Lobbying (Scotland) Act 2016

2016 asp 16

PART 1

CORE CONCEPTS

1 Regulated lobbying

(1) For the purposes of this Act, a person engages in regulated lobbying if—

(a) the person makes a communication which—

(i) is made orally to a member of the Scottish Parliament, a member of the Scottish Government, a junior Scottish Minister, a special adviser or the permanent secretary,

(ii) is made in person or, if not made in person, is made using equipment which is intended to enable an individual making a communication and an individual receiving that communication to see and hear each other while that communication is being made,

(iii) is made in relation to Government or parliamentary functions, and

(iv) is not a communication of a kind mentioned in the schedule, or

(b) in the course of a business or other activity carried on by the person, an individual makes such a communication as an employee, director (including shadow director) or other office-holder, partner or member of the person.

(2) Where a person engages in regulated lobbying by virtue of paragraph (b) of subsection (1), the individual mentioned in that paragraph is not to be regarded as engaging in regulated lobbying.

(3) For the purposes of subsection (1)(a)(i), a communication which is "made orally" includes a communication which is made using British Sign Language or is otherwise made by signs.

(4) For the purposes of subsection (1), it does not matter whether the communication occurs in or outwith Scotland.

(5) The Parliament may by resolution modify the schedule so as to—

(a) add a description of a kind of communications,

(b) modify or remove a description so added.

Commencement Information
I1 S. 1 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

2 Government or parliamentary functions

(1) Government or parliamentary functions are—

(a) the development, adoption or modification of any proposal to make or amend primary legislation in the Parliament,

(b) the development, adoption or modification of any proposal to make a Scottish statutory instrument,

(c) the development, adoption or modification of any policy of the Scottish Ministers or other office-holder in the Scottish Administration,

(d) the making, giving or issuing by the Scottish Ministers or other office-holder in the Scottish Administration of, or the taking of any other steps by the Scottish Ministers or office-holder in relation to—

(i) any contract or other agreement,

(ii) any grant or other financial assistance, or

(iii) any licence or other authorisation,

(e) speaking, lodging a motion, voting or taking any other step in relation to a matter raised in proceedings of the Parliament,

(f) representing as a member of the Parliament the interests of persons other than in proceedings of the Parliament.

(2) But 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 for the purposes of this Act.

Commencement Information
I2 S. 2 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

PART 2

THE LOBBYING REGISTER

The register

3 Lobbying register

(1) The Clerk must establish and maintain a lobbying register (the "register"), containing information about active registrants, inactive registrants and voluntary registrants.

(2) The Clerk must publish, by such means as the Clerk considers appropriate, the information about active registrants which is contained in the register.

(3) But the Clerk may withhold from publication information relating to an individual if the Clerk considers that it would be inappropriate to make that information publicly available.

(4) The Clerk may publish, by such means as the Clerk considers appropriate, such information as the Clerk considers appropriate about—

(a) inactive registrants, and

(b) voluntary registrants.

(5) In exercising functions under this Part, the Clerk must have regard to the parliamentary guidance (see section 43).

(6) In this Part—

"active registrant" means a person entered in the register under section 10,

"inactive registrant" means a person entered in the register as an inactive registrant under section 12 or 13,

"voluntary registrant" means a person entered in the register as a voluntary registrant under section 14.

Commencement Information

I3 S. 3 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

4 Content of register

(1) The register must contain an entry for each registrant setting out the information about the registrant's identity mentioned in section 5.

(2) In relation to an active or inactive registrant, the register must also contain—

(a) the information about the registrant's regulated lobbying activity mentioned in section 6, and

(b) additional information provided by the registrant mentioned in section 7.

