



EXPLANATORY NOTES

Lobbying (Scotland) Act 2016 (asp 16)

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LOBBYING (SCOTLAND) ACT 2016

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes are published to accompany the Lobbying (Scotland) Act 2016. The Notes do not form part of the Act and have not been endorsed by the Parliament.

2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE ACT

3. The Act is separated into five parts:

- *Part 1* sets out the core concepts underpinning the registration regime, including the concept of engaging in regulated lobbying and the related concepts of Government and parliamentary functions and, in the schedule, communications which are not lobbying for the purposes of the regime,
- *Part 2* sets out the framework for the operation of the lobbying register including duties to register and submit returns of regulated lobbying activity, the content of the register and the role and functions of the Clerk of the Scottish Parliament (“the Clerk”) in operating the register,
- *Part 3* sets out the oversight and enforcement regime including the role of the Clerk, the role of the Commissioner for Ethical Standards in Public Life in Scotland (“the Commissioner”) and offences,
- *Part 4* contains provision related to the publication of parliamentary guidance and a code of conduct for persons lobbying MSPs and provision related to raising public awareness,
- *Part 5* contains final provisions relating to interpretation, the process for making parliamentary resolutions under the Act, ancillary provision and other technical matters.

COMMENTARY ON SECTIONS

Part 1 – Core Concepts

Section 1: Regulated lobbying and the schedule: communications which are not lobbying

4. Section 1 sets out when a person engages in regulated lobbying for the purposes of the Act. “Person” includes a natural person (individual) or a legal person (such as a company). Only persons who engage in regulated lobbying require to register and report details of lobbying activity under the Act (on which see in particular sections 8 and 11).

5. Section 1(1)(a) provides that a person engages in regulated lobbying if the person makes a communication orally and in person, or if not made in person is made using equipment that is intended to allow both parties to see and hear each other, to a member of the Scottish Parliament, a member of the Scottish Government, a junior Scottish Minister, a special adviser or the permanent secretary of the Scottish Government if it is made in relation to Government or parliamentary functions, and if it is not of a kind listed within the schedule. For these purposes a communication which is made “orally” includes a communication which is made using British Sign Language or is otherwise made by signs (see section 1(3)). A communication is made orally and in person if it is made, for example, at a face to face meeting between a person and an MSP, Minister, special adviser or the permanent secretary of the Scottish Government at either party’s offices. A communication is made orally and using equipment which is intended to enable the individual making the communication and the individual receiving the communication to see and hear each other if it is made, for example, by video-conference (or similar mechanism).

6. Section 1(1)(b) provides that a person engages in regulated lobbying if in the course of a business (e.g. the business activity of a manufacturer) or other activity (e.g. the non-business activity of a charity) carried on by the person an individual makes a communication of the type described in section 1(1)(a) (see paragraph 5 above) as an employee, director (including shadow director) or other office holder, partner or member of the person.

7. Section 1(2) provides that where a person engages in regulated lobbying by virtue of subsection (1)(b) of section 1 the individual mentioned there (i.e. the individual who made the communication) is not to be regarded as engaging in regulated lobbying. That is significant as only persons who engage in regulated lobbying require to register and report details of lobbying activity under the Act (on which see in particular sections 8 and 11).

8. Section 1(4) provides that for the purposes of section 1(1) - the circumstances in which a person will engage in regulated lobbying for the purposes of the Act – it does not matter whether the communication occurs in or outwith Scotland.

9. The schedule sets out details of communications which are not lobbying for the purposes of the Act (i.e. the making of which will not amount to engaging in regulated lobbying under the Act). The making of such communications will not therefore trigger the requirements to report details of lobbying activity under the Act (on which see in particular sections 8 and 11).

Communications made on individual's own behalf

10. Paragraph 1 of the schedule provides that a communication made by an individual on their own behalf is not lobbying. The provision means there is no requirement under the Act to register or submit returns of lobbying activity where an individual communicates with an MSP, Minister, special adviser or the permanent secretary of the Scottish Government in relation to the individual's own affairs or views (and not in relation to the affairs or views of a third party).

Communications made to a member for constituency or region

11. Paragraph 2 provides that a communication made to a member of the Scottish Parliament for a constituency or region (in terms of paragraph 4 of the schedule "constituency" and "region" are construed in accordance with the Scotland Act 1998) is not lobbying if made—

- (a) by an individual as an employee or in another capacity mentioned in section 1(1)(b) (see paragraph 6 above) in the course of a business or other activity carried on by another person,
- (b) on the other person's behalf and not on behalf of a third party, and
- (c) to a member of the Scottish Parliament for the constituency or the region in which any of the following are situated—
 - (i) a place where the person's business is ordinarily carried on,
 - (ii) a place where the person's activity is ordinarily carried on, or
 - (iii) the individual's residence.

12. Paragraph 2 of the schedule can apply only where a communication made by an individual as (e.g.) an employee in the course of a business or other activity carried on by another person (e.g. a company) is made on behalf of that other person. It cannot apply where a communication made by an individual as (e.g.) an employee in the course of a business or other activity carried on by another person (e.g. a company) is made not on behalf of that other person but on behalf of a third party (e.g. a different company). See paragraph 2(b) of the schedule.

13. Paragraph 2 does not apply where the communication is made to an MSP who is a member of the Scottish Government or a junior Scottish Minister. See paragraph 3 of the schedule.

Communications not made in return for payment

14. Paragraph 5 of the schedule provides that a communication made by an individual who is not making it in return for payment is not lobbying. The provision means no requirement under the Act to register or submit returns of lobbying activity is triggered by voluntarily made communications with an MSP, a member of the Scottish Government, a junior Scottish Minister, special adviser or the permanent secretary of the Scottish Government.

15. Paragraph 6(a) of the schedule provides that for the purposes of paragraph 5 a communication made by an individual as an employee or in another capacity mentioned in section 1(1)(b) is made in return for payment if the individual receives payment in that capacity regardless of whether the payment relates to making communications.

16. Paragraph 6(b) of the schedule defines “payment” for the purposes of paragraph 5. In particular it means payment of any kind (e.g. payment of salary) but does not include reimbursement for travel, subsistence or other reasonable expenses related to the making of the communication.

Communications by small organisations

17. Paragraph 7 provides that a communication is not lobbying if made—

(a) by an individual as an employee or in another capacity mentioned in section 1(1)(b) (see paragraph 6 above) in the course of a business or other activity carried on by another person,

(b) on the other person’s behalf and not on behalf of a third party, and

(c) on a date when the other person has fewer than 10 full-time equivalent employees.

