Unlock Democracy’s response to the Introducing a Statutory Register of Lobbyists consultation paper

About Us

Unlock Democracy is the UK’s leading campaigning organisation for democracy, rights and freedoms. A grassroots movement, we are owned and run by our members. In particular, we campaign for fair, open and honest elections, a stronger Parliament and accountable government, and a written constitution. We want to bring power closer to the people and create a culture of informed political interest and responsibility. Unlock Democracy is a founding member of the Alliance for Lobbying Transparency, set up in 2007 with a number of organisations including Spinwatch, Friends of the Earth and Greenpeace.

Executive Summary

Unlock Democracy welcomed the government’s commitment to introduce a statutory register of lobbying interests. However, we are disappointed that proposals that took so long to produce are so limited in scope. The Public Administration Select Committee published its report recommending a register in 2008 and it was part of the Coalition Agreement, yet two years into the new Parliament we are only just at the green paper stage. We are particularly concerned that the lack of senior ministerial leadership on this issue had allowed the policy area to drift.

Unlock Democracy is not opposed to lobbying - indeed we lobby Parliament, the UK and devolved governments and local government. Lobbying is a part of the democratic process; the problem is when it's done in secret, so the public have no way of knowing who has been putting pressure on the government to do what, or how much money they are spending on exerting that pressure.

The perception that companies and wealthy individuals can buy access and influence is undermining trust in our political system. There have been a number of scandals in recent months that have demonstrated this, from the Fox/Werrity affair¹, to the allegations of Bell Pottinger² boasting about their access to the Prime Minister and McKinsey’s alleged influencing of the Health and Social Care Bill³.

We believe that the government’s proposals are fundamentally flawed and will do little to promote transparency in lobbying. Our main concerns are that the definition of lobbying is too narrow and that the level of information recorded in the register would reveal little about the network of relationships between government and those who lobby.

Unlock Democracy wants an open and transparent lobbying system. We believe that the purpose of any lobbying register should be to capture lobbying activity rather than individual lobbyists. This means that both in-house and agency lobbyists should be covered by the register and that the register must include information not just on who the lobbyist’s client is, but also who is being lobbied, the policy area that is being lobbied and the amount of money that is being spent on lobbying. This does not have to be an arduous or overly bureaucratic process. Unlock Democracy has completed a mock registration form for the first quarter of 2012 to demonstrate how this could be achieved without putting an undue burden on the organisations concerned.

The proposed register of lobbying interests only covers lobbying activity at Westminster. While we think this is the necessary and appropriate place for a new regulatory framework to be developed, in the longer term we believe it would be appropriate for this system to be introduced for the devolved parliaments and local government as well.

Definitions

- *What definition of lobbying should be used?*
- *How should lobbyists be defined?*

Unlock Democracy is deeply concerned by the narrow definition of lobbying used in the consultation paper, as this would exempt all in-house lobbying from having to be included in the register. The statement that the ‘essential flow of communication between business leaders and Government’ should be exempted amounts to declaration of intent to a return to ‘business as usual’ as swiftly as possible.

Unlock Democracy supports a register of lobbying activity because we want to see open and transparent government. We are not opposed to lobbying -indeed we are lobbyists ourselves, who seek to influence the UK government, Parliament, devolved governments and local authorities on a wide range of issues. We are not looking to stigmatise lobbying or lobbyists. However, we recognise that professional lobbying – an industry worth £2billion in the UK – can subvert democracy by giving those with the greatest resources undue influence and privileged access to politicians. The register will only address this concern if it covers all lobbying activity, not just that done by large commercial agencies.

We understand the importance of lobbying in informed decision-making. But we want to see it conducted transparently, including our own lobbying.
The Alliance for Lobbying Transparency, of which Unlock Democracy is a member, uses the following definitions:

A “lobbyist” is either a paid employee or is paid by a client, or receives other compensation, to undertake “lobbying activity”.

“Lobbying activity” includes: contact or communication with “public officials” regarding:
- The formulation, modification, or adoption of legislation;
- The formulation, modification, or adoption of regulation, policy, or position of HM Government;
- The awarding of any contract, grant or other financial benefit by or on behalf of HM Government;

It would also include any work in support of the above, such as supervision, planning and research or the financing ‘think tanks’ for lobbying on a particular issue.

By contact we mean arranging or facilitating interaction with public officials. We define communication as including: telephone conversations and any electronic communication; circulating and communicating letters, information material or position papers; organising events and attendance of as a lobbyist, meetings (formal and informal), or promotional activities in support of a lobbying position.

