

PUBLIC SERVICES AND GOVERNMENT

A CONSULTATION ON PROPOSALS FOR A LOBBYING TRANSPARENCY BILL

ANALYSIS OF RESPONSES

The Scottish Government carried out a consultation on proposals for a lobbying bill between 29th May 2015 and 24th July 2015. A total of 68 written submissions were received from: Third Sector organisations (26); Private Sector Trade Associations / membership groups (14); lobbying industry organisations (9); Trade Unions / professional organisations (7); campaigning organisations / groups (6); public bodies (3); other private sector companies (2); and one individual.

Main Findings

- The majority of respondents expressed support for three core principles set out in the consultation document (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). The majority expressed agreement with the proposal that a publicly available register of lobbyists should be introduced in Scotland.
- The majority of respondents expressed agreement with the proposal that no fee should be payable by lobbyists for registering or updating the register. The majority believed that the onus to register should lie with organisations who lobby.
- The majority of respondents expressed the view that both consultant and in-house lobbyists should be required to register. The most commonly expressed view was that no types of in-house lobbyist should be exempt.
- The majority of respondents expressed agreement with the Scottish Government's view that paid lobbyists should be required to register and that the register should allow for voluntary registration by lobbyists not required to register.
- The majority of respondents expressed agreement with the Scottish Government's view that the register should cover lobbying of MSPs and Ministers.

- A majority of those who commented on the type of communication that should be covered made comments that were supportive of a register covering direct face to face communication through pre-arranged meetings and events.
- The 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.
- In terms of the frequency of providing returns detailing lobbying activity to a register, six monthly returns were favoured by a slightly higher proportion of respondents than other frequencies, although there were mixed views.
- The majority of respondents expressed agreement with the Scottish Government's view that Parliament should introduce a Code of Practice for lobbyists.
- The majority agreed that a register should include the facility for lobbyists to indicate if they already subscribed to any industry Codes of Conduct.
- There were mixed views on who should have responsibility for oversight and upkeep of a register, with some respondents who favoured the Standards, Procedures and Public Appointments Committee Clerks, and others who preferred an alternative.
- 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.
- The most commonly expressed view about whether the legislation should be flexible to allow change to the regime was that Parliament should have, by resolution, the ability to adjust the scope and operation of this, once established.
- Around a third of all respondents identified a potential impact on equalities groups of the proposals. Most made comments about additional costs or implications for businesses.

Background and process

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

A consultation was carried out to inform the provisions of a lobbying bill, with 68 submissions received from: Third Sector organisations (26); Private Sector Trade Associations / membership groups (14); lobbying industry organisations (9); Trade Unions / professional organisations (7); campaigning organisations / groups (6); public bodies (3); other private sector companies (2); and one individual. The responses were analysed and the findings of this analysis are summarised below.

The basis of a register

The majority of respondents expressed support for three core principles suggested by the Scottish Government to underpin the introduction of any register of lobbyists (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). Many expressed support for particular aspects of the principles (e.g. the need to support engagement; the need for "transparency"; and the need for measures to be "proportionate"). Some issues were raised with the nature of the principles and their links to the Scottish Government's proposals. A number of additional principles or issues for emphasis were suggested.

The majority of respondents expressed agreement with the Scottish Government's proposal that a publicly available register of lobbyists should be introduced in Scotland. Benefits commonly identified were that a register could uphold and promote transparency, accountability, public trust and understanding of lobbying. Most respondents also identified some issues and concerns, particularly a lack of evidence of current problems in Scotland. Other concerns included a lack of clarity in some aspects of the proposals, and their potential impact. Suggestions included a need for clear definitions and guidance; and additional ways of promoting transparency.

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. Common reasons included preventing barriers and ensuring openness. There were a few concerns about costs and some suggestions about the application of fees, if introduced.

The majority of respondents expressed the view that the onus to register should lie with organisations (rather than individuals) who lobby. Benefits identified frequently included reducing the level of demand on, and practical difficulties for, those involved. A few respondents identified benefits of the onus being on individuals, but most expressed concerns with this. It was also suggested that: arrangements should be made for independent lobbyists to register; organisations could identify staff involved in lobbying; and staff employment terms and training could cover compliance.

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. Transparency and fairness were mentioned frequently among the benefits of this. Others included that: this would avoid a two tier system; there was often little distinction between the two types of lobbyist or their activities; and it would prevent loopholes and confusion. Several respondents commented specifically on the need to include in-house lobbyists (e.g. because of: the level and importance of such lobbying; lessons from their exclusion in the UK register; and potential discrimination against those without the resources to employ in-house

lobbying staff). Some questions were raised about what would constitute an “in-house” lobbyist, and a common suggestion was for a clear definition of a “lobbyist”, and of “lobbying” activity.

