

## **LOBBYING TRANSPARENCY BILL – NEIL FINDLAY MSP**

### **SUMMARY OF CONSULTATION RESPONSES**

This document summarises and analyses the responses to a consultation exercise carried out on the above proposal.

The background to the proposal is set out in section 1, while section 2 gives an overview of the results. A detailed analysis of the responses to the consultation questions is given in section 3. These three sections have been prepared by the Scottish Parliament's Non-Government Bills Unit (NGBU). Section 4 has been prepared by Neil Findlay MSP and includes his commentary on the results of the consultation.

Where respondents have requested that certain information be treated as confidential, or that the response remains anonymous, these requests have been respected in this summary.

In some places, the summary includes quantitative data about responses, including numbers and proportions of respondents who have indicated support for, or opposition to, the proposal (or particular aspects of it). In interpreting this data, it should be borne in mind that respondents are self-selecting and it should not be assumed that their individual or collective views are representative of wider stakeholder or public opinion. The principal aim of the document is to identify the main points made by respondents, giving weight in particular to those supported by arguments and evidence and those from respondents with relevant experience and expertise. A consultation is not an opinion poll, and the best arguments may not be those that obtain majority support.

Copies of the individual responses are available on the following website  
<http://www.neilfindlaymsp.com/lobbying-consultation-responses/>

Responses have been numbered for ease of reference, and the relevant number is included in brackets after the name of the respondent.

Lists of respondents, both numbered and alphabetical, are set out in the Annexes.

## SECTION 1: INTRODUCTION AND BACKGROUND

Neil Findlay's draft proposal, lodged on 6 July 2012, is for a Bill to:

require certain individuals and organisations who lobby MSPs, Scottish Ministers or relevant public officials, either on their own account or on behalf of third parties to record relevant information about their lobbying activity in a published register.

The proposal was accompanied by a consultation document, prepared with the assistance of NGBU. This document was published on the Parliament's website, from where it remains accessible:

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/29731.aspx>.

The consultation period ran initially from 9 July to 29 October 2012. The deadline for responses was subsequently extended to 7 November 2012.

The following organisations and individuals were sent copies of the consultation document or links to it:

897 messages were sent out to various organisations and people notifying them of the consultation. The type of organization and people notified included MSP'S, Parliamentary researchers, Non-Departmental Public Bodies, Public Corporations and other Public Agencies, Local Authorities, Charities and Third Sector, Commercial Lobbyists, In-House Lobbyists, NGO'S and Campaigning Organisations, previous respondents to the Standards Committee Consultation in the first parliamentary session, business groups and Trade Bodies.

A few weeks before the launch of the consultation there were stories in the Sunday Herald, Herald and PA Newswire reporting that Neil Findlay MSP was intending to launch a consultation. When the consultation was launched there was further coverage in the Sunday Herald, Evening Times and PA Newswire. During the consultation Neil Findlay organised a meeting with Unlock Democracy and the Electoral Reform Society highlighting how the consultation was still ongoing. He was also invited to address an ASPA meeting made up of an audience of, predominately, lobbyists.

The consultation exercise was run by Neil Findlay's parliamentary office.

The consultation process is part of the procedure that MSPs must follow in order to obtain the right to introduce a Member's Bill. Further information about the procedure can be found in the Parliament's standing orders (see Rule 9.14) and in the *Guidance on Public Bills*, both of which are available on the Parliament's website:

- Standing orders (Chapter 9):  
<http://www.scottish.parliament.uk/parliamentarybusiness/26514.aspx>
- Guidance (Part 3):  
<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/25690.aspx>

## SECTION 2: OVERVIEW OF RESPONSES

In total, 491 responses were received. Of these, 417 were responses collected via an online survey conducted by Unlock Democracy, which reproduced some of the key questions within the consultation. The remaining 74 were responses made directly to the consultation.

The 74 direct responses can be categorized as follows:

- 21 (28%) from individuals
- 25 (34%) from representative organisations
- 14 (19%) from charity/campaign organisations
- 6 (8%) from trade unions
- 4 (5%) from public sector organisations (including NDPBs and local authorities)
- 1 (1%) from a private sector organisation (Stuart Crawford associates)
- 2 (3%) from a politicians (Margaret McDougall MSP and Elaine Murray MSP)
- 1 (1%) from a regulator (Office of the Scottish Charity Regulator – OSCR)

Readers may wish to note that The Alliance for Lobbying Transparency is a coalition of NGOs and Trade Unions established in response to concerns about the growing influence of professional lobbyists. The Alliance is categorised as a representative organisation for the purposes of this summary.

One individual respondent wished their response to remain anonymous. There were four late submissions, however these late responses were accepted.

Of the direct responses, Twenty-one (28%) were in identical or very similar terms, which appear to have been the product of a coordinated campaign. These responses were from a range of individuals, MSPs and from Unite the Union. They were all supportive of the need to legislate.

Forty-nine of the direct responses (66%) were broadly in favour of the bill proposals. 15 (20%) did not support the proposals while 9 (12%) were unclear or undecided. One (1%) declined to answer. Additionally, Unlock Democracy's survey was overwhelmingly supportive of the general aim of the proposed Bill with 401 of 417 respondents (96%) being in favour, 12 (3%) undecided and four (0.2%) who declined to answer.

Combining the individual responses with the survey response gives combined totals of 450 (91%) in support of the proposal, 15 (3%) against it, 21 (4%) unclear or undecided and 5 (1%) against it.

All public sector organisations and individuals were in favour of the Bill's aims as were most trade unions and charity/campaign organisations.

The 25 representative organisations were split, with a majority of 12 (48%) against the proposals, six (24%) in favour and seven unclear or undecided. Of the six trade unions, five were supportive, while one offered qualified support to the proposals.

Key issues emerging in support of the bill were that the proposed legislation would promote equality of access to Parliament for organisations of all sizes and differing resource levels. It was also felt that increased transparency would improve accountability, assuage fears that influence can be bought and, ultimately, prevent the type of lobbying scandal seen at Westminster from happening in Scotland.

Those opposed to the proposal were concerned that the establishment of a register of lobbying activity would be a disproportionate response for Scotland, where it is felt that there have been no major lobbying issues. Some respondents believed that the onus should be on MSPs to provide detail of lobbying activity, not the organisations lobbying since some of them are small and lack resources. Other respondents expressing doubt about the proposed bill felt that it could disadvantage smaller organisations and charities, especially if fees are charged. Thresholds and exemptions were proposed to address this.

It was pointed out that the bill could have the opposite effect to that intended if smaller organisations are discouraged from registering because of expensive or onerous processes.

Some of those who felt that the proposed bill was disproportionate argued that it would make more sense to tackle the issues through the Members' Code of Conduct and Freedom of Information legislation.

- **SECTION 3: RESPONSES TO CONSULTATION QUESTIONS**

This section sets out an overview of responses to each question in the consultation document.

**GENERAL AIM OF PROPOSED BILL**

The proposed Bill aims to ensure that lobbying in Scotland is made as open and transparent as possible by introducing a statutory register containing some basic information that describes lobbying activity. To ensure that a register is effective requires an understanding of what constitutes lobbying and lobbyists. Defining lobbying and/or a lobbyist is a vital part of this consultation.

Respondents were asked:

**Question 1: Do you support the general aim of the proposed Bill (as outlined in Section 1 above)? Please indicate “yes/no/undecided” and explain the reasons for your response.**

73 individual respondents (99%) answered this question, with 44 (60%) being in favour of the general aim of the proposed bill and a further five (7%) expressing support with reservations.

Fifteen (20%) opposed it, and nine (12%) were undecided or expressed no clear view.

