INTRODUCTION

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament’s Standing Orders, in relation to the Lobbying (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. The memorandum also offers explanation of provision in the Bill covering Parliament’s powers to make directions, publish guidance on the registration framework and the requirement to publish a code of conduct for those lobbying its members. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

OUTLINE OF BILL PROVISIONS

2. The Bill establishes a lobbying register to contain information about certain regulated lobbying activity of both ‘consultant lobbyists’ (those engaged to lobby on behalf of another individual or organisation) and in-house lobbyists (e.g. employees who lobby as part of their work). The trigger for registration is based on paid lobbying, in the sense of a consultant being paid to lobby or individuals in commercial or other organisations who lobby as part of their paid work. An individual lobbying on their own behalf or an individual lobbying on behalf of others but not in return for payment will not trigger the requirement to register.

3. The Bill places obligations on organisations and individuals (including ‘consultant lobbying firms’, self-employed ‘consultant lobbyists’ paid by others to lobby on their behalf and commercial or other organisations and individual employers with paid individuals who lobby ‘in-house’) to register and submit regular information returns of regulated lobbying activity following lobbying of MSPs and Ministers. But the Bill provides that when an individual undertakes lobbying activity as part of their paid work for another individual or organisation (e.g. as an employee), the communication is treated as being made by the other individual or the organisation. The Government is persuaded, having consulted on whether the regime should adopt an individual or organisation-focused approach, that this organisation-focused approach to registration carries significant benefits in terms of resource implications and ease, for both registrants and the Parliament.

4. The Bill captures as ‘regulated lobbying’ only face to face oral communication with MSPs and Ministers (e.g. ‘in person’, meetings, events, other hospitality).

5. In terms of the Bill lobbyists will require to register after a first instance of lobbying MSPs or Ministers, or may apply to register in advance if they believe they are likely to trigger the registration requirement in future. Thereafter lobbyists will be required to submit periodic (six-monthly) returns of lobbying activity.
The Bill provides for the Register to be kept and maintained by the Clerk of the Parliament ("the Clerk") and for a suite of proportionate oversight and enforcement provision (including scope for independent investigations by the Commissioner for Ethical Standards in Public Life in Scotland ("the Commissioner") who reports to Parliament and offences) to promote and secure compliance with the requirements in the Bill. It also provides for Parliament to be able to produce guidance on the operation of the regime.

RATIONALE FOR SUBORDINATE LEGISLATION

7. The Bill contains a number of different delegated powers.
   - First, reflective of the fact that the legislative framework in the Bill provides for the creation of a register to be operated by the Clerk from within the Parliament, powers for the Parliament to make further provision about operational arrangements in connection with the lobbying register by resolution.
   - Second, power for the Scottish Ministers to make, by regulations, ancillary provision considered necessary or expedient for the purposes of, or in connection with, any provision made by or under the Bill (and usual powers to commence provisions in it, also by regulations).
   - Third, powers for the Parliament to issue directions to the Commissioner in connection with the Commissioner’s functions under the Bill (i.e. investigating complaints of failure to adhere to the registration, reporting and associated requirements imposed by the Bill and to report to Parliament).

8. In deciding whether provisions should be set out in resolutions by Parliament, regulations made by regulations or directions by Parliament rather than on the face of the Bill, the Scottish Government has considered:
   - the need to make proper use of valuable parliamentary time;
   - the need to provide a robust framework while maintaining sufficient flexibility to respond to changing circumstances without the need for primary legislation; and
   - the desire to allow for changes to be made to the operational arrangements in connection with the lobbying register without the need for primary legislation.

9. The provisions are described in detail below. For each provision the memorandum sets out:
   - the person upon whom the power to make subordinate legislation is conferred and the form in which the power is to be exercised;
   - why it is considered appropriate to delegate the power to subordinate legislation and the purpose of each such provision; and
   - the parliamentary procedure to which the exercise of the power to make subordinate legislation is to be subject, if any.

10. In addition the Bill empowers Parliament to publish guidance on the operation of the Act and requires the Parliament to publish a Code of Conduct for persons lobbying its members.
This document relates to the Lobbying (Scotland) Bill (SP Bill 82) as introduced in the Scottish Parliament on 29 October 2015

DELEGATED POWERS

PART 1 – RESOLUTIONS BY PARLIAMENT; REGULATIONS MADE BY SCOTTISH STATUTORY INSTRUMENT

11. This part of the Memorandum includes explanation of a series of provisions in the Bill which confer power on the Parliament to make provision by resolution. As explained below, this approach is taken in recognition of Parliament’s particular interest in the operation and maintenance of the lobbying register and, in particular, that it should have the ability to make changes to operational aspects of the registration scheme over time.

