

Proposed Lobbying Transparency (Scotland) Bill Neil Findlay MSP

Accountability Scotland's Consultation Paper Response

1. Do you support the general aim of the proposed Bill? Please indicate "yes/no/undecided" and explain the reasons for your response.

Yes. Accountability Scotland welcomes the proactive approach to this essential aspect of democracy and the initiative shown by Neil Findlay in proposing this Bill which anticipates the future intensification of lobbying.

Accountability Scotland is a membership organisation which actively campaigns for administrative justice and political redress of the existing democratic deficit in Scottish politics and public bodies, with emphasis on transparency and accountability. Our membership is drawn from across the political spectrum and comprises a wide range of professions and expertise. At present, we are currently involved in:

- **Petitioning the Scottish Government** to preserve an independent administrative justice tribunals council (AJTC) when the UK committee is abolished*
- **Campaigning for higher standards of practice**, scrutiny, accountability and action to restore public confidence in the SPSO (Scottish Public Services Ombudsman) and its appointed figurehead
- **Seeking to establish a Cross Party Group** which will create a forum for discussion and engagement with MSPs and interested parties on issues of Administrative Justice with a focus on transparency and accountability in public bodies and public officials. We anticipate that lobbying transparency would be a running agenda item.
- **Collectively addressing maladministration and public service** failure through campaign work and networking amongst members.
- **Organising a National Conference on Administrative Justice in Scotland.**

*** We presume that the AJTC will be approached regarding this Bill as it involves many matters of Administrative Justice. We would expect strong support and sound advice to be given by this important body in regard to most of the questions in this Consultation Paper.**

At best, lobbying functions to usefully inform policy, decision making and legislation. Awareness of, and access to, this process must be subject to greater scrutiny by the electorate. At worst, direct and indirect forms of lobbying are covert, secretive and serve selected interests devoid of, and detrimental

to, healthy democracy. We believe the Scottish Government must demonstrate in practice greater commitment to the Nolan Principles or the seven principles of public life. These are:

Selflessness	to act solely in the public interest over financial interest etc.
Integrity	remain free of obligation to anyone who might seek to influence their position of office
Objectivity	decision making based on merit in areas of business and public life
Accountability	remain open to public scrutiny and accountability for their decisions and actions
Openness	remain as open and willing to justify reasons for decisions of office, restricting information only when absolutely of concern to the wider public
Honesty	declare private interests and take care to avoid conflicts of duty or interest
Leadership	uphold and support all of the above principles by leadership and example

The proposed Bill is vital if Scotland is to restore, maintain and enhance best practice and civic confidence in politicians and public servants in accordance with the Nolan Principles. The Bill is also crucial if the Scottish Parliament's stated commitment to equality and access for all is to be both upheld and subject to scrutiny in practice.

The Bill also anticipates an intensification in lobbying practice as politicians and society strive to adapt to current social and economic challenges. In this context, legislation which clearly defines what lobbying is, where and in whose best interests it serves is both timely and essential.

2. Do you agree that legislation is a necessary and appropriate means of improving lobbying transparency?

Yes. Accountability Scotland believes legislation and the creation of a statutory lobbying register is both necessary and appropriate to:

- provide a transparent supply chain of information and influence on policy makers and legislators
- clearly define and enforce best practice where currently registration, standards and self-regulation are patchwork and inconsistent at best.
- fulfil and go beyond the First Report of the Scottish Parliament Standards Committee in 2002, which recommended the creation of a statutory lobby register.

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

Accountability Scotland members believe that a Lobbying Transparency Bill must not be tokenistic and requires teeth. The North American model sets a baseline standard for a working model to be adapted and established within the context of Scottish public life.

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?

MSPs will come into contact with a wide range of direct, indirect and third party lobbying activities. Definitions of consultation which are currently provided, fail to comprehensively capture the diversity of lobbying. The MSPs' Code of Conduct, Volume 3, Sections 5 to 5.5 provides a useful and inclusive definition of lobbying as :

"undertaken by paid staff and by members of business and trade associations, individual companies, trade unions, charities, churches, voluntary organisations and other individuals and groups, many of whom have no professional staff and comparatively few resources."

These definitions should also be expanded to include newly evolving forms of economic activity, such as social enterprise and third sector, which may take on public contracts yet are largely self-regulating.

