

Public Audit and Post-legislative Scrutiny Committee
Post-legislative scrutiny of The Lobbying (Scotland) Act 2016
Submission by Murray Blackburn Mackenzie

We support a legislative approach to the regulation of lobbying activity. Lobbying in good faith on behalf of an interest group is a legitimate activity in a democracy. The 2016 Act enables greater transparency which in turn increases the legitimacy of law and policy-making processes. We have a number of comments to make about the operation of the Act:

1. Mode of communication

The Act regulates lobbying activity that takes place orally and undertaken face to face. This includes lobbying conducted via video conference. Given the restrictions in place as a result of the Covid-19 pandemic, it seems likely that very little in person, face to face lobbying is taking place, and that this has been largely supplanted by video conferences. Video conferencing applications such as Skype and Zoom can be used without the video function or with the video function actively disabled. Given that restrictions on the ability to meet in person are likely to remain in place for some time to come, the Committee may wish to review the type of interactions covered by the Act, to ensure that current stipulations cannot be easily circumvented.

2. Information returns and reporting

The guidance states that registrants must submit information returns no later than two weeks after the end of each six-month period. It is not clear what action is taken when registrants fail to comply with this requirement. We suggest that the Committee queries how often non-compliance has occurred since the Act came into force and what actions were taken in response. We also suggest that there should be a mechanism for indicating when a registrant has failed to update the register in line with the statutory requirements.

To better realise the benefits of the Act in terms of transparency and public accessibility, we suggest that data from the lobbying register is analysed and reported on, in the form of an annual report that details lobbying activity by sector, and within this, by organisation.

3. Scope of the Act

Aside from Special Advisers, the Scottish Government Permanent Secretary is the only civil servant covered by the Act. However most lobbying of civil servants is likely to be directed at the grades below. We suggest that the Committee takes this opportunity to consider the merits of extending the scope of regulated lobbying activity directed at the Scottish Government to civil servants at Director-General and Director level, as these are also roles which function predominantly as senior influencers in government, rather than having immediate responsibility for specific policy areas. Contact with Deputy-Directors might also be considered, as a critically influential group, although we understand that the scale of day to day contact with outside organisations at that level might argue against that, both in terms of workload and the quantity of data generated. We would invite the Committee to consider further proportionate ways to track lobbying of civil servants more comprehensively.

The Act does not cover some small organisations, defined as those with fewer than ten full-time equivalent employees, unless one of their principal purposes is to represent the interests of others. We suggest that these criteria are overly broad and may exclude some small organisations that exert substantial influence on government decision-making and parliamentary activity. We therefore think that the criteria for exclusion might be qualified further. In particular, Committee members may wish to consider including small organisations that are majority Scottish Government funded within the scope of the Act, at minimum in relation to their parliamentary lobbying activity.

4. Equity of access

In '*Principles for Transparency and Integrity in Lobbying*', the Organisation for Economic Co-operation and Development (OECD) states that 'Countries should provide a level playing field by granting all stakeholders fair and equitable access to the development and implementation of public policies' (2020: 5).¹

While analysis of data from the lobbying register has largely focused on lobbying by businesses,² we would like to draw the Committee's attention to the complex and close relationships between public and third sector organisations in Scotland, and the prevalence of co-production within policy-making. To secure a level playing field, we think that more attention needs to be paid to lobbying by third sector organisations, in particular by organisations which are majority funded by the Scottish Government.

The Committee might consider in particular what issues are raised by parliamentary lobbying in support of government proposals by bodies which rely substantially on the Scottish Government for funding.

Relatedly we think that consideration needs to be given to instances where groups or organisations have felt that access to decision-makers has been unduly or unfairly limited. For example, the feminist campaign group For Women Scotland has documented its difficulties in securing a meeting with the Cabinet Secretary for Social Security and Older People to discuss reform of the Gender Recognition Act, despite a commitment from the Cabinet Secretary to listen to women's groups.³

5. Additional suggestions

Recording lobbying activity is only one element of improving the transparency of law and policy-making processes. Members might also consider inviting organisations that are providing either written or oral evidence to parliamentary committees to lodge a short statement about how they are funded as a matter of routine. At minimum this might inform the Parliament who their largest single funder is, and what proportion of their income is derived from that source, but might be more detailed.

Members might also consider requiring organisations that are majority funded by the Scottish Government for three years or more to submit an annual written report to the Public Audit and Post Legislative Scrutiny (PAPLS) Committee outlining their activity. This could be a bespoke report, or simply follow the format of the report required to accompany their annual accounts. This report could detail any public engagement work over the past year, including any activity that falls within the scope of the Lobbying Act. PAPLS could reserve the right to invite any of those organisations in to give oral evidence on their activity.

25 August 2020

¹ OECD (2020) [Recommendation of the Council on Principles for Transparency and Integrity in Lobbying](#) OECD/LEGAL/0379

² Ferret (19 July 2020) [Exposed: the businesses that most often lobby Scottish ministers](#)

³ For Women Scotland (2019) [Consultation with Stakeholders](#)

ANNEX

[MurrayBlackburnMackenzie](#) is an independent policy analysis collective, made up of Dr Kath Murray, Lucy Hunter Blackburn and Lisa Mackenzie. Between us, we have extensive experience in policy-making, research and communications. We are Edinburgh based.

We formed in November 2018. All of the research and analysis we undertook initially was done on an unpaid basis.

To put our work on a more sustainable footing, over the past ten months, we have raised funds via two crowdfunders. In September 2019, we launched a [crowdfunder](#) to enable us to scrutinise the Scottish Government's plans for reforming the Gender Recognition Act 2004.

In May 2020, we launched a smaller [crowdfunder](#) to enable us to scrutinise the Scottish Government's draft Hate Crime and Public Order (Scotland) Bill.

Crowdfunder	Total amount raised	Number of supporters	Average donation
GRA reform	£8,780	293	£28.98
Hate crime	£3,430	108	£30.82
	£12,210.00		

Across both crowdfunders, we raised a total of **£12,210** (£11,413.75 after fees). We have also received offline donations via PayPal of **£447**.

The majority of these funds have been used to pay for our time. We have allocated the work between us based on our individual availability, paying ourselves an hourly rate of £15. However, we continue to supplement this with unpaid hours as necessary.