

Response ID ANON-H5RW-WFAF-A

Submitted to **Review of the Lobbying Act (Scotland) 2016**

Submitted on **2020-08-13 12:57:11**

About you

Please read the privacy notice below and tick the box below to show that you understand how the data you provide will be used as set out in the policy.

I have read and understood how the personal data I provide will be used.

What is your name?

Name:

Peter Duncan

What is your email address?

Email:

peter@messagematters.co.uk

Are you responding as an individual or on behalf of an organisation?

Organisation

Organisation:

Association for Scottish Public Affairs (ASPA)

What has changed?

In your view, what concerns was the Lobbying Act seeking to address?

Please enter your answer in the text box below:

It was clear during the passage of the Lobbying Bill that the majority of contributions from inside or outside Holyrood highlighted the legislation's potential to contribute to increasing transparency. Those who supported the introduction of regulations highlighted the need to understand more about the lobbying that was taking place, and to do so required a knowledge of what lobbying was taking place.

Additionally, there were regular suggestions during the passage of the legislation that the lack of transparency meant that Holyrood could be embroiled in some form of lobbying "scandal". It was our view then, and remains our view now, that this is a fundamental misrepresentation of the situation. In that respect, the legislation was a solution in search of a problem which did not exist. As the Scottish Government minister, Joe FitzPatrick MSP said during the legislative stages of the Bill in 2016:

"...we have fortunately not experienced the same difficulties regarding lobbying in Scotland, as have been seen at Westminster" and "The Scottish Parliament already has strict rules around lobbying activity".

Nonetheless, there was a consensus in Parliament that new regulations would further enhance the cause of openness and transparency.

We would point out, however, that there has been less interest in the information collected than was predicted at the time, and an almost complete absence of any evidence of unethical behaviour.

Two years on, has the Lobbying Act addressed those concerns?

Please enter your answer in the text box below:

ASPA takes the view that the ambition for transparency has been partially achieved, at least in the existence of a volume of information about face to face conversations that have taken place. Clearly more published information means greater transparency.

We believe, however, that this review of the legislation should consider what purpose has been served by the collection of this data. It has been valuable to informed observers, but there has been a notable absence of interest from the general public, and only occasional interest from the media on the public's behalf.

Given that, it is legitimate for the Committee, and the wider Parliament, to consider whether the increased transparency that has been brought about by the legislation has actually led to the public being better informed.

The "value" that has been added by the Lobbying Act may be seen to be that the Parliament has "at least done something" to widen the availability of information, which although of limited interest so far, may be of value in supporting investigations into real or perceived impropriety in the future.

The Act has also at least enforced a minimum standard in lobbying that must apply to anyone conducting regulated lobbying activity. We would, however, argue that a much higher standard is required of ASPA members who must all abide by our code of conduct if they are to maintain their membership of our Association. Our members have an obligation to abide by our internal standards as set out in the ASPA Code of Conduct, and also - crucially - to report for investigation any

other member who they believe to be falling below that required standard.

It is our general view that the legislation has not materially changed the way in which lobbying is undertaken when considered in the round. Largely, our members are undertaking a consistent and vigorous dialogue with MSPs, ministers, special advisers and the Permanent Secretary in the same way as they have done since the reformation of the Scottish Parliament. That having been said, we do have two observations to make which may have had an impact at the margin.

Firstly, there may well be some conversations happening with MSPs (and ministers, special advisers and the Permanent Secretary) by telephone rather than in person. By definition, the Act may have discouraged face to face interaction which we believe is a retrograde step.

Secondly, we believe that some events are particularly difficult for organisations to manage from a regulated lobbying perspective. At the margin, there may be events that would have happened otherwise but which either do not happen, or happen at a smaller scale, given the need to record and report on each individual conversation. There may be many attendees and many MSPs, ministers and special advisers, and that sometimes causes a real concern over accurately capturing every single conversation. Again, at the margin, some events may - in consequence - not happen as a result, or attendees may be restricted in order to better control recording.

It will be for the committee to judge whether these marginal impacts are welcome or not. In ASPA's view, we should be encouraging the widest possible interaction between the "outside world" and parliamentarians.

Do you support a legislative approach to regulating lobbying activity?

Please enter your answer in the text box below:

We accept that there was, and probably remains, a parliamentary consensus behind the Act. We accept that the prospects for rolling back some of the elements of the legislation are limited or non-existent. ASPA was sceptical before its introduction that the legislation was necessary, although we engaged positively during the legislative process to ensure that the Act would be as well-informed as possible. As the widest membership body for public affairs professionals in Scotland, we believed we should be as practical as we could in helping the final legislation be as good as it could be.