Unlock Democracy’s survey was overwhelmingly supportive of the general aim of the proposed Bill, with 401 of 417 (96%) responding in favour, 12 (3%) undecided and four (0.2%) who declined to answer .

Combining the individual responses with the survey response gives combined totals of 450 (91%) in support of the proposal, 15 (3%) against it, 21 (4%) unclear or undecided and 5 (1%) against it.

The main reasons given for supporting the proposed Bill were:

- Establishment of a register would increase transparency in lobbying, which is a fundamental element of good governance, and would be a significant development in the transparency of the Scottish Parliament and Scottish Government, and in methods used by lobbyists.
- It would improve public knowledge of lobbying, accountability and democracy and help to improve public trust in the political system.
- It would help to address concerns about the ability to buy influence.
- It would ensure measures are put in place to avoid lobbying scandals such as those at Westminster happening in Scotland.

- The legislation is vital to enable Scotland to act in accordance with Nolan Principles and to uphold the Scottish Parliament's commitment to equality and access for all. The proposed Bill anticipates an intensification in lobbying practices and this legislation is "timely and appropriate".

The main reasons given for opposing the proposed Bill were:

- Responsibility for accountability should lie with MSPs/Ministers and not with those doing the lobbying.
- The proposals are disproportionate and seek to deal with a problem that does not exist in Scotland.
- There is a danger of legislative overlap if Westminster also establishes a lobbying register. There should either be a single register for the UK or lobbyists should only have to register on either register to practice anywhere in UK.
- Reservations about registration and the proposed level of detail to be disclosed. For example, the proposals suggest disclosure of financial information that could be commercially sensitive, confidential and/or misleading and could potentially be very difficult to ascertain for many organisations.
- Proposals may harm access and participation in the political process, rather than improving them, particularly if registration and disclosure of detail is costly or onerous for smaller organisations with limited resources.
- Privacy is valuable in discussions between business and government, and may be affected if meetings must be put on public record.
- Opposition to bringing in "blanket" regulation covering both commercial and non-commercial lobbying when many organisations, such as charities, are already regulated by statute to ensure they are transparent.

Other points made included:

- Proposals do not go far enough. They should also include a requirement for Ministers and MSPs to publish their diaries in relation to lobbying activity.
- Review and stronger enforcement of the existing MSP Code of Conduct and extending Freedom of Information legislation to cover individual MSPs and Ministers would be a more proportionate response.

## **IS LEGISLATION NECESSARY?**

### **Question 2: Do you agree that legislation is a necessary and appropriate means of improving lobbying transparency?**

Of the 74 direct respondents, 57 (77%) answered this question, with 43 of them (75%) agreeing that legislation is necessary. 18 (24%) disagreed, 6 (8%) were undecided or unclear while seven (9%) declined to answer.

Of the 417 responding to Unlock Democracy's survey, 372 (89%) agreed that legislation was necessary, 6 (1%) disagreed, 35 (8%) were undecided while 4 (1%) expressed no view.

Combining both sets of data gives a total of 415 out of 491 responses (85%) being in favour of legislating while 24 (5%) are not in favour of legislating, 41 (8%) undecided or unclear and 11 (2%) not answering the question.

Arguments in favour of legislation as the mechanism to take forward the principles behind the draft proposal included—

- Self-regulation of lobbying activity does not work, and makes it easy for those wishing to avoid disclosure to do so.
- The House of Commons Public Administration Select Committee (2009) was highly critical of voluntary self-registration schemes and recommended that statutory register is needed.<sup>1</sup>
- Legislation would fulfil the recommendation of the 1st Report, 2002 of the Scottish Parliament Standards Committee to create a statutory lobbying register.
- Legislation is necessary to provide transparency, and to clearly define and enforce best practice.
- Information on lobbying activity is currently hard to obtain; existing voluntary self-regulation schemes/codes lack effective complaints and disciplinary procedures and do not provide the level of transparency required for proper accountability.

Those arguing against a legislative requirement highlighted issues such as—

- Proposals seek to deal with a problem that does not exist in Scotland and are a disproportionate response.
- Responsibility lies with elected officials to ensure they behave appropriately, therefore it would be better to look at strengthening MSP/Ministerial Codes of Conduct/ Freedom of Information legislation

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<sup>1</sup> <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmpubadm/36/36i.pdf>  
Paragraphs 19 and 130.

and/or publishing Ministers', MSPs' and civil servants' diaries. These methods would be simpler and more cost-effective ways of providing transparency.

- The proposed measures could create a barrier to political engagement and participation if they impose an onerous cost/administrative burden on less well-resourced organisations such as charities.
- The legislation does not seek to create sector standards or practices but penalise those who engage in “lobbying” by requiring them to register and disclose meetings and communications.
- Restricting the register to include lobbying consultancies as in the proposed Westminster register may be a more appropriate approach.

Some respondents had mixed views on the need for legislation, including:

- Stonewall Scotland expressed support for a register covering commercial lobbyists but not lobbying by the voluntary sector.
- The Association of Teachers and Lecturers Scotland didn't necessarily believe there had been examples of abuse of power to warrant the proposed legislation, but believed it was better to have a system fit for Scotland than one imposed by Westminster.

### **APPROACHES ELSEWHERE?**

**Question 3: Is there any specific international approach to the regulation of lobbyists that represents a good model for developing an approach appropriate for Scotland?**

Thirty-four (46%) of the 74 direct respondents answered this question. Many of those acknowledged that no existing model is without problems. However, there was equal support for the Canadian and US systems.

The Canadian system does not include financial information, distinguishes between different types of lobbyist (corporate, in-house etc.) and some respondents believed it could be developed further for Scotland.

The US system includes some financial information.

The Confederation of British Industry also cited the Australian system as a possible model.

Additionally, the Electoral Reform Society Scotland suggested looking at the work of ALTER-EU on the success and failings of the EU Transparency register.

One individual suggested looking at systems in place in the Nordic countries and Iceland.

Other comments included:

- Friends of the Earth Scotland [2] expressed support for ALTER-EU's suggested changes to the EP/EC voluntary register relating to mandatory registration, greater financial transparency, under-reporting safeguards and publication of offenders' names.
- UNISON [11] stated that the Principles for Disclosure in the House of Commons Public Administration Select Committee Report on Lobbying (2009) would be a good starting point in designing the system.
- The Public Relations Consultants Association believed that their own Public Affairs register for UK lobbyists provides a better model than any international example.
- The Scottish Council for Development and Industry stressed that if international models are to be looked at, they should be Parliaments of countries of a similar size and population to Scotland, with similar level of powers and public trust in the legislative process.
- Alcohol Focus Scotland stressed that the register should clearly differentiate between lobbyists working for private interests and for the wider public interest. They believed that not-for-profit organisations are sometimes linked to commercial entities via governing structures or in other ways and this must be made clear on the register.
- A number of respondents believed that the recommendations of the Organisation for Economic Co-operation and Development (OECD) should be taken into account. OECD strongly recommends having a register of lobbying as central to good governance. Statutory change would be a good development for Scotland. It was noted that registration is increasing worldwide.
- UNISON [11] cautioned against wholesale importation of any foreign system and any regulation should be designed to fit the culture of political participation in Scotland and the working practices of the Scottish Parliament.
- The Association of Professional Political Consultants Scotland [8] stressed that any register should be developed in collaboration with all stakeholders.

## **DEFINITIONS**

**Question 4: What robust, comprehensive and sufficiently explicit definitions of lobbying and lobbyist can be developed and applied that will ensure all who lobby are captured under the proposals?**

### *UKPAC definition*

UKPAC support their own definition<sup>2</sup>, which was reproduced in the Member's consultation document, and a number of other respondents expressed their support for it too, although some stressed it may require development with stakeholders.