Commencement Information

I4 S. 4 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

5 Information about identity

The information about the registrant's identity is—

(a) in the case of an individual—

(i) the individual's name, and

(ii) the address of the individual's main place of business (or, if there is no such place, the individual's residence),

(b) in the case of a company (within the meaning of the Companies Act 2006)—

(i) the name of the company,

(ii) its registered number,

(iii) the address of its registered office,

(iv) the names of its directors and of any secretary, and

(v) the names of any shadow directors,

(each of those expressions having the same meaning as in that Act),

(c) in the case of a partnership (including a limited liability partnership)—

(i) the name of the partnership,

(ii) the names of the partners, and

(iii) the address of its main office or place of business, and

(d) in the case of any other person—

(i) the name of the person, and

(ii) the address of the person's main office or place of business.

Commencement Information

I5 S. 5 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

6 Information about regulated lobbying activity

(1) The information about the registrant's regulated lobbying activity is information submitted by the registrant about instances of the registrant engaging in regulated lobbying.

(2) That is, in relation to each instance of regulated lobbying—

(a) the name of the person lobbied,

(b) the date on which the person was lobbied,

(c) the location at which the person was lobbied,

(d) a description of the meeting, event or other circumstances in which the lobbying occurred,

(e) the name of the individual who made the communication falling within section 1(1),

(f) either—

(i) a statement that the lobbying was undertaken on the registrant's own behalf, or

(ii) the name of the person on whose behalf the lobbying was undertaken, and

(g) the purpose of the lobbying.

Commencement Information

I6 S. 6 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

7 Additional information

The additional information provided by the registrant is—

(a) any information submitted by the registrant about—

(i) whether there is an undertaking by the registrant to comply with a code of conduct which governs regulated lobbying (whether or not it also governs other activities) and is available for public inspection,

(ii) where a copy of the code may be inspected, and

(iii) any individual given responsibility by the registrant for monitoring the registrant's compliance with the code, and

(b) such other information provided by the registrant which the Clerk considers appropriate to include in the register.

Commencement Information
I7 S. 7 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

Active registrants

8 Duty to register

(1) A person who engages in regulated lobbying when the person is not an active registrant must, before the end of the relevant period, provide to the Clerk—

(a) the information mentioned in section 5 in relation to the person's identity, and

(b) the information mentioned in section 6 in relation to the first instance of the regulated lobbying.

(2) The "relevant period" is the period of 30 days beginning with the date on which the first instance of the regulated lobbying occurred.

(3) A person must provide the information under subsection (1) in such form as the Clerk may determine.

Commencement Information
I8 S. 8 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

9 Application for registration

(1) A person may apply to the Clerk to be entered in the register if the person—

(a) is not an active registrant, and

(b) has not engaged in regulated lobbying during the period of 30 days before the date of the application.

(2) An application under subsection (1) must—

(a) be in such form as the Clerk may determine, and

(b) include the information mentioned in section 5 in relation to the person's identity.

Commencement Information
I9 S. 9 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

10 Entry in the register

(1) This section applies where a person—

(a) provides information in accordance with section 8, or

(b) applies in accordance with section 9.

(2) The Clerk must as soon as reasonably practicable after the information or application is received—

(a) enter the person in the register as an active registrant, and

(b) update the register to include—

(i) the information provided by the registrant under section 8(1) or, as the case may be, section 9(2)(b), and

(ii) any other information provided by the registrant which the Clerk considers appropriate to include in the register.

(3) The Clerk must, as soon as reasonably practicable after entering the person in the register, notify that person in writing of—

(a) the date on which the period of 6 months mentioned in section 11(1)(a) begins in relation to the person, and

(b) the effect of section 11(1)(b) on an active registrant.

(4) The Clerk may send additional copies of the notice sent under subsection (3) by whatever means the Clerk considers appropriate.

Commencement Information

I10 S. 10 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

11 Information returns

(1) An active registrant must submit to the Clerk an information return in respect of—

(a) the period of 6 months beginning with—

(i) in the case of a registrant who provided information under section 8(1), the date on which the relevant period mentioned in that section began in relation to that person, or

(ii) in the case of a registrant who applied under section 9(1), the date of the application, and

(b) each subsequent period of 6 months.

