Passage of the

Lobbying (Scotland) Bill
2016

SPPB 237
Passage of the
Lobbying (Scotland) Bill 2016

SP Bill 82 (Session 4), subsequently 2016 asp 16

SPPB 237

EDINBURGH: APS GROUP SCOTLAND
## Contents

Foreword

*Introduction of the Bill*
- Bill (As Introduced) (SP Bill 82) ........................................ 1
- Explanatory Notes (and other accompanying documents) (SP Bill 82–EN) ........ 33
- Policy Memorandum (SP Bill 82–PM) .................................... 73
- Delegated Powers Memorandum (SP Bill 82–DPM) ......................... 88

### Stage 1

- Stage 1 Report, Standards, Procedures and Public Appointments Committee Annexe A: Correspondence on the Financial Memorandum
  Annexe B: Extract from minutes and associated written evidence
  Annexe C: Other written evidence .................................................. 103
- Stage 1 Report, Delegated Powers and Law Reform Committee ....................... 291
- Extract from the Minutes of Proceedings, Delegated Powers and Law Reform Committee, 17 November 2015 ................................................. 351
- Extract from the Minutes of Proceedings, Delegated Powers and Law Reform Committee, 1 December 2015 .................................................. 351
- Official Report, Delegated Powers and Law Reform Committee, 17 November 2015 .......................................................... 352
- Extract from the Minutes of Proceedings of the Meeting of the Parliament, 7 January 2016 .......................................................... 354
- Official Report, Meeting of the Parliament, 7 January 2016 ......................... 355
- Scottish Government response to the Standards, Procedures and Public Appointments Committee’s Stage 1 Report, 27 January 2016 ......................... 375

### Stage 2

- Marshalled List of Amendments for Stage 2 (SP Bill 82–ML) ......................... 383
- Groupings of Amendments for Stage 2 (SP Bill 82–G) ................................ 392
- Extract from the Minutes of Proceedings, Standards, Procedures and Public Appointments Committee, 4 February 2016 ........................................ 394
Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected. An exception is the groupings of amendments for Stage 2 and Stage 3 (a list of amendments in debating order was included in the original documents to assist members during actual proceedings but is omitted here as the text of amendments is already contained in the relevant marshalled list).

Where documents in the volume include web-links to external sources or to documents not incorporated in this volume, these links have been checked and are correct at the time of publishing this volume. The Scottish Parliament is not responsible for the content of external Internet sites. The links in this volume will not be monitored after publication, and no guarantee can be given that all links will continue to be effective.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:
• Introduction, followed by publication of the Bill and its accompanying documents;
• Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
• Stage 2: the Bill returns to a committee for detailed consideration of amendments;
• Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.

After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available free of charge on the Parliament’s website (www.parliament.scot).

The series is produced by the Legislation Team within the Parliament’s Chamber Office. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates followed the standard 3 stage process described above.

This Bill arose from the Scottish Government’s commitment under Rule 9.14.13(a) to initiate legislation during Session 4 of the Parliament to give effect to the Final Proposal of Neil Findlay MSP for a lobbying transparency bill. Following the Scottish Government’s commitment to legislate but prior to the introduction of the Bill, the Standards, Procedures and Public Appointments Committee carried out an inquiry into lobbying.

Information on Neil Findlay’s Final Proposal and the Scottish Government’s notification that it intended to legislate can be accessed here: http://www.scottish.parliament.uk/parliamentarybusiness/Bills/52990.aspx.

CONTENTS

Section

PART 1
CORE CONCEPTS

1 Regulated lobbying
2 Government or parliamentary functions

PART 2
THE LOBBYING REGISTER

The register

3 Lobbying register
4 Content of register
5 Information about identity
6 Information about regulated lobbying activity
7 Additional information

Active registrants

8 Duty to register
9 Application for registration
10 Entry in the register
11 Information returns

Inactive registrants

12 Reclassification as an inactive registrant on application
13 Reclassification as an inactive registrant without application

Voluntary registrants

14 Voluntary registration

Further provision

15 Power to specify requirements about the register

PART 3
OVERSIGHT AND ENFORCEMENT

Duty to monitor

16 Clerk’s duty to monitor compliance
Information notices

17 Clerk’s power to require information
18 Limitations on duty to supply information and use of information supplied
19 Appeal against information notice
20 Power to make further provision about information notices
21 Offences relating to information notices

Investigation of complaints

22 Commissioner’s duty to investigate and report on complaint
23 Requirements for complaint to be admissible
24 Procedure for assessing admissibility of complaint
25 Investigation of complaint
26 Commissioner’s report on complaint
27 Parliament’s action on receipt of report
28 Withdrawal of complaint
29 Commissioner’s discretionary reports to Parliament
30 Restriction on Commissioner’s advice
31 Directions to the Commissioner

Investigations: witnesses and documents

32 Power to call for witnesses and documents etc.
33 Notice
34 Exceptions to requirement to answer question or produce document
35 Evidence under oath
36 Offences relating to Commissioner’s investigation
37 Restriction on disclosure of information

Commissioner’s functions

38 Commissioner’s functions etc.
39 Investigation of performance of Commissioner’s functions

Disposal of complaints

40 Parliament’s power to censure

Further provision

41 Power to make further provision about Parliament’s procedures etc.

Offences

42 Offences relating to registration and information returns

PART 4

GUIDANCE AND CODE OF CONDUCT

43 Parliamentary guidance
44 Code of conduct for persons lobbying MSPs

PART 5

FINAL PROVISIONS

45 Offences by bodies corporate etc.
46 Interpretation
### Lobbying (Scotland) Bill

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>47</td>
<td>Parliamentary resolutions</td>
</tr>
<tr>
<td>48</td>
<td>Application of Act to trusts</td>
</tr>
<tr>
<td>49</td>
<td>Ancillary provision</td>
</tr>
<tr>
<td>50</td>
<td>Commencement</td>
</tr>
<tr>
<td>51</td>
<td>Short title</td>
</tr>
</tbody>
</table>

Schedule—Communications which are not lobbying
Lobbying (Scotland) Bill

[AS INTRODUCED]

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 and in person to a member of the Scottish Parliament, a member of the Scottish Government or a junior Scottish Minister,

(ii) is made in relation to Government or parliamentary functions, and

(iii) 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), 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), it does not matter whether the communication occurs in or outwith Scotland.

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,

(g) any other function of—
   (i) the Scottish Ministers,
   (ii) an office-holder in the Scottish Administration other than the Scottish Ministers, or
   (iii) a member 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.

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.

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.

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,

(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.

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,
   (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.

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.

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.

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.
Lobbying (Scotland) Bill
Part 2—The lobbying register

(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.

10 Entry in the register

(1) This section applies where a person—
   (a) provides information in accordance with section 8, or
   (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.

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

(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.

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—

(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.

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).

5  (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.

10  (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.

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).

(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.

30  (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.

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,
Part 3—Oversight and enforcement

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).

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,

(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.

**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.

**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
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.

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.

**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).

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

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).

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 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.

(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.

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.

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.

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.

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—
   (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.

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.

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.

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, 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.

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.
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,

(ii) the date by which the document must be produced, and

(iii) the particular matters in connection with which the document is required.

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.

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).

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).

37 **Restriction on disclosure of information**

5 (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.

10 (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),

(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.

38 **Commissioner’s functions etc.**

25 (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.”.

30 (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, 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.”.

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”.

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.

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.

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.

(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.

Part 4

Guidance and code of conduct

43 Parliamentary guidance

(1) The Parliament may publish guidance on the operation of this Act (referred to in this Act as “the parliamentary guidance”).

(2) The guidance may 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.

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.

(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.

PART 5

FINAL PROVISIONS

45 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 or, 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,

(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.

46 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),
“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,
“voluntary registrant” has the meaning given in section 3(6).

47 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.

48 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, in return for payment, 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.
49 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.

50 Commencement

(1) This section and sections 46, 47, 49 and 51 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.

51 Short title

The short title of this Act is the Lobbying (Scotland) Act 2016.
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.

Communications not made in return for payment

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

3 For the purposes of paragraph 2—
   (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.

Communications in Parliament or required under statute.

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

Meetings initiated by a member or Minister

5 A communication made in the course of a meeting or other event arranged by or on behalf of a member of the Parliament, a member of the Scottish Government or a junior Scottish Minister.

6 However, paragraph 5 does not apply where the meeting or other event was arranged in response to a request from a person attending or represented at the meeting or event.

Cross-party groups

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

Journalism

8 A communication made for the purposes of journalism.
Communications by political parties

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

Communications by judiciary

10 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.

11 In paragraph 10—
   “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—
   (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.

Communications by Her Majesty

12 A communication made by or on behalf of Her Majesty.

Government and Parliament communications etc.

13 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,
Lobbying (Scotland) Bill
Schedule—Communications which are not lobbying

(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.

14 In paragraph 13—

“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—

(a) the government of any State, and

(b) 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.
Lobbying (Scotland) Bill
[AS INTRODUCED]

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.

Introduced by: John Swinney
Supported by: Joe FitzPatrick
On: 29 October 2015
Bill type: Government Bill
These documents relate to the Lobbying (Scotland) Bill (SP Bill 82) as introduced in the Scottish Parliament on 29 October 2015

LOBBYING (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Lobbying (Scotland) Bill introduced in the Scottish Parliament on 29 October 2015:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government statement on legislative competence; and
- the Presiding Officer’s statement on legislative competence.

A Policy Memorandum is published separately as SP Bill 82–PM.
EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL

3. The Bill is separated into 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 (“the Commissioner”) and offences,
   - Part 4 contains provision related to the publication of parliamentary guidance and a code of conduct for persons lobbying MSPs,
   - Part 5 contains final provisions relating to interpretation, the process for making parliamentary resolutions under the Bill, ancillary provision and other technical matters.

COMMENTARY ON SECTIONS

Part 1 – Core Concepts

Section 1: Regulated lobbying and the schedule: communications which are not lobbying

4. Section 1 sets out when a person engages in regulated lobbying for the purposes of the Bill. “Person” includes a natural person (individual) or a legal person (such as a company). Only persons who engage in regulated lobbying require to register and report details of lobbying activity under the Bill (on which see in particular sections 8 and 11).

5. Section 1(1)(a) provides that a person engages in regulated lobbying if the person makes a communication orally and in person to a member of the Scottish Parliament, a member of the
Scottish Government or a junior Scottish Minister, if it is made in relation to Government or parliamentary functions, and if it does not fall within the schedule. A communication is made orally and in person if it is made, for example, at a face to face meeting between a person and an MSP or Minister at either party’s offices.

6. Section 1(1)(b) provides that a person engages in regulated lobbying if in the course of a business or other activity carried on by the person an individual makes a communication of the type described in section 1(1)(a) – i.e. a communication made orally and in person to a member of the Scottish Parliament, a member of the Scottish Government or a junior Scottish Minister, which is made in relation to Government or parliamentary functions (on which see section 2), and which does not fall within the schedule - as an employee, director (including shadow director), partner or member of the person.

7. Section 1(2) provides that where a person engages in regulated lobbying by virtue of subsection (1)(b) of section 1 the individual mentioned there (i.e. the individual who made the communication) is not to be regarded as engaging in regulated lobbying. That is significant as only persons who engage in regulated lobbying require to register and report details of lobbying activity under the Bill (on which see in particular sections 8 and 11).

8. Section 1(3) provides that for the purposes of section 1(1) - the circumstances in which a person will engage in regulated lobbying for the purposes of the Bill – it does not matter whether the communication occurs in or outwith Scotland.

9. The schedule sets out details of communications which are not lobbying for the purposes of the Bill (i.e. the making of which will not amount to engaging in regulated lobbying under the Bill). The making of such communications will not therefore trigger the requirements to report details of lobbying activity under the Bill (on which see in particular sections 8 and 11).

Communications made on individual’s own behalf

10. Paragraph 1 of the schedule provides that a communication made by an individual on their own behalf is not lobbying. The provision means there is no requirement under the Bill to register or submit returns of lobbying activity where an individual communicates with an MSP or Minister in relation to the individual’s own affairs of views (and not in relation to the affairs or views of a third party).

Communications not made in return for payment

11. Paragraph 2 of the schedule provides that a communication made by an individual who is not making it in return for payment is not lobbying. The provision means no requirement under the Bill to register or submit returns of lobbying activity is triggered by voluntarily made communications with an MSP or Minister.

12. Paragraph 3(a) of the schedule provides that for the purposes of paragraph 2 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.
13. Paragraph 3(b) of the schedule defines “payment” for the purposes of paragraph 2. In particular it means payment of any kind (e.g. payment of salary) but does not include reimbursement for travel, subsistence or other reasonable expenses related to the making of the communication.

**Communications in Parliament or required under statute**

14. Paragraph 4 of the schedule provides that a communication made in proceedings of the Parliament (and therefore already available to the public) or required under any statutory provision or other rule of law, is not lobbying.

**Meetings initiated by a member or Minister**

15. Paragraph 5 of the schedule provides that a communication made in the course of a meeting or other event arranged by or on behalf of a member of the Parliament, a member of the Scottish Government or a junior Scottish Minister is not lobbying.

16. Paragraph 6 of the schedule makes clear that paragraph 5 does not apply where the meeting or other event was arranged in response to a request from a person attending or represented at the meeting or event. So communication made by an individual to an MSP or Minister at a meeting or event initiated by or on behalf of the MSP or Minister and not in response to a request from the individual or any person they represent will not trigger obligations under the Bill to register or submit return of lobbying activity.

**Cross-party groups**

17. Paragraph 7 of the schedule provides that a communication made in the context of, and during, a meeting of a group recognised as a cross-party group by the Parliament is not lobbying. Existing parliamentary rules exist so information about participation in cross-party groups, including any secretarial support they receive, is available to the public.

**Journalism**

18. Paragraph 8 of the schedule provides that a communication made for the purposes of “journalism”, a concept recognised in the law, is not lobbying. For discussion of “journalism” in the courts see for example Commissioner of Police of the Metropolis v Times Newspapers Ltd [2011] EWHC 2705 (QB), per Mr Justice Tugendhat at paragraphs 131 and 132 in particular.

**Communications by political parties**

19. Paragraph 9 of the schedule provides that a communication made by or on behalf of a party registered under Part 2 of the Political Parties, Elections and Referendums Act 2000 is not lobbying. This exception ensures that political discourse within (or between) registered political parties does not trigger any requirement to register.
These documents relate to the Lobbying (Scotland) Bill (SP Bill 82) as introduced in the Scottish Parliament on 29 October 2015

Communications in the conduct of public affairs

20. Paragraphs 10 to 13 of the schedule have the effect that communications made in the conduct of public affairs are not lobbying.

21. Paragraph 10 of the schedule provides that a communication made by or on behalf of a holder of judicial office within the United Kingdom, or a member of the judiciary of an international court is not lobbying.

22. Paragraph 11 of the schedule defines “holder of judicial office within the United Kingdom” and “member of the judiciary of an international court” for the purposes of paragraph 10.

23. Paragraph 12 provides that a communication made by or on behalf of Her Majesty the Queen is not lobbying.

24. Paragraph 13 of the schedule provides that Government and Parliament communications (i.e. communication made by or on behalf of the holders of public offices (in that capacity), public bodies, organisations and institutions etc. listed in sub-paragraphs (a) to (o)) are not lobbying.

25. Paragraph 14 of the schedule provides that “State” (listed in paragraph 13(m), which provides that a communication by or on behalf of “a State other than the United Kingdom” is not lobbying) includes, but is not limited to, the government of any State and any organ of such a government and that the reference to a State other than the United Kingdom includes reference to any territory outside the United Kingdom. The paragraph 13(m) exception therefore covers communications by any of the various organs of government (legislative, executive or judicial) of a foreign country or a territorial unit of such country. Paragraph 14 also defines “international organisation” (listed in paragraph 13(o), which provides that a communication by or on behalf of “an international organisation” is not lobbying).

Section 2: Government or parliamentary functions

26. Section 2(1)(a) to (g) sets out what are Government or parliamentary functions for the purposes of section 1. The section complements provision in section 1 which as noted above provides that, subject to the terms of the schedule, it is communications made orally and in person to a member of the Scottish Parliament, a member of the Scottish Government or a junior Scottish Minister and which is made in relation to Government or parliamentary functions which trigger the requirements under the Bill to register or submit returns of lobbying activity.

27. Subsection (2) provides that 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. And so communications with the Lord Advocate or the Solicitor General in relation only to the retained functions of the Lord Advocate will not trigger the requirements under the Bill to register or submit returns of lobbying activity. The retained functions of the Lord Advocate are, as noted, defined in section 52(6) of the Scotland Act 1998. They are any functions exercisable by the Lord Advocate immediately before the Lord Advocate ceased to be a Minister of the Crown on devolution and other statutory functions conferred on the Lord Advocate alone after he ceased to be a Minister of the Crown. These functions relate mainly to
These documents relate to the Lobbying (Scotland) Bill (SP Bill 82) as introduced in the Scottish Parliament on 29 October 2015

the Lord Advocate’s role as head of the systems of criminal prosecution and investigation of deaths in Scotland.

Part 2 – The lobbying register

28. Section 3 contains provision relating to the establishment and maintenance of a lobbying register.

29. Subsection (1) places a duty on the Clerk (a member of staff appointed by the Scottish Parliamentary Corporate Body – see in particular sections 20 and 21 of the Scotland Act 1998) to establish and maintain a lobbying register, which is to contain information about three categories of person. Those categories are:

- active registrants,
- inactive registrants, and
- voluntary registrants.

Active registrants

30. An “active registrant” is a person entered in the register under section 10. Section 10 sets out two ways a person may become an active registrant.

31. A person may become an active registrant by providing information to the Clerk under the duty to register in section 8. The duty to register applies where a person (who is not already registered as an active registrant) engages in regulated lobbying.

32. Alternatively, a person may apply to be entered in the register as an active registrant under section 9. Section 9 allows a person to be entered in the register as an active registrant in advance of engaging in regulated lobbying.

Inactive registrants

33. The concept of “inactive registrant” is included within the statutory framework as a way to manage the registration process and minimise any burdens arising from it. It allows a means for a person who has been registered as an active registrant to no longer be subject to the requirement to make information returns (under section 11) every 6 months if they are no longer and do not intend in the future to be engaged in regulated lobbying activity. This avoids the registrant from having to submit ‘nil’ returns, and the Clerk having to oversee and administer those returns. The effect of these provisions is that there is a statutory duty for any relevant instance of lobbying to be registered, but there are reduced administrative burdens relating to lobbying which may occur on a one-off or infrequent basis.

34. An active registrant may become an “inactive registrant” if the Clerk believes the active registrant is not, or is no longer, engaged in regulated lobbying. An active registrant may apply to become an inactive under section 12, or the Clerk may reclassify an active registrant without an application under section 13 (provided the Clerk has given the active registrant notice and a chance to make representations). Sections 12 and 13 are discussed further below.
35. An inactive registrant may revert to being an active registrant if they are re-entered in the register under section 10.

Voluntary registrants

36. Voluntary registration opens the registration scheme to those who deem themselves to undertake lobbying but do not trigger the statutory requirement to register because the lobbying does not amount to engaging in regulated lobbying within the meaning of the Bill (see section 1), e.g. lobbying carried out for a person by an individual who is not making the communications in return for payment). This ability to register on a voluntary basis would for example therefore allow an individual or entity to register and submit returns in relation to any engagement they have with MSPs or Ministers even if there is no requirement for the individual or entity to do so under the Bill.

37. A person may apply to be a “voluntary registrant” under section 14, unless the person is already an active registrant. It is for the Clerk to decide whether to enter the applicant in the register or refuse the application.

Clerk’s duty to publish information from the register

38. Subsections (2) to (4) of section 3 deal with publication of information in the register. The Clerk is under a duty to publish the information in the register about active registrants. The Clerk may however decide not to publish information about individuals if the Clerk considers publication of that information would be inappropriate.

39. The Clerk may choose to publish information about inactive registrants and voluntary registrants.

Information about identity

40. Section 4 provides that for all registrants – ie active registrants, inactive registrants and voluntary registrants – the register must contain information about the registrant’s identity as set out in section 5. The identity information set out in section 5 varies depending on the type of person (e.g. individual, company, partnership or other person) but in all cases will include the person’s name and address.

Information about regulated lobbying activity

41. Section 4 also provides that for both active and inactive registrants the register must also contain information about the registrant’s regulated lobbying activity as set out in section 6 and such additional information provided by the registrant mentioned in section 7.

42. Section 6 sets out the information about the lobbying activity of both active registrants and inactive registrants that the register must contain. That information includes, in relation to each instance of regulated lobbying, the name of the MSP, member of the Scottish Government or junior Scottish Minister lobbied, the date on which the lobbying occurred etc.
43. **Section 7** sets out the additional information in relation to active registrants and inactive registrants that the register must contain. That additional information is such information as may be provided by the registrant about any code of conduct which governs regulated lobbying and in relation to which there is an undertakings for the registrant to comply and – so far as the Clerk considers appropriate to include it - such other information as may be provided by the registrant for inclusion in the entry.

**Duty to register**

44. **Section 8** imposes a duty to register on a person who engages in regulated lobbying when the person is not an active registrant. The person must, within 30 days beginning with the date on which the first instance of regulated lobbying occurred, provide the Clerk information in relation to the person’s identity (see section 5) and information as set out in section 6 in relation to the first instance of regulated lobbying.

45. Section 8(3) provides that a person must provide the information under subsection (1) in such form as the Clerk may determine.

**Application for registration**

46. **Section 9** contains provision relating to applications for registration, in particular to allow a person to seek to be entered on the register in advance of the person engaging in regulated lobbying, if they so wish. A person who is not already an active registrant is therefore able to apply to the Clerk to be entered in the register (and therefore become an active registrant), providing information about their identity as set out at section 5. Again, the information must be in such a form as the Clerk may determine.

**Entry in the register**

47. **Section 10** contains provision relating to the Clerk entering a person in the register as an active registrant following the person providing information under section 8 or applying under section 9.

48. The section goes on to outline the action that must be taken by the Clerk as soon as reasonably practicable after information or an application is received. In particular the Clerk must enter the person in the register as an active registrant and update the register with both (a) information provided by the person under section 8(1) (duty to register in 30 days following first instance of engaging in regulated lobbying when not an active registrant) or under section 9(2)(b) (application by person who is not an active registrant and who has not engaged in regulated lobbying) and (b) any other information provided by the registrant and which the Clerk agrees to include in the register.

49. Once the Clerk has entered the person on the register the Clerk must, as soon as reasonably practicable, send a written notice to the person informing the person of the date on which the period of 6 months in section 11(1)(a) begins for that person (i.e. the date which is the beginning of the 6 month period in respect of which the person will, as an active registrant, require to submit a first information return in relation to regulated lobbying activity under
These documents relate to the Lobbying (Scotland) Bill (SP Bill 82) as introduced in the Scottish Parliament on 29 October 2015

section 11) and of the effect of section 11(1)(b) (which provides that an active registrant must thereafter submit information returns in respect of each subsequent 6 month period).

50. Subsection (4) makes clear that the Clerk may send additional copies of a notice sent under subsection (3) by whatever means the Clerk considers appropriate (for example, by e-mail).

Information returns

51. Section 11 contains provision relating to each active registrant’s duty to submit information returns.

52. An active registrant must submit to the Clerk (in such a form as the Clerk may determine) an information return in respect of an initial period of six months (the start date of the initial period of six months being either the date on which first instance of lobbying in relation to which the registrant provided information under section 8(1) (duty to register in 30 days following first instance of engaging in regulated lobbying when not an active registrant) occurred or the date of the registrant’s application under section 9 (application by person who is not an active registrant and who has not engaged in regulated lobbying)), whichever is the case, and each subsequent period of 6 months. Information returns must be submitted before the end of the period of 2 weeks beginning immediately after the end of each 6 month period.

53. Section 11(3) provides that the first information return to be provided by an active registrant after the registrant provides information under section 8(1) (duty to register in 30 days following first instance of engaging in regulated lobbying when not an active registrant) must contain the information as set out in section 6 about the registrant’s regulated lobbying activity during the 6 month period in question (other than the first instance of regulated lobbying provided under section 8(1)(b)) or a statement that the registrant has not engaged in regulated lobbying activity in that period (other than that first instance).

54. Section 11(4) provides that every other information return submitted by a registrant under section 11 must contain the information set out in section 6 about the registrant’s regulated lobbying activity in the 6 month period in question or a statement that the registrant has not engaged in regulated lobbying activity in that period and, if any information included in relation to the registrant has become inaccurate, information about the changes that have occurred.

55. Section 11(5) provides that an active registrant may at any time notify the Clerk in writing:

- if any information included in the register in relation to that registrant has become inaccurate, about the changes that have occurred,
- about information about any code of conduct which governs regulated lobbying and in relation to which there is an undertaking for the registrant to comply,
- about such other information which, with the agreement of the Clerk, the registrant wishes to be included in the register.
56. The Clerk is required to update the register to include the information contained in an information return or received under section 11(5) as soon as reasonably practicable after receiving the information.

Reclassification as an inactive registrant

57. Section 12 contains provision relating to an application by an active registrant to be reclassified as an inactive registrant.

58. Subsections (2), (3) and (4) provide that an application to be entered in the register as an inactive registrant must be in such form as the Clerk may determine and specify the information that must be contained in such an application. Any application will require to include such information about the active registrant’s regulated lobbying activity (as set out in section 6) which has not at the date of the application yet been provided to the Clerk or a statement to the effect that the active registrant has not engaged in any such regulated lobbying.

59. Subsections (5) and (6) set out the process to be followed by the Clerk if, following the application, the Clerk has reasonable grounds to believe (i.e. on the basis of facts or information available) that the applicant is not, or is no longer, engaged in regulated lobbying. The Clerk may in particular enter the applicant in the register as an inactive registrant by updating the applicant’s entry in the register accordingly. The Clerk must notify the applicant of both the date on which the applicant is entered on the register as an inactive registrant and the effect of that.

60. Section 13 contains provision relating to the reclassification as an inactive registrant by the Clerk without an application under section 12.

61. Subsection (1) allows the Clerk to enter an active registrant in the register as an inactive registrant if there is no outstanding application by the registrant under section 12, and the Clerk has reasonable grounds to believe (i.e. on the basis of facts or information available) that the registrant is not, or is no longer, engaged in regulated lobbying.

62. Subsection (2) provides that before deciding under this section to enter an active registrant in the register as an inactive registrant the Clerk must give to the registrant a notice stating that the Clerk is considering updating the registrant’s entry, the Clerk’s reasons for doing so and that the registrant has the right to make written representations to the Clerk before the date which is specified in the notice (such date to be at least 28 days after the date on which the notice is given).

63. Subsection (3) provides that the Clerk must consider any representations made by the registrant in making a decision under this section.

64. Subsection (4) provides that the Clerk must, as soon as practicable after making a decision under this section to enter a registrant in the register as an inactive registrant, update the registrant’s entry in the register accordingly.
65. Subsection (5) sets out the process to be followed by the Clerk after making a decision under this section. Again, the Clerk must notify the applicant of both the date on which the applicant is entered on the register as an inactive registrant and the effect of that.

66. In particular the effect of a person being entered in the register as an inactive registrant under either section 12 or section 13 will be that the person will as an inactive registrant no longer be under a duty, as they would have been as an active registrant, to submit 6 monthly information returns under section 11. But the effect is also that if the person engages in regulated lobbying on or after the date on which they are entered as an inactive registrant they will be under a duty to provide information under section 8(1) (duty to register in 30 days following first instance of engaging in regulated lobbying when not an active registrant).

Voluntary registration

67. **Section 14** contains provision relating to voluntary registration.

68. Subsection (1) provides that a person may apply to the Clerk be entered in the register as a voluntary registrant (unless the person is already an active registrant).

69. Subsection (2) provides that an application under this section must be in such form as the Clerk may determine and specifies that the application must contain information in relation to the person’s identity (which varies depending on the type of person, e.g. in the case of a company, the name of the company, its registered number etc.) as set out in section 5.

70. Subsection (3) provides that the Clerk may either enter or refuse to enter the applicant in the register.

71. Subsection (4) sets out that the Clerk may remove a voluntary registrant from the register on an application from the voluntary registrant to do so or may update the register accordingly if (following submission of information under section 8(1) (duty to register in 30 days following first instance of engaging in regulated lobbying when not an active registrant) or an application under section 9 (application by person who is not an active registrant and who has not engaged in regulated lobbying) the person is instead entered in the register as an active registrant.

Power to specify requirements about the register

72. **Section 15** provides that the Scottish Parliament may by resolution make provision about Part 2 of the Bill.

73. The Bill sets the overarching statutory framework for a lobbying register. 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) without the need for primary legislation. That includes in particular flexibility to make provision about the duties of the Clerk on whom functions are conferred in relation to the register, obligations on those wishing to register and those registered and more generally management of the register and information contained in it.
74. Section 15(1)(a) to (i) provides a non-exhaustive list of examples of what resolutions made under this section may make provision about. Section 15(2) provides that a resolution made under this section may modify sections 4 to 14. 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 conferring the power is though to allow the Parliament to make further detailed operational provision, or to adjust existing provision, in connection with the lobbying register in light of practical experience over time.

75. Section 47 makes provision in relation to the process to be followed in relation to parliamentary resolutions, including provision for them to be published in the same way as Scottish statutory instruments so that they are published in a recognised format and easily accessible.

**Part 3 – Oversight and Enforcement**

(a) the Clerk

*Clerk’s duty to monitor compliance*

76. Section 16 imposes a duty on the Clerk to monitor compliance with the obligations imposed by or under the Bill on persons who engage in regulated lobbying and voluntary registrants. Section 16(2) makes clear that in exercising the duty, the Clerk must have regard to the parliamentary guidance (see section 43).

*Information notices*

77. Section 17 provides that in connection with the duty under section 16, the Clerk may serve a notice (an “information notice”) on an active registrant, a voluntary registrant or 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) whether in or outside Scotland, requiring the person to supply information specified in the notice.

78. Section 17(3) states that the information notice must specify the form in which the information must be supplied, the date by which the information must be supplied and contain particulars of the right to appeal under section 19(1).

79. Subsection (4) confirms that the date specified under subsection (3)(b) must not be before the end of the period (21 days) within which an appeal against an information notice under section 19(1) can be made.

80. Subsection (5) confirms that where an information notice has been served on a person, the Clerk may send an additional copy of the information notice by whatever means the Clerk considers appropriate (e.g. by e-mail or hard copy), and may cancel the information notice by serving notice to that effect on the person.
81. Section 18(1) provides that an information notice does not require a person to supply information which would disclose evidence of the commission of an offence by the person (other than an offence under section 42(1), section 42(2), or section 42(3) of the Bill (offences relating to registration and information returns)). Section 18(1) also provides that an information does not require a person to disclose information which the person would otherwise be entitled to refuse to supply in proceedings in a court in Scotland. This covers for example various other privileges recognised by the courts in Scotland such as the privilege which attaches to solicitor/client communications – ie information in respect of which a claim to confidentiality of communications as between client and professional legal adviser could be maintained in legal proceedings.

82. Section 18(2) provides that 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) (offences of failure to provide required information under and information notice or provision of inaccurate or incomplete information)) unless the person is prosecuted for an offence under section 42(1), section 42(2), or section 42(3) of the Bill (offences relating to registration and information returns) and in proceedings for that offence the person gives contrary evidence and evidence relating to the statement is introduced by the person or on their behalf.

83. Section 19 sets out a framework for appeals against information notices served by the Clerk under section 17.

84. Subsection (1) provides that a person on whom an information notice has been served may appeal (on fact or law) to the sheriff against the notice or any requirement specified in it.

85. Subsection (2) provides that 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.

86. Subsection (3) provides that a decision of the Sheriff Appeal Court on appeal (on fact or law) against the sheriff’s decision in final. On appeals from the sheriff to the Sheriff Appeal Court see in particular section 110 of the Courts Reform (Scotland) Act 2014.

87. Subsection (4) makes clear that if an appeal is brought under this section, the person is not required to supply the information specified in the information notice under appeal until the date on which the appeal is “finally determined” (on which see subsection (5)) or the person decides not to proceed with the appeal and it is withdrawn.

88. Section 20 gives the Scottish Parliament a power, exercisable by resolution, to make further provision about information notices.

89. Section 20(2) provides that a resolution under subsection (1) may in particular make provision (or further provision), specifying descriptions of information which the Clerk may not require a person to supply in response to an information notice, 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) and about other matters which must be specified in an information notice.
90. Section 47 makes provision in relation to the process to be followed in relation to parliamentary resolutions, including provision for them to be published in the same way as Scottish statutory instruments so that they are published in a recognised format and easily accessible.

91. **Section 21** sets out the framework for offences relating to information notices.

92. Subsection (1) provides that it is an offence for a person who has been served with an information notice under section 17 to fail to supply the required information on or before the date by which the person is required to do so or to provide information which is inaccurate or incomplete in a material particular.

93. Subsection (2) provides that it is a defence to a charge in proceedings against a person for an offence under subsection (1) to show that the person exercised all due diligence to avoid committing the offence. This imposes an evidential burden only on the person.

94. Subsection (3) provides that 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.

(b) the Commissioner – investigation of complaints and report to Parliament

95. **Section 22** imposes a duty on the Commissioner to investigate when the Commissioner receives a complaint that a person has or might have failed:

   (a) to comply with section 8(1) (duty to register in 30 days following first instance of engaging in regulated lobbying when not an active registrant),

   (b) to provide accurate and complete information in an application made under section 9 (application by person who is not an active registrant and who has not engaged in regulated lobbying),

   (c) to comply with section 11 (duty on active registrant to submit information returns), or

   (d) to supply accurate and complete information in response to an information notice in accordance with section 17.

96. Subsection (2) makes clear that on receipt of such a complaint 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).

97. Subsection (3) provides that in exercising the duties imposed by or under this Act, the Commissioner must have regard to the parliamentary guidance (see section 43).

98. Subsection (4) states that an assessment under subsection (2)(a) and an investigation under subsection (2)(b)(i) must be conducted in private.
Assessment of admissibility of complaints

99. **Section 23** provides for a three part test for admissibility. Subsection (1) explains that a complaint is admissible if it appears to the Commissioner that the complaint:

   (a) is relevant (see subsection (2)),

   (b) meets the conditions mentioned in subsection (3), and

   (c) warrants further investigation (see subsection (4)).

100. Subsection (2) states that a complaint is relevant if it appears at first sight – i.e. on its face - to be about a person who may in the future be, or may currently be, or may previously have been, engaged in regulated lobbying, and that, if all or part of the conduct complained about is established, it might amount to a failure to comply with a requirement mentioned in section 22(1)(a) to (d).

101. Subsection (3) sets out a number of conditions – largely procedural in nature - that require to be met before a complaint will be admissible, including that the complaint must be in writing, must be made by an identifiable individual (rather than in the name of another person such as a company) and made before the end of the period of one year beginning on the date when the complainant could reasonably have become aware of the conduct complained about.

102. Subsection (4) provides that a complaint warrants further investigation if there is sufficient evidence 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).

103. **Section 24** sets out the procedure for assessing admissibility of a complaint. Subsection (2) provides that when 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), the Commissioner must notify the person who is the subject of the complaint that the complaint has been received, inform that person of the nature of the complaint and, except where the Commissioner considers that it would not be appropriate to do so (e.g. where the complainant might be vulnerable or where to do so could prejudice an investigation), inform that person of the name of the individual who made the complaint.

104. Subsection (3) focusses on the first part of the test for admissibility – whether the complaint is relevant. It provides that if the Commissioner considers that the complaint is not relevant, the Commissioner must dismiss it.

105. Subsections (4) to (7) focus on the second part of the test for admissibility – whether the conditions in section 23(3) are met. In particular provision is made in subsections (5) to (7) for where a relevant complaint fails to meet one or more of the conditions mentioned in section 23(3).

106. Subsection (5)(a) provides that if the complaint is of a kind specified in a direction by the Parliament, the Commissioner must make a report to the Parliament (before the Commissioner considers the third part of the test for admissibility (i.e. whether the complaint warrants further
These documents relate to the Lobbying (Scotland) Bill (SP Bill 82) as introduced in the Scottish Parliament on 29 October 2015

investigation)). Subsection 5(b) provides that if the complaint is not of such a kind the Commissioner will consider whether the complaint warrants further investigation and, if it does, will report to the Parliament. Subsection 5(c) deals with other cases, ie where the complaint is not of a kind specified in a direction by the Parliament and where the Commissioner considers that the complaint does not warrant further investigation, in which case the Commissioner will dismiss the complaint.

107. Subsection (6) sets out the information which a report under subsection (5)(a) or (b) must contain. Subsection (7) provides that after receiving a report under subsection (5)(a) or (b) the 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 meets all of those conditions. If the direction is to treat the complaint as if it meets all the conditions and is issued in response to a report under subsection (5)(a), the Commissioner will then require to consider the third part of the test for admissibility – whether the complaint warrants further investigation.

108. Subsection (8) provides that if the Commissioner considers that the complaint is admissible (in accordance with the three part test, i.e. as (a) relevant, (b) meeting all of the conditions in section 23(3) (or having been directed by the Parliament under subsection (7)(b) to treat the complaint as meeting all of those conditions) and (c) warranting further investigation), the Commissioner must inform all of the Parliament (by making a report to the Parliament), the individual who made the complaint and the person who is the subject of the complaint.

109. Subsection (9) deals with the situation where the Commissioner considers a complaint is inadmissible and has not already dismissed it under or in pursuance of other provision in section 24 (ie subsections (3), (5)(a) or (7)(a)). This will be the case where the Commissioner considers that a relevant complaint which meets the conditions in section 23(3) does not warrant further investigation or where following a report to the Parliament on a relevant complaint under subsection (5)(a) the Parliament directs the Commissioner to treat the complaint as if the section 23(3) conditions are met but the Commissioner then determines that the complaint does not warrant further investigation. The Commissioner is to dismiss the complaint.

110. Subsection (10) provides that, 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.

111. Subsection (11) confirms that subsections (2), (8) and (10) apply only to the extent that they are capable of applying where the person to whom the complaint relates has not been named in the complaint or the individual who made the complaint is anonymous.

112. Subsection (12) provides that if the Commissioner has not assessed whether a complaint is admissible within 2 months of receiving the complaint, the Commissioner must, as soon as possible thereafter, make a report to the Parliament on the progress of the assessment of admissibility.
Investigation of admissible complaint and report to Parliament

113. **Section 25**(1) provides that section 25 applies to the investigation of a complaint assessed as admissible under section 22(2)(a).

114. Subsection (2) provides that 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.

115. Subsection (3) provides that the Commissioner may make a finding of fact if satisfied on the balance of probabilities that the fact is established.

116. Subsection (4) provides that 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 admissible, the Commissioner must, as soon as possible thereafter, make a report to the Parliament on the progress of the investigation.

117. **Section 26** makes provision in respect of a Commissioner’s report on the outcome of any investigation of an admissible complaint.

118. Subsection (2) sets out the information that the report must contain, including details of the complaint, the Commissioner’s findings in fact and details of any representations made under subsection (4)(b) by the person who is the subject of the complaint.

119. Subsection (3) provides that the report must not make reference to action which may be taken by the Parliament under section 40 (censure by the Parliament or no further action).

120. Subsection (4) makes clear that 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, and (b) provide that person with an opportunity to make representations on the draft report.

121. **Section 27**(1) provides that the Parliament is not bound by the facts found by the Commissioner in a report made under section 22(2)(b)(ii) (Commissioner’s report on the outcome of an admissible complaint).

122. Subsection (2) provides that 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.

123. Subsection (3) provides that subject to a direction under subsection (2), the provisions of the Bill and of any other direction made under the Bill apply (subject to necessary modifications) in relation to any further investigation and report as they apply in relation to an investigation and report into a complaint.
Withdrawal of a complaint

124. **Section 28**(1) and (2) provide that 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 signed written notice to the Commissioner.

125. Subsection (3)(a) and (b) sets out the actions that the Commissioner must take when a complaint is withdrawn during an assessment of admissibility under section 22(2)(a). The Commissioner must cease to investigate and inform the person who is the subject of the complaint.

126. Subsection (4)(a) to (c) sets out the actions that the Commissioner must take when a complaint is withdrawn during an investigation of an admissible complaint under section 22(2)(b)(i). The Commissioner must inform the person who is the subject of the complaint, invite that person to express views on whether the investigation should nevertheless continue and, having considered relevant information, determine whether to recommend to the Parliament that the investigation should continue.

127. Subsection (5) provides that for the purposes of subsection (4)(c) “relevant information” includes any reason given by the individual who made the complaint for withdrawing it and any views expressed by the person who is the subject of the complaint on whether the investigation should continue.

128. Subsection (6)(a) to (d) sets out the actions that the Commissioner must take when the Commissioner determines to recommend to the Parliament that the investigation should cease (including informing the complainer and person who is the subject of the complaint and reporting to the Parliament).

129. Subsection (7)(a) to (e) provides that where the Commissioner determines to recommend to the Parliament that the investigation should continue the Commissioner must report to the Parliament setting out particular matters, including the reasons for the Commissioner’s recommendation.

130. Subsection (8) provides that after receiving a report under subsection (7), the Parliament must direct the Commissioner to either continue the investigation or cease the investigation.

131. Subsection (9) provides that 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 be continued or ceased.

132. Subsection (10) makes clear that where the Commissioner is required under this section to provide reasons given by the individual who made the complaint for withdrawing it (e.g. under section 28(3)(b)(iii)), the Commissioner may provide a summary of those reasons.
Commissioner’s discretionary reports to Parliament

133. **Section 29** provides that the Commissioner may, in such circumstances as the Commissioner thinks fit, make a report to the Parliament as to the progress of any actions taken by the Commissioner in accordance with the Commissioner’s duties under section 22(2) or informing the Parliament of a complaint which the Commissioner has dismissed as being inadmissible and the reasons for the dismissal.

Restriction on Commissioner’s advice

134. **Section 30(1)** provides that the Commissioner may not give advice as to whether conduct which has been, or is proposed to be, committed by a person would constitute a failure to comply with a requirement mentioned in section 22(1)(a) to (d), or otherwise express a view upon such a requirement, except in the context of an investigation or report mentioned in section 22.

135. Subsection (2) provides that nothing in subsection (1) prevents the Commissioner from giving advice or otherwise expressing a view about the procedures for making a complaint to the Commissioner or the procedures following upon the making of a complaint.

Directions to the Commissioner

136. The general power in **section 31** of the Bill for the Parliament to issue directions to the Commissioner provides for operational flexibility in the overall arrangements for oversight of the registration regime by the Commissioner and the Parliament as provided for in Part 3 of the Bill (in particular sections 22 to 30).

137. Subsection (1) provides that the Commissioner must, in carrying out the Commissioner’s functions conferred by or under the Bill, comply with any direction given by the Parliament.

138. Subsection (2) provides a non-exhaustive list of examples of the types of thing a direction given by the Parliament may deal with. A direction may:

(a) make provision as to the procedure to be followed by the Commissioner when conducting an assessment (assessment of admissibility of complaint) or investigation (investigation of admissible complaint) 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) (assessment of admissibility of complaint) or an investigation under section 22(2)(b)(i) (investigation of admissible complaint) or, if started, may suspend or stop such an assessment or investigation before it is concluded,

(ii) must not conduct such assessment or investigation or, if started, must suspend or stop such assessment or investigation before it is concluded,

(iii) is not required to report to the Parliament under sections 22(2)(b)(ii), 24(5)(a) or (b), (8)(a) or (12), 25(4) or 28(7), or
(c) require the Commissioner to report to the Parliament upon such matter relating to the exercise of the functions of the Commissioner under the Bill as may be specified in the direction.

139. Subsection (3) makes clear that a direction under subsection (1) may not direct the Commissioner as to how any particular investigation is to be carried out.

Commissioner investigations: witnesses and documents

140. **Section 32** (1) provides that the Commissioner may for the purposes of an investigation under section 22(2)(b)(i) (investigation into an admissible complaint) require any person, whether in or outwith Scotland, to attend the Commissioner’s proceedings (ie any formal activity the Commissioner undertakes as part of his investigation) for the purpose of giving evidence or to produce documents in the person’s custody or under the person’s control.

141. Subsection (2) provides that 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.

142. Subsection (3) makes clear that the Commissioner may not impose such a requirement on any person whom 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.

143. Subsection (4) provides that 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.

144. **Section 33** provides that notice must be given to a person of a requirement under section 32(1) to attend for the purposes of giving evidence or to produce documents in the person’s custody and what information must be provided to the person in such notice.

145. Paragraph (a) specifies what information must be contained in the notice where the person is required to give evidence.

146. Paragraph (b) specifies what information must be contained in the notice where the person is required to produce a document.

147. **Section 34** (1) provides that 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. As noted above this covers for example various privileges recognised by the courts in Scotland such as the privilege against self-incrimination and certain other privileges in connection with litigation.

148. Subsection (2) provides that 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 officer would be entitled to decline to answer or to produce in accordance with section 27(3) or, as the case may be, section 23(10) of the Scotland Act 1998. This provides for these persons to refuse to answer questions or provide documents about particular criminal proceedings when it is considered that it would be prejudicial to those proceedings or contrary to the public interest to do so.

149. **Section 35**(1) provides that the Commissioner may administer an oath to any person giving evidence to the Commissioner and require that person to take an oath.

150. Subsection (2) provides that a person who refuses to take an oath when required under subsection (1) commits an offence.

151. Subsection (3) provides that a person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale or imprisonment for a period not exceeding 3 months.

152. **Section 36**(1) provides that a person to whom a notice under section 33 has been given (notice of requirement to attend for the purposes of giving evidence or to produce documents in the person’s custody) 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.

153. Subsection (2) provides that it is a defence to a charge in proceedings against a person for an offence under subsection (1)(a), (b) or (d) to show that there was a reasonable excuse for the refusal or failure. This imposes an evidential burden only on the person.

154. Subsection (3) provides that a person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a period not exceeding 3 months.

**Commissioner investigations - restriction on disclosure of information**

155. **Section 37**(1) provides that 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) (assessment of admissibility of a complaint), 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) (investigation of an admissible complaint).

156. Subsection (2) provides that the persons referred to in subsection (1) are the Commissioner, a member of the Commissioner’s staff, or any other person appointed by the Commissioner.
157. Subsection (3)(a) makes clear that subsection (1) does not prevent disclosure of information for the purpose of enabling or assisting the Commissioner to discharge the Commissioner’s functions:

(i) conferred by or under the Bill (including by a resolution of the Parliament under section 41 (power to make further provision about the Parliament’s procedures on receipt of a report from the Commissioner under Part 3 of the Bill)),

(ii) conferred by or under any other enactment, or

(iii) in the standing orders of the Scottish Parliament.

158. Subsection (3)(b) makes clear that subsection (1) does not prevent disclosure of information for the purpose of the investigation or prosecution of any offence or suspected offence.

Commissioner’s functions etc.

159. Section 38 sets out a series of modifications (as provided for in subsections (2) to (4)) to the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 in consequence of this Bill. That Act makes general provision for the Commissioner and exercise of the Commissioner’s functions under existing legislation. The modifications are to reflect the conferral of further functions on the Commissioner under the Bill.

Investigation of performance of Commissioner’s functions

160. Section 39 provides for consequential changes to schedule 2 to the Scottish Public Services Ombudsman Act 2002 so that the Commissioner in exercise of functions under the Bill is a person liable to investigation by the Scottish Public Services Ombudsman for the purposes of that Act.

Parliament’s power to censure

161. Section 40 provides that after receiving a report under section 22(2)(b)(ii) (report of outcome of investigation of admissible complaint) or section 27(2) (report of further investigations after direction by the Parliament following receipt of report of outcome of investigation of admissible complaint under section 22(2)(b)(ii)), the Parliament may censure the person who is the subject of the report or take no further action.

Power to make further provision about Parliament’s procedures etc.

162. 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 this Part. Subsection (2)(a) to (d) sets out what, in particular, a resolution under subsection (1) may make provision about.

163. Section 47 makes provision in relation to the process to be followed in relation to parliamentary resolutions, including provision for them to be published in the same way as
Scottish statutory instruments so that they are published in a recognised format and easily accessible.

(c) offences

164. **Section 42** makes provision for offences in relation to registration and information returns. Subsection (1) provides that it is an offence for a person who is required to provide information under section 8(1) (duty to register in 30 days following first instance of regulated lobbying when not an active registrant) to fail to provide the information on or before the date by which the person is required to do so or provide information which is inaccurate or incomplete in a material particular.

165. Subsection (2) provides that 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.

166. Subsection (3) provides that it is an offence for a person who is required to submit an information return under section 11 to fail to submit the return on or before the date by which the person is required to do so or provide information which is inaccurate or incomplete in a material particular.

167. Subsection (4) provides that it is a defence to a charge in proceedings against a person for an offence under subsections (1) to (3) to show that the person exercised all due diligence to avoid committing the offence. This imposes an evidential burden only on the person.

168. Subsection (5) provides that a person who commits an offence under subsections (1) to (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Part 4 – Guidance and code of conduct**

**Parliamentary guidance**

169. **Section 43** contains provision relating to the publication of parliamentary guidance.

170. Subsection (1) provides that the Parliament may publish guidance on the operation of this Act.

171. Subsection (2) lays out particular examples of what the guidance may contain, including the circumstances in which a person is or is not engaged in regulated lobbying for the purposes of the Act and the circumstances in which a communication is of a kind which falls within the schedule or the Clerk’s functions under the Act.

172. Subsection (3) provides that before publishing the guidance, any revision to it or replacement of it, the Parliament must consult the Scottish Ministers.
173. When exercising functions under Part 2 both the Clerk and the Commissioner are required to have regard to the parliamentary guidance (see sections 3(5), 16(2) and 22(3)). This ensures that the Clerk and the Commissioner will take account of the guidance when exercising such functions.

**Code of conduct for persons lobbying MSPs**

174. **Section 44** contains provision relating to the publication of a code of conduct for persons lobbying MSPs.

175. Subsection (1) provides that the Parliament must publish a code of conduct for persons lobbying members of the Parliament.

176. Subsection (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.

177. Subsection (3) lays out that, in this section, “lobbying” means making a communication of any kind to a member of the Parliament in relation to the member’s functions. This 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.

**Part 5 – Final provisions**

178. **Section 45** contains provision relating to offences committed by bodies corporate.

179. Subsection (1) provides that where an offence under this Bill has been committed by a body corporate or a Scottish partnership or other unincorporated association, and it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of a “relevant individual”, or an individual purporting to act in the capacity of a relevant individual, the individual (as well as the body corporate, partnership or, as the case may be, other unincorporated association) commits the offence and is liable to be proceeded against and punished accordingly. This means that where an offence under the Bill is committed by an organisation and it can be proved that a specific individual played a role in the committing of the offence, that person also commits an offence and can be prosecuted accordingly.

180. Subsection (2) defines “relevant individual” for the purposes of subsection (1).

181. **Section 46** defines terms used in the Bill.

182. **Section 47** contains provision relating to the process to be followed by the Parliament in making parliamentary resolutions under this Bill. Sections 15 (power to specify requirements about the register), 20 (power to make further provision about information notices) and 41 (power to make further provision about the Parliament’s procedures where the Commissioner
submits a report to the Parliament under Part 3 of the Bill) of the Bill confer power on the Parliament to make provision by parliamentary resolution.

183. Subsection (1) makes clear that, before making a resolution under the Bill, the Parliament must consult the Scottish Ministers.

184. Subsection (2) provides that any power of the Parliament to make such a resolution includes power to make different provision for different purposes, or incidental, supplementary, consequential, transitional, transitory or saving provision.

185. Subsection (3) provides that immediately after any such resolution is passed, the Clerk must send a copy of it to the Queen’s Printer for Scotland (“the Queen’s Printer”).

186. Subsection (4) provides that section 41(2) to (5) of the Interpretation and Legislative Reform (Scotland) Act 2010 (“the 2010 Act”) and the Scottish Statutory Instruments Regulations 2011 (S.S.I. 2011/195) apply to the resolution as if it were a Scottish statutory instrument, as if the copy of it sent to the Queen’s Printer under subsection (3) were a certified copy received in accordance with section 41(1) of the 2010 Act and with the modifications set out in subsections (5) and (6). Subsection (5) makes clear that references to “responsible authority” in section 41(2) to (5) of the 2010 Act are to be read as references to the Clerk. Subsection (6) makes clear that regulation 7(2) and (3) of the Scottish Statutory Instruments Regulations 2011 does not apply (this ensures that the obligation in regulation 7(1) of those Regulations – Queen’s Printer to deliver certified copies to certain libraries – applies to parliamentary resolutions made under the Bill). Overall the main purpose of the provision in section 47(4) to (6) of the Bill is to provide for parliamentary resolutions under the Bill to be published by the Queen’s Printer in the same way as Scottish statutory instruments.

187. **Section 48** contains provision relating to the application of this Bill to a trust.

188. Subsection (2) provides that the trustees of a trust engage in regulated lobbying if a trustee makes, in return for payment, a communication falling within section 1(1)(a) (a communication made orally and in person to a member of the Scottish Parliament, a member of the Scottish Government or a junior Scottish Minister, which is made in relation to Government or parliamentary functions (on which see section 2), and which does not fall within the schedule (communications which are not lobbying for the purposes of the Bill)).

189. Subsection (3) makes clear that references in Parts 2 and 3 to “person” are to be read as references to the trustees of the trust.

190. Subsection (4) makes clear that an obligation imposed under those Parts on the trustees of the trust may be fulfilled by any one or more of the trustees.

191. **Section 49** confers power to make ancillary provision.

192. Subsection (1) provides that the Scottish Ministers may by regulations make such incidental, supplementary, consequential, transitional, transitory or saving provision as they
consider necessary or expedient for the purposes of, or in connection with, any provision made by or under this Bill.

193. Subsection (2) provides that regulations under subsection (1) may make different provision for different purposes and may modify any enactment (including this Bill).

194. Subsection (3) provides that subject to subsection (4), regulations under subsection (1) are subject to the negative procedure (on which see section 28 of the 2010 Act).

195. Subsection (4) provides that regulations under subsection (1) which contain provisions that add to, replace or omit any part of the text of an Act are subject to the affirmative procedure (on which see section 29 of the 2010 Act).

196. **Section 50** (1) provides that this section and sections 46, 47, 49 and 51 come into force on the day after Royal Assent.

197. Subsection (2) provides that the other provisions of this Bill come into force on such day as the Scottish Ministers may by regulations appoint.

198. Subsection (3) provides that different days may be appointed for different purposes.

199. Subsection (4) provides that regulations under subsection (2) may contain transitional, transitory or saving provision.

200. **Section 51** provides that the short title of the Bill if enacted is to be the Lobbying (Scotland) Act 2016.
These documents relate to the Lobbying (Scotland) Bill (SP Bill 82) as introduced in the Scottish Parliament on 29 October 2015

FINANCIAL MEMORANDUM

INTRODUCTION

1. This Financial Memorandum has been prepared by the Scottish Government to satisfy Rule 9.3.2 of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

2. The Scottish Government proposes to introduce a lobbying register to contain information about certain regulated lobbying activity of those who directly engage with Members of the Scottish Parliament (MSPs) and Scottish Ministers as part of their work. This takes forward the recommendations of the Standards, Procedures and Public Appointments Committee (“the Committee”) report dated 6 February 20151 (“the Committee’s report”). That report has informed the development of the Government’s Bill to a significant extent, and the Government is grateful for the work undertaken by the Committee.

3. The Government believes that the existing frameworks which offer guidance on contact between lobbyists and elected representatives are robust – in particular, the Code of Conduct for Members of the Scottish Parliament2 and the Scottish Ministerial Code3. The Government notes that these frameworks have not been challenged in terms of how they deal with lobbying activity. Nonetheless, those arrangements are probity-based, and the Government believes that there is a need to increase transparency of direct face to face paid lobbying (communication) with MSPs and Ministers to facilitate improved awareness and understanding of lobbying activity, improved public scrutiny of the work of the Parliament and Government, improved accountability and trust in that work and improved outcomes.

4. The main policy components of the Bill are:
   - Establishment of a lobbying register containing 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 (employees who lobby as part of their work).
   - A trigger for registration focused on paid lobbying, in the sense of a consultant being paid to lobby and in the sense of persons in commercial or other organisations who lobby as part of their paid work.
   - An obligation on organisations to register (i.e. both ‘lobbying firms’ and commercial or other organisations which employ ‘in-house lobbyists’) following their lobbying of MSPs and Ministers.
   - Defining ‘regulated lobbying’ in this context as face to face oral communication with MSPs and Ministers (e.g. ‘in person’, meetings, events, other hospitality), in line with the Committee’s report.

---

2 www.scottish.parliament.uk/msps/code-of-conduct-for-msps.aspx
3 http://www.gov.scot/About/People/14944/684
These documents relate to the Lobbying (Scotland) Bill (SP Bill 82) as introduced in the Scottish Parliament on 29 October 2015

- Lobbyists will require to register after a first instance of lobbying MSPs and 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 Parliament will have the ability, via resolution, to alter elements of the framework for operation of the lobbying register.
- Register to be kept and maintained by the Clerk of the Parliament (“the Clerk”); with a suite of proportionate oversight and enforcement provision (including scope for independent investigations by the Commissioner for Ethical Standards in Public Life (“the Commissioner”) and reporting to the Parliament provided to promote and secure compliance with the requirements in the Bill.
- The Parliament will be able to produce guidance on the operation of the regime.

5. This Memorandum sets out estimates of potential costs, presented as ranges where possible and based upon currently available data.

6. A statutory register of lobbying has not previously existed in Scotland, so it is not currently possible to provide the precise number of lobbyists who will be required to submit returns under the Bill. Ultimately, further transparency about the frequency and nature of lobbying activity in Scotland will only become available once the register is active. An additional variable is the increase in the Parliament’s competence expected as a result of the Scotland Bill currently being scrutinised by both the UK and Scottish Parliaments. This may result in increased lobbying activity directed towards MSPs and Scottish Ministers in respect of new areas of policy. In light of that uncertainty about the precise number of registrations and periodic returns that will be required under the Bill, the Government has used an estimated range of potential registrants to inform this Memorandum (see paragraphs 30 to 32).

7. As well as the Scottish Government’s own analysis of financial implications arising from the Bill, the Memorandum also includes information supplied by the parliamentary authorities which sets out indicative start-up costs for the register, together with anticipated ongoing costs for its administration and upkeep. The Government is grateful for this input, which has helped ensure this Memorandum contains the best available estimates of the financial implications of the Bill.

8. The timing of the commencement of the Bill has not yet been decided, and will be informed by ongoing discussions between the parliamentary authorities and the Government. However, it is unlikely that the registration framework will be fully operational until about 18-24 months after the Bill’s parliamentary passage is concluded. The Government proposes to commence provisions only once the parliamentary authorities indicate they are ready to formally launch the register. The assumption for the purposes of this Memorandum is that start-up costs would be generated in 2016-17, with ongoing running costs being incurred from 2017-18 onwards.
9. The Scottish Parliamentary Corporate Body (“SPCB”) has advised that some impacts on internal functions can be absorbed within existing budgets – see paragraph 14. The Government acknowledges that there will be associated costs in other areas, and this Memorandum details those costs between paragraphs 13 and 33. The associated costs relate to the establishment of the register, and ongoing resourcing requirements.

10. The initial scoping work undertaken in partnership with prospective lobbyists does not suggest any direct cost burden arising in terms of compliance with registration requirements. The lobbying organisations which the Government has consulted view implications as being confined to staff time. Many consultant lobbyists already comply with registration requirements imposed by industry bodies and would similarly not regard the introduction of a register as proposed by the Bill as a significant cost issue.

COSTS ON THE SCOTTISH ADMINISTRATION

11. No direct costs will be incurred on the Scottish Administration as a result of the Bill. Communications by or on behalf of the Scottish Administration with MSPs or Ministers will not trigger the requirements in the Bill to register and submit returns. There is no requirement on Ministers, as ‘lobbyees’, to take direct action in consequence of the proposed statutory framework. Ministers and their officials will have regard to any guidance which the Parliament produces under the Bill, but as the running of the register will fall to the parliamentary authorities and registration and monitoring returns will fall on lobbyists, the Government does not envisage being required to commit additional resources to comply with the new regime. Any duties which ultimately do fall on the Government will be absorbed within existing resource budgets.

COSTS ON LOCAL AUTHORITIES

12. No costs will be incurred on local authorities as a result of the Bill. As introduced, the only ‘lobbyees’ are MSPs and Ministers: it is communications with MSPs and Ministers that will trigger requirements to submit returns of lobbying activity for inclusion in the register. Elected representatives and officials of local authorities are not ‘lobbyees’ for the purposes of the Bill. Nor will communications by or on behalf of a local authority with MSPs or Ministers trigger the requirements in the Bill to register and submit returns. Although it could be anticipated that most local authorities would wish to familiarise themselves with the lobbying regime and how it will operate, the Bill has no direct impact on them and so it is not therefore envisaged that they would be required to commit additional resources to comply with the new regime. There has been no evidence arising from the consultation process to challenge this assumption.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

Costs on the Scottish Parliamentary Corporate Body

13. There will be direct costs arising from the Bill for the SPCB. The Bill requires the Clerk to establish and maintain the register and day-to-day administration and oversight of the lobbying regime created by the Bill will therefore be undertaken within parliamentary machinery, broadly comparable to the position in relation to the registration of Members’
These documents relate to the Lobbying (Scotland) Bill (SP Bill 82) as introduced in the Scottish Parliament on 29 October 2015

Interests. Parliamentary authorities have provided the Government with the estimated costings referenced below.4

14. The SPCB has noted that the Bill would impact upon most offices in the Parliament, for example in relation to increased enquiries from the public and media, additional FOI requests and the need for staff training on registration matters. The SPCB has advised that these impacts can largely be absorbed within existing budgets.

15. From the SPCB’s perspective, there are two main potential areas of additional cost:

- Set-up costs to establish the lobbying register, which are anticipated to relate mainly to creating the necessary IT systems to support the register and the development of supporting guidance and education material.
- Ongoing recurring costs, which are anticipated to relate mainly to the resource required to process registrations and returns under the Bill.

Set-up costs

Set-up costs for IT systems

16. The SPCB anticipates the need to construct a bespoke IT system which would allow the register to be established and maintained, would allow registrants to submit information to the Clerk, would enable the SPCB to obtain reports on registered information, and which is compliant with ‘open data’ principles, enabling the public to search information in the register.

17. The SPCB has advised that set-up costs comprise staff costs for IT specialists to develop the necessary system (as opposed to a standalone cost to procure a new system). Following an examination of international comparators, the SPCB anticipates that a register could be created over an approximately 18 month timeframe and the cost for this will fall within the range of £180,000 - £300,000. These costs are estimated to occur in 2016-17.

Set-up costs for awareness raising

18. The Committee’s report anticipated the register operating on a light touch, educative basis. The Parliament will also be able to publish guidance on the scheme as set out in the Bill. Production of the guidance and related educational and outreach initiatives will involve use of clerking resources.

19. The SPCB considers that such initiatives will include marketing the register online and in the media, educative videos, mass emails to organisations who may need to register, e-learning modules/web-based seminars, provision of support material and face to face meetings and promotion of the register at ‘entry points’ to the Parliament (e.g. events, committees, cross-party groups etc.). The SPCB envisages that the principal costs for awareness raising would be in terms of social and other electronic media campaigns, and placing adverts in newspapers and trade publications. The SPCB estimates that the cost for this will fall within the range of £50,000 - £100,000. These costs are estimated to occur in 2016-17.

4 Letter dated 9 September 2015
Total set-up costs on the Scottish Parliamentary Corporate Body

<table>
<thead>
<tr>
<th>Costs on the Scottish Parliamentary Corporate Body</th>
<th>2016-17</th>
<th>2017-18</th>
</tr>
</thead>
<tbody>
<tr>
<td>Set-up Costs</td>
<td>£230,000 (min) – £400,000 (max)</td>
<td>£0</td>
</tr>
<tr>
<td>TOTAL</td>
<td>£230,000 (min) – £400,000 (max)</td>
<td>£0</td>
</tr>
</tbody>
</table>

Ongoing costs

Ongoing costs for legal input

20. The SPCB considers that there may be some legal resource implications arising from implementation of the Bill as a result of requests for legal advice from the Clerk on operation of the regime, particularly in the early years of the register.

21. The SPCB estimates that additional resources required from the Parliament’s legal office might consist of one day a week from a lawyer (at present approximately £14,700 per annum). These costs are estimated from 2016-17 onwards.

Ongoing costs for IT systems

22. In addition to the initial start-up costs, the SPCB anticipates some costs arising from maintenance of relevant IT systems, although it considers that the number of registrants will, to a degree, affect the cost of ongoing maintenance. The SPCB’s estimate for the ongoing cost of IT support is approximately £22,000 per annum.

23. The SPCB considers that other ongoing expenses will include website hosting at a cost of approximately £10,000 per annum. The SPCB also considers that a system refresh will be necessary every four to five years, with resultant additional IT costs. The SPCB estimates that the cost of a refresh every four to five years will be approximately £50,000.

24. The ongoing costs for IT systems are estimated from 2017-18 onwards, apart from the cost of a system refresh which is estimated in 2020-21.
Ongoing costs for administration and oversight of register

25. The Government anticipates that the administration and oversight of the register will represent the main ongoing cost for the SPCB. The Government also agrees with the Committee’s conclusion that demand for the register will have an impact on the ongoing costs for the administration of the register.

26. As noted above, the Bill requires the Clerk to establish and maintain the register. The Bill also places the Clerk under a duty to monitor compliance with the obligations imposed by or under the Bill. It is envisaged that Clerk’s duty in this regard will mainly consist of processing and checking the information received, and having regard to any issues complaints received from members of the public. The intention is not for the Clerk to assume a ‘policing’ role - for example, it is not envisaged that the Clerk will undertake dedicated media monitoring or conduct audits specifically related to the register, which the Government acknowledges would have an impact on the work and costs involved.

27. The SPCB considers that there will therefore be a role for a member of staff (the SPCB has indicated that the job title for this role will be the ‘Registrar’), who, on behalf of the Clerk, will co-ordinate and manage work on administration and oversight of the register as well as advising the SPPA Committee on how the register is functioning.

28. The SPCB also envisages that the ‘Registrar’ will be responsible for advising the IT team on the initial configuration of the IT system, assisting in development of the code of conduct for lobbyists to be published by the Parliament under the Bill and for publicity and education about the register. The cost of this post, including employers’ costs, is estimated at approximately £75,000 per annum.

29. The SPCB considers that one member of executive/administrative staff would be required per 1000 registrants, at a cost of approximately £35,000 per annum including pensions and national insurance. Using the Government’s estimated range of 255 to 2,550 potential registrants (see paragraphs 30 to 32 below), this equates to a range of between approximately 0.25 and 2.5 members of staff depending on the eventual number of registrants. The cost range for ongoing administration costs is therefore between £8,750 and £87,500 per annum. Including the cost for the ‘Registrar’ staff member above, the total estimated range for ongoing administration of the register is therefore £83,750 - £162,500.

30. The SPCB considers that these staff would need to be involved at the outset, particularly the ‘Registrar’ who will be responsible for overseeing all of the work on register development, education and awareness raising. These costs are therefore estimated from 2016-17 onwards.

Number of potential registrants

31. The Government agrees with the Committee’s conclusion that demand for the register will have an impact on the ongoing costs for the administration of the register. With that in mind, the Government has looked to provide an estimated range of the number of registrants who would be required to submit periodic returns. This estimate has been informed by a project to
These documents relate to the Lobbying (Scotland) Bill (SP Bill 82) as introduced in the Scottish Parliament on 29 October 2015

analyse a sample of 12 months of Ministerial engagement logs\(^5\), from July 2013 to August 2014. Engagements which clearly did not fall within the Bill’s definition of regulated lobbying (for example press interviews, ambassadorial engagements, etc.) were omitted, leaving a list of individuals and organisations who held meetings with Ministers which may have constituted lobbying activity. The Government subsequently drew from information provided by the SPCB about MSPs’ engagements over the same time period to estimate how many additional instances of lobbying (i.e. engagements with individuals and organisations not already identified in the analysis of Ministerial logs) may have taken place. The combination of this information produced a ‘high end’ estimate of 2,550 potential registrants.

32. However, the Government believes it is likely that not all of these engagements would constitute regulated lobbying as defined by the Bill, and therefore further analysed a sample of the Ministerial engagement logs to more closely and specifically identify which of the engagements might have involved such regulated lobbying activity. Approximately 10% of the sampled meetings were considered to be likely to have involved regulated lobbying activity as defined in the Bill, and this informs the Government’s ‘low end’ estimate of 255 potential registrants.

33. The Government accepts that the total number of organisations or individuals who ultimately register could be lower or higher (based on actual regulated lobbying activity), however considers that a range of between 255 and 2,550 registrants is a useful and relevant working assessment.

Total ongoing costs on the Scottish Parliamentary Corporate Body

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Ongoing Costs</td>
<td>£98,450 (min) – £177,200 (max)</td>
<td>£130,450 (min) – £209,200 (max)</td>
<td>£130,450 (min) – £209,200 (max)</td>
<td>£130,450 (min) – £209,200 (max)</td>
<td>£180,450 (min) – £259,200 (max)</td>
</tr>
<tr>
<td>TOTAL</td>
<td>£98,450 (min) – £177,200 (max)</td>
<td>£130,450 (min) – £209,200 (max)</td>
<td>£130,450 (min) – £209,200 (max)</td>
<td>£130,450 (min) – £209,200 (max)</td>
<td>£180,450 (min) – £259,200 (max)</td>
</tr>
</tbody>
</table>

The above table shows costs in 2016/17 as the ‘Registrar’ and admin staff costs, plus the cost of legal advice. The ongoing costs for IT (an additional £10,000 for hosting and £22,000 for IT support) will not apply until the system is live 18 months later, and so are included in the costings for years 2017/18 and 2018/19. The costings for year 2020/21 also include the IT refresh cost of £50,000).

---

\(^5\) [http://www.gov.scot/About/People/14944/Events-Engagements/MinisterialEngagements](http://www.gov.scot/About/People/14944/Events-Engagements/MinisterialEngagements)
Total Costs on the Scottish Parliamentary Corporate Body

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Set-up Costs</td>
<td>£230,000 (min) – £400,000 (max)</td>
<td>£0</td>
<td>£0</td>
<td>£0</td>
<td>£0</td>
</tr>
<tr>
<td>Ongoing Costs</td>
<td>£98,450 (min) – £177,200 (max)</td>
<td>£130,450 (min) – £209,200 (max)</td>
<td>£130,450 (min) – £209,200 (max)</td>
<td>£130,450 (min) – £209,200 (max)</td>
<td>£180,450 (min) – £259,200 (max)</td>
</tr>
<tr>
<td>TOTAL</td>
<td>£328,450 (min) – £577,200 (max)</td>
<td>£130,450 (min) – £209,200 (max)</td>
<td>£130,450 (min) – £209,200 (max)</td>
<td>£130,450 (min) – £209,200 (max)</td>
<td>£180,450 (min) – £259,200 (max)</td>
</tr>
</tbody>
</table>

Costs on lobbyists

34. There will also be some indirect costs for lobbyists who are required to register and provide regular returns of their regulated lobbying activity. There will be no fee payable by lobbyists to register or submit returns. The principal implications for lobbying organisations are therefore anticipated to be in terms of staff time rather than direct financial expenditure. As highlighted earlier in this memorandum some consultant lobbyists, as a matter of good practice, already record their lobbying activity and, where that is the case, any additional costs on those entities would be marginal. The Government has held discussions with lobbying organisations for the purposes of preparing the relevant Business and Regulatory Impact Assessment, with the indirect costs on lobbyists being summarised below.

Initial return (registration)

35. The Bill requires organisations which carry out regulated lobbying to register within 30 days of the first instance of regulated lobbying activity. Alternatively, organisations who believe they are likely to engage in regulated lobbying in the future can ‘pre-register’. The information required on registration is basic identity information and so light-touch in nature.

36. Estimates for the staff time required to compile an initial registration by a lobbying organisation include £0 (on the basis that any additional duties falling on lobbyists would be absorbed within existing resource budgets, and that registration would require half an hour of staff time), £200 (based on half a day of an member of administrative staff’s time, together with two hours of a senior staff member’s time, to process an application for an organisation of approximately 20 employees), and £400 (based on four hours at a team rate of £100 per hour).
37. On that basis, the **staff time** required to compile an initial registration is estimated between **0.5 and 4 hours**. That equates to a notional indirect cost of between £0 and £400 for each lobbying organisation, in terms of the staff time required to process an initial registration.

**Regular returns**

38. The Bill requires those engaged in regulated lobbying to provide six monthly returns detailing their regulated lobbying activity. The information required in each six monthly return, which would be submitted online, includes the name of the person lobbied, date, location, a description of the meeting, event or other circumstances, the name of the individual who made the communication, and the purpose of the lobbying.

39. The Government notes that there are likely to be differing implications for a large lobbying organisation and a small one in terms of the time required to collate a return. Additionally, if no lobbying activity has been carried out in the preceding six months, registrants will only be required to confirm a nil return. The estimates detailed below take account of this differential, which ranges from submitting a nil return to a collating and submitting a large number of instances of lobbying activity carried out by numerous individuals.

40. Estimates for the staff time required to compile each six monthly return include **£0** (on the basis that any additional duties falling on lobbyists would be absorbed within existing resource budgets, and that compiling each return would require one hour of staff time), **£800** (based on eight hours at a team rate of £100 per hour), and **between £600 and £900** (based on 24 hours of intermediate and senior staff members’ time at approximately £200-£300 per day).

41. On that basis, the **staff time** required to compile each six monthly return is estimated between **1 and 24 hours**. That equates to a notional indirect cost of between £0 and £900 for each lobbying organisation, in terms of the staff time required to process each six monthly return.

**Other costs for lobbyists**

42. Lobbying organisations who undertake regular and co-ordinated lobbying activity (as opposed to lobbying organisations who meet Ministers or MSPs on an infrequent basis) may require to put in place systems to support the preparation of six monthly returns. An estimate of the staff time required to establish such a system is **7 days** of senior staff time, with ongoing administrative support costs for the system at a couple of days per month. There could be additional requirements in terms of the staff time needed to familiarise employees or members with the regime, and any associated training.

43. On this basis, the one-off amount of staff time required to develop an internal compliance system within a lobbying organisation is estimated at **7 days**. That equates to a notional indirect cost of between £1,500 and £2,500 for each lobbying organisation in terms of one-off staff time to develop an internal compliance system. The ongoing amount of administrative staff’s time to provide support for such a system is estimated at **2 days**. That equates to a notional ongoing cost of between £200 and £300 per month for each lobbying organisation in terms of staff time to provide support for such an internal compliance system.
These documents relate to the Lobbying (Scotland) Bill (SP Bill 82) as introduced in the Scottish Parliament on 29 October 2015

Costs on Commissioner for Ethical Standards in Public Life in Scotland

44. The Bill provides for the Commissioner to investigate complaints that a person has failed to adhere to the requirements of the regime and report to the Parliament on the outcome of the investigation. The Government has liaised with the Commissioner to identify the resource implications for his office.

45. The Commissioner has noted the difficulties that arise in seeking to speculate about the number of complaints which might arise in consequence to the Bill. The Commissioner has, however, offered some indicative data to assist the preparation of this memorandum. The estimates are based on work undertaken in the context of the Interests of Members of the Scottish Parliament (Amendment) Bill, which may also widen the scope of the complaints to be investigated by the Commissioner’s office.

46. The Commissioner notes that there have been very few investigations under the legislation governing complaints about the conduct of MSPs, and which therefore follow the procedure adopted as the basis for the model in the Lobbying (Scotland) Bill. The Commissioner notes there will certainly be a degree of novelty in that the persons who are subject to investigation will not be elected representatives (nor councillors or those who are appointed by ministers to public boards in relation to which the Commissioner also has existing investigative functions). The Commissioner also considers that the Bill, as drafted, involves a relatively rigid process for dealing with complaints, with a possibility that his office would have to investigate all complaints submitted. The Bill does however provide the Parliament with powers of direction over the Commissioner, including over the general handling of complaints.

47. The Commissioner has supplied figures for the basic cost of investigating a relatively complex complaint against a local councillor. These are the most numerous of the complaints which are investigated by his office, and therefore on which he has the best comparative information. This assesses an average cost for an investigating officer (IO) of around £1,000 per case. However, more complex investigations consume between £4,000 and £6,000 of IO costs, to which should be added a further £1,000 for the cost of the Commissioner’s own time and processing within the office.

48. Based on the minimal number of complaints received by the Commissioner in respect of Member’s Interests, the Government has estimated a range of between 0 and 10 investigations per year in respect of the Bill. Given the estimates provided by the Commissioner, the range for costs of investigations per year is therefore estimated to be between £0 in the case of no investigations, and £70,000 in the case of 10 complex investigations.

49. The Commissioner also notes the current pressure of work in his office. The Commissioner does, however, believe that any additional investigations arising as a result of the Bill can be absorbed within his existing resource. He does, however, note that his current complement of investigative staff would be required to devote additional time to any investigation arising.
50. As investigations by the Commissioner would only become a possibility following the launch of the registration regime, 2018-19 is estimated to be the earliest date at which potential costs relating to investigations would arise.

Total Costs on Commissioner for Ethical Standards in Public Life in Scotland

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Ongoing Costs</td>
<td>£0</td>
<td>£0</td>
<td>£0 (min) – £70,000 (max)</td>
<td>£0 (min) – £70,000 (max)</td>
<td>£0 (min) – £70,000 (max)</td>
</tr>
<tr>
<td>TOTAL</td>
<td>£0</td>
<td>£0</td>
<td>£0 (min) – £70,000 (max)</td>
<td>£0 (min) – £70,000 (max)</td>
<td>£0 (min) – £70,000 (max)</td>
</tr>
</tbody>
</table>

Costs of criminal procedures

51. Although the Government believes that the likelihood of a criminal prosecution against a lobbyist is extremely low given the Parliament’s clear policy intention that the lobbying registration scheme will be light touch and educative as opposed to punitive. Any such prosecutions would be for the summary procedure. The estimated court costs of Sheriff Court summary proceedings ranges between £95 - £1,523 per case depending on the plea entered. Average Legal Aid costs for Sheriff Court summary proceedings are estimated to range between £568 - £802 per case. We therefore do not anticipate significant additional costs for the Legal Aid Fund. On the basis of one case being brought to court per year, the ongoing cost to the courts is therefore estimated to range from £663 to £2,325 per year.

52. As a court case would only become a possibility following the launch of the registration regime, 2018-19 is estimated to be the earliest point at which potential costs relating to criminal procedures would arise.

---

These documents relate to the Lobbying (Scotland) Bill (SP Bill 82) as introduced in the Scottish Parliament on 29 October 2015

Total costs relating to criminal procedures

<table>
<thead>
<tr>
<th>Costs relating to criminal procedures</th>
<th>2016-17</th>
<th>2017-18</th>
<th>2018-19</th>
<th>2019-20</th>
<th>2020-21</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ongoing Costs</td>
<td>£0</td>
<td>£0</td>
<td>£663 (min) – £2,325 (max)</td>
<td>£663 (min) – £2,325 (max)</td>
<td>£663 (min) – £2,325 (max)</td>
</tr>
<tr>
<td>TOTAL</td>
<td>£0</td>
<td>£0</td>
<td>£663 (min) – £2,325 (max)</td>
<td>£663 (min) – £2,325 (max)</td>
<td>£663 (min) – £2,325 (max)</td>
</tr>
</tbody>
</table>

OVERALL SUMMARY OF COSTS

Totals have been rounded to the nearest hundred

<table>
<thead>
<tr>
<th>ESTIMATED BILL COSTS</th>
<th>2016-17</th>
<th>2017-18</th>
<th>2018-19</th>
<th>2019-20</th>
<th>2020-21</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scottish Administration</td>
<td>£0</td>
<td>£0</td>
<td>£0</td>
<td>£0</td>
<td>£0</td>
</tr>
<tr>
<td>Local Authorities</td>
<td>£0</td>
<td>£0</td>
<td>£0</td>
<td>£0</td>
<td>£0</td>
</tr>
<tr>
<td>Scottish Parliamentary Corporate Body</td>
<td>£328,500 (min) – £577,200 (max)</td>
<td>£130,500 (min) – £209,200 (max)</td>
<td>£130,500 (min) – £209,200 (max)</td>
<td>£130,500 (min) – £209,200 (max)</td>
<td>£180,500 (min) – £259,200 (max)</td>
</tr>
<tr>
<td>Commissioner for Ethical Standards</td>
<td>£0</td>
<td>£0</td>
<td>£0 (min) – £70,000 (max)</td>
<td>£0 (min) – £70,000 (max)</td>
<td>£0 (min) – £70,000 (max)</td>
</tr>
<tr>
<td>Lobbyists</td>
<td>£0</td>
<td>£0</td>
<td>£0</td>
<td>£0</td>
<td>£0</td>
</tr>
<tr>
<td>Costs relating to criminal procedures</td>
<td>£0</td>
<td>£0</td>
<td>£700 (min) – £2,300 (max)</td>
<td>£700 (min) – £2,300 (max)</td>
<td>£700 (min) – £2,300 (max)</td>
</tr>
<tr>
<td>TOTAL COST OF BILL</td>
<td>£328,500 (min) – £577,200 (max)</td>
<td>£130,500 (min) – £209,200 (max)</td>
<td>£131,200 (min) – £281,500 (max)</td>
<td>£131,200 (min) – £281,500 (max)</td>
<td>£181,200 (min) – £331,500 (max)</td>
</tr>
</tbody>
</table>
SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

On 29 October 2015, the Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy (John Swinney MSP) made the following statement:

“In my view, the provisions of the Lobbying (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

On 29 October 2015, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Lobbying (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
INTRODUCTION

1. This document relates to the Lobbying (Scotland) Bill introduced in the Scottish Parliament on 29 October 2015. It has been prepared by the Scottish Government to satisfy Rule 9.3.3 of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 82–EN.

POLICY OBJECTIVES OF THE BILL

2. This Bill is being brought forward to fulfil the Government’s objective of increasing the public transparency of elected representatives’ activity. The Bill takes account of the findings of the recent Inquiry by the Scottish 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 20151 as the basis for legislation. The Government welcomed the report produced by the Committee (“the Committee’s report”), which has informed its approach to this Bill to a significant extent. The overarching objective of the Bill is to introduce a measured and proportionate register of lobbying activity. The register would then complement existing parliamentary and governmental transparency mechanisms.

3. The main policy components of the Bill are:
   - Establishment of a lobbying register containing 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).
   - A trigger for registration focused 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 obligation focused on organisations to register (i.e. both ‘lobbying firms’ and commercial or other organisations with ‘in-house lobbyists’) following their lobbying of MSPs and Ministers.

---

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

- Defining ‘regulated lobbying’ in this context as face to face oral communication with MSPs and Ministers (e.g. ‘in person’, meetings, events, other hospitality), in line with the Committee’s report.
- Lobbyists will require to register after a first instance of lobbying MSPs and 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 Parliament will have the ability, via resolution, to alter elements of the framework for the operation of the lobbying register.
- Register to be kept and maintained by the Clerk of the Parliament (“the Clerk”) with 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 the Parliament and offences provided to promote and secure compliance with the requirements in the Bill.
- The Parliament will be able to produce guidance on the operation of the regime and must publish a code of conduct for persons lobbying its members.

4. The Government consulted on its proposals between 29 May and 24 July 2015, with a majority of respondents indicating that they were in favour of the introduction of a register.

BACKGROUND

5. The Government believes that the existing probity-based frameworks which offer guidance on contact between lobbyists and elected representatives are robust - in particular, the Code of Conduct for Members of the Scottish Parliament and the Scottish Ministerial Code. The Government notes that these frameworks have not been challenged in terms of how they deal with lobbying activity.

6. The Government recognises the significance of public access to the Parliament. One of the Parliament’s founding principles was that it should be “accessible, open, responsive, and should develop procedures which make possible a participative approach to the development, consideration and scrutiny of policy and legislation”. The Government is clear that provision on lobbying transparency should not infringe on this principle, which it deems both essential and beneficial to policy making in Scotland.

7. The Scottish Government agrees with the view expressed in the Committee’s report that “lobbying is a legitimate and valuable activity”. During a survey conducted by PA Advocacy in January 2014, four-fifths of MSPs said that direct contact with or correspondence from organisations was useful in their role. The Government also recognises that Scotland’s

---

2 www.scottish.parliament.uk/msps/code-of-conduct-for-msps.aspx
3 http://www.gov.scot/About/People/14944/684
4 White Paper - Scotland’s Parliament (Cm 3658) 24 July 1997
5 http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/86491.aspx#a3
constitutional position is changing. Increased responsibility and greater powers for the Scottish Parliament will naturally lead to increased intensity in the conduct of Scottish public affairs, with the potential for an increase in the amount of lobbying that takes place in Scotland. In that context, the Government considers that it is of fundamental importance to ensure that elected representatives continue to have access to as wide a range of information and perspectives as possible.

8. The broad overall policy aim of the Bill is to deliver a public benefit: to increase transparency of direct face to face paid lobbying (communication) with MSPs and Ministers. Improved transparency will facilitate improved awareness and understanding of lobbying activity, improved public scrutiny of the work of the Parliament and Government, improved public accountability and trust in that work and improved outcomes. In this context ‘paid lobbying’ is used in the sense of a consultant paid to lobby or individuals in commercial or other organisations who lobby as part of their paid work.

9. It is hoped that, in so doing, the Bill will serve to further strengthen the integrity and reputation of both the Scottish Parliament and the Scottish Government and demonstrate the positive democratic climate that exists in Scotland. It is also hoped that it will lead to an increased understanding of the nature of lobbying activity in Scotland.

10. The Bill seeks to strike a balance between ensuring that important relevant information about lobbying activity is publicly available while at the same time ensuring that the obligations on those communicating with MSPs and Ministers are not unduly burdensome. Accordingly, the Bill focuses on face to face lobbying of MSPs and Ministers and not, for example, written communications in the form of emails and letters. This reflects the view that communication made orally and in person is a particularly significant and effective form of communication and that it is important that the public have information about that form of lobbying.

11. The Bill ensures communications with MSPs and Ministers by individuals on their own behalf and communications made by individuals because they choose to associate themselves with a particular ‘cause’, are not caught by the requirements to register and submit returns of regulated lobbying activity. Rather, as noted above, it is concerned with paid lobbying of MSPs and Ministers, in the sense of a consultant paid to lobby or individuals in commercial or other organisations who lobby as part of their paid work. This reflects the public’s legitimate interest in money paid to influence the political process by this means. It strikes an appropriate balance between the wider interest of society in having information about lobbying activity publicly available on the one hand and in not imposing reporting obligations in connection with personal or voluntarily made communications with MSPs and Ministers.

12. The Bill catches ‘consultant lobbying’ on behalf of third parties and ‘in-house lobbying’ by organisations on their own behalf. This provides for wider transparency and also ensures equitable treatment of lobbying where payment is involved, whether it is carried out for an organisation by individuals within that organisation who lobby as part of their paid work or for a third party by an external ‘consultant’ paid to lobby.

13. The Government detects a strong willingness on the part of those who engage with MSPs and Ministers to embrace this reform.
14. To reflect the context as outlined above, the Government has used three core principles to assess the merits of any lobbying registration regime:

- Avoiding any erosion of the Parliament’s principles of openness, ease-of-access and accountability. Reforms must adhere to the Parliament’s founding principles and not restrict the legitimate activities of non-party political organisations engaging in public policy.
- Any proposed measures must complement the existing framework - for example, the Interests of Members of the Scottish Parliament Act 2006, the Code of Conduct for Members of the Scottish Parliament, the Scottish Ministerial Code and public registers of ministerial meetings.
- The need for a proportionate solution, simple in its operation and which commands broad support within and outwith the Parliament.

15. Finally, the Government notes that lobbying registers, and particularly registers illustrating lobbying activity, are increasingly commonplace worldwide. Notable statutory regimes include those in Austria, Canada, USA and Ireland. The UK Government has also recently legislated to introduce a statutory registration regime in its Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014. The Government sees merit in the establishment of a lobbying register, designed to reflect Scottish circumstances, as an example of its ongoing commitment to openness in the conduct of its affairs.

BILL CONTENT- GENERAL

16. The Bill is separated into 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 in operating the register.
- **Part 3** sets out the oversight and enforcement regime including the role of the Clerk, the role of the Commissioner and offences.
- **Part 4** contains provision related to the publication of parliamentary guidance and a code of conduct for persons lobbying MSPs.
- **Part 5** contains final provisions relating to interpretation, the process for making parliamentary resolutions, ancillary provision and other technical matters.
PART 1

CORE CONCEPTS

Policy objectives

17. The provisions contained in Part 1 of the Bill set 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.

Regulated lobbying

18. In the Committee’s report, it suggested that a lobbying register should include details of pre-arranged meetings and events rather than all forms of communication between lobbyists and MSPs. The Committee also suggested that capturing all communication, although positive in terms of increasing transparency, would risk placing too great a burden on lobbyists.

19. The Government agreed with the Committee’s conclusion that there is a need to strike a balance between increasing transparency, and introducing a system that requires “a sensible amount of information”. The Government also believes that capturing direct, face-to-face communication – being a particularly significant and effective form of communication - is a reasonable and proportionate measure given the evidence received by Committee. Therefore, the Bill captures as regulated lobbying communications made “orally and in person” to an MSP or a Minister in relation to their functions (Government or parliamentary functions, a concept which does not include the retained functions of the Lord Advocate within the meaning of section 52(6) of the Scotland Act 1998: communications to the Lord Advocate and Solicitor General in relation to the Lord Advocate’s retained functions will not therefore trigger requirements to register and submit returns of lobbying activity under the Bill.) Other forms of communication such as letters, e-mails and telephone calls are not captured which minimises the burden placed on registrants.

20. The Committee proposed that organisations should be required to register as lobbyists. The Government’s consultation mooted the possibility of a register operating on the basis of each individual lobbyist registering separately to offer more transparency around individual instances of lobbying activity. However, following respondents’ strong preference for the adoption of the Committee’s approach, which they deemed to be more proportionate and less burdensome, the Government also agreed with the Committee’s conclusion that the onus for registration should be placed on organisations rather than individuals. The Bill therefore provides that when an individual undertakes regulated 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 that other individual or the organisation. That other individual or the organisation will require to register and submit returns of the regulated lobbying activity under the Bill.

---

7 http://www.scottish.parliament.uk/parliamentarybusiness/Currentcommittees/86491.aspx#a21
8 http://www.scottish.parliament.uk/parliamentarybusiness/Currentcommittees/86491.aspx#a19
9 http://www.scottish.parliament.uk/parliamentarybusiness/Currentcommittees/86491.aspx#a21
This document relates to the Lobbying (Scotland) Bill (SP Bill 82) as introduced in the Scottish Parliament on 29 October 2015

21. In focussing on lobbying undertaken as part of paid work, paid refers to payment of any kind but in particular does not include the payment of reasonable expenses, and so on.

Communications which are not lobbying

22. The Government considers that communications with MSPs and Ministers by individuals on their own behalf and communications made by individuals in a voluntary capacity, because they choose to associate themselves with a particular ‘cause’, should never be caught by the registration and reporting requirements imposed by the Bill. The Government position is that only lobbying activity undertaken by those who are paid to do so should be caught. This is reflected in the Bill. The focus of the Bill is, as noted above, on paid lobbying, in the sense of a consultant paid to lobby or individuals in commercial or other organisations who lobby as part of their paid work. It is that which triggers the Bill’s requirements to register and submit returns. The intention is to capture this significant lobbying activity in a simple and straightforward manner, a key aim highlighted in the Committee’s report being to capture significant lobbying activity. The Bill therefore exempts any communication made by an individual on their own behalf, or a communication by individual who is not making it in return for payment. Such communications do not trigger the Bill’s requirements to register and submit returns.

23. The intention is to improve the transparency of face to face (in person) oral communications between paid lobbyists and elected representatives, whether at meetings or in other forums, the fact and purpose of which would not otherwise generally enter the public domain. The Bill therefore provides that communications made during parliamentary proceedings are not regulated lobbying which will trigger the requirements in the Bill to register and report lobbying activity.

24. The Bill also provides for exceptions to ensure that communications made in the day to day conduct of affairs within the public sector are not regarded as ‘lobbying’. This reflects the principle that such communications are a natural and expected part of everyday public discourse and that, accordingly, the benefit of capturing such activity did not outweigh the extra administrative burden that would arise for public bodies and offices in the conduct of their affairs. Should a member of the public wish to access information held by the public sector it is open to them to request such information through freedom of information arrangements. Examples of communications excepted under the Bill are those made by other arms of government within the United Kingdom, those made by representatives within the Scottish public sector, foreign states, international organisations and so on. The Government believes that this will have an indirect positive effect on transparency by ensuring that the register focuses on providing information on lobbying activity that would be of most interest to members of the public.

---

10 http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/86491.aspx#a20
PART 2

THE LOBBYING REGISTER

Policy objectives

25. The Register will in practice be operated and maintained by the Scottish Parliamentary Corporate Body (“the SPCB”), reflective of the fact that the register will capture lobbying directed towards Members of the Scottish Parliament in relation to their functions (as well as Ministers in relation to their functions). The Clerk, an employee of the SPCB, is to establish and maintain the lobbying register and monitor compliance with the registration regime. The focus of the Bill framework is on the educative and light-touch approach favoured by the Committee in its report.

26. 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, as noted above, 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.

27. Lobbyists will require to register within 30 days after a first instance of regulated lobbying of MSPs and Ministers and thereafter submit periodic information returns (every six months from the point of the first instance) of regulated lobbying activity. This approach is designed to avoid creating a barrier between lobbyists and elected representatives, which an alternative approach of requiring lobbyists to register before engaging in any regulated lobbying activity might be argued to do and which the Government believes would risk infringing on the openness and accessibility of the Parliament. It will create flexibility for lobbyists and remove the risk of unintended transgressions, while at the same time ensuring that the register still captures all relevant lobbying activity with an emphasis on a light-touch approach.

28. Nevertheless, lobbyists who believe they are likely to trigger the requirement to register in the future because they will engage in regulated lobbying have the option to apply to register in advance under the Bill (following which they will require to submit periodic information returns every six months from the point of application). The Government believes that the Bill should provide maximum flexibility for lobbyists, and this feature will allow those who believe they are likely to trigger the registration requirements in the future to register in advance. This also has attractions in terms of the openness and transparency of the information contained within the register – the public will be able to gauge how many organisations intend to carry out regulated lobbying activity, as well as how many have already done so.

29. On registering in either of these ways, a person becomes an “active registrant” for the purposes of the registration regime established by the Bill and therefore is under a duty to submit
This document relates to the Lobbying (Scotland) Bill (SP Bill 82) as introduced in the Scottish Parliament on 29 October 2015

six monthly returns of regulated lobbying activity. An active registrant may, though, apply to the Clerk to be reclassified as an “inactive registrant”, in particular if they do not intend to engage in further regulated lobbying. Additionally, the Clerk may reclassify an active registrant as an inactive registrant without an application where the Clerk has reasonable grounds to believe they are no longer engaged in regulated lobbying. As above, the primary purpose of these provisions is to provide maximum flexibility for lobbyists, who will be able to indicate that they no longer expect to engage in regulated lobbying activity and wish to be reclassified as an active registrant. This will remove the requirement to provide six monthly information returns detailing lobbying activity, removing any unnecessary burden on the lobbyist, and also reducing the burden on the Clerk. In the event an inactive registrant engages in further lobbying activity they would require to re-register as an active registrant under the scheme following which the requirement to submit six monthly information returns is triggered again.

30. A facility for registration by a “voluntary registrant” (i.e. a person who does not trigger the statutory registration requirements because they are not engaged in regulated lobbying) is included in the Bill. This offers such person the ability to proactively declare what lobbying activity they undertake, thus enhancing transparency, without imposing disproportionate requirements to register. The operational detail of how that voluntary process should operate is to be left to the Parliament’s discretion (the Parliament may, by resolution, make provision about Part 2 of the Bill including voluntary registration).

31. As noted in the preceding paragraph, the Bill provides for the Parliament to be given the power, by resolution, to make provision about Part 2 of the Bill on the register. The power will allow the Parliament to make additional provision and modify certain existing provision (e.g. the power could be exercised to make provision about the information to be provided by registrants, the removal of information from the register etc.). The Committee’s report concluded that “the Parliament must be assured that the new registration process does not inhibit those seeking to legitimately lobby Parliament and Government. The Parliament must be able to change this new system if it considers this is the case.” The Government agrees that there should be a role for the Parliament to make provision about the operation of the regime, including to make changes in light of practical experience of how the regime is operating and the resolution making power provides for this. The Bill requires that parliamentary resolutions be published in the same way as Scottish Statutory Instruments to ensure appropriate publicity.

PART 3
OVERSIGHT AND ENFORCEMENT

Policy objectives

32. The focus of the Bill framework is on the educative and light-touch approach favoured by the Committee’s report.

33. Reflecting the recommendations in the Committee’s report, the Bill provides for a three-tier oversight and enforcement system, as follows:

- **Tier 1** - The Clerk oversees compliance.

---

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

- **Tier 2** - By way of further oversight, the Commissioner investigates possible breaches / the Parliament has power to censure lobbyists.

- **Tier 3** - Criminal offences and penalties, provided for as a last resort.

34. As a starting point, oversight of the regime will be by the Clerk. As mentioned above, the Bill provides that the Clerk must establish and maintain the lobbying register and monitor compliance with the registration regime. If necessary, the Clerk will be able to issue information notices to require provision of information for example where, in exercise of the Clerk’s duty to monitor compliance, the Clerk considers that information in the register is inaccurate or incomplete (the Bill provides a right of appeal to the sheriff against information notices). It is envisaged that Clerk’s duty to monitor compliance will mainly consist of checking and processing information received, and addressing any relevant issues raised by potential registrants or from the public. The intention is also for the Clerk to have the flexibility to pursue corrections, missing information, or unintended oversights on a relatively informal basis, using measures short of the formal oversight machinery.

35. However, as this is a statutory regime, which places clear duties on individuals and organisations the Government believes it is appropriate to make provision for further oversight and enforcement which will give the Parliament and members of the public assurance that wilful non-compliance can be addressed. The Government does not believe that provision for further oversight and enforcement is at odds with the intention that the overall lobbying framework should be light touch in nature. It is the Government’s hope and expectation that the day-to-day focus of ensuring compliance will firmly remain on the educative and administrative role of the Clerks, as envisaged in the Committee Report.

36. The oversight and enforcement framework is designed so that any instance of non-compliance can be addressed at an appropriate level, with a strong emphasis on the oversight aspects and in particular on encouraging compliance with a light touch registration scheme in the most effective and proportionate manner, the policy intention being as follows:

- Minor or inadvertent transgressions would be addressed via informal exchanges between the Clerk and a lobbyist.

- The Clerk would have the option to issue information notices where initial informal exchanges failed to rectify omissions.

- If compliance was still not achieved, the Clerk could escalate complaints to the Commissioner (the Commissioner is also able to receive complaints directly from members of the public). Following investigation of complaints the Commissioner will report the outcome to the Parliament. It would then fall to the Parliament to consider whether to censure the lobbyist. The role of the Commissioner is intended to complement the Clerk’s oversight role.

- If the preceding measures failed to rectify any omissions from the register, and there was evidence of wilful non-compliance, there would be the prospect of prosecution in the Courts.
37. In respect of the role of the Commissioner, the Government is considering whether an Order under section 104 of the Scotland Act 1998 may be required to extend the Commissioner’s power to call witnesses and documents to the rest of the UK.

PART 4

GUIDANCE AND CODE OF CONDUCT

Policy objectives

38. The Parliament may publish guidance on the operation of the regime which will be key to the educative focus of the regime and in helping lobbyists to understand their obligations under the Bill. The Parliament must also publish a code of conduct for those lobbying MSPs more generally, i.e. including but not restricted to those engaged in regulated lobbying.

39. Whilst a matter entirely for the Parliament, the Government envisages the 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.

40. 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.

41. It is assumed the Parliament would develop both documents during its preparations for the registration regime to go live, following commencement of the legislation.

PART 5

FINAL PROVISIONS

42. The provisions set out in Part 5 of the Bill relate to interpretation, the process for making parliamentary resolutions, ancillary provision and other technical matters.

ALTERNATIVE APPROACHES

43. The main alternative approaches to the Bill are:

- Maintenance of the status quo.
- A register of the details of consultant lobbyists only.
- A register which includes a threshold based on frequency of lobbying activity.
- A register containing details of wider lobbying activity.
Maintenance of the status quo

44. This option has been discounted as it would not fill the gaps which currently exist in the transparency of lobbying activity in Scotland. Taking no action would therefore have no effect in improving awareness and understanding of lobbying activity, improved public scrutiny of the work of the Parliament and Government, improved public accountability and trust in that work and improved outcomes. Taking no action would also be contrary to the position adopted by both the Committee and the Government.

Register of the details of consultant lobbyists only

45. This option would involve legislating for a simple register of basic identification details of consultant lobbyists only and who they work for. It would not require consultant lobbyists to regularly supply information about their engagements with “lobbyees”. It would not require any information to be provided by those who lobby through “in-house” lobbyists.

46. This would establish a low burden model for consultant lobbyists and the SPCB. But as the Committee report did not recommend that details of MSP’s engagements with external lobbyists should be published (which, in addition to already published information on ministerial engagements, could have complimented such a registration-only approach), the Government considers that adopting this model would leave an unwelcome gap in transparency that would undermine the integrity of the proposed reform. It is clear from evidence to the Committee’s Inquiry into lobbying and the Government’s own consultation, that there is also an attraction to improved understanding of lobbying activity undertaken by both consultant lobbyists and “in-house” lobbyists and to capturing that in an accessible form. Although therefore such a register of consultant lobbyists might have some impact on improving public understanding of the nature of the lobbying industry, the Government does not consider that it would be effective in securing the aims of the reform – to generally increase transparency of direct face to face paid lobbying (communication) with MSPs and Ministers to facilitate improved awareness and understanding of lobbying activity, improved public scrutiny of the work of the Parliament and Government, improved public accountability and trust in that work and improved outcomes. The Government therefore considers that this option would fail certain key aims for legislation.

Register including a threshold based on frequency of lobbying activity

47. A threshold based on frequency of lobbying activity was proposed in the Committee’s report. The Government recognises that creating a registration threshold of this nature would be a legitimate way of ensuring that infrequent lobbying does not trigger a requirement to register and would help to minimise the impact of the regime on infrequent lobbyists. However, the Government believes that there would be drawbacks to this approach. It would create an arbitrary threshold below which lobbying activity would not need to be disclosed, despite the fact that it could be of significant interest to the public and in relation to substantive policy issues. Such a threshold approach would also create a potential loophole whereby registration could be avoided by management of the frequency of direct engagement with MSPs and Ministers.

---

12 http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/86491.aspx#a20
48. The Government also considers that including a threshold of this nature may risk introducing ambiguity to when registration requires to be undertaken and could increase inadvertent non-compliance. Simplicity to the end-user is a key principle followed by the Government in bringing forward its preferred legislative model, the importance of which is amplified when there is strong evidence of lobbyist wishing to embrace any registration requirement that is introduced. The Government’s aim is therefore to keep the regime simple, clear and consistent in how it deals with lobbyists, but also proportionate in its impact. The Government acknowledges why the Committee suggested the use of thresholds of this nature (reflective of a shared aim of keeping the register proportionate), but believes the approach set out in the Bill is preferable for the reasons above.

49. Finally, the Government notes that there was no significant support for taking a threshold-based approach in the public consultation.

50. Instead, the focus of the Bill is on establishing a registration trigger based on a threshold of paid lobbying, a position which received support from a majority of respondents to the public consultation which is designed to deliver transparency of this significant lobbying activity in a clear and straightforward way, but without the attendant risk of compromising the transparency of regulated lobbying activity.

Register containing details of wider lobbying activity

51. The Committee Report reinforced the importance of establishing a registration scheme that was proportionate in the Scottish context. The Government recognises calls for a registration scheme which is wider in scope, for example in terms of the type of communications which would trigger registration and reporting requirements (e.g. written communications with MSPs and Ministers) or in terms of the range of ‘lobbyees’ (e.g. imposing requirements to register and report not just in relation to communications made to Ministers and MSPs but also communications made to civil servants). But it agrees with the Committee’s view that a light touch regime is merited at this time. The Government considers the establishment of a register as proposed under the Bill will deliver a proportionate level of transparency.

CONSULTATION

52. The issue of whether measures should be introduced to deliver transparency in respect of lobbying activity in the devolved Scottish context has been consulted upon widely during the current parliamentary session. In July 2012 a consultation was launched on a Member’s Bill proposal to establish a public register of lobbying activity. This was followed in September 2013 by the Standards, Procedures and Public Appointments Committee Inquiry on Lobbying, which involved a call for written evidence.

53. On 29 May 2015 the Scottish Government published a public consultation on proposals for lobbying register. The consultation was open for 8 weeks and closed on 24 July 2014, with a wide range of stakeholders being invited by e-mail or letter to respond.

54. A total of 68 written responses were submitted to the Scottish Government, and the policy set out in the Bill has taken account of the perspectives raised during the public
consultation. As is usual for this topic, there was a wide range of opinions from respondents, however more than two-thirds of respondents were in favour of the introduction of a register. The responses are available in full on the Scottish Government website using the link below:

http://www.gov.scot/Publications/2015/08/2246/0

55. A full independent analysis of consultation responses was undertaken by Reid Howie Associates, and published on the Scottish Government website on 21 October 2015. The report is available at the link below:

http://www.gov.scot/Publications/2015/10/2647

56. The 68 respondents can be broken down into the following groups:

<table>
<thead>
<tr>
<th>Category</th>
<th>No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Third sector</td>
<td>26</td>
</tr>
<tr>
<td>Private sector Trade Associations and membership groups</td>
<td>14</td>
</tr>
<tr>
<td>Lobbying industry</td>
<td>9</td>
</tr>
<tr>
<td>Trade Unions and professional organisations</td>
<td>7</td>
</tr>
<tr>
<td>Campaigning organisations and groups</td>
<td>6</td>
</tr>
<tr>
<td>Public bodies</td>
<td>3</td>
</tr>
<tr>
<td>Private sector companies</td>
<td>2</td>
</tr>
<tr>
<td>Individuals</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>68</td>
</tr>
</tbody>
</table>

57. The Government has maintained engagement with stakeholders on an ongoing basis during the development of the policy. The Government has met with stakeholders including lobbying industry groups such as ASPA, APPC and CIPR, lobbying firms such as PRCA and CBI, the third sector (SCVO), the Law Society, and campaign groups such as Electoral Reform Society, Unlock Democracy and Spinwatch.

58. The headline policy issues arising from the consultation were as follows:

- A preference for an organisation-focussed approach to registration.
- A clear reinforcement of the view that regulatory measures should not impact on the openness of the Parliament or in any way constrain or inhibit lobbyists engagement with elected representatives.
- That any registration regime should be not be unduly burdensome in terms of the expectations placed on lobbyists in terms of compliance.
- That registration should be free to the lobbyist.

**Proposals changed following public consultation**

**Organisational registration**

59. In the public consultation, the Government had proposed that individual lobbyists should be required to register. The Government’s proposals were based on maximising clarity and
accountability, but were contrary to Committee’s report, which had recommended that organisations should be responsible for registering.

60. An organisation-focused model for registration was widely supported in the consultation, with around two thirds of respondents in favour. Resourcing and the potential burden of an individual-focused model was a primary concern for stakeholders. The Government was therefore persuaded to adjust its initial proposals and provide for an organisation-focused model for registration.

Registration prior to lobbying

61. In the consultation the Government had proposed a model which required lobbyists to register before engaging in lobbying of MSPs and Ministers. The Government noted significant concern from respondents about this approach, it being perceived as creating a prior bar on lobbying. The Government has therefore sought to address that concern by adopting a model in the Bill in which lobbyists are not required to register in advance of engaging in regulated lobbying but are instead required to register within 30 days of an initial instance of lobbying.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

62. A full Equality Impact Assessment (EQIA) has been undertaken for the Bill. The Government considers that the Bill does not have an adverse impact on the basis of age, sex, race, gender reassignment, pregnancy and maternity, disability, marital or civil partnership status, religion or belief or sexual orientation. The Government is satisfied that the policy as contained within the Bill applies to all ‘consultant’ and ‘in-house’ lobbyists equally. One area that has been highlighted, which the Government believes will be the responsibility of the parliamentary authorities in due course, is that consideration will have to be given to the design, form and structure of the register to ensure it is appropriately accessible to all. The Government has communicated this consideration to the parliamentary authorities.

Human rights

63. The Bill will engage the Article 8 (right to private life) ECHR rights of lobbyists as it will require lobbyists to submit personal information to be held in public register. It is also important to consider the Article 10 (freedom of expression) rights of lobbyists so far as that protects the form and manner, rather than content, of expression and potential Article 1 of Protocol 1 (right to property) economic rights of consultant lobbyists. So far as these rights are engaged it is considered that any interference with them will be in accordance with law and proportionate.

64. The interference with Articles 8(1) and any interference with Article 10(1) is considered justified having regard to the aims of the Bill summarised in paragraph 8 above. The measures will be in accordance with law under the legal framework in the Bill, and necessary in a democratic society for the protection of the rights and freedoms of others, or in the case of Article 1 of Protocol 1 any control of use justified as in the general interest.
65. The regime is proportionate under these Articles in light of the legitimate aim summarised in paragraph 8 above. In particular:

- The registration regime is rationally connected to that aim, as it will result in information about lobbyists and regulated lobbying activity being publicly available to be scrutinised by members of the public.
- It is not considered that, taking account of the aim before the legislature, this could be achieved by less intrusive measures. To provide the necessary transparency an alternative to meet the same aim would still require publication of information about lobbyists and their activity.
- The investigatory authorities and low-level sanctions are necessary to obtain the information required for the authorities to have adequate information to satisfy the aims of the system fairly.
- Lobbyists, and those on whose behalf they lobby, must provide limited information only about themselves after engaging in regulated face to face lobbying activity of Ministers and MSPs, and subject to exemptions, e.g. for lobbying on individuals’ own behalf and other lobbying not involving payment. In all the circumstances, the registration regime strikes a fair balance between the interests of lobbyists on one hand and the interests of society as a whole.

66. The oversight arrangements in the Bill are also compatible with Article 6 ECHR fair trial rights (determination of civil rights and obligations or of a criminal charge), so far as they are engaged. The arrangements which allow the Clerk to issue information notices do not determine an individual’s civil rights or any criminal charge. The same applies to the oversight arrangements involving investigation by the Commissioner and report to the Parliament (as with the Commissioner’s existing investigatory regimes). So far as the Clerk’s or the Commissioner’s powers engage the protection against self-incrimination (or ‘right to silence’) in Article 6, they do not breach that protection, particularly in view of the safeguards provided, e.g. on the use of evidence obtained.

