

# Scottish Parliament Lobbying Register

Clàr Coiteachaidh  
Pàrlamaid  
na h-Alba



**Annual Report 2019**  
Aithis Bhliadhnail 2019

LOBBYING REGISTER | CLÀR-COITEACHAIDH



The Scottish Parliament  
Pàrlamaid na h-Alba

# **First report on the operation of The Lobbying (Scotland) Act 2016**

Covering the period 12 March 2018 to 12 June 2019

# **A' Chiad aithisg air obrachadh Achd Coiteachadh (Alba) 2016**

A' dèiligeadh ris an ùine 12 Màrt 2018 gu 12 Ògmhios 2019

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- Sir Paul Grice, Clerk/Chief Executive, Scottish Parliament

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## FOREWORD



I am pleased to present to you the first Annual Report on the Scottish Parliament's Lobbying Register.

This report provides information on progress made since the Lobbying (Scotland) Act 2016 came into force and covers the period from 12 March 2018 until 12 June 2019.

During that time, our dedicated Lobbying Team within the Scottish Parliament has 'registered' over 1000 organisations - from as far afield as the Cayman Islands and the USA, to others who are located quite literally on our doorstep in Edinburgh.

The team has been on hand as a constant and consistent source of help for our new 'registrants' - the varied range of companies, organisations and individuals now all regularly contributing Information Returns to the Lobbying Register – supporting them to understand the statutory requirement of registering lobbying activity.

The team's focus on providing prompt feedback to registrants on all their Information Returns and providing helpful advice to registrants on the Act, has been particularly important in this embryonic first 15 months.

I wish to thank all our current (and ever-growing number of) registrants, from across the world. Your collective input to the Register is shaping a very valuable source of transparency about public life in Scotland, providing an online insight into the face-to-face lobbying of our elected Members, Government Ministers and some of the key individuals who support them.

And, with the publication of almost 7000 Information Returns in that period alone, it's been an exceptionally busy and productive time. I would like to thank the Lobbying Team for their solid commitment in supporting this important new task for the Parliament.

Looking ahead, the Scottish Parliament is required to carry out a review and produce a report on the operation of the Act, once the Lobbying Register has been running for two years. This review will start next year and will be taken forward by a parliamentary committee.

Evidence will be sought from registrants and others with a strong interest on the current and future approach to the Lobbying Register. I would encourage you to engage, when that time comes.

**Sir Paul Grice**  
Clerk/Chief Executive  
The Scottish Parliament

## FACAL-TOISICH



Tha mi toilichte a' chiad Aithisg Bhliadhna air Clàr Coiteachaidh Pàrlamaid na h-Alba a chur fa ur comhair.

Tha an aithisg seo a' toirt fiosrachadh air an adhartas a rinneadh bho chaidh Achd Coiteachadh (Alba) 2016 a chur an gnìomh, agus tha i a' dèiligeadh ris an ùine bho 12 Màrt 2018 gu 12 Ògmhios 2019.

Rè na h-ùine sin, tha an sgioba sònraichte againn taobh a-staigh Pàrlamaid na h-Alba a bhios a' dèiligeadh ri cùisean coiteachaidh air còrr is 1,000 buidheann a chlàradh – bho cho fad air falbh is na h-Eileanan Caimean agus na Stàitean Aonaichte gu feadhainn a tha cha mhòr air leac an dorais againn ann an Dùn Èideann.

Tha an sgioba air a bhith ri làimh gu cunbhalach agus gu seasmhach airson cuideachadh a thoirt do na 'buidhnean clàraichte' ùra againn – an raon farsaing de chompanaidhean, buidhnean agus daoine fa leth a bhios uile a-nis a' tilleadh Bhileagan Fiosrachaidh chun a' Chlàir Choiteachaidh – a' toirt taic dhaibh gus an riatanas reachdail a thuigsinn a thaobh gnìomhachd coiteachaidh a chlàradh.

