OFFICIAL REPORT
AITHISG OIFIGEIL

Public Audit and Post-legislative Scrutiny Committee

Thursday 26 November 2020

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Thursday 26 November 2020

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PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE
27th Meeting 2020, Session 5

CONVENER

Jenny Marra (North East Scotland) (Lab)
*Anas Sarwar (Glasgow) (Lab) (Acting Convener)

DEPUTY CONVENER

*Graham Simpson (Central Scotland) (Con)

COMMITTEE MEMBERS

*Colin Beattie (Midlothian North and Musselburgh) (SNP)
Neil Bibby (West Scotland) (Lab)
*Bill Bowman (North East Scotland) (Con)
Willie Coffey (Kilmarnock and Irvine Valley) (SNP)
*Alex Neil (Airdrie and Shotts) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Graeme Dey (Minister for Parliamentary Business and Veterans)
James Drummond (Scottish Parliament)
Al Gibson (Scottish Government)
Johann Lamont (Glasgow) (Lab) (Committee Substitute)
John Mason (Glasgow Shettleston) (SNP) (Committee Substitute)
Billy McLaren (Scottish Parliament)
Dougie Wands (Scottish Government)

CLERK TO THE COMMITTEE

Lucy Scharbert

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Public Audit and Post-legislative Scrutiny Committee

Thursday 26 November 2020

[The Convener opened the meeting at 09:00]

Decision on Taking Business in Private

The Acting Convener (Anas Sarwar): Good morning and welcome to the 27th meeting in 2020 of the Public Audit and Post-legislative Scrutiny Committee. Before we begin, I remind members, witnesses and staff who are present in the room that social distancing measures are in place in committee rooms and across the Holyrood campus. In addition, a face covering must be worn when moving around, exiting and entering the committee room, although it can be removed once you are seated at the table in the committee room. I also remind everyone to turn any mobile devices to silent so that they do not disturb the committee's work.

We have received apologies from Willie Coffey MSP and Neil Bibby MSP. I welcome John Mason MSP and Johann Lamont MSP, who are attending in their place.

Agenda item 1 is a decision on taking business in private. Do any members object to taking items 3 and 4 in private? If Alex Neil MSP, who is joining us remotely, objects, please can he raise his hand? No one objects. The committee is therefore agreed to take items 3 and 4 in private.

Lobbying (Scotland) Act 2016: Post-legislative Scrutiny

09:01

The Acting Convener: Agenda item 2 is post-legislative scrutiny of the Lobbying (Scotland) Act 2016. At our meeting today, the committee will take evidence from the lobbying registrar and then from the Minister for Parliamentary Business and Veterans.

I welcome our first panel of witnesses, who are attending in person. Billy McLaren is the lobbying registrar and James Drummond is the assistant registrar, and both are from the lobbying register team in the Scottish Parliament.

I understand that both Billy McLaren and James Drummond wish to make opening statements.

Billy McLaren (Scottish Parliament): Good morning. James Drummond and I will just say a few words to start off today's session. You all know that the Lobbying (Scotland) Bill was a Scottish Government bill that was passed by all the political parties in March 2016, which was late in session 4. Royal assent followed in April 2016, and from that point, responsibility for development and implementation passed to the Parliament, which had responsibility for establishing a new lobbying register.

James Drummond and I are half of a four-person team in the Parliament that administers the lobbying register. As an initiative that has been placed in the care of the Parliament, we have been keen to make sure that we work with all stakeholders with an interest. We are pleased that the 2016 act contained a provision for a review at this point, allowing everyone to take stock and look at what has worked in practice and what has perhaps not worked, and to see where consensus can be found in relation to the future course of the lobbying register.

James Drummond (Scottish Parliament): I would also like to thank the committee for inviting us along to give evidence today. I hope that we can share our experience of administering the register over the past two and a half years.

Although the operation of the register only began in March 2018, our work to promote the act began well in advance. We will be happy to expand further on that work if you wish. However, what we are here to do today is to help the committee in undertaking the review.

On the back of the written submissions that you have received and the evidence that you heard a fortnight ago, we hope that the information that we provide will help the committee to learn more

about the work that we do and how the lobbying register system works. If there is anything that is not covered in today's session or if you seek further information on something, we will be happy to do what we can to provide you with that in any further sessions or through communication with the committee clerks.

The Acting Convener: Thank you both very much. You will have seen from the evidence taken by the committee so far that we have split our work and evidence into three themes: the impact and operation of the act to date; the status quo or legislative reform; and non-legislative improvements. We will try to cover those three themes, although perhaps not in as structured a way as we would like.

Before I hand over to Colin Beattie to ask some specific questions about the impact and operation of the act, can you both give some general reflections on whether you think that the act works in its current form and has sufficient scope, and on your feelings about its general operation?

Billy McLaren: Thank you, convener. We are relatively early in the life of any lobbying register, although we are more than two years into the system. Returns started to flow in after we got the system set up and running. About 70 per cent of the organisations have been through five six-month statutory return periods, so it is still a learning process.

The act represented a new form of transparency. There was no transparency on any lobbying of that nature previously. Prior to the existence of the register team, the Scottish Government and the Standards, Procedures and Public Appointments Committee had looked at face-to-face lobbying as the most effective way to lobby and therefore probably the most instructive and worthwhile to record. Section 50 of the act scheduled this review after two years. In some respects, nothing has really changed since that initial step. You will always get more transparency by recording more lobbying interactions, but where does that question of balance fit now?

Importantly, even in that relatively short period, more than 11,000 substantive returns have been published on face-to-face lobbying activity. Therefore, for the first time, we are seeing a picture develop of what lobbying looks like for the Scottish Parliament and the Scottish Government over that period. Those returns help us to look in more detail at who is submitting and who is lobbying, so we have that advantage as we reach the review. By any account, there have probably been more registrants and more returns submitted than we expected, which, for me, is evidence of a willingness to comply, with regard to that particular type of communication.

Although some people would say that the scope of face-to-face lobbying is quite narrow, we cover a range of people: big and medium-sized businesses, the third sector, charities, representative bodies, consultants and public relations firms. It was all new to them, so it has been a big challenge for everybody over the past two and a half years, and I think that we have come quite a way.

James Drummond: On the impact, our focus since the register commenced has been on administration and supporting users. We have not had a full evaluation of that yet. We are here today; we appreciate that the review is perhaps a stepping stone, and, at some point, we would probably welcome an impact assessment of the operation of the register, but it is not something that we have done so far.

The Acting Convener: Billy McLaren referred to analysing the data. What key things have you learnt from that, which we did not know before?

Billy McLaren: We have not done a deep impact assessment—such an assessment is not a statutory requirement—but we felt that it was a good idea to do annual reports. We left a little bit of time for the first report, which was done after 18 months, and, quite recently, we published and gave the committee a copy of our most recent report. There has not been a great deal of change between the 2019 and 2020 reports with regard to the types of organisations coming forward. There have been a few more, but we have not seen a great change in the pattern of who is engaged in regulated lobbying. That data is useful for us, because it allows us to put out a set of factual data. It is important to us, as parliamentary officials, not to be engaged in spin, with top-10 tables and so on. We want to provide factual data that people can base their own assumptions on. Therefore, with regard to an impact assessment, those are the two—

The Acting Convener: You have done a data analysis but you have not done a deep review of what that might mean.

Billy McLaren: No, we have not.

The Acting Convener: Are you aware of the Government using that data analysis to review what it might mean?

Billy McLaren: No. We have seen various pieces of work that have been done, but I have not seen an awful lot, externally, and I am not aware of any deep analysis of the data that we have so far.

The Acting Convener: Colin Beattie is next.

Colin Beattie (Midlothian North and Musselburgh) (SNP): Does the registrar have any thoughts on the evidence from some respondents

about the administrative burden on lobbying organisations arising from the act?

Billy McLaren: Largely, organisations submit information through information returns. As I mentioned, there have been 11,000-plus substantive information returns. Our presumption is always to publish information returns—in fact, we publish more than two thirds within seven days. However, as I said, both the people who submit returns and our team, who review the returns and provide assistance on the parliamentary guidance that is designed to help, are in a learning process.

We are fairly early into the process. We think that we can improve what some people see as the drudgery of information returns and we have already taken some steps on that front. I will try not to get too boring and technical, but there are, for example, two main boxes in the return, which are the main focus for people who say that submitting a return can be quite a drudge. The "Description of the meeting" box is a very basic box in which people should say what contact they had—for example, a meeting or a discussion. People find it a bit monotonous and time consuming to put in ministerial titles or members' constituency titles. We need that information for reasons of data integrity, but the team puts it in now, because we could tell that people were getting frustrated with it.

Colin Beattie: Is there any way to reduce the administrative burden?

Billy McLaren: Yes. We are already looking at automating that particular box. People's returns can be sent back for that reason alone, which is frustrating.

Colin Beattie: Some organisations suggested that the burden should perhaps be turned around and put on the regulated individuals—the MSPs, ministers and so on. Have you had any lobbying or pressure to do that?

Billy McLaren: No. I will make a point that came up early on in the debate before we came into being. Publishing the diaries of MSPs and ministers does not show what the lobbying was; it simply gives an indication of meetings that took place. That is the difference between a lobbying register and publishing a piece of factual information about who met who.

Colin Beattie: A bulk upload feature has been talked about. Will you give a bit more information on that?

Billy McLaren: We have a bulk upload feature, which we introduced to help people. This relates to another frustration that people have, which is about multiple returns. Indeed, we raised the issue in our annual report in the hope that the committee would look at it when the time came for the review.

Our bulk upload feature is very basic; it means that you can save all your returns and then click one button, having ticked the boxes, and submit it. The bulk upload feature that some people are talking about is an Excel spreadsheet and is, in fact, quite a technical and complex thing to do. We do not rule it out and we have looked at it; however, our information technology budget is very small. We have £10,000 a year to spend on development costs, and that function alone would more than surpass that. Nonetheless, we do not rule it out and if the committee recommends more investment in IT, we certainly would not have a problem with that—as you would imagine. However, we have to work within the pocket that we have.

Colin Beattie: I have one final question. Can you reassure us that you are working with the various organisations that are doing the lobbying with a view to improving the system and developing its operation?

Billy McLaren: James Drummond might cover this later, but I note that our approach has always been inclusive; we could not have made this work if it had not been. We still continually meet organisations—albeit, unfortunately, not face-to-face at the moment—to discuss ways to improve things.

I would like to reassure those organisations that we have things in the pipeline, within our small budget, that will help to change things, one of which is the automation of parts of the information return. We do not ask for a huge amount of information in the information return; we ask only about the headings that are listed in the act, which are basic things. Where we can find ways to remove things, we will try to do so.

A way forward that we have identified is the automation of the description box. We will tell registrants that that is what we have in mind; we see that as a continual process. To put it another way, checking and dealing with compliance issues causes us more work, and we would like to reduce that part of our work so that we can spend more time on positive things, such as getting returns through.

09:15

James Drummond: Again, that is about the IT system and technological solutions. Apps for the lobbying register were mentioned in your previous evidence session; you may want to ask us about those. The current system is scalable. It can be used on any device. We hear about organisations using it on laptops or mobile phones. Budget-wise, creating an app is not something that we could do

right now, but the current system can be used on mobile phones—it is on phones now.

On our approach to providing guidance to organisations. We have done that from day 1, in order to ensure that any and all registrants have the necessary information to aid them in understanding and complying with the act and what they need to submit.

We have spent a lot of time visiting organisations, taking part in roundtables, and hearing from all the sectors about their concerns. A lot of that work has helped us, in conjunction with our work in interpreting the act, in providing supplementary documentation for common scenarios and frequently asked questions. We provide a suite of information, so that anybody who uses the register has those documents to hand. We tell people who have something to submit how to submit it and the types of things that we are looking for. We have done all of that.

We even had the IT system up and running in 2017, four months before the act was commenced. That allowed organisations to get a feel for the system and gave them the chance to submit real examples of what was to become regulated lobbying after 12 March 2018.

Post commencement, we have done more of the same. Assisting stakeholders is the foundation of all that we do. We are always on hand to provide them with advice. Everything is underpinned by the five key steps for regulated lobbying, which you might hear about later, and all the guidance that we have.

The Acting Convener: Thank you. I will hand over to Graham Simpson in a moment.

You mentioned that you do not have the capacity to build an app. Do you not have the budget, or do you think that an app is not required? What is the reason?

James Drummond: I was not there at the very start, and I do not know whether an app was ever considered. The main thing was to get the register up and running. Apps were mentioned but, again, I think that we considered that they would be further down the line. I have no idea how much it would cost to develop an app.

The Acting Convener: How would you rate the functionality of the platform?

Billy McLaren: We think that improvements could be made—we have been discussing that. We have a budget to do a number of improvements. We also have an obligation to do some upgrades on how the website looks. The website is three years old. It is amazing how quickly technology moves on—page rendering, beta websites and so on. Sometimes, websites just look a bit old after a few years, and ours is in need of a refresh, for sure. We need to improve the search facility—that has come through in some of the evidence that you have heard. We are fully aware of that. The information is there; the past few years have been about building that information up, but it needs to be findable and usable.

Nobody in the previous evidence session mentioned the comma-separated values—CSV—file, which is an important function in the register. It is a complete download of every information return and is the research tool that most people use when they are doing deeper research into what is happening.

The Acting Convener: Graham Simpson has some specific questions on accessibility; I will focus for a second on the platform itself. Have you done an analysis of what you would like the platform to look like and how it should operate ideally? Have you costed that, or does that have to be done by the Government? Do you have the scope to do it?

