

Public Relations Consultants Association (PRCA) response to Standards, Procedures and Public Appointments Committee Lobbying (Scotland) Bill call for evidence

Executive summary

- + We welcome the opportunity to contribute: this call for written views, alongside our previous work with the Bill team and our contact with the Committee, should go some way to providing a full and consistent industry view on the Lobbying (Scotland) Bill as it currently stands.
- + We believe that a Bill is necessary and support the establishment of a Lobbying Register in Scotland: this has been our longstanding position.
- + The PRCA will continue to operate the industry's Public Affairs Register alongside this and will continue to offer guidance and assistance to members on their regulatory requirements.
- + Individuals representing themselves to the institutions of government should not appear on a Lobbying Register in Scotland. It is, however, vital that those conducting lobbying in a voluntary or pro-bono capacity are captured: the current loophole is deeply undesirable. A lobbyist is a lobbyist and there must be a level playing field.
- + We do not believe a balance has been achieved between capturing information of value and ensuring access and participation in democracy are not discouraged: to remedy this, the amount of information required by registrants should be reduced to a number of essential categories. This ought to be framed by the fact that those who are lobbied already have access to a great deal of information.
- + The current definition of lobbying is narrow: pursuing a working, real-world definition would ensure the widest coverage possible.
- + An educative approach is by-and-large the best approach: the amount of education required, of course, hinges on how many of the issues raised in this consultation response remain unresolved.
- + There is a real and pressing risk that this Bill, as it stands, could undermine the industry's own ethical standards, captures swathes of information that is not of value and does not cover a great many of those who are actually lobbied. We continue to have concerns around how this Lobbying Register in Scotland will be overseen and believe that the time, cost and opportunity costs suggested in the Bill's Explanatory Notes is an underestimate if these issues are not addressed.

Introduction

- + The PRCA is the UK professional body representing lobbyists and communications professionals. Our membership includes consultancies (including around 75% of the "PR Week Top 150"), in-house teams (including banks, charities and the entire Government Communications Service) and also individual practitioners. We represent around 350 consultancies and 250 in-house teams. We are the largest association of our type in Europe.
- + Of our 18,000 individuals who are members of the PRCA, over 1,000 are lobbyists.
- + There are currently 98 members on the PRCA Public Affairs Register. This includes the largest consultancies such as MHP Communications, Weber Shandwick, H+K Strategies and Edelman, for instance. We also represent in-house teams for organisations as diverse as the NSPCC, AXA, Visa, Local Government Association and The Law Society.

1. Do you agree that the Bill is necessary and that the establishment of a Lobbying Register is desirable?

- + The PRCA is in favour of a statutory Lobbying Register in Scotland to promote transparency and public confidence in the Scottish political institutions and the wider lobbying industry. This has underpinned our previous work on the topic and continues to inform our approach.
- + Lobbyists seek to inform as well as influence policy so that policymakers can make decisions with the best possible understanding of the effect and implications legislation or regulation will have. A lobbyist is not defined by any specific profession but rather “by the act of lobbying in a professional capacity” itself.
- + The above must be caveated by the reality that any suggestion of poor practice from those who engage in lobbying is patently false.
- + A Lobbying Register in Scotland is desirable; a Bill is necessary; this particular Bill as it is currently drafted, however, needs improvement.

2. How will the Bill affect you or your organisation?

- + The Lobbying (Scotland) Bill affects the PRCA in four different ways: as an organisation which lobbies, as an organisation representing the lobbying industry, as an organisation which runs the industry’s voluntary register and as an organisation which provides advice and guidance to members on matters of regulation.
- + Firstly, the PRCA will be required to register. As an organisation which lobbies in Scotland and with multiple individuals carrying out that work disclosed on our own voluntary register – ranging from a Public Affairs, Policy and Research Manager through to a Director of Communications, Events and Marketing – we welcome the fact that the 80% of lobbyists who work in-house will feature.
- + Secondly, many of our members will be required to register. Our membership includes consultancies (including around 75% of the “PRWeek Top 150”), in-house teams (from banks to public sector teams to charities), and also individual lobbyists. A significant number of our members lobby from the offices in Scotland – including Grayling, Weber Shandwick and Bellenden – and a great many conduct this same action from offices around the UK, including London.
- + Thirdly, any new register of lobbyists must exist alongside our own PRCA Public Affairs Register and complement the existing framework to ensure openness. In terms of how this affects us as the largest association of our kind in Europe, we will continue to lead on voluntary disclosure for the industry, guide members according to the PRCA Code of Conduct and uphold industry ethics.
- + Finally, the interplay between our register and a Lobbying Register in Scotland will require us to release guidance, assist members, explain differences and ensure that due diligence is followed in the course of both registers. Following our experience with the Office of the Registrar of Consultant Lobbyists, we would expect this to take the form of regular bulletins, reminders, roundtables and one-to-one consultation.