(2) The information return must be submitted—

(a) in such form as the Clerk may determine,

(b) before the end of the period of 2 weeks beginning immediately after the end of the period to which the return relates.

(3) The first information return submitted by a registrant mentioned in subsection (1)(a)(i) must contain—

(a) either—

(i) the information mentioned in section 6 in relation to each instance of the registrant engaging in regulated lobbying during the period in question (other than information provided under section 8(1)(b)), or

(ii) a statement that, during the period in question, other than the registrant's first instance of regulated lobbying, the registrant did not engage in regulated lobbying, and

(b) if any information included in the register in relation to the registrant is or has become inaccurate, information about the changes that have occurred.

(4) Every other information return submitted by a registrant under this section must contain—
  (a) either—
    (i) the information mentioned in section 6 in relation to each instance of the registrant engaging in regulated lobbying during the period in question, or
    (ii) a statement that, during the period in question, the registrant did not engage in regulated lobbying, and
  (b) if any information included in the register in relation to the registrant is or has become inaccurate, information about the changes that have occurred.

(5) An active registrant may, at any time, notify the Clerk in writing—
  (a) if any information included in the register in relation to that registrant has become inaccurate, about the changes that have occurred,
  (b) about information of the type mentioned in section 7(a),
  (c) about such other information which the registrant wishes to include in the register.

(6) The Clerk must, as soon as reasonably practicable after receiving an information return or information under subsection (5), update the register to include—
  (a) the information contained in the information return or as the case may be provided under subsection (5)(a) or (b),
  (b) any information provided under subsection (5)(c) which the Clerk considers appropriate to include in the register.

Commencement Information
I11 S. 11 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

Inactive registrants

12 Reclassification as an inactive registrant on application

(1) An active registrant may apply to the Clerk to be instead entered in the register as an inactive registrant (in this section referred to as the "applicant").

(2) The application under subsection (1) must—
  (a) be in such form as the Clerk may determine, and
  (b) contain either—
    (i) in the case of an applicant who has not submitted an information return under section 11, the information about the applicant's regulated lobbying activity mentioned in subsection (3), or
    (ii) in the case of an applicant who has submitted a return under that section, the information about the applicant's regulated lobbying activity mentioned in subsection (4).

(3) The information about the applicant's regulated lobbying activity is either—
  (a) the information mentioned in section 6 (other than any information provided under section 8(1)(b)) about each instance of the applicant engaging in regulated lobbying during the period—

(i) beginning with the date on which the period mentioned in section 11(1)(a) began in relation to the applicant, and

(ii) ending with the date of the application, or

(b) a statement that, in that period, the applicant—

(i) did not engage in regulated lobbying, or

(ii) other than the applicant's first instance of regulated lobbying, did not engage in regulated lobbying.

(4) The information about the applicant's regulated lobbying activity is either—

(a) the information mentioned in section 6 about each instance of the applicant engaging in regulated lobbying during the period—

(i) beginning with the day after the end of the 6 month period covered by the last information return submitted by the applicant under section 11, and

(ii) ending with the date of the application, or

(b) a statement that, in that period, the applicant did not engage in regulated lobbying.

(5) If, following an application under subsection (1), the Clerk has reasonable grounds to believe the applicant is not, or is no longer, engaged in regulated lobbying, the Clerk may enter the applicant in the register as an inactive registrant by updating the applicant's entry in the register accordingly.

(6) The Clerk must, as soon as practicable after making a decision under this section, notify the applicant of—

(a) the decision and the Clerk's reasons for the decision, and

(b) in the case of a decision to enter the applicant in the register as an inactive registrant—

(i) the date on which the applicant is entered in the register as an inactive registrant, and

(ii) the effect of the applicant being entered in the register as an inactive registrant.

Commencement Information

I12 S. 12 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

13 Reclassification as an inactive registrant without application

(1) The Clerk may enter an active registrant in the register as an inactive registrant if—

(a) there is no outstanding application by the registrant under section 12, but

(b) the Clerk has reasonable grounds to believe the registrant is not, or is no longer, engaged in regulated lobbying.