Billy McLaren: The budget and choices are ours, and we work on the platform within the budget that we have.

The Acting Convener: Have you said what you would want ideally, what you could live with, and what the cost would be?

Billy McLaren: Yes. We do a prioritisation every year. At the start of the year, we roll over what we have not been able to do and we look at what stakeholders have said.

The Acting Convener: As part of that work, do you know what would it cost for you to do what you would ideally like to do?

Billy McLaren: We would not be able to do that without knowing exactly what the IT contractors would charge. From the developments that we have made over the years, we have a pretty good idea of how much an individual item of expenditure costs; we are usually looking at £2,000, £3,000 or £4,000 for a minor change to be made, which is a reasonable price in today's market. We would be happy to cost some of the bigger items, such as an app, but we have not had the window to do it.

The Acting Convener: I am sorry; you said that you have done work on what you would ideally like to do—you scoped that and got costings done. What came back from that?

Billy McLaren: We manage to spend up to £9,999 every year; we use the budget to its full capacity. Of course, we start planning for the next year's budget early on. We speak to our IT contractors and see what we can afford.

The Acting Convener: I am sorry; I am asking about what you can do within what you can afford.

Have you done work on what you would like to happen in an ideal scenario and found out what it would cost?

Billy McLaren: No, we have not done it to that extent.

The Acting Convener: Is that something that you would like to do?

Billy McLaren: Yes.

The Acting Convener: Okay.

James Drummond: I will expand on what we do just now. We have an IT enhancement document that is with our external contractors. That sets out our priorities of what we would like to do in terms of adjustments and improvements to the system. When we get word back on what each of those changes will cost, we will be able to decide how we spend that money before the end of this financial year.

The Acting Convener: When do you expect to get that back?

Billy McLaren: We need to get the prices back, but we have said, "Here is what we would like to do this year; what can we get for £10,000?" We will make choices within that, and that will be what we spend for this year. We operate on a contingency funding basis. If we could use the contingency for the extra costs that we have been talking about, we would bid for that, but that is our set budget.

The Acting Convener: For you to do what you would ideally like to do, are you talking about tens of thousands or hundreds of thousands of pounds?

Billy McLaren: We are not talking about hundreds of thousands of pounds. The system is relatively basic and scalable. However, we have never had to develop an app, so we do not know how much it would cost.

We also want to look at the complexity of the Excel spreadsheet. Regardless of whether we could afford the work, it would still be a good idea to be able to price it. Having heard those views expressed a couple of weeks ago, it was certainly our intention to do that as well, so that we know.

The Acting Convener: If you could share the cost with the committee when you get it back, that would be fantastic, so that it can be part of our considerations.

Billy McLaren: Yes, of course.

Graham Simpson (Central Scotland) (Con): One of my frustrations with the register is that, when I look at my entries, I see a list of meetings that I have had. If I click on one meeting, the system will show me what that meeting was, but then I have to go back to stage 1, look up my name and look at the list of meetings again. Instead of the system just opening up a new box when I click on a meeting, I have to go right back to the beginning. It is really difficult to use. Have you looked at that?

Billy McLaren: I was not aware of that until you raised it two weeks ago, probably because we use the system in a slightly different way. When we search under "Graham Simpson" and get 230-odd returns, we use the csv function, which shows all the results, and then we filter the information. When you mentioned it two weeks ago, I went and checked and found that the register works in the way that you described. It should not, so we will put that in the enhancements document. Without getting too technical, if you are looking at the original list, there is a button that you can use to do a refined search, but your point is that, when you go in, you cannot easily get back to the list, so we will look into that.

James Drummond: We were looking at the system last night, specifically after you mentioned the issue. It might not be obvious but, if you search for all your returns and then right click on one of the hyperlinks that results, it will open in another window. That meeting will pop up as a separate window and all the other returns are still listed in the previous window, so you do not have to go all the way back. We might need to look at that; I appreciate that it is not always obvious.

Graham Simpson: It is good that I have pointed you in the right direction.

You mentioned the IT enhancement document. Apart from the issue that I have raised, what other aspects are you looking to improve?

Billy McLaren: Perhaps James Drummond would like to answer that question, as he leads on the document.

James Drummond: Our registrants work to statutory time periods, but there is nothing on the information return screen to tell them which period they are submitting for. We are considering making the system a bit more intuitive to allow organisations to know which period they are submitting for.

Billy McLaren already mentioned the description field. At the moment, that is a free-text field and we constantly have to change it—it is rare that we receive perfect description text. We are considering automating it so that people can just tick a box to show the type of event that it was—a videoconference, a party conference, a seminar or a social event. That would be the biggest change to the system.

Another aspect that we are looking at relates to the data integrity of inputting constituencies or

ministerial titles. We have looked at including constituencies in the drop-down field for MSPs' and ministers' names, and, for ministers who have held two or three different posts, their job titles and the dates that they were in post. That would enable people to pinpoint the date when they lobbied the minister and, therefore, what capacity the minister was in at that time.

Graham Simpson: Do you have any information on who accesses the register? Is it organisations, individuals, journalists or lobbyists? Do you have a breakdown of that?

Billy McLaren: No, I do not. I would be happy to ask the IT contractors to provide us with statistics on that, but I do not have anything of that nature to hand. It would be good information to get hold of.

Graham Simpson: Is it even possible to get that?

Billy McLaren: Yes, I think so. I do not know whether we will be able to get information at the level of who accesses the register, but it is common practice to have statistics about the number of hits. I am always wary about hits, because they do not provide a drill down.

James Drummond: The hits would probably also include those by staff from our office, because we use the system day in, day out.

Graham Simpson: I can see the technical difficulties with that.

I have an unrelated question, which is about what people write when they enter something in the register. I will use myself as an example. I led on the Planning (Scotland) Bill for my party, so I held lots of meetings with people on that. For most of those meetings, the entry could have been, "Met Graham Simpson to discuss concerns over the planning bill", but that would not tell us an awful lot. Is the level of detail enough?

Billy McLaren: That goes to the crux of the evidence that has been given. There is a frustration that we ask for too much, so we have to strike a balance. Finding the balance can be difficult for people—as I mentioned, some of the organisations that we are dealing with are not used to being described as lobbyists. Other people find the balance easy. For meetings on an issue such as a planning bill, some people find it easy to write what they came to talk about, what their asks were and what they wanted to see, which is the essence of a good return. That is what we look for and what we aim to publish. People get a bit frustrated when we go back to them and ask them to set it out in that way. We produced guidance on that last year, which has perhaps not quite had the impact that we had hoped for. However, you cannot go far wrong if you follow it.

As I mentioned, there is a bit of confusion between the description box and the purpose box. The Irish system also has two boxes. If we can get people to focus on the purpose box in the manner that Graham Simpson just suggested, that would be ideal for us. We have done an awful lot of work to engage with stakeholders on that.

I understand the frustration. Sometimes, the person putting in the return is not the front-line person—they are just co-ordinating returns—so they get frustrated at having to go back to ask the chief executive or someone else for more information. I understand that, but we are trying to get to the point that Graham Simpson succinctly described. That is all that we need; as the guidance says, it needs to be "clear" and "understandable", and it has to be clear to readers. We do not all have assumed knowledge on the intricacies of a planning bill, for example, but we want to know what happened.

09:30

The Acting Convener: Before we turn to questions from John Mason, I want to pick up on the question of who accesses or requests information. Do you get press inquiries?

Billy McLaren: From time to time.

The Acting Convener: Do they relate to individual submissions or general statistics?

Billy McLaren: I do not remember having had anything about individual submissions.

James Drummond: The ones that come to mind are more about topics. The details escape me right now, but they have been more about whether someone has asked about a certain topic or how many returns might be related to, say, Edinburgh airport.

The Acting Convener: But none about specific submissions?

Billy McLaren: As the committee will know, most of the Parliament's press inquiries come through the press office. We will be asked for factual information, but that is public data so it is already out there.

The Acting Convener: How often?

Billy McLaren: I would say that it has probably been a handful of times in the past couple of years. We have always said that we are happy to brief journalists on how the register works, but no one has taken us up on that.

The Acting Convener: A handful being, say, five times in two years—or less than that?

Billy McLaren: I would say round about five. We do not take an exact note of them.

Because of the way in which the act is constructed, journalists find the process a wee bit difficult. The act provides for a period of up to six months in which to submit a return.

The Acting Convener: Six months later, the story will have gone.

Billy McLaren: Yes, so there is a topicality aspect. Perhaps what journalists are expecting is not quite what the act provides for. The resource is good for long-term research, though. If the committee is considering journalists' practice, it will probably find it to be more the case that investigative journalists use it.

The Acting Convener: As James Drummond would like to come in, I will come back to Billy McLaren with a supplementary question.

James Drummond: I add that there is perhaps a little bit of misunderstanding on the part of journalists about how to use the system. The addresses that we have seen come in on some emails relate to newspaper titles, and we think that those have been from journalists who think that they have to register on the system to be able to search on it. We have gone back to them to say that it is not a requirement for them to do so. One or two newspaper journalists have tried to register—I presume with the intention of being able to search and see who has been lobbying.

The Acting Convener: Have you had any freedom of information requests?

Billy McLaren: No, but that is partly because the information is already published. We have always said that any communications between us and stakeholders are accessible through FOI requests.

The Acting Convener: Is six months too long a period? We have heard that view from previous witnesses. Should the period be shorter? What would be a better timeframe?

Billy McLaren: Those questions probably go into policy areas that are not for us, as parliamentary officials, to answer.

The committee might want to consider the harmonising of dates. Every registrant has a different date, which is the earlier of when they registered or when they first lobbied. There is therefore a lot of chopping and changing on dates. Even though we send out reminders to registrants two weeks before the end of their six-month period, give information on their dates and, as James Drummond said, have provided improved data on the website to make it clearer for them, we find that the issue with dates can sometimes lead to their being confused or forgetting. We send out quite a high number of non-compliance emails because people forget to put returns in. What the timing should be is one question, but perhaps harmonisation of dates would be worth considering. I do not want to go into—

The Acting Convener: I recognise that you do not want to get into policy areas, but your answer suggested that a period of six months is perhaps too long.

Billy McLaren: It is certainly done differently in other areas. For example, in Ireland returns are made three times per year. We see the timeframe as neutral, as far as our administration process is concerned. If there were to be more return dates, we would have a bit more work to do on compliance, but perhaps harmonising the dates would help to reduce the amount of compliance work required. We do not have a strong opinion on that.

James Drummond: The issue goes back to the written evidence that the committee has received and what it heard a fortnight ago. It is almost as though it is based on the topicality of the system.

It is worth reminding the committee that organisations do not have to wait six months, or however long it is to the end of their deadline, before submitting. Registrants can submit at any point that they wish during reporting periods. Of course, it is perfectly acceptable for an organisation to wait until its deadline, but the 2016 act and the register allow for that flexibility.

In a practical sense, if organisations submit little and often, that means that, when we go back to them with queries, the submissions are still fresh in the memories of the individuals who have engaged in the lobbying. If we go back to an organisation to seek further details or clarity about a return that is four or five months old, the person who engaged in that regulated lobbying might have moved on or their memory might have faded, so we say to organisations that they can submit little and often, which would make the register more topical.

The Acting Convener: I will bring in Alex Neil, who joins us remotely.

Alex Neil (Airdrie and Shotts) (SNP): I will move the discussion a wee bit away from process and on to impact. The impact of freedom of information legislation has been very obvious down the years. The Westminster expenses scandal is probably the best example of the impact of FOI, which, unlike Tony Blair, I think has been a good thing.

However, I do not see the impact on the lobbying register. Do not get me wrong; I am not criticising you guys, because you are doing a good job, as always. I take the point that you have not yet done a systematic and properly researched impact assessment, but you are at the front end of the system.

We sign a register of members' interests, for example. One of the impacts of that is that, if we have an interest in a debate, we have to declare it, even if it is not registered. However, I have never heard anyone in a debate refer to having been lobbied, in relation to the 2016 act, and I have never heard of any changes in behaviour of those who have been lobbied or the lobbyists. Have you seen any impact? Let us go back to what the act was supposed to do, which was to bring lobbying out into the open. Has it done that? What is your experience?

Billy McLaren: As you know, it is difficult to gauge the impact. I heard the conversations in the previous session about the issue. The 2016 act probably helps in deterring inappropriate behaviour, because there is now a legal obligation to report face-to-face lobbying. As you know, there is a code of conduct for those who lobby MSPs. If there were criminal activities, those could go straight to the Crown Office. Investigations can be carried out by the Commissioner for Ethical Standards in Public Life in Scotland, which can result in a report being brought to Parliament and then Parliament applying sanctions. That reputational aspect hangs over everybody every day and is a very important factor.

There has not been much of an impact, and our annual report bears that out. There have not been an awful lot of massive compliance issues with the 2016 act. There might be more of an impact or more of a news story if something were to happen to challenge that position, but we have not seen anything so far.

People are generally compliant. They are putting in their returns, and we are starting to see what those returns mean. We can start to assess the 11,000-plus returns and where they lie, whether it is in the third sector or with certain companies and businesses. I do not think that there has been any big impact in that sense, but we are seeing more of a pattern and picture emerging. I am not sure that that answers the question entirely, but that is—

The Acting Convener: How do you identify non-compliance?

