Standards, Procedures and Public Appointments Committee

Lobbying (Scotland) Bill

Written submission received from Shelter Scotland

Summary

- A key principle underpinning the Scottish Parliament is equality of access both to parliamentarians and the process of law making. This openness must be preserved for everyone.

- We support the goal of increasing transparency and feel that if introduced, a register of lobbying organisations (as opposed to individuals) is a welcome amendment to the original proposals and would be a straightforward way to keep a comprehensive list of who is engaging in face-to-face lobbying activity across Scotland.

- We are concerned that compliance to new regulations may detract limited resources away from Shelter Scotland’s core critical business of providing direct support to our clients, lobbying and engaging productively with elected members. It may even preclude some people/organisations from becoming involved with the Scottish Parliament.

- We believe that the approach of capturing face to face communications with MSPs and Ministers that is proposed in the draft Bill is the most proportionate approach and achieves the correct balance between transparency and participation.

- 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, especially smaller community groups, completing the register and involve a significant amount of unnecessary bureaucracy.

- Above all else legislation must ensure that access and openess are maintained and the barrier to entry is not too high. Compliance with new legislation should not hinder genuine and legitimate engagement or prohibit smaller organisations or those with greater restrictions on their resources.

Introduction

Shelter Scotland helps over half a million people every year struggling with bad housing or homelessness through our advice, support and legal services. We believe that everyone has the right to a safe, secure and affordable home and that housing is vital to people and families being able to flourish in their communities. We provide direct services to people facing bad housing and homelessness and we campaign to prevent it in the first place.

Since our establishment in 1968, Shelter Scotland has a long history of engaging openly, successfully and legitimately with Scotland’s politicians and institutions and agree with the view of the Standards, Procedures and Public Appointments (SPPA) Committee that “lobbying is a legitimate and valuable activity”. A key part of our role, and that of many third sector organisations across the country, is to stand up for and
ensure that the voices of our clients and vulnerable groups are heard in the parliamentary process and the formation of legislation and policy that affects those we seek to represent.

Our response to this Committee consultation at Stage 1 of the Bill is primarily from our own perspective as a third sector organisation with an in-house policy and public affairs team but who have a range of staff who engage with parliamentarians. It is Shelter Scotland’s view that in the interest of fairness, any regulation brought in by forthcoming legislation should treat all paid lobbyists in the same way regardless of sector or role.

Formal Response to Consultation Questions

Q1. Do you agree that the Bill is necessary and that the establishment of a Lobbying Register is desirable?

Shelter Scotland is not convinced on the rationale or requirement for this new legislation, especially since the Scottish Government’s original consultation document on proposals for a Lobbying Transparency Bill clearly stated that: “we do not need to take remedial action to address any problems with lobbying in Scotland”. While we are not sure a new regime is necessary, we have answered the questions asked in recognition that legislation and regulation in this area is due to be introduced.

A fundamental principle underpinning the Scottish Parliament is equality of access both to parliamentarians and the process of law making. This openness must be preserved for everyone in any legislation brought forward. We support the proposals for the establishment of a publicly available Lobbying Register to be introduced in Scotland and welcome the amendment to the original consultation proposals on this issue for any such register to apply to organisations rather than to individuals.

As outlined in the Policy Memorandum accompanying the draft Bill, the Bill is being brought forward to fulfill the Scottish Government’s objective of: “increasing the public transparency of elected representatives’ activity”. As such, it is the view of Shelter Scotland that a simpler way of achieving this could be to facilitate the centralised publication of MSPs’ diaries on a regular basis via the Scottish Parliament website or some other similar, publically accessible location.

Q2. How will the Bill affect you or your organisation?

As currently drafted, the Bill will require Shelter Scotland to adopt additional administrative functions to meet the requirements of the proposed Lobbying Register and the required six monthly returns of activity. As a campaigning charity with limited resources, we fear that compliance to new regulation may detract from our critical core business of providing direct support to our clients, lobbying and engaging productively with elected members and may even preclude some people/organisations from engaging with the Scottish Parliament.

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2. [http://www.scottish.parliament.uk/S4_Bills/Lobbying%20(Scotland)%20Bill/SPBill82PMS042015.pdf](http://www.scottish.parliament.uk/S4_Bills/Lobbying%20(Scotland)%20Bill/SPBill82PMS042015.pdf)
Q3. 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?

Yes, Shelter Scotland agrees that only covering lobbying where it is being done in exchange for payment is the correct approach to take. This proposal strikes the right balance of not limiting access to the parliament from interested individuals and taking account of the desire to increase transparency with regard to paid lobbying activity.

Q4. 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?

As currently drafted, yes. Shelter Scotland believes that the approach of capturing face to face communications with MSPs and Ministers that is proposed in the Bill is the most proportionate approach and achieves the correct balance between transparency and participation.

Shelter Scotland is 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 significant amount of unnecessary bureaucracy. In our experience, emails and telephone calls with Ministers and MSPs are usually used for administrative purposes i.e. to set up a face to face discussions, confirm attendance at events etc. 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, we support the calls from the Scottish Council for Voluntary Organisations (SCVO) that 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.

Q5. 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?

Generally, yes. However, Shelter Scotland supports the concerns raised by the SCVO that if the Bill excludes all the bodies covered by Freedom of Information (FOI) legislation then it will fail to capture a significant area of lobbying activity in Scotland. 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.
Q6. 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 outlined in the draft Bill and would not want to see organisations penalised for genuinely accidental breaches of the rules – especially in the early stages of its introduction. It will take time for organisations to become familiar with the new rules and processes required, so lenience will be particularly vital in the beginning. We do however, believe that this legislation needs to have some teeth and sanctions for those who deliberately and repeatedly fail to comply with this legislation should be established.

Q7. Are there any unforeseen consequences of the Bill as currently drafted?

We are concerned that this Bill 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.

Q8. Are there any amendments that would, in your view, enhance the Bill?

As noted in response to Questions 1, the stated primary policy objective of the bill is noted as being: “increasing the public transparency of elected representatives’ activity”3. It is the view of Shelter Scotland that a much simpler way of achieving this would be to facilitate the centralised publication of MSPs’ diaries on a regular basis via the Scottish Parliament website or some other similar, publically accessible location. In addition, as currently drafted, 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 this imbalance and require MSPs, special advisors and civil servants to be more transparent in their activities.

In addition, Shelter Scotland supports the call from organisations such the Association for Scottish Public Affairs (ASPA) and the SCVO that it would be of value to include a ‘sunset clause’ in the Bill to trigger a review of the legislation a year after its introduction so as to assess and review the costs and benefits of the legislation and help offset concerns about negative impacts and unintended consequences

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3 http://www.scottish.parliament.uk/S4_Bills/Lobbying%20(Scotland)%20Bill/SPBill82PMS042015.pdf