SUMMARY

- Our position from the outset has been that the responsibility for transparency in lobbying should lie with those who hold public office – MSPs, Ministers, special advisors and senior civil servants
- We support the need for transparency in lobbying but are concerned by the effect the Bill could have on democratic engagement
- The third sector has considerable knowledge and experience, which may be lost if organisations are discouraged from engaging by the introduction of a register
- We are concerned that if the Bill is broadened beyond the current proposals, it will become onerous for the third sector
- If the scope of the Bill is broadened to civil servants, they must bear the burden of responsibility for transparency
- Capturing the interactions of volunteers would be a disproportionate burden on third sector organisations and could discourage volunteers from participating in campaigning activity
- We would like to see a clause inserted into the Bill which triggers a review of the legislation a year after its introduction - to help offset concerns about negative impacts and unintended consequences
- The Bill won’t capture a significant area of lobbying activity in Scotland if it excludes universities, colleges, leisure trusts and others covered by Freedom of Information legislation

OUR RESPONSE

INTRODUCTION

It has been acknowledged continually throughout the process of developing the Bill that “lobbying is a legitimate and valuable activity” and that it is useful to MSPs. It has also been acknowledged that there are currently no concerns with undue influence in lobbying in Scotland. We accept the desire for transparency in lobbying but don't accept that a justifiable case has been made for expansion of the lobbying register. Placing a significant administrative burden on third sector organisations and discouraging valuable engagement is not an acceptable price to pay for benefits in transparency that are largely hypothetical. The register must remain light touch or it will restrict access to democratic processes and erode the participative principle of the Parliament.
1. **DO YOU AGREE THAT THE BILL IS NECESSARY AND THAT THE ESTABLISHMENT OF A LOBBYING REGISTER IS DESIRABLE?**

We support the principle that lobbying interactions should be transparent. To maintain confidence in political decision making, the democratic process should be visible to the public. However, it is also vital that politicians remain accessible and that we don't put barriers in place which discourage people and organisations from contacting them to express their views and provide expertise.

Our position from the outset has been that the responsibility for transparency in lobbying should lie with those who hold public office – MSPs, Ministers, special advisors and senior civil servants. We believe that this would be the most proportionate way to provide transparency, while not discouraging participation.

However, we accept that a lobbying register will be introduced and stated in our response to the Scottish Government’s consultation that we would not oppose the register, provided it was light touch and doesn’t cause undue bureaucratic burden for the third sector or damage legitimate engagement.

As the Bill develops, consideration must be given to the effect it could have in limiting engagement and producing unnecessary bureaucracy for the third sector. Our concern is that the Bill will be broadened beyond the initial proposals and will become detrimental to participation and onerous for the third sector.

2. **HOW WILL THE BILL AFFECT YOU OR YOUR ORGANISATION?**

If the Bill is passed in its current format, SCVO will have to devote time to an additional administrative task to compile and submit the six monthly reports that have been proposed. This will be manageable for us as we have a dedicated Public Affairs department and routinely collect much of that information for other purposes. We have four Public Affairs Officers, a Policy Manager and a Director of Public Affairs who all meet MSPs on a regular basis.

In addition our Chief Executive, Deputy Chief Executive and four other department Directors will all meet MSPs in the course of their work. Completing a six monthly return would involve a member of the Public Affairs team collecting the required information from those staff and completing the register. We anticipate that as long as the Bill only covers face to face meetings with MSPs and Ministers this would take approximately a day of staff time during the six month period.

However, we are not concerned by the overall impact this will have on our work, It is our members where the greatest impact will be felt, particularly smaller organisations, those that only occasionally engage with the Parliament and those that have staff around the country communicating with MSPs locally.
3. **REGISTRATION IS TRIGGERED ONLY WHEN LOBBYING IS BEING DONE IN EXCHANGE FOR PAYMENT (EITHER AS A CONSULTANT OR AN EMPLOYEE) AND DOES NOT CAPTURE LOBBYING CARRIED OUT IN THE COURSE OF VOLUNTARY WORK OR WHEN IT IS DONE BY AN INDIVIDUAL ON HIS OR HER OWN BEHALF. DO YOU AGREE WITH THIS APPROACH?**

We agree that only covering lobbying where it is being done in exchange for payment is the correct approach to take. Many third sector organisations make use of volunteers to conduct campaigning activity and raise awareness. Capturing all those interactions in a register would involve an entirely disproportionate burden on the organisations they volunteer for and could discourage volunteers from participating in campaigning activity.

