Standards, Procedures and Public Appointments Committee

MEETING DETAILS
14th meeting 2017, Session 5
Thursday 7 September 2017 at 10am in the Mary Fairfax Somerville Room (CR2).

ADDITIONAL INFORMATION
Meeting papers and Official Reports from previous meetings

COMMITTEE PAPERS
Agenda
Lobbying (Scotland) Act 2016

NOTICES
Next meeting:
14 September 2017

Future Meetings:
21 September 2017
5 October 2017
2 November 2017
16 November 2017
30 November 2017
14 December 2017

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STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

AGENDA

14th Meeting, 2017 (Session 5)

Thursday 7 September 2017

The Committee will meet at 10.00 am in the Mary Fairfax Somerville Room (CR2).

1. Declaration of interests: Jamie Halcro Johnston will be invited to declare any relevant interests.

2. Decision on taking business in private: The Committee will decide whether to take items 5 and 6 in private.

3. Decision on taking business in private: The Committee will decide whether to take future consideration of a report from the Commissioner for Ethical Standards in Public Life in Scotland, and its own draft report on the complaint, in private at future meetings.

4. Lobbying (Scotland) Act 2016: The Committee will take evidence on a draft Direction and a draft Resolution under the Lobbying (Scotland) Act 2016 from—


5. Work programme: The Committee will review its work programme.

6. Complaints: The Committee will consider two reports from the Commissioner for Ethical Standards in Public Life in Scotland.

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The papers for this meeting are as follows—

**Agenda item 4**

Note by the Clerk  SPPA/S5/17/14/1

**Agenda item 5**

PRIVATE PAPER  SPPA/S5/17/14/2 (P)

**Agenda item 6**

(to follow)  SPPA/S5/17/14/3 (P)

(to follow)  SPPA/S5/17/14/4 (P)
Standards, Procedures and Public Appointments Committee

14th Meeting 2017 (Session 5), Thursday 7 September 2017

Lobbying (Scotland) Act 2016 – draft Direction and Resolution

Purpose

1. Billy McLaren, the Lobbying Registrar, will attend the meeting to propose that the Committee issue a Direction to the Commissioner for Ethical Standards, and promote a Resolution under the Lobbying (Scotland) Act 2016.

2. The Direction and Resolution are necessary next steps as part of preparations towards full commencement of the Act in early 2018.

Parliamentary process

3. Following Committee scrutiny in April, Parliament approved Standing Orders (new Chapter 3C) to assist with certain operational aspects of the Act. These allow the Parliament to use its procedures to determine details and make preparations for the Act in two ways:

   - to provide directions to the Commissioner for Ethical Standards, in relation to his role within the Act (a power that rests with the Committee);
   - to progress lobbying resolutions necessary under the Act (for final approval in a plenary session of Parliament).

4. Subsequently, on 14 June, the Scottish Government laid The Lobbying (Scotland) Act 2016 (Commencement No. 1) Regulations 2017. These regulations come into force on 6 September 2017 and allow the Parliament to bring forward the necessary directions and lobbying resolutions, prior to full commencement of the Act.

Direction to the Commissioner for Ethical Standards in Public Life in Scotland

5. Section 31 of the Act allows the Parliament to issue directions to the Commissioner.

6. Attached at Annexe A is a draft Direction setting out the specific arrangements for when the Commissioner makes reports to the Parliament under Part 3 of the Lobbying (Scotland) Act 2016. The Commissioner has been consulted on the draft and is content with the proposals, which specify details about matters including record keeping and liaison with the Procurator Fiscal.

7. As required by Rule 3C.1 of Standing Orders, if the Committee approves the terms of the Direction, it will be sent to the Commissioner by the Convener.

Lobbying Resolution

8. Section 41 of the Act states that the Parliament “must by resolution” make provision about procedures to be followed when the Commissioner makes a report to the Parliament.
9. Attached at Annexe B is a short draft Resolution which confirms the role that the SPPA Committee will perform in respect of scrutiny and decision making in response to Commissioner reports.

10. The Act requires that before making a resolution under the Act, the Parliament must consult the Scottish Ministers. If the Committee is satisfied with the terms of the draft Resolution the Convener will write to the Minister for Parliamentary Business in order to initiate this consultation.

11. Once a response is received from the Minister, as required by Rule 3C.2 of Standing Orders, a lobbying resolution motion will be lodged by the Convener seeking the agreement of the Parliament. The motion will also be referred to the Delegated Powers and Law Reform Committee for technical scrutiny of its provisions. Subject to the report of that Committee, the motion will be taken in the Chamber at a future date.

Lobbying Registrar

12. Billy McLaren, Lobbying Registrar, will attend the meeting to discuss the terms of the draft Direction and draft Resolution. He will be accompanied by colleagues from the Parliament’s Solicitor’s Office.

