



Lobbying (Scotland) Act 2016

2016 asp 16

PART 3

OVERSIGHT AND ENFORCEMENT

PROSPECTIVE

Duty to monitor

16 Clerk's duty to monitor compliance

- (1) The Clerk must monitor compliance with the duties imposed by or under this Act on—
 - (a) persons who engage in regulated lobbying, and
 - (b) voluntary registrants.
- (2) In monitoring compliance the Clerk must have regard to the parliamentary guidance (see section 43).

Information notices

PROSPECTIVE

17 Clerk's power to require information

- (1) In connection with the duty under section 16, the Clerk may serve a notice (an “information notice”) on a person mentioned in subsection (2), whether in or outwith Scotland, requiring the person to supply information specified in the notice.
- (2) The persons are—
 - (a) an active registrant,
 - (b) a voluntary registrant,

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- (c) a person 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.
- (3) An information notice must—
- (a) specify the form in which the information must be supplied,
 - (b) specify the date by which the information must be supplied, and
 - (c) contain particulars of the right to appeal under section 19(1).
- (4) The date specified under subsection (3)(b) must not be before the end of the period during which an appeal under section 19(1) can be made.
- (5) Where an information notice has been served on a person, the Clerk may—
- (a) send an additional copy of the information notice to the person by whatever means the Clerk considers appropriate,
 - (b) cancel the information notice by serving notice to that effect on the person.

PROSPECTIVE

18 Limitations on duty to supply information and use of information supplied

- (1) An information notice does not require a person—
- (a) to supply information which would disclose evidence of the commission of an offence by the person, other than an offence under subsection (1), (2) or (3) of section 42,
 - (b) to supply information which the person would otherwise be entitled to refuse to supply in proceedings in a court in Scotland.
- (2) 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)) unless—
- (a) the person is prosecuted for an offence under subsection (1), (2) or (3) of section 42, and
 - (b) in the proceedings—
 - (i) in giving evidence the person provides information that is inconsistent with the statement, and
 - (ii) evidence relating to the statement is adduced, or a question relating to it is asked, by the person or on the person's behalf.

PROSPECTIVE

19 Appeal against information notice

- (1) A person on whom an information notice has been served may appeal to the sheriff against the notice or any requirement specified in it.
- (2) 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.

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- (3) A decision of the Sheriff Appeal Court on an appeal against the sheriff's decision is final.
- (4) If an appeal is brought under this section, the person is not required to supply the information specified in the information notice until the date on which the appeal is finally determined or withdrawn.
- (5) For the purposes of subsection (4), the appeal is “finally determined”—
 - (a) where the appeal is determined by the sheriff, on the date on which the period during which an appeal to the Sheriff Appeal Court may be made expires without an appeal being made, or
 - (b) where an appeal to the Sheriff Appeal Court is made, the date on which that appeal is determined.

20 Power to make further provision about information notices

- (1) The Parliament may by resolution make further provision about information notices.
- (2) A resolution under subsection (1) may in particular make provision (or further provision)—
 - (a) specifying descriptions of information which the Clerk may not require a person to supply in response to an information notice,
 - (b) 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),
 - (c) about other matters which must be specified in an information notice.

Annotations:

Commencement Information

II S. 20 in force at 6.9.2017 by S.S.I. 2017/201, reg. 2(b)

PROSPECTIVE

21 Offences relating to information notices

- (1) It is an offence for a person who has been served with an information notice under section 17—
 - (a) to fail to supply the required information on or before the date by which the person is required to do so, or
 - (b) to provide information which is inaccurate or incomplete in a material particular.
- (2) It is a defence for a person charged with an offence under subsection (1) to show that the person exercised all due diligence to avoid committing the offence.
- (3) 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.