Section 5.2 also acknowledges that individuals may lobby MSPs:

"It is an essential element of the democratic system that any individual should be able to lobby the Parliament or an MSP."

Therefore, we consider it important that both commercial and non-commercial lobbying is captured regardless of the scale and frequency of this activity.

5. Who should register on a lobbying register in Scotland?

Volume 2, Section 5.1.4 of the MSPs Code of Conduct states:

"5.1.4 Before taking any action as a result of being lobbied, a member should be satisfied about the identity of the person or organisation who is lobbying and the motive for lobbying. A member may choose to act in response to a commercial lobbyist but it is important that an MSP knows the basis on which the member is being lobbied in order to ensure that any action the member takes complies with the standards set out in this Code."

Consideration of how lobbyists, MSPs and public servants can adapt existing guidelines and practice to adhere to more formal legislative requirements should be considered and how this might capture and record a comprehensive, identifiable and accessible record of lobby activity.

A lobbying register should be of purposeful and effective use to politicians, public servants and the general public in ensuring that the identity, nature and motives of all lobbying is reflected.

Ideally, all lobbyists, professional, non-professional, individuals and business representatives should register if they initiate contact with any holder of public office with the specific intention to advise or influence a policy or legislative matter. The chain of influence should be traceable, whether a public servant is lobbied directly, indirectly or through a third party.

Please find suggested exemptions under question 11.

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?

Yes, a standard code of conduct is essential to ensure there is a consistent minimum benchmark standard of good practice and this good practice adhered to, even exceeded, by all lobbyists. The register must reflect all forms of lobbying, not just commercial lobbying in order to capture the changing economic climate and the rise of closer collaborative relationships with social enterprise and third sector.

A code of conduct for MSPs and public servants should be based on volume 2. Section 5.1.3 of the MSP Code of Conduct. This code of conduct should form the basis of legislation which makes expected standards explicit and enforceable to those who seek to influence Government.

All persons or organisations who initiate or respond to communications with public servants should be made explicitly aware of what constitutes lobbying activity. This should be part of the administrative and support function of public offices. All Ministers, MSPs and civil servants should be willing to provide summarised and chronological, even statistical accounts of meetings and their purpose. This need not be bureaucratic and onerous if real time data is collected. Citizens should not have to resort to FOI requests to obtain this information.

Advice can be sought from the AJTC on this 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?

A statutory regime is required. A well designed statutory registration and information system which functions in tandem with day-to-day Government administration need not be more onerous and bureaucratic. A robust and effective administration should easily cope by adopting a legally-defined and proactive approach. Any additional work this does generate is an acceptable burden if the highest aims and principles of Government are to be upheld.

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.

The AJTC should be approached for advice.

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?

A suggested baseline standard could be:

Name of staff or individual

Descriptive Information about organisation or activity and any historic or existing collaborative partnerships

Career and voluntary positions of office held historically

Identity of clients; business partners; partnership organisations or funders

Subject matter lobbied, proposed Bill or policy and the purpose of that activity. i.e., an energy company lobbying on 'sustainable practice' is too opaque. Lobbying on planning permission for specific commercial practice would be more specific.

Details of financial and non-financial resources committed to lobbying

Fees and in-kind support received in relation to lobbying activity (This to include anything approaching entertainment, including paid 'working lunches' or the covering of conference fees).

Detail of MSPs contacted, nature of contact and subject matter raised on each point of contact

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.)?

Setting a financial threshold weakens and undermines the credibility and purpose of the entire Bill. It is not the financial threshold which is critical but knowledge of the direct and indirect conduit of influence conveyed by any individual or organisation, paid or unpaid, to further a particular interest via government agencies.

All forms of lobbying should be clearly defined and inclusive so as to deter categorical avoidance and less detectable forms of lobbying.

Professional and highly paid lobbyists should be identified but their existence should not allow more subtle forms of lobbying to fly under the radar.

Charities can become just as powerful lobbyists as corporates so the time/resource question is relative to the objectives and size of each particular organisation rather than comparative across the sectors.

Every MSP, Civil Servant and Government-appointed person (including quango personnel) must hold a summary diary of all lobbying they have been involved in. This may be as brief as a name, organisation and nature of meeting but this still provides a record of influence. This need not be an arbitrary exercise but one which simply adapts existing working electronic diaries, scheduling and administration to improve accountability and transparency for the general public.

