

HEARING BRIEF INDEX

Public Inquiry



Operation Eclipse - E19/0471

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Regulation of Lobbying Act 2015: Guidance for people carrying on lobbying activities

Revised June 2019

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Introduction

The Regulation of Lobbying Act 2015 (no 5 of 2015) (the Act) was signed into law in March 2015, and commenced on 1 September 2015. The enforcement provisions, contained in Part 4 of the Act, commenced on 1 January 2017.

Lobbying is an essential part of the democratic process through which citizens may make their views on public policy and public services known to politicians and public servants. Organisations such as interest groups, representative bodies, industry and civil society organisations, NGOs, charities and third party professional lobbyists all provide necessary input and feedback to politicians and public servants through communication of their views and concerns. The aim of the Act is not to restrict the flow of information or views on policy or legislation. The intention is to bring about significantly greater openness and transparency with respect to lobbying activities.

The Act is designed to provide information to the public about:

- Who is lobbying,
- On whose behalf is lobbying being carried out,
- What are the issues involved in the lobbying,
- What is the intended result of the lobbying,
- Who is being lobbied, and
- What is the extent of the lobbying activities.

In general, the Act applies to commercial organisations that have more than 10 full time employees; representative bodies with at least one full time employee; and advocacy groups, non-governmental organisations and charities that have at least one full time employee and that promote particular interests or causes, and professionals engaged in lobbying on behalf of a client who fits within the above criteria. In certain circumstances, where the communications concern the zoning or development of land, the Act may apply to individuals and groups who may not ordinarily regard themselves as carrying on lobbying activities.

The Act aims to make lobbying more open and transparent by providing for

- The establishment and maintenance of an on-line Register of Lobbying (the Register);
- Obligations on lobbyists to register and to provide information regularly about their lobbying activities, including, in the case of professional lobbyists, information about their clients;
- The Standards in Public Office Commission (Standards Commission) to be the regulator of lobbying;
- The imposition of a cooling-off period on certain lobbying activities that may be carried out by some former public officials.

The Act provides that the Standards Commission may produce a Code of Conduct for persons carrying on lobbying activities “with a view to promoting high professional standards and good practices”. The Standards Commission has recently published a Code of Conduct for Persons Carrying on Lobbying Activities (Code). The Act provides that a person carrying on lobbying activities shall have regard to this Code. These guidelines, therefore, should be read in conjunction with the Code.

When did the Act come into effect?

The Act came into effect on 1 September 2015. The first registration period (“relevant period”) was 1 September 2015 – 31 December 2015. If you carried on lobbying activities during that period you had to register on www.lobbying.ie by 21 January 2016 at the latest. The first returns of lobbying activities, setting out the details of your lobbying activities in the period 1 September 2015 - 31 December 2015, had also to be submitted by 21 January 2016.

The enforcement provisions, which provide for offences and penalties for persons who do not comply with the requirements of the Act came into effect on 1 January 2017.

Are you affected by the legislation?

The Act sets out the categories of person to which the meaning of “carrying on lobbying activities applies”. We refer to such persons as being within scope of the Act. A person is lobbying if the person is within scope of the Act and makes a relevant communication. A person makes a relevant communication if communicating personally (directly or indirectly) with a Designated Public Official (DPO) about a relevant matter.

You are affected by the legislation, therefore, if you meet all of the following conditions:

- A. You are within scope of the Act.
- B. You make, manage or direct the making of a relevant communication.
- C. That communication is with a DPO.
- D. That communication is about a relevant matter.
- E. That communication is not an excepted communication.

A) Who is within scope of the Act?

Persons within scope of the Act are as follows:

- A person with more than 10 full-time employees
- A body that exists primarily to represent the interests of its members, and which has one or more fulltime employees, and the relevant communications are made on behalf of any of the members. We refer to such bodies as “representative bodies”. Representative bodies might include, for example, a trade union, professional body, industry association or sporting body.
- A body which exists primarily to take up particular issues, and which has one or more full-time employees, and the relevant communications are concerned with any of these issues. We refer to such bodies as “advocacy bodies”. Advocacy bodies might include, for example, organisations promoting human rights issues or campaigning for homeless people.
- Any person (individual or organisation) making a "relevant communication" concerning the development or zoning of land which is not their principal private residence.
- A third party (individual or organisation) who is paid to lobby on behalf of a person who fits within one of the categories of persons above. (The payment can be in money or money’s worth.)

Communications by representative bodies and advocacy bodies

In the case of representative bodies and advocacy bodies, the relevant communication must be made by an employee of the body or by a person who holds a paid office in the body (for example, the chairman) and whose functions relate to the affairs of the body as a whole and where the communication is made in his/her capacity as such. This means that, in general, communications made by unpaid volunteers are not considered to be lobbying. Office holders such as chairmen and secretaries may be unpaid volunteers. If they are, communications made by them do not generally constitute carrying on lobbying activities. However, a relevant communication may be direct or indirect so, if the communication is made by an unpaid volunteer on the direction of an employee or paid office holder, it is lobbying and must be included in the organisation's return.

Representative /Advocacy bodies composed entirely of volunteers will generally be outside the scope of the Act unless lobbying about the zoning/development of land. If, however, they employ a person full-time, they would come within scope of the Act.

Representative /Advocacy bodies who make a "relevant communication" concerning the zoning or development of land are regarded as carrying on a lobbying activity irrespective of whether they have a fulltime employee or not. This is because the Act specifically provides that any person making a "relevant communication" which concerns the zoning or development of land, which is not their principal private residence, may be required to register and submit a return of lobbying activities. In other words, the criteria for number of employees is irrelevant if the subject you are communicating on is zoning and development of land.

B) Who are the Designated Public Officials?

Designated Public Officials (DPOs) under the Act are:

- Ministers and Ministers of State;
- TDs and Senators;
- MEPs for Irish constituencies; ☐ Members of local authorities;
- Special Advisers to Ministers and Ministers of State who have been appointed under section 11 of the Public Service Management Act 1997;
- Public Servants as prescribed;
- Other categories of persons as prescribed.

In relation to "public servants as prescribed" the Minister for Finance and Public Expenditure and Reform has made regulations (The Regulation of Lobbying Act 2015 (Designated Public Officials) Regulations 2015 and The Regulation of Lobbying Act 2015 (Designated Public Officials) Regulations 2016) which together provide details of the positions that are prescribed as DPOs for the purposes of the Act.

In relation to the Civil Service a public servant in a position of Secretary General, Second Secretary, Deputy Secretary, Assistant Secretary or Director in a public service body specified in Schedule I of the 2015 Regulations is prescribed as a DPO. A public servant in a position specified in Schedule 2 of the 2015 Regulations is also prescribed as a DPO.

In relation to local authorities, the 2015 Regulations provide that persons in the following positions in local authorities are prescribed as DPOs:

- Chief Executives and equivalent grades
- Assistant Chief Executive (Dublin City Council only)
- Directors of Services

- Heads of Finance
- Head of Human Resources (Dublin City Council only)
- Under the 2016 regulations, which came into effect from 1 September 2016, a public servant in Cork County Council in a position of Divisional Manager is prescribed as a DPO.

Full details of the positions above, which are prescribed in the Regulations, are available on our website www.lobbying.ie. The list of positions prescribed as DPOs may be extended by Ministerial Order to other categories over time.

Public bodies are required under the Act to publish on their websites the names of their employees who are DPOs and a brief description of their roles and responsibilities. It is important to note that not all public bodies have DPOs prescribed.

C) What is a relevant communication?

A relevant communication is a communication that

- May be written or oral
- Is made personally (directly or indirectly)
- Is made by a person who is within scope of the Act
- Is made to a Designated Public Official
- Relates to a relevant matter
- Is not an excepted communication

It should be noted that not all relevant communications (lobbying activities) take place in a formal setting or using formal means. While a great deal of relevant communications may take place via in-person meetings, telephone calls or emails, lobbying can also take place in less formal ways. These include casual encounters, social gatherings, or even social media. If the communication meets the above criteria, it is considered a relevant communication (lobbying activity) and must be recorded.

D) What is a relevant matter?

A relevant matter is any matter relating to

- The initiation, development or modification of any public policy or of any public programme (for example, proposals for changes in taxation, proposals for changes in agricultural policy, proposals for changing entitlement to health services)
- The preparation or amendment of any law (including secondary legislation such as statutory instruments and bye-laws) (for example, proposals to change the law on adoption, proposals to change bye-laws relating to traffic)
- The award of any grant, loan or other financial support, contract or other agreement, or of any licence or other authorisation involving public funds (for example, the criteria for the award of housing grants for people with disabilities, the purchase or sale of a property or other assets by the government.)

APART FROM the implementation of any such policy, programme, enactment or award or any matter of a technical nature.

Some examples of the difference between what might be regarded as relevant matters and “implementation” matters or matters of a technical nature are as follows:

- Communications seeking to introduce or amend a particular tax policy or law would be regarded as communications concerning a relevant matter. Where a policy has been decided and the tax law has subsequently been enacted, communications regarding application of the law would most likely be regarded as implementation matters.
- Communications relating to the inclusion of certain criteria in a public tender would be regarded as a communication on a relevant matter. When the criteria are agreed and a Request for Tenders is published, communications such as the submission of a tender; queries regarding the tender specifications and feedback on the outcome of the tender would be regarded as implementation matters.
- As regards matters of a technical nature an example might be where the Government is proposing policy or legislation to reduce motor car emissions. Communications regarding the proposed policy or legislation would be regarded as concerning a relevant matter. For example, where the Government consults with scientific experts on the level of emissions that may cause harm to the environment, it would be a technical matter. When the legislation is in place queries to the regulatory department concerning how to conform with the new requirements would also most likely be technical matters.

NOTE: Not all communication is lobbying.

It is worth noting that not all communication is considered lobbying for the purposes of the Act. A communication must meet each of the criteria at A, B, C and D above to be considered a lobbying activity. In addition a number of “excepted” (exempt) communications exist (see below).

E) What are the “excepted” (exempt) communications?

The following are “excepted” (exempt) communications and are not, therefore, regarded as lobbying (i.e. they are not relevant communications):

- Private affairs: Communications by or on behalf of an individual relating to his or her private affairs unless they relate to the development or zoning of any land. Where an individual communicates about the zoning or development of land which is his/her principal private residence and the area of land does not exceed 1 acre, the communication is exempt. Detailed guidelines on lobbying in relation to development and zoning of land are available at www.lobbying.ie. In that regard, therefore, a significant amount of constituency clinic communications which elected representatives may have with their constituents will be exempt where the matter relates to an individual’s private affairs. For example, communications in relation to a person’s eligibility for, or entitlement to, a social welfare payment, a local authority house, or a medical card are not relevant communications.
- Diplomatic relations: Communications by or on behalf of a foreign country or territory, the European Union, the United Nations or any other international intergovernmental organisation. Note that this exemption only applies to communications sanctioned by the officials from the country or territory; simply being resident in another country does not qualify for the exemption.
- Factual information: Communications requesting factual information or providing factual information in response to a request for the information (for example, a company asking a public servant how to qualify for an enterprise grant and getting an answer; a person asking about the rules in relation to planning and getting an answer; factual information provided to a government department by a representative body in response to a request from the department).
- Published submissions: Communications requested by a public service body and published by it (for example, submissions received in response to a public consultation process which are subsequently published by the public body.) The Standards Commission has published more detailed guidance in [the FAQ section of its website](#) on the matter of public consultation processes.

- Trade union negotiations: Communications forming part of, or directly related to, negotiations on terms and conditions of employment undertaken by representatives of a trade union on behalf of its members. It should be noted that this particular exemption applies to a trade union as defined in the Act. The definition of a trade union set out in the Act, and consequently the exemption, may not apply to all employee representative bodies.
- Safety and security: Communications the disclosure of which could pose a threat to the safety of any person or to the security of the State.
- Oireachtas committees: Communications which are made in proceedings of a committee of either House of the Oireachtas. It should be noted that this exemption only applies to formal proceedings of a committee which are generally recorded and/or minuted. It does not apply to communications outside of formal proceedings.
- Communications by DPOs or public servants: Communications by a DPO in his or her capacity as such are exempt. (For example, communications by county councillors to local authority managers or other public servants does not constitute lobbying.) Similarly communications by public servants (or those engaged on contract by a public service body) made in that capacity and relating to the functions of the public service body are exempt. Public servants are employed by or hold office in public service bodies. A “public service body” is defined in the Act. In general, these are State bodies other than commercial State bodies. The Standards Commission has published [separate guidelines for DPOs](#) which deals with this exemption in greater detail.
- Governance of commercial State bodies: Communications by or on behalf of a commercial State body made to a Minister of the Government who holds shares in, or has statutory functions in relation to, the body, or to DPOs serving in the Minister’s department, in the ordinary course of the business of the body. (For example, certain communications involving Irish Rail and the Minister for Transport, Tourism and Sport.) The Standards Commission has published more detailed guidance on this particular exemption in [the FAQ section of the lobbying.ie website](#) and, in particular, guidance on what might constitute the ordinary course of business of such a body.
- Policy working groups: Communications between members of a “relevant body” appointed by a Minister, or by a public service body, for the purpose of reviewing, assessing or analysing any issue of public policy with a view to reporting to the Minister or public service body on it. A “relevant body” is one whose members are appointed by a Minister or by a public service body and the members include one or more DPOs and one or more who are not public servants nor engaged for the purposes of a public service body. (For example, advisory groups, expert groups, working groups, review groups or commissions.) This exemption only applies if the relevant body conducts its activities in accordance with the Transparency Code. The Transparency Code is available at <https://www.lobbying.ie/help-resources/information-for-public-bodies/transparency-code/>. The Standards Commission has also published a more detailed [guidance note on advisory groups etc. and the Regulation of Lobbying](#). This guidance note might also be relevant for organisations which might provide a secretariat for a DPO or group of DPOs and who may be carrying on lobbying activities.

Register of Lobbying

The Standards Commission is responsible for establishing and maintaining the Register of Lobbying (the Register). The Register is available online to members of the public at www.lobbying.ie and is free of charge.

The Register contains:

- The registration details provided to the Standards Commission by each registered person on their Application to Register and



- The information contained in the returns of lobbying activities made by each registered person.

Requirement to register

You are prohibited from carrying on lobbying activities unless you are registered on the Register. This prohibition does not apply to the first relevant period during which you carry out lobbying activities. The Act provides that you can register after you have commenced lobbying. Under the Act a person undertaking lobbying activities is required to register and submit a return of lobbying activity within 21 days of the end of the first “relevant period” in which they begin lobbying. The relevant period is the four months ending on the last day of April, August and December each year. For example, if someone lobbies for the first time during the month of October, that activity has taken place within the relevant period of 1 September – 31 December. The person would be required to register and submit their first returns by 21 January, 21 days after the end of the relevant period. There is no requirement, therefore, to register until after a person has actually commenced lobbying.

Once you are obliged to be registered, however, it is a relevant contravention of the Act and an offence to carry on lobbying activities without being registered.

The requirement to register applies equally to companies, sole traders, partnerships, representative bodies, advocacy bodies and individuals who are within scope of the Act. The legal structure is not relevant. Individual citizens will most likely only be required to register if they are carrying on lobbying activities in a private capacity in relation to the development or zoning of land which is not their principal private residence.

Where an employee of a company is directed by the company to carry on lobbying activities on behalf of a company, it is the company and not the employee that is required to register and submit a return of the lobbying activities.

There is no fee involved in registering.

Information which must be provided when registering

In order to be registered, the person registering must first create an account on www.lobbying.ie. The person must then complete an online Application to Register and provide the Standards Commission with the information set out below.

- The name of the person, company or organisation which has carried out the lobbying activities. If you have carried out a lobbying activity in a personal capacity (as opposed to on behalf of a company or organisation) i.e. in relation to zoning and development, then you register in your own name as an individual. Otherwise, the registration should be in the name of the company/organisation. If your legal name differs from the name that the business is most commonly known as, we recommend that registrants register under the legal name but include a reference to the most commonly known identity. For example: 12345 Ireland Ltd (trading as LobbyGroup)
- The address (or principal address) at which the person carries on business or (if there is no such address) the address at which the person normally lives.
- The business or main day to day activities of the organisation
- Any e-mail address, telephone number or website address relating to the person’s business or main activities



- Any registration number issued to the organisation by the Companies Registration Office, and if a company, provide details of the registered office of the company.

In relation to the contact information above which must be provided the following should be noted:

- Where an organisation is registering the contact information provided should be that which relates to the organisation.
- If you are registering on behalf of your business, you should provide your business name and contact details and not your personal details.
- An individual registering in relation to lobbying activities carried out in a private capacity must provide their business contact details (if they have business contact details).
- A person should only provide their personal contact details if there are no business contact details which can be provided.

In addition to the above information, which must be provided, you must also state that the information contained in your registration details is correct.

When you provide the above information and the statement, you become a registered person and the information you have provided will be immediately available on the Register. The Standards Commission will review your registration. If it considers that you may not have been required to register, it will contact you to clarify why you have registered.

If you have registered and you subsequently permanently cease carrying on lobbying activities you may ask the Standards Commission to note that fact in your entry on the Register. You must verify that this has been done in order to end the obligation to make returns.

Requirement to make returns

As a registered person, you are required to make returns to the Standards Commission within 21 days of the end of each relevant period. The relevant period is the four month period, ending on the last day of April, August and December each year. If you have not carried out any lobbying activities in the relevant period you must submit a nil return. It is a contravention of the Act and an offence to fail to make a return of lobbying activities (including a nil return if required).

The requirement to make returns (including nil returns) does not apply to you if your entry on the Register notes that you have permanently ceased lobbying.

Information which must be included in your return of lobbying activities

If you have carried on lobbying activities in the relevant period, your return must state:

- The DPOs and the relevant public service bodies who were lobbied.
- The subject matter of the lobbying and the results it was intended to secure. A separate return is required for each different subject matter for which lobbying took place during the relevant period. It is important that the intended result be meaningful. Terms such as “raising awareness”, “providing clarification”, “providing information” etc. are not sufficient. It must be clear what it is you were trying to achieve from the lobbying activity(ies). (For example, if you were lobbying on the issue of accident and emergency services and you were aiming to have such services provided in a particular hospital then your return of lobbying activities should provide this level of detail). Where the lobbying

activity concerns zoning and development, the subject matter must provide details of the particular lands/development, and the intended results must be specific as to the desired outcome.

- The type and extent of the lobbying activities carried on. The online return form on www.lobbying.ie will provide “drop down” options to assist you in identifying the type and extent of activity appropriate to your return. It is not necessary to complete a separate return in respect of each lobbying activity on the same subject matter. All lobbying activities related to the same subject matter during the relevant period must be accounted for on a single return relating to that subject matter.
- The name of the individual in your organisation who had primary responsibility for carrying on the lobbying activities. Others within your organisation may be involved in lobbying but the person listed here should be the one who is primarily responsible. If you wish to identify other persons who lobbied on the subject, you may enter their names in the free text field for “Additional Information”.
- If you were lobbying on behalf of a client or other person in return for payment you must provide certain information (see next section about the client/other person).
- The name of each person who is or ever has been (whether before or after the passing of the Act) a DPO and who is employed by, or providing services to you and who was involved in carrying on the lobbying activities for which the return is being made (for example, if you are employing a former TD, special advisor or senior public servant or you have a contract for services with such a person and that person was involved in carrying on the lobbying activities)
- You must confirm that your registration details are still correct. If they have changed you must amend your registration details.
- You must confirm that the information contained in the return is correct.

When you provide the above information your return of lobbying activities will be immediately available on the Register. The Standards Commission has published [guidance on submitting a return of lobbying activities](#), including a sample return and tips to avoid making common errors.

Relevant information about a client

If you are lobbying on behalf of a client or other person in return for payment, you must register and submit a return of the lobbying activities carried out on behalf of the client/other person. If the client/other person engages in additional or separate lobbying activities, the client/other person must also register and submit a return in respect of the additional or separate lobbying activities.

You must also provide the following information about a client/other person on your return of lobbying activities:

- The client’s/other person’s name
- The address (or principal address) at which the client/other person carries on business or (if there is no such address) the address at which the client/other person normally lives
- The client’s/other person’s business or main activities,
- Any e-mail address, telephone number or website address relating to the client’s/other person’s business or main activities,
- Any registration number issued to the client/other person by the Companies Registration Office, and if the client is a company, details of their registered office.

Requirement for further or corrected information

The Standards Commission may ask for further information in relation to an Application to register as a lobbyist and/or a return of lobbying activity submitted if it considers that:

- The information provided in the application or returns is inaccurate or misleading or
- Further information is required to ensure that the application or return complies with the legislation

You will be given 21 days in which to provide the necessary further or corrected information.

If you fail to do so, the Standards Commission will remove from the Register the information provided in your registration or your return. You will be told the reason for the removal of the information.

The Standards Commission may immediately remove information from the Register if it considers that any information contained in registration details or in a return of lobbying activities is sufficiently inaccurate or misleading to warrant immediate removal from the Register.

If the Standards Commission removes information provided by you from the Register, you will be treated as not having registered or made a relevant return as the case may be unless and until corrected information is provided. In that regard you may be regarded as having contravened the Act and committed an offence.

Delayed publication

You may apply to the Standards Commission to delay the publication of certain information contained in your registration details or your returns. You may do this if you give information at registration or in a return and you consider that making it publicly available could reasonably be expected to:

- A. Have a serious adverse effect on the financial interests of the State, the national economy, or business interests generally or the business interests of any particular set of people or
- B. Cause a material financial loss to the person to whom the information relates or prejudice seriously the competitive position of that person in the conduct of the person's occupation, profession or business or the outcome of any contractual or other negotiations being conducted by that person

Applications to delay publication must be made through the online register. A decision on your application to delay publication must be made within 21 days. Where the reasons cited for delayed publication are those at paragraph A above, the Standards Commission must first consult with the relevant Minister(s) before making its decision on your application.

If the Standards Commission considers that making the information publicly available could reasonably be expected to have the consequences you suggest, it may make a determination:

- To exclude some or all of this information from immediate publication
- To make some or all of the information available only in summary form

The Standards Commission may make such a determination if it considers that the public interest would be better served by approving the request. Such a determination may apply for a specified period of not more than six months or until it is revoked, whichever happens first. You may apply to renew the delayed publication if needed, as often as necessary, but for no more than 6 months at a time.

While a determination is in force, the Freedom of Information Acts do not apply to a record relating to any information which is the subject of a determination.

The Standards Commission will provide copies of the determination to you and to any Ministers who were consulted.

If your application for delayed publication is rejected in whole or in part, the Standards Commission will give you reasons.

If approved, the Standards Commission may review its determination at any time and may decide to revoke its determination if it appears that the public interest would be better served by making the information publicly available immediately than by delaying it. If this occurs, you and the relevant Ministers consulted will be informed.

If information is published in summary form, this will be stated on the Register.

When delayed publication has occurred or where information was published only in summary form and publication or full publication occurs, the Standards Commission will publish on the Register an explanation for why the publication was delayed or the information summarised.

Any person who is unhappy with any decision made by the Standards Commission in relation to delayed publication may appeal.

The Standards Commission will not make information which was delayed or summarised publicly available until 14 days after its decision to do so. This is to allow for the making of an appeal. If you appeal, publication will not occur until the appeal process is complete or the appeal is withdrawn.

Other Content which may be excluded from the Register

Personal data

The Act allows for the collection and publication of certain personal data, to enhance the transparency of the Register. This may include a registrant's name and contact details. A person may request to have his/her personal data which is contained in an Application to Register or in Client Details on a return of lobbying activities excluded from the information which is publicly available on the Register. The Standards Commission will exclude the information if it considers it necessary in order:

- To prevent the information being misused
or
- To protect the safety of any person or ☐
To protect the security of the State.

Personal data is defined in the data protection legislation as data relating to a living individual who is or can be identified either from the data or from the data in conjunction with other information. For more information, see www.dataprotection.ie. The Standards Commission has published [a guidance note regarding requests to exclude personal data](#). It has also published [a privacy notice](#) regarding the personal data which is held by the Standards Commission in respect of its statutory functions under the Regulation of Lobbying Act 2015.

Inaccurate, out of date or misleading information

If you consider that there is information about you on the Register which is inaccurate, out of date or misleading, (for example as a person carrying on lobbying activities, a person being lobbied or a client included on another person's return of lobbying activities) you may provide evidence of this to the Standards Commission. If the Standards Commission considers that the information is inaccurate, out of date or misleading, it may amend or delete the information as appropriate.

If the Standards Commission does not consider the information to be inaccurate, misleading or out of date, it must notify you of this and give you reasons for its decision. If you are unhappy with the Standards Commission decision in relation to amending or deleting information relating to you, you may appeal.

If a person considers that information contained on the Register, which does not relate to them, is inaccurate, out of date or misleading, the person may provide evidence of this to the Standards Commission. If the Standards Commission considers that the information is inaccurate, out of date or misleading, it may amend or delete the information as appropriate. A person cannot, however, appeal the Standards Commission's decision if the information does not relate to them.

“Cooling-off period”: Restrictions on post-term employment as lobbyist

The Act provides that certain DPOs are restricted from being engaged in lobbying in certain circumstances for a year after they leave their employment or office unless they get permission from the Standards Commission – in effect, they are subject to a “cooling-off” period.

The DPOs concerned are Ministers and Ministers of State, special advisers and prescribed public servants. We refer to these persons as “relevant DPOs.”

Others who are DPOs for the purposes of the lobbying registration requirements are not covered by this provision, that is, TDs, Senators MEPs and Local Authority members.

Relevant DPOs who are covered by this provision may not:

- Carry on lobbying activities in certain circumstances or
- Be employed by, or provide services to, a person carrying on lobbying activities in certain circumstances.

These circumstances are where the lobbying activity:

- Involves any public service body with which the relevant DPO was connected, that is, employed or held an office or other position in the year prior to the relevant DPOs leaving, or
- Is to a person who was also a DPO connected with that public service body in the year prior to the relevant DPO's leaving.

A relevant DPO may apply to the Standards Commission for consent to engage in such lobbying. The

Standards Commission may decide to give consent unconditionally or give consent with conditions attached. The Standards Commission may also refuse to give consent for all or part of the cooling-off period.

A relevant DPO who is unhappy with the decision may appeal.

The Standards Commission has [published additional guidance](#) for the benefit of any persons seeking to apply to waive or reduce their cooling-off period.

Enforcement

Part 4 of the Regulation of Lobbying Act 2015 sets out “relevant” contraventions of the Act and enforcement provisions. The enforcement provisions came into effect on 1 January 2017.

Relevant contraventions

Section 18 of the Act sets out the following as “relevant contraventions” of the Act:

- Carrying on lobbying activities without being registered;
- Failing to make a return by the deadline;
- Providing the Standards Commission with any information known to be inaccurate or misleading; ☐ Failing to co-operate with an investigating officer who is investigating contraventions of the Act; and ☐ Obstructing an investigation.

Enforcement provisions

The provisions contained in Part 4 give the Standards Commission the authority to:

- investigate possible relevant contraventions (Section 19).
- prosecute offences (Section 20).
- serve fixed payment notices to persons who are late submitting a return of lobbying activities (Section 21).

Investigations

The Standards Commission may authorise an investigation if it reasonably believes that a person may have committed or may be committing a relevant contravention.

Authorised officers may be appointed to carry out the investigation. They will have extensive powers to obtain necessary information and documents including the power to enter and search premises.

As a result of an investigation, the Standards Commission may prosecute offences.

Prosecutions and Fines

Any relevant contravention listed above may be prosecuted by the Standards Commission

- If you are prosecuted in the District Court and found guilty (summary conviction), you may be fined up to €2,500 (this is known as a Class C fine).
- If you are prosecuted in the Circuit Criminal Court and found guilty (conviction on indictment), you may be fined and imprisoned for up to two years.
- Submitting a late return (that is making a return after the prescribed deadline) is a relevant contravention, which will result in a fixed payment notice being issued. The amount of the fixed payment is €200. If you pay the fixed payment within the time specified, no further action will be taken. Failure to pay the fixed payment may result in prosecution.

Appeals

Certain decisions of the Standards Commission may be appealed. A person aggrieved by a decision of the Standards Commission may appeal against the particular decision within 14 days stating the reasons for appeal. Appeals should be made to appeals@lobbying.ie. The decisions in question are:

- A decision in relation to the removal of information where the Standards Commission has deemed it inaccurate, out of date or misleading. (Note a person may only appeal such a decision if the information concerned relates to the person.)
- A decision in relation to an application for delayed publication
- A decision in relation to an application to waive or reduce the restrictions on post term employment.

The Minister for Finance and Public Expenditure and Reform (the Minister) has appointed independent and impartial Appeal Officers to consider such appeals. The Minister has also made Regulations prescribing the procedures which are to be followed in the conduct of appeals. These Regulations are available [here](#).

The Appeal Officer will give a decision on the appeal within 14 days of the appeal having been received by the Standards Commission. He/she may

- Confirm the decision made by the Standards Commission or
- Revoke the decision and replace it with a new decision which he/she considers appropriate.

The Appeal Officer's decision will be issued to the person making the appeal and to the Standards Commission at the same time.

The Appeal Officer's decision may be appealed to the High Court on a point of law within 21 days of the decision having been made. The High Court decision is final and there is no further appeal.

Review of the Act

The legislation provides for regular reviews of the operation of the Act. The first such review took place in September 2016 when the Act had been in operation for a year. The Minister published a report on the first review of the Act on 2 May 2017. The Report [is available on the Dept Public Expenditure and Reform's website](#). Subsequent reviews must take place every three years. When conducting this review, the Minister

will engage in consultations with, among others, people who are carrying on lobbying activities and their representatives. The Standards Commission must also be consulted.

Further Information

Further information on the Act is available at www.lobbying.ie.

Any person who wishes to attend a briefing session on the Act should register their interest by emailing info@lobbying.ie.

Appendix: Best practices for persons carrying on lobbying activities

- 1) Register after you have commenced lobbying
 - Make sure you are actually required to register – do the Three Step Test on www.lobbying.ie
 - No need to register until the first deadline after the first relevant period in which you commence lobbying
- 2) Put in place arrangements to record lobbying activity
 - Identify who is responsible for lobbying on behalf of your organisation
 - Ensure anyone who lobbies keeps a record of their lobbying activities
 - Identify a compliance officer responsible for submitting returns on behalf of the organisation
 - Identify a backup compliance officer in case the primary person is sick or absent
 - Have the compliance officer review all returns for completeness, accuracy and consistency
- 3) Make sure you know the reporting periods and deadlines
 - Plan ahead – put deadlines in your calendar
 - Do not wait until the final day to submit your return – you can submit at any time when you have a completed return
 - Nil returns are required for periods where you didn't lobby
- 4) Ensure your returns are correct
 - One return per subject – no need to submit a separate return for every communication
 - Ensure that the subject and intended result are clear and meaningful
 - o You must disclose what the result was you were seeking. It is not sufficient to say you communicated on “issues of interest”.
 - Ensure you have selected the correct Designated Public Official
 - Make sure that the communication is not exempt
- 5) If you have stopped lobbying and don't intend to lobby in future, apply to the Standards Commission to have your registration marked as “ceased lobbying”



- 6) When in doubt, seek additional information
- The Standards Commission has published guidelines, frequently asked questions, sample returns and more on www.lobbying.ie
 - You may also contact us at info@lobbying.ie or (01) 639-5722

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



Lobbying (Scotland) Act 2016

2016 asp 16

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 10th March 2016 and received Royal Assent on 14 April 2016

An Act of the Scottish Parliament to make provision about lobbying, including provision for establishing and maintaining a lobbying register and the publication of a code of conduct.

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.

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

- (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.

Annotations:

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.

Annotations:

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.

Annotations:

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.

4

Lobbying (Scotland) Act 2016 asp 16
PART 2 – The lobbying register
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Changes to legislation: There are currently no known outstanding effects for the Lobbying (Scotland) Act 2016. (See end of Document for details)

Annotations:

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.

Annotations:

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,

Lobbying (Scotland) Act 2016 asp 16
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Changes to legislation: There are currently no known outstanding effects for the Lobbying (Scotland) Act 2016. (See end of Document for details)

- (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.

Annotations:

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.

Annotations:

Commencement Information

I7 [S. 7](#)
 in force at 12.3.2018 by
[S.S.I. 2018/73](#)
 ,
[reg. 2](#)

6

Lobbying (Scotland) Act 2016 asp 16
PART 2 – The lobbying register
Document Generated: 2018-09-07

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

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.

Annotations:

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.

Annotations:

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

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- (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.

Annotations:

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

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

- (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.

Annotations:

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—

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

- (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.

Annotations:

Commencement Information

I12 [S. 12](#)
 in force at 12.3.2018 by
[S.S.I. 2018/73](#)

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

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.

Annotations:

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).

Changes to legislation: *There are currently no known outstanding effects for the Lobbying (Scotland) Act 2016. (See end of Document for details)*

- (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.

Annotations:

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.

12

Lobbying (Scotland) Act 2016 asp 16
PART 3 – Oversight and enforcement
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Changes to legislation: There are currently no known outstanding effects for the Lobbying (Scotland) Act 2016. (See end of Document for details)

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

Annotations:

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).

Annotations:

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,

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

- (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.

Annotations:

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.

Annotations:

Commencement Information

I18 [S. 18](#)
 in force at 12.3.2018 by

14

Lobbying (Scotland) Act 2016 asp 16
PART 3 – Oversight and enforcement
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Changes to legislation: There are currently no known outstanding effects for the Lobbying (Scotland) Act 2016. (See end of Document for details)

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.

Annotations:

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.

Annotations:

Commencement Information

I20 [S. 20](#)
 in force at 6.9.2017 by

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

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.

Annotations:

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).

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

- (4) An assessment under subsection (2)(a) and an investigation under subsection (2)(b) (i) must be conducted in private.

Annotations:

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).

Annotations:

Commencement Information

I23 [S. 23](#)
in force at 12.3.2018 by
[S.S.I. 2018/73](#)
, [reg. 2](#)

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

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.

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

- (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.

Annotations:

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.

Annotations:

Commencement Information

I25 [S. 25](#)
in force at 12.3.2018 by
[S.S.I. 2018/73](#)
,
[reg. 2](#)

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

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.

