

**Post-legislative Scrutiny: The Lobbying (Scotland) Act 2016**  
**Call for Views**  
**Submission by For Women Scotland, 14 August 2020**



For Women Scotland welcomes this opportunity to respond to the Call for Views on the Post-legislative Scrutiny: The Lobbying (Scotland) Act 2016. FWS is a grassroots women's rights organisation composed of ordinary women from across Scotland: the primary motivation for forming was concern about the Scottish Government's proposal to reform the Gender Recognition Act 2004 and the potential impact on the hard won rights and protections for women and girls. The following response concentrates on where the Lobbying Act impacts on women's rights and was formed after seeking input from our members.

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

The Lobbying Act was seeking to define and record regulated lobbying activity in order to provide openness and accountability about who is seeking to influence decisions in the Scottish Parliament.

**2. Two years' on, has the Lobbying Act addressed these 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 somewhat addressed our concerns. The register does provide valuable information with regards to who, when and what face-to-face lobbying activity has taken place but it is limited in scope, with only a partial picture provided.

As it is not publicly known what activities lobbying groups participated in prior to the Lobbying Act it cannot be ascertained if the way lobbying is carried out has changed. However, it is entirely possible that lobbying has shifted away from face-to-face conversations to other means of communication in order to avoid registration. It may also be the case that 'lobbying targets' have shifted away from those requiring declaration.

Very little in the way of scrutiny of lobbying activity has taken place in the last two years which means that disparity of access, balanced lobbying of all views, and complete transparency is still an issue.

**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?**

Yes, a statutory register of lobbyists is the simplest way to provide public scrutiny of who is seeking to influence political decisions, and is essential in an open and democratic Parliament.

#### **4. Could the Lobbying Act be improved in any way? If so, please indicate why and in what way.**

##### **Report additional communication methods used to lobby**

The aim of the lobbying register should be to capture significant paid-for lobbying activity, regardless of the form of that activity. Face-to-face meetings (including video conferencing) are just one way to influence decision makers. In order to give a fuller picture of lobbying activity it is essential that the register should include letters, emails, phone conversations, and events. In almost all cases lobbying organisations will hold records of these communications and it need not be overly burdensome, in the main, to administrate.

Certain communications should be exempt - those that are a matter of public record such as submissions to consultations and Committees, or public requests from government for information, as well as routine administrative communications.

##### **Report additional groups lobbied**

To achieve a much fuller picture of significant lobbying activity, lobbying of any civil servant should be covered by the register. One of the key points from the debate on the Westminster lobbying register was that, very often, the most useful lobbying contacts are not Ministers, but at the lower level of the civil service where the details of policy or draft legislation are developed. We saw this from the shaping of the Gender Recognition Act consultation whereby civil servants in the Family Law team were successfully lobbied by transgender pressure groups to the extent that sex and gender were deliberately conflated and the definition of sex was removed from the documentation. This was contrary to information given by the EHRC and caused a lot of confusion for respondents.

##### **Shorten reporting time period**

Ideally, lobbyists should be required to register lobbying activities as close to the occurrence of the meeting as possible. Delays in disclosure create the risk that the public would not be aware of lobbying activities until after any legislative or government action has taken place. As with the example above, the current six month allowance for reporting permitted the consultation to be made public without allowing for any challenge on the clear bias of its framework.

At the moment lobbyists file reports at six monthly intervals from the date of their first regulated lobbying activity. This date is not published and it is difficult for the public to know when to expect the register to be updated.

Both these issues could be solved by moving to three monthly reporting in line with calendar quarters.

##### **Improve equal opportunity of access**

It is inevitable that some organisations are better equipped to engage in public policy and lobbying than others, but the government should look for ways to counter this, and to actively take responsibility for parity in access and diversity of views being lobbied. It is easy to see how the sheer extent of lobbying activity by one organisation can prompt suspicions of

unequal access and the possibility that decisions have been taken to serve the interests of those with greater access.

By way of demonstration, the lobbying register shows 54 lobbying occasions by just two transgender pressure groups in the three months leading up to the government announcement of a public consultation on the GRA. This seems a particularly high number given that Parliament was sitting for only 39 days during this period. In comparison, no women's groups were given access or input into the decision making process; it took nearly a year, and numerous requests, for our group to be granted one meeting with a Minister - and this occurred long after we could have had any influence on the legislative process.

In order to avoid allegations about corruption over preferential access serving narrow interests it is imperative that a more proactive stance is taken to seek a range of views, both on an individual level by Parliamentarians and by broad oversight on input into legislative processes.

### **Report costs incurred by lobbying**

As a proactive measure it would be beneficial if organisations provide a reasonable estimate of the financial cost of lobbying activities during the preceding reporting period. It is important to capture how much money is spent in lobbying for particular outcomes, both to give an indication of long-term trends and to show the disparity between corporate and grassroots organisations, and between funded and non-funded groups..

The Lobbying Act fails to acknowledge that certain lobbyists receive significant funding from the Scottish Government, which, despite our groups' best efforts, we cannot hope to match the resources or influence granted by such an advantage. The government has created a taxpayer-funded feedback loop and is using it as the basis to make public policy. This is neither representative nor democratic and disadvantages the electorate who are largely cut out of the decision making process.

At the moment the Scottish Government funds lobbying groups who also openly campaign for the removal of women's rights in the Equality Act, namely the Genuine Occupational Requirement and the provision of single-sex services. This is an enormous conflict of interest when the government is simultaneously tasked with upholding this legislation; it is an untenable position.

### **Improve scrutiny and accountability**

The register relies upon self-referral and record taking with no mechanism for ensuring accuracy. We are aware of several concerns about possible non-declaration of lobbying activities and either MSPs diaries could be opened to enable public comparison, or spot checks conducted against entries therein to ensure compliance.

The lobbying register is in danger of becoming a passive record, when it should actually be a powerful tool in improving levels of integrity and equality of access. Periodic objective scrutiny should allow for steps to be taken to make sure the political process is open to meaningful input from a wide range of interests and opposing positions, and to avoid regulatory capture by specialist pressure groups.