Standards, Procedures and Public Appointments Committee

Lobbying (Scotland) Bill

Written submission received from Spinwatch

Summary
Spinwatch welcomes the fact that the Scottish government is taking a Bill through Parliament to try and make lobbying more transparent. We believe strongly, however, that the system of registration in the Bill needs to be strengthened in order to allow genuine public scrutiny of lobbying in Scotland.

We propose that the Bill be amended in the following ways:
• Expand the definition of lobbying in the Bill so that:
  • multiple modes of communication trigger registration
  • lobbying of civil servants and special advisers triggers registration
• Expand the information that should be disclosed by lobbyists to include spending on lobbying

Consultation questions
1. Do you agree that the Bill is necessary and that the establishment of a Lobbying Register is desirable?

Spinwatch agrees with the government’s conclusion that as the powers and responsibilities of the Scottish Parliament increase, so lobbying in Scotland will grow in intensity and volume.

This should be a cause for celebration and concern. Lobbying is essential to a functioning, healthy democracy and wider participation in decision-making is to be encouraged. There is genuine public concern, however, that lobbying can also subvert the democratic process and that certain interests, particularly corporations, can enjoy privileged access and can wield disproportionate influence over politicians.

We agree with the government’s decision to act now, while public trust in decision-making is high: ‘to put beyond doubt any question of lobbying impropriety in Scotland and ensure that lobbying in the future is as open and transparent as possible’, as Minister for Parliamentary Business, Joe FitzPatrick said.¹

The simplest way of achieving transparency in lobbying is with a robust, statutory register of lobbyists, which requires lobbyists to provide basic, but meaningful information on their activities.²

¹ Statement by Joe FitzPatrick on ‘Increasing transparency around lobbying’, 29 May 2015
² To alternatively require Ministers, MSPs and officials on the receiving end of lobbying to publish diaries of meetings with lobbyists, as some have proposed, would be to place the burden entirely on decision-makers. It would also provide only a very partial view of lobbying, which extends far beyond individual, face-to-face meetings.
2. How will the Bill affect you or your organisation?

Spinwatch has actively lobbied for transparency regulations in Westminster, Brussels and Holyrood for over a decade. We have consistently proposed that transparency in lobbying should apply to not-for-profit organisations like ourselves, as well as companies and trade unions. To date, only Brussels has allowed us to make public our lobbying (see Spinwatch’s entry on the EU transparency register).³

We have been registered in Brussels since 2013. This has required us to disclose more information than would be required in Scotland, namely: who we are; our remit and ‘fields of interest’; specific issues lobbied on; whether we participate in any EU groups; the number and names of active lobbyists employed by Spinwatch; whether we are a member of any association, or network in the EU; and finally, our annual lobbying spend. Registration takes between one and two hours to complete, and we have found it to be no burden.

We would, therefore, willingly sign up to any register in Holyrood. Under the current proposals it is likely that our lobbying, in relation to the government’s Bill, would trigger registration: we have had face-to-face meetings with Ministers and MSPs. However, these contacts constitute only a small proportion of our lobbying activity, which includes communication with MSPs via email and letter, and contact with civil servants not covered by the proposals.

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 paid lobbyists should be required to register. This should include, however, those whose job is not as a lobbyist, but who engage in lobbying occasionally, such as company CEOs. It is possible, with a robust definition, following the example of other countries, to capture lobbying by these key staff, whose interaction with officials may be sporadic, but whose influence may be significant.

As a principal, lobbying transparency measures should attempt to capture the majority of, and most significant, lobbying activity, but not strive to capture every lobbying contact.

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?

Spinwatch strongly believes that the proposals set out in the Bill do not go far enough: the information put in the public domain will not allow adequate public scrutiny of who is lobbying in Scotland. Only a minority of lobbying activity will be captured, namely lobbying in person of Ministers and MSPs.

³ Spinwatch profile on the EU transparency register, 2015
It is very possible that such a narrow focus will present a distorted picture to the people of Scotland of who is petitioning the government.