Island communities

67. The Bill has no specific effect on island communities in Scotland, covering all regulated lobbying activity equally.

Local government

68. The Bill has no effect on local government in Scotland.

Sustainable development

69. It is considered that the Bill would be likely to have no effect in relation to the environment and, as such, is exempt for the purposes of section 7 of the Environmental Assessment (Scotland) Act 2005. A pre-screening report has been completed. This confirmed that the Bill would have no impact on the environment and consequently that a full Strategic Environmental Assessment did not need to be undertaken.
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.
6. 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.

RATIONAL 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.
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 2015.1 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

---

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

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>the Scottish Parliament</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>Resolution by Parliament</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>Resolution by Parliament</td>
</tr>
</tbody>
</table>

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

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

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

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

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) 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 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.

---

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

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)\(^6\)

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)\(^7\)

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\(^8\).

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).

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

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.

---

Standards, Procedures and Public Appointments Committee

Stage 1 Report on the Lobbying (Scotland) Bill
# Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>1</td>
</tr>
<tr>
<td>Overview of scrutiny</td>
<td>1</td>
</tr>
<tr>
<td>Background to the Bill</td>
<td>1</td>
</tr>
<tr>
<td>Executive Summary</td>
<td>3</td>
</tr>
<tr>
<td>The Bill: overview of provisions and evidence received</td>
<td>4</td>
</tr>
<tr>
<td>Policy objectives</td>
<td>4</td>
</tr>
<tr>
<td>Regulated lobbying</td>
<td>4</td>
</tr>
<tr>
<td>The register</td>
<td>13</td>
</tr>
<tr>
<td>Participation</td>
<td>17</td>
</tr>
<tr>
<td>Oversight and enforcement</td>
<td>17</td>
</tr>
<tr>
<td>Flexibility</td>
<td>20</td>
</tr>
<tr>
<td>Code of conduct</td>
<td>21</td>
</tr>
<tr>
<td>Policy and Financial Memorandums</td>
<td>22</td>
</tr>
<tr>
<td>General principles</td>
<td>23</td>
</tr>
<tr>
<td>Annexe A: Correspondence on the financial Memorandum</td>
<td>28</td>
</tr>
<tr>
<td>Annexe B: Extract from minutes and associated written evidence</td>
<td>34</td>
</tr>
<tr>
<td>Annexe C: Other written evidence</td>
<td>36</td>
</tr>
</tbody>
</table>
Standards, Procedures and Public Appointments Committee

1. The remit of the Standards, Procedures and Public Appointments Committee is to consider and report on—
   a. the practice and procedures of the Parliament in relation to its business;
   b. whether a member’s conduct is in accordance with these Rules and any Code of Conduct for members, matters relating to members interests, and any other matters relating to the conduct of members in carrying out their Parliamentary duties;
   c. the adoption, amendment and application of any Code of Conduct for members; and
   d. matters relating to public appointments in Scotland.

2. Where the Committee considers it appropriate, it may by motion recommend that a member’s rights and privileges be withdrawn to such extent and for such period as are specified in the motion.

[Contact information]

Follow the Scottish Parliament @ScotParl
Committee Membership

**Convener**
Stewart Stevenson
Scottish National Party

**Deputy Convener**
Mary Fee
Scottish Labour

**Cameron Buchanan**
Scottish Conservative and Unionist Party

**Patricia Ferguson**
Scottish Labour

**Fiona McLeod**
Scottish National Party

**Gil Paterson**
Scottish National Party

**Dave Thompson**
Scottish National Party
Introduction

Overview of scrutiny

1. The Lobbying (Scotland) Bill was introduced on 29 October 2015 by the Minister for Parliamentary Business, Joe FitzPatrick MSP. The Parliamentary Bureau designated the Standards, Procedures and Public Appointments Committee as lead Committee in consideration of the Bill at Stage 1.

2. In anticipation of the Bill’s referral, the Committee considered its approach to scrutiny of the Bill at its meeting on 8 October. It issued a call for views on 30 October and took evidence from organisations affected by the Bill and campaigners and academics on 12 November, and from the Commissioner for Ethical Standards in Public Life and the Minister for Parliamentary Business on 19 November.

3. The Finance Committee invited the Scottish Parliamentary Corporate Body to respond to its standard questionnaire on financial memoranda. The Finance Committee wrote to the Standards, Procedures and Public Appointments Committee on the Bill on 18 November to raise issues. The Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Bill at its meetings on 17 November and 1 December and published a report on 2 December.

4. The Committee has received a good number of written submissions, many of which raise specific concerns with the Bill. The Committee asks that the Scottish Government review these submissions carefully and consider whether any further action is merited.

Background to the Bill

Proposal for a Member’s Bill

5. On 17 May 2013, Neil Findlay MSP lodged a final proposal for a Member’s Bill to require certain individuals and organisations who lobby MSPs, Scottish Ministers or relevant public officials, either on their own account or on behalf of third parties, to record relevant information about their lobbying activity in a published register.

6. The Minister for Parliamentary Business wrote to Neil Findlay on 13 June 2013 indicating, under Rule 9.14.13 of Standing Orders, that it would initiate legislation within the parliamentary session to give effect to Mr Findlay’s final proposal. This undertaking removed the right of the Member to introduce a Bill.

7. The Scottish Government also indicated that it considered parliamentary probity to be a matter for the Parliament and it therefore wished this Committee to play a central role throughout the development and scrutiny of the Bill. The press release it issued by the Government on 13 June stated: “the end product must be
something that everyone can stand behind” and “we will seek to obtain cross-party consensus for improving the transparency of lobbying practice, working with all political parties, Mr Findlay and a wide range of stakeholders.”

Previous work on Lobbying by the Standards, Procedures and Public Appointments Committee

8. The Committee conducted an inquiry into a Proposal for a register of lobbying activity between September 2013 and February 2015 with the following remit—

To examine whether there is a problem, either actual or perceived, with lobbying and, if so, how this can most effectively be addressed; to what extent a register of lobbyists would help with this process, who such a register should cover and how it would be operated in practice; and whether other steps might be needed to improve probity and transparency in this area.

9. The Report on the inquiry recognised that lobbying is a legitimate and valuable activity but that legislation was necessary and appropriate in the interests of transparency. The Report contained a series of recommendations which set out the core principles of a preferred lobbying regime. A central recommendation (Recommendation 8) was that any regulatory regime should be aimed only at organisations that undertake significant lobbying activity and proposed that an activity threshold be devised to ensure that minor instances of lobbying would not be registrable.
Executive Summary

10. The Committee listened carefully to those giving evidence to the inquiry and has agreed to recommend that the Scottish Government gives consideration to making some key changes to the Bill in order to broaden its coverage.

11. Firstly, a majority of the Committee is of the view that restricting registration only to lobbyists who engage in oral face to face communications could leave a great deal of important information unrecorded and create a loophole for those wishing to conceal their activity. We therefore recommend that the Government examines the consequences of amending the Bill to alter the definition of lobbying to include communication of any kind with a view to establishing what amendments to the Bill might be required.

12. We note that broadening the definition to include all forms of communication could increase the volume of information required to be registered. To address this, we are asking the Government to examine the requirements of the register in order to manage the burden on organisations and ensure that repetitive information does not need to be registered.

13. The Committee strongly agrees with the principle – reflected in the Bill – that individuals must be able to freely engage on their own behalf or in an unpaid capacity behalf of an organisation. With regard to organisations and those lobbying on their behalf, we endorse the Government’s approach that it is only necessary to register the details of lobbying if the lobbyist is paid – either as a professional lobbyist or as part of their job.

14. We were concerned that the Bill’s restriction only to lobbying of MSPs and Ministers was too narrow and have asked the Government to consider bringing forward amendments to broaden the definition to include communications made to other public officials.

15. We heard a number or arguments in favour of requiring lobbyists to disclose their expenditure on lobbying. We note that the Bill gives the Parliament powers to specify what must appear in the register and this can include financial disclosure if the Parliament chooses to go down that route.

16. Finally, any meetings which are not initiated by a lobbyist would be exempt from registration under the Bill as it stands. While we understand the concerns that led to this exemption being made, we remain concerned about its clarity and workability. Accordingly, we are asking the Government to re-examine the practicality of the exclusion and consider removing or replacing it at Stage 2.

17. We look forward to working with the Scottish Government to achieve these changes at Stage 2.
The Bill: overview of provisions and evidence received

Policy objectives

Overview

18. The Policy Memorandum\(^3\) (PM) on the Lobbying (Scotland) Bill states that the Bill’s aim is to increase public transparency of elected representatives’ activity and that the overarching objective of the Bill is to introduce a measured and proportionate register of lobbying activity.

19. The Government envisages that the legislation will complement existing parliamentary and governmental transparency mechanisms such as the Code of Conduct for Members of the Scottish Parliament and the Scottish Ministerial Code. In doing so, the Scottish government believes that it will not jeopardise the Parliament’s founding principles that it should be “accessible, open, responsive and should develop procedures which make possible a participative approach to the development, consideration and scrutiny of policy and legislation.”\(^4\)

20. The PM states at paragraph 10 that the Bill “seeks to strike a balance between ensuring that important relevant information about lobbying activity is publicly available while at the same time ensuring that the obligations on those communicating with MSPs and Ministers are not unduly burdensome”.

Regulated lobbying

Definitions and exclusions

21. “Regulated lobbying” is defined at Section 1 of the Bill as a communication which is made orally and in person to an MSP or Minister in relation to parliamentary or Government functions. Communications made via other means such as email, telephone, video conference or in writing are therefore not registrable (though “a communication of any kind” is to be covered by a (non-binding) code of conduct for persons lobbying MSPs (including Ministers).

22. The schedule excludes the following communications from registration:

- communications by individuals on their own behalf
- communications not made in return for payment
- communications made in proceedings of Parliament (e.g. witnesses giving evidence)
• Meetings initiated by a member or Minister (but not where this was arranged in response to a request by a person attending or represented at the meeting or event).

• communications in Cross-Party Groups

• communications made for the purposes of journalism

• communications by political parties

• communications by judiciary

• communications by Her Majesty

• Government and Parliament communications

23. There was universal support among those responding to the Committee’s inquiry for the principle that individuals who are lobbying on their own behalf are not required to register.

24. In terms of other possible exclusions, BMA Scotland was concerned about whether trade union negotiations will have to be registered. While such negotiations normally take place with civil servants and are not therefore registrable under the Bill as currently drafted, BMA Scotland was concerned that Ministers do sometimes get involved if there are difficulties reaching a settlement and that would trigger registration. They argue that “it would be wrong for a trade union engaged in collective bargaining activity to be considered to be lobbying”.

The Committee notes that legislation in other jurisdictions contains an exemption for trade union negotiations and invites the Government to consider whether the Bill should be amended to introduce a similar exclusion to the schedule.

Restriction of the definition to “orally and in person”

25. The restriction of the definition of regulated lobbying to communications which are “made orally and in person” set out at Section 1 was the focus of much evidence. This definition means that the requirement to register is only triggered if oral, face to face, contact is made and organisations who engage via electronic means or over the telephone would not, therefore, be required to register.

26. Many of those responding to the inquiry were of the view that restricting registration only to those who make oral communications could create a “loophole” for lobbyists wishing to conceal their activity as they could very easily switch to an alternative form of communication such as email or telephone call.

27. Dr William Dinan, Spinwatch and ALTER EU, described this restriction as “ludicrous”\(^5\), while Neil Findlay MSP pointed out that “we have moved on
considerably since that was the way in which people lobbied politicians and the Bill must recognise that”. Unlock Democracy described the definition as a “gift to those who might wish to keep their activity out of the public gaze”. Professor Raj Chari, Trinity College, Dublin, was unaware of any other legislation that contained such a restriction. The Law Society of Scotland was concerned that if other communications were not included in the definition, “the policy aim of transparency may be only partially met.6

28. ASH Scotland characterised the definition as “clearly insufficient” while Carers Trust Scotland described the approach as “an oversight”. They, along with some others responding to the Committee called for the bill to adopt the definition given by the Sunlight Foundation which defines lobbying as—

oral and written communication, including electronic communication, with an elected official, their staff, or high and mid-ranking government employee who exercises public power or public authority, for the purposes of influencing the formulation, modification, adoption, or administration of legislation, rules, spending decisions, or any other government programme, policy, or position.7

29. Unlock Democracy, who described the approach as “a significant loophole” cited an example of a lobbying campaign at Westminster which involved hundreds of texts, emails and phone calls. None of which would be recorded under this bill.8

30. The Minister for Parliamentary Business defended the definition in the Bill, pointing out that the new regime would sit within a broader transparency framework and argued that face to face meetings appeared to be of greatest value to lobbyists – an observation contained in the Committee’s report.9

31. Many of those responding to the Committee welcomed the limitation to oral face to face meetings as it would minimise the burden on organisations. The Association of Scottish Public Affairs explored the consequences of extending the definition to include social media – citing the example of tweets issued in a personal capacity by those who, nevertheless, had an interest in policy outcomes.10

The Committee understands that the definition of lobbying was restricted to oral communications in order to focus the scope of the information to be captured and produce a low burden, light touch regime.

Nevertheless, a majority of the Committee is of the view that restricting registration to oral communications is an artificial distinction which could leave a great deal of important information unregistered. The Committee recommends that the Government reviews the potential impact of altering the definition at Section 1 to include communication of any kind with a view to establishing what amendments to the Bill might be required.
A requirement for registrants to record other forms of communication?

32. The effect of altering the definition at Section 1 to include communication of any kind would be that registrants would be required (by virtue of Section 6) to record all of those contacts.

33. The Committee examined the merits of requiring registrants (under the current definition) to record all contacts and found some conditional support among those submitting evidence. ASH Scotland suggested that “this need not require the registration of every single email”. Willie Sullivan, Electoral Reform Society, argued that “it would be too onerous to record every single email, just the fact that contact was made with the person in question … would be enough”. Unlock Democracy agreed that it would not be necessary to record each individual contact and suggested instead that lobbyists be required to register who they have contacted on which issues during the reporting period.

34. The Minister was opposed to making a change in this area. He felt that requiring the registration of emails, phone calls and letter would be more onerous and therefore likely to encourage lobbyists to seek to avoid registration. He was particularly concerned about the administrative burden that would face smaller organisations and argued that the regime must not discourage participative engagement.

35. BMA Scotland felt that extending the register to include other forms of communication “would be an unworkable bureaucratic burden that would deter many organisations from engaging”. The Chartered Institute of Public Relations agreed that any such move would impact significantly on organisational resources. Shelter Scotland also felt that this would increase the burden, especially on smaller community groups, and involve a significant amount of unnecessary bureaucracy.

The Committee notes that altering the definition of regulated lobbying to include all forms of communication would mean that, under the Bill as drafted, the details of each contact would be required to be registered under Section 6. In the interests of proportionality, the Committee invites the Government to examine Section 6 in light of any changes to the definition, in order to determine whether some flexibility could be afforded that would mean that repeated contacts with the same individual on the same subject would not have to be recorded.

Trigger / threshold – “paid lobbying”

36. In any legislation of this type, it is necessary to draw a line designating which individuals or organisations should be subject to its provisions. This line – a threshold or a trigger, when combined with a definition of lobbying which is explored above – is used to shape the regime and define where the focus of scrutiny of lobbying will lie.
37. Lobbying regimes in other countries employ various thresholds and triggers that look at the status of the lobbyist or their activity levels and so on. The UK’s Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014\(^2\) (“the UK Act”) requires only consultant lobbyists to register, for example, while Ireland’s Regulation of Lobbying Act 2015 (“the Irish Act”) captures professional lobbyists, firms over a certain size and advocacy and representative bodies.

38. This Bill makes no distinction between commercial and in-house lobbyists. This was welcomed by a majority of respondents, who felt that focussing on professional lobbying alone (as in some other legislation such as the UK Act) would mean that a great deal of lobbying activity would be overlooked. Royal College of Nursing Scotland disagreed that in-house lobbyists should be required to register, arguing that “it is clear who in-house lobbyists represent”.\(^24\)

39. Rather than look at the status of the person lobbying, the Bill employs a trigger that captures all lobbying which is carried out in return for payment, regardless of who is lobbying. Commercial lobbyist organisations will clearly be required to register as will any organisation which either employs lobbying firms or has in-house lobbyists who are paid.

40. Under the terms of the Bill, campaign groups and volunteer organisations of any size will not have to register as long as no payment is made in return for the activity. Small firms, charities and third sector organisations (who may only undertake lobbying rarely) will generally be required to register. Large, influential NGOs could avoid registration as long as it is their volunteers or unpaid board members who are carrying out the lobbying. Pro bono work by professional lobbyists would not trigger registration. Carers Trust Scotland observed that the distinction could pose a difficulty for third sector organisations who may have both paid and unpaid staff engaged in lobbying.\(^25\) The Scottish Grocer’s Federation argued that representations made by Board members and trustees should not be excluded from registration.\(^26\) The Public Relations Consultant Association agreed that it was “vital that those conducting lobbying in a voluntary or pro bono capacity are captured”.\(^27\) The Association of Scottish Public Affairs agreed, pointing out that there could be equally powerful groups on either side of an argument and only one would have to register.\(^28\) The Scottish Environmental Services Association’s response echoed this concern specifically in relation to public sector organisations, which are exempted from registering by virtue of the schedule.\(^29\)

41. In practice, most “third sector” lobbying will be registrable under the Bill since at least some lobbying activity will tend to be carried out by salaried staff. Some of those responding to the Committee felt that third sector or civil society organisations should be considered on an entirely separate footing to lobbying which is conducted for commercial interests. This is partly because the motivations for lobbying were different and partly because there was a risk that third sector organisation might be inhibited from engaging due to concerns about the administrative burden of registration.\(^30\) The Electoral Reform Society agreed...
with the paid/unpaid trigger but argued for a threshold that would exclude smaller organisations who spend a small amount of time or money on lobbying activity.\textsuperscript{31}

42. Some felt that the trigger lacked clarity. Quarriers sought clarification on the status of meetings with MSPs which they facilitate on behalf of people they support since staff would normally be present.\textsuperscript{32} Children in Scotland believed that removing the trigger would mean that there was no confusion over who needs to register.\textsuperscript{33}

43. The Minister was at pains to point out that the “paid lobbying” trigger was designed to ensure that individuals and small organisations were not inhibited from engaging and participating in the work of Parliament and Government. He said “those are exactly the sort of people whom we want to ensure that we do not put any barriers in the way of”.\textsuperscript{34}

44. BMA Scotland called for the trigger to be modified so that only those staff who are expected to lobby as part of their job descriptions should be included. This would, they argued, reduce the burden on organisations who will otherwise be required to “monitor the day to day activity of every employee”.\textsuperscript{35} Cancer Research UK agreed, contending that “those who occasionally undertake lobbying activity to support broader aims of organisations’ role should not be included”.\textsuperscript{36} The Federation of Small Businesses were similarly concerned, pointing out that “a number of our volunteer members across the country receive small honoraria or consultancy fees, for example if they hold an office-bearer position in a local branch.”\textsuperscript{37} MND Scotland argued that charities should not have to register since staff are lobbying on behalf of those unable to lobby themselves. If this was not possible, then the names of individual staff members should not be a requirement of the register they felt.\textsuperscript{38} The Chartered Institute of Public Relations pointed out that “full-time, unpaid volunteers and agencies may run campaigns ‘pro bono’ to avoid registration” and called for the Government to review the impact of the measure.\textsuperscript{39}

45. Neil Findlay MSP disagreed with the “paid lobbying” trigger. He felt that it was an oversimplification to regard all voluntary organisations as being there to “do good” and cited the example of organisations on either sides of the debate on same sex marriage each believing themselves to be a force for good.\textsuperscript{40} For this reason, he saw no reason for voluntary organisations to be excused from registration just because the lobbyist is not paid and argued that both paid and unpaid activity should therefore be treated in the same way.

46. Peter Duncan, Association of Professional Political Consultants, was also opposed to the trigger, stating that “it excludes some very effective influence that is exerted by volunteers and enthusiasts who … make a difference but they would not be captured by the Bill.”\textsuperscript{41} Various organisations agreed.\textsuperscript{42,43}

47. Another approach might be to treat paid and unpaid lobbying equally and remove the trigger, relying on the definition of lobbying (i.e. type and subject of communication) to scope what activity is registrable. Some witnesses were concerned about the administrative burden that would be placed on small
voluntary organisations if the trigger were to be removed. Andy Myles, Scottish Environment LINK, argued in favour of the trigger “in order to reflect the fact that … not all lobbying is equal”.44

48. An alternative trigger or threshold might be to specify an expenditure level above which organisations were required to register. This approach would mean that firms and organisations, regardless of size, who undertake infrequent lobbying would not be required to register. The Minister felt that the difficulty with this approach would be that quantifying expenditure in order to make a judgement about whether registration was triggered, while it would be simple for commercial lobbying firms, could be onerous for organisations with in-house lobbyists.45

49. The pros and cons of an activity threshold in place of the paid/unpaid trigger were also explored. The Minister argued that replacing the “paid lobbying” trigger with an activity threshold would allow organisations to manage the number of contacts to stay below the threshold if they wished to avoid registration. He pointed out that a small number of meetings could have great significance and that the Government’s consultation on the Bill “was overwhelmingly in support of paid lobbying being the test”.46

The Committee strongly agrees with the principle that individuals must be able to freely engage on their own behalf or in an unpaid capacity behalf of an organisation.

The Committee accepts that it is necessary to have a threshold or a trigger in order to focus scrutiny on lobbying activity likely to be of greatest public interest while ensuring that the regime is not over burdensome and does not inhibit those wishing to engage. On balance, the Committee agrees with the Government’s approach that paid lobbying is registrable and unpaid lobbying is not registrable as the best way to achieve this.

The subjects of lobbying activity

50. The definition at Section 1 means that a person engages in regulated lobbying if the oral communication is made to a member of the Scottish Parliament, a member of the Scottish Government or a junior Scottish Minister. There was some debate over whether other individuals should be included in addition to these.

51. Under regimes in other jurisdictions, other public officials are also included as recipients of lobbying. These could include senior civil servants, special advisers, senior staff in Non-Departmental Public Bodies and so on. The Irish legislation uses a definition of “Designated Public Officials”47 which encompasses a much broader range of public roles. There was a good deal support for expanding the definition among those responding to the Committee.
52. Andy Myles argued that “a vast number of decisions are not made by Ministers”. Will Dinan contended that the absence of other public officials in the definition “made no sense” since lobbying strategies are not always focused on MSPs. Friends of Craighouse felt that “lobbying officials is probably more of an issue than lobbying politicians” since officials supplied information as the basis for elected representatives’ decisions. Carers Trust Scotland described meetings with senior civil servants as “equally useful in lobbying significance”. Alcohol Focus Scotland agreed that the scope of the Bill should be extended to civil servants and special advisers.

53. The Minister countered that widening out the definition of regulated lobbying to include communications with other public figures would involve a greater resource burden on registrants and said that the line had been drawn in order to strike the right balance between burden and optimal transparency. He justified the distinction between advisers, who advise, and Ministers and MSPs, who make the decisions, and cautioned that broadening the scope beyond the decision makers would result in a greater administrative load both for lobbyists and the Parliament.

54. The Scottish Council for Voluntary Organisations and Shelter Scotland both proposed that, if the definition was to be extended, then it should be public officials who were responsible for publishing the information on regulated lobbying.

The Committee recommends that the Government consider bringing forward amendments to broaden the definition of regulated lobbying to include communications made to other public officials.

Meetings initiated by MSPs and Ministers

55. As set out above, meetings initiated by an MSP or junior Minister, or member of the Scottish Government (unless in response to a request by a person attending or represented at a meeting or event) do not constitute lobbying for the purposes of the Bill. This exemption reflects the motivation of the individuals involved and is designed to make a distinction between lobbying that serves the purposes of the lobbyist, and lobbying which may occur in the course of stakeholder fact-finding meetings and so on, which Ministers and MSPs seek in order to enhance their policy knowledge and gather views. The exclusion is also designed to rule out the sort of incidental lobbying that is not planned or sought by the lobbyist and could take place during conversation at dinners, visits and other events.

56. This approach was questioned by Professor Chari, who pointed out that early Canadian legislation on lobbying contained a similar exclusion but was later amended as it was felt to have created an unhelpful loophole. There was little support from other witnesses for the exclusion. The Commissioner for Ethical Standards in Public Life in Scotland (the Commissioner) felt there was a risk that it would result in a lack of clarity, making it more difficult for him to come to a view
on complaints. He reminded the Committee that many events are sponsored by MSPs and questioned whether communications at such events should be excluded since “if I were a lobbyist I would regard these sorts of events as quite a good opportunity”.55

57. The Minister explained that the exclusion was aimed primarily at ensuring there were no barriers to engagement. He reiterated that the new regime will sit within a framework of other transparency mechanisms, pointing out that interactions with Ministers were already captured under the Ministerial Code. He did not wish to see a situation where Ministers and MSPs could not freely seek policy information, carry out fact-finding visits and so on without their contacts, who had not sought the engagement, being compelled to register.56 BMA Scotland welcomed the exemption, believing it would reduce the risk that specialists would become unwilling to participate in providing expertise.57

58. With regard to the onus to demonstrate who had initiated the meeting, the Minister said “there is a degree of self-regulation in that the MSP or Minister would know if they had initiated the meeting” and “we are trying to strike a balance to make sure that we are not debarring anyone, making it more difficult for people to engage with MSPs and Ministers or blocking access to factual information.”58

59. Legislation in other areas approaches this challenge in different ways. The Irish Act, under its exempted communications, has a category for “factual information” which excludes communications requesting factual information or providing factual information in response to a request for information. An approach such as this may have the potential to achieve similar aims – i.e. to exclude fact-finding meetings which may be of little interest to the public – and it would remove the difficulty of demonstrating who initiated the meeting.

60. Alternatively, if it is accepted that “lobbying is lobbying” regardless of who initiated the contact, the exemption could be removed altogether.

The Committee is concerned about the workability of the exclusion in the schedule for meetings initiated by MSPs or Ministers. The Committee asks the Government to re-examine the practicality of the exclusion and consider removing or replacing it at Stage 2.

Exclusion for Journalism

61. One of the exclusions set out in the schedule is for “a communication made for the purposes of journalism”.

62. The Commissioner questioned the workability of this exclusion, observing that it was not well defined and could lead to difficult judgements about what constitutes journalism.59 The Committee felt that some forms of journalism, such as writing for
trade journals, have the appearance of lobbying (although written forms are not captured by the Bill in its current form).

63. Neil MacLeod, Principal Legal Officer, Scottish Government Legal Department, drew the Committee’s attention to the Explanatory Notes, which refer to the fact that, according to case law, a communication made for the purposes of journalism is not lobbying.60

The Committee notes that any guidance on the Act must set out the definition of journalism in order to provide clarity on precisely what types of communication would attract the exemption.

Exclusion for Cross-Party Groups

64. Communications made in the course of a meeting of a group recognised as a cross-party group (CPG) are excluded from the definition of regulated lobbying. This avoids overlap with other transparency mechanisms since CPGs are already required to publish details of meetings. The Minister and his officials clarified that any activity carried out by CPG members outwith CPG meetings (such as writing to a Minister) would be subject to the same tests as any other activity and may, therefore, be registrable as regulated lobbying.61

65. The Committee notes that guidance on the regime will need to provide clarity for CPGs that meetings which are not quorate will not benefit from the exclusion and that registration will therefore be necessary if regulated lobbying takes place at such meetings.

Exclusion for communications by Judiciary

66. The Bill’s schedule sets out an exemption for communications made by or on behalf of a holder of judicial office within the United Kingdom and a member of the judiciary of an international court. The Law Society of Scotland suggested that communications under this exemption should be limited to communications relating to court and judicial functions.62

Lobbying outwith Scotland

67. Section 1(1)(3) of the Bill means that it does not matter for the purposes of the Bill whether a communication happens outwith Scotland. The Law Society of Scotland questioned how this would operate in practice and how, if a person fails to disclose a communication outwith Scotland, this would be evidenced.63

The register

Identity of lobbyists
The Bill requires organisations, rather than individuals, to register. The name of the individual making the communication on the organisation’s behalf is however required to appear in the register albeit not as the registrant. This means that those who may be concerned about former Government, party or Parliament staff being engaged in lobbying (so called “revolving door” concerns) will be able to identify whether any such individuals have engaged in lobbying. While this transparency was welcomed by some of those responding to the Committee, others questioned whether the Bill should go further and provide for a “cooling off period” which would prevent certain classes of individual from lobbying for a period following cessation of their employment.

The Committee raised these issues with the Minister, who pointed out that the Ministerial Code prevents former Ministers from lobbying Government for two years, and the Business Appointment Rules for civil servants means that there is a scrutiny structure for the future employment of civil servants and special advisers. Furthermore, the Independent Advisory Committee on Business Appointments scrutinises Ministers’ future positions. The Minister felt that any provision that placed employment restrictions on MSPs, whose job security is subject to the outcome of elections, would be disproportionate. He reiterated that the Bill was intended to complement existing probity frameworks.

The Committee had an additional concern about whether Parliamentary Liaison Officers (PLOs) represented a conduit to Ministers. While any initial contact between an external lobbyist and a PLO would be registrable (because PLOs are MSPs), any subsequent representations made by the PLO to a Minister on that lobbyist’s behalf would not be captured by the Bill by virtue of the schedule’s exclusion of Government and Parliament communications.

The Committee is satisfied that the inclusion of individuals’ names on the register will enable those with an interest to probe the employment history of those involved in lobbying. The Committee further notes that Parliament would be able, following exercise of its resolution making power at Section 15(1) of the Bill, to make provision requiring information on the employment history of lobbyists to be included on the register itself.

Categories of registrant

The Bill envisages three categories of registrant at Section 3(1): Active, inactive and voluntary. The Law Society of Scotland felt that the different requirements on each category might lead to confusion.

Details of matters discussed during lobbying

With regard to recording details of lobbying activity, Professor Chari felt that requiring information on “the purpose of the lobbying” (Section 6(2)(g)) was vague and information about the outcome sought by the lobbyist should be required.
The Law Society of Scotland suggested that the register might lead to an increase in Freedom of Information requests from people seeking details of the meetings which would appear on the register. The Minister pointed out that the Parliament could, through its powers under Section 15, make this type of information a requirement of the register.

73. NFU Scotland (NFUS) informed the Committee that lobbying activity undertaken with elected representatives will be in regard to sensitive or confidential matters on behalf of individual members and called for the Bill to recognise that the integrity of member interest organisations such as NFUS cannot be undermined by the requirement to publish details of meetings.

Disclosure of expenditure

74. Registrants are not required to disclose the amount they spend on lobbying. Several of those responding to the Committee welcomed this because it would protect commercial confidentiality. On the other hand, Dr Dinan regretted the absence of a requirement to record expenditure arguing that “the public, when looking in on the whole influence game in politics, involves the amount of resources that are devoted to influencing decision making”. Professor Chari agreed, observing that “if the end objective is accountability and in particular transparency, Scottish citizens might want to see that information”. Willie Sullivan asserted that financial disclosure “tells you how important it is to the people who are lobbying”. ASH Scotland believed “the register should, as far as possible, catch influence as well as activity and that lobbyists should be required to declare … how the activity is funded”. They added that “there should be an additional explicit requirement to declare links with the tobacco industry”. Cancer Research UK believed that requirements on financial disclosure would strengthen the Bill as it would “help trace the impact that lobbyists may be having” and “provide valuable transparency”. Alcohol Focus Scotland, the Reid Foundation and Unlock Democracy also called for a requirement on financial disclosure.

75. Richard Maughan, CBI Scotland argued against requiring financial disclosure, pointing out that it would create a significant burden on organisations to provide estimates of staff costs and overheads. He warned that expenditure “does not reveal anything about the quality of the lobbying or the influence that it achieved”. Peter Duncan contended that some of the most effective representation is from people who are not paid. The Chartered Institute of Public Relations said that quantifying costs would be complicated and unproductive as well as commercially disadvantageous and potentially misleading.

76. Neil Findlay MSP referred to his Member’s Bill consultation, which found that “people are interested whether a lobbyist spends a fiver or £500,000”. He proposed placing expenditure estimates within bands in order to overcome the issue of commercial sensitivity.
The Committee understands the public interest value in revealing how much is spent on lobbying and notes that it will be within the Parliament’s powers (under section 15, Power to specify requirements about the register) to require registered organisations to disclose their level of expenditure on lobbying.

Frequency of information returns

77. The Bill provides for a 30 day “grace” period in which a lobbyist must register following his or her first instance of regulated lobbying. This is to ensure that people at an event or a chance meeting, for example, are not inhibited from engaging and nor is there any risk that they could find themselves inadvertently committing an offence.

78. The Bill provides for a six-monthly cycle for the provision of information returns by registrants. There was some debate among witnesses about the ideal reporting cycle. Some felt that more frequent returns were preferable since lobbyists would not need to delve into records going back over long periods. It was pointed out that monthly intervals were in use in other countries and there was no requirement to lodge a return if contact had not been made during that period.81

79. There was some support for harmonising returns with a so called “census day” that would require returns from all registrants on the same day. This, it was argued, would be simpler and clearer for registrants and may assist with publicity and ease of understanding.82,83 The Minister argued that the six-monthly cycle beginning with the date of registration would involve a lower administrative burden by spacing out the workload and pointed out that registrants could update their registers as frequently as they wished subject to the Clerk’s agreement.84

80. The Committee notes that the Bill’s powers under Section 15 (power to specify requirements about the register) would allow Parliament to alter the frequency of information returns if there is thought to be merit in so doing.

81. Some of those responding to the Committee said that the proposed cycle for returns would not sit well with the cycle for returns under the EU and UK systems and any voluntary industry regulatory statements.85 Children in Scotland felt that quarterly returns would offer greater transparency.86 Unlock Democracy suggested that organisations who expend a small amount of resources on lobbying should only be required to report on an annual basis.87

Voluntary registration

82. There are arrangements for voluntary registration. This will enable those organisations which are not required to register to do so in order to raise their profile or simply in the interests of transparency and good practice. The question arose of whether registered lobbyists could register information on activity other than regulated lobbying.
83. The Committee sought and received reassurance that the Bill (at Section 7(b)) would allow those who are required to register and who engage in both regulated and unregulated lobbying to register instances of unregulated lobbying voluntarily (under Section 7 – “additional information” – of the Bill) albeit at the Clerk’s discretion. Neil MacLeod added that the guidance to be issued by the Parliament on the operation of the Act (under Section 43) could ensure registrants had the opportunity to register additional information on a voluntary basis.

Participation

84. Throughout discussion of the provisions, the issue cropped up of whether the Bill would inhibit participation with the work of Parliament and Government and act as a barrier, particularly to smaller organisations by creating an administrative burden. Will Dinan said that there was evidence to demonstrate the reverse. He said that “the fact that there are registers begins to explain the system to people a bit more, and they understand how they can interact”. Professor Chari agreed that “a register is a very good professional tool for lobbyists, as it allows them to see what they need to do to try to influence Government”. Unlock Democracy stated that “there is no evidence from other jurisdictions that a register presents a barrier to participation”.

85. On the other hand the Federation of Small Business felt that “the Bill potentially places a barrier to genuine dialogue between politicians and many Scots about their business” and provided a few examples. The Health and Social Care Alliance Scotland were also concerned that the requirements of the bill may run counter to the values of openness and accessibility. MND Scotland felt that the bill may discourage some staff from attending Parliament receptions. The Scottish Council for Voluntary Organisations believed that the Bill would make employees of small third sector organisations less likely to engage with the Parliament and that valuable frontline experience could, therefore, be denied to parliamentarians. Volunteer Scotland were also concerned that small and medium sized charities and organisations my refrain from engaging.

Oversight and enforcement

86. Following the recommendations of the Committee, the Scottish Government has, it believes, taken an “educative, light-touch approach” to compliance and a regime where inadvertent breaches can be addressed without recourse to sanctions. The Policy Memorandum sets out the three tier oversight and enforcement system the Bill provides for (paragraphs 32-37), with criminal offences a “last resort” for “wilful non-compliance”.

Complaint handling

87. The Commissioner warned that the process for complaint handling – which is modelled on the Parliamentary Standards Commissioner Act 2002 (the 2002 Act) – could prove onerous and bureaucratic. He set out a scenario whereby a single complaint could potentially oblige him to produce up to five reports. He said “while
I appreciate the need for parliamentary oversight of the process, it does strike me that in that sort of situation it is verging on overkill."  

88. There was some discussion of whether the power to provide the Commissioner with directions (Section 31) could be used to allow the Commissioner to refer minor complaints to the Committee or the Clerk of the Parliament rather than carrying out the full process of investigation. Section 31 enables the Parliament to issue directions to the Commissioner setting out circumstances in which he or she may decide not to conduct an assessment or an investigation, and may not be required to report to Parliament.

Offences and sanctions

89. Richard Maughan expressed concerns about the criminal sanctions in the Bill and said “it must be made clear that we do not want criminal sanctions for someone getting something wrong on a form.” Andy Myles predicted that rival organisations would be most likely to make a complaint about one another and warned of the consequences for workloads involved in responding to complaints. The Federation of Small Businesses were concerned that the quantity of information required to be registered would inevitably lead to errors in returns.

90. The Committee was concerned that individuals or organisations who inadvertently fail to register or fail to submit a return could be denied an opportunity to address the matter since an offence will, technically, have been committed (Section 42) and there is therefore the potential for complaints to be made directly to the police or the Procurator Fiscal. This could mean that individuals who make a mistake – perhaps because they were unaware of the law – could find themselves reported to the Procurator Fiscal. The Association for Scottish Public Affairs was concerned that Parliamentary censure could have significant commercial and reputational consequences for lobbying consultancies in particular and could result in deprivation of livelihood.

91. The Commissioner indicated that he would feel uncomfortable in principle with not referring criminal offences to the Procurator Fiscal once he became aware of them. He said—

> Under my existing powers, if I come across something that may be a criminal offence, I report it immediately to the procurator fiscal, as that is obviously the system by which potential criminal offences are investigated. I cannot see anything in the Bill that would change that. In other words, quite a lot of the complaints that might come to me could be about criminal offences, and I would have to report them to the procurator fiscal.

92. He pointed out that—

> I have no role at all in the system of criminal prosecution. I fear that, if I or any successor of mine were to have that sort of discretion, it could be seen
as effectively usurping the role of the Crown Office and the procurator fiscal with regard to whether a potential offence should be prosecuted. 103

93. He added that any referrals would slow down the completion of his investigation and could necessitate extra reports if the delay led to an investigation taking longer than six months (Section 25). 104

94. The Commissioner drew the Committee’s attention to different approaches to similar situations. The Electoral Commission’s approach on political donations for example, which involves a range of civil sanctions that can be used before criminal sanctions are invoked. In relation to this, Steve Goodrich, Transparency International UK questioned—

why there are two different bodies, doing two different functions, for what is essentially one purpose. Having worked for a regulator, I think that it is clear that having the compliance staff, the advice and guidance staff and the enforcement staff in one body helps to ensure that there is coordination and an understanding of how those different pieces fit together. 105

95. The Minister pointed out that “there is no requirement in the bill for the commissioner to report to the procurator fiscal. That is not the intention”. 106 Neil MacLeod confirmed—

there is no requirement for [the Commissioner] to escalate things, but there is the facility for Parliament to issue directions to the Commissioner in whatever terms it sees fit. One particular type of direction that could be issued would be to allow the Commissioner to refer matters to the clerk, in the first instance. 107

While the Committee accepts there is nothing in the Bill that compels the Commissioner – or for that matter, the Clerk – to refer offences to the Procurator Fiscal, it wishes to be reassured that an arrangement for the referral of minor and first time offences to clerks for educative steps was acceptable to all parties – including the Crown Office and Procurator Fiscal Service.
96. The bill provides for a certain amount of flexibility for the Parliament to make changes to the regime in the light of experience. Provisions about the lobbying register may be modified which would allow the Parliament to alter such things as what information is to be recorded on the register and with what frequency information returns must be made.

97. Provisions relating to definitions, thresholds and exclusions cannot be amended through delegated powers. The Minister explained that the Bill was designed to give the Parliament maximum powers over the operation of the regime but that the significant, core principles of definition (and exclusions), thresholds and identity should be prescribed by the Bill and “if there were to be a major change to the core principles, it would be appropriate to alter the primary legislation”.  

98. He described the process by which the powers will operate, envisaging a lead role for the Committee in recommending changes for approval by the Parliament. This arrangement would be subject to Standing Order Rule changes.

99. The Parliament is also given powers to direct the Commissioner in his duties in relation to the Bill. This would allow the processes to be amended in the light of experience. This is explored in greater detail under the section on oversight and enforcement above.
100. A number of those responding to the Committee called for a review after an agreed period so that Parliament could revisit and revise the legislation.\textsuperscript{110}

The Committee agrees that the core principles of the Bill should be agreed at this legislative stage and appear in the Act. It is content that the powers delegated to the Parliament, including those to make further provision on the operation of the register about information notices and to direct the Commissioner and produce guidance about the regime, afford an appropriate level of flexibility that will ensure that lessons learned in the course of implementation can be addressed.

\textbf{Code of conduct}

101. Section 44 provides for the publication of a code of conduct for persons lobbying MSPs (and, as such, will also pertain to Ministers). The code of conduct is to encompass all forms of lobbying and is therefore not restricted only to those who carry out regulated lobbying. The Minister explained that a distinction had been made because the code had a different purpose and “it would be appropriate for the code to go wider”\textsuperscript{111}

102. The Delegated Powers and Law Reform (DPLR) Committee noted that the Bill does not require persons to comply with or have regard to the code of conduct nor were there any sanctions of enforcement provisions in relation to the Code. The DPLR Committee regarded this as “highly unusual”. In its response, the Scottish Government pointed out that the Committee had recommended, following its inquiry into a proposal for a register of lobbying that any code of conduct should not be binding. The DPLR concluded that it be more appropriately expressed as a power to issue guidance.

The Committee welcomes the provisions on the code of conduct, which will allow the Parliament to direct and guide those making communications of any kind and need not be restricted only to contacts which conform to the definition of regulated lobbying.
Policy and Financial Memorandums

103. The lead committee is required under Rule 9.6.3 of Standing Orders to report on the Policy Memorandum which accompanies the Bill. The Committee considers that the Policy Memorandum adequately sets out the policy intention behind the provisions of the bill and the alternative approaches that had been considered. The Committee found the memorandum useful in assisting its scrutiny of the Bill.

104. The same rule also requires the lead committee to report on the financial Memorandum (FM). The FM sets out a range of costs likely to fall on the Scottish Parliamentary Corporate body (SPCB) and the Commissioner for Ethical Standards in Public Life in Scotland. It also estimates the potential costs falling to organisations which undertake regular and co-ordinated lobbying.

105. The Finance Committee wrote to the Committee on 18 November 2015 regarding the Bill’s Financial Memorandum. The Finance Committee had received confirmation from the SPCB that the FM accurately reflected the indicative costs provided by the Parliament. The SPCB’s response also drew attention to the Bill’s cost implications for the Commissioner for Ethical Standards in Public Life, whose office is funded by the SPCB. The SPCB considered that there may have been a misinterpretation regarding whether the Commissioner’s office could absorb the costs of implementing the Bill.

106. The Committee raised the matter with both the Commissioner and the Minister during oral evidence. Both parties confirmed that the Financial Memorandum had misrepresented the Commissioner’s position and it would not be possible for his office to absorb the estimated cost of implementing the Bill. The Minister undertook to formally clarify the position with the Committee.¹¹²

107. Correspondence relating to the Financial Memorandum is set out at Annexe A.

108. The Public Relations Consultant Association felt that the figures in the FM underplayed the costs that organisations would bear to comply with the legislation. The Association for Scottish Public Affairs agreed and also pointed out that no costs had been estimated for organisations who found themselves the subject of complaints.¹¹³
General principles

109. Under Rule 9.6.1 of Standing Orders, the lead committee is required to report to the Parliament on the general principles of the Bill.

110. There was overwhelming support for the Bill from those responding to the Committee although several responses did suggest that it amounted to a solution without a problem. It was generally accepted that there is not, currently, any evidence of a serious problem with lobbying in Scotland but there was a general consensus that greater transparency was desirable as a preventative measure as it would help to detect and deter wrongdoing. Steve Goodrich asserted that “it is a question of citizens being able to hold representatives, public officials and lobbyists to account.” Similarly, Willie Sullivan argued that greater transparency would play a part in addressing people’s perception of political inequality.

111. The Committee has long been of the view that lobbying is a positive and necessary part of any democracy but that a register which operated a fairly light burden would promote transparency and political equality.

The Committee supports the general principles of the Bill that a lobbying register should be established and that it is backed by a code of conduct and an educative compliance regime with sanctions as a last resort.
1 Lobbying (Scotland) Bill, as introduced (SP Bill 82, Session 4 (2015))
3 Lobbying (Scotland) Bill, Policy Memorandum
7 Unlock Democracy. Written submission.
9 The Law Society of Scotland. Written submission.
10 ASH Scotland. Written Submission.
11 Carers Trust Scotland. Written submission.
13 Unlock Democracy. Written submission.
15 Association of Scottish Public Affairs. Written submission.
16 ASH Scotland. Written submission
18 Unlock Democracy. Written submission.
20 BMA Scotland. Written submission.
21 Chartered Institute of Public Relations. Written submission.
22 Shelter Scotland. Written submission.
23 Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014.
24 Royal College or Nursing Scotland. Written submission.
25 Carers Trust Scotland. Written submission.
26 Scottish Grocer’s Federation. Written submission.
28 Association of Scottish Public Affairs. Written submission.
29 The Scottish Environmental Services Association. Written submission.
30 Association for Scottish Public Affairs. Written submission.
31 Electoral Reform Society. Written submission.
32 Quarriers. Written submission.
33 Children in Scotland. Written submission.
35 BMA Scotland. Written submission.
36 Cancer Research UK. Written submission.
37 Federation of Small Businesses. Written submission.
38 MND Scotland. Written submission.
Designated Public Officials under the Irish model include elected members (including MEPs), Ministers, elected representatives at local government level, Special Advisers, senior Civil Servants and Chief Executive Officers and Directors of Services in Local Authorities.

PLOs are MSPs appointed by the First Minister on the recommendation of Ministers whom they assist in discharging their duties. PLOs are unpaid and are not part of the Scottish Government.
Standards, Procedures and Public Appointments Committee
Stage 1 Report on the Lobbying (Scotland) Bill, 12th Report, 2015 (Session 4)

74 ASH Scotland. Written submission.
75 Cancer Research UK. Written submission.
76 Alcohol focus Scotland. The Reid Foundation. Unlock Democracy. Written submission.
79 Chartered Institute of Public Relations. Written submission.
83 Association of Professional Political Consultants. Written submission.
85 Association of Professional Political Consultants. Written submission.
86 Children in Scotland. Written submission.
87 Unlock Democracy. Written submission.
90 Unlock Democracy. Written Submission.
91 Federation of Small Businesses. Written submission.
92 The Health and Social Care Alliance Scotland. Written submission.
93 MND Scotland. Written submission.
94 Scottish Council for Voluntary Organisations. Written submission.
95 Volunteer Scotland. Written submission.
100 Federation of Small Businesses. Written submission.
101 Association for Scottish Public Affairs. Written submission.


Association for Scottish Public Affairs. Written submission.


Annexe A: Correspondence on the financial Memorandum

Letter from the SPCB to the Finance Committee

Kenneth Gibson MSP
Convener, Finance Committee
Room T3.60
The Scottish Parliament
EDINBURGH
EH991SP

11 November 2015

Dear Kenneth

Lobbying (Scotland) Bill: Financial Memorandum

Thank you for your letter of 4 November regarding the Lobbying (Scotland) Bill.

Please find attached the SPCB's response to your Committee's questionnaire.

Yours sincerely

TRICIA MARWICK

Finance Committee Questionnaire

This questionnaire is being sent to those organisations that have an interest in, or which may be affected by, the Lobbying (Scotland) Bill’s Financial Memorandum (FM) (page 27 of the Explanatory Notes).

In addition to the questions below, please add any other comments you may have which would assist the Finance Committee's scrutiny of the FM.

Consultation

1. Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?

The Parliament's views were sought on the cost of implementing the Bill. Our response made clear that the extent of the costs involved in establishing and maintaining a register was largely dependent on the number of organisations required to register and on the detail of how the register will operate.
With this in mind, parliamentary officials provided some unit staffing costs which the Scottish Government has combined with its own estimates of registrant numbers.

We also provided a range of IT costs in relation to establishing and maintaining the register, an estimate of costs in relation to awareness raising and an estimate of costs likely to be incurred by our legal office.

2. If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?

As above.

3. Did you have sufficient time to contribute to the consultation exercise?

Yes.

Costs

4. If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.

The FM accurately reflects the indicative costs and assumptions provided by the Parliament.

At the time of submitting the figures, there was some uncertainty about the role the Parliament would play in ensuring compliance with the Register and the code of conduct for lobbyists. The Policy Memorandum states "It is envisaged that the Clerk's duty to monitor compliance will mainly consist of checking and processing the information received, and addressing any relevant issues raised by potential registrants and from the public."

The costs set out in the FM would support this level of involvement with compliance (a range is provided at paragraph 29 to reflect different numbers of registrants).

If a more hands-on "policing" role (eg, monitoring diaries, monitoring attendance at meetings or events initiated by external parties, media monitoring) is required then costs will increase.

As the Committee will be aware the SPCB also funds the Commissioner for Ethical Standards in Public Life. In the FM, costs have been provided dependent on the number and complexity of investigations ranging from zero for no cases to £70k for more complex cases.

The FM states that such costs could be absorbed within his existing resources. We consider there may have been a misinterpretation here as we understand the Commissioner advised that based on his current workload any costs could not be absorbed within his existing budget. There are therefore additional Commissioner costs to factor into the total.
5. Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

With the exception of Commissioner costs, we believe the figures shown are reasonable and accurate. We note the Scottish Government has estimated that a range of between 255 and 2,550 organisations would be required to register.

6. If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?

There will be minor costs to many of the offices of the Parliament which it will be possible to absorb. In addition to these, there will be costs to the SPCB in relation to establishing and running the register and associated regime. This point was made in our submission to the Scottish Government and is reflected at paragraph 15 of the FM. We will endeavour to mitigate these costs as much as we can, particularly in the first half of 2016/17 but additional resources will be required.

7. Does the FM accurately reflect the margins of uncertainty associated with the Bill’s estimated costs and with the timescales over which they would be expected to arise?

The cost ranges in the tables at paragraph 33 of the FM reflect our view on the margins of uncertainty if compliance is limited to what is set out in paragraph 34 of the Policy Memorandum (see above).

The timescales in the tables at paragraph 33 reflect the potential profile of estimated expenditure.

Wider Issues

8. Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?

We did not make any comment on the potential resource implications for the Commissioner for Ethical Standards in Public Life in Scotland in our submission to the Scottish Government. The committee’s attention is, however, drawn to our answer at Question 4 about Commissioner costs. Our understanding is that despite what is stated in the FM, the Commissioner does not consider that the costs can be absorbed within his existing resources.

9. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

The Bill contains a number of powers to make further provision.

Section 15 is concerned with the requirements of the register, including the duties of the Clerk. This power clearly has the ability to impact on the work of staff at the Parliament.
and could, therefore, lead to greater costs in the future, depending on what staff were required to do.

It is not possible to quantify these costs except to say that anything involving an increase in the responsibilities of the Clerk or an alteration in the volume or complexity of the register will increase staff time and, therefore, increase costs.

It is not thought that the power at section 20 to make further provision about information notices has the potential to impact on costs significantly.

Section 41 requires to the Parliament to make provision about procedures to be followed when the Commissioner submits a report to the Parliament and is not thought to have any significant potential cost implications.

Letter from the Finance Committee to the Standards, Procedures and Public Appointments Committee

Stewart Stevenson MSP, Convener, Standards, Procedures and Public Appointments Committee
The Scottish Parliament
Room T3.60
By email

Dear Stewart,

Lobbying (Scotland) Bill: Financial Memorandum

The Finance Committee invited the Scottish Parliamentary Corporate Body (SPCB) to respond to our standard questionnaire on financial memoranda (FM) in respect of the above Bill. A copy of its response is attached.

The completed questionnaire confirms that “the FM accurately reflects the indicative costs and assumptions provided by the Parliament” which the SPCB believes to be “reasonable and accurate.”

However, the submission draws the Committee’s attention to the Bill’s potential cost implications for the Commissioner for Ethical Standards in Public Life who is funded by the SPCB. On the basis of figures provided by the Commissioner, the FM estimates that he would incur additional costs of “between £0 in the case of no investigations and £70,000 in the case of 10 complex investigations.”

The FM further states that “the Commissioner does, however, believe that any additional investigations arising as a result of the Bill can be absorbed within his existing resource.” However, the SPCB submission states—
“The FM states that such costs could be absorbed within his existing resources. We consider there may have been a misinterpretation here as we understand the Commissioner advised that based on his current workload any costs could not be absorbed within his existing budget. There are therefore additional Commissioner costs to factor into the total.”

Your committee may therefore wish to seek clarification from the Scottish Government regarding the additional costs to the Commissioner as a result of the Bill.

Yours sincerely,

Kenneth Gibson MSP
Convener

Letter from Minister for Parliamentary Business to the Convener of the Finance Committee

Kenneth Gibson MSP
Convener
Finance Committee
Room T3.60
Scottish Parliament
Edinburgh
EH991SP

30 November 2015

Dear Kenneth

On 19 November I gave Stage 1 evidence to the Standards, Procedures and Public Appointments Committee on the Lobbying (Scotland) Bill. During that session Stewart Stevenson mentioned correspondence received from your Committee about an aspect of the Financial Memorandum in respect of the Bill.

The issue centres on paragraph 49 of the Government's Financial Memorandum which reads as follows:

"The Commissioner [for Ethical Standards in Public Life] also notes the current pressure of work in his office. The Commissioner does, however, believe that any additional investigations arising as a result of the Bill can be absorbed within his existing resource."

However the Scottish Parliamentary Corporate Body, in its response to your Committee's questionnaire on financial memoranda, advised that a misinterpretation of the Commissioner's views may have occurred as the Commissioner considers that such costs could not be absorbed and should rather be considered as additional in
nature. The table following paragraph 50 of the Financial Memorandum did offer an assessment of the cost burden of potential lobbying complaints, based on information provided by the Commissioner. These were only indicative, given the clear uncertainty over the number of investigations that might require to be conducted.

The information set out in the Memorandum flows from exchanges my officials had with the Commissioner. It is now clear that officials did not fully appreciate Mr Thomson’s explanation of his inability to absorb additional costs in terms of the Commissioner’s remit as a whole with the potential resourcing impact that specific complaints that may arise from the Bill would have. Now that the Corporate Body has helpfully clarified the matter I am happy to accept that position.

Whilst the evidence I gave to Stewart’s Committee puts on record the Government’s explanation of the misinterpretation that arose, this letter meets my subsequent commitment to clarify the position in writing. I am copying this letter to Stewart Stevenson.

JOE FITZPATRICK –
Annexe B: Extract from minutes and associated written evidence

16th Meeting 2015 (Session 4), Thursday 8 October 2015

Decision on taking business in private: The Committee agreed to take items 4, 5 and 6 in private.

Lobbying (Scotland) Bill (in private): The Committee agreed its approach to the scrutiny of the Bill at Stage 1.

18th Meeting 2015 (Session 4), Thursday 12 November 2015

Decision on taking business in private: The Committee agreed to take items 5 and 6 in private.

Lobbying (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Professor Raj Chari, Department of Political Science, Trinity College Dublin;
Dr William Dinan, Director, Spinwatch, Steering Committee, ALTER EU;
John Downie, Director of Public Affairs, Scottish Council for Voluntary Organisations;
Peter Duncan, Chairman, Association of Professional Political Consultants in Scotland;
Neil Findlay;
Steve Goodrich, Senior Research Officer, Transparency International UK;
Richard Maughan, Head of Campaigns, CBI;
Andy Myles, Advocacy Officer, Scottish Environment Link;
Willie Sullivan, Director, Electoral Reform Society Scotland.

Lobbying (Scotland) Bill (in private): The Committee considered the evidence heard earlier in the meeting.
19th Meeting 2015 (Session 4), Thursday 19 November 2015

Lobbying (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Bill Thomson, Commissioner for Ethical Standards in Public Life in Scotland;

Joe FitzPatrick, Minister for Parliamentary Business, Al Gibson, Bill Team Leader, Parliament and Legislation Unit, and Neil MacLeod, Principal Legal Officer, SGLD, Scottish Government.

Lobbying (Scotland) Bill (in private): The Committee considered the evidence heard earlier in the meeting.

21st Meeting 2015 (Session 4), Thursday 3 December 2015

Lobbying (Scotland) Bill (in private): The Committee considered a draft Stage 1 report and agreed to finalise by correspondence.

22nd Meeting 2015 (Session 4), Thursday 10 December 2015

Lobbying (Scotland) Bill (in private): The Committee agreed a draft Stage 1 report.
Annexe C: Other written evidence

- Alcohol Focus Scotland (27KB pdf)
- the ALLIANCE (150KB pdf)
- ASH Scotland (151KB pdf)
- ASPA (15KB pdf)
- BMA Scotland (146KB pdf)
- Cancer Research UK (148KB pdf)
- Carers Trust Scotland (143KB pdf)
- CPG on Volunteering and the Voluntary Sector (140KB pdf)
- Children in Scotland (143KB pdf)
- CIPR (152KB pdf)
- Dr Will Dinan (242KB pdf)
- Friends of Craighouse (10KB pdf)
- FSB Scotland (171KB pdf)
- Steve Hay (6KB pdf)
- Information Commissioner's Office (126KB pdf)
- Law Society of Scotland (249KB pdf)
- MND Scotland (76KB pdf)
- NFU Scotland (72KB pdf)
- OSCR (122KB pdf)
- PRCA (174KB pdf)
- Quarriers (70KB pdf)
- RCN Scotland (125KB pdf)
- Reid Foundation (184KB pdf)
- RNIB Scotland (150KB pdf)
- Royal Society of Edinburgh (164KB pdf)
- RSPB Scotland (150KB pdf)
- Scottish Environmental Services Association (148KB pdf)
- Scottish Grocers Federation (170KB pdf)
- Shelter Scotland (196KB pdf)
- Unlock Democracy (133KB pdf)
- Volunteer Scotland (117KB pdf)
- Mark Whittet (70KB pdf)
Lobbying (Scotland) Bill – List of written submissions.

- Spinwatch (205KB pdf)
- Dr Will Dinan (242KB pdf)
- SCVO (190KB pdf)
- APPC (151KB pdf)
- CBI Scotland (140KB pdf)
- Electoral Reform Society (75KB pdf)
- Alcohol Focus Scotland (27KB pdf)
- the ALLIANCE (150KB pdf)
- ASH Scotland (151KB pdf)
- ASPA (15KB pdf)
- BMA Scotland (146KB pdf)
- Cancer Research UK (148KB pdf)
- Carers Trust Scotland (143KB pdf)
- CPG on Volunteering and the Voluntary Sector (140KB pdf)
- Children in Scotland (143KB pdf)
- CIPR (152KB pdf)
- Friends of Craighouse (10KB pdf)
- FSB Scotland (171KB pdf)
- Steve Hay (6KB pdf)
- Information Commissioner’s Office (126KB pdf)
- Invicta Public Affairs (95KB pdf)
- Law Society of Scotland (249KB pdf)
- MND Scotland (76KB pdf)
- NFU Scotland (72KB pdf)
- OSCR (122KB pdf)
- PRCA (174KB pdf)
- Quarriers (70KB pdf)
- RCN Scotland (125KB pdf)
- Reid Foundation (184KB pdf)
- RNIB Scotland (150KB pdf)
- Royal Society of Edinburgh (164KB pdf)
- RSPB Scotland (150KB pdf)
- Scottish Environmental Services Association (148KB pdf)
- Scottish Grocers Federation (170KB pdf)
- Shelter Scotland (196KB pdf)
- Unlock Democracy (133KB pdf)
- Volunteer Scotland (117KB pdf)
- Mark Whittet (70KB pdf)
Summary
Spinwatch welcomes the fact that the Scottish government is taking a Bill through Parliament to try and make lobbying more transparent. We believe strongly, however, that the system of registration in the Bill needs to be strengthened in order to allow genuine public scrutiny of lobbying in Scotland.

We propose that the Bill be amended in the following ways:
• Expand the definition of lobbying in the Bill so that:
  • multiple modes of communication trigger registration
  • lobbying of civil servants and special advisers triggers registration
• Expand the information that should be disclosed by lobbyists to include spending on lobbying

Consultation questions
1. Do you agree that the Bill is necessary and that the establishment of a Lobbying Register is desirable?

Spinwatch agrees with the government’s conclusion that as the powers and responsibilities of the Scottish Parliament increase, so lobbying in Scotland will grow in intensity and volume.

This should be a cause for celebration and concern. Lobbying is essential to a functioning, healthy democracy and wider participation in decision-making is to be encouraged. There is genuine public concern, however, that lobbying can also subvert the democratic process and that certain interests, particularly corporations, can enjoy privileged access and can wield disproportionate influence over politicians.

We agree with the government’s decision to act now, while public trust in decision-making is high: ‘to put beyond doubt any question of lobbying impropriety in Scotland and ensure that lobbying in the future is as open and transparent as possible’, as Minister for Parliamentary Business, Joe FitzPatrick said.¹

The simplest way of achieving transparency in lobbying is with a robust, statutory register of lobbyists, which requires lobbyists to provide basic, but meaningful information on their activities.²

¹ Statement by Joe FitzPatrick on ‘Increasing transparency around lobbying’, 29 May 2015
² To alternatively require Ministers, MSPs and officials on the receiving end of lobbying to publish diaries of meetings with lobbyists, as some have proposed, would be to place the burden entirely on decision-makers. It would also provide only a very partial view of lobbying, which extends far beyond individual, face-to-face meetings.
2. **How will the Bill affect you or your organisation?**

Spinwatch has actively lobbied for transparency regulations in Westminster, Brussels and Holyrood for over a decade. We have consistently proposed that transparency in lobbying should apply to not-for-profit organisations like ourselves, as well as companies and trade unions. To date, only Brussels has allowed us to make public our lobbying (see Spinwatch’s entry on the EU transparency register).³

We have been registered in Brussels since 2013. This has required us to disclose more information than would be required in Scotland, namely: who we are; our remit and ‘fields of interest’; specific issues lobbied on; whether we participate in any EU groups; the number and names of active lobbyists employed by Spinwatch; whether we are a member of any association, or network in the EU; and finally, our annual lobbying spend. Registration takes between one and two hours to complete, and we have found it to be no burden.

We would, therefore, willingly sign up to any register in Holyrood. Under the current proposals it is likely that our lobbying, in relation to the government’s Bill, would trigger registration: we have had face-to-face meetings with Ministers and MSPs. However, these contacts constitute only a small proportion of our lobbying activity, which includes communication with MSPs via email and letter, and contact with civil servants not covered by the proposals.

3. **Registration is triggered only when lobbying is being done in exchange for payment (either as a consultant or an employee) and does not capture lobbying carried out in the course of voluntary work or when it is done by an individual on his or her own behalf. Do you agree with this approach?**

We agree that only paid lobbyists should be required to register. This should include, however, those whose job is not as a lobbyist, but who engage in lobbying occasionally, such as company CEOs. It is possible, with a robust definition, following the example of other countries, to capture lobbying by these key staff, whose interaction with officials may be sporadic, but whose influence may be significant.

As a principal, lobbying transparency measures should attempt to capture the majority of, and most significant, lobbying activity, but not strive to capture every lobbying contact.

4. **Do the provisions set out in the Bill succeed in striking a balance between capturing information of value and ensuring that access and participation with the work of Parliament and Government is not discouraged?**

Spinwatch strongly believes that the proposals set out in the Bill do not go far enough: the information put in the public domain will not allow adequate public scrutiny of who is lobbying in Scotland. Only a minority of lobbying activity will be captured, namely lobbying in person of Ministers and MSPs.

---

³ Spinwatch profile on the EU transparency register, 2015
It is very possible that such a narrow focus will present a distorted picture to the people of Scotland of who is petitioning the government.

- Excluding contact between lobbyists and special advisers or civil servants, for example, is likely to lead to at least some corporate lobbying remaining out of public view. Communication with advisers and certain civil servants often requires an insider's knowledge and contacts, which is something that professional lobbyists and lobbying agencies provide and will charge a premium for. This, in the main, puts these services, and advantages, out of reach of all but well-resourced corporations. Some lobbying by companies may, therefore, be excluded from the register as a result.

- Face-to-face meetings are an important way of petitioning government. However, evidence shows that other means of communication are key to developing and sustaining significant lobbying campaigns. Take the case of News Corp lobbying in 2010 over its bid to take over BSkyB (a campaign that occurred in Westminster, but is not peculiar to Westminster). In the course of the bid's progress – just over a year – News Corp's chief lobbyist exchanged nearly 800 texts, 150 emails and nearly 200 phone calls with the Minister's special adviser. The purpose of this significant contact programme was to ensure that government did not hamper the progress of the bid, and it was conducted via means other than face-to-face meetings. It was a particularly high-stakes campaign, but the methods are typical of commercial lobbyists.

The decision, therefore, to exclude lobbyists' communication with special advisers and civil servants by any means other than face-to-face, creates a significant loophole in the legislation. Our proposed changes to the Bill to close these loopholes are at the end of this document (question 8).

We also disagree with the assumption in the question that transparency in lobbying will deter participation in politics in Scotland. There is no evidence from other jurisdictions that a register presents a barrier to participation. The UK's 2009 inquiry into lobbying by the Public Administration Select Committee also weighed up the evidence on the risk registration posed in creating an exclusive process and concluded that, while it is one that clearly needs to be guarded against, 'it is a risk that has been overstated'.

Additionally, research undertaken in the US among officials responsible for operating lobbying registers showed that robust regulation did not reduce the numbers of

---

4 As in Westminster and Whitehall, special advisers in Edinburgh 'play a vital role as ministerial sounding boards and gatekeepers', writes Lionel Zetter in the lobbying industry 'bible': *Lobbying, the art of political persuasion*. 'They are generally happy to meet with lobbyists, and to hold discussions off the record', he adds.

5 Take the example of Kevin Pringle at Charlotte Street Partners. As the SNP's former director of communications, he has an insider's knowledge of who's who in Scottish politics. Charlotte Street Partners does not disclose who is paying for their services. If, however, it follows the industry norm, corporate interests will dominate its client roster, with perhaps a small number of public sector clients and one or two, often, pro bono non-profit clients.

6 Information disclosed through the Leveson inquiry; and presented in: *A Quiet Word: Lobbying, Crony Capitalism and Broken Politics in Britain*, Cave and Rowell; Vintage, 2015; p.6.

ordinary people engaged in lobbying. It also suggests that lobbying disclosure can bring benefits from a greater understanding of the forces at work in policy-making.\(^8\)

Spinwatch is mindful that registration should not create an undue burden on less well resourced organisations, like small businesses and small charities. However, with an exemption for lobbying on a voluntary basis, and a minimum threshold for smaller organisations, we believe that only those with sufficient capacity would be required to register. As noted above, registration on the EU transparency register has proved to be no burden for us as an organisation.

5. **Do you feel that the definitions and exclusions are sufficiently clear? Do they, for example, allow individuals and organisations to easily know whether their activity requires to be registered?**

The definitions and exclusions are sufficiently clear. However, we strongly urge that the definition of who should register be expanded so that: multiple modes of communication trigger registration; and lobbying of civil servants and special advisers triggers registration. See question 8 for more on this.

6. **The Bill’s Policy Memorandum states the Bill aims for a “light touch, educative approach” and that “criminal offences and penalties [are] provided for as a last resort”. What are your views on this approach?**

We agree that criminal offences and penalties should be reserved for serious offences, such as knowingly and corruptly failing to comply. Registrants should also be given a reasonable period to respond to any complaint and/or correct a ‘defective filing’ before any other action is taken. We do believe, however, that it is essential that the body operating the register should be given sufficient powers to investigate any potential breach of the rules.

As stated in our previous submission to the government, reputation is important to professional lobbyists. The introduction of a sanction requiring the Registrar to inform officials of a clear breach would be an additional means of ensuring compliance.

7. **Are there any unforeseen consequences of the Bill as currently drafted?**

It is certainly possible that the current legislation could lead to lobbyists avoiding face-to-face meetings with Ministers to sidestep disclosure. Meetings will be held with the Minister’s adviser instead, or conversations will be conducted over the telephone. We don’t imagine that this will happen in the majority of cases, yet such an obvious loophole is a gift to those who might wish to keep their activity out of the public gaze.\(^9\)

---

\(^8\) William Dinan, David Miller and Philip Schlesinger, *Supplementary Evidence to Standards Committee Consultation on Lobbying the Scottish Parliament*, Stirling Media Research Institute, University of Stirling, March 2001.

\(^9\) It is understood in the lobbying industry that often the most effective lobbying occurs when there is little or no public scrutiny. As Steve John, an experienced lobbyist, now with McKinsey, writes in *The Persuaders: When Lobbyists Matter*, (Palgrave Macmillan, 2002): ‘The influence of lobbyists increases when . . . it goes largely unnoticed by the public.’
As outlined above in question 4, we believe that the legislation as currently drafted could also create a distorted view of who is exerting influence in Scotland.

It is also possible that the legislation, with its narrow focus and loopholes, will need to be rewritten in the not too distant future. A lobbying scandal involving an unregistered lobbyist, which is feasible, would lead to concerns about the weakness of this register, and may call in to question government assurances that it has taken a proactive stance on transparency.

8. Are there any amendments that would, in your view, enhance the Bill?

This is how we think the Bill should be amended.

1. Expand definition so multiple modes of communication trigger registration

We propose that the definition of a lobbyist – as set out in 1(1)(a)(1) – is amended so that it includes multiple modes of communications, not just face-to-face meetings; and more closely mirrors the internationally recognised definition of lobbying below:

The term “lobbyist” refers to any individual who, as a part of his or her employment or for other compensation, engages in more than one lobbying contact (oral and written communication, including electronic communication) with an elected official, his or her staff, or high and mid-ranking government employee who exercises public power or public authority, for the purpose of influencing the formulation, modification, adoption, or administration of legislation, rules, spending decisions, or any other government program, policy, or position.

2. Expand definition so lobbying of civil servants and special advisers triggers registration

We propose that the definition of a lobbyist – as set out in 1(1)(a)(1) – is amended so that as well as Ministers and MSPs, it also includes civil servants and special advisers above grade 7, and staff in agencies and NDPBs of the Scottish Government above civil service grade 7, or equivalent. This would mean it would more closely mirror the best practice definition above.

3. Expand the information that should be disclosed by lobbyists to include spending on lobbying

As drafted, lobbyists must disclose who they are, whom they are lobbying, and the purpose of the lobbying. Under an expanded definition (as above), which includes more than simply face-to-face meetings, it is not necessary for lobbyists to detail every contact, or communication made, as has been suggested by some.

We propose, however, that the information that lobbyists are required to disclose – as set out in s6(2) – should include a good faith estimate of how much they are spending on lobbying. Spending could be banded to make it easier. The disclosable expenditure should include direct staff costs and other expenditure, including spending on: the preparation of materials, or information to be used in support of
lobbying efforts; professional advice, opinion polling, research, or any other evidence created in support of lobbying; events and hospitality; and any staff costs involved in these activities.

We also propose that organisations, or groups of organisations working collectively, whose total expenditure on lobbying activity during an accounting year is cumulatively less than £2,000, or which dedicates cumulatively less than 0.25 of a full-time equivalent member of staff to direct lobbying activity, should only report on an annual basis. Any organisation that exceeds these levels should report on a quarterly basis.

Wholly voluntary, community and social campaign groups that do not employ, or remunerate staff, or engage third-party organisations to do this on their behalf, shall be exempt from reporting.

Tamasin Cave
Spinwatch
30 November 2015
This paper is a response to the Standards, Procedures & Public Appointments Committee call for further evidence to support its role at Stage 1 scrutiny of the general principles of the Lobbying (Scotland) Bill 2016. The responses below are informed by independent research undertaken for over a decade on lobbying in Scotland, the UK and the EU. It is also informed by the deliberations of an expert lobbying regulation seminar held at the University of Stirling on 20 November 2015.¹

General Principles

1. Do you agree that the Bill is necessary and that the establishment of a Lobbying Register is desirable?

Yes. The introduction of a lobbying register at the Scottish Parliament is a necessary and appropriate measure to help safeguard the probity of Scottish public life and to contribute to the accountability of the Scottish Parliament and Scottish Government. Lobbying registers are becoming increasingly common² and the introduction of such a well designed register will help keep the Scottish Parliament at the forefront of acknowledged good governance practice.

2. How will the Bill affect you or your organisation?

N/A

3. Registration is triggered only when lobbying is being done in exchange for payment (either as a consultant or an employee) and does not capture lobbying carried out in the course of voluntary work or when it is done by an individual on his or her own behalf. Do you agree with this approach?

There are some problems with this approach, particularly in relation to lobbying that might be undertaken by a person, or coalition of persons, who are not paid directly by the group or organisation (for example a charity, trust, or private company) that they are acting or volunteering on behalf of, but who may be lobbying for a contract, subvention or other payment from the Scottish Government or Parliament. In that context the attempt to secure a favourable decision that impacts on the public purse should fall within the scope of a lobbying register.

It is not clear from the draft bill if the term 'person' applies to coalitions or incorporated bodies.

There appears to be something of a contradiction running throughout the Bill, which

¹Regulator and Expert Lobbying Seminar, Stirling Court Hotel, University of Stirling, 20 November 2015.
recognises payment as a trigger for disclosure, but fails to try to make any information regarding the quantum of that payment public.

4. Do the provisions set out in the Bill succeed in striking a balance between capturing information of value and ensuring that access and participation with the work of Parliament and Government is not discouraged?

The Parliament is right to ensure that its practices and procedures are such that they encourage participation and engagement. The regulatory burden of compliance with the provisions of the proposed Lobbying (Scotland) Bill 2016 appear to be very light, and the volume and detail of information to be disclosed under the current proposals is unlikely to capture much information of value if the intention of the Bill is to promote lobbying transparency.

The focus of the SPPA Committee approach in the report published in January 2015 appears preferable, where lobbying activity is captured. The current Bill could be improved significantly if senior civil servants (above grade 7) and special advisers were included. In terms of disclosure, email and written communications must be included in some way (elements of each of these are provided for in the UK Register of Consultant Lobbyists, it is regrettable that the Scottish system will not go as far as the Westminster register in this regard).

The precise nature and detail of lobbying disclosures has not yet been fully elaborated. It is striking that the Scottish register seems at odds with the kinds of disclosures a majority of legislators in other OECD countries favour and expect (including 'whether the lobbyists was previously a public official', 'the name of parent or subsidiary company that would benefit' from lobbying activity, 'the source and amount of any government funding received', and 'lobbying expenses').

5. Do you feel that the definitions and exclusions are sufficiently clear? Do they, for example, allow individuals and organisations to easily know whether their activity requires to be registered?

It is very difficult to understand why regulated lobbying activity is so defined by the Scottish Government. The claims that this reflects the concerns expressed in the recent consultation do not bear scrutiny. The fact that the Scottish Government consultation in May 2015 invited comments on whether respondents agreed that a 'register should cover the lobbying of MSPs and Ministers' (Q. 7) cannot be read as 'proof' that this is properly the exclusive focus of a lobbying register. It is quite clear from reading the responses submitted that few respondents are aligned with the Government's preferred reading of the consultation responses in terms of the proposed scope of a register. The research commissioned by the Scottish Government to analyse the responses to their consultation suggests that 'Most of the additional suggestions focused on the need to include lobbying of others (most commonly Special Advisers and civil servants) in the register's coverage'. There is clearly widespread agreement that the scope of then proposed register is too narrow, but this is something the Scottish Government have chosen to ignore. Moreover, I am unaware of any empirical support to suggest that oral requests are honoured more


than requests made by some other means.

6. The Bill’s Policy Memorandum states the Bill aims for a “light touch, educative approach” and that “criminal offences and penalties [are] provided for as a last resort”. What are your views on this approach?

It appears to many observers (including to many of those who attended the regulator seminar in Stirling) that the so-called “light touch” of the proposed legislation is insufficient. Indeed what is striking is how light the touch is in terms of the substance of the disclosure obligations and yet how elaborate the enforcement provisions turn out to be. In particular there is a concern that the range of covered activities (communications made orally and in person, instigated by the outside interest) and covered persons (Ministers and MSPs) in the proposed Bill is far too narrow to deliver meaningful lobbying transparency.

7. Are there any unforeseen consequences of the Bill as currently drafted?

There is broad agreement that the introduction of a lobbying transparency register is both desirable and achievable. This consensus appears to rest on the belief that while lobbying is a legitimate activity there does need to be increased transparency to enable scrutiny and accountability. There has been quite a change in emphasis since the initial private members bill to introduce a lobbying register at Holyrood was first mooted early in this parliamentary session. In particular the emphasis has shifted from transparency around lobbying and outside interests to transparency of relations with MSPs. This tendency is also evident in the current government proposals. While at the end of this process there may well be a lobbying register, it is clear that as currently configured this will not capture the many aspects of lobbying that do not involved face-to-face communication. This may well lead to either a false sense of transparency around lobbying in Scotland, it may also discourage direct meetings with ministers and MSPs in favour of other lobbying practices that do not need to be disclosed, and the limited nature of the current proposals may mean that the register fails to attract respect or command compliance, and could well fall into disrepute.

Parliament can modify parts of this scheme (but apparently not sections 1-3 which determine coverage) by resolution if necessary. Is it realistic to think that that power will be exercised in a timely fashion? Will it be used to improve the system or, rather, undercut its usefulness? And the power to change is clearly not a sufficient justification for failing to enact the most effective scheme that can be formulated at this time. There is widespread consensus about the key flaws of the current government proposals in terms of scope and covered activities – this can and should be changed before the Bill passes into legislation.

8. Are there any amendments that would, in your view, enhance the Bill?

Yes. One suggestion (drawn from regulatory experience in other jurisdictions) would be to include statutory provision to review the legislation within a defined period (e.g., 2 years) of it coming into force. The emphasis placed on section 15 of the Bill by the Scottish Government to enable Parliament to revisit and revise the functioning of the lobbying register is welcome but insufficient. Sections 1-3 of the Bill should also be subject to future mandatory review and revision if deemed necessary.

---

5The new Irish lobbying legislation has this explicit provision in the Act, with the intention that ‘It is intended that provisions regarding the Registrar’s powers of sanction will not be commenced until a review of the implementation of the legislation has been carried out one year after the commencement of the legislation.’ http://www.sipo.gov.ie/en/About-Us/Registration-of-Lobbying/
Ensure that there is sufficient trial period (up to 6 months) before the act takes force to ensure those covered fully understand their disclosure obligations. This would be well-aligned with the educative approach favoured by the Scottish Government, and would allow clerks responsible for oversight to promote awareness and compliance with the provisions of the legislation.

Finally, consideration should be given to including some disclosure of the financial resources devoted to lobbying. The logic of the definition of regulated lobbying activity adopted clearly recognises that payment is an important factor that helps distinguish organised and professionalised lobbying from constituent petitioning. However, the proposals make no effort to disclose financial information related to lobbying activity.

Dr Will Dinan
30 November 2015
Standards, Procedures and Public Appointments Committee

Lobbying (Scotland) Bill

Written submission received from SCVO

SUMMARY

- Our position from the outset has been that the responsibility for transparency in lobbying should lie with those who hold public office – MSPs, Ministers, special advisors and senior civil servants
- We support the need for transparency in lobbying but are concerned by the effect the Bill could have on democratic engagement
- The third sector has considerable knowledge and experience, which may be lost if organisations are discouraged from engaging by the introduction of a register
- We are concerned that if the Bill is broadened beyond the current proposals, it will become onerous for the third sector
- If the scope of the Bill is broadened to civil servants, they must bear the burden of responsibility for transparency
- Capturing the interactions of volunteers would be a disproportionate burden on third sector organisations and could discourage volunteers from participating in campaigning activity
- We would like to see a clause inserted into the Bill which triggers a review of the legislation a year after its introduction - to help offset concerns about negative impacts and unintended consequences
- The Bill won’t capture a significant area of lobbying activity in Scotland if it excludes universities, colleges, leisure trusts and others covered by Freedom of Information legislation

OUR RESPONSE

INTRODUCTION

It has been acknowledged continually throughout the process of developing the Bill that “lobbying is a legitimate and valuable activity” and that it is useful to MSPs. It has also been acknowledged that there are currently no concerns with undue influence in lobbying in Scotland. We accept the desire for transparency in lobbying but don’t accept that a justifiable case has been made for expansion of the lobbying register. Placing a significant administrative burden on third sector organisations and discouraging valuable engagement is not an acceptable price to pay for benefits in transparency that are largely hypothetical. The register must remain light touch or it will restrict access to democratic processes and erode the participative principle of the Parliament.
1. **DO YOU AGREE THAT THE BILL IS NECESSARY AND THAT THE ESTABLISHMENT OF A LOBBYING REGISTER IS DESIRABLE?**

We support the principle that lobbying interactions should be transparent. To maintain confidence in political decision making, the democratic process should be visible to the public. However, it is also vital that politicians remain accessible and that we don't put barriers in place which discourage people and organisations from contacting them to express their views and provide expertise.

Our position from the outset has been that the responsibility for transparency in lobbying should lie with those who hold public office – MSPs, Ministers, special advisors and senior civil servants. We believe that this would be the most proportionate way to provide transparency, while not discouraging participation.

However, we accept that a lobbying register will be introduced and stated in our response to the Scottish Government's consultation that we would not oppose the register, provided it was light touch and doesn't cause undue bureaucratic burden for the third sector or damage legitimate engagement.

As the Bill develops, consideration must be given to the effect it could have in limiting engagement and producing unnecessary bureaucracy for the third sector. Our concern is that the Bill will be broadened beyond the initial proposals and will become detrimental to participation and onerous for the third sector.

2. **HOW WILL THE BILL AFFECT YOU OR YOUR ORGANISATION?**

If the Bill is passed in its current format, SCVO will have to devote time to an additional administrative task to compile and submit the six monthly reports that have been proposed. This will be manageable for us as we have a dedicated Public Affairs department and routinely collect much of that information for other purposes. We have four Public Affairs Officers, a Policy Manager and a Director of Public Affairs who all meet MSPs on a regular basis.

In addition our Chief Executive, Deputy Chief Executive and four other department Directors will all meet MSPs in the course of their work. Completing a six monthly return would involve a member of the Public Affairs team collecting the required information from those staff and completing the register. We anticipate that as long as the Bill only covers face to face meetings with MSPs and Ministers this would take approximately a day of staff time during the six month period.

However, we are not concerned by the overall impact this will have on our work. It is our members where the greatest impact will be felt, particularly smaller organisations, those that only occasionally engage with the Parliament and those that have staff around the country communicating with MSPs locally.
3. **REGISTRATION IS TRIGGERED ONLY WHEN LOBBYING IS BEING DONE IN EXCHANGE FOR PAYMENT (EITHER AS A CONSULTANT OR AN EMPLOYEE) AND DOES NOT CAPTURE LOBBYING CARRIED OUT IN THE COURSE OF VOLUNTARY WORK OR WHEN IT IS DONE BY AN INDIVIDUAL ON HIS OR HER OWN BEHALF. DO YOU AGREE WITH THIS APPROACH?**

We agree that only covering lobbying where it is being done in exchange for payment is the correct approach to take. Many third sector organisations make use of volunteers to conduct campaigning activity and raise awareness. Capturing all those interactions in a register would involve an entirely disproportionate burden on the organisations they volunteer for and could discourage volunteers from participating in campaigning activity.

4. **DO THE PROVISIONS SET OUT IN THE BILL SUCCEED IN STRIKING A BALANCE BETWEEN CAPTURING INFORMATION OF VALUE AND ENSURING THAT ACCESS AND PARTICIPATION WITH THE WORK OF PARLIAMENT AND GOVERNMENT IS NOT DISCOURAGED?**

The approach of capturing face to face communications with MSPs that is adopted in the Bill is the most proportionate approach and stands the best chance of achieving the correct balance between transparency and participation. However, we also have concerns about the effect this Bill could have on the thousands of third sector organisations that legitimately engage with the Parliament. Increasing participation is a key government policy objective, which we and many of our members support. Therefore, it is vital that the minor improvements in transparency brought about by the Bill are considered alongside any detrimental effects on participation or onerous administrative duties for third sector organisations.

**Effect on smaller charities**

We would like the committee to consider the following question: If I am an employee of a small third sector organisation with very limited time and resources, will the Bill make me more or less likely to engage with the parliament? We think the answer to that question is going to be ‘less likely’ in some cases. This is because third sector organisations can be wary of the term 'lobbyist' and don't see their campaigning or advocacy work with Parliament and Government in that way. Additionally, charity trustees can be risk averse when it comes to being perceived as political and may see registration as a lobbyist as being 'party political'. This could deny the Parliament the breadth of valuable experience that frontline organisations bring, which is vital for creating good policy.

Even if the Bill is light touch and the individual administrative burden on a charity is small, it must be considered as an addition to the cumulative effect of regulation. Third sector organisations are already heavily burdened with regulation and bureaucracy, much of it focussed on transparency and accountability. Each addition to that burden may seem small, but it all adds up and it all takes time away from vital frontline work.
Effect on larger organisations

A number of third sector organisations have expressed concern to us about the work involved with collecting information for the register from staff members working outside public affairs departments. The Committee heard from Andy Miles of how the RSPB undertakes campaigning activity, where all staff members are ‘lobbyists’ and charged with speaking to MSPs about the protection of birds. Collating all those interactions would be an enormously onerous task and the head office may not hear about the interaction until months after it has taken place. Organisations such as Barnardo’s and the British Heart Foundation will face similar problems collecting information from their shop managers around the country who engage with local MSPs on a regular basis. Gathering those interactions and recording centrally in an accurate manner would be considerable task and this would be multiplied considerably if the Bill is broadened to other forms of communication.

Broadening the Bill

We are concerned by the suggestions that the Bill could be widened to include other forms of communication such as telephone calls and emails. This would greatly increase the burden on organisations completing the register and involve a lot of unnecessary bureaucracy. In our experience emails and telephone calls with Ministers and MSPs are usually used to set up a face to face discussion. Where we are sending substantial communications it is almost always information that would be in the public domain anyway, consultation responses and briefings that are published on our website.

There have also been calls to extend the scope of the Bill to include senior civil servants. If this is done it must be focussed on the Civil servants themselves providing the information required, as Ministers currently do. This could be done through amendments to the Civil Service Code. We would oppose any extension of the register to include civil servants as it would further add to the levels of administration required and discourage partnership working with the Scottish Government.

5. **DO YOU FEEL THAT THE DEFINITIONS AND EXCLUSIONS ARE SUFFICIENTLY CLEAR? DO THEY, FOR EXAMPLE, ALLOW INDIVIDUALS AND ORGANISATIONS TO EASILY KNOW WHETHER THEIR ACTIVITY REQUIRES TO BE REGISTERED?**

We would appreciate greater clarity on whether the register would allow third sector organisations to perform a ‘lead role’ in registering activity on behalf of their members. It is common for third sector intermediaries and larger organisations to facilitate the engagement of their members with MSPs. So an organisation like The Alliance could organise a roundtable discussion with MSPs to inform them about the effect of change in policy with fifteen of their members. Would the register allow The Alliance to list the event on their return and name the organisations involved? Or would all fifteen organisations have to register individually. If it is the latter the bureaucratic burden would be increased significantly and organisations may be discouraged from participation in the event.
We are concerned by the list of bodies that will be exempt from completing the register. The Bill won’t capture a significant area of lobbying activity in Scotland if it excludes all the bodies covered by Freedom of Information (FOI) legislation. Universities, colleges, leisure trusts and others covered by FOI all lobby MSPs and Ministers on a regular basis, so these interactions must be included in any register.

The argument that as these bodies are covered by FOI they don't need to be included on the register does not hold up to scrutiny. The purpose of the register is to safeguard public confidence in democracy by making lobbying transparent. This requires that interactions are easily accessed in one location and searchable. If a member of the public searches the register for the lobbying meetings undertaken by their MSP in the last six months, they would expect that search to reveal the totality of those interactions. They wouldn't expect to also have to submit multiple FOI requests to all the universities, colleges and other bodies covered by FOI.

6. **THE BILL’S POLICY MEMORANDUM STATES THE BILL AIMS FOR A “LIGHT TOUCH, EDUCATIVE APPROACH” AND THAT “CRIMINAL OFFENCES AND PENALTIES [ARE] PROVIDED FOR AS A LAST RESORT”. WHAT ARE YOUR VIEWS ON THIS APPROACH?**

We agree with the educative approach and would not want third sector organisations to be penalised for accidental breaches of the rules. It will take time for third sector organisations to become familiar with the rules and processes required, so lenience will be particularly vital in the beginning.

7. **ARE THERE ANY UNFORESEEN CONSEQUENCES OF THE BILL AS CURRENTLY DRAFTED?**

Research\(^5\) conducted by a student on placement with SCVO into the UK Lobbying Act showed that legislation can negatively impact on the third sector in ways that were unintended. The research focussed on restrictions on campaigning activity in the run up to elections, so the situation is not identical to this Bill, but a number of the conclusions are still pertinent to this lobbying register.

The research found that the Act introduced ‘Undue burdens because organisations have had to invest additional time and resources to ensure compliance with the law’ and ‘Due to the Lobbying Act’s lack of clarity, organisational perceptions of what the Act ‘does’ are as important (if not more so) than the actual regulations’.

We are concerned that the Scottish register could cause similar problems with a lack of clear definitions that could impact on the third sector. It is not clear yet what the definition of lobbying activity will be and this could cause confusion about whether or not to register. Many third sector organisations will act cautiously and register if they are unsure. It is also not clear the types of meetings that will be covered.

If the Bill is expanded to other forms of communication, this problem will be exacerbated further. Does the email sent to an MSP to arrange a meeting have to be registered? What about the four follow up emails with their assistant to make the practical arrangements? If a briefing is attached to the email which sets out our position, would that count as lobbying?
To help offset concerns about any negative impacts and unintended consequences, we would like to see a clause inserted into the Bill which triggers a review of the legislation a year after its introduction. This review would assess the impact of the register on those that have to complete it and the effect it has on engagement with the Parliament.

8. ARE THERE ANY AMENDMENTS THAT WOULD, IN YOUR VIEW, ENHANCE THE BILL?

The onus for transparency in the Bill is being placed entirely on those that lobby. We would like to see amendments brought forward that address that imbalance and require MSPs, special advisors and civil servants to be more transparent in their activities. This would allow for meetings initiated by MSPs and Ministers to be covered without placing the responsibility on those they are meeting with. It would also provide a check against the register, to ensure it is completed accurately.

CONCLUSION

It has been acknowledged continually throughout the process of developing the Bill that “lobbying is a legitimate and valuable activity” and that it is useful to MSPs. It has also been acknowledged that there are currently no concerns with undue influence in lobbying in Scotland. We accept the desire for transparency in lobbying but don’t accept that a justifiable case has been made for expansion of the lobbying register. Placing a significant administrative burden on third sector organisations and discouraging valuable engagement is not an acceptable price to pay for benefits in transparency that are largely hypothetical. The register must remain light touch or it will restrict access to democratic processes and erode the participative principle of the Parliament.

Felix Spittal
Policy Officer
Scottish Council for Voluntary Organisations,
30 November 2015
ABOUT US

The Scottish Council for Voluntary Organisations (SCVO) is the national body representing the third sector. There are over 45,000 voluntary organisations in Scotland involving around 138,000 paid staff and approximately 1.3 million volunteers. The sector manages an income of £4.9 billion.

SCVO works in partnership with the third sector in Scotland to advance our shared values and interests. We have over 1,600 members who range from individuals and grassroots groups, to Scotland-wide organisations and intermediary bodies.

As the only inclusive representative umbrella organisation for the sector SCVO:

- has the largest Scotland-wide membership from the sector – our 1,600 members include charities, community groups, social enterprises and voluntary organisations of all shapes and sizes
- our governance and membership structures are democratic and accountable - with an elected board and policy committee from the sector, we are managed by the sector, for the sector
- brings together organisations and networks connecting across the whole of Scotland

SCVO works to support people to take voluntary action to help themselves and others, and to bring about social change.

Further details about SCVO can be found at www.scvo.org.uk.

---

Standards, Procedures and Public Appointments Committee

Lobbying (Scotland) Bill

Written submission received from Association of Professional Political Consultants (APPC)

The Association of Professional Political Consultants is the self-regulatory and representative body for professional political practitioners in the UK. APPC’s main role is to ensure the highest standards of honesty, integrity and professionalism amongst its members.

The basis for APPC’s self-regulatory regime lies in its Code of Conduct and its Register of members, their consultants and their clients is updated quarterly and published on the APPC’s website.

Taken together, the Code and the Register provide an effective and transparent regime. Any MP, MSP, AM, MLA or official can be assured that any APPC member company will be honest and ethical. Equally, the APPC’s members’ clients know that they will be advised against any public affairs activity that is unethical or illegal. APPC membership brings clear benefits for both clients and politicians.

The APPC has three main roles:
1. To ensure transparency and openness by maintaining a register of political practitioners
2. To enforce high standards by requiring members to adhere to a code of conduct
3. To promote understanding of the public affairs sector, and the contribution made by political practitioners to a properly functioning democracy
Response to the consultation questions issued by the Standards, Procedures and Public Appointments Committee on the Lobbying (Scotland) Bill as introduced on 29th October 2015.

1. Do you agree that the Bill is necessary and that the establishment of a Lobbying Register is desirable?

APPC has been clear from the very start of the committee’s considerations that we see no great evidence base for legislation, and even those most vociferous advocates of legislation accept that action is required only on a preventative basis, rather than in response to any identified problem. Furthermore, both the Committee and the Scottish Government have made clear that lobbying is not only an entirely legitimate process, but is important and one which supports the work of Parliament, informing MSPs and government. In that context, APPC believes it to be vital that any legislative proposal does not discourage lobbying in future.

Whilst we do not accept therefore that a Bill is necessary, we are keen to ensure that any regulations introduced are fit for purpose and that transparency is at the heart of any regulatory regime introduced. In that context, we want to support Parliament in arriving at legislation that strikes the right balance between increasing transparency and not over-burdening lobbyists with regulations that unduly inhibit their everyday lobbying activities.

If lobbying regulation is to be agreed, then it should focus on high standards and transparency - APPC therefore supports the establishment of a register in that context, providing that its cost and administrative requirements do not place an unreasonable burden on those registering.

2. How will the Bill affect you or your organisation?

IMPACT ON APPC

APPC is a membership organisation representing primarily consultant lobbyists, and has not lobbied the Scottish Parliament, until now. We have sought to lobby Parliament on the contents of this Bill, in our representative role where we seek to speak on behalf of our membership. Therefore, the Bill itself would not place any great requirement on APPC on an ongoing basis. However, our membership will be very significantly affected by the terms of the legislation.

APPC was established on the fundamental principles of openness and transparency. Therefore we have nothing to fear and everything to gain from further clarity - providing it can be introduced fairly and in a way which does not impose unreasonable burdens on those registering.

APPC members are already required to declare on a quarterly basis those clients for whom they provide lobbying services and make a declaration of those staff and subcontracted consultants who undertake those services. It is our belief that this quarterly declaration provides for a spirit of openness that has been welcomed in all quarters since the establishment of APPC over 20 years ago.
Therefore, our members will be affected by the introduction of an additional administrative burden over and above that which they already have. Depending on the organisation, some will already be required to complete regulatory statements in Brussels and at Westminster, as well as comply with the APPC code of practice. The burden of new legislation at Holyrood will therefore be incremental in nature, although the size of that incremental burden is the key issue for our membership.

That incremental burden would be minimised if the registration cycle were to be synchronised with the Westminster ORCL registration cycle. APPC believes that the current proposal for a rolling registration deadline, individual to each registrant, will add complexity to the registration routine, and may well be the least efficient process for screening registration details by the Clerk.

Clearly, the scope of the proposed legislation is the key to determining the burden on our members in complying. However, we believe that it is equally important that the legislation is genuinely transparent, and in that spirit we are of the view that meetings initiated by MSPs or the Scottish Government should be subject to registration by the lobbyist, in the same way as if the lobbyist had initiated the meeting.

APPC believes these extensions to scope would not add significantly to the burden of registration, and where it does so would be more than compensated for by increased transparency.

CODE OF PRACTICE

APPC members already agree to abide by our code of practice, which is widely regarded as the “gold standard” for the lobbying industry. It is robustly and independently enforced, and every member is required to make a quarterly return, review and declare compliance on an annual basis, as well as ensure on an ongoing basis that all staff and freelance contractors are trained on the code and have the APPC code written into their contracts of employment.

In that context, APPC members have little to fear from being subject to a Parliament code of practice, although we note that the new code will not be identified, consulted upon or agreed to before the likely date when the Bill will become law. As a result, it is difficult to confirm what impact being subject to another code of practice will be. However, self-evidently, it will be another code of practice and will therefore have some impact on the complexity of staff training programmes.

We would be happy to share our experience of devising, reviewing and enforcing our code with Parliamentary authorities when they come to consider a new statutory code.

The impact of the register on our members will also be that they will be able to confirm in their registration that they are subject to another industry code of practice. APPC would recommend that ability does not extend to providing “official” recognition for in-house codes of practice - we are aware of some registering with ORCL at Westminster who indicate that they subscribe to an industry code of practice, which is effectively an in-house one and not independently enforced. The Parliament should preclude this in Scottish legislation.
We would also recommend that the Parliament precludes the use of Regular Visitor passes for the Holyrood building by anyone undertaking lobbying activity. Our view is that such use is completely inappropriate.

COST ARGUMENTS

APPC believes that there is already a significant issue of cost in implementing the Bill as drafted. Over the course of a five year Parliamentary term, administering the proposed scheme of regulation is already projected to cost significantly over £2m. Whilst recognising that a case has been made for regulating lobbying, we believe that there is already a danger that the cost of doing so will become disproportionate.

Further to that concern, APPC believes that any significant extension to the scope of lobbying as defined by the Bill would result in a further escalation in the cost of administration. We do not believe that the incremental cost would be justified, particularly as far as requiring registration of lobbying activity beyond face to face oral communications, as defined in the Bill. Particularly if the scope were extended to include registration of email correspondence, the administrative burden of registration will escalate significantly, without in our view any meaningful increase in transparency.

3. You would only have to register if you were lobbying in exchange for payment (either as a consultant or an employee). You wouldn’t have to register if you lobby in the course of voluntary work or lobby on your own behalf. Do you agree with this approach?

APPC disagrees with this approach. We have always made the case for a level playing field approach, so that every lobbyist is treated the same under any new legislation. In that context, we completely accept the ability of any individual to contact their own MSPs - either constituency or regional list - about any issue of concern to them. That should not be captured by any requirement to register as lobbyist, or register any lobbying done.

However, the focus of the legislation on paid lobbying does allow a significant amount of intensive lobbying to be unregulated. Lobby groups formed on voluntary capacity - or indeed individuals lobbying beyond their elected representatives on an unpaid basis - should be subject to transparency as much as any other form of lobbying. To take an example, a group of parents campaigning for increased nursery provision across Holyrood, including contacts with MSPs and ministers - in our view any lobbying they do, above and beyond an individual parent speaking to their own MSPs, should be of equivalent public interest to any lobbying by, say, a nursery provider group, or by one of the nursery teachers organisations.

We appreciate that there is no intention on the part of the Parliament to prevent or inhibit voluntary lobbying of the Parliament, and we believe that providing the scope of the legislation is kept manageable, there would be limited impact on voluntary groups, or indeed anyone else. Given that registration is to be free of charge, and we believe should remain so, this would remove any financial burden on voluntary group registration. Furthermore, we would welcome confirmation within the Bill itself that there will be no cost to any registrant.
4. Does the Bill strike the right balance between capturing valuable information while ensuring that access to participation with the work of Parliament and Government is not discouraged?

In our view, the Bill as currently drafted is a good compromise between the desire for increased transparency and the administrative burden and resultant disincentive to lobby that would be inherent in a significantly wider definition of lobbying.

As we have indicated above in our response to Q2, APPC supports an extension to the Bill to require meetings organised by MSPs and the Scottish Government, to be registered. We further believe that unpaid lobbying should also be subject to the same level playing field approach as paid lobbying.

However, we do not believe that widening the requirement to register to include letters, emails or other electronic communications would be sensible. APPC believes that doing so would add hugely to the administrative burden, begin to deter legitimate lobbying of Parliament and also start to significantly increase the cost of compliance, as well as the cost to Parliament of administering the Register.

The Scottish Government has identified that face to face lobbying is the most high profile and effective means of lobbying Parliament, and that the transparency benefits of registering outweighs the compliance costs and risks of closing channels of communication between Parliament and the outside world. APPC supports that approach. Conversely, APPC believes that requiring registration of, for example, every email sent to an MSP would have the opposite impact - costs of compliance would far outweigh transparency benefits, and as a result communication between lobbyists and MSPs would reduce in a way that the Scottish Government has identified would be a step backwards.

It is a difficult balance to strike, but with the addition of the recommendations to widen scope that APPC has made above, we believe that the Bill is a reasoned and balanced compromise.

FINANCIAL DECLARATION

During the evidence session held with the Committee on 12th November, there was widespread discussion on the merits or otherwise in widening the scope of the legislation to include a requirement to register the financial value of lobbying contracts. APPC is completely opposed to widening the legislation to require financial disclosure. Our reasons are a combination of practicality and purpose.

Practically, it will be very difficult to identify the financial costs of lobbying as defined in the legislation. Given the integrated nature of the commercial arrangements reached between professional lobbyists and their clients, or indeed the wide range of services provided by in-house public affairs professionals, how is a figure to be arrived at that accurately reflects the cost of that lobbying meeting with an MSP? Even if a value is attributed by the lobbyist, how would it be verified by the administrators of the register?
Furthermore, the Parliament needs to satisfy itself that there is a purpose to declaring financial information. APPC believes that financial value is only one metric that can be used to quantify lobbying - and there is no evidence to show that more spent on lobbying results in more effective lobbying. Some of the most effective lobbying is undertaken by volunteers, without payment, and there is no evidence to show that the public is any less interested in the fact that it has happened. That is why we have also recommended that the scope of the Bill is extended to encompass unpaid lobbying - cost is of little bearing to effectiveness, as the Convener recognised in his related admiration of Mrs Madge Elliot for her (voluntary) efforts to lobby widely for re-instatement of the Borders Railway.

5. Do you feel that the Bill is sufficiently clear? Does it allow individuals and organisations to easily know whether their activity requires to be registered?

We are broadly content that the Bill is sufficiently clear in most respects. However, APPC believes that more work is required to provide more detail on the process for handling complaints.

In particular, we believe that greater detail is required on the process for making a determination on individual complaints. What fundamental tests will be applied in coming to a decision? At what stage will the enforcement approach change from “educative and light touch” onto robust enforcement? What frequency of inadvertent errors of registration will be allowed before enforcement is escalated? APPC believes that this is particularly relevant given:

1. the early evidence from the UK Registrar that demonstrates a higher level of typographical errors than had been anticipated
2. any suggested widening of scope to include written or email communications may exponentially increase the amount of data to be registered, with a significant increase in inadvertent errors.

APPC also believes that a more detailed process for dealing with vexatious complaints is required. Doing so will provide reassurance to registrants who are complying with new regulations in good faith, as well as reassurance to the taxpayer that costs will not be unnecessarily escalated.

Peter Duncan
APPC
30 November 2015
Introduction

- The CBI is the UK’s leading business organisation, speaking for some 190,000 businesses operating across the UK. CBI members directly employ at least 500,000 people in Scotland, which represents a quarter of the private sector workforce. This includes companies headquartered in Scotland as well as those based in other parts of the UK that have operations and employ people in Scotland.

- We welcome the opportunity to respond to the committee’s call for evidence on the draft Lobbying (Scotland) Bill, following the oral evidence we provided on 12 November. CBI Scotland has been closely engaged with the public debate around the regulation of lobbying, including responding to Neil Findlay MSP’s 2012 consultation, providing evidence to the committee’s previous inquiry in 2013-14, and replying to the government’s consultation in 2015.

- Our starting point is that lobbying is essential to the public policymaking process in Scotland – it is one of the central means by which policymakers hear views from groups affected by public policy, test the viability of new policies, and are held to account as part of a healthy democratic process. This vital information exchange contributes to promoting better policy outcomes for the people of Scotland, and we welcome the fact that this has been recognised by both the government and the committee.

There remains a lack of evidence of the need for a statutory register of lobbyists, but with legislation now before parliament the focus should must be on implementing it in way that is not unduly burdensome on those it affects

- We are clear that lobbying activity must be conducted in an open and transparent way, not least to promote public confidence in the system of government, but there are different options available to policymakers in seeking to deliver upon this objective, of which a register of lobbyists as set out in this bill is just one. We have consistently questioned the case for the creation of a new regulatory regime (which would impose costs on groups which lobby) as a proportionate way of providing such transparency and we remain sceptical of the case for creating a statutory register of lobbyists in Scotland. We have also suggested alternative approaches, including improving the existing system of publishing ministers’ meetings with external parties as well as releasing information about MSPs’ diaries.

- At the root of this scepticism is the lack of evidence put forward by the government and other stakeholders about the existence of a particular problem with lobbying in Scotland which necessitates a regulatory response. As the proposals will impose costs on those which it affects, it is right that they are
considered in terms of what makes good regulation, and on this question the principles underpinning the Scottish Government’s Better Regulation agenda provide an effective starting point – including that any new regulatory proposals are proportionate to the problem that is being addressed and evidence-based.

- The lack of evidence of a problem with lobbying in Scotland which needs addressing, a lack of evidence around what a lobbying register would actually achieve, and a limited examination by the government of alternative approaches, mean these proposals risk looking like a solution in search of a problem.

- However, as it’s clear that the government is committed to taking forward the proposals, we want to engage constructively in order to help ensure that the final regulatory regime can be implemented in a way which does not impose overly disproportionate burdens on those affected and to highlight practical issues to be addressed in order to support making the regime effective. In this vein, we responded to the government’s consultation in July, recently provided oral evidence to the committee in November, and set out further evidence in the remainder of this document.

We welcome measures in the draft bill which attempt to strike the right balance, including making organisations responsible for keeping records, focusing on direct face-to-face contact with MSPs and ministers, and not requiring financial disclosure

- As with all regulation, it is vital to strike the right balance to ensure that it addresses a clearly defined problem in a proportionate and not overly burdensome way. Notwithstanding the fact that we are sceptical about the need for a lobbying register in Scotland, we welcome some of the measures taken forward in the draft bill which attempt to strike the right balance and not impose additional and unnecessary burdens.

- We welcome the draft bill’s focus on placing the responsibility for registering with organisations rather than individuals. In our submission to the government we highlighted that individual registration would have led to higher costs for businesses affected, because it could lead to ‘double counting’ where more than one individual attends a meeting, as well as many companies being likely to want to keep central records anyway.

- We also welcome that the draft bill proposes to capture face-to-face contact with MSPs and ministers. We also agree that contact with MSPs and ministers is most legitimately of interest because they are directly elected representatives. We strongly believe that any widening of the register to include contact with civil servants and special advisers – as some have proposed – would add disproportionately to the regulatory burden, as would capturing additional correspondence over and above the face-to-face contact with MSPs and ministers as outlined in the draft bill.

- We also strongly agree with the non-requirement of financial disclosure as set out in the draft bill. On a practical basis, making respondents calculate and provide this information (potentially including, for example, office overheads) would significantly add to the burden for those affected. In addition, providing
commercially sensitive financial information – such as consultancy fees or salaries – would carry significant risks for affected organisations. And, finally, there is a broader risk of financial information becoming a ‘blunt instrument’ in terms of informing the debate about lobbying – the amount of money spent is an overly simplistic indicator of activity and does not address the key transparency issue of who is lobbying and for whom.

- It is important to stress that any additional requirements or proposals to extend the scope of the register must be looked at in terms of whether they impose additional costs to those affected and whether unintended consequences could result – including the potential for engagement with government and parliament to be reduced. Any additional proposals must therefore be subjected to a full regulatory impact assessment.

But there remain some significant practical issues to be addressed in the draft bill, not least clarification around how incidental contacts would be managed, achieving the right level of information about meetings, and putting in place a staged approach to criminal penalties

- Despite the publication of the draft bill and explanatory notes, there is still a pressing need to clarify some of the remaining issues to ensure the register does not create regulatory grey areas. If this is not achieved, there is a risk of a ‘chilling effect’ whereby affected organisations err on the side of caution and potentially reduce engagement with the parliament and government.

- We believe that there still needs to be further clarification as to what ‘face to face’ communication at pre-arranged meetings means in practice. Many types of contact with MSPs and ministers may not necessarily be viewed as ‘lobbying’, e.g. incidental interactions at visits to sites within constituencies or panel appearances at third party events. We have heard from members that uncertainty on what constitutes ‘face-to-face’ lobbying may lead to businesses curtailing contact with local MSPs for events such as site visits, if there is a risk of being inadvertantly captured by the new regulations.

- In terms of capturing the right level of information, we would agree in principle that the recommendation in the consultation to include ‘direct, face-to-face’ communication at meetings that are arranged in advance is a sensible criteria at which to focus the activities of the register. However, care must be taken to ensure that the nature of the information captured is proportionate in itself and not does include sensitive commercial information. Again, businesses may be minded to err on the side of caution and cut back on engagement with parliamentarians if there was a risk of sensitive information being captured. To give an example, some companies may discuss potential investment decisions with ministers and MSPs which could be harmed by the inappropriate release of information.

- To reflect the two way communication flow between elected representatives and external stakeholders, we also believe it is important that contacts initiated by MSPs and ministers are reflected.
We also question why unpaid lobbying has been excluded from the latest proposals, given that this can be highly effective and the desire to create a level playing field.

We support the intention for a “light touch, educative approach” to implementing and monitoring compliance with the register. We believe that the focus should be on spreading awareness and the need to sign up, and that some moderate sanctions could be in place for serious breaches of the regime. But we believe the threat of criminal penalties is wholly disproportionate, particularly given that laws already exist to govern inappropriate and corrupt behaviour, such as through the Bribery Act.

There is also an opportunity cost as a result of organisations not doing certain things because they need to focus on the proposals outlined in the draft bill. Moreover, anything that includes criminal sanctions has a legal dimension, with legal fees and costs that organisations will need to bear. Costs might differ according to the types of organisations that might be affected, but these are not trivial and cannot be dismissed by businesses as part of their diligence and compliance activities.