Billy McLaren: It is a process thing. If people do not submit returns by the deadline that we give, we follow that up. That is an area of non-compliance.

The Acting Convener: If people do not submit, you just accept that nothing happened. Surely, that is not a way of ensuring compliance.

Billy McLaren: We issue an email and make sure that they become compliant by submitting the returns. If we do not get a response to the email, we send a letter to the senior person with responsibility in the company. We have found that that is effective.

The Acting Convener: But would you accept that—[*Inaudible*.]—on you go, Alex.

Alex Neil: Compliance is not impact; they are two separate issues. I will let the convener ask you about compliance, but I am interested in impact. You have said that there is no obvious impact and I do not know of any change in behaviour. We know that somebody tried to lobby Graham Simpson on the Planning (Scotland) Bill, but we do not know whether that lobbying was about a specific planning issue or application or about a policy issue, and we do not know who the lobbyist was, so we do not know whether anything untoward took place. I should say that we are all in this position, not only Graham Simpson. If that lobbying was about a specific planning issue that was under consideration or an appeal to the Scottish Government and we found out later that, as a result of that, Graham had lobbied ministers formally or informally—I am absolutely sure that that is not the case, by the way; I am just picking on Graham because he mentioned an example—we would not know the specific issue that was lobbied on and if we do not know that, what is the point of the exercise?

The Acting Convener: Let me just say that Graham Simpson is happy to confirm that nothing inappropriate took place.

Billy McLaren: Without continuing with that particular non-example, such a return should say what the lobbying was, and you should be able to gauge from that return what it was. A fictional example—or perhaps not—would be, "I engaged on section such and such and wanted amendments to be lodged". What the lobbying return should say is how you lobbied a member in relation to legislation, policy, contracts or licences and whether you wanted them to raise something on your behalf.

Alex Neil: So, why is it not doing that?

Billy McLaren: I think that it does.

Alex Neil: In Graham Simpson's example, if the lobbyist put in a submission that says, "I lobbied Graham Simpson and many other MSPs on the planning bill", would you go back to the lobbyist and say that that is not detailed enough and that you need to know specifically what they lobbied Graham Simpson about?

Billy McLaren: Yes, that is what we try to do and, in some cases, particularly with a big bill such as the Planning (Scotland) Bill, we would go back and get more information about the particular aspects of what was lobbied on. Some things are more obvious.

Alex Neil: If I went and checked that specific entry, would I now get more detail than what the original submission included?

Billy McLaren: I will explain our process. There are four of us in the team and we sit down every day with all the returns that came in the day before. There is a degree of consistency in how we approach those things. Clearly, with more than 11,000 returns, we will not get it right every time, but before we publish we make sure that we have the most information that we can have on a particular information return. That is the intention and that is what we try to do as a team. That should allow us to build up a pattern on a big bill such as the Planning (Scotland) Bill, for example. That is probably one of the biggest pieces of legislation that has been lobbied on, based on the number of returns that we received; it was a big bill and covered a lot of different territory and a lot of different types of territory, so we would look to find out exactly what that organisation was focusing on in its meeting with Mr Simpson.

Alex Neil: That is an important topic, because if you look at the history, the most prominent Scottish civil servant to have been convicted of fraud—in the Poulson case—was convicted in relation to a planning issue and, in local government, nine times out of 10, fraud cases are about getting a bung for a planning issue, so planning is a good example of the purpose of this legislation, which is to root out any fraudulent behaviour.

The Planning (Scotland) Bill is a good example of where lobbying had to be done properly, because, traditionally, planning has been the single main source of corruption among public officials, in the few cases that we have had, locally and nationally. If the lobbying legislation is going to serve its purpose, surely we have to ask for the detail in every case, as we would be required to do in a register of interests or an FOI request, where that is fairly standard. Do you not have the resources to do it, or are you just selective about how you do it? How do you judge when you need to go back and get the detail? In what percentage of cases do you go back and ask for more detail, so that we can be sure that the purpose behind the act has been served?

09:45

Billy McLaren: That is our bread and butter. That is what we do. Four of us get together every day and assess returns. We have looked at nearly 11,000 returns—or possibly more than that, because remember that we delete quite a number as well. There is a 10 or 11 per cent deletion rate of stuff that is clearly not regulated lobbying. We have that day-to-day experience.

It always goes back to what we say in the guidance, which is that it has to be clear and understood by readers of the register what the lobbying was, who has lobbied, when they lobbied and what they lobbied on. That is the test that we apply. It does vary—

Alex Neil: But my issue is with the definition of the latter point: what was lobbied on. In the case that Graham Simpson highlighted, the submission said that Graham had been lobbied on the Planning (Scotland) Bill, but information about which aspects of the bill appears not to have been included. If that is not included, the thing is absolutely worthless, quite frankly.

Billy McLaren: That is partly what you are hearing in the complaint about us sending information returns back because we are looking for more detail. We drill down and try to get at exactly what you are describing. We try to get something that explains what the lobbying was. That is our bottom line.

Alex Neil: This week is a good example—there are many weeks that are good examples at the moment—because Neil Bibby's Tied Pubs (Scotland) Bill is up for decision today. I have been lobbied on that bill more than I have been lobbied on anything else, other than coronavirus-related stuff, which has overwhelmed us all, I think. That lobbying has all been done by email—part of a campaign on both sides of the argument by numerous organisations for and against the bill. It is quite legitimate, in a democratic society, to lobby a member to vote for or against a bill. I could pick many other examples, such as the people who are lobbying us at the moment to ensure that, after 11 December, every gym in the country is opened up and not kept shut because of coronavirus. That lobbying has been from a whole range of people and organisations.

How do we account for that kind of lobbying? I know that there is a policy issue in there that you cannot answer, but, as the man in charge, can you say how much of that should be captured by the existing lobbying legislation?

Billy McLaren: There is lobbying of all types and descriptions, as you say. You can lobby through social media, campaign emails, written correspondence, emails and face-to-face discussions. The act, as it is now, involves face-to-face lobbying.

To go back to the impact issue, we have seen a lot of returns—more than we expected—just for face-to-face lobbying. That has given us an idea of the amount of lobbying that is going on.

On the issue of moving on, I would not enter into that policy decision, but this is one part of transparency. As I said at the start of the meeting, the more lobbying interactions there are, the more

we can form a picture, but that has to be balanced against the administrative and cost burden for organisations.

Alex Neil: If somebody lobbies me via a Zoom or Microsoft Teams call, is that technically face-to-face lobbying under the act?

Billy McLaren: Yes, it is.

Alex Neil: Has there been much lobbying on Zoom?

Billy McLaren: We checked last week and we are up to 346 videoconferences. Those have increased substantially since we had to stop in-person engagement. They are on the rise.

Alex Neil: That will be a growth industry henceforth in your sector.

Billy McLaren: We are seeing a lot of it now.

The Acting Convener: Can I pick up on that? The definition of registered lobbying says that face-to-face meetings must be registered. Would you accept that the same definition should apply to written communication, including emails, even if that is not covered by the act? I know that you do not want to get into policy, but could the principle that gives us a definition of lobbying go beyond face-to-face meetings?

Billy McLaren: There are many different types of lobbying. It might assist stakeholders to know that the detail is in the act. We do not put it in the five key steps—which James Drummond could take you through—but we talk about Government or parliamentary functions. However, you could use what is in the act to make the definition more specific so that it relates to legislation, policy, contracts and so on. I will not give you a list, but that is what we are looking for. It would help with the point that we made in response to Graham Simpson's example. When people have a meeting, they want to be able to say what that relates with regard to policy or legislation.

The Acting Convener: Again, I am not asking you to give a policy opinion, but if written communications such as emails were to be included, would that create too much of an administrative burden for you? Is that a consideration?

Billy McLaren: That is a decision for the committee, and it is why we are having a review. If the resources were there, we could do that. It is about getting a balance. I understand that that is difficult and that it is also difficult to assess the impact. It is a chicken-and-egg situation. We are here to do whatever we are asked to.

The Acting Convener: I will come back to you with a question about compliance that came to mind when you were talking to Alex Neil, but John Mason has been waiting a long time.

John Mason (Glasgow Shettleston) (SNP): I was going to start there before I go on to the bit about the future. I was interested in the figure of more than 11,000 published returns. Have you any way of knowing how many returns should have been published? Would it be 15,000, 20,000 or something else?

Billy McLaren: When a return is submitted to us, we will carry out the process that we described. If we think that it involves something that is not regulated lobbying, we will go back and give advice that it does not fit or that an exemption may apply. Returns that have been submitted can end up being deleted because they are not regulated lobbying.

John Mason: I was thinking of the returns that have not been submitted. I kept a list for the first six months or year of who was registering. Then I saw the event come through. I reckon that perhaps 80 per cent of the returns that I thought should have been registered were registered. That may have improved, but if about 20 per cent of returns were not appearing at all in the system you would not know that, would you?

Billy McLaren: We would not, but it would depend on whether an exemption applied. We do not know what we do not know. Somebody might apply for a constituency exemption because they have met you on that basis.

John Mason: This is apart from constituency exemptions. At least to start with, some returns were not being registered and you would not know about that.

I want to look at the future. I will ask the minister about policy, but I am thinking about the practicalities of what both Alex Neil and the convener said about what you can actually do. Cost is another factor that is not taken into account. I would have thought that a member of the public would be more interested if a business took me out for dinner for an hour than if I were to meet a little charity for an hour and I bought them a coffee. That cost factor does not come into our system at all. Is that right? Could cost be brought into the system?

Billy McLaren: There are already rules about hospitality for members. They are part of the existing structure. That does not come into this legislation.

John Mason: I do not know enough about the IT side of things. You have four full-time staff working on this subject. Is that how it works?

Billy McLaren: We do now, yes.

John Mason: If you were to bring in extra things such as emails or phone calls or any of the other possibilities that have been mentioned, what would the cost be—or do you have no idea how

many more staff you would need? Would you need to double your staff, or what?

Billy McLaren: On that front, we are better able to assess things now than we were at the beginning. The original financial memorandum that was prepared by the Scottish Government estimated between 255 and 2,550 registrants. We have 1,200, so we are well past the mid-way point.

Inevitably, there is a correlation: the more registrants we have, the more information returns we get. If we get more information returns, we obviously need staff to administer that, regardless of what type of communication is used. We have a reasonable idea about the current capacity, and we are just about managing with four staff now. I would not have an idea what the result would be if the scope was expanded—we might need to get some professional work done on that—but we know how we are working within our current capacity.

John Mason: So, any addition would have an impact—an impact on the actual system, with investment in the IT, and a staffing impact, too.

Billy McLaren: Yes. To give you some reassurance, we are parliamentary officials, and the scheme is administered by the Parliament. The Scottish Parliamentary Corporate Body gives us our pay and rations. We have highlighted the fact that committee is looking at our review. Any change that adds to the scope will obviously add to the administrative costs for the Parliament.

Bill Bowman (North East Scotland) (Con): Members have probably gone through most of the questions, but I will pick up on some things that you said earlier, Mr McLaren. You spoke about reviewing returns. I think that you said that you do that in real time, as opposed to historically. Do you make judgments when you look at the returns? Do you think, "I wonder what's going on here? What's this person up to?" Perhaps you come across a member who has never had a return or has had only very few. Do you wonder whether that is right? Do you report that to somebody?

Billy McLaren: The only judgment that we make is whether a return tells us who has been lobbied and what they have been lobbied about. That is the bottom line. We are keen for the purpose box to reflect what happened: whether there had been a meeting or a discussion at an event, for example. That is how we would approach it.

Bill Bowman: So you make no judgments on what has gone on.

Billy McLaren: Generally speaking, we would not require to.

James Drummond: There is nothing that we read where we think, "Oh, right, that's what's happening." Billy McLaren used the phrase "bread and butter." We are there to administer the register and to look at the content of an information return, with a view to ensuring that it is published for the public to read and so that they can see what has been going on.

Bill Bowman: When I have clicked on the link in an email and looked at a return, I do not think that I have even seen anybody say, "I lobbied." Do people use the term "lobbied"?

Billy McLaren: Some people do, and we find it useful if they do. There are certain key phrases that are better for readers of the register, such as saying that someone lobbied on a certain part of a bill, or that they lobbied a member because they want them to support their campaign. I would like to say here that that is a good thing, and for people to say that it is not a bad thing. We talked about this point earlier. People might not be used to the idea of there being lobbyists, and we perhaps do not use the term so much. Even saying, "We raised the issue," indicates that it is something that people care about and that they are looking for change, and that is why people may be talking to you, as a member.

Bill Bowman: Usually, the return says, "We discussed", or, "We spoke about". Is "lobby" a dirty word?

Billy McLaren: No. I mentioned the guidance that we prepared, which gives a template for how to write things to make them clearer. Whatever language you use, it is fine as long as it indicates what you were trying to achieve—that is a good thing to put in a return. It is useful to say what it was that you discussed or what was raised.

Bill Bowman: I am not so sure that "lobby" is not a word that people are a little bit concerned about, if I say to them, "You were lobbying me," or, "You are a lobbyist."

Billy McLaren: You are right that it still has those connotations but, to respond to the question of whether "lobby" is a dirty word, I think that the answer is no. Lobbying is a fundamental process that allows us to do the jobs that we do in Parliament. People should come here and look for changes to legislation and express their views.

10:00

Bill Bowman: You also mentioned that you had a deletion rate of something like 11 per cent. Is the whole return deleted or just aspects of it?