A number of individuals stated that it provides a "universal and level playing field" for all who lobby as part of their professional duties".

The Electoral Reform Society favoured a broad definition with exemptions and felt those in the consultation document were a good starting point. They believed the definition should include any "set of interests or undertaking that seeks to influence the content or form of legislation or policy decision of political, government or public agents".

### *Lobbying*

A number of respondents provided definitions of "lobbying", including:

"Lobbying is the professional practice of deliberately and intentionally informing and influencing the decisions made by policy-makers involved in the public policy process. It is the "process of seeking to shape the public policy agenda in order to influence government (and its institutions) and the legislative programme". In terms of registrable activity on a statutory register, lobbying refers to contact and/or communication with those working for and/or representing the institutions of government, as well as assisting lobbying through the provision of professional advice, strategy or counsel." [PRCA 40]

"Communication with public officials (elected or appointed) regarding: the formulation, amendment or adoption of legislation; the formulation, modification or adoption of regulation, policy or position of Government policy; the awarding of any contract, grant or other financial benefit by or on behalf of the Scottish Government." [UNISON 11]

The Chartered Institute of Public Relations [10] suggested defining lobbying as "activities carried out in a professional capacity, in the course of business or employment, which are designed to influence government or other social policy or to help others to influence government or other social policy".

Accountability Scotland [19] felt that the MSP's Code of Conduct Volume.3, sections 5-5.5, provides a useful and inclusive definition of lobbying and that this should be expanded to include newly evolving forms of economic activity such as third sector or social enterprise, which may take on public contracts but are largely self-regulating.

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<sup>2</sup> <http://www.publicaffairsCouncil.org.uk/en/resources/lobbying-definition.cfm>

YouthLink Scotland [39] said that the definition of lobbying must have clear parameters. Informal contact should not be included; it should focus on formal contact (consultation responses etc.). They felt it would be disproportionate for voluntary organisations to detail every informal contact made with civil servants.

The Jimmy Reid Foundation [49] stated that lobbying is anyone seeking to influence public policy (in-house or commercial). If they do this regularly, they're lobbyists.

Spinwatch [47] and Alliance for Lobbying Transparency [18] defined lobbying as a) arranging or facilitating contact with “public officials”; b) “Communication” with officials to influence legislation, regulation, or government policy, and for government contracts and grants; c) All work in support of the above, including supervision, planning and research; d) Financing think-tanks for lobbying on a particular issue.”

### *Lobbyist*

A number of respondents provided definitions of “lobbyist”, including:

“A lobbyist is either a paid employee or paid by a client, or receives other compensation to undertake lobbying activity”. [Unlock Democracy 53, Alliance for Lobbying Transparency (their definition)]

“A lobbyist is either a paid employee (in-house) or is paid by a client to undertake “lobbying activity””. [Spinwatch 47, Alliance for Lobbying Transparency 18]

“A lobbyist is a professional who performs the practice of deliberately and intentionally informing and influencing the decisions made by policy-makers to reflect the interests of the lobbyist, or the interests of a party the lobbyist represents, in the public policy process. This includes contact and/or communication as well as assisting lobbying through the provision of professional advice, strategy or counsel” [PRCA 40]

“A lobbyist is any professional, individual or organisation who seeks to influence policy or political decisions through meeting with, or making direct representations to, Government Ministers and senior civil servants and other key decision-makers” [Sheila McKechnie Foundation 14]

[A lobbyist is] “Someone who is either a paid employee or is paid by a client or receives other compensation to carry out “lobbying activity”” [UNISON 11]

### *What to include*

University and College Union Scotland [4] believed any definition of lobbyist should include all lobbyists, not just professional lobbyists.

Epilepsy Scotland [6] pointed out the difficulties for charities in articulating where information-sharing ends and lobbying begins and recommended a short-term working group to consider definitions with third sector representation to consider definitions.

The Royal College of Nursing [33] believed that the definition of lobbyist must be limited to those who lobby on behalf of a third party or multiple clients.

Scottish Churches [15] disagreed with the member's proposal that participation in parliamentary business should be excluded in the definition of lobbying. The relationship they have with other denominations means they can work as in-house or third-party lobbyists.

The Law Society of Scotland [48] felt that the definition of lobbying activity should be concise and narrowly defined. It suggested various situations which should not be covered by the definitions relating to lawyers, and some relating to parliamentary business such as committee evidence and member's bills.

## **WHO SHOULD REGISTER?**

### **Question 5: Who should register on a lobbying register in Scotland?**

Fifty-nine (80%) of the 74 direct respondents answered this question. Twenty-four (41%) of those stated that "All who lobby in a professional capacity" should register on a lobbying register in Scotland.

Nine respondents (12%) believed that all those captured by the definitions of lobbying/lobbyist and not covered by an exemption should register.

Some respondents believed that only commercial lobbyists i.e. those that lobby for others on commercial or client basis should register. The Royal College of Nursing [33] believed that extending it to in-house and individual lobbyists would greatly increase the cost and bureaucratic burden on those registering and administering the register.

Some respondents believed that all who lobby should register and there should be no exemptions to this

The Scotch Whisky Association suggested that representative organisations like them with in-house lobbyists should only have to include the name of the organisation, details of the chief lobbyist (if applicable) and names only of others who may be involved in lobbying. Commercial lobbyists should have to register all individuals.

### *Charities*

Some respondents argued that charities should be excluded from having to register on the grounds that the regulations may impact negatively in terms of increased cost and administrative burden. Some also stressed that there is a big difference between lobbying activity of charities and professional lobbyists.

SCVO [12] and Children in Scotland [22] commented that charities are essentially different from commercial lobbyists, and that their campaigning is very important in informing policy and should not be discouraged from engaging with political systems, financially or otherwise.

### *Trade unions*

The Association of Teachers and Lecturers [31] Scotland and ASLEF [32] believed there is little public benefit in including trade unions as they are already regulated.

### *General*

The Sheila McKechnie Foundation [14] believe that the definition should be as wide as possible and include pro bono lobbying, as this can be paid for in other services.

The British Medical Association [44] expressed concern about having to register for negotiation or providing professional input into policy development.

Scottish Engineering [51] did not think it right that a company seeking to influence its MSP on a specific or local matter of concern, or promote employment and training prospects, should qualify as a lobbyist.

## **CODE OF CONDUCT**

<p><b>Question 6: Is it necessary or desirable to develop a Code of Conduct for lobbyists to accompany a lobbying register? If so, what key elements should this code include?</b></p>
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Fifty-two of the 74 direct respondents (70% of the total) answered this question, with 40 (77%) of these agreeing that Code of Conduct legislation is necessary. 7 (9%) disagreed that a code of conduct was necessary while 5 (7%) were undecided. 22 (30%) declined to answer.

Of the 417 responding to Unlock Democracy's survey, 318 (76%) agreed that a code of conduct should accompany a lobbying register. 15 (3%) disagreed, 58 (14%) were undecided and 26 (6%) declined to answer.

Combining both sets of data gives a total of 358 out of 491 responses (73%) in favour of a code of conduct, 22 (4%) against, 63 (13%) unclear or undecided and 48 (10%) declining to answer.

Arguments in favour of a Code included:

- It would help improve industry standards and is essential to provide a minimum benchmark standard of good practice.
- It would help to clarify standards of behaviour required to conform to registration requirements.

- Unlock Democracy [53] reported that 81.33% of the respondents to their survey supported the development of a Code. This does not concur with the data submitted as part of this consultation, which produced a figure of 76% - as set out above.