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Investigation of complaints

PROSPECTIVE

22 Commissioner's duty to investigate and report on complaint

- (1) This section applies where the Commissioner receives a complaint that a person has or might have failed—
 - (a) to comply with the duty to provide information under section 8(1),
 - (b) to provide accurate and complete information in an application made under section 9,
 - (c) to comply with the duty to submit information returns under section 11, or
 - (d) to supply accurate and complete information in response to an information notice in accordance with section 17.
- (2) The Commissioner must—
 - (a) assess whether the complaint is admissible (see sections 23 and 24), and
 - (b) if the complaint is admissible—
 - (i) investigate the complaint (see section 25), and
 - (ii) report upon the outcome of the investigation to the Parliament (see section 26).
- (3) In carrying out the duties imposed by or under this Act the Commissioner must have regard to the parliamentary guidance (see section 43).
- (4) An assessment under subsection (2)(a) and an investigation under subsection (2)(b) (i) must be conducted in private.

PROSPECTIVE

23 Requirements for complaint to be admissible

- (1) A complaint is admissible if—
 - (a) the complaint is relevant,
 - (b) the complaint meets the conditions mentioned in subsection (3), and
 - (c) the complaint warrants further investigation.
- (2) A complaint is relevant if, at first sight—
 - (a) it appears to be about a person who may be, or may have been, engaged or may be likely to engage in regulated lobbying, and
 - (b) it appears that, if it is established that all or part of the conduct complained about occurred, it might amount to a failure to comply with a requirement mentioned in section 22(1)(a) to (d).
- (3) The conditions are that the complaint—
 - (a) is made in writing to the Commissioner,
 - (b) is made by an individual, is signed by that individual and states that individual's name and address,
 - (c) names the person to whom the complaint relates,

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- (d) sets out the facts related to the conduct complained about, and
 - (e) is made before the end of the period of one year beginning on the date when the individual who made the complaint could reasonably have become aware of the conduct complained about.
- (4) A complaint warrants further investigation if, after an initial investigation, the evidence is sufficient to suggest that the person who is the subject of the complaint may have failed to comply with a requirement mentioned in section 22(1)(a) to (d).

PROSPECTIVE

24 Procedure for assessing admissibility of complaint

- (1) This section applies where the Commissioner receives a complaint that a person has or might have failed to comply with a requirement mentioned in section 22(1)(a) to (d).
- (2) The Commissioner must—
 - (a) notify the person who is the subject of the complaint that the complaint has been received,
 - (b) inform that person of the nature of the complaint, and
 - (c) except where the Commissioner considers that it would not be appropriate to do so, inform that person of the name of the individual who made the complaint.
- (3) If the Commissioner considers that the complaint is inadmissible due to being irrelevant, the Commissioner must dismiss the complaint.
- (4) Subsections (5) to (7) apply where the Commissioner considers that the complaint is relevant but fails to meet one or more of the conditions mentioned in section 23(3).
- (5) The Commissioner must—
 - (a) if the complaint is of a kind specified in a direction by the Parliament, make a report to the Parliament,
 - (b) if the complaint is not of such kind and the Commissioner considers that the complaint warrants further investigation, make a report to the Parliament,
 - (c) in any other case, dismiss the complaint.
- (6) A report under subsection (5)(a) or (b) must include—
 - (a) the reasons why the Commissioner considers that the complaint fails to meet one or more of the conditions mentioned in section 23(3),
 - (b) the reasons for that failure (if known),
 - (c) if the report is made under subsection (5)(b), a statement that the complaint warrants further investigation,
 - (d) the recommendation of the Commissioner as to whether, having regard to all the circumstances of the case, the complaint should be dismissed as inadmissible for failing to meet one or more of the conditions mentioned in section 23(3) or should be treated as if it had met all of those conditions, and
 - (e) any other matters which the Commissioner considers appropriate.
- (7) After receiving a report under subsection (5)(a) or (b), the Parliament must give the Commissioner a direction—