Section 15(1) – Power to specify requirements about the register

Power conferred on: the Scottish Parliament
Power exercisable by: Resolution by Parliament
Parliamentary procedure: Resolution by Parliament

Provision

12. Section 15(1) confers power on the Parliament, by resolution, to make provision about Part 2 (the lobbying register) of the Bill and sets out a non-exhaustive list of the types of provision which may be made in exercise of the power, i.e. 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 Part 2 of the Bill.

13. Section 15(2) provides that a resolution under subsection (1) may modify sections 4 to 14 of the Bill.
14. General provision in connection with resolutions is made in section 47 of the Bill. Section 47(1) provides that before making a resolution the Parliament must consult the Scottish Ministers. Section 47(2) provides that the power to make a resolution includes power to make different provision for different purposes and to make ancillary provision. Section 47(3) and (5) to (7) applies, with modifications, section 41(2) to (5) of the Interpretation and Legislative Reform (Scotland) Act 2010 (“ILRA 2010”) and the Scottish Statutory Instruments Regulations 2011 to provide for resolutions under the Act to be published by the Queen’s Printer for Scotland in the same way as Scottish Statutory Instruments (a precedent for which can be found at paragraph 10(2) of the schedule of the Interests of Members of the Scottish Parliament Act 2006) to ensure that resolutions under the Bill – which may impose or vary obligations on private individuals and other persons to register and report lobbying activity under the Bill – are published in a recognised format so as to be easily accessible. Section 47(4) provides for Part 1 (interpretation) of ILRA 2010 to apply to a resolution as if it were a Scottish instrument.

Reason for taking power

15. The Bill sets the overarching statutory framework for a lobbying register, but it is important that, without the need for primary legislation, the Bill provides flexibility for making provision about the operational detail of the registration scheme (the framework for which is provided for in Part 2 of the Bill). That includes in particular flexibility to make provision about the duties of the Clerk on whom functions are conferred in relation to the register, obligations on those wishing to register and those registered and more generally management of the register and information contained in it. The power will ensure that the Parliament has the ability, following enactment of the Bill to make any further detailed operational provision considered necessary or appropriate before the lobbying register goes live. The principal reason for taking the power is though to allow the Parliament to make further detailed operational provision, or to adjust existing provision, in connection with the lobbying register in light of practical experience over time. The Government envisages the Parliament seeking the views of stakeholders as part of this process. It is in these circumstances that, to provide maximum flexibility, it is made clear that Parliament may in exercise of the resolution making power modify existing provision made in sections 4 to 14 of the Bill (these sections providing for the operational aspects of the registration scheme).

Reason for choice of procedure

16. The Parliament has always taken the lead on matters relevant to its own operations, including arrangements such as the Code of Conduct for MSPs, which contains provisions on lobbying which apply equally to all Members (including the Scottish Ministers) and the Government therefore recognises that the Parliament has a particular interest in the subject matter of the Bill. The Bill takes account of the findings of the recent Inquiry by the Parliament’s Standards, Procedures and Public Appointments Committee (“the Committee”) into lobbying in Scotland. The Committee concluded that legislation in this area was necessary and appropriate, and invited the Government to consider the proposals set out in its report dated 6 February 2015. In its report the Committee expressed the view that “the Parliament must be assured that the new registration process does not inhibit those seeking to legitimately lobby

[1](http://www.scottish.parliament.uk/S4_StandardsProceduresandPublicAppointmentsCommittee/Reports/stpR-15-01w.pdf)
Parliament and Government. The Parliament must be able to change this new system if it considers this is the case.”

17. It is these considerations which have informed the decision to confer power on Parliament to make provision by resolution. Adoption of the parliamentary resolution process means that the usual ‘affirmative’ or ‘negative’ procedure associated with Scottish Statutory Instruments (SSIs) is not relevant in this context. As with resolutions made under the 2006 Act, it is envisaged that any necessary further procedural provision in relation to the making of parliamentary resolutions under the Bill would be made in the Parliament’s Standing Orders. By way of example Rule 1.8 of the Standing Orders sets out procedural provision applicable to parliamentary resolutions under paragraph 10(2) of the schedule of the Interests of Members of the Scottish Parliament Act 2006 (mentioned in paragraph 13 above).