18. Paragraph 7 of the schedule can apply only where a communication made by an individual as (e.g.) an employee in the course of a business or other activity carried on by another person (e.g. a company) is made on behalf of that other person. It cannot apply where a communication made by an individual as (e.g.) an employee in the course of a business or other activity carried on by another person (e.g. a company) is made not on behalf of that other person but on behalf of a third party (e.g. a different company). See paragraph 7(b) of the schedule.

19. Paragraphs 9 and 10 of the schedule make provision about how the number of “full-time equivalent employees” is to be calculated for the purposes of paragraph 7 of the schedule. Paragraph 9 provides that for the purposes of paragraph 7, the number of full-time equivalent employees a person has is calculated as follows—

(a) find the total number of hours worked by all the employees of the person in the 28 days ending with the date on which the communication was made,

(b) divide that number by 140.

20. Paragraph 10 provides that for the purposes of the calculation in paragraph 9, any employee who worked more than 140 hours during the period of 28 days is to be treated as having worked 140 hours (i.e. the number of worked hours for any one employee which fall to be counted for the purposes of the calculation is capped at 140 hours, even if the particular employee in question in fact worked more than 140 hours in the 28 day period)).

21. The calculation in paragraph 9 is based on a notional 35 hour working week for a full-time member of staff (i.e. a notional 140 hours over a 4 week (i.e. 28 day) period).

22. Paragraph 8 provides that paragraph 7 does not apply where the communication is made in the course of a business or other activity carried on by a person if one of the person's principal purposes is to represent the interests of other persons (e.g. a person which is a body having as a core purpose representing the views of its members).

Communications in Parliament or required under statute

23. Paragraph 11 of the schedule provides that a communication made in proceedings of the Parliament (and therefore already available to the public) or required under any statutory provision or other rule of law, is not lobbying.

Communications made on request

24. Paragraph 12 of the schedule provides that a communication about a topic which is made in response to a request for factual information or views on that topic from the person to whom the communication is made (i.e. MSP, member of the Scottish Government, junior Scottish Minister, special adviser or the permanent secretary of the Scottish Government) or a person acting on behalf of that person (e.g. a member of an MSP's staff acting on behalf of an MSP or a civil servant acting on behalf of a Minister) is not lobbying.

Cross-party groups

25. Paragraph 13 of the schedule provides that a communication made in the context of, and during, a meeting of a group recognised as a cross-party group by the Parliament is not lobbying. Existing parliamentary rules mean information about participation in cross-party groups, including any secretarial support they receive, is available to the public.

Journalism

26. Paragraph 14 of the schedule provides that a communication made for the purposes of "journalism", a concept recognised in the law, is not lobbying. For discussion of "journalism" in the courts see for example *Commissioner of Police of the Metropolis v Times Newspapers Ltd* [2011] EWHC 2705 (QB), per Mr Justice Tugendhat at paragraphs 131 and 132 in particular.

Communications in relation to terms and conditions of employment

27. Paragraphs 15 and 16 of the schedule provide that a communication made by or on behalf of any employer or by or on behalf of a trade union, to a member of the Scottish Parliament, a member of the Scottish Government, a junior Scottish Minister, a special adviser, or the permanent secretary of the Scottish Government and which forms part of, or is directly related to, negotiations on terms and conditions of employment of the employees of the employer or of the members of the trade union is not lobbying.

28. Paragraph 17 provides the meaning of “trade union”.

Communications by political parties

29. Paragraph 18 of the schedule provides that a communication made by or on behalf of a party registered under Part 2 of the Political Parties, Elections and Referendums Act 2000 is not lobbying. This exception ensures that political discourse within (or between) registered political parties does not trigger any requirement to register.

Communications in the conduct of public affairs

30. Paragraphs 19 to 23 of the schedule have the effect that communications made in the conduct of public affairs are not lobbying.

31. Paragraph 19 of the schedule provides that a communication made by or on behalf of a holder of judicial office within the United Kingdom, or a member of the judiciary of an international court is not lobbying.

32. Paragraph 20 of the schedule defines “holder of judicial office within the United Kingdom” and “member of the judiciary of an international court” for the purposes of paragraph 19.

33. Paragraph 21 provides that a communication made by or on behalf of Her Majesty the Queen is not lobbying.

34. Paragraph 22 of the schedule provides that Government and Parliament communications (i.e. communication made by or on behalf of the holders of public offices (in that capacity), public bodies, organisations and institutions etc. listed in sub-paragraphs (a) to (o)) are not lobbying.

35. Paragraph 23 of the schedule provides that “State” (listed in paragraph 22(m), which provides that a communication by or on behalf of “a State other than the United Kingdom” is not lobbying) includes, but is not limited to, the government of any State and any organ of such a government and that the reference to a State other than the United Kingdom includes reference to any territory outside the United Kingdom. The paragraph 22(m) exception therefore covers communications by any of the various organs of government (legislative, executive or judicial) of a foreign country or a territorial unit of such country. Paragraph 23 also defines “international organisation” (listed in paragraph

22(o), which provides that a communication by or on behalf of “an international organisation” is not lobbying).

Section 1: Additions to the Schedule

36. Section 1(5) of the Act provides that the Parliament may by resolution modify the schedule so as to add further descriptions of kinds of communications (which if added would then also be communications which are not lobbying for the purposes of the Act, i.e. the making of which will not amount to engaging in regulated lobbying under the Act) or to modify or remove such descriptions added. 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 are easily accessible.

Section 2: Government or parliamentary functions

37. Section 2(1)(a) to (f) sets out what are Government or parliamentary functions for the purposes of section 1. The section complements provision in section 1 which as noted above provides that, subject to the terms of the schedule, it is communications made orally and in person, or if not made in person are made using equipment (e.g. video-conferencing or similar mechanisms) that is intended to allow both parties to see and hear each other, to a member of the Scottish Parliament, a member of the Scottish Government, a junior Scottish Minister, a special adviser or the permanent secretary of the Scottish Government and which is made in relation to Government or parliamentary functions which trigger the requirements under the Act to register or submit returns of lobbying activity.

38. Subsection (2) provides that the retained functions of the Lord Advocate (within the meaning of section 52(6) of the Scotland Act 1998) are not Government or parliamentary functions. And so communications with the Lord Advocate or the Solicitor General in relation only to the retained functions of the Lord Advocate will not trigger the requirements under the Act to register or submit returns of lobbying activity. The retained functions of the Lord Advocate are, as noted, defined in section 52(6) of the Scotland Act 1998. They are any functions exercisable by the Lord Advocate immediately before the Lord Advocate ceased to be a Minister of the Crown on devolution and other statutory functions conferred on the Lord Advocate alone after he ceased to be a Minister of the Crown. These functions relate mainly to the Lord Advocate’s role as head of the systems of criminal prosecution and investigation of deaths in Scotland.