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- (a) to dismiss the complaint as inadmissible for failing to meet one or more of the conditions mentioned in section 23(3), or
 - (b) to treat the complaint as if it had met all of those conditions.
- (8) If the Commissioner considers that the complaint is admissible, the Commissioner must inform—
- (a) the Parliament, by making a report to the Parliament,
 - (b) the individual who made the complaint, and
 - (c) the person who is the subject of the complaint.
- (9) If the Commissioner considers that the complaint is inadmissible and has not already dismissed the complaint under subsection (3) or (5)(c) or in pursuance of subsection (7)(a), the Commissioner must dismiss the complaint.
- (10) In dismissing a complaint, the Commissioner must inform the individual who made the complaint and the person who is the subject of the complaint of the dismissal together with the reasons why the complaint is inadmissible.
- (11) Subsections (2), (8) and (10) apply only to the extent that they are capable of applying where—
- (a) the person to whom the complaint relates has not been named in the complaint, or
 - (b) the individual who made the complaint is anonymous.
- (12) If the Commissioner has not assessed whether a complaint is admissible before the end of the period of 2 months beginning on the date the complaint is received, the Commissioner must, as soon as possible thereafter, make a report to the Parliament on the progress of the assessment of admissibility.

PROSPECTIVE

25 Investigation of complaint

- (1) This section applies to the investigation of a complaint assessed as admissible under section 22(2)(a).
- (2) The investigation must be conducted with a view to making findings of fact in relation to compliance with a requirement mentioned in section 22(1)(a) to (d) by the person who is the subject of the complaint.
- (3) The Commissioner may make a finding of fact if satisfied on the balance of probabilities that the fact is established.
- (4) If the Commissioner has not completed the investigation before the end of the period of 6 months beginning on the date the complaint is found to be admissible, the Commissioner must, as soon as possible thereafter, make a report to the Parliament on the progress of the investigation.

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PROSPECTIVE

26 Commissioner's report on complaint

- (1) This section applies to a report made under section 22(2)(b)(ii).
- (2) The report must include—
 - (a) details of the complaint,
 - (b) details of the assessment of admissibility carried out by the Commissioner,
 - (c) details of the investigation carried out by the Commissioner,
 - (d) the facts found by the Commissioner in relation to whether the person who is the subject of the complaint failed to comply with a requirement mentioned in section 22(1)(a) to (d),
 - (e) any representations made under subsection (4)(b).
- (3) The report must not make reference to a measure that may be taken by the Parliament under section 40.
- (4) Before the report is provided to the Parliament, the Commissioner must—
 - (a) provide a copy of a draft report to the person who is the subject of the report,
 - (b) provide that person with an opportunity to make representations on the draft report.

PROSPECTIVE

27 Parliament's action on receipt of report

- (1) The Parliament is not bound by the facts found by the Commissioner in a report made under section 22(2)(b)(ii).
- (2) The Parliament may direct the Commissioner to carry out such further investigations as may be specified in the direction and report on the outcome of those investigations to it.
- (3) Subject to a direction under subsection (2), the provisions of this Part and of any other direction made under this Part apply (subject to necessary modifications) in relation to any further investigation and report as they apply to an investigation and report into a complaint.

PROSPECTIVE

28 Withdrawal of complaint

- (1) At any time after a complaint has been made to the Commissioner and before a report is made to the Parliament under section 22(2)(b)(ii), the individual who made the complaint may withdraw the complaint by notifying the Commissioner.
- (2) A notification under subsection (1) must be—
 - (a) in writing, and