18. The requirement (in terms of section 47(1) of the Bill) for prior consultation with the Scottish Ministers reflects the fact that those requiring to register and report details of lobbying activity for inclusion in the lobbying register include not only persons communicating with MSPs in relation to their functions but also those communicating with Ministers in relation to their functions. The Scottish Ministers therefore also have a particular interest in any further provision which the Parliament proposes to make by resolution about the operational aspects of the regime.

19. The provision made in section 47(3) and (5) to (7) of the Bill for resolutions to be published in the same way as SSIs will, as noted above, ensure that resolutions under the Bill – which may impose or vary obligations on private individuals and other persons to register and report lobbying activity under the Bill – are published in a recognised format so as to be easily accessible.

Section 20(1) – Power to make further provision about information notices

Power conferred on: the Scottish Parliament
Power exercisable by: Resolution by Parliament
Parliamentary procedure: Resolution by Parliament

Provision

20. Section 20(1) makes provision for the Parliament, by resolution to make further provision about information notices issued by the Clerk under section 17 of the Bill.

21. Section 16 of the Bill imposes a duty on the Clerk to monitor compliance with obligations imposed by or under the Bill on, in particular, persons who engage in regulated lobbying (such persons being obliged to register and submit periodic returns of lobbying activity). Section 17 provides that in connection with the Clerk’s duty to monitor compliance, the Clerk may serve information notices on certain persons. The purpose of an information notice is to elicit information from the person on which it is served. For example if the Clerk considers that information in the register is inaccurate or incomplete the Clerk could, as necessary, serve an information notice on a person as part of the process of remedying the inaccuracy or gap in information in the register.
22. Section 17(3) and (4) of the Bill makes provision about the form and content of information notices. Section 18 makes provision which limits the duty to provide information in response to an information notice and the use which may be made of information provided.

23. Section 20(1) confers power on the Parliament, by resolution, to make further provision about information notices and section 20(2) sets out a non-exhaustive list of examples of the type of further provision which may be made in exercise of the power, ie further provision about:

(a) descriptions of information which the Clerk may not require a person to supply in response to an information notice;

(b) the minimum period between the date on which an information notice is served and the date when information should be supplied; and

(c) other matters which must be specified in an information notice.

24. Again, the general provision on resolutions in section 47 of the Bill is applicable here (on which see paragraph 13 above, in relation to the resolution making power in section 15 of the Bill).

Reason for taking power

25. The ability to issue information notices is a key operational tool for the Clerk in terms of oversight of the registration scheme. The Government considers that it is important to provide for flexibility to supplement the framework provision on information notices in the Bill without the need for primary legislation by conferring power on Parliament, by resolution, to make further detailed provision about this important operational aspect of the regime. For example, the Parliament could exercise the power to make provision about the structure of a standard template for information notices. Parliament will also have the power to make further provision about information notices in light of practical experience, including for example specifying matters which require to be specified in an information notice (over and above those already specified in section 17(3)) and specifying additional information which the Clerk may not require a person to supply in response to an information notice (in addition to the information already specified in section 18(1)).

Reason for choice of procedure

26. Reference is made to paragraphs 15 to 18 above (in relation to the resolution making power in section 15 of the Bill). The same considerations apply in relation to the choice of procedure in section 20 of the Bill.
Section 41 – Power to make further provision about Parliament’s procedures etc.

**Power conferred on:**  the Scottish Parliament  
**Power exercisable by:**  Resolution by Parliament  
**Parliamentary procedure:** Resolution by Parliament

**Provision**

27. Section 41(1) provides that the Parliament must by resolution make provision about procedures to be followed when the Commissioner submits a report to the Parliament under Part 3 of the Bill (which, significantly, sets out the framework for investigation of complaints and reporting to Parliament by the Commissioner as part of the overall arrangements for oversight of the registration regime for which the Bill provides) and section 41(2) sets out a non-exhaustive list of provision that could be made, in particular 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 from the Commissioner;

(c) on the giving of a direction under Part 3 of the Bill;

(d) about the review of, or appeal to a court against, a decision by the Parliament to censure a person under section 40.

28. Again, the general provision on resolutions in section 47 of the Bill is applicable here (on which see paragraph 15 above, in relation to the resolution making power in section 15 of the Bill).

**Reason for taking power**

29. It is considered necessary and appropriate that procedural provision is made to regulate the procedure to be followed by Parliament when the Commissioner submits a report to it under part 3 of the Bill. But, as this concerns matters of parliamentary procedure, it is considered appropriate for the Parliament to determine the detail of the procedures to be followed and to have the flexibility to adjust the procedures in light of experience over time.