Part 2 – The lobbying register

39. **Section 3** contains provision relating to the establishment and maintenance of a lobbying register.

40. Subsection (1) places a duty on the Clerk (a member of staff appointed by the Scottish Parliamentary Corporate Body – see in particular sections 20 and 21 of the Scotland Act 1998) to establish and maintain a lobbying register, which is to contain information about three categories of person. Those categories are:

- active registrants,
- inactive registrants, and
- voluntary registrants.

Active registrants

41. An “active registrant” is a person entered in the register under section 10. Section 10 sets out two ways a person may become an active registrant.

42. A person may become an active registrant by providing information to the Clerk under the duty to register in section 8. The duty to register applies where a person (who is not already registered as an active registrant) engages in regulated lobbying.

43. Alternatively, a person may apply to be entered in the register as an active registrant under section 9. Section 9 allows a person to be entered in the register as an active registrant in advance of engaging in regulated lobbying.

Inactive registrants

44. The concept of “inactive registrant” is included within the statutory framework as a way to manage the registration process and minimise any burdens arising from it. It allows a means for a person who has been registered as an active registrant to no longer be subject to the requirement to make information returns (under section 11) every 6 months if they are no longer and do not intend in the future to be engaged in regulated lobbying activity. This avoids the registrant from having to submit ‘nil’ returns, and the Clerk having to oversee and administer those returns. The effect of these provisions is that there is a statutory duty for any relevant instance of lobbying to be registered, but there are reduced administrative burdens relating to lobbying which may occur on a one-off or infrequent basis.

45. An active registrant may become an “inactive registrant” if the Clerk believes the active registrant is not, or is no longer, engaged in regulated lobbying. An active registrant may apply to become an inactive under section 12, or the Clerk may reclassify an active registrant without an application under section 13 (provided the Clerk has given the active registrant notice and a chance to make representations). Sections 12 and 13 are discussed further below.

46. An inactive registrant may revert to being an active registrant if they are re-entered in the register under section 10.

Voluntary registrants

47. Voluntary registration opens the registration scheme to those who deem themselves to undertake lobbying but do not trigger the statutory requirement to register because the lobbying does not amount to engaging in regulated lobbying within the meaning of the Act (see section 1), e.g. lobbying carried out for a person by an individual who is not making the communications in return for payment. This ability to register on a voluntary basis would for example allow an individual or entity to register and submit returns in relation to any engagement they have with MSPs, members of the Scottish Government, junior Scottish Ministers, special advisers or the permanent secretary of the Scottish Government even if there is no requirement for the individual or entity to do so under the Act.

48. A person may apply to be a “voluntary registrant” under section 14, unless the person is already an active registrant. It is for the Clerk to decide whether to enter the applicant in the register or refuse the application.

Clerk’s duty to publish information from the register

49. Subsections (2) to (4) of section 3 deal with publication of information in the register. The Clerk is under a duty to publish the information in the register about active registrants. The Clerk may however decide not to publish information about individuals if the Clerk considers publication of that information would be inappropriate.

50. The Clerk may choose to publish information about inactive registrants and voluntary registrants.

Information about identity

51. **Section 4** provides that for all registrants – i.e. active registrants, inactive registrants and voluntary registrants – the register must contain information about the registrant’s identity as set out in section 5. The identity information set out in section 5 varies depending on the type of person (e.g. individual, company, partnership or other person) but in all cases will include the person’s name and address.

Information about regulated lobbying activity

52. **Section 4** also provides that for both active and inactive registrants the register must also contain information about the registrant’s regulated lobbying activity as set out in section 6 and such additional information provided by the registrant mentioned in section 7.

53. **Section 6** sets out the information about the lobbying activity of both active registrants and inactive registrants that the register must contain. That information includes, in relation to each instance of regulated lobbying, the name of the person (i.e. MSP, member of the Scottish Government, junior Scottish Minister, special adviser or the permanent secretary of the Scottish Government) lobbied, the date on which the lobbying occurred etc.

54. **Section 7** sets out the additional information in relation to active registrants and inactive registrants that the register must contain. That additional information is such information as may be provided by the registrant about any code of conduct which governs regulated lobbying and in relation to which there is an undertaking for the registrant to comply and – so far as the Clerk considers appropriate to include it - such other information as may be provided by the registrant for inclusion in the entry.

Duty to register

55. **Section 8** imposes a duty to register on a person who engages in regulated lobbying when the person is not an active registrant. In terms of section 8(1), read with section 8(2), the person must, within 30 days beginning with the date on which the first instance of regulated lobbying occurred, provide the Clerk information in relation to the person's identity (see section 5) and information as set out in section 6 in relation to the first instance of regulated lobbying.

56. Section 8(3) provides that a person must provide the information under subsection (1) in such form as the Clerk may determine.

Application for registration

57. **Section 9** contains provision relating to applications for registration, in particular to allow a person to seek to be entered on the register in advance of the person engaging in regulated lobbying if they so wish. A person who is not already an active registrant is therefore able to apply to the Clerk to be entered in the register (and therefore become an active registrant), providing information about their identity as set out at section 5. Again, the information must be in such a form as the Clerk may determine.

Entry in the register

58. **Section 10** contains provision relating to the Clerk entering a person in the register as an active registrant following the person providing information under section 8 or applying under section 9.

59. The section goes on to outline the action that must be taken by the Clerk as soon as reasonably practicable after information or an application is received. In particular the Clerk must enter the person in the register as an active registrant and update the register with both (a) information provided by the person under section 8(1) (duty to register in 30 days following first instance of engaging in regulated lobbying when not an active registrant) or under section 9(2)(b) (application by person who is not an active registrant and who has not engaged in regulated lobbying) and (b) any other information provided by the registrant and which the Clerk agrees to include in the register.

60. Once the Clerk has entered the person on the register the Clerk must, as soon as reasonably practicable, send a written notice to the person informing the person of the date on which the period of 6 months in section 11(1)(a) begins for that person (i.e. the date which is the beginning of the 6 month period in respect of which the person will, as an active registrant, require to submit a first information return in relation to regulated

lobbying activity under section 11) and of the effect of section 11(1)(b) (which provides that an active registrant must thereafter submit information returns in respect of each subsequent 6 month period).

61. Subsection (4) makes clear that the Clerk may send additional copies of a notice sent under subsection (3) by whatever means the Clerk considers appropriate (for example, by e-mail).

Information returns

62. **Section 11** contains provision relating to each active registrant's duty to submit information returns.