James Drummond: It is the whole return. That could be for any reason, including the fact that we have gone back to an organisation to raise the issue of whether an exemption might apply. That might be because an organisation has sent a return on something that is not a form of lobbying

communication. Organisations still submit returns because they have sent a letter or made a phone call and, clearly, that is not regulated lobbying. In other cases, organisations tell us that they have participated in a working group. We might ask whether that could have been communication on request—the organisation might have been invited to participate in a Scottish Government working group, for example. Those are the types of returns that we delete.

Bill Bowman: Therefore, that is done by agreement. You would not just delete something but would always—

James Drummond: We do not delete anything without confirmation from a registered user. It is for them to take that decision. We will point them in the right direction to consider whether the activity is exempt. We are not in the meetings when organisations have that communication, so they have to take the decision on whether they agree that something is probably not a regulated lobbying communication and that we can delete it.

Bill Bowman: Do you ever get the comeback, "We'd rather put it in, just in case," because there is a fear that they could be in trouble if they do not submit a return?

James Drummond: There has always been a bit of that fear right from the start, with people erring on the side of caution because they do not want to fall foul of the law and be non-compliant. Therefore, organisations do come back to us on those matters. However, we always talk about underpinning things with the five key steps in the guidance, so they should ask themselves whether they communicated about Scottish Government or Scottish parliamentary functions, whether they were seeking to inform or influence and so on. In that way, they can focus their minds on the nature of the communication.

Bill Bowman: Finally, do you look for issues relating to the general data protection regulation—returns that perhaps disclose information about individuals that should not be in a public statement?

James Drummond: The only issue that comes to mind straight away concerns location. Every return has to state the location where the communication took place. With the upturn in videoconferencing and many people working from home, we ask that, if the contact was initiated from a person's home, people should write "private residence, address withheld".

Johann Lamont (Glasgow) (Lab): There is a distinction between a lobbyist and someone who is lobbying. There is a tradition in the labour movement of lobbying Parliament. It was seen as something that you would do, but it was part of a campaign. I think that a lobbyist is someone who is paid to lobby. Does that distinction between lobbyists—consultants in effect—and people who are participating in campaigns come out in your analysis of your figures? I am interested in the balance in the register between private interests, the third sector and the public sector as well as the balance between people who, I would say, are engaging in citizen participation and those who are funded to lobby. Do you have those figures?

Billy McLaren: The act makes no distinction between a corporate lobbyist, in the traditional sense, and someone who does a bit of lobbying as part of their job, as such.

Johann Lamont: That would still be a job.

Billy McLaren: It is to do with jobs and it has to be paid. Apart from minor expenses, it can be paid in any capacity. Under the act, a public affairs officer for a large charity, for example, is considered to be someone who is lobbying. There are figures in the annual report that I am happy to share but, roughly speaking, the third sector accounts for around 40 per cent of the total number of organisations registered—there are about 1,200. The next highest category is certainly businesses.

Johann Lamont: When it comes to your capacity to do the job, what you do is more than a tick-box exercise. Who determines your budget?

Billy McLaren: The corporate body does that.

Johann Lamont: Is there a bottom line in the budget for your functions to stop the budget being reduced or increased insufficiently for you to do your job? What is the protection for your budget?

Billy McLaren: Clearly, the committee has the power under this act to make statutory change. Therefore, if statutory changes are made, Parliament needs to reflect that and the SPCB needs to consider it in its setting of the budget. That is how it operates. We work within our remit, and we have already flagged up to the SPCB that, if there is a degree of change—up or down—and it is a statutory change, we need to look at the resources according to the remit.

Johann Lamont: I am interested in the impact of the pandemic more generally. As the register has developed, have you been tracking changes in who uses it and how early they register?

The committee papers talk about how a report on lobbying for a bill that is published three months after a bill passes does not really inform about how Government got to a position in which it did certain things or changed its mind on them. Are you tracking the ease of access for groups and which groups are getting access so that you have a sense of what is developing over time, and have you detected any patterns of change?

Billy McLaren: In the annual report, which I mentioned earlier, there did not seem to be a great deal of change in the groups, organisations and proportions of those groups between the end of June 2019 and the end of June 2020.

People are still registering. Those are people who are lobbying for the first time and who realise that they have to be registered. They might have received that information from an MSP who tells them, "You have met me, so make sure that you are in compliance with the act." We still see a fair a number of people registering, and number has gone up again. Last year, when we did the annual report, 1,088 people had registered, and this year the number is just short of 1,200. Therefore, there is a steady climb.

We work with new registrants, and it is easier to do so in a way. When the register was introduced, 70 per cent of registrants registered within three months, which meant that we had a big glut at the start. Now, it is good to work with new registrants and tell them how to provide a decent information return and so on. I am not sure that that quite answers the question, but that is how we deal with new registrants.

Johann Lamont: In your experience, have you seen patterns of change in behaviour or in use, and do you expect next year's report to be quite different following the pandemic?

Billy McLaren: Not necessarily. I am not saying that, after two years, the register is in a settled pattern, but there do not seem to be big changes. We are not all of a sudden seeing a new type of organisation that is lobbying heavily. We produce data with the annual report that states what all the organisations are. That is quite useful for us.

Johann Lamont: Does it state the means by which they lobbied? The most obvious, straightforward way is at a meeting. For example, direct lobbying could happen at a meeting that lobbyists have been invited to to celebrate an anniversary in the garden lobby, which is no longer available due to the pandemic. Is that visible in your report?

Billy McLaren: That is visible in the information returns, and I suppose that, with a bit of analysis, people could see how many instances of lobbying happened in the Parliament pre-Covid. There might be some figures about videoconferences, mainly because they are very prominent in our minds just now. We could certainly do analysis to see where lobbying is taking place, if the member would like.

Johann Lamont: I would think that there might be more lobbying, because Zoom meetings are an awful lot easier to organise than getting someone into a physical space.

This might be a slightly facetious point, but I am pretty resistant to technology, so if I am in a Zoom meeting, I tend to be there through audio as opposed to face to face. Is that a way for someone to avoid recording the meeting as a face-to-face one?

James Drummond: We also heard that being raised in the previous evidence sessions. We are not aware of any suggestion that people are deliberately switching off cameras as a tactic to avoid registering communication.

Johann Lamont: Technically, would it make a difference? Would I be within my rights to say that I have not been lobbied, because we used the Zoom facility as if it were a phone call.

James Drummond: Section 1 of the act, in defining regulated lobbying communications, talks about the use of video communications and uses the phrase "is intended to enable". A clarification might be required in that text to address videoconferences, because technical difficulties might prevent the user from being able to have a camera switched on.

Billy McLaren: For it to be considered as regulated lobbying communication, people have to be seen and heard so, if someone makes a conscious decision to use the facility just for audio purposes, I do not think that we would be able to capture it under the existing language.

Johann Lamont: A Zoom call is the equivalent of someone coming to see me in Parliament, but we might not use the video. In a lot of ways, it is a marginal point but, if people are looking to find ways of avoiding things, and we are trying to capture what people are doing, the system has to move with the world that we now live in, which is very different. I wonder whether it would be worth reflecting on that.

I am conscious that I have gone on a bit, so I will make my final point. To what extent do you see your role as being part of the broader purpose of the Lobbying (Scotland) Act 2016? People might ask whether it is working and how we would know, which is a point that applies to any law. It is for those whose job it is to enforce the law to establish who is not doing something that they should be doing, but the people who are engaging with the process in an open and honest way are engaging with you. Your job is to record people who are abiding with the law. It is for others—maybe an investigative journalist—to identify where someone has not given that information, and to get evidence that it has happened. To what extent do you see yourselves as a function or administrative role in this and to what extent to do see yourselves more broadly as part of the commitment to transparency? We should not forget the original reason for the legislation, which

was that people feared that some would have a greater influence on Government and decision makers than others and that that would not be visible to the rest of us, who were wrestling with those arguments and decisions. Do you see yourselves in that broader landscape? Is there anything that we should be saying that would help you in that role? Is anything inhibiting you in that role?

Billy McLaren: We see ourselves as part of the broader aim of increasing transparency by the work that we do. We are proactive; if we see newspaper articles or social media that suggest that somebody might not be aware of the requirements, we email organisations. We have not had direct evidence of evasion from anybody but, if we did, we would take it up with the organisation concerned. Of course, that level of investigation can be carried out by the Commissioner for Ethical Standards in Public Life in Scotland. We are committed to getting all the information that we can to make lobbying as transparent as possible.

Johann Lamont: Do you record that anywhere? For example, if someone in the Government had reported that they had had pressure from a discussion with someone else, and you looked on the register and it was not there, would you report that somewhere?

Billy McLaren: If we had a whistleblower-type of situation, which we have not had, we would first look at the reasons why that information might not have been recorded. If we had good reason to approach an organisation, we would ask whether it was aware of the requirements, because we want to make sure that it complies with the act. We try to be as proactive as we can within the resources that we have.

Johann Lamont: Thank you.

Graham Simpson: I want to clear up the business of using Zoom or Teams without the camera on, because I am pretty sure that it has been raised and that we took evidence on it. My reading of the act is that it says that, if people use a platform with which they can have a video call, that is lobbying, whether or not they use the video facility. Am I correct in that?

Billy McLaren: You have witnesses from the Scottish Government in next. I think that that part of the act was written at a time when we could never have foreseen this situation. As James Drummond mentioned, the act talks about "intended to enable"; people might decide to use videoconference facilities but be heard and not seen.

Graham Simpson: The key phrase there is "intended to enable"—for example, Microsoft Teams can enable me to use a video facility, but if I choose not to use it, the facility is still there, so surely that would be covered.

10:15

Billy McLaren: On that question, we probably would need to see what the intention was from the Scottish Government. The act also says that you have to be intending to "see and hear", so our advice is that "see and hear" has to be part of the equation. If you decide not to use the seeing function and are just using the equipment to hear, you are not intending to use the equipment to "see and hear". It is an issue that needs to be looked at; I am sure the people who wrote that would be able to clarify the issue, and we would value that clarity. That is how we read the bill, but we have a perspective that nobody could have envisaged three or four years ago.

Graham Simpson: We need to clear that up for your sake.

The Acting Convener: There is one area that we have not covered yet, which is exemptions and the compliance with the exemptions. Billy McLaren, your 2019 annual report commented on a number of the exemptions and suggested that further clarity was required. Could you expand on that?

Billy McLaren: Yes, although I am conscious of your time. We highlighted four exemptions that cause some administrative issues, and I will briefly say what they were if that is okay.

The Acting Convener: Please do.

Billy McLaren: One is the exemption for communications made to a member for a constituency or region. There is quite a lot in this, and I do not know whether we have time to cover it.

The Acting Convener: The time is our problem not yours, so please say what you need to say.

Billy McLaren: The fundamental problem that we have had in administering that exemption is the lack of a definition of the phrase "ordinarily carried on". The constituency exemption—to put it in shorthand—is applied by the organisation, because there is no definition of what "ordinarily carried on" means, if the organisation conducts business in the member's constituency or if that is where it is located. That is fine, but a problem has been that big organisations that are spread across Scotland, such as a utility company or a church, have found it difficult to make a decision on whether they ordinarily carry on their activities or business in that area. We have to formally consult the Scottish ministers on the parliamentary guidance, and the best guidance that we could get, which was agreed by the Government, is that it is up to the organisations to decide.

However, that is creating a bit of angst and inconsistency, so some people were, quite rightly, saying that they can only really apply the requirements to communications with the Scottish ministers, because that exemption does not apply to them. That was raised with us early on as something to consider in the review.

Another exemption relates to payment. Again, there is no definition of a threshold or a de minimis level; the example that we gave in the report is that there could be a situation where somebody who is not normally an employee of the organisation is given a small gift. That could kind of sit there for ever and the person could be worried about whether that constitutes payment, so one suggestion was that there could be a de minimis amount or a time period after which a gift does not apply, and we said that we would raise that on behalf of the working group.

There is a small organisations exemption, which is the exemption that applies to a threshold based on 10 full-time employees; if an organisation is below that, it does not have to register or submit returns. Again, that does not apply to representative bodies, but that is not entirely clear and the interpretation of how it is applied is quite wordy. Some smaller organisations and charities that have fewer than 10 employees are not clear whether they are a representative body under the act, and we could not provide fuller guidance on that. That is something that we could work to provide; there is a different definition in Ireland that could be used, for example.

We touched on multiple returns briefly. We thought that that was perhaps a good way of easing some of the burden and bureaucracy. We try to do the wee things that we can, but the act talks about "each instance" and we cannot change that, so that would be down to a committee review-type scenario. However, if someone has good text in the purpose box and is doing the same thing, with the same person, to promote a campaign, for example, they could submit one return instead of 50 of the same return. We would be happy to look at that possibility.

The Acting Convener: Do you have a preferred view on those first three issues, or does a policy decision need to be made by the Government? What is the split between what can be cleared through guidance and what has to be done through legislative reform?

Billy McLaren: If we had the power, we would have changed all those things already. The section 15 powers only go so far. Those issues relate to the schedule to the act. The act is constructed in a way that means that the Parliament does not have the power to change or modify existing parts of the schedule, so we cannot do anything about that. I am sure that we could look at ways to improve the guidance as a result, but legislative change would be involved.

The Acting Convener: [*Inaudible*.]—do you think that is?

Billy McLaren: There is an administrative burden relating to the constituency exemption. It has been quite hard to explain that to people, because it is complicated. That would be useful if we are making changes. It all relates to better explanation.