**Questions**

1. **Do you agree that the Bill is necessary and that the establishment of a Lobbying Register is desirable?**

   In this case, we do not believe that, overall, an evidence-based case has been made, so we are sceptical about the need for legislating to create more regulation – both for businesses and other groups potentially included in the new regime. The Scottish government has its own set of principles of better regulation, the spirit of which includes that any action should be proportionate to a problem that has been addressed, and that there is both evidence of this problem existing and evidence that the proposed regulation would actually address it. We do not believe the legislation as it stands meets these criteria. However, as highlighted above, given that this regulation now looks like a reality, we want to engage to ensure as simple and effective a regime is created as possible.

2. **How will the Bill affect you or your organisation?**

   In answering this question we consider both the impact on the CBI and our members.

   The CBI has regular engagement with the Scottish government and parliament and as part of this we meet ministers and MSPs to discuss matters of importance to the Scottish economy – these meetings would have to be registered under the proposed new regulatory regime. This would create the need for new compliance systems to be formed, capturing information in a different way to how it is currently compiled and diverting staff time from other activities.

   CBI members operating in Scotland will also be affected. As it stands, the proposals have already created uncertainty, due to the remaining lack of clarity over what meetings will have to be recorded. Some members have informed us
that due to the need to keep additional records and data, they will be burdened by extra costs of compliance. This is true for businesses of all sizes, but smaller businesses without dedicated compliance and legal teams may find this a greater problem. Larger organisations would face more complex challenges, especially if a firm has multiple sites around the country.

- Whatever is finally decided, we strongly believe a grace period should be included, to ensure that those required to sign up are not unfairly penalised for minor and inadvertent transgressions while the new system is implemented.

3. **Registration is triggered only when lobbying is being done in exchange for payment (either as a consultant or an employee) and does not capture lobbying carried out in the course of voluntary work or when it is done by an individual on his or her own behalf. Do you agree with this approach?**

- We question the proposed exemptions for the unpaid lobbyists outlined in the draft bill. There does not appear to be a convincing case given as to why this form of lobbying, which can which often have extensive capacity, should be treated differently to others which are proposed for coverage by the register. We would favour a level playing field whereby, if a register is to be created, it applies to all organisations which lobby.

4. **Do the provisions set out in the Bill succeed in striking a balance between capturing information of value and ensuring that access and participation with the work of Parliament and Government is not discouraged?**

5. **Are there any unforeseen consequences of the Bill as currently drafted?**

- As highlighted above, notwithstanding our overall scepticism to these proposals, we do believe that there has been an attempt to strike the right balance.

- We believe that capturing oral, face-to-face communication with ministers and MSPs is the correct approach to take if a register is to be implemented. At the same time, efforts should be made to ensure that the register of ministers’ meetings is updated on a regular basis to ensure compliance on behalf of all interested parties. We have also proposed improving the Scottish parliament’s own transparency regime by publishing MSP’s diaries and engagements.

- Widening the scope to non-elected figures, or gathering other types of written and electronic communication, would cause a significantly larger burden on those required to register and may have an impact on businesses engaging with the work of the Scottish parliament and government – for companies of all sizes this could amount to a significant amount of correspondence and activity that would need to be monitored, captured and regulated, potentially also containing sensitive commercial or financial information. Therefore, we would strongly oppose widening the scope of the register to avoid additional costs and any unforeseen impact on parliamentary engagement.

- If the register was to be extended, an additional impact assessment would need to be carried out, to capture the increased burden created by widening the scope of its activities.
6. Do you feel that the definitions and exclusions are sufficiently clear? Do they, for example, allow individuals and organisations to easily know whether their activity requires to be registered?

- The CBI has consistently highlighted in our engagement with the lobbying register process that there is a lack of clarity over what ‘face-to-face’ contact with ministers and MSPs would constitute in practice.

- Many types of contact with MSPs and ministers could fall into a regulatory grey area, e.g. visits to sites within their constituencies, or panel appearances at third party events. Despite the publication of the policy memorandum and explanatory notes with the draft Bill, it is still unclear whether individual members of staff who might meet politicians as an incidental part of these activities be classed as lobbyists and be required to register on behalf of their companies. If this is the intention of the bill then we would question it as being highly disproportionate.

7. The Bill’s Policy Memorandum states the Bill aims for a “light touch, educative approach” and that “criminal offences and penalties [are] provided for as a last resort”. What are your views on this approach?

- We support the intention for a “light touch, educative approach” to implementing and monitoring compliance with the register. We believe that the focus should be on spreading awareness and the need to sign up, and that some moderate sanctions could be in place for serious breaches of the regime.

- However, we believe the threat of criminal penalties is wholly disproportionate, particularly given that laws already exist to govern inappropriate behaviour, such as through the Bribery Act. The government should identify the gaps in current legislation that new criminal sanctions would address - and the ultimate threat of jail or significant financial penalties looks disproportionate. Again, the threat of these sanctions may discourage engagement with the Scottish government and ministers.

- If criminal sanctions are to be imposed, there must be a staged approach to ensure that minor infractions are not overly penalised, and that organisations affected are kept fully informed.

8. Are there any amendments that would, in your view, enhance the Bill?

- As highlighted above, amending the draft Bill to include unpaid lobbyists would ensure a level playing field for those affected, and ensure that all professional lobbying activity was covered equally.

- We would also call for clarity on the exclusion of incidental face-to-face contact with parliamentarians, and for clarity around the phasing of any criminal sanctions.

CBI Scotland
November 2015
Standards, Procedures and Public Appointments Committee

Lobbying (Scotland) Bill

Written submission received from the Electoral Reform Society

About the Electoral Reform Society

Founded in 1884, the Electoral Reform Society (ERS) operates on a simple premise – that our politics can be better than it is. We seek a living democracy where every vote and every voice is valued, where power is fairly distributed and those who exercise power can be held to account. Our policy is developed in consultation with our elected Council and our membership.

The Electoral Reform Society’s main funding source is in the form of an annual dividend from Electoral Reform Services Ltd, the UK’s leading independent supplier of ballot and election services. These organisations have strict separation of governance and objectives.

We think a statutory register of lobbying is important for the following reasons:

While lobbying is an important part of public policy formation, there is lots of evidence that falling trust in democracy and the rise of populism are in part fueled by a public view that government acts in the interests of powerful sectoral interests – big business – to the harm of sections of the public. One of the actions to address this concern would be to try and make the lobbying process as transparent as possible, without harming public engagement.

We welcome the fact that the Scottish government is taking a Bill through the parliament to try and address this problem by making lobbying more transparent but we think it could be made better. We suggest the following:

1. Expand definition so multiple modes of communication trigger registration

As drafted in the current Bill, only if lobbyists meet politicians face-to-face will they have to register their lobbying. We believe that it shouldn’t matter how you contact politicians – whether by letter, email, text, over the phone, or in person – it’s still lobbying and should trigger registration.

We propose that the definition of a lobbyist – as set out in 1(1)(a)(1) – is amended so that it includes multiple modes of communications, not just face-to-face meetings; and more closely mirrors the internationally recognised definition of lobbying below:

The term “lobbyist” refers to any individual who, as a part of his or her employment or for other compensation, engages in more than one lobbying contact (oral and written communication, including electronic communication) with an elected official, his or her staff, or high and mid-ranking government employee who exercises public power or public authority, for the purpose of influencing the formulation, modification,
adoption, or administration of legislation, rules, spending decisions, or any other government program, policy, or position.

2. **Expand definition so lobbying of civil servants and special advisers triggers registration**

As drafted in the current Bill, only lobbying of Ministers and MSPs triggers registration. This ignores lobbying of civil servants and special advisers, who can be valuable contacts for lobbyists.

We propose that the definition of a lobbyist – as set out in 1(1)(a)(1) – is amended so that as well as Ministers and MSPs, it also includes civil servants and special advisers above grade 7, and staff in agencies and NDPBs of the Scottish Government above civil service grade 7, or equivalent. This would mean it would more closely mirror the best practice definition above.

3. **Expand the information that should be disclosed by lobbyists to include spending on lobbying**

As drafted in the current Bill, lobbyists must disclose who they are, whom they are lobbying; and the purpose of the lobbying. Under an expanded definition that includes more than simply face-to-face meetings, it is not necessary for lobbyists to detail every contact, or communication made, as has been suggested by some.

We propose, however, that the information that lobbyists are required to disclose – as set out in s6(2) – should include a good faith estimate of how much they are spending on lobbying. Spending could be banded to make it easier. The disclosable expenditure should include direct staff costs and other expenditure, including spending on: the preparation of materials, or information to be used in support of lobbying efforts; professional advice, opinion polling, research, or any other evidence created in support of lobbying; events and hospitality; and any staff costs involved in these activities.

**Impact on Our Organisation.**

Much of the information required for this register is captured and reported to the elected council of the Electoral Reform Society. We have attempted to put together an example of the sort of information required arising from the bill with our suggested amendments. Appendix 1. It is of course just our interpretation at this time but it does show how straight forward such a register might be.

**Who Should Register ?**

We agree with the need for those who are paid to lobby being a trigger for registration. We think there should be a threshold for smaller campaigns/organisations. We propose that organisations, or groups of organisations working collectively, whose total expenditure on lobbying activity during an accounting year is cumulatively less than £2,000, or which dedicates cumulatively less than 0.25 of a full-time equivalent member of staff to direct lobbying activity, should not have to register.
Wholly voluntary, community and social campaign groups that do not employ, or remunerate staff, or engage third-party organisations to do this on their behalf, shall be exempt from reporting.

Willie Sullivan
Director, Scotland
Electoral Reform Society
30 November 2015
Standards, Procedures and Public Appointments Committee
Lobbying (Scotland) Bill
Written submission received from Alcohol Focus Scotland

1. When the Scottish government first took up the issue of lobbying, Alcohol Focus Scotland (AFS) was encouraged and hopeful that Scotland would lead the way in the UK in making lobbying more transparent. However, as it stands, we are disappointed in the Scotland (Lobbying) bill, as it falls a long way short of delivering a meaningful level of transparency around lobbying in Scotland.

2. The limited scope of the lobbying register proposed in the bill means that the bulk of lobbying activity in Scotland will be excluded from registration. As currently drafted, the register will fail provide the Scottish public with an accurate picture of the extent of lobbying activity in Scotland and who is lobbying whom on what issues.

3. AFS believes that full disclosure of all lobbying activity is necessary to ensure the integrity and probity of policy and political decision-making processes.¹ We would therefore like to see the current bill enhanced to deliver greater lobbying transparency. In line with the Scottish Alliance for Lobbying Transparency, we support the following amendments:

- Expand the types of communications covered by a statutory register
  Individuals and organisations, including AFS, lobby using multiple modes of communication, not just face-to-face meetings. If a lobbying register is to serve a useful purpose in shedding a light on the nature and extent of lobbying then it must cover all the types of communications lobbyists are known to use to influence decision-making and the policy process.

- Extend registration to cover lobbying of civil servants and special advisers
  Special advisers and civil servants have a significant role in the formulation, modification or adoption of policies and legislation, and they are lobbied in this regard. To provide a true picture of lobbying activity in Scotland and the potential for officials and advisers to be used as a route into government and parliament, the scope of the register should be extended to cover lobbying of civil servants and special advisers.

- Expand the information to be disclosed to include spending on lobbying
  Information that lobbyists are required to disclose should include an estimate of how much they are spending on lobbying.

¹ See our previous submissions on lobbying transparency:
4. Extending the scope of registration along the lines above would not in our view be disproportionate or burdensome. Accepted norms and standards of good governance and accountability now mean that most organisations already have in place a range of recording and reporting mechanisms - for members, shareholders, funders etc. If information on lobbying activity is collected for other reporting purposes, then a requirement to register lobbying activity should not impose a significant additional burden for the majority of organisations. For small community organisations and charities that engage in a limited amount of lobbying activity, thresholds can be set to exempt them from reporting.

5. A more transparent lobbying process can build public trust in political institutions. As the Bill progresses through the next stages of the parliamentary process, the Scottish Parliament has the opportunity to strengthen the current bill to provide a greater degree of lobbying transparency in Scotland.

Petrina Macnaughton
Research and Policy Coordinator
Alcohol Focus Scotland
30 November 2015.
Standards, Procedures and Public Appointments Committee

Lobbying (Scotland) Bill

Written submission received from Health and Social Care Alliance Scotland (the ALLIANCE)

The ALLIANCE is the national third sector intermediary for a range of health and social care organisations. The ALLIANCE has over 1,500 members including a large network of national and local third sector organisations, associates in the statutory and private sectors and individuals. Many NHS Boards and Community Health and Care Partnerships are associate members.

The ALLIANCE’s vision is for a Scotland where people who are disabled or living with long term conditions and unpaid carers have a strong voice and enjoy their right to live well.

Introduction

The ALLIANCE welcomes the opportunity to comment on proposals for a Lobbying (Scotland) Bill. As the Government’s consultation documents have previously recognised, lobbying is a vital part of a healthy democracy, and is an activity through which elected representatives can hear a range of views to ensure that they arrive at rounded and well informed decisions.

Influencing policy and legislation through lobbying is a key area of focus for many members of the ALLIANCE. Meeting with MSPs and Scottish Government Ministers allows third sector organisations the opportunity to ensure that the views of people who use support and services are expressed and noted within the legislative process – beyond simply responding to policy consultation processes.

Our response is informed by the views of our members, though it is important to point out that many of our members do not feel they have received adequate information about the impact of the Bill for them and their operations.
Consultation Questions

1. Do you agree that the Bill is necessary and that the establishment of a Lobbying Register is desirable?

A notable feature of the Scottish Parliament has been how open and accessible it is to campaigning groups and individuals seeking to ensure their MSPs are well informed about the decisions they make. In our view, these are principles that should be celebrated and built upon. We are concerned; however, that the proposals to introduce additional requirements on those seeking to engage with elected representatives may run counter to these values and may disempower third sector organisations from engaging with the Scottish Parliament.

The Government’s previous consultation document notes that “no allegations of impropriety about the lobbying of MSPs have arisen since the Scottish Parliament conducted its last Inquiry into the subject in 2002.” We are also not aware of a problem with lobbying in Scotland which will likely be “fixed” by this Bill – but we welcome the further transparency it may create.

We would, however, encourage the committee to consider:

- Current approaches to transparency and whether they are operating successful, for example whether Ministerial diaries are being published in a timely and consistent manner.

- Options for MSPs diaries to be openly available to the public – rather than placing legislative obligation on external parties.

- How the Bill is accompanied by further measures that promote discussion, debate and sharing of information between the public and MSPs, and that the mechanisms for doing so, including Cross Party Groups, are recognised as a valuable part of the Parliamentary and legislative process with which the public can directly engage in the work of the Parliament.

- Initiatives such as Your Say\(^1\), which ensured that the Welfare Reform Committee directly hears from people affected by changes to social security, are particularly good practice in this regard.

---

\(^1\) [http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/47889.aspx](http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/47889.aspx)
2. How will the Bill affect you or your organisation?

Under the proposals the ALLIANCE will need to enter onto the register and create a system for recording all of our political engagement which comes under the scope of the legislation.

The ALLIANCE regularly hosts roundtable sessions which facilitate discussion between politicians and our member organisations and individuals. We feel the legislation is unclear about whether every individual involved in such a discussion would need to be registered as a “lobbyist”.

A lot of our face to face engagement with elected members is about helping the people we support to engage in the democratic process. So, for example, helping to facilitate for a MSP/Minister to come and meet with a group of adults with learning disabilities and engage with/learn about what matters to them. Would the communication that takes place as part of that process now to be regarded as regulated lobbying by our organisation?

**ALLIANCE Member Organisation**

3. You would only have to register if you were lobbying in exchange for payment (either as a consultant or an employee). You wouldn’t have to register if you lobby in the course of voluntary work or lobby on your own behalf. Do you agree with this approach?

Yes.

4. Does the Bill strike the right balance between capturing valuable information while ensuring that access to participation with the work of Parliament and Government is not discouraged?

We are concerned that while it is proposed that registration would be free of charge, the introduction of the proposed registration regime would be likely to have a greater impact on smaller third sector organisations who may lack the administrative capacity to interpret and comply with the register and could therefore contribute to an inequality of access to the political process in Scotland.

Consequently, the ALLIANCE believes that the most proportionate, and practical method of increasing the accountability and openness of decision making processes would be for the Scottish Government and Scottish Parliament publish Ministers’ and Members of the Scottish Parliament’s diaries. This measure would support the objectives of transparency without placing additional and unnecessary requirements on third sector organisations seeking to amplify the voices of those they represent.

Significant guidance is necessary to ensure that all lobbyists, organisations and people who contact their MSPs understand the rules and the obligations on them as a result of the Bill.
5. Do you feel that the Bill is sufficiently clear? Does it allow individuals and organisations to easily know whether their activity requires to be registered?

A number of our members have expressed concern that they do not feel well informed about the nature of the Bill and the obligations it places upon them. We welcome a light-touch approach and feel that a significant information campaign highlighting the need for organisations to comply with the rules would be helpful to ensure that registers and rules are effectively followed.

Andrew Strong  
Policy and Information Manager  
the ALLIANCE  
30 November 2015

About the ALLIANCE

The ALLIANCE has three core aims; we seek to:

- Ensure people are at the centre, that their voices, expertise and rights drive policy and sit at the heart of design, delivery and improvement of support and services.
- Support transformational change, towards approaches that work with individual and community assets, helping people to stay well, supporting human rights, self management, co-production and independent living.
- Champion and support the third sector as a vital strategic and delivery partner and foster better cross-sector understanding and partnership.
Standards, Procedures and Public Appointments Committee

Lobbying (Scotland) Bill

Written submission received from ASH Scotland

Background

ASH Scotland is the independent Scottish charity taking action to reduce the harm and inequality caused by tobacco. Our activities include an expert information service, campaigning for political action on tobacco and health, supporting community groups to help their service users affected by tobacco use, building public support and awareness for making Scotland free from tobacco and supporting charities, enforcement agencies, the NHS and others to contribute to achieving that goal.

The tobacco industry

The tobacco industry is uniquely harmful and dangerous to public health. For that reason among others, the UK, the EU and 178 other countries have signed the Framework Convention on Tobacco Control (FCTC), the only public health treaty in existence.

The FCTC does not exclude tobacco industry representatives from discussions but, through a series of recommendations and requirements under Article 5.3, sets out the proper parameters for engagement with the industry to ensure transparency. This was in response to a long-established and well-documented history of misrepresentation and inappropriate interference in public health policy.

The article, and guidance around it issued by the World Health Organisation (WHO), directs that interactions with industry representatives should be open and transparent, and should never take place in the context of public health policymaking. For this reason, ASH Scotland supports strong provisions to ensure that the tobacco industry and its vested interests are not able to evade scrutiny when lobbying for their lethal products.

Our proposals

Who should be covered?

We believe the register should as far as possible catch influence as well as activity, and that lobbyists should be required to declare funding and sources of information and intended influence. In our view the register should catch who lobbyists are working with and for, how the activity is funded, issues discussed, and individuals with significant involvement in the stated activities. In accordance with our responsibilities under the FCTe, we believe there should be an additional explicit requirement to declare links with the tobacco industry and its vested interests.
We believe that the register should apply to all those who undertake lobbying as a main part of their paid employment, including those who work for private, public or third sector organisations, and that it should also be designed to capture tobacco industry links and influence in line with the FCTC.

Defining lobbying

ASH Scotland is concerned by reports that the Bill as it stands will cover only face-to-face lobbying. This is clearly insufficient to capture the wide variety of lobbying methods used by public relations professionals, including electronic means. We suggest a clear cut requirement to register any communication with a registered person. This need not require the registration of every single email, but could cover numerous electronic communications over a given time period. We would propose that the frequency of face-to-face interactions was still recorded.

A clear definition of what constitutes lobbying activity will be important to the success of the register, for example distinguishing between lobbying and information provision. We suggest that the definition given by the Sunlight Foundation, an international transparency organisation, be used. This defines lobbying as "oral and written communication, including electronic communication, with an elected official, their staff, or high and mid-ranking government employee who exercises public power or public authority, for the purposes of influencing the formulation, modification, adoption, or administration of legislation, rules, spending decisions, or any other government programme, policy, or position." Guidelines with examples of types of activity may be helpful.

Registration fees

As a small charity, we understand that registration fees could have an impact on access to the Parliament by smaller organisations. For that reason, if a fee were to be required to cover administration of this scheme, we would suggest that a tiered system, linked to turnover and/or profit, is used. This may include a free tier for the smallest organisations, or those in certain categories (such as community organisations).

It may also be desirable to link declaration requirements to this tiered system, in order to prevent undue administrative burdens falling on the smallest organisations. However, the system we propose would not present a significant challenge to us, as most potentially reportable contacts made by ASH Scotland staff are reported to our Board under our present governance arrangements.

Ruaraidh Dobson
Policy & Communications Officer
ASH Scotland
26 November 2015
INTRODUCTION

This paper is the response of the Association for Scottish Public Affairs (ASPA) the representative body for the public affairs sector in Scotland, to the Standards, Procedures and Public Appointments Committee’s call for evidence on the Lobbying (Scotland) Bill.

RESPONSE TO SPECIFIC CONSULTATION QUESTIONS

Q 1. Do you agree that the Bill is necessary and that the establishment of a Lobbying Register is desirable?

In our evidence to the Standards Committee’s previous inquiry into this issue, and in our response to the Government's consultation paper published in May this year, ASPA expressed scepticism about the value of a lobbying register. This was largely on the basis that there have been no allegations of impropriety about the lobbying of MSPs since the Scottish Parliament conducted its last Inquiry into the subject in 2002. However, we note that there appears to be some support for the establishment of such a register, and the view that a register may be beneficial in terms of maintaining and enhancing public confidence in the Parliament and in lobbying, provided that the regulatory regime is proportionate and does not detract from the principle that Parliament should be “accessible, open, responsive, and should develop procedures which make possible a participative approach to the development, consideration and scrutiny of policy and legislation”, as set out in the Bill's Policy Memorandum.

We would also agree with the finding of the Standards, Procedures and Public Appointments Committee’s previous inquiry that "lobbying is a legitimate and valuable activity". We agree, too, with the sentiments expressed in the Government's consultation paper that “lobbying is a vital part of a healthy democracy”; and that it is “crucial that elected representatives hear a range of views to ensure that they arrive at rounded and well informed decisions”.

As a piece of business regulation imposing additional costs and administration, the Bill should be assessed against the Scottish Government’s Better Regulation principles, including via a Business and Regulatory Impact Assessment.

Q 2. How will the Bill affect you or your organisation?

ASPA is the representative body for the public affairs sector in Scotland. It was established in 1998 by public affairs and policy practitioners in Scotland to represent those working both in-house and consultancy. ASPA is a voluntary organisation run by its members and has no paid staff. Membership is corporate rather than individual.
individual, although some members are sole-traders. Its members comprise a wide range of organisations, including large and small firms, membership organisations. ASPA members also cover the private and not-for profit sectors.

As a result, the extent to which the Bill might affect our members varies considerably. Some of our members who are umbrella/membership organisations whose members include small organisations, or who are small organisations in their own right have expressed concern about the extra administrative burden and costs that the Bill would entail. In the case of smaller charities, for example, that lobby only occasionally, the fear has been expressed that this could deter them from lobbying activity altogether. It should also be noted that only small organisations may find the additional administrative burden resulting from the Bill difficult; the extent of this burden depends on the number of staff involved in public affairs and the complexity of the organisation. For example, one of our members is a very large organisation, with thousands of staff across the UK, but has only one person formally engaged in public affairs in Scotland, and only on a part-time basis. Conversely, a trade association or charity might employ 30 or 40 staff in total, of whom five or six might be in public affairs or policy roles.

We do not accept that there will be any lobbyists who will not incur costs as a result of this legislation. We would query the nil amount entered against ‘Lobbyists’ in the table entitled ‘Overall Summary of Costs’ on page 38 of the Financial Memorandum. Sections 34 - 43 make it clear that in Year 1, there is a range of costs from £0 to £4,100, and that in subsequent years, costs range from £0 to £1,200 (not including complaints or legal procedures). Furthermore, the Financial Memorandum also mentions the costs to the Commissioner of dealing with a complaint but does not set a figure for a lobbyist’s costs for that. The Financial Memorandum also lists costs relating to any criminal procedure but does not accept that the lobbyist would bear costs here as well.

Any amendment to extend the scope of information required would increase costs to our members as well as to other parties

Q 3. Registration is triggered only when lobbying is being done in exchange for payment (either as a consultant or an employee) and does not capture lobbying carried out in the course of voluntary work or when it is done by an individual on his or her own behalf. Do you agree with this approach?

We believe that any register of lobbyists should apply to all lobbyists without exception, on the basis of the principle of having a level playing field.

We have some reservations about restricting registration only to paid lobbying, because of the potential unintended consequences this may cause in certain circumstances, as outlined below. In general terms, we have much sympathy with the proposition that unpaid ‘volunteer’ lobbyists should not generally be required to register. For example, if a membership organisation such as The National Trust for Scotland or RSPB perceived that a particular policy issue might affect it, and then urged its members to write to their MSP about such a policy, it would be unreasonable for those individual members to be required to register. However, one caveat to the practical application of the ‘paid lobbyists only’ principle is that it might
create a loophole for pro bono work – if a professional is giving their lobbying work free of charge, but getting paid for PR advice or providing some other service.

We also believe that there may be a potential problem in terms of lack of transparency and inequity if groups of citizens do not have to register, thus creating a distinction between paid lobbyists and community campaign groups. The latter can be very well funded and well connected, and can be extremely effective. For example, a conservation society, run entirely by volunteers, may undertake a lobbying campaign to oppose the redevelopment of an area. For clarity, we regard such activity as entirely legitimate, and would not wish to restrict it. However, if such a group was not required to register, whereas a firm arguing the opposite case in relation to the same proposal would be required to register, this would create an asymmetry in the degree of transparency about lobbying on the issue. Indeed, it is possible to envisage a hypothetical scenario where a voluntary, citizens’ campaign group (not required to register) received a significant donation from one commercial organisation – say a golf course – opposed to the plans of another commercial organisation – say a wind-farm developer - and only the latter would be required to register.

As we highlighted in our response to the Scottish Government consultation earlier this year, it should be noted that, as it stands, the Bill may affect a very wide range of face-to-face contacts with MSPs, including by individuals who might not usually be considered as ‘lobbyists’. Many people in an organisation, drawn in for their specific technical expertise, may be involved in meeting MSPs. These may also include paid external advisers joining MSP meetings - ranging from solicitors, to planning/environmental consultants, or many other forms of qualified technical contractors with an involvement in some constituency/parliamentary/legislative matter. These examples would be greatly multiplied if the scope were also to widen beyond meetings with MSPs to meetings with civil servants and/or others in government/parliament, or to other forms of communication. The Committee may wish to examine these aspects carefully.

Q 4. Do the provisions set out in the Bill succeed in striking a balance between capturing information of value and ensuring that access and participation with the work of Parliament and Government is not discouraged?

As drafted, and subject to the caveat regarding the administrative burden on small organisations mentioned in our answer to Question 2, above, and to the comments below, we broadly agree that the Bill succeeds in striking a balance between capturing information of value and ensuring that access and participation with the work of Parliament and Government is not discouraged.

We have noted calls from some stakeholders for the information requirements to be extended, both in terms of the scope of information required, the persons being lobbied, and the nature of the communication.

Taking the last of these issues first, in our response to the Government’s consultation paper that preceded the Bill, we agreed in principle with the Government that capturing direct, face-to-face communication at pre-arranged meetings would be a reasonable and proportionate measure, as is reflected in
Section 1(a) (i), which defines regulated lobbying as being made ‘orally and in person to a member of the Scottish Parliament, a member of the Scottish Government or a junior Scottish Minister’. This remains our view.

We have considered the case for the scope of regulated lobbying to be extended to include emails, letters and phone calls as well as face to face communications. However, we believe that this would be disproportionate; would detract from, rather than enhance, transparency; and would be unworkable in practice. In practice, this would require the recording on the register of literally thousands of items of correspondence or phone calls, many of which would be on minor administrative matters. Nor can we see any practical way of restricting such communication to ‘significant’ communications, because the definition of ‘significant’ is essentially subjective, and those recording information would err on the side of over-reporting, for fear of accidental breach of the legislation. This would result in so much information being recorded in the register that it would be unwieldy, and hence would detract from transparency, and it would clearly place a disproportionate burden on those required to register.

By way of example of the difficulty of defining ‘significant’, one of our members recently emailed the members of the Education Committee to let them know that some students studying a particular module were intending to attend a committee session as part of their studies, and asked if committee members could speak to the students after the formal session. The purpose of the request was partly to ensure the students had as productive and beneficial an experience as possible; and partly also to raise the profile of the project amongst MSPs – the latter for ‘policy’ reasons. Would that constitute ‘significant’ lobbying? Would it even constitute lobbying at all?

Furthermore, if emails or letters were to be included within the scope of the Bill, then, logically, we cannot see how it should not also cover social media, which would add massively to the volume of information to be recorded, as well as being fraught with difficulty around definitions. Suppose an individual mentions an MSP in a tweet or retweets an MSP’s tweet about a particular area of policy. Is this ‘lobbying’? It might be reasonable to exclude that from the scope of the Bill if the person’s Twitter biography included the disclaimers ‘tweeting in a personal capacity’ and/or ‘retweets not necessarily endorsements’. However, what if the person in question happened to be the CEO of an organisation with a direct interest in the area of policy under discussion on Twitter?

We have also noted calls for the scope of the Bill being extended to apply to civil servants and Special Advisers (SpADs). We believe that extending the Bill to cover these groups would place a disproportionate burden on organisations who engage regularly with the civil service. We are also unclear as to what risk or problem such an extension would serve to address. Civil servants are there to carry out the policies of the elected government, and lobbying of ministers and MSPs is already covered by the Bill. Civil servants, including SpADs, are also already covered by the Civil Service Code, and the civil service is a professional body that should be trusted, and part of its role is to liaise and consult with all interested parties, often on very technical and complex issues. In many cases, this consultation is by way of consultation papers that are published on the Scottish Government website, and
where the names of the organisations responding to those consultations are also already published.

In terms of the scope of information to be disclosed, we believe that the Bill as drafted is broadly proportionate. We have noted some stakeholders arguing that financial information should be disclosed. We would strongly oppose this on a number of grounds, not least commercial confidentiality. We would also suggest that money spent on lobbying is a very subjective measure. The correct message coming from the right person, who might be an unpaid volunteer, could have far more impact than an extensive and expensive campaign from an organisation that spends large amounts of money on public affairs activity but is not well co-ordinated or thought out. There would also be practical difficulties in defining any financial information that might be disclosed. Would it include the amount an organisation spent internally, i.e. on salaries, offices, and administrative support staff? In the case of smaller organisations and individual consultants, this could, de facto, lead to the disclosure of the salary of an individual or individuals. It would certainly mean the disproportionate disclosure of commercial information which would be helpful to competitors.

As regards the frequency of information to be submitted to the Clerk for inclusion in the register, we think that the six month period set out in Clause 11 of the Bill is probably broadly proportionate. However, some of our members have suggested that that it might be simpler, for administrative reasons, to provide information more frequently, e.g. every three months.

We therefore suggest that active registrants be allowed to provide information more frequently than six months, if they so choose.

Q 5. Do you feel that the definitions and exclusions are sufficiently clear? Do they, for example, allow individuals and organisations to easily know whether their activity requires to be registered?

As currently drafted, we believe that the definitions and exclusions on the face of the Bill appear to be reasonably clear, at least to organisations or individuals whose main function is lobbying. However, this may not be the case in practice.

We remain concerned that smaller organisations for whom lobbying is incidental to their main work, or individuals for whom lobbying is only a small part of their role may be put off from engagement with the Parliamentary process for fear of an inadvertent failure to comply with the Bill. We therefore believe that the Parliamentary guidance to be published under Part 4 of the Bill will be vital in ensuring clarity; that this guidance must, insofar as is possible, be written in plain language; and should be available before the registration provisions of the Bill come into force. This will be even more important should the scope of the Bill be extended in any way, e.g. to involve communication by telephone, as discussed in our answer to Question 4, above.

Issues of the need for potential clarification that have been highlighted to us by our members include:
The scope of government and parliamentary communication may prove difficult to define as this relies on mutual understanding of what had been said. For example, in the course of a meeting where a lobbyist sought to consult a politician on a planned factory closure, issues of government policy may be raised incidentally by the politician – making the meeting potentially registerable.

The Bill, as now drafted, covers lobbying where a person has to be present and communicate orally. This might cause confusion as an individual may form part of a group identified as meeting a minister or MSP, but not say anything subject to registration.

Stakeholders are often invited as guests to roundtables or receptions with dozens or even hundreds of other attendees where MSPs and Ministers will be present. This may include occasions where issues of government policy are raised. Where this MSP/Ministerial engagement was not pre-planned, it is not clear if this activity would be registerable.

While international government bodies are referenced, it is less clear how requirements would be enforced in relation to companies and NGOs from non-UK countries.

Q 6. The Bill’s Policy Memorandum states the Bill aims for a “light touch, educative approach” and that “criminal offences and penalties [are] provided for as a last resort”. What are your views on this approach?

We agree in principle that any regime requires sanctions for non-compliance. Any sanctions regime should be proportionate, and we are entirely opposed to the notion that criminal sanctions are at all appropriate for the registrations regime: the sort of behaviour that would merit such sanctions are already addressed under other legislation, such as the Bribery Act.

We are particularly concerned at the prospect of smaller organisations being subjected to criminal procedures while going about their duties in an open democracy. We would seek reassurances that complaints will not be put into the public domain until they have been investigated and that any malicious complaints would be dealt with severely as complaints to the Clerk /Commissioner are likely to have a serious impact on an organisations’ business, especially if they are small public affairs consultancies or sole traders. There appears to be no detail in Section 40 around what form a ‘Parliamentary censure’ might take, and the Committee should be aware that such censure might have a significant commercial and reputational impact on lobbying consultancies in particular. In some cases this might amount to the effective deprivation of someone’s livelihood. This is not to argue against the principle of having the sanction of such a censure, but rather to highlight its potential severity, as well as the need for a robust appeal process.

It also appears to us that the powers proposed for the Clerk of the Parliament in relation to the register seem very extensive. For example, Clause 7 (b) allows the Clerk to require registrants to provide ‘such other information provided by the registrant which the Clerk considers appropriate to include in the register’. We appreciate the need for flexibility, but this power appears somewhat open-ended. It is therefore important that there are proper checks and balances built in to the system from the outset.
Q 7. Are there any unforeseen consequences of the Bill as currently drafted?

The premise of the Bill, as it would apply to in-house lobbyists, effectively rests on the idea that the public affairs department – which might only consists of one or two people - undertakes all lobbying or at least has sight of everything relevant going on. This is very often not the case. In a large academic institution, for example, academics often have relationships of their own with politicians, and they will almost always consider those relationships to be based on their subject knowledge or expertise and the provision of advice, and which neither they nor an independent third party observer would see as ‘lobbying’. However, in the course of a discussion where they were giving technical advice (i.e. not ‘lobbying’) they might well get on to talk about some aspect of higher education policy, which would be regarded as lobbying. If the academic who did this failed to notify the public affairs department and hence the lobbying activity was not registered, would the institution in breach of the law?

It might be argued that the above problem could be addressed by ensuring that all staff in an organization should be instructed to notify the relevant public affairs staff in the event of any contact with MSPs. Indeed, most large organisations already have internal policies about staff not talking to the media or to politicians without reference to the public affairs or press teams. However, in the real world, not everyone always reads or adheres to such policies, particularly where the area concerned appears unrelated to the person’s ‘day job’, and we are aware of instances where this has happened.

It is also possible that by creating a category of registrants, that this role acquires a status that is misunderstood – implying that an organisation needs to be a registered lobbyist to engage. For consultants whose practice is to advise and facilitate (and do not, as a matter of principle, act as an intermediary for face to face communication) – there is a risk that by not needing to register they may be perceived as ‘unlicensed’, and hence disadvantaged commercially in the eyes of potential clients (who may use the register as a guide).

Our members have also raised concerns at the impact the Bill might have on situations where, for example, firms seek to make MSPs and ministers aware of commercially sensitive information, such as potential job losses or possible major inward investment/economic development, in advance of commercial decisions being taken. If such activity were required to be disclosed in the register, it might deter political engagement within the decision-making phase of important developments: we cannot believe that this is something Parliament would wish. It would also appear from the list of exclusions in paragraphs 13 and 14 of Schedule 1 that an organ of a nation state (a government corporation/wholly owned enterprise) would not be covered as lobbying, even were it to be engaged in commercial (including investment) activity on a competitive basis within the UK. We would welcome clarification of this point. If the interpretation is indeed correct, David might need to register, but Goliath would not.

While the Bill proposes the registration of face to face lobbying, it proposes that the code of conduct for persons lobbying MSPs should be applied to "making a communication of any kind to a member" which could lead to confusion over what
lobbying activity is to be registered and what lobbying activity is subject to the code of conduct.

Q 8. Are there any amendments that would, in your view, enhance the Bill?

We believe that there should be corresponding changes to the MSPs' Code of Conduct to ensure that there is full transparency in lobbying, rather than all of the responsibility for registering lobbying activity being put on lobbyists. This would ensure that if a lobbyist failed to register relevant activity – whether deliberately or through oversight, then the activity would be recorded elsewhere. Ministers already publish their engagements, and if there is a problem, real or perceived, with the transparency of lobbying activity, having MSPs similarly declare their meetings could help address this.

The MSPs Code of Conduct currently refers to commercial lobbyists at parts 5.1.3 and 5.1.4. We would propose this is amended to delete "commercial" and simply refer to lobbyists. This would avoid any implication that in-house lobbyists are exempt from these parts.

In part 5.1.5 of the MSP Code of Conduct it requires members to "consider keeping a record of all contacts with lobbyists". We would suggest this could be strengthened to require all members to keep such a record rather than to merely consider it.

It has also been suggested that meetings initiated by MSPs or ministers to be included in the scope of the Bill: as currently drafted, they would be excluded under Schedule 1. Including meetings initiated by ministers or members would appear logical, if the purpose of the Bill is to increase transparency. However, in practice, it may raise problems. For example, many charities have local shops, often staffed by volunteers, and registering a visit from a local MSP may not be notified to central public affairs staff – who would be responsible for registration - until many months after the fact, if at all.

Also, in the event that meetings initiated by MSPs or ministers are included within the scope of the Bill, we suggest that this should exclude ministerial working groups. There are large numbers of such groups and requiring individuals/organisations participating in them to include their meetings in the register would add nothing to transparency, since their membership and minutes of their meetings are already in the public domain. It is also the case that with some professional representative bodies, representation on such groups is via a mixture of paid employees (who might be required to register their activity under the Bill as drafted) and board/council/committee members who serve in an unpaid capacity, and who would not be required to register their activity under the Bill as drafted.

We believe that it would be helpful to include a ‘sunset clause’ in the Bill, and/or to build in an evaluation process to review the costs and benefits of the legislation on a periodic basis.

Clause 15 on the power to specify requirements about the register states that "The Scottish Parliament may by resolution make provision about this Part". We would
prefer to see secondary legislation used to specify requirements about the register in order to provide for proper process and transparency.

Clause 40 on Parliament's power to censure states that the parliament may "censure the person who is the subject of the report" without reference to what measures of censure may be available to the Parliament. We would welcome more detail on what measures of censure the Parliament would intend to use.

Clause 43 on Parliamentary guidance states that "The Parliament may publish guidance on the operation of this Act". We would propose the Bill is amended to state that "The Parliament will publish guidance on the operation of this Act" in order to remove any doubt that such advice will be provided.

Alastair Ross FCIPR
Convener
Association for Scottish Public Affairs
30 November 2015
Introduction

The British Medical Association (BMA) is a registered trade union and professional association representing doctors from all branches of medicine. The BMA has a total membership of around 150,000 representing around two-thirds of all practising doctors in the UK. In Scotland, the BMA represents around 16,000 members.

We welcome the opportunity to submit written evidence to the Standards, Procedures and Public Appointments Committee’s scrutiny of the Lobbying (Scotland) Bill.

1. Do you agree that the Bill is necessary and that the establishment of a Lobbying Register is desirable?

The BMA is supportive of the principal aims of transparency in lobbying that appear to be motivating the proposal to introduce a register of lobbyists, but is not convinced that a register is required.

Since devolution, there has been an open and transparent approach to engagement of the public and professions in the development of policy by all administrations, past and present. The consultation process is often set out very publicly and many organisations, including the BMA allow responses to be published. The legislative process too is very open, particularly during stage 1 with the publication of evidence received by external organisations and the public forum in which the Scottish Parliament Committees meet.

In our submission to the Scottish Government’s consultation on the proposals for this bill, we argued that a robust and enforceable code of conduct around lobbying that covers MSPs and all lobbyists would be a more meaningful and effective development than a register. We are therefore pleased to see that a code of conduct has been included in the bill as currently drafted, although consideration should be given to what – if any – enforcement mechanism will be attached to it as this has not yet been made clear.

2. How will the Bill affect you or your organisation?

The BMA is an active participant in Scottish public life and regularly meets with MSPs and Ministers to discuss health matters and issues that are of concern to doctors. This bill will therefore require the BMA to monitor and log any face to face contact members of staff have with MSPs or Ministers and submit appropriate details of such meetings in regular returns.
While this will undoubtedly create an added administrative burden to the BMA, we recognise and welcome the fact that some steps have been taken to minimise this burden since the Scottish Government’s consultation ahead of the bill being drafted.

The fact that the bill as currently drafted envisages an organisation based approach to the register in particular is a welcome one. While the register will still create an additional administrative burden for organisations like the BMA, that additional burden would be significantly greater if an individual approach was adopted.

In our submission to the Scottish Government, we made the point that organisations would still need to be actively involved in ensuring individual employees comply with the legislation under an individual approach, creating significant duplication of effort and greatly increasing the administrative burden involved in complying with the register. We therefore reiterate that an organisation based approach to the register is the correct one if the register is to avoid creating a disproportionately heavy burden.

Similarly, taking the approach of returns not being required when an MSP or Minister initiates the request for a meeting is a sensible one. Many organisations, including the BMA, are often asked to provide expert views on a particular policy by Ministers or MSPs. In the case of the BMA, this expert input will often be provided by a practising doctor. Excluding meetings where an MSP or Minister has sought out a meeting with an organisation from the register will help to ensure that there is no risk of people becoming unwilling to participate in providing such expertise. Additionally, it will cut down on the risk of organisations inadvertently submitting an incomplete return because staff who have little contact with politicians and therefore may be unaware of the register’s requirements were at a meeting or event where an MSP or Minister attended without being specifically asked to by an organisation.

3. Registration is triggered only when lobbying is being done in exchange for payment (either as a consultant or an employee) and does not capture lobbying carried out in the course of voluntary work or when it is done by an individual on his or her own behalf. Do you agree with this approach?

The BMA believes that it is vital that the ability of individuals to meet MSPs on their own behalf or to campaign voluntarily on issues is not compromised in any way. As such, limiting registerable activity to those who are paid by an organisation is a sensible approach to take.

It is uncontentious that the work of BMA Scotland’s Public Affairs Office whose staff are paid to engage politicians would fall within the scope of the register and should therefore be contained within submissions. However, consideration should be given to the status of other members of staff who are not expected to lobby for their organisation as part of their job description, but could potentially find themselves in contact with an MSP or Minister.

If being paid by an organisation – even when that payment is for a purpose other than lobbying - is sufficient to trigger a need to include meetings in a return, then organisations will need to put procedures in place to train and monitor all staff members in order to comply with this bill’s requirements. For larger organisations, this could be quite a significant undertaking.
If this is the approach that is taken, then the clause that is currently in the bill stating that meetings initiated by an MSP or Minister are exempt takes on an additional importance as it minimises the risk of organisations submitting inaccurate returns because a member of staff who was unfamiliar with the need to register found themselves in contact with an MSP or minister.

While staff from outside an organisation’s public affairs office (or equivalent) may on occasion find themselves at meetings or events attended by MSPs or Ministers, it is unlikely that they would seek to initiate such meetings without involvement from an organisation’s public affairs office who should be aware of the need to submit returns.

Some clarification is also needed around the status of meetings that were not initiated by either a lobbying organisation or an MSP or Minister. An example of this could be a chance discussion at a public conference where both an MSP and a representative of a lobbying organisation were on a panel. If neither party had initiated such a meeting, would it trigger the need to register it or not?

Consideration should also be given to the status of membership organisations and their members. While in general the doctors who hold elected positions in the BMA do work on behalf of the organisation on a voluntary basis and therefore would not trigger the reporting requirements of this legislation, some members who are particularly active on behalf of the BMA do receive honoraria payments in recognition of the time they have given up. Although these payments are *ex gratia*, it seems likely that they would trigger a need for any meetings with MSPs or Ministers they may decide to initiate to be included in the BMA’s returns. As these individuals are members of the BMA as an organisation rather than employees, monitoring their potential activity to include in returns may be challenging.

An alternative approach that could be considered would be to stipulate that registration is only required when lobbying is carried out by representatives of an organisation who are specifically paid to carry out lobbying activity, rather than any contact from someone who is paid by an organisation being enough to trigger reporting requirements regardless of what their actual job is.

4. **Do the provisions set out in the Bill succeed in striking a balance between capturing information of value and ensuring that access and participation with the work of Parliament and Government is not discouraged?**

The BMA is not convinced that a register of face to face meetings is required or that it would provide a particularly meaningful measure of all lobbying activity that takes place. However, we are strongly of the view that seeking to extend the register to include other forms of communication such as every email, social media or phone conversation would be an unworkable bureaucratic burden that would deter many organisations from engaging with the Scottish Parliament and Scottish Government.

If a register is to be created, then the approach being taken in the bill as currently drafted is largely the correct one, however the code of conduct included in the legislation should also be a robust and enforceable part of these plans.
5. Do you feel that the definitions and exclusions are sufficiently clear? Do they, for example, allow individuals and organisations to easily know whether their activity requires to be registered?

In our submission to the Scottish Government we stressed the need for a clear and unambiguous definition of what constitutes lobbying activity.

The approach taken by the bill as drafted – that any face to face meeting with an MSP or Minister to discuss a parliamentary or government related matter, by someone who is paid by an organisation and who initiates the meeting triggers the need for inclusion in reporting – is a relatively clear one.

While organisations may need some clarification around some of the specific cases already mentioned in this submission, there is no reason to believe that these could not be dealt with through publishing clear guidance to organisations rather than by amending the bill.

6. The Bill’s Policy Memorandum states the Bill aims for a “light touch, educative approach” and that “criminal offences and penalties [are] provided for as a last resort”. What are your views on this approach?

The BMA believe that this is the right approach to take if a situation is to be avoided where an organisation’s concerns about compliance leads to reduced political engagement. While we recognise the need for criminal offences and penalties to exist, in practice few if any organisations would be willing to endure the reputational damage that would accompany continued failure to comply with the register’s requirements.

Taking an educative approach, particularly in the years immediately following the register’s introduction, will help to ensure that organisations are not punished for genuine mistakes.

7. Are there any unforeseen consequences of the Bill as currently drafted?

In general, the bill as currently drafted strikes a balanced approach that would introduce the register while avoiding some of the most burdensome suggestions that have been mooted in relation to a lobbying register.

However, one unintended consequence from the bill as drafted may arise from the fact that it appears to be largely drafted with the way that lobbying consultancies and smaller organisations work in mind. Larger organisations that employ significant numbers of staff will find it difficult to monitor the day to day activity of every employee to ensure that they do not trigger a requirement to report contact with an MSP or Minister.

A consequence of this may be that instead of trying to monitor contact and include it in lobbying returns, the alternative approach of instructing staff who are not employed specifically to lobby to have no contact with MSPs or Ministers may be taken. This could deprive MSPs and Ministers of local perspectives affecting an
organisation that they might otherwise be offered and increase the ‘professionalisation’ of lobbying in Scotland.

8. Are there any amendments that would, in your view, enhance the Bill?

As has already been highlighted in this submission, the BMA believes that a robust and enforceable code of conduct on lobbying activity covering MSPs, Ministers and all lobbyists would be a far more meaningful development than a register of meetings.

While provision for such a code is included in the bill as drafted, the bill currently does not contain any reference to how that code would be enforced or what penalties would exist for breaching it. Additionally, the bill as drafted stipulates that the code of conduct will only apply to lobbyists, not to MSPs or Ministers. While MSP and Ministerial codes of conduct do set out how they should behave in relation to lobbyists, including statements of the behaviour expected of MSPs and Ministers in a code of conduct specifically on lobbying would reflect the fact that lobbying is a two way street and that the public expects probity from politicians as well as lobbyists.

Amending the bill to widen the code of conduct to cover the conduct of both lobbyists and politicians and to explicitly set out the consequences for non-compliance would be welcome improvements.

Additionally, a specific exemption should be included in the bill for negotiating activity around terms and conditions of employment.

When a trade union holds meetings with MSPs or Ministers to discuss policy or legislation then clearly that is lobbying that would fall within the scope of the bill and would need to be registered. However, Scottish Ministers also hold a role as employers who trade unions will at times negotiate with over the terms and conditions of public sector employees. It would be wrong for a trade union engaged in collective bargaining activity as defined in the Trade Union and Labour Relations (Consolidation) Act 1992 to be considered to be lobbying. If such negotiations were considered lobbying, it would invite third parties to involve themselves in setting public sector employee terms and conditions in a way that would not be acceptable in any other walk of life and would diminish the status of employees in relation to their employer. The conduct of trade union negotiations is already heavily regulated and should not fall within the scope of this bill.

While in practice such negotiations would usually be conducted with civil servants and therefore normally not trigger the reporting requirements in the bill as it is currently drafted, it is not uncommon for a meeting with ministers to be requested if there are difficulties reaching a settlement. As such, a specific exemption for collective bargaining activity should be added to this bill to prevent any possibility of negotiating activity being classed as lobbying – particularly if any consideration is given to widening the scope of the legislation to include meetings with civil servants.

Lastly, as outlined previously in this submission, consideration should be given to limiting the ‘paid lobbying’ definition to individuals who are specifically paid to carry out that function so as to avoid non-lobbyist staff who are unfamiliar with the
legislation from failing to report meetings and thereby triggering an incomplete return for an organisation.

The motivation behind introducing this register is to publish information around where regular, organised, paid lobbying is taking place. Capturing one-off, potentially inadvertent, meetings with an organisation’s staff members who are not employed to lobby is presumably not the motivation behind this bill, but ensuring that these meetings are not mistakenly excluded from an organisation’s return will be a significant source of the increased administration required by organisations.

Neil Dunsire,
Public Affairs Officer
BMA Scotland
27 November 2015
Standards, Procedures and Public Appointments Committee

Lobbying (Scotland) Bill

Written submission received from Cancer Research UK

Summary

Cancer Research UK supports the introduction of a universal register, accompanied by a code of conduct, in order to maintain and increase public confidence in lobbying. We believe that campaigning activity is hugely important and that bad practice in this field should be exposed and eradicated, using this opportunity to regulate all those whose primary professional purpose is to lobby.

We welcome the Scottish Standards, Procedures and Public Appointments Committee call for views into the Lobbying (Scotland) Bill. We believe that lobbying and campaigning activity is a hugely important tool for charities, whether used to encourage change or maintain a positive status quo, raise awareness, provide expertise to strengthen strategy, or otherwise help to achieve their vision. Cancer Research UK believes the Scottish Government should protect the ability of charities to campaign.

Cancer Research UK is the largest single funder of cancer research in the UK, and last year, we spent over £31 on cancer research in Scotland. Our unique position allows us to inform political debate and provide expert advice on the issues that matter to cancer scientists, doctors, nurses and the thousands of people in the UK living with cancer. Our Public Affairs team works in Europe, England, Northern Ireland, Wales, and Scotland to ensure cancer stays at the top of the political agenda.

Do you agree that the Bill is necessary and that the establishment of a Lobbying Register is desirable?

Yes. Cancer Research UK supports the principles of a transparent and universal register and the publication of an accompanying code of conduct. This will enable lobbying to increase its transparency and its reputation.

Campaigning or lobbying is a legitimate and important activity for charities to be involved in. Charity campaigning should be celebrated as a vital part of Scottish society which provides an opportunity for many people to participate in government decision making and the democratic process.

Charities, including Cancer Research UK, experience high levels of trust from the public. We need this to continue and encompass all elements of charity activity, including campaigning and working with the parliamentary process to advocate for change or maintain a positive status quo.
Lobbying and campaigning activity therefore needs to be undertaken in a transparent way, with integrity and clarity. We therefore recognise there is a need to regulate lobbying activity to uphold public confidence.

There are potential issues surrounding the unequal conditions imposed on charities versus other organisations involved in lobbying. Charities work to high standards, regulated by the Office of the Scottish Charity Regulator (OSCR). In order to increase trust in lobbying activities, efforts should be made to expose and eradicate bad practice.

**How will the Bill affect you or your organisation?**

Whilst we support a register, it should be recognised that its introduction would have an impact. For instance, Cancer Research UK campaigns in Scotland on various tobacco control issues and a register will require our in-house public affairs and campaigning team to be registered. This would require the charity to undertake additional administration.

In response to some of the specific details outlined in the draft Bill:

- We support the proposal for the register to be free-to-use, as any money spent by charities on reporting cannot be spent on fulfilling their charitable purposes
- The six-monthly frequency for returns is a reasonable and proportionate time-frame, and should help minimise the additional burden placed on charities
- The proposed level of information that is required to be captured should provide the right balance between transparency and proportionality
- We support the proposed three-tier oversight and enforcement system, comprising oversight by the Clerk, Commissioner investigation of potential breaches, and criminal offences and penalties as a last resort.

The introduction of a register in Scotland should also consider the potential for duplication with regimes proposed by Westminster and other nations. Any register would need to take into account the additional impact this would have on charities and other organisations working across multiple jurisdictions.

**You would only have to register if you were lobbying in exchange for payment (either as a consultant or an employee). You wouldn’t have to register if you lobby in the course of voluntary work or lobby on your own behalf. Do you agree with this approach?**

We believe that the register should apply to all professional lobbyists, both in-house and external. The Bill’s proposal of a universal register for professional lobbyists will achieve parity between in-house lobbyists in private organisations and those working within charities.

An individual should be included when the primary purpose of their role within their organisation is to campaign or lobby: in Cancer Research UK, for example, this could include campaigning and public affairs officers. Those who occasionally
undertake lobbying activity to support broader aims of organisations’ role should not be included, such as the chief executive officer of the charity.

We agree with the Scottish Government’s assessment that excluding lobbying undertaken in the course of voluntary work strikes an appropriate balance between the wider interest of society in having information about lobbying activity publicly available on the one hand and in not imposing reporting obligations in connection with personal or voluntarily made communications with MSPs and Ministers.

**Does the Bill strike the right balance between capturing valuable information while ensuring that access to participation with the work of Parliament and Government is not discouraged?**

As above, in response to some of the specific details outlined in the draft Bill:

- We support the proposal for the register to be free-to-use, as any money spent by charities on reporting cannot be spent on fulfilling their charitable purposes
- The six-monthly frequency for returns is a reasonable and proportionate time-frame, and should help minimise the additional burden placed on charities
- The proposed level of information that is required to be captured should provide the right balance between transparency and proportionality.
- We support the proposed three-tier oversight and enforcement system, comprising oversight by the Clerk, Commissioner investigation of potential breaches, and criminal offences and penalties as a last resort.

One element that Cancer Research UK believes would strengthen the proposals, and help trace the impact that lobbyists may be having, is financial disclosure. Listing funding streams in order to show who has financially supported lobbying activity, if this is not already clear, would provide valuable transparency that is not currently captured by the draft Bill.

**Do you feel that the Bill is sufficiently clear? Does it allow individuals and organisations to easily know whether their activity requires to be registered?**

To ensure all lobbyists fully understand their obligations, we would support the publication of 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 should 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.

This is in addition to the publication of a clear, statutory code of conduct alongside the Bill, which should be established in conjunction with campaigning and lobbying professionals, including those from the charitable sector. This code of conduct would set out clear expectations about how professionals should interact with MSPs, mirroring their own code of conduct. It should aim to improve lobbying standards.
Additionally, we believe there should be clear advice and guidance to help charities understand who should be on any register (similar to OSCR and Charity Commission guidance about their reporting requirements for Scotland and the rest of the UK).

About us

Cancer Research UK is the world’s leading cancer charity dedicated to saving lives through research. We support research into all aspects of cancer through the work of over 4000 scientists, doctors and nurses. Cancer Research UK spent around £31 million last year in Scotland on some of the UK’s leading scientific and clinical research. Our Cancer Research UK Centres in Edinburgh and Glasgow are bringing together experts in the local medical and scientific community – working in partnership to translate research into benefits for patients as quickly as possible. The charity’s pioneering work has been at the heart of the progress that has seen cancer survival in Scotland move from 1 in 4 in the 1970s to 2 in 4 today.

Gregor McNie
Senior Public Affairs Manager
Cancer Research UK
27 November 2015
Standards, Procedures and Public Appointments Committee  
Lobbying (Scotland) Bill  
Written submission received from Carers Trust Scotland  

1. Do you agree that the Bill is necessary and that the establishment of a Lobbying Register is desirable?

We value our access to policy makers, and it is vital that our work remains transparent for our own legitimacy as campaigners. We engage with the Scottish Parliament and Scottish Government solely to represent the needs and experiences of unpaid carers and campaign on issues that directly affect them, always evidencing this through research and consultation with carers and carers’ services. We already record (and in many cases, publicise) our interaction with politicians and policymakers to inform all our stakeholders, including funders and donors, about our activities; we must be transparent to all our stakeholders otherwise our validity as a charity and campaigning organisation would be compromised.

As our engagement with the Scottish Parliament is already fully transparent, we have no particular concerns with a register of lobbying work being publically available; the Bill’s provisions seem administratively proportionate and we are pleased that the onus for registration should be placed on organisations rather than individuals. However, we continue to question the need for legislation in this area, in line with our response to the consultation on proposals for the Bill:

- Several codes of conduct and codes of practice for organisations that lobby already exist and charities are regulated; these methods of regulating lobbying activity seem sufficient, given that there is no known bad practice in lobbying in Scotland.
- It is imperative that organisations, particularly in the third sector, are not prevented from taking part in the parliamentary process or penalised by not registering their lobbying activity. The Bill’s provisions around oversight and enforcement are good and will not be overly burdensome on organisations, but the awareness raising that accompanies this Bill must be clear to all who may be affected.
- A register that only collects information of face-to-face contact with MSPs will miss the opportunity to capture a great deal of significant lobbying activity that is carried out by phone and email, and that is directed towards special advisers and civil servants.
- Increased transparency and publicity of Ministerial and MSP diaries should also be considered in tandem with this Bill.

2. How will the Bill affect you or your organisation?

We engage in regulated lobbying as specified by the Bill, so we will have to register. It will require more stringent record-keeping of meetings and some time spent on awareness-raising with our wider staff team and board of trustees, as staff who may
not consider themselves to be lobbyists (such as trustees and volunteers) will be affected by this legislation and must be made aware of the requirement to keep track of the meetings they have with MSPs. As we are a network organisation, there will also be a further responsibility for us to inform and support our network about how this may affect them; these organisations are service providers, and frequently receive visits from their local MSPs in order to meet service users and discuss local issues, which would count as a ‘pre-arranged meeting or event’ under the terms of the Bill but would traditionally have not been considered as lobbying.

Our lobbying activity is not consistent and changes depending on Parliamentary activity that is applicable to our organisation's aims and objectives, or that affects our service users. Based on current proposals it is unlikely that we will ever become an ‘inactive registrant’, although this may be the case for the members of our Network.

3. Registration is triggered only when lobbying is being done in exchange for payment (either as a consultant or an employee) and does not capture lobbying carried out in the course of voluntary work or when it is done by an individual on his or her own behalf. Do you agree with this approach?

We agree that this is a reasonable approach – individual citizens who are engaging in the democratic process should not be expected to join a register of lobbyists. However, as expressed in our response to the consultation on proposals earlier this year, this distinction can cause problems for third sector organisations who may have both paid and voluntary staff engaged in lobbying activity, and furthermore may not be fully aware that activities they undertake could constitute regulated lobbying activity. These nuances of lobbying activity – on behalf of an organisation but not undertaken for payment – is common in the third sector but is difficult to capture in the provisions of this Bill. It is likely that organisations that are aware of this possibility will register their activity anyway, but this may tip the balance towards the register being overly burdensome for some organisations.

4. Do the provisions set out in the Bill succeed in striking a balance between capturing information of value and ensuring that access and participation with the work of Parliament and Government is not discouraged?

The current Bill provisions will not capture all information of value. As described above, the exclusion of electronic and telephone communications is an oversight. Moreover, meetings with senior civil servants, which would not be captured under the current Bill, can be equally useful in lobbying significance as meeting with parliamentarians, and as one of the Bill’s aims is to improve transparency, this leaves a gap. It seems obvious that lobbyists who did not want to disclose the details of their meetings would simply use methods of communication that do not need to be registered.

5. Do you feel that the definitions and exclusions are sufficiently clear? Do they, for example, allow individuals and organisations to easily know whether their activity requires to be registered?

The requirement to register following the first instance of lobbying activity is good, as it protects accessibility of the Parliament and removes an unnecessary burden from organisations and allows them to react quickly to developments such as the
introduction of relevant legislation. The classifications of active and inactive registrants is also useful for organisations whose lobbying activity is not consistent over time, although the administrative burden on both the Clerk and the registering organisations will not be fully clear until it is operational. Guidance under Section 43 of the Bill will presumably bring further clarity to the current provisions, and there will be support for the third sector through official and representative channels such as OSCR and SCVO.

As discussed above, there must be clarification of the activities of trustees, interns and other voluntary positions who are not paid but who carry out lobbying activity on behalf of an organisation, and hopefully this can be achieved in guidance too.

6. The Bill’s Policy Memorandum states the Bill aims for a “light touch, educative approach” and that “criminal offences and penalties [are] provided for as a last resort”. What are your views on this approach?

This is a reasonable approach and ensures that organisations who unwittingly breach the regulations will not be penalised. It is more likely that any breach of the register would be due to oversight rather than malicious intent, and it would be wrong for organisations or individuals to be unduly penalised for this.

7. Are there any unforeseen consequences of the Bill as currently drafted?

8. Are there any amendments that would, in your view, enhance the Bill?

As mentioned above, there is a risk that lobbyists and organisations who wish to conceal the nature of their lobbying activity will simply use methods of communication that do not have to be registered. An amendment to include electronic and telephone communications would enhance the general aim of the Bill to make lobbying activity more open and transparent, but the potential administrative burden would need to be taken into serious consideration.

Heather Noller
Carers Trust Scotland
30 November 2015
Standards, Procedures and Public Appointments Committee

Lobbying (Scotland) Bill

Written submission received from the Cross-Party Group on Volunteering and the Voluntary Sector

I write on behalf of the Cross-Party Group on Volunteering and the Voluntary Sector following our meeting on 24th November 2015.

An item on our agenda was the Lobbying (Scotland) Bill which is currently being scrutinised by your Committee. Mindful that the closing date for the submission of written views to the Committee is 30th November, it was felt that our meeting provided an opportunity for discussion on the Bill and its potential impact on existing arrangements and relationships with MSPs and Ministers and to determine if members wished the Cross-Party to make a submission to the Standards, Procedures and Public Appointments Committee.

The Group has asked me to convey to the Committee about the need for further clarity regarding the obligation for registration and whether all communications with a MSP, a member of the Scottish Government or a junior Scottish Minister would be deemed to be lobbying.

Examples were given of many Third Sector Organisations who neither employ nor engage personnel whose role is solely dedicated to lobbying on behalf of the organisation but have other paid staff who, as part of their remit, will have a requirement to communicate with a MSP, a member of the Scottish Government or a junior Scottish Minister. Do these organisations need to register?

Also, there was confusion as to whether communication requesting that a MSP, a member of the Scottish Government or a junior Scottish Minister to visit a project run by a Third Sector organisation would constitute ‘lobbying’.

The Group’s view is the Bill must not adversely impact on the Parliament’s principles of openness, ease-of access and accountability.

We urge the Committee to ensure that further clarification is provided to avoid further confusion.

Margaret McDougall MSP
Convener
Cross-Party Group on Volunteering and the Voluntary Sector
25 November 2015
Children in Scotland welcomes the opportunity to respond to the Committee’s call for evidence on the Lobbying (Scotland) Bill. We are an influencing and membership organisation, comprised of representatives from the voluntary, public and private sectors.

Children in Scotland is the collective voice for:
- children, young people and families in Scotland; and
- organisations and businesses that have a significant impact on children’s lives in Scotland

1. Do you agree that the Bill is necessary and that the establishment of a Lobbying Register is desirable?

In order to inform our response to the initial call for views in July, Children in Scotland asked our members if they agreed that a register of lobbyists should be introduced. 33 of our members responded to our survey and of those who responded via our online survey, over 85% agreed a publicly available register should be introduced in Scotland. One respondent added:

“As democratically elected representatives and as the individuals who retain the most political power (e.g. those with most influence of public policy), MSPs should be accountable to all constituents (individual and organisational), as such access to these representatives should not be limited. Though more should be done to ensure that smaller organisations and individuals have more access to MSPs - their opinions/causes/concerns matter too.”

Children in Scotland is supportive of the three core principles laid out by the Scottish Government. In particular we welcome the consideration that reforms should “not restrict the legitimate activities of non-party political organisations engaging in public policy.” As a membership organisation we are supportive of measures that will improve engagements with smaller organisations and individuals as well as welcoming transparency with larger groups and bodies.

2. How will the Bill affect you or your organisation?

As a third sector organisation, much of our written communications with MSPs are already in the public domain as we submit consultation responses, issue briefings and provide joint secretariat support to the Cross Party Group on Children and Young People. All of this information is already available on our website as well as on the Scottish Parliament and Scottish Government sites.

We welcome the definition of regulating lobbying activity as being “orally and in
person” (S1(1)(a)(i)) and “in relation to Government or Parliamentary functions” (S1(1)(a)(ii)). Due to the definition of parliamentary functions being rather wide, we would however welcome an inclusion in the Schedule to ensure that some of our members who provide services are not forced to register their activities if their local MSP visits their premises. It is commonplace for MSPs to visit services, charity shops or community initiatives to find out about the work undertaken in their local community, and we would not want any disincentives for MSPs or local organisations to undermine this type of activity.

3. Registration is triggered only when lobbying is being done in exchange for payment (either as a consultant or an employee) and does not capture lobbying carried out in the course of voluntary work or when it is done by an individual on his or her own behalf. Do you agree with this approach?

As communicated in our previous response, Children in Scotland believes that all lobbyists aside from individuals should be included to ensure that there is no confusion as to who needs to register and no differences in the information that they should share.

4. Do the provisions set out in the Bill succeed in striking a balance between capturing information of value and ensuring that access and participation with the work of Parliament and Government is not discouraged?

We are pleased that the reporting duties appear to be reasonable in content, however Children in Scotland believes that returns should be filled in every quarter as this is frequent enough to be of interest to members of the public.

We believe that if it is not updated regularly enough it will not improve transparency, particularly ahead of elections in which members of the public may wish to access the register in order to identify the interests of candidates wishing to re-stand.

5. Do you feel that the definitions and exclusions are sufficiently clear? Do they, for example, allow individuals and organisations to easily know whether their activity requires to be registered?

The definitions for who needs to register are clear, in that the regulations apply to all except individuals and volunteers.

Since the duty to register and indeed report on their activity falls on organisations, it is important that they are made aware of this through access to clear and accessible information on their duties.

6. The Bill’s Policy Memorandum states the Bill aims for a “light touch, educative approach” and that “criminal offences and penalties [are] provided for as a last resort”. What are your views on this approach?
We welcome this approach and feel that sanctions should be a last resort, particularly if they incur financial repercussions. Again, access to clear information and guidance for organisations is key to ensure that the Act does not introduce new barriers for organisations to engage with MSPs, Ministers or any members of the Scottish Government.

7. Are there any unforeseen consequences of the Bill as currently drafted?

In order to ascertain this, we would need to consult with our members to provide more robust scrutiny.

8. Are there any amendments that would, in your view, enhance the Bill?

As a membership organisation, again we would prefer to consult with our members on any potential amendments to inform our position.

Sarah McDermott
Assistant Policy Officer
Children in Scotland
30 November 2015
1. Do you agree that the Bill is necessary and that the establishment of a Lobbying Register is desirable?

We agree. Some CIPR members have questioned whether the introduction of a new statutory register is necessary given the insufficient evidence of poor lobbying practice in Scotland, but the Institute broadly believes mechanisms promoting transparency can help build public confidence in lobbying. We suggest the Government includes a sunset clause within the bill to review the legislation and its impact after three years.

2. How will the Bill affect you or your organisation?

How the bill affects the CIPR

The impact of the bill on the CIPR will depend largely on the scope of the legislation. The CIPR has held face-to-face discussions with MSPs and Scottish Government representatives and would be required to register and declare all such meetings in future. Registering and ensuring the Institute’s record remains up-to-date would inevitably impact on staff time. The burden of compliance would be limited based on our current levels of engagement but that this may change over time. If, however, the scope of the legislation was expanded to include other forms of communication, the compliance burden would increase significantly. Further resources would need to be allocated to ensure a record of all communications with the Scottish Government (emails, letters and telephone calls) was accurately maintained. These administrative responsibilities would reduce the amount of time staff could spend on other areas of work. Quantifying the overall costs associated with lobbying activity carried out by staff, for whom lobbying is not their sole responsibility, would be complicated and unproductive.

How the bill affects CIPR members

Given the level of detail within the bill, it is difficult to predict the impact any legislation will have on members. Some CIPR members working for public affairs consultancies primarily advise clients and facilitate political engagement, rather than actively lobby face to face. The impact of the bill on these members may be limited, but the impact on those who directly engage in lobbying activity is likely to be significant.

If the scope of the legislation is broadened to include various forms of communication, the impact would be far greater. Many large consultancies have electronic time recording systems which can be used to accurately record and maintain all lobbying activity via email, but such systems are unlikely used by the majority of in-house and charity organisations. Therefore, the requirement to
declare all forms of communication is likely to impact significantly on organisational resources including staff time and associated costs. Costs associated with lobbying within in-house teams are often “sunk” unless they can be allocated to a specific campaign investment, contract or invoice. As a result, predicting the financial impact of the bill for those members would be particularly challenging.

3. Registration is triggered only when lobbying is being done in exchange for payment (either as a consultant or an employee) and does not capture lobbying carried out in the course of voluntary work or when it is done by an individual on his or her own behalf. Do you agree with this approach?

No. Individuals exercising their democratic right to lobby should not be required to register but exempting unpaid lobbyists may create an invitation to avoidance. There is a possibility full-time, unpaid volunteers and agencies may run campaigns “pro bono” to avoid registration. Drawing a distinction between individuals lobbying parliamentarians on their own accord and agencies “employing” unpaid staff to run campaigns is a challenge for the Scottish Government. We have suggested the Government consider a mechanism to review the impact of this measure as a potential loophole, within a reasonable period of time. Limiting the number of exemptions will be crucial to ensuring the register’s credibility. The Institute strongly believes that in order for a level playing field to be maintained, all lobbyists must be required to register.

4. Do the provisions set out in the Bill succeed in striking a balance between capturing information of value and ensuring that access and participation with the work of Parliament and Government is not discouraged?

In its current form, the bill strikes a fair balance between capturing information of value and ensuring that parliamentary participation is not discouraged. There is a risk that any kind of regulation could be perceived as a constraint on access.

5. Do you feel that the definitions and exclusions are sufficiently clear? Do they, for example, allow individuals and organisations to easily know whether their activity requires to be registered?

There are two main issues which remain unclear.

- Incidental contact - Stakeholders are often invited to party conferences, roundtables and other receptions with dozens or hundreds of other attendees where MSPs and Ministers will be present. These meetings may present occasions where issues of government policy are raised. Although this MSP/Ministerial engagement was not pre-planned, it is not clear if this activity would require declaration.

- Non-UK engagement - It is unclear how requirements would be enforced in relation to companies and NGOs from non-UK countries. There should be a level playing field for all lobbyists
6. The Bill’s Policy Memorandum states the Bill aims for a “light touch, educative approach” and that “criminal offences and penalties [are] provided for as a last resort”. What are your views on this approach?

We agree this is a sensible approach.

7. Are there any unforeseen consequences of the Bill as currently drafted?

Public affairs practitioners not required to register may suffer reputational damage as a result of any future legislation. There is a danger that their legitimacy as public affairs specialists may be called into question. Registration may become confused with a „licence to practice”, which could result in clients becoming reluctant to take advice from „unlicensed” consultancies.

The exemption of unpaid lobbyists outlined in the response to question three could also inadvertently promote avoidance. Additionally, there may be a significant increase in Freedom of Information (FoI) requests to Government and Parliament triggered by the disclosure of contact with lobbyists.

8. Are there any amendments that would, in your view, enhance the Bill?

Disclosure responsibilities should be evenly balanced between lobbyists and MSPs. The bill would be enhanced if it compelled MSPs to publish diaries and details of their meetings with lobbyists. Section 5.1.5 of the MSP code of conduct already requires MSPs to “consider keeping a record of all contact with lobbyists”. We welcome the fact that an accurate record of ministerial engagements is already published on the Scottish Government Website, but feel this obligation should be extended to all MSPs. Requiring this would help spread the burden of the bill equally between lobbyists and parliamentarians. This information should also be more easily accessible from the Scottish Parliament website’s homepage, so that members of the public are able to quickly access information about MSPs engagements. Initiatives such as these that can help „open up” Parliament and promote transparency should be carefully considered by policy makers. Furthermore, we feel that communication with officials of an equivalent rank to minister should also be covered.

In general, we would view the addition of any clauses requiring the disclosure of financial information related to lobbying activity as unhelpful. In our view to do so could be commercially disadvantageous, particularly to smaller businesses and may potentially provide misleading information about lobbying. Existing legislation covering bribery and corruption should be invoked where there is any suggestion of improper activity. As stated in our previous consultation response, we would also welcome a system that allows „self-referral”.

7. Are there any unforeseen consequences of the Bill as currently drafted?

Public affairs practitioners not required to register may suffer reputational damage as a result of any future legislation. There is a danger that their legitimacy as public affairs specialists may be called into question. Registration may become confused with a „licence to practice”, which could result in clients becoming reluctant to take
advice from „unlicensed” consultancies. The exemption of unpaid lobbyists outlined in the response to question three could also inadvertently promote avoidance. Additionally, there may be a significant increase in Freedom of Information (FoI) requests to Government and Parliament triggered by the disclosure of contact with lobbyists.

8. Are there any amendments that would, in your view, enhance the Bill?

Disclosure responsibilities should be evenly balanced between lobbyists and MSPs. The bill would be enhanced if it compelled MSPs to publish diaries and details of their meetings with lobbyists. Section 5.1.5 of the MSP code of conduct already requires MSPs to “consider keeping a record of all contact with lobbyists”. We welcome the fact that an accurate record of ministerial engagements is already published on the Scottish Government Website, but feel this obligation should be extended to all MSPs. Requiring this would help spread the burden of the bill equally between lobbyists and parliamentarians. This information should also be more easily accessible from the Scottish Parliament website’s homepage, so that members of the public are able to quickly access information about MSPs engagements. Initiatives such as these that can help „open up” Parliament and promote transparency should be carefully considered by policy makers. Furthermore, we feel that communication with officials of an equivalent rank to minister should also be covered.

In general, we would view the addition of any clauses requiring the disclosure of financial information related to lobbying activity as unhelpful. In our view to do so could be commercially disadvantageous, particularly to smaller businesses and may potentially provide misleading information about lobbying. Existing legislation covering bribery and corruption should be invoked where there is any suggestion of improper activity. As stated in our previous consultation response, we would also welcome a system that allows “self-referral”.

Koray Camgoz
Public Relations and Policy Officer
CIPR
27 November 2015
Standards, Procedures and Public Appointments Committee

Lobbying (Scotland) Bill

Written submission received from Friends of Craighouse Grounds and Wood

The Scottish Government is keen to tell us that an independent Scotland would be like our wealthy Scandinavian country neighbours, yet we now discover we are not worthy of Scandinavian levels of transparency of government. Neil Findlay's proposals were sensible and proportionate, requiring some paperwork, but (as was pointed out by some representatives to the committee) no more than is already required of charities.

We, like many others, have made specific complaints about poor lobbying activities in Scotland. But they have been ignored. MSPs and lobbyists repeat often that there are "no lobbying scandals" in Scotland, yet no-one investigates any allegations. By watering down the proposed lobbying transparency bill to the point where it is described as "almost pointless" by experts analysing the issue, MSPs are ensuring that any scandalous behaviour never becomes public.

The claim is made that ministers’ engagements are recorded publicly and available on a Scottish Government website. In our case, we had to put in an FOI request and challenge delays over several months via both our MP and the Information Commissioner before details of the meeting were released. I have not been able to find this meeting on the Scottish Government website. Although this may be a clerical error (John Swinney's meetings for May 2013 in the published record are all June meetings for some reason) it is still the case that for Craighouse, the current system was not transparent.

It is important to understand what this issue is really about. Lobbying transparency is not about corruption, which is already illegal. This is about good, honest, politicians being given inaccurate information from which to make decisions. It is about the public excluded from the decision-making process, while money buys access and the ability to influence the information put in front of decision-makers.

It is about good governance. Lobbying officials is probably more of an issue than lobbying politicians, because it controls the official reports that elected representatives make decisions on. If those politicians understood that the reports they were reading were the result of speaking to one side and not another, then we believe that would enable them to put those reports in better context.

Countries that have stronger transparency of lobbying are wealthier than Scotland. Transparency will lead to better government through better information available to decision-makers. Scotland deserves better.

At Friends of Craighouse, we support Neil Findlay's excellent proposal and do not agree that it should be watered down.
Andrew Richards
Friends of Craighouse Grounds and Wood
29 November 2015
Standards, Procedures and Public Appointments Committee

Lobbying (Scotland) Bill

Written submission received from FSB

Introduction

As experts in business, FSB offers members a wide range of vital business services, including advice, financial expertise, support and a powerful voice in Government. Its aim is to help smaller businesses achieve their ambitions.

FSB is Scotland’s largest direct-member business organisation, representing around 19,000 members.

In addition to representing a number of small public affairs consultancies, our activities as a representative organisation will be affected by the proposals in the Bill. We also have concerns that the Bill as drafted could capture a wide range of activity by almost all of our members and their employees. We are also long-standing contributors to the better regulation debate and thus take a keen interest in any measures which would impact on the business regulation environment in Scotland.

FSB submitted a response to the consultation on proposals for lobbying legislation in July, in which we explained our opposition to introducing a register of lobbyists. This remains our position. In summary, given the lack of evidence of a specific problem, a legislative solution does not appear to be a proportionate response and is likely to have unintended consequences which could result in a less transparent lobbying environment in Scotland.

We also set out a range of questions about the impact of lobbying legislation on both individual small businesses and membership organisations. Some of these points have been addressed with the publication of the Lobbying (Scotland) Bill but a number of questions remain. This submission therefore concentrates on these issues, which broadly align with the Committee’s questions regarding the impact of the Bill on our organisation and the clarity of the Bill’s provisions.

Lack of clarity on the role of volunteers and individuals

In the policy memorandum accompanying the Bill, the Scottish Government states that:

“The Government considers that communications with MSPs and Ministers by individuals on their own behalf and communications made by individuals in a voluntary capacity, because they choose to associate themselves with a particular ‘cause’, should never be caught by the registration and reporting requirements imposed by the Bill.”

---

1 Paragraph 22, Policy Memorandum
We agree that small business owners, or their staff, should in no way be prohibited from raising issues of concern about their business with local MSPs or relevant Ministers. Equally, as members of FSB, they should be able to discuss wider issues affecting small businesses with parliamentarians. However, in both circumstances, the wording of the Bill leaves uncertainty.

Firstly, the schedule sets out that communications “made by an individual on the individual’s own behalf” are not to be regarded as lobbying. In this respect, businesses which are sole-traders or partnerships could be free to make representations about their own business, subject to the interpretation of s1(b). However, the situation is more worrying for small businesses which are incorporated (Scottish Government figures suggest 28% of businesses are incorporated). In these firms, even where there are no employees, defining the ‘individual’ is trickier, since the business owner is acting as a paid director/employee on behalf of another legal person – i.e. the company – when making representations. Regardless of whether it is the government’s intention that such activity is not intended to be caught by the requirements of the Bill, the sections as drafted could do so.

Secondly, we have concerns about the attempt to establish a dividing line between activities of volunteers (not regulated lobbying) and paid employees (regulated). This is principally done by using payment as the deciding factor.

“In focusing on lobbying undertaken as part of paid work, paid refers to payment of any kind but in particular does not include the payment of reasonable expenses, and so on.”

Payment is further defined as:

“(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.”

While the policy intent to exclude volunteers appears clear, the wording of the Bill is not. A number of our volunteer members across the country receive small honoraria or consultancy fees, for example if they hold an office-bearer position in a local branch.

---

2 Paragraph 21, Policy Memorandum
3 Section 3 (b), Schedule
In our view, the current wording of the Bill would mean such payment is within scope and, as a result, any of our members receiving such payment would be engaging in regulated lobbying if they communicated with MSPs or Ministers while representing the FSB, despite being (to all intents and purposes) volunteers.

The scope of section 1 and the schedule is so vast that it could catch any number of perfectly legitimate – indeed essential – aspects of the democratic process taking place. For example, the following would be count as regulated lobbying:

- An employee meets their MSP at a school Christmas Fete, when asked how things are going, they recount difficulties at work due to the modern apprenticeship scheme.
- A business owner attending Business in the Parliament and telling an MSP other than the one who invited them how well his business is doing thanks to the Small Business Bonus scheme.
- A business owner invites his or her MSP to his premises to celebrate Small Business Saturday and, during the visit, discusses town centre regeneration.
- An FSB branch secretary meets an MSP at a social event and gives them a copy of an FSB policy document.

Although not a direct concern for FSB, in considering the above, we do wonder how any public sector employees could make representations to their MSP about any aspect of their employment or their employer without taking part in regulated lobbying.

Therefore, as is stands, the Bill potentially places a barrier to genuine dialogue between politicians and many Scots about their business, or the company they work for. This is clearly the polar opposite from the policy intention of the Bill and we submit that it needs to be amended fundamentally before proceeding. In addition, further detailed guidance from the Parliament on this matter will be required before the new legislation takes effect, if many businesses and membership organisations in Scotland are to understand their responsibilities.

**Reporting, monitoring and oversight**

The Bill places a great deal of responsibility on the Clerk appointed to oversee the operation of the new regime. We note the intention to operate an informal, light touch approach to monitoring and compliance. However, given the potentially severe consequences for our organisation, members and employees, we have a number of concerns regarding oversight.

Given the potentially wide-ranging scope of the Bill for an organisation like FSB, keeping track of every regulated communication is likely to present a significant administrative challenge to our organisation. With the sheer amount of communication involved, there will also inevitably be errors in the information returned by large organisations, particularly relating to regulated activity not undertaken by direct employees.

In addition to the likelihood of mistakes, it is also seems likely that the Bill will generate a number of complaints and the possibility of mischief-making has to be
considered. With such complaints likely to be high-profile, the Clerk’s role in managing the process will be critical. In particular, while there must be a formal process for investigating complaints, the process should be staged so that less serious complaints could be dealt with in a more efficient, informal manner.

Susan Love
Policy Manager
Federation of Small Businesses
20 November 2015
Standards, Procedures and Public Appointments Committee

Lobbying (Scotland) Bill

Written submission received from Steve Hay

I am writing as a private individual with regard to the Lobbying (Scotland) Bill. I would not be in favour of registering lobby groups, as it may, under a future govt., restrict their influence i.e. a future govt. could more easily discriminate against/disregard groups they disagreed with, than if such groups were merely approaching the govt on an ad hoc basis.

Steve Hay
16 November 2015
Lobbying (Scotland) Bill

1. The Information Commissioner’s Office (the ICO) is the UK’s independent public authority set up to uphold information rights. We do this by promoting good practice, ruling on complaints, providing information to individuals and organisations and taking appropriate action where the law is broken.

2. The ICO enforces and oversees the Data Protection Act 1998 (the DPA) and the Privacy and Electronic Communication Regulations 2003, as well as the UK Freedom of Information Act 2000 and the UK Environmental Information Regulations 2003, both of which apply to reserved matters in Scotland.

3. The ICO welcomes the opportunity to comment to the Standards, Procedures and Public Appointments Committee on aspects of the Lobbying (Scotland) Bill (the Bill) that are relevant to our work in relation to the DPA.

4. We note that a similar register of those lobbying the UK Government was established by the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014. In responding to the Cabinet Office’s proposals, we welcomed the intention to introduce that register to increase transparency by making information easily accessible to the public about who is lobbying and for whom.

Publication of the register

5. Section 3 of the Bill will establish a register of lobbyists and the Clerk of the Parliament (the Clerk) must publish details of active registrants in such manner as he considers appropriate. The Clerk may also choose to publish information about inactive and voluntary registrants as he considers appropriate. The Clerk must also have regard to any parliamentary guidance issued under section 43.

6. Section 5(a) of the Bill requires registrants to provide certain information. If the registrant is an individual, they are to provide their name and, if they do not have a business address, their residential address. Section 5(d) requires any other person to provide their name and main office address. In the case of a self-employed person, their office may be their residential address. This information is personal data and consideration should be given to whether it should be made publicly available.

7. The second data protection principle says that personal information must only be processed for one or more specified and lawful purposes. According to the policy memorandum, the objective of the Bill is “increasing the public transparency of elected representatives’ activity”. This does not necessarily require that
members of the public have access to the addresses of registered lobbyists for the register to achieve its stated purpose.

8. We recommend that the Committee consider whether residential addresses should be published at all or, if they should, in what manner they should be published. For example, should an individual’s residential address be published in an online version of the register? Should it be restricted to those viewing the register in person, or only made available upon request?

9. We would be happy to enter into further discussions with the Committee to consider these issues in more detail, particularly at the point when any parliamentary guidance to the Clerk is being drafted.

Accurancy of personal information

10. Section 11 of the Bill allows an active registrant to advise the Clerk at any time if any of their details on the register are inaccurate. The Clerk must then update them as soon as practicable. This is a welcome provision as it gives effect to the right under the fourth data protection principle to ensure personal data is accurate and, where necessary, kept up to date.

11. However, we could not see an equivalent provision for voluntary registrants. To give full effect to people’s rights under the DPA, we recommend that the Bill contains such an equivalent provision.

Kept no longer than is necessary

12. We note the provision that a lobbyist may be reclassified as inactive either by application or on the decision of the Clerk. Consideration should be given to an additional procedure through which the lobbyist, having been inactive for a specified period, can be removed from the Register.

Privacy impact assessment

13. We welcome the Scottish Government’s publication of a privacy impact assessment (PIA) on the provisions of this Bill. However, we believe this would have benefitted from consultation with relevant stakeholders, including the ICO, as it should then have identified the issues in this response and incorporated solutions into the Bill. The ICO is always willing to assist the Parliament and the Government in considering the impact of legislation on personal privacy.

We trust the Committee finds this response helpful. We would be happy to discuss any aspect of it further at the Committee’s convenience if required.

Dr Ken Macdonald
Assistant Commissioner for Scotland
Information Commissioner’s Office
30 November 2015
Standards, Procedures and Public Appointments Committee

Lobbying (Scotland) Bill

Written submission received from Invicta Public Affairs

1. Do you agree that the Bill is necessary and that the establishment of a Lobbying Register is desirable?

Invicta Public Affairs is supportive of moves to introduce a statutory register of consultant lobbyists in Scotland. However, we believe that any register introduced in Scotland should be brought into line with the UK Register of Lobbyists, and restricted to consultant lobbyists only.

We do not see the case for extending the register to others who are engaged in lobbying activity, such as charitable organisations, equalities groups, trade unions and trade bodies. It is unclear to what extent these organisations engage in lobbying, as it will be part of a range of services offered and will not necessarily be undertaken on a formal and continuous basis. However, we do welcome the fact that the register is limited to organisations and is not extended to individual employees. Ultimately it is a matter for Parliament to judge who should be included within the register.

It is also important to note that, as a company, we do not consider there to be a problem with the lobbying industry in Scotland. The profession has not experienced the same issues at the Scottish Parliament as it has in Westminster. However, we are in favour of normalising and formalising the lobbying profession in Scotland through the introduction of a register. Increased transparency within the industry will help to improve the standard of engagement, as well as the quality of service provided to our clients.

Invicta Public Affairs is already included within the UK Register of Lobbyists and, as such, our activities in engaging UK Ministers have been made transparent and are available for the public to view with regard. This transparency is welcome as it helps us to improve our operating practices more effectively.

2. How will the Bill affect you or your organisation?

Invicta Public Affairs is already fully compliant with the UK Register of Lobbyists and provides information returns on a quarterly basis. As such, we are not concerned about the regulatory burden of a register in Scotland.

However, a six monthly return will significantly increase the administrative burden on Invicta Public Affairs, in particular if MSPs are to continue to be included within the Bill. Given the number of MSPs we engage with over a period of six months, the volume of information required would be difficult to manage. In turn, this would increase the likelihood of human error, which could be mistakenly construed as a deliberate attempt to mislead.
It should also be noted that the purpose of a register is to monitor engagement which could affect how decisions are made and what decisions are made by the Scottish Government. MSPs do not have a decision making role within Government and have to abide by a different code of conduct to Ministers.

Furthermore, MSPs are the representatives of the electorate and, as such, they are the first point of contact for their constituents. By including MSPs within the Bill the difference between engagement by consultant lobbyists and engagement by the civilian population is blurred. The distinct roles between Ministers and MSPs is not recognised in this Bill.

As such, Invicta Public Affairs believes that engagement with MSPs should be removed from the Bill and that the register should work on the basis of a quarterly return. This would align the administrative burden with the UK register, and avoid the accidental omission of any information.

3. Registration is triggered only when lobbying is being done in exchange for payment (either as a consultant or an employee) and does not capture lobbying carried out in the course of voluntary work or when it is done by an individual on his or her own behalf. Do you agree with this approach?

Invicta Public Affairs agrees that payment for lobbying activity should be the point of demarcation, as it is clear and quantifiable. However, there is a distinct difference between consultant lobbyists who are paid solely for undertaking lobbying activity and charitable organisations, equalities groups, trade unions and trade bodies who provide a range of services.

Currently the Bill is too broad with regards to the membership of the register. It is less clear to an employee of a charitable organisation or campaign group when they are engaging in regulated lobbying activity, as they are paid for undertaking their job role - a small part of which may include lobbying. On the other hand, a company like Invicta Public Affairs is paid a fee by other companies and organisations to specifically undertake lobbying activity.

Due to this distinction between consultant lobbyists and those who engage in lobbying as part of a job role or organisation, Invicta Public Affairs believes that any register introduced in Scotland should be restricted to the former.

Furthermore, we believe that a code of conduct should only be introduced if the register is restricted to consultant lobbyists. It is not possible to compare the practices of a company like Invicta Public Affairs, whose purpose it is to engage in lobbying activity, and those organisations / employees who do so as part of a much larger remit. As such, it would be difficult to apply the same code of conduct across the broad membership currently proposed in the Bill.

However, voluntary registration should be offered for those individuals, organisations and groups who partake in lobbying activity but are not paid a specific fee for this particular service. This will allow for transparency while recognising the difference between those who are paid to lobby and those who do so on their own behalf or as part of a larger remit / job role.
4. Do the provisions set out in the Bill succeed in striking a balance between capturing information of value and ensuring that access and participation with the work of Parliament and Government is not discouraged?

A balance has been struck with regards to the information that is required for submission. Indeed, Invicta Public Affairs welcomes the fact that no financial disclosure is required, and that the onus is on employers to register their organisation rather than on individual employees.

Both of these measures allow for employers to continue implementing their duty of care to their clients and their employees. Furthermore, the increased responsibility on organisations will encourage self regulation and will help improve standards in the lobbying industry.

We also welcome the fact that regulated lobbying activity is restricted to face-to-face engagement. Only this kind of direct engagement allows for influence of the kind which should be monitored by the register. Unsolicited engagement via emails and phone calls do not exert the same influence over decision makers as face-to-face meetings.

Moreover, the recording of this type of engagement will allow for a process of double disclosure, as any Ministerial meetings are already recorded within the Ministerial diary. This will increase transparency within the lobbying industry and allow for any information omissions to be flagged up.

If MSPs are to continue to be included within the Bill it is important that regulated lobbying activity on this level is also restricted to face-to-face engagement. Otherwise, the volume of work required for information returns would be too difficult for a company like ours to manage.

It should be noted that Invicta Public Affairs never issues communications it would not be comfortable disclosing to the public.

5. Do you feel that the definitions and exclusions are sufficiently clear? Do they, for example, allow individuals and organisations to easily know whether their activity requires to be registered?

Yes. However, Invicta Public Affairs believes that the requirement to register is currently too broad and that it should be restricted to consultant lobbyists.

6. The Bill’s Policy Memorandum states the Bill aims for a “light touch, educative approach” and that “criminal offences and penalties [are] provided for as a last resort”. What are your views on this approach?

Failure to adhere to a Code of Practice is a civil matter and, as such, should be dealt with through a civil sanction. Any criminal activity will be picked up by the Bribery Act 2010 and should be dealt with by the police and the procurator fiscal.

An appropriate sanction for failure to adhere to an industry code would be the issuing of a fine and / or removal from the register of consultant lobbyists, depending on if
the fine is paid and the seriousness of the offence. The organisation removed should also be named by the register as having failed to adhere to the Code of Practice.

This is a proportionate civil sanction which is transparent, exposing organisations who have failed to meet industry standards to clients, who may form their own judgements and act upon them accordingly.

7. **Are there any unforeseen consequences of the Bill as currently drafted?**

If MSPs are included within the Bill, there would be a large administrative burden on organisations and a significant volume of meaningless information submitted. In turn, this could result in the accidental omission of information due to the volume of meetings undertaken with local representatives on a six monthly basis.

MSPs have a distinctly different role to Ministers, in that they are not decision makers and can in fact partake in lobbying activity through their engagement with Government. Their roles are not comparable and, as such, MSPs should not be included within the Bill.

8. **Are there any amendments that would, in your view, enhance the Bill?**

Invicta Public Affairs would propose the removal of MSPs from the Bill, as well as the restriction of obligatory registration to consultant lobbyists.

**Invicta Public Affairs**
**14 December 2015**
Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors.

With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland’s solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom governments, parliaments, wider stakeholders and our membership.

We are pleased to consider and respond to Scottish Parliament’s Standards, Procedures and Public Appointments Committee (the Committee) call for written evidence on the Lobbying (Scotland) Bill. This response has been prepared on behalf of the Law Society of Scotland by members of our Lobbying working party.

General Comments

We note that the Bill was introduced on 29 October 2015. We believe that this Bill is of great importance to all those who regularly and occasionally engage with the members of the Scottish Parliament and Scottish Government Ministers. Given the importance of the Bill, we believe that it deserves to have proper scrutiny, to ensure that it will be an effective and well-functioning piece of legislation, successfully achieving a fair balance between those undertaking lobbying activity, other interested parties and those making important policy and legislative decisions.

We previously responded to the consultation, by Neil Findlay MSP, on a Proposed Lobbying Transparency (Scotland) Bill and contributed through written and oral evidence.

---

evidence to the Committee’s Inquiry into Lobbying. We also responded to the recent consultation on proposals for a Lobbying Transparency Bill and we have engaged with the Scottish Government’s Bill team during the drafting of the Bill.

As recognised by the Committee, lobbying is a necessary, important and legitimate activity in a democratic society, providing interested parties with the opportunity to engage with politicians in generating effective and considered public policy and legislation, and is a fundamental part of the political and legislative process. Lobbying activity helps to ensure that parliamentarians are well informed when considering proposed legislation which helps to ensure that the Scottish Parliament introduces laws and measures which have been fully considered and debated.

To fulfil our statutory obligations to both our members and the public, we regularly engage with the Scottish Government, the United Kingdom Government, and both the Scottish and United Kingdom Parliaments, providing comment, advice and guidance on legislative proposals and raising key issues for further consideration and debate. Supporting the principles of transparency, the Society is voluntarily registered on the European Commission’s Transparency Register, which provides the public with access to information of those who are actively engaged in guiding and influencing the EU decision-making process.

We recognise the importance of ensuring and maintaining the Scottish public’s trust and confidence in the political process and legislative system, and agree that transparency helps to provide effective oversight and scrutiny of the political process and is a central element of good governance. However, we also believe that this has to be balanced with ensuring that there is open communication between interested parties and those making important policy and legislative decisions. Any proposals to introduce a register must ensure that due consideration is given to a fair balance between these interests.

In considering the provisions of the Bill, we are pleased to note that a number of our previous comments and concerns have been taken into account. For example, we are pleased to note that the provisions will extend to all paid lobbyists, those working in-house and individually.

However we do have a number of comments and concerns to put forward in relation to the specific provisions contained within the Bill.

**Specific Comments on the provisions of the Bill**

In relation to section 1, regulated lobbying. We note that a person will be considered as engaging in regulated lobbying activity where he or she makes a communication orally and in person to a member of the Scottish Parliament (MSPs),

---

3 https://www.youtube.com/watch?v=ExjLWiPDZUk&list=PL4l0q4AbG0mkmae5aUjk3d0PkPSDKsHRD&index=5
5 Standards, Procedures and Public Appointments Committee 1st Report, 2015 (Session 4) Proposal for a register of lobbying activity
members of the Scottish Government or a junior Scottish Minister. This effectively restricts the provisions of the Bill to one singular medium of communication: direct face-to-face. As we have previously stated in earlier responses, engagement with MSPs and Ministers can take place through a number of other channels. It is not clear, and no evidence has been demonstrated, why lobbying through face-to-face communications would be covered by the register but engagement by telephone would not? We believe that imposing such a strict limit on the channels of communications covered risks bringing the system into disrepute, abuse and potential criticism.

The practical effect of restricting the communication to oral and face-to-face, will be that a person may convey orally and over the telephone (for example) views, opinion and advice with the purpose of influencing Government or parliamentary functions (as defined in section 2) and such communication will not be defined a lobbying. However, if that same person communicates the same views, opinion and advice with the same purpose face-to-face, then this will fall to be defined as ‘regulated lobbying’.

We are not suggesting that the register be extended to cover all methods of communication, but we do suggest that further consideration must be given to ensure it covers the most widely used methods, otherwise the policy aim of transparency may be only partially met. Alternatively, or in addition, we would suggest that the emphasis should be more focused on the nature and purpose of the communication.

It is worth noting that the approach taken in the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 is to include any ‘oral or written communications’. This will include e-mails and telephone calls etc.

In relation to restricting lobbying to communications with MSPs, Scottish Ministers and junior Ministers. As we have previously stated, it is also possible to successfully influence public policy decision making through effective engagement with other non-parliamentarians including special advisers and senior civil servants who themselves play a critical role in advising Ministers and devising government policy. We again suggest that consideration be given as to whether engagement with this wider group of individuals should also be included.

We note that section 1 introduces the Schedule to the Bill, which sets out those communications which will not be considered as lobbying. Paragraph 4(b) of the Schedule excludes communications made by a holder of judicial office within the United Kingdom or a member of the judiciary of an international court. As currently drafted, this would allow a holder of judicial office to lobby on any matter without a requirement to register. We would suggest that exempted communications for judicial office holders should be limited to communications relating to court and judicial functions.

---

6 Section 2 (3) Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014
**Paragraph 5** of the Schedule exempts communications made in the course of a meeting arranged by or on behalf of MSPs etc. It is not clear what the position would be if a lobbyist contacts the MSP by telephone, for example, with the intent of influencing those functions as set out in **section 2** (which will not trigger the requirements under the Bill to register) and during the course of that communication is invited in by the MSP to discuss further. Will this still be exempted?

We note that **section 1(3)** extends the provision of the Bill extra territorially. We would question how this is to be monitored and enforced. In addition, **section 42** makes it a criminal offence if a person fails to provide information as required under **section 8**. How will it be evidenced if a person fails to disclose a communication out with Scotland?

**section 3** relates to the ‘lobbying register’. It is not clear within the Bill if the register is to be a public register or not. We note that the Clerk will be under a duty to publish information contained in the register relating to active registrants, and the Clerk **may**, under **section 3(3)** withhold publishing information on voluntary and inactive registrants if the Clerk considers that the publication of such information would be inappropriate. The provisions, in our view, provide a wide discretion to the Clerk to determine what information to publish. For example, what information would be considered ‘inappropriate’ how is this to be measured and defined? If the register is not to be public, and given the wide discretions as set out in **section 3** for the publication of information, then the policy aim of public accessibility and transparency may be significantly diluted. In addition, how is the information (or the register if it is public) to be published, is this to be on the Scottish Parliament website for example. We would welcome clarification from the Scottish Government.

It is also not clear if the intention is to create two separate registers, or a single register. **Section 5** sets out the information regarding the identity of the lobbyist, **section 6** set out the information to be provided about the regulated activity. Will the information provided in accordance with clause 5 and 6 be collated into a single register or separate registers? We would welcome clarification from the Scottish Government.

We note **section 3** introduces three separate classes of lobbyists: active registrants, inactive registrants and voluntary registrants. These are defined at **section 3(6)**. It is not clear why there are to be distinct and separate categories of registrant. The provisions throughout the Bill relating to each distinct category of registrant, and the respective registration requirements are, we suggest, confusing and ambiguous and may be difficult from a bureaucratic perspective to administer. We would suggest that more consideration be given to an approach similar to that in the Transparency of Lobbying Non-Party Campaigning and Trade Union Administration Act 2014 which effectively only has one category of registrant.  

---

7 Sections 3-7 Transparency of Lobbying Non-Party Campaigning and Trade Union Administration Act 2014.  
In relation to the information to be provided. We note that section 5(c) imposes a requirement to list the names of partners. Many partnerships have a significant number of partners and may have offices throughout the UK.\textsuperscript{8} To require the names of each individual partner for large partnerships may be problematic, as partners may join and leave on a regular basis. This may also be a problem for a company (under clause 5 (b)) with a large number of directors or shadow directors.

Section 6 F (ii) requires that information be disclosed on whose behalf the lobbying activity is being conducted. As we have previously stated\textsuperscript{9}, from the perspective of Scottish solicitor firms who may conduct public affairs work on behalf of clients, solicitors have a duty of confidentiality to protect the identity of their clients. The registration of client details as set out in section 6F will breach the Society’s regulations on confidentiality. Confidentiality is a duty which is owed to the client, and ordinarily can only be waived with the client’s express permission. If the client does not agree to waive confidentiality, then effectively the law firm will not be able to engage with MSPs on their client’s behalf.

We also note that there is no provision which sets out the timescales for the publication by the Clerk of the information provided. This would appear to be open to discretion. Section 11(6) states that Clerk must update the register as soon as ‘reasonably practicable’ following receipt of the information return. This, we suggest, may be ambiguous. We would further suggest, supporting the policy intent of transparency and public accessibility that, publication timescales be expressly provided, for example 30 days following receipt.

Section 27 provides that the Scottish Parliament is not bound by the facts found by the Commissioner in relation to a complaint and the investigation thereof. It is not clear if this extends to any conclusion or recommendation of the Commissioner’s report to parliament.

Section 40 provides the Scottish Parliament with the power to censure. However, ‘censure’ is not defined. We would welcome clarification of what sanctions this will include, and would suggest that these be set out on the face of the Bill.

Section 43 provides that the Scottish Parliament ‘may’ publish guidance on the operation of the Lobbying (Scotland) Act. We would suggest that guidance ‘must’ be published to ensure that those proposing to engage in lobbying activity are fully aware of the registration requirements and how these requirements impact on their activities.

Section 44 imposes a requirement on the Scottish Parliament to publish a code of conduct for persons lobbying MSPs. We note that section 44 (3) states that lobbying means ‘making a communication of any kind’. This is inconsistent with section 1 and the provisions throughout the Bill which relate to communications

\textsuperscript{8} The Society is aware of one law firm, who undertake Public affairs work as a service to clients, with 400 partners.

\textsuperscript{9} http://www.lawscot.org.uk/media/229006/consultation_proposed_lobbying_transparency%20_scotland_bill.pdf
made ‘orally’. We suggest that the provisions for the proposed code of conduct be subject to full consultation with all stakeholders.

Call for evidence questions
1. Do you agree that the Bill is necessary and that the establishment of a Lobbying Register is desirable?

As we previously stated, we are not convinced that the Bill is necessary. We suggest that before consideration is given as to whether or not the bill is necessary, the clear aim and purpose of the register needs to be crystallised. There is no clear evidence of lobbying mischief or perceived mischief therefore it is difficult to comment if the policy intent itself is justified or if the Bill is necessary.

However, we do agree that from a public perception a lobbying register may support the principles of transparency, although as referred to above, it is not clear if the register is to be publically accessible, and if so how much information will be available given the wide discretion of the Clerk.

2. How will the Bill affect you or your organisation?

As we have referred to above, we are supportive of the principle of transparency, oversight and scrutiny in the legislative and political process. We regularly engage with MSPs, Scottish Ministers and junior ministers. We note that the exceptions of communications contained within the Schedule to the bill include, at paragraph 4(b) ‘a communication….required under any statutory provision or other rule of law’.

The Law Society of Scotland’s statutory objectives are set out within the Legal Services (Scotland) Act 2010. Section 1 of the 2010 Act provides that:

1. Regulatory objectives
  ‘For the purposes of this Act, the regulatory objectives are the objectives of—
  (a) supporting—
    (i) the constitutional principle of the rule of law,
    (ii) the interests of justice
  (b) protecting and promoting—
    (i) the interests of consumers,
    (ii) the public interest generally,
  (c) promoting—
    (i) access to justice,
    (ii) competition in the provision of legal services,
  (d) promoting an independent, strong, varied and effective legal profession’
  (e) encouraging equal opportunities (as defined in Section L2 of Part II of Schedule 5 to the Scotland Act 1998) within the legal profession,

To ensure that we actively meet our statutory objectives, we engage with MSPs, Scottish Ministers and senior civil servants. Schedule 1 of the Bill may, we suggest, exclude the Society’s face to face direct communications with MSPs. The Society may consider its position further as the Bill progresses.

10 http://www.legislation.gov.uk/asp/2010/16/contents
3. Registration is triggered only when lobbying is being done in exchange for payment (either as a consultant or an employee) and does not capture lobbying carried out in the course of voluntary work or when it is done by an individual on his or her own behalf. Do you agree with this approach?

We agree with this approach. However, there may be instances where a member of an organisation lobby’s on behalf of that same organisation and he or she receives no payment beyond expenses. Will this be considered lobbying activity under the provision of the Bill? We would welcome clarification from the Scottish Government.

4. Do the provisions set out in the Bill succeed in striking a balance between capturing information of value and ensuring that access and participation with the work of Parliament and Government is not discouraged?

One of the key principles from the formation of the Scottish Parliament, detailed in the Consultative Steering Group’s report on *Shaping Scotland’s Parliament* was that “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”. To allow, and encourage, active engagement with MSPs ensures that a voice is given to those most impacted, and supports this very important principle. We are pleased to note that consideration has been given to this principle in considering the introduction of a lobbying register and in drafting the provisions of the current Bill.

5. Do you feel that the definitions and exclusions are sufficiently clear? Do they, for example, allow individuals and organisations to easily know whether their activity requires to be registered?

As referred to above, the differing requirements for the three categories of registrant (active, inactive and voluntary) are confusing and may not be sufficiently clear in communicating their respective requirements to individuals and organisations.

6. The Bill’s Policy Memorandum states the Bill aims for a “light touch, educative approach” and that “criminal offences and penalties [are] provided for as a last resort”. What are your views on this approach?

We agree with the light touch, educative approach, with criminal offences and penalties as a last resort.

7. Are there any unforeseen consequences of the Bill as currently drafted?

We would suggest that, as information on lobbying activity is published, there may be an increase in the number of requests made under the Freedom of Information (Scotland) Act 2002 for details of the meetings referred to in the register. This may have cost implications and require increased resource.

---

8. Are there any amendments that would, in your view, enhance the Bill?

We will give further consideration to the provisions of the Bill following publication of the Standards, Procedures and Public Appointments Committee Stage 1 report and we will consider amendments at that time for suggestion at Stage 2. However, we would suggest that a review clause be included to measure and consider the effectiveness of the Act and to ensure that it is, and continues to, meet the policy intent.

Brian Simpson
Solicitor – dual qualified
Law Reform
The Law Society of Scotland
30 November 2015
About MND Scotland

MND Scotland is the only Scottish charity providing funding for research as well as care, information and support for people with MND and their families. We are the proud 2015 winners of the Scottish Charity of the Year and People’s Choice Awards.

Introduction

MND Scotland responded to the initial Scottish Government Consultation on Lobbying Transparency. We welcome the opportunity to respond to the Bill but it would seem that many of the concerns we identified in the initial consultation still remain.

Consultation questions

1. Do you agree that the Bill is necessary and that the establishment of a Lobbying Register is desirable?

    No, we do not agree with either of these points. As highlighted in our original consultation submission, chapter 1, page 3 of that consultation document stated ‘no concerns have been identified about the probity of lobbying in Scotland.’ We therefore feel neither a Bill nor Register are necessary.

2. How will the Bill affect you and your organisation?

    Our charity holds an exhibition and reception at the Scottish Parliament once a year during MND Awareness Week. Three members of staff ‘man’ the exhibition but potentially all our small staff team of 15 people would attend the reception. They will speak to MSPs about our charity’s work and this may or may not include activity such as campaigns. Section 5 (b) of the Bill indicates that our charity would be the registrant. However, section 6.(2).(e). suggests that the names of all our staff would need to be recorded if they have conversations with MSPs which could be deemed as lobbying. Apart from this being a bureaucratic burden for our organisation, it may discourage members of our small staff team from attending Parliament receptions. This would make it very difficult for us to hold such events and ultimately it is people affected by MND – our guests and the people we represent - who would lose out.

3. Registration is triggered only when lobbying is being done in exchange for payment (either as a consultant or an employee) and does not capture lobbying carried out in the course of voluntary work or when it is done by an individual on his or her own behalf. Do you agree with this approach?
No, we do not agree with this approach. Charity employees are paid but they are lobbying solely on behalf of the vulnerable people the charity represents. These vulnerable people are often not well enough to lobby themselves and need others – charities – to do it for them. The differentiation here is, therefore, not helpful. Charity employees – not just volunteers – should be exempt. If this legislation discourages small charities from lobbying, it is harming the vulnerable people they represent who are unable to lobby themselves.

4. Do the provisions set out in the Bill succeed in striking a balance between capturing information of value and ensuring that access and participation with the work of Parliament and Government is not discouraged?

No. As outlined in point 2, we believe that staff from our charity and other small charities will be discouraged from legitimately engaging in the work of the Parliament and Government.