63. An active registrant must submit to the Clerk (in such a form as the Clerk may determine) an information return in respect of an initial period of six months (the start date of the initial period of six months being either the date on which first instance of lobbying in relation to which the registrant provided information under section 8(1) (duty to register in 30 days following first instance of engaging in regulated lobbying when not an active registrant) occurred or the date of the registrant's application under section 9 (application by person who is not an active registrant and who has not engaged in regulated lobbying)), whichever is the case, and each subsequent period of 6 months. Information returns must be submitted before the end of the period of 2 weeks beginning immediately after the end of each 6 month period.

64. Section 11(3) provides that the first information return to be provided by an active registrant after the registrant provides information under section 8(1) (duty to register in 30 days following first instance of engaging in regulated lobbying when not an active registrant) must contain the information as set out in section 6 about the registrant's regulated lobbying activity during the 6 month period in question (other than the first instance of regulated lobbying provided under section 8(1)(b)) or a statement that the registrant has not engaged in regulated lobbying activity in that period (other than that first instance).

65. Section 11(4) provides that every other information return submitted by a registrant under section 11 must contain the information set out in section 6 about the registrant's regulated lobbying activity in the 6 month period in question or a statement that the registrant has not engaged in regulated lobbying activity in that period and, if any information included in relation to the registrant has become inaccurate, information about the changes that have occurred.

66. Section 11(5) provides that an active registrant may at any time notify the Clerk in writing:

- if any information included in the register in relation to that registrant has become inaccurate, about the changes that have occurred,
- about information about any code of conduct which governs regulated lobbying and in relation to which there is an undertaking for the registrant to comply,

- about such other information which, with the agreement of the Clerk, the registrant wishes to be included in the register.

67. The Clerk is required to update the register to include the information contained in an information return or received under section 11(5) as soon as reasonably practicable after receiving the information.

Reclassification as an inactive registrant

68. **Section 12** contains provision relating to an application by an active registrant to be reclassified as an inactive registrant.

69. Subsections (2), (3) and (4) provide that an application to be entered in the register as an inactive registrant must be in such form as the Clerk may determine and specify the information that must be contained in such an application. Any application will require to include such information about the active registrant's regulated lobbying activity (as set out in section 6) which has not at the date of the application yet been provided to the Clerk or a statement to the effect that the active registrant has not engaged in any such regulated lobbying.

70. Subsections (5) and (6) set out the process to be followed by the Clerk if, following the application, the Clerk has reasonable grounds to believe (i.e. on the basis of facts or information available) that the applicant is not, or is no longer, engaged in regulated lobbying. The Clerk may in particular enter the applicant in the register as an inactive registrant by updating the applicant's entry in the register accordingly. The Clerk must notify the applicant of both the date on which the applicant is entered on the register as an inactive registrant and the effect of that.

71. **Section 13** contains provision relating to the reclassification as an inactive registrant by the Clerk without an application under section 12.

72. Subsection (1) allows the Clerk to enter an active registrant in the register as an inactive registrant if there is no outstanding application by the registrant under section 12, and the Clerk has reasonable grounds to believe (i.e. on the basis of facts or information available) that the registrant is not, or is no longer, engaged in regulated lobbying.

73. Subsection (2) provides that before deciding under this section to enter an active registrant in the register as an inactive registrant the Clerk must give to the registrant a notice stating that the Clerk is considering updating the registrant's entry, the Clerk's reasons for doing so and that the registrant has the right to make written representations to the Clerk before the date which is specified in the notice (such date to be at least 28 days after the date on which the notice is given).

74. Subsection (3) provides that the Clerk must consider any representations made by the registrant in making a decision under this section.

75. Subsection (4) provides that the Clerk must, as soon as practicable after making a decision under this section to enter a registrant in the register as an inactive registrant, update the registrant's entry in the register accordingly.

76. Subsection (5) sets out the process to be followed by the Clerk after making a decision under this section. Again, the Clerk must notify the applicant of both the date on which the applicant is entered on the register as an inactive registrant and the effect of that.

77. In particular the effect of a person being entered in the register as an inactive registrant under either section 12 or section 13 will be that the person will as an inactive registrant no longer be under a duty, as they would have been as an active registrant, to submit 6 monthly information returns under section 11. But the effect is also that if the person engages in regulated lobbying on or after the date on which they are entered as an inactive registrant they will be under a duty to provide information under section 8(1) (duty to register in 30 days following first instance of engaging in regulated lobbying when not an active registrant).

Voluntary registration

78. **Section 14** contains provision relating to voluntary registration.

79. Subsection (1) provides that a person may apply to the Clerk be entered in the register as a voluntary registrant (unless the person is already an active registrant).

80. Subsection (2) provides that an application under this section must be in such form as the Clerk may determine and specifies that the application must contain information in relation to the person's identity (which varies depending on the type of person, e.g. in the case of a company, the name of the company, its registered number etc.) as set out in section 5.

81. Subsection (3) provides that the Clerk may either enter or refuse to enter the applicant in the register.

82. Subsection (4) sets out that the Clerk may remove a voluntary registrant from the register on an application from the voluntary registrant to do so or may update the register accordingly if following submission of information under section 8(1) (duty to register in 30 days following first instance of engaging in regulated lobbying when not an active registrant) or an application under section 9 (application by person who is not an active registrant and who has not engaged in regulated lobbying) the person is instead entered in the register as an active registrant.

Power to specify requirements about the register

83. **Section 15** provides that the Scottish Parliament may by resolution make provision about Part 2 of the Act.

84. The Act sets the overarching statutory framework for a lobbying register. The Act provides flexibility for making provision about the operational detail of the registration scheme (the framework for which is provided for in Part 2 of the Act) without the need for primary legislation. That includes in particular flexibility to make provision about the duties of the Clerk on whom functions are conferred in relation to the register, obligations on those wishing to register and those registered and more generally management of the register and information contained in it.

85. Section 15(1)(a) to (i) provides a non-exhaustive list of examples of what resolutions made under this section may make provision about. Section 15(2) provides that a resolution made under this section may modify sections 4 to 14. The power will ensure that the Parliament has the ability to make any further detailed operational provision considered necessary or appropriate before the lobbying register goes live. The principal reason for conferring the power is thought to allow the Parliament to make further detailed operational provision, or to adjust existing provision, in connection with the lobbying register in light of practical experience over time.

86. 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.

Part 3 – Oversight and Enforcement

(a) the Clerk

Clerk’s duty to monitor compliance

87. **Section 16** imposes a duty on the Clerk to monitor compliance with the obligations imposed by or under the Act on persons who engage in regulated lobbying and voluntary registrants. Section 16(2) makes clear that in exercising the duty, the Clerk must have regard to the parliamentary guidance (see section 43).