**Reason for choice of procedure**

30. Reference is made to paragraphs 15 to 18 above (in relation to the resolution making power in section 15 of the Bill). In the context of Commissioner investigations and reporting to Parliament under the Scottish Parliamentary Standards Commissioner Act 2002 (“SPSCA 2002”) relevant procedural provision to regulate the procedure to be followed by Parliament when the Commissioner submits a report is set out not in subordinate legislation in exercise of powers conferred in that Act but instead in Rule 3A.3 of the Standing Orders and in the Code of Conduct for Members of the Scottish Parliament. That though is in the context of arrangements

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for investigating and reporting to Parliament on the conduct of its own members. In the context of the Bill it was considered appropriate to include provision requiring the Parliament to make procedural provision by resolution so as to ensure that there was clarity for users of the legislation - in particular the private individuals and other persons engaged in regulated lobbying who may be the subject matter of complaints to the Commissioner and reports to Parliament - that such provision would be made and by what means. Provision in section 47 of the Bill, which ensures that parliamentary resolutions will be published in the same way as SSIs, will ensure ease of accessibility.

Section 49 – Ancillary provision

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations made by Scottish statutory instrument
Parliamentary procedure: Affirmative procedure if it amends an Act, otherwise negative procedure

Provision

31. Section 49(1) provides the Scottish Ministers with the power to make, by regulations, 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 Bill. Section 49(2) makes clear that regulations under section 49(1) may make different provision for different purposes and may modify any enactment (including the Bill).

Reason for taking power

32. The Bill may give rise to a need for a range of incidental, supplementary, or consequential provisions. This power provides flexibility to make any adjustments considered necessary in light of experience over time in order to ensure that the policy intentions of the Bill are achieved and any unexpected issues (ie points subsequently identified in the statutory framework deemed to raise legal or operational difficulties) can be dealt with effectively and that the implementation of the Bill is not compromised in any way. The power under section 49 therefore allows for changes to be made that could not otherwise be achieved through the use of other powers contained in the Bill. The Scottish Government recognises the potentially broad application of this power, which includes the facility to modify primary legislation, and to alter the provisions in the Bill. Any supplementary use of the power would though be strictly construed.

Reason for choice of procedure

33. Any use of the power which adds to, omits or replaces any part of an Act (including the Bill) would trigger the level of parliamentary scrutiny which attaches to the affirmative procedure. Other uses of the power are subject to the negative procedure. These procedures are typical for ancillary powers.
Section 50 – Commencement

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations made by Scottish statutory instrument
Parliamentary procedure: Laid, no procedure

Provision

34. Section 50(2) enables the Scottish Ministers to commence the Bill by conferring a power on Ministers, by regulations, to bring provisions of the Bill into force on such day as the Scottish Ministers appoint. Sections 46, 47, 49 and 51 will come into force on the day after Royal Assent. Subsection (4) provides that regulations under subsection (2) may include transitional, transitory or saving provision.

Reason for taking power

35. It is standard for Ministers to have powers over the commencement of Bills. It is considered appropriate for the substantive provisions of the Bill to be commenced at such a time as the Scottish Ministers consider to be suitable, such an approach being normal to ensure that necessary administrative provision is in place. In the case of this Bill, where the Parliament has a significant interest the Government would expect to exercise its power under section 50 in discussion with the parliamentary authorities about appropriate timings for commencement.

36. It is not unusual to include the power to make transitory, transitional and savings provision in a commencement order (this approach having been adopted in many Bills) This allows flexibility in implementing the arrangements in the Bill to ensure that provisions can be commenced in an operationally effective manner. The power is limited in that it can only be used in connection with commencement.

Reason for choice of procedure

37. As is usual for commencement regulations, the default laying requirement applies (as provided for by section 30(1) of the Interpretation and Legislative Reform (Scotland) Act 2010).
PART 2 – DIRECTION MAKING POWERS

Section 31 – Directions to the Commissioner

Power conferred on: the Scottish Parliament
Power exercisable by: Direction by Parliament
Parliamentary procedure: Direction by Parliament

**Provision**

38. Part 3 of the Bill (sections 22 to 37 in particular) makes provision for investigation of complaints and reporting to Parliament by the Commissioner as part of the overall arrangements for oversight of the registration regime for which the Bill provides (this being the ‘second tier’ of the arrangements, the ‘first tier’ being oversight by the Clerk). The provision is similar in substance to existing provision for investigation and reporting to Parliament by the Commissioner under sections 3 to 16 of SPSCA 2002.

