

LOBBYING (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 – Oversight and Enforcement

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

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 Subsection (3)(a) and (b) sets out the actions that the Commissioner must take when a complaint is withdrawn during an assessment of admissibility under section 22(2)(a).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 Subsection (4)(a) to (c) sets out the actions that the Commissioner must take when a complaint is withdrawn during an investigation of an admissible complaint under section 22(2)(b)(i).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.