to influence public policy, which should be required to give details of their membership.
- The register should be confined to basic information, eg no financial information, and should be kept continually up to date.
- Managing the register is a matter for the government. In practice there will be no enforcement and there will be no effective means of verifying the information on the register.
- The Impact Assessment is poor, contradicting the consultation paper, with inaccurate figures and making no attempt to produce estimates of costs and benefits. It has been judged “not fit for purpose” by the Regulatory Policy Committee.

General comments

4. The proposals in the consultation paper, seem to be put forward with no great enthusiasm. The main purpose seems to be to meet a commitment in the Coalition Agreement. They are not properly thought through, for example with little thought being given as to how the register would operate in practice and no understanding that there is not a stand-alone, easily definable activity called “lobbying”. The proposals are capable of catching huge numbers of people and organisations, for no apparent purpose. The Impact Assessment has been judged by the Government’s own Regulatory Policy Committee as “not fit for purpose”, and in a number of respects is contradictory to the proposals in the consultation document itself (eg in respect of inhouse lobbyists) as well as having figures that are wrong and seem to be plucked out of thin air. This is not good policy-making.

5. A rational approach would be to review the problem that the proposal is seeking to address in the light of the consultation responses. This might lead to a decision to drop the proposal. But there is a climate in which “something must be done”. That something should be a very simple register covering organisations only, not individuals, no financial information, and in practice no sanctions. The government cannot duck the issue that it has to own and manage the process.

Purpose of a register

6. The purpose of the proposal is to meet the commitment in the Coalition Programme –

“We will regulate lobbying through introducing a statutory register of lobbyists and ensuring greater transparency.”

7. Any register and something which ensures a bit more transparency meets this requirement. However, from a government committed to reducing the regulatory burden one is entitled to expect something more sophisticated. A little more detail is given in section 3 of the consultation paper –

“The purpose of the UK register is to increase transparency by making available to the public, to decision-makers and to other interested parties authoritative and easily-accessible information about who is lobbying and for whom. This will help ensure that those seeking to influence decisions do so in a way that is open to scrutiny, improving knowledge about the process and the accountability of those involved in it.”

Definition of a lobbyist

8. The concept of a register of “lobbyists” naturally begs the question of who is a lobbyist, and this is already the subject of significant debate and lengthy papers. The consultation paper gives the following definition: “Lobbyists should mean those who undertake lobbying activities on behalf of a third party client or whose employees conduct lobbying activities on behalf of a third party client.” The consultation paper also says “the register is not intended to cover the normal interaction between constituents and their MPs. Nor should the essential flow of communication between business leaders and Government, civil figures, community organisations and Government and so on, be included”, nor is it intended to cover those engaged in lobbying on their own behalf.

9. But this definition raises a host of issues –

- What about someone writing to a minister of behalf of himself and third parties (“I am writing on behalf of the residents of Parkside Close to protest against the proposal to allow.....”)
- What about thirty A list celebrities writing a letter to *The Times* demanding more government funding for their particular cause?
- What is a community organisation? Occupy London or London Citizens? Why should community organisations be exempt?
- What about medical charities campaigning for better treatment – perhaps a good case for covering them since some may well be funded by those with a vested interest.
- Trade associations are not mentioned at all in the consultation paper – surprising given that they are the largest group of “lobbyists” in the country.
- Think tanks etc seek to influence policy – indeed that is the primary purpose of most.

10. The consultation paper proposes covering not only organisations but also the people within organisations who carry out “lobbying”. This is unwise. Given the definition of lobbying thousands of people would be covered. The large trade associations could easily each have 150 people engaged in lobbying – in that they would personally have meetings with officials, regulators etc seeking to influence public policy. Organisations might engage an individual or a consultant to do a small piece of work for two weeks – for example talking to officials about a specific point. Is the commissioning organisation supposed to record all such interactions on the register? Any lobbying is done in the name of the organisation not the individual and it would be unwise, and indeed impractical, to seek to record the details of individuals employed as “lobbyists”, particularly given that the term is both pejorative in the eyes of many and not capable of a meaningful or simple definition when applied to individuals.