Reasons given for opposing a Code included:

- Any such Code should be a matter for the lobbying industry itself to develop.
- The Public Relations Consultants Association (PRCA) [40] suggested that the register could indicate whether lobbyists are signed up to a trade body register; this would create no additional cost and help to improve transparency.
- The British Medical Association [44] suggested that a Code applying to all lobbyists and MSPs could be introduced instead of the register, with sanctions for non-compliance.
- Existing Codes of Conduct apply to people in public life, including sanctions for breaches, and these already give significant public assurance. Processes also exist in NDPBs etc. for reporting of interests.
- The Chartered Institute of Public Relations [10] rejected the need for a statutory Code, and don't support any measures which would undermine the existing self-regulatory structure of lobbying industry.

*Key Elements of Code:*

A number of respondents suggested using the following as a basis for the development of a Code of Conduct:

- Guidelines set out for MSPs and the Nolan Principles on Standards in Public Life
- UKPAC Guiding Principles of Conduct: transparency and openness; accuracy and honesty; integrity, and propriety
- Association for Scottish Public Affairs Code
- The House of Commons Political and Constitutional Reform Committee report "introducing a statutory register of lobbyists".<sup>3</sup>

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<sup>3</sup> <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpolcon/153/15302.htm>  
Para 72.

A number also listed good practice guidelines they felt should be covered in any Code developed, including:

- Requirement to make clear the policy outcome they are seeking to influence
- Any financial interests which might benefit from lobbying
- Never conceal client's identity
- Never knowingly use false or partisan information
- Never seek to influence by offering inducements directly or in kind
- Never claim to speak on behalf of anyone without their specific consent
- Never blur the boundaries between professional and social influence
- Avoid inducements associated with lobbying that could constitute financial or other gain or be interpreted as compromising
- Reflect current best practice and give clear expression to the core principles and spirit of the legislation.
- Contain clear guidelines on reporting of meetings, which should then be made freely available on the internet.
- Be voluntary; a statutory register would require policing from the body maintaining register and costs fall to public purse or those registering.

## **SELF REGULATION**

**Question 7: Are the current arrangements, whereby lobbyists are governed only through self-regulatory schemes, adequate or is a statutory regime required in order to regulate lobbying?**

Sixty respondents answered this question. Eleven (18%) of those believed that existing self-regulatory schemes are sufficient, whilst 41 (68%) did not believe self-regulation was adequate and that a statutory scheme was needed. A further eight responses were unclear on this question.

*Arguments in favour of a statutory register included:*

The majority of individuals and a number of organisations who responded believed that self-regulation does not adequately govern activities of lobbyists, so a statutory register is required.

Additionally, some felt that self-regulation does not sit well with the founding principles of the Scottish Parliament.

The Sheila McKechnie Foundation [14] said that self-regulation is "wholly inappropriate in this area" and that the government should act now before a scandal happens.

Accountability Scotland [19] stated that a well-designed statutory regime should not be onerous, and any additional work would be worth it, adding "No ethically or morally sound interest group willing to acknowledge organisational interest in influencing government should fear or evade greater accountability and transparency in this process".

*Comments of respondents opposed to a statutory register included:*

The Chartered Institute of Public Relations (CIPR) [10] believed there is a risk that a statutory Code would be less rigorous and reflective of the highest standards of professional conduct. They think it preferable that government should engage with the lobbying industry to see how legislation can support them e.g. a register promoting membership of lobbying orgs like CIPR who uphold their own Code and standards.

The Scottish Council for Voluntary Organisations [12] and Children in Scotland [22] believe the proposals are disproportionate and unnecessary, especially as Ministers/MSP have a duty to adhere to a Code of Conduct and the founding principles of the Scottish Parliament.

The Association for Scottish Public Affairs felt that the member had not made the case that a register would be a proportionate response to the problem in Scotland. They also point out that there would be regulatory overlap if UK legislation on a lobbying register is enacted, and believe amending Ministerial/MSP Codes/rules would be more proportionate and effective.

## **WHAT SHOULD BE DISCLOSED?**

**Question 8: What do you think is the appropriate and necessary information to be disclosed in order to make lobbying transparent and how regularly should entries be updated?**

The member suggested that the following information should be disclosed in his consultation:

- The name of the lobbyist
- The company/organisation they work for and/or who they are working on behalf of (the client)
- Who they are contacting
- The subject of the contact, for example the particular policy, legislation or contract they are trying to influence.

- The estimated financial worth or expenditure, for in-house lobbying, or of the lobbying activity over a period of time, or the time expended.
- The career history of the individual lobbyist.

Four (5%) respondents agreed with the information proposed in the consultation.

Fifteen (20%) respondents agreed that the name of the lobbyist should be included.

Twenty-two (30%) respondents expressed support for including the details of who lobbyists contact and the meeting subject.

A small number of responses supported the inclusion of the following details in relation to lobbying meetings:

- Meeting/contact date
- Attendee names
- Agenda/papers
- Record/minute of meeting

Ten (13%) respondents felt that details of whom lobbying was being undertaken on behalf of (employer or client) should be disclosed.

#### *Financial information*

Twenty-three respondents, including the majority of individual respondents who answered the question, wanted to see details of costs disclosed, in the form of cash and time spent in lobbying while some others supported the disclosure of some measure of financial value.

Reasons given in support of including financial information included:

- Twenty-one respondents, including the majority of individuals, believed that cost information is important to help the public "decipher how much investment has been dedicated ... and understand the importance or otherwise of the lobbying carried out".
- Without financial information, it cannot be properly determined to what degree financial resources determine the degree of access to decision-makers.
- Lobbying is an investment for companies so it is important that the public can see the difference in spend between them and civic companies.

- Both the Alliance for Lobbying Transparency [18] and Spinwatch [47] cited an article based on a report by the US public policy research organisation the CATO Institute, which estimated that very large financial gains are achieved through lobbying.<sup>4</sup>

Additional suggestions included the disclosure of:

- Details of any funding or support in whole or part by other parties with an interest in the outcome
- Commercial fees paid to lobbyists for services rendered
- Fees and in-kind support for lobbying activity e.g. working lunches
- For each client, how much spent and on which topic annually
- Total budget spent on lobbying by them or the organisation they're lobbying on behalf of

A number of respondents were opposed to the inclusion of financial information. Reasons given included:

- The information proposed is difficult to verify and burdensome to collect.
- Disclosure would undermine commercially sensitive and confidential contracts.
- Difficulties in calculating some aspects such as salary costs when it is not clear what constitutes lobbying.
- Inclusion of financial information is unnecessary and could harm the industry.
- Some financial information may be subject to legal privilege.
- The amount spent not always indicative of the result. It would be difficult to draw meaningful comparisons between lobbying companies.
- Difficult to see the benefit to public.

The Public Relations Consultants Association (PRCA) [40] believed that providing some financial information would distort the market place and break competition law. They also voiced concerns that it would contravene Article 81 of the post-Amsterdam EC Treaty.

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<sup>4</sup> Business Insider, *Here's Everything You've Always Wanted To Know About Lobbying For Your Business*. Available at: <http://www.businessinsider.com/everything-you-always-wanted-to-know-about-lobbying-2011-11>

The Law Society of Scotland [48] believed that the proposals would require solicitors to register client details, which would breach Law Society regulations on confidentiality (which can only be waived by client).

#### *Career history of lobbyist*

Eight respondents (11%) expressed support for requiring disclosure of lobbyists' career history where relevant. Various methods were suggested, including the following:

- Any previous elected civil service or ministerial post.
- Public posts held in last five years
- Any previous government role
- Previous experience of lobbyist
- Career and voluntary positions held historically
- Career histories only if staff have worked for the Scottish Government, Scottish Parliament, public body, Minister, MSP or public official; are or have been a member or worked for a political party or an organisation associated with a political party; run for or held office locally or nationally.

A number of respondents were opposed to disclosure of career history.