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.

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.

(b) the Commissioner – investigation of complaints and report to Parliament

106. **Section 22** imposes a duty on the Commissioner to investigate when the Commissioner receives a complaint that a person has or might have failed:

- (a) to comply with section 8(1) (duty to register in 30 days following first instance of engaging in regulated lobbying when not an active registrant),
- (b) to provide accurate and complete information in an application made under section 9 (application by person who is not an active registrant and who has not engaged in regulated lobbying),
- (c) to comply with section 11 (duty on active registrant to submit information returns), or

(d) to supply accurate and complete information in response to an information notice in accordance with section 17.

107. Subsection (2) makes clear that on receipt of such a complaint 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).

108. Subsection (3) provides that in exercising the duties imposed by or under this Act, the Commissioner must have regard to the parliamentary guidance (see section 43).

109. Subsection (4) states that an assessment under subsection (2)(a) and an investigation under subsection (2)(b)(i) must be conducted in private.

Assessment of admissibility of complaints

110. **Section 23** provides for a three part test for admissibility. Subsection (1) explains that a complaint is admissible if it appears to the Commissioner that the complaint:

- (a) is relevant (see subsection (2)),
- (b) meets the conditions mentioned in subsection (3), and
- (c) warrants further investigation (see subsection (4)).

111. Subsection (2) states that a complaint is relevant if it appears at first sight – i.e. on its face - to be about a person who may in the future be, or may currently be, or may previously have been, engaged in regulated lobbying and that if all or part of the conduct complained about is established, it might amount to a failure to comply with a requirement mentioned in section 22(1)(a) to (d).

112. Subsection (3) sets out a number of conditions - largely procedural in nature - that require to be met before a complaint will be admissible, including that the complaint must be in writing, must be made by an identifiable individual (rather than in the name of another person such as a company) and made before the end of the period of one year beginning on the date when the complainant could reasonably have become aware of the conduct complained about.

113. Subsection (4) provides that a complaint warrants further investigation if there is sufficient evidence 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).

114. **Section 24** sets out the procedure for assessing admissibility of a complaint. Subsection (2) provides that when 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), the Commissioner must notify the person who is the subject of the complaint that the complaint has been received, inform that person of the nature of the complaint and, except where the Commissioner considers that it would not be appropriate to do so (e.g. where

the complainant might be vulnerable or where to do so could prejudice an investigation), inform that person of the name of the individual who made the complaint.

115. Subsection (3) focusses on the first part of the test for admissibility – whether the complaint is relevant. It provides that if the Commissioner considers that the complaint is not relevant, the Commissioner must dismiss it.

116. Subsections (4) to (7) focus on the second part of the test for admissibility – whether the conditions in section 23(3) are met. In particular provision is made in subsections (5) to (7) for where a relevant complaint fails to meet one or more of the conditions mentioned in section 23(3).

117. Subsection (5)(a) provides that if the complaint is of a kind specified in a direction by the Parliament, the Commissioner must make a report to the Parliament (before the Commissioner considers the third part of the test for admissibility (i.e. whether the complaint warrants further investigation)). Subsection 5(b) provides that if the complaint is not of such a kind the Commissioner will consider whether the complaint warrants further investigation and, if it does, will report to the Parliament. Subsection 5(c) deals with other cases, i.e. where the complaint is not of a kind specified in a direction by the Parliament and where the Commissioner considers that the complaint does not warrant further investigation, in which case the Commissioner will dismiss the complaint.

118. Subsection (6) sets out the information which a report under subsection (5)(a) or (b) must contain. Subsection (7) provides that after receiving a report under subsection (5)(a) or (b) the Parliament must give the Commissioner a direction to dismiss the complaint for failing to meet one or more of the conditions in section 23(3) or to treat the complaint as if it meets all of those conditions. If the direction is to treat the complaint as if it meets all the conditions and is issued in response to a report under subsection (5)(a), the Commissioner will then require to consider the third part of the test for admissibility – whether the complaint warrants further investigation.

119. Subsection (8) provides that if the Commissioner considers that the complaint is admissible (in accordance with the three part test, i.e. as (a) relevant, (b) meeting all of the conditions in section 23(3) (or having been directed by the Parliament under subsection (7)(b) to treat the complaint as meeting all of those conditions) and (c) warranting further investigation), the Commissioner must inform all of the Parliament (by making a report to the Parliament), the individual who made the complaint and the person who is the subject of the complaint.

120. Subsection (9) deals with the situation where the Commissioner considers a complaint is inadmissible and has not already dismissed it under or in pursuance of other provision in section 24 (i.e. subsections (3), (5)(a) or (7)(a)). This will be the case where the Commissioner considers that a relevant complaint which meets the conditions in section 23(3) does not warrant further investigation or where following a report to the Parliament on a relevant complaint under subsection (5)(a) the Parliament directs the Commissioner to treat the complaint as if the section 23(3) conditions are met but the Commissioner then determines that the complaint does not warrant further investigation. The Commissioner is to dismiss the complaint.

121. Subsection (10) provides that, 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.

122. Subsection (11) confirms that subsections (2), (8) and (10) apply only to the extent that they are capable of applying where the person to whom the complaint relates has not been named in the complaint or the individual who made the complaint is anonymous.

123. Subsection (12) provides that if the Commissioner has not assessed whether a complaint is admissible within 2 months of receiving the complaint, the Commissioner must, as soon as possible thereafter, make a report to the Parliament on the progress of the assessment of admissibility.

Investigation of admissible complaint and report to Parliament

124. **Section 25(1)** provides that section 25 applies to the investigation of a complaint assessed as admissible under section 22(2)(a).

125. Subsection (2) provides that 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.

126. Subsection (3) provides that the Commissioner may make a finding of fact if satisfied on the balance of probabilities that the fact is established.

127. Subsection (4) provides that 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 admissible, the Commissioner must, as soon as possible thereafter, make a report to the Parliament on the progress of the investigation.

128. **Section 26** makes provision in respect of a Commissioner's report on the outcome of any investigation of an admissible complaint.

129. Subsection (2) sets out the information that the report must contain, including details of the complaint, the Commissioner's findings in fact and details of any representations made under subsection (4)(b) by the person who is the subject of the complaint.

130. Subsection (3) provides that the report must not make reference to action which may be taken by the Parliament under section 40 (censure by the Parliament or no further action).

131. Subsection (4) makes clear that 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 and (b) provide that person with an opportunity to make representations on the draft report.