11. The definition of “lobbyist” must be narrowed so as to do the minimum necessary to meet the transparency requirement. Registration could be confined to -

- Companies that for reward provide a public affairs service, who should be required to identify their clients.
- Trade associations that have a representative role, who should be required to identify their members.
- Interest groups that have as one of their functions seeking to influence public policy, which should be required to give details of their membership. This would include trades unions, think tanks and pressure groups. In the case of individual member organisations, eg the National Trust (a fierce lobbying group as the government knows to its cost), the NSPB and trades unions simply giving the number of paid up members should be sufficient. It would also be sensible to require disclosure of any significant funding (say over £5,000) other than from members, so as to catch, for example, a medical charity acting as a front for a drugs company.

12. It is agreed that in-house lobbyists should not be covered by the register. This is partly because it is clear who they are lobbying for – as is pointed out in the consultation paper. But more importantly it would be impossible to define an in-house lobbyist in a meaningful way. Large numbers of companies engage in lobbying, in that they respond to consultation documents, participate in the work of trade associations, have regular contact with their Member of Parliament and are involved in Chambers of Commerce. Companies typically do not employ a person called a “lobbyist”, not least because this is counterproductive. Large companies will have a head of public affairs, whose remit is very wide-ranging, including typically the media, government departments and Members of Parliament, both domestically and internationally. However, they are not the only people engaged in “lobbying”. The chief executive of any company operating in an area where public policy is relevant can be expected to engage in lobbying activity, as can a number of other members of staff, both directly and through trade associations, and the non-executive-directors.

The impact assessment

13. The government has set up the Regulatory Policy Committee to provide independent scrutiny of regulatory proposals put forward by government. The Committee has reviewed over 600 proposals. On just five occasions government has gone ahead with a proposal when the Committee has found the Impact Assessment to be “not fit for purpose”. It is ironic that one of these should be a proposal by the Minister for Government Policy on the statutory register of lobbyists. The Committee’s Opinion, published on its website, commented -

“Market failure addressed by proposal. The IA mentions market failure as the driver for the proposal, but does not explain how significant this is and how the proposal will address the causes of the market failure specifically. The IA needs to do this to allow consultees to see how the proposal could work in practice.

Options. The IA needs to present options to overcome the current market failure to enable consultees to take a view on what is the best means of action in this area.

Costs of proposal. It is unclear how relevant the dental health professional example given is to the issue at hand, and the IA needs to provide information on the costs of registration fees for a wider range of bodies than the one given for dental health professionals.

Benefits from proposal. The IA does not have a separate section in its evidence base on the benefits of the proposal. The IA needs to include this to maximise the value of consultation.”

14. The table on page 6 of the impact assessment is bizarre. The table suggests that there are 60 companies with 100 in-house staff engaged in lobbying who would be covered by the Register. But the consultation paper proposes that in-house-staff should not be covered. If they were covered these numbers need to be multiplied by perhaps a factor of 50.

15. The table suggests that just 25 trade associations and 50 of their staff are involved in lobbying. The number of trade association is probably nearer 500 and the committee members and staff engaged in lobbying would run into thousands. Representative work is one of the main functions of most associations, but, again, associations do not employ someone called a “lobbyist”. Rather, representative work is a function of most of the senior staff of the organisation.

16. The Impact Assessment makes no attempt to calculate the costs and benefits of the benefits of the policy – contrary to the principles of good policy making. The one regulatory regime which is used as an analogy is the General Dental Council, which is about as bad a comparator as could be found. This council is a regulator of a profession not a register. In terms of the costs of running a register the Claims Management Regulator would be a far better comparator.

17. The Impact Assessment says that micro business (employing fewer than ten staff) will not have to pay the costs of registering. The large majority of businesses that will have to register will be micro businesses, so if the register is to cover its costs larger companies will have to subsidise their competitors. There is no logic in this. All businesses should pay the costs of registering.

Responses to consultation questions

18. Following are answers to the specific questions raised in the consultation document

Definition of lobbying and lobbyists

Lobbying should be defined as seeking to influence policy or regulatory decisions on behalf of others. Those acting pro bono, trade associations, trades unions that seek to influence policy, think tanks and voluntary bodies that seek to influence policy should all be covered.

Those acting on their own behalf (including large companies and individuals) and those acting on behalf of individuals on an issue local to them should not be covered. There should also be a specific exemption for any communication between organisations and individuals and the relevant constituency MP or councillor.