5. Do you feel that the definitions and exclusions are sufficiently clear? Do they, for example, allow individuals and organisations to easily know whether their activity requires to be registered?

No. We feel that the Bill is most definitely not clear. The wording of the Bill suggests that all our staff engaged in Parliamentary work, like receptions, would need to have their details included in the Register but this is not explicitly clear. In addition, the type of lobbying that needs to be registered also appears unclear. Section 1 (a)(i) states ‘...the person makes a communication which is made orally and in person to a member of the Scottish Parliament, a member of the Scottish Government or a junior Scottish Minister.’ However, section 44 (3) states ‘In this section, “lobbying” means making a communication of any kind to a member of the Parliament in relation to the member’s functions.’

6. The Bill’s Policy Memorandum states the Bill aims for a “light touch, educative approach” and that “criminal offences and penalties [are] provided for as a last resort”. What are your views on this approach?

Talk of “criminal offences and penalties” sounds very heavy handed to employees of small charities and will undoubtedly discourage many from legitimately engaging in the work of the Parliament.

7. Are there any unforeseen consequences of the Bill as currently drafted?

The bill is unclear and needs redrafted.

8. Are there any amendments that would, in your view, enhance the Bill?

Yes. Charities should be exempt from registering for the reasons outlined in response to question 3. They are lobbying solely for the benefit of the vulnerable people they represent. If charities are not exempted, they must genuinely be allowed to register as one body without having to include the name of every employee who attends a Parliament reception or exhibition who may or may not be engaged in what is deemed to be lobbying activity with MSPs.
Susan Webster,
Head of Policy and Campaigns
MND Scotland
30 November 2015
Standards, Procedures and Public Appointments Committee

Lobbying (Scotland) Bill

Written submission received from NFU Scotland

Introduction

1. NFU Scotland (NFUS) welcomes the opportunity to respond to the Committee’s inquiry on the Lobbying Transparency Bill. As was outlined in its initial response to the Scottish Government’s consultation exercise on the topic in the summer, NFUS is supportive of any initiative to encourage transparency those working in Scottish public affairs and elected representatives. As a lobbying organisation, NFUS is always enthusiastic to promote the communication we share with elected representatives to our members as a record of our work on behalf of their interests, and we consider this to be good practice.

2. Whilst NFUS supports the laudable aims of the Bill, there does remain some confusion on how the Bill will operate in reality, particularly for organisations with complex structures such as NFUS. This response asserts some of the considerations and concerns that NFUS outlined in its initial response to the consultation, and key areas requiring clarification.

NFU Scotland structure

3. NFUS is Scotland’s premier farming lobby organisation, and represents over 8,500 members across nine regions in Scotland. NFUS represents the interests of Scottish farmers, Scottish farming (including crofting) and all of the associated interests and concerns. NFUS also has a growing professional membership base.

4. The mission statement of NFUS is to “promote and protect the interests of our members by influencing government, the supply chain and consumers in order to secure a sustainable future for Scottish agriculture.”

5. Clearly, NFUS by its very nature exists solely to lobby governments, elected representatives, public bodies and wider stakeholders. As outlined, whilst NFUS has no issue with legislation to improve transparency between elected representatives and public affairs professionals, it is vital that the legislation is enacted in a way which does not invite accidental transgressions from organisations such as NFUS which operate over a wide network of representatives.

6. NFUS currently employs 30 permanent paid staff, the majority of whom will have contact with elected parliamentarians and Scottish Government to varying degrees. NFUS staff are answerable to the 27 members of the Board of Directors, all of whom are paid an honorarium. In addition, NFUS has a contract of service with a network of over 70 NFU Mutual Group Secretaries
for member recruitment and retention, who are self-employed but receive commission payments from NFUS for their services. Since January 2014, the Union has also employed a full-time Parliamentary Officer, who is responsible for co-ordinating the majority of public affairs activity with elected parliamentarians. However, as far as possible grassroots and face-to-face contact with parliamentarians from members and staff alike is encouraged. It may, therefore, prove difficult to stay abreast of all face-to-face communications, particularly if the entirety of NFUS’s network is to fall in to the legislation.

Areas requiring clarification

7. As suggested, NFUS has concerns that the definition of those ‘paid to lobby’ in Schedule 3(b) of the Bill is not sufficient to clarify who the intended targets of the Bill will be. NFUS considers it important that the Committee presses Scottish Government to engage with organisations to discuss how this might apply to more complex organisational structures.

8. Further detail on where the legislation will begin and end would also be of great value. As the Committee members will be aware, much ‘lobbying’ activity is conducted in regular pre-planned meetings with public representatives, but on occasion, spontaneous discussion will take place in other contexts (e.g. agricultural shows, events and dinners, etc). Again, NFUS seeks reassurance that the legislation will be drafted in a way that won’t invite accidental transgressions for this type of interaction.

9. NFUS also notes that often, lobbying activity undertaken with elected representatives will be in regard to sensitive or confidential matters on behalf of individual members. The Bill must recognise that the integrity of member interest organisations such as NFUS cannot be undermined by the requirement to publish details of such meetings. Further information on the levels of detail required from lobbying organisations when recording lobbying activity in the register would be very welcome.

Clare Slipper
Parliamentary Officer
NFU Scotland
25 November 2015
Standards, Procedures and Public Appointments Committee

Lobbying (Scotland) Bill

Written submission received from OSCR

1. Background

1.1 The Scottish Charity Regulator

The Office of the Scottish Charity Regulator (OSCR) is established under the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act) as a Non-Ministerial Department forming part of the Scottish Administration. OSCR is the independent registrar and regulator of over 23,800 charities registered in Scotland.

The Standards Procedures and Public Appointments Committee (the Committee) has issued a call for evidence on the Lobbying Bill outlining a series of specific questions they are seeking views on.

2. Response

2.1 Context

In our previous submissions to the Scottish Parliament’s Standards, Procedures and Public Appointments Committee in respect to their inquiry into lobbying and the Scottish Government consultation on the planned Bill, we highlighted the need for proportionality in the scope and requirements of a Register of Lobbyists:

“Transparency in public life is important. The proposal of a register of lobbyists is one route towards making lobbying transparent. If such a register is to be created, it is essential that it is clear who is required to register and what they are required to register. Proportionality comes into play and any negative impacts across the charity sector should be mitigated wherever possible. This would be important both in terms of minimising the regulatory burden for charities, especially small charities, as well as ensuring that the principle of accessibility to the Scottish Parliament is upheld.”

We also stressed the diversity of the charity sector in Scotland and the potential for disproportionate impact on the majority of Scottish charities that have an income of less than £25,000. Many of these small charities have a very limited 'professional' capacity to take part in lobbying activity and are unlikely to have been the focus of the original intentions of the Inquiry and subsequent proposals.

2.2 Questions on the general principles

1. Do you agree that the Bill is necessary and that the establishment of a Lobbying Register is desirable?
As previously indicated we are in favour of increasing transparency in public life and encouraging engagement with MSPs, whilst minimising the administrative burden on charities. However, it is important that any registration would not create an unnecessary burden for charities nor, indeed, stop or discourage engagement with MSPs and Ministers, if that is what they need to do to further their charitable purposes.

2. **How will the Bill affect you or your organisation?**

As reflected in earlier submissions the register may increase queries and concerns to OSCR about political activity by charities.

3. **Registration is triggered only when lobbying is being done in exchange for payment (either as a consultant or an employee) and does not capture lobbying carried out in the course of voluntary work or when it is done by an individual on his or her own behalf. Do you agree with this approach?**

In our consultation response to Scottish Government, we highlighted that:

‘it is not clear whether ‘professional lobbyists’ who may volunteer their skills for a charity would need to register that area of voluntary work.’

We are pleased to see that the Bill clarifies this position.

4. **Do the provisions set out in the Bill succeed in striking a balance between capturing information of value and ensuring that access and participation with the work of Parliament and Government is not discouraged?**

Yes, however, we would question whether excluding electronic communications, online meeting facilities and social media takes full advantage of the opportunity to ‘future proof’ the Bill by addressing these alternative methods of communication.

5. **Do you feel that the definitions and exclusions are sufficiently clear? Do they, for example, allow individuals and organisations to easily know whether their activity requires to be registered?**

We believe that the definitions set out in the Bill are clear; however, whether it will allow individuals and organisations ‘to easily know’ if their activity is caught will be very much dependent on that activity. We would hope to see comprehensive guidance with illustrative examples to ensure that individuals and organisations understand the requirements and how they might apply to them.

6. **The Bill’s Policy Memorandum states the Bill aims for a “light touch, educative approach” and that “criminal offences and penalties [are] provided for as a last resort”. What are your views on this approach?**

We welcome the light touch approach and in line with our own principles of proportionate regulation.

7. **Are there any unforeseen consequences of the Bill as currently drafted?**
No comment.

8. Are there any amendments that would, in your view, enhance the Bill?

No comment.

3. Conclusion

OSCR has welcomed the opportunity to respond to this call for evidence and we look forward to developments in this area.

Caroline Monk
Engagement Manager: Policy and Guidance
OSCR
30 November 2015
Standards, Procedures and Public Appointments Committee

Lobbying (Scotland) Bill

Written submission received from PRCA

We welcome the opportunity to contribute: this call for written views, alongside our previous work with the Bill team and our contact with the Committee, should go some way to providing a full and consistent industry view on the Lobbying (Scotland) Bill as it currently stands.

- We believe that a Bill is necessary and support the establishment of a Lobbying Register in Scotland: this has been our longstanding position.

- The PRCA will continue to operate the industry’s Public Affairs Register alongside this and will continue to offer guidance and assistance to members on their regulatory requirements.

- Individuals representing themselves to the institutions of government should not appear on a Lobbying Register in Scotland. It is, however, vital that those conducting lobbying in a voluntary or pro-bono capacity are captured: the current loophole is deeply undesirable. A lobbyist is a lobbyist is a lobbyist and there must be a level playing field.

- We do not believe a balance has been achieved between capturing information of value and ensuring access and participation in democracy are not discouraged: to remedy this, the amount of information required by registrants should be reduced to a number of essential categories. This ought to be framed by the fact that those who are lobbied already have access to a great deal of information.

- The current definition of lobbying is narrow: pursuing a working, real-world definition would ensure the widest coverage possible.

- An educative approach is by-and-large the best approach: the amount of education required, of course, hinges on how many of the issues raised in this consultation response remain unresolved.

- There is a real and pressing risk that this Bill, as it stands, could undermine the industry’s own ethical standards, captures swathes of information that is not of value and does not cover a great many of those who are actually lobbied. We continue to have concerns around how this Lobbying Register in Scotland will be overseen and believe that the time, cost and opportunity costs suggested in the Bill’s Explanatory Notes is an underestimate if these issues are not addressed.

Introduction

- The PRCA is the UK professional body representing lobbyists and communications professionals. Our membership includes consultancies (including around 75% of the “PR Week Top 150”), in-house teams (including
banks, charities and the entire Government Communications Service) and also individual practitioners. We represent around 350 consultancies and 250 in-house teams. We are the largest association of our type in Europe.

- Of our 18,000 individuals who are members of the PRCA, over 1,000 are lobbyists.

- There are currently 98 members on the PRCA Public Affairs Register. This includes the largest consultancies such as MHP Communications, Weber Shandwick, H+K Strategies and Edelman, for instance. We also represent in-house teams for organisations as diverse as the NSPCC, AXA, Visa, Local Government Association and The Law Society.

1. Do you agree that the Bill is necessary and that the establishment of a Lobbying Register is desirable?

- The PRCA is in favour of a statutory Lobbying Register in Scotland to promote transparency and public confidence in the Scottish political institutions and the wider lobbying industry. This has underpinned our previous work on the topic and continues to inform our approach.

- Lobbyists seek to inform as well as influence policy so that policymakers can make decisions with the best possible understanding of the effect and implications legislation or regulation will have. A lobbyist is not defined by any specific profession but rather “by the act of lobbying in a professional capacity” itself.

- The above must be caveated by the reality that any suggestion of poor practice from those who engage in lobbying is patently false.

- A Lobbying Register in Scotland is desirable; a Bill is necessary; this particular Bill as it is currently drafted, however, needs improvement.

2. How will the Bill affect you or your organisation?

- The Lobbying (Scotland) Bill affects the PRCA in four different ways: as an organisation which lobbies, as an organisation representing the lobbying industry, as an organisation which runs the industry’s voluntary register and as an organisation which provides advice and guidance to members on matters of regulation.

- Firstly, the PRCA will be required to register. As an organisation which lobbies in Scotland and with multiple individuals carrying out that work disclosed on our own voluntary register – ranging from a Public Affairs, Policy and Research Manager through to a Director of Communications, Events and Marketing – we welcome the fact that the 80% of lobbyists who work in-house will feature.

- Secondly, many of our members will be required to register. Our membership includes consultancies (including around 75% of the “PRWeek Top 150”), in-house teams (from banks to public sector teams to charities), and also individual
lobbies. A significant number of our members lobby from the offices in Scotland – including Grayling, Weber Shandwick and Bellenden – and a great many conduct this same action from offices around the UK, including London.

- Thirdly, any new register of lobbyists must exist alongside our own PRCA Public Affairs Register and complement the existing framework to ensure openness. In terms of how this affects us as the largest association of our kind in Europe, we will continue to lead on voluntary disclosure for the industry, guide members according to the PRCA Code of Conduct and uphold industry ethics.

- Finally, the interplay between our register and a Lobbying Register in Scotland will require us to release guidance, assist members, explain differences and ensure that due diligence is followed in the course of both registers. Following our experience with the Office of the Registrar of Consultant Lobbyists, we would expect this to take the form of regular bulletins, reminders, roundtables and one-to-one consultation.

3. Registration is triggered only when lobbying is being done in exchange for payment (either as a consultant or an employee) and does not capture lobbying carried out in the course of voluntary work or when it is done by an individual on his or her own behalf. Do you agree with this approach?

- This legislation should provide certain common sense exemptions to protect the relationship between an MSP and their constituents: whilst the register should include all those who meet the definition and the legislation must be scrutinised to avoid possible loopholes, an individual representing themselves on personal matters should not be considered a lobbyist here.

- Other exemptions should cover the provision of information or evidence in response to an invitation, in response to a court order or enactment or as part of a tender process.

- Addressing the exclusion of voluntary work, this risks excluding important work done on a pro-bono basis. To give a real world example, a number of lobbyists give their time and expertise by joining the PRCA at meetings with politicians and civil servants alongside helping us to plan this work. Turning specifically to lobbyists working as consultants, this would also exclude work counted as overservicing (time and activities carried out above and beyond the agreed project fee or retainer fee which may not be reclaimed from the client).

- This exclusion also raises a number of unintended consequences. For example, it suggests that lobbying is confined specifically to what we might call the lobbying industry. Concurrently, it goes some way to suggest that there exists a class of paid lobbyists and a class of voluntary lobbyists whose work is so radically different that the former is required to register and the latter is not.

- A lobbyist is a lobbyist is a lobbyist and there must be a truly inclusive Lobbying Register in Scotland with a level playing field.
4. Do the provisions set out in the Bill succeed in striking a balance between capturing information of value and ensuring that access and participation with the work of Parliament and Government is not discouraged?

- We do not believe that – in the provisions set out in the Bill – a balance has been achieved.

- Our industry believes in a balanced and proportionate approach towards the information required will result in a Lobbying Register in Scotland that is both useful to the end user (ultimately, the public and politicians), not overly burdensome for the registrant (lobbyists) and which reflects the industry’s own successful voluntary models (the PRCA Public Affairs Register).

- If we are concerned with capturing information of real value, the Lobbying Register in Scotland ought to include the following details: the registered name and (if applicable) any trading names to ensure that the end user has access to the same basic information as those being lobbied; the office(s) conducting lobbying activity; the best point of contact for any lobbying queries which would allow the public to see the designated employee for compliance and make contact with them if necessary; employees conducting lobbying; and whether or not the organisation complies with a relevant code of conduct.

- Specific transparency details – such as whether an employee is a councillor or whether they currently hold an elected role in a political party – ought to be considered.

- The Bill as it stands would require lobbyists to provide the name of the person lobbied; the date; the location; a description of the meeting; a statement as to whether it was done on the registrant’s own behalf or for a client; and the purpose of the lobbying. There is a significant cost to capturing all of this information.

- The Government could meet a great deal of its own aims by, for example, ensuring that diaries are properly updated and published. Placing the onus solely on lobbyists discourages participation with Parliament and sits uneasily with the fact that democracy has never been stronger in Scotland.

5. Do you feel that the definitions and exclusions are sufficiently clear? Do they, for example, allow individuals and organisations to easily know whether their activity requires to be registered?

- We recognise that this is a devolved matter for Scotland and that many of the references to Westminster’s Lobbying Act can distract from this or appear unhelpful, but in this instance we believe it would be fruitful to achieve what they did not: a correct definition from the start.

- We appreciate that – following meetings and what was said at evidence sessions – the Bill “is unlikely to survive” in its present form and believe that now is the time to look at changing the definition to a working, real-world one that would cover all lobbyists.
Whilst the definitions might make sense to stakeholders closely involved with the Bill or in the contexts of the Lobbying Act, it would instead be fruitful to ask: “do you feel that the definitions and exclusions are sufficiently clear to the public, businesses, lobbyists and politicians themselves?” Whilst all four categories of end user approach this from a different angle and a different experience of lobbying, simply defining lobbying as face-to-face work seems at odds with reality. Politicians, for instance, surely recognise that they are lobbied in a variety of ways and the public’s confidence in Holyrood is hardly buttressed by a Lobbying Register in Scotland that concerns itself with only one method. We believe that lobbying – properly defined – centres on “influencing government” or “advising others to influence government” and this is carried out in a variety of ways.

A number of issues currently exist due to the definition: for example, there are potential problems around an MSP speaking at a large meeting or roundtable.

As background, we agree with the Government’s stance previously that thresholds of any sort could lead to the exclusion of lobbying activity which should be of interest to the end user. We seek assurances that this still stands and – although campaigners against lobbying will suggest them – that financial disclosure or the sorts of perverse thresholds previously discussed during Neil Findlay MSP’s Members Bill will not be part of the Lobbying Register in Scotland.

In terms of the exclusions, some of these are particularly welcome. The exclusion of a communication made “for the purpose of journalism”, for instance, is something we proposed from the PRCA Public Affairs Register and our definition of lobbying. Similarly, charities, think tanks, trade unions and law firms are no different from consultants: they all lobby. We welcome their inclusion in the Bill.

One exclusion, however, merits immediate attention: voluntary work. We are pleased that Q4 of this consultation is given over to the consideration of this point. We anticipate a range of views on the matter, but what ought to concern us here is the aim and end result of “voluntary” lobbying (which is precisely the same as paid lobbying) rather than the idea that good intentions or charitability ought to mean we exempt it entirely.

6. The Bill’s Policy Memorandum states the Bill aims for a “light touch, educative approach” and that “criminal offences and penalties [are] provided for as a last resort”. What are your views on this approach?

To reiterate our response to the Consultation on Lobbying Transparency and Inquiry into Lobbying: for the Lobbying Register in Scotland to be credible, it should have statutory powers in place to penalise organisations for non-compliance. The system of sanctions in the Companies Act 2006, for instance, include the proportionate approach that small offences should face a warning notification prior to any civil penalties.

In our experience running the industry’s voluntary Public Affairs Register, errors are promptly corrected once highlighted and subsequently not repeated. We do not foresee that registrants from our industry would make anything other than
non-purposeful administrative errors, especially given the industry’s commitment to greater transparency. We also do not foresee that correcting these errors within a reasonable timeframe would be a particularly burdensome task.

- We support the “educative approach”; though whether this Lobbying Register in Scotland can be deemed “light touch” depends as much on the information required from the registrants as it does on the overall approach.

7. Are there any unforeseen consequences of the Bill as currently drafted?

- This Bill risks – unintentionally, we believe – undermining standards. Whilst we welcome the fact that the Lobbying Register in Scotland will indicate if a registrant complies with a voluntary code of conduct, we believe that the distinction between those who are committed to transparency and those who are not must be preserved. By introducing a statutory code of conduct, there is a risk that this distinction is removed and those viewing the Lobbying Register in Scotland will have their ability to make an informed decision about the ethical standing of registrants hindered.

- One of the real and pertinent unforeseen consequences of the Bill is that the amount of information required from a registrant discourages engagement or ultimately leaves us with a strange end result, as touched upon in our response to Q4 of this consultation. We do not believe that the amount of information is truly necessary. If the counterargument to this is that the Lobbying Register in Scotland will be sufficiently “light touch” that these categories will require relatively few details then, indeed, this is another reason for them not to feature at all. In dealing with engagement and democracy, we must be consequentialists: we cannot risk creating a real or perceived barrier to lobbying.

- We have raised the inclusion of civil servants, SPADs, staff and Scottish Government officials in consultation responses, meetings with the Bill team and with the Committee Convenor. To provide a real world example, the PRCA has met with a variety of senior civil servants throughout the process who have made serious and tangible policy decisions. We do not believe work such as this should be omitted entirely. Whilst our meeting with this Committee’s own Convener on October 11th went some way to clarifying the reserved matter of civil servants and therefore requiring an administrative solution to include them, we do not wish to see a situation where the sound move of including Ministers and MSPs in the legislation was undermined by the exclusion of the many other institutions of government who are lobbied.

- We support the existence of an independent registrar to oversee the Lobbying Register in Scotland: with this in mind, we are concerned that the current Bill does not achieve this. Whilst we appreciate the intention of having the Clerk of the Parliament and the Commissioner for Ethical Standards in Public Life involved is that the former can oversee everyday work and the latter can investigate any issues, this does not come without complications. Education and enforcement can be contained in one role.
Moving from enforcement to financial matters, our response to this summer’s consultation gave detailed figures based on hours and opportunity cost. This was submitted in mind of a wider definition and a wider scope. Whilst we were pleased to help and support the Bill team in their work and appreciate its influence on the Bill as it stands, we are concerned that these figures now underplay costs such as the initial return. We would be happy to share detailed figures with the Committee, explore the specific requirements for our members and discuss the various structures and systems lobbyists might put in place to comply with this legislation.

8. Are there any amendments that would, in your view, enhance the Bill?

To summarise this consultation and conclude, there are a number of amendments that should be made which would enhance the Bill significantly. Examples include:

- 6(2)(a), (b), (c), (d), (f): these can all be omitted to ensure engagement is not discouraged.
- 6(2)(g): “purpose” substituted with “client or employer” to ensure only essential information.
- 10(2)(b)(ii): add “including additional, voluntarily disclosed clients on employee” to ensure erring on the side of caution is not discouraged.
- 2(b): add “and any client or employee information voluntarily disclosed”.
- 7(a)(i): “regulated” omitted to avoid confusion.
- 10(3)(a): “6 months” substituted with “3 months” so as to best fit with industry’s registers. A change to 3(a) would also be required.
- 43(1): “may publish” substituted with “will publish” to ensure proper monitoring.
- 44: this section concerns a statutory code of conduct so should be omitted entirely.

Nicholas Henry Dunn-McAfee MPRCA
Public Affairs, Policy and Research Manager
PRCA
30 November 2015
Standards, Procedures and Public Appointments Committee

Lobbying (Scotland) Bill

Written submission received from Quarriers

Quarriers is one of Scotland’s largest health and social care charities supporting thousands of disadvantaged people each year. We support vulnerable children, young people, adults and families who face challenging circumstances such as homelessness, learning and physical disabilities and epilepsy. We welcome the opportunity to respond to the Standards Procedures and Public Appointments Committee call for evidence on the proposed Lobbying (Scotland) Bill.

Consultation Questions

1. Do you agree that the Bill is necessary and that the establishment of a Lobbying Register is desirable?

Many of the people Quarriers supports people feel disengaged from the democratic process due to inequalities of power and participation. All citizens and groups, including disabled and vulnerable people must be able to have a strong voice in the political process. The openness and transparency of the Scottish Parliament is a real strength in this regard.

Therefore, while we recognise the importance of accountability, we believe it is vital that legislation which introduces additional requirements on those seeking to engage with elected representatives does not in any way disempower third sector organisations or the people they support from engaging with the Scottish Parliament.

2. How will the Bill affect you or your organisation?

Quarriers consults widely with the people we support and our staff and as an organisation we value the opportunity to influence policy and legislation through lobbying to ensure these views are expressed and acknowledged within the legislative process. Under the proposals Quarriers will need to enter onto the register and create a system for recording all of our political engagement which comes under the scope of the legislation.

We also place emphasis on ensuring that the people we support have opportunities to engage in the political process on issues that matter to them. Facilitating meetings with MSPs is an important part of this and these can take place on an individual basis but also collectively through the Quarriers Discovery Group led by adults with learning disabilities and Quarriers VIP group led by young people supported in our youth housing services. A lot of our face to face engagement with elected members is therefore part of helping to facilitate an MSP/Minister coming to meet with people we support. We feel clarity is need on whether the communication that takes place as part of that process is now to be regarded as regulated lobbying by our organisation.
3. Registration is triggered only when lobbying is being done in exchange for payment (either as a consultant or an employee) and does not capture lobbying carried out in the course of voluntary work or when it is done by an individual on his or her own behalf. Do you agree with this approach?

Yes.

4. Do the provisions set out in the Bill succeed in striking a balance between capturing information of value and ensuring that access and participation with the work of Parliament and Government is not discouraged?

We are concerned about the increased bureaucracy which would result from a Lobbying Register and the impact this may have on the ability of third sector organisations and individuals can to ensure their MSPs are well informed about the decisions they make. There is a danger therefore that this could contribute to a widening of inequality of access to the political process in Scotland.

One way to increase the accountability and openness of decision making processes would be for the Scottish Government and Scottish Parliament to publish Ministers’ and Members of the Scottish Parliament’s diaries. This would allow for greater transparency without placing additional and unnecessary requirements on third sector organisations who are trying to give the people they support a stronger voice.

5. Do you feel that the definitions and exclusions are sufficiently clear? Do they, for example, allow individuals and organisations to easily know whether their activity requires to be registered?

There is some scope for ambiguity particularly around whether the activity of third sector organisations that helps individuals to engage with elected representatives would require to be registered. Guidance which clearly states the rules and the obligations on all lobbyists, organisations and people who contact their MSPs must be communicated widely and effectively.

Lorne Berkley
Policy Manager
Quarriers
30 November 2015
The Royal College of Nursing (RCN) is the UK’s largest professional association and union for nurses with around 425,000 members, of which around 39,000 are in Scotland. Nurses and health care support workers make up the majority of those working in health services and their contribution is vital to delivery of the Scottish Government’s health policy objectives.

Please find attached the RCN response to the call for views on the Lobbying (Scotland) Bill.

Do you agree that the Bill is necessary and that the establishment of a Lobbying Register is desirable?

The Scottish Parliament has established a reputation as being an open and transparent institution. This open engagement with politicians and decision makers of all parties by the public and by organisations has been seen by many as a very positive way to involve the electorate with their representatives.

As far as RCN Scotland is aware, there is not a problem with lobbying in Scotland, so on that basis, introducing the Register as proposed in the Bill seems unnecessary. We question whether the register will, in fact, have a public benefit.

Given the lack of a problem concerning lobbying it seems unnecessary to take any legislative action. Clearly it is important to ensure that any relevant Codes of Conduct for MSPs, Ministers and public officials are reviewed regularly and as necessary. They should be publicised publically and kept as transparent as possible.

How will the Bill affect you or your organisation?

Under the proposals RCN Scotland will need to enter onto the register.

We do already as a matter of best practice keep a record of all political engagement activity.

The need to register and the requirement to supply six monthly information return will, nevertheless, add to the workload of RCN Scotland.

Registration is triggered only when lobbying is being done in exchange for payment (either as a consultant or an employee) and does not capture lobbying carried out in the course of voluntary work or when it is done by an individual on his or her own behalf. Do you agree with this approach?

As stated in our original evidence to the Committee during its inquiry into lobbying, RCN Scotland believes that, as it is clear who in-house lobbyists represent (i.e. it is
clear that the Royal College of Nursing represents nurses and the nursing profession) a register should only apply to commercial or third-party lobbyists. This would ensure clarity on which client(s) third parties are representing.

Whilst we believe that in-house lobbyists should not be included, we are content that those speaking about voluntary work or as individuals are not captured.

**Do the provisions set out in the Bill succeed in striking a balance between capturing information of value and ensuring that access and participation with the work of Parliament and Government is not discouraged?**

We do not support proposals for in-house lobbyists to be included in the Register. Nevertheless we do not see the requirement to register as a barrier to continuing effective engagement with MSPs and the Scottish Government.

For commercial and third party lobbyists, however, the Register will capture helpful information about on whose behalf they are lobbying which will increase transparency.

**Do you feel that the definitions and exclusions are sufficiently clear? Do they, for example, allow individuals and organisations to easily know whether their activity requires to be registered?**

We believe that guidance would be necessary to ensure that all lobbyists understood the requirements and obligations placed on them by the Bill.

**The Bill’s Policy Memorandum states the Bill aims for a ‘light touch, educative approach’ and that ‘criminal offences and penalties [are] provided for as a last resort’. What are you views on this approach?**

Broadly we welcome the light-touch approach. As previously stated we do not believe there to be a problem with lobbying in Scotland and, given that, the Bill is not looking to address a problem but rather promote further transparency. It would therefore seem unnecessary to adopt anything other than a light-touch.

Clearly, however, a compulsory register is of little use if it is not regularly monitored and subject to compliance checks. As such it is important that penalties can be imposed should a situation arise where a person/(s) deliberately avoid registration and/or updating the Register when they have had cause and direction to do so.

**Theresa Fyffe**  
**Director**  
**RCN Scotland**  
**23 November 2015**
Standards, Procedures and Public Appointments Committee

Lobbying (Scotland) Bill

Written submission received from the Reid Foundation

About the Reid Foundation

The Jimmy Reid Foundation was established in 2011 by the Scottish Left Review, the political magazine which was Jimmy’s last major political project.

The Foundation is an independent ‘Think Tank’ is not affiliated to any political party or organisation but works closely with anyone interested in a more progressive future for Scotland. By making strenuous efforts to maintain party political neutrality the Foundation aims to offer a home for all people of the left in Scotland.

The Foundation is based around a work programme which is set and overseen by a Project Board. The Project Board is made up of leading Scottish thinkers in their area and is intentionally non-party political.

Overview

Influencing elected politicians is a fundamental part of Scotland’s vibrant democracy. At elections to the Scottish Parliament and local council, respect for and trust in politicians is a fundamental motivator in getting people out to vote and being satisfied in the conduct of public affairs on devolved matters.

Many people would like to influence elected politicians effectively so that their damp home can be fixed, schools address bullying promptly and the recommendations of inquiries on blacklisting in the workplace are taken forward robustly. However we all know there is not an even playing field when it comes to lobbying. Positive action is needed to achieve equality in outcomes and ensure transparency and accountability in the process of lobbying.

There is no doubt that the case has been made for action but there remains a genuine debate on the nature and extent of the rules required to make the system work properly for democracy, and which earns the public’s trust.

The Jimmy Reid Foundation believes that one strategy alone will not work to ensure power sits with the people of Scotland. The system agreed must be robust to ensure a global and well-funded industry does not ‘run rings’ around our democratic process. Therefore we have concluded that the proposed register does not go far enough.

It is our view that changes in the Freedom of Information (Scotland) Act 2002, as amended, are required to ensure more transparency in the influence brought to bear on MSPs, elected councillors and their staff. There should be an open consultation on extending FoI SA and consider such matters as making public all diaries so that the electors can observe, at any time, who is meeting whom.
Additional checks and balances are required in the system, particularly with the growth in devolved powers of the Scottish Parliament. For example a Human Rights committee should be established at the Scottish Parliament to reflect the importance of the public sector acknowledging its role as the ‘duty bearer’ in respecting people’s human rights.

Context

The Lobbying Act 2014 - The proper title is the ‘Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014’, and it amended legislation passed in 2000 that also proved problematic. Under part two, campaigning organisations such as charities must now register with the Electoral Commission as non-party campaigners if they spend more than a threshold of £20,000 in England and £10,000 in Scotland, Wales or Northern Ireland on certain regulated activities during the election period. The Act expands the list of regulated activities and lowers the upper spending limits. The impact has been various, e.g. there has been a chilling effect on the activities of some organisations and some have scaled back their campaigning activities. Voters will suffer as the amount of information publicly available may be reduced, making it more difficult to form an opinion. That is not good for our democracy.

Research on Practice

In drafting this submission we are mindful of Scottish Parliament Motion S4M-14508 lodged by Neil Findlay MSP on 13th October 2015:

“Holyrood Exposed, a Guide to Lobbying in Scotland”: That the Parliament welcomes the publication of Holyrood Exposed, a Guide to Lobbying in Scotland, which has been produced by Spinwatch, Unlock Democracy and the Electoral Reform Society Scotland; notes the reported increase in the number of lobbying consultancies and in-house lobbyists operating in Scotland, and looks forward to what it hopes will be a robust lobbying register being introduced through an Act of Parliament before the end of the session."

We also note the comments made by Tamasin Cave of Spinwatch who was commenting on the publication of the same report:

"A decent register of lobbyists – which would simply make public who is lobbying whom, about what, and how much they are spending in the process – is an essential feature of modern government, not a 'nice to have'.”

FoISA

We also note the comments of the Human Rights Consortium Scotland in its submission to the UN Human Rights Committee on UK compliance with the International Covenant on Civil and Political Rights:

“The Freedom of Information (Scotland) Act 2002 (FoISA) introduced an enforceable right of access to information but the value of the right has been diminished as the

---

way that public services are delivered has changed. There is a need for legal reform to provide a right of access to information on the spending of public money by extending the range of organisations covered and increasing the information routinely disclosed.\textsuperscript{2}

**Human Rights**

We note that a number of human rights are engaged in this debate:

- Article 10 ECHR: Individual electors have the right to form an opinion and to receive and impart information in order to do so.
- Protocol 1, Article 3 of the ECHR: Individuals electors have the right to participate in free elections “under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”

**Comments**

The Scottish Parliament was set up in 1999 to be ‘open, accessible and accountable’. It is therefore a matter of considerable regret that 16 years later it is stated:

“Lobbying is a serious, but normally invisible feature of our politics. Commercial lobbyists – whose paid job it is to influence the decisions taken by our politicians – operate without scrutiny. Lobbying is best done and is most effective when no one is watching.”

And that the current Bill “will only allow you to see a fraction of the lobbying activity taking place in and around Holyrood.”\textsuperscript{3}

So whilst the declared purpose of the Bill is to increase public transparency by introducing a register of lobbying activity, in practice we are persuaded that what is proposed is insufficient.

We are persuaded of the argument that:

“A decent register, as they have had for decades in Canada, the US and other countries around the world, would require lobbyists to regularly disclose their activities. It should mean that the people of Scotland could see: who is influencing whom, which decisions they are trying to influence, and how much money they are spending in the process.

“The Royal Bank of Scotland, for example, declares its lobbying activity in Washington, Canada and Brussels. The quarterly declarations (see examples below) reveal who RBS has been meeting in the Canadian finance ministry; that RBS is spending in the region of €1m (£750k) a year on influencing EU officials; and that in the seven years it has been under public ownership it has spent $5.5m (£3.6m) of British taxpayers’ money on lobbyists in Washington.

\textsuperscript{2} For more information go to [www.hrcscotland.co.uk](http://www.hrcscotland.co.uk)

\textsuperscript{3} “Holyrood Exposed, a Guide to Lobbying in Scotland” Pg 3
The people of Scotland currently have no way who it is talking to in Holyrood, what it is seeking to influence, nor how much it spends in the process.\footnote{Ibid Pg 21}

However it seems odd to place the onus on disclosure on the private sector only and there needs to be a balanced approach with the public being able to exercise an enforceable right to know, matched with a duty of elected politicians and their staff, to disclose who they are meeting with, how many times and when.

Decisions behind closed doors are undemocratic. Politicians who rely only on evidence that people are paid to deliver will lead to unbalanced decisions. As the report points out “Transparency in lobbying is key to modern governance. It helps to put an end to secret decision-making behind closed doors.”\footnote{Ibid Pg 23} Efforts needs to be invested to come up with a system of checks and balances that ensures transparency and therefore accountability.

Given the above, the Foundation’s views on the Committee’s set questions are as follows

1. Do you agree that the Bill is necessary and that the establishment of a Lobbying Register is desirable?

   Yes, but the register has to be more robust and other measures are required too such as extending FoISA and place obligations on MSPs and their staff to declare who they are communicating with.

2. How will the Bill affect you or your organisation?

   We are still considering the impact.

3. You would only have to register if you were lobbying in exchange for payment (either as a consultant or an employee). You wouldn’t have to register if you lobby in the course of voluntary work or lobby on your own behalf. Do you agree with this approach?

   We understand the motivation for this approach but in practice fear it will be a loophole that is exploited.

4. Does the Bill strike the right balance between capturing valuable information while ensuring that access to participation with the work of Parliament and Government is not discouraged?

   No, as the proposals do not go far enough.

5. Do you feel that the Bill is sufficiently clear? Does it allow individuals and organisations to easily know whether their activity requires to be registered?

\footnote{Ibid Pg 21} \footnote{Ibid Pg 23}
Any register will require a public information campaign to accompany it and we suspect this will be an additional avenue of income for lobbying businesses.

the Reid Foundation
1 December 2015
Standards, Procedures and Public Appointments Committee

Lobbying (Scotland) Bill

Written submission received from RNIB Scotland

About us

As Scotland’s leading organisation of blind and partially sighted people, RNIB Scotland welcomes the opportunity to respond to this call for evidence.

The number of registered blind and partially sighted people in Scotland currently stands at around 34,500. However, registration is voluntary and research indicates that as few as 23-38% of eligible people are actually registered. There are around 188,000 people in Scotland with significant sight loss and the number of Scottish people with sight loss could almost double to 400,000 between now and 2030 due to our ageing population and the persistently poor health that continues to disadvantage many of our communities.

We support children and adults with sight loss to live full and independent lives. Our priorities are to:

- Stop people losing their sight unnecessarily
- Provide support at the point of diagnosis of sight loss ("Being there")
- Support independent living for blind and partially sighted people
- Create a society that is inclusive of blind and partially sighted people’s interests and needs.

We are a membership organisation dedicated to delivering services our members need and campaigning for their civil and welfare rights. To meet these goals in the future we anticipate that it is likely to be appropriate to register RNIB Scotland on a Scottish Lobbying Register within a regulated lobbying framework.

Scottish Parliament Standards Procedures and Public Appointments Committee Lobbying (Scotland) Bill call for evidence

The current Lobbying Bill was introduced in the Scottish Parliament on 29 October 2015 with the stated purpose of increasing 'public transparency of the interactions between lobbyists and elected representatives and Government Ministers'. The Committee’s role at Stage 1 of the parliamentary process is to report to the Parliament on the overall purpose of the Bill – that is, on its general principles. To this end, the call for evidence invited responses to eight key questions and our responses are below:
General Principles of the Lobbying Bill

1. Do you agree that the Bill is necessary and that the establishment of a Lobbying Register is desirable?

We agree that the Bill is necessary and that the establishment of a Lobbying Register is desirable. We also welcome the approach of covering 'significant' lobbying activity defined in the Bill's Policy Memorandum as involving 'direct face to face paid lobbying (communication) with MSPs and Ministers'.

This will complement other existing parliamentary and governmental transparency measures including the Code of Conduct for Members of the Scottish Parliament and the Scottish Ministerial Code.

It will also fit in with the international trend of regulating lobbying outlined in the Scottish Parliament Information Centre (SPICe) briefing, 'Lobbying Schemes in Other Countries' (SPICe, 2014). This noted the existence and development of Lobbying Registers in Australia, Australia: New South Wales; Australia: Victoria; Canada; Canada: British Columbia; European Union (EU); Organisation for Economic and Co-operation and Development (OECD); France; United States; and New Zealand.

2. How will the Bill affect you or your organisation?

RNIB Scotland is engaged in service delivery for blind and partially sighted people as well as campaigning for their civil and welfare rights. We have regular contact with parliamentarians, government ministers and civil servants.

We note that the Core Concepts of the Lobbying Bill state that:

'(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 and in person to a member of the Scottish Parliament, a member of the Scottish Government or a junior Scottish Minister, (ii) is made in relation to Government or parliamentary functions, and (iii) 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), partner or member of the person.
(2) Where a person engages in regulated lobbying by virtue of paragraph (b) of subsection 15 (1), the individual mentioned in that paragraph is not to be regarded as engaging in regulated lobbying.
(3) For the purposes of subsection (1), it does not matter whether the communication occurs in or outwith Scotland.'

We are also aware of the definitions and exclusions of 'Communications which are not lobbying' as defined in the Schedule to the Lobbying (Scotland) Bill [see response to question five].
We recognise that some of our activities may fall under the scope of lobbying that should be registered. Therefore, we would make a proactive application to register and would devise an appropriate internal six-monthly reporting system that covers our range of organisational lobbying.

3. Registration is triggered only when lobbying is being done in exchange for payment (either as a consultant or an employee) and does not capture lobbying carried out in the course of voluntary work or when it is done by an individual on his or her own behalf. Do you agree with this approach?

Yes - we agree with the approach of triggering registration when lobbying is being done in exchange for payment. We also agree with the approach of registering organisations rather than individuals where an individual lobbies on behalf of their employing organisation.

4. Do the provisions set out in the Bill succeed in striking a balance between capturing information of value and ensuring that access and participation with the work of Parliament and Government is not discouraged?

RNIB Scotland welcomes the acknowledgement in the Bill's Policy Memorandum that:

'One of the Parliament's founding principles was that it should be "accessible, open, responsive, and should develop procedures which make possible a participative approach to the development, consideration and scrutiny of policy and legislation". 

The Government is clear that provision on lobbying transparency should not infringe on this principle, which it deems both essential and beneficial to policy making in Scotland.'

RNIB Scotland further welcomes the statement in the Policy Memorandum that:

'The Scottish Government agrees with the view expressed in the Committee's report that lobbying is a legitimate and valuable activity. During a survey conducted by PA Advocacy in January 2014, four-fifths of MSPs said that direct contact with or correspondence from organisations was useful in their role. The Government also recognises that Scotland's constitutional position is changing. Increased responsibility and greater powers for the Scottish Parliament will naturally lead to increased intensity in the conduct of Scottish public affairs, with the potential for an increase in the amount of lobbying that takes place in Scotland. In that context, the Government considers that it is of fundamental importance to ensure that elected representatives continue to have access to as wide a range of information and perspectives as possible.'

The Bill's provisions appear to strike a balance between capturing information of value and ensuring that access and participation with the work of Parliament and Government is not discouraged.
We nonetheless emphasise that it is most important that the process of registration is simple, straightforward and free for organisations. Guidelines for registering 'lobby contacts' should be established and well-publicised ahead of the introduction of a Lobbying Register so that registering organisations have a good understanding of their obligations and do not arrive at the conclusion that reporting lobbying activity is so onerous that the organisation is 'better off' not lobbying the Scottish Government or Parliament.

5. Do you feel that the definitions and exclusions are sufficiently clear? Do they, for example, allow individuals and organisations to easily know whether their activity requires to be registered?

The Schedule to the Lobbying (Scotland) Bill lists 'Communications which are not lobbying'. These include:

'Meetings initiated by a member or Minister
5 A communication made in the course of a meeting or other event arranged by or on behalf of a member of the Parliament, a member of the Scottish Government or a junior Scottish Minister.
6 However, paragraph 5 does not apply where the meeting or other event was arranged in response to a request from a person attending or represented at the meeting or event.

Cross-party groups
7 A communication made in the course of a meeting of a group recognised as a cross-party group by the Parliament.'

RNIB Scotland has provided Secretariat services to the Scottish Parliament's Cross-Party Group on Visual Impairment for several years. The Cross-Party Group activity is of great importance not only to RNIB Scotland but to the sight loss sector in Scotland. Given that the Scottish Parliament website publishes details of their activities, we welcome the exclusion of Cross-Party Group activity from lobbying reporting as well as 'indirect' contact with MSPs and Ministers including emails, letters and phone calls. This is in keeping with the 'light touch' approach referred to below whilst ensuring that substantial and sustained lobbying must be reported. However, it will be important to establish clear guidance including responses to 'Should this type of activity be reported?' so that organisations do not inadvertently breach the lobbying reporting regulations.

6. The Bill's Policy Memorandum states the Bill aims for a 'light touch, educative approach' and that 'criminal offences and penalties [are] provided for as a last resort'. What are your views on this approach?

This approach promises to keep the doors of the Scottish Parliament and Government open to a wide range of perspectives, information and organisations whilst capturing significant lobbying and increasing transparency and public knowledge of major lobbying activity.
7. Are there any unforeseen consequences of the Bill as currently drafted?

Clichéd but true - time will tell! It is most important to maintain the Scottish Parliament's founding principles of accessibility, openness and responsiveness, with procedures which enable a participative approach to the development, consideration and scrutiny of policy and legislation.

8. Are there any amendments that would, in your view, enhance the Bill?

As time will reveal the impact of the legislation including unforeseen consequences it would be appropriate to add a requirement to report within its first three years of existence on whether the Lobbying Register has met its stated purpose of increasing 'public transparency of the interactions between lobbyists and elected representatives and Government Ministers'. This Report should include any necessary recommendations for amendment or further legislation.

James Adams
Public and External Affairs Manager
RNIB Scotland
1 December 2015
Written submission received from the Royal Society of Edinburgh

Introduction Remarks

The Royal Society of Edinburgh (RSE) is Scotland’s National Academy, established in 1783 by Royal Charter and also a Scottish Charity. As part of its Royal Charter, the RSE is committed to the Advancement of Learning and Useful Knowledge. The RSE seeks to fulfil this Charter requirement in many ways, including providing advice on public policy issues to the Scottish Government and the Scottish Parliament. This advice is always offered on a non-partisan basis and is based on the expertise and knowledge of our diverse Fellowship.

The RSE is pleased to have the opportunity to respond to the consultation and individual comments on the questions posed are below, however the Society would ask if there is a proven need to legislate. The Minister in his foreword observes, “Lobbying is a vital part of a healthy democracy, and democracy has never been healthier in Scotland than now.” Further on in Chapter One the consultation states that “no allegations of impropriety about the lobbying of MSPs have arisen since the Scottish Parliament conducted its last Inquiry into the subject in 2002.” This raises the question, is legislation at all required?
CONSULTATION QUESTIONS

Question 1 – Do you agree that the Government’s three core principles are appropriate to inform the delivery of an effective and proportionate lobbying registration regime in Scotland?

If there is to be a statutory register of lobbyists, then all three of the core principles outlined are essential. To achieve these means that any register and regulations established must be light touch, as is suggested in the third of the principles.

If introducing a Bill, it is also essential that the Government clearly defines what constitutes lobbying, particularly as the Bill will potentially introduce new criminal sanctions. Many people and organisations have differing interpretations on what constitutes lobbying and this could result in confusion for organisations on whether or not they are regarded as a lobbying organisation. For example would a professional body providing expert advice to MSPs or Ministers be regarded as a lobbying organisation?

Question 2 – Do you agree that a publicly available register of lobbyists should be introduced in Scotland?

If the Scottish Government wishes to introduce a statutory register, the RSE has no fundamental objection, providing the three core principles are adhered to. The Society would also ask that, in framing and scrutinising the Bill, the Government and the Parliament look at the various international models that are referenced and consider what evidence exists on the impact that they have had.

Question 3 – Do you agree that no fee should be payable by lobbyists for registering or updating the register?

The RSE agrees that there should be no fee on the organisation or individual registering.

Question 4 – What are your views on whether the onus to register should lie with individuals who lobby as part of their work, or organisations who lobby?

The view of the RSE is that the Scottish Parliament Committee was correct in recommending that organisations should register rather than individual members of staff – we would strongly urge the Scottish Government to reconsider its proposed approach of requiring individuals to register. This approach would result in one organisation having multiple registrations. It would also mean that there would be more administration involved in the register, as each time someone changed jobs the register would need to be amended.

This could also create administrative difficulties for organisations, on deciding how many of their staff to register as the degree of interaction with parliamentarians will vary depending on individuals’ remit.

As well as there being a need to define clearly what is meant by lobbying, it is also
essential that the threshold of lobbying activity at which an organisation or individual should register is clearly set out.

**Question 5 – Should both consultant lobbyists and in-house lobbyists be required to register?**

The RSE doesn’t see that there should be a distinction between consultant lobbying and in-house lobbying, so if a register is established, both should be treated equally for consistency.

Otherwise, certain types of lobbyists could be perceived as having privileged status when lobbying on similar issues.

**Question 6 – Should any types of in-house lobbyist be exempt from registration?**

The Society is not aware of any specific exemptions that should be made for in-house lobbyists.

**Question 7 – Do you agree that the register should cover the lobbying of MSPs and Ministers?**

We agree that lobbying of MSPs and Ministers should both be included, if a register is established.

Both groups play key roles in the legislative process. In addition, if Ministers as MSPs were to be excluded from consideration in the proposed Lobbying Transparency Bill, this would create an inconsistency between Ministers and other MSPs.

**Question 8 – What types of communication do you think should be covered by a statutory register?**

We agree that the primary forms of lobbying that should be covered would be arranged face to face meetings and also involvement of MSPs in events arranged by the organisations concerned.

**Question 9 – Do you agree with the Government’s view that paid lobbyists should be required to register?**

If a register is to be established, the RSE agrees that it should only cover the work of paid staff or consultants. It should certainly not require registration by volunteers.

**Question 10 – Do you agree that the register should also allow for voluntary registration by lobbyists not required to register?**

We see no harm in this proposal, but would expect that the vast majority of people engaged in lobbying on a paid basis would already be covered.
Question 11 – What are your views on what kind of information each lobbyist should be required to provide on registration?

As indicated earlier, our preference is that the registration should be on an organisational basis, in which case the information supplied would be:
- The name of the organisation
- A description of its main activities and areas of interest
- The FTE number of staff engaged in lobbying activity
- Contact details of the organisation

For consultant lobbying organisations, they should also list their recent clients.

Question 12 – How often should lobbyists be required to provide a return detailing their lobbying activity?

An annual report would seem appropriate. This would be consistent with the ‘light touch’ approach that we have advocated earlier and would not place an undue burden on the organisation.

Question 13 – Do you agree that the Parliament should introduce a Code of Practice for lobbyists setting out guidance on the registration regime and expected standards of behaviour?

It would be important to set out such a Code of Practice, as people engaging with MSPs on a professional basis need to have a clear understanding of what is expected of them, particularly as it is proposed that there will be sanctions against either the organisation or the individual for failure to comply with the regulations once enacted.

Such a Code of Practice should be in accessible language in order to make the lobbying process accessible to all and not just a select group. The RSE wonders whether, in the first instance, a Code of Conduct would be sufficient, with tougher regulation to be introduced only where there is evidence of serious breaches of the Code.

Question 14 – Do you agree that a register should include the facility for lobbyists to indicate if they already subscribe to any industry Codes of Conduct?

It would seem sensible for organisations to indicate if their staff are covered by any professional Codes of Conduct as this would add to the confidence of the public.

Equally, organisations should be able to indicate if they are already required to comply with existing requirements, for example if an organisation has a Royal Charter, or is registered with a body such as OSCR.
Question 15 – Do you have any views on the Committee’s proposals for who should be responsible for upkeep and oversight of the Register?

The RSE is of the view that the Scottish Parliament should be the custodian of the register.

Question 16 – Do you have any views on what enforcement mechanisms and sanctions should be available in connection with the registration regime?

The RSE is comfortable with the proposals regarding the role of the Registrar and the Commissioner for Ethical Standards in Public Life. Backing this up with civil sanctions, such as a period of exclusion from providing evidence in Parliament, or the withdrawal of Parliamentary passes, would seem appropriate; however the Society is concerned about the proposed inclusion of criminal sanctions.

The consultation on the proposed Bill itself does not provide any evidence of a significant problem that requires new criminal sanctions associated with the lobbying of Parliament. It is our view that new criminal law should only be introduced where there is a proven need for it, so in this case we would advise against introducing criminal sanctions.

Question 17 – Do you have any views on whether Parliament, by resolution, should be able to adjust the scope and operation of the registration regime once established?

We are satisfied that adjusting the scope of the regime should be by statutory instrument, providing that it is enshrined in the legislation and this is done through the affirmative procedure. It would also seem appropriate for the process to be reviewed after one year to assess whether it was causing any difficulties and whether it had added any value to the interaction of civic Scotland with the Parliament.

Question 18 – Do you have any views on whether there could be impacts on equalities groups as a result of the proposals outlined?

The RSE does not have any specific evidence on the impact of the proposals outlined upon equalities groups, but it does have a concern that a very strict registration regime may place the very small charities or organisations at a disadvantage. They may find it more challenging to comply than large companies or charities would. As many of the organisations campaigning on equalities issues have small staffing numbers, this could present an issue. It would be best though for the Government and Parliament to engage directly with organisations whose primary focus is on equalities to ascertain their views.
Question 19 – Do you have any views on whether there could be any additional costs or other implications for businesses as a result of the proposals outlined?

If the legislation does adhere to the core principles discussed in question one, there should not be a problem. If however the regime is expanded either now or in the future, then there could be an impact on the costs to business and other organisations, for example, if organisations were required to provide reports of any correspondence with an MSP or Minister. We would therefore encourage the Government and Parliament to respect the three core principles set out in the consultation.

Question 20 – Do you have any other comments on the general operation of a register of lobbyists, or on any of the proposals put forward by the Committee or the Government?

The core concern that the RSE has is that the proposed Bill seeks to resolve an issue for which there has been no evidence brought forward of any misconduct or impropriety. As a result, with the best of intentions, there is a risk that a bureaucratic system emerges either now or in the future, that may put at risk the open nature of engagement between the Scottish Parliament and civic Scotland, currently widely admired.

Additional Information

Consultation responses are produced on behalf of RSE Council by an appropriately diverse working group in whose expertise and judgement the Council has confidence. This Advice Paper has been signed off by the General Secretary.

Bristow Muldoon
Head of Policy Advice
Royal Society of Edinburgh
1 December 2015
Standards, Procedures and Public Appointments Committee

Lobbying (Scotland) Bill

Written submission received from RSPB Scotland

- Do you agree that the Bill is necessary and that the establishment of a Lobbying Register is desirable?

Although we do not believe that it has been sufficiently demonstrated that there is a ‘problem’ with lobbying in Scottish politics, with the impending expansion of power of the Scottish Parliament, it is likely that lobbying pressure will increase. Consequently, it may be desirable to have some form of lobbying register. However, we feel that it has not been sufficiently shown that the form of register outlined in the Bill has been shown to properly or proportionately deal with the issue.

Further, it is not clear why the diaries of MSPs could not simply be published, which would deliver the same amount of information, without putting excessive reporting burden on charities. This would increase transparency with the expectancy of propriety incumbent upon politicians, rather than that of any private company or other third sector organisation.

- How will the Bill affect you or your organisation?

The Third sector’s recent experience of the UK Government's Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act (2014) has caused a ‘chilling’ effect upon the activities of non-party campaigning in the electoral periods. The implication of this Bill could potentially be more ‘chilling’, since its scope, although different in focus, spans the whole parliamentary cycle.

As it stands, the Bill will have a considerable impact on the legitimate activities of our, and many other, charitable organisations. The definition of ‘regulated activity’ would likely cover the activities of nearly all staff that ever come into contact with MSPs. The role of these members of staff vary greatly, but at some point during their working year, they will engage with parliamentarians. In particular, there is very little that would be included in conversation that could not be considered as in ‘relation to a Government or parliamentary function’, as stated in the definition of regulated lobbying in Part 1(1) (iii). The likely impact of this on staff is to make them adverse to engaging with MSPs or Ministers, due to increased reporting obligations, or from the prospect of leading the organisation into disrepute owing to a lack of familiarity with lobbying regulations.

RSPB Scotland has two full time members of staff whose job description primarily involves advocacy and campaigning work. We believe that a well designed regulatory system would cover the activities of these staff. The main concern is that the current definition prescribes the activities in such a way to cover any member of staff that may meet an MSP, of which there could be in the region of 100 in any year. This is a considerable increase in the scope of the regulation which will raise the administrative costs exponentially and undoubtedly have the ‘chilling’ effect seen
from the UK Government’s Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act (2014). We believe that the Bill team should work to ensure that not all work of the members of staff of charitable organisations will be covered.

Another concern is that of members of staff attending events. There will many several instances of events not organised, but are attended by, RSPB Scotland, which will also be attended by parliamentarians. RSPB have staff based around Scotland that will attend many events that will also have MSPs as guests. There are many situations, where the definition of regulated activity will cover an extensive amount of activity. Instances such as Q&A sessions at public events, opening ceremonies, photo opportunities, visits to Schools and other educational institutions and public exhibitions. It may be deemed that it is in the public interest for these activities of Charitable organisations to be publicly stated. What should be also be considered is whether it is in the public interest to place the drastic administrative obligation of reporting these perfectly legitimate activities upon charitable bodies.

It should be noted that whilst working in the Charitable sector, you are employed to further the aims of the charity, and therefore it is likely that if a member of staff meets and MSP, they would engage them in ways that would relate to ‘Government or parliamentary function’. Consequently they would have to register this activity.

- You would only have to register if you were lobbying in exchange for payment (either as a consultant or an employee). You wouldn’t have to register if you lobby in the course of voluntary work or lobby on your own behalf. Do you agree with this approach?

In principle, yes, but the Bill does not enshrine this principle to an acceptable extent. It allows considerable leeway for influential processes to go unregistered. The fact that it does not require any declaration of any non-face-to-face communication is a considerable omission that limits the Bill achieving its objective. One situation, for example, such as an individual meeting a Minister on one occasion, followed up with telephone calls, emails, letters and text messages to the same Minister would result in only the initial meeting stated with the other activity completely omitted from the regulatory process. Considering that the purpose of the Bill was to bring transparency to the lobbying activity in Scotland, it is most likely to capture the more ‘public’ side to a parliamentarian’s engagement such as visits to businesses or to a nature reserve- but none of the other highly influential aspects of lobbying activity as the example illustrates.

Further, it would impugn the RSPB from pursuing it’s charitable objectives owing to the current definition of regulated lobbying being so extensive as to encompass almost any person working in the charitable sector that comes across an MSP. In general terms, anyone working for a charity can be expected to be an ‘advocate’ for that organisation, therefore it is conceivable that nearly every paid member of staff of charitable organisations could be forced to register, (or the individual actions of every member of staff, on behalf of one organisation) should they come across an MSP as part of their work throughout the year. The charitable sector has stated that if anyone working on behalf of a charity should be registered, it should be parliamentary officers, or those who job focuses on engagement with the parliamentary process. If
this was achieved, it would mean that only charities sizeable enough to resource Parliamentary engagement posts would have to engage with the regulation, avoiding smaller charities being discouraged from parliamentary activity.

- **Does the Bill strike the right balance between capturing valuable information while ensuring that access to participation with the work of Parliament and Government is not discouraged?**

No. The same amount of information could be made public through the publishing of MSP’s diaries without any of the cost to charitable bodies. Alternatively, there could be a clear exemption from the obligation to register for charitable bodies. Alongside this exemption, The Scottish Government could easily change the guidance for charitable organisations, and advise them to either become voluntary registrants (through an amendment allowing charitable bodies to become automatic voluntary registrants) or to submit separate annual reports of all their engagement to the Clerk.

This approach, would allow charities to continue to carry on their usual work, but those with dedicated advocacy teams to report their activities in the same fashion, to the clerk.

- **Do you feel that the Bill is sufficiently clear? Does it allow individuals and organisations to easily know whether their activity requires to be registered?**

No. It does not appear to be clear whether RSPB Scotland would be considered as an ‘Active Registrant’, or simply the parliamentary officer, or all members of staff that would come into contact with an MSP. Considering the range of implications from these three scenarios, it does not seem that the implications, or layout of the bill have been correctly considered in terms of the potential effects on the charitable sector. The definition of regulated lobbying activity is so broad that it could encompass almost any employee from a charitable organisation.

Unfortunately, the approach taken in the bill appears that it will be extremely burdensome on the charitable sectors who work to influence the political process in a way that is already transparent and regulated by charitable law.

**Thomas Quinn**  
Parliamentary Assistant  
RSPB Scotland  
November 2015
Standards, Procedures and Public Appointments Committee

Lobbying (Scotland) Bill

Written submission received from Scottish Environmental Services Association (SESA)

1. The Scottish Environmental Services Association (SESA) is the trade association representing Scotland’s waste and secondary resource management industry. One of the primary functions of our trade association is to assist and inform the development of policy by collecting relevant evidence from our Members and presenting this to the Scottish Government and Parliament for consideration.

2. Our engagement with the Scottish Government is open and transparent and we have no concerns about the public learning more about our policy objectives or the nature of our discussions with MSPs or Scottish Government officials.

3. We therefore have no significant concerns on the principle of a lobbying register, as most of the required information is already freely available in the public domain. Furthermore, in contrast to some commercial, multi-client lobbying organisations, we take every opportunity possible to inform the public of our lobbying activities, and widely publicise our strategic objectives for waste and recycling policy in the public domain.

4. SESA is therefore not convinced that the proposed lobbying register would offer any additional benefit and, if anything, is only likely to introduce unnecessary administrative burden and increase costs.

5. We strongly suspect that there has been insufficient consideration of the definition of a lobbyist and lobbying for the purposes of the Bill, and what lobbying activities would in fact benefit from greater transparency. Overall, without evidence of a ‘crisis of confidence’ within policy development, the rationale for the proposed raft of measures is not entirely clear.

6. SESA is entirely comfortable with the principle of transparency around lobbying activities, and our main criticism of the Bill is simply the lack of a ‘level playing field’: it is apparent that the same rules do not apply equally to all. Our response to this call for written evidence is therefore intentionally brief, and is limited to highlighting a lack of fairness and equality.

7. The waste management industry is extremely diverse, covering a broad range of activities carried out by a number of different sectors and organisations, of which SESA and its Members form just one part of. Local authority waste management operations, the 3rd sector, community groups (and others) make up the rest of the industry and all are actively engaged to some degree in the ‘waste debate’ or in the development of policy. Whilst not offering a direct waste management service to communities or customers, there are also a number of organisations with a vested interest in waste policy (ie NGOs or local pressure groups).
8. Waste management legislation passed by MSPs therefore affects our entire industry - the activities of SESA’s Members just as much as that of local authorities. Similarly, NGOs or local pressure groups may arrange to meet MSPs or Ministers to lobby on a particular aspect of Scottish Government policy. However, as currently drafted, the lobbying activities of local authorities, and those of some NGOs or local pressure groups would be exempt from the requirement to register, all of which are equally adept at seeking to inform policy and decisions.

9. We would welcome clarification on why our sector should be singled out so, and the justification for applying additional regulatory oversight of one organisation’s lobbying activities over another. As currently drafted, the set of measures seemingly stigmatise the lobbying activities of our trade association and Members compared to similar activities carried out by other organisations or groups within the same industry.

10. If the Scottish Government is minded to present a truly fair and transparent system, then the lobbying activities of all organisations – regardless of whether conducted by the private or public sector; paid-for or voluntary – should be required to register. We therefore suggest that the scope of the Bill is considered more carefully before adoption to avoid creating a two tier system for those seeking to engage in the democratic process.

Scottish Environmental Services Association
November 2015
Standards, Procedures and Public Appointments Committee
Lobbying (Scotland) Bill
Written submission received from Scottish Grocers’ Federation

The Scottish Grocers’ Federation is the national trade association for the independent convenience store industry in Scotland. There are 5,545 convenience stores in Scotland - more per head of population than in the rest of the UK. These stores provide over 44,000 jobs and the total value of sales to Scotland’s economy is some £4 billion annually.

The Federation lobbies solely on behalf of its retail members – it is vital that they have a representative voice with Scottish Government Ministers and Members of the Scottish Parliament.

We welcome the opportunity to provide a submission to the Committee’s call for evidence.

1. Do you agree that the Bill is necessary and that the establishment of a Lobbying Register is desirable?

The Scottish Grocers’ Federation has never been convinced that there is any noteworthy problem or issue with lobbying in Scotland. Indeed in its original report on this issue (February 2015) the Committee stated that it had heard no evidence of wrongdoing – the proposed register is trying to solve a problem that simply does not exist. However it is obvious that if any register is to be introduced it must be publicly (and easily) available, completely open, transparent and free to use for registrants.

2. How will the Bill affect you or your organisation?

Activities which could be seen as ‘lobbying’ are an important part of the business of the Scottish Grocers’ Federation: it is vital that we give our members a voice in parliament and help to connect our members with their elected representatives. In practice this is essentially about informing rather than influencing; attempting to ensure that MSPs have a good awareness of the wide range of issues that impact on independent convenience store retailers. As such we would have employees who would be classed as ‘active registrants’. From our point of view it is imperative that the regime is easy to understand, that our obligations are clearly laid out and that the register does not inhibit us in advocating on behalf of our members.

3. Registration is triggered only when lobbying is being done in exchange for payment (either as a consultant or an employee) and does not capture lobbying carried out in the course of voluntary work or when it is done by an individual on his or her own behalf. Do you agree with this approach?

The Committee should give careful consideration to the potential lobbying function of Board members and Trustees. Most charities and voluntary organisations will be
governed by a Board of directors or trustees who, by definition, undertake that role in a voluntary capacity. It is quite likely that these ‘volunteers’ could undertake activities – engagement with MSPs and Ministers - on behalf of the organisation which could constitute lobbying. This should not be excluded.

4. Do the provisions set out in the Bill succeed in striking a balance between capturing information of value and ensuring that access and participation with the work of Parliament and Government is not discouraged?

This remains to be seen. However, we would like to point out that The Scottish Grocers’ Federation is a not-for-profit trade association. We advocate solely on behalf of our members (in our case independent convenience store retailers in Scotland). As such we do not have ‘clients’. It must be sufficient for trade associations to list that they are lobbying on behalf of their members – we do not lobby on someone else’s behalf. It is fairly easy for the public, MSPs and Ministers to understand who our members are. There is a strong sense in which our lobbying activity takes place on behalf of our entire sector and the issues affecting it. The register (and the registration process) should be flexible and sophisticated enough to recognise this.

5. Do you feel that the definitions and exclusions are sufficiently clear? Do they, for example, allow individuals and organisations to easily know whether their activity requires to be registered?

Yes.

6. The Bill’s Policy Memorandum states the Bill aims for a “light touch, educative approach” and that “criminal offences and penalties [are] provided for as a last resort”. What are your views on this approach?

We do not agree that there should be criminal offences and penalties in relation to infringement of the regulations. Removal from the register or a ban on registration is a proportionate and balanced response.

We do agree that a light touch, educative approach is appropriate (indeed having criminal penalties would seem to be at odds with these aims). As alluded to in Part 4 of the Bill, we believe that it is vital that Parliament publishes easy to understand, fit-for-purpose guidance on the operation of this Act, together with a code of conduct for persons lobbying members of the Parliament. To ensure an effective transition to, and full compliance with the new regime, the guidance and code of conduct should be published in advance of the register coming into effect: essentially there should be a sufficient lead in time to enable registrants to have a full understanding of their obligations.

Dr John Lee
Head of Policy and Public Affairs
Scottish Grocers’ Federation
November 2015
Standards, Procedures and Public Appointments Committee

Lobbying (Scotland) Bill

Written submission received from Shelter Scotland

Summary

- A key principle underpinning the Scottish Parliament is equality of access both to parliamentarians and the process of law making. This openness must be preserved for everyone.
- We support the goal of increasing transparency and feel that if introduced, a register of lobbying organisations (as opposed to individuals) is a welcome amendment to the original proposals and would be a straightforward way to keep a comprehensive list of who is engaging in face-to-face lobbying activity across Scotland.
- We are concerned that compliance to new regulations may detract limited resources away from Shelter Scotland’s core critical business of providing direct support to our clients, lobbying and engaging productively with elected members. It may even preclude some people/organisations from becoming involved with the Scottish Parliament.
- We believe that the approach of capturing face to face communications with MSPs and Ministers that is proposed in the draft Bill is the most proportionate approach and achieves the correct balance between transparency and participation.
- We are concerned by the suggestions that the Bill could be widened to include other forms of communication such as telephone calls and emails. This would greatly increase the burden on organisations, especially smaller community groups, completing the register and involve a significant amount of unnecessary bureaucracy.
- Above all else legislation must ensure that access and openness are maintained and the barrier to entry is not too high. Compliance with new legislation should not hinder genuine and legitimate engagement or prohibit smaller organisations or those with greater restrictions on their resources.

Introduction

Shelter Scotland helps over half a million people every year struggling with bad housing or homelessness through our advice, support and legal services. We believe that everyone has the right to a safe, secure and affordable home and that housing is vital to people and families being able to flourish in their communities. We provide direct services to people facing bad housing and homelessness and we campaign to prevent it in the first place.

Since our establishment in 1968, Shelter Scotland has a long history of engaging openly, successfully and legitimately with Scotland’s politicians and institutions and agree with the view of the Standards, Procedures and Public Appointments (SPPA) Committee that “lobbying is a legitimate and valuable activity”. A key part of our role, and that of many third sector organisations across the country, is to stand up for and
ensure that the voices of our clients and vulnerable groups are heard in the parliamentary process and the formation of legislation and policy that affects those we seek to represent.

Our response to this Committee consultation at Stage 1 of the Bill is primarily from our own perspective as a third sector organisation with an in-house policy and public affairs team but who have a range of staff who engage with parliamentarians. It is Shelter Scotland’s view that in the interest of fairness, any regulation brought in by forthcoming legislation should treat all paid lobbyists in the same way regardless of sector or role.

**Formal Response to Consultation Questions**

**Q1. Do you agree that the Bill is necessary and that the establishment of a Lobbying Register is desirable?**

Shelter Scotland is not convinced on the rationale or requirement for this new legislation, especially since the Scottish Government’s original consultation document on proposals for a Lobbying Transparency Bill clearly stated that: “we do not need to take remedial action to address any problems with lobbying in Scotland”.\(^1\) While we are not sure a new regime is necessary, we have answered the questions asked in recognition that legislation and regulation in this area is due to be introduced.

A fundamental principle underpinning the Scottish Parliament is equality of access both to parliamentarians and the process of law making. This openness must be preserved for everyone in any legislation brought forward. We support the proposals for the establishment of a publicly available Lobbying Register to be introduced in Scotland and welcome the amendment to the original consultation proposals on this issue for any such register to apply to organisations rather than to individuals.

As outlined in the Policy Memorandum accompanying the draft Bill, the Bill is being brought forward to fulfill the Scottish Government’s objective of: “increasing the public transparency of elected representatives’ activity”\(^2\). As such, it is the view of Shelter Scotland that a simpler way of achieving this could be to facilitate the centralised publication of MSPs’ diaries on a regular basis via the Scottish Parliament website or some other similar, publically accessible location.

**Q2. How will the Bill affect you or your organisation?**

As currently drafted, the Bill will require Shelter Scotland to adopt additional administrative functions to meet the requirements of the proposed Lobbying Register and the required six monthly returns of activity. As a campaigning charity with limited resources, we fear that compliance to new regulation may detract from our critical core business of providing direct support to our clients, lobbying and engaging productively with elected members and may even preclude some people/organisations from engaging with the Scottish Parliament.

---

2. [http://www.scottish.parliament.uk/S4_Bills/Lobbying%20(Scotland)%20Bill/SPBill82PMS042015.pdf](http://www.scottish.parliament.uk/S4_Bills/Lobbying%20(Scotland)%20Bill/SPBill82PMS042015.pdf)
Q3. Registration is triggered only when lobbying is being done in exchange for payment (either as a consultant or an employee) and does not capture lobbying carried out in the course of voluntary work or when it is done by an individual on his or her own behalf. Do you agree with this approach?

Yes, Shelter Scotland agrees that only covering lobbying where it is being done in exchange for payment is the correct approach to take. This proposal strikes the right balance of not limiting access to the parliament from interested individuals and taking account of the desire to increase transparency with regard to paid lobbying activity.

Q4. Do the provisions set out in the Bill succeed in striking a balance between capturing information of value and ensuring that access and participation with the work of Parliament and Government is not discouraged?

As currently drafted, yes. Shelter Scotland believes that the approach of capturing face to face communications with MSPs and Ministers that is proposed in the Bill is the most proportionate approach and achieves the correct balance between transparency and participation.

Shelter Scotland is concerned by the suggestions that the Bill could be widened to include other forms of communication such as telephone calls and emails. This would greatly increase the burden on organisations completing the register and involve a significant amount of unnecessary bureaucracy. In our experience, emails and telephone calls with Ministers and MSPs are usually used for administrative purposes i.e. to set up a face to face discussions, confirm attendance at events etc. Where we are sending substantial communications it is almost always information that would be in the public domain anyway, consultation responses and briefings that are published on our website.

There have also been calls to extend the scope of the Bill to include senior civil servants. If this is done, we support the calls from the Scottish Council for Voluntary Organisations (SCVO) that it must be focussed on the civil servants themselves providing the information required, as Ministers currently do. This could be done through amendments to the Civil Service Code. We would oppose any extension of the register to include civil servants as it would further add to the levels of administration required and discourage partnership working with the Scottish Government.

Q5. Do you feel that the definitions and exclusions are sufficiently clear? Do they, for example, allow individuals and organisations to easily know whether their activity requires to be registered?

Generally, yes. However, Shelter Scotland supports the concerns raised by the SCVO that if the Bill excludes all the bodies covered by Freedom of Information (FOI) legislation then it will fail to capture a significant area of lobbying activity in Scotland. Universities, colleges, leisure trusts and others covered by FOI all lobby MSPs and Ministers on a regular basis, so these interactions must be included in any register.
Q6. The Bill’s Policy Memorandum states the Bill aims for a “light touch, educative approach” and that “criminal offences and penalties [are] provided for as a last resort”. What are your views on this approach?

We agree with the educative approach outlined in the draft Bill and would not want to see organisations penalised for genuinely accidental breaches of the rules – especially in the early stages of its introduction. It will take time for organisations to become familiar with the new rules and processes required, so leniency will be particularly vital in the beginning. We do however, believe that this legislation needs to have some teeth and sanctions for those who deliberately and repeatedly fail to comply with this legislation should be established.

Q7. Are there any unforeseen consequences of the Bill as currently drafted?

We are concerned that this Bill could cause similar problems with a lack of clear definitions that could impact on the third sector. It is not clear yet what the definition of lobbying activity will be and this could cause confusion about whether or not to register. Many third sector organisations will act cautiously and register if they are unsure. It is also not clear the types of meetings that will be covered. If the Bill is expanded to other forms of communication, this problem will be exacerbated further.

Q8. Are there any amendments that would, in your view, enhance the Bill?

As noted in response to Questions 1, the stated primary policy objective of the bill is noted as being: “increasing the public transparency of elected representatives’ activity”\(^3\). It is the view of Shelter Scotland that a much simpler way of achieving this would be to facilitate the centralised publication of MSPs’ diaries on a regular basis via the Scottish Parliament website or some other similar, publicly accessible location. In addition, as currently drafted, the onus for transparency in the Bill is being placed entirely on those that lobby. We would like to see amendments brought forward that address this imbalance and require MSPs, special advisors and civil servants to be more transparent in their activities.

In addition, Shelter Scotland supports the call from organisations such the Association for Scottish Public Affairs (ASPA) and the SCVO that it would be of value to include a ‘sunset clause’ in the Bill to trigger a review of the legislation a year after its introduction so as to assess and review the costs and benefits of the legislation and help offset concerns about negative impacts and unintended consequences

Adam Lang  
Head of Policy and Communications  
Shelter Scotland  
30 November 2015

\(^3\) [http://www.scottish.parliament.uk/S4_Bills/Lobbying%20(Scotland)%20Bill/SPBill82PMS042015.pdf](http://www.scottish.parliament.uk/S4_Bills/Lobbying%20(Scotland)%20Bill/SPBill82PMS042015.pdf)
Standards, Procedures and Public Appointments Committee

Lobbying (Scotland) Bill

Written submission received from Unlock Democracy

- Do you agree that the Bill is necessary and that the establishment of a Lobbying Register is desirable?

We agree that this Bill is necessary and believe that a register of lobbying activity is a vital tool for holding government and lobbyists to account.

Lobbying is an essential part of a healthy democracy. However, professional lobbying – an industry worth £2 billion in the UK – can subvert democratic decision making processes by giving those with the greatest resources undue influence and privileged access to politicians. At the moment, most of this happens behind closed doors. The public does not have the full picture of how lobbying shapes the decisions made in government.

This is as true in Scotland as it is for the rest of the UK. As more powers are devolved to Scotland, the lobbying industry in and around Holyrood will only grow in size and influence. A lobbying register would bring lobbying activity from out of the shadows into the public eye. The Scottish Parliament has the opportunity to learn from Westminster’s failure and put transparency in place before it is tainted by scandal; we strongly urge you to take it.

- How will the Bill affect you or your organisation?

As currently drafted, the Bill will have no impact on Unlock Democracy. We lobby a range of Scottish politicians on democracy issues, including this Bill, but as we are based in London this has not involved any face to face meetings. This means that we would not have to declare any of our lobbying involving correspondence in writing or by phone.

Much of our campaigning involves lobbying politicians, so we believe that a Bill that does not cover our activities would deny the public the full picture. If, as we recommend, the definition of lobbying in the Bill was expanded to include other forms of communication, we would be required to declare this lobbying on the register. We do not believe this would require significant additional administrative work. We already keep records of the majority of our contact with targets for lobbying. An expanded Bill would certainly not discourage us from lobbying Scottish politicians.

- You would only have to register if you were lobbying in exchange for payment (either as a consultant or an employee). You wouldn’t have to register if you lobby in the course of voluntary work or lobby on your own behalf. Do you agree with this approach?

We agree that only lobbying conducted by paid lobbyists should be registered. While some voluntary lobbying activity may be of public interest, the primary goal of a
lobbying register should be to make the details of paid lobbying transparent so that the public can decide whether there is undue influence on politicians.

- Does the Bill strike the right balance between capturing valuable information while ensuring that access to participation with the work of Parliament and Government is not discouraged?

Unlock Democracy welcomes the fact that the Scottish Government is taking a Bill through Parliament to introduce a lobbying register but we do not think the proposals go far enough. As currently drafted, it will capture little in the way of valuable information.

The Scottish Alliance for Lobbying Transparency (SALT), of which Unlock Democracy is a founder member, believes that the current draft bill is far too narrowly focused to deliver proper transparency in lobbying. Fundamentally it will not allow us to see who is lobbying whom, about what - which should be the basic test for any lobbying register.

- Do you feel that the definitions and exclusions are sufficiently clear? Do they, for example, allow individuals and organisations to easily know whether their activity requires to be registered?

We believe that the definitions and exclusions in the Bill are clear but the definition of lobbying is too narrow to incorporate significant elements of lobbying activity. The definition of lobbying should be expanded to include written and oral communication as well as contact with special advisers and senior civil servants. This would provide a clear but broader definition of lobbying activity.

- The Bill’s Policy Memorandum states the Bill aims for a “light touch, educative approach” and that “criminal offences and penalties [are] provided for as a last resort”. What are your views on this approach?

We agree with this approach and foresee that the main role of the regulator would be to remedy inadvertent failures in compliance. We believe that criminal offences should be reserved for the most serious breaches.

- Are there any amendments that would, in your view, enhance the Bill?

We believe that the Bill would be improved by broadening the definition of lobbying to include written, oral and electronic communication, lobbying of senior civil servants and special advisors should be covered by the register, and lobbyists that register should be required to give a good faith estimate of the costs of their lobbying campaigns.

1. Expand definition so multiple modes of communication trigger registration

We believe that whatever method of communication lobbyists use to lobby politicians – whether by letter, email, text, over the phone, or in person – it is still lobbying and should trigger registration. We propose that the definition of a lobbyist – as set out in 1(1)(a)(1) – is amended so that it includes multiple modes of communications, not
just face-to-face meetings; and reflects internationally recognised definitions of lobbying.

We do not believe it would be necessary for lobbyists to declare each individual contact, for instance an email or a phone call, to provide meaningful information about their lobbying activity. Instead lobbyists could be required to register who they have contacted on which issues during the reporting period.

2. Expand definition so lobbying of civil servants and special advisers triggers registration

We propose that the definition of a lobbyist – as set out in 1(1)(a)(1) – is amended so that as well as Ministers and MSPs, it also includes civil servants and special advisers above grade 7, and staff in agencies and NDPBs of the Scottish Government above civil service grade 7, or equivalent. Although the Civil Service is a reserved matter, regulating the lobbyists who interact with civil servants appears to be within the competence of the Scottish Parliament.

3. Expand the information that should be disclosed by lobbyists to include spending on lobbying

As drafted, lobbyists must disclose who they are, whom they are lobbying, and the purpose of the lobbying.

We believe that lobbyists should be required to include a good faith estimate of how much they are spending on lobbying. Spending could be banded to make it easier. The disclosable expenditure should include direct staff costs and other expenditure, including spending on: the preparation of materials, or information to be used in support of lobbying efforts; professional advice, opinion polling, research, or any other evidence created in support of lobbying; events and hospitality; and any staff costs involved in these activities.

We also propose that organisations, or groups of organisations working collectively, whose total expenditure on lobbying activity during an accounting year is cumulatively less than £2,000, or which dedicates cumulatively less than 0.25 of a full-time equivalent member of staff to direct lobbying activity, should only report on an annual basis. Any organisation that exceeds these levels should report on a quarterly basis.

Pete Mills
Policy & Research Officer
Unlock Democracy
30 November 2015
Standards, Procedures and Public Appointments Committee

Lobbying (Scotland) Bill

Written submission received from Volunteer Scotland

Who we are

Volunteer Scotland is the National Centre for Volunteering and receives grant support from the Scottish Government and others to:

- research, demonstrate and measure the impact made by volunteers
- support paid staff and volunteers to develop skills through accessing training and easy to use volunteer development tools, policies and good practice
- offer a one stop digital gateway to everyone in Scotland who might want to find volunteer opportunities
- support organisations to post and advertise new volunteer opportunities and events through web-based tools
- provide an expert disclosure service for voluntary organisations
- help organisations and people who can influence volunteering such as funders, Government, and policy makers
- work with partners to support projects, innovation and creativity in volunteering.

Our views on the Lobbying (Scotland) Bill

Volunteer Scotland welcomes this opportunity to provide our views on the Lobbying (Bill) Scotland.

We believe that there is a need for further clarity regarding the requirement for registration and the provision of more information as to whether all communications with a MSP, a member of the Scottish Government or a junior Scottish Minister would be deemed to be lobbying as described in the Bill. Like most Third Sector organisations, we neither employ nor engage personnel whose role is solely dedicated to lobbying on behalf of the organisation. However, given our relationship, accountability and duty of care to the Scottish Government and to the Scottish Parliament, we do communicate with politicians and officials. We would seek more information from the Committee as to whether providing information to and meeting with junior Ministers, MSPs and Scottish Government to discuss service delivery, performance and accountability would be deemed as ‘lobbying’ as defined by the Bill.

Lobbying is an important part of the political process and Volunteer Scotland supports measures designed to ensure that lobbying in Scotland is made as open and transparent as possible.

We would also support, in principle, the introduction of a statutory register as a means of achieving this objective, though we would suggest that ‘openness and transparency’ could be more easily achieved by other means. For example, this
information already exists within the official diaries of Ministers, Civil Servants and MSPs. Making the relevant sections of these diaries, which record these meetings, publically available would be the most cost effective means of ensuring greater openness and transparency.

A key part of our work is to encourage and encourage greater participatory democracy and are fully supportive of the openness and accessibility of the Scottish Parliament since it was re-established in 1999. We would be concerned that the proposals contained in the Bill to introduce additional requirements on those seeking to engage with elected representatives run counter to these values and may disempower third sector organisations from engaging with the Scottish Parliament.

Lobbying can be seen as a two way process. Recent deliberative citizen engagement concerning a fairer Scotland has shown the importance of lobbying public opinion and ideas for shared goals and priorities essential for good representative government. The key question is about ensuring that processes are in place for the legislature to ensure that it is responding to citizen perspectives, and a strategic focus on the Scotland Performs Framework and is clear about managing vested interests and accountability to the common good.

Also, we are concerned that registering information could prove a significant time-burden to small and medium sized charities and organisations. The requirements of the Bill will have a disproportional impact on these organisations. As stated above, we would be concerned that this would led to them refraining from engaging with the Scottish Parliament and, therefore, unable to play an active part of the democratic process in Scotland.

The Committee must take account of these likely consequences during their scrutiny of the Bill.

Greater engagement in the democratic process, and active participation in decision making is fundamental for the well-being of future generations. Any loss of the Parliament’s principles of openness, ease-of access and accountability must be avoided.

George Thomson
Chief Executive
Volunteer Scotland
26 November 2015
Standards, Procedures and Public Appointments Committee

Lobbying (Scotland) Bill

Written submission received from Mark Whittet

I write (again) with evidence and proven, best-practice recommendations re the above.

As I presented to the Committee (and as now also -again - re- attached) [Clerk’s note: the “Lobbying Log” has not been reproduced in this submission] the evidence - and co-incidentally - the best practice solution to the 'problem' you have misdiagnosed is this;

* that all MPs (including ministers) in Holyrood publish a 'Lobbying Log' of all their business/ public duty meetings (six monthly in arrears) as is presently the best-case practice by Malcolm Wicks, a Tory MEP

This Lobbying Log - solves all known (mis-diagnosed) and (in Scotland -un-evidenced) problems of paid-for AND/OR unpaid-for charity lobbying.

This is the proven and best-practice procedure presently in place.

Having been both/ all an (elected) community Councillor, a professional journalist, professional lobbyist and as a part-qualified solicitor and former Director and Deputy Convenor of the Scottish Legal Action Group (www.scolag.org) <2004-2013> I recommend this to you on self-evident best practice grounds, and also because it would avoid needless and wasteful public expenditure to 'solve' a non-existent problem.

When I presented that same facts, information, and experience to the Scottish Council for Voluntary Organisations (SCVO) they seized upon this as patent best practice and made the same call on the same grounds based on the same evidence (or rather lack of) to the Parliament Committee in the last Scottish parliamentary session.

And that is my evidence - ie the lack of your evidence that there is a problem of this type which needs to be 'fixed.'

It is pertinent to note that while - in an entirely un-related field - you/r government is stridently calling for 'evidence-led' policy make on the Scottish shale gas / shale energy sector. That industry - as well as the Institute of Civil Engineers (ICE) - entirely supports an evidence-led policy making process.

Ergo, your non-evidence-based approach to policy-making on lobbying is logically indefensible, inconsistent, meretricious and wasteful.

It is as self-willingly blind as other non-evidence based policies based on mis-diagnosed harm reduction/ public safety where the facts and evidence are ignored
so they can be shoe-horned into a pre-set dogmatic legislation (eg road 'speed' tax
.cameras and various laws relating to provision of adult sexual services and the
criminalisation of too many drugs (and we all know how successful the 1930s
Alcohol Prohibition Act in the USA was!)

Mark R Whittet (LLB, BA, DipLP, Advanced Certificate - Local Government
Management)
2 November 2015
Delegated Powers and Law Reform Committee

Lobbying (Scotland) Bill at Stage 1
Contents

Introduction 1
Overview of the Bill 2
Delegated Powers Provisions 3
Recommendations 4
Annexe 7
The remit of the Delegated Powers and Law Reform Committee is to consider and report on—

a. any—
   i. subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
   ii. [deleted]
   iii. pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

b. proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

c. general questions relating to powers to make subordinate legislation;

d. whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

e. any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and

f. proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.

g. any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

h. any draft proposal for a Scottish Law Commission Bill as defined in that Rule; and

i. any Consolidation Bill as defined in Rule 9.18.1 referred to it by the Parliamentary Bureau in accordance with Rule 9.18.3.
Committee Membership

Convener
Nigel Don
Scottish National Party

Deputy Convener
John Mason
Scottish National Party

Richard Baker
Scottish Labour

John Scott
Scottish Conservative and Unionist Party

Stewart Stevenson
Scottish National Party
Introduction

1. At its meetings on 17 November and 1 December 2015 the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Lobbying (Scotland) Bill at Stage 1 (“the Bill”). The Committee submits this report to the lead committee for the Bill under Rule 9.6.2 of Standing Orders.

2. The Scottish Government has produced a Delegated Powers Memorandum (“DPM”) on the delegated powers provisions in the Bill.
Overview of the Bill

3. This Bill was introduced by the Deputy First Minister and Cabinet Secretary for Finance, Constitution & Economy on 29 October 2015.

4. It makes provision to establish and maintain a lobbying register and to publish a code of conduct in order to fulfil the Scottish Government’s objective of increasing the public transparency of elected representatives’ activity. The aim of the Bill is to introduce a measured and proportionate register of lobbying activity.

5. **Part 1** of the Bill makes provision in relation to the core concepts of the registration regime, including the concept of engaging in regulated lobbying and the related concepts of Government and parliamentary functions.

6. **Part 2** makes provision in relation to 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.

7. **Part 3** makes provision in relation to the oversight and enforcement of the regime, including the role of the Clerk, for example, in monitoring compliance and the role of the Commissioner for Ethical Standards in Public Life in Scotland (“the Commissioner”) in relation to complaints. Provision is also made in relation to offences.

8. **Part 4** makes provision in relation to the publication of parliamentary guidance and a code of conduct for persons lobbying MSPs.

9. **Part 5** makes provision in relation to interpretation, the process for making parliamentary resolutions under the Bill, ancillary provision and commencement as well as offences by bodies corporate etc. and the application of the Bill to trusts.

10. **The schedule** sets out communications which are not lobbying for the purposes of the regime.
Delegated Powers Provisions

11. The Committee considered the delegated powers in the Bill. At its first consideration of the Bill, the Committee determined that it did not need to draw the attention of the Parliament to the delegated powers in the following provisions:

- Section 24(7) – Direction to the Commissioner
- Section 27(2) – Direction to the Commissioner
- Section 28(8) – Direction to the Commissioner
- Section 43 – Parliamentary guidance
- Section 49 – Ancillary provision
- Section 50 – Commencement

12. At its meeting on 17 November, the Committee agreed to write to the Scottish Government to raise questions on the remaining delegated powers in the Bill. This correspondence is reproduced at the Annexe. As a result of this correspondence the Committee agreed that it did not need to draw the following powers to the attention of the Parliament:

- Section 15 – Power to specify requirements about the register
- Section 20 – Power to make further provision about information notices
- Section 24(5)(a) – Direction to the Commissioner
- Section 31 – Direction to the Commissioner
- Section 41 – Power to make further provision about Parliament’s procedures etc.
Recommendations

13. The Committee’s comments and recommendation on the remaining delegated power in the Bill are detailed below.

Section 44 – Code of Conduct for persons lobbying MSPs

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>the Scottish Parliament</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>publication of a code of conduct</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>none</td>
</tr>
</tbody>
</table>

**Provision**

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

15. 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 is therefore wider than “regulated lobbying” with which the rest of the Bill is concerned. The code of conduct may therefore contain provision relating to any other “lobbying” of MSPs, beyond that of persons engaging in “regulated lobbying” as defined in section 1 of the Bill.

**Comment**

16. The Committee noted that the provision does not include a requirement for persons to comply with or have regard to the code of conduct, and sought an explanation of this from the Scottish Government. The Committee also asked why the Scottish Government considered it appropriate that the Bill does not contain any sanction or enforcement provision in relation to breach of the code.

17. The Scottish Government referred in its response to the recommendation of the Standards, Procedures and Public Appointments (“SPPA”) Committee in its report on lobbying activity\(^1\) that the Parliament should introduce a code of practice for those who lobby, to include advice on expected standards of behaviour. The recommendation was that the code of practice should not be binding. Rather it should mirror provisions to be introduced in the MSPs’ Code of Conduct. In the SPPA Committee’s view: “This could prove useful in providing advance notice of what forms of approach would or would not be deemed appropriate”. The Government indicates in its response that it has sought to reflect the SPPA Committee’s views in framing the power in section 44.

18. The Committee considers it highly unusual for a Bill to enable the creation of a code of conduct without a corresponding obligation on persons to comply with, or

---

\(^1\)http://www.scottish.parliament.uk/S4_StandardsProceduresandPublicAppointmentsCommittee/Reports/stpR-15-01w.pdf
alternatively have regard to, that code. In the Committee’s view, the provision which is contemplated in exercise of the power is not properly characterised as a code of conduct, since there is no intention for it to regulate the activity of any persons. Rather it is intended to act as a guide to the behaviour which MSPs and their staff are likely to expect of persons engaged in lobbying. In the Committee’s view the power would accordingly be more appropriately expressed as a power to issue guidance.

19. The Committee is content in principle with the power in section 44. However in the absence of provision requiring persons to comply with or have regard to any such code, the Committee considers it highly unusual for the power to be expressed as a power to publish a code of conduct. In the Committee’s view, the power would more appropriately be expressed as a power to publish guidance.
Lobbying (Scotland) Bill [as introduced] is available at the following website:
http://www.scottish.parliament.uk/S4_Bills/Lobbying%20(Scotland)%20Bill/SPBill82S042015.pdf
[accessed December 2015]

Lobbying (Scotland) Bill Delegated Powers Memorandum is available at the following website:
http://www.scottish.parliament.uk/S4_Bills/Lobbying%20(Scotland)%20Bill/SPBill82DPMS042015.pdf
[accessed December 2015]
Correspondence with the Scottish Government

On 17 November 2015, the Committee wrote to the Scottish Government as follows:

1. The Delegated Powers and Law Reform Committee considered the above Bill on Tuesday 17 November and seeks an explanation of the following matters:

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

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>the Scottish Parliament</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>resolution by Parliament</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>resolution by Parliament</td>
</tr>
</tbody>
</table>

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

3. Section 15(2) provides that a resolution under subsection (1) may modify sections 4 to 14 of the Bill.

4. The Committee asks the Scottish Government for an explanation of the following:

5. The Delegated Powers Memorandum (“DPM”) explains that the purpose of the power in section 15(1) is to provide flexibility in order to ensure the effective operation of the registration regime. A non-exhaustive list provides an illustration of the circumstances in which the power may be exercised. The power also includes, by virtue of section 15(2), the ability to modify sections 4 to 14 of the Bill. Can the Scottish Government explain further why it is considered appropriate for the Parliament to have a delegated power to modify provisions of the Act as passed?

6. Regarding the choice of procedure, why is it considered appropriate that the power in section 15(1) is exercised by parliamentary resolution notwithstanding that it includes provision to modify primary legislation?

7. What further procedural provision is envisaged to be required in the Parliament’s Standing Orders? Why is it considered appropriate that these matters are subject to provision made in the Standing Orders, rather than set out on the face of the Bill?

8. Section 47(2)(b) confers power on the Parliament to make the full range of ancillary provision in a resolution under the Bill. Why is that considered
appropriate? Can the Scottish Government give an example of the sort of provision it is envisaged might be made under the ancillary powers?

9. Section 47(4) of the Bill provides that Part 1 of the Interpretation and Legislative Reform Act 2010 ("ILRA") is to apply to a resolution as if it were a Scottish instrument. Can the Scottish Government explain the purpose of this provision?

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

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>the Scottish Parliament</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>resolution by Parliament</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>resolution by Parliament</td>
</tr>
</tbody>
</table>

10. Section 20(1) provides that the Parliament may, by resolution, make further provision about information notices issued by the Clerk under section 17 of the Bill.

11. As regards the choice of procedure, the questions raised in relation to section 15 apply equally here. Accordingly the Committee asks the Scottish Government for an explanation of the following:

12. What further procedural provision is envisaged to be required in the Parliament's Standing Orders? Why is it considered appropriate that these matters are subject to provision made in the Standing Orders, rather than set out on the face of the Bill?

13. Section 47(2)(b) confers power on the Parliament to make the full range of ancillary provision in a resolution under the Bill. Why is that considered appropriate? Can the Scottish Government give an example of the sort of provision it is envisaged might be made under the ancillary powers?

14. Section 47(4) of the Bill provides that Part 1 of ILRA is to apply to a resolution as if it were a Scottish instrument. Can the Scottish Government explain the purpose of this provision?

Section 31 – Directions to the Commissioner

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>the Scottish Parliament</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>direction by Parliament</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>direction by Parliament</td>
</tr>
</tbody>
</table>

15. Part 3 of the Bill makes provision for the investigation of complaints and reporting to Parliament by the Commissioner as part of the oversight of the registration
regime. Section 31(1) provides that the Commissioner, in carrying out these functions, must comply with any direction given by the Parliament.

16. 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 in these circumstances.

17. **The Committee asks the Scottish Government for an explanation of the following:**

18. **In relation to the power in section 31, why is it considered appropriate that provision regarding the handling of complaints is dealt with in directions, rather than set out on the face of the Bill?**

19. **Further, can you give examples of the sorts of cases under which it is envisaged the Parliament might direct the Commissioner not to carry out an assessment of a complaint, or an investigation into a complaint?**

20. **In relation to section 24(5)(a), in what sorts of cases where a complaint is inadmissible by virtue of the rules in section 23(3) is it envisaged that the Scottish Parliament would direct the Commissioner to report? Why is it considered appropriate to specify these classes of case in directions, rather than on the face of the Bill?**

21. **What further procedural provision for directions under the Bill, including as regards publication, is envisaged to be required in the Parliament’s Standing Orders? Why is it considered appropriate that these matters are subject to provision made in the Standing Orders, rather than set out on the face of the Bill?**

**Section 41 – Power to make further provision about the Scottish Parliament’s procedures etc.**

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>the Scottish Parliament</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>resolution by Parliament</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>resolution by Parliament</td>
</tr>
</tbody>
</table>

22. **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. Part 3 of the Bill sets out the framework for investigation of complaints and reporting to Parliament by the Commissioner.**

23. **As regards the choice of procedure the questions raised in relation to section 15 apply equally here. Accordingly the Committee asks the Scottish Government for an explanation of the following:**
Delegated Powers and Law Reform Committee
Lobbying (Scotland) Bill at Stage 1, 74th Report, 2015 (Session 4)

24. What further procedural provision is envisaged to be required in the Parliament’s Standing Orders? Why is it considered appropriate that these matters are subject to provision made in the Standing Orders, rather than set out on the face of the Bill?

25. Section 47(2)(b) confers power on the Parliament to make the full range of ancillary provision in a resolution under the Bill. Why is that considered appropriate? Can the Scottish Government give an example of the sort of provision it is envisaged might be made under the ancillary powers?

26. Section 47(4) of the Bill provides that Part 1 of ILRA is to apply to a resolution as if it were a Scottish instrument. Can the Scottish Government explain the purpose of this provision?

Section 44 – Code of Conduct published by the Parliament, for persons lobbying MSPs

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

28. The Committee asks the Scottish Government for an explanation as to –

(a) why it has been considered appropriate that the section does not include requirements for persons to comply with the Code or have regard to the Code; and

(b) why it has been considered appropriate that the section does not contain any sanction or enforcement provision in relation to a breach of the Code?

On 23 November 2015 the Scottish Government responded as follows:

You wrote to James Hynd on 17 November setting out a series of questions in respect of the Lobbying (Scotland) Bill. This letter offers the Government’s response to each of those queries. Headings relate to relevant paragraph numbers in your letter.

Paragraph 5

The Delegated Powers Memorandum (“DPM”) explains that the purpose of the power in section 15(1) is to provide flexibility in order to ensure the effective operation of the registration regime. A non-exhaustive list provides an illustration of the circumstances in which the power may be exercised. The power also includes, by virtue of section 15(2), the ability to modify sections 4 to 14 of the Bill. Can the Scottish Government explain further why it is considered appropriate for the Parliament to have a delegated power to modify provisions of the Act as passed?
In particular the Government recognises – in the case of a legislative regime regulating a new field such as that provided for in the Bill – that it may be necessary to revisit operational aspects of the register in light of practical experience over time. It is principally for that reason that the power in section 15 to make provision about Part 2 is taken. Section 15(2) makes clear that the power may be exercised so as to modify existing provision in sections 4 to 14. For example, the Parliament may, in light of experience, consider it appropriate that the register contain different information about regulated lobbying activity from that contained in section 6.

As noted in paragraphs 16 to 17 of the DPM, this power for the Parliament to make changes to the Bill was included in particular in light of Recommendation 4 of the Parliament’s Standards, Procedures and Public Appointments Committee’s Inquiry Report – that the Parliament must be able to change the new registration system readily if the registration process inhibits engagement with Parliament. The power to amend the Bill is accordingly included, and covers the registration measures in the Bill, comprising most of Part 2 on the lobbying register.

The Government believes that the power is proportionate and appropriate to the particular nature of this Bill. As noted in the DPM, it is preceded by the Interests of Members of the Scottish Parliament Act 2006 where paragraph 10 of the schedule to that Act similarly confers power for the Parliament by resolution to modify the detail of primary legislation. That provision allows the Parliament, by resolution, to make modifications of that schedule (which sets out what interests constitute registrable financial interests for the purposes of the scheme).

**Paragraph 6**

**Regarding the choice of procedure, why is it considered appropriate that the power in section 15(1) is exercised by parliamentary resolution notwithstanding that it includes provision to modify primary legislation?**

As noted in the DPM and above, the decision to confer subordinate power on the Parliament exercisable by resolution rather than on Ministers in the usual way reflects the Standards Procedures and Public Appointments Committee’s Report on proposals for a register of lobbying activity. It expressed the view that “the Parliament must be assured that the new registration process does not inhibit those seeking to legitimately lobby Parliament and Government. The Parliament must be able to change this new system if it considers this is the case.”\(^2\) The power for the Parliament to amend these aspects of the framework of the Bill is conferred in order to achieve that aim.

The precedent in paragraph 10 of the schedule to the Interests of Members of the Scottish Parliament Act 2006 which similarly confers power for the Parliament by resolution to modify primary legislation is noted above.

The Government note that a parliamentary resolution requires positive affirmation of the support of the whole Parliament for the measures enacted. This would provide a level of assurance of fuller parliamentary consideration of the measures, in a similar way to the affirmative procedure which is common for subordinate powers to amend primary legislation exercisable by the Scottish Ministers.

**Paragraph 7**

**What further procedural provision is envisaged to be required in the Parliament’s Standing Orders? Why is it considered appropriate that these matters are subject to provision made in the Standing Orders, rather than set out on the face of the Bill?**

It will be a matter for the Parliament to decide what form of additional procedural provision is necessary and appropriate in relation to the exercise by Parliament of this and other resolution making powers conferred in the Bill. An example, in relation to the resolution making power under paragraph 10 of the schedule to the Interests of Members of the Scottish Parliament Act 2006, is found in Rule 1.8 of the Standing Orders. In particular, that rule provides that such a resolution may be made on a motion of the Standards, Procedures and Public Appointments Committee, and that the Committee must consult other members about the proposed resolution before lodging such motion. Any new provision to be made in Standing Orders could make similar or different provision. By way of example only it could provide for wider public consultation on a draft of any resolution before it is made.

The Bill leaves any further provision to be made in Standing Orders rather than on the face of the Bill. This is in order to provide for flexibility in the arrangements, but also more generally to respect the general position that it is for Parliament to regulate its own internal procedures.

**Paragraph 8**

**Section 47(2)(b) confers power on the Parliament to make the full range of ancillary provision in a resolution under the Bill. Why is that considered appropriate? Can the Scottish Government give an example of the sort of provision it is envisaged might be made under the ancillary powers?**

As with the freestanding ancillary power in section 49 of the Bill for the Scottish Ministers, section 47(2)(b) is in recognition of the fact that any exercise of section 15(1) and the other resolution making powers in the Bill, in particular in light of experience over time, may give rise to the need for incidental, supplementary or consequential provisions. There may also be the need to adjust how changes to the regime in the Bill would apply transitonally. It is considered appropriate that such ancillary provision can be made by Parliament in making resolutions under section 15(1) and the other bespoke resolution making powers in the Bill, rather than there being a need to rely on exercise of the section 49 power by the Scottish Ministers. While the Scottish Government recognises the range of different ways in which this power could be used, use of the power would as usual be tightly constrained.
One example of the use of the section 15 power might be that it would allow the Parliament by resolution to alter section 8 of the Bill (duty to register). Section 8 includes for instance the (30-day) timescale for providing the information required. A significant change to section 8 might, for example, need the adjustment of the operation of provision elsewhere in the Bill which is affected by the duty in this section – e.g. section 22(1)(a) on the Commissioner's duty to investigate. The ancillary power in section 47(2)(b) might in principle be used in connection with those circumstances.

Paragraph 9

Section 47(4) of the Bill provides that Part 1 of the Interpretation and Legislative Reform Act 2010 (“ILRA”) is to apply to a resolution as if it were a Scottish instrument. Can the Scottish Government explain the purpose of this provision?

Part 1 of the Interpretation and Legislative Reform (Scotland) Act 2010 (“ILRA”) contains general default provision about the interpretation and operation of Acts of the Scottish Parliament and in particular Scottish instruments made under such Acts. The rules apply to such legislation in the absence of express provision to the contrary therein.

A “Scottish instrument” is defined in section 1(4) and (5) of ILRA and does not include a resolution of the Parliament. By providing in section 47(4) of the Bill for Part 1 of ILRA to apply to a resolution of the Parliament as it applies to a Scottish instrument, resolutions of the Parliament will benefit from the interpretative and other rules in Part 1 of ILRA in the same way as any Scottish instrument, subject to any contrary provision made in such resolutions.

We note for completeness that paragraph 186 of the Explanatory Notes to the Bill contains a typographical error as it describes section 47(5) of the Bill and not, as indicated, section 47(4) which is not currently expressly addressed in the Explanatory Notes. We will address this when the Notes are revised in due course.

Paragraph 12

What further procedural provision is envisaged to be required in the Parliament's Standing Orders? Why is it considered appropriate that these matters are subject to provision made in the Standing Orders, rather than set out on the face of the Bill?

As set out in answer above to the point raised at paragraph 7 of your letter, it will be a matter for the Parliament to decide what form of additional procedural provision is necessary in relation to the exercise by Parliament of this and other resolution making powers conferred in the Bill. An example, in relation to the resolution making power under paragraph 10 of the schedule to the Interests of Members of the Scottish Parliament Act 2006, is found in Rule 1.8 of the Standing Orders. In particular, that rule provides that such a resolution may be made on a motion of the Standards, Procedures and Public Appointments Committee, and that the Committee must consult other members about the proposed resolution before lodging such motion. Any new
provision to be made in Standing Orders could make similar or different provision. By way of example only it could provide for wider public consultation on a draft of any resolution before it is made.

The Bill leaves further provision to be made in Standing Orders rather than on the face of the Bill. This is in order, again, to provide for flexibility in the arrangements but also to respect the general position that it is for Parliament to regulate its own internal procedures.

Separately, of course, the provision made at section 47(5) to (7) of the Bill – plugging in to section 41(2) to (5) of the Interpretation and Legislative Reform (Scotland) Act 2010 and the Scottish Statutory Instruments Regulations 2011, subject to modifications – provide for parliamentary resolutions under the Bill to be published by the Queen’s Printer in the same way as Scottish statutory instruments, ensuring that they are published in a recognised format and so as to be easily accessible.

Paragraph 13

Section 47(2)(b) confers power on the Parliament to make the full range of ancillary provision in a resolution under the Bill. Why is that considered appropriate? Can the Scottish Government give an example of the sort of provision it is envisaged might be made under the ancillary powers?

As set out in answer above to the point raised at paragraph 8 of your letter, as with the freestanding ancillary power in section 49 of the Bill for the Scottish Ministers, section 47(2)(b) is in recognition of the fact that any exercise of section 20(1) in relation to information notices, in particular in light of experience over time, may give rise to the need for incidental, supplementary, consequential or transitional provisions. It is considered appropriate that such ancillary provision can be made by Parliament by resolution under section 20(1) and the other bespoke resolution making powers in the Bill, rather than there being a need to rely on exercise of the section 49 power by the Scottish Ministers. While again the Scottish Government recognises the different uses of these powers, their use would as usual be strictly construed.

The Scottish Government is reluctant to speculate about possible exercise of the power, but one example might be if on the introduction of a change to the rules on the period within which information must be provided, transitional provision were desired about how and when that change had effect in respect of on-going cases.

Paragraph 14

Section 47(4) of the Bill provides that Part 1 of ILRA is to apply to a resolution as if it were a Scottish instrument. Can the Scottish Government explain the purpose of this provision?

The same principles apply for resolutions under section 20 of the Bill as set out in answer above to the point raised at paragraph 9 of your letter.
Paragraph 18

In relation to the power in section 31, why is it considered appropriate that provision regarding the handling of complaints is dealt with in directions, rather than set out on the face of the Bill?

The procedural and other arrangements for Commissioner investigation and report to Parliament under Part 3 of the Bill are based substantially on the equivalent arrangements for Commissioner investigation and reporting to Parliament under the Scottish Parliamentary Standards Commissioner Act 2002. The 2002 Act provides a framework for a system which has been operating successfully for some time now and for that reason in particular it was considered appropriate to adopt that framework in the Bill.

Similar provision is made in section 4 of the Scottish Parliamentary Standards Commissioner Act 2002, enabling the Parliament to issue directions to the Commissioner in relation to the carrying out of the Commissioner’s investigative functions under that Act. As with the 2002 Act, providing Parliament with power to issue directions to the Commissioner about exercise of his function, rather than making provision on the face of the Bill, respects the fact that the Commissioner is required to report the outcome of investigations to Parliament and provides for appropriate operational flexibility.

As with the 2002 Act there is an important limit on the power. While such directions may in principle be of either a general or specific character section 31(3) of the Bill makes clear that a direction under section 31(1) may not direct the Commissioner as to how a particular investigation is carried out.

Paragraph 19

Further, can you give examples of the sorts of cases under which it is envisaged the Parliament might direct the Commissioner not to carry out an assessment of a complaint, or an investigation into a complaint?

A particular example which has been raised in the Standards, Procedures and Public Appointments Committee’s Stage 1 consideration of the Bill concerns the ability of the Commissioner to refer matters raised in complaints to the Clerk for consideration. The power could, for example, in principle be exercised by the Parliament to direct the Commissioner, where the Commissioner considers it appropriate to do so, to suspend consideration of a complaint received and to refer any matter raised in that complaint to the Clerk to seek to informally resolve the matter with the person to whom it relates in the first instance. This might help to ensure that minor or inadvertent oversights are dealt with through informal action between the Clerk and the person to whom they relate, consistent with the overall intention of the oversight and enforcement arrangements in the Bill, ie to ensure that any questions of compliance can be addressed in an effective and proportionate manner.
Clearly other exercises of the power are possible. The Parliament has exercised its power under section 4 of the 2002 Act in a Direction found in Annex 5 of Volume 4 of the Code of Conduct for Members of the Scottish Parliament. It may be that the Parliament considers that it is appropriate to make similar provision in exercise of the section 31(1) power in the context of the Commissioner’s investigations under the Bill.