Annotations:

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.

Annotations:

Commencement Information

I27 [S. 27](#)
in force at 12.3.2018 by
[S.S.I. 2018/73](#)
,
[reg. 2](#)

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

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—

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

- (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.

Annotations:

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.

Annotations:

Commencement Information

I29 [S. 29](#)
in force at 12.3.2018 by
[S.S.I. 2018/73](#)
,
[reg. 2](#)

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

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.

Annotations:

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 subparagraph (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.

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

Annotations:

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.

Annotations:

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,

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

- (ii) the date by which the document must be produced, and
- (iii) the particular matters in connection with which the document is required.

Annotations:**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.

Annotations:**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).

Annotations:**Commencement Information**

I35 [S. 35](#)
in force at 12.3.2018 by

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

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).

Annotations:

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),

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

- (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.

Annotations:

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,

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

- 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.”.

Annotations:

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 ”.

Annotations:

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.

Annotations:

Commencement Information

I40 [S. 40](#)
 in force at 12.3.2018 by

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

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.

Annotations:

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.

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

- (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.

Annotations:

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.

Annotations:

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.

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

- (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.

Annotations:

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.

Annotations:

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,

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

- (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.

Annotations:

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,

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

“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.

Annotations:

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\(2\)](#)

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

(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).

Annotations:

Commencement Information

I49 [S. 50](#)

34

Lobbying (Scotland) Act 2016 asp 16
PART 5 – Final provisions
Document Generated: 2018-09-07

Changes to legislation: *There are currently no known outstanding effects for the Lobbying (Scotland) Act 2016. (See end of Document for details)*

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. (See end of Document for details)

SCHEDULE

(introduced by section 1)

COMMUNICATIONS WHICH ARE NOT LOBBYING

Communications made on individual's own behalf

- 1 A communication made by an individual on the individual's own behalf.

Annotations:

Commencement Information

150 [Sch. para. 1](#)
in force at 12.3.2018 by
[S.S.I. 2018/73](#)
,
[reg. 2](#)

Communications made to member for constituency or region

- 2 A communication made—
- (a) by an individual as an employee or in another capacity mentioned in section 1(1)(b) in the course of a business or other activity carried on by another person,
 - (b) on the other person's behalf and not on behalf of a third party, and
 - (c) to a member of the Scottish Parliament for the constituency or the region in which any of the following are situated—
 - (i) a place where the person's business is ordinarily carried on,
 - (ii) a place where the person's activity is ordinarily carried on, or
 - (iii) the individual's residence.

Annotations:

Commencement Information

151 [Sch. para. 2](#)
in force at 12.3.2018 by
[S.S.I. 2018/73](#)
,
[reg. 2](#)

- 3 However, paragraph 2 does not apply where the communication is made to a member of the Scottish Parliament who is a member of the Scottish Government or a junior Scottish Minister.

Annotations:

Commencement Information

152 [Sch. para. 3](#)
in force at 12.3.2018 by
[S.S.I. 2018/73](#)
,

36

Lobbying (Scotland) Act 2016 asp 16
SCHEDULE – COMMUNICATIONS WHICH ARE NOT LOBBYING
Document Generated: 2018-09-07

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

[reg. 2](#)

- 4 In paragraph 2, “constituency” and “region” are to be construed in accordance with the Scotland Act 1998.

Annotations:

Commencement Information

I53 [Sch. para. 4](#)
in force at 12.3.2018 by
[S.S.I. 2018/73](#)
, [reg. 2](#)

Communications not made in return for payment

- 5 A communication made by an individual who is not making it in return for payment.

Annotations:

Commencement Information

I54 [Sch. para. 5](#)
in force at 12.3.2018 by
[S.S.I. 2018/73](#)
, [reg. 2](#)

- 6 For the purposes of paragraph 5—
- (a) a communication made by an individual as an employee or in another capacity mentioned in section 1(1)(b) is made in return for payment if the individual receives payment in that capacity regardless of whether the payment relates to making communications,
 - (b) “payment”—
 - (i) means payment of any kind, whether made directly or indirectly for making the communication,
 - (ii) includes entitlement to a share of partnership profits,
 - (iii) does not include reimbursement for travel, subsistence or other reasonable expenses related to making the communication.

Annotations:

Commencement Information

I55 [Sch. para. 6](#)
in force at 12.3.2018 by
[S.S.I. 2018/73](#)
, [reg. 2](#)

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

Communications by small organisations

- 7 A communication made—
- (a) by an individual as an employee or in another capacity mentioned in section 1(1)(b) in the course of a business or other activity carried on by another person,
 - (b) on the other person's behalf and not on behalf of a third party, and
 - (c) on a date when the other person has fewer than 10 full-time equivalent employees.

Annotations:

Commencement Information

156 [Sch. para. 7](#)
in force at 12.3.2018 by
[S.S.I. 2018/73](#)
,
[reg. 2](#)

- 8 However, paragraph 7 does not apply where the communication is made in the course of a business or other activity carried on by a person if one of the person's principal purposes is to represent the interests of other persons.

Annotations:

Commencement Information

157 [Sch. para. 8](#)
in force at 12.3.2018 by
[S.S.I. 2018/73](#)
,
[reg. 2](#)

- 9 For the purposes of paragraph 7, the number of full-time equivalent employees a person has is calculated as follows—
- (a) find the total number of hours worked by all the employees of the person in the 28 days ending with the date on which the communication was made,
 - (b) divide that number by 140.

Annotations:

Commencement Information

158 [Sch. para. 9](#)
in force at 12.3.2018 by
[S.S.I. 2018/73](#)
,
[reg. 2](#)

- 10 For the purposes of the calculation in paragraph 9, any employee who worked more than 140 hours during the period of 28 days is to be treated as having worked 140 hours.

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

Annotations:**Commencement Information**

I59 [Sch. para. 10](#)
in force at 12.3.2018 by
[S.S.I. 2018/73](#)
, [reg. 2](#)

Communications in Parliament or required under statute.

- 11 A communication—
- (a) made in proceedings of the Parliament,
 - (b) required under any statutory provision or other rule of law.

Annotations:**Commencement Information**

I60 [Sch. para. 11](#)
in force at 12.3.2018 by
[S.S.I. 2018/73](#)
, [reg. 2](#)

Communications made on request

- 12 A communication about a topic which is made in response to a request for factual information or views on that topic from—
- (a) the person to whom the communication is made, or
 - (b) a person acting on behalf of that person.

Annotations:**Commencement Information**

I61 [Sch. para. 12](#)
in force at 12.3.2018 by
[S.S.I. 2018/73](#)
, [reg. 2](#)

Cross-party groups

- 13 A communication made in the course of a meeting of a group recognised as a cross-party group by the Parliament.

Annotations:**Commencement Information**

I62 [Sch. para. 13](#)

Lobbying (Scotland) Act 2016 asp 16

SCHEDULE – COMMUNICATIONS WHICH ARE NOT LOBBYING

Document Generated: 2018-09-07

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

in force at 12.3.2018 by
[S.S.I. 2018/73](#)
 ,
[reg. 2](#)

Journalism

- 14 A communication made for the purposes of journalism.

Annotations:

Commencement Information

I63 [Sch. para. 14](#)
 in force at 12.3.2018 by
[S.S.I. 2018/73](#)
 ,
[reg. 2](#)

Communications in relation to terms and conditions of employment

- 15 A communication made by or on behalf of a person where the communication forms part of, or is directly related to, negotiations on terms and conditions of employment of the employees of the person.

Annotations:

Commencement Information

I64 [Sch. para. 15](#)
 in force at 12.3.2018 by
[S.S.I. 2018/73](#)
 ,
[reg. 2](#)

- 16 A communication made by or on behalf of a trade union where the communication forms part of, or is directly related to, negotiations on terms and conditions of employment of the members of the trade union.

Annotations:

Commencement Information

I65 [Sch. para. 16](#)
 in force at 12.3.2018 by
[S.S.I. 2018/73](#)
 ,
[reg. 2](#)

- 17 In paragraph 16, “trade union” is to be construed in accordance with section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992.

40

Lobbying (Scotland) Act 2016 asp 16
SCHEDULE – COMMUNICATIONS WHICH ARE NOT LOBBYING
Document Generated: 2018-09-07

*Changes to legislation: There are currently no known outstanding effects
for the Lobbying (Scotland) Act 2016. (See end of Document for details)*

Annotations:**Commencement Information**

I66 [Sch. para. 17](#)
in force at 12.3.2018 by
[S.S.I. 2018/73](#)
, [reg. 2](#)

Communications by political parties

- 18 A communication made by or on behalf of a party registered under Part 2 of the Political Parties, Elections and Referendums Act 2000.

Annotations:**Commencement Information**

I67 [Sch. para. 18](#)
in force at 12.3.2018 by
[S.S.I. 2018/73](#)
, [reg. 2](#)

Communications by judiciary

- 19 A communication made by or on behalf of—
(a) a holder of judicial office within the United Kingdom,
(b) a member of the judiciary of an international court.

Annotations:**Commencement Information**

I68 [Sch. para. 19](#)
in force at 12.3.2018 by
[S.S.I. 2018/73](#)
, [reg. 2](#)

- 20 In paragraph 19—
“holder of judicial office within the United Kingdom” means—
(a) a judge of a court established under the law of any part of the United Kingdom,
(b) a member of a tribunal established under the law of any part of the United Kingdom,
“member of the judiciary of an international court” means a judge of the International Court of Justice or a member of another court or tribunal which exercises jurisdiction, or performs functions of a judicial nature, in pursuance of—

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

- (a) an agreement to which the United Kingdom or Her Majesty's Government in the United Kingdom is party, or
- (b) a resolution of the Security Council or General Assembly of the United Nations.

Annotations:**Commencement Information**

I69 [Sch. para. 20](#)
in force at 12.3.2018 by
[S.S.I. 2018/73](#)
, [reg. 2](#)

Communications by Her Majesty

- 21 A communication made by or on behalf of Her Majesty.

Annotations:**Commencement Information**

I70 [Sch. para. 21](#)
in force at 12.3.2018 by
[S.S.I. 2018/73](#)
, [reg. 2](#)

Government and Parliament communications etc.

- 22 A communication made by or on behalf of—
- (a) a member of the Scottish Parliament,
 - (b) the Scottish Ministers or other office-holder in the Scottish Administration,
 - (c) a local authority,
 - (d) any other Scottish public authority within the meaning of the Freedom of Information (Scotland) Act 2002,
 - (e) a member of the House of Commons,
 - (f) a member of the House of Lords,
 - (g) Her Majesty's Government in the United Kingdom,
 - (h) a member of the National Assembly for Wales,
 - (i) the Welsh Assembly Government,
 - (j) a member of the Northern Ireland Assembly,
 - (k) the First Minister of Northern Ireland, the deputy First Minister of Northern Ireland, the Northern Ireland Ministers or any Northern Ireland department,
 - (l) any other public authority within the meaning of the Freedom of Information Act 2000,
 - (m) a State other than the United Kingdom,
 - (n) an institution of the European Union,
 - (o) an international organisation.

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Lobbying (Scotland) Act 2016 asp 16
SCHEDULE – COMMUNICATIONS WHICH ARE NOT LOBBYING
Document Generated: 2018-09-07

*Changes to legislation: There are currently no known outstanding effects
for the Lobbying (Scotland) Act 2016. (See end of Document for details)*

Annotations:

Commencement Information

I71 [Sch. para. 22](#)
in force at 12.3.2018 by
[S.S.I. 2018/73](#)
,
[reg. 2](#)

23 In paragraph 22—
 “international organisation” means—
 (a) an international organisation whose members include any two or more States, or
 (b) an organ of such an international organisation,
 “State” includes—
 (c) the government of any State, and
 (d) any organ of such a government,

 and references to a State other than the United Kingdom include references to any territory outwith the United Kingdom.

Annotations:

Commencement Information

I72 [Sch. para. 23](#)
in force at 12.3.2018 by
[S.S.I. 2018/73](#)
,
[reg. 2](#)

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



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PARLIAMENTARY GUIDANCE

Published under the Lobbying (Scotland) Act 2016

1st Edition – January 2018



Lobbying Register | Clàr-coiteachaidh

Introduction

To be heard by parliament or government, many people ‘lobby’. It is a fundamental and valuable part of how individuals and organisations provide input and feedback to inform and influence decisions made by our elected representatives and policy developed by our government.

While many people ‘lobby’, some may not use the term directly or think they are ‘lobbying’. However, lobbying takes place in many different forms. Lobbying can originate from individuals and interest groups; bodies representing their members or professions; charities and the voluntary sector and those acting in a professional capacity to lobby on behalf of others.

There has been discussion in the Scottish Parliament around regulating some types of lobbying as far back as 1999. In 2016 the Parliament passed legislation, the Lobbying (Scotland) Act 2016 (‘the Act’), to regulate specified types of lobbying.

The Act uses the terminology of **regulated lobbying** to describe the type of activity which will require to be recorded in the publicly accessible Lobbying Register, maintained by the Scottish Parliament. This Lobbying Register is online at www.lobbying.scot.

The intention of the Act, and this online Lobbying Register established under it, is to bring about greater openness and transparency around this type of lobbying activity.

This document provides Parliamentary Guidance on the operation of the Act. In doing so, it is intended to assist those who may lobby, as follows:

- it will help you to determine if the lobbying you do is **regulated lobbying**
- and, if you are engaged in **regulated lobbying**, it will give you more information on how to register your details and then submit information on the Lobbying Register at www.lobbying.scot

Common Scenarios and FAQs are also available at www.lobbying.scot to help you with other practical questions.

Please also feel free to get in touch with us at any time, at our contact points shown on the following page.

Lobbying Register Team
The Scottish Parliament

Lobbying Register | Clàr-coiteachaidh



Lobbying Register Team, The Scottish Parliament, Edinburgh, EH99 1SP

Telephone: 0131 348 5408

Website: <https://www.lobbying.scot/>

Email: lobbying@parliament.scot

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ANNEX: SUMMARY OF THE LOBBYING (SCOTLAND) ACT 2016



REGULATED LOBBYING: EXECUTIVE SUMMARY

The Lobbying (Scotland) Act 2016 was passed by the Scottish Parliament in March 2016 and received Royal Assent in April 2016. The Act is commenced on 12 March 2018.

What is regulated lobbying?

Lobbying can come in many forms and from a range of individuals or organisations. It plays an essential role in informing and influencing decisions within parliament and government. The intention of this Act, however, is to increase public transparency about **certain types of lobbying**. This type of lobbying is specifically defined in the Act and is known as **regulated lobbying**.

The Scottish Parliament was tasked with introducing a new **Lobbying Register**, to allow the public to access and view information submitted by organisations and individuals who carry out regulated lobbying.

Regulated lobbying means **face-to-face oral** communication with any of the following people, **when discussing Scottish Government or parliamentary functions**:

- a member of the Scottish Parliament (MSP)
- a member of the Scottish Government (Cabinet Secretaries and Scottish Law Officers);
- a junior Scottish Minister;
- a Scottish Government Special Adviser; or
- the Scottish Government's Permanent Secretary (aside from Special Advisers, the **only** civil servant covered by regulated lobbying within the Act).

Elsewhere in this guidance, references to "Minister" "Scottish Minister" and "Scottish Government Minister" are intended to include members of the Scottish Government and the junior Scottish Ministers.

Retained functions of the Lord Advocate are not considered to be 'Government or parliamentary functions' for the purposes of the Act. Those 'retained functions' relate mainly to the Lord Advocate's role as head of the systems of criminal prosecution and investigation of deaths in Scotland. Communications in those areas would not therefore constitute regulated lobbying under the Act.

Other types of communication, such as emails, letters, tweets, phone calls, etc., do not constitute regulated lobbying. Regulated lobbying applies **only** to oral communications made to any of those mentioned above, face-to-face (including by video-conference), in relation to Government or parliamentary functions. The term "oral" includes communications made using British Sign Language (or otherwise made by signs).

In terms of this face-to-face communication, the Act **does not limit where or when** regulated lobbying may take place. It's the type of conversation that counts in

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regulated lobbying, not the formality of where or when the discussion took place. If you are using the opportunity to lobby, then it could be regulated lobbying regardless of the occasion or situation. See the **5 Key Steps** within this document for further help.

Under the Act, **anyone** having discussions with any of the individuals above, in the manner and circumstances set out, could be considered to be lobbying if they are acting in any form of paid capacity, whether that payment is made directly or indirectly.

Exemptions

However, very importantly, the Act defines a number of **communications which do not amount to regulated lobbying under the Act**. These cover communications:

- made by individuals raising issues on their own behalf
- made during discussions with (most) local MSPs
- made by those who are unpaid
- made by those representing some small organisations
- made in formal proceedings of the Scottish Parliament or required under statute
- made in response to requests for factual information or views on a topic (from an MSP, Minister, Law Officer, etc.)
- made during quorate meetings of Cross-Party Groups of the Scottish Parliament
- made for the purposes of journalism
- made during negotiations about terms and conditions of employment
- made by political parties and some public figures, bodies and professions.

What is the Lobbying Register?

The Lobbying Register is online at www.lobbying.scot. It is free to use and accessible to everyone.

Those engaged in regulated lobbying use the Lobbying Register to provide information on **who** they have lobbied, **when** and **where** it happened and what **the purpose** of the lobbying was.

If you are engaged in regulated lobbying then using the Lobbying Register is straightforward. A nominated individual from your organisation activates an **online account** at www.lobbying.scot and then completes **registration** details. You set up your organisation's account using a generic email and password of your choice.

You are then able to submit **Information Returns** - where you provide details of the regulated lobbying you have carried out - using your account details. If you have already carried out regulated lobbying, you should register and then submit an Information Return within 30 days of the occurrence. Thereafter, Information Returns can be submitted online to the Lobbying Register at any time (but must be submitted at least every 6 months based upon the date on which the first instance of regulated lobbying took place).

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You can also use the Lobbying Register on a **voluntary basis** if your organisation participates in lobbying but an exemption in the Act means that your communication is not *regulated* lobbying (for example, the lobbying is unpaid). And you can apply to be reclassified as **inactive** on the Lobbying Register if you no longer carry out regulated lobbying.

For those engaged in regulated lobbying, registering with the Lobbying Register and providing Information Returns are **legal requirements**. We encourage you to always check your own circumstances pro-actively to ensure you are complying with the Act. In some circumstances you may require to consult with your own legal advisers.

A **Code of Conduct** for persons lobbying MSPs has also been prepared and is available at www.lobbying.scot.

A **review** of the operation of the Act and the Lobbying Register will take place two years after full commencement of the Act, in March 2020. This will be conducted by a committee of the Scottish Parliament.

It is recognised that written guidance alone cannot provide all of the answers. Please therefore ask for further assistance from the Lobbying Register Team at the Scottish Parliament when necessary.

THE 5 KEY STEPS TO REGULATED LOBBYING

In terms of applying the Act to your own activities, you may find the following checklist and flowchart useful, as a regular reference point.

Neither the checklist nor flowchart should be taken as an absolute guide to determining whether your activities would amount to regulated lobbying. **If in doubt** you should always consult the Act itself as the core reference point, particularly in more complex situations. You may also wish to contact the Lobbying Register Team.

Step 1: you have communicated orally and face-to-face with MSPs, members of the Scottish Government, junior Scottish Ministers or the Scottish Government's Permanent Secretary or Special Advisers.

Although regulated lobbying covers a wide range of lobbying activities, it **only** applies when lobbying takes place with any of the aforementioned public figures and officials and **only then** when you do so **orally** and **face-to-face**.

This contact could be anywhere - at a meeting, event or any other such professional or even social occasion. It also applies when you use a device, which enables you to **see** and **hear** each other (e.g. video-conference). The term "oral" includes communication made using British Sign Language (or otherwise made by signs).

This step relates to [Part 1, Section 1 of the Act](#).

Step 2: your communication was in relation to Scottish Government or Scottish parliamentary functions.

To be considered as regulated lobbying the communication must be in relation to Scottish Government or Scottish parliamentary functions. Section 2 of the Act sets

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out what this means more fully, but broadly it relates to discussions you have in relation to:

- legislation to be made in the Scottish Parliament or any Scottish Government policy
- contracts, grants and other financial assistance; licences and other authorisations where the Scottish Government has a role
- matters you have raised with an MSP (not covered by an exemption to the Act), which they can take forward in that capacity, inside or outside the Scottish Parliament.

This step relates in particular to [Part 1, Section 2 of the Act](#).

Step 3: you used the opportunity to inform or influence decisions on behalf of your organisation (or those you represent).

The Act applies to this type of communication, regardless of where it takes place.

Not every conversation you have will be regulated lobbying. For example, promotional work during an event, helping at a media opportunity or indeed meeting an MSP or Minister and answering their questions during a visit to your workplace is not necessarily regulated lobbying. It's the nature of the conversation you have with those individuals during any activity which matters.

As no two discussions are the same, you and your organisation must make that judgment, keeping in mind that recording regulated lobbying is a legal requirement.

You should be aware that if the person you had the discussion with considered that they were 'lobbied', then they may well expect to see that instance recorded on the Lobbying Register.

Step 4: you are paid, representing the views of your organisation (or those of a third party).

It is not regulated lobbying if you are **not paid**. This step relates to the [schedule of the Act \(paragraphs 5 and 6\)](#).

Step 5: you are clear that the lobbying is not excluded by any other exemption to the Act.

Regulated lobbying doesn't apply if the lobbying falls under an **exemption** to the Act. These exemptions are very important to know and understand. For example, there are exemptions for communications:

- made by individuals raising issues on their own behalf
- made during discussions with (most) local MSPs
- made by those who are unpaid
- made by those representing some small organisations
- made in formal proceedings of the Scottish Parliament or required under statute

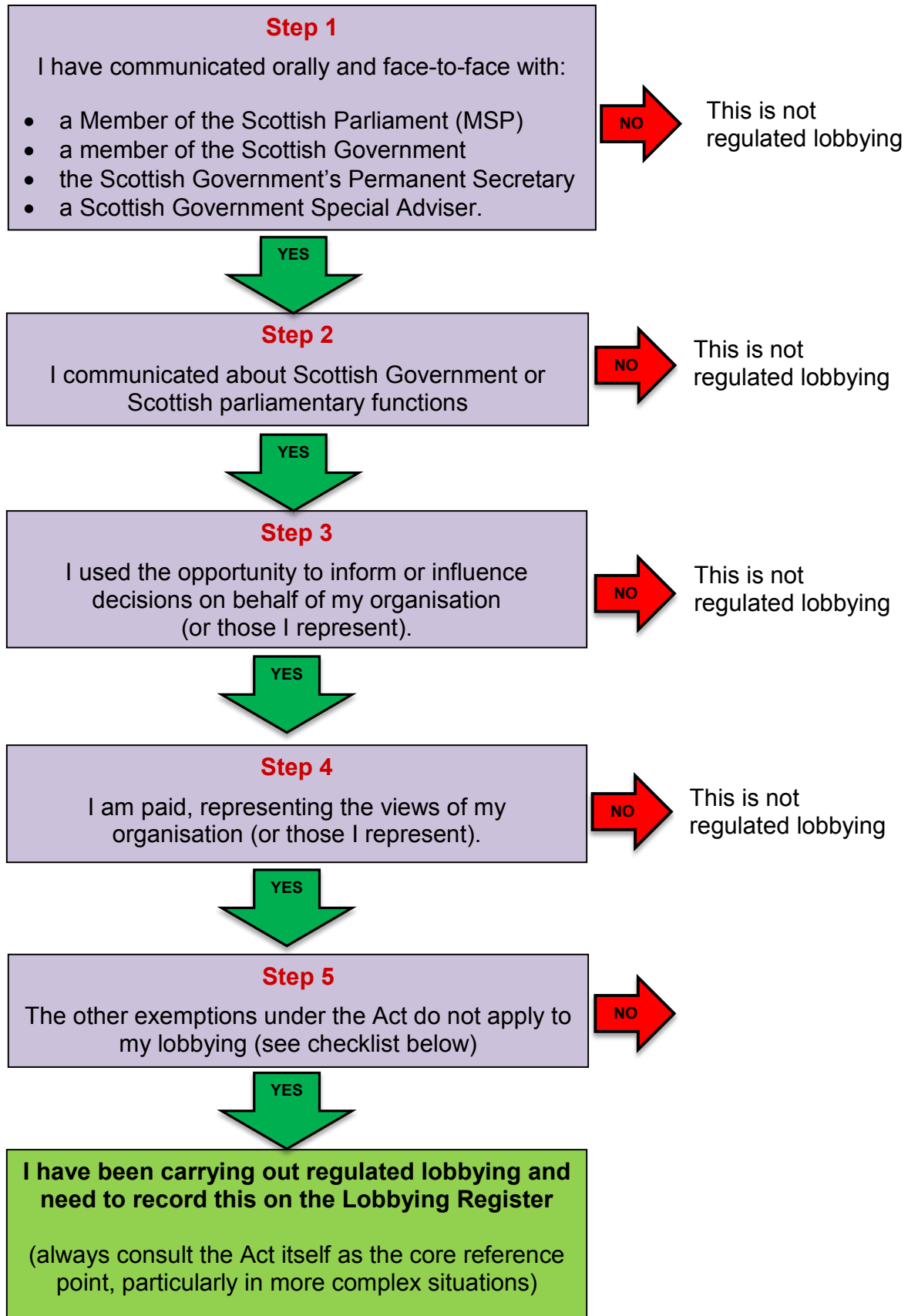
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- made in response to requests for factual information or views on a topic (from an MSP, Minister, Law Officer, etc.)
- made during quorate meetings of Cross-Party Groups of the Scottish Parliament
- made for the purposes of journalism
- made during negotiations about terms and conditions of employment
- made by political parties and some public figures, bodies and professions.

This step relates to all remaining exemptions in the [schedule of the Act](#).

There is a dedicated section within this guidance to explain the exemptions that, if applicable, will mean you are not engaging in regulated lobbying under the Act.

AM I INVOLVED IN REGULATED LOBBYING?



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There are 13 separate exemptions in the Act's schedule - **Communications which are not lobbying**. This checklist may help you determine if your activity is **not** regulated lobbying, because one of those exemptions applies.

Links are also provided directly to the [schedule](#) to allow you to check in more detail.

Step 5: An exemption would apply to my face-to-face lobbying with an MSP, member of the Scottish Government, Special Advisers or Permanent Secretary because it was...			
✓	about an issue I am raising on my own behalf (more here)		
✓	with an MSP who represents the constituency or region where I live or where my company/ organisation is based or ordinarily operates within (more here)	X	I am aware that if this MSP is a member of the Scottish Government, or I am communicating on behalf of a third party, then this exemption does not apply (more here)
✓	unpaid - directly or indirectly (more here)		
✓	undertaken when my company/organisation had fewer than 10 full-time equivalent employees (more here)	X	I am aware that if I am communicating on behalf of a third party, or in a representative capacity, this exemption does not apply (more here)
✓	during <u>formal</u> parliamentary proceedings of the Scottish Parliament (e.g. a meeting of a parliamentary committee) or as communication required by statute or another rule of law (more here)		
✓	in response to a request from those above (see Key Step 1) for factual information or views on a topic (more here)		
✓	during a <u>quorate</u> meeting of a Cross-Party Group of the Scottish Parliament (more here)		
✓	for the purposes of journalism (more here)		
✓	discussing negotiations on terms and conditions of employment (more here)		
✓	made by a political party (more here)		
✓	already exempt because my public role or the public role/functions of my organisation are listed in the Act as being exempt (more here at paragraphs 19-22).		



TYPES OF CONVERSATIONS

Although MSPs, Scottish Government Ministers or the Scottish Government's Permanent Secretary and Special Advisers operate within Scotland, the lobbying itself could take place anywhere.

For the Lobbying Register to be consistent, accurate and truly transparent, it's important it captures all instances when regulated lobbying takes place.

The following information may help you in understanding the application of the Act, in certain circumstances.

Informal discussions

The Act does not seek to inhibit face-to-face conversations with MSPs, members of the Scottish Government or the Scottish Government's Permanent Secretary and Special Advisers. These conversations crucially offer a flow of information or views on policy or legislation.

Significantly, the Act does not limit where or when regulated lobbying may take place. That is an important factor as it is not uncommon for people to meet up under a range of circumstances and for conversations that take place to turn to work-related issues.

For example, regulated lobbying could occur during a conversation you are having during a 'chance' meeting, at a personal or social event or indeed in any situation where you come into contact and work-related issues are discussed.

Some of these conversations can become regulated lobbying, in the same way as if they were raised on a more formal basis, at a pre-arranged meeting.

As the **5 Key Steps** make clear, it is likely to be regulated lobbying, if:

- your discussion covers Scottish Government or Scottish Parliamentary functions
- you are a paid individual, representing the views of your organisation (or those you represent)
- no other exemption applies.

In all exchanges, you must be mindful that the person being lobbied (e.g. a Minister or MSP) may well expect to see that conversation recorded as regulated lobbying activity, so you will need to be clear if you have engaged in regulated lobbying.

Events

As mentioned above the Act defines regulated lobbying as activity that takes places **orally** and **face-to-face**, but it does not specify where or when regulated lobbying takes place.

It may be difficult at large (and sometimes hectic) events to be sure of every conversation you had and with whom. However, given that participation at some

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events will be intended both to raise your profile and engage in discussions about policy issues, with MSPs or members of the Scottish Government, the Permanent Secretary or Special Advisers, then it is very possible regulated lobbying will take place.

You should be prepared in advance for any event you organise (or attend) and brief those who are helping (if paid) about the requirements under the Act and the need for regulated lobbying to be recorded afterwards. The 5 Key Steps indicate what discussions might amount to regulated lobbying (in this case, applied to conversations at an event).

The purpose of the Act is not to deter conversations or indeed inhibit organisations from holding events and other such important occasions. However, events are one arena where regulated lobbying can happen.

Your organisation is only required to record any details on the Lobbying Register where your own (paid only) employees or other office holders participated in regulated lobbying at the event. Your organisation is not responsible for any regulated lobbying that took place at an event by those not in your own organisation.

If you are attending an event which is not hosted by your own organisation, then your organisation is responsible for recording any regulated lobbying you undertook (on their behalf) at that event, on the Lobbying Register.

Some of these events do of course take place in the Parliament itself. However, only 'formal proceedings' of the Parliament are exempt under the Act. If your event does take place at the Parliament, our Events staff will help you with pre-event information about regulated lobbying.

You will of course have different types of conversations at an event - some will be individually and some may be in a group of people. Under the Act, each 'instance' of regulated lobbying (i.e. each relevant conversation) requires a separate Information Return to be submitted on the Lobbying Register.

Umbrella organisations

A similar approach should be taken where regulated lobbying is carried out by organisations specifically set-up to bring together views of multiple organisations, under one 'banner' or policy approach.

Where regulated lobbying is undertaken by individuals directly employed by the umbrella organisation, then the organisation itself is responsible for registering this activity.

However, where the regulated lobbying is undertaken by an individual not directly employed by the umbrella organisation, then the organisation employing that individual should record this as their lobbying activity. That individual is encouraged to make reference to the umbrella group within their own Information Return for added context.

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Speeches and Q&A sessions

It is conceivable that some speeches you make could also constitute regulated lobbying.

When you make an Information Return on the Lobbying Register you are asked to specify who you engaged with (an MSP, Minister, etc.).

Whether a speech, or a part of a speech, amounts to regulated lobbying will depend on individual circumstances. One factor is whether anything in the speech is targeted at (say) an MSP in the audience; this would point towards that part being registrable.

Again, the **5 Key Steps** listed in this guidance provide a reference point when considering whether you have engaged in regulated lobbying.

This applies in the same manner to Q&A sessions, round-table or similar events. If you ask a direct question, it may also amount to regulated lobbying if it meets the **5 Key Steps**, and would need then to be recorded as such.

There is no requirement to record your attendance at any of these events unless you actually engaged in regulated lobbying.

Awareness of those being lobbied

MSPs, members of the Scottish Government, Permanent Secretary and Special Advisers are fully aware of the Act, have prepared for its introduction and know what it means for them. If you are likely to engage in regulated lobbying with any of these individuals, or you are someone briefing colleagues who might engage in regulated lobbying, then you should familiarise yourself with who they are.

Some helpful links are here:

- [MSPs](#)
- [Scottish Government Ministers and Law Officers](#)
- [Scottish Government Permanent Secretary](#)
- [Scottish Government Special Advisers \(link correct as of July 2017\)](#)

Section Summary:

Use the **5 Key Steps** to check if you are carrying out regulated lobbying



More information

This information relates to Part 1 of the Lobbying (Scotland) Act 2016: Core Concepts.

- [Section 1: Regulated Lobbying](#)
- [Section 2: Government and Parliamentary functions](#)



COMMUNICATIONS WHICH ARE NOT LOBBYING

The final point in the **5 Key Steps** to check is whether any exemptions from regulated lobbying apply to the communications made by you or your organisation.

The schedule to the Lobbying Scotland (Act) 2016 sets out various communications that are **not regulated lobbying**. Some guidance on these is set out below.

Communications made on an individual's own behalf

The Act does not apply to discussions where individuals wish to express their own views and are not lobbying on behalf of an organisation, company, etc.

For example, if you were raising an issue in a **personal** capacity about a local school or even more generally about a school policy that applies across Scotland you should not record this on the Lobbying Register, as it is not regulated lobbying.

Communications made to Member for constituency or region (MSPs)

The Act does not apply to discussions between (most) MSPs and individuals, companies and organisations to which they have a constituency or regional connection.

This exemption was provided to ensure that most communications which businesses and organisations have with their constituency or regional MSPs will continue unchanged. This means that MSP engagement at this local level is not treated as regulated lobbying under the Act. The exemption **does not** however cover communications with MSPs who are also Scottish Ministers.

In some cases a local presence will be obvious e.g. someone who is resident in the constituency or region; a business with a strong local base or an organisation clearly active within the local area.

However some businesses and organisations are based, or operate, in multiple locations across all of the Scottish Parliament constituencies and regions in Scotland. The Act does not provide a specific measure for the level of business or activity undertaken in a constituency or region necessary for this 'local' exemption to apply – that would be very hard to define across such a varied range of possibilities.

