

Time to chill? Lessons on lobbying transparency and participation

A summary of survey responses

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Introduction & Overview

The current debate in Scotland around the scope and impact of Lobbying (Scotland) Bill 2016 has been characterised by a number of claims and concerns that appear to be largely based on projections or perceptions of lobbying disclosure, rather than an assessment of experience elsewhere. This is particularly the case in relation to the impact lobbying disclosure may have on the charitable and voluntary sectors, the so-called 'democratic chill' where registration is presumed to create a barrier to accessing the Parliament and inhibiting participation in the political process by small voluntary organisations.

To help inform this debate we have conducted a mini-survey of those operating lobbying disclosure systems and also those who represent voluntary and non-profit groups in jurisdictions where lobbying registers are in force. A summary of the key findings of this work is presented below. While we would stress that these findings are preliminary, and there is a need for more detailed research among third sector organisations and undertake secondary analysis on disclosed data¹, our findings are nevertheless broadly consistent with other comparative research which has concluded that registration is not a barrier to access or a brake on political participation². Indeed, the benefits of lobbying disclosure for transparency, good governance and accountability appear to be somewhat underplayed in the current Scottish context.

At this moment it is not clear what disclosure regime the Scottish Parliament might adopt in the coming Parliamentary session, as the legislative framework currently being considered gives Holyrood considerable latitude in determining what information related to regulated lobbying activity might be put in the public domain. As yet there appears to be little appetite to introduce thresholds to exclude the smallest community groups or voluntary organisations from disclosure

¹ Comparative analysis of the newly introduced Irish register might be particularly instructive, given similarity between scale and density of public affairs networks in Scotland and Ireland. The first Irish lobbying disclosure census date was 21 January 2016. There is also a review under way in Quebec about whether non-profit organisations should continue to be excluded under their Lobbying Transparency Act, amid concerns about the impact of lobbying disclosure on people's willingness to volunteer for charities in an advocacy capacity.

² Chari, R and Murphy, G. (2008) *The Regulation of Lobbyists in Canada, the USA, the EU institutions, and Germany*, pp. 9-10.

obligations, although the Scottish Government signalled some possible movement on this during the Stage 2 debate on the proposed legislation. The preferred disclosure criteria of paid versus unpaid advocacy will capture some charities and third sector organisations. While it is likely that the regulatory burden of lobbying disclosure has been somewhat over-stated³, it does nevertheless present some risk for small, resource-poor groups.

The Scottish Government approach to this issue has been framed in terms of the proportionality of lobbying disclosure, seeking to balance the interests of transparency with the practicalities of maintaining a manageable register. In terms of the former, it is important that disclosures are meaningful, live and inform those inside and outside the political process. To create a register that becomes little more than a tick box exercise or an archive of past political contacts would add little of democratic or public value.

Those respondents running registers strongly advocated the positive case for disclosure and good governance. While we did uncover some concerns about perceptions of barriers to access for the smallest of voluntary groups, it is clear that lobbying registration is not a problem for the companies, consultancies, and non-profit organisations that the Scottish register aims to capture. Thus, the proposed educative approach to promote understanding and secure compliance is welcome. Also, government acknowledgement of the case for a statutory review of implementation also appears to be well judged and aligned with best practice.⁴ A key lesson to be drawn from experience elsewhere is the importance of all stakeholders – Government, Parliament, and outside interests from all sectors – positively engaging with the design, implementation and review phases of this process.

The results presented below were collected from a short survey regarding the impact of lobbying disclosure legislation on small organisations, community groups, non-profit organizations, etc. The survey was distributed among 30 lobbying registrars and 37 groups representing third sector organizations in Canada, the United States, Ireland and Austria. Responses were received from 16 lobbying registrar offices and 14 contacts from third sector umbrella organizations.⁵

³ According to the OECD (2014) *Lobbyists, Governments and Public Trust*, Vol 3, p. 57, the majority (69%) of those captured by lobbying disclosure regulations take 30 minutes or less to complete their filings.

⁴ Standards, Procedures and Public Appointments Committee (2015) Stage 1 Report on the Lobbying (Scotland) Bill, SP Paper 857, Paragraph 100, http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/94898.aspx#_edn110

⁵ Please note that some of the survey response data in the below tables does not equal the number of respondents stated here as some chose to respond to the survey question(s) with comment rather than selecting a specific response on the predefined scales.

