

## Scottish Environment LINK Briefing on the 2020 Lobbying Register Review

### Introduction

The Lobbying Register was created by the Lobbying (Scotland) Act 2016 as a way to improve the transparency of decision making in Scottish politics. It is a publicly searchable and compulsory record of face-to-face lobbying of MSPs and certain Scottish Government officials. The Lobbying Register came into force on 12 March 2018, and a review of the process will commence in March 2020.

LINK engaged in the passage of the lobbying bill, with repeated calls for a fair and proportionate system that improves transparency. LINK and several of its member organisations have registered and have subsequently submitted information returns to the Lobbying Register.

This briefing seeks to reflect the experience of LINK and its members with the Lobbying Register process, and to use this experience to inform and make recommendations for the review.

### Background

Neil Findlay MSP led calls for lobbying regulation and attempted to introduce a Member's bill, some years before the Government's bill, because of "*a desire to enhance and re-build trust in politics and the political process.*"<sup>1</sup> He sought to "*promote greater transparency, openness and accountability in relation to lobbying of members of the Scottish Parliament, Ministers in the Scottish Government and relevant public officials*". Indeed, the stated aim of the 2016 Act is to "*increase public transparency about lobbying.*"<sup>2</sup>

LINK believes the upcoming review must determine whether the fundamental objective of greater transparency is being met. The review should also consider other aspects of the Lobbying Register, for example, efficacy of the website and administrative process. However, it is essential for the review to assess whether it meets its core objectives of greater transparency and accountability.

### The review process

LINK would encourage the review process to examine three main areas:

- 1) Fitness for purpose
- 2) Issues requiring clarity
- 3) Administrative and technical issues

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<sup>1</sup> [http://www.parliament.scot/S4\\_MembersBills/20120706\\_Lobbying\\_Transparency\\_consultation\\_revised.pdf](http://www.parliament.scot/S4_MembersBills/20120706_Lobbying_Transparency_consultation_revised.pdf)

<sup>2</sup> <https://www.lobbying.scot/>



## 1. *Fitness for purpose*

LINK fully supports the objectives of increasing accountability, transparency and openness in lobbying activity in Scotland. We urge that the review makes a robust assessment of whether the Lobbying Register in its current form is meeting those objectives and, if not, what alternative solutions may be proposed/introduced.

Our experience is that the Register is difficult to search (see ‘administrative and technical issues’ section). Therefore, its current value as a public database that can be searched in the interests of accountability and transparency is questionable.

The upcoming review should consider the extent to which instances of lobbying are ‘falling through gaps’ in the current system. As an example discussed below, it is feasible that many organisations have unpaid individuals in voluntary positions undertaking lobbying for them. The communications by such individuals could be extremely influential and yet they are not required to register such communications. This fails to contribute to transparency. Other ‘exemptions’ are also widely used or encouraged with the result being less transparency.

The Register’s entries also tend to be rather vague or obvious. The review may wish to assess whether it is necessary to record more detail in the ‘purpose’ section and, if so, provide clearer guidance on how to record the content of the meeting in order to maximise transparency.

The review must consider whether there are alternative, more effective means of meeting the objectives. In particular, while we observe some issues with the system that may be resolved by removing exemptions, requiring more detail, or otherwise ‘tightening application’, we also remain concerned that such an approach would add to the burden on (especially voluntary/charitable) registrants without necessarily improving the extent to which the register achieves its fundamental objective. The review must consider the pros/cons of ‘tightening’ vs alternative approaches.

In LINK’s response to the pre-bill consultation,<sup>3</sup> we proposed that any burden could be shared between those lobbying and those being lobbied, for example requiring Ministers and others to publish diaries. LINK notes that the Green/EFA group in the European Parliament (which includes MEPs from the SNP and European Green Parties) automatically publishes information about meetings held with lobbyists and civil society organisations, using a tool called LobbyCal which takes information from MEPs’ calendars<sup>4</sup>. LINK believes that the upcoming review should seriously consider the merits of requiring publication of diaries, which could be redacted to ensure there are no security issues. Publication of diaries would also overcome the issue about meeting with unpaid representatives of organisations as it would give full transparency on that aspect.

It is our understanding that MSPs and Ministers currently have to verify information returns on the Lobbying Register which must involve some administrative time on their behalf. Publishing diaries should, therefore, not add any additional burden.

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<sup>3</sup> <https://www.scotlink.org/publication/link-response-to-lobbying-transparency-bill-consultation/>

<sup>4</sup> <https://mollymep.org.uk/molly-at-work/lobbying/>



## 2. Issues requiring clarity

The [Lobbying Register Annual Report 2019](#) notes that the following exemptions have raised concerns, or requests for clarity:

*Constituency or region exemption* – there is uncertainty for organisations who operate across multiple locations about how to apply this exemption. For example, an organisation with an operation in a particular constituency could be told they do not need to submit a return, even if they lobby on issues with national relevance. We question how this can possibly maximise transparency.

*On request exemption* – registrants are advised that returns should not be submitted if the communication has been made in response to a request for information. LINK believes this would benefit from further clarification. If an MSP approaches LINK to ask for our views on environmental policy in Scotland, we could effectively talk about all of our priority areas and not have to register the communication. We question how this can maximise transparency.

*Not for payment exemption* – returns are not required if they involve communications that are not made in return for payment. Some of LINK’s communications with MSPs and Ministers are undertaken by individuals who hold unpaid, honorary positions with the organisation. We have been advised not to submit such instances. LINK is concerned that many organisations will be in the same position, thus many lobbying instances will go unreported and transparency is hindered.

*Small organisation exemption* – LINK is not covered by this exemption as we are a representative body, but many of our members can apply this exemption. We think the use of a threshold for ‘small organisations’ highlights the issue of burden, whereby the same administrative burden is placed on an organisation whether they have 11 staff or hundreds.

*Multiple returns* – the Act currently requires that each instance of lobbying is submitted. However, there have been requests for this to be reviewed and to submit a ‘one event return’. LINK has no strong views on this. However, if a standard return can be used for multiple conversations with MSPs, this would seem to be an indication of how ‘vague’ the information returns can be in terms of detailing conversation. There are instances when a LINK member might advocate both its organisational and LINK positions at a meeting and, therefore, have to submit two returns which increases administrative burden. If a LINK staff member was also present at that meeting, they would submit a separate return.

## 3. Administrative and technical issues

It is difficult to make meaningful searches of the Lobbying Register in its current form. LINK has noted that when searching the database, one must input the exact organisation name in order to see any returns. For example, searching for *NFU Scotland* shows records but searching for *NFUS* does not. Similarly, searching for *Scottish Land & Estates* shows records but not *Scottish Land and Estates*, and *ScottishPower* not *Scottish Power*. This needs to be addressed if it is to become a meaningful publicly searchable database that improves transparency and accountability.



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