39. Section 31(1)^4 in particular provides that the Commissioner, in carrying out functions conferred by or under the Bill, must comply with any direction given by the Parliament and section 31(2) sets out a non-exhaustive list of matters that could be covered by a direction, in particular a direction may:

(a) make provision as to the procedure to be followed by the Commissioner when conducting an assessment or investigation mentioned in section 22 (Commissioner’s duty to investigate and report on complaint)

(b) set out the circumstances where, despite receiving a compliant 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 investigation referred to in in sub-paragraph (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(8)(a), 24(12), 25(4) or 28,

(c) require the Commissioner to report to the Parliament upon such matters relating to the carrying out of the Commissioner’s functions as may be specified in the direction.

40. Section 31(3) provides that a direction made under section 31(1) may not direct the Commissioner as to how a particular investigation is to be carried out.

41. The Bill also contains other specific provisions enabling or requiring the Parliament to direct the Commissioner as part of the machinery for the Commissioner assessing admissibility of complaints and investigating and reporting to Parliament on admissible complaints.

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^4 For substantially similar provision in the SPSCA 2002, see section 4 of the same.
Section 24(5)(a) and (7) 

42. Section 23(1) sets out three requirements for a complaint to be admissible: (a) that the complaint is relevant, (b) that the conditions in section 23(3) are met and (c) that the complaint warrants further investigation. Section 24 sets out the procedure to be followed by the Commissioner in assessing admissibility of complaints. 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).

Section 24(5)(a)

43. Section 24(5)(a) empowers the Parliament to specify in a direction classes of case in relation to which the Commissioner is required to report to Parliament (on which see subsection (6)) on a relevant complaint which does not meet the conditions in section 23(3) (and before the Commissioner considers whether the complaint warrants further investigation).

Section 24(7)

44. Section 24(7) provides that on receipt of a report under section 24(5)(a) Parliament must give the Commissioner a direction to dismiss the complaint for failing to meet one or more of the conditions in section 23(3) or to treat the complaint as if it met the conditions.

Section 27(2) 

45. Section 27(2) provides that the Parliament may direct the Commissioner (post receipt of a report made under section 22(2)(b)(ii) on a complaint from 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.

Section 28(8) 

46. The Bill makes provision to cater for the withdrawal of complaints at any time prior to the Commissioner making a report to Parliament under section 22(2)(b)(i) (Commissioner’s report to Parliament on an admissible complaint). If the Commissioner wishes to continue the investigation of an admissible complaint a report recommending that the investigation be continued must be made to the Parliament. Section 28(8) provides that after receiving such a report the Parliament must direct the Commissioner to either continue or cease the investigation.

Reason for taking power

47. The general power in section 31 of the Bill for the Parliament to issue directions to the Commissioner (and indeed the power in section 24(5)(a)) provides for operational flexibility in

5 For substantially similar provision in the SPSCA 2002, see in particular section 7(6) and (7) of the same.
6 For substantially similar provision in the SPSCA 2002, see in particular section 10(2) of the same.
7 For substantially similar provision in the SPSCA 2002, see in particular section 11(6) of the same.
the overall arrangements for oversight of the registration regime by the Commissioner and Parliament as provided for in Part 3 of the Bill (in particular sections 22 to 30).

48. The general power of direction in section 31 in particular is consistent with the policy principle throughout the Bill that the Parliament be provided with appropriate flexibility in relation to the operational aspects of the registration scheme and associated oversight arrangements and the ability to make necessary operational provision as it sees fit, particularly in light of experience.

49. The power is taken in particular to allow the Parliament to make standing general provision around the handling of complaints (but not – as section 31(3) makes clear - to direct the Commissioner as to how any particular investigation is to be carried out, thereby safeguarding the Commissioner’s investigatory independence).

50. The specific provision for directions in sections 24(7) and 28(8) is part of the routine mechanisms for the assessment of admissibility of individual complaints and the Commissioner investigating and reporting to Parliament on individual complaints on a case by case basis.

51. The specific power of direction in section 27(2) provides flexibility for the Parliament to require the Commissioner to carry out further investigations, should the Parliament consider that further information is required, but only after the Commissioner has carried out his initial investigation and reported to Parliament.