The Association of Professional Political Consultants Scotland [8] felt that career histories were unnecessary, as the information is available elsewhere and it would make any register unwieldy. They suggest instead requiring any public post held to be declared.

Scottish Engineering [51] were unable to see how the career history of individual lobbyists within an organisation would benefit the primary objective of the bill.

#### *Frequency of update*

Of the 43 respondents who answered this question, 31 (72 %) were in favour of quarterly returns while others were unclear.

There was limited support for other options, including:

The Scottish Retail Consortium [13] favoured quarterly returns for commercial organisations and annual returns for not-for-profit organisations.

The Alliance for Lobbying Transparency [18] and Spinwatch [47] suggested quarterly returns with time limits for initial registration, which could be submitted online with a secure ID system.

SCVO [12] and Children in Scotland [22] believed that quarterly returns would be too onerous for small organisations.

The Association of Teachers and Lecturers Scotland [31] favoured six-monthly returns, believing annual returns would be too infrequent because legislation may have been passed before information on lobbying related to it was made public.

Further general comments included:

A number of respondents commented that the onus should be on MSPs/Ministers to publish details of meetings more often and more clearly to aid transparency, and that this would be a more proportionate measure than register.

University and College Union Scotland [4] did not believe that compliance with the register would be time-consuming. They suggested that if a web register was established, all contact could be recorded with minimal effort.

UK Public Affairs Council [21] stressed the need to balance intended outcomes with measures already in place and recommended examining existing Codes/Rules governing those lobbied.

YouthLink Scotland [39] felt that regulations must balance transparency with minimising bureaucracy. They cited the Freedom of Information and Public Records Acts as disproportionate responses which have had a negative impact by being too onerous.

The level of detail required should vary depending on the sector. More information on the lobbying subject may be required from commercial lobbyists whereas it is obvious what charities stand for.

The Scottish Council for Development and Industry [50] stressed that the need for privacy in meetings between business and government/Parliament needs to be taken into account. They believe complete disclosure could harm investment and be bad for Scotland in the long run.

## **THRESHOLDS**

**Question 9: Should there be a threshold for inclusion in the lobbying register? If so, what should it be (in terms of time / resources devoted to lobbying, size of organisation, budget etc.)?**

Fifty-seven individual respondents (77% of the total) answered this question, with 36 (63%) of those who answered supporting a threshold and 10 (17%) of those who answered not supportive. In a further 10 individual responses, it was unclear whether they supported a threshold or not and one respondent was undecided.

Consultees responding to Unlock Democracy's survey were divided on the question of whether there should be a threshold for inclusion in the lobbying register though a majority 220 (53%) did not support a threshold. 71 (17%) were in favour, with 104 (25%) undecided.

Combining both sets of data gives a total of 107 responses (22%) being in support of a threshold for inclusion in a lobbying register.

### *Proposed thresholds*

The member suggested various proposed thresholds in his consultation document, as follows:

- “For a consultant lobbyist, I would suggest that registration is necessary if they receive income from lobbying activity of £2000 or more over a 6 month period, or if a group of companies agree to employ several lobbyists for similar work each at under £2000 but the total exceeds £2000 in a 6 month period.
- For an in-house lobbyist, if the company or organisation spends a total of £9000 or more on “lobbying activity” over a 6 month period; or, if a group of companies agree to spend less than £9000 on lobbying activity of a similar nature but the total exceeds £9000 over a 6 month period.
- Time: Registration is required if a particular amount of time is spent on lobbying activity. I would suggest this figure would be 20% of a person's workload (time) over a 3 month period.”

Alcohol Focus Scotland [52] believed that the proposed thresholds were reasonable whilst the Association for Scottish Public Affairs [26] and University and College Union Scotland [4] felt they were too low.

The Association for Scottish Public Affairs [26] suggested a time threshold of 30 per cent or more as more practical.

The Royal College of Nursing [33] stated that the proposed thresholds were problematic and lacking detail, and that thresholds could lead to a 2-tier system whereby those not registered are denied access.

Community Pharmacy Scotland [23] felt that the thresholds in consultation were arbitrary and didn't take into account that organisations may use professionals to provide lobbying within their role rather than commercial lobbyists on a fee basis

### *Arguments in favour of a threshold*

Alliance for Lobbying Transparency [18] wanted to see exemptions for small businesses and smaller charities and suggested a threshold of 20% of time spent on lobbying activity. They were also in favour of a minimal financial

threshold, the level of which should be agreed in consultation with the relevant sectors.

The Jimmy Reid Foundation [49] believed that the threshold issue may be resolved if there are different requirements on different categories of lobbyist, and did not think it would be too onerous even for small charity to update information online periodically.

Unlock Democracy [53] proposed that any organisation employing less than one full-time equivalent public affairs person should not have to register, but noted that 55% of respondents to their survey were opposed to thresholds.

#### *Arguments against a threshold*

The Scottish Council for Voluntary Organisations [12], Children in Scotland [22] and Epilepsy Scotland [6] felt that the proposals were unclear about a financial threshold and a time-defined threshold was "largely unworkable". They felt it would be hard to articulate the role of volunteers and expressed concern about a possible reduction in volunteers if the register is created.

The Association of Professional Political Consultants Scotland [8] commented that small organisations would still need to keep track of lobbying activity to see if and when they reached the threshold. They felt that lobbying activity would be very difficult to quantify and that "applying financial thresholds not only undermines the principle and objective of the register, but being extremely onerous to calculate and in any case unverifiable, simply provides an opportunity for those wishing to avoid registration to do so".

The Scotch Whisky Association [17] felt that problems in calculating what constitutes lobbying activity and the value of it would make it difficult to set meaningful thresholds. This may discourage participation with government, undermining the Scottish Parliament's founding principles and the government's commitment to support business.

Scottish Engineering [51] felt it would be neither practical nor realistic to assess how much of fee or subscription income could be fairly attributed to the lobbying role of their organisation, and that this would be the case for many others.

The Office of the Scottish Charity Regulator (OSCR) [54] thought there were problems with both time and cost based thresholds, and questioned how variances in spend from year to year would affect the requirement to register.

Accountability Scotland [19] believed that registration should be required across the board to deter avoidance, and pointed out that charities can also become powerful lobbyists.

The UK Public Affairs Council [21] doubted the value and practicality of thresholds and expressed concern that they may drive up negative practice as

organisations/individuals seek exemption through creative accounting or worse.

The Public Relations Consultants Association (PRCA) [40] commented that in their experience, quarterly updates act as a threshold; if no lobbying has taken place in that quarter, there is no need to register. They also point out that the USA register has had problems with thresholds and avoidance.

Other comments included:

Twenty-three respondents, including the majority of individuals, felt it was important to ensure the scheme was workable and access was not restricted for ordinary constituents.

One individual [59] believed that if smaller lobbyists want to register activity they should be able to do so voluntarily, as they felt inclusion is empowering for all as it puts on record their input to policy and enables monitoring of how politicians and others with decision-making powers respond to all lobbyists, big or small.

### **WHO SHOULD BE COVERED?**

<b>Question 10: Should it only be contact with MSPs, Ministers and civil servants which should require to be recorded on the register, or should all public officials, including from NDPB's be included?</b>
---

*MSPs/Ministers/civil servants:*

Fifty-two (70%) respondents answered this question. Of these, 43 (83%) of those agreed that contact with MSPs, Ministers and civil servants should be required to be recorded on the register. Six felt it should be contact with MSPs and Ministers, one felt it should only be contact with MSPs, one (1%) believed it should be contact with all public officials, board members or politicians and one answer was unclear.