Rather, the Act exempts any discussions between you and a local MSP if your business or activity is "ordinarily carried on" in their constituency or region. As this exemption effectively removes from regulated lobbying all communications between MSPs and those they have a genuine local relationship with, you should consider whether your business or activities are significant or relevant enough to be those which are "ordinarily carried on" in that local area.

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Three other key points to note in relation to this exemption are:

- the exemption also applies to those resident in the constituency/region (however the Act does not provide any specific definition of residency)
- the Act does not limit where any discussions take place (i.e. the discussion doesn't have to be in the constituency/region of the MSP being lobbied)
- the Act does not limit the topics raised with the MSP being lobbied to issues purely of a constituency nature.

Finally and very importantly, this exemption does not apply if:

- the MSP is also a member of the Scottish Government or a junior Scottish Minister
- the communication was made on behalf of a third party (e.g. on behalf of a different company or individual).

Communications not made in return for payment

The Act does not apply to those who are **unpaid**.

If there is no payment then your activity is not regulated lobbying. It does not therefore require to be recorded in the Lobbying Register.

So, if you make a lobbying communication and you receive no payment (of any kind) for doing so, then the exemption under the Act applies.

But, if (as set out at section 1(1)(b) of the Act) an individual does so as an employee, director, or other office holder, or as a partner or member of an organisation, in return for payment (of any kind) then there is a requirement to register (unless another exemption applies).

That is the position regardless of whether the payment itself relates to making lobbying communications.

Accordingly, you should ask yourself, firstly, whether payment is being made. If it is, and it is being paid to you as an individual, employee (or director etc.), then it is unlikely that this exemption will apply.

You should also consider, secondly, the nature of the payment itself. A payment of any kind (for example, salary, entitlement to share of profits, or indeed any other form of payment), whether made directly or indirectly for making the communication, will attract a requirement to register.

However, if you are **only** reimbursed for travel, subsistence or other reasonable expenses, this doesn't count as payment. In these specific circumstances, you would not record this on the Lobbying Register, as this exemption would apply.

Therefore, if you receive payment as set out above (however small and of whatever kind) in your role, and you engage in regulated lobbying on behalf of the person or

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organisation that pays you, then you will need to record your regulated lobbying on the Lobbying Register (unless another exemption applies).

Charities within the third sector often refer to board or committee members as 'charity trustees'. If you are a charity trustee acting in an **unpaid** capacity, then you would not record your activity on the Lobbying Register, as it is not regulated lobbying. As noted above, if payment is not being made then the question of regulated lobbying under the Act does not arise.

Communications by small organisations

The Act included this exemption in order to relieve smaller organisations, companies, etc., from the workload of registration and the provision of Information Returns on the Lobbying Register.

The exemption only applies where a small organisation, company, etc., has fewer than ten employees of full-time equivalent (FTE) around the time of any instance of lobbying. A formula exists within the Act itself (see paragraph 9 of the schedule) which you can use to check whether your organisation, company, etc., meets this exemption, if you are in any doubt.

So, if your organisation matches the conditions set out above for the 'small organisations' exemption, then you are not required to register. However, there are some additional considerations with this exemption.

- Firstly, the exemption does not apply if your company, organisation, etc., is not acting on its own behalf (e.g. you are lobbying on behalf of a third party).
- Secondly and significantly, the exemption does not apply if your organisation is a representative body (see paragraph 8 of the schedule). This means you are a body that exists primarily to represent the interests of other people.

In business, if you lobby on behalf of clients then you are clearly representing other people and your organisation is therefore not covered by the exemption (regardless of whether or not you have 10 or fewer employees). Equally, bodies lobbying on behalf of trades, industry, professions or even governing sport, act to represent their membership and will not be subject to the exemption.

For other organisations, particularly smaller charities with a membership base, this may be less clear. The Act does not define what a representative body is. However it is clear that the intent was to exempt most small organisations from the requirement to register lobbying activity. While many small organisations lobby and campaign to raise awareness of a particular cause, that does not mean they are necessarily a representative body.

To be a representative body you have to be constituted in such a way that the views of your members or supporters are actively sought, considered and actioned and this must be a core purpose of your organisation.

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Communications in Parliament or required under statute

The Act exempts communications which are made in “proceedings of the Parliament”.

The Act defines [proceedings of the Parliament](#) as meaning not only proceedings of the Scottish Parliament as a whole, but to include also proceedings of any committee or sub-committee of the Parliament. It therefore covers, for example, formal meetings of the Parliament and committee evidence sessions.

This exemption recognises that information about such proceedings is already available to the public and can be accessed by a number of means including, for example, the Official Report or where a formal agenda and minute of the proceedings is published by the Scottish Parliament.

This type of communication is therefore exempt, as the information is already going to be made available in the public domain.

This exemption does not however extend outwith those formal “proceedings of the Parliament”. Activity outside of that **(including before or after such meetings)** would be subject to the usual rules relating to regulated lobbying.

Finally, this exemption also extends to communications “required under any statutory provision or other rule of law”. So, where the terms of any legislation require the making of a communication under it then such activity would not fall to be recorded on the Lobbying Register. And similarly, where for example a key principle pertaining to a particular field of law is such that it would require the making of a communication then this would also be exempt.

Communications made on request

The Act exempts communications made in response to requests for factual information or views on a topic, from an MSP or the Scottish Government through its Ministers, Law Officers, Permanent Secretary or Special Advisers.

This was to recognise that these individuals will wish, for example, to engage over policy matters to further their own understanding of issues or to seek advice. The Act does not aim to regulate this type of activity nor place a responsibility on any individual or organisation assisting in this way.

Similarly, external consultants contracted or commissioned to advise MSPs or the Scottish Government through its Ministers, Law Officers, Permanent Secretary or Special Advisers, will be able to rely on this exemption when engaging in face-to-face communication in the context of providing that advice.

The request could come directly from those individuals or from their offices e.g. in the case of MSPs, staff employed by them or the Parliament, or in the case of Scottish Ministers or Law Officers, civil servants acting on their behalf.

So, any discussion you have following a request for factual information or views on a particular topic is not regulated lobbying and should not be recorded on the Lobbying Register.

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However, if that face-to-face discussion extends beyond the original request (i.e. you go on to lobby about other matters) then you may have engaged in regulated lobbying. Once again, check the **5 Key Steps** to be sure.

As with any other instance of regulated lobbying, the obligation is on you or your organisation to record this on the Lobbying Register. The person lobbied (e.g. a Minister or MSP) may well expect to see that conversation recorded as regulated lobbying activity, as it extended beyond the original request and purpose of the meeting.

If you or your organisation requested the discussion then this exemption does not apply.

Cross-Party Groups (CPGs)

CPGs are already subject to parliamentary rules which require them to publicise information about their activity and list those who attend meetings. For this reason, the Act exempts communications which are made in the course of such a meeting.

The exemption **only** applies to communications made during meetings of a CPG at which there is a quorum. To be quorate, at least two MSPs who are members of the Group must attend. The usual rules relating to regulated lobbying apply to any activity outside of that (including before or after such meetings). This of course applies to secretariats which serve CPGs, who are still required to consider any conversations which take place outside of a quorate CPG meeting and make a judgement about whether they have lobbied, based on the **5 Key Steps**.

Journalism

Paragraph 14 of the schedule to the Act provides an exemption for “a communication made for the purposes of journalism”.

You should therefore consider whether the communication concerned is being made “for the purposes of journalism”. The Act does not elaborate on what is meant by “journalism”, although it will generally be plain whether the communication concerned falls within paragraph 14.

Communications in relation to terms and conditions of employment

The Act exempts discussions which are **negotiations** on terms and conditions of employment by employers and/or trade unions. So, you should not record this on the Lobbying Register, as this is not regulated lobbying.

This recognises the need to keep key negotiations about terms and conditions of employment confidential (when discussed between MSPs and/or the Scottish Government with employers and/or trade unions).

Communications by political parties

The Act exempts communications made by or on behalf of a number of identified public individuals and office holders, including political parties registered under Part 2 of the [Political Parties, Elections and Referendums Act 2000](#).

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Communications by judiciary

The Act exempts communications made by a number of identified public individuals and office holders, including communications by or on behalf of members of the judiciary in the United Kingdom and an international court which is established under a treaty on a UN resolution.

Communications by Her Majesty

The Act exempts communications made by a number of identified public individuals and office holders, including Her Majesty and those acting on Her behalf.

Government and Parliamentary communications etc.

This Act exempts communications by or on behalf of governments, parliamentarians and other institutions in Scotland, the UK, the EU and internationally.

The full list is set out in paragraph 22 of the [schedule](#) to the Act and includes communications by or on behalf of elected members and office-holders of UK based parliaments and governments.

The list also includes communications by or on behalf of local authorities and public authorities already designated under Scottish or UK Freedom of Information legislation – see the [Freedom of Information \(Scotland\) Act 2002](#) and [Freedom of Information Act 2000 \(the UK Act\)](#).

Internationally, it includes communications by or on behalf of other states; the EU institutions and international organisations.

Section Summary:

Key exemptions will exclude many people who only lobby in a personal, local

Other exemptions apply to avoid duplication with existing guidelines or

Some public bodies and individuals are also exempt.



More information

This information relates to the schedule of the Lobbying (Scotland) Act 2016:

- [Schedule: Communications which are not Lobbying](#)



USING THE LOBBYING REGISTER

The Scottish Parliament is responsible for establishing and maintaining the Lobbying Register at www.lobbying.scot. The Lobbying Register is available online for anyone to use and search. It is free of charge to use.

It contains:

- Registration details provided by every individual or organisation engaged in regulated lobbying.
- Information Returns for each instance of regulated lobbying, made by each registered individual or organisation.

Registration

The starting point for using the Lobbying Register is registration.

You can click on to www.lobbying.scot to view either a short video or user guidance. This sets out:

- How to register an account on the Lobbying Register for your organisation.
- What registration details you require to add for your organisation.
- How to set up your account with a generic email address and password, to allow you and others in your organisation to use the Lobbying Register (if you so wish).

Important note: if you want more than one person in your organisation to use the account, we recommend use of a generic email address (e.g. admin@acme.co.uk) and a shared password.

You do not have to wait until you have carried out an instance of regulated lobbying. You can register in advance, especially if you expect to engage in regulated lobbying within the next six months.

You should also register in advance if you want to become a voluntary registrant (see voluntary registration further below).

Re-classification

If you find, after you have registered, that your situation in relation to regulated lobbying has changed, you can ask to be re-classified from an 'active' registrant, to an 'inactive' registrant (e.g. if you no longer carry out regulated lobbying).

Voluntary registrants can also be removed from the register, on application to the Registrar.

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Information Returns

For the Lobbying Register to be consistent, accurate and truly transparent, it's important it captures all of the required information when regulated lobbying takes place.

The Lobbying Register itself is intended to provide a straightforward means by which you can comply with the Act.

You can click on to www.lobbying.scot to view either a short video or guidance text. This sets out:

- How to create an Information Return
- How to save a draft Information Return
- How to submit an Information Return
- How to view your organisation's previous Information Returns.
- How to create a 'copy' version of an existing draft entry, to help you create a new Information Return.

As the Lobbying Register is publicly available it is important to make sure that the information you provide in Information Returns is accurate, relevant and understandable. Those searching the Lobbying Register are interested to see and understand who you have lobbied, the purpose of that lobbying and where and when it took place.

The Act requires that you register no later than 30 days after your first instance of regulated lobbying occurs. As a minimum, you must submit an Information Return no later than 2 weeks after the end of each 6 month period after you first engaged in regulated lobbying.

In the case of those who 'pre-registered' before carrying out regulated lobbying, this date is 6 months from when your organisation applied for registration.

These are the **statutory** requirements; however it is up to you when to submit an Information Return within that statutory period.

Some organisations may wish to submit an Information Return soon after each instance of regulated lobbying, others may prefer to wait and submit all Information Returns around the same time within the statutory period (the size of your organisation and who has responsibility for submission of returns may determine this). Either way is absolutely fine.

If you did not engage in any regulated lobbying at all during a 6 month period, you must still record this. You can select this 'nil return' option when on the Information Return page.

The Lobbying Register will issue a system reminder by email about the statutory period requirements, every six months.

The following guidance may help in terms of what details must be provided within Information Returns (and what is not necessary).

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Declaration that registration details are up to date

Before entering any details in an Information Return you must check and declare that your registration details are up to date. This is a requirement of the Act. The declaration simply requires you to tick a box.

Date of lobbying activity

The Lobbying Register provides an automated function (a date selection box) for this purpose. An optional 'time lobbied' choice is also available (you may have had several instances in one day for example).

Role of person lobbied

Select from the drop-down list the role of the person lobbied either:

- Civil Servant (i.e. the one choice of Permanent Secretary as the only civil servant covered by the Act)
- Minister
- MSP
- Scottish Law Officer, or
- Special Adviser

Name of the person(s) lobbied

A list relevant to your choice above is provided (e.g. if you lobbied a Minister then only Scottish Government Ministers are on the list as available choices).

Choose the person you lobbied. To add more individuals use the 'Add another lobbied person' button and repeat the process as necessary.

To ensure long-term information consistency, the Lobbying Register has been set up so that it does not record individual Ministerial titles. You should enter this information manually instead, in the field covering description of the meeting.

The following links may help when compiling your return.

- [MSPs](#)
- [Scottish Government Ministers and Law Officers](#)
- [Scottish Government Permanent Secretary](#)
- [Scottish Government Special Advisers \(link correct as of July 2017\)](#)

Location where person was lobbied

Type details of the location in the free text box.

Generally, adding details here should be straightforward. However, we are aware that there could be personal data regarding an individual or individuals, or other concerns where lobbying took place in less formal arrangements (e.g. a discussion took place at a child's school). If you have any such concerns please feel free to discuss these in advance with the Lobbying Register Team.

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Description of the meeting, event or other circumstances in which the lobbying occurred

Type details in the free text box to describe what type of meeting, event or other occasion the regulated lobbying occurred at.

Adding details here should be straightforward but, where similar sensitivities to those mentioned above exist, please feel free to discuss these in advance with the Lobbying Register Team. In terms of good practice, you should also use this section to add:

- the relevant Ministerial title(s), when lobbying a Scottish Minister (e.g. First Minister)
- the relevant constituency/region, when lobbying an MSP, e.g.
 - Joan Smith MSP, Member for Glasgow Cathcart (constituency)
 - Jim Smith MSP, Member for Highlands and Islands (region)

Communication type

Select from the drop-down list whether the communication was made face-to-face or via video conference.

Name of the individual who made the communication

Type in the free text box the name of the person(s) who were involved in this instance of regulated lobbying. This can include unpaid individuals who attended with paid individuals if you wish, and their roles can also be added for context.

Was the lobbying undertaken on registrant's own behalf?

In response to this question you should select either Yes or No.

Name of the person on whose behalf the lobbying was undertaken

If you have selected 'No' above, you should type in the free text box the name of the person or organisation on whose behalf the lobbying was undertaken.

Purpose of the lobbying

As mentioned above the Lobbying Register is a publicly available register and those searching the Lobbying Register are interested to see and understand who you have lobbied, the purpose of that lobbying and where and when it took place.

Therefore, the information you provide in this free text box is crucial. It must describe, in an accurate and meaningful way, for all readers of the Register, the purpose of your regulated lobbying. It is helpful to mention what the lobbying was seeking to achieve. Without that, the Lobbying Register will not be able to fulfil the purpose for which it was established.

Information Returns are processed initially by the Lobbying Register Team before publication. As such, the Team may be able to provide some assistance before publication. However, while the Team administers the Register, there is a

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responsibility on you to ensure that the information provided in your Return is accurate and complete. The aim of any check carried out by the Team is essentially to ensure a consistent approach between users and to help new users in particular become familiar with using the Lobbying Register alongside this parliamentary guidance.

Declaration that registrant has not engaged in regulated lobbying

After your initial registration you are required, as a minimum, to provide Information Returns every 6 months. If you haven't engaged in any regulated lobbying during that period you simply need to tick a box on the Information Return screen to declare this prior to submitting your Return.

Search

Click on to www.lobbying.scot to view either a short video or read user guidance. This sets out:

- How to use the various search functions to find what you are looking for in the Lobbying Register.
- How to export search results from the Lobbying Register (e.g. in CSV format)

Voluntary registration

The Act also allows for voluntary registration, so long as a person is not already an active registrant.

This recognises that some individuals, companies or organisations will wish to submit information to the Lobbying Register but might not otherwise be required to do so because certain exemptions in the Act mean that the lobbying they carry out does not constitute regulated lobbying.

For example, where an organisation's lobbying is all carried out by unpaid staff this would not amount to regulated lobbying. However, as the organisation still participates in face-to-face lobbying of MSPs, Scottish Ministers etc. it may want to be able to record this lobbying on a voluntary basis.

Voluntary use of the Lobbying Register therefore allows such organisations to pre-register and then submit Information Returns in the same way as that of other registrants.

If you think your organisation may wish to apply for voluntary registration, then you should discuss this in the first instance with the Lobbying Register Team and then simply follow the same guidance as set out above for Registration and Information Returns.

For your benefit and the clarity of other users, the Lobbying Register will identify your activity on the register as having been provided on a voluntary, rather than statutory, basis.

Under the Act, your organisation cannot be both a voluntary registrant and an active registrant.

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Voluntary **registration** should not be confused with use of the register by organisations in the voluntary **sector**.

Section Summary:

Pre-register in advance or register within 30 days of your first instance of

You then submit an Information Return for each instance of regulated lobbying

If you have not engaged in regulated lobbying within the 6 month period you

You may apply to be made 'inactive', if your circumstances have changed and

Remember, you can still apply to use the Lobbying Register on a voluntary Act.



More information

This information relates to the Part 2 of the Lobbying (Scotland) Act 2016:
[The Lobbying Register](#)

See the short videos or user guidance at www.lobbying.scot about:

- How to Register
- How to submit an Information Return
- How to search the Lobbying Register



Oversight and Enforcement

Part 3 of the Act includes details about oversight and enforcement of its requirements:

- The Clerk of the Scottish Parliament has a duty to monitor compliance with the Act. In practice, responsibility has been delegated to the Lobbying Register Team within the Parliament on a day-to-day basis. If an individual reports a failure to register regulated lobbying activity the Lobbying Registrar could ask for details by issuing an 'Information Notice'.
- The Commissioner for Ethical Standards in Public Life in Scotland is responsible for investigating complaints about alleged breaches.
- Ultimately, the Parliament has the power to censure a person if a breach is found to have occurred.
- The Act includes criminal offence provisions with associated penalties including fines. Certain offences under the Act are also punishable by imprisonment.

Information Notices

The Act provides powers for the Clerk of the Parliament to issue Information Notices.

An Information Notice can be served on existing users of the Lobbying Register as well as any others where there are grounds for believing that there has been engagement in regulated lobbying.

The Information Notice will set out what information is being sought; the form in which it should be supplied; and the date by which this must be done. The notice will also set out the right of appeal to the sheriff (or ultimately the Sheriff Appeal Court) against the notice itself or any requirement specified in it.

Role of the Commissioner

The Act places a duty on the Commissioner for Ethical Standards in Public Life in Scotland ("the Commissioner") to investigate and report on admissible complaints into non-compliance. This covers alleged failures around:

- The requirements to register following a first instance of regulated lobbying.
- The accuracy and completeness of Registration information provided.
- The accuracy and completeness of Information Returns provided.
- The accuracy and completeness of information provided in response to an Information Notice.

The Commissioner must assess whether the complaint is admissible and, if so, investigate the complaint and report to the Parliament. The conditions, set out in Section 23(3) of the Act, are that the complaint:

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- is made in writing to the Commissioner,
- is made by an individual, is signed by that individual and states that individual's name and address,
- names the person to whom the complaint relates,
- sets out the facts related to the conduct complained about, and
- 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.

Parliament's power to censure

[Section 40](#) of the Act sets out the Parliament's power to censure a person who is the subject of a report from the Commissioner.

Offences

Provision regarding offences relating to registration and information returns is contained within [section 42](#). A person who commits an offence under section 42 can be fined up to an amount not exceeding [level 3 on the standard scale](#), currently £1,000.

Offences relating to Commissioner investigations are contained in [section 36](#). A person who commits an offence under section 36 can be sentenced to imprisonment for a period not exceeding 3 months, or fined an amount not exceeding level 5 on the standard scale, currently £5,000 (but not both).

Section Summary:

The Clerk oversees compliance.

By way of further oversight, the Commissioner investigates possible breaches

Ultimately, criminal prosecution and penalties may apply.



More information

This information relates to the Part 3 of the Lobbying (Scotland) Act 2016:

- [Oversight and Enforcement](#)



Parliamentary Guidance, Resolutions, Review & Code of Conduct

Parliamentary Guidance

The Act requires the Parliament to prepare and publish guidance on its operation. It must consult the Scottish Ministers before doing so, and must do so also when updating or replacing the guidance.

[Section 43](#) sets out the matters to be covered, as set out within this guidance.

Parliamentary Resolutions

[Rule 3C.2](#) of the Parliament's Standing Orders sets out the procedure for resolutions made by the Parliament under specified provisions contained within the Act. These resolutions represent a form of subordinate legislation.

The resolution powers enable further provision to be made, to develop the existing content in relation to certain aspects of the Act or, in specified circumstances, to make changes to it. These relate to such matters as the Clerk's duties in relation to the register, the content of it and other aspects largely relating to the ongoing administration of the register. Other powers to make changes around oversight and enforcement are also provided, and in particular the Parliament is required to make further provision about the procedures to be followed when the Commissioner submits a report to the Parliament. The list of communications which do not represent regulated lobbying under the Act, as set out in the schedule, can also be expanded.

Parliament must consult the Scottish Ministers before making a resolution. The process also requires the involvement of the Standards, Procedures and Public Appointments Committee and the Delegated Powers and Law Reform Committee. The Delegated Powers and Law Reform Committee must scrutinise and report on a resolution and it then requires to be approved by the Parliament as a whole before coming into force.

These powers to make changes by resolution were built into the Act to ensure that there is scope, for example, to refine elements of the process in light of experience of operating the Act. It is anticipated that they will be used sparingly, in response to issues identified following practical experience over time.

Parliamentary Review

The Act contains provision for a formal review to start after two full years of operation of the Lobbying Register (i.e. in 2020). The review is to be conducted by a committee of the Scottish Parliament.

That review will involve taking evidence from stakeholders and others felt by the committee to be appropriate. The committee is to publish and consult upon a draft report and any recommendations within it before publishing a final version.

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Code of Conduct

The Act requires the Parliament to publish a Code of Conduct for anyone lobbying members of the Parliament. This does not apply solely to regulated lobbying. It is available at www.lobbying.scot.

Section Summary:

Parliamentary Guidance is required by the Act and provided by this document.

Parliamentary Resolutions can be used to make certain limited changes to the

A review of the Act by a parliamentary committee will start in 2020.

The Act also requires the publication of a Code of Conduct for anyone lobbying members of the Parliament.



More information

This information relates to the Parts 4 and 5 of the Lobbying (Scotland) Act 2016:

- [Section 4: Guidance, Code of Conduct and Public Awareness](#)
- [Section 5: Final Provisions](#)



Annex: Summary of the Lobbying (Scotland) Act 2016

The Lobbying (Scotland) Act 2016

The Act comprises five parts:

Part 1 sets out the core concepts underpinning the registration regime, including the concept of engaging in regulated lobbying and the related concepts of Government and parliamentary functions and, in the schedule, communications which are not lobbying for the purposes of the regime.

Part 2 sets out the framework for the operation of the lobbying register including duties to register and submit returns of regulated lobbying activity, the content of the register and the role and functions of the Clerk of the Scottish Parliament ('the Clerk') in operating the register,

Part 3 sets out the oversight and enforcement regime including the role of the Clerk, the role of the Commissioner for Ethical Standards in Public Life in Scotland, and offences.

Part 4 contains provision related to the publication of (this) parliamentary guidance and a code of conduct for persons lobbying MSPs and provision related to raising public awareness and understanding of the Act.

Part 5 contains final provisions relating to interpretation, the process for making Parliamentary Resolutions under the Act, ancillary provision and other technical matters.

The Lobbying (Scotland) Act 2016 places a duty on the Clerk to establish and maintain a lobbying register, which is to contain information about active, inactive and voluntary registrants.

The Clerk also has specific functional responsibilities under the Act. These relate to registration and compliance of those engaged in regulated lobbying and the publishing, and maintenance of, information contained on the lobbying register. There are also powers in the Act to allow the Clerk to require specified information.

The duties of the Clerk are carried out at an operational level by the Scottish Parliament's Lobbying Registrar and team.

It is important to always to keep in mind exactly what constitutes **regulated lobbying**.

It is set out in the Act as follows:

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

(a) the person makes a communication which—

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(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.

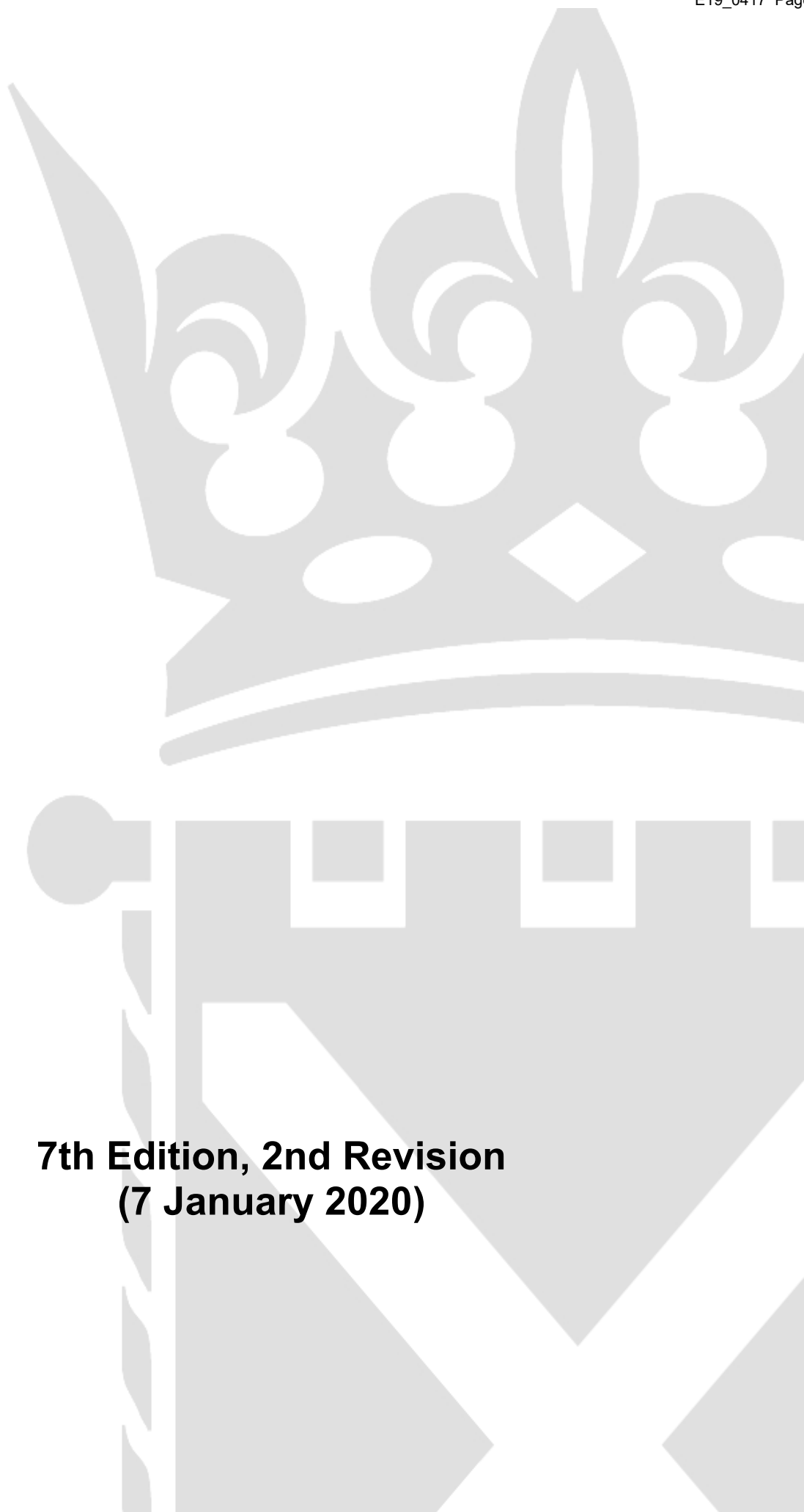


The Scottish Parliament
Pàrlamaid na h-Alba

Code of Conduct

Còd Giùlain

7th Edition, 2nd Revision
(7 January 2020)



**7th Edition, 2nd Revision
(7 January 2020)**

THE CODE OF CONDUCT FOR MEMBERS OF THE SCOTTISH PARLIAMENT

INTRODUCTION

1. The Code of Conduct for Members of the Scottish Parliament (“the Code of Conduct” or “the Code”) sets out the standards of conduct for members of the Scottish Parliament in relation to their Parliamentary duties as an MSP.
2. The Code of Conduct is enforceable. In other words, every MSP is required to understand and comply with its rules. A breach of the Code could lead to sanctions being imposed on a MSP.
3. There are some activities which are not covered by the Code. The Code does not cover—
 - Members’ private and family life
 - Members expressing their political views (in their capacity as a member of a political party or organisation)
 - Members who are Ministers, when acting as Ministers of the Scottish Government and carrying out functions of the Scottish Government covered by the Ministerial Code
4. If a member is uncertain about how the rules apply, they can ask the Standards Clerks for advice. Members may also choose to consult their own legal advisers. On detailed financial and commercial matters, they may wish to seek advice from other relevant professionals.
5. The Code of Conduct is accompanied by [guidance](#). This additional material does not form part of the Code and is not enforceable.

CODE OF CONDUCT FOR MEMBERS OF THE SCOTTISH PARLIAMENT

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SECTION 1: REGISTRATION OF INTERESTS

Introduction

1. The Code of Conduct (the Code) provides details of the requirements for the registration of members' interests. Further information can be found in the [associated guidance](#).

Interests of Members of the Scottish Parliament Act 2006

2. The [Interests of Members of the Scottish Parliament Act 2006](#) ("the Act") sets out the statutory requirements that apply to the registration and declaration of members' interests.

3. The types of financial interest which must be registered are those which might be thought to influence a member's actions, speeches or votes in the Parliament (and in some circumstances, interests which are in connection with political activities).

4. [The Interests of Members of the Scottish Parliament \(Amendment\) Act 2016](#) amended the Act to incorporate the registration requirements of the [Political Parties, Elections and Referendums Act 2000 \(PPERA\)](#). These changes ended the dual reporting of certain financial interests, to both the Electoral Commission and the Scottish Parliament.

5. The PPERA requirements about permissible donations and regulation of loans and related transactions still apply. Written guidance on these requirements is available and advice can also be obtained from the Electoral Commission.

Registrable interests

6. The 2006 Act sets out the circumstances in which financial interests must be registered. These are commonly referred to as 'registrable interests'.

7. It is the responsibility of each member to ensure that they comply with the Act. Penalties and criminal sanctions may apply in the event of non-compliance with the requirements for registration.

8. If a member is uncertain about any aspect of the operation of the Act or the Code, the [Standards Clerks](#) may be asked for advice. Members may additionally wish to seek independent legal and other professional advice prior to registration.

Access to the Register

9. The Register only applies to the current session of the Parliament. At the beginning of each new session a new Register is set up for both new and returning members.

10. The Register is available online. Each member's current register entry is published as part of their Parliament web pages.

11. Snapshots of the full register are published annually on the Parliament's website.

12. Old register entries are kept for a ten year period (after amendment or deletion).

13. Under PPERA, the Electoral Commission is required to maintain its own register. The Electoral Commission obtains the information it requires from entries in the Parliament's register and any supplementary information from the Standards Clerks (i.e. information which is not published, such as individuals' addresses).

Initial registration of interests

14. After an election, members must register interests by lodging written statements with the Standards Clerks.

15. Members must register all registrable financial interests held by them on the date they were returned or which they have acquired on that date or since that date.

16. Controlled transactions (loans, credit facilities, etc.) do not require to be registered if entered into by the member before the date on which they were returned.

17. Additionally, any interest held before the date on which the member was returned but which is no longer held must also be registered if it meets the prejudice test (set out in section 3(2) of the Act and restated below). A member must decide whether any interest meets that test.

The prejudice test

18. An interest meets the prejudice test if, after taking into account all the circumstances, that interest is reasonably considered to prejudice, or to give the appearance of prejudicing, the ability of the member to participate in a disinterested manner in any proceedings of the Parliament.

19. In making a decision as to whether an interest meets the prejudice test, a member must consider not just whether the member feels influenced by the existence of the interest but whether a fair minded and impartial observer would consider that it could influence a person acting as an MSP or give the appearance of prejudicing that person's ability to act impartially.

Completion of written statements

20. The written statement contains guidance to assist completion. Copies are available from the Standards Clerks. Following return, the statement must be lodged with the Standards Clerks no later than the date which is 30 days after the date on which a member takes the oath of allegiance or makes a solemn affirmation in accordance with section 84(1) of the Scotland Act 1998 ("the Scotland Act").

21. Interests acquired on the date of return must be registered within 30 days of that date. Any member who acquires an interest on the date of return should consult the Standards Clerks as soon as possible after that date.

22. Section 18 of the 2006 Act sets out special arrangements applying to the Lord Advocate and Solicitor General for Scotland who, under section 39(8)(b) of the Scotland Act, are included as members for the purposes of the Register and also required to submit written statements of their registrable interests.

23. If the member has no registrable interests, the Act provides that a written declaration must be lodged with the Standards Clerks to that effect. There is no specific form for a written declaration specified in the Act. Members who wish to make such a declaration may, however, make a written declaration by ticking “no” in the relevant boxes in the written statement. Alternatively, Members can email the Standards Clerks from their own Parliamentary email account to indicate that they have nothing to register.

Registration of interests acquired after date that the member is returned

24. Where an interest is acquired after the initial registration, the procedure is largely the same as for initial registration. A member must register an acquired interest by lodging a further written statement within 30 days beginning with the date of acquisition.