QUESTION 1:

The introduction of a lobbying register inhibits or deters small organisations from contacting covered officials and /or elected representatives.

| | Lobbying registrars | Third sector groups |
|--------------------------|----------------------------|----------------------------|
| Strongly agree | 0 | 1 |
| Agree | 0 | 2 |
| Don't know | 2 | 3 |
| Disagree | 6 | 3 |
| Strongly disagree | 5 | 3 |

On this question the majority of respondents disagreed with the proposition that lobbying registers deter political engagement. This opinion is almost unanimous amongst lobbying registrars. However, responses from third sector umbrella groups are more varied. While a majority disagree with the proposition, a few respondents did express concerns – *on behalf of other organisations* – that registration may inhibit participation. In relation to this, one of the key barriers identified is whether organisations have to pay a fee to be on a lobbying register.

Selected quotes from respondents:

“There can be no question that registering lobbyists does deter some behind the scenes, unknowable, contact. That typically is one key purpose of requiring registration. However, many reputable lobbyists assert that appropriate lobbyist registration and regulation assists them in making contact since, if done appropriately, it removes the taint of their conduct from being disreputable in general. In sum, it is impossible to tell whether it encourages or discourages contact overall. There is no evidence of which I am aware that it works to the detriment of small organizations.” *Stefan Ritter, Executive Secretary, Georgia Government Transparency and Campaign Finance Commission*

“If [Scotland’s] lobbyist register rules allow for some flexibility for small groups and non-profits, that might make it less of a barrier. I don’t believe it has been a barrier in Washington—we have all sorts of groups active and at our capital during the legislative session.” *Evelyn Fielding Lopez, Executive Director, Public Disclosure Commission, Washington State*

“I’m not aware of [any elected representative] who has complained of any drop-off in citizens or NGOs lobbying them, nor were there many concerns raised about CSO or citizen engagement during the extensive public consultations on the Bill. The most pressing concerns were raised by special interests who seem to prefer to work in the shadows” *John Devitt, Director, Transparency International, Ireland.*

“When there was a proposal that lobbying registration require the payment of a fee, we fought that because we believed that it would create an additional barrier, particularly for small organizations. Although I think several US states probably have fees, we prevailed and there is no fee in Minnesota.” *Susan (Susie) Brown, Public Policy Director, Minnesota Council of Nonprofits*

“I cannot comment as to whether lobbyist registration has inhibited or deterred small organizations from contacting legislators. Our law does not require those individuals spending \$500 or less on lobbying activities from registering; therefore, an argument can be made that smaller organizations

are not required to register but can still remain actively engaged.” *Christopher Piper, Executive Director, Virginia Conflict of Interest and Ethics Advisory Council*

“We do believe the fee discourages literal registration, not general contact.” *Karen Beavor, CEO, Georgia Centre for Nonprofits*

“Registration is binding in Austria, however from my experience this had no consequences for political participation, neither for corporate interests, nor the voluntary and charitable sector.” *Alice Wagner, AK Wien*

“The introduction of a lobbying registry shouldn’t inhibit or deter small organizations from contacting covered officials; however, it could be a deterrent or be perceived as a deterrent, particularly if legislation requires filing a return on the intent to lobby before the lobbying occurs (would prohibit spontaneous communication), a fee is charged for filing and/or updating a return (would impose a monetary deterrent), or the filing process requires either presenting oneself at a government office or sending in written documentation by postal mail (would cause inconvenience and delay).” *Respondent wished to remain anonymous*

“The 10 hour in a 30-day period [registration requirement in Alaska] really allows most individuals and nonprofits to engage in some amount of lobbying without having to register – this in itself encourages many nonprofits to engage in limited lobbying activity. Which quite frankly is the most they want to do. In the Public Policy Advocacy class that I teach as part of my work at The Foraker Group, I always mention that state law is designed to encourage lobbying on the part of nonprofit board and staff members.” *Mike Walsh, Vice President and Director of Public Policy, The Foraker Group, Alaska*

“The Canada Revenue Agency is responsible for awarding charitable status and has strict regulations on charities’ participation in ‘advocacy’ or lobbying activities. It is widely held that fear of violating these regulations and confusion about content of the regulations has resulted in an advocacy chill. Additionally, over the past few years, both Conservative cabinet ministers and senators have called into question the legitimacy of charities participating in advocacy activities. Moreover, the Conservative government earmarked funding to investigate charities participating in advocacy. Anecdotally we’re aware of a resulting ‘chill’, but we’re not aware of any quantifiable data to support this. Our own research suggests that what was viewed by some as an assault on charities perhaps emboldened charities to advocate/lobby. Canada’s new Liberal Government has ended the investigation program.” *Respondent wished to remain anonymous*

“One of the principles upon which Canada’s Lobbying Act is based is that the system of registration of paid lobbyists should not limit free and open access to the government.” *Office of the Commissioner of Lobbying of Canada*