*All public officials/NDPBs*

Fifty-four (73%) respondents answered this question. Of those, 12 (22%) agreed that contact with all public officials and NDPBs should be required to be registered, whilst six (11%) clearly disagreed and 21 respondents gave qualified support for this option.

Some respondents also wished to see the following included:

- Special advisors and regulators Non-Governmental Organisations (NGOs) and community groups, as they are vulnerable to becoming a conduit and should be equally subject to scrutiny
- NDPBs, as they are subject to lobbying and anecdotal evidence suggests that an inequality of access to them. Local authorities

- The Jimmy Reid Foundation [49] argued that “any activity which directly impacts on public policy or public funding is directly relevant to public interest ... arms-length external organisations (ALEOs) and any other structure created by any level of government” should also be included.

Some of the suggested exclusions were for:

- NDPBS who don't receive grant in aid
- Public officials as they already abide by other codes

The Office of the Scottish Charity Regulator (OSCR) [54] had concerns about their ability to fulfil their role if all their officials' contact with OSCR's board members from charities and so on were subject to disclosure.

## **EXEMPTIONS**

<p><b>Question 11: Which organisations should be exempted from registering and why should they be exempted?</b></p>
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The member's consultation proposed the following exemptions from the register:

- Lobbying by public officials acting in their official capacity (this does not apply to a public body employing a lobbying firm to carry out lobbying activity on its behalf)
- Participation in Parliamentary business, for example, giving evidence to a Scottish Parliament Committee.
- Administrative requests made by lobbyists, for example, on the status of a policy, where no attempt is made to influence.
- Communication by media workers in the course of their work,
- Communication – a speech, article, book, blog, twitter or social networking group that is made widely and publicly available.

Fifty-eight (78%) respondents answered this question. Of those, seven (12%) stated that there should be no exemptions to the requirement to register as a lobbyist.

UKPAC [21] and the Electoral Reform Society Scotland [27] agreed with the member's proposed exemptions, whilst the PRCA [40] opposed any exemption, believing that apply a value judgement which is unfair and serves no-one's interests.

Twenty-three respondents, including most responses from individuals favoured exemptions for ordinary citizens and smaller organisations, provided they fall below a set threshold.

There was a relatively small amount of support for each of the following exemptions:

- Charities/voluntary organisations: 8
- Civic Groups: 4
- Trade/business associations: 3
- Trade Unions: 3
- Anyone representing themselves or their members
- Company/in-house teams: 2
- Public sector orgs such as local government: 2
- Professional bodies: 1
- Think tanks: 1
- Expert consultancies: 1

The Association of Professional Political Consultants Scotland [8] exemptions from disclosure should only apply only where it may put an individual at risk.

Community Pharmacy Scotland [23] believed that organisations like themselves who are recognised in regulation as being bodies required to negotiate with Ministers in terms of services should be exempted.

### **AN INDEPENDENT BODY?**

**Question 12: Is an independent body required to oversee the register? If so, which organisation should be responsible for administering the register?**

57 (77%) respondents answered this question. Of those, 52 (91%) agreed that an independent organisation should be responsible for administering the register. Two respondents opposed this and a further three were unclear in their response.

Of those in favour of an independent organisation, 26 respondents believed that the Scottish Information Commissioner should be responsible for administering the register.

A further two preferred the Standards Commission for Scotland for this role whilst UNISON [11] thought either would be appropriate. The STUC [43] and

Alcohol Focus Scotland [52] were happy for any one of the three proposed in consultation

The Federation of Small Businesses (FSB) Scotland [36] were opposed to having an independent organisation administer the register because they believed the onus should be on decision-makers to record and publish information about contact with lobbyists. This would deliver transparency without impacting on small business or disclosing commercially sensitive information.

The Scottish Council for Development and Industry [50] believe a register for politicians and officials should be co-ordinated through the Presiding Officer in same way as Register of MSP interests and expenses.

The Association for Scottish Public Affairs [26], RSPB Scotland [45] and The Law Society of Scotland [48] stated that the Scottish Parliament should fund and administer the register as this would allow greater scrutiny and transparency, and political control over administration costs.

Unlock Democracy [53] and the Alliance for Lobbying Transparency [18] suggested it may be appropriate for the Electoral Commission to administer the register as it already runs the political party funding register and this could be added to their remit in order to minimise costs and bureaucracy

Other comments included:

The UK Public Affairs Council [21] believed that a non-statutory body should administer the register as is case with other registers. Private firms could compete for contract.

The Scottish Retail Consortium [13] questioned whether any existing body could provide value for money to fee-payers.

## **COMPLIANCE**

<b>Question 13: How will compliance be policed and what investigative and enforcement powers would the overseeing body require?</b>
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### *Policing*

Forty-one (55%) respondents specified how compliance should be policed.

In terms of who should be responsible for policing the register, three believed that it should be the body responsible for administering the register.

The Association for Scottish Public Affairs [26] stated that the Scottish Parliament should police the register.

Other comments on policing included:

Spinwatch [47] wanted to see any complaints directed through the register's administering body and a reasonable period given for registrant to reply/correct errors.

The Electoral Reform Society Scotland [27] thought that the Standards Commission should be responsible for checking compliance and MSPs/officials should be expected to check the register and report non-compliance.

The Association of Professional Political Consultants Scotland [8] pointed out that, to enable policing of the register, information must be verifiable by reference to the diaries of those being lobbied.

The Jimmy Reid Foundation [49] felt the register should self-police with a means of reporting activity in contravention of the legislation.

UKPAC [21] believed the register should be reviewed after a certain time.

### Powers

Twenty-one respondents, including the majority of individuals, felt that penalties should be stringent enough to ensure compliance.

Many of those who responded supported fines as an appropriate sanction, with some specifying that they should be on a sliding scale proportionate to the size of organisation.

There was support for a system whereby a warning was issued first followed by suspension or removal from the register in the worst cases. Respondents wanted to see a system that was proportionate and did not think criminal sanctions were appropriate.

However, there was also support for including criminal sanctions, particularly amongst the representative organisations, such as Accountability Scotland.

The Public Relations Consultants Association (PRCA) [40] believed that there must be statutory powers for non-compliance, and that sanctions in the Companies Act 2006 could apply to the register. They favour a combination of warnings and civil penalties for small offences and larger fines and/or criminal proceedings for serious offences.

Spinwatch [47] and the Alliance for Lobbying Transparency [18] also agreed that there should be powers to instigate criminal prosecution for serious offences like "knowingly and corruptly failing to comply."

The Jimmy Reid Foundation [49] supported fines proportionate to the organisation's income and/or spend on lobbying, and favoured seeing how a self-police and fines system worked before looking at punitive actions such as bans.

The Sheila McKechnie Foundation [14] believed that fines, exclusion from the register accompanied by a ban on undertaking lobbying activity were appropriate powers, and believed that charities should be subject to different, lesser, sanctions.

A number of respondents stated that the administering body should have investigatory powers, including the Scottish Independent Advocacy Alliance [20], the British Medical Association [44], Community Pharmacy Scotland [23] and Unlock Democracy [53].

The UK Public Affairs Council [21] believe failures to register and declare should be publicised, as do Friends of the Earth Scotland.

The British Medical Association [44] expressed concern that the suggested sanction of removal from register could affect employment and is their employer's decision.

Other comments included

- The need to give reasonable time to respond and to correct information.
- Breaches should include failure to register, late registration, and insufficient or defective filing; [UNISON 11]
- The administering body should have the power to request registration and issue Enforcement Notices [Electoral Reform Society Scotland 27]
- Sanctions should be "broadly aligned with offences under company law". Non-compliance should be enforced by removal from the register. [Chartered Institute of Public Relations 10]
- De-registration of a lobbyist who has not registered in first place won't work. [The Law Society of Scotland 48]
- Clarity needed over what sanction can be used that's compatible with EU law in the case of lobbying from outwith UK [The Law Society of Scotland 48]

Stuart Crawford Associates [9] believed the proposals would be virtually impossible to enforce in any meaningful way as 1) lobbying is difficult to pin down as it is mainly done via the media now and 2) it would be easy for lobbyists to avoid disclosure by reinventing themselves, and lines are blurred between lobbyists, PR practitioners and media professionals.