For decision

13. Following discussion with the Lobbying Registrar, the Committee is invited to agree the terms of the draft Direction and draft Resolution.

Dougie Wands
Committee Clerk
September 2017
LOBBYING (SCOTLAND) ACT 2016

DIRECTION BY THE STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

In exercise of the powers conferred by section 31 of the Lobbying (Scotland) Act 2016 and by virtue of Rule 3C.1 of the Standing Orders of the Scottish Parliament the Committee mentioned in Rule 6.4 of the Standing Orders (Standards, Procedures and Public Appointments) gives the following direction to the Commissioner for Ethical Standards in Public Life in Scotland.

Citation and commencement

1. This Direction may be cited as the “The Lobbying (Scotland) Act 2016 Direction to the Commissioner for Ethical Standards in Public Life in Scotland 2017” and comes into force on the day on which section 1 of the Act comes into force.

Direction under section 31

2. For the purposes of section 31 of the Act the Committee gives the Commissioner the following direction:

Information as to name of a complainer

(1) In considering, under section 24(2)(c) of the Act, whether or not it would be appropriate to inform the person who is the subject of the complaint of the name of the individual who made the complaint (the “complainer”), and without prejudice to any other matter that the Commissioner considers relevant, the Commissioner shall—

(a) have regard to whether or not the complainer is or appears to be a vulnerable person; and

(b) consider whether informing the person complained about of the name of the complainer would be likely to prejudice an investigation into the complaint.

(2) Where the Commissioner —

(a) receives a complaint about the alleged failure to comply with a requirement mentioned in section 22(1)(a) to (d) of the Act; and

(b) considers that, under section 24(2)(c) of the Act, it would not be appropriate to inform that person of the name of the complainer,

the Commissioner shall make a report in writing to the Committee setting out the reasons for that decision.
Annexe A

Interviews

(3) At least 48 hours before interviewing any person for the first time in the course of an investigation, the Commissioner shall notify that person in writing of—

(a) the purpose of the interview;

(b) the powers of the Commissioner under section 32(1) of the Act;

(c) the procedure to be followed in connection with the investigation of the complaint;

(d) the right of that person to have a third party present at the interview; and

(e) the right of that person to have his or her views conveyed through an interpreter.

(4) The Commissioner shall allow any person interviewed to have—

(a) a third party present; and

(b) his or her views conveyed through an interpreter.

(5) If the Commissioner intends to interview any person in the course of an investigation, the Commissioner shall have regard to whether or not that person appears to be a vulnerable person.

(6) No summary of an interview with a witness shall be included in any report by the Commissioner to the Committee unless the witness has been given a copy of the draft summary and an opportunity to make representations about it. To the extent that it would be lawful to do so, the Commissioner shall annexe to the report to the Committee any representations which are not reflected in the summary.

Documents and records

(7) The Commissioner shall keep written details of each interview which is carried out in the course of any investigation.

(8) The Commissioner shall keep each document which is considered in the course of any investigation unless the document requires to be returned to the person who provided it. If the Commissioner requires to return any document, the Commissioner shall make and keep a copy of it.

(9) All documents and records shall be kept for a minimum period of one year from the date on which the complaint was dismissed by the Commissioner.
or, as the case may be, the Commissioner's report upon the outcome of the investigation was made. If the Commissioner is directed to carry out further investigation under section 27 of the Act, the documents and records shall be kept for a minimum period of one year from the date on which the Commissioner's report on the further investigation was made.

(10) The Commissioner may destroy the documents and records after the period mentioned in subparagraph (9), unless the Committee instructs the Commissioner to keep the documents and records for a further specified period.

Criminal offences

(11) If the Commissioner is satisfied in relation to any complaint that the person has committed the conduct complained about and that the conduct would, if proved, constitute a criminal offence, the Commissioner shall—

(a) suspend investigation and consideration of the complaint;

(b) submit a report to the Procurator Fiscal; and

(c) notify the Committee in writing.

(12) The Commissioner shall resume investigation and consideration of a complaint in respect of which investigation and consideration has been suspended under subparagraph (11)(a)—

(a) at the conclusion of any criminal proceedings instituted in consequence of the report by the Commissioner;

(b) on receipt of confirmation from the Procurator Fiscal that no such proceedings will be raised; or

(c) on receipt of confirmation from the Procurator Fiscal that the Commissioner may do so.

