

SCVO response to Scottish Parliament

Post-legislative Scrutiny The Lobbying (Scotland) Act 2016

13 August 2020

About SCVO

The Scottish Council for Voluntary Organisations (SCVO) is the national membership organisation for the voluntary sector. We champion the sector, provide services, and debate big issues. Along with our community of 2,000+ members, we believe that charities, social enterprises, and voluntary groups make Scotland a better place.

Scotland's voluntary sector

The Scottish voluntary sector encompasses an estimated 40,000+ organisations, from grassroots community groups and village hall committees to more than 6,000 social enterprises, nearly 25,000 registered national charities, and over 100 credit unions. Scotland's voluntary organisations are focused on delivering vital services and empowering some of Scotland's most marginalised communities. They also have a big role to play in protecting Scotland's environment as well as campaigning and advocating for change. Together, they employ over 100,000 paid staff, work with over 1.4 million volunteers, and have a combined annual turnover that reached £6.06bn in 2018. This includes a range of mixed-income sources such as contracts, grants, and fundraising.

Our position

When consultation on the Lobbying (Scotland) Bill was launched in October 2015 SCVO made clear our opposition to the creation of a lobbying register, even going so far as to say that we feared the act may have a ‘chilling effect’ on the lobbying activity of Scotland’s voluntary sector. The Scottish Parliament was founded on the principle of “*a participative approach to the development, consideration and scrutiny of policy and legislation*” and engagement with our membership at the time suggested that the erection of any barriers could restrict or discourage voluntary sector organisations from participating in policy processes.¹

However, in recognising that the establishment of a lobbying register was highly likely, SCVO’s submission also stated:

“...we would not oppose the introduction of a register of lobbyists provided that it is light touch, does not cause an undue bureaucratic burden for the third sector organisations that complete it and is balanced by an increased responsibility on MSPs to be transparent”.

Five years on, SCVO’s position remains much the same. We remain unconvinced there is endemic malpractice in lobbying within Scotland. We remain unclear as to what the Act truly seeks to achieve (and therefore whether the Act has been a success) and also consider that compliance with the register places an additional and potential restrictive burden on the operations of Scotland’s voluntary sector. However, as at SCVO, we have detected a general softening of attitudes within the sector and there appears to be an overall acceptance that the register offers useful insight into lobbying behaviour in Scotland. Our engagement work also suggest that some organisations are more in favour of the register than others and many have indicated that they are happy to continue contributing to lobbying transparency, so long as the Act fulfils this purpose and it is understood how compliance with the register can help to deliver this.

Scotland’s voluntary sector has enjoyed strong relationships with MSPs of all parties since the Scottish Parliament was reconvened in 1999 and has contributed greatly to political discourse and the drive for positive change in our society. We are pleased to see that this can now be evidenced, with the Lobbying Register Annual Report 2019 showing that:

¹ http://www.parliament.scot/ResearchBriefingsAndFactsheets/S4/SB_15-79_Lobbying_Scotland_Bill.pdf

“the largest percentage of overall Information Returns published by organisational type was Charity, Trust or Advocacy Body with 2736 (40%)”²

In reality, we consider this figure to be a low estimate of the work the sector carries out, considering that many voluntary organisations are exempt from the register due to their smaller size, or spend less than 20% of their time on lobbying activities. On top of this, the failure to adequately define ‘Representative Bodies’ (who make up 25% of all submissions) in the Explanatory Notes of the Act, has led to the suggestion that voluntary sector organisations and voluntary sector intermediary bodies have fallen in to this category.³

Voluntary sector engagement

As part of our work on this submission, SCVO has engaged widely with Scotland’s Voluntary sector to more fully understand the experiences of our members. This included a Webinar session with members of SCVO’s Policy Network (comprising policy professionals from across the sector) and the creation of a survey which was sent to all members of the Policy Network between 23 July and 03 August. The findings from this survey are referenced in the relevant sections below.

Efficacy of the Act

SCVO and many of our members remain unclear as to what the Act truly sought to achieve and therefore find it difficult to comment on how successful, or otherwise, it has been.