The SCVO [12] believe that suspension or removal from the register is not within the Scottish Parliament's or Government's powers.

## **COSTS**

**Question 14: How should the administration of a statutory register be paid for? And what is your assessment of the likely financial implications (if any) of the proposed Bill to you or your organisation? What (if any) other significant financial implications are likely to arise?**

#### *Financing of register*

Twenty-two (30%) respondents, including the majority of individuals were unsure how the register should be financed but felt that, if within reason, it was a cost that should be paid.

#### Fees for all registrants

There was support for funding the register by charging fees to registrants from many respondents including the Chartered Institute of Public Relations [10], the UK Public Affairs Council [21], Scottish Independent Advocacy Alliance [20], Electoral Reform Society Scotland [27], Scottish Retail Consortium [13], and the Scottish Social Services Council [30].

The majority of those in favour of this option believed the fees should be on a sliding scale depending on the organisation/individual's resources, with a much reduced rate or exemption for charities/not-for-profit organisations.

Many of those opposed to charging fees to registrants were concerned it would be an unnecessary financial burden and may discourage smaller organisations from engaging in public life.

One pointed out that registration should pay for itself over time by savings made due to greater public scrutiny of the awarding of government contracts

The majority of those opposed to charging fees to registrants felt that the register should be publicly funded in whole or in part by the Scottish Government or Scottish Parliament.

Reasons given in favour of a publicly-funded register included:

- Lobbying is a democratic right and there should be no financial barrier to this.
- It would be undemocratic and immoral to charge fees, as it would restrict access for those who can't afford them.
- Other transparency registers are publicly funded (e.g. donations to political parties)

#### Combination of public/registrant funding

A few respondents also suggested that the register should be funded, variously, by:

- a combination of the Scottish Parliament and/or registration fees of private sector lobbyists.

- capping the lobbying budgets of public bodies and using the funds to facilitate the register. Commercial lobbyists would pay fees proportionate to the nature of lobbying and the Scottish government would contribute.
- fees to be paid by registering organisations, and start-up and maintenance costs should be publicly funded.

### *Financial implications*

Respondents identified the following costs to registering organisations:

- Registration fee
- IT/administrative set-up costs
- Administrative cost of compliance (staff costs)

The Electoral Reform Society [27] expected the cost of complying with a register to be relatively small for them, involving IT set-up (database/webform) and employing an additional 1.5 FT equivalent staff.

The Alliance for Lobbying Transparency [18] believed that registration would pay for itself, for example, by savings made due to greater public scrutiny of the awarding of government contracts.

### Charities/third sector organisations

A number of organisations expressed concern that the costs involved would hinder small organisations already operating on small budgets.

Of particular concern was the possible effect on charities. The main concerns expressed included:

- Canadian experience suggests a possible need for voluntary organisations to employ more staff to deal with the register's requirements.
- Financial and administrative burden and fear of non-compliance may lead to smaller charities disengaging with Parliament.
- It would lead to an inequality of access for smaller third sector organisations which do not have resources to sign up to the register, or the skills to interpret or comply with it.

Other comments included:

UKPAC [21] said that their experience of running their own voluntary lobbying register has been that a register can be delivered at a relatively low cost to registrants.

The Scottish Social Services Council [30] felt that public bodies do not need yet more record-keeping to do, especially as there is no major problem with lobbying in Scotland, and that registration should be proportionate, clear and meaningful to public.

The Jimmy Reid Foundation [49] commented that it “may reduce the attraction of out-sourcing lobbying activity for some commercial firms (because they use firms partly to disguise their direct role in lobbying) but the impact would be minimal and in the public interest”.

## **EQUALITY**

**Question 15: Is the proposed Bill likely to have any substantial positive or negative implications for equality? If it is likely to have a substantial negative implication, how might this be minimised or avoided?**

### *Positive Implications*

Eight (11%) respondents believed that the proposed Bill would have positive implications for equality

Supporting comments included:

- The register would allow greater scrutiny of activities of larger organisations.
- It would enable increased transparency and help improve equality of access.
- A register would help in clarifying where power interests are acting to entrench power against the interest of weaker or excluded groups.
- It would encourage a wider range of issues to be debated politically including equalities issues which seldom have big-money backing. [49]
- Research from the United States shows that robust regulation has not deterred ordinary people there from lobbying.
- It would help to prevent the covert use of money and influence.

### *Negative Implications*

Twenty-nine (38%) respondents were concerned that the proposed Bill would have negative implications for equality.

The majority of those were concerned that costs and additional administrative burden would prove too onerous for smaller charities, businesses and organisations which do not have the resources to cover registration costs or employ additional staff to cope with the increased workload.

This could create a barrier to engagement for those representing some of the most vulnerable people in society, as described by Epilepsy Scotland.

Epilepsy Scotland [6] believed that the proposed bill would have a significant negative impact on equality in that it would create a barrier to parliamentary engagement for organisations representing the most vulnerable and disadvantaged members of society. They concurred with SCVO's view that the financial and administrative impacts of complying with a register would promote inequality of access and participation by voluntary organisations.

Some respondents believed that creating any such barrier would be contrary to the Scottish Parliament's founding principles and undermine the proposed Bill's aim of facilitating and enabling more access and participation.

SCVO [12] and Children in Scotland [22] stated that the proposals shifted accountability from the Scottish Parliament to the public, were against the Scottish Parliament's founding principles, could create a two-tier system with those who can't afford to register "locked out of Holyrood", and may reduce participation by most marginalised in society by creating fear of non-compliance.

#### *Avoiding or minimising negative impact*

Various methods of avoiding or minimising negative impacts were suggested, including:

- Ensure lobbying activity of those protecting interests of marginalised and vulnerable in society are adequately recognised in the thresholds so they are not negatively impacted by a broad brush approach
- Publish MSP/Minister's diaries instead
- Build in an income threshold and a sliding scale of registration fees based on income.
- Ensure all who lobby professionally are subject to same transparency regulations
- Make registration free or low cost
- A Business Regulatory Impact Assessment should be carried out and views on implementation sought from the Scottish Government's Regulatory Review Group.
- Any register should cover all UK and EU, rather than having four separate registers.
- Be mindful of not making registration requirements too onerous.

- Adopt a light-touch approach which does not involve charging for registration.

## **SECTION 4: MEMBER'S COMMENTARY**

Neil Findlay MSP has provided the following commentary on the results of the consultation, as summarised in sections 1-3 above.

I would like to offer my sincere thanks to the Non-Government Bills Unit (NGBU). The advice and assistance they have provided me and my office has been invaluable. Their work in evaluating the consultation responses typifies their professionalism. The clarity and focus of their analysis is extremely helpful, both to me and also any other parties interested in the results.

Since launching the consultation I found opinion on my proposals varies. This divergence has been reflected in the consultation, with a minority of respondents voicing opposition. However, the responses received make it clear that my proposals for a Lobbying Transparency Bill are broadly supported. In total, 491 responses were returned, 417 via an online survey from Unlock Democracy and 74 made directly to the consultation. Of this total 91% supported my proposals. Of the responses made directly to the consultation, 66% are broadly in favour of the proposals for the Bill.