132. **Section 27(1)** provides that the Parliament is not bound by the facts found by the Commissioner in a report made under section 22(2)(b)(ii) (Commissioner's report on the outcome of an admissible complaint).

133. Subsection (2) provides that 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.

134. Subsection (3) provides that subject to a direction under subsection (2), the provisions of the Act and of any other direction made under the Act apply (subject to necessary modifications) in relation to any further investigation and report as they apply in relation to an investigation and report into a complaint.

Withdrawal of a complaint

135. **Section 28(1)** and (2) provide that 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 signed written notice to the Commissioner.

136. Subsection (3)(a) and (b) sets out the actions that the Commissioner must take when a complaint is withdrawn during an assessment of admissibility under section 22(2)(a). The Commissioner must cease to investigate and inform the person who is the subject of the complaint.

137. Subsection (4)(a) to (c) sets out the actions that the Commissioner must take when a complaint is withdrawn during an investigation of an admissible complaint under section 22(2)(b)(i). The Commissioner must inform the person who is the subject of the complaint, invite that person to express views on whether the investigation should nevertheless continue and, having considered relevant information, determine whether to recommend to the Parliament that the investigation should continue.

138. Subsection (5) provides that for the purposes of subsection (4)(c) "relevant information" includes any reason given by the individual who made the complaint for withdrawing it and any views expressed by the person who is the subject of the complaint on whether the investigation should continue.

139. Subsection (6)(a) to (d) sets out the actions that the Commissioner must take when the Commissioner determines to recommend to the Parliament that the investigation should cease (including informing the complainer and person who is the subject of the complaint and reporting to the Parliament).

140. Subsection (7)(a) to (e) provides that where the Commissioner determines to recommend to the Parliament that the investigation should continue the Commissioner must report to the Parliament setting out particular matters, including the reasons for the Commissioner's recommendation.

141. Subsection (8) provides that after receiving a report under subsection (7), the Parliament must direct the Commissioner to either continue the investigation or cease the investigation.

142. Subsection (9) provides that 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 be continued or ceased.

143. Subsection (10) makes clear that where the Commissioner is required under this section to provide reasons given by the individual who made the complaint for withdrawing it (e.g. under section 28(3)(b)(iii)), the Commissioner may provide a summary of those reasons.

Commissioner's discretionary reports to Parliament

144. **Section 29** provides that the Commissioner may, in such circumstances as the Commissioner thinks fit, make a report to the Parliament as to the progress of any actions taken by the Commissioner in accordance with the Commissioner's duties under section 22(2) or informing the Parliament of a complaint which the Commissioner has dismissed as being inadmissible and the reasons for the dismissal.

Restriction on Commissioner's advice

145. **Section 30(1)** provides that the Commissioner may not give advice as to whether conduct which has been, or is proposed to be, committed by a person would constitute a failure to comply with a requirement mentioned in section 22(1)(a) to (d), or otherwise express a view upon such a requirement, except in the context of an investigation or report mentioned in section 22.

146. Subsection (2) provides that nothing in subsection (1) prevents the Commissioner from giving advice or otherwise expressing a view about the procedures for making a complaint to the Commissioner or the procedures following upon the making of a complaint.

Directions to the Commissioner

147. The general power in **section 31** of the Act for the Parliament to issue directions to the Commissioner provides for operational flexibility in the overall arrangements for oversight of the registration regime by the Commissioner and the Parliament as provided for in Part 3 of the Act (in particular sections 22 to 30).

148. Subsection (1) provides that the Commissioner must, in carrying out the Commissioner's functions conferred by or under the Act, comply with any direction given by the Parliament.

149. Subsection (2) provides a non-exhaustive list of examples of the types of thing a direction given by the Parliament may deal with. A direction may:

- (a) make provision as to the procedure to be followed by the Commissioner when conducting an assessment (assessment of admissibility of complaint) or investigation (investigation of admissible complaint) 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) (assessment of admissibility of complaint) or an investigation under section 22(2)(b)(i) (investigation of admissible complaint) or, if started, may suspend or stop such an assessment or investigation before it is concluded,
 - (ii) must not conduct such assessment or investigation or, if started, must suspend or stop such assessment or investigation before it is concluded,
 - (iii) is not required to report to the Parliament under sections 22(2)(b)(ii), 24(5)(a) or (b), (8)(a) or (12), 25(4) or 28(7), or
- (c) require the Commissioner to report to the Parliament upon such matter relating to the exercise of the functions of the Commissioner under the Act as may be specified in the direction.

150. Subsection (3) makes clear that a direction under subsection (1) may not direct the Commissioner as to how any particular investigation is to be carried out.

Commissioner investigations: witnesses and documents

151. **Section 32(1)** provides that the Commissioner may for the purposes of an investigation under section 22(2)(b)(i) (investigation into an admissible complaint) require any person, whether in or outwith Scotland, to attend the Commissioner's proceedings (i.e. any formal activity the Commissioner undertakes as part of his investigation) for the purpose of giving evidence or to produce documents in the person's custody or under the person's control.

152. Subsection (2) provides that 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.

153. Subsection (3) makes clear that the Commissioner may not impose such a requirement on any person whom 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.

154. Subsection (4) provides that 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.

155. **Section 33** provides that notice must be given to a person of a requirement under section 32(1) to attend for the purposes of giving evidence or to produce documents in the person's custody and what information must be provided to the person in such notice.

156. Paragraph (a) specifies what information must be contained in the notice where the person is required to give evidence.

157. Paragraph (b) specifies what information must be contained in the notice where the person is required to produce a document.

158. **Section 34(1)** provides that 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. As noted above this covers for example various privileges recognised by the courts in Scotland such as the privilege against self-incrimination and certain other privileges in connection with litigation.

159. Subsection (2) provides that 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 officer would be entitled to decline to answer or to produce in accordance with section 27(3) or, as the case may be, section 23(10) of the Scotland Act 1998. This provides for these persons to refuse to answer questions or provide documents about particular criminal proceedings when it is considered that it would be prejudicial to those proceedings or contrary to the public interest to do so.

160. **Section 35(1)** provides that the Commissioner may administer an oath to any person giving evidence to the Commissioner and require that person to take an oath.

161. Subsection (2) provides that a person who refuses to take an oath when required under subsection (1) commits an offence.

162. Subsection (3) provides that a person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale or imprisonment for a period not exceeding 3 months.

163. **Section 36(1)** provides that a person to whom a notice under section 33 has been given (notice of requirement to attend for the purposes of giving evidence or to produce documents in the person's custody) 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.

164. Subsection (2) provides that it is a defence to a charge in proceedings against a person for an offence under subsection (1)(a), (b) or (d) to show that there was a reasonable excuse for the refusal or failure. This imposes an evidential burden only on the person.