25. The form of written statement is again the same as that provided for initial registration but in this case the member fills in only the information relating to the acquired interest. Alternatively, Members can email the Standards Clerks from their own Parliamentary email account with the details of the interest they wish to register.

26. Members should note that it is possible that an interest which a member already has may change in nature to become a registrable interest. That would occur where, for example, the value of heritable property or shares increases to exceed the specified financial limit. Such interests should be treated as new interests that have been acquired on the “relevant date”. Where the interest did not exceed the threshold on return or on any later date on which the interest was acquired, the “relevant date” is 5 April each year thereafter. Members therefore need to ensure that such interests are revalued as at each 5 April.

Reporting and registration of changes to controlled transactions

27. Members must register any change to a registered controlled transaction (loan, credit facility, etc.) within 30 days beginning with the date on which the change takes effect. This includes the ending of a controlled transaction.

Late Registration

28. Where a member has omitted to register an interest due, for example, to an oversight or misunderstanding, the member must register that interest within seven days of becoming aware that registration was required. It should be noted that the

obligation to register such an interest persists even where the member has subsequently disposed of the interest.

29. Members should rectify omissions as quickly as possible and should contact the Standards Clerks as soon as they become aware that something has been overlooked. Failure to register an interest is a criminal offence and opens a member up to the possibility of prosecution as well as sanctions imposed by the Parliament.

Voluntary registration

30. A member may register on a voluntary basis an interest which does not require to be registered by lodging a written statement or emailing the Standards Clerks at any time.

31. Members are not obliged to register these entries within 30 days under the Act. Once Standards Clerks are informed of such an entry, they are obliged to publish it within 30 days.

Changes to the register

32. Following initial registration, members may notify the Standards Clerks of additions and amendments to, or deletions from their register in signed hard copy or by email from their personal Scottish Parliament account. Deletions and amendments can be provided in the form of a written notice, either in signed hard copy or by email.

Deletion of interests from the Register

33. A member may instruct deletion of a registered interest from the Register if it is a ceased interest. A ceased interest is an interest which is registered but which no longer requires to be registered and voluntary registrations which the member no longer wishes to be registered.

34. A member is not required to delete ceased interests but members are encouraged to do so as it is helpful in terms of accountability and openness to the public if the Register is up to date at all times.

35. The only entries which may not be deleted under the terms of the Act are those which constitute remuneration under the remuneration and related undertaking category (because the member has received the remuneration and that cannot be reversed), although the terms of an entry relating to remuneration may be amended to reflect that remuneration is no longer received from that source.

36. Where a member wishes to have a ceased interest removed from the Register, the member should lodge with the Standards Clerks a written notice, in signed hard copy or by email from their personal Scottish Parliament account, identifying the ceased interest and giving the date that it became a ceased interest.

37. Within 30 days after the written notice is lodged, the Standards Clerks will amend the member's entry to record that the relevant interest is a ceased interest.

38. Not less than 12 months after the notice was lodged, the clerks will further amend the entry in the Register by deleting the interest and information relating to it and send a copy of the amended entry to the member.

39. Certain information will remain on the Electoral Commission's register even if it has been deleted from the Scottish Parliament register.

Deletion of controlled transaction entries from the Register

40. Members must notify the Standards Clerks of the ending of a controlled transaction within 30 days.

Amending an interest

41. A member should also monitor any changes in the status of their registered interests and seek to amend an entry where necessary. With the exception of controlled transactions, a member is not required by the 2006 Act to amend interests but members are encouraged to do so as it is helpful to the public if the Register is up to date at all times.

42. The member should consult the Standards Clerks on whether a proposed amendment is possible and what the notice of the amendment should contain. Within 30 days of the written notice being lodged the Standards Clerks will amend the entry and send a copy to the member.

Sanctions and offences for non-registration

43. Where a member fails to register an interest by failure to lodge a written statement in respect of a registrable interest within the relevant time limit, or fails to notify a change to a controlled transaction within 30 days of that change, the Parliament may apply sanctions to that member. It may also apply sanctions where a member has lodged a written notice to the effect that an interest has ceased when it has not in fact ceased.

44. The Parliament may, as it considers appropriate in a particular case, prevent or restrict such a member from participating in any proceedings of the Parliament relating to the matter in which there is an interest. Section 17A means that the Parliament may exclude a member from the premises or part of the premises, withdraw the member's right to use the facilities and services or salary and allowances provided by the SPCB or debate and agree to a motion of censure.

45. In addition, when a member fails to comply with or contravenes any registration requirement or fails to adhere to any sanction imposed as a result of non-registration, the Parliament may exclude that member from proceedings in the Parliament for such period as it considers appropriate (section 16). This could occur, for example, where a member refuses to provide all the required information about a particular registrable interest.

46. Finally, in terms of section 17 of the 2006 Act failure to register a registrable interest, or to notify a change to a controlled transaction and failure to comply with

any sanctions imposed by the Parliament as a result of that failure are criminal offences. It is for the Commissioner for Ethical Standards in Public Life in Scotland to refer breaches of the Act to the Procurator Fiscal if they come to light in the course of an investigation of a complaint. A member found guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

SECTION 2: CATEGORIES OF REGISTRABLE INTERESTS

Introduction

1. The Schedule to the [Interests of Members of the Scottish Parliament Act 2006](#) (the Act) sets out the categories of registrable financial interests which a member **must** register. These are set out below with reference to the relevant provision in the Act and with explanatory notes designed to help members when registering their interests under any particular category. Members should refer to Section 1 of this Code for the general requirements in relation to registration.

Remuneration and related undertaking – Schedule, paragraph 2

A member has, or had, a registrable financial interest:

(A1) Where the circumstances are as described in sub-paragraph (1) or (1A).

(1) Where a member receives, or has received, remuneration by virtue of—

- (a) being employed;
- (b) being self-employed;
- (c) being the holder of an office;
- (d) being a director of an undertaking;
- (e) being a partner in a firm; or
- (f) undertaking a trade, profession or vocation.

(1A) Where a member is, or was—

- (a) a director in a related undertaking; or
- (b) a partner in a firm,

but does, or did, not receive remuneration by virtue of being such a director or partner.

(2) A member does not fall within sub-paragraph (1) solely by virtue of being, or of having been, a member, a member of the Scottish Executive or a junior Scottish Minister or holding or having held the office of Presiding Officer, deputy Presiding Officer or member of the Parliamentary corporation or of Convener, deputy Convener or member of a committee of the Parliament.

(3) Sub-paragraph (1) does not apply where the remuneration received from a person on a single, or on more than one, occasion during the current parliamentary session consists solely of expenses unless those expenses amount, or amount in aggregate, to more than the specified limit.

(4) The exception in sub-paragraph (3) applies even although the remuneration received from that person on another occasion, or on other occasions, during that session does not consist solely of expenses.

Key definitions:

“Remuneration” includes any salary, wage, share of profits, fee, expenses and other monetary benefit or benefit in kind (the Act, section 19(1)). This would include, for example, reimbursement of costs incurred and the provision by an employer of a company car or travelling expenses.

“a related undertaking” is a parent or subsidiary undertaking of an undertaking of which the member is a director and receives remuneration as a director as mentioned in sub-paragraph (1)(d);

“Undertaking” has the same meaning as in the Companies Act (see section 1161(1) of the Companies Act 2006) and means, in broad terms, (a) a body corporate or partnership; or (b) an unincorporated association carrying on a trade or business, with or without a view to a profit;

“Parent” and “subsidiary” undertakings have the same meaning as in section 1162 of the Companies Act 2006;

“specified limit” means 0.5% of a member’s salary (rounded down to the nearest £10) at the beginning of the current parliamentary session;

“current parliamentary session” means the parliamentary session which begins immediately after, or in which, the member is returned;

“prejudice test” an interest meets the prejudice test if, after taking into account all of the circumstances, that interest is reasonably considered to prejudice, or give the appearance of prejudicing the ability of the member to participate in a disinterested manner in any proceedings of the Parliament.

Remuneration and related undertaking

Remuneration

2. Remuneration received from the date of return as an MSP which falls into the categories (1)(a)-(f) and related undertakings which fall into categories (1A)(a) and (b) must be registered. Remuneration received solely as an MSP (i.e. MSPs’ salary and allowances) or solely as a result of holding the following offices is expressly excluded—

- a member of the Scottish Executive or a junior Scottish Minister
- Presiding Officer
- deputy Presiding Officer
- member of the Parliamentary corporation
- Convener or deputy Convener of a committee of the Parliament
- member of a committee of the Parliament.

3. Expenses, including those that represent reimbursement of costs incurred, fall within the definition of remuneration—

- Remuneration, consisting solely of expenses, which does not exceed the specified limit (0.5% of a member’s salary at the beginning of the current parliamentary session, rounded down to the nearest £10) is not registrable.
- Expenses received from a single source on a single occasion that exceed the specified limit are registrable.
- Expenses received from a single source, which in aggregate during a parliamentary session exceed the specified limit, are registrable.

4. Members should therefore keep a record of all expenses received from the date of the member’s return, whether or not these are registrable at the time, so that they are aware if the aggregate expenses, from a single source, exceed the threshold for registration.

5. Where a member receives expenses at the same time as receiving other remuneration (for example, a fee) from the same source these expenses are always registrable regardless of the sum involved.
6. Remuneration received prior to the date of return as an MSP must also be registered if it meets the prejudice test. In terms of section 3(2) of the Act, an interest meets the prejudice test if, after taking into account all the circumstances, that interest is reasonably considered to prejudice, or to give the appearance of prejudicing, the ability of the member to participate in a disinterested manner in any proceedings of the Parliament.
7. Remuneration (including expenses exceeding the specified limit) received as an MP at Westminster or as an MEP should be registered where there is an overlap in the holding of both offices; as should any allowances paid in relation to membership of the House of Lords or any other institution except the Scottish Parliament: for example, the Committee of the Regions.
8. When registering remuneration from employment, members must include the name of the employer, the employer's principal business address (if not a private individual), the nature of its business and the position that they hold.
9. When registering remuneration from self-employment or a partnership, members must include the name and nature of the business or partnership. The principal business address of the partnership must also be given. If a member is self-employed and carries on the business from the member's private address, that address need not be included.
10. When registering remuneration from being the holder of an office, members must provide the name of the organisation in which an office is held, its principal business address, the nature of its business and the position held. Such positions can be in private businesses or public sector organisations. Examples include being a director of a consultancy firm or being a member of an advisory board or committee.
11. When registering remuneration from a directorship, members must provide the name of the undertaking in which the directorship is held, its principal business address and the nature of its business.
12. Where registering remuneration from a trade, profession or vocation, members must provide any name under which the trade etc. is carried out and the regularity and nature of the activity. Where work is provided under contract to one particular person or body, it is suggested that the names of that person or body should be given (under the requirement for any relevant additional information). For example, a member who is contracted to write a series of newspaper articles should consider giving the name of the publication and the frequency of articles for which the member is paid as well as the remuneration itself.
13. One-off activities which members might undertake, such as speaking at a conference or writing a single newspaper article, do not constitute remuneration from a trade, profession or vocation even if the member receives a fee or expenses for

doing so (although this could be registered under the voluntary category). However, if a member undertakes such an activity on a regular, remunerated basis, this may be considered remuneration from a trade, profession or vocation. There may be circumstances where a one off activity is registrable under another category (e.g. gifts) if a payment of money, or transfer of property, in return for that activity goes beyond normal commercial rates.

14. For the purposes of initial registration, remuneration must be registered under each category ((1)(a)-(f)) with reference to the gross amount per annum (or nearest estimate) that a member expects to receive from the date of return. That remuneration will then be expressed in that member's entry in the Register as being remuneration falling within the following bands—

- up to £500
- between £501 - £1,000
- between £1,001 - £2,000
- between £2,001 - £3,000
- between £3,001 - £5,000

and thereafter in intervals of £5,000.

(Members may specify an exact figure, instead of indicating a bandwidth, if they wish.)

15. In the case of remuneration received prior to the date of return and to which the prejudice test applies, the remuneration received must be registered within the relevant band for each year in which it was received.

16. Where remuneration is being received but the member does not know the exact amount that will be received, the member must register remuneration on the basis of what the member expects to receive. Where this later proves to be inaccurate, the member is encouraged to amend the entry by lodging an appropriate amendment so that the remuneration is shown within the appropriate band. Paragraphs 41 and 42 of Section 1 of this Code provide further information on amending interests.

17. Members must also register any new remuneration for work undertaken after the date of return as a newly acquired interest.

18. Remuneration received on or after the date of a member's return is registrable, even if the activity was undertaken in advance of them becoming a member. Under the terms of the Act the relevant date that the interest is acquired is the date of receipt of payment.

Late registrations

19. Members must take steps to register any remuneration that they have accidentally overlooked, or had not realised required to be registered, as soon as possible and in all cases, within seven days of becoming aware of it.

Ceased interests

20. A member may not cease an interest that consists of remuneration. Such interests will therefore remain on the register for the duration of the session.

21. Redundancy payments are registrable on receipt. Members are not required to register pensions. However, if a member wishes to, a pension may be registered voluntarily.

Related undertaking – non-remunerated directorships

22. Members are required to register any directorships which they hold, which are not remunerated, where the undertaking in which they hold a directorship is a parent or a subsidiary of an undertaking in which the member holds a remunerated directorship.

23. Members are required to register the name of the related subsidiary or parent undertaking, the nature of its business, its principal business address and its relationship to the other undertaking in which the member is a director and from which the member receives remuneration. The Interests Act defines parent undertakings or subsidiary undertakings by reference to the Companies Act 2006.

24. Any other unremunerated directorships which are not related in any way to a remunerated directorship do not require to be registered but they may be registered on a voluntary basis.

Partnerships – non-remunerated partners

25. Members are required to register being a partner in a firm where the member does not, or did not, receive remuneration by virtue of being such a partner. This could be where a member is a sleeping partner in a business or a business whose operating profits are wholly reinvested in the business. Members who are unremunerated partners in firms are required to register the name of the firm, its principal business address and the nature of its business.

Gifts – Schedule, paragraph 6**A member has a registrable interest:**

(1) Where the circumstances are as described in sub-paragraph (2) or (3).

(2) Where a member or a company in which the member has a controlling interest or a partnership of which the member is a partner receives, or has received, a gift of heritable or moveable property or a gift of a benefit in kind and—

(a) in the case where the gift was received from a person on a single occasion, the value of that gift, at the date on which it was received, exceeds the specified limit; or

(b) in the case where gifts were received from that person on more than one occasion during the current parliamentary session, the aggregate value of those gifts, each valued at the date on which it was received, exceeds the specified limit; and, in either case,

(c) that gift or those gifts meet the prejudice test.

(3) Where a member or a company in which the member has a controlling interest or a partnership of which the member is a partner receives, or has received, a gift of heritable or moveable property or a gift of a benefit in kind and—

- (a) in the case where the gift was received from a person on a single occasion, the value of that gift, at the date on which it was received, exceeds £1,500; or
- (b) in the case where—
 - (i) the value of the gift, at the date on which it was received, exceeds £500 (but does not exceed £1,500); and
 - (ii) the aggregate value of the gift and any aggregable benefit or benefits, each valued at the date on which it was received, exceeds £1,500; and, in either case,
- (c) that gift is—
 - (i) offered to the member; or
 - (ii) having been accepted, retained by the member, for use by or the benefit of the member in connection with the member's political activities.

(4) Sub-paragraph (2) does not apply to the costs of travel and subsistence in connection with the member's attendance at a conference or meeting where those costs are borne in whole or in part by—

- (a) the organiser of that conference; or
- (b) one of the other parties attending that meeting, as the case may be.

(5) Sub-paragraphs (2) and (3) do not apply to—

- (a) any support (of any kind) provided by the services of a volunteer which are provided in that volunteer's own time and free of charge; or
- (b) a donation (of any kind) which is intended by the donor to be used for the purposes of meeting—
 - (i) the election expenses of the member in relation to the election at which that member was returned as a member of the Scottish Parliament; or
 - (ii) the election expenses of the member in relation to any UK parliamentary election at which that member stands as a candidate, but this exemption ceases to apply if the donation is not used for its intended purpose by the expiry of the 35th day after the election result is declared.

(6) Sub-paragraph (3) does not apply to a gift or other benefit which the member has returned (or repaid) or sent to the Electoral Commission in accordance with sections 56 and 57 of the Political Parties, Elections and Referendums Act 2000 (c.41) (as applied by paragraph 8 of Schedule 7 to that Act).

(7) The reference in sub-paragraph (3)(b)(ii) to a benefit being valued at the date on which it was received is, in the case of a controlled transaction, a reference to its being valued at the date on which it was entered into.

(8) For the purposes of this paragraph—

“aggregable benefit” means any of the following that is accepted by the member from the same person as gave the gift and in the same calendar year as the member accepted it—

- (a) any other gift of a kind to which sub-paragraph (3)(b)(i) and (c) applies;
 - (b) any remuneration that is registrable by virtue of paragraph 2, and has a value exceeding £500 (but not exceeding £1,500) and consisting of—
 - (i) the payment to the member of any expenses incurred directly or indirectly by the member in connection with any of the member's political activities; or
 - (ii) a benefit in kind deriving from the payment by a person (other than the member) to a third party of expenses attributable to the member in connection with those activities;
 - (c) any controlled transaction (construed in accordance with paragraph 6A) having a value not exceeding £1,500;
 - (d) any overseas political visit (within the meaning given by sub-paragraph (4), as read with sub-paragraph (5), of paragraph 7) having a value exceeding £500 (but not exceeding £1,500);
- “candidate” has the same meaning as in section 118A, as read with section 90ZA(5) of the Representation of the People Act 1983 (c.2);

“controlling interest” means, in relation to a company, shares carrying in the aggregate more than half of the voting rights exercisable at general meetings of the company;

“current parliamentary session” means the parliamentary session which begins immediately after, or in which, the member is returned;

“election expenses”, in relation to a member, has the same meaning for the purposes of—

(a) sub-paragraph (5)(b)(i) as “election expenses” has in relation to a candidate in the order under section 12 of the 1998 Act which is in force for the purposes of the election at which the member was returned; and

(b) sub-paragraph (5)(b)(ii) as “election expenses” has in section 90ZA of the Representation of the People Act 1983 (c.2);

“political activities”, in relation to a member, means the political activities of the member as such or as a member of a registered political party or both;

“specified limit” means 0.5% of a member’s salary (rounded down to the nearest £10) at the beginning of the current parliamentary session.”.

Gifts

26. There are two categories of gift which are registrable.

27. Firstly, any gift with a value on the date the gift is made which exceeds 0.5% of a member’s salary at the beginning of the current parliamentary session (rounded down to the nearest £10) must be registered where the gift also meets the prejudice test.

28. If over the course of a session a member receives a number of gifts from a single source, each of which is below the threshold but which cumulatively exceed it, the member is required to register them.

29. Secondly, members must register any gift (or sponsorship within the meaning of PPERA schedule 7, para 3) over the value of £1,500 for political activities (as a member of the Parliament or a registered political party or both). A gift is considered to be for political activities where the gift is offered to the member for their use or benefit in connection with their political activities or is retained by the member for these purposes, or both. In assessing whether a gift is for a member’s use or benefit in connection with their political activities, regard is had to the intent of the donor in offering it and the intent of the member in retaining it. The prejudice test does not apply to this category of gift.

30. Political activities of a party member include promoting or procuring the election of any person to any position in, or to any committee of, the party in question, promoting or procuring the selection of any person as the party’s candidate for election to a relevant elective office; and promoting or developing policies with a view to their adoption by the party. For further information on whether a donation is for political activities, members should consult the [guidance on this Code](#), or seek advice from the Standards Clerks.

31. Gifts received for political activities (valued above £500) from the same source in the course of the calendar year, which amount to over £1,500 when aggregated with certain other benefits, must be registered. This includes any other gift, overseas visit, remuneration received as expenses or a loan, credit facility or other controlled transaction where these are for political activities and fall within certain value ranges. Members should keep track of gifts or benefits from the same source which are for

political activities and contact the Standards Clerks for advice where they are in any doubt about these provisions.

32. A gift can be any tangible item such as glassware or jewellery, to gifts of money or residential property and other benefits such as hospitality, or tickets to sporting and cultural events. The category covers benefits such as relief from indebtedness, loan concessions, or provision of property, services or facilities at a cost below that generally charged to members of the public. It also includes money spent by a third party in paying expenses incurred directly or indirectly by a member (so long as it does not amount to remuneration for work done under the remuneration category).

33. The category covers gifts received directly by a member and gifts received by any company in which a member has a controlling interest, or by a partnership of which the member is a partner. It covers gifts received in a member's capacity as an MSP. Gifts received by members in a private capacity are registrable under the first category of interest (i.e. where the gift is over £300 (either singly or cumulatively) and meets the prejudice test). Gifts to spouses and cohabitees are not registrable.

Financial and material support

34. Under the first category of gift, a member who receives any financial or material support as a member, the value of which exceeds £300, must register this as a gift where the prejudice test is met. Under the second category of gift, a member who receives any financial or material support for political activities, the value of which exceeds £1,500 either singly or in aggregation, must register the gift. The prejudice test does not apply to this second category of gift. Donations received by a member from a constituency party may fall within the gifts category.

35. Examples of material support include the provision of services of a research assistant, secretary or other member of staff whose salary, in whole or in part, is met by a person other than the member. (See volunteer services at paragraph 39, below).

36. Members must register the monetary value of the support which is the gross cost to the person providing the material support. In the case of payment of salary cost this should be calculated on the basis of pre-tax income including the cost of providing national insurance and other benefits.

37. When registering material support a member should provide the name of the provider, their principal business address (if not an individual) and the nature of its business (if not an individual). Members may also wish to detail any conditions attached to the support, such as the duration of it and how it is paid for (whether or not it is or was provided directly to the member, or is paid directly to another person providing the service to the member).

Travel and subsistence

38. Unless the gift is over the value of £1,500 (singly or cumulatively) and for political activities, members are not required to register the costs of travel and subsistence in connection with attendance at a conference or meeting if those costs are borne in whole or in part by the organiser of the conference or by one of the other parties attending the meeting. However, attendance at an overseas conference

or meeting may require to be registered as an overseas visit. It is also possible that expenses for attendance at a meeting or conference could fall into the remuneration category.

Volunteer services

39. Support from a volunteer who provides a service in their own time free of charge is exempt from the requirement to register in the gifts category.

Election expenses

40. Members are not required to register donations towards the member's election expenses even if they exceed the gifts thresholds as long as—

(a) the donor intended them to be used to meet the election expenses of the member in relation to the member's election to the Scottish Parliament; or the election expenses of the member in relation to any UK Parliamentary election at which the member stands as a candidate. This exemption only applies if the expenses fall to be included in the candidate spending return for the election in question.

and

(b) they have been spent on the intended purpose by the end of the 35th day after the result of the election was declared.

41. However, any donations which are unspent on the election in question by the expiry of the 35th day after the election result is declared (the same timeframe that is allowed for lodging election returns) must be registered under the first category of gift, if they exceed the gifts threshold of £300 and meet the prejudice test. Members acquire a registrable interest on the expiry of the 35th day after the election result is declared and have 30 days from then to register the interest as set out in section 5(2) of the Act.

42. Expenses acquired by a member before they are returned are not registrable under PPERA.

43. In recording election expenses and considering whether the exemption from registration applies, therefore, members need to be clear—

(a) whether a particular donation was intended by the donor to be used towards those election expenses (rather than for example being a general donation to the local party); and

(b) whether the donation was spent on costs associated with that election before the expiry of the 35th day after the election.

44. Should there be any complaint about a member's failure to register election expenses, the member would need to be able to demonstrate that the donation had been spent on its intended purpose within the deadline specified.

45. Certain elections may take place close to the end of the parliamentary session. The period of 35 days after the election result is declared, during which the donation

is potentially exempt, could then run into the dissolution period and so the donation would not require to be registered during that session even if it was not used for its intended purpose by the expiry of the 35th day. However, returning members may consider that such donations meet the prejudice test and so should be registered in the following parliamentary session, regardless of whether the member still has the donation by that time.

Donations from impermissible sources

46. PPERA requires that members only accept donations over £500 for political activities from a permissible source (see section 54 of, and paragraphs 6 to 9 of Schedule 7 to, PPERA). If the donation is not from a permissible source it must be returned to the donor or forwarded to the Electoral Commission where the donor cannot be identified (see sections 56 and 57 of PPERA). Members are not required to register any gift or benefit that is returned to the donor or forwarded to the Electoral Commission in these circumstances under the political activities sub-category. However, members are required to report impermissible donations to the Electoral Commission even if they have been returned. Further advice can be obtained from the Electoral Commission on the permissibility of donations.

47. Members would still be required to register donations returned to the donor under paragraph 6(2) of the schedule (i.e. under the first category of gift – over £300). As outlined above, the prejudice test would apply to this category of gift.

Registering a gift

48. In lodging a written statement in relation to a gift, the member must provide details of the nature of and estimated monetary value of the gift and the date it was received. A member must also indicate whether the gift was received directly or was given to a company or partnership in which the member has a controlling interest or is a partner. Members must additionally provide the donor's name, principal business address and the nature of the donor's business (if not a private individual).

49. In addition, members may register in the voluntary category any gift which does not meet the registration requirements, if they believe that disclosure would be in the public interest. Members should be aware of the need for caution in accepting gifts and other benefits.

50. Where a member registers a gift received before the date that the member was returned, which the member considers meets the prejudice test, the threshold for registration is based on a member's salary at the start of the parliamentary session in which the gift would be registered (not the session in which the gift was received). In other words, a single threshold applies to all gifts included in the register in a particular session. Where a gift received prior to the date of return would otherwise be registrable because it was for political activities (but for no other reason) then there is no need to register it. PPERA does not require registration of "political" gifts acquired before the date of return.

Late registrations

51. Members must also take steps to register any gifts that they have accidentally overlooked, or had not realised required to be registered, as soon as possible and in all cases, within seven days of becoming aware of the requirement to register.

Loans, credit facilities, etc. - Schedule, paragraphs 6A and 6B**A member has a registrable interest:**

6A(1) Where a member enters into a controlled transaction and—

- (a) the value of the transaction is more than £1,500; or
- (b) if not, the aggregate value of it and any aggregable benefit or benefits exceeds £1,500.

(2) Sub-paragraphs (3) to (10) define and provide further about controlled transactions.

(3) An agreement between the member and another person by which that person lends money to the member is a controlled transaction if the use condition (see sub-paragraph (9)) is satisfied.

(4) An agreement between the member and another person by which that person provides a credit facility to the member is a controlled transaction if the use condition (see sub-paragraph (9)) is satisfied.

(5) A credit facility is an agreement whereby a member is enabled to receive from time to time from another party to the agreement a loan of money not exceeding such amount (taking account of any repayments made by the member) as is specified in or determined in accordance with the agreement.

(6) Where—

- (a) the member and another person enter into a controlled transaction of a kind mentioned in sub-paragraph (3) or (4) or a transaction under which any property, services or facilities are provided for the use or benefit of the member (including the services of any person);
- (b) the other person also enters into an arrangement where a third person gives any form of security for a sum owed to the other person by the member under a transaction mentioned in paragraph (a); and
- (c) the use condition (see sub-paragraph (9)) is satisfied, the arrangement is a controlled transaction.

(7) But the agreement or arrangement is not a controlled transaction—

- (a) to the extent that, in accordance with any enactment, a payment made in pursuance of the agreement or arrangement falls to be included in a return as to election expenses in respect of a candidate or candidates at a particular election;
- (b) to the extent that it is entered into by the member and a person—
 - (i) in connection with the provision of goods or services to the member; and
 - (ii) in the normal course of that person's trade or business and on its normal terms;
- (c) if its value does not exceed £500; or
- (d) despite section 3(1)(b), it was entered into by the person who is the member before the date the member was returned.

(8) For the purposes of sections 3 and 5 and sub-paragraph (1) of this paragraph, if—

- (a) the value of a controlled transaction as first entered into is such that it is not registrable; but
- (b) the terms of the transaction are subsequently varied in such a way that it becomes registrable, the member is to be treated as having entered into a registrable transaction on the date when the variation takes effect.

(9) The use condition is that the member intends, at the time the member enters into the loan or credit facility agreement or the transaction second mentioned in sub-paragraph (6)(a), to use any money or benefit obtained in consequence of it in connection with the member's political activities (either as a member or as a member of a registered political party or both).

(10) For the purposes of sub-paragraph (9), it is immaterial that only part of the money or benefit is intended to be used in connection with the member's political activities.

(11) In sub-paragraph (1)(b), “aggregable benefit” means any of the following that is accepted by the member from the same person, being a party to the controlled transaction, and in the same calendar year as the member accepted the controlled transaction—

- (a) any other controlled transaction having a value not exceeding £1,500;
- (b) any remuneration that is registrable by virtue of paragraph 2, and has a value exceeding £500 (but not exceeding £1,500) and consisting of—
 - (i) the payment to the member of expenses incurred directly or indirectly by the member in connection with the member’s political activities (as a member or as a member of a registered political party or both); or
 - (ii) a benefit in kind deriving from the payment by a person (other than the member) to a third party of expenses attributable to the member in connection with those activities;
- (c) any gift to which paragraph 6(3)(b)(i) and (c) applies;
- (d) any overseas political visit (within the meaning given by sub-paragraph (4), as read with sub-paragraph (5), of paragraph 7) having a value exceeding £500 (but not exceeding £1,500).

Value of loans, credit facilities etc.

6B(1) The value of a controlled transaction which is a loan is the value of the total amount to be lent under the loan agreement.

(2) The value of a controlled transaction which is a credit facility is the maximum amount which may be borrowed under the agreement for the facility.

(3) The value of a controlled transaction which is an arrangement by which any form of security is given is the contingent liability under the security provided.

(4) For the purposes of sub-paragraphs (1) and (2), no account is to be taken of the effect of any provision in a loan agreement or an agreement for a credit facility at the time it is entered into which enables outstanding interest to be added to any sum for the time being owed in respect of the loan or credit facility, whether or not any such interest has been so added.”

Reporting and registration of changes to controlled transactions, section 8 of the Act.

(1) For the purposes of this section, there is a change to a registered interest that is a controlled transaction if—

- (a) another person becomes party to the transaction (whether in place of or in addition to any existing party to it);
- (b) there is a change to anything about which information was (or should have been) provided by the member in the written statement lodged by the member when registering the transaction;
- (c) the transaction comes to an end.

(2) The reference in subsection (1)(b) to information provided is a reference to information—

- (a) about or relating to the transaction; and
- (b) provided in accordance with a determination under section 4(2).

(3) For the purposes of subsection (1)(c), a loan comes to an end if—

- (a) the whole debt (or all the remaining debt) is repaid;
- (b) the creditor releases the whole debt (or all the remaining debt).

(4) A member who has registered a controlled transaction shall notify the Clerk of any change to the transaction.

(5) A member shall comply with subsection (4) by lodging a written notice with *the* Clerk not later than the last day of the period of 30 days beginning with the day on which the change takes effect.

(6) A written notice shall—

- (a) be in such form; and
- (b) contain such information about the change or relating to it, as the Parliament may determine.

(7) Within 30 days after a member has lodged a written notice in accordance with this section, the Clerk shall—

- (a) amend the entry relating to that member in the register so as to record the change and the date when it took effect; and
- (b) send a copy of the amended entry to the member.

Loans, credit facilities, etc.

52. Under section 8A of the 2006 Act, members are required to register loans, credit facilities and connected transactions ('controlled transactions') which are over the value of £1,500 and for political activities. For example, where a member enters into a credit card agreement with a credit limit over the value of £1,500 with the intention of using it wholly or partly for their political activities, this would be registrable. Members must register such controlled transactions even if only part of the money or benefit obtained is intended to be used in connection with the member's political activities.

53. Members must also register loans, credit facilities and connected transactions over the value of £500 for political activities which, when aggregated during the course of a calendar year with other such income or benefits from the same source, exceed £1,500. This includes gifts, remuneration received as expenses, overseas visits or other loans, credit facilities and connected transactions where these are for political activities and amount to over £500 but do not exceed £1,500. Members should keep track of any loans, credit facilities or connected transactions and other benefits over £500 for political activities and contact the Standards Clerks for advice when there may be an aggregated registrable interest.

54. Members must register transactions over £1,500 and for political activities that are connected to a loan or credit facility obtained by a member ('connected transactions'). A connected transaction is one under which a third party gives security in relation to a sum owed by the member under a loan or credit agreement which is itself a controlled transaction (or for the provision of property, services or facilities to the member for political activities). For example, where a third person gives a personal guarantee to a bank in respect of a loan or credit facility over the value of £1,500 provided to the member for political activities.

55. There are certain financial arrangements which members do not have to register. They are—

- payments which fall to be included in a candidate electoral return for an election;
- trade credit (given on normal rather than preferential terms);
- loans, credit facilities or connected transactions which do not exceed £500;
- loans, credit facilities or connected transactions entered into before the member was returned as a member.

56. Members may enter into a controlled transaction which is not registrable but which is subsequently varied so as to become registrable (either singly or when aggregated with other aggregable benefits). For example, the terms of a loan agreement may be varied to take its value above £1,500. In such circumstances, the date on which the controlled transaction is considered to be entered into is the date on which that change takes effect.

57. Members must indicate the value of the controlled transaction when registering it. In the case of a loan, the value is the value of the total amount to be lent under the loan agreement. For a credit facility, the value is the maximum amount which may be borrowed under the agreement for the facility. Where a third party gives security to a member for a controlled transaction (i.e. where it is a connected transaction), the value is the contingent liability under the security provided. The value of any interest added to the total of a loan or credit facility should not be taken into account when calculating its value.

58. Members must notify the Clerk of any changes to a registered controlled transaction within 30 days of the date on which the change takes effect. Such changes include changes to the name and address of the authorised participants to the transaction, its nature and its value. They also include another person becoming party to the transaction, where there is a change to anything about which information was (or should have been) provided by the member in the written statement lodged by the member when registering the transaction or where the transaction comes to an end.

Overseas Visits – Schedule, paragraph 7

A member has a registrable interest:

(1) Where the circumstances are as described in sub-paragraph (2) or (4).