(2) 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—

(a) that the Clerk is considering updating the registrant's entry in the register to be instead entered in the register as an inactive registrant,

(b) the Clerk's reasons for doing so, and

(c) 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).

(3) In making a decision under this section the Clerk must consider any representations made in accordance with subsection (2)(c).

(4) 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.

(5) The Clerk must, as soon as practicable after making a decision under this section notify the registrant in respect of whom the decision is made of—

(a) the decision and the Clerk's reasons for that decision, and

(b) in the case of a decision to enter a registrant in the register as an inactive registrant—

(i) the date on which the registrant is entered in the register as an inactive registrant, and

(ii) the effect of the person being entered in the register as an inactive registrant.

Commencement Information

I13 S. 13 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

Voluntary registrants

14 Voluntary registration

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

(2) The application must—

(a) be in such form as the Clerk may determine, and

(b) include the information mentioned in section 5 in relation to the applicant's identity.

(3) The Clerk may—

(a) enter the applicant in the register, or

(b) refuse to enter the applicant in the register.

(4) The Clerk may—

(a) remove a voluntary registrant from the register if, following an application by the voluntary registrant or otherwise, the Clerk considers it appropriate to do so,

(b) update the register accordingly if a voluntary registrant is instead entered in the register as an active registrant.

Commencement Information

I14 S. 14 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

Further provision

15 Power to specify requirements about the register

(1) The Scottish Parliament may by resolution make provision about this Part including provision about—

(a) the duties of the Clerk in relation to the register,

(b) the content of the register,

(c) the duty of a person who is not an active registrant to provide information,

(d) information to be provided by a person before the person is included in the register as an active registrant,

(e) information to be provided while a person is an active registrant,

(f) action to be taken when an active registrant is not, or is no longer, engaged in regulated lobbying,

(g) the circumstances in which the Clerk may remove information about a registrant from the register,

(h) voluntary registration, including—

(i) applying with modifications, or making provision equivalent to, the provisions applicable to active and inactive registrants, and

(ii) making provision about a voluntary registrant being instead entered in the register as an active registrant,

(i) the review of, or appeal to a court against, a decision by the Clerk under this Part.

(2) A resolution under subsection (1) may modify sections 4 to 14.

Commencement Information

I15 S. 15 in force at 6.9.2017 by S.S.I. 2017/201, **reg. 2(a)**

PART 3

OVERSIGHT AND ENFORCEMENT

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).

Commencement Information

I16 S. 16 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

Information notices

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,
- (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.

Commencement Information
I17 S. 17 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

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.

Commencement Information

I18 S. 18 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

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.

(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.

Commencement Information

I19 S. 19 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

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.

Commencement Information

I20 S. 20 in force at 6.9.2017 by S.S.I. 2017/201, **reg. 2(b)**

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.

Commencement Information

I21 S. 21 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

Investigation of complaints

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.

Commencement Information

I22 S. 22 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

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,

(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).

Commencement Information

I23 S. 23 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

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—

(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.

Commencement Information

I24 S. 24 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

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.

Commencement Information
I25 S. 25 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

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.

Commencement Information
I26 S. 26 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

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.

Commencement Information
I27 S. 27 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

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
- (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

(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.

Commencement Information

I28 S. 28 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

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.

Commencement Information

I29 S. 29 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

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.

Commencement Information

I30 S. 30 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

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—

(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 sub-paragraph (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.

Commencement Information

I31 S. 31 in force at 6.9.2017 by S.S.I. 2017/201, **reg. 2(c)**

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.

Commencement Information

I32 S. 32 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

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.

Commencement Information

I33 S. 33 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

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.

Commencement Information
I34 S. 34 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

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).

Commencement Information
I35 S. 35 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

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.

(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).

Commencement Information
I36 S. 36 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

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.

