



The Scottish Parliament
Pàrlamaid na h-Alba

Lobbying Register | Clàr-coiteachaidh

PARLIAMENTARY GUIDANCE

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Introduction

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

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

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

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

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

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

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

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

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

Lobbying Register Team
The Scottish Parliament



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ANNEX: SUMMARY OF THE LOBBYING (SCOTLAND) ACT 2016



REGULATED LOBBYING: EXECUTIVE SUMMARY

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

What is regulated lobbying?

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

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

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

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

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

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

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

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

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

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

Exemptions

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

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

What is the Lobbying Register?

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

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

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

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

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

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

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

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

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

THE 5 KEY STEPS TO REGULATED LOBBYING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

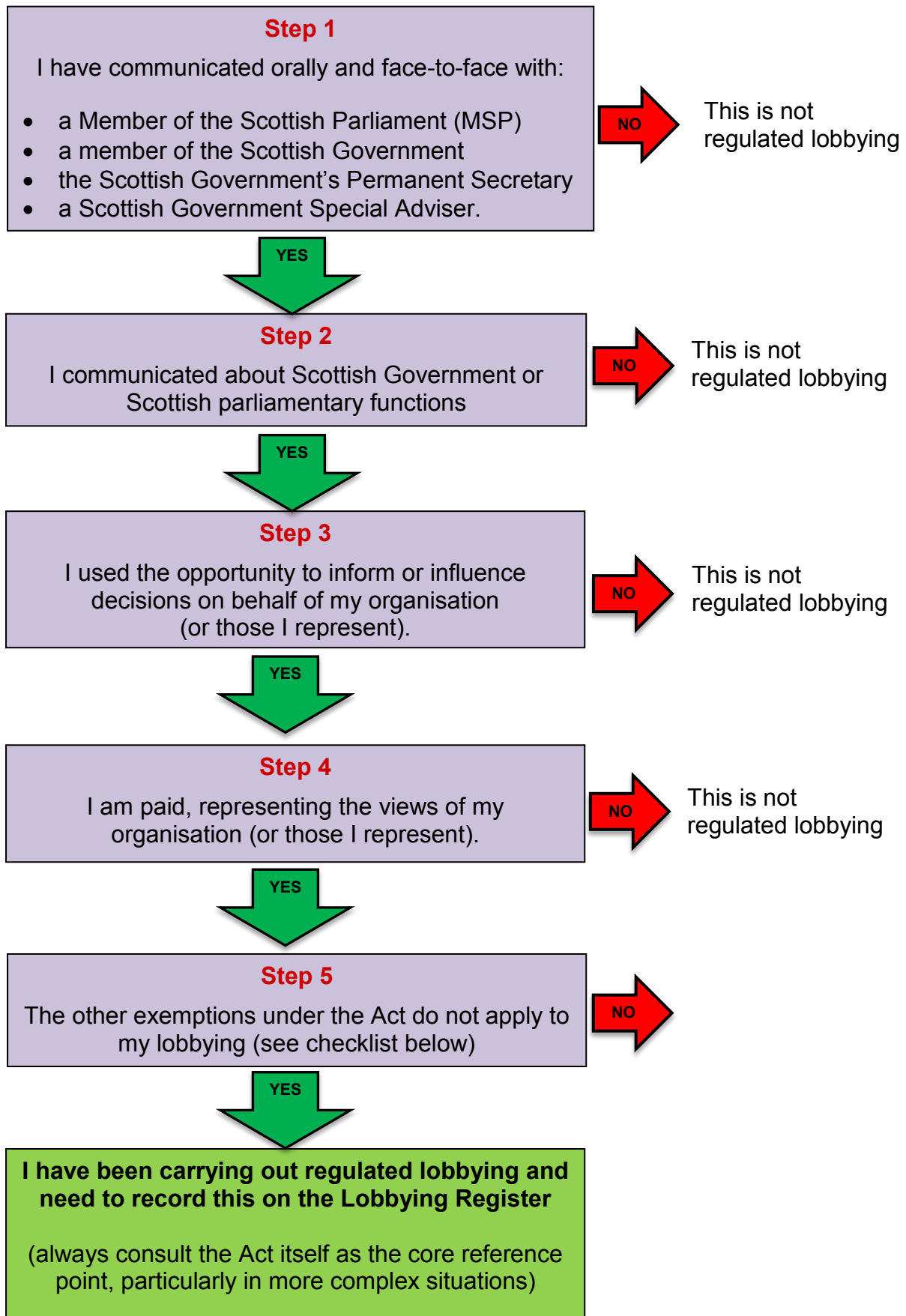
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- made in response to requests for factual information or views on a topic (from an MSP, Minister, Law Officer, etc.)
- made during quorate meetings of Cross-Party Groups of the Scottish Parliament
- made for the purposes of journalism
- made during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

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

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

AM I INVOLVED IN REGULATED LOBBYING?