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- (b) signed by the individual who made the complaint.
- (3) When a complaint is withdrawn during an assessment under section 22(2)(a), the Commissioner must—
- (a) cease to investigate the complaint, and
 - (b) inform the person who is the subject of the complaint—
 - (i) that the complaint has been withdrawn,
 - (ii) that the investigation into the complaint has ceased, and
 - (iii) of any reason given by the individual who made the complaint for withdrawing it.
- (4) When a complaint is withdrawn during an investigation under section 22(2)(b)(i), the Commissioner must—
- (a) inform the person who is the subject of the complaint—
 - (i) that the complaint has been withdrawn, and
 - (ii) of any reason given by the individual who made the complaint for withdrawing it,
 - (b) invite that person to give the Commissioner views on whether the investigation should nevertheless continue, and
 - (c) after taking into account any relevant information, determine whether to recommend to the Parliament that the investigation should continue.
- (5) For the purposes of subsection (4)(c), “relevant information” includes—
- (a) any reason given by the individual who made the complaint for withdrawing it, and
 - (b) any views expressed by the person who is the subject of the complaint on whether the investigation should continue.
- (6) If the Commissioner determines to recommend to the Parliament that the investigation should cease, the Commissioner must—
- (a) cease to investigate the complaint,
 - (b) inform the individual who made the complaint that the investigation has ceased,
 - (c) inform the person who is the subject of the complaint that the investigation has ceased, and
 - (d) report to the Parliament—
 - (i) that the complaint has been withdrawn,
 - (ii) that the investigation has ceased, and
 - (iii) on any reason given by the individual who made the complaint for withdrawing it.
- (7) If the Commissioner determines to recommend to the Parliament that the investigation should continue, the Commissioner must report to the Parliament—
- (a) that the complaint has been withdrawn,
 - (b) on any reason given by the individual who made the complaint for withdrawing it,
 - (c) on any views on the matter expressed by the person who is the subject of the complaint on whether the investigation should continue,
 - (d) that the Commissioner recommends that the investigation should continue, and

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- (e) on the reasons for the Commissioner's recommendation.
- (8) After receiving a report under subsection (7), the Parliament must direct the Commissioner to—
 - (a) continue the investigation, or
 - (b) cease the investigation.
- (9) After receiving a direction under subsection (8), the Commissioner must inform the individual who made the complaint and the person who is the subject of the complaint whether the investigation will continue or cease.
- (10) Where the Commissioner is required under this section to provide reasons given by the individual who made the complaint for withdrawing it, the Commissioner may provide a summary of those reasons.

PROSPECTIVE

29 Commissioner's discretionary reports to Parliament

The Commissioner may, in such circumstances as the Commissioner thinks fit, make a report to the Parliament—

- (a) as to the progress of any actions taken by the Commissioner in accordance with the Commissioner's duties under section 22(2),
- (b) informing the Parliament of a complaint which the Commissioner has dismissed as being inadmissible and the reasons for the dismissal.

PROSPECTIVE

30 Restriction on Commissioner's advice

- (1) The Commissioner may not—
 - (a) give advice as to whether conduct which has been, or is proposed to be, carried out by a person would constitute a failure to comply with a requirement mentioned in section 22(1)(a) to (d), or
 - (b) otherwise express a view upon such a requirement, except in the context of an investigation or report mentioned in section 22.
- (2) Nothing in subsection (1) prevents the Commissioner from giving advice or otherwise expressing a view about—
 - (a) the procedures for making a complaint to the Commissioner, or
 - (b) the procedures following upon the making of a complaint.

31 Directions to the Commissioner

- (1) The Commissioner must, in carrying out the Commissioner's functions conferred by or under this Act, comply with any direction given by the Parliament.
- (2) A direction under subsection (1) may, in particular—

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- (a) make provision as to the procedure to be followed by the Commissioner when conducting an assessment or investigation mentioned in section 22,
 - (b) set out circumstances where, despite receiving a complaint mentioned in section 22(1), the Commissioner—
 - (i) may decide not to conduct an assessment under section 22(2)(a) or an investigation under section 22(2)(b)(i) or, if started, may suspend or stop such an assessment or investigation before it is concluded,
 - (ii) must not conduct an assessment or an investigation referred to in subparagraph (i) or, if started, must suspend or stop such an assessment or investigation before it is concluded,
 - (iii) is not required to report to the Parliament under section 22(2)(b)(ii), 24(5)(a) or (b), (8)(a) or (12), 25(4) or 28(7),
 - (c) require the Commissioner to report to the Parliament upon such matter relating to the carrying out of the Commissioner's functions as may be specified in the direction.
- (3) A direction under subsection (1) may not direct the Commissioner as to how a particular investigation is to be carried out.