The Acting Convener: In your view, there is nothing that requires legislative reform.

Billy McLaren: Sorry?

The Acting Convener: From within those four parts, there is nothing that makes you think that legislative reform is definitely required.

Billy McLaren: We work on the legislation that was passed. This is an opportunity for us to reflect stakeholders' views and tell the committee the areas that are causing us a wee bit of difficulty. If it is possible, we would like to work to remove some of those difficulties.

A lot of the evidence that the committee heard related to worries about drudgery and bureaucracy. We are not trying to cause that; we are trying to work in the least bureaucratic way that we can within the framework that we have.

The Acting Convener: Picking up on what John Mason said, ultimately, you cannot tell whether there is non-compliance, because you rely on someone voluntarily giving you the information. If someone chooses not to submit a return, you cannot say whether people are being 100 per cent compliant. That is left to the transparency of the organisations. The exact same applies to exemptions. You cannot really measure compliance in relation to exemptions, because you rely on individual organisations telling the truth.

Billy McLaren: Yes.

The Acting Convener: As there are no further questions, I thank Billy McLaren and James Drummond for their time and evidence. We look forward to following up with you after the session.

10:22

Meeting suspended.

10:29

On resuming—

The Acting Convener: I welcome our second panel. Graeme Dey, the Minister for Parliamentary Business and Veterans, and Dougie Wands, who is a senior policy adviser in the Scottish Government, are attending in person, and Al

Gibson, who is a policy adviser in the Scottish Government's Parliament and legislation unit, joins us remotely. Do you want to make brief opening remarks, minister?

The Minister for Parliamentary Business and Veterans (Graeme Dey): I do not have anything particular to say, convener, other than to welcome the work that the committee is doing on the matter. The Lobbying (Scotland) Bill became the Lobbying (Scotland) Act 2016, and it is for the Parliament to scrutinise the act's effectiveness and for this committee to make recommendations. From the Government's perspective, we are simply feeding into that process and assisting you in the important work that you are doing.

The Acting Convener: Thank you, Mr Dey. You will have seen from our previous evidence sessions that we are looking at three themes: the impact of the operation of the 2016 act to date; the status quo or legislative reform; and non-legislative improvement. We will broadly follow those themes in our questions. I suppose that, for you, the biggest issues are whether we keep the status quo or go for reform, and the impact of the 2016 act. Non-legislative improvement might be less of an issue for you; it is more an operational question for the lobbying registrar. We will try to focus on the themes as much as possible, but there might be a bit of back and forth, given some of the characters on the committee, whom you know well.

Johann Lamont: Minister, given what you just said, can you confirm that no work is going on inside the Scottish Government to analyse the 2016 act's effectiveness, in the context of your commitment to transparency?

Graeme Dey: The Government's commitment to transparency informs our day-to-day working. The 2016 act, which has been in force for two years, is operated by the Parliament, in effect. Dougie Wands can give detail on work that we have done, but in principle the answer is no—no such work is going on.

Dougie Wands (Scottish Government): I can confirm that, as the minister said, the Government has not engaged in any formal analysis of the impact of the 2016 act over the past two years. The act gives powers over the lobbying regime to Parliament, so we look to the parliamentary authorities to do such work.

Johann Lamont: That is quite surprising, given that the purpose of the lobbying legislation is to ensure transparency in the Scottish Government and how people engage with it. For me, the context is that the act relates to the freedom of information regime and good governance, and is about ensuring that how decisions are made—and the things that influence and shape decisions—are transparent to people in Scotland.

What is the current position on recording of meetings of Scottish Government ministers and officials? Are all meetings recorded? Are notes or minutes taken? Is there a place where we can see in what circumstances you do that? Obviously, if all meetings are recorded, transparency is much more straightforward for everyone. What is your practice, and what enforcement is there, under the Scottish ministerial code, to ensure that that practice is followed by all ministers?

Graeme Dey: I have to say, at the outset, that the Scottish Government provides more detailed information about ministerial activity than any previous Administration in Scotland did. I want to get that out there.

Guidance for staff is clear on the importance of keeping an appropriate record of meetings. Staff are required to keep a record of official meetings that deal with substantive Government business, and to store them in the corporate electronic record and document management—eRDM—system, where they are retained in line with the arrangements in our records management plan.

For meetings that involve ministers, private offices arrange for a record to be taken of meetings that involve outside interest groups—including lobbyists, when that happens—which sets out the reasons for the meeting, the names of those attending and the interests that are represented.

In general, our policy is not to take minutes of goodwill visits, hospitality events and courtesy conversations where no policy decisions arise, and it might be sufficient to record in the official diary that the meeting took place. Of course, ministers proactively publish their diaries.

Individual civil servants are subject to the civil service code of conduct and are accountable for keeping records of decisions and key conversations. Ministers are subject to equivalent rules in the Scottish ministerial code.

Johann Lamont: What if it were established that a Government minister had had a meeting to discuss or debate Government policy, but the meeting had not been noted or recorded? I know that there is a distinction in that regard; I have been there. It was a rigorously applied part of my job when I was a minister: either a note or a minute would be taken and then circulated. Is it a breach of the ministerial code for that not to happen?

Dougie Wands: We expect the guidance that has been issued to all civil servants to be followed—

Johann Lamont: I am not talking about civil servants; I am talking about ministers. Suppose that a meeting takes place at which policy is discussed, and it is appropriate and official—although there is a bit of bandwidth around what that means. If that meeting is not recorded and a note is not taken, is that a breach of the ministerial code?

Graeme Dey: That is covered by rules in the ministerial code.

Johann Lamont: Is there an equivalent rule for the civil service?

Graeme Dey: Yes.

Dougie Wands: Yes.

Johann Lamont: Do you accept the view that that rigorous rule protects the lobbying legislation, because it ensures that there is a match between the two things?

Graeme Dey: There is an obvious interaction.

Johann Lamont: One thing that came out for me was that members of working groups would not come under the lobbying legislation. Is that right?

Graeme Dey: Do you mean organisations?

Johann Lamont: This is something that goes way back. The Scottish Government invites people along when it wants to formulate policy before it gets to the point of developing legislation. Perhaps there is an area of social policy in which the Government is interested, which might mean that you will consider organisations' funding. You bring together a group of people, and the people on that group might have strong views, one way or another, on particular bits of potential social policy or legislation. There is no need to record that under the lobbying legislation, is there?

Dougie Wands: There is a specific exemption in the schedule to the act regarding communications that are made on request. That exemption would apply where

"A communication about a topic ... is made in response to a request for factual information or views on that topic"—

that is, a communication from the person who is invited, to the person who has asked for the information.

In the circumstances that Johann Lamont raises, if the Scottish Government were to convene a working group in which a minister might be involved, and if organisations have been asked to participate in that group and to provide factual information and views, that exemption would certainly apply.

Johann Lamont: I am genuinely interested in your views on this. I am very much aware that this is something that has happened over a long period of time. When a working group is established, and there is a question of transparency around the balance of people within the group in terms of what they are arguing for, at what point does that trigger lobbying? Do you have a view on how Government could ensure a balance of people within such a group, and transparency about the interests that the group represents?

You will have heard the term "policy capture"—the idea that people with strong views on a particular policy manage to find themselves in the Government machine because they are in a working group or whatever, although that will be completely opaque to people looking at it from the outside.

First, do you think that that is an issue? Secondly, how can that be addressed? If it can be, that would give us confidence that the 2016 act is doing its job. Other bits of Government are affected by it—in a sense, by the very fact of its being there.

Graeme Dey: I see the point that you are getting at, and I am not ducking the issue, but it is for the committee to come up with recommendations and a process to follow. From a ministerial point of view, when we are trying to develop policy, one of the key drivers is the wish to avoid unintended consequences. Instinctively, we would want as a starting point to have balance in the make-up of a working group, because we would want to hear a range of views in order to come to an informed policy decision. Personally, that is the approach that I would take.

I do not think that the problem that you are concerned about exists, but I understand the line of questioning.

Johann Lamont: How would you monitor whether the problem exists? In another context I could probably lobby you about how I think that has sometimes happened. As somebody who is responsible for the functioning of Government, how do you ensure that that does not happen—that you do not end up in a position where you have what looks like Government policy although, in another set of circumstances, it would be clear that there had been strong lobbying that you have accepted? It might have been folded into a working group, and then becomes the recommendation of the working group. How do you monitor that? How do you test whether balance exists and ensure that you have not ended up in a position where policy has come back to you having been informed by what, in another set of circumstances, would simply be characterised as lobbying?

Graeme Dey: I argue that there is a difference between the formulation of policy under a heading

and lobbying, as such. Of course people will articulate their views in the process of a working group. However, there is a nuance, in that out-and-out lobbying presents a position, whereas in a working group a range of views will be put across on which people will be challenged. At the risk of sounding naive, I would expect that the group would then arrive at a balanced position that would not reflect the asks of everyone who had participated.

I will take away and think about the question about how we should monitor the process. However, again, there is subjectivity. From the outside, some people might look at the make-up of a working group and think that their particular standpoint was not sufficiently represented on it, and so would assert that there is an issue when, in fact, there might not be one.

Johann Lamont: You will be able to tell me about the level of transparency on information that is provided about memberships of individual groups. Could that help?

Dougie Wands: I cannot speak for working groups across the whole of the Scottish Government, but their establishment tends to be public. Obviously, organisations that are involved in a variety of working groups and which represent various sectors are free to express their views both within and outwith those groups—particularly when such a group comes to its conclusions and might publish a report or findings and recommendations. That would tend to be published by the Scottish Government. At that point, it is not unusual for organisations to express views that dissent from parts of our working groups' output. However, the Government is always keen to ensure that views from across all sectors are represented—especially those that are likely to be impacted by, or which have a strong interest in, the policy area concerned.

Johann Lamont: Parliamentary committees have been charged with the important responsibility of not talking just to the usual suspects. Would you consider doing a piece of work to examine whether there is a disproportionate approach, such that some groups and organisations are overrepresented? I do not want to labour the point, but it feels to me that part of the lobbying act's aim, which is to consider the way in which people influence the Government, will be effective if there is an opening up of the process inside the Government itself.

Graeme Dey: I guess that your point is that the loudest voices might be heard most. As a minister, I make strenuous efforts to engage not only with big players, such as in the veterans sector, but with all organisations, because, inevitably, good ideas will be found there.

In the context of a working group on a particular subject, there is a limit to the number of individuals or organisations that can participate, so I recognise the risk that you portray. However, in practice, ministers are looking for the most informed position, so that when we introduce legislation it is as robust and balanced as it can be and will avoid unintended consequences. Johann Lamont has been in Government, so she will know that that is the approach that underpins the process.

The Acting Convener: I want to ensure that we stay within the scope of what we are supposed to be discussing. I think that Johann Lamont's point is about where the act fits in with the spirit of transparency.

I presume that the membership of every working group and every sounding board is listed and is publicly available. The gap that Johann Lamont is perhaps suggesting comes under the operation of the act when a sounding board or working group is created. If it is then proactively established by the Government or individual MSPs, there is an exemption from the act. Whatever conversations take place—whether they are verbal or face to face—are also exempt from the act, so people would not know what the lobbying position was. However, I imagine that all the membership details of such working groups are publicly available.

10:45

Dougie Wands: Even within the context of a working group that is formed for a particular purpose, the exemption that I outlined earlier might not apply if an individual, in representing their organisation, takes the opportunity to raise other matters. For the exemption to apply, views have to be within the remit of the working group as it was formed. We can check, but my expectation is that working groups, when they are formed, are publicly announced.

Johann Lamont: I have one final question, which is also on an area that dovetails with the Lobbying (Scotland) Act 2016, as opposed to being about the act. Some people have expressed concern that Scottish Government funded bodies lobby; they lobby Government, as well as the Parliament and MSPs, on policy. If more than 70 per cent of an organisation's funding comes from the Scottish Government, but it is a separate and independent organisation that is advocating on behalf of Scottish Government policy, which perhaps it helped to develop in the first place, how can we make that more transparent?

Graeme Dey: The detail of funding is publicly available and readily accessible, regardless of whether there is such interaction with

Government, so I do not see that there is a lack of transparency.

Johann Lamont: Do you therefore think that it is acceptable when a charity that gets 70 per cent of its funding from the Scottish Government lobbies individuals on behalf of itself and therefore, in effect, on behalf of the Scottish Government?

Graeme Dey: I do not think that at all. A charity might have a policy position that is at odds with the Scottish Government's policy position; it might not agree with the Government on something.

Johann Lamont: With that funding, would it be allowed to disagree?

Graeme Dey: It is not for the Scottish Government to tell an organisation what its policy position is. For an organisation in that situation, the breakdown of its funding is publicly available. We are all aware of instances in which, when an organisation has a controversial view, the fact that it is funded partly or largely by the Scottish Government is brought to the fore. I do not see that there is an issue in such instances, because there is no secrecy about the funding that the organisation might, largely or in part, have.

Johann Lamont: People who receive Scottish Government funding are free to lobby the Government and to be public about doing so. The amount of funding that they have is transparent to the public, so you do not think that that is an issue.

Graeme Dey: No, I do not.

Johann Lamont: Okay; thank you.

The Acting Convener: Do you think that, as part of the lobbying return, they should be asked to say whether they receive Government funding and, if so, what proportion of their funding that is?

Graeme Dey: That is a matter for the committee.

The Acting Convener: Do you have a strong view on it?