Broadly, the Act seeks to “*increase public transparency about lobbying*”. In reality, what the act provides is a list of *some* of the face-to-face meetings that take place between organisations and MSPs, Ministers and Civil Servants. Whether this meets the threshold to be considered ‘transparency’ is debatable.

By focussing solely on face-to-face meetings, it is clear that a vast amount of communication and lobbying activity is not covered by the Act or the register. If the aim of the Act is to cast a light on lobbying activity or to build a picture of the range of lobbying organisations at work in Scotland, it is hard to justify why only face-to-face meetings are worthy of registration.

² [https://www.parliament.scot/LobbyingRegister/Scottish Parliament Lobbying Register Annual Report 2019.pdf](https://www.parliament.scot/LobbyingRegister/Scottish%20Parliament%20Lobbying%20Register%20Annual%20Report%202019.pdf)

³ [https://www.parliament.scot/LobbyingRegister/Scottish Parliament Lobbying Register Annual Report 2019.pdf](https://www.parliament.scot/LobbyingRegister/Scottish%20Parliament%20Lobbying%20Register%20Annual%20Report%202019.pdf)

When asked whether the Act should be expanded to include other forms of communications, 68% of respondents to our survey indicated that they thought it should.

The experience of Scotland's voluntary sector would also suggest that, unless a specific request or ask is made of an MSP, Minister or Civil Servant, this will not be considered as lobbying by the lobbying team, and does not need to be included in the register. In practise, this creates the hypothetical scenario whereby an organisation could meet face-to-face with a Minister to discuss generalities, follow up with a specific ask by email a week later and not be subject to the lobbying register.

Furthermore, the Act established a 'constituency exemption' to ensure *"communications which businesses and organisations have with their constituency or regional MSPs will continue unchanged"*. The guidance produced by the Lobbying Register team freely admits that this is difficult to define:

*"The Act does not provide a specific measure for the level of business or activity undertaken in a constituency or region necessary for this 'local' exemption to apply."*⁴

As such, it is feasible that organisations with operations across the country could present what is, in effect, a national issue as a local one. Again, there would be no requirement for this to be registered as lobbying.

Opinion within the sector as to the continuation of this exemption was closely split, with our survey showing that 57% believed the exemption should be retained, while 43% did not believe it should.

Some concerns have also been raised about the six month registration period – whereby an organisation is required to submit and finalise all returns every six months from the date on which the first instance of regulated lobbying took place. While many organisations submit returns routinely, others will choose to collate all activity and submit shortly before the six month deadline. This relatively lengthy timeframe could mean that instances of lobbying or influencing on 'live' legislation may not become publicly available until after legislation is passed. Arguably this has led to the creation of a register which does not provide 'real time' transparency.

⁴ <https://www.parliament.scot/LobbyingRegister/2018.02.22ParliamentaryGuidance1stEdition.pdf>

Fundamentally, the Act is built entirely on trust. The onus to register instances of lobbying falls solely on organisation registering their activity. Even when making every effort to comply, the reality is that some interactions will be overlooked and not lodged. This, again, raises the question as to whether MSP, Ministers and Civil Servants should do more to contribute to transparency around lobbying in Scotland – perhaps by publishing diaries, submitting lobbying returns of their own, or by adding own comments to submissions relating to them.

In our survey of the Policy Network, there was a unanimous view that MSPs, Ministers and Civil Servants should contribute to transparency. Within that view, 35% of respondents believed this should be *instead* of the Lobbying Register, while 65% believed this should work in tandem with the Lobbying Register.

The Register in practise

Ahead of the implementation of the Act and the establishment of the Lobbying Register, the Lobbying Register team worked closely with SCVO and our members to ensure the Register operated effectively and that organisations had a good foundational grasp of what would be expected and required of them. This included presenting to SCVO members and attending a roundtable discussion where organisations could voice questions and queries of the Act and its operation. Most recently we hosted a webinar session with our Policy Network to discuss and share experiences of using the lobbying register and to better understand members' views on how the system could be improved.

We were pleased to see much of this work reflected in the guidance that was ultimately issued and note that the Lobbying Register team have been extremely helpful and accommodating of the voluntary sector in handling enquiries around the Act and the register since its inception.