The time since has - in our view - demonstrated that those involved in lobbying in Scotland are performing a valuable role. We are informing and supporting vigorous debate in Parliament, and that is a good thing. We welcomed the Government's explicit support for the legitimacy of lobbying during the Act's parliamentary stages in 2015 and 2016. We believe nothing has changed, and the time since has accentuated the view that Holyrood is a better Parliament as a result of the many diverse outside organisations seeking to take part. Holyrood must never be closed to the outside world and the diverse interests who want to inform their debates.

We remain sceptical, but realistic. We do not believe the benefits of the regulations have outweighed the costs, but believe that argument has been lost and we do not argue for the removal or rolling back of the regulations as they stand. The Act is not going to be reversed, or repealed, but we can make it better, particularly in the way it has been implemented.

Our view has changed and we are pragmatic, but believe that Parliament can also be pragmatic in improving many of the arrangements that surround compliance with the regulations. For that reason, we would ask the Parliament to hold to two high level principles in its review of the legislation.

Firstly, that the regulation of lobbying should be as level a playing field as possible. A wide variety of individuals and organisations undertake lobbying, and they should be largely subject to the same regulatory burden.

Secondly, we argue that the costs of compliance should remain as low as possible - we will vigorously oppose any suggestion that Lobbying Act compliance should cost the lobbyist. That would be a substantial barrier to external engagement in the Parliamentary process and must be avoided. Similarly, attention needs to be focused on the administrative burden falling on the person or organisation registering the lobbying activity, and it must ensure that processes are both necessary and proportionate.

These two principles are rooted in fairness, and must underpin the legislation going forward.

Improvements without legislation

In your view, is the Lobbying Act working in the way it was intended?

Please enter your answer in the box provided.:

ASPA's view is that there is a need for significant improvement in the user interface for recording information on the register. As the burden of recording has been placed on the external organisation to record regulated lobbying, rather than it being recorded by the MSP, the minister, the special adviser or the Permanent Secretary, there is a need for the Lobbying Registrar to significantly improve the process for recording.

We appreciate that there are budgetary constraints, but the user experience in completing register entries is far short of what should be expected. The process of data entry is cumbersome, requires needless time to repeat information to be entered, requires far too frequent intervention before it is approved, and in consequence means that data recording is more expensive and a greater disincentive to engagement with the Parliament.

We are disappointed that so long after implementation, there has been no progress in producing a mobile app which would be of significant benefit for small and occasional lobbyists, or on a process for uploading multiple entries by spreadsheet, which would be of major benefit to larger more frequent lobbyists. Both should now be a priority.

Improvements requiring legislative change

Could the legislation be improved in any way? If so, please indicate why and in what way.

Please provide your response in the box below.:

In particular, do you have any views on whether changes should be made to the following (please indicate why and in what way):

Please provide your answer in the box provided:

It is ASPA's view that the Act covers the right people, and does focus reporting on those who have the greatest impact on Government and Parliamentary decision making. We believe that extending the Act beyond these groups would add significantly to cost and administrative burden without significant utility in improving meaningful transparency.

In particular, there has been periodic suggestion that the regulations should be extended to include more junior civil servants - but we are strongly of the view that the routine exchange of information with Scottish Government staff should not be impacted. Fundamentally, awareness of the civil service grade structure is limited, and therefore we believe that the introduction of such an extension to the regulations would lead to a significant reduction in engagement with Scottish Government staff for fear of triggering administrative burden.

The regulations, accepting the aim of capturing all face to face attempts to "inform and influence" those who can make strategic decisions, do capture the right group of people.

Please provide your answer in the box provided.:

We take the view that the correct communications are captured by the Act. As was successfully argued during the Act's passage, face to face contact is the most significant and influential contact, and any attempt to extend beyond this would be counter-productive in terms of significantly increasing the administrative burden of compliance whilst not increasing the utility of extended transparency.

We continue to make the case for regulations to be proportionate, and believe that any extension beyond face to face meetings and video-conferences would be disproportionate, unsupported by evidence of a problem, and could cause a significant increase in administrative burden.

That having been said, when the regulations were drafted to capture video-conferencing, neither the Parliament nor those consulted on the introduction of regulations could have anticipated the COVID-19 pandemic, and the massive impact the introduction of constraints on face-to-face meetings that was introduced in March 2020 and through which we are still navigating.