Tha an sgioba a' cur fòcas air fios a chur air ais gu buidhnean clàraichte air na Bileagan Fiosrachaidh uile aca agus air comhairle chuideachail a thoirt do bhuidhnean clàraichte mu dheidhinn na h-Achd, agus tha seo air a bhith gu sònraichte cudromach anns na ciad 15 mìosan nuair a bha gnothaichean gan cur air bhonn.

Tha mi airson taing a thoirt do na buidhnean clàraichte againn a th' ann agus a tha ri thighinn (tha an àireamh dhiubh a' sìor-dhol am meud) bho air feadh an t-saoghail. Tha na tha sibhse a' cur a-steach don chlàr a' toirt cumadh do stòras luachmhor de trìd-shoilleireachd mu dheidhinn beatha phoblach na h-Alba, a' toirt uinneag air-loidhne air a' choiteachadh a tha a' tachairt aghaidh ri aghaidh leis na Buill thaghte againn, le Ministearan an Riaghaltais agus le feadhainn de na prìomh dhaoine fa leth a bhios a' toirt taic dhaibh.

Agus, an dèidh do cha mhòr 7,000 Bileagan Fiosrachaidh a bhith air an cur a-steach rè na h-ùine sin a-mhàin, tha sinn air a bhith anabarrach trang agus tairbheach. Bu toigh leam taing a chur chun an Sgioba Choiteachaidh airson an dealais sheasmhaich a tha air a bhith aca gus taic a thoirt don obair ùir chudromaich seo airson na Pàrlamaid.

A' coimhead air adhart, thig air Pàrlamaid na h-Alba lèirmheas a dhèanamh agus aithisg fhoillseachadh air obrachadh na h-Achd, aon uair 's gu bheil an Clàr Coiteachaidh air a bhith a' ruith fad dà bhliadhna. Bidh an lèirmheas seo a' tòiseachadh an ath-bhliadhna agus thèid a stiùireadh le comataidh phàrlamaideach.

Bithear a' sireadh fianais bho bhuidhnean clàraichte agus bho dhaoine eile aig a bheil ùidh mhòr anns a' mhodh-obrach a chleachdar an-dràsta agus san àm ri teachd airson a' Chlàir Choiteachaidh. Bhithinn gad bhrosnachadh gus freagairt a chur ri sin, nuair a thig an t-àm.

**Sir Paul Grice**  
Clàrc/Ceannard  
Pàrlamaid na h-Alba

# Planning for the Lobbying Register

Planadh airson a'  
Chlàir Choiteachaidh

## PLANNING FOR THE LOBBYING REGISTER

A Scottish Government Bill to introduce new regulation around certain types of lobbying was passed by the Scottish Parliament on 10 March 2016. Royal Assent of the Lobbying (Scotland) Act 2016 (“the Act”) followed shortly after on 14 April 2016. The Act then came fully into force on 12 March 2018.

Although this legislation was taken forward by the Scottish Ministers, the set-up and administration of the new Lobbying Register (“the Register”) is the responsibility of the Scottish Parliament, not the Scottish Government.

Formally, under the Act, responsibility for establishing and maintaining the Register lies with the Clerk of the Parliament. A new role of ‘Lobbying Registrar’ was created within the Scottish Parliament to co-ordinate this work and to lead a team dedicated to administering this significant new duty on the Parliament.

Preparations for the new Register began in Summer 2016, with the aim of having a fully functional online register and supporting parliamentary guidance in place no later than 2 years after the date of Royal Assent of the Act. The Register was subsequently launched on 12 March 2018, with the coming into force of the Act.

### Lobbying Register online

A web-based system to allow stakeholders to submit details of their relevant lobbying communications, and the Parliament to then publish those online, was envisaged.

Following a full procurement exercise, Northgate Public Services was appointed in March 2017 to work with the Parliament in developing this new website and online database.

The resulting Register was delivered within the specified budget and time-scale and was followed by a 4-month trial period of the system, prior to the official launch in March 2018.

During this trial period the system was available for all potential users to register, submit ‘test’ information returns and provide feedback to the Lobbying Team.