Reports under sections 24(12) and 25(4) of the Act

(13) Unless the Commissioner considers that to do so would prejudice the outcome of any investigation, he or she shall send a copy of any report submitted to the Committee under section 24(12) or section 25(4) of the Act to—

(a) the complainer, and

(b) the subject of the complaint.
Annexe A

Enquiries about complaints

(14) Where—

(a) the Commissioner receives an enquiry about a complaint; and

(b) the subject of the complaint is named in the enquiry,

the Commissioner may indicate whether or not he or she has received a complaint concerning that person.

Interpretation

3. In this Direction –

“the Act” means the Lobbying (Scotland) Act 2016,

“the Commissioner” means the Commissioner for Ethical Standards in Public Life in Scotland, as appointed in terms of section 1 of the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 (as substituted by article 3(1) of the Public Services Reform (Commissioner for Ethical Standards in Public Life in Scotland etc.) Order 2013/197),

“the Committee” means the Committee mentioned in Rule 6.4 of the Standing Orders of the Scottish Parliament,

“document” means anything in which information is recorded in any form,

“vulnerable person” means any person who by reason of age, infirmity, illness, disability or any other circumstance appears to the Commissioner to be in need of care or attention,

“writing” includes typing, printing, lithography, photography and other modes of representing or reproducing words in a visible form; and expressions referring to writing are to be construed accordingly.

Clare Adamson MSP
Convener of the Standards, Procedures and Public Appointments Committee
Scottish Parliament
Edinburgh
[ ] September 2017
That the Parliament –

(a) in exercise of the power conferred by section 41 of the Lobbying (Scotland) Act 2016 (“the 2016 Act”) resolves that with effect from the day after this resolution is made the provisions which are contained in paragraphs 1 to 4 of this resolution shall come into force; and

(b) notes that in accordance with section 48(1) of the 2016 Act the Parliament has consulted the Scottish Ministers.

1. Citation

This resolution may be cited as the Lobbying (Scotland) Act 2016 (Reporting Procedures) Resolution 2017.

2. Reports by the Commissioner for Ethical Standards in Public Life in Scotland

A report to the Parliament by the Commissioner for Ethical Standards in Public Life in Scotland under Part 3 of the 2016 Act must be made in writing.

3. Parliament’s consideration of report

(1) A report made in accordance with paragraph 2 shall be referred to the committee mentioned in Rule 6.4 of the Parliament’s Standing Orders (“the Committee”) for consideration.

(2) Following consideration, the Committee shall, where appropriate, report to the Parliament, with its recommendations.

4. Exercise of power of censure

Where the Committee recommends censure of any person who is the subject of a report, such censure may only be imposed by the Parliament:

(a) in pursuance of a motion to that effect by a member of the Committee, and
(b) after notice of that motion has been given to the Parliament by a member of the Committee.

EXPLANATORY NOTE

(This note is not part of the Resolution)

The Lobbying (Scotland) Act 2016 ("the Act") establishes a registration regime for "regulated lobbying", as defined in the Act. In doing so it makes provision for a lobbying register which is to be operated by the Clerk of the Scottish Parliament ("the Clerk"). The Clerk along with the Commissioner for Ethical Standards in Public Life in Scotland ("the Commissioner") have responsibilities for oversight and enforcement of the Act. The Act sets out various reporting obligations on the Commissioner, and section 41 requires the Parliament, by resolution, to make provision about procedures to be followed when the Commissioner submits a report to the Parliament under Part 3 (Oversight and Enforcement) of the Act. This Resolution makes provision in that regard.

Paragraph 2 provides that whenever the Commissioner reports to the Parliament under Part 3 of the Act then that report is to be made in writing.

"Writing", for the purpose of the resolution, attracts the wording contained within the Interpretation and Legislative Reform (Scotland) Act 2010. It is stated there that "writing" includes typing, printing, lithography, photography and other modes of representing or reproducing words in a visible form; and that expressions referring to writing are to be construed accordingly. In consequence, a report by the Commissioner can, for example, be in electronic form.

Paragraph 3 makes provision for the Parliament's consideration of a report made by the Commissioner under Part 3 of the Act. In the first instance, it is to be referred to the committee mentioned in Rule 6.4 of the Parliament's Standing Orders (currently, the Standards, Procedures and Public Appointments Committee). That committee will then consider the relevant report. This might involve, for example, simply noting the content. In other circumstances, the nature and content of the report is likely to require the committee to report to the Parliament, with its recommendations.

Paragraph 4 makes provision for those circumstances in which the committee, having considered a report from the Commissioner, recommends censure of the person who is the subject of that report. Censure may only be imposed by the Parliament itself, and not by the Standards, Procedures and Public Appointments Committee, or by any other committee of the Parliament. The process for censure requires a motion to that effect by a member of the Standards, Procedures and Public Appointments Committee.

Rule 8.4.1 of the Parliament's Standing Orders provides that a motion can be amended (except as otherwise provided in the Standing Orders).