Commencement Information

I37 S. 37 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

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,

(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.".

Commencement Information

I38 S. 38 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

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 ".

Commencement Information

I39 S. 39 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

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.

Commencement Information
I40 S. 40 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

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.

Commencement Information
I41 S. 41 in force at 6.9.2017 by S.S.I. 2017/201, **reg. 2(d)**

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.

Commencement Information
I42 S. 42 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

PART 4

GUIDANCE, CODE OF CONDUCT AND PUBLIC AWARENESS

43 Parliamentary guidance

(1) The Parliament must publish guidance on the operation of this Act (referred to in this Act as "the parliamentary guidance").

(2) The guidance must in particular include provision about—
- (a) the circumstances in which—
  - (i) a person is or is not, for the purposes of this Act, engaged in regulated lobbying, and
  - (ii) a communication is of a kind mentioned in the schedule,
- (b) voluntary registration,
- (c) the Clerk's functions under this Act.

(3) Before publishing the guidance, any revision to it or replacement of it, the Parliament must consult the Scottish Ministers.

Commencement Information
I43 S. 43 in force at 6.9.2017 by S.S.I. 2017/201, **reg. 2(e)**

44 Code of conduct for persons lobbying MSPs

(1) The Parliament must publish a code of conduct for persons lobbying members of the Parliament.

(2) 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.

(3) In this section, "lobbying" means making a communication of any kind to a member of the Parliament in relation to the member's functions.

Commencement Information
I44 S. 44 in force at 6.9.2017 by S.S.I. 2017/201, **reg. 2(f)**

45 Public awareness and understanding of Act

The Parliament may take such steps as it considers appropriate to promote public awareness and understanding of the operation of this Act.

Commencement Information

I45 S. 45 in force at 6.9.2017 by S.S.I. 2017/201, **reg. 2(g)**

PART 5

FINAL PROVISIONS

46 Offences by bodies corporate etc.

(1) Where—

(a) an offence under this Act has been committed by a body corporate or a Scottish partnership or other unincorporated association, and

(b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—

(i) a relevant individual, or

(ii) 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.

(2) In subsection (1), "relevant individual" means—

(a) in relation to a body corporate—

(i) a director, manager, secretary or other similar officer of the body,

(ii) where the affairs of the body are managed by its members, the members,

(b) in relation to a Scottish partnership, a partner,

(c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

Commencement Information

I46 S. 46 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

47 Interpretation

In this Act—

"active registrant" has the meaning given in section 3(6),

"the Clerk" means the Clerk of the Parliament,

"the Commissioner" means the Commissioner for Ethical Standards in Public Life in Scotland,

"inactive registrant" has the meaning given in section 3(6),

"the Parliament"—

(a) means the Scottish Parliament, and

(b) includes any committee of the Parliament (except in relation to the power to censure a person under section 40 or a power to make a resolution),

"the permanent secretary" means the individual who serves the Scottish Government in the position of permanent secretary in the civil service of the State,

"proceedings of the Parliament" include proceedings of any committee or sub-committee of the Parliament,

"register" has the meaning given in section 3,

"shadow director" has the meaning given in section 251 of the Companies Act 2006,

"special adviser" means an individual who—

(a) holds a position in the civil service of the State,

(b) is appointed to assist one or more of the ministers mentioned in section 44(1)(a) or (b) of the Scotland Act 1998 after being selected for the appointment by the First Minister personally,

(c) has terms and conditions of appointment (apart from those by virtue of section 8(11) of the Constitutional Reform and Governance Act 2010) which are approved by the Minister for the Civil Service, and

(d) those terms and conditions provide for the appointment to end—

(i) not later than when the First Minister who selected the individual ceases to hold that office, or

(ii) where the individual is selected personally for the appointment by a person designated under section 45(4) of the Scotland Act 1998, not later than when the designated person ceases to be able to exercise the functions of the First Minister by virtue of the designation,

"voluntary registrant" has the meaning given in section 3(6).

