

LOBBYING (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

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

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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

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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 though 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.