3. Registration is triggered only when lobbying is being done in exchange for payment (either as a consultant or an employee) and does not capture lobbying carried out in the course of voluntary work or when it is done by an individual on his or her own behalf. Do you agree with this approach?

- + This legislation should provide certain common sense exemptions to protect the relationship between an MSP and their constituents: whilst the register should include all those who meet the definition and the legislation must be scrutinised to avoid possible loopholes, an individual representing themselves on personal matters should not be considered a lobbyist here.
- + Other exemptions should cover the provision of information or evidence in response to an invitation, in response to a court order or enactment or as part of a tender process.
- + Addressing the exclusion of voluntary work, this risks excluding important work done on a pro-bono basis. To give a real world example, a number of lobbyists give their time and expertise by joining the PRCA at meetings with politicians and civil servants alongside helping us to plan this work. Turning specifically to lobbyists working as consultants, this would also exclude work counted as overservicing (time and activities carried out above and beyond the agreed project fee or retainer fee which may not be reclaimed from the client).
- + This exclusion also raises a number of unintended consequences. For example, it suggests that lobbying is confined specifically to what we might call the lobbying industry. Concurrently, it goes some way to suggest that there exists a class of paid lobbyists and a class of voluntary lobbyists whose work is so radically different that the former is required to register and the latter is not.
- + A lobbyist is a lobbyist is a lobbyist and there must be a truly inclusive Lobbying Register in Scotland with a level playing field.

4. Do the provisions set out in the Bill succeed in striking a balance between capturing information of value and ensuring that access and participation with the work of Parliament and Government is not discouraged?

- + We do not believe that – in the provisions set out in the Bill – a balance has been achieved.
- + Our industry believes in a balanced and proportionate approach towards the information required will result in a Lobbying Register in Scotland that is both useful to the end user (ultimately, the public and politicians), not overly burdensome for the registrant (lobbyists) and which reflects the industry’s own successful voluntary models (the PRCA Public Affairs Register).
- + If we are concerned with capturing information of real value, the Lobbying Register in Scotland ought to include the following details: the registered name and (if applicable) any trading names to ensure that the end user has access to the same basic information as those being lobbied; the office(s) conducting lobbying activity; the best point of contact for any lobbying queries which would allow the public to see the designated employee for compliance and make contact with them if necessary; employees conducting lobbying; and whether or not the organisation complies with a relevant code of conduct.

- + Specific transparency details – such as whether an employee is a councillor or whether they currently hold an elected role in a political party – ought to be considered.
- + The Bill as it stands would require lobbyists to provide the name of the person lobbied; the date; the location; a description of the meeting; a statement as to whether it was done on the registrant’s own behalf or for a client; and the purpose of the lobbying. There is a significant cost to capturing all of this information.
- + The Government could meet a great deal of its own aims by, for example, ensuring that diaries are properly updated and published. Placing the onus solely on lobbyists discourages participation with Parliament and sits uneasily with the fact that democracy has never been stronger in Scotland.

5. Do you feel that the definitions and exclusions are sufficiently clear? Do they, for example, allow individuals and organisations to easily know whether their activity requires to be registered?

- + We recognise that this is a devolved matter for Scotland and that many of the references to Westminster’s Lobbying Act can distract from this or appear unhelpful, but in this instance we believe it would be fruitful to achieve what they did not: a correct definition from the start.
- + We appreciate that – following meetings and what was said at evidence sessions – the Bill “is unlikely to survive” in its present form and believe that now is the time to look at changing the definition to a working, real-world one that would cover all lobbyists.
- + Whilst the definitions might make sense to stakeholders closely involved with the Bill or in the contexts of the Lobbying Act, it would instead be fruitful to ask: “do you feel that the definitions and exclusions are sufficiently clear to the public, businesses, lobbyists and politicians themselves?” Whilst all four categories of end user approach this from a different angle and a different experience of lobbying, simply defining lobbying as face-to-face work seems at odds with reality. Politicians, for instance, surely recognise that they are lobbied in a variety of ways and the public’s confidence in Holyrood is hardly buttressed by a Lobbying Register in Scotland that concerns itself with only one method. We believe that lobbying – properly defined – centres on “influencing government” or “advising others to influence government” and this is carried out in a variety of ways.
- + A number of issues currently exist due to the definition: for example, there are potential problems around an MSP speaking at a large meeting or roundtable.
- + As background, we agree with the Government’s stance previously that thresholds of any sort could lead to the exclusion of lobbying activity which should be of interest to the end user. We seek assurances that this still stands and – although campaigners against lobbying will suggest them – that financial disclosure or the sorts of perverse thresholds previously discussed during Neil Findlay MSP’s Members Bill will not be part of the Lobbying Register in Scotland.
- + In terms of the exclusions, some of these are particularly welcome. The exclusion of a communication made “for the purpose of journalism”, for instance, is something we proposed from the PRCA Public Affairs Register and our definition of lobbying. Similarly, charities, think tanks, trade unions and law firms are no different from consultants: they all lobby. We welcome their inclusion in the Bill.