“public officials” include:
- Paid or unpaid secondees to government, special advisors, and members of government advisory groups;
- Elected / unelected Parliamentarians and their staff;
- Individuals working in:
  - Government departments;
  - Executive Agencies and Non-Ministerial Departments and Quangos;
  - Regulatory bodies.

Scope

• Should lobbyists or firms acting on a pro bono basis be required to register?

No, Unlock Democracy believes that all paid lobbying activity should registered, not just those working on behalf of third parties, i.e. agency lobbyists. Lobbying by a member of the public, which is unpaid, or lobbying of an MP by a constituent should be exempt. We are also calling for small businesses and smaller charities to be exempt.

• Should organisations such as Trade Unions, Think Tanks and Charities be required to register?

Yes. The consultation proposes that only those lobbying on behalf of third party clients should be required to register. This would exempt most trade unions, think tanks, charities and law firms who use in-house lobbyists. Unlock Democracy strongly
disagrees with this approach. We believe it is unfair to multi-client lobbyists, as it excludes the in-house lobbyists who account for a significant amount of lobbying activity in the UK.

Unlock Democracy lobbies Parliament and the government - employing four staff who spend part or the majority of their time on lobbying activities. We estimate that our expenditure on lobbying in the first quarter of 2012 is approximately £21,600. Under these proposals, we would not be required to register because we employ our own lobbyists in-house. However, if we paid for a self-employed lobbyist or an agency to do this work for us, they would have to register. Unlock Democracy takes the view that what matters is capturing the lobbying activity, not whether the person doing the lobbying is working for one or many clients.

Mark Harper MP has argued that in-house lobbyists do not need to be included in the register because,

"When an in-house representative from a company comes to see me, the public knows what's happening and that is transparent. If someone from an agency comes to see me, no-one knows who they're advocating for – and that's not transparent."

We do not believe that is the case. Unlock Democracy is currently lobbying the Cabinet Office on a number of different policy areas. If we were to have a meeting with Mark Harper, it could be about individual elector registration, House of Lords reform, lobbying, boundary changes or other democratic reform issues that we may wish the government to pursue. This would not be apparent just from the fact that he was meeting us.

Lobbying is an important part of a democratic culture, it allows different views and experiences to be heard, but we need to be open and honest about who lobbies and what they are lobbying for. This means acknowledging that it is not just large agencies who lobby, but also charities, voluntary sector organisations, trade bodies, companies, trade unions, media organisations and universities.

We are aware that there may be concern about including smaller businesses or charities in a new regulatory system. We are sympathetic to the desire to reduce bureaucracy for organisations and Unlock Democracy supports ALT’s recommendation that small businesses and charities should be exempt from registering. ALT has provisionally defined small as organisations that do not employ the equivalent of one full time public affairs person or spend £6,000 or less per quarter on lobbying activity. We are working with bodies such as the National Council for Voluntary Organisations to ensure that the right balance is reached between capturing lobbying activity and light touch regulation.

However, we believe that a comprehensive lobbying register does not have to be an undue burden. We have completed a draft filing that includes the level of information we would want to be captured on a register to demonstrate how we think this could work in practice. It took us approximately 20 minutes to complete and as some of the information is unlikely to change each quarter, we would expect this to be less for subsequent filings.

The assumption in the consultation paper seems to be that in-house lobbyists do not need to be covered because they account for very little of the lobbying activity in the UK. This is a mistaken assumption and we believe that the figures quoted in the white paper grossly underestimate the number of in-house lobbyists working in the UK. The consultation cites figures suggesting that there are between 320 and 450 in-house lobbyists employed in the UK,\(^6\) which is fewer than half the number of those working for agencies. However, in a paper published in 2009, the lobbying industry cites academic evidence suggesting that there are four in-house lobbyists for every agency lobbyist.\(^7\)

Also, the figures in the impact assessment state that there are 100 in-house lobbyists working for companies which again we think is an underestimate. We know for example, that Tesco alone employs six in-house lobbyists and they are certainly not the only company to do so. It is standard practice on the telecommunications industry to use in-house lobbyists for example.\(^8\) The industry’s 2009 figures also put the total number of dedicated lobbyists working in the UK at between 3500 and 4000.\(^9\) This is 2000-2500 more than the figure in the Cabinet Office’s Evidence Base. We believe the government’s current plans would exclude an estimated 2,500-3,000 lobbyists, working in organisations from Tesco to Barclays, CBI to Greenpeace.