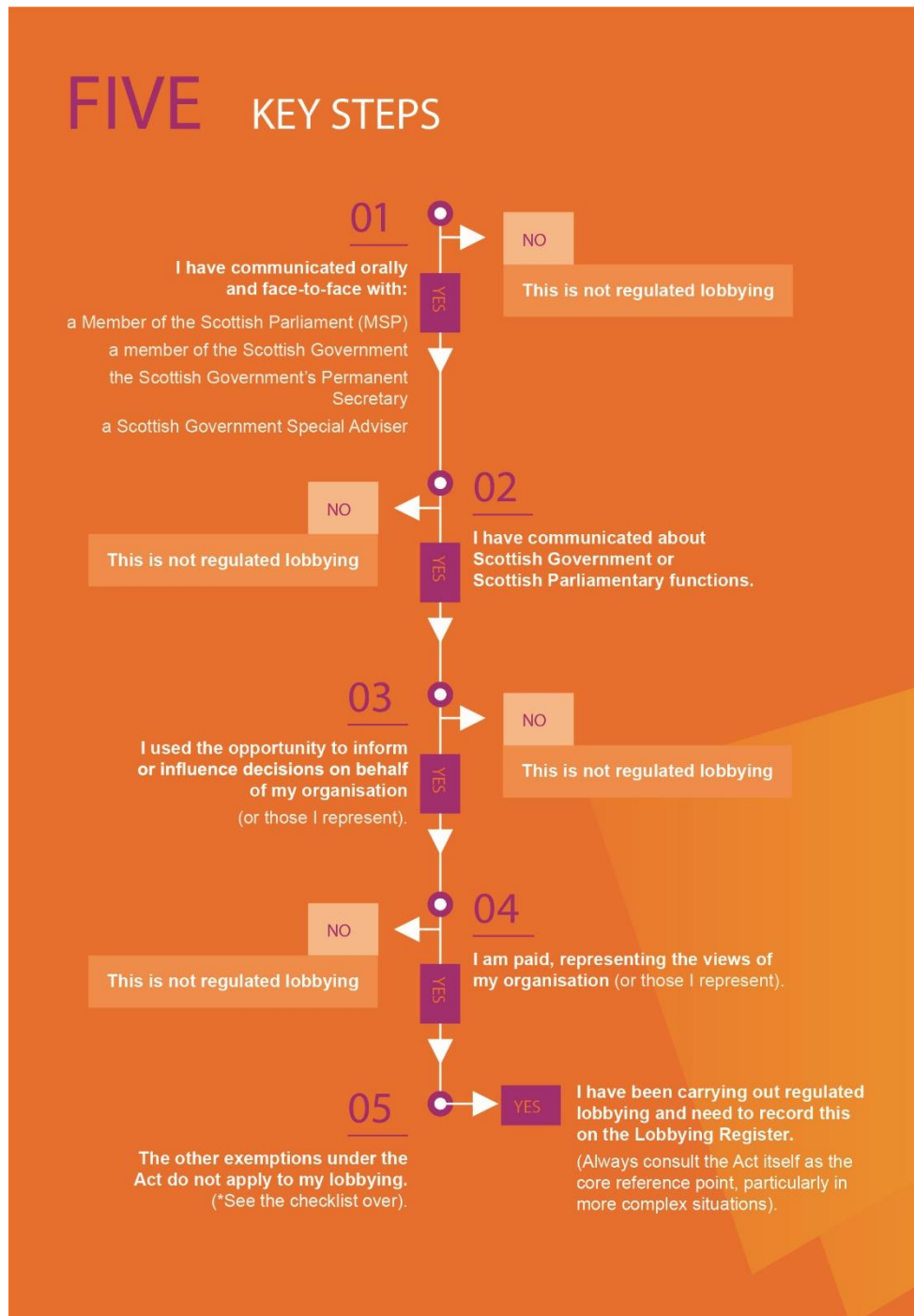
### Parliamentary Guidance and External Working Group

A key task for the Parliament was to produce **Parliamentary Guidance** on the operation of the Act, and a **Code of Conduct for those lobbying MSPs** - both requirements under the Act.