- Excluding contact between lobbyists and special advisers or civil servants, for example, is likely to lead to at least some corporate lobbying remaining out of public view. Communication with advisers and certain civil servants often requires an insider’s knowledge and contacts, which is something that professional lobbyists and lobbying agencies provide and will charge a premium for. This, in the main, puts these services, and advantages, out of reach of all but well-resourced corporations. Some lobbying by companies may, therefore, be excluded from the register as a result.

- Face-to-face meetings are an important way of petitioning government. However, evidence shows that other means of communication are key to developing and sustaining significant lobbying campaigns. Take the case of News Corp lobbying in 2010 over its bid to take over BSkyB (a campaign that occurred in Westminster, but is not peculiar to Westminster). In the course of the bid’s progress – just over a year – News Corp’s chief lobbyist exchanged nearly 800 texts, 150 emails and nearly 200 phone calls with the Minister’s special adviser. The purpose of this significant contact programme was to ensure that government did not hamper the progress of the bid, and it was conducted via means other than face-to-face meetings. It was a particularly high-stakes campaign, but the methods are typical of commercial lobbyists.

The decision, therefore, to exclude lobbyists’ communication with special advisers and civil servants by any means other than face-to-face, creates a significant loophole in the legislation. Our proposed changes to the Bill to close these loopholes are at the end of this document (question 8).

We also disagree with the assumption in the question that transparency in lobbying will deter participation in politics in Scotland. There is no evidence from other jurisdictions that a register presents a barrier to participation. The UK’s 2009 inquiry into lobbying by the Public Administration Select Committee also weighed up the evidence on the risk registration posed in creating an exclusive process and concluded that, while it is one that clearly needs to be guarded against, ‘it is a risk that has been overstated’.

Additionally, research undertaken in the US among officials responsible for operating lobbying registers showed that robust regulation did not reduce the numbers of

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4 As in Westminster and Whitehall, special advisers in Edinburgh ‘play a vital role as ministerial sounding boards and gatekeepers’, writes Lionel Zetter in the lobbying industry ‘bible’: *Lobbying, the art of political persuasion*. ‘They are generally happy to meet with lobbyists, and to hold discussions off the record’, he adds.

5 Take the example of Kevin Pringle at Charlotte Street Partners. As the SNP’s former director of communications, he has an insider’s knowledge of who’s who in Scottish politics. Charlotte Street Partners does not disclose who is paying for their services. If, however, it follows the industry norm, corporate interests will dominate its client roster, with perhaps a small number of public sector clients and one or two, often, pro bono non-profit clients.

6 Information disclosed through the Leveson inquiry; and presented in: *A Quiet Word: Lobbying, Crony Capitalism and Broken Politics in Britain*, Cave and Rowell; Vintage, 2015; p.6;

ordinary people engaged in lobbying. It also suggests that lobbying disclosure can bring benefits from a greater understanding of the forces at work in policy-making.\(^8\)

Spinwatch is mindful that registration should not create an undue burden on less well resourced organisations, like small businesses and small charities. However, with an exemption for lobbying on a voluntary basis, and a minimum threshold for smaller organisations, we believe that only those with sufficient capacity would be required to register. As noted above, registration on the EU transparency register has proved to be no burden for us as an organisation.

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?

The definitions and exclusions are sufficiently clear. However, we strongly urge that the definition of who should register be expanded so that: multiple modes of communication trigger registration; and lobbying of civil servants and special advisers triggers registration. See question 8 for more on this.

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 that criminal offences and penalties should be reserved for serious offences, such as knowingly and corruptly failing to comply. Registrants should also be given a reasonable period to respond to any complaint and/or correct a ‘defective filing’ before any other action is taken. We do believe, however, that it is essential that the body operating the register should be given sufficient powers to investigate any potential breech of the rules.

As stated in our previous submission to the government, reputation is important to professional lobbyists. The introduction of a sanction requiring the Registrar to inform officials of a clear breach would be an additional means of ensuring compliance.

