

Consultation on proposals for a Lobbying Transparency Bill

Summary

- Shelter Scotland helps over half a million people every year struggling with bad housing or homelessness through our advice, support and legal services. We believe that everyone has the right to a safe, secure affordable home and that housing is vital to people and families being able to flourish in their communities. We provide direct services to people facing bad housing and homelessness and we campaign to prevent it in the first place.
- We have a long history of engaging fully, successfully and legitimately with the Scottish Parliament and elected members and agree that “lobbying is a legitimate and valuable activity”¹. A key part of our role, and that of many third sector organisations across the country, is to stand up for and ensure that the voice of our clients and vulnerable groups is heard in the parliamentary process.
- A key principle underpinning the Scottish Parliament is equality of access both to parliamentarians and the process of law making. This openness must be preserved for everyone. We support the goal of increasing transparency and feel that a register of lobbying organisations (as opposed to individuals) would be a straightforward way to keep a comprehensive list of who is engaging in lobbying activity across Scotland.
- We do not however, support the proposed method of reporting activity and believe that the process of each individual submitting a 6 monthly return would be ineffective, overly burdensome and unnecessary.
- We believe the best way to achieve transparency would be through the publication of MSP diaries on a monthly basis via the Scottish Parliament website. This would capture the same information in a more consistent way but be less complex. It seems appropriate that the burden of disclosure should be with the elected members.
- We fear that compliance to new regulation may detract from the critical business of providing direct support to our clients, lobbying and engaging productively with elected members and may even preclude some people/organisations from becoming involved with the Scottish Parliament. Above all else legislation must, if introduced, ensure that access and openness are maintained and the barrier to entry is not too high. Compliance with new legislation should not hinder genuine and legitimate engagement or prohibit smaller organisations or those with greater restrictions on their resources.

¹ Standards, Procedures and Public Appointments Committee, Scottish Parliament inquiry into lobbying (Feb 2015)

- Our response to this consultation is primarily from our own perspective as a third sector organisation with an in-house policy and public affairs team but who have a range of staff who engage with parliamentarians. We do believe however that in the interest of fairness, any regulation brought in by forthcoming legislation should treat all lobbyists in the same way regardless of sector or role.
- If legislation is taken forward then there are many specific issues that would need to be addressed and further consultation would be necessary. It would also be necessary to 'launch' any new legislation with an awareness campaign alerting all those implicated of the new duties on them and making information and guidance widely available.

Response to consultation Questions

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?

Shelter Scotland believes that lobbying and engaging with elected members on issues crucial to our clients, tenants and consumers is critical to the democratic process and believe that the Scottish Parliament currently encourages fair and open access to decision-makers for anyone who wants it. As such, we are not clear on the rationale for this new legislation, especially since the consultation document states clearly that "we do not need to take remedial action to address any problems with lobbying in Scotland". In short, we are not sure a new regime is necessary but have answered the following questions on the assumption that some form of regulation is going to be introduced.

If legislation is deemed necessary, then the core principles outlined: openness, effectiveness and proportionality are appropriate and should underpin all aspects of any new regime and as the proposals stand the register would not achieve this. Access to the Scottish Parliament must not be restricted or disincentivised.

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

We agree that a publically available register of lobbyists should be introduced in Scotland. However we believe that it should be organisations/companies/charities that are registered rather than individuals.

It is an important point that individuals acting in a personal capacity should not be required to register.

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

Yes, we agree that there should be no fee for compliance to the register of lobbyists.

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

We agree that a publically available register of lobbyists should be introduced in Scotland. However we believe that it should be organisations/companies/charities that are registered rather than individuals. For charities or for smaller organisations, it may be a

range of people who meet with MSPs/Ministers on a specific issue beyond public affairs staff. This could include policy staff, senior managers, frontline workers, volunteers or any other specialists in their field and it would be onerous and unnecessary for them to register for potentially one meeting or visit to a service.

If the requirement is for an organisation to register and report activity as prescribed, then the organisational interest is declared.

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

If a register is introduced, in the interests of transparency and fairness, both consultant lobbyists and in-house lobbying staff should be required to register.

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

If a register is introduced, we do not believe that any in-house lobbyists should be exempt from the requirement to register because we believe it would be far more proportionate if it was organisations who were registered as opposed to individuals for the reasons outlined above.

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

We agree that the register should cover the 'lobbying' of MSPs and Ministers in the Scottish Parliament, however we believe a clear, consistent definition of what counts as 'lobbying' is also required.

As stated above we believe that rather than asking thousands of organisations across Scotland to track and report back on their meetings with MSPs, it would make far more sense to require all MSPs to publish their diaries on a monthly basis. This would capture the same information in a less complicated way.

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

We agree that a proportionate approach would be for MSP published diaries to include all pre-arranged meetings and events, rather than all communication (emails, phone calls etc).

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

There are a number of complications around the issue of whether only 'paid lobbyists' should be covered by the register and these could be circumvented by shifting the emphasis from individuals to the lobbying organisations. Then for example, if unpaid

interns or volunteers were carrying out extensive public affairs activity on a specific issue then they would be covered by the organisational registration.