Reason for choice of procedure

52. As noted above, the general power in section 31 of the Bill for the Parliament to issue directions to the Commissioner in particular reflects existing provision in relation to investigations and reporting to Parliament by the Commissioner in relation to complaints against Members of the Scottish Parliament under SPSCA 2002 (see section 4 of the same). They are by their nature directions to the Commissioner rather than to the public at large and so are different from parliamentary resolutions under the Bill. Unlike provision made in relation to parliamentary resolutions to secure their publication in the same manner as SSIs, no specific provision is made in the Bill for the publication of directions. It is though envisaged that the Parliament would publish directions made, perhaps alongside parliamentary guidance issued under section 43 of the Bill.

53. Any necessary further procedural provision in relation to the issuing of directions to the Commissioner could be made in Standing Orders (eg by adjustment of Rule 3A.2 of the same which currently makes procedural provision in relation to directions to the Commissioner under SPSCA 2002).

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PART 3 – GUIDANCE MAKING POWERS AND CODE OF CONDUCT FOR PERSONS LOBBYING MEMBERS OF THE PARLIAMENT

Section 43 - Parliamentary guidance

Provision

54. Whilst section 43 does not provide a power to make subordinate legislation, the Government would wish to offer a brief explanation of the policy rationale for the provision. Section 43(1) provides for the Parliament to publish guidance for stakeholders on the operation of the registration process and section 43(2) sets out a non-exhaustive list of examples of provision which the guidance may contain, specifically provision on:

(a) the circumstances in which –
   (i) a person is not, for the purposes of the Bill, engaged in regulated lobbying, and a communication
   (ii) a communication is of a kind mentioned in the Schedule (communications which are not lobbying) to the Bill,

(b) voluntary registration

(c) the Clerk’s functions under this Bill.

55. Section 43(3) provides that before publishing the guidance, any revision to it or replacement of it, the Parliament must consult the Scottish Ministers.

56. In carrying out functions under the Bill both the Clerk (see sections 3(5) and 16(2)) and the Commissioner (section 22(3)) must have regard to the guidance.

Policy rationale

57. The Bill confers important powers on Parliament to make operational provision by resolution. Those powers are conferred in recognition of Parliament’s particular interest in the registration regime established by the Bill, which imposes registration and reporting requirements on persons lobbying its Members, and against the background more fully set out in paragraphs 14 and 15 above.

58. Similarly the power in section 43 is intended to allow the Parliament to issue practical guidance on the operation of the Act for the benefit of stakeholders in order to complement the framework provision in the Bill and any additional provision made by Parliament by resolution. The requirement for advance consultation with Scottish Ministers recognises the fact that those requiring to register and report details of lobbying activity for inclusion in the lobbying register include not only persons communicating with MSPs but also those communicating with Ministers. Whilst a matter entirely for the Parliament, the Government envisages parliamentary guidance offering potential registrants an overview of the registration scheme, how to negotiate the process of initial registration and how to ensure compliance on an ongoing basis. It could
offer examples of what types of engagements with MSPs and Ministers would, or would not, trigger the requirements to register and report and outline best practice.

Section 44 – Code of Conduct for persons lobbying MSPs

Provision

59. Whilst again section 44 does not provide a power to make subordinate legislation, the Government would wish to offer a brief explanation of the policy rationale for the provision.

60. Section 44(1) provides that the Parliament must publish a code of conduct for persons lobbying members of the Parliament.

61. Section 44(2) provides that 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.

62. Section 44(3) makes clear that in section 44 “lobbying” means making a communication of any kind to a member of the Parliament in relation to the member’s functions. This therefore includes, but is wider than, ‘regulated lobbying’ with which the rest of the Bill is concerned. While therefore the code of conduct may contain provision relevant to persons engaging in regulated lobbying within the meaning of section 1 of the Bill, it may also contain provision relevant to any other “lobbying” of MSPs.

Policy rationale

63. The requirement to publish a code of conduct is consistent with the proposals outlined in paragraphs 143 to 145 of the Report of the Standards, Procedures and Public Appointments Committee Proposal for a register of lobbying activity (1st Report, 2015). It is anticipated that the code of conduct for persons lobbying MSPs would most probably set down the key standards of conduct the Parliament would expect lobbyists to adhere to when engaging with its Members. There is also the option for the code of conduct for persons lobbying MSPs to provide linkage with the Code of Conduct for Members of the Scottish Parliament. The code of conduct for persons lobbying MSPs could also cover any wider issues relating to lobbying that the Parliament saw fit to include.

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This document relates to the Lobbying (Scotland) Bill (SP Bill 82) as introduced in the Scottish Parliament on 29 October 2015

LOBBYING (SCOTLAND BILL)

DELEGATED POWERS MEMORANDUM

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