To take on board the widest range of views possible on the draft Parliamentary Guidance, the Lobbying Team took 6 months to engage in person with potential registrants and those with a strong interest in the new Register. Through a combination of one-to-one meetings, round-tables and Q&A events, involving companies, organisations, charities, membership bodies, trade unions, consultant lobbyists and lobby groups amongst others, the team was able to build up a picture of how the legislation could be put into practice.

This feedback led to the development of what would become known as the ‘Five Key Steps’.

This short flowchart guide is intended to assist potential registrants and others understand, in a simple and straightforward way, what is meant by ‘**regulated**’ lobbying – the collective term for all types of lobbying covered by the Act.



Just as importantly, it has helped to illustrate what is **not** regulated lobbying, by setting out the types of communication that fall outside the scope of the Act or relate to potential exemptions under it.



It was clear from this engagement that a similarly representative and inclusive approach to developing the more detailed draft Parliamentary Guidance, and Code of Conduct for those lobbying MSPs, would be necessary. As such, on 30 March 2017, the Parliament invited applications for 12 spaces on an **External Working Group** to help develop materials and offer advice on the best approach to launching the new Register in the first quarter of 2018.

Nine of these places were allocated to a membership body, a small organisation and a large organisation in each of the following three key stakeholder sectors - the third sector, the public affairs sector and the business sector. Three additional appointments brought in expertise from transparency campaigning; the legal sector and journalism. The Group was also able to benefit from advice and good practice very helpfully provided by colleagues from Ireland's Standards in Public Office Commission, which had introduced a similar register in 2015 (under Ireland's 'Regulation of Lobbying Act 2015'). The Office of The Commissioner for Ethical Standards in Public Life in Scotland, which has an investigatory role in relation to the Act, was also represented.

### **Additional expertise and research**

Further external advice was also commissioned to inform the External Working Group on a comprehensive engagement strategy and to identify and provide more detailed information on potential registrants.

- A report by Dr Eve Hepburn of Polycyscribe Ltd, **The Scottish Lobbying Register: Engaging with Stakeholders**, was presented to the External Working Group in October 2017. This mapped the lobbying and interest-group community in Scotland and beyond, leading to a detailed database of potential lobbying registrants; secondly it examined international best practice from countries where lobbying regulation had been introduced, allowing the External Working Group to learn from already 'tried and tested' best approaches.
- The External Working Group was also assisted by Clark Communications and the Parliament's own media office, to develop and agree eye-catching branding and an appropriate marketing and media buying approach.

The Group was instrumental in making sure that the draft Parliamentary Guidance was made available as early as possible (more than 6 months before the new Act came into force), to allow the maximum amount of time for stakeholders to prepare. The completed Guidance was then finalised and in place for when the Act commenced.

The Code of Conduct for those lobbying MSPs was agreed by the Group in its penultimate meeting in November, with this also then published and in operation from 12 March 2018.

### **Engagement with MSPs and the Scottish Ministers**

A crucial aspect of the engagement strategy was the involvement of MSPs, Scottish Ministers and all their supporting staff.

In relation to MSPs, the Lobbying Team attended meetings of each of the political party groups to provide updates and answer any questions, in the build up to the Act coming into force. These meetings were also attended and supported by the Clerk/Chief Executive of the Parliament. The team also attended separate meetings with the Scottish Ministers, Ministerial support staff and Special Advisers, to do likewise.

This provided a good network of additional support and, through a very healthy uptake of promotional materials, a useful conduit for distributing information to those most likely to be affected.

### **Parliamentary process**

The Lobbying (Scotland) Act 2016 requires any guidance produced by Parliament to be consulted upon with the Scottish Ministers, prior to publication. As such, the Scottish Ministers views were sought by means of a letter to the Minister for Parliamentary Business, from the Convener of the Parliament's Standards, Procedures and Public Appointments Committee (the Committee which has within its remit responsibility for matters relating to the regulation of lobbying). The response from the Minister of 18 December 2017 contributed to some minor edits being made, which were introduced to the final text.