QUESTION 2:

The introduction of a lobbying register helps small organisations and community groups know what is happening in politics of government.

| | Lobbying registrars | Third sector groups |
|--------------------------|----------------------------|----------------------------|
| Strongly agree | 4 | 1 |
| Agree | 8 | 3 |
| Don't know | 1 | 1 |
| Disagree | 0 | 4 |
| Strongly disagree | 0 | 3 |

Opinion on this question is clearly split between lobbying registrars (who see the benefits of disclosure) and third sector groups (who are sceptical about the transparency dividend of lobbying disclosure). The value of a register in terms of good governance and accountability is clearly related to the detail and frequency of disclosures. The divergence of opinion on this question also highlights the importance of a well-designed disclosure system, and an associated educative approach to ensure all stakeholders have a clear understanding of the purpose and scope of disclosure. Other potential users of information in transparency registers (politicians, public servants, media, watchdog groups, and the general public) could also be consulted or considered when deciding the detail and pattern of disclosure.

Selected quotes from respondents:

“A register in and of itself is just record keeping – the key to awareness is education about the process, building relationships and tracking pertinent legislation.” *Mike Walsh, Vice President and Director of Public Policy, The Foraker Group, Alaska*

“The introduction of a lobbying registry may help small organizations and community groups know what is happening in politics of government if they choose to access the information therein. Depending upon how the legislation is written, the registry may well not capture all of what is happening in the politics of government, especially in light of any exemptions specified.”
Respondent wished to remain anonymous

“In my experience with legislative ethics, including registration and regulation of lobbyists and their employers, I’ve found registration and reporting by both groups is essential for the public to have any idea of who’s interested in changing or preserving every public policy, and why they’re interested.” *John Schaaf, Executive Director, Legislative Ethics Commission, Kentucky*

“By registering and regulating lobbying activity the activities of lobbyists can be monitored. This is the primary purpose of requiring registration. Many reporters and citizens rely on this monitoring and follow it.” *Stefan Ritter, Executive Secretary, Georgia Government Transparency and Campaign Finance Commission*

“Canada’s Registry of Lobbyists makes public a wealth of information about who is lobbying federal public office holders, the subject matters that are being lobbied on, and oral and arranged meetings that take place with senior public office holders. We believe that this transparency can help all stakeholders know more about who is trying to influence the government’s decision making and about what.” *Office of the Commissioner of Lobbying of Canada*

QUESTION 3 – LOBBYING REGISTRARS:

To your knowledge, have any small organisations ever expressed concern that lobbying registration/disclosure is a barrier to participating in government?

| | Lobbying registrars |
|-------------------|----------------------------|
| Yes | 3 |
| No | 11 |
| Don't know | 0 |

Those running lobbying registers are largely content that lobbying transparency does not present a barrier to accessing or participating in the political system. The concerns registered by these respondents were mainly related to the question of whether resource-poor organisations would be able to afford charges for registration (the proposed Scottish system will not involve any fees or charges for registration).

Selected quotes from respondents:

“Based on the first returns deadline for the register here, which showed a high number of registrants (over 1,100) and returns (over 2,500), it would certainly seem as though the existence of the register and its associated obligations has not served as a major impediment to lobbying.”
Sherry Perreault, Head of Lobbying Regulation, Standards in Public Office Commission, Ireland

“No person has contacted the office expressing the opinion that the lobbyist registry legislation is a significant barrier to participating in government, though a few filers have expressed the opinion that filing takes precious time.” *Respondent wished to remain anonymous*

“We have heard concerns expressed that registration is a burden for non-profits. However, the Registrar has also held the view that many non-profits are well-run, large organizations with substantial budgets and also substantial interaction with governments – and that the registry serves only to provide the public with information about who is lobbying whom in government. As such, she has felt that the registry – which is online and free – is an appropriate requirement to provide transparency and accountability in government.” *Cathryn Motherwell, Director, Office of the Integrity Commissioner, Toronto*

“I am not aware of any instance where smaller organizations in Virginia have complained about limited access to the government as a result of the lobbying law.” *Christopher Piper, Executive Director, Virginia Conflict of Interest and Ethics Advisory Council*

“I have not heard of any organization or business being discouraged from lobbying, probably because the fee (\$250 for a two-year period) is relatively modest, and the interest in having a lobbyist is significant enough that the fee is reasonable for the organization (and has not been increased in 23 years).” *John Schaaf, Executive Director, Legislative Ethics Commission, Kentucky*

“Our Office has heard some concerns that small organisations might perceive that registration is a barrier to participating in government. However, we do not believe this to be the case in practice and [our] outreach and education program mitigates those concerns by helping stakeholders, including small organisations, better understand the requirements of the Lobbying Act.” *Office of the Commissioner of Lobbying of Canada*