Respondents’ views on the possible exemption of some in-house lobbyists from registration were explored, and **the most commonly expressed view was that no types of in-house lobbyist should be exempt**. 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. 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. Benefits of including only paid lobbyists were identified as being to exclude volunteers and avoid a “burden” on them. Benefits of including paid and other lobbyists were identified as promoting fairness and transparency, and recognising volunteers’ lobbying role. Concerns were raised about what would constitute “voluntary” lobbying, with a suggested need for clarity. Several respondents mentioned a need to exclude individuals lobbying on their own behalf, or engaging with their MSP as part of the latter’s constituency work.

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. The promotion of increased transparency and provision of a more complete picture of lobbying were identified most frequently as benefits of this. The most commonly raised issue was that there would be no need for voluntary registration if the register included all lobbyists. A few specific suggestions were also made about what should be permitted with voluntary registration.

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. The most commonly identified benefits were that this would enable transparency, clarity and openness. Some respondents, however, identified benefits of including only MSPs, or only Ministers. 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 commented on types of communication to 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. Among these respondents, several expressed the view that these should be the only types of communication included. Many of the concerns raised focused on “grey areas” about the types of meetings, 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.

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 fairly 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).** Suggestions were made about the nature of the information in each case. Some concerns were also raised about the inclusion of some information (e.g. due 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. **A slightly higher proportion of respondents identified benefits of a six month period for returns than for other time periods.** More Third Sector; Trade Associations / membership groups; and Trade Unions / professional organisations favoured six monthly returns than other periods. 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 respondents and campaigning organisations / groups appeared to favour this period. Arguments included that it would be manageable, accord with other registers (e.g. the Association of Professional Political Consultants; the Public Relations Consultants Association; and the UK register) 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. The benefits identified most commonly included that this would promote general improvements in lobbying 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. Among the benefits were that this could: allow organisations to display their commitment;

support transparency and information-sharing; and increase public confidence in lobbying. A few concerns included that this was not required, and may pressurise lobbyists to subscribe. A few suggestions were made on how the register might link to other Codes.

Maintenance, enforcement and changes

There were mixed views on who should have responsibility for upkeep and oversight of the register. Opinion was split between using the Scottish Parliament's Clerks to the Standards, Procedures and Public Appointments Committee and taking an alternative approach. The benefits of Clerks were that they would be independent and would have appropriate expertise. There were also concerns, however, that this may not be the case. The most common alternative suggestions were that the Public Standards Commission and the Commissioner for Ethical Standards in Public Life in Scotland should have this responsibility. Some suggestions were made about the nature of the role.

Respondents' views were sought on enforcement mechanisms and sanctions. **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.** Arguments about the need for these 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 also 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.** The most commonly mentioned reasons related to the potential for issues to emerge post-implementation. Among the small number of issues and concerns were that changes: should be unnecessary; could undermine the system's independence; and should not be made using a Scottish Statutory Instrument (SSI). A common suggestion was that there should be a process of review following the introduction and operation of registration.

Equalities and business impacts and other issues

Around a third of respondents (particularly Third Sector respondents) identified a potential impact of the proposals on equalities groups. The most common comments were about potential negative impacts, particularly on small community groups, but other specific groups were also highlighted. It was argued that 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. Suggestions were made about ways to address any negative impact. A few respondents, however, identified a potential positive impact on equalities

groups (e.g. improved equality of information or access; increased transparency and participation).

Most respondents made comments about additional costs or other implications for businesses as a result of the proposals. Most focused on cost implications. Concerns were also raised about a potential impact on specific types of businesses or organisations. Suggestions were made about ways to address any negative impact. 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. access to more reliable information about other organisations' activities; greater knowledge and awareness; and benefits to businesses from a clear and transparent political process).

Respondents were given an opportunity to make any other comments on the general operation of a register of lobbyists, or on any of the proposals put forward by the Standards, Procedures and Public Appointments Committee or Scottish Government. Many reiterated views they had expressed in response to specific questions.

How to access background or source data

The data collected for this social research publication:

are available in more detail through Scottish Neighbourhood Statistics

are available via an alternative route:

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

may be made available on request, subject to consideration of legal and ethical factors.

cannot be made available by Scottish Government for further analysis as Scottish Government is not the data controller.



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