**Paragraph 20**

**In relation to section 24(5)(a), in what sorts of cases where a complaint is inadmissible by virtue of the rules in section 23(3) is it envisaged that the Scottish Parliament would direct the Commissioner to report? Why is it considered appropriate to specify these classes of case in directions, rather than on the face of the Bill?**

Again, the procedural and other arrangements for Commissioner investigation and report to Parliament under Part 3 of the Bill are based substantially on the equivalent arrangements for Commissioner investigation and reporting to Parliament under the Scottish Parliamentary Standards Commissioner Act 2002. The 2002 Act provides a framework for a system which has been operating successfully for some time now and for that reason in particular it was considered appropriate to adopt that framework in the Bill.

Similar provision is made in section 7(6) of the Scottish Parliamentary Standards Commissioner Act 2002. As with the 2002 Act, providing Parliament with power to issue directions to the Commissioner about exercise of his function, rather than making provision on the face of the Bill, respects the fact that the Commissioner is required to report the outcome of investigations to Parliament and provides for appropriate operational flexibility.

Again, the Parliament has exercised its power under section 7(6) of the 2002 Act in a Direction found in Annex 5 of Volume 4 of the Code of Conduct for Members of the Scottish Parliament. It may be that the Parliament considers that it is appropriate to make similar provision in exercise of the section 24(5)(a) power in the context of the Commissioner’s investigations under the Bill.

**Paragraph 21**

**What further procedural provision for directions under the Bill, including as regards publication, is envisaged to be required in the Parliament’s Standing Orders? Why is it considered appropriate that these matters are subject to provision made in the Standing Orders, rather than set out on the face of the Bill?**

As for Parliamentary resolutions under the Bill (on which see for example the above answer to the point raised at paragraph 7 of your letter), it will be for the Parliament to decide what form of additional procedural provision is appropriate in relation to the exercise by Parliament of powers to issue directions under the Bill. An example of

---


procedural provision in relation to the direction making powers under the Scottish Parliamentary Standards Commissioner Act 2002 is found in Rule 3A.2 of the Standing Orders. In particular, that provides that such directions shall be given by the Standards, Procedures and Public Appointments Committee and are so given if signed by the Convener of that Committee. Again, while other provision could be made, the Parliament may wish to make the same or similar provision in relation to directions under the Bill.

On publication, the Parliament could also make provision in Standing Orders as to the means of publication of any direction under the Bill. Standing Orders do not currently make provision for publication of directions under the 2002 Act. Rather, as noted in the above answer to the point raised at paragraph 20 of the clerk’s letter, publication of directions under the 2002 Act is dealt with administratively as part of the Code of Conduct for Members of the Scottish Parliament. Where the Bill relates to the activities of persons outwith the Parliament – rather than its Members – a different means of publication may be considered appropriate, for example alongside any parliamentary guidance about operation of the Bill which may in due course be published by Parliament under section 43 of the Bill. That is ultimately a matter for the Parliament, but clearly Parliament will wish to ensure that provision is made for the publication of directions under the Bill in a clearly accessible manner.

In the context of questions regarding publication it is, the Government considers, important to remember that directions under the Bill are by their nature directions to the Commissioner rather than to the public at large. Accordingly, while those engaging with the Commissioner will wish to be aware of them – the directions are in principle different from resolutions under the Bill. It is in these circumstances that, unlike the provision for parliamentary resolutions under the Bill to secure their publication in the same manner as SSIs, no specific provision is made on the face of the Bill for publication of directions.

As with further procedural provision for resolutions under the Bill (on which see again for example the above answer to the point raised at paragraph 7 of your letter), the Bill leaves further provision to be made in Standing Orders or administratively rather than on the face of the Bill. This is also in order to provide for flexibility in the arrangements and more generally to respect the general position that it is for Parliament to regulate its own internal procedures.

**Paragraph 24**

**What further procedural provision is envisaged to be required in the Parliament’s Standing Orders? Why is it considered appropriate that these matters are subject to provision made in the Standing Orders, rather than set out on the face of the Bill?**

As noted, the procedural and other arrangements for Commissioner investigation and report to Parliament under Part 3 of the Bill are based substantially on the equivalent arrangements for Commissioner investigation and reporting to Parliament under the Scottish Parliamentary Standards Commissioner Act 2002. The 2002 Act provides a
framework for a system which has been operating successfully for some time now and for that reason in particular it was considered appropriate to adopt that framework.

However, the 2002 Act stopped short of including – or conferring power to make – provision about the procedures to be followed by the Parliament following the Commissioner submitting a report to the Parliament under that Act. Paragraph 11 of the Explanatory Notes to the 2002 Act explains that the 2002 Act does not deal with this “because it is a matter for the Parliament itself by its own internal rules to set out the procedure that is to apply…it will be necessary for the Parliament to make separate provision in the standing orders and the [Code of Conduct for Members of the Scottish Parliament] for the way the Commissioner will make reports to the Parliament and for the procedure that it will follow once the Commissioner has made a report to it…”5.

While again the Government wished to respect the position that it is for Parliament to regulate its own internal procedures, with the appropriate operational flexibility that brings, it considered that it was appropriate that in the context of this Bill the Parliament should be required to make appropriate procedural provision by resolution. That is, as noted above, in recognition of the fact that investigations and reports to Parliament under the Bill will be in relation to the activities of private parties rather than, as under the 2002 Act, the Parliament’s own Members. Provision for procedures to be followed by the Parliament following the Commissioner submitting a report to the Parliament under the Bill will therefore be of direct relevance to such parties. Taken together with the provision in section 47(5) to (7) of the Bill in relation to publication of resolutions in the same way as SSIs, this will ensure that relevant procedural provision is made by the Parliament by resolution and that any such provision is clearly accessible.

**Paragraph 25**

*Section 47(2)(b) confers power on the Parliament to make the full range of ancillary provision in a resolution under the Bill. Why is that considered appropriate? Can the Scottish Government give an example of the sort of provision it is envisaged might be made under the ancillary powers?*

As set out in the above answer to the points raised at paragraphs 8 and 13 of your letter, as with the freestanding ancillary power in section 49 of the Bill for the Scottish Ministers, the provision in section 47(2)(b) is in recognition of the fact that the exercise of section 41 in particular in light of experience over time may give rise to the need for incidental, supplementary, consequential or transitional provisions. It is considered appropriate that such ancillary provision can be made by Parliament in making resolution under section 41, rather than there being a need to rely on exercise of the section 49 power by the Scottish Ministers. While again the Scottish Government recognises the different ways in which this power can be applied, use of the power would be strictly construed. They type of provision which could be made would be of a similar nature to that indicated for the other resolutions.

---

Paragraph 26

Section 47(4) of the Bill provides that Part 1 of ILRA is to apply to a resolution as if it were a Scottish instrument. Can the Scottish Government explain the purpose of this provision?

The same purpose applies for resolutions under section 20 of the Bill as set out in the above answer to the point raised at paragraph 9 of your letter.

Paragraph 28

The Committee asks the Scottish Government for an explanation as to –

(a) why it has been considered appropriate that the section does not include requirements for persons to comply with the Code or have regard to the Code; and

(b) why it has been considered appropriate that the section does not contain any sanction or enforcement provision in relation to a breach of the Code?

As noted in paragraph 2 of the Policy Memorandum, The Bill takes account of the views of the Parliament’s Standards, Procedures and Public Appointments Committee in its Report on proposals for a register of lobbying activity. Those views have informed the Government’s approach to the Bill to a significant extent.

Paragraphs 140 to 148 of the Committee’s Report give consideration to a code of practice for those lobbying MSPs. In particular at paragraphs 143 and 144 the Parliament expressed views as follows:-

143. The Committee considers that there is an argument for providing those who regularly lobby politicians with a non-binding code including guidance that mirrors the rules in the MSP Code of Conduct. This could prove useful in providing advance notice of what forms of approach would or would not be deemed appropriate.

144. This form of code would not be a prescriptive set of rules so there is no justification for making it binding. A non-statutory approach also reflects the fact that it is ultimately the responsibility of the MSP to decide whether to meet with people seeking to lobby them, and to be familiar with the binding rules of their Code in deciding which offers to accept.

The Committee went on to conclude in paragraph 148 that:

148. The Committee recommends that the Parliament should introduce a code of practice for those who lobby that includes advice on expected standards of behaviour. This would mirror the rules on lobbying in the Code of Conduct for MSPs.

Particularly in circumstances where the code of conduct relates to those lobbying Members of the Parliament in their capacity as such, the Government has sought to reflect and respect these views in framing the provision in section 43 of the Bill. It is in these circumstances that the section does not include requirements for persons to comply with the Code or have regard to the Code and that it does not contain any sanction or enforcement provision in relation to a breach of the Code.
Lobbying

09:34

The Convener: We come now to the main substance of today’s meeting. Item 4 is for the committee to take evidence at stage 1 on the Lobbying (Scotland) Bill. We are operating the session in round-table format, so I will say how I would like us to try to play the session to get the best out of it. As convener, I will try to use as light a touch as possible—I am perfectly content for people to interact with each other over the table. However, let us try to remember that this works best if only one person speaks at a time. I will intervene to ensure that that happens.

I expect that we will hear a number of statements, assertions and claims from people, as is perfectly proper. I hope that, when they do that, people explain to us why they make those statements and claims. If any of us feels that that is not happening, we might invite the person making the claim to do so.

I give this as an example—this is not to single anyone out for any particular reason, but it is simply because I have before me a paper that the Electoral Reform Society has provided us with in relation to the Lobbying (Scotland) Bill. It refers to “The old way of doing representative democracy ... as being in a ‘malaise.’”

That is fair enough, and we might instinctively feel that we could agree with that to some extent, but if we were to say something of that character at this meeting, I would expect to hear some expression of where that has come from. It is perfectly legitimate for such expression to come from the experience of the individual who says it, and for them to explain why they have said it—that is okay—but knowing where something has come from will help us to weigh in the balance what might be conflicting things.

That was a slightly long preamble. With us today are Professor Raj Chari from the department of political science at Trinity College Dublin; Dr William Dinan from Spinwatch; John Downie from the Scottish Council for Voluntary Organisations; Peter Duncan, who I think I can fairly say is representing lobbyists—or who is, at least, a lobbyist in his own right, if not representing them; Neil Findlay, who perhaps set the Parliament on this course some considerable time ago; Steve Goodrich from Transparency International; Steve Maughan, head of campaigns at the Confederation of British Industry—

Richard Maughan (Confederation of British Industry): It is Richard Maughan.

The Convener: I beg your pardon. You are quite correct. It is quite encouraging to be reassured that at least you know who you are.

We also have Andy Myles, who is a well-kent face in these corridors, from Scottish Environment LINK; and Willie Sullivan from the Electoral Reform Society.

We have a number of themes around which we are going to try and structure our inquiry and round-table discussion today, but it is not an exclusive list; if other themes emerge, let us go there. I will share the headings that we have. The first is “Striking the balance”, which is about finding out whether the bill strikes the right balance between not making things so burdensome as to discourage small organisations, in particular, from engaging with Parliament and seeking to persuade us to adopt a particular point of view, and capturing enough information to genuinely help the general public and the third sector to see what is actually going on.

The second heading is “Definitions and Exclusions”. In the bill, have we captured what lobbying actually is and how it works?

The third heading is “Thresholds or triggers”. Do we capture things? Do we leave out some things?

The next two headings ask what is in the register and how the compliance regime works. The last heading, which I suspect may not exercise us too much in this forum, is on whether the bill will give Parliament enough flexibility to change, for example, the contents of the register and the way in which things work. As we learn from experience of using the register, we may find that we need to refine it. Do we have sufficient powers in that regard? I suspect that that may be for all parliamentarians to consider, rather than this particular group.

Having said all that, I am minded to let this discussion last for approximately an hour—although we will not cut you off mid-sentence. Who wants to start? We have not pre-arranged anything.

Andy Myles (Scottish Environment LINK): I speak as “a well-kent face”. Perhaps I should say several well-kent faces, as I have been here in different roles. As a former special adviser to Government ministers, I can say that I have been a lobbyist and I have been lobbied in this building, so I can see the issue from both points of view. I do not know whether that makes me a gamekeeper or a poacher—probably a bit of both.

The first thing that I will say on behalf of Scottish Environment LINK is that we still think that there are blind spots in the bill. If I am doing an advocacy training course for our members, one of the first lessons is to sort out what their message
is. What are they trying to lobby for? Secondly, they need to sort out who their target is. Who is going to be making the decision? Whom do they need to talk to? That will often not be an MSP, but a civil servant or special adviser, who will be covered by the “Civil Service Code”, which is not mentioned in the policy memorandum or anywhere else. It is as though, when the word “Government” is used, it means only Government ministers, but I beg you to remember that a vast number of decisions are not made by ministers; it would be humanly impossible for ministers to make all the decisions that the Government makes.

There are in the bill blind spots of which I am peculiarly aware with regard to special advisers, for example. On the other side, there is the question of striking a balance in requiring that onerous information be provided, and other such questions.

The first thing that I will say on behalf of the environmental organisations that are members of LINK is that we are completely committed to transparency and openness. We publish our briefings to MSPs and our letters to ministers on our website. We completely understand the need for openness.

However, I am representing civic organisations; I am not representing commercial interests. None of my members is lobbying for commercial interests: they will not gain from lobbying. They are already regulated as charities and so are in a particular position. Will the bill be onerous for my members? They are not commercial lobbyists, but civic organisations, so the answer is that I fear that it might be onerous. I could be—I hope that I will be—reassured by the committee and I hope to hear some reassurance from the Government. However, my fear is that the bill is not taking a proportionate approach to charitable and civic organisations.

The reason why I say that is simple. A LINK member such as RSPB Scotland has paid staff. I was RSPB’s head of advocacy and media for eight years and I told all the staff, “Every one of you is a lobbyist: every one of you has a duty to talk to MSPs and to journalists.” No member of RSPB staff who is supposed to be protecting birds should think that that can be done that without talking to MSPs. Would all those paid staff in that organisation need to be registered as lobbyists?

Andy Myles: Every one of you has a duty to talk to MSPs. Would all those paid staff in that organisation need to be registered as lobbyists? Would they have to have an active or an inactive registration? That question has been weighing on my mind since I read the policy memorandum in particular.

There are other issues that will perhaps come out during the course of the discussion, but to start with I just say that there are blind spots in the bill and there are some real questions to be answered for civic organisations. My fear is that the complexity of the registration process may have the same effect as the Westminster act—the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014—which undoubtedly has had the effect in civic society of making people shy away from the participation that is recognised by this committee and this Parliament and is a valuable and important part of Scottish political life.

09:45

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): You mentioned that there are blind spots in the bill and that special advisers are possibly in that category. Do you have other people in mind? The Electoral Reform Society’s briefing paper—which I have not the chance to read properly because we got it only this morning—suggests senior civil servants as an example. Are they the kind of people you are thinking of?

Andy Myles: We mentioned senior civil servants in our earlier written submissions on lobbying. I have mentioned special advisers. I would add to those categories—if we did not mention them—senior officials inside Government agencies. Frequently, I might advise a LINK member not to bother a member of the Rural Affairs, Climate Change and Environment Committee with an issue, but instead to speak to a particular official in Scottish Natural Heritage or the Scottish Environment Protection Agency.

Peter Duncan (Association of Professional Political Consultants): I accept much of what Andy Myles has said.

I was introduced as representing the lobbyists. I will push back slightly and say that, around this table, we are probably all lobbyists. I recall making the point last year that we are all part of the same game, in that we are all looking to put forward a point of view; MSPs, for example, will put forward points of view to one another in their group meetings. I say—with respect to what Andy Myles has said—that voluntary groups and charities also seek to put forward points of view, which are as valid as points of view that people have paid to have put forward.

Andy Myles: They certainly are.
Peter Duncan: In answer to the convener’s initial question about whether the bill strikes a balance, the APPC takes the view that it does. We started from a position of not seeing an overwhelming public case for legislation in this area; there is not an overwhelming public problem, but we accept that the case has been made. If there is to be legislation, what the bill proposes is a decent and balanced starting point.

Like Andy Myles, however, I think that there are some illogical exclusions. For example, it does not make sense to say that, just because a meeting has been initiated by an MSP that makes it different from a meeting that has been initiated by someone else. I concur with the view that it would be logical for senior civil servants and special advisers to be included.

If there is to be legislation, it needs to be sustainable and sensible. If it is not, an overwhelming public demand will be created. We did not think that there was a problem to address, but given that we are going to address it, let us get it right and let us not create a problem that was not there in the first place.

The Convener: A number of people have caught my eye: currently, I have on my list Willie Sullivan, Neil Findlay, Steve Goodrich and John Downie. I will take Willie Sullivan first.

Willie Sullivan (Electoral Reform Society Scotland): I want to begin by addressing the idea of proportionality. Someone described the bill as being a sledgehammer to crack a nut, so I think that we should have a look at the size and strength of the nut.

In his introduction, the convener mentioned the concept of democratic “malaise”. That is not the ERS’s concept; it is one that is well known in political science, and which is being discussed as a big problem: I have provided election turnout figures. I did some focus groups with Ipsos MORI last year. All sorts of studies—The Economist’s democracy index is just one—say that there is a real problem with people’s view of representative democracy and their trust in it. On the other side, we have the rise of populism, which is a reaction to that. What people say in surveys is that they feel that the influence of big wealthy and powerful interests can often trump the power of the voter. That concept is called political inequality. Whether or not it is true, it is people’s perception, and that is a real worry.

David Runciman, who is a political science professor at Cambridge, published a book last year called “The Confidence Trap: A History of Democracy in Crisis from World War I to the Present”. His premise is that democracy is very flexible and takes a lot of hits, but might at some point stop doing that, which is a trap that we might fall into. We cannot just rely on democracy to sort itself out all the time—we have to do something about it.

Transparency is vital to that: people must be able to see who is talking to whom and in whose interests. That is the nut that we are trying to crack, so the sledgehammer needs to be pretty big. I do not think that the bill gives us enough transparency.

The key point is what will trigger registration. Would it be just a face-to-face meeting, or would it include email exchanges and other forms of digital communication, which we know are important in this day and age? It is quite possible to include that aspect in the bill. A person would not necessarily have to record every single email or every other form of electronic communication over the period; the important point concerns the persons who are to be lobbied. If we can define clearly who those people are—we suggest politicians, senior civil servants and spads—any contact with them in any way over the period might go in the register. It does not matter whether that includes 10 emails or one email as long as the person is recorded. The number of face-to-face meetings should be recorded. If there are five face-to-face meetings, or one meeting, that should be recorded on the day. With regard to electronic communications, if it would be too onerous to record every single email, just the fact that contact was made with the person in question could be recorded and that would be enough.

The Convener: I think that it is fair to say, in looking at how we might extend the bill, that we would probably be more concerned if the number of registrations had to rise, because that could get out of hand in terms of being able to run the register. I do not think that committee has yet persuaded itself that it would be an issue if the amount of information that needs to be put in the lobbying register for an individual registrant rose, as it would do if we included a wide range of communication.

Willie Sullivan: Okay.

The Convener: I say that just to give you a little context in respect of our current thinking. We will come back to you—people are not getting just one shot at speaking. Neil Findlay will now come in.

Neil Findlay (Lothian) (Lab): Thank you for the invitation to come along today, convener. From the outset, it has been clear—and I made it clear in introducing my member’s bill on the subject—that lobbying is a very important part of the democratic process, and nobody would suggest otherwise. It informs Parliament and our debates, and I find it very helpful in the work that I do.

There is no evidence of wrongdoing—that is not to suggest that there might not be wrongdoing, but
there is no evidence of it. However, the whole thrust of Government over the past while has been related to preventative action, such as preventative spend, and I see a lobbying bill as a preventative measure.

We have—I hope—ensured that there is no scandal in our Parliament, and I want it to remain that way. As more powers come to this Parliament, there will be more lobbying; that is inevitable. Before the Parliament was here, there was almost no lobbying going on in Scotland. As powers have increased, the line on the graph has gone up significantly and will continue to do so. A lobbying bill should be a preventative measure that we put in place to prevent any scandal or wrongdoing emerging. That is the whole purpose behind it.

I actually think that the bill before us is a bit of a travesty of the bill that I introduced. Much of it bears little resemblance to what the Government agreed to take on. There are some glaring examples. The bill appears to be based in the 18th and 19th centuries, with no acknowledgment that the telephone and computer have been invented and that we have conference calls and the like. There is a whole range of modern communications other than people turning up in top hat and tails to speak to one another face to face over tea and crumpets. We have moved on significantly since that was the way in which people lobbied politicians, and the bill must recognise that. At present, it very much does not.

I fear that we might be in the process of releasing another shoal of red herrings with the talk of how hellishly onerous the register is going to be. I am sure that people find it a grind to fill in their expenses form every month, but they manage it, and the proposals are not much more than that. We have seen how other countries operate a register and what information needs to be put on it. Most of the information will already be populated. People will not need to put in their address and company number every month because those will already be on the form; they will simply have to fill in the detail.

Andy Myles said that the bill would stop people in the voluntary sector participating and would be hellishly onerous for them. He said that everyone in the charitable sector is there to do good. In their opinion, they are there to do good but, in other people’s opinion, they are not necessarily there to do good. For example, in the debate over same-sex marriage, on one side of the argument we had charitable organisations saying, “We are doing good and promoting same-sex marriage,” and on the other side people were saying, “We are doing good and opposing same-sex marriage.” It is not as simple as saying that the voluntary sector is a force for good because it is a force for good in the eyes of the person who looks at it. Therefore, it is essential that voluntary organisations, trade unions and others are covered by the bill.

The Convener: It might be worth saying that, from the informal discussions that the committee has had, it seems that the bill is unlikely to survive in its present form in applying only to oral communications. We have not come to a formal position on that, so that does not carry the weight of our having made a decision, but I hope that that will be the case. I think that the Government has already had a warning on that and is aware of it. We will see where that takes us.

Steve Goodrich (Transparency International UK): I will give a quick bit of context by setting out my background. Transparency International is a global charity of more than 100 chapters and 20 years’ experience of fighting corruption. I am a gamekeeper turned poacher, because I used to work at the Electoral Commission as a senior policy adviser, so I have significant experience in dealing with similar types of regulation and engaging with Scottish charities and organisations throughout the United Kingdom on things such as regulatory burdens and the scope of legislation. I hope that I have some expertise to bring to bear here.

Fundamentally, Transparency International thinks that lobbying and transparency are key pillars of the democratic process, as has been said. We need people to engage with MSPs and ministers but also civil servants to bring to bear expertise from civil society and business to ensure that the laws that are passed are fit for purpose and work well in practice. Similarly, it is essential that the transparency relates to not only that kind of activity but the way in which our policies work. That is why members have to declare their pecuniary interests, why ministers make public their diaries and why a whole load of things, including the minutes of this meeting, are made public. Therefore, we are not asking for something new; we are asking for something that complements the arrangements that are already in place.

Why are we doing this? What is the issue that we are trying to solve? There are at least three parts to that, and they are not necessarily just to do with scandal.

The first part is about making politics accountable. That is not just about accountability for those who make the decisions; it is about accountability for those who are engaged in lobbying practices. It is a two-way street and it takes two to tango. It is a question of citizens being able to hold representatives, public officials and lobbyists to account.
Secondly, the aim is not only to identify instances of corruption but to reduce the likelihood of it. Sunlight is the best disinfectant for that kind of thing. If there is more transparency about how our politics work, there will be less opportunity for corrupt incidents to happen. Last year, we did a piece of research that identified that proactively disclosing information not only helps to detect and deter corruption but can help to widen understanding about how the democratic process works.

Thirdly, the bill is about ensuring that there is equal access to participation. For example, if a business is lobbying a certain individual, without a register charities or other organisations that have a different point of view might not realise that they have not had an opportunity to make their voices heard.

A more comprehensive register could provide those three public goods, so it is not just about tackling corruption.

10:00

It is good that the definition includes interactions with MSPs within the scope. As you know, the United Kingdom register does not include interactions with MPs. It is also good to see that the Scottish Government and the Scottish Parliament have realised that there is a need to include in-house lobbyists. Recent research that we did shows that the UK register covers only a fraction of those who engage with public bodies and institutions. I want to echo what has been said about the need to cover civil servants and special advisers and a wider range of communications, such as telephone conversations and emails.

On the issue of regulatory burdens, as a lobbyist I can say that we are becoming increasingly adept at recording our interactions with public officials. To be an intelligent lobbyist, you need to know who you have spoken to and what you have said to them. That is why things like contact management systems exist. We are a relatively small charity, but we are able to do that. I want to hear from others today what the issues realistically are.

It is important to think about how you can mitigate the regulatory burdens so that you do not place unreasonable burdens on people. You can introduce thresholds, so that people have to register only if they spend over a certain amount on lobbying. That kind of measure has been applied in other circumstances, such as election campaigns. Although there are some problems with it, it has certainly worked to reduce undue regulatory burdens on campaigners.

Mary Fee (West Scotland) (Lab): It might be just the way that my mind works, but do you think that introducing a threshold might create a loophole that would enable people who are clever about what they do and how they do it to stay under the radar?

Steve Goodrich: There is a potential for that; it depends on how the provisions are drafted.

From my time working on thresholds for campaigning at elections, I know that there were certain anti-evasion measures that stopped people from working together as a unit in a way that would evade the thresholds. Those measures worked relatively well. They applied during the Scottish independence referendum, and my former colleagues who worked on that did quite a good job of engaging with people and getting them to understand how those provisions work.

You need to be mindful of the fact that there will always be people who try to evade regulatory burdens, so the devil is in the detail. However, in principle, a threshold is something that is worth considering.

The Convener: When I have reached the end of the names of the people on my list, it will mean that all of our witnesses will have contributed in a structured way. We can make our discussion less structured once we have heard people’s initial comments. The next person on the list is John Downie. Andy Myles is the first person to bid to come back in, so I will take him at the end of the list, unless he really wants to come back in the middle. Andy, do you want to immediately respond to something that has been said?

Andy Myles: I have a couple of points that I want to make, but I can do so later.

John Downie (Scottish Council for Voluntary Organisations): It is interesting to listen to different perspectives.

At the moment, SCVO is considering this issue in the context of the war on charities that is being driven by the UK Government. The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 is part of that, as were the attacks on Oxfam and other large charities last year and the fundraising review by the UK Government in the summer.

Frankly, large UK charities are running scared of campaigning at all. If I were a conspiracy theorist, I would say that it was all about £12 billion-worth of welfare cuts coming down the line and the UK Government wanting to mute the sector and stop it speaking up and campaigning about the cuts. I say that not because we are opposed to the register but because it is important to see it in context.

We have done some research that we are about to publish, and which we will no doubt submit to the committee, about the impact of the 2014 act
on our members. It might be a question of perception, but they are concerned about that legislation and how it affects them. It is important to bear that in mind.

Our view has always been that the burden of transparency in relation to lobbying should be on those who are being lobbied. We have talked about MSPs and, in our submission, we say that spads and senior civil servants to a certain level—certainly those at a deputy director level, but you could consider how far down you would want to go—should be covered by the provisions.

For us, it is a question of proportionality. An organisation such as SCVO can cope with the approach—as Andy Myles said in relation to LINK, we are not worried about ourselves. Last night I had a conversation with the director of quite a large Scottish charity, which is part of a UK organisation, and I said to him that he could live with what is proposed, even if email communication was included. His response was, “Well, why should we?”

We have to find a balance, because some of our members want a stronger bill and a lot are totally opposed to that. We believe that the third sector should be included, because we are one of the strongest lobbies in Scotland—that should not be forgotten; we might not be quite as good as higher education sometimes, but we are certainly up there.

For us, the issue has always been about the core principles of what we are trying to achieve. What is the solution? What are we trying to do? How do we make the approach proportionate? I do not agree with Willie Sullivan about there being a democratic malaise, but trust is important, especially for the third sector and its engagement with Government.

Andy Myles was right to say that a lot of lobbying is directed at not just MSPs and committees but officials. I will give the committee a good example. I think that it was on 2 July that we ran a whole day on potential new employability and social security powers, which was attended by 35 grass-roots members, about 10 medium-sized organisations and probably 15 or 16 officials. It was a working day to help people to understand the complexities of the new powers. The “Creating A Fairer Scotland: Social Security—The story so far ... and the next steps” document on welfare powers, which the Cabinet Secretary for Social Justice, Communities and Pensioners’ Rights published the other week, included a table from that meeting, which set out the principles for a social security system for Scotland.

We could probably say that that was a lobbying success, but the point that relates to the bill is that I would not want the 35 grass-roots organisations who attended the meeting to have to register if they do not generally engage with MSPs. We should be able to do that on their behalf, because it was an SCVO-convened meeting—a bit like the meetings at which Andy Myles brings together a group of LINK members.

At that meeting, we worked with officials on how to do things better in Scotland, as Andy Myles does in his meetings. A lot of that type of engagement involves intermediaries and membership organisations bringing members together to talk to cabinet secretaries, the First Minister or officials. We convene and facilitate such meetings to ensure that there is engagement.

In the case that I am talking about, we wrote to all those grass-roots organisations to tell them that the day that they had spent with officials had not been wasted. I do not want the burden of any lobbying register to fall on such organisations; I would be happier if it fell on us. We need to think about how we manage that type of situation under the bill.

In general, what is proposed in the bill strikes a balance, although we will have to get to grips with some points about communication and who comes under the bill’s scope.

As we and many of our members have always said, the issue of MSPs’ diaries—or public engagements—must be addressed, because transparency must work both ways and we want more transparency from the people who are being lobbied. I know that I am repeating myself, but the committee needs to think seriously about strengthening that aspect of the bill.

The Convener: Willie Sullivan has signalled that he wants to come back on something that you said. It is proper to bring him in, because he is an objective observer of what goes on.

**Willie Sullivan:** I want to say something about the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014. People can decide for themselves whether they think that the Government deliberately linked issues to cause confusion and fear, but the third sector is genuinely concerned about the 2014 act’s provisions on third-party campaigning in general elections—or any elections. Steve Goodrich might want to say something about that. Some people have suggested that the provisions were deliberately included with the bit about controlling a register of lobbying to cause confusion and to get the provisions through.

There needs to be clarity about what the third sector is concerned about. Is it concerned about the controls on third-party campaigning, or does it want there to be no duty or responsibility in the
lobbying part of the act? I do not know what Steve Goodrich thinks about that.

**Steve Goodrich:** There was certainly a lot of confusion among campaigners. I tried to get people to differentiate in their minds between lobbying—that is, trying to influence public officials and politicians—and trying to influence the electorate. The two are fundamentally different things and they relate to two different audiences, but it was extremely difficult to get people to understand that, because the Government put them together in the bill.

The pace at which the legislation was rushed through Parliament was also very unfortunate and it led to a large amount of confusion. It was extremely challenging when we tried, in the run-up to the bill hitting the Houses of Parliament, to engage campaigners, who had not really dealt with the non-party campaigner aspect—the electioneering aspect—at all. It was probably the first time that they had heard about the provision, so it was very challenging.

Luckily, in the Scottish Parliament, I think that this is the third time that there has been pre-legislative scrutiny of this part of the Lobbying (Scotland) Bill, which is novel considering that there was almost none for some aspects of the Westminster bill. I think that there has been enough time to discuss, debate and understand the difference. I certainly think that the confusion caused by the UK Government appeared to be intentional.

**The Convener:** At the risk of stating the obvious, I say that it is of value for us to know what is going on in relation to the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 down south, but I suspect that you should not look to this committee’s activities to remedy the perceived defects in that act, because you may be disappointed.

Andy Myles wants to comment. Is it a narrow point on this specific issue? I want to bring in others who have not yet spoken.

**Andy Myles:** It is a very narrow point about the Westminster act. In my mind, there is a clear distinction between the fears at Westminster about non-party-political campaigners intervening in elections and the day-to-day lobbying that I do all the time and should be registered for if there is a register. I say to Neil Findlay that I am quite happy to register for that.

The fact is that a lot of the 2014 act was driven by some fear that American habits of non-party-political organisations campaigning against candidates at elections would come about. I am fairly sure from the committee’s discussions that you will not allow yourselves to be distracted by that chimera—or however you pronounce "chimera".

**The Convener:** It is pronounced shim-erra.

**Andy Myles:** So it is shim-erra—or kye-merra.

**The Convener:** No, it is shim-erra.

**Andy Myles:** I hope that we will not be distracted by the issue of non-party campaigning. There are lessons to learn from the 2014 act, because it impacts on the civic sector, but that is not about the business of non-party campaigning.

**The Convener:** The business of political action committees—PACs—and super PACs looks fascinating, but I cannot afford to spend too much time on it.

**Richard Maughan:** The Confederation of British Industry is an employers organisation that speaks for businesses, including sectors and trade associations across the UK and—of course—in Scotland, where our members cover about half a million employees, which is about a quarter of the private sector workforce.

Our starting point on the issue is—as I am sure it is for most committee members—that lobbying is an essential part of the political process that contributes to better public policy outcomes. We also think that it should be conducted openly and transparently. Transparency is a good thing, but one of the key issues is that transparency is not a settled term and it probably means different things to different people in the room. We have to find a shared framework for looking at any new regulation that might be brought forward on the subject.

We approach the issue from a regulatory affairs standpoint. We look at it from our members’ perspective in considering the costs and burdens that might be imposed. We are looking at how the proposals might work in practice and at what might be realistic and proportionate. The bill as drafted seems to strike a decent balance when it comes to proportionality.

We have looked at the proposals and at the bill over the summer and before that. From the regulatory affairs standpoint, we are not sure that the bill quite meets the Scottish Government’s principles of better regulation. There is a lack of evidence that a problem exists. I appreciate that the proposals are a preventative measure, but we also have to appreciate that they impose costs from the time spent dealing with the register. That might seem incidental but, when we look across all those that will be affected, the cumulative impact will be large.
10:15

There is also an opportunity cost as a result of organisations not doing certain things because they need to focus on the proposals. Moreover, anything that includes criminal sanctions—as the bill does—has a legal dimension, with legal fees and costs that organisations will need to bear. Costs might differ according to the types of organisations that might be affected, but we cannot put that issue aside.

The Government has sought to strike the right balance in the bill, and we welcome some of the things that it covers and which were proposed in the summer. For example, we welcome the focus on organisations instead of individuals, which makes more sense, and on face-to-face contact. We need to think about what a proportionate system would look like, and this provides an effective starting point. We also welcome the fact that financial information will not be included, which would have opened up a tranche of other considerations for organisations and added to the regulatory burden.

However, I will throw a couple of practical questions into the mix. How will we deal with, say, the incidental contacts that members of staff might have with politicians? What if during the kind of site visit that MSPs make regularly in their constituencies—for example, to a supermarket—an MSP had a conversation with a member of staff on the shop floor? I am sure that capturing that kind of interaction is not the bill’s intention, but how do we deal with it? Moreover, what about the sensitive commercial information that is discussed at meetings with ministers or MSPs? We need to ensure that any information that is recorded is at the right level.

To come back to criminal sanctions, I appreciate that the explanatory notes set out a phased process for dealing with minor infractions rather than more serious, deliberate infractions but, as the bill goes through the parliamentary process, it must be made clear that we do not want criminal sanctions for someone getting something wrong on a form.

Does the bill strike the right balance? In the circumstances, we would probably say yes, but we would consistently question the evidence base for having the legislation.

The Convener: I know that Steve Goodrich wants to respond to your comments but, before I let him in, I want to tease you slightly. Like several hundred organisations that are registered under the companies acts, the CBI operates under royal charter rather than the articles of association that other companies operate under. Where has the CBI’s royal charter been published? I cannot find it.

Richard Maughan: I believe that the royal charter is available on our website.

The Convener: Neither I nor the parliamentary researchers in the Scottish Parliament information centre can find it.

Richard Maughan: I am happy to write to you on that following this meeting.

The Convener: I am gently teasing you, but I think that that illustrates the more general point that there appears to be no statutory requirement at all for companies that are registered with an RC code to provide that sort of thing. I am pretty confident that many of them, either by neglect or—perhaps—by design, simply do not have it available. I would be happy to receive that information outwith the meeting.

I believe that Steve Goodrich wishes to come back on a specific point.

Steve Goodrich: I point out that criminal sanctions are available only for instances of non-compliance. To go back to my former stamping ground, I know that the Electoral Commission has a range of sanctions available, which are used as a last resort. When I was there, everything had to be what we called front loaded in advice and guidance to ensure that people had the knowledge and skills to comply with the rules. It was then a case of having on-going discussions with campaigners to ensure that they were able to comply. If they did not do so, whether that was because of—dare I say it—consistent incompetence, wilful negligence or evasion, the commission could use a range of civil sanctions, such as a range of fines that could be increased or decreased according to the type of non-compliance.

If there are only criminal sanctions, the danger is that there will be persistent non-compliance with, for example, reporting requirements that it might not be in the public interest to pursue via criminal prosecution, and there will be no other means of redress or deterring future non-compliance. That would result in an enforcement gap whereby there is non-compliance but no means of getting people to start to comply.

The Convener: We need to discuss compliance, which is one of the headings in our papers. However, I am trying to get through everybody, and you are opening up a new topic. I have made a note to come back to the issue a bit later, because I really want to hear from William Dinan and Raj Chari.

Dr William Dinan (Spinwatch and ALTER EU): A broad observation on the contributions so far is that there is quite a lot of consistency and consensus on some of the flaws of the bill as it is drafted. I completely echo the concern that the
The bill’s drafting suggests that senior civil servants and special advisers are excluded, which does not make any sense. It flies in the face of the evidence that the committee has taken, in which people have been open about their lobbying strategies and tactics and have said that those are not all focused on MSPs. That is no shock to members, but it is surprising that the bill wants to focus just on MSPs and ministers.

The exclusion of electronic communication, including emails, does not make sense. To be frank, that is ludicrous. Email is among the easier things that people have access to. There is little compliance burden in having to disclose the fact of an email contact but not necessarily the content. That is one thing that puzzles me about the bill.

I have two broad observations on the bill. First, it almost stands in isolation from freedom of information and other transparency measures. Implementing the bill will cost a lot of money, and there is almost inefficiency in not thinking about things. Let us imagine that a journalist starts to trawl with FOI requests when a contact is disclosed. If we know that there has been communication, they do not have to waste civil servants’ time by going through a list of FOI requests before they get to yet another round of FOI requests to force the information into the public domain. It is much easier to have the fact of the communication already in a register. People can then make a more informed judgment about whether that is worth pursuing or whether more transparency is needed.

Another broad observation is that there is a bit of a tension in the bill between the trigger for registration being whether people are paid to lobby and the rest of the bill being completely silent about the question and magnitude of payment. We probably differ from the CBI a bit on that. In a lot of the more mature and transparent disclosure systems, it has been recognised that the issue of payment cannot be fudged. Some kind of financial disclosure is wanted. That seems to have been off the table for quite a long time in our discussions, but the bill almost recognises that a tension is there.

The metric that would probably be meaningful for the public, when looking in on the whole influence game in politics, involves the amount of resources that are devoted to influencing decision making, but we get no sense of that with the current proposals. As a push-back on the matter, the public may be slightly dismayed by that. How much extra transparency will the bill bring to the process for the public who are not following the detail of activity at Holyrood? I am a bit concerned about that.

My final point is about whether such regulation will put people off interacting with the political system. That claim has been made repeatedly in the evidence at meetings and in submissions. I understand the concern that is behind that, but I go back to the research that I did a long time ago, when the issue was first debated in Holyrood in 2001. We contacted people who ran registers in North America and they said quite the reverse. The fact that there are registers begins to explain the system to people a bit more, and they understand how they can interact. It is possible to create a more ambitious register that, with proper guidance, can inform people about where the responsibilities lie.

The example in Ireland is quite striking. Obviously, Raj Chari can tell members more about that. The register there is much more comprehensive, but the guidance is incredibly simple. I looked at that recently. It is easy for a member of the public or someone who is involved in a charity that does not campaign a lot to see where they have to register and what they have to disclose.

**The Convener:** There is one person who has not yet spoken. We are on the brink of getting more interactive, but I want to hear from Raj Chari, although that will worry John Downie, because Raj is an academic. [Laughter.]

**John Downie:** I was thinking about Scotland.

**The Convener:** And Raj Chari is from Dublin.

**Professor Raj Chari (Trinity College Dublin):** I am from Dublin, so that is fine.

Good comments have been made already and I do not want to go over them, but it might be good to put them in an international comparative context. Our research group works on and examines lobbying laws in countries throughout the world. I am Canadian but, as William Dinan correctly said, I was involved with the Irish legislation. I am proud to say that I think that it is very comprehensive.

As I see it, there are some good things about the bill. It is easy to criticise it, but it is also important to say what is good about it. The fact that the bill explicitly says that individuals who are lobbying and not being paid do not have to register is a very good thing. That happens and was a reason why the UK for years did not have a lobbying law, after the Nolan committee report. I am glad that that is addressed explicitly.

In contrast to the UK legislation, the bill includes in-house lobbyists, as everyone knows—

**The Convener:** Forgive me for interrupting, but you said that it is a good thing that people who are not paid are excluded. Would you like to explain that? I could explain it, but I would like to hear your explanation.
The Convener: That is helpful.

Professor Chari: The fact that the information will be available free online for public consumption is good. It relates to William Dinan's point that the whole reason for having the information is to foster transparency and accountability, although I wish that the words “online” and “free” were explicitly in the bill—they are in the policy memorandum but not the bill.

When it comes to capturing oral and in-person communication as regulated lobbying, I have to admit that when I saw that in the bill I thought that I had never seen that in any other bill that we have looked at. I find it striking that the bill does not include telephone calls and, more important, written communications. I had never seen such wording before. It pains me to say that even the UK recognises that lobbying takes place by way of written communication.

Civil servants are not included, either. A model to look at might come from what Ireland and Canada have done by using the term “designated public office holder”, which would include the people Andy Myles mentioned, such as advisers and high-level senior civil servants. That might be something to consider.

To go beyond the conversation that we have had about registering, I find the bill a little inconsistent with point h) of recommendation 9 in the committee's report from February 2015 on its lobbying inquiry, because it says that a lobbyist has to state simply “the purpose of the lobbying.” That is vague; it does not get to the spirit of giving details of what is being lobbied about, who is being lobbied and exactly what the lobbyist's intended outcome is. Under the Irish legislation, when a lobbyist is registering they have to include the subject matter, the name of the bill to be influenced—if there is a bill—and the results that the lobbyist intends to secure.

A point that we have not yet touched on concerns cooling-off or revolving-door provisions, which are found in the legislation of a lot of countries. Given the number of countries that have such provisions, it is remarkable that they are absent from the bill. They relate to the idea that a public actor has to cool off and cannot go straight into the world of lobbying without a delay. That creates a level playing field and avoids the use of insider information, which someone might have if they worked as a lobbyist right after leaving government.

I know that Richard Maughan has some issues on financial disclosure and is thankful that that is not included in the bill. The other perspective is to ask why it is not included. The joint transparency register for the European Union includes some forms of financial disclosure—[Interruption]—well, it does for in-house corporates. The legislation on that is not considered to be particularly robust on transparency and accountability.

It is unclear why those elements are absent from the bill. It would not necessarily be easy for lobbyists to spend the time on that but, if the end objective is accountability and in particular transparency, Scottish citizens might want to see that information.

My final point is on the exemption whereby, if a minister calls a lobbyist in, the lobbyist does not have to register. That is going down the wrong path. The Canadian legislation is a good example here. In its first iteration in the late 1980s and 1990s, the Canadian legislation provided that, if a minister called a lobbyist in, the person did not have to register as a lobbyist. That was a big loophole. The Canadian Government realised that it was a loophole and as a result amended the legislation later. My advice would be not to start with something that will probably go bad. You can learn from other jurisdictions and start with something that will not need to be amended.

10:30

The Convener: A number of people want to speak. Because I cut him off earlier, I go back to Richard Maughan, who had a very specific early point that he wanted to raise, followed by Peter Duncan, Andy Myles and John Downie. That may not be the complete picture.

Richard Maughan: Thank you, convener. I wanted to come back on the point about financial disclosure. There are two questions here—one is about the desired outcome and the other is about practicality. Those things are not simple and, once one scratches the surface of an issue such as financial disclosure, a number of other questions are thrown up.

There is a practical issue of what financial information is included. When it comes to factoring in overheads and salaries, a much more complex picture is painted. That adds to the compliance burden. There is a question about the commercial sensitivity of information such as fees paid for consultancy services and the like, or salaries paid to members of staff.

There is a risk that, while on the face of it financial information might seem a good thing, it
can be a blunt instrument and it is not clear what
we learn from it. It does not reveal anything about
the quality of the lobbying or the influence that is
achieved. There are different costs for a large
business compared to a charity. Not all lobbying is
equal.

On the international comparison, it would be a
stretch to say that the European transparency
register and registers in Washington DC and the
United States are perfect when it comes to
financial disclosure. Big assumptions are made,
and we should not hold them up as examples to
follow.

The Convener: I see that Neil Findlay wants to
speak.

Neil Findlay: It is on that point.

The Convener: Come on, then.

Neil Findlay: When I did the consultation, we
listened to those arguments on financial disclosure. People are interested in the scale of
the lobbying operation. They are interested in
whether a lobbyist spends a fiver or £500,000.

We were aware that people had raised the issue
of commercial sensitivity and that was why we
introduced a banding to allow the return to indicate
that the financial element was between two
figures. The exact figure would not need to be
given—concern about that is understandable
when firms are bidding for contracts—but there
would be an idea of the scale.

That is the way to get over the issue. Giving the
financial information is key, because it reveals the
extent of the lobbying.

Willie Sullivan: May I say something on that?

The Convener: I will take a slight pause,
because I recognise that my committee colleagues
have been comparatively silent—that is unusual
for politicians, but there we are—and I want to
make sure that I am not missing anyone who
wants to come in. Patricia Ferguson does—or
perhaps not. I beg your pardon.

Patricia Ferguson: I was just listening intently.

The Convener: I saw what was merely a
passing expression.

Does Willie Sullivan want to speak directly on
this point? Peter Duncan is becoming quite
impatient, so I will definitely come to him next.

Willie Sullivan: The Political Parties, Elections
and Referendums Act 2000 is a good example of
how financial information on such activities can be
measured. I have been a responsible person
under that act, and I know that it is sometimes
difficult to allocate office space and staff time.
However, if you asked the public what they would
want to know about the level of activity, they would
want to know how much was spent on it.

The Convener: Does that tell you anything
about the activity?

John Downie: No.

Willie Sullivan: I think that it does. It tells you
how important it is to the people who are
lobbying—

The Convener: Ah. So it is a measure of how
important it is to the lobbyist; it is not about the
lobbying itself. Sorry—I am being deliberately
provocative, not trying to take a position.

Willie Sullivan: It tells you how much staff time
is being spent on the activity. It tells you the power
of that side of the argument.

The Convener: Okay.

Willie Sullivan: And the powers that are
massed behind it.

The Convener: I will let Peter Duncan in, finally.

Peter Duncan: I contend that it tells you
absolutely nothing of interest. The issue with
financial disclosure—as some of the elected
representatives round the table know—is that
some of the most effective representations are
received from people such as the old lady up the
garden lane or the individual at the bus stop who
says, “Do you know what? I’m going to write to
that committee convener in the Scottish
Parliament and tell them exactly what I think.”

Such representations are authentic and
handwritten, and it is obvious that the writer has
put in a lot of thought. That is what gives them
credibility. The fact that an organisation is willing
to spend £100, £5,000, £23 or whatever tells us
nothing about the effectiveness of the
representation. I regret to say, from my industry
perspective, that a lot of money is spent on some
very ineffective lobbying. That is just how it is.

William Dinan brought up the concept of paid
lobbying, and used that to get into the argument
on financial disclosure. I would look at it from the
other perspective. There are people who are not
paid to lobby who are extremely effective
lobbyists.

A good friend of mine—and yours, I suspect—is
Gordon Aikman. He is not paid to make the case
that he makes, but he has been hugely effective in
the way that he has made it. With the resulting
money, he will have made a difference and
decisions will be taken on the basis of what he has
said. It is not as straightforward as—

Dr Dinan: Can I come back on that?

Peter Duncan: Absolutely.
Andy Myles: Gordon Aikman is very effective in his lobbying, but unless he registered voluntarily he would not be captured in a lobbying register.

Peter Duncan: Absolutely—that is my point. You need to look at the definition of the term “paid lobbying”, because it excludes some very effective influence that is exerted by volunteers and enthusiasts, who want to take a case across Scotland and make a difference. Very often they make a difference, but they would not be captured by the bill.

Another point, which arises from the contributions from William Dinan and Raj Chari, is that it would be useful to set yourselves and Parliament a hurdle regarding the legislation. We have all agreed that lobbying is a good thing and that the Parliament must be accessible. In the way in which it has set itself up, Holyrood has been admirable in its openness. I have been in another Parliament that has a different culture and has not taken progressive steps in that regard.

However, a useful hurdle to set is that, if the bill that is passed results in conversations that are perfectly legitimate not happening in the way that they would have happened before, it will have failed. If it results—with respect to some of the submissions in favour of extending the scope—in emails not being sent that would otherwise have been sent, it will have failed. That is my worry about extending the scope—it is mission creep, if you like.

My view, which I conveyed earlier, is that the bill is proportionate. If it becomes disproportionate, it will result in the Parliament receiving less communication from the outside world. That would be a bad thing, and would run counter to the principles on which the Parliament was set up.

Neil Findlay: It depends on what those details and conversations are about.

Peter Duncan: Of course, and on the basis that they are perfectly legitimate conversations and emails.

The Convener: Anyway, I declare that I am the honorary president of the Scottish Association for Public Transport and that my hero is Madge Elliott, who for 50 years championed the cause of Borders rail and was eventually successful. I suspect that she bought a few dozen postage stamps, and that was probably it.

Andy Myles is next on my list. John Downie and Steve Goodrich will be next. On you go, Andy.

Andy Myles: Thank you. There are several points that I want to come back on. Steve Goodrich raised the issue of equal access. My colleagues in Friends of the Earth England, Wales and Northern Ireland—Friends of the Earth Scotland is separate—made freedom of information requests to find out how many meetings had been held prior to the new tax arrangements being set up for fracking companies. They found that there were 19 meetings between senior officials or ministers and the fracking companies to set up their tax arrangements, but only one meeting—I think—attended by a campaigning group.

Equal access depends to a very large extent on resources in terms of what a paid lobbyist is. I think that the public are very interested in finding out such facts. If the register will allow that, that is a good thing. However, I am not sure that the register will actually do that.

The Convener: You are saying that the test of success in this regard is that we can see that there were 19 meetings with interests from one side of the argument but one meeting with those from the other side of the argument, rather than finding out, say, that £3 million was spent on getting the 19 meetings and thruppence ha’penny to get the one.

Andy Myles: That is completely correct. In fact, as we all know, the one meeting may have been brilliant and run effectively while the 19 meetings may have involved a load of dunderheads who made no difference whatsoever. That cannot really be measured. I am always being asked to give key performance indicators, but that can be a bit difficult.

I share Peter Duncan’s fear about the use of the term “paid lobbyist”. I am paid not very much, but I am paid and I am a lobbyist. However, the majority of my work is not lobbying; I lobby only part of the time. I try to darken the doors of Holyrood as little as possible. As an advocacy strategist, I try to get our members to come and talk to you; I try to get the right members—the people who have expertise—to do that. They may be paid by their individual organisations, or they may be like the formidable campaigners from the Scottish Allotments and Gardens Society, who did a brilliant job recently and changed the law on allotments through their work on the Community Empowerment (Scotland) Bill. They are a classic example of completely unpaid people doing campaigning work.

Those campaigners would have registered only voluntarily. I read the Lobbying (Scotland) Bill’s policy memorandum again last night, but I cannot work out what advice I would give to SAGS on registration. I would probably advise its members to register as voluntary in the spirit of openness. Again, I stress that we are very much interested in open government and transparency, so I think that they would probably be best to be registered, but I do not know.

I return to the question of paid lobbyists. The warden of the Woodland Trust’s Glen Finglas
reserve may well speak to several MSPs in a year through arranged meetings and will undoubtedly lobby, including on financial subjects. That might take a few hours of that person’s time, but they would still be a part-time paid lobbyist. The registration process would be for the Woodland Trust, but my fear is that it would try to narrow down the number of its people who would speak to MSPs because of the paid lobbyist category and the questions of who is paid and who is a lobbyist. It would be tremendously disadvantageous to the Parliament and to Scotland if that led to professionalisation of the people from civic Scotland who come to this building.

10:45
I try to stay out of Holyrood. I try to get real people, with experience and knowledge, to come here to talk to MSPs about real issues. If I come along, I am just another political hack—people can see that sometimes on the faces of those whom they are speaking to. As Parliament shapes the register, it is important that it ensures that it includes the trigger of the lobbyist being paid, in order to reflect the fact that, as Richard Maughan said, not all lobbying is equal.

I am constantly aware that the turnover of the entire environmental movement in Scotland—LINK and all its 36 or 37 members—is probably less than the turnover of one large supermarket. Our ability to mount lobbying campaigns, and spend millions or billions or whatever, is tiny in comparison with that of the average corporate entity. Not all lobbying is equal. However, the real equality that counts is the equality of the arguments that are brought before Parliament.

The Convener: I said earlier that the session would last for an hour but clearly we are not finished, so we will continue for another 30 minutes or so. A bit of discipline will be needed—arguments and points of view will need to be expressed quite concisely.

Andy Myles focused on what the access point should be for what ends up in the lobbying register and what does not. It would be helpful to the committee if contributors were able to identify what tests would be needed that are different from the tests that are in the bill. We would be quite content to hear from you later, in writing or whatever, if that is the right way to do it. However, it is important to focus on that.

I sort of shut down the debate about compliance, which, if I recall correctly, was raised by Steve Goodrich. If we can, I want to have a chat about how compliance works in order to test what is in the bill. Informally, we as a committee think that there is one difficulty in there.

John Downie: I will make some general points, and we will probably come back to the committee on the detail.

I would probably think of financial disclosure as an issue of scale. If we were to say how many people are involved in our public affairs activity, that would give you an idea of the scale. We have our public affairs officers, our policy and public affairs manager and me, as director. Obviously, our senior staff are also involved in that activity. There is the issue of how we allocate their time.

Funnily enough, we are about to hire two new public affairs officers. I was trying to judge how much time one of them would spend dealing with parliamentarians and he would probably focus on parliamentary activity for less than 20 per cent of his time, because he would also be dealing with officials and other stuff.

We would rather be able to give the scale of our activity. That would be more helpful for our members, particularly those who may have a staff of, say, 15 but have only two or three people who deal with policy work and work that could be described as “campaigning”. That would be their whole job. You could look at the scale, look at the level that that person is at and understand.

On email communication, we would need a very precise scale for what is meant by that. We had John Swinney and Alex Neil in our office last night to meet a delegational member to talk about the shape of the budget and we received three emails from officials about car parking spaces. You need to think about what subjects would be covered by a provision on email and where it would stop.

The committee could bring in third sector organisations such as Shelter Scotland and Inclusion Scotland and perhaps some of Andy Myles’s member organisations and ask them what the bill would mean to them in a practical sense, to get an idea of how it might work for them. Inclusion Scotland, for example, has 12 members of staff and is a brilliant organisation that does a lot of campaigning and policy work. What would the bill mean for it? I have no idea. If you spoke to the organisations that would have to implement the provisions, that would give you a better understanding.

As Steve Goodrich said, the issue of compliance needs to be addressed. We have been thinking about that, because we carried out a fundraising review over the summer. OSCR regulates charities in Scotland, and there are 900 cross-border charities in Scotland. OSCR lets the Charity Commission be the lead regulator for them while it acts as the secondary regulator, so there is co-regulation. However, OSCR has limited regulatory powers over fundraising. We could
extend its powers, but I am not sure that there is a need for that.

There are regulatory gaps in all areas, and we need to think carefully about what compliance would look like. We cannot go from zero to criminal acts right away; we need a scale that tells charities what it means if they are not compliant with the register. It is about proportionality. How the register is kept up to date and who checks what people are saying will be really important.

For us, the fact that the register will be free is critical. This week, John Major said that there should be a levy on charities in England to pay for the Charity Commission, and that is going to happen with fundraising down south as well. We do not want to see a cost burden, particularly on the organisations that we want to register and engage. It is about proportionality.

We will get back to you on some of the detail.

The Convener: That would be helpful.

Professor Chari: I have a quick question—maybe it is an observation—on the whole debate around compliance and oversight. If I understand it correctly, the bill provides for the register to be kept and maintained by the parliamentary clerk. The explanatory notes talk about the registrar of the Scottish Parliamentary Corporate Body—the term is not found in the bill, but the explanatory notes use it—who will oversee and manage the administration of the register on behalf of the clerk.

The Convener: That is the answer.

Professor Chari: However, if you want independent investigations to be done when there is a failure to provide accurate information, which is what you were getting at, that would be done by the Commissioner for Ethical Standards in Public Life in Scotland. For the oversight mechanism, it seems that you have two actors involved. The first is the registrar, who reports to the clerk. Then, if inaccuracies are found or if there is some investigation to be done, the matter is pursued by a different office, the commissioner. Is my understanding correct? My question is this: why would you split that function between two different bodies? Generally, when there is independent regulation—in Canada, for example, or in the case of the commissioner that we now have in Ireland—that is done by one person who monitors, investigates and then reports to Parliament through yearly or six-monthly reports.

The Convener: Without seeking to justify it, I can advise you that there is an explanation, which is that it parallels what happens in the members’ interests regime. The clerks perform the administrative functions of recording and of advising and encouraging those who have to provide information, but the investigative skills, which are quasi-legal, are thought to lie elsewhere. That is why there is that separation. I say that not to justify it but merely to explain.

Peter Duncan is indicating that he wants to make a point. We are beginning to run out of time, so it really needs to be short.

Peter Duncan: It is a 20-second point. The initial feedback from the Office of the Registrar of Consultant Lobbyists at Westminster is that it is quite a big administrative task to ensure that the quality of the information is correct. The initial feedback from the registrar there is that the quality of the first-round registration is awful.

I have one little point—I think that the bill should try to get the registration dates in sync. Rather than having that random six-monthly requirement, where everyone will have different return dates, we should have one date. I also think that it should be synchronous with the Westminster registrations regime. Let us try to get as few deadlines as possible, so that it is all immediately apparent.

The Convener: The clerks have written that down.

Dr Dinan: That specific point is what I want to talk about. I totally agree about the random six-monthly requirement. I would be asking, “When am I reporting on this, that or the other?” A census date would be helpful. The requirement in the bill is for people to submit information every six months; in the Irish system, it is every four months and other places have an even briefer period. The Canadian system for communication requires the information every month.

Professor Chari: If you have made contact.

Dr Dinan: Yes—if you have made contact, you register that. However, a shorter period helps you to keep in mind the need to comply with the regulation. People might think that a shorter period is more burdensome than submitting information once a year. However, if you think about some of the tasks that you have to do just once a year, they can take more time. I am on the transparency register in Brussels and, when I come round to that deadline, I think, “What have I done in Brussels this year? How do I comply with that requirement?” I have to dig through diaries and back records, which I think takes much more time. If I was to update the information monthly, like the other tasks that I have to do monthly, it would be much more familiar to me, and it might be easier to comply with the requirement if I had to do it more often and if the system was designed well.

I completely agree with the point about having a census date or something like that rather than it being about individuals making a judgment about when contact first happened and then reporting that every six months. Everyone would then know...
that a census date was coming up. That would also increase awareness in the public affairs community that that needs to be done.

**Steve Goodrich:** Again, I support harmonisation of reporting requirements, especially with the UK register, as it simplifies the process for those who are working across borders and arguably reduces the potential for confusion. I support Raj Chari in questioning why there are two different bodies, doing two different functions, for what is essentially one purpose. Having worked for a regulator, I think that it is clear that having the compliance staff, the advice and guidance staff and the enforcement staff in one body helps to ensure that there is co-ordination and an understanding of how those different pieces fit together.

I am not saying that the current arrangement that the Scottish Parliament has in place for members' interests does not work. However, in my experience, having everything within one organisation is critical.

Also, I wondered why the Commissioner for Ethical Standards in Public Life in Scotland has an investigatory role when the available sanctions are criminal. Moreover, the investigations that will be undertaken by the commissioner could have an impact on any subsequent criminal prosecution. We always took that issue into account as a civil regulator when I worked for the Electoral Commission and there was a large amount of co-ordination between the Electoral Commission and either the Crown Office and Procurator Fiscal Service—for example, during the referendum—or the Crown Prosecution Service about who had responsibility for an investigation because we did not want to trample over a COPFS or CPS investigation. My question is about how those things would link together, which again supports the need to introduce some sort of civil element.

**The Convener:** We are almost in our last 15 minutes. Willie Sullivan is next.

**Willie Sullivan:** On the point about who is captured, I think that in all our evidence on the proposed lobbying transparency bill, having some sort of threshold seemed reasonable. There are problems with that and people who are influencing policy might not get captured, but the trade-off is that you allow easier access and a better flow of information into the Parliament by setting some sort of threshold to decide who is captured, whether it is a half post or a financial limit. That is important.

I will return to the question of money. Would we then go back and say that, under PPERA, political parties should not publish how much they spend on their campaigns because they might spend it badly and not have enough influence? The question is whether the public wants to know this. I think that the answer is probably yes. A lot of it is about public confidence in what is going on.

**John Downie:** We are talking a lot about public confidence and public trust. It might be interesting if the committee did some work on that—that issue is bandied about and certainly we are doing an Ipsos MORI poll at the moment about public trust in charities. Given all the stuff that has happened in fundraising, you would naturally assume that we would be looking at that.

11:00

We can bandy about the point that the public want to know, but are they actually interested in this? Some might be and some might not, but I have not seen a lot of evidence that they are. I certainly believe that we need to make the whole system much more transparent. This week, when the Scottish Information Commissioner said that 80 per cent of the public support an extension of FOI legislation to cover housing associations, I thought to myself, “Really?” It depends on what question was posed to the public.

To go back to the core principles, we need to be clear about what we are trying to achieve and why we are doing this. That would be helpful, but it is not in the bill at present. It would be extremely helpful for people to understand why there is a register, particularly those in small and medium-sized organisations who, as Andy Myles said, would want to sign up voluntarily because they engage with parliamentarians and officials in different ways.

To go back to the point about Gordon Aikman and unpaid lobbyists, he headed up a very successful campaign that raised a lot of money for MND Scotland and got the First Minister to commit to more nurses for MND and stuff like that. Gordon was totally unpaid, but the organisation also did a great job in that campaign. It was a fantastic campaign with a very small amount of resources.

**Neil Findlay:** John Downie asked whether the public are interested in lobbying. To an extent, I hope that they are not, because the whole purpose of bringing in the system is so that we do not end up with issues that the public have huge interest in and which create headlines, with the result that we all end up in the firing line. However, the public probably are interested in some lobbying issues. I have just received a response to a freedom of information request that tells us that INEOS met the Scottish ministers 13 times before the moratorium on fracking was announced. I think that the public would be really interested in that.

**The Convener:** So that was a failed lobbying attempt.
Neil Findlay: Well—

The Convener: I am only teasing, Mr Findlay.

Neil Findlay: I think that time will tell that that was an unwise statement, convener.

The Convener: Oh no it won’t.

Neil Findlay: Anyway, that is an issue on which huge lobbying is going on and I think that the public would be interested in that.

The bigger point is that I hope that, because there is nothing to report, the public will not become fascinated with this stuff. That will be achieved through the preventative actions that we take.

The Convener: In essence, you are saying that the public will want to use the system once in a lifetime but they will always want to know that they can use it.

Neil Findlay: Yes.

Professor Chari: That is an important point because, if there is a mechanism for transparency that allows people to see who is lobbying who about what, the public can get engaged. In our research, we found that the biggest consumers of such registers are actually other lobbyists who are trying to see how their competitors are trying to influence others. A register is a very good professional tool for lobbyists, as it allows them to see what they need to do to try to influence Government.

When we talked to officials from the Canadian Cancer Society, they said that they now do not need to make big reports every year to tell their members and the people who give the society money about what they are doing. Instead, they tell those people to go to the register to see who the society has tried to influence and on what with regard to health policy. The register has become a very clever tool for the society to make known its political activity.

Registers are not just about the public—others can get engaged and get useful information from them.

Andy Myles: Raj Chari raises an important point about who might make complaints under the legislation. It is valuable to look at international experience, but there is experience closer to home that the committee might also want to look at. I suspect that, if we looked at the complaints that are made to the Office of the Scottish Charity Regulator and its equivalent south of the border, we would find that they tend to involve competing groups making complaints against one another, rather than members of the public.

The Convener: Can you give us an example of that?

Andy Myles: The RSPB has been targeted by complaints to the Charity Commission about whether it fulfils its charitable status obligations in certain regards. The RSPB has been completely cleared each time a complaint has been made, but that has been a distraction and a great deal of effort has gone into clearing its name. The same has happened to the Royal Society for the Prevention of Cruelty to Animals, which does not really operate in Scotland—it is the Scottish Society for the Prevention of Cruelty to Animals that operates here. There has been that experience across the border with charities registration.

The other example, strangely enough, is from the Republic of Ireland, where everyone argued against equal rights of appeal in planning cases on the basis that everyone would run to the courts willy-nilly, but I believe that, in fact, 90 per cent of the court cases are brought by other developers rather than by members of the public. It would be very interesting to hear from Raj Chari and others about who the complainants are in relation to registers.

Steve Goodrich: I can provide another example of the fact that it is not necessarily the public who are looking at registers. Members will know that, after they have contested an election, they have to submit a candidate spending return. Lots of people—notably, your opponents—end up spending a lot of time looking at that. There is also scrutiny at the national level. To a certain extent, there are interested individuals and members of the public, but it is often political parties, agents and party officials who undertake that scrutiny. That process keeps everyone honest. It is a case of so-and-so reported such-and-such a leaflet or such-and-such a donation.

We could have a situation in which lobbyists were keeping one another honest, if I can put it that way. I am a lobbyist, and I think that we would be interested to find out what other people are doing. That sort of self-regulatory mechanism seems to have worked very effectively in the political sphere, and I think that it can work with lobbying as well.

The Convener: I sense that we are almost there. Are there any matters that committee colleagues feel that we have not touched on to the extent that we could have done?

Cameron Buchanan (Lothian) (Con): A point that I wanted to raise relates to the issue of who initiates the meetings, which I think is quite important. How easy would it be to show who initiated a meeting? What would the consequences be?

John Downie: Peter Duncan made a point about this earlier. We get calls from MSPs,
officials and ministers, and, obviously, we call them. It just depends on what the issue is and what our workload is. MSPs and ministers often want to talk to some of our members about specific issues. As Peter Duncan said, that should be captured.

As I think we have said in previous evidence, it is time to look at the MSPs’ code of conduct and the ministerial code in this context, because I do not think that they have been reviewed for a while. When we wrote a response to the Scottish Government’s consultation, ministerial diaries had not been updated since about June 2014. The bigger picture here is that the Scottish Government is now saying that it is very strongly for the open government agenda, which used to be driven by the UK Government. The Scottish Government now seems to be putting resources into being much more transparent, and it sees legislation on lobbying as one of the action points. We need to look at the bill in the wider context of how it relates to the issue of greater transparency across Government. The committee might need to look at some of the other actions that are being taken in that context.

Peter Duncan: I think that John Downie made the point that I was going to make. Our view would be that it does not matter who initiates the meeting. The spirit of the legislation is about the fact that a meeting has taken place. To take Neil Findlay’s example about the 13 meetings with INEOS, that might not have been declared because six of them were initiated by the Government. It might be particularly unhelpful to know that, but I do not think that it would be. Whoever initiates a meeting, it should be declared.

Much of our drift is about ensuring that we have a completely level playing field. Let us make sure that everyone, regardless of whether they are paid and regardless of whether the discussion is initiated by elected representatives, is treated identically. If we do that, I think that we will avoid many of the pitfalls of the Westminster legislation, which the convener did not want us to stray into critiquing.

The Convener: Thank you all very much indeed. Sitting in the chair, I found that interesting, and we covered a lot of ground. We revisited matters that are probably beyond our process purpose, which is to make a recommendation as to whether we should accept the general principles of the bill before us. That is the next stage, and I suspect that we will find ourselves able to do that, but we will have a discussion on that.

Following that, there will be stage 2, when the bill will be subject to detailed amendment. The report that we produce presents us with an opportunity to indicate our early thinking to ministers about some of the changes that they should make at stage 2. I think that we have some in our minds already.

If, following this meeting, there are specific points in that regard that anyone here or beyond here wishes to make to us, we would be happy to hear them. Our duty now is to focus very precisely on the detail. The committee can lodge its own amendments—there is no requirement for that to be done only by people outside the committee—although that is an unusual process—and we would certainly do so if it appeared that amendments were not coming from elsewhere and we thought that they were justified and required.

11:11

Meeting continued in private until 11:22.
The Convener: The second agenda item is to take evidence on the Lobbying (Scotland) Bill at stage 1. Our first witness is Bill Thomson, who is the Commissioner for Ethical Standards in Public Life in Scotland. I welcome Bill, who is, of course, a familiar face for all sorts of reasons.

Before I kick off our questions, you may want to make an initial statement—although my question will lead to one anyway—on your general views on the bill and the implications for you in particular.

Bill Thomson (Commissioner for Ethical Standards in Public Life in Scotland): Thank you, convener. I am not going to express any views on the policy behind the bill, which I have looked at from the point of view of someone who may be asked to investigate complaints.

I remain convinced of the importance of ensuring as far as possible that the requirements are clear, because vagueness may give rise to complaints, make it very difficult to investigate complaints satisfactorily, and lead me to reporting to you that something may or may not be a complaint. I would prefer to avoid that position.

I am aware that the drafters of the bill have as far as possible followed the investigation and reporting procedures that are set out in the Scottish Parliamentary Standards Commissioner Act 2002, which established the post that I am now in. In the application of that process to the regime under the bill, there is quite a risk of its becoming quite bureaucratic, which would be time consuming and expensive from my point of view. I do not think that that is what the Government is setting out to do in the bill.

I am also aware that the process could be ameliorated or moderated by the Parliament’s issuing directions to me under the powers that are in the bill. There are specific areas where that might be helpful. If the committee is interested in the detail, I could run through a nightmare scenario that would involve four or five reports to the Parliament that dealt with a single complaint, which strikes me as a bit silly.

The Convener: That would be extremely helpful. It would help us to get our mind around things if you could give us a scenario, however unlikely it may be, that might play out in a way that was unhelpful to everybody.

Bill Thomson: I will do that.

I have raised before the other issue that troubles me slightly. At the moment, three of the types of complaint that I have to investigate may also be
about criminal offences. Under my existing powers, if I come across something that may be a criminal offence, I report it immediately to the procurator fiscal, as that is obviously the system by which potential criminal offences are investigated.

I cannot see anything in the bill that would change that. In other words, quite a lot of the complaints that might come to me could be about criminal offences, and I would have to report them to the procurator fiscal. I am not clear what the attitude of the procurator fiscal or Crown Office would be to dealing with those. At the very least, a bit of a delay in my being able to conclude an investigation would be involved. As members will be aware from the bill, if I am unable to conclude an investigation within six months of the complaint being deemed admissible, I have to report to you again.

That is just another risk. I am not saying that it will arise, but the process could be quite clumsy. Therefore, it does not seem to me that the bill necessarily achieves the light-touch approach that I understand was the objective.

There is one point of self-interest. Paragraph 49 of the financial memorandum says that I am satisfied that any costs “can be absorbed” within my existing budget. That is not what I said, and I do not know how that ended up in that format in the financial memorandum. That is just not the position.

The Convener: The Finance Committee has written to us and made precisely the point that there are differences in what we have received from different parts of the system. We will seek to address that.

In a different area—in the Interests of Members of the Scottish Parliament (Amendment) Bill—we are seeking to get something from the Lord Advocate that might help us in minimising the occasions when things automatically have to go to the Lord Advocate. It certainly seems on the face of it that this is perhaps a case of ensuring that you are not placed in the position of having to refer everything when it is relatively evident that the matter will not lead to prosecution. I suspect that that may be the answer.

You suggested that you would give an example in which there might be five reports. In your initial remarks, you gave us an example of where a report would be derived that clearly was only prescribed administratively but would serve no useful purpose. Perhaps it would be useful to hear the other ones that you have in your mind.

Bill Thomson: I apologise, but I will inevitably have to go to into detail here.

The Convener: Yes, please.

Bill Thomson: If a complaint is received that does not meet the conditions for admissibility that are set out in section 23(3) of the bill and it is of a sort that is identified in a direction from the Parliament, I have to report to the Parliament—for example, that the complaint is not signed. In other words, there are formalities that may not be complied with and, under the bill, I am supposed to report before I consider whether the complaint warrants investigation, which is the second stage.

Therefore, assuming that I report and I am directed by, I presume, this committee of the Parliament to proceed with the complaint, I have to look at whether it is worth investigating. If it merits investigation, I will report again. That would be the second report on a single complaint in probably fairly quick succession. As I have mentioned, there may be a delay because of an overlap with the criminal system, for example. There may not be a delay, but if there were a delay in those circumstances and it ran beyond six months, I would have to report again.

Another possibility is that the complaint would be withdrawn. Again, I would have to report to the committee.

Although I appreciate the need for parliamentary oversight of the process, it strikes me that that is verging on overkill and is certainly bureaucratic in that sort of situation. That would take up quite a lot of everybody’s time.

The Convener: Yes. It is helpful to spell that out, because it is sometimes on those bureaucratic issues that the integrity of the process can be compromised or appear to be compromised.

Bill Thomson: If the direction-making powers that are given to the Parliament under section 31 are used in a particular way, it will be possible to avoid the need for repeated reports in such circumstances. I hope that that is the position that we will reach.

The Convener: Without necessarily taking the sense of my colleagues on the committee, we have listened to that point very carefully. Just to be absolutely clear, this committee will not determine the guidance that is given to you. We will recommend to Parliament, which will give that.

Bill Thomson: Indeed.

The Convener: To be absolutely clear, we carry the responsibility for asking Parliament, but we do not decide.

There are one or two specific issues. In section 21 there are offences relating to information notices, and in section 42 there are offences relating to registration. How well do those parts of the bill work with your general power to investigate?
Bill Thomson: I am not sure whether I fully understand your question. I do not think that there is any restriction on my power and duty to investigate other than, as I have already said, where there is the possibility that something that is reported to me as a complaint could be criminal and therefore would have to be considered under the criminal prosecution system before I was able to do very much with it. There might be slight awkwardnesses in how much of the preliminary work I would conduct under section 23 before deciding that something had to go to the Lord Advocate or the procurator fiscal, but I am sure that that detail can be worked out.

09:30

The Convener: Similarly, and we are talking about perhaps the relatively minor mechanical things that may happen, I take it that, if the directions that you were to receive from Parliament ensured that you were able to return minor complaints to the clerks rather than dealing with them in the first instance yourself, that would not be a matter that would be likely, subject to the content of the direction, to cause you any concern.

Bill Thomson: It would not. Although I admit that I had not until recently given the matter sufficient thought, I believe that there is scope under section 31(2)(b) to set out circumstances in which certain types of relatively minor failures, which could be dealt with by an information notice, could be specified. It would put me in the position where, if that was the reason for the complaint, I could refer it to the clerks to be dealt with under that procedure. That would be really helpful.

The Convener: Certainly, at the core of our consideration of this whole issue has been our desire not to create a punitive regime for small organisations, in particular, who lobby Parliament quite properly. Those organisations might not have access to the same level of professional advice as bigger organisations and might not have people who know at the outset the rules and the fact that there is an opportunity to interact with the clerks in the first instance in order to seek help, guidance and advice before any failure to respond to matters means that the case would land in your in-tray.

Bill Thomson: I am in danger of straying into policy, which I am very wary of doing, but, given my more than 18 months’ experience of investigating complaints of various sorts, I think that one thing that might help would be some way of dealing with fairly minor issues without going through the full panoply. I do not think that that necessarily needs to be restricted to the smaller organisations that you are describing. If an organisation—even a large one—has just missed out a detail, it seems unfortunate to have to go through the whole potentially complex complaint procedure if there is a better way of dealing with it.

The Convener: That is helpful. What I take from that is that, if the directions from Parliament touched on that issue, that would not be a red line for you.

Bill Thomson: Not at all.

The Convener: You would look at the detail of the directions, and therefore it ought to be possible for us to come up with directions with which you would be comfortable.

That opens up the wider question of whether you think that the powers in section 31 are sufficiently flexible to enable us to work out a proportionate regime that operates with a light touch when the issues are not huge and can be sorted out quite quickly but still leaves you with appropriate powers to deal with the more serious and recalcitrant people who might be part of this regime.

Bill Thomson: They should be. I am by nature an optimist and I see no reason why, given the right approach, that should not be achieved.

Dave Thompson (Skye, Lochaber and Badenoch) (SNP): Good morning, commissioner. I have a general question. Your office has been altered and changed in recent years and you have been in the post now for 18 months. Are you confident that any additional workload that would come from an act following on from this bill is capable of being absorbed into your current workload? Do you have sufficient resources?

Bill Thomson: I am confident that we will deal with it but we will not do so without additional expenditure. My confidence is based on an assumption that the number of complaints will be relatively low. I am aware that the Government’s estimate of the potential number of registrants varies significantly from 255 to 10 times that number. I have assumed, for the purposes of estimation, that the number of complaints that require to be investigated fully will not exceed a handful. Even if that is the case, there will be extra costs. If they do not exceed that small number, I think that the workload will be manageable in terms of the resources that are available to me. Of course, we are speculating about what else happens in the future. If we were approaching nirvana, the number of other complaints that I deal with would be reducing. I am not certain that that will happen.

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): Overall, the idea is that the approach is meant to be what is described as educative and light touch. From what you have been saying, it seems that you think that the bill
perhaps has a way to go to ensure that that is absolutely the case.

Bill Thomson: That is correct. My experience of investigations is that they tend to lead to people, not surprisingly, becoming reasonably entrenched in their positions and arguing their corner, because somebody is investigating and therefore questioning what they have done and the propriety of it. Therefore, I am keen—as I detect that certain members of this committee are—to avoid having to go down a fairly formal investigative process if there are ways of dealing appropriately with issues that could be picked up by other means.

Patricia Ferguson: You mentioned in your introduction that you were concerned that, as things stand, some cases might have to be referred directly to the procurator fiscal. I think that I understand the kind of scenario that you are thinking of, but could you tease that out a little for the record?

Bill Thomson: At the risk of being unduly simplistic, three of the criminal offences under section 42 are also matters on which complaints can be referred to me under section 8(1), section 9 and section 11 of the bill. On the face of it, any of those sorts of complaints would bring the risk that they could also be criminal. I do not know whether I can go into any more detail.

Patricia Ferguson: No—that is helpful.

Gil Paterson (Clydebank and Milngavie) (SNP): With regard to members of the Scottish Parliament, when there is a breach in registration, there is an automatic referral to the procurator fiscal. I know that, sometimes, your office investigates the matter and says that it is just a minor thing—I know that that is not what the statement actually says, but that is what it means, reading between the lines.

In that regard, you were talking earlier about referrals to the procurator fiscal’s office, which my colleague raised. Would it cause you any embarrassment or problems if you had some discretion? After all, it might be that the matter could be referred, but you would have already investigated it and looked at it in detail. Do you think that, with regard to minor breaches, referral should not be automatic and you should have the discretion to say to Parliament that the matter is so minor that we might be effectively wasting the time of the Procurator Fiscal Service if it were referred to it?

Bill Thomson: I am a bit uncomfortable about that on grounds of principle. As you know, I have no role at all in the system of criminal prosecution. I fear that, if I or any successor of mine were to have that sort of discretion, it could be seen as effectively usurping the role of the Crown Office and the procurator fiscal with regard to whether a potential offence should be prosecuted. It might seem to be a trivial thing, because the particular issues that we are talking about are very minor, but I think that the principle is quite important. At the very least, I would want to know what the attitude of the Crown Office was to that suggestion. It makes me a bit uncomfortable, perhaps because I have a legal background and I have grown up with a particular approach to criminal law. Certainly, as of now, I would not be comfortable with that suggestion.

Gil Paterson: I may as well say that I always thought that trivial matters should be left with you. However, I then thought about it more and realised that it might make you uncomfortable for the reasons that you have stated. It is good to get that on the record. As far as I am concerned, it puts my mind at ease. I came to that conclusion myself, eventually.

Bill Thomson: It is not strictly part of this evidence session, so I do not wish to waste time on it, but there might be circumstances in which, when you are looking at investigation and enforcement regimes generally, you take account of the fact that a range of approaches can be taken, as is the case with members’ interests and political donations, which go to the Electoral Commission. I am not arguing for those approaches; I am merely pointing out that they exist.

The Convener: I think that that concludes the areas that we wanted to cover with you. Is there anything further that you wished to say to us?

Bill Thomson: I would like to elaborate slightly on a point that I made at the beginning about certainty. The schedule identifies types of communication that are not lobbying, one of which seems to be a little problematic. Paragraph 5 talks about communications that are “made in the course of a meeting or other event arranged by or on behalf of a member of the Parliament” or a minister. I am conscious that there are frequent events held in this building, usually of an evening, that are sponsored by members of the Parliament. I accept that some are held at the request of another individual, which would mean that they would be covered by paragraph 6. However, I wonder whether it is right that any communication that takes place in the course of one of those events should be exempt from being considered to be lobbying. It strikes me that, if I were a lobbyist, I would regard those sorts of events as quite a good opportunity.

The Convener: It would be fair to say that that is one of the issues that the committee will be considering with the minister and in our discussions. Without our having taken a formal position—I do not speak on behalf of the
committee in saying this—it seemed to us that it was what happened that mattered rather than at whose initiative it was happening. That is one of the areas that we will definitely be pursuing, so it is interesting that you have highlighted that to us as, indeed, others have.

Bill Thomson: The other point that strikes me as slightly giving some potential for vagueness is the exemption for journalism, which is not very well defined. Obviously there are all sorts of forms of journalism and types of publication, and certainly there are some—certain trade journals or professional journals, for example—that at times adopt a line that could be thought of as lobbying. I am slightly concerned at the prospect of having to determine whether a communication that was connected to one of those publications was to be treated as journalism, without any further explanation of what journalism means.

The Convener: One of my regular purchases is “Rail”, which is a regular publication. I think that it would be fair to say that the editor of that certainly uses his column to lobby Government, so I think that the point that you make is a good one.

Bill Thomson: I have nothing further to add.

The Convener: And there is nothing else that my colleagues wish to ask. Thank you for attending and for being so helpful and fulsome in your comments.

Bill Thomson: My pleasure—thank you.

The Convener: I will suspend the meeting while we change over witnesses.

09:44
Meeting suspended.

09:46
On resuming—

The Convener: Our next witness is Joe FitzPatrick, the Minister for Parliamentary Business. He is joined by Al Gibson, who is the bill team leader, Parliament and legislation unit, and Neil MacLeod, principal legal officer, Scottish Government legal department. Let me welcome you all to the meeting. We have a number of areas that we are going to ask questions on and I am going to kick off by throwing the baton to Cameron Buchanan.

Cameron Buchanan (Lothian) (Con): Sorry—I am just looking in my papers.

The Convener: If we come to you in a moment, that will give you time, Minister, do you want to make opening remarks?

The Minister for Parliamentary Business (Joe FitzPatrick): Very briefly. First, thank you very much for inviting me, convener, and good morning, members. The bill is parliamentary in nature so, in introducing it, we have been keen from the outset to work closely with the committee to ensure that its views were reflected in our proposed legislation. The committee report in February was pivotal in helping to shape the bill that is now in front of you. Of the 17 recommendations in that report, 12 fell within the scope of the bill and all of those have been reflected in whole or in part in our bill. Of course, we have consulted more widely in the spirit of seeking to achieve a broad consensus and the bill pulls in and reflects some of the views from stakeholders as well.

Throughout the development of the bill, we have been guided by three underpinning principles. The first is that there cannot be any erosion of the Parliament’s principles of openness, ease of access and accountability. The second is that the register of lobbyists must complement, not duplicate, existing transparency measures. The third is that the new arrangements need to be proportionate and simple in their operation and command broad support within and outwith Parliament.

Those principles have been broadly welcomed by all stakeholders and are at the heart of the bill that I have presented to Parliament. They continue to guide my thinking as the bill proceeds through its parliamentary stages. The bill seeks a balance between the interests of a wide range of stakeholders. It similarly seeks not to create unwelcome imbalances that could work against the Parliament’s interests.

The Government will continue to listen to views on how to improve the bill, but it is important that any changes must still ensure that the register is proportionate and simple and does not place an unnecessary burden on those seeking to engage with elected representatives. The same is true in meeting the committee’s firmly expressed views that the upkeep and oversight of the register should have a very limited impact on the public purse. I am pleased to take questions from committee members.

The Convener: Thank you very much. We will now move to Cameron Buchanan’s questions.

Cameron Buchanan: Good morning, minister. I am concerned that lobbyists who wish to conceal their activity will surely shift to other forms of communication. They might not reveal activity. If a non-governmental organisation had paid employees and unpaid employees, could it switch those people around so that unpaid employees were not registered and paid employees were? That is a double question.
**Joe FitzPatrick:** I watched the meeting last week, when there was a fair bit of discussion of that issue. Our approach has been to develop a proportionate framework that commands broad support, as I said. We have had to form a view about what the trigger should be for registration. Like the committee, we want a proportionate system that increases transparency but does not discourage participative engagement.

Our starting point was what the committee stated in paragraph 91 of its February report:

“Lobbying activity still places great value on face-to-face communication over emails, phone calls or teleconferencing of any kind.”

The committee came to that conclusion after taking evidence and we thought that it was an important starting point. It strikes the right balance in improving transparency without placing so great a burden on those seeking to engage with members of the Scottish Parliament or ministers as to become a barrier.

In coming to that position, we reflected further on the committee’s report. In paragraph 103, you recognised the ease of registering details of face-to-face

“meetings or events when compared to the prospect of registering details of all communication.”

You followed up on that point in paragraphs 107 and 109, which led to the conclusion in paragraph 111, which lays out the committee’s vision of a register that specifically refers to

“meetings that have been pre-arranged by the organisation with MSPs”

and

“events, including meals, arranged by the organisation”.

In coming to a conclusion on where to draw the line, we were mindful of the committee’s extensive engagement in coming to the conclusions in your report. We are of course aware that there is a spectrum of views that range from those who concur with the committee’s report in the early years of the Parliament, which concluded that there was no need for any legislation in this area, to those who are lobbying quite effectively for a much more heavy-handed regime. We think that the proposals in the committee’s recent report struck an appropriate balance; that has largely been the basis of the bill that we have brought before you.

On Mr Buchanan’s specific point about shifting activity—whether that is about types of person or types of communication, with communication shifting from face-to-face meetings to emails, for example—we need to remember the context in which the bill has been introduced. I think that we are all agreed that lobbying is deemed to be a positive contribution to our democratic process. Rather than being about probity, this is about transparency, so I hope that those who are lobbying will embrace that increased transparency as a good thing that values their contribution to our democratic processes rather than something that they will try to avoid.

We should remember that the bill is part of a larger transparency framework that would almost certainly flag up a shift of behaviour, as the question implies might happen. In those circumstances, I would have thought that the Parliament would want to look at the framework and consider whether changes needed to be made to strengthen the regime as appropriate.

However, there is no indication that those involved in lobbying in the Scottish Parliament are seen in anything other than a positive light—as contributing to the knowledge that we have and contributing to our work as MSPs and as ministers. I see no reason why those lobbyists would try to hide that activity in any way.

**The Convener:** I will just come in on our report. The first paragraph that you referred to was paragraph 91. We as a committee were seeking to make a distinction—it was more or less in what you quoted—between what activities might constitute a trigger for registration and what might thereafter appear in the register, which might encompass other activities beyond the activity used for registration. You will probably get a certain amount of questioning about the two. You referred to paragraph 111, in which we carefully used the word “including”. In giving a list of what might appear in the register, we were not seeking to exclude things that did not happen to appear on the list.

**Joe FitzPatrick:** You are absolutely right—there is a difference between what might be a trigger and what might be recorded.

**The Convener:** I will return the baton to Cameron Buchanan.

**Cameron Buchanan:** If people really wanted to conceal their activities—this is definitely about emails, which you mentioned, rather than writing—how would we handle it? Have we put enough restraints on people who really want to hide what they are doing by bringing different people to the table or doing things through different organisations? Certain organisations are quite similar on these sorts of things.

**Joe FitzPatrick:** I do not think that that is the framework that we are in. That is not the atmosphere that we are in with lobbying now. The danger of that becoming a problem would arise only if we were to bring in an onerous framework. There could then be a danger of people trying to avoid the requirements of that framework.
We are going through a process, so I am still listening to the views that the committee will bring forward, but if we manage to maintain a proportionate, light-touch, educative framework regime, I see no reason for anyone to try to avoid that, because lobbying is a good thing and it is positive. We are proud of our engagement with stakeholders of all sorts, which I think we all value.

Cameron Buchanan: I agree. So you do not think that we will put people off, as long as there is a light touch.

Joe FitzPatrick: Whatever changes happen to the bill as it goes through, as long as we maintain a light-touch regime, I see no reason for people to be put off. Even for stakeholders who feel quite strongly that there is no need for a regime because they have voluntary codes or they do not see a problem, if they feel that the Government’s proposed regime and the proposal that came forward from the committee are both light touch enough and that the case has been made by others, they will be prepared to accept that and work with it. The danger would arise if we brought in something that was onerous.

The Convener: If we were to extend the range of information that was required to be recorded in the register to include numbers of emails, letters and publications—that is not intended to be a complete list—would that constitute a problem? I say that in the context of not seeking to change the qualifying requirement. I am speaking about the registrant and perhaps, to some extent, about the register itself.

Joe FitzPatrick: There are two significant changes that could be made to include other communications. I noted that, in last week’s meeting, it was implied that it might be possible to include more communications without increasing the number of registrations. It would depend on where a change was made. If a change was made so that an email was a trigger, that would significantly increase the number of people who would have to register.

As MSPs, if we just look at our inboxes, we can see that a number of organisations contact us by post or by email on various issues; that would be caught by such a trigger, although we would have no further engagement with most of them. We might sometimes respond by email if that was deemed necessary. Including such a trigger would have a significant impact.

The other approach would be to include written communication that related to an already registrable event. The bill already proposes that a face-to-face meeting would be a trigger, and there might be communications around that. Clearly that would not increase the number of registrations, as you have implied, but it could increase the amount of information that such a registrant would need to provide. They are two different things.

We need to be careful of how onerous it would be on the lobbyist to provide that level of information and how onerous it would be on the clerks of the Parliament to administer such a scheme. If we were to go down that route, we would need to tread carefully to make sure that we were not putting up a barrier and saying to people, “We’re not going to engage any more, because it’s not worth it.”

We have therefore provided in section 15 a power for the Parliament—it is absolutely a power for the Parliament and not for the Government—to carry out at some future date an inquiry on whether it would want to make such a change and have this extension to the regime. That power is in the bill as it stands.

10:00

The Convener: Patricia Ferguson has a question about the broadening of communications.

Patricia Ferguson: As a general point, it is quite important to be careful about language. Engagement and lobbying are very different things, and it is lobbying, not engagement, that we want to catch on the register. We all need to be very careful about that.

I wonder how it will be possible to capture or demonstrate who initiated contact. Has that been thought about?

Joe FitzPatrick: We had to decide how we could get to a point where we were not making it difficult for MSPs and ministers to seek information from external sources that they deemed important. The aim is not to hide anything but to preserve the ability for MSPs and ministers to get external third-party policy information without the person whom they have asked to come in being required to register. I suppose that there would be a degree of self-regulation, in that the MSP or the minister would know if they had initiated the meeting.

I point out that if, for instance, someone were to casually ask me for a meeting, such a request by a third party would be caught by the bill. We have drafted it in a way that excludes any underhand ways of requesting a meeting, to ensure that we have maximum transparency of meetings. If those sorts of meetings are initiated by a minister, they will be covered by the proactive release of information about ministerial meetings. We are trying to strike a balance to ensure that we are not debarring anyone, making it more difficult for people to engage with MSPs and ministers or blocking access to factual information.

The Convener: Before I return the baton to Patricia Ferguson, I should say that one of the
things that has been raised with me in the past 24 hours is the fact that, for someone who is required to register, there is a prescription as to what they register. It might well be that, when a minister or MSP initiates the conversation for their benefit, the lobbyist who is engaging in that will want to register that meeting. However, as the bill is drafted, that does not appear to be permitted; it appears that only a voluntary registrant is able to register that. I am getting the sense that that is not the reading that officials have; if so, it would be helpful to get an indication that it would be perfectly possible for a registrant to register additional information beyond that which is required, of which this would be only one example.

Joe FitzPatrick: I hope that that is right, but I will get Neil MacLeod to answer the question.

Neil MacLeod (Scottish Government): As you have noted, convener, there is provision for voluntary registration in section 14, but that is not what we are talking about here. Section 7 contains provision on additional information. In the general scheme, where somebody is required to register, they will do so; in doing so, they have to provide certain information, but they also have the facility to provide additional information that the clerk can include in the register as they see fit.

The Convener: That is exactly the wording that is causing slight concern. When you talk about the clerk including something as they see fit, it sounds as if the clerk has to be persuaded. I know that that is probably just a legal construct, but it would be helpful if you could put it on record that, subject to things being legal and not libellous and to all the tests that would routinely apply, you see it as entirely proper for a registrant to submit additional information.

Neil MacLeod: Indeed. Although it is necessary for the clerk to have some discretion, the intention behind the provision is certainly to allow the submission of additional information. The bill also contains the ability for the Parliament to issue guidance on the operation of the regime. It is a matter for the Parliament, but that is the sort of thing that that guidance might properly deal with.

The Convener: That is helpful.

Patricia Ferguson: I wonder whether it matters who initiates the conversation. I am aware from the evidence that we have had that Canada had such a provision but changed it after a few years because it was becoming seen as a loophole that allowed lobbyists to act without that having to be recorded.

Joe FitzPatrick: We looked at the international situation with regard to the provision. Of the 10 models that we are aware of, only three do not have such a provision, which suggests that it is overwhelmingly considered to be appropriate.

Al Gibson will correct me if I am wrong, but I think that the only three models that do not have this provision are those in the United States of America, Canada and Slovenia. The reason for it is to ensure that we do not make it more difficult for MSPs to say to an organisation, “I need to pick your brains to get information about this question I am going to ask,” for Opposition MSPs to challenge a Government on an issue or for ministers to develop policy. If we did not have some way of accepting such contacts, we might contact an organisation and say, “Could you please come and help me with this piece of work or this policy direction I am trying to develop?” and when it said, “Yeah—that’s great,” we would have to tell them, “Oh, and by the way, you are going to have to register.” There is a danger that we would lose that contact. It is all about trying to strike a balance.

I do not think that in the current atmosphere people are going to try to avoid the register. I was interested in the comments made by Professor Chari last week about the Canadian cancer charity that tries to get as much information as possible on the register, because it sees that as a positive way of making its organisation’s impact clear. I hope that this register, too, will be seen as a positive tool.

Patricia Ferguson: There seems to be something slightly contradictory about the bill. Section 44(3) says:

“In this section, ‘lobbying’ means making a communication of any kind to a member of the Parliament in relation to the member’s functions.”

That seems to be considerably broader.

Joe FitzPatrick: That relates to the code of conduct.

Patricia Ferguson: Yes.

Joe FitzPatrick: That is intentional, because the bill is dealing with registered lobbying and the code is dealing with all lobbying. It is therefore appropriate for the code to go wider if the Parliament seeks to do so in, for example, providing guidance. There is an intentional difference between the two things—they have a different purpose.

The Convener: Just to be clear, does that mean that the code of conduct would cover people who would be eligible for voluntary registration but who might or might not have chosen to register voluntarily? Is the intention for the code to cover that category?

Joe FitzPatrick: The code will cover all lobbying activity, so it is appropriate for it to go much broader.
The Convener: So it will cover three categories of lobbyists: those who are required to register, those who voluntarily choose to register and those who do not register at all.

Joe FitzPatrick: Yes. The bill contains pretty wide powers for the Parliament to determine how to ensure that we cover everything and get the maximum amount of transparency. That is in line with the principle of complementing existing frameworks. There is regulated lobbying, which the bill deals with, and unregulated lobbying, much of which is dealt with in other frameworks.

Patricia Ferguson: I understand what the bill is trying to do but, in effect, section 44(3) almost provides a definition of lobbying. It would worry me if that turned out to be different from something elsewhere in the bill, and I just wonder whether the issue might be looked at.

Joe FitzPatrick: We are happy to continue looking at these issues, but the purpose is to make clear the lobbying that is regulated by a statutory regime and the lobbying that is the subject of guidance that the Parliament makes provisions for. I also point out that this can tie in with the MSP code of conduct, ministerial codes and other such frameworks. The provision has been written to give the Parliament the flexibility to use the powers in a way that it sees fit.

Patricia Ferguson: I think that the section needs to be looked at again.

Joe FitzPatrick: We will consider your view.

Dave Thompson: I want to make a small point that you can consider and comment on if you wish. One of the exemptions is communications in cross-party groups, but it is quite often the case that, after a discussion, a group will communicate in writing with a minister or cabinet secretary or indeed a health board, a council and so on. We therefore need to consider not only the communications within cross-party groups, but what impact a cross-party group might have in writing to ministers and so on. I wonder whether the provision needs to be broadened out a wee bit to cover that point.

Joe FitzPatrick: The committee has recently strengthened the framework for the operation of cross-party groups, and this is all about striking a balance and not duplicating other matters. If, say, a minister were to come to a cross-party group, that would obviously be on the record and in the public domain. I am not even sure who would register the fact that the cross-party group had a meeting with the minister—and I am not sure that it would add any transparency. This committee has made some inroads into improving the transparency surrounding the framework for cross-party groups in the Parliament, and I remind members that one of our three principles is to make sure that we do not duplicate other frameworks and procedures that are already in place and that we do not cross over.

Dave Thompson: Thank you for that, but the issue is not so much what takes place at a cross-party group meeting, but what might take place after it. For example, the cross-party group might pick up on an issue about the number of physiotherapists in the country and then decide to write to the minister, asking that the convener, secretary, treasurer or whoever—perhaps a wee delegation—meet the minister to consider those matters. It is that next stage that I am talking about.

Joe FitzPatrick: I will ask Al Gibson to come in, but first we need to understand who is meeting here. If the convener of the cross-party group met the minister, that meeting would not be covered, because it would be an MSP who was having that meeting. I will bring Al Gibson in to talk about what would happen if the secretary of the cross-party group had the meeting and they happened to be—let us take the extreme example—a lobbyist working for a big pharmaceutical company.

Al Gibson (Scottish Government): The exception as currently drafted seeks to capture engagements within a meeting of a cross-party group, recognising—as the minister has said—that there are separate rules in place governing the probity or activity of CPGs. In the situation that you appear to be envisaging, if there was a written communication on the back of a CPG, the bill as currently drafted would not capture that. The issue is whether there were a face-to-face meeting. I assume that if there were to be a face-to-face meeting—Neil MacLeod will correct me if I am wrong—it would be separately registrable, as it would no longer be happening in the course of the CPG forum.

10:15

Neil MacLeod: That is correct.

Joe FitzPatrick: That would be the case if the meeting is with a lobbyist of some sort.

Dave Thompson: So the intention is that, if a CPG requests a face-to-face meeting and folk who are non-MSPs meet a minister, the CPG would need to register as a lobbyist?

Joe FitzPatrick: No—not the CPG.

Dave Thompson: Who would register? Would it be the people who were meeting the minister? How would that work?

Neil MacLeod: The exception is designed to carve out communications that take place at a meeting of a cross-party group. It is intended that communication during a meeting of a cross-party
group will be not a trigger. If there are then meetings between members of the cross-party group and ministers or MSPs, we go back to the starting point and that will be registrable unless any of the other exceptions apply.

**Joe FitzPatrick:** I confirm that it would be registrable by the organisation that the person represents.

**Dave Thompson:** However, the person who was delegated to meet the minister to take the matter forward would be representing the cross-party group. If a cross-party group decides that it wants to pursue an issue, how will that work? That might be something for further consideration.

**Joe FitzPatrick:** Okay. I think that they are covered by the organisation, but we will take your point away and confirm that.

**The Convener:** It might be useful if I express a view from the chair at this point. Some cross-party groups schedule a meeting and have a meeting but it turns out not to be quorate. Although it has the appearance of a meeting of a cross-party group and operates as if it was one, it does not meet the definition of a meeting of a cross-party group. I just put that on the record as cross-party groups might care to note that the bill might widen some of the implications of their meeting when they are not quorate. That point would bear further examination on another occasion. It is an important point for cross-party groups to note.

**Joe FitzPatrick:** Education is always going to be an important part of taking the matter forward.

**Gil Paterson:** Did the Government consider whether other individuals such as civil servants, parliamentary officials and senior agency staff should be included in the definition in addition to MSPs and ministers?

**Joe FitzPatrick:** Yes. We considered whether there were other appropriate bodies that we would want to include. Again, it came down to striking the right balance. The bill reflects the conclusions that were reached by the committee and backed up by the Scottish Parliamentary Corporate Body, which made clear to the Government the need to consider the impacts of any register model that might create a resource burden greater than that which was envisaged in the report in February. We had to look at that very carefully.

In discussing the inclusion of ministerial special advisers and MSP senior advisers, I draw the distinction that, whether advisers are advising MSPs or ministers, they advise, whereas the decisions are ultimately made by the MSPs or the ministers. That is why we think that we have the correct balance. Any move to widen the definition in the bill of people who are lobbied would result in a greater number of registrants and returns, particularly if the range of communications that trigger the requirement to register and report lobbying was expanded as well.

It is about striking the right balance and having proportionate registration. Ultimately, however, the reason for the decision is that MSPs and ministers make decisions whereas special advisers and MSPs’ senior advisers advise.

**The Convener:** I want to get a technical point out of the way. Given that the civil service is the United Kingdom civil service, is it correct to say that this Parliament does not have the power to legislate directly in relation to civil servants, albeit that we could legislate in respect of lobbyists who are engaging with civil servants? Is that a correct and fair distinction that you would want to make clear to us?

**Neil MacLeod:** The civil service is reserved under schedule 5 to the Scotland Act 1998. As with many things, it comes down to an application of the purpose test, so we would have to consider that.

**The Convener:** So there would be a vires issue—which we will not attempt to resolve here—if we were to get ourselves in the position of legislating about the civil service?

**Neil MacLeod:** The civil service is reserved under schedule 5—

**The Convener:** That is all right. I just wanted to get that technical point out of the way.

**Gil Paterson:** I understand that point, although I was not aware of it until the convener raised it. It is fairly certain that lobbyists make inroads to and discuss matters with civil servants on behalf of the Government. If a lobbyist made contact with and had discussions with a civil servant, would the minister be required to register that because the Government might make a decision based on the information? In a way, the person is lobbying the minister.

**Joe FitzPatrick:** We had to look at where a line would be drawn, and the committee’s conclusion was the same. The committee’s report stated—we concurred—that face-to-face direct lobbying is of a different scale to any other type of lobbying. We are not saying that there are no other types of lobbying, which is why the code looks at unregulated lobbying, but face-to-face lobbying where one can see the whites of somebody’s eyes is of a different scale.

**Gil Paterson:** My next question is in a similar vein. In other jurisdictions, there is a cooling-off period for people who were members of Parliament or who worked for the Government in some capacity, and that period applies before they can engage with Parliament or Government in...
lobbying. Did the Scottish Government consider that?

**Joe FitzPatrick:** Yes. From the evidence that the committee took last week, it seems that Ireland included something like that in its legislation. That might be because Ireland does not have another framework in place to deal with those situations, whereas we do. Civil servants who leave the service are covered by the business appointment rules. Again, the matter is reserved to the UK, unless they are covered. That provides for scrutiny of appointments that former Crown servants propose to take up in the first two years, so there is a two-year period for civil servants. Special advisers are also covered by the business appointment rules for civil servants. For senior special advisers, the period is two years, and for other special advisers it is one year. In effect, those are cooling-off periods.

The ministerial code also provides that a minister who leaves office is prohibited from lobbying Government for two years, and ministers are also covered by the independent Advisory Committee on Business Appointments in relation to any appointments or employment that they wish to take up for up to two years.

Those periods are not in the bill, but they exist within the overall framework that we have. The bill is not intended to be the one piece of legislation that provides transparency and probity in Scotland. The intention is for it to complement the frameworks that we have in place.

**Gil Paterson:** I can well understand that answer from a Government and civil service perspective. Will you comment on MSPs and folk who were never involved in Government but were senior advisers in a political capacity and were paid for by the Parliament through the allowances system? Should there be a cooling-off period for them?

**Joe FitzPatrick:** Speaking personally, I do not think so. They are on a different scale and I think that that would be disproportionate. We are not in control of our fate in these matters, and we can imagine somebody who has stood for election and done a fantastic job as an MSP for whatever party then finding that they are out of work.

**Gil Paterson:** Thank you for that.

**Patricia Ferguson:** I have a question, but I am just reflecting on what the minister said latterly. I have a feeling that the public appointments legislation restricts former MSPs in the positions that they can accept—

**The Convener:** In certain public roles.

**Patricia Ferguson:** Exactly. It might be worth taking a look at that to ensure that there is synchronicity there.

**Neil MacLeod:** I am not personally aware of that.

**Joe FitzPatrick:** We will look into that. There may be more than I—

**The Convener:** I think that Patricia Ferguson is absolutely correct. There is a cooling-off period for appointment to certain public roles.

**Patricia Ferguson:** It applies to appointments to boards, agencies and that kind of thing.

**Joe FitzPatrick:** I bow to the member’s experience.

**Patricia Ferguson:** Going back to my colleague Gil Paterson’s questions about the categories of people who are caught by the bill, if that is the right word, I wonder about the chairs of agencies, non-departmental public bodies and the like. Was consideration given to their being subject to the bill? Another category is parliamentarians such as parliamentary liaison officers, who have quite a lot of access to ministers and might be the conduit for lobbying. It might be important to ensure that there is transparency there.

**Joe FitzPatrick:** The parliamentary liaison officers will be caught as MSPs. The one big difference between the bill and the legislation elsewhere in these islands is that it includes MSPs—again, on the committee's recommendation. Parliamentary liaison officers are caught by that, so people will not be able to use them as a back door to get to ministers. That will not be possible because meetings with all MSPs are caught by the bill.

Chairs of NGOs will be caught if they are paid in their role. There might be a small number who are not paid in their role, but in general they will belong to organisations that are of such a size that the organisation will already be registered, so voluntarily adding the information for a senior unpaid person will not be onerous and that could be encouraged.

**Patricia Ferguson:** I am not convinced about the PLO issue, because they have a specific role over and above their role as an MSP. In a sense, it is the same argument that we make for including ministers as ministers rather than just as MSPs. We recognise that there is a specific role there. I would be anxious if PLOs were not covered by the bill, as lobbyists might see them as almost fair game as a conduit to ministers.

**Joe FitzPatrick:** That is certainly not the intention, but we will go away and check to ensure that we have not inadvertently created a back door to lobbying. I do not think that we have, because the intention is that all MSPs be covered, and that includes parliamentary liaison officers, but let us take that away.
Patrick Ferguson: I am sorry, minister. I am not suggesting that the bill does not include PLOs as MSPs. I am saying that it does not include them in their capacity as PLOs.

Joe FitzPatrick: I understand your question. We will take that away and ensure that we have not missed something.

Patrick Ferguson: Thank you.

The Convener: We move on to thresholds and triggers. For lobbying to be regulated requires there to be payment or, more broadly, reward to the person who is undertaking the lobbying. What consideration did you give to other definitions and why did you end up with that one?

Joe FitzPatrick: We want to have a level playing field so that everyone is treated equally, and it was about finding that mechanism. There were two serious possibilities for taking that forward. One was to have a threshold—that was the committee's preference—and the other was for paid lobbying to provide a threshold. We considered both possibilities seriously.

10:30

We were concerned that having a threshold of a number of meetings over a year would provide a significant potential loophole whereby an organisation could manage the number of meetings in order not to trigger that threshold. Even if there was no intention not to trigger the threshold or to avoid it, an organisation could fail to register significant acts of lobbying. There could be one meeting that was of great significance and which would not require to be registered. That was our concern.

We consulted on taking both proposals forward, of course. Both proposals tried to achieve the same aim of finding a proportionate way forward in which we did not catch minor acts of lobbying and miss significant lobbying. The consultation was overwhelmingly in support of paid lobbying being the test.

The Convener: If we consider NGOs—particularly big NGOs—that will employ people whose duties include lobbying, those individuals will be paid and caught by the definition. I do not choose the RSPB for any particular reason, but it has six-figure numbers of members, if I recall correctly—it maybe has even over a million members. Of course individual members who are not paid to lobby can nonetheless be a very significant part of lobbying activity, but it appears that their activity will not be caught, even though they would be acting on behalf of an organisation. Is that understanding correct? Is that the right way of dealing with the matter?

Joe FitzPatrick: I absolutely think that that is right. It does not matter what somebody's job description is. Let us be clear. If the RSPB employs somebody who does not have a title that says that they lobby, but they lobby, they will be caught, and so they should be. However, it is not correct that a member of the public who happens to be a member of the RSPB and wants to engage with their MSP on an issue that the RSPB is lobbying on should be caught. It is correct that the bill does not catch members of the RSPB or the Boys Brigade who want to lobby on behalf of their organisation.

The Convener: I was seeking to take the discussion to a slightly different domain, not specifically the issue of a constituent engaging with their own MSP on behalf of the RSPB, but perhaps the issue of a constituent coming to Parliament and engaging with a range of MSPs, many of whom do not represent them.

Joe FitzPatrick: Those individuals should not see any hurdle in engaging with the Parliament or the Government. Those are exactly the sort of people whom we want to ensure that we do not put any barriers in the way of.

Last week, Neil Findlay raised the quite useful example of organisations that have been involved in the equal marriage debate. There were two organisations, and I think that he pointed out that both had strongly held views. Both would have been caught through their organised lobbying. Both had people who were paid to lobby, and those people would correctly have been caught. It would be wrong if we had a bill that would have made it difficult for the supporters of both campaigns to engage with MSPs and ministers in the debate that we had. Any barrier for those individuals would be wrong. They are exactly the sort of people whom we want to ensure that we do not catch.

The Convener: Nonetheless, it is the organisation that is the registrant, not the individuals. The case has been made to us that all activity on behalf of the organisation that it requires because it undertakes regulated lobbying activity should be caught by the register, notwithstanding the fact that some of that will be undertaken by people who do not receive any reward for doing it. I would be interested to hear your reasoning on that.