Graeme Dey: No, I do not. If the committee was to take that view, I would not have an issue with it, because such funding is a matter of public record, anyway.

Colin Beattie: We have taken evidence from a number of witnesses who have raised concerns about the administrative burden on lobbying organisations that arises from the act. Do you have a view on that?

Graeme Dey: The act is the act, and it has been in place for two years. Obviously, I do not participate in it from that standpoint. There are exemptions for smaller charities, so there is proportionality. I think that the act works pretty effectively. Do you have particular examples of where it is overly burdensome?

Colin Beattie: Some organisations talked about the volume of returns and the cumbersome manner in which the technology has to be updated. We had a discussion on those issues with the previous panel. Is the administrative burden that has been placed on organisations a price worth paying for transparency and accountability?

Graeme Dey: One challenge for the committee is to cut through the "Well, they would say that, wouldn't they?" approach to contributing to your work. I do not mean that disparagingly but, inevitably, people will have a view based on the fact that they would rather not do it.

I think that the burden is a price worth paying for transparency. If we were to add to that burden, there would perhaps be a debate to be had. However, as things stand, from my point of view, it looks like the right fit. If there are legitimate IT issues, it is for the Parliament as an institution to resolve that matter and to work with the organisations concerned to improve things.

Colin Beattie: Several third sector organisations raised the possibility of redistributing the workload by pushing some back on to MSPs and ministers and giving them a responsibility to update the register. How do you feel about that?

Graeme Dey: The lobbying register is predicated on those who do the lobbying being responsible for registering it; that is fundamental to the act. Redistributing the workload would completely change the balance, and I do not see how that would be justified. Speaking up for MSPs, every MSP that I know has a considerable workload at the moment, which has increased immeasurably through the pandemic. Adding to that workload in that administrative way would not be welcome or justified.

Colin Beattie: Another thing that has come up is the possibility of MSPs and ministers publishing high-level details of their diaries. What is your view on that?

Graeme Dey: Ministerial diaries are published as a matter of course; I sign off on that every three months, so that takes place. If we have the lobbying register working as it does and MSPs putting that information out there as well, there is a risk of duplication. If your suggestion is that the register be replaced, that would fundamentally change the premise of the act and the responsibilities under it.

Colin Beattie: People have pointed to, for example, members of the European Parliament, who have a system of automatically uploading their diaries into a public area for transparency

purposes. There is a feeling that we should perhaps look at that.

Graeme Dey: Again, I am not ducking the question, but it is for the committee and the Parliament to decide whether that is justified. My diary is out there. Ministers are very clear about who we have interacted with.

Speaking purely as an MSP, I am struck by the fact that, even after two years, some people do not entirely understand what constitutes lobbying and what does not. I am sure that everyone round the table has had a return that, when they think back on the conversation, has made them ask, "Was I being lobbied there? Really?"

It is good that people err on the side of caution, but I was the subject of a return because I had bumped into a former colleague at a conference. He represents an organisation that would be deemed as a lobbying organisation, but the conversation consisted of one of us saying, "How's work?" and the other responding, "It's pretty busy. How are you?", to which the answer was, "I'm pretty busy as well." We then had a chat about our former employment. A few months later, there was a lobbying return and, when I looked at it, I thought that I was not in any way lobbied. That tells you that people sometimes misunderstand. However, it is a good thing if we err on the side of caution.

Graham Simpson: I had a similar situation when I bumped into someone at an event and we had a discussion, which was not lobbying. Lo and behold, a lobbying return appeared; I challenged it and it was removed, because it was not lobbying. However, I have to be honest that, most of the time, I do not check.

Minister, you have come here to give evidence. Do you have any thoughts on how the lobbying act could be improved, or are you leaving it entirely to us?

Graeme Dey: The simple answer is that I suspect strongly that small changes could reasonably be made to improve the working of the act. It is not for the Government to push an agenda on that. We are here to give evidence to the committee on the same basis as others have done, and you will come to a view.

From personal experience, I think that there is a bit of work to be done on the speed at which registrations are made—by which I do not mean the speed at which the Parliament processes them. I have had the experience of getting a notification that was considerably late, which meant having to think carefully about whether the meeting took place and whether it was recorded accurately. That is unusual, but it happens, so some work on that could be done. In addition, even two years after the act came into force, we still need to make people more aware of what is and is not lobbying although, in my experience, people have tended to err on the side of caution, which is not a bad thing.

We will not put forward a range of suggestions, because we would be in the same category of "Well, they would say that, wouldn't they?" that I referred to earlier. Having been a convener—Mr Simpson has been one, too—I am a great believer in the parliamentary committees, and it is for the committees of the Parliament to do the important job that they do and to make recommendations.

Graham Simpson: I am sure that we will do that, but I had hoped that you would have some thoughts, too. You appear to agree with witnesses who said that having six months to make an entry in the register is too long. Should that period be shorter?

Graeme Dey: If there is evidence that there is more than the odd instance of that limit being breached, we must look at that so that the process moves timeously.

Other witnesses may have made suggestions that we have concerns about, but I will not provide a list of dos and don'ts, because it is for the Parliament to come to a view, as the Parliament owns the act.

Graham Simpson: I accept that but, normally, when a minister comes before a committee to give evidence, they have some thoughts to express, and you do not appear to have any. I have never come across this situation before—it is quite extraordinary.

The Acting Convener: You are so selfless, Mr Dey.

Graham Simpson: I will mention an idea that was put to us at a previous evidence session for when we are once again allowed to have events in the Parliament. The current position is bureaucratic and puts people off, because every individual who attends an event feels that they have to make a lobbying return, rather than there being just one return to cover the whole event. Could that or should that be changed?

Graeme Dey: I think so. Remember that I am speaking for the Government, so it is slightly different for me, but I recognise the scenario—we MSPs have all been to events at the Parliament with multiple stalls. In one example that I can think of, I spoke to people from a cancer charity about a really important topic and they all had to make individual returns for every MSP who they had spoken to. There is undoubtedly a risk that, after somebody attends an event such as that for the first time and comes away with that burden, they might not return, which would be to the detriment of the work of the Parliament. If you were to recommend a change that allowed an organisation

in those specific circumstances to make a generic return, that would be a wise way forward.

Graham Simpson: That makes two things that you have agreed with. I will put something else to you. Earlier, we explored the issue of planning, and it struck me that the act currently covers only the lobbying of MSPs. Should it cover councillors as well?

Graeme Dey: The act relates to this institution. As you well know, there is a code of conduct for councillors, which is quite restrictive around planning applications. Correct me if I am wrong, because I have never been a councillor, but my understanding is that councillors should not be lobbied in that way.

Graham Simpson: Councillors can be lobbied on a planning application, but they may not express an opinion on it. There is currently no register of the lobbying of councillors that goes on. I am merely asking whether you think that there should be one.

Graeme Dey: I reiterate that I am not a councillor but, as I understand it, if a councillor had had such a conversation, they would have to recuse themselves from the eventual decision, would they not?

11:00

Graham Simpson: No. That would be the case only if they had expressed an opinion publicly.

Graeme Dey: Most councillors who I know would declare that they had had a conversation.

It is an interesting thought. If the committee is minded to put that forward, it will be the subject of consultation.

The Acting Convener: I want to pick up two points from what Mr Simpson has asked about. First, you agree in principle that the period of six months to make an entry in the register is perhaps too long, taking into account not just the burden of the submission but the public interest in the matter. Something that is reported six months later might lose its public interest whereas, if it was reported earlier, it might maintain public interest.

Graeme Dey: If there is evidence that that is an issue—

The Acting Convener: In the evidence that we have heard, our panels of witnesses almost unanimously agreed that a quarterly period would be more sensible than a six-month period. Would you agree with that?

Graeme Dey: Ministers publish their diaries on a quarterly basis, so I can see a symmetry there.

The Acting Convener: I know that the issue of the bulk uploads of events has been covered off and sorted by the lobbying registrar; you also agree with the principle around bulk uploading.

Graeme Dey: Yes—it seems eminently sensible in order to avoid the risk of groups not coming back to engage with us as MSPs and adding to our knowledge and understanding.

John Mason: I take the point that you do not have strong views on much of this, but I will try a few other things. One suggestion is that local government might be included in the legislation; another suggestion is that more of a range of civil servants could be included, because they influence ministers.

Perhaps you can confirm that the 2016 act is not aimed at the Government; it is aimed at the whole Parliament. Do you have any thoughts about whether we should expand its coverage, or do you not have strong views on that?

Graeme Dey: I have a strong view on that, which I guess puts me in that category of "They would say that, wouldn't they?"

There is a great risk that, in extending the legislation to senior civil servants, we encroach on an important aspect of the work of the Government: policy development. The suggestion that we extend the provisions to include all senior civil servants runs the risk of stakeholders feeling inhibited about participating in the development of policy.

It is important to recognise that, although civil servants have a clear link to ministers, they occupy a different space from politicians. The day-to-day operation of Government involves interaction between civil servants and organisations. If we were to move into that space, it would be incredibly burdensome from an administrative point of view. I would have real concerns about that on both fronts.

John Mason: You use the word "burdensome": that theme has come up already. Another suggestion has been that we move into registering emails and phone calls, of which there is clearly a huge volume, as well as face-to-face meetings. Do you have thoughts about expanding the provisions in that direction?

Graeme Dey: I entirely understand the concerns that have been raised about such an extension. Some 12,000 instances of regulated lobbying have been published already, which, I understand, is well in excess of what was anticipated when the Lobbying (Scotland) Bill was introduced.

It was RNIB Scotland that said that, if the administrative burden increased to such an extent, it would be

"a deterrent to organisations communicating with decision makers"

and would

"go against the intentions of the Act."

I think that we have got it right where face-to-face interaction is involved, whether that is physical face-to-face interaction or, as is more likely these days, videoconferencing.

John Mason: There is a balance to be struck. I totally accept the point about volume. I do not want to spend a lot more money on employing people or on IT for such purposes. On the other hand, if we asked the public what they thought lobbying was and what should be recorded, they might be surprised to realise that we get a lot of emails and glossy magazines. Recently, I got a little metal turbine from one company. We get taken out for dinners, although I know that hospitality activity has to be recorded at a certain level. A lot of things that the public would think of as lobbying are not covered.

Graeme Dey: We are sitting in this room as MSPs, and we recognise the practical implications of covering such activity, given the sheer volumes that would be involved. On that basis, if no other, that is not somewhere that we should go.

John Mason: It has been suggested that Parliaments in other countries take into account costs. A big company paying quite a lot of money for somebody to carry out lobbying is a bit different from the lobbying that is done by a little charity. The charity might have 10 employees, and its lobbying counts, but it is done at a much lower-key level, with not so much being spent on it. Would it be worth looking at that?

Graeme Dey: Again, that is a matter for the committee, but it is the act of lobbying, not who does it, that is relevant, is it not?

John Mason: Can people with money behind them have more influence than people without money?

Graeme Dey: There is an argument for that, but the premise of the 2016 act is the act of lobbying. The committee has taken evidence on that from a multitude of sources.

I will bring in Dougie Wands on the comparators with other countries, because that issue was looked at when the legislation was introduced.

Dougie Wands: My colleague Al Gibson, who was involved in the earlier policy development stages, might be able to add some value on that. The premise of the 2016 act is very much about the individual instances of lobbying, regardless of who carries it out, as long as an exemption does not apply.

Financial details are not included in, for example, the United Kingdom register of consultant lobbyists, which is very much aimed at professional organisations that will, for a fee, promote particular policy positions to UK ministers. In that register, the lobbyists need to publish their client lists but individual instances of lobbying, which are published in the Scottish register, are not disclosed.

I wonder whether Al Gibson wants to add anything.

The Acting Convener: Al Gibson is joining us remotely.

I think that Mr Gibson is on mute. We cannot hear you, Mr Gibson, so we will perhaps come back to you when we can restore a connection.

Johann Lamont: I will reflect on what the minister said about civil servants. I appreciate that civil servants have a different role from that of ministers but, given your argument, it would be possible for a minister to receive a call from someone who is lobbying them and to have a conversation in which they could say, "You need to meet my senior civil servant in this area," but for that activity to have no visibility whatsoever, because it would not be recorded anywhere. You are saying that you would not want that activity to be transparent, because that might inhibit participation.

Is not the very point about transparency that people are happy to lobby and put pressure on the Government as long as they are not accountable for doing that and are not seen to be doing that? Do you accept that there is a deficit in the model that you have presented, and that it would be entirely reasonable not to name the civil servant, but for meetings between stakeholders and civil servants, in their role, to be logged somewhere?

Graeme Dey: I do not overly recognise the scenario that you have given in which a minister is called by someone and then directs them to the civil service. I do not entirely understand where you are coming from on that.

Johann Lamont: I am suggesting that people in our communities, whether organisations or businesses, who try to influence things will come to you and say, "I've got this issue." Quite often, and quite reasonably, because no one can possibly expect Government ministers to be at every meeting, they will be given an opportunity to meet officials. The Government has sanctioned that; a minister has invited them to meet officials and discuss that question. That has happened to me and to other people.

You are saying that, because the meeting is with civil servants, it is not to be logged anywhere, your argument being that doing so might inhibit

participation. Why would that inhibit participation? Is not the whole point of the 2016 act to open up and let people see what the influences are on Government and how people lobby? If their being seen to do that inhibits interaction, that might suggest that there is a problem.

Graeme Dey: Perhaps I have not explained the matter particularly well, or I have allowed that confusion. I am making a point about what would happen if we got into the territory of logging every interaction with senior civil servants. You gave the example of meetings, but it would be every interaction.