Annotations:

Commencement Information

I2 S. 31 in force at 6.9.2017 by S.S.I. 2017/201, reg. 2(c)

PROSPECTIVE

Investigations: witnesses and documents

32 Power to call for witnesses and documents etc.

- (1) The Commissioner may for the purposes of an investigation under section 22(2)(b)(i) require any person, whether in or outwith Scotland—
 - (a) to attend the Commissioner's proceedings for the purpose of giving evidence,
 - (b) to produce documents in the person's custody or under the person's control.
- (2) For the purposes of subsection (1), a person is to be taken to comply with a requirement to produce a document if that person produces a copy of, or an extract of the relevant part of, the document.
- (3) The Commissioner may not impose such a requirement on any person who the Parliament could not require, under section 23 of the Scotland Act 1998, to attend its proceedings for the purpose of giving evidence or to produce documents.
- (4) A statement made by a person in answer to a question which that person was obliged under this section to answer is not admissible in any criminal proceedings against that person, except where the proceedings are in respect of perjury relating to that statement.

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33 Notice

A requirement under section 32(1) must be imposed by giving notice to the person specifying—

- (a) where the person is required to give evidence—
 - (i) the time and place at which the person is to attend, and
 - (ii) the particular matters about which the person is required to give evidence,
- (b) where the person is required to produce a document—
 - (i) the document, or types of document, which the person is to produce,
 - (ii) the date by which the document must be produced, and
 - (iii) the particular matters in connection with which the document is required.

34 Exceptions to requirement to answer question or produce document

- (1) A person is not obliged under section 32 to answer a question or to produce a document which that person would be entitled to refuse to answer or produce in proceedings in a court in Scotland.
- (2) The Lord Advocate, the Solicitor General for Scotland or a procurator fiscal is not obliged under section 32 to answer any question or produce any document which that person would be entitled to decline to answer or to produce in accordance with section 27(3) or, as the case may be, 23(10) of the Scotland Act 1998.

35 Evidence under oath

- (1) The Commissioner may—
 - (a) administer an oath to any person giving evidence to the Commissioner, and
 - (b) require that person to take an oath.
- (2) A person who refuses to take an oath when required to do so under subsection (1) commits an offence.
- (3) A person who commits an offence under subsection (2) is liable on summary conviction to imprisonment for a period not exceeding 3 months or a fine not exceeding level 5 on the standard scale (but not both).

36 Offences relating to Commissioner's investigation

- (1) A person to whom a notice under section 33 has been given commits an offence if the person—
 - (a) refuses or fails to attend before the Commissioner as required by the notice,
 - (b) refuses or fails, when attending before the Commissioner, to answer any question concerning the matters specified in the notice,
 - (c) deliberately alters, suppresses, conceals or destroys any document which that person is required to produce by the notice, or
 - (d) refuses or fails to produce any such document.
- (2) It is a defence for a person charged with an offence under subsection (1)(a), (b) or (d) to show that there was a reasonable excuse for the refusal or failure.

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- (3) A person who commits an offence under subsection (1) is liable on summary conviction to imprisonment for a period not exceeding 3 months or a fine not exceeding level 5 on the standard scale (but not both).

37 Restriction on disclosure of information

- (1) A person mentioned in subsection (2) must not disclose information which is—
- (a) contained in a complaint,
 - (b) provided to or obtained by the person in the course of, or for the purposes of, an assessment under section 22(2)(a), or
 - (c) provided to or obtained by the person in the course of, or for the purposes of, an investigation under section 22(2)(b)(i).
- (2) The persons are—
- (a) the Commissioner,
 - (b) a member of the Commissioner's staff, or
 - (c) any other person appointed by the Commissioner.
- (3) Subsection (1) does not prevent disclosure of information for the purpose of—
- (a) enabling or assisting the Commissioner to discharge the Commissioner's functions—
 - (i) conferred by or under this Act (including by a resolution of the Parliament under section 41),
 - (ii) conferred by or under any other enactment, or
 - (iii) in the standing orders of the Scottish Parliament, or
 - (b) the investigation or prosecution of any offence or suspected offence.