7. Are there any unforeseen consequences of the Bill as currently drafted?

It is certainly possible that the current legislation could lead to lobbyists avoiding face-to-face meetings with Ministers to sidestep disclosure. Meetings will be held with the Minister’s adviser instead, or conversations will be conducted over the telephone. We don’t imagine that this will happen in the majority of cases, yet such an obvious loophole is a gift to those who might wish to keep their activity out of the public gaze.\(^9\)

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\(^8\) William Dinan, David Miller and Philip Schlesinger, *Supplementary Evidence to Standards Committee Consultation on Lobbying the Scottish Parliament*, Stirling Media Research Institute, University of Stirling, March 2001.

\(^9\) It is understood in the lobbying industry that often the most effective lobbying occurs when there is little or no public scrutiny. As Steve John, an experienced lobbyist, now with McKinsey, writes in *The Persuaders: When Lobbyists Matter*, (Palgrave Macmillan, 2002): ‘The influence of lobbyists increases when . . . it goes largely unnoticed by the public.’
As outlined above in question 4, we believe that the legislation as currently drafted could also create a distorted view of who is exerting influence in Scotland.

It is also possible that the legislation, with its narrow focus and loopholes, will need to be rewritten in the not too distant future. A lobbying scandal involving an unregistered lobbyist, which is feasible, would lead to concerns about the weakness of this register, and may call in to question government assurances that it has taken a proactive stance on transparency.

8. **Are there any amendments that would, in your view, enhance the Bill?**

This is how we think the Bill should be amended.

1. **Expand definition so multiple modes of communication trigger registration**

We propose that the definition of a lobbyist – as set out in 1(1)(a)(1) – is amended so that it includes multiple modes of communications, not just face-to-face meetings; and more closely mirrors the internationally recognised definition of lobbying below:

   The term “lobbyist” refers to any individual who, as a part of his or her employment or for other compensation, engages in more than one lobbying contact (oral and written communication, including electronic communication) with an elected official, his or her staff, or high and mid-ranking government employee who exercises public power or public authority, for the purpose of influencing the formulation, modification, adoption, or administration of legislation, rules, spending decisions, or any other government program, policy, or position.

2. **Expand definition so lobbying of civil servants and special advisers triggers registration**

We propose that the definition of a lobbyist – as set out in 1(1)(a)(1) – is amended so that as well as Ministers and MSPs, it also includes civil servants and special advisers above grade 7, and staff in agencies and NDPBs of the Scottish Government above civil service grade 7, or equivalent. This would mean it would more closely mirror the best practice definition above.

3. **Expand the information that should be disclosed by lobbyists to include spending on lobbying**

As drafted, lobbyists must disclose who they are, whom they are lobbying, and the purpose of the lobbying. Under an expanded definition (as above), which includes more than simply face-to-face meetings, it is not necessary for lobbyists to detail every contact, or communication made, as has been suggested by some.

We propose, however, that the information that lobbyists are required to disclose – as set out in s6(2) – should include a good faith estimate of how much they are spending on lobbying. Spending could be banded to make it easier. The disclosable expenditure should include direct staff costs and other expenditure, including spending on: the preparation of materials, or information to be used in support of
lobbying efforts; professional advice, opinion polling, research, or any other evidence created in support of lobbying; events and hospitality; and any staff costs involved in these activities.

We also propose that organisations, or groups of organisations working collectively, whose total expenditure on lobbying activity during an accounting year is cumulatively less than £2,000, or which dedicates cumulatively less than 0.25 of a full-time equivalent member of staff to direct lobbying activity, should only report on an annual basis. Any organisation that exceeds these levels should report on a quarterly basis.

Wholly voluntary, community and social campaign groups that do not employ, or remunerate staff, or engage third-party organisations to do this on their behalf, shall be exempt from reporting.

_Tamasin Cave_
_Spinwatch_
_30 November 2015_