4. **DO THE PROVISIONS SET OUT IN THE BILL SUCCEED IN STRIKING A BALANCE BETWEEN CAPTURING INFORMATION OF VALUE AND ENSURING THAT ACCESS AND PARTICIPATION WITH THE WORK OF PARLIAMENT AND GOVERNMENT IS NOT DISCOURAGED?**

The approach of capturing face to face communications with MSPs that is adopted in the Bill is the most proportionate approach and stands the best chance of achieving the correct balance between transparency and participation. However, we also have concerns about the effect this Bill could have on the thousands of third sector organisations that legitimately engage with the Parliament. Increasing participation is a key government policy objective, which we and many of our members support. Therefore, it is vital that the minor improvements in transparency brought about by the Bill are considered alongside any detrimental effects on participation or onerous administrative duties for third sector organisations.

**Effect on smaller charities**

We would like the committee to consider the following question: If I am an employee of a small third sector organisation with very limited time and resources, will the Bill make me more or less likely to engage with the parliament? We think the answer to that question is going to be ‘less likely’ in some cases. This is because third sector organisations can be wary of the term ‘lobbyist’ and don’t see their campaigning or advocacy work with Parliament and Government in that way. Additionally, charity trustees can be risk averse when it comes to being perceived as political and may see registration as a lobbyist as being ‘party political’. This could deny the Parliament the breadth of valuable experience that frontline organisations bring, which is vital for creating good policy.

Even if the Bill is light touch and the individual administrative burden on a charity is small, it must be considered as an addition to the cumulative effect of regulation. Third sector organisations are already heavily burdened with regulation and bureaucracy, much of it focussed on transparency and accountability. Each addition to that burden may seem small, but it all adds up and it all takes time away from vital frontline work.
Effect on larger organisations

A number of third sector organisations have expressed concern to us about the work involved with collecting information for the register from staff members working outside public affairs departments. The Committee heard from Andy Miles of how the RSPB undertakes campaigning activity, where all staff members are ‘lobbyists’ and charged with speaking to MSPs about the protection of birds. Collating all those interactions would be an enormously onerous task and the head office may not hear about the interaction until months after it has taken place. Organisations such as Barnardo’s and the British Heart Foundation will face similar problems collecting information from their shop managers around the country who engage with local MSPs on a regular basis. Gathering those interactions and recording centrally in an accurate manner would be a considerable task and this would be multiplied considerably if the Bill is broadened to other forms of communication.

Broadening the Bill

We are concerned by the suggestions that the Bill could be widened to include other forms of communication such as telephone calls and emails. This would greatly increase the burden on organisations completing the register and involve a lot of unnecessary bureaucracy. In our experience emails and telephone calls with Ministers and MSPs are usually used to set up a face to face discussion. Where we are sending substantial communications it is almost always information that would be in the public domain anyway, consultation responses and briefings that are published on our website.

There have also been calls to extend the scope of the Bill to include senior civil servants. If this is done it must be focussed on the Civil servants themselves providing the information required, as Ministers currently do. This could be done through amendments to the Civil Service Code. We would oppose any extension of the register to include civil servants as it would further add to the levels of administration required and discourage partnership working with the Scottish Government.

5. **DO YOU FEEL THAT THE DEFINITIONS AND EXCLUSIONS ARE SUFFICIENTLY CLEAR? DO THEY, FOR EXAMPLE, ALLOW INDIVIDUALS AND ORGANISATIONS TO EASILY KNOW WHETHER THEIR ACTIVITY REQUIRES TO BE REGISTERED?**

We would appreciate greater clarity on whether the register would allow third sector organisations to perform a ‘lead role’ in registering activity on behalf of their members. It is common for third sector intermediaries and larger organisations to facilitate the engagement of their members with MSPs. So an organisation like The Alliance could organise a roundtable discussion with MSPs to inform them about the effect of change in policy with fifteen of their members. Would the register allow The Alliance to list the event on their return and name the organisations involved? Or would all fifteen organisations have to register individually. If it is the latter the bureaucratic burden would be increased significantly and organisations may be discouraged from participation in the event.
We are concerned by the list of bodies that will be exempt from completing the register. The Bill won’t capture a significant area of lobbying activity in Scotland if it excludes all the bodies covered by Freedom of Information (FOI) legislation. Universities, colleges, leisure trusts and others covered by FOI all lobby MSPs and Ministers on a regular basis, so these interactions must be included in any register.