(2) Where the member makes, or has made, a visit outside the United Kingdom and that visit meets the prejudice test.

(3) Sub-paragraph (2) does not apply to a visit the travel and other costs of which—

- (a) are wholly met—
 - (i) by the member;
 - (ii) by the member's spouse, civil partner or cohabitant;
 - (iii) by the member's mother, father, son or daughter;
 - (iv) by the Parliamentary corporation; or
 - (v) out of the Scottish Consolidated Fund; or
- (b) were approved prior to the visit by the Parliamentary corporation.

(4) Where a member makes, or has made, a visit outside the United Kingdom in connection with any of the member's political activities (as a member or as a member of a registered political party or both) (an "overseas political visit") and—

- (a) the costs of the visit exceed £1,500; or
- (b) those costs exceed £500 (but do not exceed £1,500) and the aggregate value of them and any aggregable benefit or benefits exceeds £1,500.

(5) Sub-paragraph (4) does not apply to a visit the travel and other costs of which—

- (a) are wholly met—
 - (i) by the member;
 - (ii) by the Parliamentary corporation; or
 - (iii) out of the Scottish Consolidated Fund; or
- (b) were approved prior to the visit by the Parliamentary corporation.

(6) In sub-paragraph (4)(b), “aggregable benefit” means any of the following that is accepted by the member from the same person as met the costs of the visit and in the same calendar year as the member accepted it—

- (a) any other overseas political visit having a value exceeding £500 (but not exceeding £1,500);
- (b) any remuneration that is registrable by virtue of paragraph 2, having such a value and consisting of—
 - (i) the payment to the member of any expenses incurred directly or indirectly by the member in connection with the member’s political activities (as a member or as a member of a registered political party or both);
 - (ii) a benefit in kind deriving from the payment by a person (other than the member) to a third party of expenses attributable to the member in connection with those activities;
- (c) any gift to which paragraph 6(3)(b)(i) and (c) applies;
- (d) any controlled transaction (construed in accordance with paragraph 6A) having a value not exceeding £1,500.”

Overseas visits

59. A member is required to register and provide details of a visit outside the United Kingdom in certain circumstances. Firstly, members must register overseas visits where the visit meets the prejudice test. Secondly, members must register overseas visits for political activities, over the value of £1,500 (the prejudice test does not apply to such visits).

60. Members must register overseas visits for political activities over the value of £500 which, when aggregated with other such income or benefits from the same source within the same calendar year and also for political activities (including other overseas visits, gifts, remuneration received as expenses or controlled transactions), amount to over £1,500.

61. For the purposes of registration, the date upon which a visit becomes registrable is the first day of any such visit. Under the terms of the Act, members have 30 days beginning with that date to lodge a written statement with the clerks reflecting this interest.

62. Certain overseas visits are excluded from the requirement to register. These are visits, the travel and other costs of which are wholly met—

- by the member;
- by the Scottish Parliamentary Corporate Body (SPCB); or
- out of the Scottish Consolidated Fund (for example, Ministerial visits).

63. Members are not required to register overseas visits, the travel and other costs of which are wholly met—

- by the member’s spouse, civil partner or cohabitant;
- by the member’s mother, father, son or daughter

unless the visit is over the value of £1,500 (either singly or in aggregate) and for political activities, in which case members must register the overseas visit.

64. There is also no need to register visits the costs of which were approved in advance by the SPCB.

65. There may be occasions when fees or expenses for work undertaken overseas fall into the remuneration rather than overseas visits category. Equally, certain overseas visits and related costs may fall within the gifts category. Members are advised to seek advice from the Standards Clerks if they are uncertain about which category an interest should be registered in.

66. Visits within the United Kingdom and the provision of hospitality in the United Kingdom are not covered by this provision although members may register these on a voluntary basis if they believe that disclosure would be in the public interest. Depending on the value, and subject to meeting the prejudice test or the visit being for political activities, UK visits may also fall within the gifts category. Similarly hospitality provided abroad not directly linked to the cost of the visit itself does not need to be registered under the overseas visits category. Again, however, members need to take account of the value of that hospitality as it may require to be registered as a gift.

67. Members should note that committee travel outwith the UK may need to be registered. Members are advised to seek advice from the relevant committee clerk regarding prior approval by the SPCB. Members may also consult the Standards Clerks for further advice on seeking SPCB approval for certain visits overseas.

68. Where registration is required, members should provide details of the dates, destination and purpose of the visit along with the name of any individual, business or organisation which met any of the costs. Members must also provide the principal business address of the business or organisation which met the costs of the trip and the nature of the business (but not that of a private individual). Members must provide details of the cost of the visit, ideally split between travel and expenses. Costs can be provided in the currency in which they were incurred, however members may also wish to include the estimated value in sterling and the date of the currency conversion upon which this estimate is based.

69. Members must also take steps to register any overseas visits that they have accidentally overlooked, or had not realised required to be registered, as soon as possible and in all cases, within seven days of becoming aware of it.

Heritable property – Schedule, paragraph 8

A member has a registrable interest:

(1) Where a member owns or holds, or has owned or held, any heritable property and sub-paragraph (2) applies.

(2) This sub-paragraph applies where either—

- (a) the market value of the heritable property, at the relevant date, exceeds the specified limit; or
- (b) any income is received from the heritable property during the twelve months prior to the relevant date.

(3) Sub-paragraph (1) applies to heritable property which a member owns or holds, or has owned or held—

- (a) solely in the member's name;
- (b) jointly with any other person or body; or
- (c) as a trustee, whether or not jointly with other trustees, where the member has an interest as a beneficiary of the trust.

(4) Sub-paragraph (1) does not apply to heritable property—

- (a) which is used as a residential home by the member or the member's spouse, civil partner or cohabitant;
- (b) which was used as a residential home by the member or the member's spouse, civil partner or cohabitant but which, for a period of not more than 12 months, is or was unoccupied and for sale; or
- (c) which forms part of the assets of a partnership and any income from that partnership is, or forms part of, the remuneration registered under paragraph 2 of this Schedule.

(5) Where a member has ceased to own or hold any heritable property before the date on which the member was returned as a member, the relevant date is the date when the heritable property ceased to be so owned or held.

(6) Where a member owned or held any heritable property at the date on which the member was returned as a member, the relevant date is—

- (a) that date; and
- (b) the 5th April immediately following that date and in each succeeding year, where the heritable property continues to be so owned or held on that 5th April.

(7) Where a member becomes the owner of or acquires any heritable property after the date on which that member was returned as a member, the relevant date is—

- (a) the date on which the member became the owner of or acquired that heritable property; and
- (b) the 5th April immediately following that date and in each succeeding year, where the heritable property continues to be so owned or held on that 5th April.

Key definitions:

"Heritable property" includes any right or interest in heritable property whether in Scotland or elsewhere. It includes residential or other similar property, land or any right or interest in or over land;

"Spouse" in relation to a member does not include a former spouse or a spouse who is living separately and apart from the member where the separation is likely to be permanent;

"Civil partner" in relation to a member does not include a former civil partner or a civil partner who is living separately and apart from the member where the separation is likely to be permanent;

"Cohabitant" means either member of a couple consisting of—

- (a) a man and a woman who are living together as if they were husband and wife; or
- (b) two persons of the same sex who are living together as if they were civil partners;

“*current parliamentary session*” means the parliamentary session which begins immediately after, or in which, the member is returned; and

“*specified limit*” means 50% of a member’s salary (rounded down to the nearest £10) at the beginning of the current parliamentary session.

Heritable property

70. A heritable property which exceeds either the market value threshold or from which income has been received by the member or by anyone else must be registered. Members are required to register any interest in heritable property where the property’s market value exceeds 50% of the member’s salary at the start of the current parliamentary session (rounded down to the nearest £10). Members must also register heritable property which yields any income, for example from rent, in the twelve months prior to the relevant date. Members do not require to register interests in heritable property which do not exceed the market value threshold or generate income; however, members may choose to register these in the voluntary category if they wish.

71. Heritable property may be situated in any part of the world. The issue of the “relevant date” is particularly important in understanding when an interest in property requires to be registered. The relevant date is the date that the member is returned for property owned at that date; the date of acquisition for a newly acquired property; or the date of disposal when a property is sold before the member is returned. In the first two cases each 5th April after the initial relevant date is also a relevant date.

72. In relation to income-based registration, registration is required where any income is yielded in the twelve months prior to the date that the member is returned (and each following 5th April) or the date of acquisition (and each following 5th April) or the date of disposal as the case may be. An acquired rental property must therefore be registered (within 30 days) on the basis of income received in the past twelve months even where the income prior to acquisition has not been paid to the member but to a previous owner.

73. A member registering an existing property at the date that the member is returned must estimate its market value at that date and assess whether that figure exceeds 50% of a member’s salary (rounded down to the nearest £10) at the beginning of the current parliamentary session. If it does, the property must be registered. The member must then re-estimate the market value on each subsequent 5th April that the member continues to own or hold the property. If the value continues to exceed 50% of the member’s salary (as at the start of the parliamentary session) then the property should continue to be registered. If it does not, then the member may identify the interest as a ceased interest and inform the Standards Clerks.

74. Where a member disposes of a registrable property (prior to the date of return as a member), the relevant amounts for the purposes of calculation are: market value at the date of sale measured against the amount of a member’s salary at the start of the current parliamentary session; and/or any income from the property in the twelve months prior to sale. Similarly for registrable property acquired after the date of return as a member, the requirement for registration should be considered on the

basis of market value at acquisition and on each subsequent 5th April that the member owns or holds the property against salary at the start of the parliamentary session.

75. The requirement to register does not apply to heritable property used as a residence by the member or the member's spouse, civil partner or cohabitant or to heritable property which was such a residential home, but (for not more than twelve months) is or was unoccupied and for sale. A member also does not have to register property which forms part of the assets of a partnership where any income received by the member from that partnership is already registered as remuneration under paragraph 2 of the Schedule to the Act.

76. There may also be circumstances where income received from a rental property could fall within the remuneration category if it is received by a member who lets property in connection with self-employment or a trade, profession or vocation. Equally, there may be circumstances in which heritable property could fall within the gifts category. Members are advised to seek advice from the Standards Clerks if they are uncertain in which category an interest should be registered.

77. The requirement to register heritable property applies not just to property that a member owns in their own name but to property in joint names (such as with a spouse or business partner) and to property held as a trustee but only where the member has a beneficial interest in the income or assets of the relevant trust.

78. For all properties that require to be registered, members are required to indicate the location of each property (for example, by local authority area if in Scotland) and the type of property (for example, flat, house, commercial property, industrial or agricultural). Members do not have to provide the date they acquired the property if this was prior to the date the member was returned but must provide relevant dates where a property is disposed of or acquired during the session.

79. For properties registrable on the basis of market value, members must provide an estimate of market value for each property (within the bandwidths determined by the Parliament) at whichever relevant date applies. For properties registrable on the basis of income, members must provide an estimate of gross income (within the bandwidths determined by the Parliament) in the twelve months prior to whichever relevant date applies. Where a property meets both tests then both the market value and income details should be provided.

80. Registration is based on the full market value or income irrespective of whether the member owns the property independently or with another person or irrespective of the member's equity share in the property once a mortgage is taken into account or the costs of disposal. Members may provide additional details in connection with the entry in relation to these matters if they wish to do so.

81. Where a member registers an interest in heritable property which the member no longer had on the date that the member was returned but which meets the prejudice test, the relevant date is the date that the interest ceased to be held. In these circumstances the threshold for registration should relate to the salary of a

member at the start of the parliamentary session in which the member is considering registration.

82. Members must also take steps to register any heritable property that they have accidentally overlooked, or had not realised required to be registered, as soon as possible and in all cases, within seven days of becoming aware of it. Members should refer to the guidance on late registration.

Interest in shares– Schedule, paragraph 9

A member has a registrable interest:

(1) Where a member has, or had, an interest in shares, whether that interest is, or was, held by the member or by a relevant person, and sub-paragraph (2) applies.

(2) This sub-paragraph applies where either—

- (a) the nominal value of the shares at the relevant date is, or was, greater than 1% of the total nominal value of the issued share capital of the company or other body; or
- (b) the market value of the shares at the relevant date exceeds, or exceeded, the specified limit.

(3) Sub-paragraph (1) applies to an interest in shares, whether that interest is, or was, held by a member (or a relevant person)—

- (a) solely in the name of the member (or relevant person);
- (b) jointly with any other person or body; or
- (c) as a trustee, whether or not jointly with other trustees where the member has an interest as a beneficiary of the trust.

(4) Sub-paragraph (1) does not apply to an interest in shares which forms part of the assets of a partnership and any income from that partnership is, or forms part of, remuneration registered under paragraph 2 of this Schedule.

(5) Where a member has ceased to have an interest in shares before the date on which the member was returned as a member, the relevant date is the date when the interest in such shares ceased to be so held.

(6) Where a member had an interest in shares at the date on which the member was returned as a member, the relevant date is—

- (a) that date; and
- (b) the 5th April immediately following that date and in each succeeding year, where the interest is retained on that 5th April.

(7) Where a member acquires an interest in shares after the date on which the member was returned as a member, the relevant date is—

- (a) the date on which the interest in shares was acquired; and
- (b) the 5th April immediately following that date and in each succeeding year, where the interest is retained on that 5th April.

Key definitions:

“*current parliamentary session*” means the parliamentary session which begins immediately after, or in which, the member is returned;

an “*interest in shares*” means an interest in shares comprised in the share capital of a company or other body;

“*relevant person*” is a person who is subject to the control or direction of a member in respect of an interest in shares;

“*specified limit*” means 50% of a member’s salary (rounded down to the nearest £10) at the beginning of the current parliamentary session.

Interest in Shares

83. A member is required to register an interest in shares which the member or a “relevant person” (meaning a person subject to the control or direction of the member in respect of that interest) has or had. A relevant person can be a relative (such as a spouse or civil partner) or some other individual or body. Such a person may nominally own or hold the shares but can be said to be controlled or directed where, for example, only the member may authorise disposal of the shares or where the member ultimately benefits from any income or gain on disposal.

84. Registration is required where the nominal value of the shares at the relevant date is or was greater than 1% of the total nominal value of the issued share capital of the company or other body; or where the market value of the shares at the relevant date exceeds 50% of a member’s salary at the start of the current parliamentary session (rounded down to the nearest £10). Members are not required to register interests in shares which do not exceed either of the value thresholds; however, members may register these in the voluntary category if they wish.

85. Calculation of the relevant date for shares works in the same way as for heritable property (above).

86. A member considering whether registration of an existing share-holding at the date of return is required on the basis of market value must ascertain its value at that date. If it exceeds 50% of a member’s salary at the start of the current parliamentary session the shareholding must be registered. Likewise, a member considering whether registration of an existing share-holding at the date of return is required on the basis of the nominal value of the shares must ascertain whether this value is greater than 1% of the total nominal value of the issued share capital of the company or other body at that date. In either case the member must then obtain a new valuation on each subsequent 5th April that the member continues to have the interest in shares. If the value continues to exceed the relevant threshold, then the shares should continue to be registered. If they fall under that threshold then the member may have the interest removed from the Register as a ceased interest. Members who have a portfolio of shares must continue to track the value of shares as at each relevant date to ensure that all holdings continue to fall under the threshold for registration. Where a shareholding later exceeds that threshold, the share-holding must be registered as if it was an interest acquired after the date of the member’s return and on the relevant date on which the value exceeded the threshold.

87. As with the Gifts and Heritable Property categories, a member may be required to register interests in shares disposed of before being returned as an MSP, if the

member considers that the prejudice test is met. In these circumstances the threshold for registration relates to the salary of a member at the start of the parliamentary session in which the member is considering registration.

88. Where a member disposes of shares before being returned but the prejudice test applies, the market or nominal value for the purpose of registration is the market or nominal value at the date of sale. Similarly, for shares newly acquired after the date of return, registration depends either on the nominal value on acquisition or the market value at acquisition against member's salary at the start of the current parliamentary session and the nominal value or market value against this salary on each subsequent 5th April that the member continues to have the interest in shares.

89. A member does not have to register shares which form part of the assets of a partnership where any income received by the member from that partnership is already registered as remuneration.

90. There may also be circumstances in which interests in shares could fall within the gifts category. Members are advised to seek advice from the Standards Clerks if they are uncertain in which category an interest should be registered.

91. The requirement to register shares applies not just to shares that a member owns in their own name but to shareholdings in joint names (such as with a spouse or business partner) and to shareholdings held as a trustee but only where the member has a beneficial interest in the income or assets of the relevant trust.

92. When registering shares, members are required to provide details of the type of shares, the name of the company in which the shares are held, the company's business address and the nature of its business. Members do not have to provide the date of acquisition of shares held at the date of return but must provide dates where the shares have been disposed of or acquired as the case may be during the parliamentary session.

93. For shares registered on the basis of market value, members must provide a valuation on the relevant date. For shares registered on the basis of a proportion of nominal value, members must provide the percentage of the issued share capital of the company that the member holds. Where shares could be registered on the basis of both market value and nominal value the market value should also be provided as well as the percentage of overall share capital.

94. Shares in investment trusts are registrable if they meet the conditions outlined above. Members are not required to register units held in unit trusts. Members are not required to register investments that would not be considered to be part of a share portfolio, such as cash savings, cash ISAs, government bonds (gilts) and corporate bonds. If a member wishes to, these holdings may be registered in the voluntary category.

95. Members must also take steps to register any interest in shares that they have accidentally overlooked, or had not realised required to be registered, as soon as possible and in all cases, within seven days of becoming aware of it. Members should refer to the guidance on late registration.

Responsibility of the Member

96. Responsibility for ensuring compliance with the requirements of the Act for registration of interests lies with the individual member. If a member is uncertain about how the rules apply, the Standards Clerks may be asked for advice. A member may also choose to consult a personal legal adviser and, on detailed financial and commercial matters, a member may wish to seek advice from other relevant professionals. Failure to comply with the requirements of registration will constitute a breach of the requirements of the Act and may be a criminal offence. It could also lead to sanctions being imposed on a member by the Parliament.

SECTION 3: DECLARATION OF INTERESTS

The statutory requirements

1. Sections 12 and 13 of the 2006 Act set out the legal requirements in relation to declaration of interests.

Section 12, Declarable interests

- (1) *In this Act, a “declarable interest” means a declarable financial interest.*
- (2) *A member has a declarable financial interest in any matter if that member has, or had, a registrable financial interest in that matter which is registered in the entry relating to that member.*
- (3) *A member has a financial interest for the purposes of paragraph (b) of section 39(2) of the 1998 Act [the Scotland Act] if that member has a declarable financial interest.*

Section 13, Declaration of interests

- (1) *Any member who has a declarable interest in any matter shall declare that interest before taking part in any proceedings of the Parliament relating to that matter.*
- (2) *For the purposes of subsection (1), a member shall declare an interest by making, in such circumstances as the Parliament may determine, either an oral or, as the case may be, a written declaration of that interest.*

2. An interest about which a declaration must be made is referred to as a ‘declarable interest’.

3. Under the statutory requirements, a member has a ‘declarable interest’ in relation to any matter if that member has a registrable financial interest relating to it. Registrable financial interests are those which must be registered under one of the categories set out in the schedule to the Act. These categories are explained in Section 2 of the Code.

4. Before taking part in any proceedings of the Parliament a member should consider whether they have a ‘declarable interest’ in relation to the particular matter being addressed in those proceedings. The onus is on individual members to decide.

5. Declarations may be either oral or written. [The Interests of Members of the Scottish Parliament Act 2006 \(Declaration of Interests\) Determination 2007](#) sets out when oral and written declarations apply.

Oral declarations

6. Where a member has a declarable interest in any matter, the member must make an oral declaration of that interest before speaking in any meeting of the Parliament relating to that matter. This includes initiating, contributing to or intervening in any debate whether—

- during a meeting of the Parliament; or

- during a meeting of a Parliamentary committee (or a joint committee meeting or sub-committee meeting).

7. A member is not required to make an oral declaration where the member simply attends or votes at a meeting but does nothing else. The effect of the determination mentioned in paragraph 5 is that the member's register entry is sufficient declaration of their interest. If the member wishes to take part in the meeting in any way, other than simply attending or voting, they must make an oral declaration. Where the proceedings occur after the member has lodged a written statement with the clerks but before it is published in the Register, members are encouraged to make an oral declaration of that interest.

8. A member must declare an interest when speaking or intervening in a debate where that interest relates to the subject being debated. The Act requires that only such interests as actually appear in the member's entry in the Register must be declared (section 12(2)). Following the lodging of a written statement of an interest with the Standards Clerks (in relation to initial registration, newly acquired interests, or late registrations), there could be a period of up to 30 days before the statement actually appears on the Register and so becomes publicly known. In this situation, members are encouraged to make a declaration of that interest (either orally or in writing as appropriate to the proceedings) in order to avoid the suggestion of undue influence of which only they will be aware prior to the registration being published.

Written declarations

9. Where a member has a declarable interest in any matter, and takes part in any proceedings of the Parliament relating to that matter otherwise than as described above, the member must make and lodge with the Clerk (usually understood to be the clerks in the Chamber Desk) a written declaration of that interest before taking part in any such proceedings relating to that matter. The [Guidance on the Code of Conduct](#) includes instructions on how this is done.

10. Taking part in proceedings of the Parliament includes any of the following—

- (a) lodging questions for oral or written answer,
- (b) lodging motions, amendments to motions,
- (c) introducing a Bill, or lodging a proposal for a Member's Bill,
- (d) lodging amendments to Bills, or
- (e) adding the member's name in support of any of the proceedings referred to in (a) to (d) above.

11. Members should be aware that other requirements of the Act, for example, in relation to paid advocacy, also apply to voting and other proceedings.

Failure to comply with or contravention of the rules on declaration of interests

12. Failure to comply with, or contravention of, the Rules on declaration of interests may by virtue of section 15, 16 and 17A of the Act result in the Parliament, by resolution, applying sanctions to a member. In terms of section 17 of the Act, as with the failure to register interests, a member who fails to make a relevant declaration

commits a criminal offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale. Enforcement of the Rules in the Code is explained in Section 9.

SECTION 4: PAID ADVOCACY

The statutory requirements

Section 14, Prohibition of paid advocacy etc.

- (1) *A member shall not by any means, in consideration of any payment or benefit in kind—*
- (a) advocate or initiate any cause or matter on behalf of any person; or*
 - (b) urge any other member to advocate or initiate any cause or matter on behalf of any person.*
- (2) *For the purposes of subsection (1)—*
- (a) “any means” shall be construed as the doing of anything by a member in the capacity of a member, whether or not in any proceedings of the Parliament; and*
 - (b) “any payment or benefit in kind” means any payment or benefit in kind—*
 - (i) which the member receives, agrees to receive or requests and which falls within subsection (2A); or*
 - (ii) which the member’s spouse, civil partner or cohabitant receives, agrees to receive or requests and which falls within subsection (2B).*
- (2A) A payment or benefit in kind falls within this subsection if, after taking account of all the circumstances, it may reasonably be considered that the payment or benefit results (or, if and when made or given, would result) in some benefit to the member, other than a vote for that member in any election to the Parliament.*
- (2B) A payment or benefit in kind falls within this subsection if, after taking account of all the circumstances, it may reasonably be considered that the payment or benefit—*
- (a) is being provided (or, if and when made or given, would be provided) in connection with the Parliamentary duties of the member; and*
 - (b) results (or, if and when made or given, would result) in some benefit to that member,*
- (3) *Subsection (1) shall not prevent a member receiving, agreeing to receive or requesting assistance in connection with any of the following matters—*
- (a) the preparation of a Member’s Bill or of any amendment to a Bill, or any other matter relating to a Bill (whether before, during or after its passage in the Parliament and before it is submitted for Royal Assent); or*
 - (b) a debate upon subordinate legislation (whether before or after its making); or*
 - (c) a legislative consent motion.*

1. Paid advocacy is not permitted.
2. Section 14 of the [Interests of Members of the Scottish Parliament Act 2006](#) sets out what constitutes paid advocacy and is, therefore, forbidden and also sets out what assistance to a member is permitted.
3. The provisions of the Act relating to paid advocacy provide that a member may not, in consideration of any payment or benefit in kind, advocate or initiate any cause, or matter, on behalf of any person or urge any other member to advocate or initiate any cause, or matter, on behalf of any person.
4. “Any payment or benefit in kind” means any payment or benefit in kind which the member receives, agrees to receive or requests and which may reasonably be considered to result in some benefit, or if and when made or given, would result in

some benefit, for that member (except a vote for that member in an election to the Parliament). This also includes any payments or benefit in kind which the member's spouse, civil partner or cohabitant receives, agrees to receive or requests and which may reasonably be considered to be provided in connection with the Parliamentary duties of that member and to benefit that member in some way (or, if and when made or given, would result in some benefit to that member).

5. Section 14(3) of the Act describes the kinds of assistance which members may receive, agree to receive or request without being in breach of the paid advocacy provisions. Those provisions do not apply to—

- assistance provided to a member in the preparation of a Member's Bill,
- assistance with amendments to any Bill, or
- a debate on subordinate legislation or a legislative consent motion.

Sanctions and offences for failure to comply with the rule on paid advocacy

6. Failure to comply with the paid advocacy rule may result in the Parliament excluding a member from proceedings for such period as it considers appropriate (section 16 of the Act), or applying a sanction to the member (section 17A). A member may also be guilty of a criminal offence in terms of section 17 of the Act. A member found guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

SECTION 5: LOBBYING AND ACCESS TO MSPs

Rules

1. A member should not, in relation to contact with any person or organisation who lobbies, do anything which contravenes this Code of Conduct (the Code) or any other relevant rule of the Parliament or any statutory provision.
2. A member should not, in relation to contact with any person or organisation who lobbies, act in any way which could discredit the Parliament.
3. The public must be assured that no person or organisation will gain better access to, or treatment by, any member as a result of employing a commercial lobbyist either as a representative or to provide strategic advice. In particular, a member should not offer or accord preferential access or treatment to commercial lobbyists or their employers. Nor should commercial lobbyists or their employers be given to understand that preferential access or treatment might be forthcoming from an MSP or group or person within or connected with the Parliament.
4. Before taking any action as a result of being lobbied, a member should be satisfied about the identity of the person or organisation lobbying and the motive for lobbying. A member may choose to act in response to a commercial lobbyist but it is important that a member knows the basis on which he or she is being lobbied in order to ensure that any action the member takes complies with the standards set out in this Code.
5. Members should be aware of the provisions of the [Lobbying \(Scotland\) Act 2016](#). The Act is designed to improve transparency of lobbying contact between organisations and—
 - Members of the Scottish Parliament;
 - Scottish Government Ministers;
 - The Permanent Secretary of the Scottish Government; and
 - Scottish Government Special Advisers
6. In addition, members should—
 - consider whether a meeting with one group which is making representations on an issue should be balanced by offering another group with different views an opportunity to make representations;
 - consider keeping a record of all contacts with lobbyists; and
 - consider arranging for an assistant or researcher to take notes at any meetings with lobbyists.
7. This section of the Code on General Conduct sets out the standards expected in relation to acceptance of hospitality, gifts and benefits. In addition to this and the statutory provisions in the 2006 Act, members—

- should not accept any paid work which would involve them lobbying on behalf of any person or organisation or any clients of a person or organisation;
- should not accept any paid work to provide services as a Parliamentary strategist, adviser or consultant, for example, advising on Parliamentary affairs or on how to influence the Parliament and its members. (This does not prohibit a member from being remunerated for activity, which may arise because of, or relate to, membership of the Parliament, such as journalism or broadcasting, involving political comment or involvement in representative or presentational work, such as participation in delegations, conferences or other events.);
- should decline all but the most insignificant or incidental hospitality, benefit or gift if the member is aware that it is offered by a commercial lobbyist. The section of the Code on General Conduct states that a member should not accept any offer that might reasonably be thought to influence the member's judgement in carrying out Parliamentary duties. Since the basis on which many people believe that commercial lobbyists sell their services is by claiming to provide clients with influence over decision-makers, it might reasonably be thought that acceptance of a benefit of any significance from such a source could influence a member's judgement in carrying out Parliamentary duties. (If a member only becomes aware of its source after receiving hospitality, a benefit or gift, then the member should consider reimbursing the costs of any hospitality or benefit or returning any gift.)

8. Members may participate in events for which others are charged a fee to attend. Participation, for example, in a conference or seminar for which delegates are charged a fee may be a useful means of a member gathering a range of views on a topic. There could be some concern, however, that events falling into this category could be a means of "buying" access to MSPs. It is important that there should be no grounds for such a perception. No preferential treatment should, therefore, be offered or accorded any person or organisation as a result of having made initial contact with a member at such an event.

9. Members may participate in events unless they are aware, or become aware, that the organisers are promoting the event on the basis that those paying to attend the event are "buying" influence over MSPs or that they can expect to receive better subsequent access to, or treatment by MSPs, than would be accorded to any other person or organisation. Members should exercise their judgement in deciding whether it is appropriate to participate in an event and if they are uncertain, can seek advice from the Standards Clerks. Where an event involves support for a charitable purpose, including fundraising, members should ensure that they comply with the [SPCB's charities policy](#).

10. Members should ensure that staff working for them are aware of and apply these rules and guidelines when acting on a member's behalf or in any Parliamentary connection.

SECTION 6: CROSS-PARTY GROUPS (CPGs)

Introduction

1. CPGs provide an opportunity for Members of the Scottish Parliament (MSPs) to engage with external stakeholders on a particular subject.
2. CPGs are not formal parliamentary business and should not be confused with the Parliament's committee system.
3. CPGs are formed and led by MSPs although it is expected that groups will also have non-MSP members.
4. CPGs do not have any power to introduce issues formally into the parliamentary or government systems.
5. CPGs do not have access to any financial or staffing resources, other than is necessary for all CPGs to meet in the Parliament.
6. Any queries about the rules for CPGs, meeting notifications or documentation should be emailed to the Standards Clerks at crosspartygroup@parliament.scot.
7. CPGs must comply with the following rules. CPGs must also comply with any relevant policies that are set by the Scottish Parliamentary Corporate Body (SPCB). These policies are set out in the [library of policies](#) created by the SPCB on the Scottish Parliament website.

Membership and office bearers

8. Any MSP may be a member of a CPG. A CPG must have at least 5 MSP members including at least one MSP from each of the parties or groups represented on the Parliamentary Bureau. The party representation requirement may be modified or waived by the Standards, Procedures and Public Appointments Committee (the Committee) in certain circumstances.
9. CPGs may also have members who are not MSPs. Non-MSP membership is split into two categories: individuals and organisations. Where someone joins a CPG in connection with a role they have in, or to represent the views of, a specific organisation, it is the organisation that is considered to be the member of the CPG. Any decisions about membership, including whether to limit the number of non-MSP members, are a matter for the Group itself.
10. One of the MSP members of the Group must be elected as Convener; the Group must also have at least one other MSP office bearer. Groups are required to elect office bearers at the initial meeting and at every subsequent Annual General Meeting (AGM). The re-election of office bearers should be held at the Annual General Meeting (AGM). Beyond these requirements, any decisions about the structure of office bearer positions are a matter for the Group itself.

11. Any changes to the membership or office bearers of a CPG must be notified to Standards Clerks within 30 days of the change. Changes to officer bearers or MSP membership must be notified by the Convener of the Group, or the Convener's authorised signatory. Any changes to the non-MSP membership can be notified by the secretary of the Group.

Establishment of CPGs

12. Once a CPG has the required MSP membership for a Group, an initial meeting should be held. The date and time of this meeting must be notified to the Standards Clerks at least 10 calendar days before the meeting taking place. The meeting will be added to the Parliament's website by the Standards Clerks.

13. Two MSPs, who intend to be members of the Group, must attend the initial meeting. This meeting should be used to elect the office bearers, confirm the name and purpose of the Group, confirm the membership of the Group and discuss all other information that must be added to the registration form. Minutes of this meeting must be taken.

14. After this initial meeting Groups cannot meet again, formally, until the Group has been accorded recognition by the Committee.

15. New Groups will not be permitted to be established after March in the year preceding an election, except in exceptional circumstances.

Registration of CPGs

16. No later than 30 calendar days after the initial meeting, the Convener of the proposed Group, or the Convener's authorised signatory, must submit a completed registration form to the Standards Clerks.

17. The registration form sets out the information that a proposed Group must provide.

Consideration by the Standards, Procedures and Public Appointments Committee

18. Once the registration form has been received by Standards Clerks one of the proposed Group's MSP office bearers (usually the Convener) will be invited to attend a meeting of the Committee to explain the justification for the proposed Group.

19. The Committee will pay particular attention to a proposed Group's purpose. If the Committee considers that a proposed Group is not in the public interest but is intended, for example, to further particular commercial interests, the Group will not be accorded recognition. The Committee will also consider whether the purpose of a proposed Group overlaps the remit of an existing Group. The proposed Group will be asked to provide justification as to why its aim could not effectively be achieved within the existing Group.

20. Only Groups accorded recognition can use the title 'Cross-Party Group in the Scottish Parliament' and have access to Parliamentary facilities.

Re-registration following a general Scottish Parliamentary election

21. A previously recognised Group may re-register within 90 days of the first meeting of the Parliament following an ordinary or extraordinary general Scottish Parliamentary election. For the purposes of calculating the 90 day period, no account will be taken of any time during which the Parliament is in recess for more than 4 days.

22. A Group seeking to re-register must hold an initial meeting and elect office bearers. Following the initial meeting the Convener of the proposed Group, or the Convener's authorised signatory, must submit a completed registration form to the Standards Clerks.

23. If the Group meets the criteria detailed below the Standards Clerks, in consultation with the Convener of the SPPA Committee, will undertake a sifting exercise and highlight applications to be referred to the Committee for further scrutiny (either through a paper to the Committee or an evidence session with the Convener of the proposed group). For example, a Group may be referred to the Committee if it had failed to comply with the Code of Conduct in the previous Session.

