

Public Relations and Communications Association (PRCA) response to the Scottish Parliament's Public Audit and Post-legislative Scrutiny Committee's review of the Lobbying (Scotland) Act 2016

Call for written views

The Scottish Parliament's Public Audit and Post-legislative Scrutiny Committee is seeking views on the operation of the Lobbying (Scotland) Act 2016 ("the Lobbying Act").

The Lobbying Act makes provision for a public lobbying register in which organisations are required to record any instances of "regulated lobbying". In particular, the Act:

- *defines what is meant by "regulated lobbying";*
- *makes provision for the establishment, maintenance and content of the lobbying register;*
- *makes provision for oversight and enforcement of the provisions in the Act;*
- *makes provision for Parliamentary guidance and a code of conduct.*

The Act also makes provision for a committee of the Parliament to review the operation of the Act during the "review period" (from when the duty to register came into force on 12 March 2018 up to 12 March 2020). The committee must report on the review by March 2022.

Questions

You are invited to submit written views to the Committee on the following questions—

Introduction:

- The PRCA welcomes this opportunity to contribute to the review of the Lobbying (Scotland) Act. We are the world's largest PR and communications membership body, operating in more than 70 countries around the world and representing in excess of 35,000 PR professionals. The PRCA promotes all aspects of public relations and communications work, helping teams and individuals maximise the value they deliver to clients and organisations. The Association exists to raise standards in PR and communications, providing members with industry data, facilitating the sharing of communications best practice and creating networking opportunities. All PRCA members are bound by the Professional Charter and Codes of Conduct and the PRCA Public Affairs Code and benefit from exceptional training. The Association also works for the greater benefit of the industry, sharing best practice and lobbying on the industry's behalf.
- Within the PRCA is the PRCA Public Affairs Board, the voice of the public affairs and lobbying industry. The PRCA Public Affairs Board came into being in 2018 when the Association of Professional Political Consultants voted to merge with the PRCA. The Board's role is to ensure transparency through its quarterly Public Affairs Register; to enforce high standards through its Public Affairs Code; and to promote a wider understanding of public affairs and its contribution to public life.

- Finally, we would like to note that these are our initial observations, and we look forward to receiving further clarity from the Committee. We also look forward to engaging with the Committee on the issues raised in this consultation.

What has changed?

1. In your view, what concerns was the Lobbying Act seeking to address?

As the voice of the public affairs industry, the PRCA believes that Lobbying is a sign of a flourishing democracy and this has been recognized by the Lobbying Act. We also believe that the majority of lobbying is conducted in an ethical and transparent manner. All PRCA members who conduct lobbying in Scotland are regulated and guided by the PRCA Professional Charter and Codes of Conduct and the PRCA Public Affairs Code.

The proponents of the Lobbying Act have hailed the act for delivering greater transparency and reinstating public trust in the lobbying industry. There is also a common belief that this transparency is essential in avoiding lobbying scandals.

While the PRCA is committed to ethical and transparent lobbying, there are common misconceptions about the industry that were promoted during the passage of the Act. First, we believe the majority of lobbying scandals don't actually involve lobbyists. Secondly, the lobbying industry in Scotland is already operating in an ethical and transparent manner. The PRCA operates the voluntary Public Affairs Register through which our members declare their public affairs activity on a quarterly basis. Our members also appear on the Register of Consultant Lobbyists in Westminster, the Lobbying Register in Holyrood, and the Transparency Register in the EU. The public affairs industry goes above and beyond to demonstrate its commitment to ethics and transparency.

2. Two years' on, has the Lobbying Act addressed those concerns?

In particular, has the Act added value? If so, in what way? For example, has the Act improved transparency? Do you think it has changed the way lobbying is carried out?

The Lobbying Act has added some value through its inclusion of in-house lobbyists. This inclusion provides a more accurate picture and understanding of the public affairs industry. In contrast, the Register of Consultant Lobbyists in Westminster only captures a small percentage of the public affairs and lobbying industry through its exclusion of in-house lobbyists.

However, the Register is far from perfect and we cannot say that it fully achieves its goal to increase transparency.

There is a common misconception that the lobbying industry was unethical prior to the Act's introduction. However, as mentioned earlier this is not the case. The public affairs and lobbying industry has had a long-standing commitment to transparency. All of our members subscribe to the Public Affairs Code and PRCA Professional Charter and Codes of Conduct. In addition to this, they also appear on various lobbying registers across Westminster, the EU, Holyrood, and the PRCA's Public Affairs Register.

Therefore, while we appreciate the Act's commitment to transparency, we are sceptical of the claims that the Register has significantly increased transparency in Holyrood, given there was already a high standard for ethical transparency.

Finally, we are not sure if the Act has changed the way in which lobbying is carried out, if anything the Act has increased the burden on lobbyists due to the number of details they have to provide on the register. We do not believe that the amount of information declared by registrants provides much value or gives the public a better understanding of the lobbying industry in Holyrood. Furthermore, the burdensome nature of completing a register entry may have deterred lobbyists from having face-to-face communications with MSPs, Ministers, special advisers, and the Permanent Secretary. We believe these interactions are valuable and ultimately improve the policy-making process.

3. Do you support a legislative approach to regulating lobbying activity? If so, why? If not, for what reason? Has your view on the value of a legislative approach changed since the commencement of the Lobbying Act?

The PRCA has always been supportive of the establishment of statutory Registers in Westminster and Holyrood. We also engaged with the Bill team throughout the entire process. However, the current state of lobbying regulation in Holyrood is far from perfect.

The PRCA has always believed that its voluntary register works to complement statutory lobbying regulation in Holyrood, Westminster, and the EU. As the united voice for the public affairs and lobbying industry it is our role to make sure that our members understand the regulation that affects them but also ensure that the legislation is effective and fair. We work closely with the regulatory authorities to voice our industry's concerns.

That being said, we believe in good regulation. The lobbying and public affairs industry already has a strong voluntary regime in which organisations like the PRCA uphold ethical standards through the PRCA Public Affairs Code, the PRCA Professional Charter and Codes of Conduct, and the PRCA Public Affairs Register. The existing regulatory framework in Holyrood is overly burdensome and the majority of our members already declare their lobbying activity in Westminster, Holyrood, the EU, and the PRCA's own register. Therefore, we are not convinced that the burdensome nature of the register in Scotland achieves greater transparency when lobbyists are declaring their activity across multiple regimes.

We also believe there should also be a level playing field – all lobbyists in Holyrood should be subject to the same rules and regulatory expectations. There cannot be one set of rules for one class of lobbyists and another set of rules for the rest. We are strongly against the suggestion that consultant lobbyists, or lobbyists that work at agencies should be subject to a different set of stringent rules in comparison to in-house practitioners. A lobbyist is a lobbyist therefore the regulatory burden and rules should apply equally to all regardless of the lobbyist's employer.

4. In your view, is the Lobbying Act working in the way it was intended? If not, why not? What needs to change to ensure that it is working as intended (i.e without making changes to the legislation)?

The cost of compliance is much higher than anticipated and the administrative burden is overwhelmingly assumed by the lobbyist. In order to ease the burden on lobbyists we would

like to see improvements to the Register's interface to make it more user-friendly especially given the volume of information that is being declared by our members. This would help ease the administrative burden. The cost of compliance might also deter engagement with the Parliament.

We would like to note that the Registrar's office and the Registrar himself have always been helpful when our members have had questions about declaring activity on the Register. However, we strongly believe the burdensome cost of compliance must be eased and making the Register more user-friendly is imperative.

Improvements requiring legislative change

5. Could the legislation be improved in any way? If so, please indicate why and in what way?

In particular, do you have any views on whether the changes should be made to the following (please indicate why and in what way):

- a. the Act covers lobbying to a Member of the Scottish Parliament, a member of the Scottish Government, a junior Scottish Minister, a law officer, a special adviser or the permanent secretary. Does the Act cover the right groups of decision makers?**

We believe the Act covers the right group of decision makers and should not be extended beyond these individuals. Not only will this increase the administrative burden but this change will not deliver greater transparency. We strongly believe in proportionate regulation which strikes a balance between the regulatory burden on registrants and achieving transparency. By extending the scope of the Act to civil servants, the regulation would not be proportionate because it would hugely increase the administrative burden and it would not necessarily achieve greater transparency.

For example, there is a routine exchange of information between civil servants and lobbyists but this activity should not be covered by the Register. A lobbyist's job is to inform the policy-making process, which inevitably means that lobbyists are having conversations with civil servants and other members of the Scottish Government. In line with the Act's aim to cover face-to-face interactions with those who are involved in the decision-making process we believe the Act captures the right group of individuals.

- b. the Act requires face-to-face communications, including via video conferencing and other similar means, which are also regulated lobbying to be registered. Are these the right communications to capture?**

We believe that the Act covers the correct form of communications. The act should not extend to other forms of communication because the cost of compliance is already high and burdensome, and extending the scope will not deliver greater transparency.

In the current situation during which COVID-19 restrictions are in place, a number of meetings are taking place over applications such as Zoom, Skype, and Microsoft Teams which suggests that face-to-face meetings are the most significant contact.

- c. **the circumstances in which a person undertaking "regulated lobbying" is required to provide information, to be included in the register, about costs incurred by them when engaging in regulated lobbying.**

The PRCA has always believed that financial disclosure is deeply flawed and unworkable.

Money does not equate to influence; while some stakeholders have lobbied the Government for financial disclosure, it does a great disservice to MSPs and the constituents they represent. Ensuring politicians and policymakers have all the information they need to make an informed decision is vital and financial disclosure would create a chilling effect across democracy in Scotland.

More importantly, lobbying, as defined by the Act, forms part of a much wider communications brief and neither consultants nor in-house lobbyists are paid based on the number of face-to-face meetings they conduct. Meetings occur as-and when necessary according to changing political circumstances. It would be incredibly onerous and achieve very little to attempt to produce a cost by looking at every single meeting separately, consider each staff member present and then divide their salary, office overheads, employees' costs (N.I. contribution and pension contribution, for instance) and travel costs by the number of hours that meeting took.

Bill assumptions v. reality of the Act

6. Have assumptions made at the Bill's introduction in its Financial Memorandum and Policy Memorandum and during its passage through Parliament held true (for example, on costs or impact) and, if not, why not?

At present, the PRCA does not have any observations about the Financial Memorandum and Policy Memorandum.

Any other points

7. Are there any other issues you would like to raise in connection with the operation of the Lobbying Act?

Overall, the PRCA has a pragmatic view on the Lobbying Act and the existing regulatory framework in Holyrood. We believe in making the legislation work for lobbyists, parliamentarians, and the general public. However, there must be a level playing field and the regulatory burden should apply equally to all lobbyists.

However, we are strongly cautious about some of the suggestions that have been made about financial disclosure and the introduction of more stringent rules for some organisations that appear on the register.

We strongly believe there should be a level playing field and there shouldn't be a set of rules for some lobbyists that don't apply to others. In addition, this would be overly burdensome.

We appreciate that these suggestions are just mere suggestions at this stage but we would like to be consulted and given more clarity on these issues.



Finally, we would like to point out that these are our initial observations and we look forward to engaging with the Committee on the issues raised during this consultation.