

LOBBYING (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 – Oversight and Enforcement

(a) the Clerk

Information notices

88. **Section 17** provides that in connection with the duty under section 16, the Clerk may serve a notice (an “information notice”) on any person who is an active registrant, a voluntary registrant or who is not an active registrant but whom the Clerk has reasonable grounds for believing may be, or may have been, engaged in regulated lobbying, whether the person is in or outside Scotland, requiring the person to supply information specified in the notice.
89. **Section 17(3)** states that the information notice must specify (a) the form in which the information must be supplied, (b) the date by which the information must be supplied and (c) contain particulars of the right to appeal under section 19(1).
90. Subsection (4) confirms that the date specified under subsection (3)(b) must not be before the end of the period (21 days) within which an appeal against an information notice under section 19(1) can be made.
91. Subsection (5) confirms that where an information notice has been served on a person, the Clerk may send an additional copy of the information notice by whatever means the Clerk considers appropriate (e.g. by e-mail or hard copy) and may cancel the information notice by serving notice to that effect on the person.
92. **Section 18(1)** provides that an information notice does not require a person to supply information which would disclose evidence of the commission of an offence by the person (other than an offence under section 42(1), section 42(2), or section 42(3) of the Act (offences relating to registration and information returns)). Section 18(1) also provides that an information does not require a person to disclose information which the person would otherwise be entitled to refuse to supply in proceedings in a court in Scotland. This covers for example various other privileges recognised by the courts in Scotland such as the privilege which attaches to solicitor/client communications – i.e. information in respect of which a claim to confidentiality of communications as between client and professional legal adviser could be maintained in legal proceedings.
93. **Section 18(2)** provides that an oral or written statement made by a person in response to an information notice may not be used in evidence against the person in a prosecution for an offence, other than an offence under section 21(1) (offences of failure to provide required information under and information notice or provision of inaccurate or incomplete information) unless the person is prosecuted for an offence under section 42(1), section 42(2), or section 42(3) of the Act (offences relating to registration and information returns) and in proceedings for that offence the person gives contrary evidence and evidence relating to the statement is introduced by the person or on their behalf.

*These notes relate to the Lobbying (Scotland) Act 2016
(asp 16) which received Royal Assent on 14 April 2016*

94. **Section 19** sets out a framework for appeals against information notices served by the Clerk under section 17.
95. Subsection (1) provides that a person on whom an information notice has been served may appeal (on fact or law) to the sheriff against the notice or any requirement specified in it.
96. Subsection (2) provides that an appeal under subsection (1) must be made before the end of the period of 21 days beginning with the date on which the person receives the notice.
97. Subsection (3) provides that a decision of the Sheriff Appeal Court on appeal (on fact or law) against the sheriff's decision is final. On appeals from the sheriff to the Sheriff Appeal Court see in particular section 110 of the Courts Reform (Scotland) Act 2014.
98. Subsection (4) makes clear that if an appeal is brought under this section, the person is not required to supply the information specified in the information notice under appeal until the date on which the appeal is "finally determined" (on which see subsection (5)) or the person decides not to proceed with the appeal and it is withdrawn.
99. **Section 20** gives the Scottish Parliament a power, exercisable by resolution, to make further provision about information notices.
100. **Section 20(2)** provides that a resolution under subsection (1) may in particular make provision (or further provision), specifying descriptions of information which the Clerk may not require a person to supply in response to an information notice, about the minimum period between the date on which an information notice is served and the date which must be specified under section 17(3)(b) and about other matters which must be specified in an information notice.
101. **Section 48** makes provision in relation to the process to be followed in relation to parliamentary resolutions, including provision for them to be published in the same way as Scottish statutory instruments so that they are published in a recognised format and easily accessible.
102. **Section 21** sets out the framework for offences relating to information notices.
103. Subsection (1) provides that it is an offence for a person who has been served with an information notice under section 17 to fail to supply the required information on or before the date by which the person is required to do so or to provide information which is inaccurate or incomplete in a material particular.
104. Subsection (2) provides that it is a defence to a charge in proceedings against a person for an offence under subsection (1) to show that the person exercised all due diligence to avoid committing the offence. This imposes an evidential burden only on the person.
105. Subsection (3) provides that a person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.