24. The Standards Clerks will apply the following criteria to re-registrations—

- *Name and purpose of Cross-Party Group:* These must be the same as were registered in the previous Session.
- *MSP membership:* There must be at least 5 MSP members including at least one MSP from each of the parties or groups represented on the Parliamentary Bureau.
- *Non-MSP membership:* There are two categories of membership, individual and organisational. For organisational members, it is the organisation that is the member and not the individuals that attend from that organisation. An individual or organisation is not a member of a Group until Standards Clerks have been informed.
- *Office Bearers:* There must be at least 2 MSP office bearers and one of these must be the Convener of the Group.
- *Financial Benefits:* Value and source of any financial benefit must be given. In the first instance, the Group will be contacted and asked to provide more information.
- *Contact:* Must be the Convener of the Group.

25. Groups that do not require further scrutiny will be re-registered.

26. If the Group does not meet the criteria, the Standards Clerks will draw the application for re-registration to the attention of the Convener of the Committee. The Convener will decide whether the Group can be re-registered or if the application should be considered by the Committee.

Operation of CPGs

27. All CPGs must hold at least two formal meetings per year, and one of these must be the AGM.

28. All meetings, including the initial meeting, must be notified to the Standards Clerks at least 10 calendar days before the meeting. Details of all meetings will be published on the Parliament's website.
29. CPGs must hold an AGM within 11-13 months of the date that the Group was established (in the current session) and subsequently between 11 and 13 months after each AGM.
30. The AGM must be used to re-elect the office bearers and to review the work the Group has carried out over the preceding year.
31. Within 30 calendar days of holding an AGM, the Convener of a Group, or the Convener's authorised signatory, must submit a completed annual return form to the Standards Clerks. The information that Groups are required to provide are as set out in the annual return form.
32. All meetings must be attended by at least 2 MSPs who are registered members of the Group. Any MSP who is not a member of the Group is entitled to attend and participate at a meeting but will not count towards this requirement.
33. Attendance and participation by non-MSPs who are not registered members of a Group is at the discretion of the Group and therefore Groups are within their rights to refuse non-members entry to the meeting.
34. The right to vote on Group matters is restricted to registered members of the Group, both MSP and non-MSP. However, Groups which charge a subscription may restrict voting rights to members who have paid the subscription charge.
35. Each recognised Group will have a page created on the Parliament website.
36. CPGs must provide minutes of all meetings to the Standards Clerks, including the initial meeting. Minutes must list all those who attended the meeting. This should include all MSPs and non-MSP attendees and information on whether the attendees were members of the Group or invited observers (an individual or organisation is not a member of a Group until Standards Clerks have been informed). The Standards Clerks will publish minutes (including draft minutes) and agendas on each Group's page on the Parliament website.
37. Groups may provide agendas of meetings to the Standards Clerks to be published on their web page.
38. No papers other than registration forms, annual return forms, minutes and agendas will be posted on a Group's page on the Parliament website. However, if a Group wishes, it can request that a link to an external website is added to its page. The request must be made by the Convener who must confirm that they accept the following conditions—
- the Scottish Parliament is not responsible for the content of external internet sites

- the Convener of the Group has viewed the website and is content that the link is appropriate
- complaints about the content of external sites will be directed in the first instance to the Convener of the group
- the Scottish Parliament reserves the right to refuse to establish links to an external site
- responsibility for checking links on the Scottish Parliament website to ensure that they are working lies with the Convener of the group and that, in the event of discovering a link which no longer works, the Convener will inform the Standards Clerks.

39. Groups may form sub-groups to focus on particular elements of the Group's purpose. A meeting of a sub-group must be notified to Standards Clerks 10 calendar days before the meeting and two MSP members must be in attendance at the sub-group meeting. Any decisions made by a sub-group must be ratified at a subsequent meeting of the full Group.

Change of name or purpose of CPGs

40. Any proposal to change the name or purpose of the Group must be drawn to the attention of the Committee. The Committee will consider the proposed change and decide if recognition should still be accorded to the Group.

Financial benefits

41. If a Group receives secretariat support from an employee of an external organisation, the value of any time that employee spends on supporting CPG activities should be calculated and, if over £500 per year, registered. The only exception to this is where the secretariat is provided by an individual in their own time; in these circumstances it is not considered that any financial benefit is received by the Group.

42. If the external organisation providing secretarial support is a consultancy/public affairs firm or a charity/not-for-profit organisation, that organisation must agree to provide, if requested by the Committee—

- a full client list (if a consultancy/public affairs firm) and
- a list of companies which have made a donation of more than £5,000 in the previous 12 months (if a charity/not-for-profit organisation).

Use of Parliamentary facilities

43. CPGs must respect the limitations on the use of Parliamentary facilities—

- MSPs, but not other members of CPGs, may make reasonable use of the Parliament's telephone, fax, photocopying, IT facilities and Parliamentary stationery in pursuit of CPG business. Groups may only use the Parliament's IT facilities where these are available for public use.
- Groups may not make use of free postage facilities provided by the Parliament.
- Groups may not make use of the Parliament's audio or broadcasting equipment and there is no provision for the televising or sound recording of

their proceedings (other than as may be provided for in SPCB policy and in any SPCB terms and conditions on events).

- Groups may not draw on the resources of the Parliamentary staff to service meetings other than to book meeting rooms; and
- MSPs who are members of a CPG may use the services of the Parliament's Information Centre to brief themselves on matters relating to that Group, but other members of the Group may not.

Compliance with the Code of Conduct of Members of the Scottish Parliament (the Code)

44. The Convener of a Group is primarily responsible for ensuring that the Group complies with the Code. However, all other MSP members, and any secretariat, should also ensure that they are aware of the requirements in order to assist with the efficient operation of the Group.

45. To assist Groups in complying with the requirements of the Code, the Standards Clerks can provide guidance and advice.

46. The Committee will regularly consider information on whether Groups are complying with the Code.

47. Complaints that a Group has not complied with the Code will be considered in by the Committee. Failure to comply with the Code could lead to a Group's recognition being withdrawn or to sanctions being imposed on individual MSPs.

48. MSP members of a Group should be aware that benefits received in connection with a Group may also fall within the scope of the registration of interests under the Interests of Members of the Scottish Parliament Act 2006. If a member receives any such benefit, they should contact the Standards Clerks for advice on the registration requirements.

SECTION 7: MSPs' GENERAL CONDUCT

1. Members must comply with the requirements of this Code of Conduct (the Code), with the Standing Orders, and with any other decision of the Parliament relating to the conduct of MSPs.
2. This section of the Code sets out some rules on general conduct which MSPs must follow.

SPCB policies

3. Members must abide by the policies that are adopted by the Scottish Parliamentary Corporate Body (SPCB). These policies are set out in the [library of policies](#) created by the SPCB on the Scottish Parliament website.

Expenses

4. No improper use should be made of any payment or allowance made to members for public purposes. Members must abide by the [Reimbursement of Members' Expenses Scheme](#) agreed by the Parliament.

Treatment of others

5. Members must treat the following individuals with courtesy and respect:
 - other MSPs;
 - parliamentary staff (including contractors providing services to the Parliament);
 - their own staff and the staff of other MSPs.
6. Members must not behave in a manner towards these individuals that involves bullying, harassment (including sexual harassment) or any other inappropriate behaviour.

Use of parliamentary staff

7. Staff of the Parliament are employed by the SPCB to provide an impartial service to the Parliament and its members. Members should not ask Parliamentary staff to act in any way which would conflict with or call into question their political impartiality, or which could give rise to criticisms that people paid from public funds are being used for party political purposes.
8. Members should respect the confidentiality of advice, whether written or oral, received from clerks or other Parliamentary staff and should avoid attributing advice or views to a named member of staff.

Conduct in the Chamber and committees

9. Members must conduct themselves in accordance with the following Standing Orders rules during meetings in the Chamber and, as appropriate, in committee meetings.

“Members shall at all times conduct themselves in a courteous and respectful manner and shall respect the authority of the Presiding Officer. In particular, members shall not speak or stand when the Presiding Officer is speaking.” (Rule 7.3.1)

“Members shall at all times conduct themselves in an orderly manner and, in particular, shall not conduct themselves in a manner which would constitute a criminal offence or contempt of court.” (Rule 7.3.2)

10. In committees and sub-committees, Standing Orders require that members respect the authority of the convener.

11. Members must abide by the guidance issued by the Presiding Officer on members’ conduct in the Chamber and, as appropriate, in committees. The current guidance issued by the Presiding Officer can be found in the separate [guidance on the Code](#).

Confidentiality rules

12. All drafts of committee reports, and committee reports which, although agreed by a committee and no longer in draft, have not yet been published, must be kept confidential, unless the committee decides otherwise. In addition, the following must be treated as confidential—

- briefing provided to members by Parliamentary staff for particular members’ information only;
- documents produced during a private session of a committee;
- evidence submitted to a committee sitting in private from a witness which it has been agreed can be treated as confidential;
- any other documents or information which the committee has agreed must be treated as confidential; and
- minutes of private discussions.

13. Unless the Parliament or the relevant committee has agreed otherwise, such documents must not be circulated, shown, or transmitted in any other way to members of the public (including those in Cross-Party Groups), media or to any member of any organisation outwith the Parliament, including the Scottish Government, nor to other MSPs who are not members of the committee or committees for whom the material was intended.

14. Members must not provide the media with any other briefings or views on the general contents or ‘line’ of draft committee reports or other confidential material or information. Disclosures of this kind can also seriously undermine and devalue the work of committees.

15. Unless the Parliament or the relevant committee has agreed otherwise, members must not disclose any information to which a member has privileged access, for example, derived from a confidential document or details of discussions or votes taken in private session, either orally or in writing.

16. Where a committee member wishes to express dissent from a committee report, the member should only make this public once the committee report has been published in order to avoid disclosing the conclusions of a draft report.

Members' responsibilities in relation to their own staff

17. Members' staff carry out their duties as employees both within and outwith the Parliamentary complex and have dealings with those individuals mentioned in paragraph 7.5.

18. Consistent with their duties as employers, members must take all reasonable steps to ensure that their staff are fully aware of, understand and abide by the policies, rules, requirements and behavioural standards that apply to the conduct of staff when carrying out their duties both within and outwith the Parliamentary complex and in dealing with those individuals mentioned in paragraph 7.5.

19. If a member becomes aware that a member of their staff has not abided by any policies, rules, requirements or behavioural standards, that member must take appropriate action in relation to their member of staff.

20. On occasion, MSPs' staff will handle confidential information. MSPs must ensure that their staff or any other persons accessing or handling confidential documents or information listed in paragraphs 12 – 15 on their behalf comply with the confidentiality rules. MSPs will be held responsible for any breach by these parties.

SECTION 8: ENGAGING WITH CONSTITUENTS

1. This section of the Code of Conduct (the Code) sets out the rules which MSPs must follow when they are engaging with constituents.

Taking on constituents' cases

2. An MSP must take on a constituent's case when approached, unless they have a legitimate reason for declining it. Examples of legitimate reasons are—

- The constituent has asked the MSP to take inappropriate action;
- The case would lead to a conflict of interest with the MSP's existing casework;
- The case is contrary to the MSP's political beliefs.

3. If an MSP declines to take on a constituent's case, they would be expected to inform the constituent of this.

4. A MSP must not deal with a constituency case or constituency issue outwith their constituency / region unless by prior agreement.

5. Regional MSPs must work in more than two constituencies within their region.

6. Regional MSPs are expected to deal with any matter raised by any constituent within their region (unless they have a legitimate reason for not doing so).

7. MSPs must respect individual privacy when representing constituents' interests. The exception is where there are overwhelming and lawful reasons in the wider public interest for disclosure to be made to a relevant authority. An example is where an MSP is made aware of criminal activity.

Describing MSPs

8. MSPs should not misrepresent the basis on which they were elected or the area they serve.

9. Constituency MSPs should always describe themselves as—

“[Name], Member of the Scottish Parliament for [x] constituency.”

Regional members should always describe themselves as:

“[Name], Member of the Scottish Parliament for [y] region.”

10. Regional MSPs must not describe themselves as a “local” MSP for (or having a particular interest in) only part of the region for which they were elected.

11. Constituency MSPs should not describe themselves as the sole MSP for a particular area or constituency.

MSPs' staff

12. MSPs must ensure their staff or others working on their behalf with constituents conform to these rules.

SECTION 9: ENFORCEMENT OF THE RULES

Disclosure

1. Members must not disclose, communicate or discuss any complaint or intention to make a complaint to or with members of the press or other media prior to the lodging of the complaint or during Stages 1, 2 and 3 of the procedure for dealing with complaints (this procedure is set out in [the guidance on the Code of Conduct](#) (the Code)). Stage 3 is completed when the Standards, Procedures and Public Appointments Committee has made a report to the Parliament. If the complaint is about a member's treatment of another individual under paragraphs 7.5 and 7.6, members must not disclose the identity of that individual, at any time, where it has been kept confidential in the Committee's report.
2. In relation to Excluded Complaints (which are not always subject to the four stage process set out in the guidance notes), this restriction applies until the Standards, Procedures and Public Appointments Committee has confirmed that the Ethical Standards Commissioner will not be carrying out an investigation or, where such an investigation has been carried out, that the Ethical Standards Commissioner will not be carrying out any further investigation.
3. Where, during the period when the restriction on disclosure applies, any complaint or intention to make a complaint has been publicised in the press or other media without the involvement of the member who is the subject of the complaint or intended complaint, that member may issue a brief statement. In doing so, the member must, so far as possible, avoid discussing details of the complaint or intended complaint.

Complaints

4. Complaints, in relation to the conduct of Members of the Scottish Parliament under the Code, are initially investigated by the Commissioner for Ethical Standards in Public Life in Scotland ("the Ethical Standards Commissioner"). Exceptions to this procedure are set out below as 'Excluded Complaints'.

Excluded Complaints

5. Section 3(2) of the Scottish Parliamentary Standards Commissioner Act 2002 excludes certain complaints from the remit of the Ethical Standards Commissioner.
6. The complaints mentioned in the following paragraphs are "Excluded Complaints" and should not be made to the Ethical Standards Commissioner—
 - (a) Complaints about a member's conduct at a meeting of the Parliament, including a member's treatment of another member: these are to be referred to the Presiding Officer. Complaints about a member's conduct at a meeting of a committee, including a member's treatment of another member: these are to be referred to that committee's convener, unless the complaint is about the conduct of the convener (including the convener's treatment of another committee member), in which case the complaint is to be referred to the Presiding Officer. The Presiding

Officer, or as the case may be, the committee's convener will consider the complaint and may refer the complaint to the Standards, Procedures and Public Appointments Committee.

- (b) Complaints made under Section 8: Engaging with constituents: these are to be referred to the Presiding Officer.
- (c) Complaints about a member's use of the Reimbursement of Members' Expenses Scheme: these are to be referred to the Scottish Parliamentary Corporate Body (SPCB). Where, following an investigation (whether as a result of a complaint or claim submitted), the SPCB finds that a member has submitted an improper claim, the SPCB may report the matter to the Standards, Procedures and Public Appointments Committee and may recommend the removal of all or part of the member's entitlement to reimbursement of expenses under the Scheme for such period and to such extent as the SPCB may specify.
- (d) Complaints about Cross-Party Groups: these are to be made to the Standards, Procedures and Public Appointments Committee unless the complaint relates to the use of Parliamentary facilities and services in which case it should be made to the SPCB. The SPCB may refer any complaint relating to the use of Parliamentary facilities and services by a Cross-Party Group to the Standards, Procedures and Public Appointments Committee together with a recommendation for action.
- (e) Complaints about use of SPCB facilities and services and breaches of SPCB policies (which do not relate to conduct at a meeting of the Parliament or at a meeting of a committee): these are to be made to the SPCB. The SPCB may refer any complaint relating to the use of Parliamentary facilities and services and breaches of SPCB policies to the Standards, Procedures and Public Appointments Committee together with a recommendation for action.

Making a complaint about engagement with constituents

7. Any complaint against a member (including one about their staff or others working for them) in respect of Section 8 of the Code - Engaging with Constituents should in the first instance be made to the Presiding Officer. Any complaint made under this section should meet the requirements set out in [Section 9, paragraph 1 of the Guidance on the Code](#). A complaint which does not meet the requirements set out in paragraph 9.1 may be dismissed by the Presiding Officer as a 'Procedurally Defective Complaint'.

8. In considering a complaint the Presiding Officer may contact the member(s) concerned to seek a response to the conduct complained about.

9. The Presiding Officer will, if necessary, contact the respective Party Business Manager in relation to a complaint.

10. Where the complaint cannot be resolved in this way, where the matter is of sufficient seriousness to warrant a more formal investigation, or where any MSP directly involved remains dissatisfied, the Presiding Officer will raise the matter with the Convener of the Standards, Procedures and Public Appointments Committee.

11. The Standards, Procedures and Public Appointments Committee would then consider the matter as it judges appropriate, in accordance with its procedures and

its remit to consider and report on the conduct of members in carrying out their Parliamentary duties.

12. It is fundamental to the success of this Section that the Standards, Procedures and Public Appointments Committee will, as a matter of course, treat all breaches of these rules with the utmost seriousness. Members should not raise complaints under Section 8 of the Code in any way other than that described above (in particular via the media) to avoid any suggestion of prejudging the issue.

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All documents are available on
the Scottish Parliament website at:
www.parliament.scot/documents

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Email: sp.info@parliament.scot
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CODE OF CONDUCT FOR PERSONS LOBBYING MSPs

BACKGROUND

The Lobbying (Scotland) Act 2016 (“the Act”) provides that the Scottish Parliament must publish a Code of Conduct for those persons who lobby members of the Parliament (MSPs). This is set out in [Section 44](#) of the Act which states that “lobbying” means making a communication of any kind to a member of the Parliament in relation to the member’s functions.”

[Section 5](#) of the **Code of Conduct for MSPs (Lobbying and Access to MSPs)** sets out the responsibilities on MSPs who are lobbied.

As such, this **Code of Conduct for Persons Lobbying MSPs** implements the statutory obligations of the Act and complements the Code of Conduct for MSPs.

Other codes of conduct or practice in relation to lobbying are the sole responsibility of the organisations which publish those codes.

CODE OF CONDUCT

This Code sets out the key principles which any person lobbying a member of the Scottish Parliament should respect (use of the term “person” applies here in terms of both an individual and a legal person i.e. an organisation, company or other such entity).

The following ethical principles should be respected:

- If lobbying an MSP, you should act with honesty, integrity and respect.
- If lobbying an MSP, you should not expect preferential access or treatment from that MSP.
- If lobbying an MSP, where appropriate, you should make clear the identity of the person or organisation you are lobbying for and the motives and purpose of that lobbying.
- If lobbying an MSP, you should not offer any payment or benefit in kind which would involve an MSP (or members of their staff) acting as paid advocates on your behalf. Paid advocacy is prohibited by the Interests of Members of the Scottish Parliament Act 2006.
- If lobbying an MSP, you should not knowingly provide information which is untrue, inaccurate or misleading.
- If lobbying an MSP you should be fully aware of the Code of Conduct for MSPs which requires members to ensure that their staff adhere to the rules and guidelines of the Code, when acting on their behalf or in any parliamentary connection.



STATUS OF CODE

The Act obliges the Parliament to publish this Code of Conduct and to review it from time to time.

The current version of the Code is available at www.lobbying.scot

“REGULATED” LOBBYING

The Lobbying (Scotland) Act 2016 also provides that the Scottish Parliament must establish and maintain a Lobbying Register to record “regulated” lobbying as specified under the Act.

The Lobbying Register is available at www.lobbying.scot. Any person engaging in regulated lobbying with MSPs should adhere to the Parliamentary Guidance at www.lobbying.scot published by the Scottish Parliament specifically in relation to regulated lobbying.

Scottish Ministerial Code

2018 edition

A Code of Conduct and Guidance
on Procedures for Members of
the Scottish Government and
Junior Scottish Ministers



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Note:

In this Code:

Cabinet	is the Scottish Cabinet
Government	is the Scottish Government
Law Officers	are the Lord Advocate and the Solicitor General for Scotland
Ministers	are the Scottish Ministers (First Minister, Cabinet Secretaries and Law Officers) and junior Scottish Ministers
Parliament	is the Scottish Parliament

Foreword by the First Minister

I am pleased to issue this new edition of the Scottish Ministerial Code.

When I accepted Parliament's nomination to serve as First Minister in May 2016, I pledged to do everything I could to ensure that this Parliament marked the beginning of a new time of national self-confidence. This ambition can only be achieved if the people of Scotland have trust and confidence in those serving in government. That is why it is essential to set and maintain the highest standards of propriety and openness for Government Ministers.

This revised Ministerial Code sets guidelines for living up to the seven principles of public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. All Scottish Ministers, including myself, are bound by its terms.

Over this new Parliamentary term, the Scottish Parliament and Government will prepare for and assume a range of important new powers, as we take the next steps on our journey of self-government, and it is all the more important that we are guided in our mission by a clear and transparent set of principles.

I will lead by example in following the letter and spirit of this Code, and I expect that Ministers and civil servants will do likewise.



Rt Hon Nicola Sturgeon MSP
First Minister of Scotland

1. SCOTTISH MINISTERS

General Principle

1.1. Scottish Ministers are expected to maintain high standards of behaviour and to behave in a way that upholds the highest standards of propriety.

Ministerial Conduct

1.2. Ministers should be professional in all their dealings and treat all those with whom they come into contact with consideration and respect. Working relationships, including with civil servants, Ministerial and Parliamentary colleagues and Parliamentary staff should be proper and appropriate. Harassing, bullying or other inappropriate or discriminating behaviour, wherever it takes place, is not consistent with the Ministerial Code and will not be tolerated.

1.3. The Ministerial Code should be read against the background of the overarching duty on Ministers to comply with the law, including international law and treaty obligations, and to uphold the administration of justice and to protect the integrity of public life. They are expected to observe the Seven Principles of Public Life (set out in the **Annex** to this Code) and the following principles of Ministerial conduct:

- (a) The principle of collective responsibility, as defined in section 2 below, applies to all Ministers;
- (b) Ministers have a duty to the Parliament to account, and be held to account, for the policies, decisions and actions taken within their field of responsibility;
- (c) It is of paramount importance that Ministers give accurate and truthful information to the Parliament, correcting any inadvertent error at the earliest opportunity. Ministers who knowingly mislead the Parliament will be expected to offer their resignation to the First Minister;
- (d) Ministers should be as open as possible with the Parliament and the public, reflecting the aspirations set out in the Report of the Consultative Steering Group on the Scottish Parliament. They should refuse to provide information only in accordance with the Freedom of Information (Scotland) Act 2002 and other relevant statutes;
- (e) Ministers should similarly require civil servants who give evidence before Committees on their behalf and under their direction to be as helpful as possible in providing accurate, truthful and full information in accordance with the duties and responsibilities of civil servants as set out in the Civil Service Code;¹
- (f) Ministers must ensure that no conflict arises, or appears to arise, between their public duties and their private interests;

¹ See <https://beta.gov.scot/publications/civil-service-code/>

- (g) Ministers should not accept any gift or hospitality which might, or might reasonably appear to, compromise their judgement or place them under an improper obligation;
- (h) Ministers must keep separate their roles as Minister and as constituency or regional list Member of the Scottish Parliament (MSP);
- (i) Ministers must not use public resources for party political purposes;
- (j) Ministers must uphold the political impartiality of the Civil Service and not ask civil servants to act in any way which would conflict with the Civil Service Code as set out in the Constitutional Reform and Governance Act 2010.²

1.4. This Code provides guidance to Ministers on how they should act and arrange their affairs in order to uphold these standards. It lists the principles which may apply in particular situations, drawing on past precedent, but it is not a rulebook. The Permanent Secretary may provide Ministers with advice on matters which the Code covers and will ensure procedures are in place to support compliance with the Code. It is not, however, the role of the Permanent Secretary or other officials to enforce the Code.

1.5. The Code applies to all Scottish Ministers and covers Parliamentary Liaison Officers in paragraphs 4.8 to 4.14. It sets out the standards of conduct required of Members of the Scottish Parliament (MSPs) who are acting in their capacity as Government Ministers. Ministers must also comply at all times with the requirements the Parliament itself has laid down in relation to the accountability and responsibility of Ministers. All Ministers (both MSPs and Law Officers) are bound by the Interests of Members of the Scottish Parliament Act 2006, taken together with Section 39 of the Scotland Act 1998. All MSPs, including those who are Ministers, must also adhere to the terms of the Code of Conduct for Members of the Scottish Parliament, which provides a set of principles and standards for MSPs and sets out the ethical standards expected of them in carrying out their Parliamentary duties. The MSPs' Code of Conduct is available from the Scottish Parliament's website.³

1.6. Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Ministerial Code and for justifying their actions to Parliament and the public. The First Minister is, however, the ultimate judge of the standards of behaviour expected of a Minister and of the appropriate consequences of a breach of those standards. Although the First Minister will not expect to comment on every matter which could conceivably be brought to his or her attention, Ministers can only remain in office for so long as they retain the First Minister's confidence.

1.7. Where he or she deems it appropriate, the First Minister may refer matters to the independent advisers on the Ministerial Code to provide him or her with advice on which to base his or her judgement about any action required in respect of Ministerial conduct. The findings of the independent advisers will be published.

² See www.legislation.gov.uk/ukpga/2010/25/part/1/chapter/1/crossheading/codes-of-conduct

³ See www.parliament.scot/msps/code-of-conduct-for-msps.aspx

2. MINISTERS AND THE GOVERNMENT

General Principle

2.1 The Scottish Government operates on the basis of collective responsibility. This means that all decisions reached by the Scottish Ministers, individually or collectively, are binding on all members of the Government. Ministers are required to abide by them and defend them as necessary. The principle of collective responsibility requires that Ministers should be able to express their views frankly in the expectation that they can argue freely in private while maintaining a united front when decisions have been reached. This in turn requires that the privacy of opinions expressed and advice offered within the Government should be maintained.

The Scottish Government and Ministerial Functions

2.2 In accordance with Section 44(1) of the Scotland Act 1998, the Scottish Government consists of the First Minister, other Scottish Ministers (Cabinet Secretaries) appointed by the First Minister under Section 47 of the Scotland Act, the Lord Advocate and the Solicitor General for Scotland. In addition, the First Minister appoints junior Scottish Ministers under Section 49 of the Scotland Act.

2.3 Most of the functions exercisable by Ministers are conferred upon the Scottish Ministers collectively. However, these functions do not require to be exercised jointly by all the Scottish Ministers. Section 52(3) of the Scotland Act provides that any member of the Government can exercise any of the functions of the Scottish Ministers, and Section 52(4) provides that any act or omission of any member of the Government is legally the act or omission of each of them.

Collective Responsibility

2.4 The internal processes through which a Government decision has been made should not normally be disclosed. Such decisions are, however, normally announced and explained as the decision of the Minister concerned. On occasion, it may be desirable to emphasise the importance of a decision by stating explicitly that it is the decision of the Scottish Government. This, however, is the exception rather than the rule. Ministers should take special care in discussing issues which are the responsibility of other Ministers, consulting Ministerial colleagues as appropriate.

2.5 In accordance with the principle of collective responsibility, it is important that Ministers and their staff preserve the privacy of Government business and protect the security of Government documents, subject to the provisions of the Freedom of Information (Scotland) Act 2002 (see also paragraphs 2.26 and 2.27).

2.6 The issue of collective responsibility is particularly acute where the portfolio Minister is likely to take a decision that might be unpopular in the constituency or region which another Minister represents as MSP. Once a decision has been reached, the Minister who is constituency or regional MSP must be prepared to defend that decision, even if, individually, he or she might have argued against it in private, or, in the case of a constituency issue, might have made representations as a constituency or regional MSP.

2.7 Collective responsibility as defined above also applies to any junior Scottish Ministers who are appointed by the First Minister under the terms of Section 49 of the Scotland Act even though they may not be members of the Cabinet.

2.8 The only two exceptions to the doctrine of collective responsibility are: (i) statutory or other responsibilities conferred on the First Minister alone; and (ii) the Lord Advocate's retained functions, including decisions taken by the Lord Advocate in his or her capacity as head of the systems of criminal prosecution and investigation of deaths in Scotland. In such cases, the First Minister or the Lord Advocate, respectively, acts independently of other Ministers.

2.9 Where a Minister considers that he or she cannot support a decision reached collectively by the Scottish Government and wishes publicly to dispute that decision, the Minister in question should consider whether it is appropriate to resign from his or her Ministerial role. As with adherence to the rest of the Ministerial Code, a Minister can only remain in post for so long as he or she retains the confidence of the First Minister.

Cabinet Business

2.10 The Cabinet normally meets weekly. Its business consists, in the main, of questions which significantly engage the collective responsibility of the Government, either because they raise major issues of policy or because they are of critical importance to the public. When considering Cabinet business and reaching decisions collectively, it should be remembered that Cabinet members are acting in their Ministerial capacity and not in their capacity as representatives of a particular constituency or regional electorate.

2.11 Matters wholly within the responsibility of a single Minister which do not significantly engage collective responsibility need not be brought to the Cabinet unless the Minister concerned wishes to inform his or her colleagues about the matter in question or to have their advice in a full meeting of the Cabinet. It is not possible to give a precise definition of the matters which should be referred to the Cabinet for decision. As a general rule, however, Cabinet members should put before their colleagues the sorts of issues on which they themselves would wish to be consulted.

2.12 Issues should not be brought to Cabinet until there has been appropriate consultation with Ministers with a direct portfolio interest and their views have been fully reflected in the paper to be submitted for Cabinet consideration. Questions involving more than one Minister which require collective consideration by Cabinet should be examined by the officials concerned before submission to the Cabinet so that the decisions required may be clearly defined. When there is a difference between Ministers, it should not be referred to the Cabinet until other means of resolving it have been exhausted, including discussions between the Ministers concerned. It is the responsibility of the officials concerned to ensure that proposals have been discussed with other interested officials. The outcome of these discussions should be reflected in the paper submitted for Cabinet consideration.

2.13 Members of Cabinet should take particular care when agreeing the weekly Cabinet minutes as an accurate record of discussion. The minutes of the Scottish Cabinet constitute the official record, and Ministers will be expected to adhere to the decisions which they set out.

Cabinet Correspondence

2.14 Cabinet correspondence enables Cabinet to reach decisions on issues which, while requiring collective Cabinet agreement, do not necessarily require to be discussed at a Cabinet meeting. As with all Cabinet papers, Cabinet correspondence should only be issued once appropriate consultation has been undertaken among Ministers with a direct portfolio interest and once their views have been reflected fully in the correspondence paper.

2.15 Just as there is no precise definition of issues requiring Cabinet consideration, so there are no absolute rules about what should be handled through correspondence. It may, however, helpfully be used for securing clearance for the launch of a consultation paper or other significant Government publication. The Cabinet Secretariat can advise in individual cases.

Ministerial Discussions below the Level of the Cabinet

2.16 Collective Ministerial discussions can take place below the level of the Cabinet. Where it is clear that a particular issue will require two or more Ministers and their officials to work together over a period, or that a matter falling within the portfolio of one Minister needs to be considered collectively, the Cabinet may decide to establish a Cabinet sub-committee, which may include both Cabinet members and other Scottish Ministers. The size, membership and length of life of sub-committees may vary significantly depending on the nature of the subject at issue. Alternatively, one or more Ministerial meetings may be arranged involving those Ministers with a direct interest to permit discussion of a particular issue. Any collective Ministerial meeting should be minuted, with decisions and any outstanding issues recorded clearly, usually with input from the Cabinet Secretariat and/or the relevant Private Office.

2.17 Collective Ministerial meetings below the level of the Cabinet have two main purposes. First, they relieve the pressure on the Cabinet itself by enabling business to be settled at a lower level, where appropriate; or, failing that, by clarifying the issues and defining any points of disagreement. Second, they support the principle of collective responsibility by ensuring that, even though an important question may not be discussed at a meeting of the Cabinet, the decision will be given full Ministerial consideration, and the final judgement reached will be sufficiently authoritative to ensure that the Government as a whole can properly be expected to accept responsibility for it.

2.18 If the Cabinet agrees to delegate an issue to a Cabinet sub-committee and a Minister is dissatisfied with the conclusions, the First Minister will entertain an appeal to the full Cabinet only after consultation with the Minister who chairs the sub-committee concerned.

Priority of Cabinet Meetings

2.19 Cabinet meetings take precedence over all other Ministerial business, although it is understood that there may occasionally be exceptional circumstances (e.g. Parliamentary business, business overseas or meetings with the European Commission or with UK Ministers) which mean that a Minister may have to be absent.

2.20 Requests by Cabinet members for permission to be absent from Cabinet should be made only in such exceptional circumstances, and should be made at the earliest opportunity and by means of a personal minute to the First Minister. A minute is not necessary when the reason for absence from a Cabinet meeting is an overseas visit for which Ministerial approval has already been obtained in accordance with the detailed requirements set out in paragraphs 9.5 to 9.8 below.

2.21 Minutes seeking approval for absence from Cabinet for any reason, including overseas visits, should be copied to the Permanent Secretary and the Cabinet Secretariat. Subject to the First Minister's approval, an absent Cabinet member's interests may be represented at Cabinet by another Minister with relevant portfolio knowledge.

Attendance at Meetings of Cabinet Sub-Committees

2.22 Attendance at meetings of Cabinet sub-committees should take precedence over most other Ministerial business, the principal exception being business in the Parliament where the Minister's attendance is deemed essential. Private Offices should therefore not arrange any engagements for their Minister (and nor should Ministers themselves arrange any business) which would be likely to conflict with a meeting of a committee or other official Ministerial group of which their Minister is a member.

2.23 If, after a meeting date has been fixed, a Minister finds that he or she has to withdraw from a meeting, he or she must send a personal minute to the Chair explaining the circumstances. The minute should be copied to the First Minister, the Permanent Secretary and the Cabinet Secretariat.

2.24 If, exceptionally, a Minister is unable to attend a meeting of a Cabinet sub-committee of which he or she is a member, he or she should try to arrange for another Minister with relevant portfolio knowledge to attend in his or her place (although there may be exceptions for particular meetings at the discretion of the Chair). Officials cannot attend committee meetings in place of a Minister, although they may attend to provide Ministers with advice.

