



Scottish Environment LINK response to the Public Audit and Post-legislative Scrutiny Committee's call for evidence on the Lobbying (Scotland) Act 2016

Summary

LINK is supportive of a legislative approach to lobbying regulation but we strongly believe any such approach must meet the fundamental objective of increasing transparency. It is not clear whether the current legislative approach in Scotland is meeting this objective. LINK believes transparency would be improved by having MSPs', Ministers' and senior civil servants' diaries in the public domain.

In addition, we believe a number of issues must be explored and resolved in order to improve the current process of submitting returns. These range from technical issues with the current database to how the exemptions are applied.

Questions

1. In your view, what concerns was the Lobbying Act seeking to address?

The Act sought to alleviate concerns about lack of transparency in the lobbying of elected representatives and decision makers.

2. Two years' on, has the Lobbying Act addressed those concerns?

In particular, has the Act added value? If so, in what way? For example, has the Act improved transparency? Do you think it has changed the way lobbying is carried out?

It is not yet clear to us that the Lobbying Act has fulfilled its fundamental objective of increasing transparency.

A crucial part of increasing transparency is to have a publicly searchable database. Our experience is that the current Register is difficult to search therefore its value in increasing transparency is questionable. Meaningful searches of the Register are difficult because one must input the exact organisation name in order to see their returns. For example, the search function is unable to recognise when 'and' is used instead of '&' which means that the exact name of an organisation must be searched for to enable returns to be seen. Search function issues like these need to be addressed if it is to be a public database that improves transparency and accountability.

We have no evidence that the Act has changed the way lobbying is carried out. However, as there is no requirement to submit lobbying undertaken by phonecall, it is possible that more lobbyists might choose to have conversations by phone rather than in person or by videocall. Similarly, some organisations may increasingly choose to use unpaid representatives to undertake their lobbying since there is no requirement to register such instances. We discuss this further in our response to Question 4 below.

3. Do you support a legislative approach to regulating lobbying activity? If so, why? If not, for what reason? Has your view on the value of a legislative approach changed since the commencement of the Lobbying Act?

LINK has long supported a legislative approach for regulating lobbying activity. We are supportive of approaches that improve transparency and accountability, and enhance public knowledge of lobbying and trust in the political system. We have always advocated that any approach must be financially and administratively proportionate, and not affect charities' ability to undertake advocacy.



We remain in favour of a legislative approach to lobbying regulation but seek assurance that the current system is meeting its fundamental objective of increasing transparency. We believe a number of changes could be made to the current system to improve its transparency, increase the searchability of the database and reduce administrative burden on smaller organisations. We provide more detailed points on the current system below.

4. In your view, is the Lobbying Act working in the way it was intended? If not, why not? What needs to change to ensure that it is working as intended (i.e without making changes to the legislation)?

This review should consider the extent to which instances of lobbying are ‘falling through gaps’ with the current system. We believe this could be happening as a consequence of the way in which permitted exemptions are applied. We provide some examples below:

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 is told they do not need to submit a return even if they lobby on issues with national relevance. Therefore, organisations with premises in most constituencies can use this exemption not to report, even if the lobbying was something that was more relevant to national rather than local interest. We question how this can possibly maximise transparency. Furthermore, some of our members are concerned that they could be perceived to be ‘hiding’ lobbying activity where they have tried to submit a return but been advised by the Lobbying Register clerks not to submit because of this exemption. In addition, this means that a higher administrative burden might be placed on smaller organisations, while big ones have this key exemption. In summary, LINK is concerned that the application of this exemption can significantly hinder 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 an organisation to ask for views on one particular issue, the conversation might widen to other issues and yet there remains no need 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 by unpaid representatives will go unreported. We note there is provision in the Act for a lobbyist to become a ‘voluntary registrant’ which would overcome this issue. However, it is not a comprehensive solution since (i) the Lobbying Register clerks have advised us that they do not want such returns, presumably to reduce the sheer volume of submissions and (ii) such voluntary registration depends on goodwill and some unpaid lobbyists may deliberately opt out.

Small organisation exemption – LINK is not covered by this exemption as we are a representative body, but many of our members with <10 FTE can apply this exemption. However, we would highlight that some of our members who have a small Scottish team are unable to apply this exemption if they are part of a large UK team, thus resulting in a relatively high administrative burden for them.

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 supports this approach provided that enough detail is completed for each lobbying instance within the ‘one event return’. LINK members have commented that the functionality of the current register website means that it is difficult to use the ‘copy’ function. We would welcome if such technical issues with the website were resolved.



Detail within information returns

The Register's entries can often be vague. 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.

Use of an Excel template to upload returns

LINK and several of our members track our lobbying activity on an Excel spreadsheet for internal purposes, while also manually submitting individual returns via the lobbying register website. It would considerably reduce our administrative burden if there was an option to upload an Excel template directly to the Lobbying Register.

Publishing diaries

In order to maximise transparency and faith in the efforts to improve the lobbying system, the burden must be shared between those lobbying and those being lobbied. LINK therefore supports a dual approach of having a register for lobbyists and requiring MSPs, Ministers and senior civil servants to publish their diaries. We note 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. LINK would like serious consideration given to 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.

5. Could the legislation be improved in any way? If so, please indicate why and in what way? In particular, do you have any views on whether the changes should be made to the following (please indicate why and in what way):

a. the Act covers lobbying to a Member of the Scottish Parliament, a member of the Scottish Government, a junior Scottish Minister, a law officer, a special adviser or the permanent secretary. Does the Act cover the right groups of decision makers?

As stated in our response to Question 4, we think the legislation could be improved with a requirement for those being lobbied to publish their diaries.

We agree that the Act should cover lobbying of MSPs, Ministers, law officers, special advisers and the permanent secretary. However, we would like consideration given to the inclusion of all senior civil servants.

b. the Act requires face-to-face communications, including via video conferencing and other similar means, which are also regulated lobbying to be registered. Are these the right communications to capture?

LINK supports the inclusion of phone calls within regulated lobbying in addition to face to face meetings and video calls.

c. the circumstances in which a person undertaking "regulated lobbying" is required to provide information, to be included in the register, about costs incurred by them when engaging in regulated lobbying.

We believe it could be complicated for an organisation to estimate the costs it incurs in regulated lobbying. For example, an organisation's activities at a party conference might feature their wider public facing advocacy work



and it could be challenging to distinguish which expenditure is part of regulated lobbying and which is a component of any public facing advocacy.

6. Have assumptions made at the Bill's introduction in its Financial Memorandum and Policy Memorandum and during its passage through Parliament held true (for example, on costs or impact) and, if not, why not?

LINK does not have a view on this.

7. Are there any other issues you would like to raise in connection with the operation of the Lobbying Act?

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.

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.

This response is supported by the following LINK member organisations:

Association for the Protection of Rural Scotland
Butterfly Conservation Scotland
Environmental Rights Centre for Scotland (ERCS)
Fidra
Friends of the Earth Scotland
Froglife
Keep Scotland Beautiful
Ramblers Scotland
RSPB Scotland
Scottish Campaign for National Parks
Scottish Wild Land Group
Scottish Wildlife Trust
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