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?

All public officials, including NDPBs (Quangos) must be included in the register. This is necessary in order to achieve a fully transparent and truly accountable chain and network of direct, indirect and

extended influence within public life.

The ongoing scandal involving former MOD employees who go on to lobby on behalf of the defence industry is a real-time reminder of why we need the 'revolving door' between public, private and newly evolving third and social enterprise sectors to become more transparent and accountable. NGOs and community groups are also vulnerable to being used as vehicles for personal, political and commercial gain. They must be equally subject to scrutiny.

The advice of the AJTC should be sought.

11. Which organisations should be exempted from registering and why should they be exempted?

No organisations should be exempted from registration.

MSPs may wish to protect individual identity but must provide a narrative which accounts for lobbying by a self-representing person or advocating constituent on a particular matter which relates to existing or proposed policy or legislation changes. This is particularly important if it entails the need to protect individual privacy.

An example of this would be difficulties with housing, planning permission, crime, whistleblowing etc., which directly impact on individuals or communities. Any representation made directly to an MSP must also acknowledge employment or other public interest. This would be captured in the day-to-day administration of an MSPs office.

The AJTC should be asked to advise on this question.

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

A clearly defined line of legislative responsibility is required to avoid un-ending circulation or deferment and avoidance of responsibility.

The register should be directly overseen by either an independent administrative justice or standards body or the Scottish Information Commissioner reporting to Parliament. Those involved in Lobbying should be answerable to the Scottish Parliament. The advice of the AJTC should be sought on this question.

13. How will compliance be policed and what investigative and enforcement powers would the overseeing body require?

Suggested baseline standards:

The Government should be responsible for ensuring the reporting to Parliament of any lack of compliance

Explicit advice is required on legally enforceable codes of conduct and the requirement to register and maintain up-to-date registration from initial point of contact. Advice from the AJTC should be sought on these matters.

Written warning, recorded on the register for any breach of standards

Withdrawal of access to privileges and removal of privileges

A complaints process for abuse of practice

Ultimately, criminal prosecution may be necessary.

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?

Budget allocation for lobbying activity by public bodies should be capped and money should be re-directed into facilitation of a statutory register.

Commercial lobbyists or companies who exceed a particular expenditure of resource or money on lobbying should also contribute. A fee should be paid by all persons who lobby at point of registration where there are any financial aspects relating to the lobbying. This would be proportionate to the nature of the lobbyist, i.e. corporation, small firm, individual.

Lobbying by voluntary organisations and individuals, where there are no financial implications, should involve no charge to the lobbyists. The latter would apply to our organisation, Accountability Scotland.

A contribution should also come from the Scottish Government.

Resources spent and allocated to lobbying are not necessarily equated with the degree of influence exerted. Strategic lobbying can be highly effective without massive expenditure.

Registration and access to the register need not be expensive, onerous and bureaucratic and should be in real time, effective and accessible if existing administrative resources, expertise and IT systems are adapted and utilised to record in-house and on-line publication of information on lobbying. (This information should also be subject to both qualitative and quantitative analysis.)

The offices of all MSPs, public bodies and civil servants should diarise, track and monitor all meetings and communications of persons they contact regarding policy and legislative matters as a matter of existing good practice within their existing budgets. The proposed Bill simply creates a legal framework and baseline standard which should not only be met but be exceeded. MSPs and Ministers should publish an online diary for constituents to view. An online register should allow those who wish to scrutinise this to view lobbying activity through a range of criteria such as organisation, who contacted, subject of contact, contact history etc.

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?

Yes. Individual and minority groups may be reticent about having details of contact with politicians published. The Bill must be careful not to infringe on individual privacy yet provide transparency regarding the flow of influence in policy and legislature. For example, in the case of individual constituents, a register may provide a numbered reference instead of a name in order to record representations made on a particular matter.

For example, a victim of crime, maladministration or other negligence may feel they wish to make a representation. Their narrative may provide valuable insight beyond the statistics bandied about by well-funded interest groups. They may not necessarily wish to be identified. Therefore, there should be a more nuanced and sensitive way for a politician or public servant to provide an account of a particular source of advice, insight or influence without necessarily revealing their source.

The same may also apply to those who hold unpopular or minority viewpoints yet have a democratic right to make their positions known. This is a matter for further consideration should the Bill progress.