- + One exclusion, however, merits immediate attention: voluntary work. We are pleased that Q4 of this consultation is given over to the consideration of this point. We anticipate a range of views on the matter, but what ought to concern us here is the aim and end result of “voluntary” lobbying (which is precisely the same as paid lobbying) rather than the idea that good intentions or charitability ought to mean we exempt it entirely.

6. The Bill’s Policy Memorandum states the Bill aims for a “light touch, educative approach” and that “criminal offences and penalties [are] provided for as a last resort”. What are your views on this approach?

- + To reiterate our response to the Consultation on Lobbying Transparency and Inquiry into Lobbying: for the Lobbying Register in Scotland to be credible, it should have statutory powers in place to penalise organisations for non-compliance. The system of sanctions in the Companies Act 2006, for instance, include the proportionate approach that small offences should face a warning notification prior to any civil penalties.
- + In our experience running the industry’s voluntary Public Affairs Register, errors are promptly corrected once highlighted and subsequently not repeated. We do not foresee that registrants from our industry would make anything other than non-purposeful administrative errors, especially given the industry’s commitment to greater transparency. We also do not foresee that correcting these errors within a reasonable timeframe would be a particularly burdensome task.
- + We support the “educative approach”; though whether this Lobbying Register in Scotland can be deemed “light touch” depends as much on the information required from the registrants as it does on the overall approach.

7. Are there any unforeseen consequences of the Bill as currently drafted?

- + This Bill risks – unintentionally, we believe – undermining standards. Whilst we welcome the fact that the Lobbying Register in Scotland will indicate if a registrant complies with a voluntary code of conduct, we believe that the distinction between those who are committed to transparency and those who are not must be preserved. By introducing a statutory code of conduct, there is a risk that this distinction is removed and those viewing the Lobbying Register in Scotland will have their ability to make an informed decision about the ethical standing of registrants hindered.
- + One of the real and pertinent unforeseen consequences of the Bill is that the amount of information required from a registrant discourages engagement or ultimately leaves us with a strange end result, as touched upon in our response to Q4 of this consultation. We do not believe that the amount of information is truly necessary. If the counterargument to this is that the Lobbying Register in Scotland will be sufficiently “light touch” that these categories will require relatively few details then, indeed, this is another reason for them not to feature at all. In dealing with engagement and democracy, we must be consequentialists: we cannot risk creating a real or perceived barrier to lobbying.
- + We have raised the inclusion of civil servants, SPADs, staff and Scottish Government officials in consultation responses, meetings with the Bill team and with the Committee Convenor. To

provide a real world example, the PRCA has met with a variety of senior civil servants throughout the process who have made serious and tangible policy decisions. We do not believe work such as this should be omitted entirely. Whilst our meeting with this Committee's own Convener on October 11th went some way to clarifying the reserved matter of civil servants and therefore requiring an administrative solution to include them, we do not wish to see a situation where the sound move of including Ministers and MSPs in the legislation was undermined by the exclusion of the many other institutions of government who are lobbied.

- + We support the existence of an independent registrar to oversee the Lobbying Register in Scotland: with this in mind, we are concerned that the current Bill does not achieve this. Whilst we appreciate the intention of having the Clerk of the Parliament and the Commissioner for Ethical Standards in Public Life involved is that the former can oversee everyday work and the latter can investigate any issues, this does not come without complications. Education and enforcement can be contained in one role.
- + Moving from enforcement to financial matters, our response to this summer's consultation gave detailed figures based on hours and opportunity cost. This was submitted in mind of a wider definition and a wider scope. Whilst we were pleased to help and support the Bill team in their work and appreciate its influence on the Bill as it stands, we are concerned that these figures now underplay costs such as the initial return. We would be happy to share detailed figures with the Committee, explore the specific requirements for our members and discuss the various structures and systems lobbyists might put in place to comply with this legislation.

8. Are there any amendments that would, in your view, enhance the Bill?

- + To summarise this consultation and conclude, there are a number of amendments that should be made which would enhance the Bill significantly. Examples include:
- + 6(2)(a), (b), (c), (d), (f): these can all be omitted to ensure engagement is not discouraged.
- + 6(2)(g): "purpose" substituted with "client or employer" to ensure only essential information.
- + 10(2)(b)(ii): add "including additional, voluntarily disclosed clients on employee" to ensure erring on the side of caution is not discouraged.
- + 2(b): add "and any client or employee information voluntarily disclosed".
- + 7(a)(i): "regulated" omitted to avoid confusion.
- + 10(3)(a): "6 months" substituted with "3 months" so as to best fit with industry's registers. A change to 3(a) would also be required.
- + 43(1): "may publish" substituted with "will publish" to ensure proper monitoring.
- + 44: this section concerns a statutory code of conduct so should be omitted entirely.