



The Jimmy Reid  
Foundation

# ***Submission***

## **The Lobbying (Scotland) Bill**

**Submission to**

**The Standards, Procedures and Public  
Appointments Committee**

## **About the Reid Foundation**

The Jimmy Reid Foundation was established in 2011 by the [Scottish Left Review](#), the political magazine which was Jimmy's last major political project.

The Foundation is an independent 'Think Tank' is not affiliated to any political party or organisation but works closely with anyone interested in a more progressive future for Scotland. By making strenuous efforts to maintain party political neutrality the Foundation aims to offer a home for all people of the left in Scotland.

The Foundation is based around a work programme which is set and overseen by a Project Board. The Project Board is made up of leading Scottish thinkers in their area and is intentionally non-party political.

## **Overview**

Influencing elected politicians is a fundamental part of Scotland's vibrant democracy. At elections to the Scottish Parliament and local council, respect for and trust in politicians is a fundamental motivator in getting people out to vote and being satisfied in the conduct of public affairs on devolved matters.

Many people would like to influence elected politicians effectively so that their damp home can be fixed, schools address bullying promptly and the recommendations of inquiries on blacklisting in the workplace are taken forward robustly. However we all know there is not an even playing field when it comes to lobbying. Positive action is needed to achieve equality in outcomes and ensure transparency and accountability in the process of lobbying.

There is no doubt that the case has been made for action but there remains a genuine debate on the nature and extent of the rules required to make the system work properly for democracy, and which earns the public's trust.

The Jimmy Reid Foundation believes that one strategy alone will not work to ensure power sits with the people of Scotland. The system agreed must be robust to ensure a global and well-funded industry does not 'run rings' around our democratic process. Therefore we have concluded that the proposed register does not go far enough.

It is our view that changes in the Freedom of Information (Scotland) Act 2002, as amended, are required to ensure more transparency in the influence brought to bear on MSPs, elected councillors and their staff. There should be an open consultation on extending FoISA and consider such matters as making public all diaries so that the electors can observe, at any time, who is meeting whom.

Additional checks and balances are required in the system, particularly with the growth in devolved powers of the Scottish Parliament. For example a Human Rights committee should be established at the Scottish Parliament to reflect the importance of the public sector acknowledging its role as the 'duty bearer' in respecting people's human rights.

## **Context**

**The Lobbying Act 2014** - The proper title is the 'Transparency of Lobbying, Non-

party Campaigning and Trade Union Administration Act 2014', and it amended legislation passed in 2000 that also proved problematic. Under part two, campaigning organisations such as charities must now register with the Electoral Commission as non-party campaigners if they spend more than a threshold of £20,000 in England and £10,000 in Scotland, Wales or Northern Ireland on certain regulated activities during the election period. The Act expands the list of regulated activities and lowers the upper spending limits. The impact has been various, e.g. there has been a chilling effect on the activities of some organisations and some have scaled back their campaigning activities. Voters will suffer as the amount of information publicly available may be reduced, making it more difficult to form an opinion. That is not good for our democracy.

### **Research on Practice**

In drafting this submission we are mindful of Scottish Parliament Motion S4M-14508 lodged by Neil Findlay MSP on 13<sup>th</sup> October 2015:

“Holyrood Exposed, a Guide to Lobbying in Scotland”: That the Parliament welcomes the publication of *Holyrood Exposed, a Guide to Lobbying in Scotland*, which has been produced by Spinwatch, Unlock Democracy and the Electoral Reform Society Scotland; notes the reported increase in the number of lobbying consultancies and in-house lobbyists operating in Scotland, and looks forward to what it hopes will be a robust lobbying register being introduced through an Act of Parliament before the end of the session.”