Johann Lamont: It would be a meeting.

Graeme Dey: If all interactions with senior civil servants were to be recorded, that would potentially inhibit, in particular, day-to-day engagement and policy development. It would have that effect. That is just the practical—

Johann Lamont: First, you have said that that is all recorded anyway, so it would not be a massive leap to ensure that the information was on the public record. Secondly, I am not talking about day-to-day contact. I am talking about meetings at which people are arguing a case because they want to influence what the Government is doing. It is, of course, common for ministers to deploy civil servants in that way. We have all heard a minister say, "I've secured you a meeting with the civil servants. I can't make it, but you can meet my officials to talk about this."

Are you seriously saying that that activity cannot be recorded, because the role of civil servants is different? I do not accept that. Are you saying that doing so would somehow inhibit participation? To me, that gets to the heart of the matter. The issue of someone being inhibited from speaking to a Government minister and official because someone else would know about it is precisely what drove the legislation on lobbying in the first place.

Graeme Dey: With respect, I think that you are confusing two things. However, to answer your question whether the interaction can be recorded, yes, it could be recorded, if that is what you are driving at. It is a matter for the committee to consider whether it wants to focus specifically on that. I am simply outlining the general situation on interactions.

Johann Lamont: However, you would not want that change because, as you said, it would inhibit stakeholders from participating.

Graeme Dey: I think that consequences would flow from that that might not be entirely to the benefit of the process.

Johann Lamont: Are there any circumstances that you can think of, in your job, in which the public knowing that you have had a meeting, or knowing that your civil servants have had a meeting on your behalf, would create a problem and in any way inhibit the process?

Graeme Dey: The point is that, as a minister, any meeting that I have is recorded as a matter of course and released. Unless you have a surgical approach to the scenario that you have raised, that would capture all sorts of things, which I think would be inadvisable.

Johann Lamont: In that case—this relates to the first question that I asked you—perhaps we therefore must have absolute confidence about the rigour with which all meetings with ministers and senior civil servants are recorded and noted, so that if I want to make a freedom of information request at some point, I can access that information, rather than continue with what we have had in the lifetime of the Parliament, which is people being told, "We can't tell you if that meeting took place or what happened at that meeting, because no note was taken of it." You know that that has been a feature of some political discourse during the past period.

Graeme Dey: I recognise your point, but I do not necessarily agree with you on it.

The Acting Convener: We seem to have lost Alex Neil, who was to speak next. While we get him back, I will press you on a couple of the issues that John Mason and Johann Lamont covered.

Is it not the fact that, through the Lobbying (Scotland) Act 2016, we have said that the most effective form of lobbying is face to face and, consequently, we record face-to-face meetings. However, you can form a relationship in a face-to-face meeting and then do the hard lobbying by phone call or by email. Do you not accept that that is a glaring gap in the transparency of lobbying?

11:15

Graeme Dey: No, I do not. I see the argument that you make—I get that—but I come back to the burden of recording all that. The sheer volume of work that would arise from that for an active MSP—for example, someone who sits on a couple of committees—and for their staff, would be an issue. Would we have enhanced allowances for more staff? We might need somebody whose job was only to do that.

The Acting Convener: Have you ever been lobbied by phone?

Graeme Dey: By phone?

The Acting Convener: Yes.

Graeme Dey: As an MSP?

The Acting Convener: As an MSP and/or a minister.

Graeme Dey: I am struggling to think of many, if any, examples. You will always have conversations with people on the telephone, but whether they would constitute lobbying is another matter.

The Acting Convener: As far as you are concerned, you do not think that you have ever been lobbied by phone.

Graeme Dey: I do not see that as a significant issue.

The Acting Convener: It is a very straightforward question: have you ever been lobbied by phone?

Graeme Dey: I cannot think of too many examples of that off the top of my head, is the honest answer.

The Acting Convener: Off the top of your head, you have never been lobbied on the phone.

Graeme Dey: There will be instances where, as an MSP, you could perhaps say that someone has had a conversation and of course there would be—[*Interruption*.]—but does the volume of that justify the consequences of bringing that into the scope of the act?

The Acting Convener: Have any of your ministerial colleagues, cabinet secretaries or the First Minister been lobbied by phone?

Graeme Dey: I do not know; you would have to ask them.

The Acting Convener: What do you think? You must have a view.

Graeme Dey: I find it difficult to answer other than for myself.

The Acting Convener: Have civil servants been lobbied by phone?

Graeme Dey: Lobbied?

The Acting Convener: Yes.

Graeme Dey: Inevitably, the volumes of conversation when people are developing policy mean that a range of views will be expressed to them in conversations. I go back to the point, Mr Sarwar—are we saying that every phone call and email should be captured?

The Acting Convener: The fundamental question, Mr Dey, is whether the 2016 act in its current form is window dressing or gets to the crux of lobbying. If it is window dressing, let it just cover what it covers and do what it does and we will all just get along with it, but it will not ultimately change people's behaviour or give us greater transparency, unless you think that it has changed people's behaviour and given us greater transparency—you can answer that question in a moment.

If it is about giving us genuine openness and transparency, does it achieve that and, if it does not, what are the gaps? Are you honestly saying that you have never had a telephone conversation that has informed your opinion or changed your mind on something?

Graeme Dey: Your thinking could be informed, yes. I go back to the point that you made. When the act was originally introduced, there were a number of overarching principles, one of which was the need to deliver improved transparency through a proportionate solution, and that is what we have achieved. There may be an argument or a need to extend that further, but I go back to the point about whether it has improved transparency. Clearly, we have 12,000 records that suggest that it has. Has that informed behaviours? Inevitably, it will have done to a greater or lesser extent. There is also the issue of the proportionality of the approach. Through the committee's work, what evidence has emerged of a problem or the scale of a problem that has then informed your thinking about what the response to that should be?

The Acting Convener: Have you ever said to someone, "You should speak to a civil servant about this"?

Graeme Dey: There could be an occasion when I would say, "I think you need to speak to officials about that," and that would stop the conversation. I would not have the conversation and then direct them; I would tend to say, "I think you should speak to officials."

The Acting Convener: In relation to the committee's work and what we should include in our report, should emails be included in the lobbying act? Yes or no?

Graeme Dey: No; not least of all because of the—

The Acting Convener: Should phone calls be included in the lobbying act? Yes or no?

Graeme Dey: No.

The Acting Convener: Should civil servants be included in the lobbying act? Yes or no?

Graeme Dey: Senior civil servants—no.

The Acting Convener: Okay.

Johann Lamont: Junior ones?

The Acting Convener: Should any civil servant be included in the lobbying act?

Graeme Dey: I am sorry. To be clear, we were talking about senior civil servants and, in my answer, that was who I was referring to. No, I do

not think that any civil servants should be included, for all the reasons that I have articulated.

The Acting Convener: Okay; excellent. Therefore, it seems that you do not think that you should have an opinion, because it is for the Parliament to decide on the easy bits but, on the hard bits, you have an opinion and you do not think that we should make any substantive change.

Graeme Dey: No, I was asked whether I had any ideas to put forward about changing the act. When I answered that, I said that there might be things that you put to me that I do not agree with, and I have just demonstrated that.

The Acting Convener: Thank you, Mr Dey.

Alex Neil is back with us.

Alex Neil: I will pick up from where you left off, convener. Minister, do you have any specific thoughts, ideas or proposals on reform? They do not have to be legislative reforms; they could be process reforms that do not require legislation. Are there specific areas where you think that the operation, scope and implementation of the act could be improved?

Graeme Dey: I gave a couple of small examples earlier on but, in terms of how the act operates, that will come more from the practitioners and the parliamentary authorities who implement the act. They deal with it on a day-to-day basis so, if I were doing your job, those are the influences that I would most listen to, if good, solid ideas are coming forward from those sources. However, as I said earlier, there is perhaps an argument for going to quarterly reporting and, even now, for increasing the understanding of what is and is not captured by the act.

Alex Neil: From a Government point of view, as opposed to a parliamentary point of view, and generally speaking, the Government has no major issues of principle with the implementation and operation of the act.

Graeme Dey: No.

Alex Neil: Right; okay. We have had a debate about civil servants and the scope of the act. Please do not interpret my questions as advocating anything—I am merely trying to get to an understanding of the Government's position. The point of the act was to make more transparent the process of and the influences on public policy making, in order to make sure that people are aware of the potential influence of lobbying and the impact that it has on policy and to reinforce the Parliament's founding principles of openness, transparency and accountability.

I will ask about three categories of people who influence policy that we have not mentioned so far. The first is SPADs—special advisers to ministers—who are collectively appointed by ministers, report directly to ministers, work under ministers, are very clearly involved in the process and are the recipients of lobbying. There is no doubt about that, and I know that from my ministerial experience, as well as being in the Parliament for almost 22 years. There is no dispute in my mind that SPADs, ever since the Parliament was created and under successive administrations, have been a route for lobbyists to influence ministers and, sometimes, I have asked SPADs to meet particular groups to hear their point of view, because I did not have the time to see them myself. In that process, SPADs were effectively lobbied, albeit as representatives of ministers. Although, technically, they are employed by the civil service, they are not civil servants in the traditional sense, and they are not senior civil servants in that sense. Would it be appropriate to consider extending the scope of the act to cover SPADs? That was my first question. I will let you answer that before I go on to the other two.

Graeme Dey: Is the role of SPADs particularly different from the role of civil servants in the context of engagement with groups through working groups or policy development? It is all part of the same process. I go back to the point that it is a matter for the committee if it wants to make particular recommendations.

Dougie Wands: Special advisers are included under section 1 of the act, which covers all MSPs, all ministers and

"a special adviser or the permanent secretary".

They are presently caught by the act.

Alex Neil: We have heard from Al Gibson, and are going to hear from him again. Does the term "special advisers" refer only to special advisers who are appointed temporarily by ministers, or does it include people who are called "special advisers", who are non-political appointments?

The Acting Convener: I will come to Mr Dey in a second, but I should clarify, Mr Neil, that the committee will not have heard what Al Gibson said. You will have heard him, because you are on the same broadcasting channel as he is, on the BlueJeans platform, but we did not hear what he said, unfortunately. We may well get him back.

I invite Mr Dey to respond to Mr Neil's question.

Graeme Dey: The individual to whom Mr Neil referred is a civil servant.

Alex Neil: That is my point. This is about the Government's view and the application of the legislation to SPADs. The term "SPADs" is usually

used for the small group of political SPADs, if I can put it that way.

Does the act apply to non-political advisers who are part of the civil service? What is your interpretation?

I think that it is the other chap who has to answer that, as he is presumably the lawyer.

Dougie Wands: Mr Neil, I am pleased to put it on the record that I am not a lawyer. However, it is clear that the act covers the political special advisers who are appointed by ministers. You will be able to see the list in the register, and it is updated as and when those politically appointed advisers change.

Alex Neil: That does not cover non-political advisers. Is that right?

Dougie Wands: I am not entirely clear what category of officials you are referring to, but the act covers only the small group of politically appointed advisers, as I have explained.

Alex Neil: My question is whether other advisers should be included. The terminology is "adviser". If someone is an adviser, they are advising on policy. Should people who are advising on policy and who are the subject of lobbying be included in the scope of the act?

Graeme Dey: I think that you are confusing two things. You could argue, as I think that you almost are, that any civil servant who offers advice to ministers on policy development should be captured. That goes way beyond what has previously been suggested in relation to senior civil servants being captured by the act and enters a whole different tier. How to define someone who offers advice to ministers? Ministers are advised, in inverted commas, by a multitude of officials, as you well know.

The Acting Convener: The short answer is that you do not think that advisers should be included.

Graeme Dey: Indeed; they should absolutely not be included.

Al Gibson (Scottish Government): Hello: I hope that everybody can hear me now—apologies for the difficulties earlier.

I see that I am labelled as a "policy adviser", and I believe that that is what Mr Neil is alluding to. If the understanding is that I, as a civil servant, should be covered, then the minister has just covered that.

I have been interested to hear the exchanges. The committee is used to Government bills being introduced and the Government taking policy positions. If it helps the committee, I should clarify that, at the time, the Lobbying (Scotland) Bill was seen as being in a group on its own. It was a Government bill—that is beyond doubt—but it was introduced and sponsored by the Government as a means to secure a consensual approach, and the Parliament agreed to that approach at the time.

Now that we are at the point of review, as the minister said, it is for the committee and for the Parliament to take a view. There will be issues on which the Government might have a view but, incidentally, the 2016 act obviously covers ministers, so that causes difficulties.

11:30

It is possible for the act to do whatever the committee or the Parliament decides that it should do. I was interested to hear the views of the registrar in the earlier session and members' concerns about enforcement and scope. We deal in facts in the civil service. If there is a belief that there is a need for changes, the committee and the Parliament might go down that way, but those changes would have a clear impact.

If it is helpful to the committee, I note that, when I was involved in developing the bill, we dwelled very purposely on proportionality and on what the environment in Scotland required. When I was cut off, I was saying that we looked at different scenarios. As members will probably be aware, you can pay your money and take your choice. I think that the American model is known to be the most rigorous. We looked at what was proportionate for Scottish circumstances. We accepted all the views from the range of stakeholders, and I met many people during that time. Everybody had their point of view, but it was about what was deemed to be required.

Alex Neil: As a matter of interest, have you, as a so-called policy adviser, ever been lobbied?