Publication of Policy Documents and Consultation Papers

2.25 Before publishing a Government policy document or a consultation paper, officials should consider whether it raises issues which require full collective Ministerial consideration through Cabinet or a Cabinet sub-committee. The expectation is that most such papers will need collective agreement prior to publication. Any policy document containing a major statement of Government policy should be circulated to Cabinet members and other Ministers with a portfolio interest before publication. This rule applies to papers containing major statements even when no issue requiring collective decision is required.

Confidentiality and Security of Cabinet Documents and Other Government Papers

2.26 Ministers have a personal responsibility to safeguard the integrity and confidentiality of Government business. Failure to maintain good security can cause damage to the interests and reputation of the Government and may prejudice the effective conduct of official business.

2.27 Ministers should be particularly mindful of the vulnerabilities associated with telephone systems, mobile phones, BlackBerry® devices and other similar portable or tablet devices, and IT systems generally. Ministers and their Private Office staff should therefore ensure that all reasonable steps have been taken to ensure the security of Government information, in accordance with current guidance for Ministers issued by the Scottish Government Chief Information Officer.

Official Papers held by Ministers Relinquishing Office

2.28 Ministers relinquishing office should hand back to their Private Office any Cabinet documents and/or other official papers in their possession.

Access by Former Ministers to Official Papers

2.29 By convention, and at the Government's discretion, former Ministers are allowed reasonable access to official papers which they saw when they were in office. Such access is provided outwith the provisions of the Freedom of Information (Scotland) Act 2002 and is limited to that Minister personally. Access is subject to compliance with the 'Radcliffe Rules' (see paragraph 10.14 below). The papers made available for inspection cannot be copied or taken away. The use made of those papers is limited by the need to ensure that the conventions about confidentiality of exchanges between Ministers, and civil servants' advice to Ministers, are not breached. Approaches in these cases should be made in the first instance to the Permanent Secretary.

Taking Legal Advice

2.30 Paragraph 1.2 of this Code acknowledges the overarching duty on Ministers to comply with the law. It is part of the role of the Law Officers (the Lord Advocate and the Solicitor General for Scotland) to ensure that the Government acts lawfully at all times. Ministers and officials should therefore ensure that their decisions are informed by appropriate analysis of the legal considerations and that the legal implications of any course of action are considered at the earliest opportunity. All briefing to Ministers with legal implications should be informed by appropriate advice on the legal considerations.

2.31 The Law Officers have Ministerial responsibility for the provision of legal advice to Ministers on all matters relating to the law of Scotland. However, they cannot and do not advise on every legal issue which may arise. The primary source of legal advice for the Government is the Scottish Government Legal Directorate (SGLD).

2.32 All comments or views provided in any format by a qualified legal adviser as part of their role as a lawyer are considered to be legal advice. Ministers draw on oral and written legal advice as appropriate from Law Officers, SGLD, Counsel and external solicitors. There is, however, a general principle that the Law Officers must be consulted in good time before the Government is committed to significant decisions involving legal considerations.

2.33 The following are examples of the kind of situation where the advice of the Law Officers should be sought:

- (a) The legal consequences of action by the Government might have important repercussions;
- (b) A legal adviser in the Government has doubts about the legality or constitutional propriety of proposed legislation or executive action;
- (c) Ministers, or their officials, wish to have the advice of the Law Officers on questions involving legal considerations; or
- (d) There is a particular legal difficulty that may raise sensitive policy issues.

2.34 The provision of advice by the Law Officers may be through a formal written opinion or otherwise. The process of obtaining a written opinion of the Law Officers will normally be by way of a reference from SGLD. That may be at the request of Ministers, SGLD or the Law Officers themselves.

2.35 When advice from the Law Officers is referred to in correspondence between Ministers or in papers for Cabinet or Ministerial Committees, the conclusions may, if necessary, be summarised, but if this is done the complete text of the advice should be attached.

2.36 Submissions to Ministers raising legal considerations are copied to the Law Officers for information or awareness. Sometimes the Law Officers will comment on such submissions, but often they will simply note them. The Law Officers are not to be taken as offering a legal view on such a submission if they simply note it.

2.37 By convention, the written opinions of the Law Officers, unlike other Ministerial papers, are generally made available to succeeding administrations.

Disclosure of the Existence, Source or Content of Legal Advice

2.38 Ministers may acknowledge publicly that they have received legal advice on a particular topic, but must not divulge either who provided the advice or its contents (whether it is from the Law Officers or from anyone else). This applies to all forms of legal advice, including advice on a particular subject or advice associated with clearance of a document.

2.39 This approach is required in order to take account of the public interest in maintaining:

- (a) The right to confidentiality of communications between legal advisers and their clients (sometimes referred to as legal professional privilege);
- (b) The Law Officer Convention⁴ that the Scottish Government, like the UK Government, does not, other than in exceptional circumstances, disclose the fact that legal advice has or has not been given to the Government by or sought from the Law Officers, or the content of any such advice.

2.40 If, in exceptional circumstances, Ministers feel that the balance of public interest lies in disclosing either the source or the contents of legal advice on a particular matter, the Law Officers must be consulted and their prior consent obtained. Such consent will only be granted where there are compelling reasons for disclosure in the particular circumstances.

2.41 The provision in paragraph 2.38 preventing Ministers from divulging whether or not Law Officers provided legal advice does not apply in relation to Bills introduced in the Parliament because it is acknowledged publicly that the Law Officers advise on the legislative competence of Government Bills (see paragraph 3.4 below). Views given by the Law Officers in their Ministerial capacity, as opposed to legal advice provided by them in their capacity as legal advisers, are also not covered by the provision in paragraph 2.38.

The Law Officers' Role in Legal Proceedings

2.42 In criminal proceedings, the Law Officers act wholly independently of the Government. In civil proceedings, a distinction is to be drawn between proceedings in which the Law Officers are involved in a representative capacity on behalf of the Government, and action undertaken by them on behalf of the general community to enforce the law as an end in itself.

2.43 The Law Officers' role in relation to civil proceedings in which Ministers may become engaged in their personal capacities is described in paragraph 11.16.

⁴ See HM Treasury and Information Commissioner, High Court [2009] EWHC 1811. See also Erskine May *Parliamentary Practice* 23rd Edition 2004, page 443.

3. MINISTERS AND THE SCOTTISH PARLIAMENT

General Principle

3.1 In all their dealings with the Parliament, Ministers should seek to uphold and promote the key principles which guided the work of the Consultative Steering Group on the Scottish Parliament.

Key Principles of the Consultative Steering Group on the Scottish Parliament

3.2 The key principles endorsed by the Consultative Steering Group on the Scottish Parliament were as follows:⁵

- (a) The Scottish Parliament should embody and reflect the sharing of power between the people of Scotland, the legislators and the Scottish Government;
- (b) The Scottish Government should be accountable to the Scottish Parliament, and the Parliament and Government should be accountable to the people of Scotland;
- (c) The Scottish Parliament should be accessible, open, responsive, and develop procedures which make possible a participative approach to the development, consideration and scrutiny of policy and legislation;
- (d) The Scottish Parliament in its operation and its appointments should recognise the need to promote equal opportunities for all.

Commitments to Legislate

3.3 Ministers should not give undertakings either within or outside the Parliament to introduce primary legislation on any issue without the prior agreement of the Cabinet.

Introduction of Bills

3.4 Ministers responsible for Bills being introduced in the Parliament should ensure that the Bill is accompanied by clear, informative and comprehensive explanatory notes, by an appropriate policy memorandum detailing the policy objectives of the Bill and the consultation which has been undertaken on it, and by an appropriate Financial Memorandum setting out the best estimates of the administrative and compliance costs arising under the Bill, as required by the Parliament's Standing Orders. Draft Financial Memoranda must be cleared by the Cabinet Secretary for Finance and the Constitution prior to Bills being introduced. A Bill must also be accompanied by a statement, which will have been cleared with the Law Officers, that the Bill is within the legislative competence of the Scottish Parliament.

⁵ See www.parliament.scot/visitandlearn/Education/18651.aspx

Parliamentary Statements and other Government Announcements

3.5 When the Parliament is meeting, Ministers should ensure that important announcements of Government policy are made, in the first instance, to the Parliament (see also paragraph 2.25 above).

3.6 Oral statements can only be made at full meetings of the Parliament which are normally held on Tuesday, Wednesday or Thursday afternoons, when the Parliament is not in recess. The agenda for each day's business will normally have been agreed the previous week by the Parliament on a motion from the Parliamentary Bureau. The agreement of the Presiding Officer to interrupt business to allow an unscheduled statement to be made is required. If too many announcements are made by oral statement, Parliamentary business could be hindered. Nevertheless, careful consideration should be given in the case of important or particularly sensitive issues to the desirability of making an oral statement rather than an announcement by Written Answer to a Parliamentary Question. Ministers proposing to make an oral statement or to make an important announcement in the Parliament through another mechanism are therefore asked to conform to the following procedure:

(a) **As much notice as possible** of the intention to make an announcement should be given to (i) the First Minister; (ii) the Minister for Parliamentary Business; (iii) the Permanent Secretary; (iv) the First Minister's Communications desk; and (v) the Cabinet Secretariat. This notification should indicate: the broad content of the proposed announcement; (if necessary) why an oral statement is thought to be appropriate; and whether the policy with which it is concerned has been approved by Ministers, with references to relevant discussions in Cabinet or in other collective Ministerial meetings. If agreement is given in principle, a draft of the statement or answer should be circulated to the same recipients and all Cabinet members as soon as possible, once it has been approved in broad terms (though not necessarily in detail) by the relevant member of Cabinet and other Ministers with a portfolio interest (in urgent cases, clearance in principle and clearance of the detailed text may be secured at the same time);

(b) In the case of announcements by Written Answer to a Parliamentary Question, a press announcement must not be made before the Written Answer has been sent by e-mail to the MSP who lodged the Question. The timing of the announcement should be discussed and agreed with the Minister for Parliamentary Business and the Parliamentary Clerk's Office;

(c) Ministers should not give undertakings, either within or outside the Parliament, that an oral statement will be made to the Parliament on any subject at a specific time or within a particular period until agreement has been given by the First Minister and the Minister for Parliamentary Business to the proposed timing, and by the Ministers concerned to the terms of the statement;

- (d) Ministers should take account of the pressures of other Parliamentary business when considering the timing of statements. Where possible, the Government's intention to make a statement should be intimated in time for it to be taken into account by the Parliamentary Bureau in drawing up a business programme for the period in question. Where the need for an urgent statement emerges subsequently, early notice must be given to the Private Secretaries to the Minister for Parliamentary Business to allow the necessary request to be made to the Presiding Officer. Such requests must be submitted no later than 12 noon on the day the statement is to be made;
- (e) Copies of the final version of such announcements should be sent to the First Minister, the Minister for Parliamentary Business, the Permanent Secretary, the Cabinet Secretariat and the First Minister's Communications desk as soon as they are available;
- (f) A copy of the text of any oral statement should normally be passed to the non-Government parties one hour before it is made. For this purpose the final text must reach the office of the Minister for Parliamentary Business in the Parliament at least one and a half hours before the statement is due to be made;
- (g) The office of the Minister for Parliamentary Business will arrange for a copy of the final text of an oral statement to be sent in advance to the Presiding Officer;
- (h) Copies of any Ministerial statement made in the Parliament and of any document being published by means of the statement should be passed, via the office of the Minister for Parliamentary Business, to the Scottish Parliament Information Centre (SPICe). This affords Members an opportunity of studying the statement in advance of its publication in the Official Report;
- (i) All advance copies should be marked "*check against delivery – embargoed until [insert date]*", to indicate that Ministers can and will make changes to their statements up to and including the point of delivery; and
- (j) Every effort should be made to avoid leaving significant announcements to the last day before a recess.

Supply of Publications

3.7 A Minister in charge of an item of business in the Parliament is responsible for supplying SPICe in advance with a list of all those papers which he or she considers relevant to consideration of the item. The Minister must ensure that a reasonable number of copies of any documents published during the previous two years which may be needed for the debate are passed to SPICe if requested. When any document is out of print, the Minister should decide whether or not a reprint is required. Where any doubt exists about the need for any document to be available for a debate, the Minister should consult the Minister for Parliamentary Business.

Financial Resolutions

3.8 All motions for Financial Resolutions are lodged in the name of the Cabinet Secretary for Finance and the Constitution. However, he or she is not responsible for securing Parliamentary approval for the Resolution. This responsibility falls to the Minister responsible for the Bill to which the Financial Resolution relates.

Ministerial Availability

3.9 It is expected that Ministers' commitments in Parliament will normally take precedence over other engagements, and it is each Minister's responsibility to ensure that requests for absence from Parliament are submitted and cleared in advance by the Minister for Parliamentary Business.

Membership of Cross-Party Groups

3.10 In order to avoid any conflict of interest, Ministers should not take up membership of any Parliamentary Cross-Party Groups. On taking up office, they should relinquish membership of any such groups of which they are, at that time, a member.

Appearing before a Select Committee of the UK Parliament

3.11 A Select Committee of the UK Parliament may invite a Scottish Minister to attend and give evidence at one of its meetings. Where possible, Scottish Ministers should normally accept such invitations and should provide the Committee with relevant information about Scottish Government policy and practice.

4. MINISTERS AND THEIR RESPONSIBILITIES

General Principle

4.1 The First Minister is responsible for the overall organisation of the Government and the allocation of functions between Ministers in charge of portfolios.

Appointment of the First Minister

4.2 A First Minister must secure nomination at the start of each new Parliamentary session following a vote by MSPs, in accordance with Chapters 4 and 11 of the Standing Orders of the Scottish Parliament.⁶ Once a member has been nominated, the Presiding Officer recommends the appointment to Her Majesty The Queen. The appointment is made by Her Majesty by Royal Warrant. The Warrant is presented to the Lord President in the Court of Session when the First Minister is sworn in.

Ministerial Responsibilities and Titles

4.3 The First Minister is responsible for the overall organisation of the Government and the appointment of all Cabinet Secretaries and junior Scottish Ministers. Ministerial appointments are subject to approval by Her Majesty. Before seeking approval, the First Minister must first secure the agreement of the Parliament. The First Minister is also responsible for recommending the appointment of the Law Officers. These appointments are made by Her Majesty by Royal Warrant. The agreement of the Parliament must be obtained before a recommendation is made.

4.4 The structure and allocation of Ministerial portfolios are matters for the First Minister. The allocation of functions among Ministers is the responsibility of the First Minister, whose approval must be sought where any changes are proposed that affect this allocation or the responsibilities for the discharge of Ministerial functions. All Ministerial titles, and any proposed changes to them, must be approved by the First Minister.

Membership of the Cabinet

4.5 Membership of the Cabinet and decisions on attendance at Cabinet meetings are matters for the First Minister.

Ministers' Availability

4.6 The First Minister's office should be kept informed of Ministers' engagements, and also of their weekend and holiday arrangements, so that, if a sudden emergency arises, the First Minister can be informed which Ministers are immediately available. As set out at paragraph 9.7, any Minister who wishes to be absent from the UK for any reason other than official business at a European Union institution must seek the approval of the Cabinet Secretary for Culture, Tourism and External Affairs.

⁶ See www.parliament.scot/parliamentarybusiness/17797.aspx

4.7 When a Minister will be unable to be contacted for a considerable period because of absence or illness, it may be desirable that arrangements should be made for another member of the Government to be available to cover for him or her and to represent his or her interests in discussions in Cabinet or in any other collective Ministerial meetings. The First Minister's prior approval should be sought for the arrangements for cover for an absent Minister.

Parliamentary Liaison Officers

4.8 The First Minister may, on the recommendation of a Cabinet Secretary, and following consultation with the Minister for Parliamentary Business, appoint an MSP as a Parliamentary Liaison Officer (PLO) to support the Cabinet Secretary in the discharge of his or her Parliamentary duties.

4.9 No approach should be made to a potential PLO without the prior approval of the First Minister and the Minister for Parliamentary Business. Appointment as a PLO can be terminated at any time by the First Minister, following consultation with both the Cabinet Secretary whom the PLO has been appointed to assist and the Minister for Parliamentary Business.

4.10 PLOs are not members of the Scottish Government and may not stand in for Cabinet Secretaries or other Ministers at media or other events. They should also exercise discretion in any speeches or broadcasts which they may make, taking care not to make statements which appear to be made in an official or semi-official capacity. PLOs may serve on Parliamentary Committees, but they should not serve on Committees with a substantial direct link to their Cabinet Secretary's portfolio.

4.11 PLOs may be invited to attend official meetings and may be given access to Government information. Such access should be solely for the purpose of allowing PLOs to discharge their role effectively, and on a strictly confidential basis. PLOs should not, however, have access to information with a protective marking of secret or above. PLOs are required to exercise care in the use of any official information to which they have access in the course of their duties as a PLO and, in particular, should respect the confidentiality arrangements.

4.12 Although PLOs are not subject to the rules on private interests which apply to Ministers, they must ensure that no conflict arises, or appears to arise, between their role as a PLO and their private interests. They are in any case bound by the requirements of the Code of Conduct for Members of the Scottish Parliament.⁷

4.13 PLOs undertaking visits within the United Kingdom relating to their duties as a PLO may receive the normal Civil Service travel and subsistence allowances, as would any other MSP undertaking work for the Government.

4.14 At the beginning of each Parliamentary session, or when changes to PLO appointments are made, the Minister for Parliamentary Business will advise Parliament which MSPs have been appointed as PLOs. The Minister for Parliamentary Business will also ensure that PLO appointments are brought to the attention of Committee Conveners. PLOs must declare their appointment as a PLO on each occasion when they are participating in Parliamentary business related to the portfolio of their Cabinet Secretary.

⁷ See www.parliament.scot/msps/code-of-conduct-for-msps.aspx

Special Advisers

4.15 Special advisers provide assistance to Ministers in the development of Scottish Government policy and its presentation. The appointment of special advisers also reinforces the political impartiality of the permanent Civil Service by providing a separate channel for political advice and assistance available to Ministers.

4.16 Under the terms of the Constitutional Reform and Governance Act 2010, the First Minister is responsible for all special adviser appointments.⁸ If the First Minister ceases to hold office, the appointments of all special advisers appointed by him or her also end. The First Minister is responsible for deciding on the distribution of all special adviser posts within the Scottish Government, whether in support of individual Ministers or as a collective resource.

4.17 All special advisers (paid or unpaid) will be appointed by the First Minister under the terms and conditions set out in the Model Contract for Special Advisers and the Code of Conduct for Special Advisers.⁹ Salaries for special advisers are determined either by a Special Advisers Remuneration Committee or by any alternative mechanism that may be put in place following discussion and agreement with the First Minister.

4.18 The responsibility for the management and conduct of all special advisers (paid or unpaid), including discipline, rests with the First Minister. It is open to the First Minister to terminate employment by withdrawing his or her consent to an individual appointment.

4.19 Under the terms of the Constitutional Reform and Governance Act 2010, the Scottish Government is required to prepare an annual report setting out the numbers, names and pay bands of special advisers and their overall salary cost and to lay it before the Scottish Parliament.

Royal Commissions and Public Inquiries

4.20 The First Minister should be consulted in good time about any proposal to set up:

- (a) Royal Commissions in relation to devolved matters; and
- (b) Public inquiries into any aspect of policy on devolved matters.

4.21 Submissions proposing either of the above should contain details of the proposed size and structure of the body. This requirement is separate from the provisions concerning public appointments set out in Section 5 below.

⁸ See www.legislation.gov.uk/ukpga/2010/25/part/1/chapter/1/crossheading/special-advisers

⁹ See <https://beta.gov.scot/publications/special-advisers-code-of-conduct-and-model-contract/>

Contacts with External Individuals and Organisations, including Outside Interest Groups and Lobbyists

4.22 Ministers meet many people and organisations and consider a wide range of views as part of the formulation of Government policy. Meetings on official business should normally be arranged through Private Offices. A private secretary or official should be present for all discussions relating to Government business. Private Offices should arrange for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented. A monthly list of engagements carried out by all Ministers is published three months in arrears.

4.23 If Ministers meet external organisations or individuals and find themselves discussing official business without an official present – for example at a party conference, social occasion or on holiday – any significant content (such as substantive issues relating to Government decisions or contracts) should be passed back to their Private Offices as soon as possible after the event, who should arrange for the basic facts of such meetings to be recorded in accordance with paragraph 4.22 above.

4.24 See also paragraphs 9.27 to 9.31, 10.18 and 10.19, which provide guidance on contacts with commercial companies and meetings with external groups and the media, respectively.

Requirements of the Lobbying (Scotland) Act 2016

4.25 Ministers should also have regard to the Lobbying (Scotland) Act 2016, which established the Lobbying Register overseen by the Scottish Parliament. The purpose of the Register is to increase public transparency of lobbying activity in Scotland. The requirement to register any relevant lobbying activity lies with those who lobby, and not with Ministers, the Permanent Secretary or Special Advisers or their support staff. Ministers and officials should be familiar with the duties placed on lobbyists under the 2016 Act. Lobbyists seeking guidance about whether or not any communications made during a meeting are registrable should be directed to the Lobbying Register Team in the Scottish Parliament.¹⁰

¹⁰ See www.parliament.scot/gettinginvolved/101810.aspx

5. MINISTERS AND APPOINTMENTS

General Principle

5.1 Ministers have a duty to ensure that influence over Civil Service and public appointments is not abused for partisan purposes.

Civil Service Appointments

5.2 Civil Service appointments must be made in accordance with the requirements of the Constitutional Reform and Governance Act 2010¹¹ and the Civil Service Commissioners' Recruitment Principles.¹²

Selection Principles for Public Appointments

5.3 Public appointments should be made in accordance with the requirements of the law and, where appropriate, the *Code of Practice for Ministerial Appointments to Public Bodies in Scotland* issued by the Commissioner for Ethical Standards in Public Life in Scotland.¹³

5.4 National devolved public bodies in Scotland operate to a greater or lesser extent at arm's length from Ministers and the Scottish Government. Details of the relevant public bodies may be found in the *National Public Bodies Directory* published by the Scottish Government.¹⁴ The role of the Chair and board members of a public body, appointed by Ministers, is to provide effective leadership, direction, support and guidance to the organisation and to ensure that the Government's policies and priorities are implemented. The board is the bridge between the Minister who approves the corporate business plans and key performance targets of the body, and the Chief Executive and senior management team, who aim to ensure that plans are delivered and targets met through effective and properly controlled executive action.

5.5 In general (and subject to the constitution of the body to which the appointment is being made), public appointments to the boards of public bodies are the responsibility of Ministers. The Minister will appoint the person he or she considers to be best qualified for the position, based on specific criteria. In doing so, the Minister should have regard to public accountability, the requirements of the law and, where relevant, the Code issued by the Commissioner for Ethical Standards in Public Life in Scotland.

5.6 Appointment on merit is fundamental and applies to all Scottish public appointment procedures, irrespective of whether they are regulated by the Commissioner for Ethical Standards in Public Life in Scotland. Further information and advice on the Code issued by the Commissioner, its implications for Ministers, and Ministers' specific responsibilities are available from the Scottish Government Public Appointments Team.

¹¹ See www.legislation.gov.uk/ukpga/2010/25/part/1/chapter/1/crossheading/appointment

¹² See <http://civilservicecommission.independent.gov.uk/civil-service-recruitment/>

¹³ See www.publicappointments.org/publications/110/code-of-practice

¹⁴ See www.gov.scot/Topics/Government/public-bodies/about/Bodies

The Role of the First Minister and Other Ministers with a Particular Interest

5.7 The First Minister should always be copied into any initial submission seeking commencement of a new public appointment round, or the re-appointment of, or extension of the appointment of a Chair of a public body.

5.8 Final submissions seeking a decision on the appointment of a Chair of a public body should always be sent to the appointment Minister and the First Minister. Publicising the announcement of any new Chair should not take place until the First Minister has confirmed the appointing Minister's decision.

5.9 The First Minister must be consulted about any appointment which is likely to have political significance. Ministers should take a wide view of what constitutes political significance. Even local or regional appointments may from time to time excite an unusual amount of public interest because of the circumstances surrounding the appointment or the background of the candidate. In all cases involving political considerations, submissions to the First Minister should be copied to the Minister for Parliamentary Business.

5.10 The Cabinet Secretary for Finance and the Constitution must approve all initial submissions for new appointments which have advertising costs. All initial submissions which have associated advertising costs must be sent to the Cabinet Secretary for Finance and the Constitution as well as to the appointing Minister. No appointment round which has associated advertising costs should commence without clearance by the Cabinet Secretary for Finance and the Constitution.

5.11 The Lord Advocate should be consulted where it is proposed to appoint a judge or legal officer (e.g. a Scottish Law Commissioner) to a Royal Commission or a public inquiry. In such cases, it may be preferable for the individuals concerned to be approached by the Lord Advocate, rather than by officials.

5.12 The Minister for Parliamentary Business should always be consulted before an MSP is approached about appointment to any office which would result in the vacation of a Parliamentary seat.

5.13 In all cases where a submission is to be put to the First Minister for approval, no commitment should be made to any individual before the First Minister has commented. In the case of Royal Commissions or public inquiries, the First Minister and the Lord Advocate should be consulted before any informal soundings are undertaken. In other cases, any informal soundings should be made in such a way as to preserve freedom of action and avoid any appearance of commitment.

6. MINISTERS AND CIVIL SERVANTS

General Principle

6.1 Ministers must uphold the political impartiality of the Civil Service, and not ask civil servants to act in any way which would conflict with the Civil Service Code¹⁵ and the requirements of the Constitutional Reform and Civil Governance Act 2010.¹⁶ Ministers should be professional in their working relationships with the Civil Service and treat all those with whom they come into contact with consideration and respect.

Ministers and the Civil Service

6.2 Ministers have a duty to:

- (a) Give fair consideration and due weight to informed and impartial advice from civil servants, as well as to other considerations and advice in reaching policy decisions;
- (b) Uphold the political impartiality of the Civil Service, and not to ask civil servants to act in any way which would conflict with the Civil Service Code;
- (c) Ensure that influence over appointments is not abused for partisan purposes; and
- (d) Observe the obligations of a good employer with regard to the terms and conditions of those who serve them.

6.3 Ministers should not ask civil servants to engage in activities likely to call into question their political impartiality or to give rise to the criticism that official resources are being used for party political purposes.

The Role of the Accountable Officer

6.4 The Public Finance and Accountability (Scotland) Act 2000¹⁷ makes provision for the appointment of the Permanent Secretary as Principal Accountable Officer (PAO) for the Scottish Administration and specifies the Permanent Secretary's functions in this capacity. These include designating Accountable Officers for such parts of the Scottish Administration as the Permanent Secretary may specify and for certain other bodies, the accounts of which are required by statute to be audited by or under the control of the Auditor General for Scotland.

6.5 The essence of the Accountable Officer's role is a personal responsibility for the propriety and regularity of the public finances for which he or she has stewardship and ensuring the economic, efficient and effective use of resources. Accountable Officers are personally answerable to the Public Audit Committee of the Parliament on these matters within the framework of Ministerial accountability to the Parliament. The PAO has overall responsibility for these matters with regard to the Government, but would normally only be expected to answer personally to the Public Audit Committee on issues affecting the Government as a whole.

¹⁵ See <https://beta.gov.scot/publications/civil-service-code/>

¹⁶ See www.legislation.gov.uk/ukpga/2010/25/contents

¹⁷ See www.legislation.gov.uk/asp/2000/1/contents

6.6 Accountable Officers have a particular responsibility to see that appropriate advice is tendered to Ministers on all matters of financial propriety and regularity and on the economic, efficient and effective use of resources. If Ministers are contemplating a course of action which the Accountable Officer considers would breach the requirements of financial regularity or propriety, the Accountable Officer must set out in writing his or her objection to the proposal, the reasons for the objection and his or her duty to inform the Auditor General for Scotland should the advice be overruled.

6.7 If Ministers decide nonetheless to proceed, the Accountable Officer must seek written authority to take the action in question and must send the relevant papers to the Auditor General for Scotland and to the Clerk to the Public Audit and Post-legislative Scrutiny Committee as soon as possible. The same procedure applies where the Accountable Officer considers that Ministers are contemplating a course of action which he or she could not defend as representing value for money within a framework of Best Value. The procedure enables the Public Audit and Post-legislative Scrutiny Committee to see that the Accountable Officer does not bear personal responsibility for the actions concerned.

6.8 The role of Accountable Officers is described in greater detail in the Memorandum to Accountable Officers published in the Scottish Public Finance Manual.¹⁸

Civil Servants and Party Conferences

6.9 Ministers should not ask civil servants to attend or take part in party conferences or meetings of party policy or subject groups. It is an established principle in the public service that civil servants in their official capacity should not accept invitations to conferences convened by, or under the aegis of, party political organisations. The situation is, of course, different when Ministers require officials to be in attendance at party political events in order to enable the Minister to carry out urgent official business unconnected with the event. An exception to this rule is made for Special Advisers who, under the terms of their contracts, may attend party functions, including annual party conferences (but they may not speak publicly at the conference) and maintain contact with party members. Further guidance is available from the Cabinet Office.¹⁹

6.10 If a Minister wishes to have a brief for a party political occasion to explain Government policies or actions, there is no reason why this should not be provided. It cannot however contain material which could be construed as designed to promote one party's line or to anticipate criticisms from other parties.

¹⁸ See www.gov.scot/Topics/Government/Finance/spfm/Accountability

¹⁹ See www.gov.uk/government/publications/civil-servants-and-party-conferences-guidance

7. MINISTERS' CONSTITUENCY AND PARTY INTERESTS

General Principle

7.1 Facilities provided to Ministers at Government expense to enable them to carry out their official duties should not be used for party or constituency work. Where Ministers have to take decisions which might have an impact on the constituency or region which they represent as MSP, they should take particular care to avoid any possible conflict of interest.

Use of Government Property / Resources

7.2 Government property should not generally be used for constituency work²⁰ or party activities. A particular exception is recognised where a building has been designated as the First Minister's official residence. Where Ministers host party or personal events in the First Minister's official residence, it should be at their own or at party expense, with no cost falling on the public purse.

7.3 Official facilities and resources may not be used for the dissemination of material which is essentially party political. The conventions governing the work of Government Communications staff are set out in the Propriety Guidance issued by the Government Communication Network.²¹ Similar conventions apply to special advisers in their work to assist Ministers in the presentation of Scottish Government policy, as set out in the *Code of Conduct for Special Advisers* (see also paragraphs 4.15 to 4.17).²²

References for Constituents

7.4 On occasions, Ministers are asked to provide personal or job references for constituents. Ministers may only do this provided they make clear that they are doing so as an MSP and not as a Minister. Particular care must be taken, however, to avoid any conflicts of interest; in some cases, it may not be appropriate for a Minister to provide a reference, even as an MSP. For example, Ministers should not provide references for jobs in the public sector for which their portfolio is responsible.

Constituency Interests

7.5 Where Ministers have to take decisions within their area of portfolio responsibility which might have an impact on their own constituency or region, they must take particular care to avoid any possible conflict of interest. They should advise the Permanent Secretary and, in the case of junior Scottish Ministers, the relevant Cabinet Secretary of the interest, and responsibilities should be arranged to avoid any conflict of interest.

7.6 Ministers are free to make their electorate's views about constituency matters known to the responsible Minister by correspondence, leading deputations or by personal interview, provided they make clear that they are acting as an MSP and not as a Minister.

²⁰ References to constituency work also include regional MSPs' work on behalf of their electorates.

²¹ See <https://gcs.civilservice.gov.uk/guidance/propriety/>

²² See <https://beta.gov.scot/publications/special-advisers-code-of-conduct-and-model-contract/>

7.7 Ministers are advised to take particular care in cases relating to planning applications in the constituency or region which they represent, or in other similar cases. Particular care is required when expressing views on cases involving exercise of discretion by Ministers (such as school or hospital closures), where representations intended to be taken into account in reaching a decision may have to be made available to other parties and thus may well receive publicity.

7.8 In all such cases, it is important that Ministers should:

- (a) Make clear that the views they are putting forward are ones expressed in their capacity as the MSP representing a particular electorate;
- (b) Avoid criticism of the Government's policies; and
- (c) Confine themselves to comments which could reasonably be made by those who are not Ministers.

7.9 Once a decision has been announced, it should be accepted without question or criticism. It is important that Ministers, in expressing the views of their electorate, do so in a way that does not create difficulty for the Ministers who have to take the decision and that they bear in mind the Government's collective responsibility for the outcome. Ministers should also take account of any potential implications which their comments might have in their own field of portfolio responsibility.

7.10 Particular care also needs to be taken over cases in which a Minister may have a personal interest or connection, for example because they concern family, friends or employees. If, exceptionally, a Minister wishes to raise questions about the handling of such a case, they should advise the Permanent Secretary and write to the Minister responsible, as with constituency cases, but they should make clear their personal connection or interest. The responsible Minister should ensure that any enquiry is handled without special treatment.

7.11 Additional guidance specific to planning cases and energy consents is set out in paragraphs 8.6 to 8.8 below.

Lottery Bids

7.12 In order to avoid the impression that Ministers are seeking to influence decisions on awards of Lottery money, Ministers should not normally give specific public support for individual applications for Lottery funding. Where a Minister wishes to lend support to a specific project as constituency or regional MSP for a potential Lottery application, he or she should be guided by the principles set out in paragraph 7.10. Ministers lending support to a specific project should do so on the very clear understanding that it is in their capacity as an MSP.

Scottish Public Services Ombudsman Cases

7.13 The Scottish Public Services Ombudsman (SPSO) was established by the Scottish Public Services Ombudsman Act 2002 and is the final stage for complaints about most public services in Scotland. Members of the public may submit

complaints directly to the SPSO, but they may also choose to approach their MSP for assistance or ask them to act as their representative in dealing with the SPSO. When Ministers are asked by members of the public for assistance in dealing with the SPSO, they should, where possible, act no differently from MSPs who are not Ministers. Ministers should accordingly consider requests on their merits in deciding whether to refer a complaint to the SPSO, or to refer the case to the relevant Minister, or to decline to take action. Where the complainant is not from the Minister's constituency or region, the Minister may wish to refer the case to an MSP who represents the relevant constituency or region. Any Minister is minded to provide assistance in relation to a case referred to the SPSO should inform the Minister responsible for the portfolio concerned in advance.