We also note the comments made by Tamasin Cave of Spinwatch who was commenting on the publication of the same report:

"A decent register of lobbyists – which would simply make public who is lobbying whom, about what, and how much they are spending in the process – is an essential feature of modern government, not a 'nice to have'." <sup>1</sup>

### **FoISA**

We also note the comments of the Human Rights Consortium Scotland in its submission to the UN Human Rights Committee on UK compliance with the International Covenant on Civil and Political Rights:

“The Freedom of Information (Scotland) Act 2002 (FoISA) introduced an enforceable right of access to information but the value of the right has been diminished as the way that public services are delivered has changed. There is a need for legal reform to provide a right of access to information on the spending of public money by extending the range of organisations covered and increasing the information routinely disclosed.” <sup>2</sup>

### **Human Rights**

We note that a number of human rights are engaged in this debate:

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<sup>1</sup> Press Release issued by ‘Alliance for Lobbying Transparency’ available at <http://www.lobbyingtransparency.org/blog/2015/10/10/holyrood-exposed-a-guide-to-lobbying-in-scotland>

<sup>2</sup> For more information go to [www.hrcscotland.co.uk](http://www.hrcscotland.co.uk)

- Article 10 ECHR: Individual electors have the right to form an opinion and to receive and impart information in order to do so.
- Protocol 1, Article 3 of the ECHR: Individuals electors have the right to participate in free elections “under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”

### Comments

The Scottish Parliament was set up in 1999 to be ‘open, accessible and accountable’. It is therefore a matter of considerable regret that 16 years later it is stated:

“Lobbying is a serious, but normally invisible feature of our politics. Commercial lobbyists – whose paid job it is to influence the decisions taken by our politicians – operate without scrutiny. Lobbying is best done and is most effective when no one is watching.”

And that the current Bill “will only allow you to see a fraction of the lobbying activity taking place in and around Holyrood.”<sup>3</sup>

So whilst the declared purpose of the Bill is to increase public transparency by introducing a register of lobbying activity, in practice we are persuaded that what is proposed is insufficient.

We are persuaded of the argument that:

“A decent register, as they have had for decades in Canada, the US and other countries around the world, would require lobbyists to regularly disclose their activities. It *should* mean that the people of Scotland could see: who is influencing whom, which decisions they are trying to influence, and how much money they are spending in the process.

“The Royal Bank of Scotland, for example, declares its lobbying activity in Washington, Canada and Brussels. The quarterly declarations (see examples below) reveal who RBS has been meeting in the Canadian finance ministry; that RBS is spending in the region of €1m (£750k) a year on influencing EU officials; and that in the seven years it has been under public ownership it has spent \$5.5m (£3.6m) of British taxpayers’ money on lobbyists in Washington.

The people of Scotland currently have no way who it is talking to in Holyrood, what it is seeking to influence, nor how much it spends in the process.”<sup>4</sup>

However it seems odd to place the onus on disclosure on the private sector only and there needs to be a balanced approach with the public being able to exercise an enforceable right to know, matched with a duty of elected politicians and their staff, to disclose who they are meeting with, how many times and when.

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<sup>3</sup> “Holyrood Exposed, a Guide to Lobbying in Scotland” Pg 3

<sup>4</sup> Ibid Pg 21

Decisions behind closed doors are undemocratic. Politicians who rely only on evidence that people are paid to deliver will lead to unbalanced decisions. As the report points out “Transparency in lobbying is key to modern governance. It helps to put an end to secret decision-making behind closed doors.”<sup>5</sup> Efforts need to be invested to come up with a system of checks and balances that ensures transparency and therefore accountability.

Given the above, the Foundation’s views on the Committee’s set questions are as follows

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

Yes, but the register has to be more robust and other measures are required too such as extending FoISA and place obligations on MSPs and their staff to declare who they are communicating with.

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

We are still considering the impact.

3. You would only have to register if you were lobbying in exchange for payment (either as a consultant or an employee). You wouldn’t have to register if you lobby in the course of voluntary work or lobby on your own behalf. Do you agree with this approach?

We understand the motivation for this approach but in practice fear it will be a loophole that is exploited.

4. Does the Bill strike the right balance between capturing valuable information while ensuring that access to participation with the work of Parliament and Government is not discouraged?

No, as the proposals do not go far enough.

5. Do you feel that the Bill is sufficiently clear? Does it allow individuals and organisations to easily know whether their activity requires to be registered?

Any register will require a public information campaign to accompany it and we suspect this will be an additional avenue of income for lobbying businesses.

**For further information:**  
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<sup>5</sup> Ibid Pg 23