Unlock Democracy believes that it is essential that in-house lobbyists, including those working for trade associations, charities, voluntary sector organisations, trade unions and companies are covered. Although we take this position on a matter of principle and not simply on the basis of the numbers of people employed, we are concerned that the government’s evidence base is poor and may have led them in an erroneous policy direction. Law firms, management consultants and accountancy firms also lobby on behalf of clients and must be included in a transparency register to create a level playing field with dedicated lobbying agencies. However, as stated above, lobbying of the government by a member of the public, which is unpaid, or lobbying of an MP by a constituent, should be exempt.

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We also note that at present it is only proposed the register of lobbyists should apply to Westminster. Whilst we think it is necessary and appropriate that the new regulatory regime should begin at Westminster, in the longer term we believe that similar schemes should also be brought in for the devolved parliaments and local government.

• How can public participation in the development of Government policy best be safeguarded?

There is nothing in a register of lobbying activity to prevent public participation in government policy making. The register would not apply either to individuals lobbying their own MP or to those participating on a parliamentary inquiry. The public in general would not be affected by a register of lobbying activity. Furthermore, there is evidence that the public supports the introduction of a lobbying register. A recent YouGov poll\textsuperscript{10} found that three quarters of people want lobbying to be more transparent.

Lobbying by trade associations, trade unions, charities and campaigning organisations like Unlock Democracy, can play an important part in informed decision-making. We are not seeking to curtail this activity by introducing a register of lobbying activity, merely bring it into the open.

A lobbying register which covered all lobbying activity and included information about how much money is being spent on lobbying would allow the public to see who is seeking to influence government policy and assess whether they have been successful.

**Information to be included in the register**

• Should the register include financial information about the cost of lobbying and about any public funding received?

Unlock Democracy believes that for a lobbying register to be effective it must include who is lobbying whom, what they are lobbying for and crucially, how much money is being spent on lobbying. The specific information that we think should be included in the register and that we have included on our draft filing is:

- The organisation lobbying;
- The name(s) of individual lobbyist(s);
- Information on any public office held by the lobbyist in the past 5 years (the so-called ‘revolving-door’);
- The public body being lobbied;
- The name of public official with whom contact has been made (senior civil servant and above);
- A summary of what is being lobbied on, whether legislation, regulation, policy or government contract;

\textsuperscript{10} Published in the Sunday Times 23 October 2011

http://www.thesundaytimes.co.uk/sto/news/Politics/article805951.ece accessed 15 March 2012
• The amount of money spent on lobbying (a good faith estimate).

This goes considerably further than the government’s proposals, but is the level of information necessary to bring transparency to lobbying. The ultimate purpose of a lobbyists’ register is to increase government accountability, by putting lobbyists’ dealings with officials in the public domain. Therefore, it must include information on who is being lobbied in government and what issues they are being lobbied on. The amount of money that is being spent on lobbying is particularly important. This would bring out into the open the different amounts being spent by businesses and civil society organisations for example. After all, lobbying is an investment for organisations; US figures suggest that for every dollar spent on lobbying, a company can expect a $100 return, while in the UK it is estimated that for a lobbyist knowing a cabinet minister is worth £113,000 a year.\footnote{http://www.telegraph.co.uk/news/politics/9084470/Knowing-a-cabinet-minister-worth-113000-a-year.html} accessed 24 February 2012

Frequency of returns

• \textit{Should returns be required on a quarterly basis?}

We believe registration should take place within 14 days of a lobbying agency beginning a contract for a client, or a month of an organisation starting to lobby on an issue. The organisation, whether an agency, company, trade body, union or charity, should be responsible for registering, listing individual lobbyists. Agencies should make one filing per client.

Unlock Democracy has completed a sample filing and included it as an annex to this response to show the level of information that we believe is necessary. This sample filing is for the first quarter of 2012 and took under 20 minutes to complete.

Additional functions

• \textit{Should the register’s operator have any additional functions besides accurately reproducing and usefully presenting information provided by the registrants?}

Unlock Democracy believes that the body who maintains the register has both the powers and funding necessary to carry out investigations where they believe a company is not complying with the regulations. We have already seen with the party funding registers the problems that can arise when a regulator has the power to sanction but not to investigate.

We also expect that the register would be published in a way that is fully searchable and downloadable so that the data can be interrogated if desired.