Clearly, those restrictions have resulted in a significant expansion of the use of video-conference facilities, and a further reflection on the guidance for recording them should be considered. Does a video-conference call (using Zoom, for example) where video is turned off by the MSP, but kept on for others, avoid it becoming registerable activity? ASPA would support further guidance to clarify this area.

Please provide your answer in the box provided.:

ASPA takes the view that publication of fees for professional lobbying would be administratively undeliverable and practically of little value to those looking to widen awareness of lobbying. Whether our members are working in-house for a charity or working for a lobbying consultancy, it would be very difficult to identify the costs of lobbying activity, and potentially expensive to produce. How would an in-house communications professional account for his/her time and that of management and admin staff in preparing for a single meeting with an MSP? Given the inter-relationship between lobbying and wider PR/comms activity, how would a lobbying consultant know how to separate out lobbying costs from an integrated communications contract? And, in either case, how would the information be verified as accurate?

We also suggest that some of the most effective lobbying is often undertaken for free, whilst some of the most expensive is often ineffective. Given that, what value is served by placing a value, potentially arbitrary, on lobbying activity? ASPA suggests that publication of costs and fees would make no contribution to meaningful appraisal of Holyrood lobbying activity.

Bill assumptions v. reality of the Act

Have assumptions made at the Bill's introduction in its Financial Memorandum and Policy Memorandum and during its passage through Parliament held true (for example, on costs or impact) and, if not, why not?

Please enter your response in the box provided.:

We note that the number of registrations being completed is at the very high end of what was anticipated, and that the cost of administering the legislation has risen as a result. Beyond that, we have no observations to make about the cost of administering the legislation by Parliament.

It is ASPA's view that the costs of compliance are also at the very top end of that which was anticipated when considering costs by those registering. That is why we make the observations above about improving the system's usability in order to minimise costs of compliance and reduce the chances that costs will result in reduced interaction between the Parliament and the outside world.

Any other points

Are there any other issues you would like to raise in connection with the operation of the Lobbying Act?

Please provide your answer in the box provided.:

We believe that the Act should provide a level playing field across the diverse range of individuals and organisations undertaking lobbying activity.

In that spirit, ASPA notes that the use of the constituency exemption has been much greater than would probably have been anticipated at the time of the Act's passing. We believe the spirit of those legislative exemptions was that the regulations should not capture the ability of an individual to make representations to their member of the Scottish Parliament, or indeed a Minister in the Scottish Parliament. We would observe that, in fact, there is widespread use of this exemption and that often the individual contact with a local representative is actually part of a wider systematic engagement, and Parliament should consider whether the

regulations should in fact capture that activity.

We also note that the small organisation exemption further creates an uneven playing field. One charity with 9 staff is treated differently than one with 11 staff, and that seems counter-intuitive. Were the Act to apply evenly, minimising compliance costs on very small organisations would act as a welcome break on excess administrative burden for all.

We are concerned by the excess burden placed on the organisers of large events, with burdensome requirements to register individual conversations between a large number of attendees on behalf of lobbyists, as well as a large number of MSPs, ministers etc. Our members believe there must be a more proportionate way to record engagement at these events rather than individual conversation recording. Furthermore, at events where it is not clear who is in the audience, we believe a significant challenge exists in noting, and being sure, when or if an MSP or Special adviser (for example) is in the audience.

We have been told by members that some people attending Cross Party Groups do not take part in the conversation during any time when there is only one MSP in the room as they do not want to be seen to be lobbying. We would suggest that Cross Party Group meetings – whether quorate or not – should not fall within the scope of the Act as these meetings are already transparent, open to all and minuted.

We believe it may be proportionate to review the exemption provided for instances where face to face meetings take place at the request of an MSP or Minister. We have no evidence to offer here, but do believe that there must be examples of invitations being extended with the express objective of removing the requirement to register. We question whether that is in the public interest, and whether it would be clearer and not particularly burdensome to remove this exemption.

ASPA would like to place on record its appreciation for the way in which the Registrar and his staff have engaged widely before, during and after implementation of the regulations. They have been patient and appreciated in the way they have supported members in compliance. Whilst there are always examples of advice varying in the interpretation of individual circumstances, their contribution has been welcome and helpful. We note the absence of non-compliance and disciplinary action, and believe that the helpful-first approach has been a major contributory factor.

If you or your organisation are on the Scottish Lobbying Register, would you be happy to provide a little more information about your lobbying and engagement activities?

No

Evaluation

Was this Call for Views submission tool easy to use?

Easy to use

Why did you feel it was, or was not, easy to use?:

Do you think this Call for Views submission tool provides a good way for you to get involved in the work of Parliament?

Yes

Please explain the reasons for your answer?: