

Consultation on Lobbying Transparency



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Alcohol Focus Scotland

Title Mr ☐ Ms ☐ Mrs ☐ Miss ☐ Dr ☐ *Please tick as appropriate*

Surname

Forename

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3. Permissions - I am responding as...

Individual / Group/Organisation
☐ Please tick as ☒

(a) Do you agree to your response being made available to the public (in Scottish Government library

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available ☐

Yes, make my response available, but not my name and address ☐

Yes, make my response and name available, but not my address ☐

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library

Are you content for your **response** to be made available?

Please tick as appropriate

☒ Yes ☐ No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

☐ No

☒ Yes

CONSULTATION QUESTIONS

Question 1 – Do you agree that the Government’s three core principles are appropriate to inform the delivery of an effective and proportionate lobbying registration regime in Scotland?

AFS broadly supports the three principles as long as they are seen as attendant to the primary purpose of a lobbying register, which is to provide greater transparency of lobbying activity in Scotland. Simplicity in the operation of a register, for example, is of little value unless it also achieves this objective.

We are also a bit uncertain about making it a principle that the introduction of a register should not restrict *how* stakeholders and members of the public engage in public policy issues. At present there is little accessible information in the public domain about who lobbies whom in the Scottish Parliament and on what issues, and how that engagement is carried out. If a lobbying register succeeds in making this clearer, it is not inconceivable that there may be lobbying practices revealed that society collectively may wish to see modified. Starting out from a position that everything in relation to lobbying in Scotland is fine and nothing needs to change seems to us to be bit complacent. Evidence suggests that there has been an increase in scope and intensity of lobbying activity in recent years. Moreover, modes of communication have changed, and as noted in the consultation document Scotland’s constitutional position is changing. We would like to think that the establishment of a lobbying register would lead to some reflection on what the register reveals about the nature of lobbying activity and whether there is anything that needs to change to ensure that parliament is accessible to all citizens and interest groups and not predominantly to those who are the best resourced.

Question 2 – Do you agree that a publicly available register of lobbyists should be introduced in Scotland?

Yes.

In our view a statutory register of lobbying activity is essential to improve lobbying transparency in Scotland. Existing mechanisms for obtaining information relating to lobbying activity are limited, fragmented and not easily accessible. Openness and transparency in lobbying activity is necessary to ensure accountability and the integrity and probity of policy and political decision-making processes.

Our concern about lobbying activity in Scotland is not restricted to, or even particularly focused on, possible impropriety in lobbying conduct. Far more problematic in our view, and the view of many other organisations, is the potential for large organisations, especially corporations, to gain privileged and disproportionate access to decision-makers in parliament and government by virtue of fact that they are better resourced.

In the field of alcohol policy, we know that the alcohol industry has been engaged in significant lobbying activity in Scotland over the past few years in opposition to measures included in the current alcohol strategy. Some may argue that as minimum pricing legislation was passed it shows access to decision-makers doesn’t always entail influence. However, we are not so sure. In an interview broadcast on a website for whisky enthusiasts in November 2013, the then chief executive of the Scotch Whisky Association, Gavin Hewitt, stated that the industry had taken its eye off the ball in relation to alcohol policy developments in Scotland and should have made more overtures to the SNP while it was in opposition:

"If we had been able to foresee the Scottish National Party in its minority government role in 2007 wanting to press ahead with minimum pricing, and had we got hold of them before they actually formulated policy, I think we would have saved ourselves both a lot of time and a lot of money," he said.

"We told them that effectively anything which actually interfered other than through tax with the pricing of alcohol was likely to run into problems [but] by the time we actually told them that minimum pricing was totally unacceptable to us and would remain so, they didn't believe us, and therefore we're in the legal fight that we are now."

Under the influence, J Gornall BMJ 2014;348:f7646

What is striking in this interview is Gavin Hewitt's implicit belief that had the SWA established relationships with SNP politicians prior to the party's election to government then minimum pricing would not have happened.

Information on the alcohol industry's lobbying activities in the UK and Scotland, including their strategy of building long-term personal relationships with decision-makers, has been revealed piecemeal through investigative journalism and a limited number of research studies. We want to see this type of information made public as a matter of routine. Disproportionate access to decision-makers can result without any obvious impropriety or any breach of a code of conduct. An individual MSP can ensure proper conduct in relation to lobbying activity directed towards them, but they cannot safeguard against disproportionate access to decision-makers because they are unlikely to know everything about who has access to whom, on what issues and how frequent that access is. This is what a statutory register can provide.

Question 3 – Do you agree that no fee should be payable by lobbyists for registering or updating the register?

Ideally we would like registration and updating of the register to be free. However, AFS is not opposed to paying a fee if that results in a more effective register.

For a lobbying register to achieve its purpose of providing greater lobbying transparency, it needs to include sufficient information on who is lobbying whom, and on what policies, legislation and regulation. It needs to be searchable by date, subject areas and keywords. There needs to be sufficient functionality to allow users to extract the information they need in an accessible, understandable and useable format. It is better, in our view, for a fee to be payable if that achieves an online resource that delivers increased lobbying transparency, rather than producing something cheap but inadequate.

The payment of fees for products and services is common to many organisations in the performance of their work. AFS pays for a parliamentary reporting service for example, we subscribe to journals, and we pay membership fees for umbrella organisations. A lobbying registration fee could be viewed as a similar type of cost. A graded fee structure could be devised so that individuals/organisations paid according to their means, with an exemption for small organisations.

Question 4 – What are your views on whether the onus to register should lie with individuals who lobby as part of their work, or organisations who lobby?

Please provide reasons in support of your response.

AFS believes that the onus to register should lie with organisations

In AFS there are up to half a dozen people who could be involved in what would be classed as lobbying activity. Each individual participates in lobbying and influencing work on behalf of the organisation, advancing a position that has been adopted by the organisation. Individual employees come and go: it is the organisation's position and conduct that is of relevance. It's important in our view that a lobbying register tracks the lobbying activity of organisations.

Question 5 –Should both consultant lobbyists and in-house lobbyists be required to register?

Please provide reasons in support of your response.

Yes, both consultant and in-house lobbyists should be required to register.

As noted in the Scottish lobbying inquiry report and elsewhere, a significant amount of lobbying activity is undertaken by in-house lobbyists working for business, charitable and professional organisations. To confine registration to consultant lobbyists, as is the case with the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 at Westminster, would mean a large proportion of lobbying activity in Scotland would not be subject to public scrutiny.

Question 6 – Should any types of in-house lobbyist be exempt from registration?

Please provide reasons in support of your response.

No.

We believe all in-house lobbyists should be required to register. We are concerned about the extent to which different interest groups are able to access and influence decision-makers in government. A judgement about whether any particular interest group has disproportionate access can only be made if the activities of all interest groups are included in the register.

Question 7 – Do you agree that the register should cover the lobbying of MSPs and Ministers?

Please provide reasons in support of your response.

Yes. However, we believe the register should also cover lobbying of special advisers and civil servants.

To improve lobbying transparency in relation to public policy-making, a register needs to cover ministers, special advisers and civil servants, in addition to MSPs. Ministers, special advisers and civil servants have a significant role in the formulation, modification or adoption of policies and legislation, and they are all lobbied in this regard.

Research into the alcohol industry's lobbying activity, which included interviews with industry actors, found that the industry sought access to the entire range of political actors

involved in policy-making, including civil servants, ministers, parliamentarians and special advisers. Respondents in interviews agreed that their first point of call on a given issue would be to the relevant officials in the government department in question and they felt they enjoyed a “high level of access to officials.” Contact with ministers was actually less frequent than officials. Some respondents highlighted the value of speaking to ministers’ special advisers and access to these advisers was seen as a “parallel route” into government. *‘Water dripping on a stone?: industry lobbying and UK alcohol policy. Hawkins B., Holden C., Policy Politics 2013.*

If key groups of people involved in policy matters - i.e. special advisers and civil servants – are not covered by the register then the public will be kept in the dark about a significant proportion, and potentially very influential aspect, of lobbying activity.

Question 8 – What types of communication do you think should be covered by a statutory register?

AFS believes that a statutory register should cover more types of communication than is proposed. We would be very disappointed if after all the debate and consultation around the merits of a register, and the time and effort required to set one up, all we get is a scant record of face-to-face meetings.

The Scottish lobbying inquiry report states that “lobbying activity still places great value on face-to-face communication over emails, phone calls or teleconferencing of any kind.” We are very doubtful of this assertion. Reflecting on our own lobbying activity we know that face-to-face meetings make up the smallest proportion of our total lobbying and influencing work. We are much more likely to use email, letters and phone calls, and we know we are not unique in this regard.

A register of lobbying activity should, in our view, include all the types of communication that lobbyists are known to use to influence the policy process: emails, text messages, telephone calls, written communications (letters, information material or position papers), events (attended and organised), as well as one-to-one and roundtable meetings. Transparency in lobbying activity requires this level of reporting otherwise lobbyists could simply put more emphasis and resources into channels of communication not covered by a register, so defeating the ends of lobbying transparency.

We differ with the view taken in the inquiry report and the current consultation document that registering lobbying activity beyond face-to-face meetings would be disproportionate and burdensome for organisations. Again, we use our own experience of lobbying and influencing as a guide. We have looked back over our activity reports for the past year and identified the activity that would be classed as lobbying (including written communications, not just face-to-face meetings). Assuming that it takes around 20 minutes to complete an entry about a particular lobbying activity in the register, we estimate that it would take us around one day in total to enter information about all our lobbying activity in the Scottish context over one year. We do not consider this a disproportionate burden. We are a national charity with a strong advocacy and campaigning role. It is likely that we engage in more policy and influencing work than the bulk of voluntary sector organisations operating in Scotland.

Consultant lobbyists who lobby all of the time will have a bigger administration burden with the introduction of a lobbying register. However, they receive significant sums of money for their services, and can factor in the cost of any additional reporting requirements into what they charge clients.

Question 9 – Do you agree with the Government’s view that paid lobbyists should be required to register?

Please provide reasons in support of your response.

We support the position that paid lobbyists should be required to register, subject to a review of the operation of the register after a set period to assess whether excluding volunteer lobbyists has a detrimental impact on lobbying transparency, or the work of smaller organisations.

We appreciate that it is not that straightforward to devise a registration regime that works to capture significant lobbying activity, while also ensuring that the burden on small organisations is not disproportionate. Drawing a distinction between paid and voluntary lobbyists appears to us to be a workable proposal, as we anticipate that the bulk of lobbying activity is undertaken by paid lobbyists with volunteer lobbyists engaging in small, infrequent amounts of lobbying activity.

Question 10 – Do you agree that the register should also allow for voluntary registration by lobbyists not required to register?

Please provide reasons in support of your response.

We're not opposed to voluntary registration, provided it is supplementary to mandatory registration requirements and mandatory information provision, which we believe should be extended beyond what is proposed in the consultation document.

The value of a statutory lobbying register is that it requires the same types of information and the same level of detail from all organisations required to register. This is necessary to reveal the extent to which different interest groups lobby and are able to access and potentially influence policy and decision-makers. A voluntary scheme that allowed organisations to choose to register or not, and to provide only the information they wanted to reveal, would almost certainly result in a more fragmented and partial picture of lobbying activity.

To achieve increased lobbying transparency, we believe mandatory registration requirements and mandatory information provision need to be at the core of a lobbying registration regime. We also believe that the information required in terms of who the register should cover (Q7), the types of communication that should be covered (Q8); and what information lobbyists should provide on registration (Q10) needs to be expanded.

Question 11 – What are your views on what kind of information each lobbyist should be required to provide on registration?

Please provide reasons in support of your response.

The information required on registration should include the organisation/individual lobbyist and the career history in the case of consultant lobbyists. When registering specific lobbying activity, the information required should also include who the lobbyist is working on behalf of (the client), if relevant; who they are contacting; the communication techniques used; and the subject of the contact.

It is important in our view that the register identifies those organisations/individuals lobbying in the public interest and those lobbying in the interests of business. Some not-for-profit organisations are linked to commercial entities by way of their governing structures, membership, operations, or reliance on industry funding. If a register is to address concerns about disproportionate access to decision-makers by large corporations with deep pockets, then all lobbying activity funded by corporations needs to be identifiable.

We believe this level of information is necessary to deliver greater lobbying transparency.

Question 12 – How often should lobbyists be required to provide a return detailing their lobbying activity?

Please provide reasons in support of your response.

We would like the register to be as current as possible, so our preference would be for quarterly reporting. Actors engage in lobbying to influence decisions and policy outcomes, so ideally it would be helpful to know what lobbying activity was being undertaken while a decision or policy outcome was still under consideration.

Question 13 – Do you agree that the Parliament should introduce a Code of Practice for lobbyists setting out guidance on the registration regime and expected standards of behaviour?

Please provide reasons in support of your response.

Yes.

We think guidance on the registration regime could be helpful and there may be merit in developing a code of conduct for lobbyists setting out accepted standards of behaviour. An element of this code could cover the use and presentation of evidence to public officials in support of a lobbying position, for example, with a commitment to ensuring that evidence is not distorted or misrepresented in briefing documents and one-to-one communications with decision-makers.

Question 14 – Do you agree that a register should include the facility for lobbyists to indicate if they already subscribe to any industry Codes of Conduct?

Please provide reasons in support of your response.

We don't have strong feelings about this proposal. It is not something that will deliver greater lobbying transparency in our view, but we have no objection to organisations/individuals indicating if they subscribe to any industry code of conduct if they want to.

Question 15 – Do you have any views on the Committee's proposals for who should be responsible for upkeep and oversight of the Register?

AFS believes that upkeep and oversight of the register should be the responsibility of a body that is independent of parliament and government and those undertaking lobbying activity. For this reason we are not in favour of Committee's suggestion that its clerks act as 'Registrar'. We believe that existing bodies, such as the Standards Commission for Scotland, the Public Standards Commissioner, or the Scottish Information Commissioner are more appropriate to take on the role of lobbying registrar. They are independent from government and parliament and have the necessary skills and experience in terms of monitoring adherence to codes of conduct and regulations, as well as investigating complaints and ordering remedial action.

Question 16 – Do you have any views on what enforcement mechanisms and sanctions should be available in connection with the registration regime?

Please provide reasons in support of your response.

We support the approach to enforcement mechanisms and sanctions outlined in the consultation document. We agree that there should be a range of enforcement measures, starting with prompts and written warnings for minor or unintended transgressions. However, we believe that penalties for failure to comply with the new rules should also include fines for non-disclosure, and the possibility of criminal prosecution for more serious offences. Evidence from various fields demonstrates that adherence to regulatory regimes without proper enforcement is weak.

Question 17 – Do you have any views on whether Parliament, by resolution, should be able to adjust the scope and operation of the registration regime once established?

The full implications and consequences of the operation of a lobbying register cannot be known until a register is put in place. That is the same for any piece of legislation, regulation, or policy. Not knowing everything, however, is not a reason for inaction; otherwise we would never do anything. We firmly support provision to adjust the scope and operation of the registration regime once established. The scheme should be reviewed periodically to assess whether it is achieving its purpose of increased lobbying transparency, and whether any modifications are necessary to address any unintended consequences.

Question 18 – Do you have any views on whether there could be impacts on equalities groups as a result of the proposals outlined?

Please draw on specific evidence and/or wider knowledge, experience and expertise.

Generally we believe that a statutory register could have a positive impact on equality. Rich and powerful organisations are able to deploy far greater resources for lobbying activity than small organisations and financially constrained charities. Making lobbying activity more transparent through the introduction of a statutory register of lobbyists is the first step towards making lobbying more accountable and representative of the wider public interest. Negative impacts on equality would arise if a statutory register deterred smaller organisations from lobbying due to the administrative burden of registering. An equalities impact assessment can be conducted with a view to minimising any perceived negative impacts on equalities groups and once the system is established the situation can be reassessed.

Question 19 – Do you have any views on whether there could be any additional costs or other implications for businesses as a result of the proposals outlined?

Please draw on specific evidence and/or wider knowledge, experience and expertise.

No comment.

Question 20 – Do you have any other comments on the general operation of a register of lobbyists, or on any of the proposals put forward by the Committee or the Government?

No comment.