The vast majority of individuals who have expressed an opinion, made up of ordinary people – concerned Scottish citizens - are overwhelmingly supportive of my proposals. Those opposed tend to be professional lobbyists. Their comments suggest that most lobbyists believe there are no problems in Scotland and there is no need for legislation but ordinary people do. The perception of ordinary people is that lobbyists have disproportionate access and influence and that lobbying should be transparent and known about to the wider public. From the outset I have insisted that a vital part of good governance necessitates openness and transparency. The responses provided to me during this consultation have reinforced my conviction that transparency is not only desirable, but absolutely necessary.

However, as important as the numbers are they do not prove or disprove anything, it is the power of reasoned argument that I believe to be most important. Some arguments and suggestions have been put forward by those who oppose my proposals and I have endeavoured to incorporate these constructive suggestions into my bill. I have, in particular, responded to concerns expressed over issues of commercial sensitivity, namely the proposal that those registering should provide exact details of monetary contracts. I have listened to the arguments on both sides and suggest that rather than exact figures an approximate value could be reported within a banding system. However, I should stress that I still believe financial disclosure, within such a banding system, to be an important part of my proposals in that it discloses something of the scale of the effort and resource allocated to lobbying.

I also note the many responses asking for the Bill to tightly define what constitutes lobbying and who or what is a lobbyist. I hope that my response to the definitional issue meets the concerns expressed in the consultation. I am also aware of the numerous calls to ensure MSP's and Government are more

open and transparent. I agree that this should be considered by Parliament more broadly I therefore welcome the consultation by the Standards, Procedures and Public appointments committee considering views on a potential Committee Bill to amend the Interests of Members of the Scottish Parliament Act 2006. In initiating this consultation to potentially change the members' interests' regime and the rules on paid advocacy i believe this Committee Consultation could complement my bill.

I have also listened to concerns that this Bill will add an unnecessary layer of bureaucracy and be onerous and burdensome for those expected to register lobbying activities. I will of course seek to ensure any reporting burden is proportionate and am confident I can allay some of the fears expressed in the consultation. The international experience suggests that such registers do not have to impose a significant burden on registrants. Investing time and effort into designing a register, and developing clear guidelines and expectations should ensure that those who have to register can adapt easily to what is expected of them.

I believe some of the arguments made against the Bill to be misplaced. For example, it is argued that this bill might harm the ability of ordinary people to gain access to MSP's and the Parliamentary process. This is neither the intention nor the likely outcome of this Bill. Instead, my proposals attempt to shine a light on those who often enjoy most access as a result of their lobbying efforts: whether this leads to greater influence is a moot point, though responses in this consultation have highlighted research showing that lobbying is a strategic political investment on which those paying for lobbying expect some return. Moreover, the reason I am proposing thresholds in the Bill is to differentiate between those who are organised or 'professional' lobbyists and those who are ordinary people and small community groups seeking to make representations.

Some respondents have argued that charities and Third Sector organisations should not have to register as their charitable status somehow excludes them for the business of lobbying. I do not accept this: if charities and third sector groups are lobbying to influence government policy, and if they have paid employees lobbying or if their lobbying spend exceeds the thresholds we will establish, then they should be expected to register just the same as any other organisation. This Bill seeks to adopt the principle that all lobbyists are treated equally, and that there should not be classes of exemption that can create loopholes or the perception of an uneven playing field.

I also note that many respondents contend my proposals are disproportionate and unnecessary and suggest there is "lobbying problem" in Scotland. It may well be that no recent controversies have occurred but we should not be complacent. Moreover, this proposal is also about promoting transparency, one of the key founding principles of the Scottish parliament, and a principle increasingly recognised across the world as a fundamental component of good governance. It is very obvious that we can make a significant contribution to increasing the transparency of lobbying in Scotland with the introduction of these proposals. They are proportionate, timely given the

likelihood of increased powers for the Scottish Parliament (regardless of the outcome of the independence referendum), will bring our institutions into line with best practice elsewhere.

Without a lobbying register it is hard to imagine how the public and media can properly hold Holyrood to account. If information is not in the public domain about how organisations seek to influence legislation, and how legislators respond to such pressure, the founding principles of power sharing and accountability become little more than rhetorical claims, rather than the core values which guide and inform the business of this Parliament.

I also believe that Scotland should develop its own robust system - I do not accept the arguments that we wait on the UK parliament to legislate. Devolution gives the Scottish Parliament the opportunity to legislate on this issue and any progress on this should not be determined or more likely delayed, by waiting for the Westminster government to introduce reforms.

The core provisions of any Scottish Register of Lobbyists were generally agreed in the responses. A key task going forward will be to strike a balance between easy and straightforward compliance and ensuring that the information disclosed is sufficient to enable scrutiny of the lobbying of Parliament and Government and makes it transparent who is lobbying, what they are lobbying on and helps inform judgement on whether those who have lobbied have had an influence as a result of their lobbying.

Finally, I understand that my Bill is reliant on the support of the Scottish Parliament. This is not a party political issue - it is one of core democratic principle. I hope that Members will support my proposals and engage with this debate as the proposed Bill progresses through the legislative process. In so doing they will help enhance the founding principles of the Scottish Parliament

**Annexe A****List of Respondents (numbered as received) to the  
Proposed Lobbying Transparency (Scotland) Bill consultation**

1	CBI Scotland
2	Friends of the Earth Scotland
3	Quality Meat Scotland
4	University and College Union Scotland
5	Who Cares? Scotland
6	Epilepsy Scotland
7	Scottish Property Federation
8	Association of Professional Political Consultants Scotland
9	Stuart Crawford Associates
10	Chartered Institute of Public Relations
11	UNISON
12	Scottish Council for Voluntary Organisations
13	Scottish Retail Consortium
14	Sheila McKechnie Foundation
15	Scottish Churches Parliamentary Office
16	Glasgow City Council
17	Scotch Whisky Association
18	Alliance for Lobbying Transparency
19	Accountability Scotland
20	Scottish Independent Advocacy Alliance
21	UK Public Affairs Council
22	Children in Scotland
23	Community Pharmacy Scotland
24	Health and Social Care Alliance Scotland
25	Nil by Mouth
26	Association for Scottish Public Affairs
27	Electoral Reform Society Scotland
28	Lawrie Morgan-Klein
29	Stonewall Scotland
30	Scottish Social Services Council
31	Association of Teachers and Lecturers Scotland
32	Associated Society of Locomotive Engineers and Firemen
33	Royal College of Nursing
34	John Findlay
35	Sinead Brown
36	Federation of Small Businesses Scotland
37	Scottish Environmental Services Association
38	ASH Scotland
39	YouthLink Scotland
40	Public Relations Consultants Association
41	Capability Scotland

42	Scottish Environment Protection Agency
43	STUC
44	British Medical Association
45	RSPB Scotland
46	Peter Ward
47	Spinwatch
48	Law Society of Scotland
49	Jimmy Reid Foundation
50	Scottish Council for Development and Industry
51	Scottish Engineering
52	Alcohol Focus Scotland
53	Unlock Democracy
54	Office of the Scottish Charity Regulator
55	James Swan
56	Nigel Goddard
57	Elaine Murray
58	Morag Parnell
59	Anonymous
60	James Doolan
61	Michael Shanks
62	Ian Forbes
63	Unite the Union
64	David Shaw
65	Joe Fagan
66	Rae Cahill
67	Lorraine Haxton
68	Martin Hinds
69	Craig Miller
70	Stephen Smellie
71	Margaret McDougall MSP
72	Mike Cowley
73	George Paul
74	Lisa Hauschel

**Annexe B**

**List of Respondents (alphabetical) to the  
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Association of Professional Political Consultants Scotland	8
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Brown, Sinead	35
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CBI Scotland	1
Chartered Institute of Public Relations	10
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