7.14 Where a complaint is about a matter for which the Minister is responsible, the Minister may wish to investigate it personally unless he or she, or one of the other Ministers in his or her team, has already been directly involved in the case. Where a Minister has been so involved, the SPSO should be asked to investigate if the case is within the Ombudsman's jurisdiction; and there may be other circumstances in which a Minister will prefer to refer a case to the SPSO straight away. Ministers should decide for themselves whether or not it is appropriate for them to become involved in a case, and they should be aware that their choosing not to become involved shall in no way preclude the submission of a complaint to the SPSO.

Parliamentary Commissioner for Administration

7.15 A complaint brought to the attention of a Minister may fall outwith the remit of the Scottish Public Services Ombudsman but instead lie within the remit of the Parliamentary Commissioner for Administration (PCA) (commonly known as the Parliamentary Ombudsman).²³ Scottish Ministers do not have the power to refer such complaints directly to the PCA. Ministers should instead draw the complaint to the attention of the complainant's MP or advise the complainant to ask his or her MP to refer the complaint to the PCA.

²³ See www.ombudsman.org.uk/about-us/who-we-are

8. MINISTERS' ENGAGEMENT ON PLANNING MATTERS, INCLUDING THE GRANTING OF ENERGY CONSENTS

General Principle

8.1 Ministers should take particular care to avoid conflicts of interest when dealing with planning matters, including the granting of energy consents.

Ministers' Interests in Specific Cases

8.2 The requirements of this section of the Code are especially relevant for a Minister who is either the Planning Minister or who otherwise has a particular interest in a specific case. Ministers should clearly articulate a distinction between their role as Minister and as the MSP representing a particular electorate.

The Planning Minister

8.3 To help ensure the fairness and transparency of the planning system, the Planning Minister²⁴ or any other Minister involved in the planning decision, must do nothing which might be seen as prejudicial to that process, particularly in advance of the decision being taken. Action that might be viewed as being prejudicial includes:

(a) Taking a decision, or being part of the decision-making process, in respect of an application which falls within the constituency or region represented by the Planning Minister or any other Minister involved in the planning decision, or expressing an opinion publicly on a particular case which is before, or may subsequently be referred to, the Minister(s) for decision.

In order to preserve the integrity of the decision from challenge on grounds of prejudice, the Planning Minister or any other Minister involved in the decision-making process would have to debar him- or herself from any involvement in the case:

- (i) if the application fell within his or her constituency or region; or
- (ii) if the Minister had expressed a personal view on the proposal; or
- (iii) if the Minister considered that his or her impartiality might be perceived to be compromised in any other way;

(b) Meeting the developer or objectors to discuss the proposal, but not meeting all parties with an interest in the decision.

The Planning Minister, or any other Minister involved in the planning decision, should only hold such a meeting if it is possible to meet **all** interested parties in respect of a particular proposal or, as an absolute minimum, to offer all parties the opportunity of such a meeting; and

(c) Commenting on decisions once they have been issued, other than in terms of what has appeared in the decision letter or, in the case of structure plan or Strategic Development Plan approvals, any accompanying explanatory annexes.

²⁴ The Planning Minister is the Minister responsible for taking a decision on behalf of Scottish Ministers collectively on planning cases (including planning permission, listed building consents and energy consents) that have been referred to the Scottish Government.

In the interests of certainty and stability, the legislation provides for decisions on planning cases to be final, subject only to challenge in the Courts on a point of law, or on the grounds that a decision is so unreasonable that no reasonable Minister could have arrived at it. Decision letters set out in full the grounds for decisions, and the Minister should make it clear that, in any discussion after a decision is made, he or she would be unable to add to the terms of the relevant decision letter.

Other Ministers with a Particular Interest

8.4 Particular care needs to be taken over cases in which a Minister may have a personal interest or connection, for example because they concern family, friends or employees. If, exceptionally, a Minister wishes to raise questions about the handling of such a case, they should write to the Permanent Secretary and the Minister responsible, as with constituency cases, but they should make clear their personal connection or interest. The responsible Minister should ensure that any inquiry is dealt with rigorously and without special treatment.

8.5 Ministers with powers in relation to public bodies are required to take particular care when a body is a statutory consultee in the planning process. While Ministers are free to give general strategic guidance to those public bodies for which they have portfolio responsibility and to be reassured that this is being followed, and although Ministers are entitled to take an interest in whether public bodies are fulfilling their statutory role in the planning system, they should take care not to seek to influence the substance of the advice being given in individual cases which are subject to the planning process.

All Ministers

8.6 The general guidance at 7.5 to 7.10 above also applies to planning matters, including energy consents. It is entirely legitimate for Ministers, in their capacity as a constituency or regional MSP, to make representations on behalf of their electorate on planning matters, but they must take particular care to ensure they follow this due process when doing so. Where Ministers find it unavoidable to express a view on a planning case, they should be aware of the potential sensitivities in doing so, should make it clear that they are not involved in the decision making process on the planning case, and must make it clear that the views they put forward are ones expressed in their capacity as the MSP representing a particular electorate.

8.7 Ministers can, when acting in their MSP role, represent their electorate's views on planning cases, and should act as follows:

- (a) They may write to the Minister responsible for taking a decision on a planning application, arguing against or in favour of a particular course of action. But in so doing, they should make it clear that they are representing their electorate as MSP or are acting at the request of a particular group or person;

- (b) They can express agreement with the views of a particular group or person when submitting representations in connection with a planning application, but such expressions of personal opinion should be informed by the procedures as set out in paragraph 7.8 above;
- (c) They should make no comment of their own where the determination of a planning application will lead to, or will implicitly involve, other decisions in which the Minister making representations on behalf of a particular constituency or region is involved in his or her own Ministerial capacity;
- (d) They may attend public meetings, make representations to a planning authority, argue a constituent's case at a public local inquiry and take a personal position. But their role throughout must be consistent with the restrictions set out under (a) to (c) above. They may not take a personal position in respect of cases falling under (c) above;
- (e) They may lead deputations or arrange meetings between relevant parties, ensuring that they take into account the guidance set out at paragraphs 7.6 to 7.8; and
- (f) They can make public comment, including through the media, but should be aware of the potential sensitivities in doing so.

8.8 Parliamentary Liaison Officers should take special care when making representations to Ministers about planning issues. In particular, they should not discuss planning cases with interested parties or imply that they have any influence over planning decisions. In representing their interests as a constituency or regional MSP, they should abide by the guidance in paragraphs 7.5 to 7.10 above.

The First Minister

8.9 The guidance set out in paragraphs 8.6 to 8.8 applies to the First Minister in the same way as to all other Ministers. The First Minister may act as a constituency or regional MSP on any matter, in the same way as any other Minister. However, the First Minister must take especially rigorous care to be seen to separate his or her role as an MSP and his or her potential Ministerial role in a planning decision. The First Minister must be seen to do nothing that could be perceived as prejudicial to the planning process, by making sure that other Ministers have a clear understanding that, when he or she is acting or expressing a view as a constituency or regional MSP, those actions or views are not misinterpreted as being directive.

8.10 The First Minister should avoid making any public statement about the merits of a planning application (even in his or her capacity as local MSP) that might be seen to put the Planning Minister under pressure when making a decision about a planning matter. Where the First Minister judges that the circumstances in which he or she is acting as constituency or regional MSP are particularly sensitive, he or she has the option of consulting the Permanent Secretary.

9. TRAVEL BY MINISTERS

General Principle

9.1 Ministers must ensure that they always make efficient and cost-effective travel arrangements. Ministers must be satisfied that their travel arrangements could be defended in public, consistent with Ministers' commitment to reduce emissions.

Guiding Principles for Ministerial Travel

9.2 In planning their official travel, Ministers should adhere to the guiding principles set out below:

- (a) **Propriety:** On Ministerial visits, whether in the UK or abroad, Ministers and officials should make sure that there is no confusion about who is and is not a member of the Ministerial party. When Ministers travel on official business, the cost should normally be met from public funds. When any expenses are not met in this way, Ministers should ensure that no undue obligation is involved. Official transport should not normally be used for travel arrangements arising from party or private business;
- (b) **Efficient Use of Resources:** The availability of some services, such as official cars, is necessarily limited, and Ministers should pay special attention to the need to use the Government Car Service efficiently. Where practicable, Ministers are encouraged to use public transport and to make use of the Government's central travel contracts wherever possible. Travel arrangements should be consistent with Ministers' commitment to reduce emissions;
- (c) **Cost Consciousness:** In using official cars and travelling by rail or air, Ministers must always make cost-effective travel arrangements. The cost of alternative arrangements should be considered before any decisions involving substantial costs are made; and
- (d) **Security:** Ministers should keep security risks in mind at all times, particularly when travelling by car. This applies both to them personally and to Ministerial papers.

Overseas Visits

9.3 Ministers should make it their personal responsibility to approve the size and composition of any Ministerial delegation for which they are responsible, keeping delegations as small as possible. Ministers and officials should make sure that there is no confusion about who is and is not a member of the Ministerial party.

9.4 When Ministers travel on official business, their travel expenses should be borne by the Government. Offers of free travel or accommodation should not normally be accepted. The only exception to this is in the case of an offer of transport from an overseas government, provided no undue obligation is created. If such offers are received, guidance should be sought from International Division, who will refer to the First Minister and the Permanent Secretary as required. Further advice on gifts and hospitality is set out below in paragraphs 11.19 to 11.24.

Detailed Arrangements for Overseas Visits

9.5 Ministers should normally arrange overseas visits in the Parliamentary recess or, where appropriate, at weekends, except where the visit is in connection with the business of the European Union (EU) or there are other compelling reasons of Government business. Ministers should also bear in mind that Cabinet meetings take precedence over all other Ministerial business, as set out in paragraph 2.20 above. A sufficient number of Ministers must also be available during recess to ensure the effective conduct of Government business, and it may be necessary for this reason to restrict or reconsider absences abroad.

9.6 International Division and/or European Relations Division, as appropriate, should be informed if any overseas visit is contemplated (for example, whenever an invitation is received by the Minister's Private Office). They will be responsible for consulting the Foreign & Commonwealth Office, if necessary, and feeding back any views. International Division and/or European Relations Division should thereafter be kept involved in making arrangements for all overseas visits.

9.7 Any Minister who wishes to be absent from the country for any reason other than official business at an EU institution must seek the written approval of the Cabinet Secretary for Culture, Tourism and External Affairs. In addition, the Minister for Parliamentary Business must approve any absence from Parliament. Such approval must be obtained before any commitment is given, even on an informal basis.

9.8 In the case of official visits, the minute seeking approval should be copied to the First Minister, the Cabinet Secretary for Finance and the Constitution, the Minister for Parliamentary Business, the Permanent Secretary, DG Constitution & External Affairs, the Cabinet Secretariat inbox, International Division and European Relations Division. The minute should include a statement of the objectives of the visit, its approximate cost and the names of the officials accompanying the Minister. For the avoidance of confusion, the minute should also set out clearly the names and designations of all those who are members of the Ministerial party. A template is available from the office of the Cabinet Secretary for Culture, Tourism and External Affairs.

9.9 Ministers planning visits to EU councils or other EU institution meetings should inform the Cabinet Secretary for Culture, Tourism and External Affairs in writing and should copy the minute to DG Constitution & External Affairs, the Cabinet Secretariat inbox, International Division and European Relations Division.

9.10 The First Minister's prior written approval is required for any official visit overseas by a special adviser (paid or unpaid) or where it is proposed that a Minister should be accompanied on any official visit overseas by his or her spouse or partner.

9.11 Where the First Minister proposes to be absent from the country for any reason other than official business at an EU institution, he or she must first seek Her Majesty The Queen's permission to leave the country.

9.12 When making arrangements for official Ministerial visits overseas, the diplomatic post concerned should be approached to give advice on the proposed programme, except in the case of visits arranged by Scottish Development International. International Division and/or European Relations Division, as appropriate, will provide contact details for the relevant diplomatic post.

9.13 When holding meetings overseas with Ministers and/or officials from overseas governments, or where official business is likely to be discussed, Ministers should always ensure that a private secretary or relevant official is present. If Ministers meet an external organisation or individual and find themselves discussing official business without an official present – for example at a social occasion or on holiday – any significant content should be passed back to their Private Office as soon as possible after the event. Ministers should seek guidance from International Division and/or European Relations Division if there is any uncertainty about the status of such meetings or the attendance of non-officials at them. International Division and/or European Relations Division will, in turn, seek advice from the Foreign & Commonwealth Office, as required.

Ministerial Reports on Return from Overseas Visits

9.14 Where a Minister has travelled overseas on official business (including visits to EU countries for the purpose of attending meetings of EU Councils or meetings at other EU institutions), the Minister's lead official should provide the Cabinet Secretary for Culture, Tourism and External Affairs and the First Minister with a brief note summarising the purpose and nature of their visit, making an initial assessment of its value in terms of the original objectives, and recording any substantive discussions held with representatives of foreign or Commonwealth countries. This applies to informal discussions as well as those held in the course of official business. Ministers should note that this applies equally if such contacts are made while on holiday in the country concerned (and if Ministers intend making such contact, they must seek the views of the First Minister before travelling).

9.15 International Division and/or European Relations Division will ensure that a note of the salient points of any substantive discussions is passed to the Foreign & Commonwealth Office for information. In the case of EU Council meetings, a report to the Scottish Parliament on the outcomes of the Council will normally be sufficient. Ministers' reports on overseas visits must be completed within ten days of their return. Reports should be copied to DG Constitution & External Affairs, International Division and European Relations Division. A template is available from the office of the Cabinet Secretary for Culture, Tourism and External Affairs.

9.16 The Minister's Private Office must also provide the Ministerial Private Office divisional support team with details of the dates of the visit, countries visited, meetings held, and the names and designations of those who accompanied the Minister, as well as the final costs of the visit, including all flights and travel and subsistence costs. This information will be collated as a central record, ensuring that up-to-date information on such visits and their costs can be made available at short notice in the event that Ministers are asked to account for their travel arrangements.

Publication of Ministerial Overseas Travel

9.17 The Scottish Government publishes quarterly details of all travel overseas by all Ministers. Ministerial Private Offices must provide the information required to compile this list to the Ministerial Private Office divisional support team as soon as each overseas visit has been completed.

Visits by Ministers from Foreign or Commonwealth Countries

9.18 Ministers should consult the First Minister before extending invitations to Ministers in other national or regional governments to pay official visits to Scotland. Relevant officials should also inform International Division about all visits to Scotland which become known to them, whether private or official, by Ministers in other governments or by any other person of equivalent status, to enable International Division to inform the Foreign & Commonwealth Office. It will be for the First Minister to decide whether to consult the Foreign & Commonwealth Office before inviting Ministers from foreign or Commonwealth countries to Scotland.

Ministers Recalled from Abroad

9.19 If a Minister is abroad with permission and is called home for Ministerial or Parliamentary reasons – including to vote – the cost of the extra journey back and forth may be met from public funds.

UK Visits

9.20 Ministers intending to make an official visit within the United Kingdom must, in all normal circumstances, inform in advance the MPs whose constituencies are to be included within the itinerary. Within Scotland, Ministers must also, again in all normal circumstances, inform the constituency and regional MSPs for the relevant area. The notification should also be copied to the chief executive of the relevant local authority. It is recognised that there will be occasions when visits are organised or the details confirmed at short notice, but where reasonably possible such notification should issue at least 48 hours in advance of the visit concerned. Ministers and officials should make sure there is no confusion about who is and is not a member of the Ministerial party.

9.21 Similar courtesies should be extended when Ministers are visiting the constituencies of members of the National Assembly for Wales or the Northern Ireland Assembly.

9.22 Ministers who are planning official visits to England, Wales or Northern Ireland which would involve a public engagement should inform the First Minister. In the case of visits in England, the appropriate Secretary of State should be informed, as should the First Minister in the case of Wales and the First Minister and Deputy First Minister in the case of Northern Ireland.

Party Political Occasions

9.23 Where a visit is a mix of political and official engagements, it is important that the Government and the party each meet a proper proportion of the actual cost.

Air Miles, Etc.

9.24 Air Miles-type rewards schemes and other benefits earned through travel paid for from public funds should be used only for official purposes or else forgone, other than where they are *de minimis* (for example, access to special departure lounges or booking arrangements associated with membership of regular flier clubs). If it is impracticable to use the benefits for Government travel, there is no objection to Ministers donating them to charity if this is permissible under the terms of the relevant scheme and the charity is one chosen by the scheme operator.

Travelling Expenses of Spouses or Partners

9.25 The expenses of a Minister's spouse or partner, when accompanying the Minister on the latter's official duties, may occasionally be paid from public funds, provided that it is clearly in the public interest that he or she should accompany the Minister. The written agreement of the First Minister must be obtained on each occasion before travel.

Travelling Expenses of Special Advisers

9.26 If necessary, a Minister may take a special adviser on an overseas visit at the public expense, provided that it is clearly in the public interest that he or she should accompany the Minister. The First Minister's written approval must be obtained on each occasion before travel.

Contact with Commercial Companies

9.27 Regardless of their responsibilities, all Ministers will come into contact with private sector businesses from time to time. Invitations to functions and events are common place and are part and parcel of Ministerial life. It is for Ministers themselves to judge whether to accept any invitation extended to them but they should satisfy themselves that doing so does not place them under any real or perceived obligation nor risks the commercial position of the Government. Ministers should be guided by the principles set out below in coming to a decision.

9.28 Ministers are free to enjoy normal hospitality provided by private sector companies in the course of their duties (further guidance on acceptance of gifts and hospitality is set out in paragraphs 11.19 to 11.24). However, Ministers should consider very carefully any repeated or serial hospitality from an individual or a company. Ministers need to be sensitive to the risk that private sector interests might occasionally attempt to use occasions to exercise improper influence and lobby the Minister.

9.29 Ministers should also avoid promoting an individual company's products or services by association. They should also bear in mind public sector procurement procedures and resist any attempt to influence them in favour of particular products or services. If such attempts are experienced, Ministers should report these to the Director of Procurement and Commercial. However, nothing in this Code should be taken as preventing Ministers from fulfilling their proper function of encouraging investment in economic activity to the benefit and prosperity of the people of Scotland.

9.30 Formal invitations which are sent to Ministers are usually subject to a process which allows relevant officials in the Scottish Government to brief the Minister on the appropriateness of accepting the invitation, including matters such as company performance, commercial interests the company might have with the Government, etc. Informal approaches should be treated with caution, and Private Offices should seek advice from the appropriate Directorate if the Minister is in any doubt.

9.31 Ministers should also have regard to the Code of Conduct for Members of the Scottish Parliament – Volume 2, Section 5 on Lobbying and Access to MSPs²⁵ which provides guidance on the relationship between lobbyists and MSPs (see also paragraph 4.25 of this Code on the requirements of the Lobbying (Scotland) Act 2016).

9.32 Paragraphs 4.22 to 4.24, 10.18 and 10.19 of this Code provide further guidance on meetings with external individuals and organisations, including outside interest groups, lobbyists and the media, including those meetings where an official is not present.

²⁵

See www.parliament.scot/msps/105587.aspx

10. MINISTERS AND THE PRESENTATION OF POLICY

General Principle

10.1 Official facilities paid for out of public funds can be used for Government publicity and advertising but may not be used for the dissemination of material which is essentially party political.

Media Interviews, Speeches, Etc.

10.2 In order to ensure the effective presentation of Government policy, Scottish Government Media Managers co-ordinate a strategic communications process on behalf of Ministers. This requires, among other things, that all major interviews and media appearances, both print and broadcast, are the subject of prior consultation with Media Managers and, if appropriate, the First Minister and any other Minister he or she may designate for this purpose.

10.3 The presentational aspects of all major announcements, speeches and new policy initiatives should also be discussed with Media Managers in this way, and the timing, format and content of all announcements should be cleared with them. The conventions governing the work of Government Communications staff are set out in the Government Communication Service Propriety Guidance.²⁶

10.4 In all cases other than representations on behalf of constituents (as described in paragraph 7.6), the principle of collective responsibility applies, as set out in paragraph 2.1. Ministers should ensure that their statements are consistent with collective Government policy. Ministers should take special care in referring to subjects which are the responsibility of other Ministers.

10.5 Ministers must only use official machinery for distributing texts of speeches relating to Government business. Speeches made in a party political context must be distributed through the party machinery.

News Conferences/Broadcasts

10.6 As part of their general presentational duties, Ministers will be expected to speak to the news media, through television and radio interviews, through interviews with journalists and through news conferences. In all cases, the advice of Media Managers should be sought before any such events are arranged, e.g. on timing, content and handling. Support should be provided by Media Managers where this is practical. In keeping with the concept of collective responsibility, Ministers should be mindful that when responding to direct approaches from members of the media, their comments are likely to be perceived as representative of the Government. In all cases, propriety should be maintained, in accordance with Government Communication Service Propriety Guidance. Details on procedures for media handling will be provided by Media Managers.

10.7 Ministers invited to broadcast on radio, television and/or webcasts in a political or private capacity should consider if acceptance of such an invitation would have a bearing on another Minister's responsibilities, in which case they should clear the matter with the Ministerial colleague concerned before agreeing to the invitation.

²⁶ See <https://gcs.civilservice.gov.uk/guidance/propriety>

Non-Government Communications, including Press Articles

10.8 Ministers may contribute to a book, journal, newspaper (including the letters pages), blog or other similar social media, including a local newspaper in the constituency or region they represent as MSP, provided that publication will not be at variance with Ministers' obligations to Parliament or their duty to observe the principle of collective Ministerial responsibility and that it does not bring the Government into disrepute. No payment should be accepted for such contributions.

10.9 Any Minister wishing to practise regular journalism must have the prior written approval of the First Minister.

Social Media

10.10 Ministers may retain personal social media accounts (e.g. Facebook, Twitter), provided that any activity on their account is not at variance with their obligations to Parliament or their duty to observe the principle of collective Ministerial responsibility. It is Ministers' personal responsibility to ensure that social media activity in their name does not breach these requirements or bring the Government into disrepute.

10.11 If Ministers wish to use social media for official policy communications, they should use an appropriate Government account.

Payment for Speeches, Media Articles, Etc.

10.12 Ministers should not accept payment for speeches or media articles of an official nature or which directly draw on their responsibilities or experience as Ministers or with a view to donating the fee to charity. If the organisation in question insists on making a donation to a charity then it should be a charity of the organisation's choice. This is to avoid any criticism that a Minister is using his or her official position to influence or take the credit for donations to charity.

Books

10.13 Ministers may not, while in office, write and publish a book on their Ministerial experiences. Nor, while serving as a Minister, may they enter into any agreement to publish their memoirs on leaving their Ministerial position.

10.14 Former Ministers intending to publish their memoirs are required to submit the draft manuscript in good time before publication to the Permanent Secretary and to conform to the principles set out in the Radcliffe report of 1976.²⁷

Surveys

10.15 Ministers are sometimes asked to give interviews to persons engaged in academic research or in market opinion surveys or questionnaires. Ministers should bear in mind the possibility that their views may be reported in a manner incompatible with their responsibilities and duties as Ministers, and such interviews should normally be declined.

²⁷ See Directory of Civil Service Guidance, Volume 2: Collected Guidance, page 41: Ministerial Memoirs: The Radcliffe Rules and their application:
www.gov.uk/government/publications/directory-of-civil-service-guidance

Publication of Policy Statements and Consultation Papers

10.16 Given the need to make statements of policy to Parliament before the media, there is no procedure whereby final proof copies of policy documents can be made available under embargo to accredited correspondents a short time before publication. If a Minister wishes to depart from this general principle, Media Managers and, through them, the First Minister and whichever Minister he or she may designate for this purpose must be consulted. See also paragraph 2.25 for clearance of Government policy documents and consultation papers.

Complaints

10.17 Ministers who wish to make a complaint against a journalist or a particular section of the media to the appropriate regulator must have the authority of the First Minister. The nature of the complaint and the case for referring it to the appropriate body should be set out in a minute to the First Minister, copied to the Permanent Secretary, DG Organisational Development & Operations, the Director for Communications, Ministerial Support and Facilities and the Head of Communications. Similarly, Ministers should always consult the Head of Communications before making any oral complaint to a media organisation about their handling of a story.

Meetings with External Organisations

10.18 A monthly list of engagements carried out by all Ministers is published three months in arrears. Detailed arrangements for recording contacts with external organisations and individuals, including outside interest groups and lobbyists, are set out in paragraphs 4.22 to 4.24 above. See also paragraphs 9.27 to 9.31 for further guidance on contact with commercial companies.

Meetings with the Media

10.19 Ministers must be open about their links with the media. The monthly list of Ministerial engagements referred to in paragraph 10.18 above will include Ministers' meetings with newspaper and other media proprietors, editors and senior executives, regardless of the purpose of the meeting.

Statistics

10.20 Ministers must be mindful of the UK Statistics Authority's Code of Practice,²⁸ which defines good practice in relation to official statistics, observance of which is a statutory requirement on all organisations that produce National Statistics in accordance with the provisions of the Statistics and Registration Service Act 2007.

10.21 Ministers must also have regard to the relevant Pre-Release Access to Official Statistics Orders,²⁹ which place strict conditions on access to official statistics in their final form, including limiting access ahead of publication and prohibits any statement or comment to the press ahead of release of the statistics.

²⁸ See www.statisticsauthority.gov.uk/assessment/code-of-practice/index.html

²⁹ See www.statisticsauthority.gov.uk/about-the-authority/uk-statistical-system/legislation/pre-release-access/index.html

11. MINISTERS' PRIVATE INTERESTS

General Principle

11.1 Ministers must ensure that no conflict arises, or could reasonably be perceived to arise, between their public duties and their private interests, financial or otherwise.

Responsibility for Avoiding a Conflict

11.2 It is the personal responsibility of each Minister to decide whether and what action is needed to avoid a conflict or the perception of a conflict, taking account of advice received from the Permanent Secretary.

11.3 The role of the Permanent Secretary is to ensure that advice is available when it is sought by the Minister, either by providing it personally, drawing on precedent and if need be other parts of government, or by securing the services of a professional adviser. Where there is a doubt, it will almost always be better to relinquish or dispose of the interest in question. In cases of serious difficulty or doubt, the matter may be referred to the First Minister for a view. But ultimately it is the responsibility of Ministers individually to order their own private lives in such a way as to avoid criticism, and the final decision about what action to take to achieve that is theirs.

Procedure

11.4 On appointment to each new office, Ministers must provide the Permanent Secretary with a full list in writing of all interests which might be thought to give rise to a conflict in relation to their Ministerial office. The list should also cover interests of the Minister's spouse or partner and close family which might be thought to give rise to a conflict. The Permanent Secretary will also seek confirmation from Ministers, at the time of their appointment, as to whether they are aware of any close acquaintances or advisers who have a contractual relationship with the Government or are involved in policy development.

11.5 Where appropriate, the Minister will meet the Permanent Secretary to agree action on the handling of interests. Ministers must record in writing what action has been taken, and provide the Permanent Secretary with a copy of that record. Ministers will be expected to inform the Permanent Secretary at the earliest opportunity if there is any change in their interests.

11.6 The personal information which Ministers disclose to those who advise them is treated in complete confidence and may not be disclosed without their permission.

11.7 Where it is proper for a Minister to retain a private interest, he or she should declare that interest to Ministerial colleagues and officials if they have to discuss public business which in any way affects it, and the Minister should remain entirely detached from the consideration of that business. Similar steps may be necessary in relation to a Minister's previous interests.

Financial Interests

11.8 Ministers must scrupulously avoid any danger of an actual or perceived conflict of interest between their Ministerial position and their private financial interests. They should be guided by the general principle that they should either dispose of the interest giving rise to the conflict or take alternative steps to prevent it. In reaching their decision, Ministers should be guided by the advice given to them by the Permanent Secretary. Ministers' decisions should not be influenced by the hope or expectation of future employment with a particular firm or organisation.

Steps to be Taken where Financial Interests are Retained

11.9 Where, exceptionally, it is decided that a Minister can retain an interest, the Minister and the Permanent Secretary must put processes in place to prohibit access to certain papers and ensure that the Minister is not involved in certain decisions and discussions relating to that interest.

11.10 In some cases, it may not be possible to devise a mechanism to avoid a conflict of interest. In any such case, the First Minister must be consulted and it may be necessary for the Minister to cease to hold the office in question.

Register of Interests of Members of the Scottish Parliament

11.11 Ministers are reminded that the provisions of the Ministerial Code are additional to the requirements of the Interests of Members of the Scottish Parliament Act 2006, which apply both to Ministers who are MSPs and to the Law Officers. Guidance on the registration and declaration of Members' financial interests is set out in the Code of Conduct for Members of the Scottish Parliament.³⁰

Public Appointments

11.12 When they take up office, Ministers should give up any other public appointment they may hold. Where, exceptionally, it is proposed that such an appointment should be retained, the Permanent Secretary and the First Minister must be consulted.

Non-Public Bodies

11.13 Ministers should take care to ensure that they do not become associated with non-public organisations whose objectives may in any degree conflict with Government policy and thus give rise to a conflict of interest.

11.14 Ministers should therefore not normally accept invitations to act as patrons of, or otherwise offer support to, pressure groups, or organisations dependent in whole or in part on Government funding. There is normally less objection to a Minister associating him- or herself with a charity, subject to the points above, but Ministers should take care to ensure that, in participating in any fund-raising activity, they do not place, or appear to place, themselves under an obligation as Ministers to those

³⁰ See www.parliament.scot/msps/code-of-conduct-for-msps.aspx

to whom appeals are directed, and for this reason they should not approach individuals or companies personally for this purpose. In all such cases, the Minister should consult the Permanent Secretary and, where appropriate, the First Minister. Ministers should also exercise care in giving public support for petitions, open letters, etc.

Trade Unions

11.15 There is no objection to a Minister holding trade union membership, but care must be taken to avoid any actual or perceived conflict of interest. Accordingly, Ministers should arrange their affairs so as to avoid any suggestion that a union of which they are a member has any undue influence. They should take no active part in the conduct of union affairs, should give up any office they may hold in a union and should receive no remuneration from a union. A nominal payment purely for the purpose of protecting a Minister's future pension rights is acceptable.

Civil Legal Proceedings

11.16 Ministers occasionally become engaged in civil legal proceedings in their personal capacities but in circumstances that may have implications for them in their official positions. In all cases where Ministers become engaged in civil legal proceedings in their personal capacities, they should consult the Law Officers before consulting their own solicitors, in order to allow the Law Officers to express a view on the handling of the case so far as the public interest is concerned or, if necessary, to take charge of the proceedings from the outset.

Nominations for Prizes and Awards

11.17 From time to time, the personal support of Ministers is requested for nominations being made for prizes and awards. Ministers should not sponsor individual nominations for any awards, since it would be inevitable that some people would assume that the Government was itself thereby giving its sponsorship.

Foreign Decorations

11.18 Ministers should not normally, while holding office, accept decorations from foreign countries.

Acceptance of Gifts and Hospitality

11.19 No Minister should accept gifts, hospitality or services from anyone which would, or might appear to, place him or her under an obligation. The same principle applies if gifts, etc. are offered to a member of his or her family.

11.20 This is primarily a matter which must be left to the good sense of Ministers. But any Minister in doubt or difficulty over this should seek the advice of the Permanent Secretary. The following specific rules apply:

- (a) Gifts given to Ministers in their Ministerial capacity become the property of the Government;

(b) However, gifts of small value, currently up to £140, may be retained by the Minister in question. If not retained by the Minister, gifts of small value should be handed over to the Minister's Private Office for disposal;

(c) Gifts of a higher value must, **in all cases**, be reported to the Permanent Secretary. Such gifts may be purchased by the recipient at their cash value (abated by £140). If not purchased by the Minister, gifts of a higher value should be handed over to the Permanent Secretary for disposal;

(d) There is usually no customs duty or import VAT payable on the importation of official gifts received overseas. HMRC can advise on any cases of doubt. If a Minister wishes to retain a gift, he or she will be liable for any tax it may attract.

11.21 Gifts retained by Ministers that are valued at less than 0.5% of a Member's salary (rounded down to the nearest £10) do not need to be additionally declared in the Register of Interests of Members of the Scottish Parliament.

11.22 The Scottish Government will publish a quarterly list of gifts received by Ministers valued at more than £140. The list provides details of the value of the gifts and whether they were retained by the Government or purchased by the Minister. Private Offices must ensure that they maintain records of gifts received, in such a way as to be able to provide this information on a quarterly basis to the Permanent Secretary's office and Ministerial Private Office Division to allow the quarterly publication of gifts valued at more than £140.

11.23 Gifts given to Ministers in their capacity as MSPs or as members of a political party fall within the rules relating to the Register of Interest of Members of the Scottish Parliament.³¹

11.24 For the avoidance of doubt, if a Minister accepts hospitality in a Ministerial capacity valued at more than £140, this should be included in the quarterly publication of Ministerial gifts. In addition, hospitality valued at more than 0.5% of a Member's salary (rounded down to the nearest £10) must also be declared in the Register of Interests of Members of the Scottish Parliament.

Acceptance of Appointments after Leaving Government Office

11.25 On leaving office, Ministers will be prohibited from lobbying Government for two years. They must also seek advice from the independent Advisory Committee on Business Appointments about any appointments or employment they wish to take up within two years of leaving office.³² Former Ministers must ensure that no new appointments are announced, or taken up, before the Committee had been able to provide its advice. Former Ministers must abide by the advice of the Committee.

³¹ For full details, see the Code of Conduct for Members of the Scottish Parliament available at: www.parliament.scot/msps/code-of-conduct-for-msps.aspx

³² See www.gov.uk/government/organisations/advisory-committee-on-business-appointments

THE SEVEN PRINCIPLES OF PUBLIC LIFE ³³

Selflessness

Holders of public office should act solely in terms of the public interest.

Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty

Holders of public office should be truthful.

Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

³³ The Seven Principles of Public Life were first published in the first report of the Nolan Committee on Standards in Public Life (May 1995). The accompanying narrative was revised by the Committee in *Standards Matter: A review of best practice in promoting good behaviour in public life* (January 2013). See: www.gov.uk/government/publications/standards-matter-a-review-of-best-practice-in-promoting-good-behavior-in-public-life



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