QUESTION 3 – THIRD SECTOR GROUPS:

Has your organisation ever experienced lobbying registration/disclosure as a barrier to participating in government?

| | Third sector groups |
|-------------------|----------------------------|
| Yes | 1 |
| No | 10 |
| Don't know | 1 |

QUESTION 4 – THIRD SECTOR GROUPS:

Do you know if any member organisations have ever experienced lobbying registration/disclosure as a barrier to participating in government?

| | Third sector groups |
|-------------------|----------------------------|
| Yes | 4 |
| No | 5 |
| Don't know | 3 |

While the vast majority of peak and umbrella civil society respondents to our survey have not directly experienced lobbying disclosure as a barrier to their participation in government and public affairs, a third of respondents say this has been an issue for member groups or other small voluntary groups. Where concerns are raised, it does appear to relate to the particularities of the lobbying systems (as can be seen from some of the comments below). This emphasises the need for careful consideration of how registers are designed and, pertinent to the ongoing Scottish Parliamentary deliberations of the Lobbying (Scotland) Bill 2016, whether there is merit in considering some thresholds to ensure that the small organisation that are at the heart of such concerns, are clearly excluded from the proposed register.

Selected quotes from respondents:

“There are many 'myths' about lobbying here. For example, it is confused with the ban on political activity and therefore many non profit organizations believe that they cannot lobby.” *Karen Beavor, CEO, Georgia Centre for Nonprofits*

“My sense is that the vast majority of small organisations don't think [the lobbying register] applies to them and [they] haven't really engaged in the process. I was delivering a Board Roles and Responsibilities workshop on Saturday and most of the attendees were very unclear about the Lobbying Register and felt it didn't apply to them. They were shocked to learn that approaching their local member of parliament about much needed support for their organisation/community was lobbying, that they needed to be registered and that they would need to file a return. They were strongly of the view that this was another sledge hammer approach to solving problems with "big business and property developed" lobbying and getting special favours or treatment from politicians/public officials.” *Diarmaid Ó Corrbuí, CEO, Carmichael Centre for Voluntary Groups, Ireland*

SELECTED GENERAL COMMENTS FROM RESPONDENTS REGARDING LOBBYING DISCLOSURE:

“I think that legislation governing lobbying and the creation of a lobbyist registry is an excellent aid to democracy.” *LeeAnn Montgomery, Commissioner of Lobbyists, Newfoundland and Labrador*

“The bottom line, that *everybody* recognizes, is that concentrated and concerted business/private interests will continue to hold majority sway over officials at all levels in NY - regardless of reporting that lobbying or not. The most significant lobbying still is a wink and a nod at invite-only dinner parties.” *Anonymous*

“In our state we do make even small, non-profit groups register if there is someone who is going to spend some amount of time on four or more days in direct lobbying - face to face meeting with legislators mostly. This means that a very small group could qualify as a lobbyist and need to register. Generally, the small group or non-profit will have to register, but may have very little to report. Also, by practice rather than rule, if a non-profit doesn't register properly or if there is a problem with the reports, we are quite lenient because we know this is not a professional lobbyist.” *Evelyn Fielding Lopez, Executive Director, Public Disclosure Commission, Washington State*

“Last year, only those who received or agreed to receive (communicator lobbyists) and those who expended or agreed to expend (client lobbyists) more than \$3000 on lobbying expenditures were required to register. As a result, many small organizations were able to have communications without facing the costs (\$250 per lobbyist) and burdens that come with lobbyist registration and reporting.” *Carol Carson, Executive Director, Connecticut Office of State Ethics*

“When we increased the lobbyist registration fee from \$150 to \$250 for two-year registration, small organizations expressed concern about the increased cost. The threshold for registration was increased from \$2000 to \$3000 in 2015 to address the concern. Since the law's inception in the late 1970's, the threshold has regularly increased.” *Carol Carson, Executive Director, Connecticut Office of State Ethics*

“Within our system, we have not had any complaints that the registration requirements create barriers or problems for small organizations.” *Evelyn Fielding Lopez, Executive Director, Public Disclosure Commission, Washington State*

“Organizations of all sizes recognize the value in “having their name out there” and being visible at the state level. Indeed, every legislative session, 10-20 organizations which do not even meet the threshold of required lobbying registration do so voluntarily, because they are aware of the extent to which Wisconsin legislators rely on Eye On Lobbying data.” *Molly Nagappala, Lobbying & Ethics Specialist, Government Accountability Board, Wisconsin*