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

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

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



TYPES OF CONVERSATIONS

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

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

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

Informal discussions

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

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

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

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

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

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

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

Events

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

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

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

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

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

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

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

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

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

Umbrella organisations

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

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

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

Speeches and Q&A sessions

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

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

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

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

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

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

Awareness of those being lobbied

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

Some helpful links are here:

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

Section Summary:

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



More information

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

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



COMMUNICATIONS WHICH ARE NOT LOBBYING

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

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

Communications made on an individual's own behalf

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

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

Communications made to Member for constituency or region (MSPs)

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

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

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

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

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

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

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

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

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

Communications not made in return for payment

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

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

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

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

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

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

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

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

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

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

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

Communications by small organisations

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

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

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

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

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

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

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

Communications in Parliament or required under statute

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

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

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

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

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

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

Communications made on request

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

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

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

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

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

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

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

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

Cross-Party Groups (CPGs)

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

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

Journalism

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

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

Communications in relation to terms and conditions of employment

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

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

Communications by political parties

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

Communications by judiciary

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

Communications by Her Majesty

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

Government and Parliamentary communications etc.

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

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

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

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

Section Summary:

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

Other exemptions apply to avoid duplication with existing guidelines or

Some public bodies and individuals are also exempt.



More information

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

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



USING THE LOBBYING REGISTER

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

It contains:

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

Registration

The starting point for using the Lobbying Register is registration.

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

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

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

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

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

Re-classification

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

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

Information Returns

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

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

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

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

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

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

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

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

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

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

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

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

Declaration that registration details are up to date

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

Date of lobbying activity

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

Role of person lobbied

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

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

Name of the person(s) lobbied

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

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

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

The following links may help when compiling your return.

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

Location where person was lobbied

Type details of the location in the free text box.

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

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

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

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

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

Communication type

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

Name of the individual who made the communication

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

Was the lobbying undertaken on registrant's own behalf?

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

Name of the person on whose behalf the lobbying was undertaken

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

Purpose of the lobbying

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

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

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

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

Declaration that registrant has not engaged in regulated lobbying

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

Search

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

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

Voluntary registration

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

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

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

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

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

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

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

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

Section Summary:

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

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

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

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

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



More information

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

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

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



Oversight and Enforcement

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

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

Information Notices

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

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

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

Role of the Commissioner

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

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

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

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- is made in writing to the Commissioner,
- is made by an individual, is signed by that individual and states that individual's name and address,
- names the person to whom the complaint relates,
- sets out the facts related to the conduct complained about, and
- is made before the end of the period of one year beginning on the date when the individual who made the complaint could reasonably have become aware of the conduct complained about.

Parliament's power to censure

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

Offences

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

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

Section Summary:

The Clerk oversees compliance.

By way of further oversight, the Commissioner investigates possible breaches

Ultimately, criminal prosecution and penalties may apply.



More information

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

- [Oversight and Enforcement](#)



Parliamentary Guidance, Resolutions, Review & Code of Conduct

Parliamentary Guidance

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

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

Parliamentary Resolutions

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

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

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

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

Parliamentary Review

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

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

Code of Conduct

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

Section Summary:

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

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

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

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



More information

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

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



Annex: Summary of the Lobbying (Scotland) Act 2016

The Lobbying (Scotland) Act 2016

The Act comprises five parts:

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

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

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

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

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

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

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

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

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

It is set out in the Act as follows:

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

(a) the person makes a communication which—

(i) is made orally to a member of the Scottish Parliament, a member of the Scottish Government, a junior Scottish Minister, a special adviser or the permanent secretary,

(ii) is made in person or, if not made in person, is made using equipment which is intended to enable an individual making a communication and an individual receiving that communication to see and hear each other while that communication is being made,

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

(iv) is not a communication of a kind mentioned in the schedule, or

(b) in the course of a business or other activity carried on by the person, an individual makes such a communication as an employee, director (including shadow director) or other office-holder, partner or member of the person.

(2) Where a person engages in regulated lobbying by virtue of paragraph (b) of subsection (1), the individual mentioned in that paragraph is not to be regarded as engaging in regulated lobbying.

(3) For the purposes of subsection (1)(a)(i), a communication which is “made orally” includes a communication which is made using British Sign Language or is otherwise made by signs.

(4) For the purposes of subsection (1), it does not matter whether the communication occurs in or outwith Scotland.