The argument that as these bodies are covered by FOI they don’t need to be included on the register does not hold up to scrutiny. The purpose of the register is to safeguard public confidence in democracy by making lobbying transparent. This requires that interactions are easily accessed in one location and searchable. If a member of the public searches the register for the lobbying meetings undertaken by their MSP in the last six months, they would expect that search to reveal the totality of those interactions. They wouldn’t expect to also have to submit multiple FOI requests to all the universities, colleges and other bodies covered by FOI.

6. **THE BILL’S POLICY MEMORANDUM STATES THE BILL AIMS FOR A “LIGHT TOUCH, EDUCATIVE APPROACH” AND THAT “CRIMINAL OFFENCES AND PENALTIES [ARE] PROVIDED FOR AS A LAST RESORT”. WHAT ARE YOUR VIEWS ON THIS APPROACH?**

We agree with the educative approach and would not want third sector organisations to be penalised for accidental breaches of the rules. It will take time for third sector organisations to become familiar with the rules and processes required, so lenience will be particularly vital in the beginning.

7. **ARE THERE ANY UNFORESEEN CONSEQUENCES OF THE BILL AS CURRENTLY DRAFTED?**

Research conducted by a student on placement with SCVO into the UK Lobbying Act showed that legislation can negatively impact on the third sector in ways that were unintended. The research focussed on restrictions on campaigning activity in the run up to elections, so the situation is not identical to this Bill, but a number of the conclusions are still pertinent to this lobbying register.

The research found that the Act introduced ‘Undue burdens because organisations have had to invest additional time and resources to ensure compliance with the law’ and ‘Due to the Lobbying Act’s lack of clarity, organisational perceptions of what the Act ‘does’ are as important (if not more so) than the actual regulations’.

We are concerned that the Scottish register could cause similar problems with a lack of clear definitions that could impact on the third sector. It is not clear yet what the definition of lobbying activity will be and this could cause confusion about whether or not to register. Many third sector organisations will act cautiously and register if they are unsure. It is also not clear the types of meetings that will be covered.

If the Bill is expanded to other forms of communication, this problem will be exacerbated further. Does the email sent to an MSP to arrange a meeting have to be registered? What about the four follow up emails with their assistant to make the practical arrangements? If a briefing is attached to the email which sets out our position, would that count as lobbying?
To help offset concerns about any negative impacts and unintended consequences, we would like to see a clause inserted into the Bill which triggers a review of the legislation a year after its introduction. This review would assess the impact of the register on those that have to complete it and the effect it has on engagement with the Parliament.

8. ARE THERE ANY AMENDMENTS THAT WOULD, IN YOUR VIEW, ENHANCE THE BILL?

The onus for transparency in the Bill is being placed entirely on those that lobby. We would like to see amendments brought forward that address that imbalance and require MSPs, special advisors and civil servants to be more transparent in their activities. This would allow for meetings initiated by MSPs and Ministers to be covered without placing the responsibility on those they are meeting with. It would also provide a check against the register, to ensure it is completed accurately.

CONCLUSION

It has been acknowledged continually throughout the process of developing the Bill that “lobbying is a legitimate and valuable activity” and that it is useful to MSPs. It has also been acknowledged that there are currently no concerns with undue influence in lobbying in Scotland. We accept the desire for transparency in lobbying but don’t accept that a justifiable case has been made for expansion of the lobbying register. Placing a significant administrative burden on third sector organisations and discouraging valuable engagement is not an acceptable price to pay for benefits in transparency that are largely hypothetical. The register must remain light touch or it will restrict access to democratic processes and erode the participative principle of the Parliament.

Felix Spittal
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Scottish Council for Voluntary Organisations,
30 November 2015
ABOUT US

The Scottish Council for Voluntary Organisations (SCVO) is the national body representing the third sector. There are over 45,000 voluntary organisations in Scotland involving around 138,000 paid staff and approximately 1.3 million volunteers. The sector manages an income of £4.9 billion.

SCVO works in partnership with the third sector in Scotland to advance our shared values and interests. We have over 1,600 members who range from individuals and grassroots groups, to Scotland-wide organisations and intermediary bodies.

As the only inclusive representative umbrella organisation for the sector SCVO:

- has the largest Scotland-wide membership from the sector – our 1,600 members include charities, community groups, social enterprises and voluntary organisations of all shapes and sizes
- our governance and membership structures are democratic and accountable - with an elected board and policy committee from the sector, we are managed by the sector, for the sector
- brings together organisations and networks connecting across the whole of Scotland

SCVO works to support people to take voluntary action to help themselves and others, and to bring about social change.

Further details about SCVO can be found at www.scvo.org.uk.