Joe FitzPatrick: I feel quite strongly that those people should not be caught. There are a number of reasons for that. To stick with Neil Findlay's topic, I had a particular position during that campaign, but I engaged with a large number of constituents. I do not think that the two organisations will have known who engaged with me. Therefore, we would be putting in place a complexity that would be very difficult for us to
manage. There would be the strong potential for an organisation to say, “You cannot do that unless you let us know first.” I do not think that anyone should have to get permission to engage with a democratic process. That is the lobbying that we want to encourage, and we should not shy away from using the word “lobbying” for that type of activity, because that is what it is, and it is appropriate and is to be welcomed.

**The Convener:** It is helpful to get that on the record, minister. Thank you.

There is another thing in respect of which there is a bit of a head of steam among some people out there. Probably the majority of the public feel that the level of expenditure that is undertaken would be an appropriate trigger. What consideration did you give to whether that could be used as a trigger? Why did you end up dismissing that?

**Joe FitzPatrick:** Using the level of expenditure as a trigger would have been pretty easy for third-party lobbyists and consultant lobbyists. They will have a line and will know exactly how much they have spent on a particular campaign, so using that would be dead easy for them, but it would probably be slightly more difficult for the in-house lobbying of big organisations, and it would potentially be quite onerous for some smaller organisations. I am not sure that it would be terribly helpful.

**The Convener:** So your focus is really on the activity of lobbying and whether reward is associated with undertaking that activity. You are seeking to argue that that is a more clear-cut and unambiguous definition than simply a financial one.

**Joe FitzPatrick:** In order to find a regime that is simple to understand, either of the two methods—the one with the number of meetings that the committee suggested or the paid method—would both work in terms of that test.

**The Convener:** You are also suggesting that the financial test might bear disproportionately on middle-ranking organisations and the small ones that did not pay at all.

**Joe FitzPatrick:** I think that it would potentially impact on smaller organisations. Bizarrely, it would be easiest for the consultant organisations, because they will not have to do any work. They will know exactly how much money they have spent on a campaign.

**The Convener:** Just for the sake of argument and to choose just one example, do you recognise that the public might have a perfectly reasonable interest in how much the drinks industry is spending to resist the agreed policy of minimum pricing that we have in the Parliament?

**Joe FitzPatrick:** If we are sticking with the trigger as is, the bill allows for Parliament—after consideration, I would have thought—to extend the details that are on the register. The bill will provide a framework whereby a future committee could say that it felt that information was information that the clerks were in a position to register. To maintain the system that had that information, we need to ensure we have a system that works and is useful and proportionate to the public. All those considerations would need to be taken into account. In the framework of the bill, we have provided the power for the scope to be extended in that way in respect of the information that is registered.

**The Convener:** Quite a lot of lobbying organisations are charities and are therefore already regulated by Office of the Scottish Charity Regulator. Is the approach creating dual registration for such bodies, and difficulties through that?

**Joe FitzPatrick:** No, it does not do that. OSCR’s role is very different from what is in the bill. It would be important for us to ensure that there was no duplication, but there certainly is no duplication in respect of OSCR’s role and what the bill is trying to achieve.

**Patricia Ferguson:** I want to talk about the content of the register in a wee bit more detail and, in particular, I want to reflect on the discussions that we had in the round-table session last week. There were suggestions about other things that should be included. For example, an organisation’s expenditure was seen as being quite important in reflecting the level of concern that it might have on an issue. There were suggestions that banding might be quite helpful. We could have a band to protect commercial confidentiality. Another suggestion was around the employment history of lobbyists. Sometimes it is not the seniority or the position of the person in the organisation that matters, but their contacts that result from previous activity. What about those issues and any other issues that you have thought about?

**Joe FitzPatrick:** The section 15 powers are designed to offer the Parliament full flexibility on the operational aspects of the register, so it would be within the Parliament’s powers—again, I stress the Parliament’s powers, not the Government’s powers—to change what is required to be there. I would have thought that Parliament would want to do that very carefully and ensure that we did not put an overly onerous burden on people that would provide a block to engagement with the democratic process. That would need to be taken forward carefully, but we have provided the power to allow that to be added. The bill is designed to
provide a flexible framework that can evolve, as the Parliament sees fit.

Patricia Ferguson: Another issue that we discussed last week was the idea of a six-monthly return. A variety of views were expressed about that. Most of those who were what we would understand normally to be lobbyists already have systems in place that allow them to record contacts, because that is what they are about and that is very important to them. There were suggestions that there should be registration maybe once a year rather than every six months. Others thought that the register should almost be like a rolling register. Why was six months arrived at?

Joe FitzPatrick: We had to find a figure that was balanced, but the reason for a rolling six months rather than a six-month cut-off on a set date—a census day almost—was that, if there was a census day, that would put an unnecessary burden on the Parliament through all that information coming in at one time, whereas if people did it at their own time, that would be spread out over the year. I hope that that could be managed more easily by the Parliament. That was the main reason for that.

Patricia Ferguson: It was a practical decision.

Joe FitzPatrick: I listened to what was said last week. I can see how that approach might be helpful to organisations, but it might put a burden on the Parliament that would not help too much.

The Convener: I want to be clear. It is not the Parliament’s responsibility to set out what information has to be provided. The Parliament needs to set out what information has to be prescribed in legislation is framed.

Patricia Ferguson: That is important. That is the way that the bill’s provisions, if I may put it in that way. Certainly, it is currently about the purpose of the lobbying. That is the way that the legislation is framed.

The Convener: Just to be clear, section 15 would allow us to prescribe not simply in guidance.

Joe FitzPatrick: Indeed.

Neil MacLeod: The section 15 power gives Parliament the power by resolution to change bits of the framework, including the bit that prescribes what information has to be provided.

10:45

The Convener: Yes—and that goes beyond mere guidance.

Neil MacLeod: Indeed.

The Convener: I just wanted to be clear technically on that point. Cameron Buchanan has a question on flexibility.

Cameron Buchanan: I am concerned about the flexibility of the Lobbying (Scotland) Bill, in respect of powers to alter its provisions. There are provisions to alter some of its provisions, but not enough. What do you think of that?

Joe FitzPatrick: We have tried to give maximum powers in the operation of the bill, but the core principles should be decided as the bill goes through Parliament. If there were to be a major change to the core principles, it would be appropriate to alter the primary legislation.

Cameron Buchanan: Do you mean using what we used to call a sunset clause?

Joe FitzPatrick: No. I am simply saying that it would be appropriate for Parliament to consider more regularly the operation of the bill. A committee similar to this one will probably want to look at how the bill and the registration scheme are working in order to see whether we have it right. Changing the basis of who has to register would be more significant and the Parliament would rightly want to look at that in a future bill.

Cameron Buchanan: Who would have the responsibility for lodging such a bill?

Joe FitzPatrick: It would be whoever sought the changes, so it could be a committee bill. Are you asking about changes to the powers?

Cameron Buchanan: Yes.

Joe FitzPatrick: Parliament needs to set out the operational powers in standing orders. We might expect that a committee would look at that similarly to how it looks at other standing orders, such as the members’ interests statute. Obviously, it is for Parliament to take a view, which is why I am being a bit coy about saying something
definite. It is for Parliament to decide how to take that forward, but I would have thought that standing orders would be changed to give that role to this committee.

The Convener: It might be helpful to say that the clerks have given some early consideration to changes to standing orders, the “Code of Conduct for Members of the Scottish Parliament” and a range of things that the bill provides for. At the moment, the expectation is that it will be for this committee or its successor to bring forward such changes in due course, and for Parliament to approve or reject them, of course.

Cameron Buchanan: Yes. Could Parliament be required to make those changes?

Joe FitzPatrick: Such lobbying would be recorded.

Cameron Buchanan: Yes, of course.

Joe FitzPatrick: That could be recorded. One of the great things about this committee is that it would be quite resistant to such actions and members base decisions on evidence. I imagine that its predecessor committees have been the same way, as will the committees that follow.

Dave Thompson: The Commissioner for Ethical Standards in Public Life in Scotland has concerns about oversight and enforcement, and outlined a nightmare scenario in which he would have to report back on numerous occasions because of his duty to report any criminal matter to the procurator fiscal. The policy memorandum says that the bill takes a light-touch approach, and that it is educative and so on. If someone reports to the commissioner before the clerks, for instance, have had a chance to deal with something, he has to put it to the procurator fiscal and so on. Can you comment on those concerns?

Joe FitzPatrick: First, it is very important that we have that legal basis to the bill. Without it, it would be difficult for clerks to do their job in terms of education and getting people to register properly. The purpose is absolutely to have an educative and light-touch regime.

There is no requirement in the bill for the commissioner to report to the procurator fiscal. That is not the intention. Al Gibson will give more background.

Al Gibson: Under members’ interests legislation or, more correctly, the Scottish Parliamentary Standards Commissioner Act 2002, directions could be made. I understand that one was made on how the commissioner should handle certain matters such that if a matter came to his attention, and in his eyes there was reason to refer it to the procurator fiscal, he could do so, and await a decision on whether a prosecution was required. Given that this is meant to be a light-touch regime, we purposely did not include any such requirement in the bill. However, under section 31, other statutes could be mirrored; we could have a direction-making power so that Parliament could direct the commissioner to act in that way. We thought that that was not appropriate in this statutory framework.

I take the point about members of the public. As with any offence, members of the public can approach the police or whoever and seek prosecutions or put complaints to the commissioner. On direction, we have discussed whether the commissioner would be unduly caught up with matters of lesser significance that did not warrant investigation, but were still about the integrity of the registrable information. We suggest that Parliament could use the power under section 31 to direct the commissioner on how to act in such cases, so that such issues could be referred back for consideration by the clerk.

Dave Thompson: Is the intention that the commissioner will be given clear guidance and direction to ensure that trivial matters do not end up before the fiscal and cause delays and so on? The commissioner will very clearly know and understand what he can send back to the clerks.

Al Gibson: Yes—there is no requirement for the commissioner to report to the fiscal.

The Convener: Equally, it might be a matter of putting the relationship between the commissioner and the Lord Advocate, as the head of the prosecution service, on a formal basis. Of course, that would depend on the Lord Advocate’s view of what is appropriate, in some instances, as well.

Joe FitzPatrick: We are creating a criminal offence, so there has to be clarity.

Neil MacLeod: Clearly there will be a need to manage the relationship between the Crown Office and Procurator Fiscal Service and the role of the commissioner, but I agree with what the minister and Al Gibson have said. The bill confers functions and gives the commissioner a particular role. There is no requirement for him to escalate things, but there is the facility for Parliament to issue directions to the commissioner in whatever terms it sees fit. One particular type of direction that could be issued would be to allow the commissioner to refer matters to the clerk, in the first instance.

The Convener: There is no question of directing the Lord Advocate about what his attitude might be.

Neil MacLeod: No.

The Convener: That is self-evident.

Patricia Ferguson: Earlier this morning we took interesting evidence from the commissioner. One of his points was that among the communications
that are specifically excluded in the schedule is journalism. His feeling is that the definition is very broad and he made the valid point that there are different forms of journalism. There are house magazines, for example, or trade magazines, that might use their publications for lobbying. He asked whether the definition is as helpful as it might be.

Joe FitzPatrick: One of the points to note is that the product of journalists tends to be very much in the public domain. Neil MacLeod can talk about the definition.

Neil MacLeod: The exception is "A communication made for the purposes of journalism."

We have thought about that. Paragraph 18 of the explanatory notes for that particular exception refer to particular case law in which the legal concept of journalism is discussed—the Commissioner of Police of the Metropolis v Times Newspapers Limited—in which there was a discussion of the concept of journalism in law. That is what we are trying to get at in framing the definition.

The Convener: It would probably be helpful at some stage in the bill process to make sure that we have appropriate comment on the record that could be referred to by courts at a later date to help to understand our intention. Alternatively, would you consider whether the quite straightforward definition in the schedule might be looked at again? I think that Patricia Ferguson has made a reasonable point.

Joe FitzPatrick: We will certainly look at it to make sure that in legal terms the definition that we have is doing exactly what we expect it to do, and not something else.

Patricia Ferguson: Thanks.

The Convener: Finally, I have received correspondence from the Finance Committee. There appears to be a bit of a discrepancy between what the financial memorandum, the Scottish Parliamentary Corporate Body and the commissioner say about the estimates for costs. I wonder if the minister might care to comment on that.

Joe FitzPatrick: The Commissioner is not challenging the costs, though, is he?

The Convener: Let me just quote from the letter from Kenny Gibson, convener of the Finance Committee:

"The FM accurately reflects the indicative costs and assumptions provided by the Parliament which the SPCB believes to be 'reasonable and accurate'.

However, the submission draws the Committee's attention to the Bill's potential cost implications for the Commissioner for Ethical Standards in Public Life... On the basis of figures provided by the Commissioner, the FM estimates that he would incur additional costs of 'between £0 in the case of no investigations and £70,000 in the case of 10 complex investigations'.

The FM further states that 'the Commissioner does, however, believe that any additional investigations arising as a result of the Bill can be absorbed within its existing resource.'"

The SPCB says that essentially there will be extra costs for the commissioner.

Joe FitzPatrick: The financial memorandum states that the extra cost would be from zero upwards, depending on the number of cases, but it is probably worth putting on the record that there was on our part a misunderstanding of what the commissioner meant in terms of absorbing that cost. We accept that the commissioner is saying that the costs that the Finance Committee says are accurate are additional costs.

The Convener: Can I therefore take it that we will see a restatement of the financial memorandum at some point, preferably before Parliament is—

Joe FitzPatrick: The figures in the memorandum are correct, but—

The Convener: The figures are correct, but the commentary needs to be adjusted: is that what you are saying?

Al Gibson: We can investigate that and we are happy to put on record that there has been a misunderstanding, as the minister said. I think that there was, in respect of the financial memorandum, confusion around the commissioner’s explanation to me and colleagues about whether lobbying complaints in themselves were capable of absorption, or whether it was the fact that the additional functions—on top of what we understood to be enhancements to the commissioner’s remit—would no longer be absorbed at some point in the future. As the minister has said, we are very happy to accept that that was a misrepresentation in the memorandum and we will seek to—

The Convener: Can I seek a commitment from the minister, that by the time Parliament gets to considering a financial memorandum—I am not sure one will be required, but it might—we will have a version of it that no member will wish to challenge on this basis?

Joe FitzPatrick: We have today accepted the commissioner’s position and are putting that on the record.

The Convener: I am taking that just a notch further, and asking you to consider reissuing the financial memorandum.

Joe FitzPatrick: We will check what the process is.
The Convener: I accept that you have put that on the record now, but I suspect that reissuing it would be helpful.

Joe FitzPatrick: We will check what the process is.

The Convener: That is fine. I think we have covered the ground that we wanted to cover. Have you concluding remarks, minister? Are there any issues that we have not covered that you wish to draw to our attention?

Joe FitzPatrick: No. Thank you very much. We appreciate how the committee has taken this work forward and I think that we are moving forward in the most appropriate way on a bill that is, as I said at the start, largely parliamentary in nature. It is appropriate that we continue to listen to the committee as the bill moves through Parliament.

The Convener: Thank you, minister, Mr Gibson and Mr MacLeod for attending and being helpful in your answers. We move into private session.

11:01

Meeting continued in private until 11:31.
Lobbying (Scotland) Bill: The Committee agreed its approach to the delegated powers provisions in this Bill at Stage 1.

Lobbying (Scotland) Bill: The Committee considered further the delegated powers provisions in this Bill at Stage 1 and agreed the contents of a report to the Standards, Procedures and Public Appointments Committee.
The Convener: Under agenda item 9, members are invited to consider the delegated powers provisions in the Lobbying (Scotland) Bill.

The committee is invited to agree the questions it wishes to raise with the Scottish Government on the delegated powers in the bill in written correspondence. The committee will consider the responses at a future meeting to inform a draft report.

Sections 15(1), 20(1) and 41 all relate to powers exercisable by resolution of the Parliament. Section 47 of the bill makes general provision in relation to those powers. The committee might wish to seek explanation in relation to three points.

First, the delegated powers memorandum does not explain the type of procedural detail that could be included in Parliament’s standing orders on making parliamentary resolutions. Secondly, section 47(2)(b) confers wide power to make ancillary provision under such parliamentary resolutions, but the delegated powers memorandum does not explain why that is needed. Lastly, section 47(4) provides that part 1 of the Interpretation and Legislative Reform (Scotland) Act 2010 is to apply to a resolution as if it were a Scottish instrument; again, the purpose of that is not explained in the delegated powers memorandum.

The committee might wish to ask the Scottish Government the following questions. What further procedural provision is envisaged to be required in the Parliament’s standing orders, and why is it considered appropriate that those matters are subject to provision made in the standing orders rather than set out in the bill?

Why is it considered appropriate for the Parliament to make the full range of ancillary provision in a resolution under the bill, a power that is provided for in section 47(2)(b)? Can the Scottish Government give an example of the sort of provision that it is envisaged might be made under the ancillary powers?

Can the Scottish Government explain the purpose of the provision in section 47(4) of the bill that provides that part 1 of the Interpretation and Legislative (Scotland) Act 2010 is to apply to a resolution as if it were a Scottish instrument?

Is the committee content to ask those questions?

Members indicated agreement.

The Convener: Section 15(2) enables primary legislation in sections 4 to 14 of the bill to be
modified by a parliamentary resolution that is made under section 15(1). Does the committee agree to ask the Scottish Government to explain further why it is considered appropriate for the Parliament to have a delegated power to modify provisions of the act as passed, and, regarding the choice of procedure, to say why it is considered appropriate that the power in section 15(1) is exercised by parliamentary resolution notwithstanding that it includes provision to modify primary legislation?

Members indicated agreement.

The Convener: Part 3 of the bill makes provision for the investigation of complaints and reporting to Parliament by the Commissioner for Ethical Standards in Public Life in Scotland as part of the oversight of the registration regime. Section 31(1) provides that the commissioner, in carrying out those functions, must comply with any direction that is given by the Parliament. Section 24(5)(a) empowers the Parliament to specify in a direction certain classes of case in relation to which the commissioner is required to report to Parliament in specific circumstances.

The committee might wish to ask the Scottish Government the following questions. In relation to the power in section 31, why is it considered appropriate that provision regarding the handling of complaints is dealt with in directions rather than set out in the bill? Further, can the Scottish Government give examples of the sorts of cases under which it is envisaged that the Parliament might direct the commissioner not to carry out an assessment of a complaint or an investigation into a complaint?

In relation to section 24(5)(a), in what sorts of cases where a complaint is inadmissible by virtue of the rules in section 23(3) is it envisaged that the Scottish Parliament would direct the commissioner to report, and why is it considered appropriate to specify those classes of case in directions rather than in the bill?

What further procedural provision for directions under the bill, including as regards publication, is envisaged to be required in the Parliament’s standing orders, and why is it considered appropriate that those matters are subject to provision made in the standing orders rather than set out in the bill?

Do we agree to ask those questions?

Members indicated agreement.

The Convener: Section 44(1) provides that the Parliament must publish a code of conduct for persons lobbying members of the Parliament. Does the committee agree to ask the Scottish Government for an explanation of why it has been considered appropriate that the section does not include requirements for persons to comply with the code or have regard to the code, and why it has been considered appropriate that the section does not contain any sanction or enforcement provision in relation to a breach of the code?

Members indicated agreement.

The Convener: That completes the public part of the meeting; we will now move into private.

12:09
Meeting continued in private until 12:50.
Note: (DT) signifies a decision taken at Decision Time.

**Lobbying (Scotland) Bill:** The Minister for Parliamentary Business (Joe FitzPatrick) moved S4M-15220—That the Parliament agrees to the general principles of the Lobbying (Scotland) Bill.

After debate, the motion was agreed to (DT).

**Lobbying (Scotland) Bill: Financial Resolution:** The Minister for Parliamentary Business (Joe FitzPatrick) moved S4M-15213—That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Lobbying (Scotland) Bill, agrees to any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament’s Standing Orders arising in consequence of the Act.

The motion was agreed to (DT).
Lobbying (Scotland) Bill: Stage 1

The Deputy Presiding Officer (John Scott):
The next item of business is a debate on motion S4M-15220, in the name of Joe FitzPatrick.

15:16

The Minister for Parliamentary Business (Joe FitzPatrick): The Lobbying (Scotland) Bill is an unusual bill: it has been introduced by the Government, but is parliamentary in nature. For that reason, I have been keen from the outset to work closely with Parliament to ensure that its views are reflected in the proposed legislation.

We all agree that lobbying is a legitimate activity, and we recognise the valuable contribution that it makes to informing policy making in Scotland. However, it is right that we seek to improve transparency in lobbying activity in order to retain the public’s trust, particularly in the light of continuing constitutional change. The results of a recent poll that was commissioned by the Scottish alliance for lobbying transparency indicated that three quarters of public respondents were in favour of the creation of a register. Therefore, our shared objective is to ensure that Parliament puts in place a robust, workable and, above all, proportionate lobbying registration scheme. We must do so while listening to the views of a range of stakeholders. The Government’s Lobbying (Scotland) Bill is founded firmly on that basis of its being a shared endeavour.

When the Government announced its intention to legislate on lobbying, its rationale for doing so was made clear. The question whether Parliament should establish a lobbying register was and remains significant, and requires careful consideration. Therefore, the Government was persuaded that it should put its full weight and resources behind the proposal, but recognised from the outset the need to reflect Parliament’s wishes. I remain firmly of the view that the end product must be something that members across the chamber will be able to stand behind. The debate allows that process to continue.

Against that backdrop, we welcomed the late Helen Eadie’s suggestion that the Standards, Procedures and Public Appointments Committee contribute to determining what measures would be appropriate in the Scottish context by holding a committee inquiry. I am grateful to Parliament and the committee for its close involvement in progression of the bill, the detail of which I will outline later.

For the Government’s part, throughout the development of the bill, ministers have been guided by three underpinning principles. First,
there cannot be any erosion of Parliament's principles of openness, ease of access and accountability. Civic engagement is something that Parliament does well and which people truly welcome. Many people have commented on the Scottish Parliament's openness and hold that accessibility in high regard. The valuable relationships that Parliament has fashioned with all Scottish stakeholders have not only contributed to its many successes but have been integral to its swift development into a significant and trusted feature within Scottish society.

The second guiding principle is that the register of lobbyists must complement rather than duplicate current transparency measures. Many frameworks have been established within Parliament and the Government to deliver probity around lobbying. A lobbying register must be developed to fit within that landscape, as opposed to being viewed as a single catch-all solution.

The third principle is that the new arrangements need to be proportionate, to be simple in their operation and to command broad support both within and outwith Parliament; proportionality and simplicity are key considerations. We need to minimise the burden on those who will need to register and they will need to be clear about what is expected of them in order that they comply with the new scheme. On Parliament being the operator of the registration scheme, the parliamentary authorities also need arrangements that are as clear as possible for the public and which avoid capturing activity that would reasonably be viewed as trivial or as immaterial to the purpose.

Those three underpinning principles have been generally welcomed by stakeholders and are at the heart of the bill that I have presented to Parliament. They will continue to guide my thinking as the bill proceeds through its parliamentary stages, and to guide my thinking in respect of representations for change that are put to me.

Our policy objective is to ensure that we maintain the public's trust in Parliament as an institution by bringing added transparency. Our aim is to shed light on lobbying activity that is designed to influence the actions of ministers and members for a particular purpose: the bill is not intended to interfere with the day-to-day relationships that each of us has with our constituents. Patricia Ferguson made a very important point during evidence at the Standards, Procedures and Public Appointments Committee on 19 November when she highlighted the importance of being clear that the register should be designed to capture lobbying, but not simple engagement. I agree fully with that: we must ensure that we do not unwittingly erode legitimate engagement between the public and their elected representatives. I will therefore continue to consider the bill carefully in relation to the discussions that elected members have with their constituents, and I will in due course consider any necessary changes to protect the relationship between members and their constituents.

I mentioned the key role that the Standards, Procedures and Public Appointments Committee has played in helping to develop the policy in the bill. As I said, the Government welcomed the committee's announcement in September 2013 that it would hold an inquiry into lobbying. That inquiry took evidence from a wide range of stakeholders including campaign groups, representatives of the consultant lobbying industry, the voluntary and business sectors and academics. The inquiry concluded in February of 2015 with the publication of the committee's report.

That report reaffirmed what has become the universal conclusion, which is that lobbying is a "legitimate and valuable activity". The committee invited the Government to adopt recommendations that were set out in the report as the basis for proposed legislation to establish a lobbying register. The report confirmed the committee's view that a register based on its recommendations "would constitute a substantial new body of information which would make a notable contribution to increasing transparency".

The committee also invited the Government to work closely with the Scottish Parliamentary Corporate Body on any proposals that would impact on parliamentary resources.

The committee's 2015 report was pivotal in helping to shape the bill that is now before Parliament. Indeed, of the 17 recommendations in the February 2015 report, 12 fall within the scope of the bill and all of those have been reflected in whole or in part.

The Government consulted on its proposals for legislation, as informed by the committee's conclusions, and the feedback that was received has influenced the draft legislation.

I turn to the Standards, Procedures and Public Appointments Committee's stage 1 report. We welcome the committee's support for the bill's general principles. Given that the proposals in the bill will impact on every single member, it is very important that we take the views of the chamber as a whole prior to finalising and publishing the Government's formal response. That is consistent with the inclusive approach that has typified the development of the bill.

However, I wish to offer colleagues some initial thoughts on the content of the stage 1 report. The committee's agreement to the bill's core principle of focusing on lobbying involving payment is
welcome. That principle underpins the nature of the lobbying activity that we understand to be relevant for capture, and it helps to distinguish such activity from engagement between a constituent and his or her elected representative.

Members will note that unpaid lobbying does not require to be registered, although the bill allows for voluntary registration of unpaid lobbying activity, but I note that the committee’s thinking has moved on in relation to two key areas of the model that it endorsed in February 2015. First, the committee has asked the Government to review whether the scope of the bill should be widened to include communications of any kind. The Government is willing to keep an open mind on that issue and to listen to whatever evidence is made available to support such a position, but it will not surprise members to hear that the Government is extremely cautious about the merits of that approach.

Neil Findlay (Lothian) (Lab): I would like to exemplify the point. If the minister has a problem with a product that he has bought or a bill that he gets and he has to contact a company that is based in, say, India or America, does he book a flight and turn up at the company’s door because he has to speak to the person face to face in order to resolve the problem, or does he pick up the phone and deal with it there and then?

Joe FitzPatrick: As I said, the Government is keeping an open mind on the issue. Our starting point in attempting to provide a proportionate response has been to consider what is the most significant form of lobbying. We have written the bill on the basis that the most significant lobbying is face-to-face lobbying. However, I am not saying that other forms of interaction are not also lobbying.

Neil Findlay: Again, I ask a question: is most of our time taken up meeting people face to face or is most of our time taken up dealing with communications of another type?

Joe FitzPatrick: We would all have to go and look at our diaries to work out how much time we spend meeting people. I am clear in my view that face-to-face lobbying is the most significant form of lobbying, but I am not for a second saying that other forms of communication are not significant, as well. That is why we continue to have an open mind on the matter.

Some respondents to the consultation made calls for written communications to trigger registration. They highlighted the point that Neil Findlay makes, which is that some such communications could, as a matter of fact, constitute lobbying. As I said, the Government acknowledges that point, but in response we must highlight that we are trying to introduce a proportionate approach to lobbying registration.

Our starting point is to question whether it is proportionate to extend registration to written correspondence that is directed to MSPs and ministers. Members across the chamber would, I hope, appreciate what a volume of such correspondence there is—for example, the number of representations that I received from stakeholders in advance of today’s debate. I am sure that other members also received a large volume of written evidence. I am sure, too, that members appreciate that that information—which will have come from across the spectrum—has helped them to prepare for today’s deliberations.

Mary Fee (West Scotland) (Lab): I thank the minister for taking another intervention. I will be very brief. Will the minister clarify in what form were the bulk of the communications that he received about the bill?

The Deputy Presiding Officer: I will give you extra time, minister.

Joe FitzPatrick: Okay. In terms of volume, I—like every other member—have probably received the greater volume in the form of emails, which is significant. However, in terms of time, I have spent more time this week engaging on the issue with—

Neil Findlay: Because your staff read the emails.

Joe FitzPatrick: I think that I, myself, have read every single email that has come in about the bill.

I will continue: I have had meetings with stakeholders on all sides of the debate, which is very significant. I appreciate the meetings that I had with SALT and other organisations this week.

John Wilson (Central Scotland) (Ind): Would the minister make a distinction between lobbying and organised lobbying? The majority of emails that I have had this week on the bill, and those on other issues with which I have been bombarded in the past couple of days, are from individuals who have taken up an issue based on their own concerns. There is a distinction between organised lobbying by paid lobbyists and communications from individuals who feel so strongly about an issue that they want to write to their elected members.

Joe FitzPatrick: I am conscious that I should make some progress, but that is absolutely the case, and the bill as drafted makes that distinction, which is very important.

The response to the Government’s consultation demonstrated strong support for the registration of oral face-to-face communication, which is seen in the eyes of some people as striking an appropriate balance in the context of there being no evidence
of wrongdoing. In the eyes of others, there is no case for a register at all.

Although it would be possible in principle to extend registration to all forms of communication, the question that we must answer is whether that would be a proportionate response and whether we could be sure that it would not deter people from engaging with Parliament. Any negative effect of that sort would be precisely what we are seeking to avoid. The Government believes that there is a risk that extension would have such an effect, which would be to the detriment of organisations engaging both with Parliament and elected representatives. That will have to be considered carefully, and I would be interested to hear members’ views on it. As I said, our ears are not closed to the arguments. [Interruption.]

I will try to make some progress. The committee’s stage 1 report referred to special advisers and civil servants, and it records my response to the proposal for extension. My point was that MSPs and ministers are decision makers and legislators, whereas advisers are just that. Again, it would be perfectly possible to extend the bill in that way, but we need to consider the evidence and any potential implications of such an extension. Again, our minds are not closed on that point, but equally we need to test any extension against the principle of proportionality. I invite colleagues’ views on whether senior civil servants and senior advisers to ministers and MSPs should be covered by the bill.

The committee’s report also included recommendations on certain practical aspects of the registration framework, such as collective pay bargaining and the appropriateness of the current exception for meetings that are initiated by elected members. I will deal with those issues in due course in the Government’s response.

I thank you for your indulgence, Presiding Officer; there were important points that we had to make. The bill seeks to balance the interests of a wide range of stakeholders and to avoid unwelcome imbalances that could work against Parliament’s interests. There is in the bill considerable flexibility available for Parliament in the light of experience to alter the operational aspects of the registration scheme. I hope members will agree that the bill represents a firm foundation for the establishment of an initial scheme to underpin a register of lobbying activity. I look forward to hearing the views that will be expressed during the debate.

I move,

That the Parliament agrees to the general principles of the Lobbying (Scotland) Bill.

15:33

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): The term “lobbying” can, for some people at least, conjure up images of dubious characters loitering in the corridors of power, attempting to gain unfair advantage over the ordinary citizen. Indeed, the origins of the term lie in the Willard hotel in Washington, where Ulysses S Grant, President of the United States, used to retire for his brandy and cigars in the evening and would be accosted in the hotel lobby by people who were seeking to influence public policy. Lobbying was originally face to face—there were no telephones in the 1820s.

The committee has, however, had a long-term view that modern lobbying is a positive and necessary part of any democracy that equips decision makers with valuable information and, more important, allows individuals, firms and organisations to engage with and influence policy makers, as they have every right to do.

The bill aims to bring a perfectly legitimate activity out into the open. If everyone can see who has contributed to the decision-making process, those decisions should have greater legitimacy and be more representative, and it ought to be easier to hold decision makers to account—outcomes that I think are broadly supported across the Parliament.

Equally, we are aware of the danger of creating barriers or the appearance of barriers for smaller organisations and for individuals whom we wish to see engage with Parliament. Vitally, MSPs and our constituents must still be able to interact with one another on matters of local interest.

The committee’s work in this area goes back some time, as the minister outlined. Following Neil Findlay MSP’s proposal for a member’s bill on lobbying transparency in 2012, the committee held an inquiry to look into the question whether there needed to be more information available to the public about who lobbies the Scottish Parliament and the Scottish Government. We produced a report in February 2015, which set out a series of proposals. Those proposals have, to a large extent, informed the Government’s approach to its bill.

Nevertheless, in light of the evidence that we heard during our stage 1 inquiry, we think that there are further issues to consider. The bill, as currently drafted, will only require lobbyists to register if they have face-to-face meetings with MSPs and ministers.

Chic Brodie (South Scotland) (SNP): Warren Buffet once said that the contribution of people, particularly those in public service, requires integrity, intellect and energy, and without the first one, the other two are useless.
I think that the member would agree that we should seek to retain all those characteristics and my evidence today is that they are endemic in this Parliament. I am therefore concerned—even sure—that the consequence of the bill may be, in the long run, the very opposite of what is intended, in that those characteristics may well be damaged. Does the member accept that, should the bill go ahead, the committee must ensure that there will be no exceptions for different types of lobbyist?

Stewart Stevenson: The committee’s view is that we need to seek to differentiate between lobbyists who lobby as part of their paid activity and those individuals and organisations that are working in a voluntary context in which people receive no financial or similar reward. We think that that distinction is a good one.

The member referred to integrity, intellect and energy. I cannot speak for the committee because we did not discuss the issue in quite those terms but I suspect that the committee would view having a register of lobbyists and shining a light into what goes on in regard to lobbying as providing an excellent opportunity for us all to demonstrate those three attributes of integrity, intellect and energy.

The committee understands that the definition of registrable lobbying in the bill is designed to capture the most meaningful interactions and that a line was drawn in an effort to produce a light-touch regime. Nevertheless, in thinking about it since our original report, we feel that that approach may be too narrow and could create the impression of there being options open to organisations that wish to avoid scrutiny. We have therefore recommended that consideration be given to widening the definition of registrable lobbying to include all forms of communication.

We have not looked directly at the potential effects of that widening of the definition and hence ask the Government to do that. In practice, my personal experience—I stress that it is my personal experience—does not suggest that such an extension of the definition would significantly increase the number of registrants.

My personal reflection is that we must test to see whether such an extension would inhibit communication between MSPs and constituents. That is one of the essential tests. We must not overburden organisations, in particular small organisations that are pursuing legitimate campaigns, by creating an administrative headache for them—or for Parliament, although the former are the more important consideration.

During the bill’s progress we will not, of course, decide what the proposed register’s contents will be—Parliament will come to that matter after the bill’s passage. However, at this stage, it is worth saying that the committee is not suggesting that the details of every phone call and email should appear in the register; we suggest that it should contain merely the fact that there have been such communications and what their purpose has been. To include all the details would generate a great deal of repetitive information and possibly render the register less useful and accessible to citizens by burying the relevant information.

Neil Findlay: Having read the committee’s stage 1 report, I understand that it rejected thresholds for registration. That was an error. Having thresholds would have meant that incidental and small-scale lobbying would not be captured. Will the member elaborate on why the committee rejected thresholds?

Stewart Stevenson: There was an element of judgment; there is no absolute certainty in this. However, the test of including only people who receive reward for their lobbying is a simple and objective one, while the test of having a threshold, which the committee discussed at some length, is a more difficult one in terms of coming up with a watertight definition. As the bill progresses to stages 2 and 3, I am sure that we can return to that issue and debate it further. I think that I am correct in reporting the committee’s considerations in those terms and in saying that that is why we came to our conclusion. As I said, it was a judgment call.

The bottom line is that we have asked the Government to find a way, as the bill progresses, to demonstrate that any alteration of the definition of lobbying will leave acceptably modest administrative burdens for those lobbying while delivering a useful and accessible register.

I take it that I have a little flexibility in time, Presiding Officer?

The Deputy Presiding Officer: You have nine minutes, Mr Stevenson, but there is a little flexibility.

Stewart Stevenson: Thank you—that is helpful.

We looked at the distinction that the bill makes between paid and unpaid lobbying. We basically endorsed the Government’s approach in that regard. It is right that any citizen can lend their voice to a cause or support an organisation in an unpaid capacity without having to register.

We also agreed that the distinction that has been made elsewhere between professional lobbyists—whatever they are—and in-house lobbyists is not one that we would want to see echoed here.

Under the bill as currently drafted, a person would not be required to register following a meeting with a minister or an MSP provided that the minister or MSP had initiated the meeting. We
understand and accept the rationale behind the exception, which was designed to ensure that there were no restraints on MSPs and ministers entering into discourse with stakeholders, experts and representative groups that may have particular skills or knowledge that allow them to make a valuable contribution to policy or otherwise challenge proposals.

We share the view that MSPs and ministers should be able to have such interactions with specialists without those specialists then having to register. However, in practice, we have concerns. If matters are discussed during a chance meeting, a dinner or an event, who initiated the meeting and how can that be demonstrated? That could be difficult, and we therefore ask the Government to look at its approach and see whether there are ways of offering greater clarity and certainty.

When it comes to the subjects of lobbying, we were persuaded by those who gave evidence that restricting the bill to MSPs and ministers was too narrow. Although we accept the argument that ministers are responsible for decisions, other office-holders are clearly involved in their inception. Importantly, the lobbying organisations that we spoke to considered such interactions to be of equal value to meetings with ministers. Accordingly, we have asked the Government to consider introducing amendments to broaden the definition to include communications with other public officials, such as civil servants, special advisers and senior staff.

We heard arguments that expenditure on lobbying should be disclosed. I return to the point that that is a matter that Parliament can consider further when we look at the orders that we will make after the bill’s passage.

The Parliament was founded on the principles of openness, accessibility and participation. If we get it right, the bill will promote those values and allow everyone to participate on an equal footing.

We look forward to continuing to work with the Government on any changes that it introduces. I am happy to say that the committee endorses the view that the Parliament should adopt the bill’s general principles.

15:44

Neil Findlay (Lothian) (Lab): I am pleased to open the debate on behalf of the Labour Party. I am also pleased that the Government has got round to introducing the bill, because this debate has been a long time coming. I submitted my draft proposal for a lobbying transparency (Scotland) bill in July 2012, and the issue is only now coming before the Parliament. Nevertheless, we have got here; that is a good thing, and we will support the bill’s principles at decision time.

Like others, I believe that lobbying is a good thing. It informs debate and assists the democratic process. For example, the briefings that we have all received for this debate and which we receive for others are often invaluable in providing information, expertise and knowledge and giving different perspectives from a range of opinions. They enhance our democracy, and that, as I have said, is a good thing.

However, the workings of the Parliament and the ways in which legislation is made, contracts are awarded and so on, including any lobbying that might have occurred in the process, should all be open to scrutiny and be transparent. As we know, the general standing of politics and those who work in and around it, following the expenses scandals, cash for questions, taxis for hire—

Chic Brodie: Not here.

Neil Findlay: Calm your jets, Mr Brodie.

After all those things and the current financial controversies of some MPs, that general standing is not high. Thankfully, the Parliament has been largely free of such scandals—and long may that continue. Indeed, the reason I wanted to introduce a bill was to ensure that we put in place systems to prevent such things from happening, thus protecting our democracy, this Parliament and those who engage with it. It would take only one or two scandals to really damage the Parliament’s standing, and that would be a major setback for all of us and for this institution. In that respect, a good, robust and workable lobbying bill fits with the preventative agenda that the Government promotes and which I think all of us support.

However, it is hard to deny the view of many that, compared with ordinary people—the average man or woman in the street—powerful interests enjoy disproportionate access to Government, politicians and decision makers as well as disproportionate influence over policy and the legislative process. We could pick out a whole range of issues, but the fact is that organisations that are engaged in promoting renewable energy, fracking, cuts to air passenger duty, airport expansion and a whole range of other matters regularly spend very significant amounts of time, money and effort on getting what they want. There is nothing wrong at all with that—they are perfectly entitled to do so—but the public should have a right to know who they are speaking to, the reason for those communications and what, if any, was the outcome. That is not revolutionary stuff—it fits in with the Parliament’s founding principles.

The bill is therefore timely and absolutely appropriate. New powers are coming to this place and we know that, with new powers, lobbying follows. There was almost no Scottish lobbying industry of note before the Parliament existed but,
as powers have come, lobbying activity has increased and now it goes on in this place every minute of every day. Again, I stress that that is not a bad thing, but it is right that we legislate now in an atmosphere of relative calm and not in the wake of a scandal, when party-political advantage would clearly and inevitably influence our discussions and decisions.

That said, if we are to legislate, it must be done properly. As it stands, the bill is, in my opinion, in need of radical amendment to make it fit for purpose, and I am pleased that colleagues from all parties on the Standards, Procedures and Public Appointments Committee recognise some of the major flaws in the Government’s proposals and the need for improvement.

One of those major flaws is the proposal to include only face-to-face meetings between the lobbyist and the lobbied. On first reading that proposal, I immediately wondered whether the Government thinks that we still live in the 19th century or a world where telecommunications and computers do not exist. I see that the minister has a fancy biro pen, so I assume that he does not write with a quill on parchment. I am sure that he does not send smoke signals or speak to people via two bean cans tied together with string.

The Government says that it wants to deliver an economy that is futureproofed and has world-class connectivity. With that come new-fangled gimmicks with strange names such as the telephone, the computer, email, conference calls, videoconferencing and—for heaven’s sake—Skype and FaceTime. I can hear the minister muttering, “It doesn’t matter. They will never catch on.”

Joe FitzPatrick: It is not the case that the Government does not recognise those other forms of lobbying. Indeed, the bill allows for the Parliament to put in place guidance for them. What we are saying is that, in relation to regulated lobbying, a line needs to be drawn between what is a criminal offence and other lobbying, for which there is guidance. Nobody is suggesting that those other forms of lobbying do not exist or that we do not have email or telephones. It is just about where we draw the line in relation to regulation.

Neil Findlay: I thank the minister for confirming that he is not a Luddite and that he is a modern man in the modern age. I am sure that he will want to ensure that the bill is a modern bill for the modern age, and that the Government will come back at stage 2 with a new definition of regulated lobbying.

Professor Raj Chari said during a committee evidence session:

“I had never seen such wording before. It pains me to say that even the UK recognises that lobbying takes place by way of written communication.”—[Official Report, Standards, Procedures and Public Appointments Committee, 12 November 2015; c 21.]

I am sure that the minister does not want to be compared unfavourably with the dog’s breakfast that is the UK lobbying act—the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014. We want a better proposal than what is in the bill. We must recognise its absurdity and fix it as soon as possible.

We also need to address the weaknesses in the provisions on who should be included in the register as having been lobbied. We all know how lobbyists target special advisers and civil servants, and they must be included in the proposals. Not to include them would leave a glaring loophole that could easily be exploited. The minister mentioned the SALT briefing that we have received, and in its polling, 91 per cent of the public believed that SPADs and civil servants must be included in the register. I hope that the minister will take that into account. There is no mention, either, of financial disclosure. If we want people to have faith in the system, it is surely vital that they know the scale of lobbying. Are people spending a fiver or five grand? That would tell us the scale of the lobbying that goes on, and 92 per cent of people support the inclusion of that information.

We also need thresholds to ensure that normal MSP contact is unaffected, that one-off or infrequent lobbying is not included and that only significant lobbying by those who invest significant amounts of money and time to influence policies or win contracts are included in any register. Failure to make that clear has led to the fear that all the activities of anyone who approaches parliamentarians will have to be registered. That was never the intention. I hope that it is not the Government’s intention—I am sure that it is not. My original proposals also suggested that the working careers of lobbyists should be included in the register, because too often we see the revolving door in operation whereby ex-politicians, special advisers and civil servants move into new roles and, within a short period, open up their contact books to gain access to decision makers, using all the knowledge and relationships that they built up in their previous employment to influence policy or win contracts for their new clients or bosses. Again, that can lead to negative perceptions among the public, yet there is no mention of a revolving-door provision in the Government’s proposals. We need only look at what has happened with recent Governments of all persuasions at Westminster to see all that in action—for example, with the new recruits at Aberdeen Asset Management, Weber Shandwick and Charlotte Street Partners. As I said, that has
happened at Westminster under Governments of all persuasions.

The bill has many flaws and some of it is a bit of a mess. At a seminar that I and the convener of the Standards, Procedures and Public Appointments Committee attended recently to discuss the bill, an independent expert on lobbying said that, at best, he would give it two out of 10, but that he would give the US system six out of 10. That does not bode well for the bill’s claims of transparency. If the bill is to work and to enhance our democracy, it will need serious amendment, and we intend to lodge many of the necessary amendments at stage 2.

15:55

Cameron Buchanan (Lothian) (Con): I, too, am glad that we have the chance to debate the Lobbying (Scotland) Bill and all of the possible routes to take. If we are to achieve the cross-party consensus that the Scottish Government seeks on the issue, we must examine each of the main points that were considered during the Standards, Procedures and Public Appointments Committee’s inquiry and raised in our report.

It is essential that we maintain a firm focus on the three principles that must underlie the bill if it is to be fair, effective and worthwhile. The first principle, of course, is transparency; indeed, it would be right to say that the whole point of a lobbying register would be to increase transparency. It is vital that the lobbying process and the breadth of the bill itself are clear. In addition, we must ensure that any lobbying register upholds the principle of accessibility. That is essential so that those who wish to participate in the public decision-making process are not deterred from doing so. That is a fundamental point.

Further, any registration requirements must be proportionate if they are to be fair and worthwhile. That point has already been covered. The question of proportionality touches on a number of issues that the committee has raised, including the types of communication and which officials should be counted. I do not think that we should specify the types of communication, because all sorts of modern methods are being introduced.

Whatever form the final version of the bill takes, all the implications and requirements must be clearly understood by all. That means that any provisions must be examined in depth and publicly so that any indirect consequences are considered at length. A transparent approach to decisions on the bill is also required, so that the public can understand the direction that it is taking and be prepared for any new system. To help to achieve that, we must ensure that the key provisions of the bill are decided in the Parliament and are not left to secondary legislation. I realise that we are only at stage 1, but my point is that ease of understanding the bill must not be an afterthought or we will end up with a stifling bill and a lawyers’ paradise.

An example of an area that we need to clarify is the exemption when meetings are not initiated by a lobbyist. Part of the issue of public understanding concerns just how much preparation or adjustment would be needed, which touches on the two other principles that I want to mention—accessibility and proportionality. I think that we can all agree that the involvement of expert organisations, members of the public and affected parties in the policy process is a welcome and indeed necessary feature of our political system. Obviously, in order to make informed decisions, officials must be informed in the first place. We must therefore keep a focus on ensuring that accessibility for the public is made neither more difficult nor discouraged in the first place. That has been highlighted many times in committee and in evidence to the committee.

I say “the public” on purpose, because the issue of lobbying is not one of backroom deals between special interests and brokers of power, as it is sometimes portrayed—lobbying sometimes has a rather dirty name. Rather, lobbying is the much more fundamental matter of the chance for everyone to participate in policy making and the exchange of ideas. All manner of organisations and members of the public should feel welcome to discuss matters of interest with their representatives.

As for proportionality, I am quite clear that any potential system of lobbying regulation has to be light touch. That ties in with the importance of accessibility. It is worth raising a couple of more specific points in that regard. First, the committee has pointed out that it is worth looking into the inclusion of all forms of communication in the bill, as well as contact with senior civil servants and special advisers. I see where those demands are coming from, but we should not lose sight of the need to strike a balance between increasing transparency where needed and ensuring that individuals and organisations are not deterred from participating in the political process due to undue regulation and overcomplication.

The committee has concerns about the inclusion in the register of contact with MSPs—we will probably deal with that at stage 2—because we need to ensure that MSPs’ ability to undertake their duties as public representatives is not restricted. Politics conducted on behalf of the public should, after all, be open to easy access for the public. Suggestions about using a targeted approach, based on the intensity of lobbying
activity rather than its source, are a welcome idea that is worth exploring.

Secondly, proportionality should be measured relative to the benefit to be gained or the problem to be solved. That suggests the need to understand how undue influence may arise and, therefore, where requirements should be targeted. Thankfully, we have not been troubled by lobbying scandals in our political system, although that does not mean that we might not be. It also begs the question how much needs to be done.

I am saying not that we should not do anything, but that our measure of what is proportionate should be underpinned by an understanding that the bill will deal with a potential rather than a pressing problem. I believe that, if those principles are upheld, a fair, effective and worthwhile system for the regulation of lobbying can be found. To do that, we must continue to scrutinise each proposition in depth and ensure that we act on the principles rather than pay lip service to them. I will touch on that in more detail later. I look forward to discussing all aspects of the bill with colleagues across the chamber.

The Deputy Presiding Officer (Elaine Smith): We turn to the open debate, with speeches of six minutes or so. At this stage, there is a bit of time in hand for interventions.

16:00

George Adam (Paisley) (SNP): I was a member of the Standards, Procedures and Public Appointments Committee during the original inquiry into lobbying and while most of the work on the issue was done, I left the committee recently but, for some reason, I keep getting drawn back—or is that dragged back?—into the debate. I will discuss my personal views, as I have had time to sit back from my work on the committee and look at some of the information.

I believe that all democracies should be transparent and open. I support the bill but, at the same time, I have a number of concerns about it. As colleagues have mentioned, there are a number of practicalities to do with our day-to-day constituency and parliamentary life, which I feel the proposals could make more difficult.

I take members back to 1997, when many of us were together trying to ensure that this institution came into being. I remember trying to download the Scotland bill white paper from the web with my 14.4k modem. After 24 hours of waiting and a worried visit from my mother-in-law, who wanted to know why my phone had been engaged for 24 hours, I went down to the local bookshop and bought a hard copy.

Between that time and now, and throughout the lifetime of the Parliament, Scotland and the world have changed dramatically. We now have superfast broadband, but that bookstore in Paisley is no longer there. How could a third or fourth generation family business compete with the web when people can purchase a hard copy or an electronic copy at home and instantly get it or have it delivered to their door? Although advancement for the consumer is good, something has been lost. With progress, something important has been lost in life.

That is the point that I want to make about the bill. We need to be careful that we do not lose the many strengths of the Scottish Parliament because of a feeling that something has to be done about lobbying. Many look to Westminster and see that its legislation has not helped in any way and was a knee-jerk reaction to some of the strange workings of that Parliament. Should we not take note of that reaction? During the committee’s evidence taking, lobbying legislation was slated for being useless. We were told that Westminster and Washington are among the worst for transparency but both have already legislated on lobbying.

I get a hard time from colleagues regarding my great pride in being Paisley’s member of the Scottish Parliament, and I take that in good humour. However, the serious point for me is about how I deliver for my constituents and how I interact with their employers, the public sector and the third sector on their behalf.

Neil Findlay: Will Mr Adam take an intervention?

George Adam: Can I just get this point across, Mr Findlay?

The bill as it stands will make it difficult for local employers and small businesses to contact me. Some small and medium-sized enterprises might not even bother, because they will wonder whether it is worth the hassle to register to be able to have a meaningful dialogue with their elected member. It has been stated that the register should be targeted at organisations that have significant contact with their MSPs. One small engineering business recently came to me to discuss an expansion that would create jobs in the area. It wanted to know how it could take the next big step and to ask me to help it or point it in the right direction. That business might have looked for a different way of dealing with that and might not have approached an elected member if it had thought that there was an administrative barrier to doing so.

Would the bill mean that every single major employer in Renfrewshire would have to register and record every single meeting that it had with an
elected member as we discuss the future of my constituents and their jobs? As the bill stands, it would put an added burden on the third sector to register, and one of the best things about the Scottish Parliament could be lost. This institution is Scotland’s Parliament and we all take great pride in the openness and accessibility of our members, ministers and Government, and that is worth preserving. I am aware that many of the original intake of members in 1999 looked at the workings of the Parliament and considered how to deal with lobbying. They knew that doing so could harm their vision for the Parliament.

**Neil Findlay:** Mr Adam is making a good argument for us to have thresholds that would mean that all those people who he talks about—or the vast majority of them—would not need to register at all.

**George Adam:** I am making the argument that I can represent the people of Paisley and ensure that I can still have the interaction and the flexibility to do that.

Do not get me wrong. Openness and transparency in politics and our delivering for our constituencies are the most important things. However, an issue constantly came up in the inquiry, and that has happened in this debate, as well. How do we define lobbyists? The Scottish Parliament information centre paper that we received was quite interesting, as it confuses the issue even more. It says:

“Lobbying activity can be conducted through a number of direct or indirect communication methods including personal letters, telephone and emails; forms of social media, such as twitter and facebook; providing briefing material to Members and organising meetings and rallies.

Lobbyists come from various sectors, including:
- individual members of the public
- groups of constituents
- local businesses
- organised pressure groups or campaigners
- commercial organisations.”

That is just about everyone. We need to find out who we are calling a lobbyist at this stage.

How do we take that to the next stage? The funny thing was that there was the accusation that the definition in the UK Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 was too narrow, that not enough people were included, and that many of the lobbying firms were still getting the opportunity to work without getting caught up in the net.

As the bill is our direction of travel, I want two things from it. I want to be able to represent my constituents and to work with other organisations to try to make my constituency a better place to live in. I do not want an administrative straitjacket. Most important, I do not want to lose sight of the founding principles of the Parliament. If we lose them, we will not get them back, just as we will not get back the family-run bookstore.

**16:06**

**Cara Hilton (Dunfermline) (Lab):** I am pleased to have the chance to speak in this debate. I commend my Scottish Labour colleague Neil Findlay for proposing a bill back in 2012 and for his patience over the past few years as the bill has been considered by the Standards, Procedures and Public Appointments Committee and finally taken on board by the Scottish Government.

I was a member of the Standards, Procedures and Public Appointments Committee during the original inquiry and have taken a keen interest in the bill. It is good that we are finally seeing some progress in this important area.

The Electoral Reform Society has said that the debate

“could either place Scotland as a world leader in transparent politics or create legislation which leaves Parliament vulnerable to lobbying scandals”.

In that context, I have serious concerns that the bill as it stands is just too weak. Stewart Stevenson highlighted some of the concerns that the current Standards, Procedures and Public Appointments Committee has expressed. I hope that, when we next discuss the bill in the chamber, it will have been strengthened considerably. I am pleased that the minister said that he has an open mind on that.

At Holyrood, we quite rightly pride ourselves on being different from Westminster. We are more open, more accountable and more accessible to all. Although Holyrood has been pretty much free of any lobbying scandals to date, that is not a reason not to act.

The bill is not about preventing lobbying. As Neil Findlay has said, lobbying is a good thing. It is an important part of our democratic process; indeed, it often improves public policy outcomes. It informs our debates, provides valuable information and expertise, and improves public engagement with the Parliament. However, it must be open, transparent and conducted to the highest possible standards, not conducted behind closed doors and in secret.

I suspect that this will be the first and last time that I will quote David Cameron, but he hit the nail on the head when he described lobbying as

“the next big scandal waiting to happen ... an issue that exposes the far-too-cosy relationship between politics, government, business and money.”
With new powers on the way to Holyrood and the ability to raise and spend more finance, we will inevitably see more frequent and more intense lobbying.

At a time when the decisions that are being made by both the Scottish Parliament and Government are coming under increasing public scrutiny and our communities are paying the price of austerity in cuts to public services, job losses and pay freezes as the result of decisions that politicians are taking at all levels, we should be leading the way in ensuring that the decisions that we take here and the workings of our Parliament and our Government are as open and transparent as possible. We should use this opportunity to pass world-leading legislation not as a response to scandal, as has been the case elsewhere, but because we want to show the citizens of Scotland that the Scottish Parliament will always put people first, not commercial and other vested interests.

It is therefore disappointing that, rather than grasping that opportunity, the bill falls short of the change that we need to see. In its final report on the bill, the Standards, Procedures and Public Appointments Committee concluded that its narrow scope "could leave a great deal of important information unrecorded and create a loophole for those wishing to conceal their activity."

I am sure that I am not alone in having received many emails from constituents over the past week that have urged action to close that loophole and strengthen the bill. As Neil Findlay has said, we will seek to amend the bill at stage 2 to make it more robust and fit for purpose.

A recent poll by YouGov on behalf of the Scottish alliance for lobbying transparency found that 88 per cent of voters thought that a lack of transparency over lobbying was either a big or a significant risk to Scottish democracy. Calls for the current proposals to be strengthened could not be clearer, with 86 per cent wanting emails to be covered, 91 per cent wanting senior civil servants to be covered and 92 per cent wanting to know how much lobbyists are spending on their campaigns. That poll provides concrete evidence of the public desire to ensure that we have a robust and transparent lobbying register in Scotland, not the halfway house that is being proposed today. I hope that the Government will take into account the strength of public feeling on this issue, listen to the demand for transparency about how money and lobbying influence politics in Scotland, and agree to the changes that Scottish Labour, the committee and the majority of the public want to see.

Today’s debate is about strengthening our democracy. To coin a phrase from the Scottish National Party, it is about making our democracy stronger for Scotland. We have the honour to serve our constituents in the Parliament and in return we have a duty to ensure that the Parliament, the Government and their decisions are as open and transparent as possible. It is in all our interests to ensure that we get the bill right. Let us ensure that when it comes back to the chamber, the bill that we debate is stronger and more effective. The bill should be strengthened to include all lobbying, not just face-to-face contact; strengthened to include not just MSPs and ministers, but civil servants and special advisers; strengthened to require financial disclosure of lobbying, but with thresholds so that normal MSP contact is unaffected; and strengthened to recognise the revolving door in politics and give the public the right to know the work history of lobbyists.

We are rightly proud of our Parliament, but we cannot pretend that it is immune to corporate power or influence. The Scottish public have the right to know the full extent of lobbying on the issues that affect everybody. Scotland must lead the way on political transparency, I commend once again Neil Findlay for his tremendous work, to help ensure that Scotland’s democracy is truly fit for the 21st century.

16:11

Fiona McLeod (Strathkelvin and Bearsden) (SNP): When I come to look at the Lobbying (Scotland) Bill, my starting point is not just this Parliament’s founding principles but the reputation that we have garnered over the 17 years of its existence since 1999. The founding principles were about us being open and transparent. We wanted this to be Scotland’s Parliament, not the MSPs’ Parliament, and we wanted to work in partnership with the people of Scotland and civic Scotland. When I look around the chamber at the members taking part in the debate, I think that I, Elaine Murray and Gil Paterson will feel that most strongly, as we were here in the heady days of 1999, when we were so enthusiastic about what we were setting out to do.

Seventeen years on, this Parliament has a well-credited reputation as an open and transparent Parliament that works in partnership. That reputation is reflected in the Standards, Procedures and Public Appointments Committee’s two reports. In 2014, when I was a member of the committee, we took extensive evidence on lobbying after Neil Findlay proposed a member’s bill. More recently, when I was not a committee member—I have just come back to it—evidence was taken for stage 1 of this bill. Neither of those reports found any evidence of malpractice, which is an important point, and I am glad that everybody who has spoken in the debate made that point.
However, we are not complacent. I do not want anybody to think that if people suggest that the bill does or does not go far enough, that is because of complacency. The issue is how we ensure that this Parliament maintains its high reputation. There is no complacency and the reports found no malpractice.

The process of moving from a member’s bill to a Government bill was very much influenced by the evidence in the standards committee’s first report. The minister talked about the clear principles that frame the bill: the bill should be proportionate and complementary and should not interfere with the engagement of which this Parliament is so proud.

When I looked at the bill I asked whether it matched those principles. In relation to the principles of proportionality and engagement, some of the evidence that we received has made me concerned that we should not go too far. As an example, I will quote from the evidence of the Epilepsy Consortium Scotland:

“any regulation of lobbyists in Scotland should be specifically formed to reflect the culture of political participation in Scotland, and the particular working practices of the Scottish Parliament. We believe it must not create a barrier to parliamentary engagement for organisations representing the most vulnerable and disadvantaged members of society.”

I then looked at the evidence from the Scottish Council for Voluntary Organisations, and I will quote again:

“Transparency of lobbying in Scotland is a relevant and laudable goal, but protecting participation is absolutely vital and must take precedence, especially as it has been conceded on numerous occasions that there is no problem with undue influence of lobbying in Scotland. Sabotaging the high levels of participation in Scotland to achieve hypothetical increases in transparency would be a tragedy for democracy and must be avoided.”

Neil Findlay: The member raises an interesting point about the SCVO. During the consultation on my bill, the SCVO was the most vocal opponent for some bizarre reason—I have no idea why. When I scratched a little bit deeper, I found that many members of the SCVO were in favour of the bill and that the consultation response was from only 11 members of the SCVO, which represents thousands of organisations. Only 11 of them opposed the bill.

Fiona McLeod: I well remember that day of evidence taking in the committee and I remember the member being rebuked by the convener at the time for his manner.

Since the SCVO submitted that evidence, in the past couple of weeks a lot of other organisations, including the SCVO, have been back in touch and all maintained their position. I go back to what I said when I started; it is not that we should not have the bill, but I am concerned that we should protect the Parliament’s founding principles of openness and transparency and the reputation for partnership working that we have built up, and make sure that we do not bring in a bill that prevents that reputation from continuing as it is.

When it was taking evidence during stage 1, the committee looked in greater detail at extending the provisions to all communications. That has already been discussed by a number of members today. Members will notice that the committee report was not unanimous on that, and I should just stand up and say that I was the one who did not agree that the provisions of the bill should be extended beyond face-to-face oral communications. That is again because of my concerns about it becoming a barrier to that great partnership that we have with civic society, our constituents and groups of ordinary citizens that come together and get passionate about something.

In the past few days, evidence has been submitted to us from the Federation of Small Businesses, Cancer Research UK and the Association for Scottish Public Affairs, which is a professional association for lobbyists. That is the panoply of everybody who is involved and they are saying that they have concerns about the bill’s provisions being extended to cover all communications.

In paragraph 107 of the committee’s first report, from when I was there to hear all the evidence, the committee says:

“The proposed register does not seek to capture all contact from organisations that are required to register. The Committee wants to increase transparency, but considers that a system that requires ‘a sensible amount of useful information’ from organisations can be established.”

I keep coming back to that phrase “a sensible amount of useful information”. That is what we are looking at.

When we started to discuss extending the bill beyond oral face-to-face communications, we thought about it and made jokes about being in the 21st century with telephones and emails. I then started to think about Twitter and Facebook. If we extend the bill to cover all communications, will we have to register tweets, posts and direct messages? I want us to think it all through.

The Deputy Presiding Officer: Could you draw to a close, please?

Fiona McLeod: Certainly.

On the complementary strand of the principles, I draw members’ attention to the fact that we have a code of conduct and the Interests of Members of the Scottish Parliament Act 2006, and the Standards, Procedures and Public Appointments Committee works hard to produce rules and
guidance on, for example, cross-party groups, to ensure that we maintain that openness and transparency.

To go back to the beginning, I point to the founding principles of this Parliament and our 17 years of positive engagement. At stage 1, we will agree the principles of the bill but, at stage 2, we must ensure that any amendments are about improvements and adjustments in response to the evidence and that they maintain the openness of this Parliament.

16:20

Elaine Murray (Dumfriesshire) (Lab): Unlike others who have taken part in the debate, I am not on the committee that considered the arguments on the bill, but I read the SPICe briefing and the committee’s stage 1 report with interest.

As others have said, lobbying is an acceptable activity; indeed, it is a necessary activity that contributes to parliamentary discussion and knowledge. It is carried out legitimately by a wide range of organisations and individuals.

Unfortunately, the term “lobbying” now carries negative connotations because of disreputable activity by some organisations and some parliamentarians—although not, I hasten to add, by members of this Parliament. It is transparency over lobbying activity that is required, not the prevention of lobbying. Third sector organisations, trade unions, private businesses and public organisations must remain able to participate in discussion about matters that the Parliament is considering.

Credit should be given to my colleague Neil Findlay for initiating the Lobbying (Scotland) Bill by lodging proposals for his member’s bill in July 2012. His proposals would have required individuals and organisations that lobby MSPs, Scottish ministers and public officials to record and publish information on their activities. It has taken some time for his proposals to be progressed, but I am pleased that they are being progressed now.

The Scottish Government undertook to take over Neil Findlay’s member’s bill, which was welcome. However, there are significant questions about whether the Lobbying (Scotland) Bill, as it stands at stage 1, is sufficiently robust to ensure public confidence about who is influencing our decisions.

For example, the provisions on registering lobbying activity do not extend to senior civil servants and officials or to special advisers, although those individuals have significant influence over policy making and might draft legislation or advise ministers on how to present proposed action. It could well be more effective for a lobbyist to influence senior civil servants and advisers than to contact ministers or MSPs. That is a glaring omission from the bill and I was pleased that the committee recommended that the definition should be broadened to include public officials.

The bill is also deficient in that it covers only face-to-face oral communications, as others have mentioned. We all know that that is not the only way in which we are lobbied. We receive emails every day from organisations that wish to influence our views, legislation and other matters. I often receive letters that are sent by professional lobbyists on behalf of, for example, companies that wish to build wind farms in my constituency, and it has not been unknown for professional lobbyists to phone me on their clients’ behalf. Those alternative forms of communication can be just as effective as face-to-face meetings—indeed, written communication might be a preferable way to present the arguments for a proposal. It therefore seems peculiar that those forms of lobbying are not included in the scope of the bill.

Another key part of Neil Findlay’s proposed member’s bill was transparency over the amount of money that is spent on lobbying. As the financial aspects of lobbying are of particular public interest, that information should be publicly available. I appreciate that there are sensitivities in case such information reveals details of paid lobbyists’ salaries. Neil Findlay suggested to the committee that those sensitivities might be addressed, at least in part, by using a system of banding. However, MSPs’ salaries and any additional income that we receive have—correctly—to be declared, and the salaries and salary bands of public officials are published. I therefore find it difficult to be overly sympathetic to the view that the funding of lobbying activity should not be treated similarly.

There are other potential loopholes in the proposals. Large, well-funded non-governmental organisations could get round the requirement for registration by using volunteers rather than paid staff to undertake lobbying, while paid staff would prepare and organise the materials and events to support the volunteers’ activities. Pro bono lobbying by professional lobbyists would also not be required to be registered.

I support Neil Findlay’s suggestion that the public ought to know whether former politicians, advisers and civil servants are using the contacts that they established when they were in office to subsequently make money for themselves or their employers by lobbying. While in office, or while advising people in office, those people are paid from the public purse—taxpayers’ money is spent on their salaries. If they use the contacts that they made while being paid from the public purse to then make money for themselves or others or to
influence their successor politicians or advisers, surely the public should know that that is happening and how much of that is happening. That is also a matter of public confidence.

Thresholds should be examined at stage 2, because small businesses that contact their local MSP, for example, should not necessarily fall within the scope of the bill. I can give a current example of that. During the recent floods in Dumfries, a lot of small businesses along White Sands and Friars Vennel were adversely affected and a number of people from small businesses spoke to me about flood defences, insurance, whether there might be assistance to help them to get back on their feet and so on. They should not have to register the fact that they bumped into me in the street and had a one-off conversation about something that was pertinent to their business. I would not want such businesses to be involved in the registration process for such activity.

There is still a lot of work to do to improve the bill, and I hope and believe that ministers are listening carefully to the committee’s suggestions as well as to the suggestions that have been made today. I am sure that the committee and the Parliament will have interesting and full discussions at stages 2 and 3.

16:26

Gil Paterson (Clydebank and Milngavie) (SNP): I well remember that in 1999, in the first parliamentary session, the expectation and drive were for the Parliament to be an open and accessible institution that was different from what was being experienced at Westminster. Ordinary people were invited and encouraged to engage with the Scottish Parliament, whether as individuals or as part of an organisation. For me, one of the best aspects of that action for engagement—which was universally driven by members of all parties, the parties themselves, the Scottish Executive and even the parliamentary authorities—was how the third sector positively reacted to the invitation. I see no less encouragement from the present Parliament complement, including the Scottish Government, for the public and the third sector to positively engage with us.

For my part, early in the first parliamentary session—in fact, it was in its first year—I secured a members’ business debate on men’s violence against women and children, which attracted substantial numbers of women, other individuals and people from the third sector who were engaged in one way or another with the issue. Directly after the debate, we all met for a chat and it was quickly agreed that we would set up a cross-party group on men’s violence against women and children. The cross-party group met six or so weeks later, and I am pleased to say that it is still going strong and is thriving.

I would say that, between then and now, any person who has been engaged in that area of concern has been a lobbyist in some form. Under the definition that the SPPA Committee has suggested, all organisations such as Scottish Women’s Aid, Rape Crisis Scotland and Open Secret will be required to register simply because they have people who are paid.

As far as I am aware, none of those third sector organisations has a paid lobbyist, but I cannot in all honesty say that they do not lobby. What is the difference between lobbying and campaigning? If it were not for the persistent and dedicated campaigning—or is it lobbying?—by those organisations over decades, which has been carried out predominantly by women, we would still be in the dark ages on matters that significantly affect women and children. I asked Government officials whether someone who was a paid worker at, say, Rape Crisis Scotland would be regarded as a lobbyist and their answer was yes.

As a proposed recommendation from the committee was to ask the Scottish Government to consider making all communications of any kind constitute a requirement to register, I also asked whether an individual—say, from Rape Crisis—who was considered to be a lobbyist because they were paid would be required to register if they sent me a Christmas card. The answer was yes. [Laughter.] Members may laugh, but that is the advice that I was given, so we need to be really careful about how we describe things and how it will affect organisations.

Neil Findlay: I have seen shoals of red herrings being released in the debate, but that is the biggest. It is a blue whale of a red herring that sending a Christmas card will be lobbying—come on. I certainly hope that the incidental lobbying that Gil Paterson mentioned in the scenario that he painted will not be included in the bill when it is passed but, even if it were, that would mean someone taking two minutes to fill in a piece of paper. That is the burden that we are talking about. However, Gil Paterson makes a strong case for putting thresholds into the bill, which I agree with him on.

Gil Paterson: I note that Mr Findlay was laughing, but I tell him that the colleague who is sitting next to him, Mary Fee, did not laugh when I raised the question at the committee and was given that answer. I am not against addressing lobbyists and taking on the big guys; I am looking after the small women and small institutions. We need to be really careful about how we describe things and how we use the definition, and I will explain that further.
Many women's organisations put enormous amounts of time—relatively speaking—into finding funds simply to keep going and are not in a position to have any slack, so adding a further burden on them would be detrimental. More important, why would we want to place them in the category of lobbyists in the first place? Surely we want to make it easy for us to engage with such organisations.

**Neil Findlay:** In the consultation, Scottish Women's Aid supported my proposal for a lobbying bill.

**Gil Paterson:** I am not speaking for Scottish Women's Aid or anybody else. These are my own words. I am talking about the impact that the bill will have on such organisations.

I have sponsored two members' business debates for the Scottish Cot Death Trust, which is a tiny organisation that does some of the most difficult work that one could imagine. Does it lobby? Of course it does, but what does it lobby for? That is not about money or resources. The trust lobbies for awareness to inform the public, to assist families through some of the most harrowing times of their lives and to educate the public on preventative action. Why would we want to cause that organisation not to engage with the Parliament?

I ask the Government and the whole Parliament to consider the definitions extremely carefully. The bill must be for lobbyists—that is, people who are paid to lobby—and not for people in the third sector, who could be working for an organisation that has as little as one paid member of staff and which happens to seek our assistance to help others. The bill should not cover all communications of any kind—I happen to like getting Christmas cards.

Whatever we do on lobbying should take account of the slowest ship in the convoy. The part of the convoy that needs our protection most is the voluntary sector—for example, the women's groups that I described. They and we need engagement.

I agree with the principles of the bill.

16:34

**Cameron Buchanan:** Many interesting points have been raised in this afternoon's debate and I hope that that open, respectful discussion continues so that we can settle the issues surrounding the Lobbying (Scotland) Bill. Most of us disagree on the detail rather than on the substance of the bill.

There are a few more points that I wish to raise that we will be looking at as we continue to scrutinise the bill. Those include some of the finer details about ensuring that the burden of regulation is kept proportionate and that the requirements are realistic in practice. Some arguments have been made about forcing lobbyists to disclose financial expenditure on lobbying. Those arguments are worth airing but I think that they would fail the proportionality test.

On the other hand, there is scope to embed a more proportionate approach in the system by continually reviewing the proposed frequency of submissions to the register so that paperwork is kept to a strict minimum. It is also worth highlighting that there are many international comparators when it comes to lobbying registers and we would do well to study their lessons. We Conservatives will certainly do so as we scrutinise the bill, including examining the possibility of working with the UK register so that the overall burden on organisations is minimised.

Members will be aware of some of the arguments that have been made about forcing lobbyists to disclose their expenditure on lobbying activity. However, such a move would not be productive and would cause some problems without a proportionate benefit. Assigning all expenditure to certain activity could be very difficult for some organisations and efforts to comply may result in unintentionally misleading figures that are simply counterproductive—not to mention the implications for commercial sensitivity and confidentiality.

Those risks and the associated high costs of compliance point to negatives that outweigh the suggested gains of enforced financial disclosure. Since there have been, thankfully, no cash-for-lobbying scandals so far in our politics, such a move would be pandering to perceptions rather than responding to reality. Indeed, were such complex requirements to exist, small businesses might simply disengage from the political process rather than risk falling foul of guidance.

Another detail that will be debated as scrutiny of the bill continues is the requirement for information returns to the lobbying register, or more specifically their frequency. As the bill stands, such returns would be required every six months, which strikes an appropriate balance between information and proportionality. I certainly would not want to see organisations and individuals forced to make returns frequently.

That said, there could be scope to have a flexible system of information returns that varied according to factors such as lobbying intensity, size and form. I do not wish to advocate such a multitiered system today but merely suggest that it is worth looking at as our consideration of the bill continues. Such a system might be impractical, but there is no harm in discussing the ideas.
On a different note, for a bill with many points of contention and a wide range of options, it is important that we study international comparators such as Ireland’s register of lobbying and the European Union’s transparency register. In Ireland, for example, there was a trial run of the new register before it came into legal effect, in order to help organisations to adapt to the requirement. That approach might be worth considering here to reduce regulatory pressure.

In the EU, there is a series of incentives for lobbyists who register, such as increased access to premises and automatic mail notification of new consultations. Again, that is an idea worth exploring and we would do well to learn as much as we can from those examples so that if we choose to go our own way, we do so from an informed position.

Finally, I would like to leave colleagues with a thought on what the ultimate aim of any lobbying regulation is. It is not to create the most watertight lobbying register in the world—that is just a method. The ultimate and real aim is to ensure that our politics and Government are transparent, open, accountable and free from undue influence or corruption. There are many routes to take when it comes to lobbying regulation, but the ultimate responsibility lies with the politicians and officials. Compliance with codes of conduct, adherence to the standards expected in public office and outright refusal to indulge attempts at illegitimate influence are the strongest defence of a free political system. We would do well to remember that.

16:38

Mary Fee (West Scotland) (Lab): In closing the debate for Scottish Labour, I take the opportunity to summarise the two arguments made by my colleagues and to state clearly our position on the Lobbying (Scotland) Bill.

Scottish Labour supports the general principles of the bill in trying to promote greater transparency, accountability and openness among our parliamentarians. We agree that lobbying is a “legitimate and valuable activity”, we support the proposal to establish a lobbying register and we also support the proposal to include only paid lobbyists on the register.

However, as Neil Findlay highlighted in his opening remarks, the bill falls far short of his original proposal. Indeed, the bill as currently drafted is in danger of making the situation worse, not better. We need to ensure that the bill is fit for purpose and that it does what it is intended to do. As it is currently drafted, it will not.

Cara Hilton spoke about the weakness of the bill and mentioned the potential risk of vulnerability for those involved. Elaine Murray highlighted the fact that lobbying is a necessary and legitimate activity but needs to be robustly regulated. Other colleagues across the chamber spoke of the principle of openness and transparency and the need for robust legislation that is proportionate. In his thoughtful and thorough speeches, Cameron Buchanan adequately and fully reflected the evidence that we heard in committee.

The fact that the bill covers only face-to-face lobbying means that it does not cover a great deal of lobbying, as the majority of lobbying is conducted through emails and telephone calls. Therefore, as things stand, the right amount of information would not be collected. It is correct that the bill should cover face-to-face lobbying, but for it to have any impact on improving the transparency of Parliament, it should cover all forms of communication with MSPs, including emails and telephone calls.

The second key way in which my colleagues have highlighted that the bill could be improved is by broadening the definition of lobbying. At present, the bill does not include communications with public officials such as civil servants and special advisers, as Neil Findlay highlighted. We in Scottish Labour believe that the definition of lobbying should be broadened to include civil servants and special advisers. Special advisers hold a highly influential position in the decision making of Government ministers. To make the Scottish Parliament as transparent, accountable and open as possible, the remit of the bill should extend to those individuals who have influence over our Government. Broadening the remit of the bill to include civil servants and special advisers would be rational and fair and would strengthen our democracy.

In looking to broaden the scope of the lobbying activity that is covered by the bill, the Government may wish to pay close attention to the definition that is used by the Sunlight Foundation. It defines lobbying as:

“Oral and written communication, including electronic communication, with an elected official, their staff, or high and mid-ranking government employee who exercises public power or public authority, for the purposes of influencing the formulation, modification, adoption, or administration of legislation, rules, spending decisions, or any other government programme, policy, or position.”

The evidence that the Standards, Procedures and Public Appointments Committee collected from witnesses was conclusive. There was a clear consensus that the bill simply does not go far enough. The Law Society of Scotland stated that the policy aim of transparency might be only “partially met” if other forms of communication were not included in the definition of lobbying in the bill.
I urge the Government to look into amending the bill to ensure that it covers all forms of communication between lobbyists and MSPs, not just face-to-face communication, as well as communications between civil servants or special advisers and MSPs. It is only by implementing those changes to the bill that we can start to rebuild public confidence in elected politicians, which we all know is probably at an all-time low, and make the Scottish Parliament an institution that is renowned the world over for its transparency, accountability and openness.

I confirm Labour’s in-principle support for the Lobbying (Scotland) Bill.

Neil Findlay: On a point of order, Presiding Officer.

In response to Gil Paterson, I said that Scottish Women’s Aid supported my bill proposal. I want to correct the record. The comments were actually from Zero Tolerance Scotland, which made many positive comments about the bill but also, incidentally, raised many of the concerns that members have highlighted today.

The Deputy Presiding Officer: Thank you, Mr Findlay. That is not a point of order, but your clarification is now on the record.

I call Joe FitzPatrick to wind up the debate. We have quite a bit of time in hand, minister—until 5 o’clock, if you wish to take that time. Otherwise, the Parliament will have to suspend briefly.

16:45

Joe FitzPatrick: I welcome the contributions to the debate from members of all parties. As I said at the start, the Government recognises that the bill is very parliamentary in nature, which is why we have engaged as we have.

I understand Neil Findlay’s initial frustration because we were taking longer than he might have liked to bring the bill to Parliament, but it was absolutely appropriate that before we formulated our framework we listened to the deliberations of the Standards, Procedures and Public Appointments Committee, following its inquiry. The inquiry was instigated by the late Helen Eadie MSP who, as one of the founding members of the Scottish Parliament, felt it to be very important that Parliament had a large say in the introduction of any such bill.

That is why—as I said in my opening remarks—the committee’s report influenced the Government’s thinking very much in progressing the bill; some of the decisions that members have questioned were influenced by the evidence to and recommendations from the committee. However, as I also said at the start of the debate, this is not the end of the parliamentary process.

We are just at the end of stage 1 and have still to go through stages 2 and 3. We will continue to listen to members; it has been helpful during the debate to hear various views from members in all parts of the chamber.

I will address some points that were made—I hope I can remember who raised them. The convener of the Standards, Procedures and Public Appointments Committee raised the issue of the exemption for meetings that are initiated by MSPs or ministers, which I did not manage to get into in any great depth in my opening speech. As members and in Government, we all regularly invite people to provide us with factual or background information on policy. I hope we all agree that it is important that that continue. There is a question about whether it would be fair that people whom we, as members of Parliament or as ministers, invite to come in and give us information should have to register. There is a danger that people whom we might ask to do that would be deterred from engaging with us. That said, I note the concerns that the committee expressed in its stage 1 report—in particular, its questions on how we can ensure that there is as much clarity in that area as possible. We will look at that carefully in advance of providing a response to the stage 1 report.

Neil Findlay spoke about the importance of knowing about the previous employment and careers of lobbyists; I believe that he was thinking of former special advisers and ministers. The Advisory Committee on Business Appointments considers applications under business appointment rules regarding new jobs for former ministers, senior civil servants and other Crown servants. Again, we will consider whether clarity can be improved in that regard.

I emphasise that although there might appear to be many different voices around the chamber, we are all clear that we want to come out of the process with a bill that improves transparency in Scotland. That is very much where we are going, and I hope that the process will help us to get to that point.

Elaine Murray raised a point regarding voluntary lobbying, which was an area that we considered. Our challenge was how we could cover that without catching grass-roots lobbying by communities and advocates, which we do not want to catch. That was why we had the “paid” or “unpaid” definition as our starting point. However, recognising that there is a potential gap there, the bill has provision to allow people who are not required to register to provide additional information voluntarily.

There was an interesting piece of evidence at stage 1 in respect of the Canadian experience: the register in Canada is now held in such regard that
people want to ensure that their lobbying activity is on it. If we can get to a point at which our register is not seen as being onerous in any way, but instead is seen as something that people want to be on, we will be in a better place and we will have something very useful. We need to get to that point.

I will mention some of the contact with people that I have had this week. There are people out there who are concerned that the register and the regime could be a barrier.

**Neil Findlay:** On the point about people's fears, and given Gil Paterson’s comment, is the minister quaking in his boots at the prospect of having to shred his Christmas card list, his letter to Santa or his note to the Easter bunny?

**Joe FitzPatrick:** Obviously, I am not at all concerned. As the committee recommended, the bill does not place any onus on members. Ministers currently record their meetings and engagements; members could be required similarly to record their meetings and engagements, which would put the onus on members. The SPPA Committee considered that option; the convener piloted such a regime and showed that it is possible. That said, the committee as a whole concluded that it is not the best way forward. We have tried to respond to the committee’s deliberations.

**Chic Brodie:** Of course, we all maintain a calendar of events and some of us make it public. In the minister’s opinion, why did the committee not consider making that facility available for ministers and MSPs?

**Joe FitzPatrick:** As I said, that mechanism is already in place for ministers. Information on the meetings that I have had this week about the bill will be published, as well as information on meetings that I have had previously.

**Stewart Stevenson:** The minister quite correctly referred to my publishing what, in my opinion, were interactions with me that counted as lobbying. However, the committee took the view that placing the onus of deciding what is lobbying on the people who are being lobbied rather than on the people who initiate the lobbying could transfer responsibility to the wrong people. Although my experience shows that technically it is perfectly possible for members to follow that option, there are severe risks that we would miss things or over-report things because we are not the ones doing the lobbying.

**Joe FitzPatrick:** The convener is better able than I am to articulate the reasoning behind the committee’s deliberations. As I said, our starting point was to look at the committee’s conclusions and to take them forward.

Elaine Murray and Neil Findlay both referred to the suggestion—again, there have been some communications on the matter—that financial details should be provided. Of course, the bill provides Parliament with the powers to require that information. As Parliament looks at the detailed operation of the bill, it can make that choice. I will come back to that when I talk about the powers that the bill will give Parliament.

A number of members referred to other forms of lobbying and to the question whether advisers and civil servants should be included. A large amount of discussion has taken place on those two areas, and I think that we have all been in receipt of a number of representations from both sides. On one side, we have people who are clear that such information is required; on the other side, we have groups and organisations that would consider that to be a barrier to their engagement with Parliament. It is important that, if we are going to make any changes to that area, we consider the matter carefully and do not bring in a regime that could be a barrier to engagement.

Fiona McLeod mentioned how engagement is one of Parliament’s founding principles and how, right from the start, civic Scotland’s ability to engage with Parliament has been so important. George Adam and Elaine Murray extended that theme when they spoke of the need to ensure that when the bill is passed at stage 3 we protect MSPs’ constituency work, and ensure that we have not inadvertently put in place measures that create a barrier. That chimes very much with—she is not in the chamber—Patricia Ferguson’s point in committee that we must require registration of lobbying but not registration of engagement, which we see as part of our day-to-day work. A lobbying regime must not inhibit legitimate engagement. I will continue to look carefully at the bill in that regard, and we will make any necessary changes to protect those relationships.

I am pleased that, across the chamber, members have acknowledged the positive and important part that lobbying plays in democracy and in policy development. I know that the people who engage with Parliament will be pleased to hear that we respect their role in that. The convener was absolutely right when he said that the bill’s aim is to put that legitimate activity into the public domain in a helpful way.

I mentioned in my opening remarks that I had received a number of representations from stakeholders, as I know other members have. I have also met various stakeholders throughout the bill’s development.

**The Presiding Officer (Tricia Marwick):** One moment, minister. There is an awful lot of noise from members who are coming into the chamber. It would be a courtesy to the minister and to
members who have been taking part in the debate if they would sit quietly and listen.

Joe FitzPatrick: Our approach typifies this Parliament’s reputation for engagement and is a clear indication that I am listening to different views in order to achieve broad support not only within but outwith Parliament. I will continue to be guided by that underpinning principle.

It is important to touch on some stakeholders’ points. First, and most important, most people agree that the establishment of a lobbying register is a positive step towards increasing transparency. We should hold on to that; it is important.

I acknowledge the alliance for lobbying transparency’s recent poll, which Cara Hilton mentioned. It not only highlighted the public’s support for a lobbying register, but contributed to the transparency group’s campaign. The vibrancy of such debate and that campaign are important to Parliament and to Scottish democracy.

I acknowledge the lobbying industry’s important points about ensuring that there is a level playing field. The Government has sought to introduce a bill that is simple to understand and simple in its operation. The voluntary sector has rightly highlighted the need to avoid unnecessary burdens being placed on small organisations—a point that Gil Paterson reflected when he discussed women’s organisations in his constituency.

The business community has made it clear that engagement with elected members is an important part of the process of policy development. I agree that engagement is important, whether it be with business or our constituents.

When I opened the debate, I said that the Lobbying (Scotland) Bill is unusual in that although it has been introduced by the Government it is very parliamentary in nature. I have therefore been keen from the outset to work closely with Parliament, and this debate has certainly contributed to that aim. I hope that that collaborative working will continue as the bill continues its parliamentary passage.

Lobbying (Scotland) Bill:
Financial Resolution

17:00

The Presiding Officer (Tricia Marwick): The next item of business is consideration of motion S4M-15213, in the name of John Swinney, on the financial resolution for the Lobbying (Scotland) Bill.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Lobbying (Scotland) Bill, agrees to any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament’s Standing Orders arising in consequence of the Act.—[Joe FitzPatrick]

The Presiding Officer: The question on the motion will be put at decision time.
Decision Time

The Presiding Officer: The next question is that motion S4M-15220, in the name of Joe FitzPatrick, on the Lobbying (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament agrees to the general principles of the Lobbying (Scotland) Bill.

The Presiding Officer: The final question is that motion S4M-15213, in the name of John Swinney, on the financial resolution for the Lobbying (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Lobbying (Scotland) Bill, agrees to any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament’s Standing Orders arising in consequence of the Act.

The Presiding Officer: I am reliably informed that today is another first for the Scottish Parliament; I understand that this is the first time one minister has been responsible for two separate pieces of legislation in the same sitting.

On that note, I conclude decision time.

Meeting closed at 17:01.
Minister for Parliamentary Business
Joe FitzPatrick MSP

T: 0300 244 4000
E: scottish.ministers@gov.scot

Stewart Stevenson MSP
Convener
Standards, Procedures and Public Appointments Committee
Scottish Parliament
Edinburgh
EH99 1SP

27 January 2016

Dear Stewart,

I would like to thank you and the Standards, Procedures and Public Appointments Committee for your scrutiny of the Lobbying (Scotland) Bill and for the comprehensive and constructive Stage 1 report.

As I outlined during the Stage 1 debate, it was important that I was able to listen to the views from across the Chamber before responding to the Committee’s points in detail. I am pleased that members across the Chamber unanimously agreed the general principles of the Bill.

In considering what amendments might be made to the Bill both as a consequence of points raised during the Stage 1 debate and in the committee’s Stage 1 report, I continue to be guided by the three principles which have informed the Scottish Government’s approach to the development of the Lobbying Bill:

- Firstly, there cannot be any erosion of the Parliament’s principles of openness, ease-of-access and accountability;
- The second guiding principle is that the register of lobbyists must complement and not duplicate existing transparency measures;
- And, the third principle is that the new arrangements need to be proportionate, simple in their operation and command broad support within and outwith the Parliament.

It was clear to me from the Stage 1 process and the debate that stakeholders and Members from across the Chamber place particular importance on maintaining the Parliament’s principle of accessibility, and especially in relation to our constituency role. This is something that I have had careful regard to in giving consideration to what Government amendments may be appropriate during the Bill’s passage.
I am also conscious that many of those who responded to the Government’s consultation exercise proposed that the definition of lobbyist in the Bill should extend more widely than just to MSPs and Ministers. That point was also echoed by the Committee in its Report. As I made clear during the Stage 1 debate, the Government wishes to ensure that any alterations to the Bill do not compromise its wish to deliver a proportionate registration scheme. We intend therefore to reflect further on how any such broadening can be balanced against the underpinning principle of ensuring proportionality in the operation of the regime.

I attach the Scottish Government’s response to the Committee’s Stage 1 report as an annex to this letter, which addresses each of the Committee’s recommendations and conclusions. In addition, I have summarised below areas where the Government is in particular giving consideration to the lodging of Stage 2 amendments.

Scottish Government Stage 2 Proposals

*Trade Union and employer communications in relation to terms and conditions of employment:*

The Government proposes the creation of an exception so that communications by a Trade Union or an employer to a Minister or MSP which are part of or relate directly to terms and conditions of employment (e.g. collective pay bargaining) will not amount to regulated lobbying for the purposes of the Bill.

*Other face to face communications as regulated lobbying:*

The Government agrees that a case can be made for widening the concept of regulated lobbying in section 1 of the Bill to include other forms of oral face to face communications, specifically video conferencing and equivalents. The Government is giving consideration to bringing forward relevant amendments at Stage 2.

*Review provision:*

The Government, having considered the implications of extending the regime as recommended by the Committee, believes that it would be appropriate for the Scottish Parliament to conduct a review of the Act after two years of operation. The Government is considering an amendment requiring the Parliament to consider the areas for potential change highlighted by the committee in its Stage 1 report - extending the definition of regulated lobbying to include other forms of communications; extending the definition of regulated lobbying to other categories of lobbyist; and reviewing the information about regulated lobbying activity to be provided on registration or in information returns including whether, and if so what, financial information ought to be provided by registrants.

*Meetings initiated by Ministers or MSPs:*

The Government is considering, as the Committee called for, amendments to the current exception in paragraph 5 of the schedule to the Bill to provide further clarity as to the circumstances in which an MSP or Minister can seek information from a person without that person then requiring to register. In particular, the Government is
giving consideration to focussing the exception on the provision of factual information or views.

*Power to add to the current list of exceptions*

The Bill contains provision in its schedule for certain communications to be excepted from the definition of regulated lobbying. The Government, however, recognises that through experience of the operation of the register further such requirements could be identified. Therefore, the Government is giving consideration to bringing forward an amendment to provide the Parliament with a power by resolution to add to the list of exceptions included within the schedule.

*Government or parliamentary functions*

The Government is reflecting on whether the concept of “Government or parliamentary functions” in section 2 of the Bill requires to be modified with a view to ensuring that the Bill does not go further than would be desirable in terms of the types of oral communications with MSPs and Ministers which are capable of amounting to regulated lobbying.

I hope you find this response helpful and I look forward to working with the Committee as the Bill continues its parliamentary passage.

Yours for Scotland

Joe Fitzpatrick

JOE FITZPATRICK
<table>
<thead>
<tr>
<th>Committee's Recommendation</th>
<th>Scottish Government Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recommendation 1</td>
<td>The Scottish Government notes the Committee's recommendation and is giving consideration to bringing forward an amendment to create an exception so that any communication by a Trade Union or employer to a Minister or MSPs which is part of, or relates directly to, the terms and conditions of employees will not amount to regulated lobbying for the purposes of the Bill.</td>
</tr>
<tr>
<td>The Committee notes that legislation in other jurisdictions contains an exemption for trade union negotiations and invites the Government to consider whether the Bill should be amended to introduce a similar exclusion to the schedule.</td>
<td></td>
</tr>
<tr>
<td>Recommendation 2</td>
<td>The Government’s view continues to be that face to face oral communication is the most significant and influential means of conducting lobbying and that the focus of the Bill should remain on such activity. This avoids creating a disproportionate registration regime which in practice is likely to discourage access to, and engagement with, MSPs and Ministers.</td>
</tr>
<tr>
<td>The Committee understands that the definition of lobbying was restricted to oral communications in order to focus the scope of the information to be captured and produce a low burden, light touch regime. Nonetheless, a majority of the Committee is of the view that restricting registration to oral communications is an artificial distinction which could leave a great deal of important information unregistered. The Committee recommends that the Government reviews the potential impact of altering the definition at Section 1 to include communication of any kind with a view to establishing what amendments to the Bill might be required.</td>
<td></td>
</tr>
<tr>
<td>The Government is not persuaded that a case has been made to justify altering the scope of the Bill to include other forms of communication such as telephone calls or written communications within the concept of regulated lobbying. However, the Government does see a case for amending the Bill to provide for other forms of oral face to face communications, specifically video conferencing and equivalents, to fall within the concept of regulated lobbying.</td>
<td></td>
</tr>
<tr>
<td>The Government also considers that it would be appropriate for the Parliament to review the operation of the Act after two years of operation and to base any potential changes to the forms of lobbying communication covered by the regime on a firm evidential base; and therefore will consider bringing forward a relevant amendment at Stage 2.</td>
<td></td>
</tr>
</tbody>
</table>
**Recommendation 3**
The Committee notes that altering the definition of regulated lobbying to include all forms of communication would mean that, under the Bill as drafted, the details of each contact would be required to be registered under Section 6. In the interests of proportionality, the Committee invites the Government to examine Section 6 in light of any changes to the definition, in order to determine whether some flexibility could be afforded that would mean that repeated contacts with the same individual on the same subject would not have to be recorded.

The Government notes the Committee’s recommendation.

As noted above, the Government is not minded to alter the definition of regulated lobbying to include all forms of communication. Rather the Government is giving consideration to amendments to provide for other oral face to face communications, specifically video conferencing and equivalents, to fall within the scope of regulated lobbying. The Government is of the view that there is no need at this stage to make changes to section 6 (information about regulated lobbying activity).

Section 15 of the Bill would in any event provide the Parliament with the power to alter the information about regulated lobbying activity to be provided under the scheme either on registration or in information returns, including the power to modify section 6. Any concern the Committee has about the provision of repeat information is capable of being addressed in due course through this mechanism.

**Recommendation 4**
The Committee strongly agrees with the principle that individuals must be able to freely engage on their own behalf or in an unpaid capacity on behalf of an organisation.

The Government notes and agrees with the Committee’s recommendation.

To further ensure that the Bill does not negatively impact on the constituency role of MSPs, the Government is giving consideration to an amendment which will ensure that communications by an organisation with one of that organisation’s local constituency or regional list MSPs in that capacity will not trigger the Bill’s requirements to register.
<table>
<thead>
<tr>
<th>Recommendation 5</th>
<th>The Government notes and agrees with the Committee's recommendation.</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Committee accepts that it is necessary to have a threshold or a trigger in order to focus scrutiny on lobbying activity likely to be of greatest public interest while ensuring that the regime is not over burdensome and does not inhibit those wishing to engage. On balance, the Committee agrees with the Government's approach that paid lobbying is registrable and unpaid lobbying is not registrable as the best way to achieve this.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Recommendation 6</th>
<th>The Government notes the Committee's recommendation and intends to reflect further on how any such broadening can be balanced against the underpinning principle of ensuring proportionality in the operation of the regime.</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Committee recommends that the Government consider bringing forward amendments to broaden the definition of regulated lobbying to include communications made to other public officials.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Recommendation 7</th>
<th>The Government notes the Committee's recommendation. The Government is considering amendments to the current exception in paragraph 5 of the schedule to the Bill to provide further clarity as to the circumstances in which an MSP or Minister can seek information from a person without that person then requiring to register. In particular, the Government is giving consideration to focussing the exception on the provision of factual information or views.</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Committee is concerned about the workability of the exclusion in the schedule for meetings initiated by MSPs or Ministers. The Committee asks the Government to re-examine the practicality of the exclusion and consider removing or replacing it at Stage 2.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Recommendation 8</th>
<th>The Government notes and agrees with the Committee's recommendation.</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Committee notes that any guidance on the Act must set out the definition of journalism in order to provide clarity on precisely what types of communication would attract the exemption.</td>
<td></td>
</tr>
<tr>
<td>Recommendation 9</td>
<td>The Government notes and agrees with the Committee’s conclusion.</td>
</tr>
<tr>
<td>------------------</td>
<td>-------------------------------------------------------------------</td>
</tr>
<tr>
<td>The Committee is satisfied that the inclusion of individuals’ names on the register will enable those with an interest to probe the employment history of those involved in lobbying. The Committee further notes that Parliament would be able, following exercise of its resolution making power at Section 15(1) of the Bill, to make provision requiring information on the employment history of lobbyists to be included on the register itself.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Recommendation 10</th>
<th>The Government notes the Committee’s conclusion. It is the Government’s position that the question of whether, and if so what, financial information ought to be provided by registrants is an issue which it would be appropriate to consider as part of the proposed review of the operation of the Act.</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Committee understands the public interest value in revealing how much is spent on lobbying and notes that it will be within the Parliament’s powers (under section 15, Power to specify requirements about the register) to require registered organisations to disclose their level of expenditure on lobbying.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Recommendation 11</th>
<th>The Government notes the Committee’s recommendation and is continuing discussions on the practical arrangements in this area with the Crown Office and Procurator Fiscal Service.</th>
</tr>
</thead>
<tbody>
<tr>
<td>While the Committee accepts there is nothing in the Bill that compels the Commissioner – or for that matter, the Clerk – to refer offences to the Procurator Fiscal, it wishes to be reassured that an arrangement for the referral of minor and first time offences to clerks for educative steps was acceptable to all parties – including the Crown Office and Procurator Fiscal Service.</td>
<td></td>
</tr>
</tbody>
</table>
**Recommendation 12**
The Committee agrees that the core principles of the Bill should be agreed at this legislative stage and appear in the Act. It is content that the powers delegated to the Parliament, including those to make further provision on the operation of the register about information notices and to direct the Commissioner and produce guidance about the regime, afford an appropriate level of flexibility that will ensure that lessons learned in the course of implementation can be addressed.

The Government notes and agrees with the Committee's conclusion.

**Recommendation 13**
The Committee welcomes the provisions on the code of conduct, which will allow the Parliament to direct and guide those making communications of any kind and need not be restricted only to contacts which conform to the definition of regulated lobbying.

The Scottish Government notes and agrees with the Committee's conclusion.

The Committee supports the general principles of the Bill that a lobbying register should be established and that it is backed by a code of conduct and an educative compliance regime with sanctions as a last resort.
Lobbying (Scotland) Bill

Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Section 1
Sections 2 to 51
Schedule
Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Before section 1

Neil Findlay

14 Before section 1, insert—

<Lobbying: definition

For the purposes of this Act, “lobbying” means, in a professional capacity, attempting to influence, or advise those who wish to influence, by various means of communication, a member of the Scottish Parliament, a member of the Scottish Government or a junior Scottish Minister, a parliamentary liaison officer or a designated public official, on any matter within their competence.>

Section 1

Patricia Ferguson

15 In section 1, page 1, line 8 leave out <made orally and in person> and insert <of a kind mentioned in subsection (2A)>

Joe FitzPatrick

1 In section 1, page 1, line 8, leave out <and in person>

Joe FitzPatrick

2 In section 1, page 1, line 9, leave out <or a junior Scottish Minister> and insert <, a junior Scottish Minister or a special adviser>

Patricia Ferguson

16 In section 1, page 1, line 9, at end insert <a parliamentary liaison officer or a designated public official,>

Joe FitzPatrick

3 In section 1, page 1, line 9, at end insert—
<ia> 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.

Joe FitzPatrick

4 In section 1, page 1, line 14, after <director> insert <or other office-holder>

Neil Findlay

17 In section 1, page 1, line 17, at end insert—

A person is not to be regarded as engaging in regulated lobbying if the person—

(a) receives income for that lobbying that falls within Band A or Band G (see section (Payment for lobbying)), or

(b) when engaging in that lobbying does so for less than 20% of that person’s working time over a period of 3 months.

Patricia Ferguson

18 In section 1, page 1, line 17, at end insert—

(2A) For the purposes of this Act, “communication” includes—

(a) communication made orally and in person,

(b) “electronic communication” within the meaning of section 15(1) of the Electronic Communications Act 2000,

(c) a “traditional document” within the meaning of section 1A of the Requirements of Writing (Scotland) Act 1995, and

(d) any other communication as the Parliament may by resolution specify.

(2B) The Parliament may by resolution modify, add to or remove any of the provisions for the time being mentioned in subsection (2A).

Joe FitzPatrick

5 In section 1, page 1, line 19, at end insert—

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.

Schedule

Joe FitzPatrick

6 In the schedule, page 25, line 24, leave out paragraphs 5 and 6 and insert—

Communications made on request

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.
In the schedule, page 25, line 33, at end insert—

<Communications in relation to terms and conditions of employment

8A 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.

8B 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.

8C In paragraph 8B, “trade union” is to be construed in accordance with section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992.>

Section 2

In section 2, page 2, leave out lines 11 to 15

Section 5

19 In section 5, page 3, line 15, at end insert <and

( ) a record of the individual’s employment for the past 5 years.>

20 In section 5, page 3, line 19, at end insert—

( ) a record of the employment for the past 5 years of any individual paid to carry out lobbying activity on the company’s behalf.>

21 In section 5, page 3, line 26, at end insert—

( ) a record of the employment for the past 5 years of any individual paid to carry out lobbying activity on the partnership’s behalf, and>

22 In section 5, page 3, line 29, at end insert <, and

( ) a record of the employment for the past 5 years of any individual paid to carry out lobbying activity on the person’s behalf.>

Section 6

23 In section 6, page 4, line 5, at end insert—

<(ea) the band within which payment for the lobbying falls (see section (Payment for lobbying)),>
(eb) the time, recorded by the person who made the communication, spent in the lobbying.

After section 6

Neil Findlay

24 After section 6, insert—

<Payment for lobbying

(1) For the purposes of section 6(2)(ea), the registrant must submit to the Clerk which of the following bands the instance of regulated lobbying falls within—

(a) where the lobbying was undertaken on the registrant’s own behalf—

<table>
<thead>
<tr>
<th>Band</th>
<th>Relevant consideration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Band A</td>
<td>Not more than £2,000</td>
</tr>
<tr>
<td>Band B</td>
<td>More than £2,000, but not more than £5,000</td>
</tr>
<tr>
<td>Band C</td>
<td>More than £5,000, but not more than £10,000</td>
</tr>
<tr>
<td>Band D</td>
<td>More than £10,000, but not more than £15,000</td>
</tr>
<tr>
<td>Band E</td>
<td>More than £15,000, but not more than £20,000</td>
</tr>
<tr>
<td>Band F</td>
<td>More than £20,000</td>
</tr>
</tbody>
</table>

(b) where the lobbying was undertaken on behalf of a company, partnership or other person—

<table>
<thead>
<tr>
<th>Band</th>
<th>Relevant consideration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Band G</td>
<td>Not more than £2,000</td>
</tr>
<tr>
<td>Band H</td>
<td>More than £2,000, but not more than £5,000</td>
</tr>
<tr>
<td>Band I</td>
<td>More than £5,000, but not more than £10,000</td>
</tr>
<tr>
<td>Band J</td>
<td>More than £10,000, but not more than £15,000</td>
</tr>
<tr>
<td>Band K</td>
<td>More than £15,000, but not more than £20,000</td>
</tr>
<tr>
<td>Band L</td>
<td>More than £20,000, but not more than £25,000</td>
</tr>
<tr>
<td>Band M</td>
<td>More than £25,000, but not more than £30,000</td>
</tr>
<tr>
<td>Band N</td>
<td>More than £30,000</td>
</tr>
</tbody>
</table>
(2) The amounts set out in the bands relate to payments received for an instance of lobbying over a period of 6 months.

After section 14

Cameron Buchanan

25 After section 14, insert—

<Information for registrants

(1) The Clerk must ensure that active and voluntary registrants are sent—
   (a) copies of parliamentary documents,
   (b) information on parliamentary deadlines,
   (c) such other information as the Clerk considers appropriate, should they notify the Clerk that they wish to receive such information.

(2) The Clerk may provide inactive registrants with such information as the Clerk considers appropriate, should they notify the Clerk that they wish to receive such information.

(3) For the purposes of this section—
   “parliamentary deadlines” means—
   (a) deadlines for stages of bills,
   (b) deadlines for submitting evidence on, and lodging amendments to, bills,
   (c) deadlines for laying and consideration of Scottish Statutory Instruments and other documents subject to parliamentary procedure,
   (d) deadlines for responding to inquiries undertaken by committees or sub-committees of the Parliament,
   (e) any other deadlines as the Clerk considers relevant,

“parliamentary documents” includes—
   (a) bills and accompanying documents,
   (b) marshalled lists and groupings,
   (c) the document currently known as the “Business Bulletin”,
   (d) any other documents as the Clerk considers relevant.

(4) For the purposes of this section, sending documents and information can include transmission by electronic means.

Section 15

Neil Findlay

26 In section 15, page 9, line 5, at end insert—

< the values of the bands for the time being set out in section (Payment for lobbying).>
Section 24

Joe FitzPatrick

9 In section 24, page 13, line 17, after <to> insert <meet>

Cameron Buchanan

27 In section 24, page 13, line 29, at end insert—

<( ) The Commissioner must ensure that information disclosed under subsection (8) is treated as confidential until such time as the Commissioner has reported upon the outcome of the investigation to the Parliament under section 22(2)(b)(ii).>

Section 42

Neil Findlay

28 In section 42, page 21, line 23, leave out subsection (5) and insert—

<(6) Where a person who has been carrying out lobbying activity for 6 months or less commits an offence under subsection (1), (2) or (3), the Clerk is to give notice to the person advising of the requirement to provide information under section 8(1).

(7) A person—

(a) who has received notice from the Clerk under subsection (6), or

(b) who has been carrying out lobbying activity for more than 6 months, 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.

(8) A person who, having received a fine under subsection (7), subsequently commits an offence under subsection (1), (2) or (3)—

(a) may be prevented from engaging in lobbying activity for a period of 3 years,

(b) is liable on summary conviction to a fine not exceeding the statutory maximum.>

Section 43

Cameron Buchanan

29 In section 43, page 21, line 28, leave out <may> and insert <must>

Cameron Buchanan

30 In section 43, page 21, line 30, leave out <may> and insert <must>

Neil Findlay

31 In section 43, page 21, line 36, at end insert—

<(2A) The Parliament may make available information with a view to promoting awareness and understanding of this Act.

(2B) The Parliament must ensure that sufficient funding is provided to make available information under subsection (2A).>
Section 45

Joe FitzPatrick

10 In section 45, page 22, line 16, leave out second <or > and insert <of>

Section 46

Patricia Ferguson

32 In section 46, page 22, line 35, at end insert—

<“designated public official” means—

(a) a special adviser within the meaning of section 15 of the Constitutional Reform and Governance Act 2010 (where it applies to the Scottish Ministers),

(b) a person serving as a member of staff of the Scottish Administration in the position of—

(i) Permanent Secretary (or equivalent),
(ii) Director-General (or equivalent),
(iii) Director (or equivalent),
(iv) Deputy Director (or equivalent),

(c) any other member of staff of the Scottish Administration whom the Parliament has, by resolution, prescribed, by reference to that public servant’s—

(i) role,
(ii) level of remuneration, or
(iii) grade,>

Patricia Ferguson

33 In section 46, page 23, line 4, at end insert—

<“parliamentary liaison officer” means a member of the Scottish Parliament appointed by the First Minister to support a member of the Scottish Government in the discharge of parliamentary duties,>

Joe FitzPatrick

11 In section 46, page 23, line 9, at end insert—

<“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,>

Section 48

Joe FitzPatrick

12 In section 48, page 23, line 35, leave out <, in return for payment,>

After section 48

Joe FitzPatrick

13 After section 48, insert—

<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 (ia), 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).

Cameron Buchanan

13A As an amendment to amendment 13, line 8, leave out <2 years> and insert <1 year>

Cameron Buchanan

13B As an amendment to amendment 13, line 32, leave out <2 years> and insert <1 year>

Section 50

Cameron Buchanan

34* In section 50, page 24, line 18, at end insert—

<(  ) The Scottish Ministers may not appoint, as a day for section 8 to come into force, a day earlier than 3 months after the day on which the Clerk has established the register under section 3.>

Cameron Buchanan

35* In section 50, page 24, line 18, at end insert—

<(  ) The Scottish Ministers may not appoint, as a day for section 8 to come into force, a day earlier than 3 months after the day on which Guidance is first published under section 43(1).>
Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the first day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

**Lobbying: definition**
14

**Regulated lobbying: methods of communication**
15, 1, 3, 18

**Regulated lobbying: recipients of communications**
2, 16, 8, 32, 33, 11

**Minor and technical amendments**
4, 9, 10, 12

**Money and time spent lobbying**
17, 23, 24, 26

**Communications which are not lobbying**
5, 6, 7

**Employment history of lobbyists**
19, 20, 21, 22

**Information provision**
25, 29, 30, 31

**Confidentiality of consideration of admissible complaints**
27

**Offences and sanctions**
28

**Review of Act**
13, 13A, 13B
Commencement
34, 35
Lobbying (Scotland) Bill: The Committee considered the Bill at Stage 2.

The following amendments were agreed to (without division): 1, 2, 4, 5, 6, 7, 8, 9, 29, 30, 10, 11, 12 and 13.

Amendment 3 was agreed to (by division) (For 5, Against 1, Abstain 0).

The following amendments were disagreed to (by division)—

14 (For 1, Against 5, Abstain 0)
15 (For 1, Against 5, Abstain 0)
16 (For 1, Against 5, Abstain 0)
17 (For 1, Against 5, Abstain 0)
18 (For 1, Against 5, Abstain 0)
19 (For 1, Against 5, Abstain 0)
20 (For 1, Against 5, Abstain 0)
21 (For 1, Against 5, Abstain 0)
22 (For 1, Against 5, Abstain 0)
23 (For 1, Against 5, Abstain 0)
24 (For 1, Against 5, Abstain 0)
25 (For 1, Against 5, Abstain 0)
26 (For 1, Against 5, Abstain 0)
27 (For 1, Against 5, Abstain 0)
28 (For 1, Against 5, Abstain 0)
29 (For 2, Against 4, Abstain 0)
30 (For 1, Against 5, Abstain 0)
31 (For 1, Against 5, Abstain 0)
32 (For 1, Against 5, Abstain 0)
33 (For 1, Against 5, Abstain 0)
13A (For 1, Against 5, Abstain 0)
13B (For 2, Against 4, Abstain 0)
34 (For 1, Against 5, Abstain 0)
35 (For 1, Against 5, Abstain 0).