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

Commissioner investigations - restriction on disclosure of information

166. **Section 37(1)** provides that 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) (assessment of admissibility of a complaint), 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) (investigation of an admissible complaint).

167. Subsection (2) provides that the persons referred to in subsection (1) are the Commissioner, a member of the Commissioner's staff, or any other person appointed by the Commissioner.

168. Subsection (3)(a) makes clear that subsection (1) does not prevent disclosure of information for the purpose of enabling or assisting the Commissioner to discharge the Commissioner's functions:

- (i) conferred by or under the Act (including by a resolution of the Parliament under section 41 (power to make further provision about the Parliament's procedures on receipt of a report from the Commissioner under Part 3 of the Act)),
- (ii) conferred by or under any other enactment, or
- (iii) in the standing orders of the Scottish Parliament.

169. Subsection (3)(b) makes clear that subsection (1) does not prevent disclosure of information for the purpose of the investigation or prosecution of any offence or suspected offence.

Commissioner's functions etc.

170. **Section 38** sets out a series of modifications (as provided for in subsections (2) to (4)) to the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 in consequence of this Act. That Act makes general provision for the Commissioner and exercise of the Commissioner's functions under existing legislation. The modifications are to reflect the conferral of further functions on the Commissioner under the Act.

Investigation of performance of Commissioner's functions

171. **Section 39** provides for consequential changes to schedule 2 to the Scottish Public Services Ombudsman Act 2002 so that the Commissioner in exercise of functions under the Act is a person liable to investigation by the Scottish Public Services Ombudsman for the purposes of that Act.

Parliament's power to censure

172. **Section 40** provides that after receiving a report under section 22(2)(b)(ii) (report of outcome of investigation of admissible complaint) or section 27(2) (report of further investigations after direction by the Parliament following receipt of report of outcome of investigation of admissible complaint under section 22(2)(b)(ii)), the Parliament may censure the person who is the subject of the report or take no further action.

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

173. **Section 41(1)** provides that the Parliament must, by resolution, make provision about procedures to be followed when the Commissioner submits a report to the Parliament under this Part. Subsection (2)(a) to (d) sets out what, in particular, a resolution under subsection (1) may make provision about.

174. 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.

(c) offences

175. **Section 42** makes provision for offences in relation to registration and information returns. Subsection (1) provides that it is an offence for a person who is required to provide information under section 8(1) (duty to register in 30 days following first instance of regulated lobbying when not an active registrant) to fail to provide the information on or before the date by which the person is required to do so or provide information which is inaccurate or incomplete in a material particular.

176. Subsection (2) provides that 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.

177. Subsection (3) provides that it is an offence for a person who is required to submit an information return under section 11 to fail to submit the return on or before the date by which the person is required to do so or provide information which is inaccurate or incomplete in a material particular.

178. Subsection (4) provides that it is a defence to a charge in proceedings against a person for an offence under subsections (1) to (3) to show that the person exercised all due diligence to avoid committing the offence. This imposes an evidential burden only on the person.

179. Subsection (5) provides that a person who commits an offence under subsections (1) to (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Part 4 – Guidance, code of conduct and public awareness

Parliamentary guidance

180. **Section 43** contains provision relating to the publication of parliamentary guidance.

181. Subsection (1) provides that the Parliament must publish guidance on the operation of this Act.

182. Subsection (2) lays out particular examples of what the guidance must contain, including the circumstances in which a person is or is not engaged in regulated lobbying for the purposes of the Act and the circumstances in which a communication is of a kind which falls within the schedule or the Clerk's functions under the Act.

183. Subsection (3) provides that before publishing the guidance, any revision to it or replacement of it, the Parliament must consult the Scottish Ministers.

184. When exercising functions under Part 2 both the Clerk and the Commissioner are required to have regard to the parliamentary guidance (see sections 3(5), 16(2) and 22(3)). This ensures that the Clerk and the Commissioner will take account of the guidance when exercising such functions.

Code of conduct for persons lobbying MSPs

185. **Section 44** contains provision relating to the publication of a code of conduct for persons lobbying MSPs.

186. Subsection (1) provides that the Parliament must publish a code of conduct for persons lobbying members of the Parliament.

187. Subsection (2) provides that the Parliament must, from time to time, review the code of conduct and may, if it considers it appropriate, publish a revised code of conduct.

188. Subsection (3) lays out that, in this section, “lobbying” means making a communication of any kind to a member of the Parliament in relation to the member's functions. This includes, but is wider than, ‘regulated lobbying’ with which the rest of the Act is concerned. While therefore the code of conduct may contain provision relevant to persons engaging in regulated lobbying within the meaning of section 1 of the Act, it may also contain provision relevant to any other “lobbying” of MSPs.

Public awareness and understanding of the Act

189. **Section 45** provides that Parliament may take such steps as it considers appropriate to promote public awareness and understanding of the operation of the Act.

Part 5 – Final provisions

190. **Section 46** contains provision relating to offences committed by bodies corporate.

191. Subsection (1) provides that where an offence under this Act has been committed by a body corporate or a Scottish partnership or other unincorporated association and it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of a “relevant individual”, or an individual purporting to act in the capacity of a relevant individual, the individual (as well as the body corporate, partnership or, as the case may be, other unincorporated association) commits the offence and is liable to be proceeded against and punished accordingly. This means that where an offence under the Act is committed by an organisation and it can be proved that a specific individual played a role in the committing of the offence, that person also commits an offence and can be prosecuted accordingly.

192. Subsection (2) defines “relevant individual” for the purposes of subsection (1).

193. **Section 47** defines terms used in the Act.

194. **Section 48** contains provision relating to the process to be followed by the Parliament in making parliamentary resolutions under this Act. Sections 15 (power to specify requirements about the register), 20 (power to make further provision about information notices) and 41 (power to make further provision about the Parliament’s procedures where the Commissioner submits a report to the Parliament under Part 3 of the Act) of the Act confer power on the Parliament to make provision by parliamentary resolution.

195. Subsection (1) makes clear that, before making a resolution under the Act, the Parliament must consult the Scottish Ministers.

196. Subsection (2) provides that any power of the Parliament to make such a resolution includes power to make different provision for different purposes, or incidental, supplementary, consequential, transitional, transitory or saving provision.

197. Subsection (3) provides that immediately after any such resolution is passed, the Clerk must send a copy of it to the Queen’s Printer for Scotland (“the Queen’s Printer”).