A primary concern for SCVO ahead of the implementation of the Act was that it would cause an initial bureaucratic burden on our members. While going from no form of registration to some form of registration would inevitably create additional workload, we are now in a better position to understand the impact of this.

In our survey, 79% of respondents said that the introduction of the Act had placed an additional burden on them. 65% of organisations have a dedicated member of staff who handles lobbying register submissions. 9% of organisations spend up to 4 hours per month on Lobbying Register Activity, while 48% spend

around 2 hours per month and 44% spend an hour or less. We were pleased to note that, broadly speaking, the Act has had no negative impact upon the way voluntary organisations undertake lobbying work, with 91% saying it had no negative impact, versus 9% who said it had.

A frequent concern raised by voluntary sector organisations related to the need for correction and resubmission of entries, with 64% of respondents to our survey saying that they had submissions returned. Often it was requested that an organisation re-submit an entry because information had not been repeated in certain fields, or, for example, because an MSP's constituency had not been named.

There was a strong agreement that the registration form could be streamlined to reduce the need for re-iterations of the same information, or the need to include very particular (but seemingly insignificant) details. Our survey found that 82% of respondents found submitting to the register a 'cumbersome' task.

There was also a general feeling from the Policy Network that the sector's understanding of what lobbying is did not reflect the more rigid interpretation defined in the Act and its associated guidance. When asked if the Act's definition of lobbying was the same as their organisation's understanding of lobbying, 73% of respondents said that it was not.

On many occasions, entries have been refused because they were not deemed to constitute regulated lobbying or did not contain a specific 'ask' of an MSP, Minister or Civil Servant. It was suggested by some members that, if organisations had gone to the trouble to lodge information they deemed to constitute lobbying activity, this should be included in the register – so long as the information was entered accurately. We consider that this misunderstanding of what constitutes lobbying helps account for the high level of returned submissions.

Many organisations raised the issue of party conferences, events and exhibitions and the spike in lobbying related work this creates. Organisations hosting an exhibition stand in Parliament, for example, will speak with dozens of MSPs over two days and will rarely deviate from a specific subject matter. Despite this, the organisation would be required to submit dozens of individual lobbying returns to comply with the Act. When asked if a process of bulk submissions should be introduced for these kind of events, 96% of respondents agreed that it should.

Conclusion and recommendations

While we can clearly identify a range of opinion within Scotland's voluntary sector regarding the Lobbying Act, our survey and member engagement has helped identify particular key themes and shared concerns relating to the efficacy of the Act and the operation of the Register.

Our initial fears that the Act could create a chilling effect on the sector appear to have been largely unfounded, and the vast majority of the sector has adapted well to the new legislation and continues to add important ideas and opinion to our political discourse and the function of our Parliament. This is perhaps best underlined by the fact that (collectively) the voluntary sector carries out the greatest volume of lobbying activity in Scotland.

Despite this, it is clear that an additional burden has been placed on organisations at an already difficult time and that many find the process cumbersome, time consuming and lacking in clarity as to what constitutes lobbying.

On the overall efficacy of the Act, we cannot provide a clear and united 'sector view'. Instead, we were able to identify concerns regarding the practical application of the Act and the operation of the register and believe that many of these shortcomings can be addressed simply and in collaboration with the Lobbying Register team.

To improve the Act, we would make the following recommendations:

- Introduce a process of bulk submissions for events, exhibitions and party conferences
- Streamline the lobbying register form – removing the need for reiteration of specific detail
- Accept submissions that organisations consider constitute lobbying activity
- Introduce a code of conduct to prevent misuse of constituency exemptions
- Ensure the register provides 'real time' transparency of lobbying activity and not potentially outdated entries
- Expand the Act to include other lobbying communications – instead of exclusively face-to-face meetings
- Introduce a process to allow MSPs, Ministers and Civil Servants to contribute to transparency

We believe the acceptance of these recommendations would serve a dual purpose – enhancing transparency and ensuring compliance with the act is easier and less burdensome for voluntary organisations.

SCVO and our members would be happy to work closely with the Committee and the Lobbying Register team to ensure any changes and amendments are workable and effective and look forward to engaging in further discussions around the Act and its function.

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