The following amendments were moved and, no member having objected, withdrawn: 25, 27.
The following provisions were agreed to without amendment: Sections 3 and 4, section 5, section 6, sections 7 to 14, section 15, sections 16 to 23, sections 25 to 41, section 42, section 44, section 47, section 50, section 51 and the Long Title.

The following provisions were agreed to as amended: Section 1, the Schedule, section 2, section 24, section 43, section 45, section 46, section 48 and section 49.

The Committee completed Stage 2 consideration of the Bill.
Lobbying (Scotland) Bill: Stage 2

09:01  

The Convener: We come to our main item of business for today, which is stage 2 of the Lobbying (Scotland) Bill. I remind members that if stage 2 is not completed today the committee will be required to meet next Thursday, 11 February 2016.

I welcome Joe FitzPatrick, who is the Minister for Parliamentary Business, and his officials. Officials are not permitted to participate in the formal proceedings. I also welcome Neil Findlay, who has lodged a number of amendments.

Members should have the bill, the marshalled list and the groupings, which set out the amendments in the order in which they will be debated. Our task is to consider all the amendments and also to agree to each section of the bill.

For the debate on each group, I will call the member with the lead amendment to open the debate by speaking to and moving the lead amendment and speaking to all amendments in the group. I will then call any other members who have amendments in the group to speak to all amendments in the group. I will then call any other members who indicate to me that they wish to speak, taking the minister last if he does not have an amendment in the group. Finally, I will invite the member who opened the debate to wind up and indicate whether they wish to press or seek to withdraw the lead amendment.

Any member present may object to the withdrawal of an amendment. If there is an objection, we will proceed straight to the question on the amendment; there is no division on whether an amendment may be withdrawn.

We will follow the normal procedure if a division is required.

When we reach amendments on the marshalled list that have already been debated, I will ask the member to move or not move the amendment. If the member who lodged the amendment does not move it, any other member present may move the amendment.

Before section 1

The Convener: The first group is entitled "Lobbying: definition". Amendment 14, in the name of Neil Findlay, is the only amendment in the group.

Neil Findlay (Lothian) (Lab): Thank you for the opportunity to speak to the committee this morning.

As it stands, the bill lacks a clear definition of lobbying. It sets out core concepts but it does not set out a definition. Amendment 14 provides a definition that everyone can understand from the outset.

It strikes me as absurd to introduce a lobbying bill without defining what we mean by the term "lobbying". When I consulted on my proposed lobbying transparency bill, I looked far and wide for a sound definition. The definition in amendment 14 is the one that the House of Commons Public Accounts Committee uses and it is the best one that I could find. I consulted widely, and that was accepted as a fair definition. It will help the bill and those who will be affected by it.

I move amendment 14.

The Minister for Parliamentary Business (Joe FitzPatrick): I thank Neil Findlay for lodging his amendment 14 and for his explanation of its purpose and effect. I recognise Neil Findlay’s particular interest in the area and in transparency in general.

Amendment 14 intends to define what lobbying is before the bill defines the scope of “regulated lobbying”. The amendment would introduce unhelpful ambiguity to the bill. Section 1 already gives a clear and legally certain outline of what type of activity is deemed to be lobbying, the type of lobbyees and lobbyists to be included, and the means by which the communication is made.

Including a further definition is likely to lead to confusion over what is and what is not regulated lobbying. For example, the words “in a professional capacity” do not clearly define what lobbying is intended to be covered, unlike the existing exemption in the schedule to the bill on when payment is relevant. It is also unwise to include a definition that seeks to highlight the intention of the lobbying activity. It is already clear that lobbying is an attempt to influence decision-makers.

The approach taken in amendment 14 was criticised in the Organisation for Economic Co-operation and Development’s comparative review of legislation for enhancing transparency and accountability. The specific words in amendment 14 were removed from the Canadian regime because they did not allow its legislation to be enforced as introduced.

Finally, the inclusion of parliamentary liaison officers as lobbyees is unnecessary, because lobbying members of the Scottish Parliament is already caught by the scope of the bill. A PLO can be appointed only on the basis that they are an MSP. Although I recognise that the member is trying to be helpful and take account of amendments 15, 16, 18, 32, and 33, amendment 14 risks introducing unnecessary ambiguity and
confusion about the definition of regulated lobbying in the bill. Accordingly, I invite Neil Findlay not to press amendment 14, but if he does then I invite the committee to resist it.

**The Convener:** I invite Neil Findlay to wind up and indicate whether he will press or withdraw amendment 14.

**Neil Findlay:** I will press the amendment. It is somewhat of a stretch to claim that providing a definition makes the bill more ambiguous. As it stands, without that definition, the bill is ambiguous.

**The Convener:** The question is, that amendment 14 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)

**Against**
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scott, John (Ayr) (Con)
Stevenson, Stewart (Banffshire and Buchan) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)

**The Convener:** The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 14 disagreed to.

**Section 1—Regulated lobbying**

**The Convener:** Amendment 15, in the name of Patricia Ferguson, is grouped with amendments 1, 3 and 18. If amendment 15 is agreed to, I will not be able to call amendment 1, because it will have been pre-empted.

**Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab):** The genesis of amendments 15 and 18 is the evidence that was presented to the committee by a number of witnesses. The idea that the bill should cover only oral communication was described as “clearly insufficient” by ASH Scotland and as “ludicrous” by Dr Dinan of Spinwatch. Professor Chari of Trinity College Dublin advised that he was unaware of any other legislation that contained such a restriction.

We all recognise that, in 2016, much of the communication that takes place with politicians is by letter, telephone and email. Lobbying and lobbyists use all the methods of communication that are open to them and, if we want the bill to have any real effect, it must recognise that. That was the conclusion of the majority of the members of this committee and it was recognised in the stage 1 report. I hope that members will support my amendments and give effect to our recommendations.

On amendment 3, I would like to support the principle that videoconferencing should be captured by the bill, but the wording of the amendment is such that it re-emphasises the belief that the focus of the bill is on face-to-face communication and I cannot therefore do so.

I move amendment 15.

**Joe FitzPatrick:** I thank Patricia Ferguson for lodging her amendments. It is important that issues that have been raised during the passage of the bill are aired at stage 2.

I understand that amendments 15 and 18 intend to extend significantly the definition of “regulated lobbying” to include a wide range of forms of communication beyond the face-to-face and in-person communications that are set out in the bill.

The issue of what types of communication should be included within the scope of “regulated lobbying” attracted considerable interest during stage 1, and it continues to be the content of much lobbying of MSPs, on both sides, about the bill. The Government’s continuing view is that face-to-face communication is the most significant and influential means of conducting lobbying and that the focus of the bill should remain on that activity. However, I have reflected carefully and I am of the view that the bill should incorporate all face-to-face communication regardless of the means of delivery, which is why I lodged amendments 1 and 3 to ensure that videoconferencing and equivalent means will be treated as regulated lobbying activity. That will maintain the proportionality of the bill and will avoid creating a registration regime that might, in practice, discourage access to and engagement with MSPs and ministers.

The Government is not persuaded that a case has been made that justifies altering the scope of the bill to include other forms of communication such as telephone calls or written communications—as Patricia Ferguson proposed—within the concept of regulated lobbying. Doing so would place a potentially very significant burden on organisations seeking to engage with the Parliament and the Government. It would not be in anyone’s interest for us to commence with a regime that is unwieldy and off-putting and would lead to criticism of the legitimate public interest that lies at the heart of what the bill seeks to achieve.

In a separate group of amendments, the committee will debate the merits of an amendment that requires that Parliament reviews the operation of the bill after two years. It is through that review that Parliament should reflect on whether face-to-face communications should continue to be the principal focus of the regime or whether it should be extended to other forms of communication. That approach would enable the Parliament to
build an evidence base to justify imposing those controls, taking into account the day-to-day operation of the register for both lobbyists and the Parliament.

For those reasons, I invite the committee not to support Patricia Ferguson's amendments 15 and 18.

The Convener: I invite Patricia Ferguson to wind up and to press or withdraw her amendment.

Patricia Ferguson: I intend to press the amendment.

I am sorry that the minister feels that the evidence that the committee took did not result in an amendment that he can support. I do not want to take too much of the committee's time, because we have a very full agenda. However, I will point out that the idea that we should review the bill to see whether, at a future date, we want to include matters such as the method of communication seems to be the wrong way to look at the bill. We should start by recording all the categories of communication that would be covered by my amendment and by the bill, and review the bill at that future date to see whether or not they are appropriate.

We cannot review something for which we have not captured information. The only way that we will be able to capture information and find out the extent of lobbying, and the purpose and effectiveness of that communication, is by capturing all forms of communication from the outset. If a future Parliament decides that that has been onerous and resulted in us not doing what was intended by the bill, it could be changed at that point. Doing it the other way around is entirely contrary to the purpose of the bill.

The Convener: The question is, that amendment 15 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)

Against
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scott, John (Ayr) (Con)
Stevenson, Stewart (Banffshire and Buchan) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 15 disagreed to.

The Convener: Amendment 1 has already been debated with amendment 15.

Amendment 1 moved—[Joe FitzPatrick]—and agreed to.
communications that could clearly be viewed as not being lobbying might risk being captured unnecessarily and discourage engagement.

It might assist members if I offer a couple of examples of communications that the Government views as inappropriate for capture. First, if a local housing association that wishes to take forward housing developments in a particular constituency seeks to meet the local MSP to inform them of its intentions and seek their view, that MSP is not being invited to take or not take any specific action of the sort covered in sections 2(1)(a) to (f). Another example might be representatives of a Scottish business in financial trouble wanting to meet the local MSP to communicate that fact as a courtesy and nothing more.

I invite Patricia Ferguson not to move amendments 16, 32 and 33. If the member wishes to move them, I invite the committee to oppose them.

I move amendment 2.

**Patricia Ferguson:** These amendments recognise that ministers and MSPs are not the only people who might be lobbied. During the committee’s deliberations, we looked at that issue and took evidence that showed that, in other jurisdictions, the list of those who might be lobbied goes further than the categories in the bill.

The committee recognised that as many public officials wield considerable power and make important decisions about policy and financial matters, they, too, should be covered by the bill. Once again, the committee recommended as much in its report, so I hope that the amendments will be supported. I appreciate the minister has lodged an amendment to cover special advisers, but it does not go far enough.

Amendment 32 seeks to add to the list of those who might be considered to be in receipt of communications deemed as lobbying, and amendments 16 and 33 attempt to include parliamentary liaison officers in that category. It can and has been argued that that group of MSPs is already covered in the bill, but I want to reinforce the point that they have a particular status in relation to their role in assisting ministers. The amendments seek to protect them specifically from allegations that they themselves might have been lobbied in that role and that they, in turn, have lobbied the minister on behalf of a lobbyist.

I hope that the committee supports my amendments, although I accept that that is unlikely to happen.

**Joe FitzPatrick:** It might be helpful if, for the record, I make it absolutely clear that PLOs are already captured in their capacity as MSPs. The suggestion that they are having a meeting in their capacity as a PLO does not provide a loophole; they are clearly covered by the bill as MSPs.

I hope that Patricia Ferguson will not move her amendments covering other senior civil servants. As I have said, I am happy to work with her in light of the discussions that the Government is having with the trade unions on a stage 3 amendment. It is appropriate to ensure that we are careful about the action that we take and that it is fully considered, and I hope that the member will agree that consultation with trade unions is part of the process.

**Amendment 2 agreed to.**

**Amendment 16 moved—[Patricia Ferguson].**

The Convener: The question is, that amendment 16 be agreed to. Are we agreed?

**Members:** No.

The Convener: There will be a division.

**FOR**
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)

**AGAINST**
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scott, John (Ayr) (Con)
Stevenson, Stewart (Banffshire and Buchan) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

**Amendment 16 disagreed to.**

**Amendment 3 moved—[Joe FitzPatrick].**

The Convener: The question is, that amendment 3 be agreed to. Are we agreed?

**Members:** No.

The Convener: There will be a division.

**FOR**
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scott, John (Ayr) (Con)
Stevenson, Stewart (Banffshire and Buchan) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)

**AGAINST**
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)

The Convener: The result of the division is: For 5, Against 1, Abstentions 0.

**Amendment 3 agreed to.**

The Convener: Amendment 4, in the name of the minister, is grouped with amendments 9, 10 and 12.

**Joe FitzPatrick:** This group contains a number of minor tidying-up amendments. Amendment 4 seeks to put beyond doubt who should be caught—and how—by the definition of “regulated
lobbying”. Section 1(1)(b) sets out the categories of people who, in the course of a business or other activity, make communications that might count as regulated lobbying. The definition is already wide and covers employees, directors, partners or members, and the amendment is a clarificatory one that simply ensures that all types of paid office-holder in an organisation are included in the definition of “regulated lobbying”.

Amendment 9 corrects a drafting error by inserting the word “meet” into section 24(6)(d). The amendment has no policy effect.

Amendment 10 corrects a drafting error in section 45 by changing the erroneous use of the word “or” to “of”, thus ensuring that the relevant provision makes sense. Again, the amendment has no policy effect.

Amendment 12 removes the words “in return for payment” from section 48 to avoid duplication of the provisions in section 1 that define the activity that is regulated lobbying. Once again, the amendment has no policy effect.

I move amendment 4 and invite the committee to support amendments 9, 10 and 12.

Amendment 4 agreed to.

The Convener: Amendment 17, in the name of Neil Findlay, is grouped with amendments 23, 24 and 26.

Neil Findlay: With regard to amendment 17, which relates to thresholds for lobbying, it is necessary that we capture lobbyists who are involved in significant amounts of lobbying activity. The amendments will ensure that small-scale lobbying is not caught by the legislation, and they address concerns about the alleged burden or danger of restricting activity or engagement with the Parliament by small community organisations, charities, businesses and so on; I am also delighted to be able to reassure Gil Paterson that he can still send his Christmas cards. This is a proportionate measure that reflects some of the concerns that have been raised during consideration of the bill. After all, thresholds are used in other jurisdictions and should be included in the bill.

Amendment 23 is all about scale. There is a real difference between spending £100 and £50,000 on lobbying. For the purposes of openness and transparency, it is vital that the public see how much money and time is being spent on lobbying activity, and this amendment will allow the public to access that information and see whether there is any correlation between the money and effort spent on lobbying and the tangible benefits of that activity. They could see, for example, how much time, effort and cash was spent on changing the law on X, Y or Z or how much was spent in an attempt to win contract 1, 2 or 3. More than a third of lobbying registers around the world apply thresholds. Those registers work, and I believe that suggestions to the contrary are red herrings.

Amendment 24 seeks to put in place a banding system to provide a framework for registrants in disclosing the levels of money and time spent on lobbying. In lodging amendment 24, I have taken into account in the banding system the sector’s concerns about the commercial sensitivity of expressing the actual amounts spent by, for example, ensuring that no specific examples of contracts for lobbying are included. I think that the banding system is helpful and merely represents a way of making the register work better.

Amendment 26 seeks to update the current proposals to ensure that thresholds are dealt with appropriately throughout the bill.

I move amendment 17.

Joe FitzPatrick: I see two purposes behind Neil Findlay’s amendments: first, to offer a threshold to remove low-value lobbying from the registration scheme; and, secondly, to include in the register financial data and time spent lobbying.

I have sympathy with the first aim, in particular, in light of the concerns expressed by members during the stage 1 debate about the bill’s potential impact on constituency-based activities—and I include in that Gil Paterson’s Christmas cards. I consider that, in their current form, the amendments would add unnecessary complexity and ambiguity to the registration process and for registrants submitting information returns. That said, I wish to give further consideration to the question whether it would be possible to exempt lobbying of a de minimis nature and to return to the matter at stage 3. I am happy to provide the committee with an update on my thinking on the matter ahead of the lodging deadline for amendments.

As for the second aim of Neil Findlay’s amendments, the Government’s view is that no case has been made with regard to requiring registrants to provide financial data in connection with regulated lobbying. The power available to the Parliament in section 15 would allow the detailed operation of such requirements to be developed without undue haste; the Government also suggests that such matters are best dealt with in the context of the formal review process proposed in amendment 13.

As a result, I ask Neil Findlay not to press amendment 17. If he does so, I ask the committee to resist it.

The Convener: I invite Neil Findlay to wind up and indicate whether he is pressing or withdrawing amendment 17.
Neil Findlay: I will be pressing my amendments, so I suggest that we just go to the vote.

The Convener: The question is, that amendment 17 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)

Against
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scott, John (Ayr) (Con)
Stevenson, Stewart (Banffshire and Buchan) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 17 disagreed to.

Amendment 18 moved—[Patricia Ferguson].

The Convener: The question is, that amendment 18 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)

Against
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scott, John (Ayr) (Con)
Stevenson, Stewart (Banffshire and Buchan) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 18 disagreed to.

The Convener: Amendment 5, in the name of the minister, is grouped with amendments 6 and 7.

Joe FitzPatrick: The amendments in this group address a number of topics. First, in its stage 1 report, the committee helpfully suggested that the Government give consideration to a potential exception in the schedule that would cover all trade union communications. The Government agreed with the committee and has therefore lodged amendment 7 to that effect. The Government has sought to maintain a fair and balanced approach throughout the bill’s development and as a result the amendment proposes to exempt communications made by trade unions or employers in relation to terms and conditions of employment.

In recognition of the fact that further exceptions might be needed in light of the experience of operating the register, the Government has lodged amendment 5 to give the Parliament the power by resolution to add to the current list of exclusions contained in the schedule to the bill. That power will also give the Parliament the ability to amend or remove any such additions that are made.

09:30

Amendment 6 has been lodged in response to the committee’s request for the Government to look again at the exception in the schedule to the bill on meetings initiated by members or ministers. I welcome the committee’s assistance in helping to correctly frame the exception and to avoid the creation of a potential loophole that might have allowed lobbying activity to go unregistered. As a result, amendment 6 makes it clear that the exception to a requirement to register extends only to the provision of factual information or views in response to a request.

I move amendment 5.

Amendment 5 agreed to.

Section 1, as amended, agreed to.

Schedule—Communications which are not lobbying

Amendments 6 and 7 moved—[Joe FitzPatrick]—and agreed to.

Schedule, as amended, agreed to.

Section 2—Government or parliamentary functions

Amendment 8 moved—[Joe FitzPatrick]—and agreed to.

Section 2, as amended, agreed to.

Sections 3 and 4 agreed to.

Section 5—Information about identity

The Convener: Amendment 19, in the name of Neil Findlay, is grouped with amendments 20, 21 and 22. I invite Neil Findlay to move amendment 19 and to speak to all the amendments in the group.

Neil Findlay: The amendments in the group address the issue of the so-called revolving door, whereby former ministers, senior civil servants, special advisers and others who work at senior levels of Government build up an extensive contact list of influential people, and then leave that post to go on and exploit that contact book for commercial or financial gain. That situation is not open to ordinary members of the public.

The amendments would mean that the previous five years’ employment histories of lobbyists are available for all to see. It is a transparency measure, and it is proportionate. It is important
that the public are able to observe whether a lobbyist has recently worked in or for the very Government that he or she is now lobbying. The amendments help with that transparency, which I believe is an essential part of the bill.

I move amendment 19.

Joe FitzPatrick: Again, I thank Neil Findlay for lodging his amendments, and for his explanation of their purpose and effect.

Amendments 19, 20, 21 and 22 all seek to introduce a requirement for people who register to provide retrospective information about their employment history, or the employment history of those who lobby on their behalf.

The Government does not feel that a case has been made to require people who undertake lobbying activity to have their employment history publicly disclosed. It is important to remember that the amendments would apply to all people who undertake regulated lobbying, but it is not clear that such information would always be relevant to the lobbying activity that was being undertaken.

The amendments would also require organisations to reveal personal details in situations in which the individuals did not agree to their being revealed when they took up employment. Individuals may have legitimate reasons for not wishing to disclose such information publicly, or to their current employers.

In its stage 1 report the committee noted that it is satisfied that the inclusion of individuals’ names on the register would enable those with an interest to probe the employment history of people who are involved in lobbying.

Also, arrangements are already in place to scrutinise the future employment of senior civil servants and special advisers, as well as there being a restriction on former ministers and special advisers to ensure they do not lobby the Government for two years following the end of their appointment.

As the committee identified in its report, there is also a power at section 15 of the bill that will allow Parliament to change by resolution the details that are to be disclosed through the registration process. That power would enable Parliament to identify further information that it thinks would be appropriate for inclusion in the register, and to do so in a proportionate and focused way. I believe that that is the appropriate way forward on this matter. Accordingly, I ask Neil Findlay to seek to withdraw amendment 19 and, if it is pressed, I ask the committee to oppose the amendment.

The Convener: I invite Neil Findlay to wind up and indicate whether he will press or seek to withdraw amendment 19.

Neil Findlay: I am very disappointed with the minister’s response. The proposal is an essential part of the whole transparency process that the bill is aimed at, so I certainly want to press the amendments.

The Convener: The question is, that amendment 19 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)

Against
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scott, John (Ayr) (Con)
Stevenson, Stewart (Banffshire and Buchan) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 19 disagreed to.

Amendment 20 moved—[Neil Findlay].

The Convener: The question is, that amendment 20 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)

Against
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scott, John (Ayr) (Con)
Stevenson, Stewart (Banffshire and Buchan) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 20 disagreed to.

Amendment 21 moved—[Neil Findlay].

The Convener: The question is, that amendment 21 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)

Against
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scott, John (Ayr) (Con)
Stevenson, Stewart (Banffshire and Buchan) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.
Amendment 21 disagreed to.
Amendment 22 moved—[Neil Findlay].

The Convener: The question is, that amendment 22 be agreed to. Are we agreed?
Members: No.

The Convener: There will be a division.
For
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)

Against
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scott, John (Ayr) (Con)
Stevenson, Stewart (Banffshire and Buchan) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 22 disagreed to.
Section 5 agreed to.

Section 6—Information about regulated lobbying activity
Amendment 23 moved—[Neil Findlay].

The Convener: The question is, that amendment 23 be agreed to. Are we agreed?
Members: No.

The Convener: There will be a division.
For
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)

Against
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scott, John (Ayr) (Con)
Stevenson, Stewart (Banffshire and Buchan) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 23 disagreed to.
Section 6 agreed to.

After section 6
Amendment 24 moved—[Neil Findlay].

The Convener: The question is, that amendment 24 be agreed to. Are we agreed?
Members: No.

The Convener: There will be a division.
For
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)

Against
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
Russell, Michael (Argyll and Bute) (SNP)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 24 disagreed to.
Sections 7 to 14 agreed to.

After section 14

The Convener: Amendment 25, in the name of Cameron Buchanan, is grouped with amendments 29 to 31. I invite John Scott to speak to all the amendments in the group and to move amendment 25.

John Scott: Amendment 25 is intended to provide a benefit to registrants that may incentivise registration in advance and incentivise voluntary registration. The effect of the amendment would be to allow registrants, should they choose, to automatically receive relevant information, such as on opportunities to participate in consultations and on deadlines by which members have to lodge amendments. Apparently, there is a system in the European Union in which lobbyists who have registered receive automatic mail notification of new consultations or inquiries, among other incentives. That seems to be a good idea, and the amendment may prove to be a useful tool to encourage registration.

Amendment 29 would make it a requirement to publish guidance on the register rather than that just being an option, by substituting the word “must” for “may”. It is essential that everyone who is affected is clear on the operation and requirements of the register so that it operates smoothly, and so that misunderstandings are kept to a minimum. Clear guidance is necessary to achieve that; the amendment would make it absolutely clear that guidance will be published.

Amendment 30 would make it a requirement for guidance on the register to include provision about what qualifies as regulated lobbying. That gets to the heart of the matter. Clarity is essential to make compliance trouble free and to enable the register’s intentions to be fulfilled.

I move amendment 25.

Neil Findlay: Amendment 31 alludes to resources and ensuring that the bill is successfully implemented. We cannot have an ad hoc system; we cannot legislate without putting in proper resources. Legislation must be fit for purpose and backed by hard cash. In short, we must invest in our democracy and there must be sufficient resource in place to raise awareness of the changes that will result from the bill. At a recent seminar in the University of Stirling, the Irish lobbying regulator spoke about the need for that. I
agree with her. Successful implementation of the register and a well-functioning, open and transparent democracy will not come at no cost. We need to invest sufficient resources in the system.

Patricia Ferguson: I am very supportive of the idea of information being provided that allows lobbyists to understand the system and how they should comport themselves in relation to it. Therefore, I support amendment 31, in Neil Findlay’s name, and amendments 29 and 30, in Cameron Buchanan’s name.

However, I do not support amendment 25. By the nature of their jobs, lobbyists should be aware of such things as parliamentary deadlines and consultations. I really do not see why parliamentary resources should be expended on making that job easier than it is. Parliament’s information is open to all and is freely available on our website. That should be sufficient.

Joe FitzPatrick: I listened with interest to the debate on this group of amendments. I will deal with each amendment in turn.

I acknowledge the spirit in which Cameron Buchanan’s amendment 25 has been lodged, but I agree with Patricia Ferguson about it. It is important that the work of Parliament is open and accessible and that people who wish to engage with it can understand what business is being conducted. However, the Government does not believe that it is appropriate or necessary to set out in primary legislation prescriptive requirements about what information the clerk should provide to registered lobbyists—although I recognise that, ultimately, that is a matter for Parliament.

There are already administrative processes that interested members of the public or organisations can use to enable them to keep abreast of parliamentary developments. For example, they can subscribe to electronic notifications and material in relation to bills, committees, Parliament news and various activities in Parliament. Parliament also offers people the opportunity to receive a weekly e-bulletin. Using the facilities that Parliament already provides continues to be the best way to address the matter. Perhaps Parliament’s guidance on the operation of the bill could set out how lobbyists could make best use of those facilities. For those reasons, I recommend that the committee not support amendment 25.

On amendments 29 and 30, it is the Government’s view that the guidance that will be developed under the bill will be central to its successful implementation. We would all find it difficult to envisage circumstances in which Parliament would not produce that guidance. On that basis, the Government supports the committee’s accepting amendments 29 and 30.

Amendment 31 is in two parts. Although the first part—proposed new section 43(2A)—is, strictly speaking, unnecessary, I can see some benefits in highlighting Parliament’s ability to promote awareness and understanding of the bill. I am less sympathetic towards the second part—proposed new section 43(2B)—because it must be left to the Scottish Parliamentary Corporate Body to make decisions about use of the overall budget that is available to Parliament. Consequently, I invite Neil Findlay not to move amendment 31, with the undertaking that I will seek to lodge a Government amendment at stage 3 that will deliver on the first part of it. For those reasons, I invite the committee to resist amendments 25 and 31 and to support amendments 29 and 30.

John Scott: I will not press amendment 25, given the explanation that the minister has provided.

Amendment 25, by agreement, withdrawn.

Section 15—Power to specify requirements about the register

Amendment 26 moved—[Neil Findlay].

The Convener: The question is, that amendment 26 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)

Against
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scott, John (Ayr) (Con)
Stevenson, Stewart (Banffshire and Buchan) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 26 disagreed to.

Section 15 agreed to.

Sections 16 to 23 agreed to.

Section 24—Procedure for assessing admissibility of complaint

Amendment 9 moved—[Joe FitzPatrick]—and agreed to.

The Convener: Amendment 27, in the name of Cameron Buchanan, is in a group on its own.

John Scott: As the bill stands, there is some ambiguity about whether the commissioner’s report to Parliament stating that a complaint is admissible will be public knowledge. Our concern
is that the identity of the subject of the complaint should be public only if an investigation finds that they have failed to comply with the register’s requirements.

We are concerned that without amendment 27 there may be scope for competition-motivated accusations to be made, and the accused could suffer consequences before an investigation had proved an accusation to be either true or false. Exposure to possible reputational damage for the subject of a complaint for failing to comply with requirements should not be possible before an investigation has actually been completed. However, should the minister be able to clarify that the report to Parliament that is mentioned in section 24 would be private and would be for Parliament only, we would consider that.

I move amendment 27.

Joe FitzPatrick: I thank Cameron Buchanan for lodging amendment 27, and I thank John Scott for his explanation of its purpose and effect. I understand that the amendment seeks to ensure that no information in relation to an investigation by the commissioner is made public until such time as the commissioner has issued their report on the outcome of their investigations to Parliament for its consideration, as required in section 22. There is already provision in section 22(4) that requires an assessment of admissibility and an investigation to be conducted in private. The Government is unsure how the amendment is intended to apply alongside the requirement in section 24(6) to tell Parliament and the complainant that the complaint has been ruled admissible.

There are potential issues about the workability of such an arrangement in the context of the need to keep the complaints procedure private—for example, the need then to enter into confidential agreements with the complainant, the person being complained about and Parliament.

For those reasons, I invite John Scott to seek to withdraw amendment 27. If he will not, I invite the committee to resist the amendment. I make it clear that if Cameron Buchanan would find it helpful to discuss the matter with me and my officials in advance of stage 3, I would be very happy to do so.

John Scott: In the light of the minister’s kind offer to discuss the intentions behind the amendment with him prior to stage 3, I am happy to accept that invitation on Cameron Buchanan’s behalf and to seek to withdraw the amendment.

Amendment 27, by agreement, withdrawn.

Section 24, as amended, agreed to.

Sections 25 to 41 agreed to.

Section 42—Offences relating to registration and information returns

The Convener: Amendment 28, in the name of Neil Findlay, is in a group on its own.

Neil Findlay: Amendment 28 is part of a proportionate system of warning and penalty that alerts organisations to the fact that they may not as yet have registered or fulfilled their responsibilities under the legislation. If they still fail to oblige after being warned, a sliding scale of punishment prior to summary conviction is suggested, to a point at which they may be banned from operating as lobbyists.

Among other things, that might be a greater incentive to ensure that all lobbyists fulfil their obligations than some of the other punishments that have been suggested.

I move amendment 28.

Joe FitzPatrick: I thank Neil Findlay for lodging amendment 28, the intention of which is to introduce a more serious penalty for second or subsequent offences under section 42 of up to the statutory maximum of £10,000, and for that person then to be potentially prevented from lobbying for three years. The amendment also seeks to impose an administrative sanction for an offence committed under section 42 in circumstances in which a person has been carrying out lobbying activity for six months or less. That would create a criminal offence with no criminal penalty. The clerk would simply give the offending person notice advising them about the duty to register.

I fully appreciate the spirit in which amendment 28 seeks to offer registrants some latitude in respect of initial failures to comply with the registration scheme, at least for a time, until they fully understand the operation and requirements of the act. However, there is a fundamental issue with the amendment in that the outcomes would lack clarity. For example, in relation to the sanction preventing a person from lobbying for three years, it is not clear what lobbying someone would be prevented from undertaking. I think that Neil Findlay intends to relate it to regulated lobbying, as it is defined in the bill, but that would not necessarily be the effect of the amendment. It is also unclear how the sanction would be enforced.

More generally, I have concerns about whether the proposed interference with someone’s ability to work is a proportionate response. In addition, it is not clear when the six-month period for determining whether a person is given notice from the clerk or is liable to a fine would apply. I presume that it would from the time of committing the offence, but again that would not necessarily be the effect of amendment 28.
Issues also arise with the clerk having to give notice to a person when that person “commits an offence”. Under section 17, the clerk will already be able to require information from an active or voluntary registrant when the clerk has reason to believe that a person has failed to provide it. However, and more importantly, it must be left to the courts to determine whether an offence has been committed and, when an offence has been committed, to impose an appropriate criminal sanction.

My concerns are not just about the mechanisms of amendment 28. More fundamentally, the Government considers that the existing statutory framework that is set out in the bill provides a proportionate approach to offences. The awareness-raising that will be conducted by the Parliament in the run-up to the register becoming operational, alongside the guidance that is to be published by the Parliament, will ensure that registrants are aware of what is required of them.

Section 16 outlines the clerk’s duty to monitor compliance and section 17 describes the power that the clerk has to issue information notices requiring a person to supply information. In addition, section 22 provides for the duty of the Commissioner for Ethical Standards in Public Life in Scotland to investigate and report on complaints that are received when a person has failed to comply with the requirements of the act. The provision of guidance and the role of the clerk and commissioner, backed by the possibility of criminal sanctions, is fair to registrants and sufficient to ensure the robustness of the registration regime.

I ask Neil Findlay to seek to withdraw amendment 28 but, if he does not do so, I ask the committee to resist it.

Neil Findlay: At the beginning, it appeared that the minister supported the principle of amendment 28 but, through some verbal gymnastics, he got himself into a position of opposing it. If he supports the principle, will the Government work with me to bring back the amendment at stage 3 in a more acceptable form? If not, I will press the amendment.

Joe FitzPatrick: I understand the spirit of what Mr Findlay is saying, but I am clear that the bill as drafted meets the spirit.

The Convener: The question is, that amendment 28 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Scott, John (Ayr) (Con)

Against
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 28 disagreed to.

Section 42 agreed to.

Section 43—Parliamentary guidance

Amendments 29 and 30 moved—[John Scott]—and agreed to.

Amendment 31 moved—[Neil Findlay].

The Convener: The question is, that amendment 31 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Scott, John (Ayr) (Con)

Against
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)

The Convener: The result of the division is: For 2, Against 4, Abstentions 0.

Amendment 31 disagreed to.

Section 43, as amended, agreed to.

Section 44 agreed to.

Section 45—Offences by bodies corporate etc

Amendment 10 moved—[Joe FitzPatrick]—and agreed to.

Section 45, as amended, agreed to.

Section 46—Interpretation

Amendment 32 moved—[Patricia Ferguson].

The Convener: The question is, that amendment 32 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)

Against
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scott, John (Ayr) (Con)
Stevenson, Stewart (Banffshire and Buchan) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 32 disagreed to.

Section 46, as amended, agreed to.
The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 32 disagreed to.

Amendment 33 moved—[Patricia Ferguson].

The Convener: The question is, that amendment 33 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)

Against
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scott, John (Ayr) (Con)
Stevenson, Stewart (Banffshire and Buchan) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 33 disagreed to.

Amendment 11 moved—[Joe FitzPatrick]—and agreed to.

Section 46, as amended, agreed to.

Section 47 agreed to.

Section 48—Application of Act to trusts

Amendment 12 moved—[Joe FitzPatrick]—and agreed to.

Section 48, as amended, agreed to.

After section 48

The Convener: Amendment 13, in the name of the minister, is grouped with amendments 13A and 13B.

Joe FitzPatrick: Paragraph 100 of the committee’s stage 1 report highlighted that “a number of those responding to the Committee called for a review after an agreed period so that Parliament could revisit and revise the legislation.”

The Government agrees that there would be merit in conducting a review to consider how successfully the regime has operated and whether any changes should be made in light of the review.

That process would allow proper consideration of whether potentially significant changes should be made to the regulated lobbying regime rather than amending the bill now in ways that might put at risk the key principles of openness and accessibility that have underpinned the Government’s and committee’s approach to the bill. Putting in place a review mechanism enables the Parliament to gather information and establish an evidence base to support and justify any case for change.

That is why amendment 13 in my name would require the Parliament to conduct a review of the lobbying register after its first two years of formal operation. Although it will be for Parliament to determine the form and content of its final report, the Government believes that it is important to recognise that certain issues have attracted particular attention during the bill’s development and parliamentary passage. Therefore, the provision specifies that the report may in particular contain recommendations about whether to add to or modify the type of persons who would be treated as lobbyees under the regulated lobbying system, whether to add to or modify the types of communication that would be treated as regulated lobbying activity, and whether lobbyists who undertake regulated lobbying activity should be required to provide information about expenditure that is incurred in carrying out that regulated lobbying activity.

I expect the Parliament’s review to be thorough and wide ranging. Once it has been completed, it will be for Parliament to determine whether it wishes to use any of the powers in the act to make changes to the administration of the register or to introduce further primary legislation if it considers that a more fundamental policy change is required.

Although I appreciate the basis on which Cameron Buchanan’s amendments 13A and 13B have been lodged, I cannot recommend that members support them. Amendment 13A would reduce from two years to one year the period in which the Parliament’s review would be conducted. I do not believe that one year of operation of the register would be a sufficient period of time on which to base an informed analysis. Information returns will be provided by lobbyists every six months, and I believe that the Parliament will wish to enable that cycle to be completed more than once before it conducts its review.

Similarly, amendment 13B would reduce from two years to one year the period in which the Parliament must conduct and complete its review. In light of the expectation that Parliament will consult in developing its evidence base and on its draft recommendations, I do not believe that it would be appropriate to require the review to be completed in one year. However, it is important to remember that the Government’s proposed two-year limit is the maximum time that the Parliament will have in which to complete its review. It would therefore be open to Parliament to complete its review more quickly if it wished to do so.
I invite the committee to support amendment 13 in my name. I ask John Scott not to move amendments 13A and 13B in the name of Cameron Buchanan, but if he does so, I ask the committee to resist them.

I move amendment 13.

**John Scott:** We agree that it would be wise to review the operation of the register after we, and all concerned, have gained practical experience of its operation. However, the Government’s amendment requires only that a report is published within a period of four years after enactment, which is the sum of the two-year review period plus a subsequent two-year period to report. The process makes sense, but the timings appear to be too long.

If there are issues or gaps in the register that are serious enough to warrant revision, it is likely that they will be apparent within a year of the register’s operation. Furthermore, it should be possible to report on the register’s operation within a year when the aim is to review rather than to create from scratch.

We therefore suggest that the Government’s amendment is amended to reduce the time by which a report is to be published to two years. The amendments will achieve that by reducing the review period and the report period to one year each.

I move amendment 13A.

**Patricia Ferguson:** I am sympathetic to the Government’s amendment that seeks to reduce the review period, as that is absolutely necessary. I do not have a problem with a review taking place two years after the bill comes into force. However, I sympathise to some extent with Cameron Buchanan’s amendment 13B simply with regard to parliamentary cycles. If the bill is to be reviewed after two years and Parliament has up to two years to do that review, that would in effect mean that any resulting work on the bill would take place at the very end of a session. In all likelihood the work would be rushed or may not happen until the next parliamentary session.

If there are issues, flaws and faults in the bill, and if improvements can be made, we should do that within a reasonable timeframe, and certainly within the next session of Parliament. For that reason I will not support amendment 13A, but I will support amendment 13B.

**Joe FitzPatrick:** Patricia Ferguson makes some good points. The bill as drafted would allow Parliament to undertake the process faster if it chooses to. Amendment 13B would put in a rigid framework that might not work with the timetable for the next session of Parliament. It would be for Parliament rather than the Government to frame the review, so it would be better to give Parliament that flexibility going forward. Although I note that there are some arguments in that regard, I think that it is appropriate to resist amendments 13A and 13B.

**John Scott:** I hear what the minister says, and I welcome his comment that a review could take less than two years. As Patricia Ferguson said, in the normal cycle of parliamentary sessions—which we seem to have got out of at the moment—a review would take place at the end of a session and it would therefore be less likely that it would be acted on expeditiously.

I press amendment 13A.

**The Convener:** The question is, that amendment 13A be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**
Scott, John (Ayr) (Con)

**Against**
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)

**The Convener:** The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 13A disagreed to.

Amendment 13B moved—[John Scott].

**The Convener:** The question is, that amendment 13B be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Scott, John (Ayr) (Con)

**Against**
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)

**The Convener:** The result of the division is: For 2, Against 4, Abstentions 0.

Amendment 13B disagreed to.

Amendment 13 agreed to.

Section 49, as amended, agreed to.

Section 50—Commencement

**The Convener:** Amendment 34, in the name of Cameron Buchanan, is grouped with amendment 35.
**John Scott:** Amendment 34 would require the register to be operational at least three months before the registration requirements come into force. The intention is to allow potential registrants to become accustomed to using the register so that any technical difficulties or misunderstandings can be addressed before sanctions come into force. It is important that registrants are able to experience practical use of the register if they are to be ready when the requirements come into force.

Amendment 35 would require the guidance to be published at least three months before the registration requirements come into force. The intention is to allow potential registrants to understand their requirements in advance so that any action that is needed to comply can be taken before enforcement. That would give registrants a better chance to get to grips with the register without fear of falling foul of the requirements.

I move amendment 34.

**Joe FitzPatrick:** I thank Cameron Buchanan for lodging the amendments and I thank John Scott for his explanation of their purpose and effect.

The Government’s position is that implementation of the bill as enacted is properly a matter for Parliament, and that the Government will be steered by Parliament in determining when relevant provisions of the bill should commence. While I accept the spirit underlying Cameron Buchanan’s amendments, which would ensure that the mechanics of the register and the guidance are in place before the duty to register bites on lobbyists, I do not believe that it is necessary to set that out in the bill.

The Government would prefer to leave to the Parliament's discretion determining when the provisions in the bill should commence and the order in which commencement should take place. In doing so, the Government expects that the Parliament will wish to ensure that guidance on the operation of the bill as enacted has been produced and that support will be available to those lobbyists who may be required to register their lobbying activity.

For those reasons, I invite John Scott not to press amendment 34.

**John Scott:** I press amendment 34.

**The Convener:** The question is, that amendment 34 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**
Scott, John (Ayr) (Con)

**Against**
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)

**The Convener:** The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 34 disagreed to.

Amendment 35 moved—[John Scott].

**The Convener:** The question is, that amendment 35 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**
Scott, John (Ayr) (Con)

**Against**
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)

**The Convener:** The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 35 disagreed to.

Section 50 agreed to.

Section 51 agreed to.

Long title agreed to.

**The Convener:** That ends stage 2 consideration of the bill.

**Patricia Ferguson:** Convener, I crave your indulgence while the minister is still with us.

Minister, has a date been established for stage 3? Colleagues around the table should have the opportunity to think about the framing of amendments for that stage.

**Joe FitzPatrick:** I will come back to members on that.

**The Convener:** An early indication would certainly be helpful, minister. Thank you very much.
CONTENTS

Section

**PART 1**

**CORE CONCEPTS**

1  Regulated lobbying
2  Government or parliamentary functions

**PART 2**

**THE LOBBYING REGISTER**

*The register*

3  Lobbying register
4  Content of register
5  Information about identity
6  Information about regulated lobbying activity
7  Additional information

*Active registrants*

8  Duty to register
9  Application for registration
10  Entry in the register
11  Information returns

*Inactive registrants*

12  Reclassification as an inactive registrant on application
13  Reclassification as an inactive registrant without application

*Voluntary registrants*

14  Voluntary registration

**Further provision**

15  Power to specify requirements about the register

**PART 3**

**OVERSIGHT AND ENFORCEMENT**

*Duty to monitor*

16  Clerk’s duty to monitor compliance
**Information notices**

17 Clerk’s power to require information
18 Limitations on duty to supply information and use of information supplied
19 Appeal against information notice
20 Power to make further provision about information notices
21 Offences relating to information notices

**Investigation of complaints**

22 Commissioner’s duty to investigate and report on complaint
23 Requirements for complaint to be admissible
24 Procedure for assessing admissibility of complaint
25 Investigation of complaint
26 Commissioner’s report on complaint
27 Parliament’s action on receipt of report
28 Withdrawal of complaint
29 Commissioner’s discretionary reports to Parliament
30 Restriction on Commissioner’s advice
31 Directions to the Commissioner

**Investigations: witnesses and documents**

32 Power to call for witnesses and documents etc.
33 Notice
34 Exceptions to requirement to answer question or produce document
35 Evidence under oath
36 Offences relating to Commissioner’s investigation
37 Restriction on disclosure of information

**Commissioner’s functions**

38 Commissioner’s functions etc.
39 Investigation of performance of Commissioner’s functions

**Disposal of complaints**

40 Parliament’s power to censure

**Further provision**

41 Power to make further provision about Parliament’s procedures etc.

**Offences**

42 Offences relating to registration and information returns

**PART 4**

**GUIDANCE AND CODE OF CONDUCT**

43 Parliamentary guidance
44 Code of conduct for persons lobbying MSPs

**PART 5**

**FINAL PROVISIONS**

45 Offences by bodies corporate etc.
46 Interpretation
Schedule—Communications which are not lobbying
Lobbying (Scotland) Bill

Part 1—Core concepts

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 or a special adviser,
      (ia) 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,
      (ii) is made in relation to Government or parliamentary functions, and
      (iii) 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), it does not matter whether the communication occurs in or outwith Scotland.

(4) 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.
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.

Part 2

The lobbying register

The 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.

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.

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.

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,
   (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.

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.

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.

9 Application for registration

(1) A person may apply to the Clerk to be entered in the register if the person—
Lobbying (Scotland) Bill
Part 2—The lobbying register

10 Entry in the register

(1) This section applies where a person—
(a) provides information in accordance with section 8, or
(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.

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.
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

(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.

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.

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.

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.

Inactive registrants

Reclassification as an inactive registrant on application

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”).

The application under subsection (1) must—

(a) be in such form as the Clerk may determine, and

(b) contain either—
Lobbying (Scotland) Bill
Part 2—The lobbying register

(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.

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.

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).

(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.
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.

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

**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).

**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,
   (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.

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.

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.
Lobbying (Scotland) Bill
Part 3—Oversight and enforcement

(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.

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.

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.

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).

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

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).

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.

(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—
Lobbying (Scotland) Bill
Part 3—Oversight and enforcement

(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.

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.

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.

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.

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—
   (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.

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.

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—
Lobbying (Scotland) Bill
Part 3—Oversight and enforcement

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, the Commissioner 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,

   (i) 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,

   (ii) 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.

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

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.

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).

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).

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),

(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.

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,

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.”.

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”.

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.

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.

**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.

(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.

**PART 4**

**GUIDANCE AND CODE OF CONDUCT**

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.

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.

(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.

PART 5

FINAL PROVISIONS

45 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,

(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.

46 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),

“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,

“voluntary registrant” has the meaning given in section 3(6).

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,
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).

References to “responsible authority” are to be read as references to the Clerk.

Regulation 7(2) and (3) of the Scottish Statutory Instruments Regulations 2011 does not apply.

48 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.

48A 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 (ia), 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).

49 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.

50 Commencement

(1) This section and sections 46, 47, 49 and 51 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.

51 Short title

The short title of this Act is the Lobbying (Scotland) Act 2016.
## Schedule—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.

### Communications not made in return for payment

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

3. For the purposes of paragraph 2—
   
   (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.

### Communications in Parliament or required under statute.

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

### Communications made on request

4A. 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.

### Cross-party groups

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

### Journalism

8. A communication made for the purposes of journalism.
Communications in relation to terms and conditions of employment

8A 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.

8B 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.

8C In paragraph 8B, “trade union” is to be construed in accordance with section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992.

Communications by political parties

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

Communications by judiciary

10 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.

11 In paragraph 10—

“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—

(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.

Communications by Her Majesty

12 A communication made by or on behalf of Her Majesty.

Government and Parliament communications etc.

13 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.

In paragraph 13—

“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.
Lobbying (Scotland) Bill
[AS AMENDED AT STAGE 2]

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.

Introduced by: John Swinney
Supported by: Joe FitzPatrick
On: 29 October 2015
Bill type: Government Bill
INTRODUCTION

1. As required under Rule 9.7.8A of the Parliament’s Standing Orders, these revised Explanatory Notes are published to accompany the Lobbying (Scotland) Bill (introduced in the Scottish Parliament on 29 October 2015) as amended at Stage 2. Text has been added or deleted as necessary to reflect the amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the right margin.

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL

4. The Bill is separated into 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 (“the Commissioner”) and offences,
   - *Part 4* contains provision related to the publication of parliamentary guidance and a code of conduct for persons lobbying MSPs,
This document relates to the Lobbying (Scotland) Bill as amended at Stage 2 (SP Bill 82A)

- Part 5 contains final provisions relating to interpretation, the process for making parliamentary resolutions under the Bill, ancillary provision and other technical matters.

COMMENTARY ON SECTIONS

Part 1 – Core Concepts

Section 1: Regulated lobbying and the schedule: communications which are not lobbying

5. Section 1 sets out when a person engages in regulated lobbying for the purposes of the Bill. “Person” includes a natural person (individual) or a legal person (such as a company). Only persons who engage in regulated lobbying require to register and report details of lobbying activity under the Bill (on which see in particular sections 8 and 11).

6. Section 1(1)(a) provides that a person engages in regulated lobbying if the person makes a communication orally and in person, or if not made in person is made using equipment that is intended to allow both parties to see and hear each other, to a member of the Scottish Parliament, a member of the Scottish Government, a junior Scottish Minister or a special adviser if it is made in relation to Government or parliamentary functions, and if it is not of a kind listed within the schedule. A communication is made orally and in person if it is made, for example, at a face to face meeting between a person and an MSP, Minister or special adviser at either party’s offices. A communication is made using equipment which is intended to enable the individual making the communication and the individual receiving the communication to see and hear each other if it is made, for example, by video-conference (or similar mechanism).

7. Section 1(1)(b) provides that a person engages in regulated lobbying if in the course of a business or other activity carried on by the person an individual makes a communication of the type described in section 1(1)(a) (see paragraph 5 above) as an employee, director (including shadow director) or other office holder, partner or member of the person.

8. Section 1(2) provides that where a person engages in regulated lobbying by virtue of subsection (1)(b) of section 1 the individual mentioned there (i.e. the individual who made the communication) is not to be regarded as engaging in regulated lobbying. That is significant as only persons who engage in regulated lobbying require to register and report details of lobbying activity under the Bill (on which see in particular sections 8 and 11).

9. Section 1(3) provides that for the purposes of section 1(1) - the circumstances in which a person will engage in regulated lobbying for the purposes of the Bill – it does not matter whether the communication occurs in or outwith Scotland.

10. The schedule sets out details of communications which are not lobbying for the purposes of the Bill (i.e. the making of which will not amount to engaging in regulated lobbying under the Bill). The making of such communications will not therefore trigger the requirements to report details of lobbying activity under the Bill (on which see in particular sections 8 and 11).
This document relates to the Lobbying (Scotland) Bill as amended at Stage 2 (SP Bill 82A)

Communications made on individual’s own behalf

11. Paragraph 1 of the schedule provides that a communication made by an individual on their own behalf is not lobbying. The provision means there is no requirement under the Bill to register or submit returns of lobbying activity where an individual communicates with an MSP, Minister or special adviser in relation to the individual’s own affairs or views (and not in relation to the affairs or views of a third party).

Communications not made in return for payment

12. Paragraph 2 of the schedule provides that a communication made by an individual who is not making it in return for payment is not lobbying. The provision means no requirement under the Bill to register or submit returns of lobbying activity is triggered by voluntarily made communications with an MSP, Minister or special adviser.

13. Paragraph 3(a) of the schedule provides that for the purposes of paragraph 2 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.

14. Paragraph 3(b) of the schedule defines “payment” for the purposes of paragraph 2. In particular it means payment of any kind (e.g. payment of salary) but does not include reimbursement for travel, subsistence or other reasonable expenses related to the making of the communication.

Communications in Parliament or required under statute

15. Paragraph 4 of the schedule provides that a communication made in proceedings of the Parliament (and therefore already available to the public) or required under any statutory provision or other rule of law, is not lobbying.

Communications made on request

16. Paragraph 4A of the schedule provides that a communication about a topic which is made in response to a request for factual information or views on that topic from the person to whom the communication is made (i.e. MSP, Minister or special adviser) or a person acting on behalf of that person (e.g. a member of an MSP’s staff acting on behalf of an MSP or a civil servant acting on behalf of a Minister) is not lobbying.

Cross-party groups

17. Paragraph 7 of the schedule provides that a communication made in the context of, and during, a meeting of a group recognised as a cross-party group by the Parliament is not lobbying. Existing parliamentary rules mean information about participation in cross-party groups, including any secretarial support they receive, is available to the public.
Journalism

18. Paragraph 8 of the schedule provides that a communication made for the purposes of “journalism”, a concept recognised in the law, is not lobbying. For discussion of “journalism” in the courts see for example Commissioner of Police of the Metropolis v Times Newspapers Ltd [2011] EWHC 2705 (QB), per Mr Justice Tugendhat at paragraphs 131 and 132 in particular.

Communications in relation to terms and conditions of employment

19. Paragraphs 8A and 8B of the schedule provide that a communication made by or on behalf of any employer or by or on behalf of a trade union, to a member of the Scottish Parliament, a member of the Scottish Government, a junior Scottish Minister or a special adviser and which forms part of, or is directly related to, negotiations on terms and conditions of employment of the employees of the employer or of the members of the trade union is not lobbying.

20. Paragraph 8C provides the meaning of “trade union”.

Communications by political parties

21. Paragraph 9 of the schedule provides that a communication made by or on behalf of a party registered under Part 2 of the Political Parties, Elections and Referendums Act 2000 is not lobbying. This exception ensures that political discourse within (or between) registered political parties does not trigger any requirement to register.

Communications in the conduct of public affairs

22. Paragraphs 10 to 13 of the schedule have the effect that communications made in the conduct of public affairs are not lobbying.

23. Paragraph 10 of the schedule provides that a communication made by or on behalf of a holder of judicial office within the United Kingdom, or a member of the judiciary of an international court is not lobbying.

24. Paragraph 11 of the schedule defines “holder of judicial office within the United Kingdom” and “member of the judiciary of an international court” for the purposes of paragraph 10.

25. Paragraph 12 provides that a communication made by or on behalf of Her Majesty the Queen is not lobbying.

26. Paragraph 13 of the schedule provides that Government and Parliament communications (i.e. communication made by or on behalf of the holders of public offices (in that capacity), public bodies, organisations and institutions etc. listed in sub-paragraphs (a) to (o)) are not lobbying.
27. Paragraph 14 of the schedule provides that “State” (listed in paragraph 13(m), which provides that a communication by or on behalf of “a State other than the United Kingdom” is not lobbying) includes, but is not limited to, the government of any State and any organ of such a government and that the reference to a State other than the United Kingdom includes reference to any territory outside the United Kingdom. The paragraph 13(m) exception therefore covers communications by any of the various organs of government (legislative, executive or judicial) of a foreign country or a territorial unit of such country. Paragraph 14 also defines “international organisation” (listed in paragraph 13(o), which provides that a communication by or on behalf of “an international organisation” is not lobbying).

Section 1: Additions to the Schedule

28. Section 1(4) of the Bill provides that the Parliament may by resolution modify the schedule so as to add further descriptions of kinds of communications (which if added would then also be communications which are not lobbying for the purposes of the Bill, i.e. the making of which will not amount to engaging in regulated lobbying under the Bill) or to modify or remove such descriptions added. Section 47 makes provision in relation to the process to be followed in relation to parliamentary resolutions, including provision for them to be published in the same way as Scottish statutory instruments so that they are published in a recognised format and are easily accessible.

Section 2: Government or parliamentary functions

29. Section 2(1)(a) to (f) sets out what are Government or parliamentary functions for the purposes of section 1. The section complements provision in section 1 which as noted above provides that, subject to the terms of the schedule, it is communications made orally and in person, or if not made in person are made using equipment (e.g. video-conferencing or similar mechanisms) that is intended to allow both parties to see and hear each other, to a member of the Scottish Parliament, a member of the Scottish Government, a junior Scottish Minister or a special adviser and which is made in relation to Government or parliamentary functions which trigger the requirements under the Bill to register or submit returns of lobbying activity.

30. Subsection (2) provides that 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. And so communications with the Lord Advocate or the Solicitor General in relation only to the retained functions of the Lord Advocate will not trigger the requirements under the Bill to register or submit returns of lobbying activity. The retained functions of the Lord Advocate are, as noted, defined in section 52(6) of the Scotland Act 1998. They are any functions exercisable by the Lord Advocate immediately before the Lord Advocate ceased to be a Minister of the Crown on devolution and other statutory functions conferred on the Lord Advocate alone after he ceased to be a Minister of the Crown. These functions relate mainly to the Lord Advocate’s role as head of the systems of criminal prosecution and investigation of deaths in Scotland.

Part 2 – The lobbying register

31. Section 3 contains provision relating to the establishment and maintenance of a lobbying register.
This document relates to the Lobbying (Scotland) Bill as amended at Stage 2 (SP Bill 82A)

32. Subsection (1) places a duty on the Clerk (a member of staff appointed by the Scottish Parliamentary Corporate Body – see in particular sections 20 and 21 of the Scotland Act 1998) to establish and maintain a lobbying register, which is to contain information about three categories of person. Those categories are:
   • active registrants,
   • inactive registrants, and
   • voluntary registrants.

Active registrants

33. An “active registrant” is a person entered in the register under section 10. Section 10 sets out two ways a person may become an active registrant.

34. A person may become an active registrant by providing information to the Clerk under the duty to register in section 8. The duty to register applies where a person (who is not already registered as an active registrant) engages in regulated lobbying.

35. Alternatively, a person may apply to be entered in the register as an active registrant under section 9. Section 9 allows a person to be entered in the register as an active registrant in advance of engaging in regulated lobbying.

Inactive registrants

36. The concept of “inactive registrant” is included within the statutory framework as a way to manage the registration process and minimise any burdens arising from it. It allows a means for a person who has been registered as an active registrant to no longer be subject to the requirement to make information returns (under section 11) every 6 months if they are no longer and do not intend in the future to be engaged in regulated lobbying activity. This avoids the registrant from having to submit ‘nil’ returns, and the Clerk having to oversee and administer those returns. The effect of these provisions is that there is a statutory duty for any relevant instance of lobbying to be registered, but there are reduced administrative burdens relating to lobbying which may occur on a one-off or infrequent basis.

37. An active registrant may become an “inactive registrant” if the Clerk believes the active registrant is not, or is no longer, engaged in regulated lobbying. An active registrant may apply to become an inactive under section 12, or the Clerk may recategorise an active registrant without an application under section 13 (provided the Clerk has given the active registrant notice and a chance to make representations). Sections 12 and 13 are discussed further below.

38. An inactive registrant may revert to being an active registrant if they are re-entered in the register under section 10.

Voluntary registrants

39. Voluntary registration opens the registration scheme to those who deem themselves to undertake lobbying but do not trigger the statutory requirement to register because the lobbying
This document relates to the Lobbying (Scotland) Bill as amended at Stage 2 (SP Bill 82A)

does not amount to engaging in regulated lobbying within the meaning of the Bill (see section 1), e.g. lobbying carried out for a person by an individual who is not making the communications in return for payment. This ability to register on a voluntary basis would for example therefore allow an individual or entity to register and submit returns in relation to any engagement they have with MSPs, Ministers or special advisers even if there is no requirement for the individual or entity to do so under the Bill.

40. A person may apply to be a “voluntary registrant” under section 14, unless the person is already an active registrant. It is for the Clerk to decide whether to enter the applicant in the register or refuse the application.

Clerk’s duty to publish information from the register

41. Subsections (2) to (4) of section 3 deal with publication of information in the register. The Clerk is under a duty to publish the information in the register about active registrants. The Clerk may however decide not to publish information about individuals if the Clerk considers publication of that information would be inappropriate.

42. The Clerk may choose to publish information about inactive registrants and voluntary registrants.

Information about identity

43. Section 4 provides that for all registrants – i.e. active registrants, inactive registrants and voluntary registrants – the register must contain information about the registrant’s identity as set out in section 5. The identity information set out in section 5 varies depending on the type of person (e.g. individual, company, partnership or other person) but in all cases will include the person’s name and address.

Information about regulated lobbying activity

44. Section 4 also provides that for both active and inactive registrants the register must also contain information about the registrant’s regulated lobbying activity as set out in section 6 and such additional information provided by the registrant mentioned in section 7.

45. Section 6 sets out the information about the lobbying activity of both active registrants and inactive registrants that the register must contain. That information includes, in relation to each instance of regulated lobbying, the name of the MSP, member of the Scottish Government, junior Scottish Minister or special adviser lobbied, the date on which the lobbying occurred etc.

46. Section 7 sets out the additional information in relation to active registrants and inactive registrants that the register must contain. That additional information is such information as may be provided by the registrant about any code of conduct which governs regulated lobbying and in relation to which there is an undertaking for the registrant to comply and – so far as the Clerk considers appropriate to include it - such other information as may be provided by the registrant for inclusion in the entry.
Duty to register

47. **Section 8** imposes a duty to register on a person who engages in regulated lobbying when the person is not an active registrant. The person must, within 30 days beginning with the date on which the first instance of regulated lobbying occurred, provide the Clerk information in relation to the person’s identity (see section 5) and information as set out in section 6 in relation to the first instance of regulated lobbying.

48. Section 8(3) provides that a person must provide the information under subsection (1) in such form as the Clerk may determine.

Application for registration

49. **Section 9** contains provision relating to applications for registration, in particular to allow a person to seek to be entered on the register in advance of the person engaging in regulated lobbying, if they so wish. A person who is not already an active registrant is therefore able to apply to the Clerk to be entered in the register (and therefore become an active registrant), providing information about their identity as set out at section 5. Again, the information must be in such a form as the Clerk may determine.

Entry in the register

50. **Section 10** contains provision relating to the Clerk entering a person in the register as an active registrant following the person providing information under section 8 or applying under section 9.

51. The section goes on to outline the action that must be taken by the Clerk as soon as reasonably practicable after information or an application is received. In particular the Clerk must enter the person in the register as an active registrant and update the register with both (a) information provided by the person under section 8(1) (duty to register in 30 days following first instance of engaging in regulated lobbying when not an active registrant) or under section 9(2)(b) (application by person who is not an active registrant and who has not engaged in regulated lobbying) and (b) any other information provided by the registrant and which the Clerk agrees to include in the register.

52. Once the Clerk has entered the person on the register the Clerk must, as soon as reasonably practicable, send a written notice to the person informing the person of the date on which the period of 6 months in section 11(1)(a) begins for that person (i.e. the date which is the beginning of the 6 month period in respect of which the person will, as an active registrant, require to submit a first information return in relation to regulated lobbying activity under section 11) and of the effect of section 11(1)(b) (which provides that an active registrant must thereafter submit information returns in respect of each subsequent 6 month period).

53. Subsection (4) makes clear that the Clerk may send additional copies of a notice sent under subsection (3) by whatever means the Clerk considers appropriate (for example, by e-mail).
Information returns

54. **Section 11** contains provision relating to each active registrant’s duty to submit information returns.

55. An active registrant must submit to the Clerk (in such a form as the Clerk may determine) an information return in respect of an initial period of six months (the start date of the initial period of six months being either the date on which first instance of lobbying in relation to which the registrant provided information under section 8(1) (duty to register in 30 days following first instance of engaging in regulated lobbying when not an active registrant) occurred or the date of the registrant’s application under section 9 (application by person who is not an active registrant and who has not engaged in regulated lobbying)), whichever is the case, and each subsequent period of 6 months. Information returns must be submitted before the end of the period of 2 weeks beginning immediately after the end of each 6 month period.

56. **Section 11(3)** provides that the first information return to be provided by an active registrant after the registrant provides information under section 8(1) (duty to register in 30 days following first instance of engaging in regulated lobbying when not an active registrant) must contain the information as set out in section 6 about the registrant’s regulated lobbying activity during the 6 month period in question (other than the first instance of regulated lobbying provided under section 8(1)(b)) or a statement that the registrant has not engaged in regulated lobbying activity in that period (other than that first instance).

57. **Section 11(4)** provides that every other information return submitted by a registrant under section 11 must contain the information set out in section 6 about the registrant’s regulated lobbying activity in the 6 month period in question or a statement that the registrant has not engaged in regulated lobbying activity in that period and, if any information included in relation to the registrant has become inaccurate, information about the changes that have occurred.

58. **Section 11(5)** provides that an active registrant may at any time notify the Clerk in writing:
   - if any information included in the register in relation to that registrant has become inaccurate, about the changes that have occurred,
   - about information about any code of conduct which governs regulated lobbying and in relation to which there is an undertaking for the registrant to comply,
   - about such other information which, with the agreement of the Clerk, the registrant wishes to be included in the register.

59. The Clerk is required to update the register to include the information contained in an information return or received under section 11(5) as soon as reasonably practicable after receiving the information.

Reclassification as an inactive registrant

60. **Section 12** contains provision relating to an application by an active registrant to be reclassified as an inactive registrant.
61. Subsections (2), (3) and (4) provide that an application to be entered in the register as an inactive registrant must be in such form as the Clerk may determine and specify the information that must be contained in such an application. Any application will require to include such information about the active registrant’s regulated lobbying activity (as set out in section 6) which has not at the date of the application yet been provided to the Clerk or a statement to the effect that the active registrant has not engaged in any such regulated lobbying.

62. Subsections (5) and (6) set out the process to be followed by the Clerk if, following the application, the Clerk has reasonable grounds to believe (i.e. on the basis of facts or information available) that the applicant is not, or is no longer, engaged in regulated lobbying. The Clerk may in particular enter the applicant in the register as an inactive registrant by updating the applicant’s entry in the register accordingly. The Clerk must notify the applicant of both the date on which the applicant is entered on the register as an inactive registrant and the effect of that.

63. **Section 13** contains provision relating to the reclassification as an inactive registrant by the Clerk without an application under section 12.

64. Subsection (1) allows the Clerk to enter an active registrant in the register as an inactive registrant if there is no outstanding application by the registrant under section 12, and the Clerk has reasonable grounds to believe (i.e. on the basis of facts or information available) that the registrant is not, or is no longer, engaged in regulated lobbying.

65. Subsection (2) provides that before deciding under this section to enter an active registrant in the register as an inactive registrant the Clerk must give to the registrant a notice stating that the Clerk is considering updating the registrant’s entry, the Clerk’s reasons for doing so and that the registrant has the right to make written representations to the Clerk before the date which is specified in the notice (such date to be at least 28 days after the date on which the notice is given).

66. Subsection (3) provides that the Clerk must consider any representations made by the registrant in making a decision under this section.

67. Subsection (4) provides that the Clerk must, as soon as practicable after making a decision under this section to enter a registrant in the register as an inactive registrant, update the registrant’s entry in the register accordingly.

68. Subsection (5) sets out the process to be followed by the Clerk after making a decision under this section. Again, the Clerk must notify the applicant of both the date on which the applicant is entered on the register as an inactive registrant and the effect of that.

69. In particular the effect of a person being entered in the register as an inactive registrant under either section 12 or section 13 will be that the person will as an inactive registrant no longer be under a duty, as they would have been as an active registrant, to submit 6 monthly information returns under section 11. But the effect is also that if the person engages in regulated lobbying on or after the date on which they are entered as an inactive registrant they
will be under a duty to provide information under section 8(1) (duty to register in 30 days following first instance of engaging in regulated lobbying when not an active registrant).

**Voluntary registration**

70. **Section 14** contains provision relating to voluntary registration.

71. Subsection (1) provides that a person may apply to the Clerk be entered in the register as a voluntary registrant (unless the person is already an active registrant).

72. Subsection (2) provides that an application under this section must be in such form as the Clerk may determine and specifies that the application must contain information in relation to the person’s identity (which varies depending on the type of person, e.g. in the case of a company, the name of the company, its registered number etc.) as set out in section 5.

73. Subsection (3) provides that the Clerk may either enter or refuse to enter the applicant in the register.

74. Subsection (4) sets out that the Clerk may remove a voluntary registrant from the register on an application from the voluntary registrant to do so or may update the register accordingly if (following submission of information under section 8(1) (duty to register in 30 days following first instance of engaging in regulated lobbying when not an active registrant) or an application under section 9 (application by person who is not an active registrant and who has not engaged in regulated lobbying) the person is instead entered in the register as an active registrant.

**Power to specify requirements about the register**

75. **Section 15** provides that the Scottish Parliament may by resolution make provision about Part 2 of the Bill.

76. The Bill sets the overarching statutory framework for a lobbying register. 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) without the need for primary legislation. That includes in particular flexibility to make provision about the duties of the Clerk on whom functions are conferred in relation to the register, obligations on those wishing to register and those registered and more generally management of the register and information contained in it.

77. Section 15(1)(a) to (i) provides a non-exhaustive list of examples of what resolutions made under this section may make provision about. Section 15(2) provides that a resolution made under this section may modify sections 4 to 14. 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 conferring the power is though to allow the Parliament to make further detailed operational provision, or to adjust existing provision, in connection with the lobbying register in light of practical experience over time.
78. Section 47 makes provision in relation to the process to be followed in relation to parliamentary resolutions, including provision for them to be published in the same way as Scottish statutory instruments so that they are published in a recognised format and easily accessible.

Part 3 – Oversight and Enforcement

    (a) the Clerk

Clerk’s duty to monitor compliance

79. Section 16 imposes a duty on the Clerk to monitor compliance with the obligations imposed by or under the Bill on persons who engage in regulated lobbying and voluntary registrants. Section 16(2) makes clear that in exercising the duty, the Clerk must have regard to the parliamentary guidance (see section 43).

Information notices

80. Section 17 provides that in connection with the duty under section 16, the Clerk may serve a notice (an “information notice”) on an active registrant, a voluntary registrant or 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, whether in or outside Scotland, requiring the person to supply information specified in the notice.

81. Section 17(3) states that the information notice must specify the form in which the information must be supplied, the date by which the information must be supplied and contain particulars of the right to appeal under section 19(1).

82. Subsection (4) confirms that the date specified under subsection (3)(b) must not be before the end of the period (21 days) within which an appeal against an information notice under section 19(1) can be made.

83. Subsection (5) confirms that where an information notice has been served on a person, the Clerk may send an additional copy of the information notice by whatever means the Clerk considers appropriate (e.g. by e-mail or hard copy) and may cancel the information notice by serving notice to that effect on the person.

84. Section 18(1) provides that an information notice does not require a person to supply information which would disclose evidence of the commission of an offence by the person (other than an offence under section 42(1), section 42(2), or section 42(3) of the Bill (offences relating to registration and information returns)). Section 18(1) also provides that an information does not require a person to disclose information which the person would otherwise be entitled to refuse to supply in proceedings in a court in Scotland. This covers for example various other privileges recognised by the courts in Scotland such as the privilege which attaches to solicitor/client communications – i.e. information in respect of which a claim to confidentiality of communications as between client and professional legal adviser could be maintained in legal proceedings.
85. Section 18(2) provides that 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) (offences of failure to provide required information under and information notice or provision of inaccurate or incomplete information) unless the person is prosecuted for an offence under section 42(1), section 42(2), or section 42(3) of the Bill (offences relating to registration and information returns) and in proceedings for that offence the person gives contrary evidence and evidence relating to the statement is introduced by the person or on their behalf.

86. **Section 19** sets out a framework for appeals against information notices served by the Clerk under section 17.

87. Subsection (1) provides that a person on whom an information notice has been served may appeal (on fact or law) to the sheriff against the notice or any requirement specified in it.

88. Subsection (2) provides that 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.

89. Subsection (3) provides that a decision of the Sheriff Appeal Court on appeal (on fact or law) against the sheriff’s decision is final. On appeals from the sheriff to the Sheriff Appeal Court see in particular section 110 of the Courts Reform (Scotland) Act 2014.

90. Subsection (4) makes clear that if an appeal is brought under this section, the person is not required to supply the information specified in the information notice under appeal until the date on which the appeal is “finally determined” (on which see subsection (5)) or the person decides not to proceed with the appeal and it is withdrawn.

91. **Section 20** gives the Scottish Parliament a power, exercisable by resolution, to make further provision about information notices.

92. Section 20(2) provides that a resolution under subsection (1) may in particular make provision (or further provision), specifying descriptions of information which the Clerk may not require a person to supply in response to an information notice, 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) and about other matters which must be specified in an information notice.

93. Section 47 makes provision in relation to the process to be followed in relation to parliamentary resolutions, including provision for them to be published in the same way as Scottish statutory instruments so that they are published in a recognised format and easily accessible.

94. **Section 21** sets out the framework for offences relating to information notices.

95. Subsection (1) provides that it is an offence for a person who has been served with an information notice under section 17 to fail to supply the required information on or before the
date by which the person is required to do so or to provide information which is inaccurate or incomplete in a material particular.

96. Subsection (2) provides that it is a defence to a charge in proceedings against a person for an offence under subsection (1) to show that the person exercised all due diligence to avoid committing the offence. This imposes an evidential burden only on the person.

97. Subsection (3) provides that 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.

(b) the Commissioner – investigation of complaints and report to Parliament

98. Section 22 imposes a duty on the Commissioner to investigate when the Commissioner receives a complaint that a person has or might have failed:

(a) to comply with section 8(1) (duty to register in 30 days following first instance of engaging in regulated lobbying when not an active registrant),

(b) to provide accurate and complete information in an application made under section 9 (application by person who is not an active registrant and who has not engaged in regulated lobbying),

(c) to comply with section 11 (duty on active registrant to submit information returns), or

(d) to supply accurate and complete information in response to an information notice in accordance with section 17.

99. Subsection (2) makes clear that on receipt of such a complaint 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).

100. Subsection (3) provides that in exercising the duties imposed by or under this Act, the Commissioner must have regard to the parliamentary guidance (see section 43).

101. Subsection (4) states that an assessment under subsection (2)(a) and an investigation under subsection (2)(b)(i) must be conducted in private.

Assessment of admissibility of complaints

102. Section 23 provides for a three part test for admissibility. Subsection (1) explains that a complaint is admissible if it appears to the Commissioner that the complaint:

(a) is relevant (see subsection (2)),

(b) meets the conditions mentioned in subsection (3), and

(c) warrants further investigation (see subsection (4)).
103. Subsection (2) states that a complaint is relevant if it appears at first sight – ie on its face - to be about a person who may in the future be, or may currently be, or may previously have been, engaged in regulated lobbying, and that, if all or part of the conduct complained about is established, it might amount to a failure to comply with a requirement mentioned in section 22(1)(a) to (d).

104. Subsection (3) sets out a number of conditions - largely procedural in nature - that require to be met before a complaint will be admissible, including that the complaint must be in writing, must be made by an identifiable individual (rather than in the name of another person such as a company) and made before the end of the period of one year beginning on the date when the complainant could reasonably have become aware of the conduct complained about.

105. Subsection (4) provides that a complaint warrants further investigation if there is sufficient evidence 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).

106. Section 24 sets out the procedure for assessing admissibility of a complaint. Subsection (2) provides that when 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), the Commissioner must notify the person who is the subject of the complaint that the complaint has been received, inform that person of the nature of the complaint and, except where the Commissioner considers that it would not be appropriate to do so (e.g. where the complainant might be vulnerable or where to do so could prejudice an investigation), inform that person of the name of the individual who made the complaint.

107. Subsection (3) focusses on the first part of the test for admissibility – whether the complaint is relevant. It provides that if the Commissioner considers that the complaint is not relevant, the Commissioner must dismiss it.

108. Subsections (4) to (7) focus on the second part of the test for admissibility – whether the conditions in section 23(3) are met. In particular provision is made in subsections (5) to (7) for where a relevant complaint fails to meet one or more of the conditions mentioned in section 23(3).

109. Subsection (5)(a) provides that if the complaint is of a kind specified in a direction by the Parliament, the Commissioner must make a report to the Parliament (before the Commissioner considers the third part of the test for admissibility (ie whether the complaint warrants further investigation)). Subsection 5(b) provides that if the complaint is not of such a kind the Commissioner will consider whether the complaint warrants further investigation and, if it does, will report to the Parliament. Subsection 5(c) deals with other cases, ie where the complaint is not of a kind specified in a direction by the Parliament and where the Commissioner considers that the complaint does not warrant further investigation, in which case the Commissioner will dismiss the complaint.

110. Subsection (6) sets out the information which a report under subsection (5)(a) or (b) must contain. Subsection (7) provides that after receiving a report under subsection (5)(a) or (b) the 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 meets all of those conditions. If the direction is to treat the complaint as if it meets all the conditions and is issued in response to a report under subsection (5)(a), the Commissioner will then require to consider the third part of the test for admissibility – whether the complaint warrants further investigation.

111. Subsection (8) provides that if the Commissioner considers that the complaint is admissible (in accordance with the three part test, i.e. as (a) relevant, (b) meeting all of the conditions in section 23(3) (or having been directed by the Parliament under subsection (7)(b) to treat the complaint as meeting all of those conditions) and (c) warranting further investigation), the Commissioner must inform all of the Parliament (by making a report to the Parliament), the individual who made the complaint and the person who is the subject of the complaint.

112. Subsection (9) deals with the situation where the Commissioner considers a complaint is inadmissible and has not already dismissed it under or in pursuance of other provision in section 24 (i.e. subsections (3), (5)(a) or (7)(a)). This will be the case where the Commissioner considers that a relevant complaint which meets the conditions in section 23(3) does not warrant further investigation or where following a report to the Parliament on a relevant complaint under subsection (5)(a) the Parliament directs the Commissioner to treat the complaint as if the section 23(3) conditions are met but the Commissioner then determines that the complaint does not warrant further investigation. The Commissioner is to dismiss the complaint.

113. Subsection (10) provides that, 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.

114. Subsection (11) confirms that subsections (2), (8) and (10) apply only to the extent that they are capable of applying where the person to whom the complaint relates has not been named in the complaint or the individual who made the complaint is anonymous.

115. Subsection (12) provides that if the Commissioner has not assessed whether a complaint is admissible within 2 months of receiving the complaint, the Commissioner must, as soon as possible thereafter, make a report to the Parliament on the progress of the assessment of admissibility.

Investigation of admissible complaint and report to Parliament

116. Section 25(1) provides that section 25 applies to the investigation of a complaint assessed as admissible under section 22(2)(a).

117. Subsection (2) provides that 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.

118. Subsection (3) provides that the Commissioner may make a finding of fact if satisfied on the balance of probabilities that the fact is established.
119. Subsection (4) provides that 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 admissible, the Commissioner must, as soon as possible thereafter, make a report to the Parliament on the progress of the investigation.

120. **Section 26** makes provision in respect of a Commissioner’s report on the outcome of any investigation of an admissible complaint.

121. Subsection (2) sets out the information that the report must contain, including details of the complaint, the Commissioner’s findings in fact and details of any representations made under subsection (4)(b) by the person who is the subject of the complaint.

122. Subsection (3) provides that the report must not make reference to action which may be taken by the Parliament under section 40 (censure by the Parliament or no further action).

123. Subsection (4) makes clear that 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, and (b) provide that person with an opportunity to make representations on the draft report.

124. **Section 27**(1) provides that the Parliament is not bound by the facts found by the Commissioner in a report made under section 22(2)(b)(ii) (Commissioner’s report on the outcome of an admissible complaint).

125. Subsection (2) provides that 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.

126. Subsection (3) provides that subject to a direction under subsection (2), the provisions of the Bill and of any other direction made under the Bill apply (subject to necessary modifications) in relation to any further investigation and report as they apply in relation to an investigation and report into a complaint.

**Withdrawal of a complaint**

127. **Section 28**(1) and (2) provide that 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 signed written notice to the Commissioner.

128. Subsection (3)(a) and (b) sets out the actions that the Commissioner must take when a complaint is withdrawn during an assessment of admissibility under section 22(2)(a). The Commissioner must cease to investigate and inform the person who is the subject of the complaint.
129. Subsection (4)(a) to (c) sets out the actions that the Commissioner must take when a complaint is withdrawn during an investigation of an admissible complaint under section 22(2)(b)(i). The Commissioner must inform the person who is the subject of the complaint, invite that person to express views on whether the investigation should nevertheless continue and, having considered relevant information, determine whether to recommend to the Parliament that the investigation should continue.

130. Subsection (5) provides that for the purposes of subsection (4)(c) “relevant information” includes any reason given by the individual who made the complaint for withdrawing it and any views expressed by the person who is the subject of the complaint on whether the investigation should continue.

131. Subsection (6)(a) to (d) sets out the actions that the Commissioner must take when the Commissioner determines to recommend to the Parliament that the investigation should cease (including informing the complainer and person who is the subject of the complaint and reporting to the Parliament).

132. Subsection (7)(a) to (e) provides that where the Commissioner determines to recommend to the Parliament that the investigation should continue the Commissioner must report to the Parliament setting out particular matters, including the reasons for the Commissioner’s recommendation.

133. Subsection (8) provides that after receiving a report under subsection (7), the Parliament must direct the Commissioner to either continue the investigation or cease the investigation.

134. Subsection (9) provides that 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 be continued or ceased.

135. Subsection (10) makes clear that where the Commissioner is required under this section to provide reasons given by the individual who made the complaint for withdrawing it (e.g. under section 28(3)(b)(iii)), the Commissioner may provide a summary of those reasons.

Commissioner’s discretionary reports to Parliament

136. Section 29 provides that the Commissioner may, in such circumstances as the Commissioner thinks fit, make a report to the Parliament as to the progress of any actions taken by the Commissioner in accordance with the Commissioner’s duties under section 22(2) or informing the Parliament of a complaint which the Commissioner has dismissed as being inadmissible and the reasons for the dismissal.

Restriction on Commissioner’s advice

137. Section 30(1) provides that the Commissioner may not give advice as to whether conduct which has been, or is proposed to be, committed by a person would constitute a failure to comply with a requirement mentioned in section 22(1)(a) to (d), or otherwise express a view upon such a requirement, except in the context of an investigation or report mentioned in section 22.
138. Subsection (2) provides that nothing in subsection (1) prevents the Commissioner from giving advice or otherwise expressing a view about the procedures for making a complaint to the Commissioner or the procedures following upon the making of a complaint.

**Directions to the Commissioner**

139. The general power in section 31 of the Bill for the Parliament to issue directions to the Commissioner provides for operational flexibility in the overall arrangements for oversight of the registration regime by the Commissioner and the Parliament as provided for in Part 3 of the Bill (in particular sections 22 to 30).

140. Subsection (1) provides that the Commissioner must, in carrying out the Commissioner’s functions conferred by or under the Bill, comply with any direction given by the Parliament.

141. Subsection (2) provides a non-exhaustive list of examples of the types of thing a direction given by the Parliament may deal with. A direction may:

(a) make provision as to the procedure to be followed by the Commissioner when conducting an assessment (assessment of admissibility of complaint) or investigation (investigation of admissible complaint) mentioned in section 22,

(b) set out circumstances where, despite receiving a complaint mentioned in section 22, the Commissioner:

(i) may decide not to conduct an assessment under section 22(2)(a) (assessment of admissibility of complaint) or an investigation under section 22(2)(b)(i) (investigation of admissible complaint) or, if started, may suspend or stop such an assessment or investigation before it is concluded,

(ii) must not conduct such assessment or investigation or, if started, must suspend or stop such assessment or investigation before it is concluded,

(iii) is not required to report to the Parliament under sections 22(2)(b)(ii), 24(5)(a) or (b), (8)(a) or (12), 25(4) or 28(7), or

(c) require the Commissioner to report to the Parliament upon such matter relating to the exercise of the functions of the Commissioner under the Bill as may be specified in the direction.

142. Subsection (3) makes clear that a direction under subsection (1) may not direct the Commissioner as to how any particular investigation is to be carried out.

**Commissioner investigations: witnesses and documents**

143. Section 32(1) provides that the Commissioner may for the purposes of an investigation under section 22(2)(b)(i) (investigation into an admissible complaint) require any person, whether in or outwith Scotland, to attend the Commissioner’s proceedings (ie any formal activity the Commissioner undertakes as part of his investigation) for the purpose of giving evidence or to produce documents in the person’s custody or under the person’s control.
144. Subsection (2) provides that 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.

145. Subsection (3) makes clear that the Commissioner may not impose such a requirement on any person whom 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.

146. Subsection (4) provides that 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.

147. Section 33 provides that notice must be given to a person of a requirement under section 32(1) to attend for the purposes of giving evidence or to produce documents in the person’s custody and what information must be provided to the person in such notice.

148. Paragraph (a) specifies what information must be contained in the notice where the person is required to give evidence.

149. Paragraph (b) specifies what information must be contained in the notice where the person is required to produce a document.

150. Section 34(1) provides that 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. As noted above this covers for example various privileges recognised by the courts in Scotland such as the privilege against self-incrimination and certain other privileges in connection with litigation.

151. Subsection (2) provides that 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 officer would be entitled to decline to answer or to produce in accordance with section 27(3) or, as the case may be, section 23(10) of the Scotland Act 1998. This provides for these persons to refuse to answer questions or provide documents about particular criminal proceedings when it is considered that it would be prejudicial to those proceedings or contrary to the public interest to do so.

152. Section 35(1) provides that the Commissioner may administer an oath to any person giving evidence to the Commissioner and require that person to take an oath.

153. Subsection (2) provides that a person who refuses to take an oath when required under subsection (1) commits an offence.

154. Subsection (3) provides that a person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale or imprisonment for a period not exceeding 3 months.
155. **Section 36**(1) provides that a person to whom a notice under section 33 has been given (notice of requirement to attend for the purposes of giving evidence or to produce documents in the person’s custody) 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.

156. Subsection (2) provides that it is a defence to a charge in proceedings against a person for an offence under subsection (1)(a), (b) or (d) to show that there was a reasonable excuse for the refusal or failure. This imposes an evidential burden only on the person.

157. Subsection (3) provides that a person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a period not exceeding 3 months.

**Commissioner investigations - restriction on disclosure of information**

158. **Section 37**(1) provides that 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) (assessment of admissibility of a complaint), 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) (investigation of an admissible complaint).

159. Subsection (2) provides that the persons referred to in subsection (1) are the Commissioner, a member of the Commissioner’s staff, or any other person appointed by the Commissioner.

160. Subsection (3)(a) makes clear that subsection (1) does not prevent disclosure of information for the purpose of enabling or assisting the Commissioner to discharge the Commissioner’s functions:

   (i) conferred by or under the Bill (including by a resolution of the Parliament under section 41 (power to make further provision about the Parliament’s procedures on receipt of a report from the Commissioner under Part 3 of the Bill)),

   (ii) conferred by or under any other enactment, or

   (iii) in the standing orders of the Scottish Parliament.

161. Subsection (3)(b) makes clear that subsection (1) does not prevent disclosure of information for the purpose of the investigation or prosecution of any offence or suspected offence.

**Commissioner’s functions etc.**

162. **Section 38** sets out a series of modifications (as provided for in subsections (2) to (4)) to the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 in consequence of
This document relates to the Lobbying (Scotland) Bill as amended at Stage 2 (SP Bill 82A)

this Bill. That Act makes general provision for the Commissioner and exercise of the Commissioner’s functions under existing legislation. The modifications are to reflect the conferral of further functions on the Commissioner under the Bill.

**Investigation of performance of Commissioner’s functions**

163. *Section 39* provides for consequential changes to schedule 2 to the Scottish Public Services Ombudsman Act 2002 so that the Commissioner in exercise of functions under the Bill is a person liable to investigation by the Scottish Public Services Ombudsman for the purposes of that Act.

**Parliament’s power to censure**

164. *Section 40* provides that after receiving a report under section 22(2)(b)(ii) (report of outcome of investigation of admissible complaint) or section 27(2) (report of further investigations after direction by the Parliament following receipt of report of outcome of investigation of admissible complaint under section 22(2)(b)(ii)), the Parliament may censure the person who is the subject of the report or take no further action.

**Power to make further provision about Parliament’s procedures etc.**

165. *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 this Part. Subsection (2)(a) to (d) sets out what, in particular, a resolution under subsection (1) may make provision about.

166. Section 47 makes provision in relation to the process to be followed in relation to parliamentary resolutions, including provision for them to be published in the same way as Scottish statutory instruments so that they are published in a recognised format and easily accessible.

(c) offences

167. *Section 42* makes provision for offences in relation to registration and information returns. Subsection (1) provides that it is an offence for a person who is required to provide information under section 8(1) (duty to register in 30 days following first instance of regulated lobbying when not an active registrant) to fail to provide the information on or before the date the by which the person is required to do so or provide information which is inaccurate or incomplete in a material particular.

168. Subsection (2) provides that 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.

169. Subsection (3) provides that it is an offence for a person who is required to submit an information return under section 11 to fail to submit the return on or before the date by which the
person is required to do so or provide information which is inaccurate or incomplete in a material particular.

170. Subsection (4) provides that it is a defence to a charge in proceedings against a person for an offence under subsections (1) to (3) to show that the person exercised all due diligence to avoid committing the offence. This imposes an evidential burden only on the person.

171. Subsection (5) provides that a person who commits an offence under subsections (1) to (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Part 4 – Guidance and code of conduct

Parliamentary guidance

172. Section 43 contains provision relating to the publication of parliamentary guidance.

173. Subsection (1) provides that the Parliament must publish guidance on the operation of this Act.

174. Subsection (2) lays out particular examples of what the guidance must contain, including the circumstances in which a person is or is not engaged in regulated lobbying for the purposes of the Act and the circumstances in which a communication is of a kind which falls within the schedule or the Clerk’s functions under the Act.

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

176. When exercising functions under Part 2 both the Clerk and the Commissioner are required to have regard to the parliamentary guidance (see sections 3(5), 16(2) and 22(3)). This ensures that the Clerk and the Commissioner will take account of the guidance when exercising such functions.

Code of conduct for persons lobbying MSPs

177. Section 44 contains provision relating to the publication of a code of conduct for persons lobbying MSPs.

178. Subsection (1) provides that the Parliament must publish a code of conduct for persons lobbying members of the Parliament.

179. Subsection (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.

180. Subsection (3) lays out that, in this section, “lobbying” means making a communication of any kind to a member of the Parliament in relation to the member’s functions. This 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.

**Part 5 – Final provisions**

181. **Section 45** contains provision relating to offences committed by bodies corporate.

182. Subsection (1) provides that where an offence under this Bill has been committed by a body corporate or a Scottish partnership or other unincorporated association, and it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of a “relevant individual”, or an individual purporting to act in the capacity of a relevant individual, the individual (as well as the body corporate, partnership or, as the case may be, other unincorporated association) commits the offence and is liable to be proceeded against and punished accordingly. This means that where an offence under the Bill is committed by an organisation and it can be proved that a specific individual played a role in the committing of the offence, that person also commits an offence and can be prosecuted accordingly.

183. Subsection (2) defines “relevant individual” for the purposes of subsection (1).

184. **Section 46** defines terms used in the Bill.

185. **Section 47** contains provision relating to the process to be followed by the Parliament in making parliamentary resolutions under this Bill. Sections 15 (power to specify requirements about the register), 20 (power to make further provision about information notices) and 41 (power to make further provision about the Parliament’s procedures where the Commissioner submits a report to the Parliament under Part 3 of the Bill) of the Bill confer power on the Parliament to make provision by parliamentary resolution.

186. Subsection (1) makes clear that, before making a resolution under the Bill, the Parliament must consult the Scottish Ministers.

187. Subsection (2) provides that any power of the Parliament to make such a resolution includes power to make different provision for different purposes, or incidental, supplementary, consequential, transitional, transitory or saving provision.

188. Subsection (3) provides that immediately after any such resolution is passed, the Clerk must send a copy of it to the Queen’s Printer for Scotland (“the Queen’s Printer”).

189. Subsection (4) provides that Part 1 of the Interpretation and Legislative Reform (Scotland) Act 2010 (“ILRA”) applies to any such resolution as if it were a Scottish instrument. Part 1 of ILRA contains general default provision about the interpretation and operation of Acts of the Scottish Parliament and in particular Scottish instruments made under such Acts. The rules apply to such legislation in the absence of express provision to the contrary therein. A “Scottish instrument” is defined in section 1(4) and (5) of ILRA and does not include a resolution of the Parliament. By providing in section 47(4) of the Bill for Part 1 of ILRA to
apply to a resolution of the Parliament as it applies to a Scottish instrument, resolutions of the
Parliament will benefit from the interpretative and other rules in Part 1 of ILRA in the same way
as any Scottish instrument, subject to any contrary provision made in such resolutions.

190. Subsection (5) provides that section 41(2) to (5) of ILRA and the Scottish Statutory
Instruments Regulations 2011 (S.S.I. 2011/195) apply to the resolution as if it were a Scottish
statutory instrument, as if the copy of it sent to the Queen’s Printer under subsection (3) were a
certified copy received in accordance with section 41(1) of ILRA and with the modifications set
out in subsections (5) and (6). Subsection (5) makes clear that references to “responsible
authority” in section 41(2) to (5) of ILRA are to be read as references to the Clerk. Subsection
(6) makes clear that regulation 7(2) and (3) of the Scottish Statutory Instruments Regulations
2011 does not apply (this ensures that the obligation in regulation 7(1) of those Regulations –
Queen’s Printer to deliver certified copies to certain libraries – applies to parliamentary
resolutions made under the Bill). Overall the main purpose of the provision in section 47(4) to
(6) of the Bill is to provide for parliamentary resolutions under the Bill to be published by the
Queen’s Printer in the same way as Scottish statutory instruments.

191. Section 48 contains provision relating to the application of this Bill to a trust.

192. Subsection (2) provides that the trustees of a trust engage in regulated lobbying if a
trustee makes a communication falling within section 1(1)(a) (a communication made orally and
in person, or if not made in person is made using equipment that is intended to allow both parties
to see and hear each other, to a member of the Scottish Parliament, a member of the Scottish
Government a junior Scottish Minister or a special adviser, which is made in relation to
Government or parliamentary functions (on which see section 2), and which does not fall within
the schedule (communications which are not lobbying for the purposes of the Bill)).

193. Subsection (3) makes clear that references in Parts 2 and 3 to "person” are to be read as
references to the trustees of the trust.

194. Subsection (4) makes clear that an obligation imposed under those Parts on the trustees of
the trust may be fulfilled by any one or more of the trustees.

195. Subsections (1) and (2) of Section 48A provide that the Parliament must make
arrangements for one of its committees or sub-committees to review the operation of the Act
during the period beginning on the day section 8 (duty to register) comes into force and ending 2
years after that date (“the review period”).

196. Subsection (3) makes provision about the procedures to be followed by the committee or
sub-committee conducting the review (taking evidence, publishing a draft report, consulting on
the draft report and any recommendations in it, and having regard to any representations made
on the draft ahead of the report’s publication).

197. Subsection (4) provides that it is for the committee or sub-committee to determine the
appropriate form and manner of the report (subsection (4)(a)) and whether to include in it any
recommendations as to whether the Act should be amended in particular ways (see subsection (4)(b) and (c)).

198. Subsection (5) provides that the report must be published no later than 2 years after the end of the review period and subsection (6) provides that a report must be published.

199. **Section 49** confers power to make ancillary provision.

200. Subsection (1) provides that the Scottish Ministers may by regulations make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, or in connection with, any provision made by or under this Bill.

201. Subsection (2) provides that regulations under subsection (1) may make different provision for different purposes and may modify any enactment (including this Bill).

202. Subsection (3) provides that subject to subsection (4), regulations under subsection (1) are subject to the negative procedure (on which see section 28 of ILRA).

203. Subsection (4) provides that regulations under subsection (1) which contain provisions that add to, replace or omit any part of the text of an Act are subject to the affirmative procedure (on which see section 29 of ILRA).

204. **Section 50**(1) provides that this section and sections 46, 47, 49 and 51 come into force on the day after Royal Assent.

205. Subsection (2) provides that the other provisions of this Bill come into force on such day as the Scottish Ministers may by regulations appoint.

206. Subsection (3) provides that different days may be appointed for different purposes.

207. Subsection (4) provides that regulations under subsection (2) may contain transitional, transitory or saving provision.

208. **Section 51** provides that the short title of the Bill if enacted is to be the Lobbying (Scotland) Act 2016.
INTRODUCTION

1. As required under Rule 9.7.10 of the Parliament’s Standing Orders, this Supplementary Delegated Powers Memorandum is published to accompany the Lobbying (Scotland) Bill (introduced in the Scottish Parliament on 29 October 2015) as amended at Stage 2.

2. The Memorandum has been prepared by the Scottish Government. It does not form part of the Bill and has not been endorsed by the Parliament. It should be read in conjunction with the original Delegated Powers Memorandum published to accompany the Bill as introduced.

3. The purpose of this Supplementary Delegated Powers Memorandum is to explain the purpose, effect and background to a power amended into the Bill at Stage 2.

THE POWER AMENDED INTO THE BILL AT STAGE 2

Section 1(4) – Power to amend schedule

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

Provision

4. The schedule to the Bill contains in effect a list of ‘exclusions’: a list of communications which do not amount to regulated lobbying for the purposes of the registration regime established by the Bill.

5. New section 1(4) of the Bill as amended at Stage 2 confers a power on the Parliament, by resolution, to modify the schedule to the Bill to (a) add a description of a kind of communication and (b) modify or remove a description so added. While the power will therefore allow Parliament to add new types of communication to the schedule (i.e. new types of communication excluded from the regime) and to vary or remove such additions, the power does not allow Parliament to remove or modify any communication listed in the schedule at the point the Bill is enacted.
Reason for taking power

6. The Scottish Government identified communications which it viewed as necessary and appropriate for exclusion from the scope of the Bill on introduction and these were listed in the schedule. However, the Standards, Procedures and Public Appointments Committee’s Stage 1 Report on the Bill invited the Government to consider whether a further type of communication (trade union negotiations in respect of terms and conditions of employment) should be added to the schedule. The Government’s response to the Committee’s report confirmed it would consider amending the Bill and a relevant amendment was lodged, and subsequently agreed by the Committee, at Stage 2 (see new paragraphs 8A to 8C of the schedule to the Bill as amended at Stage 2).

7. The identification of this further necessary and appropriate exclusion caused the Government to reflect further on the need for the Parliament to have flexibility to add further exclusions to the schedule (without having to resort to fresh primary legislation), particularly in light of practical experience of the operation of the register. The power is though a limited power to add (and vary) new exclusions. It does not enable the Parliament to remove or modify any communication listed in the Schedule at the point the Bill is enacted. That is because the Government considers the exclusion of the communications listed in the schedule to the Bill, as it stands, to be key to ensuring that the lobbying registration scheme put in place by the Bill is appropriate and proportionate.

8. Provision at section 47 of the Bill (Parliamentary resolutions) will apply to resolutions made by the Parliament under section 1(4) in the same way as it applies to other resolutions made by the Parliament under the Bill (see further paragraph 14 of the original Delegated Powers Memorandum for the Bill as introduced).

Choice of procedure

9. 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 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 Parliament and Government. The Parliament must be able to change this new system if it considers this is the case.”

10. 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 Interests of Members of the Scottish Parliament Act 2006, 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.

11. The requirement (in terms of section 47(1) of the Bill) for prior consultation with 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 ‘parliamentary functions’ but also those communicating with Ministers and, following amendment of the Bill at Stage 2, Special Advisers in relation to ‘Government 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.

12. 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.
Delegated Powers and Law Reform Committee

Lobbying (Scotland) Bill as amended at Stage 2
Contents

Introduction ........................................ 1
Delegated Power Provision ..................... 2
Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on—

a. any—
   i. subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
   ii. [deleted]
   iii. pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

b. proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

c. general questions relating to powers to make subordinate legislation;

d. whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

e. any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and

f. proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.

g. any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

h. any draft proposal for a Scottish Law Commission Bill as defined in that Rule.
Committee Membership

Convener
Nigel Don
Scottish National Party

Deputy Convener
John Mason
Scottish National Party

Lesley Brennan
Scottish Labour

John Scott
Scottish Conservative and Unionist Party

Stewart Stevenson
Scottish National Party
**Introduction**

1. At its meeting on 1 March 2016 the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Lobbying (Scotland) Bill as amended at Stage 2 (“the Bill”)\(^1\). The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.

2. The Bill was introduced on 29 October 2015 by the Deputy First Minister and Cabinet Secretary for Finance, Constitution & Economy. It makes provision to establish and maintain a lobbying register and to publish a code of conduct in order to fulfil the Scottish Government's objective of increasing the public transparency of elected representatives’ activity. It also provides for the monitoring of compliance with the lobbying regime, and for enforcement measures.

3. The Scottish Government has provided the Parliament with a supplementary memorandum on the delegated powers provisions in the Bill (“the SDPM”)\(^2\).

4. The Committee previously reported on the delegated powers provisions in this Bill at Stage 1 in its 74th report of 2015\(^3\).
Delegated Power Provision

4. The Committee considered the one new delegated power provision in the Bill after Stage 2. There are no substantially amended delegated power provisions.

5. After Stage 2, the Committee reports that it does not need to draw the attention of the Parliament to the new delegated power provision listed below, and that it is content with the parliamentary procedure which the power is subject to:

   - Section 1(4) – Regulated lobbying

6. The Committee therefore reports that it is content with the new delegated power provision in the Bill as amended at Stage 2.
1 Lobbying (Scotland) Bill, as amended at Stage 2 (SP Bill 82A, Session 4 (2016)) is available at the following website: 
http://www.scottish.parliament.uk/S4_Bills/Lobbying%20(Scotland)%20Bill/SPBill82AS042016.pdf 
[accessed March 2016]
2 Lobbying (Scotland) Bill. Supplementary Delegated Powers Memorandum (SP Bill 82A-DPM, Session 4 (2016)) is available at the following website: 
http://www.scottish.parliament.uk/S4_Bills/Lobbying%20(Scotland)%20Bill/SPBill82ADPMS042016.pdf 
[accessed March 2016]
3 Delegated Powers and Law Reform Committee. 74th Report, 2015 (Session 4). Lobbying (Scotland) Bill at Stage 1 (SP Paper 842) can be accessed at the following website: 
Lobbying (Scotland) Bill

Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

- Section 1 to 51
- Long Title
- Schedule

Amendments marked * are new (including manuscript amendments) or have been altered.

Before section 1

Neil Findlay

1. Before section 1, insert—
   
   **Lobbying: definition**
   
   For the purposes of this Act, “lobbying” means, in a professional capacity, attempting to influence, or advise those who wish to influence, by various means of communication, a member of the Scottish Parliament, a member of the Scottish Government or a junior Scottish Minister, a special adviser, or a designated public official, on any matter within their competence.

Section 1

Patricia Ferguson
Supported by: Patrick Harvie

12. In section 1, page 1, line 8, leave out <made orally> and insert <of a kind mentioned in subsection (2A) and is made>

Joe FitzPatrick

18. In section 1, page 1, line 9, leave out <or a special adviser> and insert <, a special adviser or the permanent secretary>

Patricia Ferguson
Supported by: Patrick Harvie

13. In section 1, page 1, line 9, at end insert <or a designated public official.>

Patricia Ferguson
Supported by: Patrick Harvie

15. In section 1, page 1, leave out lines 10 to 13

Patrick Harvie

17. In section 1, page 1, line 18, at end insert <, or
in the course of a business or other activity carried on by the person, an individual  
makes a communication as an employee, director (including shadow director) or  
other office-holder, partner or member of the person inviting—  
(i) a client,  
(ii) a customer,  
(iii) an employee, or  
(iv) a member,  
of the person to make a communication of a kind mentioned in paragraph (a) and,  
as a direct result, the individual mentioned in sub-paragraph (i) or (ii) makes such  
a communication (regardless of whether or not the subsequent communication is  
made on the individual’s own behalf).  

(1A) In paragraph (c) of subsection (1), the individual who makes the subsequent  
communication mentioned in that paragraph is not to be regarded as engaging in  
regulated lobbying.>  

Neil Findlay  
2 In section 1, page 1, line 18, at end insert—  
<(  ) A person is not to be regarded as engaging in regulated lobbying if the person—  
(a) receives income for that lobbying that falls within Band A or Band G (see section  
(Payment for lobbying)), or  
(b) when engaging in that lobbying does so for less than 20% of that person’s  
working time over a period of 3 months.>  

Patricia Ferguson  
Supported by: Patrick Harvie  
14 In section 1, page 1, line 21, at end insert—  
<(2A) For the purposes of this Act, “communication” includes—  
(a) communication made orally and in person,  
(b) “electronic communication” within the meaning of section 15(1) of the Electronic  
Communications Act 2000,  
(c) a “traditional document” within the meaning of section 1A of the Requirements of  
Writing (Scotland) Act 1995, and  
(d) any other communication as the Parliament may by resolution specify.  
(2B) The Parliament may by resolution modify, add to or remove any of the provisions for  
the time being mentioned in subsection (2A).>  

George Adam  
23 In section 1, page 1, line 21, at end insert—  
<(  ) 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.>
Section 5

Neil Findlay
3 In section 5, page 3, line 18, at end insert <and

\((\ )\) a record of the individual’s employment for the past 5 years,>

Neil Findlay
4 In section 5, page 3, line 22, at end insert—

\((\ )\) a record of the employment for the past 5 years of any individual paid to carry out regulated lobbying activity on the company’s behalf,>

Neil Findlay
5 In section 5, page 3, line 29, at end insert—

\((\ )\) a record of the employment for the past 5 years of any individual paid to carry out regulated lobbying activity on the partnership’s behalf, and>

Neil Findlay
6 In section 5, page 3, line 32, at end insert <, and

\((\ )\) a record of the employment for the past 5 years of any individual paid to carry out regulated lobbying activity on the person’s behalf.>

Section 6

Neil Findlay
7 In section 6, page 4, line 8, at end insert—

\((\ )\) the band within which payment for the lobbying falls (see section \((Payment for lobbying)\)),

(b) the time, recorded by the person who made the communication, spent in the lobbying,>

After section 6

Neil Findlay
8 After section 6, insert—

\(<Payment for lobbying\)

(1) For the purposes of section 6(2)(ea), the registrant must submit to the Clerk which of the following bands the instance of regulated lobbying falls within—

\[\begin{array}{|c|c|}
\hline
\text{Band} & \text{Relevant consideration} \\
\hline
\text{Band A} & \text{Not more than £2,000} \\
\hline
\text{Band B} & \text{More than £2,000, but not more than £5,000} \\
\hline
\end{array}\]
(b) where the lobbying was undertaken on behalf of a company, partnership or other person—

<table>
<thead>
<tr>
<th>Band</th>
<th>Relevant consideration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Band G</td>
<td>Not more than £2,000</td>
</tr>
<tr>
<td>Band H</td>
<td>More than £2,000, but not more than £5,000</td>
</tr>
<tr>
<td>Band I</td>
<td>More than £5,000, but not more than £10,000</td>
</tr>
<tr>
<td>Band J</td>
<td>More than £10,000, but not more than £15,000</td>
</tr>
<tr>
<td>Band K</td>
<td>More than £15,000, but not more than £20,000</td>
</tr>
<tr>
<td>Band L</td>
<td>More than £20,000, but not more than £25,000</td>
</tr>
<tr>
<td>Band M</td>
<td>More than £25,000, but not more than £30,000</td>
</tr>
<tr>
<td>Band N</td>
<td>More than £30,000</td>
</tr>
</tbody>
</table>

(2) The amounts set out in the bands relate to payments received for an instance of lobbying over a period of six months.

Section 15

Neil Findlay

9 In section 15, page 9, line 10, at end insert—

<( ) the values of the bands for the time being set out in section (Payment for lobbying).>
(7) A person—
   (a) who has received notice from the Clerk under subsection (6), or
   (b) who has been carrying out regulated lobbying activity for more than 6 months,
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.

(8) A person who, having received a fine under subsection (7), subsequently commits an
offence under subsection (1), (2) or (3)—
   (a) may be prevented from engaging in regulated lobbying activity for a period of 3
years,
   (b) is liable on summary conviction to a fine not exceeding the statutory maximum.

Section 43

Neil Findlay

11 In section 43, page 21, line 36, at end insert—

<(2A) The Parliament may make available information with a view to promoting awareness
and understanding of this Act.

(2B) The Parliament must ensure that sufficient funding is provided to make available
information under subsection (2A).>

After section 44

Joe FitzPatrick

19 After section 44, insert—

<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.>

Section 46

Patricia Ferguson
Supported by: Patrick Harvie

16 In section 46, page 22, line 35, at end insert—

<“designated public official” means—
   (a) a person serving as a member of staff of the Scottish Administration in the
position of—
      (i) Permanent Secretary (or equivalent),
      (ii) Director-General (or equivalent),
      (iii) Director (or equivalent),
      (iv) Deputy Director (or equivalent),
   (b) any other member of staff of the Scottish Administration whom the
Parliament has, by resolution, prescribed, by reference to that public
servant’s—>
(i) role,  
(ii) level of remuneration, or  
(iii) grade,

Joe FitzPatrick
20 In section 46, page 23, line 4, at end insert—

<<“the permanent secretary” means the individual who serves the Scottish Government in the position of permanent secretary in the civil service of the State.>>

Schedule

Joe FitzPatrick
21 In the schedule, page 26, line 5, at end insert—

<<Communications made to member for constituency or region

1A 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.

1B However, paragraph 1A 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.

1C In paragraph 1A, “constituency” and “region” are to be construed in accordance with the Scotland Act 1998.>>

Joe FitzPatrick
22 In the schedule, page 26, line 18, at end insert—

<<Communications by small organisations

3A 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.

3B For the purposes of paragraph 3A, 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.

3C For the purposes of the calculation in paragraph 3B, any employee who worked more than 140 hours during the period of 28 days is to be treated as having worked 140 hours.

Patrick Harvie

22A As an amendment to amendment 22, at end insert—

<3D Paragraph 3A does not apply to a person who has 1 or more full-time equivalent employees and is a body which exists primarily to—

(a) represent the interests of its members and the relevant communication is made on behalf of any of the members, or

(b) take up particular issues and the relevant communication is made in the furtherance of any of those issues.>
Amendment 22B below was lodged as a manuscript amendment under Rule 9.10.6. The Presiding Officer has agreed under that Rule that amendment 22B may be moved at the meeting of the Parliament on 10 March 2016. Amendment 22B will be debated in group 9. Amendment 22B will be called immediately after amendment 22 (on page 6 of the Marshalled List of Amendments) and before amendment 22A (on page 7 of the Marshalled List).

A line numbered version of amendment 22 is included below for ease of reference.

Schedule

Joe FitzPatrick

22 In the schedule, page 26, line 18, at end insert—

<Communications by small organisations

3A 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.

3B For the purposes of paragraph 3A, 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.

3C For the purposes of the calculation in paragraph 3B, any employee who worked more than 140 hours during the period of 28 days is to be treated as having worked 140 hours.>

Joe FitzPatrick

22B As an amendment to amendment 22, line 7, at end insert—

<3AA However, paragraph 3A 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.>
Groupings of Amendments for Stage 3

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the day of Stage 3 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

**Groupings of amendments**

**Note:** The time limits indicated are those set out in the timetabling motion to be considered by the Parliament before the Stage 3 proceedings begin. If that motion is agreed to, debate on the groups above each line must be concluded by the time indicated, although the amendments in those groups may still be moved formally and disposed of later in the proceedings.

**Group 1: Lobbying: definition**
1

**Group 2: Regulated lobbying: methods of communication**
12, 15, 14, 23

**Group 3: Regulated lobbying: recipients of communications**
18, 13, 16, 20

**Debate to end no later than 45 minutes after proceedings begin**

**Group 4: Regulated lobbying: individuals making communications**
17

**Group 5: Money and time spent lobbying**
2, 7, 8, 9

**Group 6: Employment history of lobbyists**
3, 4, 5, 6

**Debate to end no later than 1 hour and 15 minutes after proceedings begin**
Group 7: Offences and sanctions
10

Group 8: Public awareness
11, 19

Group 9: Communications which are not lobbying
21, 22, 22B, 22A

Debate to end no later than 1 hour and 45 minutes after proceedings begin
EXTRACT FROM THE MINUTES OF PROCEEDINGS
Parliamentary Year 5, No. 90 Session 4
Meeting of the Parliament
Thursday 10 March 2016

Note: (DT) signifies a decision taken at Decision Time.

