

# LOBBYING (SCOTLAND) ACT 2016

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 3 – Oversight and Enforcement

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

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

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

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.