198. Subsection (4) provides that Part 1 of the Interpretation and Legislative Reform (Scotland) Act 2010 (“ILRA”) applies to any such resolution as if it were a Scottish instrument. Part 1 of ILRA contains general default provision about the interpretation and operation of Acts of the Scottish Parliament and in particular Scottish instruments made under such Acts. The rules apply to such legislation in the absence of express provision to the contrary therein. A “Scottish instrument” is defined in section 1(4) and (5) of ILRA and does not include a resolution of the Parliament. By providing in section 48(4) of the Act for Part 1 of ILRA to apply to a resolution of the Parliament as it applies to a Scottish instrument, resolutions of the Parliament will benefit from the interpretative and other

rules in Part 1 of ILRA in the same way as any Scottish instrument, subject to any contrary provision made in such resolutions.

199. Subsection (5) provides that section 41(2) to (5) of ILRA and the Scottish Statutory Instruments Regulations 2011 (S.S.I. 2011/195) apply to the resolution as if it were a Scottish statutory instrument, as if the copy of it sent to the Queen's Printer under subsection (3) were a certified copy received in accordance with section 41(1) of ILRA and with the modifications set out in subsections (5) and (6). Subsection (5) makes clear that references to "responsible authority" in section 41(2) to (5) of ILRA are to be read as references to the Clerk. Subsection (6) makes clear that regulation 7(2) and (3) of the Scottish Statutory Instruments Regulations 2011 does not apply (this ensures that the obligation in regulation 7(1) of those Regulations – Queen's Printer to deliver certified copies to certain libraries – applies to parliamentary resolutions made under the Act). Overall the main purpose of the provision in section 48(4) to (6) of the Act is to provide for parliamentary resolutions under the Act to be published by the Queen's Printer in the same way as Scottish statutory instruments.

200. **Section 49** contains provision relating to the application of this Act to a trust.

201. Subsection (2) provides that the trustees of a trust engage in regulated lobbying if a trustee makes a communication falling within section 1(1)(a) (a communication made orally and in person, or if not made in person is made using equipment that is intended to allow both parties to see and hear each other, to a member of the Scottish Parliament, a member of the Scottish Government, a junior Scottish Minister, a special adviser or the permanent secretary of the Scottish Government, which is made in relation to Government or parliamentary functions (on which see section 2), and which does not fall within the schedule (communications which are not lobbying for the purposes of the Act)).

202. Subsection (3) makes clear that references in Parts 2 and 3 to "person" are to be read as references to the trustees of the trust.

203. Subsection (4) makes clear that an obligation imposed under those Parts on the trustees of the trust may be fulfilled by any one or more of the trustees.

204. **Subsections (1) and (2) of Section 50** provide that the Parliament must make arrangements for one of its committees or sub-committees to review the operation of the Act during the period beginning on the day section 8 (duty to register) comes into force and ending 2 years after that date ("the review period").

205. Subsection (3) makes provision about the procedures to be followed by the committee or sub-committee conducting the review (taking evidence, publishing a draft report, consulting on the draft report and any recommendations in it, and having regard to any representations made on the draft ahead of the report's publication).

206. Subsection (4) provides that it is for the committee or sub-committee to determine the appropriate form and manner of the report (subsection (4)(a)) and whether to include in it any recommendations as to whether the Act should be amended in particular ways (see subsection (4)(b) and (c)).

207. Subsection (5) provides that the report must be published no later than 2 years after the end of the review period and subsection (6) provides that a report must be published.

208. **Section 51** confers power to make ancillary provision.

209. Subsection (1) provides that the Scottish Ministers may by regulations make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, or in connection with, any provision made by or under this Act.

210. Subsection (2) provides that regulations under subsection (1) may make different provision for different purposes and may modify any enactment (including this Act).

211. Subsection (3) provides that subject to subsection (4), regulations under subsection (1) are subject to the negative procedure (on which see section 28 of ILRA).

212. Subsection (4) provides that regulations under subsection (1) which contain provisions that add to, replace or omit any part of the text of an Act are subject to the affirmative procedure (on which see section 29 of ILRA).

213. **Section 52(1)** provides that this section and sections 47, 48, 51 and 53 come into force on the day after Royal Assent.

214. Subsection (2) provides that the other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.

215. Subsection (3) provides that different days may be appointed for different purposes.

216. Subsection (4) provides that regulations under subsection (2) may contain transitional, transitory or saving provision.

217. **Section 53** provides that the short title of the Act is the Lobbying (Scotland) Act 2016.

PARLIAMENTARY HISTORY

218. The following table sets out, for each Stage of the proceedings in the Scottish Parliament on the Bill for this Act, the dates on which the proceedings at that Stage took place, and the references to the Official Report of those proceedings. It also shows the dates on which Committee reports and other papers relating to the Bill were published, and gives references to those reports and other papers.

PROCEEDINGS AND REPORTS	REFERENCE
INTRODUCTION	
Bill as introduced – 29 October 2015	SP Bill 82 – Session 4 (2015)
Spice briefing on Bill (as introduced) – published 08 December 2015	SPICe briefing SB 15/79
STAGE 1	
Lead Committee – Standards, Procedures and Public Appointments Committee	
Stage 1 report – published 15 December 2015	12th Report 2015 (Session 4)
12 November 2015	Col 3-36
19 November 2015	Col 2-34
03 December 2015	In private
10 December 2015	In private
Finance Committee	
04 November 2015	In private
18 November 2015	In private
Delegated Powers and Law Reform Committee	
17 November 2015	Col 42-44
01 December 2015	In private
Report on delegated powers - published 02 December 2015	74th Report 2015 (Session 4)
Consideration by the Parliament	
Stage 1 debate – 07 January 2016	Col 50-81
STAGE 2	
Lead Committee – Standards, Procedures and Public Appointments Committee	
Consideration of amendments – 04 February 2016	Col 3-30
Bill (as amended at Stage 2) – published 05 February 2016	SP Bill 82A – Session 4 (2016)
AFTER STAGE 2	
Supplementary Delegated Powers Memorandum – published 16 February 2016	Supplementary Memorandum

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

PROCEEDINGS AND REPORTS	REFERENCE
Delegated Powers and Law Reform Committee	
Consideration of delegated powers at stage 2 – 01 March 2016	Col 6
Report on delegated powers – published 02 March 2016	18th Report 2016 (Session 4)
SPICe briefing on Bill at stage 3 – published 02 March 2016	SPICE briefing SB 16/23
STAGE 3	
Consideration by the Parliament	
Stage 3 proceedings – 10 March 2016	Col 34-115
Bill (as passed) – published 11 March 2016	SP Bill 82B – Session 4 (2016)
ROYAL ASSENT	
14 April 2016	Lobbying (Scotland) Act 2016 (asp 16)

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