**Lobbying (Scotland) Bill - Stage 3:** The Bill was considered at Stage 3.

The following amendments were agreed to (without division): 23, 19 and 20.

The following amendments were agreed to (by division)—

- 18 (For 96, Against 12, Abstentions 0)
- 21 (For 77, Against 31, Abstentions 0)
- 22B (For 77, Against 31, Abstentions 0)
- 22 (For 76, Against 31, Abstentions 0)

The following amendments were disagreed to (by division)—

- 1 (For 30, Against 75, Abstentions 0)
- 12 (For 34, Against 75, Abstentions 0)
- 13 (For 35, Against 74, Abstentions 0)
- 15 (For 35, Against 73, Abstentions 0)
- 2 (For 31, Against 77, Abstentions 0)
- 14 (For 35, Against 73, Abstentions 0)
- 3 (For 29, Against 76, Abstentions 0)
- 4 (For 29, Against 76, Abstentions 0)
- 5 (For 28, Against 76, Abstentions 0)
- 6 (For 29, Against 75, Abstentions 0)
- 7 (For 29, Against 76, Abstentions 0)
- 8 (For 29, Against 76, Abstentions 0)
- 9 (For 29, Against 76, Abstentions 0)
- 10 (For 35, Against 72, Abstentions 0)
- 11 (For 30, Against 66, Abstentions 11)
- 16 (For 35, Against 72, Abstentions 0)
- 22A (For 35, Against 73, Abstentions 0)

Amendment 17 was moved and, with the agreement of the Parliament, withdrawn.

**Lobbying (Scotland) Bill - Stage 3:** The Minister for Parliamentary Business (Joe FitzPatrick) moved S4M-15870—That the Parliament agrees that the Lobbying (Scotland) Bill be passed.

After debate, the motion was agreed to (DT).
Lobbying (Scotland) Bill: Stage 3

14:01

The Deputy Presiding Officer (Elaine Smith): The next item of business is stage 3 proceedings on the Lobbying (Scotland) Bill. In dealing with the amendments, members should have the bill as amended at stage 2, which is SP Bill 82A, the marshalled list, the supplement to the marshalled list and the groupings.

The division bell will sound and proceedings will be suspended for five minutes for the first division of the proceedings. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after a debate. Members who wish to speak in the debate on any group of amendments should press their request-to-speak buttons as soon as possible after I call the group. Members should now refer to the marshalled list of amendments.

Before section 1

The Deputy Presiding Officer: Group 1 is on lobbying: definition. Amendment 1, in the name of Neil Findlay, is the only amendment in the group.

Neil Findlay (Lothian) (Lab): The bill is in danger of being undermined from the outset by a lack of definition of what we are talking about when we discuss lobbying. The bill as it stands has no clear definition of lobbying and therefore leaves itself exposed.

Amendment 1 would remedy that glaring loophole by providing a definition of what we mean by the term “lobbying”. It strikes me as rather absurd to introduce a bill without defining lobbying. I do not think that we introduce many bills in the Parliament without describing the actual thing that we are legislating for, but then again, logic does not necessarily apply in this place.

The definition that I propose is one that we consulted on and was much commented on. Therefore I ask people to support the amendment.

I move amendment 1.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I understand the principle underlying what Mr Findlay is seeking to do. However, I am left somewhat unclear about what the phrase “in a professional capacity” might mean, since that would not be defined within the bill were we to accept the amendment.

Although I understand where Mr Findlay is coming from, it seems to me much more effective for us to look at the activities that are covered by the bill. That is what the bill is about.
Neil Findlay: I think that the definition as given is much clearer than the lack of definition that we have at the moment. Does the member not agree?

Stewart Stevenson: Of course I do not agree. The definition carries with it the significant danger that, by putting things such as “in a professional capacity” in the amendment, it may exclude some of the intention of areas that we will regulate on. We are simply safer to go on what is in the bill—the activities that are covered by the bill—and that is certainly my intention.

Neil Findlay: Will the member take an intervention?

Stewart Stevenson: I think that I will not. We need to make progress.

Patrick Harvie (Glasgow) (Green): In defence of Neil Findlay’s amendment, it seems reasonable to include a definition of lobbying on the face of the bill. The argument that we have just heard, which is that amendment 1 includes both too much definition and not enough, seems rather weak and perplexing.

The Minister for Parliamentary Business (Joe FitzPatrick): As Neil Findlay described, the aim of amendment 1 is to set out in the bill a definition of what lobbying is before the bill moves on to define the scope of regulated lobbying.

As I made clear at stage 2, the amendment is not required. Section 1 of the bill already defines clearly what type of activity is deemed to be lobbying, the type of lobbyists and lobbyees to be included, and the means by which the lobbying communications are made.

Mr Findlay’s amendment would lead to confusion and potential difficulties of interpretation of the bill’s key provisions including, in particular, section 1. The effect of the amendment is likely to be the opposite of what Mr Findlay envisages. It would not add clarity, but instead would create unnecessary ambiguity.

For those reasons, I invite the Parliament to oppose Neil Findlay’s amendment 1.

Neil Findlay: As we go through the afternoon Mr FitzPatrick might care to reflect on the words “confusion” and “ambiguity”, because as we go through the bill that is what it will be riddled with.

I therefore press amendment 1.

The Deputy Presiding Officer: The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: The Parliament is not agreed and there will be a division. As it is the first division of the stage, I suspend the meeting for five minutes.

14:06 Meeting suspended.

14:11 On resuming—

The Deputy Presiding Officer: We move to the division on amendment 1.

For

Bailie, Jackie (Dumbarton) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Brennan, Lesley (North East Scotland) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, lain (East Lothian) (Lab)
Harvie, Patrick (Glasgow) (Green)
Hilton, Cara (Dunfermline) (Lab)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Urquhart, Jean (Highlands and Islands) (Ind)
Wilson, John (Central Scotland) (Ind)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
before it suggests that only communications made orally, that is, face-to-face communication, videoconference or the like, should be deemed to be lobbying. In evidence to the Standards, Procedures and Public Appointments Committee, Dr Dinan of Spinwatch and the alliance for lobbying transparency and ethics regulation European Union—ALTER-EU—described the restriction to face-to-face communication as "ludicrous", while Unlock Democracy described the current definition as "a gift to those who might wish to keep their activity out of the public gaze".

Professor Raj Chari of Trinity College, Dublin, an expert in the area, advised us that he was unaware of any legislation anywhere else that contained such a restriction. Carers Trust Scotland presumed charitably that it must just be an oversight. However, it is not an oversight. It is instead the policy position of the Scottish Government.

As a result of the evidence heard during stage 1, the Standards, Procedures and Public Appointments Committee, of which I am a member, suggested that the Scottish Government should consider including other forms of communication, such as emails, letters and telephone communication.

At stage 2, I lodged amendments designed to give effect to the stated recommendations of the majority of the Standards, Procedures and Public Appointments Committee members, but unfortunately the committee chose to vote down those amendments by five votes to one—so much for the independence of our committees.

Today, I again move amendments designed to ensure that communication by email, by telephone and in writing will be considered to be lobbying. Without those amendments, the bill becomes a sham.

Before members press their voting buttons, I ask them to consider this. We have all been lobbed about the bill. We have been lobbed by a range of organisations that have different viewpoints. How many of the organisations that lobbed us spoke to us face to face and how many sent emails? I think that we know the answer to that. We also know the power of electronic and written communication. To omit that from the bill is plain wrong.

I move amendment 12.
not define the word “orally”. It further noted that the plain dictionary definition of “orally” refers to verbal communication. Like the Law Society, I would welcome clarification from the Government of whether the bill covers British Sign Language and other forms of communication that are equivalent to the spoken word.

During the passage of Mark Griffin’s member’s bill on British Sign Language, I, along with my colleagues on the Education and Culture Committee, learned that BSL is a living, thriving language in our community. If we truly recognise BSL as a language, as that bill does, it stands to reason that that language will be used to engage in the political process in ways that represent the community involved.

It is only logical to include BSL in the Lobbying (Scotland) Bill as oral communication. Amendment 23 is a technical amendment that would keep the Parliament’s commitment to those we serve in the BSL community, who are looking towards equality of communication. With that in mind, I ask members to support the amendment.

Stewart Stevenson: Patricia Ferguson’s quotation from the Standards, Procedures and Public Appointments Committee’s stage 1 report was perfectly proper, but it might be as well to continue from where she quoted. The report said:

“The Committee recommends that the Government reviews the potential impact of altering the definition ... to include communication of any kind with a view to establishing what amendments ... might be required.”

That recommendation was made because the effect of extending the definition is not known.

I very much welcome the Government’s amendments to give us two years of running the system, after which we will revisit the subject and see what we want to do. That is a proportionate response.

I know only one little bit of sign language, which I am demonstrating now—it identifies who I am as ZS, which are my working initials. I very much support George Adam’s amendment 23, which is timely, appropriate and the right thing to do.

Patrick Harvie: I am struggling to resist the temptation to use some of the few signs that I know.

I very much welcome George Adam’s amendment 23, as it is important that we include BSL in the bill. I am interested that the amendment finishes with the words

“or is otherwise made by signs.”

If we agree to amendment 23 but not to Patricia Ferguson’s amendments, we will be in the absurd position where semaphore will be included as lobbying but email will not. Which century are we living in?

Surely we must include the broadest range of forms of communication, which includes those that are particularly powerful and which we can expect to be of only increasing significance in the future. Please let us agree to amendments 12, 15 and 14 and be serious about the bill.

Joe FitzPatrick: Patricia Ferguson’s amendments 12, 15 and 14 would substantially broaden the definition of regulated lobbying by including other forms of communication—particularly communication by electronic and written means. They would also give the Parliament the power by resolution to modify, add to or remove the types of communication that the bill covers.

The Government’s view, which is supported by the Standards, Procedures and Public Appointments Committee’s inquiry into lobbying, remains that face-to-face lobbying is the most influential. As I made clear at stage 2, the Government does not support extending the definition of regulated lobbying to include other forms of communication.

I am not persuaded that the additional burden that such an extension could place on organisations has been properly thought through. That view is supported by many stakeholders, including the Scottish Council for Voluntary Organisations and the Federation of Small Businesses.

The Government listened to views and lodged an amendment, agreed to at stage 2, to extend the scope of face-to-face communications to include communication by videoconferencing or its equivalent, in addition to communication in person.

The review provision, which was inserted into the bill at stage 2, provides an opportunity to learn from experience in the operation of the act and to found any changes to the types of communication that are covered on a clear evidence base.

Neil Findlay: Will the member take an intervention?

Joe FitzPatrick: Okay, quickly.

Neil Findlay: On the subject of clear evidence, what evidence does the minister have, or has he ever had, that face-to-face communication is more effective than any other communication? He has no evidence and he has never put any before Parliament.

Joe FitzPatrick: I think that there is evidence, which I will come to later. [Interruption.]

The Deputy Presiding Officer: Order, please.
Joe FitzPatrick: I think that the important thing is that we need to make sure that the bill is proportionate, and there is no evidence to—[Interruption.]

The Deputy Presiding Officer: Order, please.
Joe FitzPatrick: —assert the fact that it would not be a disproportionate burden to extend the definition in the way that Patricia Ferguson’s amendment suggests.

I thank George Adam for lodging amendment 23 and the Law Society of Scotland for raising the matter that it deals with. The Government will support the amendment, which makes it clear that the definition of “regulated lobbying” includes methods of communication that are used as alternatives to the spoken word—I think that deals with Patrick Harvie’s point—and, very importantly, recognises that British Sign Language is in itself a language.

I am clear that British Sign Language and other such methods of communication, such as those used by the deafblind community, whether face to face or through an interpreter, should be included within the definition of regulated lobbying. This amendment will helpfully put that beyond doubt.

In conclusion, I ask the Parliament to oppose Patricia Ferguson’s amendments 12, 15 and 14, and I invite the Parliament to agree to George Adam’s amendment 23.

The Deputy Presiding Officer: Thank you, minister. I call Patricia Ferguson to wind up and to indicate whether you intend to press or withdraw, please.

Patricia Ferguson: I definitely intend to press my amendment. I am struggling to know how to react to the contribution made by Stewart Stevenson. I think that he knows that I very much respect the way in which he convenes the Standards, Procedures and Public Appointments Committee and I very much enjoy the discussions and the debates that we have. I will simply remind him, without going into detail any further than this, that the report of the committee that he chairs described the distinction that was being placed on the bill by the Scottish Government as an “artificial distinction”. That is the view of his committee.

I also say to the minister that I find peculiar the idea that somehow collating information about written communication would be harder than collating information about verbal communication. It stands to reason that one is recorded in writing on a computer, and the other relies on individuals reporting it.

It seems to me that we are in the 21st century. We all know that the volume of emails and the volume of telephone calls that we have has increased even since this Parliament has been in existence. Many members will testify to the fact that constituency surgeries are no longer as well attended as they were in 1999. That does not mean that the volume of communications from constituents is any less. It just means that those constituents choose to communicate in a slightly different way, and they do so by email.

To exclude those issues from the bill is, to my mind—

Joe FitzPatrick: Will the member take an intervention?

Patricia Ferguson: Well, I will take an intervention, minister.[Interruption.]

The Deputy Presiding Officer: Could members stop having conversations across the chamber, please?

Joe FitzPatrick: I will be very clear. The bill as framed would not under any circumstances capture what is said by constituents who are coming to see their MSP, such as people who are coming to talk about housing issues on their own behalf, and that is very much our intention. The bill is very clear that those people are not covered.

Patricia Ferguson: I am really surprised that after all these months Mr FitzPatrick thinks that I need to be told that.[Interruption.]

The Deputy Presiding Officer: Order, please.

Patricia Ferguson: We know—and if they have read the bill and the amendments, members of the Parliament know—that communication with one’s constituents is not covered by the bill.

The point that I was making—Mr FitzPatrick must know this well—is that the way in which people of all kinds choose to communicate in 2016 is very different even from the way that they chose to communicate in 1999.

If we do not include communication by email, letter and telephone, as well as everything that civil servants record for ministers, we will do the bill a disservice and make the Parliament a laughing stock.

The Deputy Presiding Officer: The question is, that amendment 12 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Baillie, Jackie (Dumbarton) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Brennan, Lesley (North East Scotland) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
The Government has carefully considered the possibility of including all senior civil servants as lobbyees and has concluded that the case has not extended to any other specific groups of public unions.

A further whether the bill should be bill to cover special advisers, and I undertook to Government amendment at stage 2 to extend the proportionate. The committee agreed to a stage 2, I made it clear that her approach was not amendments that Patricia Ferguson lodged at further.

The purpose of Patricia Ferguson’s amendment 13 is to extend the scope of regulated lobbying: recipients of communications. Amendment 18, in the name of the minister, is grouped with amendments 13, 16 and 20.

Joe FitzPatrick: The purpose of Patricia Ferguson’s amendment 13 is to extend the scope of regulated lobbying to include communications that are made to people other than MSPs, ministers and special advisers. Her amendment 16 defines the civil servants she wishes to extend the bill to cover. Amendments 18 and 20 set out an alternative way forward.

During the debate on almost identical amendments that Patricia Ferguson lodged at stage 2, I made it clear that her approach was not proportionate. The committee agreed to a Government amendment at stage 2 to extend the bill to cover special advisers, and I undertook to consider further whether the bill should be extended to any other specific groups of public officials and, in doing so, to consult the trade unions.

The Government has carefully considered the possibility of including all senior civil servants as lobbyees and has concluded that the case has not
been made to justify extending the bill in that way. First, doing so would increase the volume of registrable lobbying activity, which would bring an additional burden to registrants and could erode public engagement in Scotland.

In addition, although civil servants have a clear link to ministers, they occupy a different space from politicians. There would be a risk of impacting unduly on the day-to-day operational duties that civil servants undertake that do not influence the exercise of ministerial functions in a way that would generally be regarded as lobbying.

However, I recognise the permanent secretary’s unique position, and amendments 18 and 20 will include face-to-face communications with the permanent secretary in the definition of regulated lobbying. I remind members that the bill, as amended at stage 2, includes a review provision that will allow Parliament to learn from the experience of the register and to build a clear evidence base on which to consider any proposals for change.

I invite Patricia Ferguson not to move amendments 13 and 16. If she chooses to move them, I ask Parliament to oppose them.

I move amendment 18.

14:30

Patricia Ferguson: The minister’s amendment 18, to include the permanent secretary, is welcome. However, the permanent secretary is only one of many civil servants and officials who have responsibility and who, as the minister admitted, receive communications that may well be registrable lobbying if my amendments are agreed to. I therefore find his argument to be slightly odd.

As Parliament will understand, I want to extend the definition of those who are covered by the bill, and it is clear that I want to extend it further than the minister does. I want the definition to include civil servants to the grade of deputy director.

If the bill is to be effective, it has to recognise that politicians are not the only people who are lobbyed and that officials may also be lobbyed. The public need to know what lobbying takes place; that is a large part of the bill. However, the bill must serve another purpose, which is to protect those who may unwittingly fall foul of unscrupulous lobbyists. The best way to do that is to make the situation as transparent as possible, so that public officials are protected by the openness that would apply to any of their dealings that are to be registered.

The minister argues that members of the civil service do not make decisions in and of themselves. Perhaps that point can be argued, but who writes the briefings on which ministers base their decisions? It is the civil servants. If those civil servants have been lobbyed, should that fact not be known? I think that it should be.

I very much welcome the minister’s change of direction in this area but, if we are to provide any kind of openness and transparency, the bill has to be extended to include civil servant grades down to deputy director.

Patrick Harvie: Patricia Ferguson and Joe FitzPatrick have both had the happy privilege of serving as Scottish ministers. I am yet to enjoy that luxury, but my guess is that the vast majority of lobbying of senior civil servants is not to the permanent secretary but to those who are in other influential positions in the Scottish Government.

Mr FitzPatrick reminds us—correctly—that there is to be a review period. If we are to be as fully informed as we deserve to be by that review, the greatest amount of information about the lobbying that takes place must be captured between now and the review. We will be in a stronger position to decide whether the system is working if we have had maximum transparency in the intervening period. For that reason—if nothing else—I support Patricia Ferguson’s amendments 13 and 16.

The Deputy Presiding Officer: Would the minister care to wind up?

Joe FitzPatrick: I will wind up briefly. We have to be careful that we do not make decisions that could have unintended consequences. I understand that there is a body of opinion that we should go much further on how deep a level of the civil service is covered by the bill. That is why we lodged a stage 2 amendment to provide for a review, and we specifically stated that the Parliament should look at this area. We have to see the act in operation.

Neil Findlay: Is the minister seriously telling us that, of all the people in the Scottish Government, the only person who gets lobbyed and should be registered is the permanent secretary?

Joe FitzPatrick: I am saying that we have established the level at which we think lobbying should be registrable, which includes special advisers and the permanent secretary. I am confident that that can be achieved without any unintended consequences on the operation of the Scottish Government and without impacting on people who engage with the Government.

Dr Richard Simpson (Mid Scotland and Fife) (Lab): The minister has not made clear his response to Patrick Harvie’s question whether, in the meantime, he will collect data to ensure that the review is fully informed.

Joe FitzPatrick: There are two approaches that could be taken: extending the register as far as possible, which is what the minister suggests, or doing something that would generally capture lobbying that would be perceived as lobbying.
The Deputy Presiding Officer: The question is, that amendment 18 be agreed to. Are we agreed?

Members: Yes.

The Deputy Presiding Officer: We are agreed—[Interuption.] I am sorry; we are not agreed. I will put the question again. If someone wishes to disagree, they should do so loudly.

The question is, that amendment 18 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Bailie, Jackie (Dumbarton) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Brennan, Lesley (North East Scotland) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunningham South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunningham North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macintosh, Ken (Eastwood) (Lab)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Malik, Hanzala (Glasgow) (Lab)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDonald, Mark (Aberdeen Donside) (SNP)
McDouggall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMillan, Stuart (West Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, David (Highlands and Islands) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (Ind)
Yousaf, Humza (Glasgow) (SNP)

Against
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Goldie, Annabel (West Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
Milne, Nanette (North East Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Urquhart, Jean (Highlands and Islands) (Ind)

The Deputy Presiding Officer: The result of the division is: For 96, Against 12, Abstentions 0.
Amendment 18 agreed to.

Amendment 13 moved—[Patricia Ferguson].

The Deputy Presiding Officer: The question is, that amendment 13 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Bailie, Jackie (Dumbarton) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Brennan, Lesley (North East Scotland) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mallik, Hanzala (Glasgow) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Murray, Elaine (Dumfrieshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Urquhart, Jean (Highlands and Islands) (Ind)
Wilson, John (Central Scotland) (Ind)

Against

Adam, George ( Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Allard, John (Midlothian North and Musselburgh) (SNP)
Baird, Marko (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrik, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Lanarkshire and Stonehouse) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 35, Against 74, Abstentions 0.

Amendment 13 disagreed to.

Amendment 15 moved—[Patricia Ferguson].

The Deputy Presiding Officer: The question is, that amendment 15 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Patrick Harvie: I have already indicated informally to the Scottish Government and to Neil Findlay that I am moving amendment 17 not with huge determination but with a desire to have some discussion about a form of lobbying that might not yet be a significant issue in Scotland but which we should anticipate will grow in the future. It is not covered by the system of lobbying regulation that the bill seeks to establish, but it is a growing area that I hope that the review will consider.

The amendment concerns businesses that operate a highly networked business model, which marshals and encourages a large number of their customers to lobby in effect on the business’s behalf rather than on behalf of the direct interests of their customers to lobby in effect on the...
of individual citizens. Around the world, there are many, many cases of that happening. Perhaps the most notorious example involves Uber. Whatever view we take of whether Uber’s business model is a good addition to a country’s transport economy, Uber has vigorously used its highly networked customer base to lobby for favourable regulatory regimes, including in contexts in which public safety is at significant threat and regulations are intended to address that issue rather than shut down the company’s business altogether. Other companies, such as Facebook, have used similar tactics.

We have talked about the change in how people communicate. We are also seeing a change in how businesses operate and we are seeing the phenomenon of highly networked businesses, which can mobilise quickly, in a non-transparent and unregulated way, the voices of a great number of their customers to lobby on behalf of the business’s interests. We can expect that to be an increasing feature of lobbying, whether we call it professional lobbying or networking—that is less the point.

I lodged amendment 17 merely to solicit the views of Opposition members who have argued for lobbying regulation and the view of the Government on how our system of lobbying regulation should deal with this new and emerging form of commercial lobbying, as and when it develops in Scotland.

I move amendment 17.

Stewart Stevenson: I absolutely understand Patrick Harvie’s motivation in lodging amendment 17, but in practice he is in danger of falling into an approach that he would strongly oppose, which is the approach that the United Kingdom Government is taking in attempting to stop charities being involved in lobbying. I will give an example that might—I stress the word “might”; I do not assert this as an absolute—arise from the approach that he proposes.

In essence, Mr Harvie is saying that a member of the RSPB, which I take as an example only because it is a very large organisation, could not be lobbied by a paid employee of the RSPB to take part in a campaign on an issue that the charity felt strongly about. The scenario is analogous to the one that Mr Harvie described. Under his proposed approach, an organisation that is professionally run, employs a large number of people and has a huge body of support might not be able to inform its supporters so that they could aid its lobbying activities in line with their personal beliefs, as members of a charity such as the RSPB or another such organisation.

It is good to debate amendment 17, and the issue should certainly be included in our consideration at the end of the review period, but I am reluctant to support the amendment in its current form, for reasons that I hope that Patrick Harvie will understand.

Patricia Ferguson: Labour members are pleased that Patrick Harvie lodged amendment 17, which highlights an area that had not been thought of in the context of the bill. I suspect that he is right that the issue need not and should not be decided on today. When the review takes place, as we hope that it will do early in the next session of the Parliament, I suspect that people in the Parliament and beyond will be much more familiar with the business model that he described and will therefore perhaps be more able to make a reasoned judgment on it.

The use of new technologies is growing and they are enabling people to have the kind of networked relationship that Patrick Harvie described. It is right that we consider how best to include such issues in the bill. I think that they should ultimately be included in our lobbying regulation, but then again, I am naive enough to think that electronic communication in its more normal form should be included in the bill.

Joe FitzPatrick: I thank Patrick Harvie for his explanation of amendment 17. I think that even he agrees that there is no requirement today for such a provision in the bill. The amendment is ambiguous and is unclear about its intention in some areas. That is the case for obvious reasons, which the member explained. However, as it stands, amendment 17 would add a complex provision, which would not align directly with the key principles that were considered when we developed the bill—that the system should be proportionate and simple to operate.

Having said that, I thank Patrick Harvie for raising the issue, which will enable the Parliament to consider whether it should be included in the review of the legislation’s operation. I invite him to seek to withdraw amendment 17 and, if he decides not to do so, I ask the Parliament to resist it.

Patrick Harvie: I am grateful for the constructive comments that have been made on the need to address, in some form, the issues that amendment 17 merely seeks to invite debate on.

A great many non-governmental organisations—including the RSPB as well as organisations that I have less sympathy for—expect their professional campaigners and lobbying operations to fall within the ambit of the regulation system. The amendment would simply introduce one more dimension to a system of regulation that they already expect to comply with,
and I do not think that it would be disproportionate. The concerns about the impact on NGOs should not prevent our debating how, in the future, we might take a more robust approach to commercial interests using networked business models and the huge networked customer bases that they have to lobby in their interests.

Do not get me wrong—I see far more to welcome than to fear in the network age. However, there is a necessary debate about how the platforms that are emerging for these huge and exciting networked aspects of our lives are to work in the public interest instead of being co-opted merely to serve commercial and private interests. I hope that we will return to the issue in the review and come up with a system that is relevant to such emerging aspects.

Amendment 17, by agreement, withdrawn.

The Deputy Presiding Officer: Group 5 is on money and time spent lobbying. Amendment 2, in the name of Neil Findlay, is grouped with amendments 7 to 9.

Neil Findlay: It is my contention that the public are most concerned about the influence of powerful, wealthy and often well-connected individuals and/or organisations that use their power, wealth and connections to gain access to decision makers, to influence policy, to win contracts or to exert influence over the Government or Parliament in other ways. People are less concerned about small-scale, relatively insignificant lobbying.

My original bill consultation took account of the concern that was raised by small businesses, community organisations and charities that small-scale lobbying might be included. We listened to those who were concerned that the bill would prevent rather than encourage dialogue with the Parliament and access to it; and, in keeping with other jurisdictions, almost a third of which operate, unlike Mr Findlay’s amendments, with a financial threshold for consultant lobbyists. I therefore require registrants to provide financial data in a way that is understandable and simple to communicate from the scheme. They will do so without financial reward, they will not. It is a clear and unambiguous threshold that is not open to the chosen interpretation of enthusiastic accountants. If members want to put accountants in the position of offering a subjective view on whether something is in or out, so be it, but I will not support that.

The threshold definition that is in the bill is the appropriate one, and I encourage members to leave the bill unamended by Mr Findlay’s amendments.

Amendment 8 and 9 would provide information relating to the scale of investment that is made in lobbying activity. The public are rightly concerned about how much money organisations invest to get results. That is what lobbying is—an investment by an organisation to get results. There is a great difference between spending a few hundred pounds on a photo shoot with an MSP holding a placard and spending tens of thousands of pounds in trying to win a ferries contract or a railways franchise. In my consultation, we took evidence from businesses that were concerned that the actual amount spent would be commercially sensitive, so we agreed a compromise whereby a system of banding would indicate the scale within set parameters. Accordingly, amendment 8 sets out proposed scales for both consultant and in-house lobbyists. It is all about openness and transparency.

I move amendment 2.

Stewart Stevenson: One would imagine from what Mr Findlay has just said that the bill as it stands would exclude lobbying for a ferries contract or a railway franchise, but that is very far from the case. Such lobbying would already be captured as regulated lobbying, because people would be being paid to do it.

There is already a lobbying threshold: it is that if someone gets paid to lobby—I speak broadly; there are some caveats—they will be captured, but if someone does it of their own volition and without financial reward, they will not. It is a clear and unambiguous threshold that is not open to the chosen interpretation of enthusiastic accountants. If members want to put accountants in the position of offering a subjective view on whether something is in or out, so be it, but I will not support that.

The threshold definition that is in the bill is the appropriate one, and I encourage members to leave the bill unamended by Mr Findlay’s amendments.

Joe FitzPatrick: The amendments in this group are the same as those that Neil Findlay lodged at stage 2, which were opposed by the committee. They seek to do two things: first, to provide a threshold that would remove small-scale lobbying from the registration scheme; and, secondly, to include financial data and the amount of time that is spent lobbying in the register.

I agree with Mr Findlay that we should seek to remove small-scale lobbying from the registration scheme. That is why I lodged amendments 21, 22 and 22B, which I will invite Parliament to support later in proceedings. My amendments will exempt small-scale lobbying and constituency-based communications from the scheme. They will do so in a way that is understandable and simple to operate, unlike Mr Findlay’s amendments, with their complexities.

I again make it clear, as I did at stage 2, that I do not think that the case has been made to require registrants to provide financial data in connection with regulated lobbying. I therefore invite Parliament to oppose Mr Findlay’s amendments.
The Deputy Presiding Officer: I invite Neil Findlay to wind up and to indicate whether he intends to press or to withdraw amendment 2.


The Deputy Presiding Officer: That was quick.

The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Bailie, Jackie (Dumbarton) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Brennan, Lesley (North East Scotland) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, lain (East Lothian) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (SNP)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Urquhart, Jean (Highlands and Islands) (Ind)
Wilson, John (Central Scotland) (Ind)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Kevin (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Donnan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fitzpatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmone, Alex (Aberdeen East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 31, Against 77, Abstentions 0.

Amendment 2 disagreed to.

Amendment 14 moved—[Patricia Ferguson].

The Deputy Presiding Officer: The question is, that amendment 14 be agreed to. Are we agreed?

Members: No.
The Deputy Presiding Officer: There will be a division.

For
Bailie, Jackie (Dumbarton) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Brennan, Lesley (North East Scotland) (Lab)
Chisholm, Malcolm (Edinburgh Northem and Leith) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mak, Hanzala (Glasgow) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (LD)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Urquhart, Jean (Highlands and Islands) (Ind)
Wilson, John (Central Scotland) (Ind)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Cofey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, Jane (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Surgeon, Nicola (Glasgow Southside) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 35, Against 73, Abstentions 0.

Amendment 14 disagreed to.

Amendment 23 moved,—[George Adam]—and agreed to.

Section 5—Information about identity

The Deputy Presiding Officer: Group 6 is on the employment history of lobbyists. Amendment 3, in the name of Neil Findlay, is grouped with amendments 4 to 6.

Neil Findlay: This group of amendments relates to the revolving door principle. Senior politicians, civil servants, special advisers et cetera, having served in the civil service or Government, leave their posts armed with a hefty black book full of contacts; inside knowledge of the policy process and the key players and decision makers; and a very good idea of future developments and
spending proposals or other likely proposals. They then take up a post in business, in finance or with a lobbying company, or some other organisation, and are free to use those links on behalf of their new employers and clients, although such opportunities are not available to the ordinary man and woman in the street. We need only look at some of the lobbying organisations and businesses detailed in Spinwatch’s recently published “Holyrood Exposed: A guide to lobbying in Scotland” to see that at work. [Interuption.]

**The Deputy Presiding Officer:** Order, please. There is a bit of chat going on. Can we have quiet, please?

**Neil Findlay:** If we look at the personnel of, for example, Charlotte Street Partners, Weber Shandwick or Edinburgh Airport, we see that they are very well connected ex-politicians, civil servants and special advisers, with a huge advantage over ordinary members of the public and their business competitors.

Amendments 3 to 6 would compel people in such a position to record on their lobbying returns their employment record for the previous five years. For example, the former head of the civil service, Sir John Elvidge, now chairs Edinburgh Airport Ltd. If he was involved in lobbying, he would have to detail his previous role to allow the public to deduce whether there might be any correlation between his being in that past role and the Government’s policy on, say, scrapping air passenger duty or expanding airports, and whether there is any contradiction with the Government’s climate change policy. The amendments are, therefore, about openness and transparency, and I believe that they should be supported.

I move amendment 3.

**Joe FitzPatrick:** As Neil Findlay has just outlined, amendments 3 to 6 in his name seek to introduce a requirement for those who register to provide retrospective information about their employment history or the employment history of those lobbying on their behalf. As I made clear at stage 2, I do not agree that the case has been made for requiring those who undertake lobbying activity to have their employment history publicly disclosed. It is important to remember that the amendments would apply to everyone undertaking regulated lobbying; a requirement for individuals to publish such information would clearly be disproportionate.

In its stage 1 report, the committee noted “that the inclusion of individuals’ names on the register will enable those with an interest to probe the employment history of those involved in lobbying”, as indeed Neil Findlay managed to do with regard to Sir John Elvidge. As for civil servants and special advisers, I repeat exactly what I said at stage 2: arrangements are already in place to scrutinise the future employment of civil servants and special advisers, and there is a restriction to ensure that former ministers do not lobby Government for two years following the end of their appointment.

I therefore ask Neil Findlay not to press his amendments. If he does not do so, I ask the Parliament to oppose them.

**The Deputy Presiding Officer:** Mr Findlay, do you intend to press or withdraw amendment 3?

**Neil Findlay:** I will press it, Presiding Officer.

**The Deputy Presiding Officer:** The question is, that amendment 3 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

- Baillie, Jackie (Dumbarton) (Lab)
- Beamish, Claudia (South Scotland) (Lab)
- Bibby, Neil (West Scotland) (Lab)
- Brennan, Lesley (North East Scotland) (Lab)
- Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
- Fee, Mary (West Scotland) (Lab)
- Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
- Findlay, Neil (Lothian) (Lab)
- Finnie, John (Highlands and Islands) (Ind)
- Gray, Iain (East Lothian) (Lab)
- Harvie, Patrick (Glasgow) (Green)
- Henry, Hugh (Renfrewshire South) (Lab)
- Hilton, Cara (Dunfermline) (Lab)
- Johnstone, Alison (Lothian) (Green)
- Kelly, James (Rutherglen) (Lab)
- Lamont, Johann (Glasgow Pollok) (Lab)
- Macintosh, Ken (Eastwood) (Lab)
- Malik, Hanzala (Glasgow) (Lab)
- McCulloch, Margaret (Central Scotland) (Lab)
- McDougall, Margaret (West Scotland) (Lab)
- McMahon, Michael (Uddingston and Bellshill) (Lab)
- McNeil, Duncan (Greenock and Inverclyde) (Lab)
- Murray, Elaine (Dumfriesshire) (Lab)
- Pearson, Graeme (South Scotland) (Lab)
- Pentland, John (Motherwell and Wishaw) (Lab)
- Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
- Smith, Drew (Glasgow) (Lab)
- Urquhart, Jean (Highlands and Islands) (Ind)
- Wilson, John (Central Scotland) (Ind)

**Against**

- Adam, George (Paisley) (SNP)
- Adamson, Clare (Central Scotland) (SNP)
- Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
- Allard, Christian (North East Scotland) (SNP)
- Beattie, Colm (Midlothian North and Musselburgh) (SNP)
- Biagi, Marco (Edinburgh Central) (SNP)
- Brodie, Chic (South Scotland) (SNP)
- Brown, Gavin (Lothian) (Con)
- Brown, Keith (Clackmannanshire and Dunblane) (SNP)
- Buchanan, Cameron (Lothian) (Con)
- Burgess, Margaret (Cunninghame South) (SNP)
- Campbell, Aileen (Cunninghame South) (SNP)
- Campbell, Roderick (North East Fife) (SNP)
- Carlaw, Jackson (West Scotland) (Con)
The Deputy Presiding Officer: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Brennan, Lesley (North East Scotland) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Ferry, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Gray, Iain (East Lothian) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Murray, Elaine (Dumfries and Galloway) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Urquhart, Jean (Highlands and Islands) (Ind)
Wilson, John (Central Scotland) (Ind)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunningham South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kid, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Ewen (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
McDonald, Gordon (Edinburgh Penicuik) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McKeelie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robinson, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeen South) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stuart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 29, Against 76, Abstentions 0.

Amendment 3 disagreed to.

Amendment 4 moved—[Neil Findlay].
<table>
<thead>
<tr>
<th>Member</th>
<th>Constituency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab).</td>
<td></td>
</tr>
<tr>
<td>Fee, Mary (West Scotland) (Lab).</td>
<td></td>
</tr>
<tr>
<td>Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab).</td>
<td></td>
</tr>
<tr>
<td>Brennan, Lesley (North East Scotland) (Lab).</td>
<td></td>
</tr>
<tr>
<td>Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab).</td>
<td></td>
</tr>
<tr>
<td>Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab).</td>
<td></td>
</tr>
<tr>
<td>Findlay, Neil (Lothian) (Lab).</td>
<td></td>
</tr>
<tr>
<td>Finnie, John (Highlands and Islands) (Ind).</td>
<td></td>
</tr>
<tr>
<td>Gray, Iain (East Lothian) (Lab).</td>
<td></td>
</tr>
<tr>
<td>Harvie, Patrick (Glasgow) (Green).</td>
<td></td>
</tr>
<tr>
<td>Henry, Hugh (Renfrewshire South) (Lab).</td>
<td></td>
</tr>
<tr>
<td>Hilton, Cara (Dunfermline) (Lab).</td>
<td></td>
</tr>
<tr>
<td>Johnstone, Alison (Lothian) (Green).</td>
<td></td>
</tr>
<tr>
<td>Kelly, James (Rutherglen) (Lab).</td>
<td></td>
</tr>
<tr>
<td>Lamont, Johann (Glasgow Pollok) (Lab).</td>
<td></td>
</tr>
<tr>
<td>Macintosh, Ken (Eastwood) (Lab).</td>
<td></td>
</tr>
<tr>
<td>Malik, Hanzala (Glasgow) (Lab).</td>
<td></td>
</tr>
<tr>
<td>McCulloch, Margaret (Central Scotland) (Lab).</td>
<td></td>
</tr>
<tr>
<td>McDougall, Margaret (West Scotland) (Lab).</td>
<td></td>
</tr>
<tr>
<td>McMahon, Michael (Uddingston and Bellshill) (Lab).</td>
<td></td>
</tr>
<tr>
<td>Murray, Elaine (Dumfriesshire) (Lab).</td>
<td></td>
</tr>
<tr>
<td>Pearson, Graeme (South Scotland) (Lab).</td>
<td></td>
</tr>
<tr>
<td>Pentland, John (Motherwell and Wishaw) (Lab)</td>
<td></td>
</tr>
<tr>
<td>Simpson, Dr Richard (Mid Scotland and Fife) (Lab).</td>
<td></td>
</tr>
<tr>
<td>Smith, Drew (Glasgow) (Lab).</td>
<td></td>
</tr>
<tr>
<td>Urquhart, Jean (Highlands and Islands) (Ind).</td>
<td></td>
</tr>
<tr>
<td>Wilson, John (Central Scotland) (Ind).</td>
<td></td>
</tr>
</tbody>
</table>

**Against**

<table>
<thead>
<tr>
<th>Member</th>
<th>Constituency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adam, George (Paisley) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Adamson, Clare (Central Scotland) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Allain, Dr Alasdair (Na h-Eileanan an Iar) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Allard, Christian (North East Scotland) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Beatrice, Colin (Midlothian North and Musselburgh) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Biagi, Marco (Edinburgh Central) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Brodie, Chic (South Scotland) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Brown, Gavin (Lothian) (Con).</td>
<td></td>
</tr>
<tr>
<td>Brown, Keith (Clackmannanshire and Dunblane) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Buchanan, Cameron (Lothian) (Con).</td>
<td></td>
</tr>
<tr>
<td>Burgess, Margaret (Cunningham South) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Campbell, Aileen (Clydesdale) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Campbell, Roderick (North East Fife) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Carlisle, Jackson (West Scotland) (Con).</td>
<td></td>
</tr>
<tr>
<td>Coffey, Willie (Kilmarnock and Irvine Valley) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Constance, Angela (Almond Valley) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Crawford, Bruce (Stirling) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)</td>
<td></td>
</tr>
<tr>
<td>Dey, Graeme (Angus South) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Don, Nigel (Angus North and Mearns) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Doris, Bob (Glasgow) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Dornan, James (Glasgow Cathcart) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Eadie, Jim (Edinburgh Southern) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Ewing, Annabelle (Mid Scotland and Fife) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Ewing, Fergus (Inverness and Nairn) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Fabian, Linda (East Kilbride) (SNP).</td>
<td></td>
</tr>
<tr>
<td>FitzPatrick, Joe (Dundee City West) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Gibson, Kenneth (Cunninghame North) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Gibson, Rob (Caithness, Sutherland and Ross) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Goldie, Annabel (West Scotland) (Con).</td>
<td></td>
</tr>
<tr>
<td>Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Hume, Jim (South Scotland) (LD).</td>
<td></td>
</tr>
<tr>
<td>Hyslop, Fiona (Linlithgow) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Johnstone, Alex (North East Scotland) (Con).</td>
<td></td>
</tr>
<tr>
<td>Keir, Colin (Edinburgh Western) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Kidd, Bill (Glasgow Anniesland) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Lamont, Johann (Glasgow Pollok) (Lab).</td>
<td></td>
</tr>
<tr>
<td>Johnstone, Alex (North East Scotland) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Lochhead, Richard (Moray) (SNP).</td>
<td></td>
</tr>
<tr>
<td>MacAskill, Kenny (Edinburgh Eastern) (SNP).</td>
<td></td>
</tr>
<tr>
<td>MacDonald, Angus (Falkirk East) (SNP).</td>
<td></td>
</tr>
<tr>
<td>MacDonald, Gordon (Edinburgh Pentlands) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Mackay, Derek (Renfrewshire North and West) (SNP).</td>
<td></td>
</tr>
<tr>
<td>MacKenzie, Mike (Highlands and Islands) (SNP).</td>
<td></td>
</tr>
<tr>
<td>McLaughlin, Fiona (Strathkelvin and Bearsden) (SNP).</td>
<td></td>
</tr>
<tr>
<td>McMillan, Stuart (West Scotland) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Milne, Nanette (North East Scotland) (Con).</td>
<td></td>
</tr>
<tr>
<td>Mitchell, Margaret (Central Scotland) (Con).</td>
<td></td>
</tr>
<tr>
<td>Neil, Alex (Airdrie and Shotts) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Paterson, Gill (Clydebank and Milngavie) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Robertson, Dennis (Aberdeenshire West) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Robson, Shona (Dundee City East) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Russell, Michael (Argyll and Bute) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Salmond, Alex (Aberdeen East) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Scanlon, Mary (Highlands and Islands) (Con).</td>
<td></td>
</tr>
<tr>
<td>Scott, Tavish (Shetland Islands) (LD).</td>
<td></td>
</tr>
<tr>
<td>Smith, Liz (Mid Scotland and Fife) (Con).</td>
<td></td>
</tr>
<tr>
<td>Stevenson, Stuart (Banffshire and Buchan Coast) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Stewart, Kevin (Aberdeen Central) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Thompson, Dave (Skye, Lochaber and Badenoch) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Torrance, David (Kirkcaldy) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Watt, Maureen (Aberdeen South and North Kincardine) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Wheelhouse, Paul (South Scotland) (SNP).</td>
<td></td>
</tr>
<tr>
<td>White, Sandra (Glasgow Kelvin) (SNP).</td>
<td></td>
</tr>
<tr>
<td>Yousaf, Humza (Glasgow) (SNP).</td>
<td></td>
</tr>
</tbody>
</table>

**The Deputy Presiding Officer:** The result of the division is: For 29, Against 76, Abstentions 0.

**Amendment 4 disagreed to.**

**Amendment 5 moved—[Neil Findlay].**

**The Deputy Presiding Officer:** The question is, that amendment 5 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

**For**

<table>
<thead>
<tr>
<th>Member</th>
<th>Constituency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Baillie, Jackie (Dumbarton) (Lab).</td>
<td></td>
</tr>
<tr>
<td>Beamish, Claudia (South Scotland) (Lab).</td>
<td></td>
</tr>
<tr>
<td>Bibby, Neil (West Scotland) (Lab).</td>
<td></td>
</tr>
<tr>
<td>Brennan, Lesley (North East Scotland) (Lab).</td>
<td></td>
</tr>
<tr>
<td>Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab).</td>
<td></td>
</tr>
<tr>
<td>Fee, Mary (West Scotland) (Lab).</td>
<td></td>
</tr>
<tr>
<td>Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab).</td>
<td></td>
</tr>
</tbody>
</table>

**Against**

<table>
<thead>
<tr>
<th>Member</th>
<th>Constituency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Findlay, Neil (Lothian) (Lab).</td>
<td></td>
</tr>
<tr>
<td>Finnie, John (Highlands and Islands) (Ind).</td>
<td></td>
</tr>
<tr>
<td>Gray, Iain (East Lothian) (Lab).</td>
<td></td>
</tr>
<tr>
<td>Harvie, Patrick (Glasgow) (Green).</td>
<td></td>
</tr>
<tr>
<td>Henry, Hugh (Renfrewshire South) (Lab).</td>
<td></td>
</tr>
<tr>
<td>Hilton, Cara (Dunfermline) (Lab).</td>
<td></td>
</tr>
<tr>
<td>Johnstone, Alison (Lothian) (Green).</td>
<td></td>
</tr>
<tr>
<td>Kelly, James (Rutherglen) (Lab).</td>
<td></td>
</tr>
<tr>
<td>Lamont, Johann (Glasgow Pollok) (Lab).</td>
<td></td>
</tr>
<tr>
<td>Macintosh, Ken (Eastwood) (Lab).</td>
<td></td>
</tr>
<tr>
<td>Malik, Hanzala (Glasgow) (Lab).</td>
<td></td>
</tr>
<tr>
<td>McCulloch, Margaret (Central Scotland) (Lab).</td>
<td></td>
</tr>
<tr>
<td>McDougall, Margaret (West Scotland) (Lab).</td>
<td></td>
</tr>
<tr>
<td>McMahon, Michael (Uddingston and Bellshill) (Lab).</td>
<td></td>
</tr>
<tr>
<td>Murray, Elaine (Dumfriesshire) (Lab).</td>
<td></td>
</tr>
<tr>
<td>Pearson, Graeme (South Scotland) (Lab)</td>
<td></td>
</tr>
<tr>
<td>Pentland, John (Motherwell and Wishaw) (Lab)</td>
<td></td>
</tr>
<tr>
<td>Simpson, Dr Richard (Mid Scotland and Fife) (Lab)</td>
<td></td>
</tr>
<tr>
<td>Smith, Drew (Glasgow) (Lab).</td>
<td></td>
</tr>
<tr>
<td>Urquhart, Jean (Highlands and Islands) (Ind)</td>
<td></td>
</tr>
<tr>
<td>Wilson, John (Central Scotland) (Ind).</td>
<td></td>
</tr>
</tbody>
</table>
Amendment 5 disagreed to.

Amendment 6 moved—[Neil Findlay].

The Deputy Presiding Officer: The question is, that amendment 6 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Baillie, Jackie (Dumbarton) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Brennan, Lesley (North East Scotland) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Gray, Iain (East Lothian) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, Jim (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
McCallion, Margaret (Central Scotland) (Lab)
McDowall, Margaret (West Scotland) (Lab)
McDonald, Michael (Uddingston and Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Murray, Elaine (Dumfries and Galloway) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Urquhart, Jean (Highlands and Islands) (Ind)
Wilson, John (Central Scotland) (Ind)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-Shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh South) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (East Renfrewshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McDonald, Mark (Aberdeen Donside) (SNP)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Mclean, Andrew (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Glasgow) (SNP)
Robinson, Bryan (South Scotland) (SNP)
Rolland, David (Lothian) (Con)
Russell, Michael (North East Scotland) (SNP)
Salmond, Alex (Aberdeen South) (SNP)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Urquhart, Jean (Highlands and Islands) (Ind)
Wilson, John (Central Scotland) (Ind)
Salmond, Alex (Aberdeenshire East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 29, Against 75, Abstentions 0.

Amendment 6 disagreed to.

Section 6—Information about regulated lobbying activities

Amendment 7 moved—[Neil Findlay].

The Deputy Presiding Officer: The question is, that amendment 7 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Bailie, Jackie (Dumbarton) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Brennan, Lesley (North East Scotland) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Gray, Iain (East Lothian) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macintosh, Ken (Eastwood) (SNP)
Malik, Hanzala (Glasgow) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Murray, Elaine (Dumfrieshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Urquhart, Jean (Highlands and Islands) (Ind)
Wilson, John (Central Scotland) (Ind)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Pertshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dorman, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Easttrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Mattheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McDonlad, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milton, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Yousaf, Humza (Glasgow) (SNP)
The Deputy Presiding Officer: The result of the division is: For 29, Against 76, Abstentions 0.

Amendment 7 disagreed to.

After section 6

Amendment 8 moved—[Neil Findlay].

The Deputy Presiding Officer: The question is, that amendment 8 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Bailie, Jackie (Dumbarton) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Brennan, Lesley (North East Scotland) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Gray, Iain (East Lothian) (Lab)
Harvie, Patrick (Green) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mallik, Hanzala (Glasgow) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Dr Patrick (Glasgow) (Lab)
Urquhart, Jean (Highlands and Islands) (Ind)
Wilson, John (Central Scotland) (Ind)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Currie, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Sirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)

Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Linda (East Kilburn) (SNP)
Fitzpatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Robin (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (Con)
Mckelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, GIL (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 29, Against 76, Abstentions 0.

Amendment 8 disagreed to.

Section 15—Power to specify requirements about the register

Amendment 9 moved—[Neil Findlay].

The Deputy Presiding Officer: The question is, that amendment 9 be agreed to. Are we agreed?

Members: No.
The Deputy Presiding Officer: There will be a division.

For
Bailie, Jackie (Dumbarton) (Lab)
Beamish, Claudia (South Scotland) (SNP)
Bibby, Neil (West Scotland) (Lab)
Brennan, Lesley (East Scotland) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Gray, lain (East Lothian) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDouall, Margaret (West Scotland) (Lab)
McMahan, Michael (Uddingston and Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Urquhart, Jean (Highlands and Islands) (Ind)
Wilson, John (Central Scotland) (Ind)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Alian, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Allan, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Strirling) (SNP)
Cunningham, Roseannna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabellle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Cathness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Barnfife and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Thompson, Deve (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 29, Against 76, Abstentions 0.

Amendment 9 disagreed to.

Section 42—Offences relating to registration and information returns

The Deputy Presiding Officer: Group 7 is on offences and sanctions. Amendment 10, in the name of Neil Findlay, is the only amendment in the group.

Neil Findlay: Amendment 10 provides for a sliding scale of warnings, alerts and sanctions for those who fail to register, or who register and then commit a breach of the terms of the register. In practice, that would mean the organisation being warned, via the clerk of the Parliament, of its failure. If, after that, the organisation still failed to address the concerns, a sliding scale of punishment prior to conviction would be suggested, with the ultimate sanction being that the organisation would be struck off the register for three years and/or be fined. Its being barred from the register, and that becoming common
knowledge, may be the most effective sanction. It will ensure that others are not tempted to try to breach the terms of the register.

I move amendment 10.

Joe FitzPatrick: Amendment 10 is a similar amendment to one that Mr Findlay lodged at stage 2, and which was opposed by the committee by five votes to one.

Neil Findlay: The minister has raised that point several times when it suits his argument, but when it does not suit his argument he never mentions it.

Members: Oh!

The Deputy Presiding Officer: Order, please.

Joe FitzPatrick: We will just move on.

Amendment 10 would create a criminal offence with no criminal penalty. I understand that it is also Mr Findlay’s intention to introduce a more serious penalty for a second or subsequent offence and for that person then potentially to be prevented from lobbying for three years.

I appreciate the spirit in which amendment 10 seeks to offer registrants some latitude in respect of initial failures to comply with the registration scheme. However, I remain of the view that the amendment will not deliver that intention. It is unclear how a sanction that would prevent a person from engaging in regulated lobbying activity would be enforced. The Government considers that the existing statutory framework, as set out in the bill, provides a proportionate approach in respect of offences.

The provision of guidance and the roles of the clerk and commissioner, backed by the possibility of criminal sanctions, provide an approach that is both fair to registrants and sufficient to ensure the robustness of the registration regime. For those reasons, I ask Neil Findlay to seek to withdraw amendment 10. If he will not, I ask Parliament to oppose it.

Neil Findlay: I wish to press amendment 10.

The Deputy Presiding Officer: The question is, that amendment 10 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Bailie, Jackie (Dumbarton) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Brennan, Lesley (North East Scotland) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)

Against

Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Urquhart, Jean (Highlands and Islands) (Ind)
Wilson, John (Central Scotland) (Ind)

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileene (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
The Deputy Presiding Officer: I am sorry, minister. I should have asked you to speak to amendment 19 and the other amendments in the group.

Joe FitzPatrick: Will do.

Amendment 11 has two parts. First, it would provide that “The Parliament may make available information with a view to” raising “awareness ... of this Act.” Secondly, it would require the Parliament to make available “sufficient funding” to support such activities. I am sympathetic towards the first part of Mr Findlay’s amendment. As I intimated at stage 2, I have lodged amendment 19, which will enable Parliament to “take such steps as it considers appropriate to promote public awareness and understanding of the operation of this Act.”

My amendment will, of course, be complementary to the bill’s existing provisions requiring the Parliament to publish guidance on the operation of the act.

I still cannot support the second part of Mr Findlay’s amendment. It must be left to the Scottish Parliamentary Corporate Body to make decisions about use of the overall budget that is available to Parliament. It is not appropriate for us to take such action in a bill.

I invite Parliament to support amendment 19 and to oppose amendment 11.

The Deputy Presiding Officer: The result of the division is: For 35, Against 72, Abstentions 0.

Amendment 10 disagreed to.

Section 43—Parliamentary guidance

The Deputy Presiding Officer: Group 8 is on public awareness. Amendment 11, in the name of Neil Findlay, is grouped with amendment 19.

Neil Findlay: Amendment 11 seeks to ensure that adequate resources and investment are available in the system and that the legislation is implemented successfully. We cannot introduce a system on a whim or on a shoestring budget; we must put in the resources to raise awareness of the changes that the bill will bring in, and to ensure that the register will be effectively monitored and enforced.

I recently heard the Regulator of Lobbying in Ireland speak at an expert seminar at the University of Stirling. She was clear that investment and education are required to ensure that legislation is successful. In her words, “What price a well-functioning and transparent democracy?”

I agree.

I move amendment 11.

Joe FitzPatrick: Again, I say that Neil Findlay lodged an identical amendment at stage 2.
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McManus, Michael (Uddingston and Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Murray, Elaine (Dumfries) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Wilson, John (Central Scotland) (Ind)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Brianne (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Dundee West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
MacArthur, Liam (Orkney Islands) (LD)
McDonald, Mark (Aberdeen Donside) (SNP)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeen South) (SNP)
Scott, Tavish (Shetland Islands) (LD)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Yousaf, Humza (Glasgow) (SNP)

Abstentions
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Goldie, Annabel (West Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Edinburgh North and Leith) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)

Amendment 16 moved—[Joe FitzPatrick]—and agreed to.

Section 46—Interpretation
Amendment 16 moved—[Patricia Ferguson].
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Urquhart, Jean (Highlands and Islands) (Ind)
Wilson, John (Central Scotland) (Ind)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing,ergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
 Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 35, Against 72, Abstentions 0.

Amendment 16 disagreed to.

Amendment 20 moved—[Joe FitzPatrick]—and agreed to.

Schedule—Communications which are not lobbying

The Deputy Presiding Officer: Group 9 is on communications which are not lobbying. Amendment 21, in the name of the minister, is grouped with amendments 22, 22A and 22B.

Joe FitzPatrick: The three amendments in my name in this group—amendments 21, 22 and 22B—deal with important elements of how the lobbying regime will operate, so I will take some time to explain why the Government proposes the changes.

Parliament is rightly proud of its reputation for being open and accessible and for the relationships that it has built with individuals and organisations throughout Scotland. All members place particular importance on their engagement with their constituents, whether they are businesses and other organisations or individuals. During the passage of the bill, I have listened carefully to members’ concerns about the potential for it to impact on that legitimate engagement. At stage 2, I intimated to the committee that I wanted to consider options that would seek to exempt constituency-based communications and small-scale lobbying. Amendments 21, 22 and 22B in my name will help to ensure that the lobbying regime that the bill creates will be proportionate and will not deter engagement with MSPs and ministers.

Amendment 21 is what I describe as the constituency-based exemption. It seeks to exempt all communications that are made by individuals as, for example, employees
that is, a “person” in the legal sense—and on that person’s behalf to a local constituency or regional list MSP. “Local” means an MSP for the constituency or region in which the person’s business or other activity is ordinarily carried out, or for the place of residence of the individual who made the communication.

The exemption will apply regardless of where the communication takes place. For example, it could be made when a local MSP attends a small business gala event in their constituency at which representations are made to them about particular issues that concern local or national policies.

Neil Findlay: My region covers the whole of the Lothians, in which dozens of lobbying organisations are based. Is the minister saying that they will be able to lobby me as a constituency member without any of that activity needing to be registered?

Joe FitzPatrick: No. Neil Findlay is not correct. It is clear that the exemption relates to organisations that are lobbying on their own behalf. Third-party lobbying organisations are always lobbying on behalf of a party.

Neil Findlay: Is the minister telling me that, if an organisation that lobbies me on its own behalf contacts me, as a regional MSP, that activity does not need to be registered?

Joe FitzPatrick: Yes—that is exactly what we are saying. We want to ensure that legitimate constituency-based engagement is not covered by the bill. However, we recognise that there is a distinction between ministers and cabinet secretaries and other members. Therefore, the constituency-based exemption—[Interruption.]

The Deputy Presiding Officer: Minister, could I stop you for a moment?

The noise in the chamber is becoming louder. We cannot hear the minister.

Joe FitzPatrick: The constituency-based exemption does not exempt communications that are made to MSPs who are also members of the Scottish Government or are junior Scottish ministers. That brings me to amendment 22—

Johann Lamont (Glasgow Pollok) (Lab): Will Joe FitzPatrick take an intervention?

Joe FitzPatrick: No—I will make some progress. Amendment 22 will exempt all communications that are made by individuals, for example,

“an employee ... in the course of a business or other activity carried on by another person”—

again, that is “person” in the legal sense—

“on the other person’s behalf”, where that person, such as a small business or other type of organisation,

“has fewer than 10 full-time equivalent employees.”

The number of full-time equivalent employees that that person has will be based on—

Johann Lamont: Will the member give way?

Joe FitzPatrick: I will complete this point.

The number of full-time employees will be based on the “number of hours worked by all the employees ... in the 28 days ending on the date on which the communication was made.” For those purposes, full-time equivalent is based on a notional 35-hour week for a full-time member of staff, which is 140 hours over 28 days. That is the maximum number of hours that can be counted for an individual full-time member of staff.

Johann Lamont: I thank the minister for taking an intervention. In the interests of understanding what is being proposed, is it being suggested that if an organisation employs someone as a lobbyist to come and lobby a member who represents a region, that would not be registered, but if that organisation went to an external organisation whose expertise was in lobbying, it would have to be registered? Although the job that would be being done is exactly same, are you saying that there will be a distinction? What is to stop an organisation, rather than employing someone externally, employing someone as part of its organisation, in order not to have to disclose that it is lobbying MSPs?

Joe FitzPatrick: In terms of the constituency-based exemption, we are trying to ensure that the legitimate engagement of businesses and organisations with their list member does not require to be registered. There may be several reasons why an organisation might want to engage—for example, to give a constituency member a heads up about an impending employment challenge in that member’s constituency. We want to ensure that such engagement can continue. The Government recognises that, in this case, there is a difference between most MSPs and MSPs who are also in the Scottish Government or are junior ministers. It is very difficult to unpick that in the time period, which is why the exemption will not extend to ministers.

On amendment 22 and the small organisations, many of us will have received emails from the Scottish alliance for transparency in lobbying—it was quite an effective campaign—which felt that it had identified a potential loophole in the Government’s amendments. The Government’s
intention is that representative bodies will not benefit from the small-organisation exemption. The focus should be on avoiding undue burdens being placed on other small organisations. If a body’s core purpose is to represent the views of its members it should not benefit from the exemption.

In response to concerns from stakeholders and Mr Harvie’s amendment 22A, I have lodged amendment 22B. Although we did not think that it would be required, amendment 22B will make it clearer that the exemption for small organisations does not apply to representative bodies. Patrick Harvie’s amendment 22A goes too far because it seeks to exclude from the small-organisation exemption bodies with “1 or more full-time equivalent employees”,

if that body

“exists primarily to ... represent the interests of its members and the relevant communication is made on behalf of any of the members”,

or exists to

“take up particular issues and the relevant communication is made in the furtherance of any of those issues.”

I agree with the principle of the first part of amendment 22A, which is that representative bodies should not benefit from the exemption. That is why I lodged amendment 22B, which will put that beyond doubt.

However, there is a fundamental issue with the second part of Mr Harvie’s amendment 22A, which seeks to exclude from the small-organisation exemption what I would describe as advocacy groups—unless they have less than one full-time equivalent employee—that exist based on, and which take up and promote, a particular issue.

Every one of us will have our own examples of when we have met or visited a small group that campaigns tirelessly to raise awareness of a particular issue, or a small charity that does all that it can to better the lives of the people of Scotland. Such entities typically operate with minimal resources. Do we really want communications by that type of small organisation to be caught? I hope that most members will agree that the answer to that question is no. That is why I ask members not to support Patrick Harvie’s amendment 22A.

My amendments 21, 22 and 22B taken together will help to ensure that individuals, businesses and organisations will retain the ability to freely engage with their elected representatives in the constituency in which they are based, and that smaller organisations will avoid the disproportionate burden that engaging with MSPs and ministers might present.

I am keen to ensure that no legitimate engagement between MSPs and ministers, and local businesses, organisations and individual constituents is inhibited by the bill. My amendments strike a balance between delivering transparency and avoiding inhibition of engagement. The requirement for Parliament to review the operation of the act will ensure that we can reflect on whether that balance has been struck.

What I have presented is clear and simple to operate—that reflects one of the underpinning principles that I have retained throughout the bill process.

I ask members to support my amendments 21, 22 and 22B, and I hope that Mr Harvie will not press his amendment 22A. If he presses it, I ask members to reject it.

I move amendment 21.

Patrick Harvie: I think that most of us recognise that there is an issue with very small organisations, and that the way in which the regulation system treats them might not need to be the same as the way in which it treats large, well-resourced and well-staffed lobbying outfits. However, the fact that the minister lodged amendment 22B demonstrates an acknowledgement that amendment 22 gives a wee bit too much blanket protection in that regard.

I think that all of us recognise the picture that the minister painted of the small, underfunded or perhaps entirely unfunded local, crowdfunders funded or whatever advocacy organisations with charitable purposes for which we all have a great deal of sympathy. However, surely we can all acknowledge that there are small organisations that might have very few staff and very little direct resourcing, but which represent with a much more politically powerful voice the interests of something that is much more significant and commercial.

Amendment 22A would get the balance more right than the minister’s amendment 22B does. The caveat that it would introduce to the small-organisation exemption would leave us with a stronger bill and ensure that we strike the right balance in respect of who is and is not brought into the lobbying regime.

Let us remember that we are not creating a profoundly overburdensome lobbying regulatory regime. By and large, the bill is a step in the right direction. It does not take us everywhere we need to get to, but amendment 22A would strike the right balance on the small-organisation exemption better than amendment 22B would.

I want to say a few words about amendment 21 and constituency and regional relevance. We are talking not necessarily about residency, but about
individuals. I note that proposed paragraph 1A(c)(iii) refers to “the individual’s residence”. That does not necessarily imply to me their permanent or fixed residence. I wonder whether an individual who is representing the interests of their own business or any other might be able simply to rent a flat for a week in the constituency of the First Minister’s parliamentary liaison officer in order to ensure that they can lobby them outside the scope of the regulatory regime or, indeed, whether they could do so in the constituency of a committee chair if they wanted to lobby them outside the scope of the regulatory regime.

I also wonder about the phrases “a place where the person’s business is ordinarily carried on” and “a place where the person’s activity is ordinarily carried on”.

What if we are talking about Tesco? Is not its business carried on in every constituency in Scotland? There are organisations that cannot be pinned down in that narrow and specific way. They might well find ways to use the provision as a loophole to avoid complying with the regulatory regime, because they want to have communications but would rather not be treated in the transparent way that the bill should be all about. I therefore have severe reservations about amendment 21.

15:30

Patricia Ferguson: I had not planned to speak on amendment 22. However, in the course of the discussion, and looking at all the things that the minister is trying to do in the amendment, I began to wonder whether the original text of the bill, which talked about lobbyists specifically as people employed for that purpose by organisations, might not—for the very reasons that Patrick Harvie has given—have provided a better definition.

I want to talk about amendment 21. Neil Findlay, Patrick Harvie and Johann Lamont have already pointed out the flaws in that element of the bill. As it stands, not only would a person who works in Mr Findlay’s region be exempted from the lobbying regulations if they were talking to the constituency member or to any of the members for the region in which their business was based but if, for talking’s sake, that individual lived in my constituency in Glasgow, they would also, under the terms of the bill, be exempted by the lobbying regulations from having to declare that they had spoken to me or any of the regional members in Glasgow. In this context, I do not know what the word “activity” means. I would be interested to hear the minister explain that. There seem to be far too many exemptions in the amendment.

In more general terms, a real question mark over amendment 21 is that it seems to add to what is already a long list of situations in which communications with an MSP would not be considered to be lobbying. How does that amendment to the schedule, which talks about the people who are not captured by the bill, square with part 1 of the bill, which details who is captured? The two are potentially contradictory because the same category of people who are included in part 1 are excluded in the schedule.

Stewart Stevenson: I very much welcome the protection for the interaction between members and interests that are in their constituency. I illustrate that in a number of ways. A number of companies with a nine-figure turnover operate wholly and exclusively within my constituency and no other. I will name one example, which is Peterhead harbour board, where the turnover is well in excess of £100 million a year. Were it to be inhibited from inviting me to discuss a harbour development, from suggesting to me, advance of committing to such a development, that it would be a good idea if such a development were to take place, and from receiving my views and advice on the matter, that would be quite an improper interference.

Neil Findlay: Will the member take an intervention?

Stewart Stevenson: One moment, please.

There would be confusion regarding my right to talk to my constituents, hundreds of whose jobs depend on the success of that business. The moment that that business interacts with the Government to seek grants, it would, of course, be caught by the act. Equally, if it chose to have an adviser act on its behalf and talk to me, it would be caught. There is a fine line.

Patrick Harvie: Will the member give way?

Stewart Stevenson: If you do not mind, Mr Harvie, I did the courtesy of saying to Mr Findlay that I would take an intervention from him.

Neil Findlay: I am astonished. You were the convener of the committee that took all the evidence and you know that none of that is true, because what happens is—

Members: Oh!

The Deputy Presiding Officer: Order, please.

Neil Findlay: You know that the evidence taken by the committee does not support what you are saying. All that would happen is that the person would have to register. You could have a dialogue with anyone you want. No one would be inhibited from anything.

The Deputy Presiding Officer: Can members remember to speak through the chair, please?
Stewart Stevenson: I absolutely accept that the company in question, which I used as an example, would be likely to become registered. However, constituents might have genuine interests in the constituency that they wish to raise; in the case of city members, a single educational institution might have significant issues that it wishes to raise with its member, not necessarily in the context of it being registered. I accept that it might subsequently have to register.

Patrick Harvie: The member talks about constituents. Is that not the nub of it? Our constituents are citizens and have votes, but the businesses do not have votes and are not our constituents. People who work in businesses are our constituents—[Interruption.]

The Deputy Presiding Officer: Order, please.

Patrick Harvie: If members will permit, I will continue with my argument.

People working in those businesses are our constituents and nothing in the bill inhibits them as individual citizens from contacting their MSPs. This is about whether businesses should be treated as though they themselves are our constituents. Businesses do not have votes, and there is a good reason why their lobbying should be treated very differently from the case of an individual citizen seeking to have a meeting with their representative.

Stewart Stevenson: I wonder whether I live in a uniquely different world—[Laughter.] It is possible.

[Laughter.]

The Deputy Presiding Officer: Order, please.

Stewart Stevenson: Businesses in my constituency feel quite comfortable about approaching me and discussing their plans for their businesses. It is proper that they do so, because the livelihoods of thousands of people in my constituency are affected. If there are members in this Parliament who are in a different position, I pity them rather than envy them.

Neil Findlay: None of this was ever about small organisations and none of it was ever about constituency business. All through the bill’s passage and the debates around lobbying, we have seen shoals of red herrings being brought out time and time again. A lot of bad stuff has gone into this bill as the Government has taken it through.

Members: Bad stuff?

Neil Findlay: Yes, that is right—you heard correctly. [Interruption.]

The Deputy Presiding Officer: Order, please.

Neil Findlay: The Government amendments that are before us are just nonsense. If they are agreed to, it will mean that a constituent of mine who is a lobbyist but who meets me to lobby at their place of work in, say, Edinburgh does not have to register. Given that my region covers the whole of the Lothians, that means that a number of employees—

Stewart Stevenson: Will the member take an intervention?

Neil Findlay: Just let me get through this point.

A number of employees who contact me directly and want to sit down and discuss lobbying activity would not be covered—that is nonsense.

Stewart Stevenson: I wonder whether the member can assure me that he is making a very clear distinction between someone who is representing a lobbying company talking about the business of that company and their speaking about the business of their clients, which is lobbying caught by the regulated lobbying provisions of the bill. I am uncertain as to why that category of company, uniquely among companies, should be excluded from meeting the constituency member.

Neil Findlay: Yes, I am talking absolutely about that, and that is it clarified.

On the Government amendment about companies with under 10 employees—[Interruption.]

The Deputy Presiding Officer: Order, please.

Neil Findlay: Of all the stuff in the bill, that is the most farcical of all the amendments that the minister has lodged. He should at least have the dignity and self-respect to look embarrassed by the rubbish that he has brought forward, because there is no evidence from stages 1 and 2 to support the amendment. Where does the figure of 10 for the number of employees come from? Why is it not 20? Why is it not five? Why is it not three? There is no rationale for the proposal.

Let us look at some of the organisations that now, with the minister’s stroke of genius, will not be covered: the Faculty of Advocates, the Association of the British Pharmaceutical Industry Scotland, the Institute of Chartered Accountants Scotland, the Scottish Licensed Trade Association, the Federation of Small Businesses, Scottish CND, the Institute of Directors, the Scottish Grocers Association and CBI Scotland, all of which have fewer than 10 employees and will not be covered by the bill. All those organisations lobby this Parliament effectively and regularly, but none of them will be covered because of an amendment lodged by the minister. What a farce! What a shambles! The minister should be ashamed of himself.
The Deputy Presiding Officer: I call the minister to wind up. [Interruption.] Can we have order, please?

Joe FitzPatrick: It is good to see that Neil Findlay has woken up at last. [Interruption.]

The Deputy Presiding Officer: Order. Order!

Joe FitzPatrick: I was expecting some more fire earlier on.

Let us deal with Mr Findlay’s list of organisations. Those organisations are, in the main, representative organisations, so if they are lobbying they are lobbying not on their own behalf but on behalf of their members. We were confident that the bill caught them and the exclusion in amendment 22 did not remove them. However, after taking on board Patrick Harvie’s amendment 22A and the comments—

Hugh Henry (Renfrewshire South) (Lab): Will the member take an intervention?

Joe FitzPatrick: I will finish making my point.

After taking on board Mr Harvie’s amendment 22A and SALT’s campaign, my officials and I drafted an amendment that is based on Mr Harvie’s amendment and places that beyond any doubt. There is no question but that those sorts of representative bodies are covered by the bill.

On the wider issue, we have tried to bring forward a bill and amendments that strike a balance between delivering transparency and avoiding the inhibition of engagement. We have had to decide where we felt that balance is. I respect the fact that some members, including Patrick Harvie, Patricia Ferguson and Neil Findlay, have a different view of where the balance is. One of the strengths of the review process that we have built into the bill is that the Parliament and committees can look back in future parliamentary sessions and decide whether we have struck the balance correctly. If we have not, they can make changes. That is very important.

Patricia Ferguson thought that the exclusion somehow contradicts the earlier parts of the bill. The earlier parts of the bill are drawn very widely, which catches a great number of people. The schedule, in terms of exclusions, removes some people from that wider pool.

On that basis, the bill and our amendments are really strong. I hope that colleagues will support my amendments and reject Mr Harvie’s amendment.

The Deputy Presiding Officer: The question is, that amendment 21 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
Mckelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Mhle, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)

Against

Adamson, Alastair (Lothian) (SNP)
Allard, Christian (North East Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
Mckelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Mhle, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
The Deputy Presiding Officer: The result of the division is: For 77, Against 31, Abstentions 0.

Amendment 21 agreed to.

Amendment 22 moved—[Joe FitzPatrick].

Amendment 22B moved—[Joe FitzPatrick].

The Deputy Presiding Officer: The question is, that amendment 22B be agreed to. Are we agreed?

Members: No.

For

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Alineen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabi, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Janet (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (Ind)
Woolhead, Paul (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)
Amendment 22B agreed to.

Amendment 22A moved—[Patrick Harvie].

15:45

The Deputy Presiding Officer: The question is, that amendment 22A be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Bailie, Jackie (Dumbarton) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Pamphilon, Lesley (North East Scotland) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Kelly, James (Rutherglen) (Lab)

Against

Bailie, Jackie (Dumbarton) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Pamphilon, Lesley (North East Scotland) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Kelly, James (Rutherglen) (Lab)
McGrigor, Jamie (Highlands and Islands) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Robinson, Dennis (Aberdeen West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeen East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 35, Against 73, Abstentions 0.

Amendment 22A disagreed to.

The Deputy Presiding Officer: The question is, that amendment 22, as amended, be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Kevin (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Fitzpatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McDonald, Mark (Aberdeen Donside) (SNP)
McIntyre, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeen East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Yousaf, Humza (Glasgow) (SNP)

Against
Ballie, Jackie (Dumbarton) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Brennan, Lesley (North East Scotland) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Urquhart, Jean (Highlands and Islands) (Ind)
Wilson, John (Central Scotland) (Ind)

The Deputy Presiding Officer: The result of the division is: For 76, Against 31, Abstentions 0.

Amendment 22, as amended, agreed to.

The Deputy Presiding Officer: That ends the consideration of amendments.

The Minister for Parliamentary Business (Joe FitzPatrick): In opening this debate, I would like to thank all members for their contributions to the development of the Lobbying (Scotland) Bill, which I hope the Parliament will approve in due course.

I opened the stage 1 debate in January by highlighting the distinct character of the bill. It has been brought forward by the Government, but it is very much parliamentary in nature. I made it clear that I was keen to work closely with the Parliament from the outset to ensure that members’ views were reflected in the bill’s framework.

Contributions to the bill’s journey have come in many forms: from Neil Findlay’s proposal for a member’s bill; from the late Helen Eadie’s suggestion that the Standards, Procedures and Public Appointments Committee conduct an inquiry into the most appropriate measures required in the Scottish context; and from the subsequent inquiry and committee report of that inquiry, which was published in February 2015. Of the 17 recommendations in that report, 12 fell within the scope of the bill and were reflected in whole or in part in the bill as introduced.

The Government’s consultation, published in May 2015, maintained the momentum of stakeholder engagement. Following the bill’s introduction, that momentum continued through the committee’s calls for evidence and its stage 1 report, which was published in December 2015, as well as its endorsement of the general principles of the bill. All 13 recommendations in the committee’s report had been or were actioned by the Government. Of course, the momentum also continued through the contributions made by members during the bill’s parliamentary passage.

All those steps evidence the collaborative working between the Government and the Parliament that is indicative of the Scottish democratic process, of which we are rightly proud. That collaborative working has—importantly—involved stakeholders, who have helped to shape the bill to ensure that it will work for lobbyists, for businesses and organisations, for transparency campaign groups and, most importantly, for citizens.

Neil Findlay (Lothian) (Lab): On a scale of one to 10, at which level of transparency does the
minister believe the bill sits in comparison with what happens in other jurisdictions?

Joe FitzPatrick: I think that the bill sits in absolutely the correct place, balancing transparency and proportionality for Scottish circumstances, going back to Helen Eadie’s initial request that the Standards, Procedures and Public Appointments Committee look at the issue.

As a result of engagement with stakeholders—including the numerous meetings that I have had with them—the bill responds positively to the range of interests involved. I respect the position of members and stakeholders who have called for greater transparency. I emphasise that the Government has listened, and has strengthened the bill during the parliamentary process.

I welcome the positive contribution from the lobbying industry, which has embraced the principle of greater transparency and accepted the principles of the registration framework. I have listened to the industry’s calls for a level playing field, and I think that we have achieved that.

I have also listened to the concerns of the third and voluntary sectors. As a result, I have tried to ensure a proportionate approach to the regime by ensuring that an undue burden is not placed on smaller organisations in the sector, which do all that they can to better the lives of the people of Scotland.

I have listened to businesses through their representative bodies, which have called for a simple approach that is easy to operate and has the aim of ensuring a free and open relationship between elected members and the businesses that serve our communities. That has always been balanced against our aim of greater transparency.

I have listened to trade unions through their contributions to the Government’s consultation and the parliamentary inquiry, and in respect of the issue of widening the definition of regulated lobbying to include civil servants, which I will say more about later.

Importantly, I have listened to the public through their representations to their elected members and to me. I was clear at the outset that the regime that the bill sets up should not seek to catch individuals who are communicating on their own behalf. That was based on the important principle of retaining engagement between the Government, Parliament, constituents and members of the public.

In June 2013, when the Government announced that it would introduce a lobbying bill, we set out three underpinning principles that have guided the development of the bill. First, the Parliament has a proud reputation for its approach to openness, ease of access and accountability, and for the relationships that it has built with civic Scotland. I was clear that there should be no erosion of any of those elements.

Secondly, I was clear that the register of lobbyists should complement and not duplicate existing transparency measures and should be developed to work alongside existing frameworks that have been established in the Parliament and the Government.

Finally, the new arrangements should be proportionate and simple in their operation, and they should command broad support within and outwith the Parliament. The key words that I have consistently used are proportionality and simplicity.

Those three underpinning principles have been welcomed by members and stakeholders and are clearly reflected in the bill.

Every member who contributed to the stage 1 debate agreed that lobbying is a legitimate activity and recognised the valuable contribution that it makes to informing policy in Scotland. However, we agreed that we should seek to increase the transparency of lobbying activity, particularly in light of the further devolution of powers to the Scottish Parliament. The bill will aid existing transparency measures in a robust and coherent manner.

I have said throughout the bill’s development that I would continue to consider any potential changes to the bill, as long as the principle of proportionality was retained.

I thank members for their amendments, although I recognise there might be some disappointment at the fact that some changes were not endorsed by the committee and the Parliament. The amendments that the Government has lodged, which were agreed to, were considered carefully on the basis of the views of Parliament and stakeholders.

On a number of fronts, and particularly on the subject of written communications, I have not been assured that proposed changes would respect the principle of proportionality. Robert Cumming of PA Advocacy recently undertook his third annual advocacy survey of MSPs. His analysis of the evidence shows that most MSPs rely on direct communication with organisations by way of meetings in the first instance. That evidence supports the Government’s position that face-to-face communication is the most effective means of lobbying.

At stage 2, the committee agreed to a Government amendment to the bill that requires the Parliament to report on the operation of the legislation. It is appropriate for the Parliament to review, in the light of experience, the types of
communication that are covered and other aspects of the scope of the regime. That approach will enable the Parliament to suggest changes on the basis of evidence that is founded on the practical experience of operating a lobbying register.

There are provisions in the bill that allow for the Parliament to make changes, by resolution, to operational aspects of the regime. Both provisions focus on experience and evidence gathering to inform proposals for change.

Members have consistently called for engagement with elected representatives, in particular by small organisations and businesses, to be protected, and for a regime that does not interfere with our daily engagement with our constituents. The bill will not undermine the Parliament’s strong reputation for accessibility, nor will it undermine the open Government that the First Minister committed to leading when she came to office.

That is why I lodged the amendments that related to exceptions for constituency-based activity and communications by small organisations and businesses. Amendment 21 exempted communications from organisations on their own behalf to the constituency MSP or the list MSPs for the place where the organisation carries out its business or where the individual who makes the communication on behalf of the organisation is a resident, regardless of where the meeting takes place. That amendment clearly reflected the Parliament’s wish not to interfere with the communication that we have with our constituents.

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): I understand what the minister is saying, and none of us would disagree with where he is trying to get to. However, the amendment that was agreed to today means that, under the bill, a person will be exempt if they speak to someone who represents the area in which they work, they will be exempt if they speak to the raft of MSPs who represent the area in which they live, and they will be exempt if they speak to people who represent the area where they carry on their “activity”—I do not know what is meant by “activity”; maybe the minister will clarify that. It seems to me that that excludes far too many people.

Joe FitzPatrick: We have tried to strike a balance that reflects the work of a constituency member. Certainly, if I am approached by a business that operates in my constituency or by someone who is a constituent of mine, I take that as something that I can deal with as a constituency member. The member should remember that the exemption will not apply to ministers.

Amendment 22 established an exemption in respect of any organisation that has fewer than 10 full-time-equivalent employees. A communication made on such an organisation’s own behalf will not require the organisation to register under the bill.

I hope that members will agree that the bill, as amended, achieves the aim that we set at the start of the process. I hope that everyone in the Parliament can get behind the bill.

The collaborative relationship between the Government, the Parliament and our stakeholders throughout the bill’s development is yet another example that supports the proud reputation of this Parliament and the Government for open engagement with civic Scotland. I commend the bill to the Parliament. I hope that members will support it at decision time.

I move,

That the Parliament agrees that the Lobbying (Scotland) Bill be passed.

15:58

Neil Findlay (Lothian) (Lab): I do not think that the minister believed a word of that. This is not one of the Parliament’s finest days.

It is a day of mixed feelings for me. In one sense, I am pleased that, three years after I proposed a lobbying transparency bill, the Parliament will at least legislate for some form of regulation of lobbying. However, this is not the robust bill that I envisaged three years ago. My proposed member’s bill sought to open up our democracy and greatly increase transparency and accountability.

From the day when I proposed my bill, I got the impression that the minister would rather stick pins in his eyes than legislate properly to regulate lobbying. We know why. It is in the interests of any Government party that people do not know what is really going on. Who are ministers meeting? What are they meeting about? Who is influencing policy? Who is schmoozing ministers, MSPs, civil servants and special advisers? Who has friends and contacts in the right places, the right businesses and civic society? The public wants to know, and has the right to know, what is done in their name.

Joe FitzPatrick: Prior to the bill’s introduction, ministers have recorded their meetings, which was always a means of having transparency.

We are moving towards an election. One group of people who will be lobbied to have an impact on manifestos is advisers to Opposition leaders. Will Opposition leaders publish details of the meetings that their advisers have?
Neil Findlay: The minister is going way off at a tangent. I am up for openness and transparency—the more of it that we have, the better.

Joe FitzPatrick: Will the member answer my question?

Neil Findlay: We will come to some of those issues in a moment.

The public want to know and have a right to know what is being done in their name. They should know whether dealings with Donald Trump, Jim Ratcliffe, Brian Souter or whoever have resulted in contracts being won, policies being changed or decisions being taken—or not taken. However, lobbying transparency is something that the Government does not want. The Government currently uses freedom of information exemptions—often ludicrously—to hide its dealings on fracking and to cover up its developing links with Qatar.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I realise that the member did not attend all the committee's evidence sessions. If he had, he would have heard representatives of the major lobbying organisations say that they entirely welcome the opportunity that registering their actions will give them to publicise the value of the work that they do. I do not necessarily endorse that view, but we heard many organisations that are involved in lobbying welcome what is happening.

Neil Findlay: Excellent, but I bet that none of them put forward the nonsensical amendments that we have seen today.

We are hearing about FOI exemptions being used to prevent people from finding out information on things such as the future of hospital services, and we are seeing the use and abuse of the parliamentary questions system to dish out pathetic non-answers in response to the concerns that we raise on behalf of our constituents. That is a real failure in our democracy that has gone completely unchecked in this Parliament.

All of that is designed to prevent the release of information, and the bill is just another inconvenience. The reality is that the bill's tortuous journey does not show the Parliament in a good light. From the minute that the Government grudgingly took it over, I have never been convinced that it was serious about transparency. Initially, the Government did nothing for almost two years, with the minister hoping that it would all somehow just go away. Despite denials, the Government asked the committee to hold an inquiry. There was then a committee debate, a consultation and more delay. Then we had a further debate on the committee report. By the time that that had all happened, the bill was watered down to the bowl of rather meagre gruel that the minister brings to the table today.

Joe FitzPatrick: For the record, I clarify that it was the late Helen Eadie who requested that the Standards, Procedures and Public Appointments Committee pursue an inquiry.

Neil Findlay: The Government also asked the current convener to host that inquiry, as the minister confirmed in the letter that he sent to me.

The bill was watered down to such an extent that, when we attended an expert seminar on the bill at the University of Stirling, a US professor of public policy who is an authority on lobbying said that, if the US system gets six out of 10 for transparency, the bill gets two at best. Of course, since then, the bill has got a whole lot worse because of the ridiculous amendments that were moved by the minister today—a minister who has shown zero interest in, enthusiasm for or knowledge of the issue since day 1.

In its present form, the bill is as clear a statement as anyone could wish for that the Government has no interest in enhancing the principles of openness, transparency and accountability that the Parliament was supposedly founded upon. I am afraid that these are now tokenistic words that fail to match the reality for the public and their representatives, who are searching for answers to serious questions. After nine years in government, the SNP is Scotland's new establishment, and it is more interested in protecting its associations, its networks and the web of helpful connections that it has built up in that time and in looking as though it is up for scrutiny while closing it down at every turn.

If the minister's remit from the First Minister was to make the bill tokenistic, weak and full of loopholes, he has passed with flying colours, but it is not something that he should be proud of. When the bill is passed, he will have done his party proud but the Parliament will have missed a major opportunity to reform our democracy for the better.

We will support the bill despite its being woefully inadequate, because at least it gets lobbying on the statute book. However, we will seek to amend almost every element of it at the review in the next session of Parliament to make it fit for purpose. A bill that fails to recognise that we live in an electronic age, a bill that means that the Confederation of British Industry, the Institute of Directors and others are not covered and a bill that allows the political elite to use their contact books for commercial advancement without any scrutiny is a bill that is not fit for purpose.
Cameron Buchanan (Lothian) (Con): I will begin by addressing Mr Findlay’s last point—the IOD and other groups are covered by the bill because they are big organisations. It was definitely the committee’s intention that those big organisations be covered.

Neil Findlay: From the research that I have seen, my understanding is that the IOD is not a big enough organisation to be covered, because it does not have enough employees.

Cameron Buchanan: It might not have enough employees, but it has members, and that is the same sort of thing.

I think that we can agree that it is important to have a democratic system that is open, transparent and trusted by the public. There is nothing too contentious about that. However, there has been vigorous debate on some of the details in the bill, and there have been important points to consider on a range of issues, including the scope of the communications that will be covered and the information returns that will be required.

For our part, we have kept a clear focus on ensuring that the system of registration delivers transparency while remaining light touch in its approach. “Light touch” is the key phrase that I have used throughout the bill’s consideration. Furthermore, it must be clear to any potential registrants what will be required of them so that we have a collaborative environment rather than a pay day for lawyers. With that in mind, I would like to touch on some of the changes that were proposed and how they fit in with the overarching principle of proportionality.

The question of which types of communication should be covered as regulated lobbying is hugely influential on the overall scope of the bill, so it is entirely right that we have had extensive debate on what qualifies as such lobbying. We recognise the motivation behind the arguments for emails and phone calls to be covered by the definition of regulated lobbying, but we must always consider the wider need for proportionality and targeted provisions. It is apparent that including all forms of communication would place a large and on-going burden on registrants and on the clerks who operate the system. We all know that the volume of emails that are sent and received in just one day—let alone over a period of months—can be huge. It would be difficult and costly for registrants to register all those, and such a requirement would make the information that was received by the clerks less targeted.

I mention the issue of provisions being targeted for two reasons. First, the duties that the bill imposes must be proportionate to the benefits that will be gained. I keep making that point. As we have acknowledged before, thankfully our political system has not been troubled by lobbying scandals. Therefore, to some extent the bill is targeted at a potential rather than an existing problem of undue influence, and we should bear that in mind when we assess the costs that we can justify imposing on organisations, businesses and members of the public.

Secondly, we have heard that face-to-face meetings can be more influential or important than emails or phone calls. That makes it apparent that capturing information on such meetings would provide a useful insight into lobbying practices without imposing the large burdens on registrants that would make a register counterproductive. To my mind, the question is again one of proportionality.

As for the disclosure of financial information as part of the returns, it remains apparent that requiring that would be a counterproductive and disproportionate measure. The first point to make is that assigning expenditure to specific activities could be a very difficult and resource-intensive burden for organisations—particularly small ones—to comply with, and could lead to confusion and unwelcome obstacles. In addition, there remain significant issues with commercial sensitivity and confidentiality. The effect of those concerns is that enforcing financial disclosure would impose negatives that outweighed the positives.

For the register to be effective, it must increase the transparency of our policy making without compromising its strength. That means that we must ensure that the openness of our politics is not weakened through confusion or bureaucracy. I think that forcing registrants to disclose financial information fails that test.

The point about maintaining the strength of our policy making is key. Here in the Parliament, we rightly pride ourselves on having an open and accessible political system that not only supports public engagement but allows more informed decisions to be made. I do not believe that anyone would want elected politicians to make policy decisions without information from the experts, and we must guard against such unwanted outcomes. The principles of openness and transparency go hand in hand and must underlie each aspect of the bill, including the matter of implementation, on which I will elaborate in my closing speech.

The Deputy Presiding Officer: We move to the open debate.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): Several references to Helen Eadie
have already been made in this debate, and I think that it is a mark of the affection in which she is held that only today a number of us were reminiscing over lunch about her contributions to the Parliament and wider political debate. Perhaps those of us on the yes side in the European Union campaign, in particular, will miss her enthusiastic Europeanism.

Before I get to the substance of my speech, I want to report the result of the extensive research—approximately 75 seconds of it—that I have undertaken since Mr Findlay spoke. I can tell him that, far from employing fewer than 10 people, the CBI employs 14 directors alone—and that is before we get to any other employees. If Mr Findlay is asserting, as he did in his speech, that the CBI will be excluded because it employs fewer than 10 people, he is factually wrong; the web address, which he can check to get the list of names, is news.cbi.org.uk. I think that that example characterises many of the untested assertions that have been made this afternoon.

On a number of occasions during the debate on the amendments, Mr Findlay suggested that we reject certain Government amendments on the basis that, in the bill’s development through the parliamentary process—and I note that, at each stage, we learn more and should respond as such—the committee did not take any evidence on the issue in question. However, that did not inhibit Mr Findlay from lodging a whole series of amendments on issues such as offences and sanctions that fell well outside the information that the committee engaged with during its research. However, let us not get into that in too much detail.

I very much welcome the bill. Of course, Mr Findlay suggested that a couple of things in the bill are worth looking at and putting on the record. First, we have not made the mistake in the bill of looking at registering lobbyists; instead, we have looked at lobbying and the people who undertake it. Perhaps in looking at the registration of consultant lobbyists Westminster has missed the proper target. This bill focuses on the activity of lobbying, which I think is all well and good.

One of the very useful gems in the bill is voluntary registration, which allows bodies that are uncertain about engaging or which expect to engage in substantial lobbying activity in future to choose to register, even though there is no objective evidence at the time of registration that they are required to do so. That is a very strong part of the bill.

Another very good aspect of the bill is that people can lobby first and register afterwards. In many instances, the interaction between someone who is lobbying and the person being lobbied will not initially have the character of lobbying, which develops during the discussion. In that respect, the 30-day period is a very welcome provision.

Although I welcome the bill, the issue is, for me, not that huge, although I appreciate that it is not insubstantial. I estimate that, between now and the dissolution of Parliament, I will have four interactions that I might categorise as my being lobbied by someone. The bill sets out a very substantial way forward. The Parliament will look forward to exercising the powers under section 15 to draw up the details of the register, which is what our successors in office will be doing in the next session of Parliament.

16:14

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): I rise to speak in the debate with a feeling of dismay about the bill that we are passing today. I say that as someone who was not initially a supporter of the idea of a lobbying bill—in fact, as some colleagues know, because I have told them so, I was one of those who sat on the Standards Committee in the first session of this Parliament and decided that we would not have any kind of regulation of lobbying. However, I am now in favour of legislation on lobbying, and I would like to explain why.

As a member of the Standards and Public Appointments Committee, I decided that I would keep an open mind and listen to the arguments and the evidence before coming to a decision about whether I would vote for the bill. The committee took evidence from a number of eminent people with great experience in the area—people who had helped shape legislation in other countries, people who were advocates for greater transparency in politics and people who lobbied for a living. We also heard from charities and the voluntary sector, and we discussed with them their concerns and the points that they made. Then, the committee debated what we had heard and drew up our stage 1 report. We made a number of recommendations to the Government about ways in which the bill could and should be improved. Many of those ideas have been debated today, so I will not rehash them now.

It became clear that the Scottish Government was going to take on board only a few of our recommendations, so I lodged amendments to
give effect to some of the committee’s stage 1 report. I should say that, at that point, I still was not entirely sure that we needed a lobbying bill. However, I was absolutely sure that, if we were going to have one, it needed to be the best bill that it could possibly be. In that regard, although I know that it is rehashing what I said earlier—I make no apologies for that—it is ludicrous, in the 21st century, to exclude communications other than face-to-face communications. However, perhaps unsurprisingly, all my amendments were voted down at stage 2, in spite of the fact that they simply reflected the views of the committee. How that can happen in a Parliament such as this, I leave others to consider. Today, once again, similar amendments were voted down.

While the committee was scrutinising the bill, my colleague Neil Findlay tried to obtain information through the FOI system about ministers’ engagement with lobbying companies. Most of the information that was requested could not be supplied because to do so would take the cost over the £600 threshold. On that point, I wonder whether the Scottish Government needs to examine the system that it uses for recording such information to see whether it might be equipped with a proper search facility that would allow such information to be abstracted more easily and—crucially—cheaply.

Gradually, over time, I came to the conclusion that a lobbying bill was required because, in principle, people should know what their elected members do and who has influence over them. It also seemed to me that the Government was going out of its way to ensure that the bill would be as ineffectual as possible, although I genuinely do not understand why it would want to do that.

Earlier, when we were dealing with amendments, Patrick Harvie made the point that we should, at this stage, include other categories of civil servants and that, if that were found to be too onerous, or if it did not work, we could reduce the numbers but that, until we had the information, we could not make that judgment.

That amendment was defeated, but it is not beyond the Scottish Government to record that information internally and feed it into the review when the review takes place. It is only by having that kind of information that Parliament will be able to make a properly informed judgment. Will the minister consider that today?

Mr FitzPatrick has made great play of the idea of the bill having to be proportionate. I agree with that. We all want to be transparent and open, and we want our constituents to have as much and as easy access to us as possible. What we disagree about is the way in which that should be handled in legislation. We have ended up with a complicated, labyrinthine bill that might do more harm than good—I genuinely hope that that is not the case, but I fear that it might be.

It is the passage of this bill that has made me think that a lobbying bill is needed. The problem is that what is needed is not the bill that is before us, which is a pale imitation of the robust bill that a Parliament such as this one should have.

I sincerely hope that, when the legislation is reviewed in the next session of Parliament, there is a Government and a Parliament that is not afraid of transparency and openness and which will create a new bill that is proportionate and does what it says on the tin, because this one does not.

16:19

Cameron Buchanan: The level of transparency in our Government and its openness to the public are both crucial aspects of a healthy democracy, which makes it so important that we get the Lobbying (Scotland) Bill right. I have always maintained that, if the bill is to be effective, it must—as I have said earlier—take a proportionate approach that increases transparency in our decision-making process without detering participation in the first place. It appears that, after much deliberation, we have reached a point where the correct balance has been struck in our opinion, and I am pleased to say that we Scottish Conservatives will therefore be supporting the bill at decision time.

It has been right to seek a collaborative approach to the proposed legislation, which is worth bearing in mind as we consider how to ensure that the potential registrants and the wider public are ready for its provisions coming into force. It is essential that the provisions that are imposed by the bill are clearly understood so that they do not create any disincentive to participation in public decision making. A long-term principle of our democratic process is that the wider the range of views that are heard in policy making, the better the policy will be.

As I have said before, lobbying is not about closed-door deals between vested interests and powerful decision makers; it is about the fundamental matter of having an open political process in which all manner of ideas, views and contributions are welcome. Wide-ranging participation is crucial to a healthy democracy. It should therefore be clear that organisations and members of the public should be free to discuss matters of interest with their elected representatives, and they should feel that it is hassle free to do so.

I have already underlined how important it has been to keep that in mind throughout our deliberations on the scope of the register, and I emphasise the need to continue promoting
openness in any requirements that come into force. A crucial aspect of maintaining openness and accessibility is the availability of help or guidance to assist potential registrants. The aim, after all, is to increase transparency, not to catch anyone out. I was therefore very pleased that my amendment requiring the publication of guidance on the operation of the register was passed at stage 2. Such guidance is simply too important to be discretionary, and we must ensure that it is clear, thorough and targeted in its explanations of what does and does not count as regulated lobbying, and of what any on-going requirements are. Ideally, the guidance would remove the need for complex compliance operations or expensive lawyers, so that we can all get on with the business of conducting politics in an open way, which all parties support.

Furthermore, putting in an effort to have a clear, collaborative process in place would minimise the chance of stakeholders simply pulling out of the public decision-making process, as well as decreasing the likelihood of unintentional mistakes in compliance. If we achieve such a collaborative culture around lobbying, I believe that we will have struck the optimal situation in which all our processes are transparent and maintain their strength through accessibility.

I am pleased to say that the bill as it now stands appears to reach that balance, and we Scottish Conservatives therefore put our support behind it.

16:22

Mary Fee (West Scotland) (Lab): Scottish Labour supports the principle of a lobbying bill and the need for the introduction of legislation in this area. Despite voting for it at decision time tonight, we believe that the bill should have been amended further to ensure that it is a strong and effective piece of legislation.

The Lobbying (Scotland) Bill in front of us is a dilution of my colleague Neil Findlay’s original proposal for a lobbying bill. As we have heard, there are two key areas where we believe that the bill falls short: by excluding emails and by excluding all civil servants except permanent secretaries. That is a mistake, and it renders the bill almost meaningless. The passing of the bill will lead to a situation where only one civil servant for each Scottish Government department, the permanent secretary, will be captured by the bill. That is an obvious failing.

At stage 2, when the bill was in committee, Scottish Labour lodged 16 amendments, but each and every one of them was rejected—the SNP used its majority on the Standards, Procedures and Public Appointments Committee to reject all the alternatives that were proposed by Scottish Labour.

The Scottish Labour amendments in the names of my colleagues Neil Findlay and Patricia Ferguson aimed to strengthen the bill in the key areas of accountability, transparency and openness. The result of every Scottish Labour amendment being rejected at stage 2 is a bill that is not as strong or effective as we would have liked it to be. Scottish Labour would have liked to strengthen the bill significantly to ensure that the legislation was as strong and effective as possible.

As well as not addressing the concerns raised by members of the Parliament, the Scottish Government has not considered the views of civic Scotland on the bill either. Organisation after organisation and expert after expert have criticised the bill for not being as strong as it could be, yet the SNP has taken little action to strengthen it to make it a truly effective and workable piece of legislation. For example, Unlock Democracy described the bill’s definition of lobbying as “a gift to those who might wish to keep their activity out of the public gaze”.

Presiding Officer,

“Research has shown that the public overwhelmingly want greater transparency in Holyrood, but they’re still waiting for MSPs to deliver, rather than give in to the lobbying industry. It would be farcical and ironic if the bill to regulate lobbying were to be neutered because MSPs have been lobbied by the lobbying industry.”

Those are not my words but those of Robert Barrington, executive director of Transparency International UK. Members across this chamber should reflect on that statement.

In 1999 when the Scottish Parliament was established, it had the explicit founding values of accountability, transparency and openness. At a time when public confidence in politicians is failing, we should be aiming more than ever to inspire faith among the people of Scotland in their elected representatives. We in Scottish Labour passionately believe in strengthening the Lobbying (Scotland) Bill to make it a strong and effective piece of legislation.

We understand the need for a lobbying bill; we supported the proposal for the introduction of a lobbying bill. We want the bill to be strong on lobbying, transparency and accountability.

The Government talks frequently about being a listening Government and being consensual. Speakers in this afternoon’s debate have raised concerns about the legislation and the need to strengthen it. This was a perfect opportunity for the SNP Government to do exactly that; it is just a pity that it decided not to listen.
At points today, I have wondered whether we have been discussing two different bills. The bill that I am looking at is not the bill that the SNP is talking about. A lobbying bill is needed, so we will support the passing of the Lobbying (Scotland) Bill, but the Scottish Government must listen to the concerns of parliamentarians, independent organisations and experts alike, and take action to ensure that the bill meets the aspirations of this Parliament in providing accountability, openness and transparency through strong and effective lobbying legislation.

16:27

Joe FitzPatrick: I welcome the fact that members have subjected the Lobbying (Scotland) Bill to close scrutiny throughout its parliamentary passage, and today has been no different.

I am not thin-skinned, but I thought that some of Mr Findlay’s comments went a bit deep and verged on being nasty and offensive. In defence of my position, I will read some of the comments that SALT has published today in response to the amendments that we have passed this afternoon. Willie Sullivan, director of the Electoral Reform Society, said:

“We are delighted that the minister has responded in this way.”

I know that SALT and its members want to go further than we have done. Indeed, Willie Sullivan confirmed that, but he said:

“While we do still have some concerns about the Bill—particularly the fact that only face-to-face meeting are recorded and not emails or phone calls—we are sure that this Bill when enacted will increase public visibility of lobbying.

With a built-in two year review the new lobby register should provide a firm basis and good evidence for parliament to include emails etc following that review.”

That is a positive comment.

Robin McAlpine from the Common Weal, which is also a SALT member, said:

“This legislation is still not as strong as we’d like but the Scottish Government has been listening and we’ve definitely made progress. Above all, there is a commitment that this is a foundation which can be built on in the next parliament. Hopefully Scotland is moving towards a system of lobbying transparency it can be proud of.”

Those are positive comments from some of the people who have been pushing for maximum transparency. I certainly welcome those comments.

Neil Findlay suggested that the CBI would somehow be exempt from the bill because he reckoned that it had fewer than 10 full-time equivalents who worked in Scotland. Let me be absolutely clear about the amendments that we have passed today. First of all, the exemption is not based on the number of staff working in Scotland but on the number of staff working for the organisation irrespective of where they are located. Secondly, we put it beyond doubt that representative bodies are excluded.

Patricia Ferguson asked whether we would consider monitoring the amount of contact with senior civil servants to inform a future review of the bill. We can consider that but, as I said at stage 2, we would have to discuss any changes that we wished to make in relation to senior civil servants with the trade unions and we would have to evidence why those changes would be an appropriate step forward. We did not manage to achieve that at this stage.

In my opening speech, I mentioned the Government’s desire to achieve as much consensus as possible for the establishment of a register of lobbying activity in Scotland. We have achieved that. Some of the positive comments from SALT show that we have made progress in pulling together people from all sides of the argument. Initially, some organisations, such as the Federation of Small Businesses, were very critical of what we had done, but I hope that they now see that we have a bill—and, in future, will have an act—that, as Cameron Buchanan said, is proportionate and gives us increased transparency without being overly burdensome.

Although some of the comments that were made today might suggest differently, the bill has generally been developed in a positive climate of Scottish democracy. The engagement that I have had with stakeholders on all sides has been positive. That is a sign that public engagement remains as strong as ever and that there is a dynamic in support of the Parliament’s openness.

The Government does not want the bill to discourage public engagement in Scotland’s politics. We have kept that principle firmly in mind when promoting measures that are aimed at increasing transparency. The phrase “striking a balance” might seem to be a cliché, but the extensive coverage of the bill highlights the importance of getting the balance right and giving close consideration to the wider implications of any policy proposals.

I put on record my thanks to the Standards, Procedures and Public Appointments Committee. Stewart Stevenson and his committee have devoted a significant proportion of their time this session to helping to develop thinking on our approach. The successor committee will be heavily involved in implementing processes for the lobbying register. Therefore, the debate is only part of a careful and methodical process.

I also thank the wide range of stakeholders who took the time to engage with me and my office.
over the past three years. That engagement has ensured that the Government has been well informed of contrasting views and ideas and helped us to reach a proportionate balance.

I thank my bill team, who have been working on the bill for some three years and have helped me to introduce and present a bill that I am proud of and which will do the Parliament proud. The bill as amended is now coherent and, above all, provides a proportionate initial framework for the registration of lobbying activity in Scotland.

I ask members to join me in supporting the passage of the Lobbying (Scotland) Bill at decision time.

The Deputy Presiding Officer: That concludes the debate on the Lobbying (Scotland) Bill.
CONTENTS

Section

PART 1
CORE CONCEPTS

1 Regulated lobbying
2 Government or parliamentary functions

PART 2
THE LOBBYING REGISTER

The register

3 Lobbying register
4 Content of register
5 Information about identity
6 Information about regulated lobbying activity
7 Additional information

Active registrants

8 Duty to register
9 Application for registration
10 Entry in the register
11 Information returns

Inactive registrants

12 Reclassification as an inactive registrant on application
13 Reclassification as an inactive registrant without application

Voluntary registrants

14 Voluntary registration

Further provision

15 Power to specify requirements about the register

PART 3
OVERSIGHT AND ENFORCEMENT

Duty to monitor

16 Clerk’s duty to monitor compliance
Information notices
17 Clerk’s power to require information
18 Limitations on duty to supply information and use of information supplied
19 Appeal against information notice
20 Power to make further provision about information notices
21 Offences relating to information notices

Investigation of complaints
22 Commissioner’s duty to investigate and report on complaint
23 Requirements for complaint to be admissible
24 Procedure for assessing admissibility of complaint
25 Investigation of complaint
26 Commissioner’s report on complaint
27 Parliament’s action on receipt of report
28 Withdrawal of complaint
29 Commissioner’s discretionary reports to Parliament
30 Restriction on Commissioner’s advice
31 Directions to the Commissioner

Investigations: witnesses and documents
32 Power to call for witnesses and documents etc.
33 Notice
34 Exceptions to requirement to answer question or produce document
35 Evidence under oath
36 Offences relating to Commissioner’s investigation
37 Restriction on disclosure of information

Commissioner’s functions
38 Commissioner’s functions etc.
39 Investigation of performance of Commissioner’s functions

Disposal of complaints
40 Parliament’s power to censure

Further provision
41 Power to make further provision about Parliament’s procedures etc.

Offences
42 Offences relating to registration and information returns

PART 4
GUIDANCE AND CODE OF CONDUCT
43 Parliamentary guidance
44 Code of conduct for persons lobbying MSPs
44A Public awareness and understanding of Act

PART 5
FINAL PROVISIONS
45 Offences by bodies corporate etc.
46 Interpretation
47 Parliamentary resolutions
48 Application of Act to trusts
48A Report on operation of Act
49 Ancillary provision
50 Commencement
51 Short title

Schedule—Communications which are not lobbying
Amendments to the Bill since the previous version are indicated by sideling in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

Lobbying (Scotland) Bill

[AS PASSED]

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,

      (ia) 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,

      (ii) is made in relation to Government or parliamentary functions, and

      (iii) 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.

   (2A) 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.

   (3) For the purposes of subsection (1), it does not matter whether the communication occurs in or outwith Scotland.

   (4) 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.

2 Government or parliamentary functions

(1) Government or parliamentary functions are—

5 (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—

10 (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.

20 (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.

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.

30 (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.

35 (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.

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.

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.
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,
(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.

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.

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.

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.

10 Entry in the register
(1) This section applies where a person—
(a) provides information in accordance with section 8, or
(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.

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

(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.

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—
      (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.
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.

**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).

(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.

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.

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

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).
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,
   (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.

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.
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.

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.

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.

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).

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

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).
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.
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.

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.

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.

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.

Investigation of complaint

This section applies to the investigation of a complaint assessed as admissible under
section 22(2)(a).

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.

The Commissioner may make a finding of fact if satisfied on the balance of probabilities
that the fact is established.

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.

Commissioner’s report on complaint

This section applies to a report made under section 22(2)(b)(ii).

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).

The report must not make reference to a measure that may be taken by the Parliament
under section 40.

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,
Lobbying (Scotland) Bill
Part 3—Oversight and enforcement

(b) provide that person with an opportunity to make representations on the draft report.

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.

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—

(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.

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.
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.

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), 28(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.

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.

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

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.

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).
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).

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),
      (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.

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, 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.”.

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”.

[562]
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.

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.

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.
(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.
PART 4
GUIDANCE AND CODE OF CONDUCT

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.

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.

(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.

44A 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.

PART 5
FINAL PROVISIONS

45 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,

(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.

46 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,

“voluntary registrant” has the meaning given in section 3(6).

47 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.

48 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.

48A 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 (ia), 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).

49 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.
50  Commencement

(1) This section and sections 46, 47, 49 and 51 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.

51  Short title

The short title of this Act is the Lobbying (Scotland) Act 2016.
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.

Communications made to member for constituency or region

1A 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.

1B However, paragraph 1A 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.

1C In paragraph 1A, “constituency” and “region” are to be construed in accordance with the Scotland Act 1998.

Communications not made in return for payment

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

3 For the purposes of paragraph 2—
   (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.

Communications by small organisations

3A 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.

3AA However, paragraph 3A 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.

3B For the purposes of paragraph 3A, 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.

3C For the purposes of the calculation in paragraph 3B, any employee who worked more than 140 hours during the period of 28 days is to be treated as having worked 140 hours.

Communications in Parliament or required under statute.

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

Communications made on request

4A 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.

Cross-party groups

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

Journalism

8 A communication made for the purposes of journalism.

Communications in relation to terms and conditions of employment

8A 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.

8B 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.

8C In paragraph 8B, “trade union” is to be construed in accordance with section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992.
Communications by political parties

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

Communications by judiciary

10 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.

11 In paragraph 10—

“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—

(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.

Communications by Her Majesty

12 A communication made by or on behalf of Her Majesty.

Government and Parliament communications etc.

13 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.

14 In paragraph 13—

“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.
Lobbying (Scotland) Bill
[AS PASSED]

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.

Introduced by: John Swinney
Supported by: Joe FitzPatrick
On: 29 October 2015
Bill type: Government Bill