The Parliament, along with the Commissioner for Ethical Standards in Public Life in Scotland, has responsibilities for oversight and enforcement of the Act. The Act sets out various reporting obligations on the Commissioner. Section 41 in particular requires the Parliament to prepare a formal resolution, setting out procedures to be followed when the Commissioner submits a report to the Parliament.

As such, **The Lobbying (Scotland) Act 2016 (Reporting Procedures) Resolution 2017** was agreed by the Standards, Procedures and Public Appointments Committee on 7 September 2017. The draft resolution was scrutinised by the Delegated Powers and Legislative Reform Committee. It was passed by Parliament (following statutory consultation with the Scottish Ministers) on 1 November 2017.

Finally, the Standards, Procedures and Public Appointments Committee also agreed **The Lobbying (Scotland) Act 2016 Direction to the Commissioner for Ethical Standards in Public Life in Scotland 2017** at the same 7 September 2017 meeting, following earlier consultation with the Commissioner. This sets out an agreed administrative process between the Committee and the Commissioner.

### **Memorandum of Understanding**

In November 2018 a **Memorandum of Understanding (MoU)** was agreed between the Scottish Parliament, the Commissioner for Ethical Standards and Crown Office and Procurator Fiscal Service.

While the Act itself remains the core legal reference point, the MoU sets out the steps each party is to take, in relation to the oversight and enforcement framework within the Act for non-compliance, including potentially criminal matters.

**Registrations**

Clàraidhean

## REGISTRATIONS

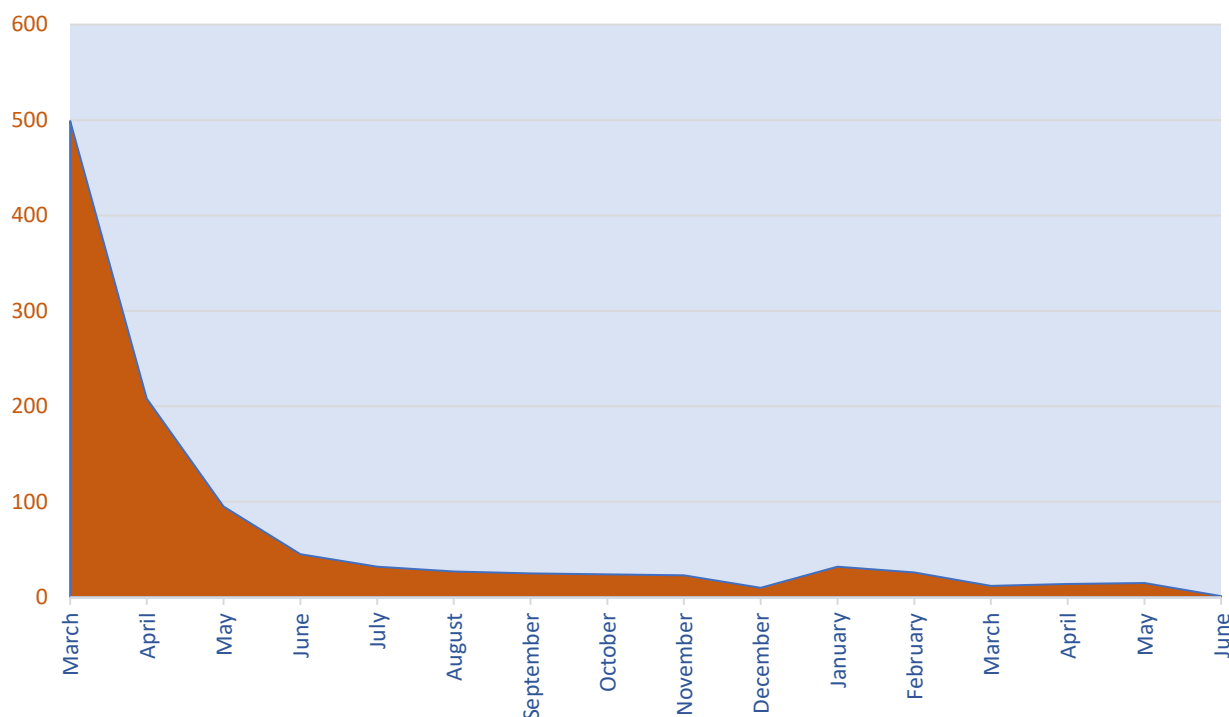
As previously noted, the Register launched on 12 March 2018, when the Act came into force. From that point any company, organisation or other eligible individual (e.g. a sole trader), likely to engage in regulated lobbying, was able to register an account on the Register website at [www.lobbying.scot](http://www.lobbying.scot).