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

We believe the approach should be taken as outlined in the question above which would negate the need for this question to be answered.

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

As stated above we do not support the proposal of individual lobbyists submitting 6 monthly returns. We believe instead that a register of lobbying organisations should be compiled but that to enhance transparency, MSPs are required to publish their diaries on a monthly basis.

If a register of lobbyists is compiled then organisations should be required to provide basic contact information and topline aims of lobbying activity but not name individuals engaged in lobbying activity.

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

As stated above we do not believe that individual lobbyists or organisations should make 6 monthly returns detailing activity, instead we believe that the same objective could be achieved through the mandatory publication of MSP diaries on a monthly basis. As a small group of publically elected officials, 129 MSP diaries would be more straightforward to regulate as they are set up for and staffed for an existing level of scrutiny.

Not only would the requirement for individuals to report their activity be onerous for the thousands of people and organisations who currently engage in legitimate lobbying activity in Scotland but it would be incredibly difficult to verify and ensure returns were accurate and meaningful. In the consultation document there is nothing outlined on how this would be resourced in order to make it effective but it seems it would be very difficult to police the accuracy of returns.

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?

If a statutory register of lobbyists is introduced then it would be necessary to produce accompanying guidance which lays out procedures, expectations, where information would be held etc. This should also include a definition of 'lobbying' and state explicitly what activity should be covered so nothing is open to (mis)interpretation.

It would be appropriate for this to include a Code of Practice for lobbyists to ensure consistency of approach and shared understanding. This should be produced in consultation with relevant bodies and organisations many of whom already have their own existing codes of practice.

This should be complementary to, and not replace existing industry or professional codes of conduct.

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?

There seems no necessity for disclosure of membership of industry bodies and subscription to existing codes of conduct, however here should be the opportunity to disclose that information should the organisation wish to on a voluntary basis.

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

Monitoring compliance with this legislation as currently proposed, represents a significant challenge. While we understand the reason for the suggestion that the Standards Procedures and Public Appointments Committee Clerks are responsible for upkeep and oversight of the register, this may represent a conflict since they already work with and engage with MSPs. As such we support the suggestion by SCVO, ASPA and others that the Commissioner for Ethical Standards in Public Life would offer a more independent approach.

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

We agree that in order for the register to have any value at all there should be some sanctions for non-compliance. However, we are fundamentally opposed to the notion that non-compliance to a register which seeks to address no recognised problem but only increase transparency, should carry with it the possibility of criminal sanctions. We agree with ASPA and others that any criminal activity should be covered comprehensively by the Bribery Act 2010 or other legislation.

As with any new legislation, there will need to be sufficient 'bedding in' time and no penalties should be imposed during the initial period – perhaps a year – to allow smaller organisations and those with very few resources to get up to speed with new requirements. There should also be initial comprehensive support and advice available for organisations who are not clear on their new legal responsibilities. As noted in the Committee report, it would be important to 'launch' the register with an awareness campaign.

Sanctions for serious and sustained breaches after the initial period, should be proportionate in line with the core principles and as outlined in the Committee report focus on restricting or prohibiting activity.

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?

We agree that there should be scope for the Scottish Parliament to make minor changes to the initial legislation as a response to experience of the new regime in practice and this should be through secondary legislation - a Scottish Statutory Instrument (SSI). Any major changes, for example the introduction of criminal sanctions or a registration fee should require a properly scrutinized change to primary legislation.

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.

Shelter Scotland has major concerns about the impact of this new statutory register on smaller organisations whose core business is not lobbying but who do engage in some public affairs work which might be covered. With the current proposals aimed at individuals not organisations and lobbyists not the elected members, smaller organisations, local charities and community groups could fall foul of the statutory register unintentionally and face a penalty. This would especially be the case if the organisation in question does not consider lobbying its core business but is compelled to interact with elected members on a specific issue. This could therefore have a particularly detrimental effect on socially excluded or already disenfranchised or disengaged groups.

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.

The impact of compliance to a new statutory register depend very much on what the eventual legislation looks like. There are, as outlined above, a number of practical difficulties with individuals registering and the most time efficient and effective form of register would focus on organisations rather than individuals. It also seems more practical and proportionate to require MSPs to publish their diaries instead of asking thousands of organisations across Scotland to track and report on their lobbying activities. It would also be critical to define clearly what 'lobbying' is and explicitly what activity is covered and what level of detail is required in the 6 monthly return. If this was all kept proportionate it should mean the burden is not prohibitively great.

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?

As stated above, we have a number of reservations to the approach laid out in the consultation paper but also a query over what this register would achieve, without significant resource to police. It is not clear how non-compliance would be picked up. It therefore seems that this might be a fairly onerous process for organisations which will change the practice of lobbying very little.

Shelter Scotland does, however, fully support the general principles of openness, effectiveness and proportionality and ultimately any statutory register introduced must seek to maintain these.

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