48 Parliamentary resolutions

(1) Before making a resolution under this Act, the Parliament must consult the Scottish Ministers.

(2) A power of the Parliament to make such a resolution includes power to make—

(a) different provision for different purposes,

(b) incidental, supplementary, consequential, transitional, transitory or saving provision.

(3) 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").

(4) Part 1 of the Interpretation and Legislative Reform (Scotland) Act 2010 applies to the resolution as if it were a Scottish instrument.

(5) Section 41(2) to (5) of that Act and the Scottish Statutory Instruments Regulations 2011 (S.S.I. 2011/195) apply to the resolution—

(a) as if it were a Scottish statutory instrument,

(b) 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 the Interpretation and Legislative Reform (Scotland) Act 2010, and

(c) with the modifications set out in subsections (6) and (7).

(6) References to "responsible authority" are to be read as references to the Clerk.

(7) Regulation 7(2) and (3) of the Scottish Statutory Instruments Regulations 2011 does not apply.

49 Application of Act to trusts

(1) This section applies in the application of this Act to a trust.

(2) For the purposes of this Act, the trustees of the trust engage in regulated lobbying if a trustee makes a communication falling within section 1(1)(a).

(3) References in Parts 2 and 3 to "person" are to be read as references to the trustees of the trust.

(4) An obligation imposed under those Parts on the trustees of the trust may be fulfilled by any one or more of the trustees.

Commencement Information

I47 S. 49(1)(3) in force at 6.9.2017 by S.S.I. 2017/201, **reg. 2(h)**

I48 S. 49(2)(4) in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

50 Report on operation of Act

(1) The Scottish Parliament must make arrangements for one of its committees or sub-committees to report in accordance with this section to the Scottish Parliament on the operation of this Act during the review period.

(2) In this section, the "review period" means the period—

(a) beginning on the day on which section 8 comes into force, and

(b) ending 2 years after that day.

(3) The committee or sub-committee must—

(a) for the purposes of preparing its report under subsection (1), take evidence from such persons as it considers appropriate,

(b) publish its draft report under subsection (1),

(c) consult with such persons as it considers appropriate on—

(i) the draft report, and

(ii) any recommendations that it proposes to include in its final report, and

(d) before making its report under subsection (1), have regard to any representations made to it on the draft report and on any proposed recommendations.

(4) A report under subsection (1) may—

(a) be made in such form and manner as the committee or sub-committee considers appropriate,

(b) include a recommendation as to whether this Act should be amended to modify the circumstances in which a person engages in regulated lobbying, whether by adding to or modifying—

(i) section 1(1)(a)(i), in relation to the type of persons to whom a communication is made,

(ii) section 1(1)(a)(i) or (ii), in relation to the type of communication which is made,

(c) include a recommendation as to whether this Act should be amended in relation to the circumstances in which a person engaging in regulated lobbying is to provide information, to be included in the register, about expenditure incurred by the person in engaging in regulated lobbying.

(5) A report under subsection (1) must be made no later than 2 years after the end of the review period.

(6) The Scottish Parliament must publish a report made under subsection (1).

Commencement Information

I49 S. 50 in force at 12.3.2018 by S.S.I. 2018/73, **reg. 2**

51 Ancillary provision

(1) 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.

(2) Regulations under subsection (1) may—

(a) make different provision for different purposes,

(b) modify any enactment (including this Act).

(3) Subject to subsection (4), regulations under subsection (1) are subject to the negative procedure.

(4) 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.

52 Commencement

(1) This section and sections 47, 48, 51 and 53 come into force on the day after Royal Assent.

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

(3) Different days may be appointed for different purposes.

(4) Regulations under subsection (2) may contain transitional, transitory or saving provision.

53 Short title

The short title of this Act is the Lobbying (Scotland) Act 2016.

Changes to legislation:
There are currently no known outstanding effects for the Lobbying (Scotland) Act 2016.