Information to be included in the register

In the case of public affairs firms the names of clients should obviously be given. Interest groups should give details of their membership (the number of paid-up members in the case of individual member organisations) and any significant third party funding. However, there should be no requirement to list the names of “lobbyists” as the information would be meaningless. Most public affairs work is advising clients who to lobby and how to lobby. This would not be caught by the definition of lobbyist. (Indeed with the definition some public affairs companies would not be caught because they do not lobby directly.) If individuals had to be registered then public affairs companies would simply register all their staff as would trade associations. The register would be bureaucratic to operate and would require constant updating if it was to be meaningful (“lobbyists” are often engaged for specific short term pieces of work – started instantly and completed in a month or so).

If it is decided to include information on “lobbyists” then a bit of common sense is needed. What relevance is it if the head of a unit in a large trade association was a civil servant ten years earlier, or a minister in an outgoing government who had lost his seat in Parliament? If there is to be such a requirement then it should be limited to any positions held in say the last five years.

It is agreed that details of meetings should not be included as this would be meaningless unless details were also given of phone calls, meetings at receptions and dinners etc.

There should be no financial information on the register, other than significant third party funding of interest groups. It would simply not be practical to include any meaningful financial information. Most of those caught by the register provide a package of services to their members of which representation is just one. Seldom would anyone be employed solely for “lobbying”, nor would a fee, whether for an individual joining a pressure group or a company buying a full service from a public affairs business, separately identify an amount for “lobbying”. What would the National Trust, or Which?, or the National Farmers Union be expected to declare?

Section 3 of the consultation paper suggests that a lobbying firm would need to include on the register “registered address of the company and Company Number”. This is rather sloppy. There is no requirement on businesses to be companies and many of those who would be required to register will not be companies. Many trade associations for example are unincorporated. Also, a significant amount of lobbying in the UK is done by companies or organisations that are not registered, incorporated or based in the UK.

How often should the register be updated

If the register is to have any meaning it must be real time or at least promptly updated. Quarterly updates are no use as they would be purely historic. If the register is confined to the key information (ie does not include the names of “lobbyists”, details of meetings, financial information etc) there is no reason why the information should not be kept up to date, any changes being notified within a maximum of seven days. It is assumed that the register will operate on a “self-service” basis with organisations updating their own entries.

Additional functions linked to the register

There should be no additional functions linked to the register. The government should decide on the format for data and then leave it to those registering. An “operator” cannot possibly be given responsibility for verifying the information? How is an “operator” supposed to know who the clients of a public affairs company are, or how many members the NFU or the AA has? The consultation paper refers to “reasonable steps”. What is in mind here? The consultation paper refers to investigating anomalies or non-disclosure. This can be done only by a statutory body armed with statutory powers (Offspin?), the introduction of criminal offences etc. It is assumed that it will be a criminal offence not to register, and someone has to be identified as “the enforcer”.

How should the register be funded

If the register is confined to basic information as set out in this response then costs should be minimal. A standard annual fee, say £100, should be sufficient. It is difficult to relate any fee to turnover as few businesses could identify turnover related to lobbying and there would be no means of validating any figures. The proposal to exempt micro businesses from paying the fee is misguided as it would not be easy to identify such businesses given that lobbying is not a stand-alone activity, and if they were exempted it would not be possible to fund the costs of running the register without a substantial cross-subsidy from larger businesses. If someone is going to start verifying data and taking enforcement action where there is non-disclosure etc the costs will be massive.

What sanctions would be appropriate?

In practice, it is unlikely that any sanctions would be applied given that there is no expectation that any organisation will be charged with policing the register. It would be adequate that if organisations were not on the register, then in the case of public affairs companies, they would find it difficult to get work, and in the case of interest groups, their views would be ignored. However, sanctions will have to be included in the legislation if only for show. A modest fine would be sufficient.

Who should run the register

It is irrelevant who runs the register. This is a mechanical operation, provided it is kept simple. It is for the government to decide who should manage the operation. The analysis in the consultation paper is naïve. The issue is not who runs the register but who is responsible for making the rules, commissioning the register as a mechanical operation, enforcement etc. It is no use the government asking others how it should run its business. This must be “belong” to the appropriate bit of government. However, it seems that there is no appropriate bit and no department is volunteering to take this. The Cabinet Office will have to set up a unit to manage the process. The establishment of Claims Management Regulation (in which the author of this paper was heavily involved as a consultant then as the regulator) is a useful model for what would be required.

The suggestion in the consultation paper that there will be “legislation to create a statutory register run by a body independent of government” is contradictory. If the register is statutory the body cannot be independent of government.