Al Gibson: I have been involved in policy throughout my career, so I suppose that I have. That is part of the—

Alex Neil: Have you been lobbied in your current role?

Al Gibson: These are very sweeping terms. I do not mean to be unhelpful. Yes, of course I was during the course of the—

Alex Neil: The question is fairly straightforward. Within the terms of the definition of lobbying in the 2016 act, as it stands, have you been lobbied in your current position?

Al Gibson: No. Again, I do not mean to be difficult, but I am not caught by the scope of the act, as it is drafted, so that would not constitute regulated lobbying. However, in my professional experience, as I mentioned, I was involved in the bill. Obviously, a range of stakeholders came to

state their position, so it could be argued that lobbying took place when they were stating their point of view. The issue goes back to the point that was made earlier about the working groups. That is the nature of government. It is the natural course of events for officials and our ministers to take on board a range of views.

Graeme Dey: As I was listening to that answer, something came to mind. If we were to go down this road, would committees of the Parliament be captured by the provisions? A committee issues a call for evidence—on one level, it invites comment—so would everybody who wrote to the committee or sent an email be covered? I am not trying to muddy the waters; I am just thinking through the consequences. Would the work that the Parliament's committees do in formulating an approach, taking evidence on a bill and so on be captured by such an extension? Those are the kind of things that we need to consider.

The Acting Convener: I accept that question, but I think that committees proactively publish a lot more than the Government does. Perhaps the Government should follow the model that the committees use in relation to proactive publishing.

Alex Neil: The other thing is that committees do the vast bulk of their work in open session. Quite rightly, a lot of Government work is not done in that way.

My final question to the minister is on the same theme. Again, I emphasise that I am not advocating anything because, as other committee members will confirm, I am a sceptic about some parts of the 2016 act. The other area to consider is Government agencies, such as Scottish Enterprise and the Scottish Environment Protection Agency, which, by definition, make policy within a legislative framework. They are clearly lobbied from time to time. Should quangos such as Scottish Enterprise and SEPA be considered for inclusion in the scope of the act?

Graeme Dey: That is a matter for the committee to make a recommendation on. I keep going back to—

The Acting Convener: You have a view on civil servants and ministers. Do you have a view on quangos?

Graeme Dey: I can see the argument that Alex Neil is advancing, even though he says that he is not making that argument. Staff from the likes of SEPA interact with stakeholders on a range of matters in formulating a policy approach. Should we get down to the level of considering listening to a range of views and coming to an informed position as lobbying?

Let us take SEPA as an example. Its reputation in the farming community is greatly enhanced now compared with what it was years ago, because SEPA engaged with, listened to and worked with that community and came up with what the community would consider to be a more proportionate approach. Is that lobbying, or is it a wise approach to developing policy? If the committee feels that it should be captured by the act, it should be looked at.

Alex Neil: It is a case of what is good for the goose is good for the gander. On the whole, back-bench MSPs have far less influence on policy than the likes of special advisers and Government agencies. If you think that lobbying legislation is required, it becomes difficult for you to argue that people who have a heavy influence on policy and who are lobbied, such as advisers and those who work for quangos, should be excluded from being covered by the legislation, when MSPs, who often have less direct influence on policy, are included. That contradiction in the legislation should be resolved.

Graeme Dey: There is also a contradiction in what we are doing right now. You say that back-bench MSPs have little influence, yet this committee of back-bench MSPs will have a large influence on how the act is developed, if that is what happens. As back-bench MSPs, you have listened to a range of views—it could be argued that you have been lobbied—and the committee will produce a report, which could become the subject of a consultation, so that more people feed in their views. I understand where you are coming from, but I am not sure that I accept entirely that back-bench MSPs are deprived of the opportunity to influence, because the proof is here today.

Alex Neil: I want to correct that, because that was not my point. I agree that this committee will, I hope, have influence on this subject. However, across the piece, policy makers in other parts of public administration, such as quangos, often have as much, if not more, day-to-day influence on certain aspects of policy than back-bench MSPs. Therefore, if it is true that the purpose of the act is to be transparent about the lobbying of policy makers, it must be noted that MSPs are not the only and not—sometimes by far—the most important policy makers in public administration.

The Acting Convener: I think that the point that Alex Neil is making is that that was a good attempt to divert, minister, but try again.

Graeme Dey: I am not trying to divert. I have been a committee convener and a back bencher, and I do not recognise the idea that back-bench MSPs are impotent when set against SPADs or policy advisers.

Let us consider the parliamentary process. The Government brings forward an informed policy position, having taken a range of views;

committees scrutinise it, take evidence and make recommendations—as you well know, Mr Sarwar, the Government often takes on board a lot of what is in committee reports—then MSPs vote. We are in a Parliament—

The Acting Convener: I think that you are diverting again, Mr Dey, but I will hand over to Johann Lamont.

Johann Lamont: To be honest, I think that an array of straw men were thrown up there.

The point is that if the committee has been transparent in its conclusions and has presented them to the Scottish Government, we will not know who will have influenced the Government's attitude to those recommendations. We will not know who has lobbied you or your civil servants, saying, "We can't possibly have that, because it's not any good." There is no equivalence.

Do you not accept that quangos, which are public bodies that play very important roles in communities—you mentioned SEPA; there is also a wide array in education—make decisions that influence the Government's view? In some cases, some very bad decisions have been made, but what influenced those decisions has not been transparent. It might be the case that some bodies in the farming community think that SEPA is doing a great job because it has finally agreed with them, but we have not seen why it has come to that conclusion.

You must accept that such bodies play a huge role in influencing what goes on in our communities. I would be interested to hear the argument that says that there should be no transparency on what helps them to come to their conclusions.

Graeme Dey: That is not what I argued; I think that I said that I recognise the point that was being made. There is validity to the argument; it is up to the committee to decide whether to pursue it.

I want to correct something. I might have picked you up wrongly, but you seemed to infer that a parliamentary committee would make recommendations in a report and that organisations could then lobby the Government not to accept the committee's recommendations. That is not at all how things work, in practice.

Johann Lamont: So what is "an informed policy position"? You said that you would respond to the recommendations of a parliamentary committee with an informed view. What is your definition of "informed"? Would it categorically exclude people outside of ministers informing or helping to shape your thinking?

If a parliamentary committee takes a view, particularly on a policy area, the Government has to decide in its response what its informed view is. There will be people who will be unhappy with the committee's recommendations on a policy area. It would be possible for your view to be informed by their lobbying of you, if that is what an informed policy view is, but the point is that we would not know. There would be no transparency around how your informed policy view on your attitude to the parliamentary committee's report was formed.

Graeme Dey: I think that you misunderstand the process. A committee would produce a report with recommendations, which the Government would reflect on. The Government would perhaps consider that some of them were not wise, based on the view that it had formed. The Government would also take account of the fact that it requires to engage with the committee and with individual MSPs. The Parliament would then have a discussion about the recommendations. In my experience, it is simply not the case that there is somehow a further stage at which the Government is lobbied.

As members, we all know that in the run-up to the amendment stages of a bill, we are inundated with people telling us what we ought to do. We get lists that say what we should vote for and what we should vote against. That is in the nature of the process.

Johann Lamont: That is precisely the point that I am making. The Government's informed view on whether it will accept or resist amendments or recommendations is not simply internal to Government. It might be that a quango has said, "Wait a minute—you can't do that, because it will have this consequence," or a group might have lobbied you. The point is that that will not be transparent. Indeed, in some circumstances—to go back to the very beginning of our discussion—it will not even be evident that that conversation about why the recommendation in question should be resisted took place.

Graeme Dey: I do not accept all that. In the context of the process of amendments and so on, there is another element. This is not a deflection; MSPs lodge amendments that were not dreamed up by the MSP, but have been given to the MSP by organisations. There is nothing wrong with that, but there is a lack of transparency in it.

11:45

Johann Lamont: My recollection is that, certainly for a member's bill, the member has to say whether amendments have been supported by anybody. It would be very unusual if that was not made clear.

You have said that, as a protection, this parliamentary committee, in the same way as others, can make recommendations and the Government will come back with an informed view.

Graeme Dey: Yes—and that view will have come from the Government having reflected on the committee's recommendations and the committee report, and responding accordingly.

Johann Lamont: If a stage 1 report says something challenging to a particular interest, whether it be to the farming community, a housing organisation, or the co-operative sector, and I, for example, as a representative of the co-operative sector said to you that you cannot do that because it would be really damaging, that lobbying would not necessarily be transparent. What if a farming group comes to you and tells you that you cannot support a recommendation in a stage 1 report? We are looking for transparency around how you come to form that policy view on a recommendation in a stage 1 report from a parliamentary committee.

The Acting Convener: Mr Dey, if you would answer that, we will then go to Mr Bowman, because he has been waiting very patiently.

Graeme Dey: Yes, he has.

I think that there has been a misunderstanding of the process and how we get to that point. The Government's view will be reflected in the original bill. During the committee's evidence sessions, things might come up that might influence the Government's thinking. There might be a clear reason why the committee has made recommendations, and the Government will accept those.

Johann Lamont: With respect, you have said that it is for this committee to make recommendations and you do not have a view, but you will have a view if we say something that you do not agree with, and we will not know how you came to that view.

Bill Bowman: My question is on a more simple aspect. You said earlier that the Government has no issues with implementation or operation of the act. In the earlier session today, we heard that there was an 11 per cent deletion rate of returns that come in. Could the Government be doing more about educating—if that is the right word—the public and informing them about the act as it is before we get into making changes? As we heard in this morning's discussions, people are looking for clarification on many areas of the act as it stands, never mind an enhanced act.

Graeme Dey: I go back to what I said earlier. The act is administered by the Parliament. If the Parliament suggests to the Government that, after two years of operation, there is a lack of understanding about what is or is not covered, that is something to be looked at, but it will come out through this process. The committee might well recommend that there is an issue to be addressed. I recognise the point that Bill Bowman has made; there could be operational aspects of the act that the Government is not readily sighted on and about which there are valid concerns. The 11 per cent rate of deletion could be one of those.

Bill Bowman: Is there no on-going interaction between the registrar and the Scottish Government on how things are going and issues that come up—perhaps such things as deletion rates?

Graeme Dey: I will bring Dougie Wands in on that. I remind Bill Bowman that the Government lodged the amendment that would bring us to this point, such that after two years there would be a review. It was always the plan to see how the act would operate and for Parliament to review it.

Dougie Wands: I will respond to Mr Bowman's question. It was for Parliament to implement the act when it came into force, and that is done day to day through the lobbying registrar's office. The committee has just heard from the registrar and the deputy registrar. We do not engage regularly with them about the operation or administration of the act; that is very much a matter for the registrar. We interact when there is a need to share information about, for example, changes in ministerial office-holders and so on, but beyond that we do not regularly engage about matters to do with implementation of the act.

The committee has heard concerns; some have also been captured in the registrar's annual reports. It was always intended that there would be an opportunity to review the system in the light of experience after two years of operation. The experience seems to be that certain elements of the act are causing confusion. The registrar's team has done a lot in terms of producing valuable guidance, but if issues of interpretation remain difficult, the committee might well make recommendations for adjustment.

Bill Bowman: I am sure that we will.

The Acting Convener: I am conscious of the time, minister, but there are a few brief questions to complete the issues that have been raised and that we want to cover in our report.

Is the current legal framework sufficiently robust when it comes to non-compliance with the 2016 act?

Graeme Dey: In the absence of evidence to the contrary, I have to say yes. However, evidence might come forward from this process that indicates otherwise.

The Acting Convener: Okay. Do you consider that there is enough scope in the legal framework to bring to light any undue influence or improper lobbying practices?

Graeme Dey: I would have to give the same response in that regard. I am not aware of anything, but, again—

The Acting Convener: Do you think that undue influence or improper lobbying do not exist, or that we do not have sufficient ways of finding out whether those practices exist?

Graeme Dey: What reason is there to believe that that is the case? If there is evidence that that is the case, we should look at it. That approach applies to all the processes.

The Acting Convener: You do not think that any exists.

Graeme Dey: I am not aware of any.

The Acting Convener: In the earlier evidence session, the registrar gave, I think, three specific examples of minor legislative changes that are required. You might not have heard that, minister, because you were waiting to come in.

Graeme Dey: No, I did not hear that.

The Acting Convener: I presume that you will consider the examples. It would be really helpful if you could provide the committee with a response.

Graeme Dey: We can easily do that. Our engagement with the process is to hear what the committee will recommend and respond to it, but if you would like us to have a look at that evidence and respond—

The Acting Convener: I ask that you look at that, in case you have a view on the proposals.

Graeme Dey: Okay. We will have a look and write to you.

The Acting Convener: If you have a view, please share it with us.

Graeme Dey: Absolutely.

The Acting Convener: The final question is about how the 2016 act and the registrar and so on operate. Does the Government still subsidise the cost, or is that part of the Parliament's budget?

Graeme Dey: The Parliament comes to the Government with a budget ask. That process is overseen by the Finance and Constitution Committee. To the best of my knowledge—Dougie Wands will tell me if I am wrong—that has never been rejected by the Government. Contained in that is funding for the 2016 act. If the Parliament came asking for an enhanced amount, and it was justified through the process, the Government would fund it. There is no impediment.

The Acting Convener: No member has any further questions, and the minister does not wish to make a final comment. I thank Mr Dey, Dougie Wands and Al Gibson—who has been joining us remotely—for their evidence.

11:52

Meeting continued in private until 12:08.

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