Funding
• Should the lobbying industry meet the costs of the register and any associated functions?

No. We believe the register should be publicly funded, not financed by lobbyists, as the government proposes. We would be concerned that any scheme funded by the lobbying industry would need to charge fees to those covered by the register, potentially making it difficult for smaller companies and organisations. There must be no financial barrier to anyone wanting to lobby in a transparent way.

Whilst we recognise the difficulties of calling for additional public expenditure in the current economic climate, we believe that a lobbying register could pay for itself by improving government accountability. Public money can be misspent as a consequence of well-funded lobbying. As David Cameron says: “Government contracts worth hundreds of billions of pounds are potentially at stake.” 12

A publicly funded register would also put the lobbying register on a par with other transparency registers aimed at increasing trust in government, such as the register of donations to political parties.

Sanctions

• Should penalties for non-compliance apply? If so, should they be broadly aligned with those for offences under company law?

New rules are only as good as the monitoring and enforcement that goes with them. The body running the register must be given sufficient funds to adequately monitor its accuracy and enforce sanctions. Non-compliance with the lobbying disclosure law, or failure to remedy a breach, could result in a civil fine and in extreme or repeated cases a disqualification from any lobbying activity for a set period, with the level dependent on the extent and gravity of the violation. Anyone who knowingly fails to comply with the lobbying disclosure law, which includes non-payment of fine or no compliance with any disqualification period, could face criminal prosecution.

The register’s operator

• Who should run the register – a new body or an existing one? What sort of body should it be?

Unlock Democracy believes it is essential that any lobbying register is administered by an independent body and not the industry itself, as is currently the case. We would be

12 David Cameron: Rebuilding trust in politics February 8 2010
happy for it to be added to the remit of an existing body, such as the Electoral Commission, which already maintains registers on donations and loans to political parties. This would help to minimise both the costs and bureaucracy associated with the new regulatory regime, whilst at the same time reassuring the public that the register signals a new era of independence, openness and transparency in lobbying in the UK.
Lobbying register sample filing:
Unlock Democracy, member of the Alliance for Lobbying Transparency

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<th>Date of filing:</th>
<th>2012</th>
<th>1</th>
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<tbody>
<tr>
<td>Year</td>
<td>Quarter</td>
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**Registrants details**

Registrants name: Unlock Democracy

☐ Organisation (commercial) ☒ Organisation (not-for-profit) ☐ Lobbying Firm ☐ Self Employed Individual ☐ Coalition

Address: 6-9 Cynthia Street

London

Post Code: N1 9JF

Contact name: Peter Facey (Director)

Tel: 020 7278 4443

Email: info@unlockdemocracy.org.uk

Lobbying on behalf of: Unlock Democracy

ID: Company no. 02440899

Client name if lobbying on behalf of a third party, or registrants name if in-house

Company / Charity number (if applicable)

**Lobbying activity details**

- Issue(s) lobbied on:
  Political and constitutional reform issues, including: introduction of a statutory register of lobbyists; House of Lords reform; individual elector registration; and party funding
    - Government departments and agencies lobbied:
      - Parliament; Cabinet Office
        - Public official(s) with whom contact has been made (senior civil servant and above):
          Nick Clegg, DPM; Mark Harper, Minister for Political and Constitutional Reform; Peter Lee (CO)

- Issue(s) lobbied on:
  Sustainable Communities Act
    - Government departments and agencies lobbied:
      - Parliament; Department for Communities and Local Government
        - Public official with whom contact has been made
          Greg Clark, Minister of State for Decentralisation; Hulya Mustafa (DCLG)

**Name of individual(s) who acted as a lobbyist**

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<thead>
<tr>
<th>Lobbyist(s) name:</th>
<th>Any public office held in past 5 years</th>
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<tbody>
<tr>
<td>Peter Facey</td>
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<td>Alexandra Runswick</td>
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<td>Steve Shaw</td>
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**Financial value of lobbying**

<table>
<thead>
<tr>
<th>Client income:</th>
<th>Lobbying expenses:</th>
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<tr>
<td>Information to be provided by third party lobbyist named above as registrant: good faith estimate, to the nearest £1000, of all lobbying related income from the client in this quarter.</td>
<td>Good faith estimate of expenses relating to lobbying activities undertaken by the registrant for this quarter.</td>
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<tr>
<td>£: ___________________________</td>
<td>£: £21,600 ___________</td>
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