

LOBBYING (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

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).

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

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.