PROSPECTIVE

Commissioner's functions

38 Commissioner's functions etc.

- (1) The Scottish Parliamentary Commissions and Commissioners etc. Act 2010 is modified as follows.
- (2) In section 1(3) (functions of the Commissioner)—
- (a) the word “and” after paragraph (b) is repealed,
 - (b) after paragraph (c) insert “, and
 - (d) the Lobbying (Scotland) Act 2016.”.
- (3) In section 5(1) (protection from actions for defamation)—
- (a) in paragraph (a)—
 - (i) the word “or” in the second place where it occurs is repealed,
 - (ii) after “Parliamentary Standards Act” insert “ or the Lobbying (Scotland) Act 2016 ”,
 - (b) in paragraph (c)—
 - (i) the word “or” in the second place where it occurs is repealed,

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(ii) after “Public Appointments Act” insert “ or the Lobbying (Scotland) Act 2016 ”.

(4) In section 25 (annual reports), after subsection (3) insert—

“(3A) The report must include, in relation to the performance of the Commissioner's functions under the Lobbying (Scotland) Act 2016—

- (a) the numbers of complaints made to the Commissioner during the reporting year,
- (b) the number of complaints which were withdrawn during the reporting year, broken down according to the stage of the investigation at which they were withdrawn,
- (c) in relation to assessments of admissibility under section 22(2)(a) of that Act—
 - (i) the number completed,
 - (ii) the number of complaints dismissed, and
 - (iii) the number of complaints considered admissible,during the reporting year,
- (d) in relation to investigations under section 22(2)(b)(i) of that Act—
 - (i) the number completed,
 - (ii) the number of reports made under section 22(2)(b)(ii) of that Act,during the reporting year, and
- (e) the number of further investigations that the Commissioner has been directed to carry out under section 27(2) of that Act during the reporting year.”.

39 Investigation of performance of Commissioner's functions

In paragraph 21ZA of schedule 2 of the Scottish Public Services Ombudsman Act 2002—

- (a) the word “and” is repealed,
- (b) at the end insert “ and the Lobbying (Scotland) Act 2016 ”.

PROSPECTIVE

Disposal of complaints

40 Parliament's power to censure

After receiving a report under section 22(2)(b)(ii) or 27(2), the Parliament may—

- (a) censure the person who is the subject of the report, or
- (b) take no further action.

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Further provision

41 Power to make further provision about Parliament's procedures etc.

- (1) The Parliament must by resolution make provision about procedures to be followed when the Commissioner submits a report to the Parliament under this Part.
- (2) A resolution under subsection (1) may in particular make provision—
 - (a) on how the Commissioner is to make a report to the Parliament,
 - (b) in connection with the Parliament's consideration of a report made under this Part (including the carrying out of further investigation),
 - (c) on the giving of a direction under this Part,
 - (d) about the review of, or appeal to a court against, a decision by the Parliament under section 40 to censure a person.

Annotations:

Commencement Information

I3 S. 41 in force at 6.9.2017 by S.S.I. 2017/201, reg. 2(d)

PROSPECTIVE

Offences

42 Offences relating to registration and information returns

- (1) It is an offence for a person who is required to provide information under section 8(1) —
 - (a) to fail to provide the information on or before the date by which the person is required to do so, or
 - (b) to provide information which is inaccurate or incomplete in a material particular.
- (2) It is an offence for a person to provide, in an application for registration under section 9, information which is inaccurate or incomplete in a material particular.
- (3) It is an offence for a person who is required to submit an information return under section 11 to—
 - (a) fail to submit the return on or before the date by which the person is required to do so,
 - (b) provide information which is inaccurate or incomplete in a material particular.
- (4) It is a defence for a person charged with an offence under subsection (1), (2) or (3) to show that the person exercised all due diligence to avoid committing the offence.
- (5) A person who commits an offence under subsection (1), (2) or (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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Changes to legislation:

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