Registrations can be made in advance of any regulated lobbying being undertaken, but as a legal requirement must be made no later than 30 days from the date from a 'first instance' of regulated lobbying.

A registration is completed online, with one account per organisation. The organisation's details submitted are assessed by the Lobbying Team. Once all the details are verified, the team turn the account 'active' – it is at this point the new 'registrant' can submit Information Returns on the Register.

### Registrants by number

During the period covered, **1088** companies, organisations or other paid individuals (such as sole traders), became registrants.

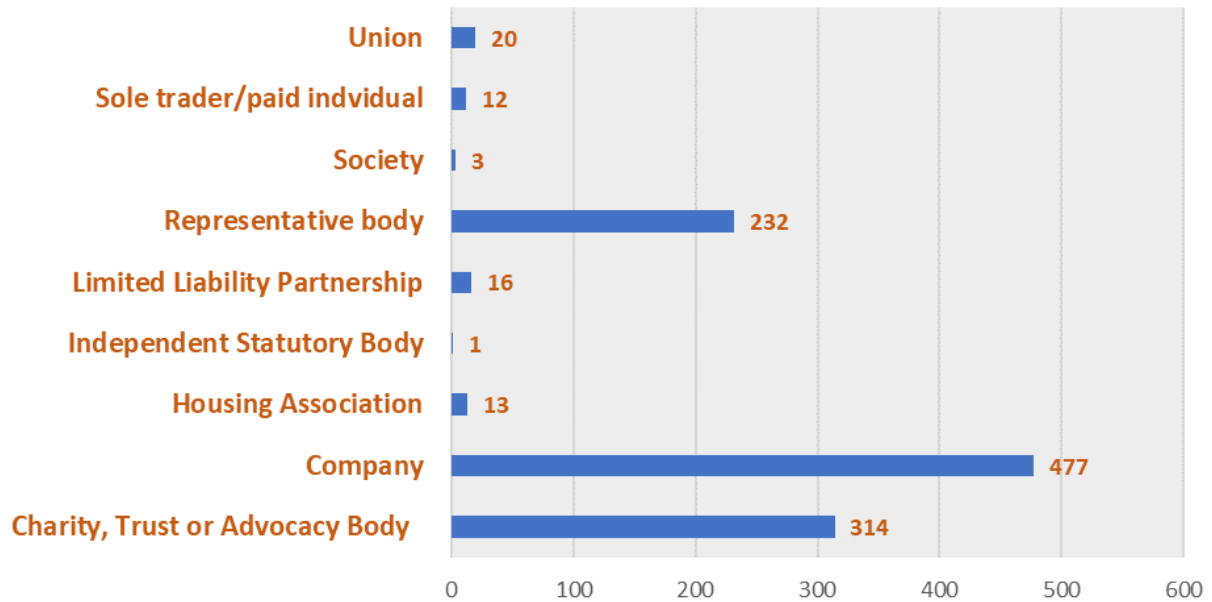


### Highlights

- Encouragingly, many organisations registered pro-actively within the first three months of operation (**802**), accounting for almost three-quarters of all registrants, by 12 June 2019.
- Applications to become a Registrant continue to be submitted, usually as organisations engage in regulated lobbying for the first time.

## Registrants by organisational type

The organisational types of registrant are reflected in the table below. This information is based on the primary role of any company, organisation or individual registered.

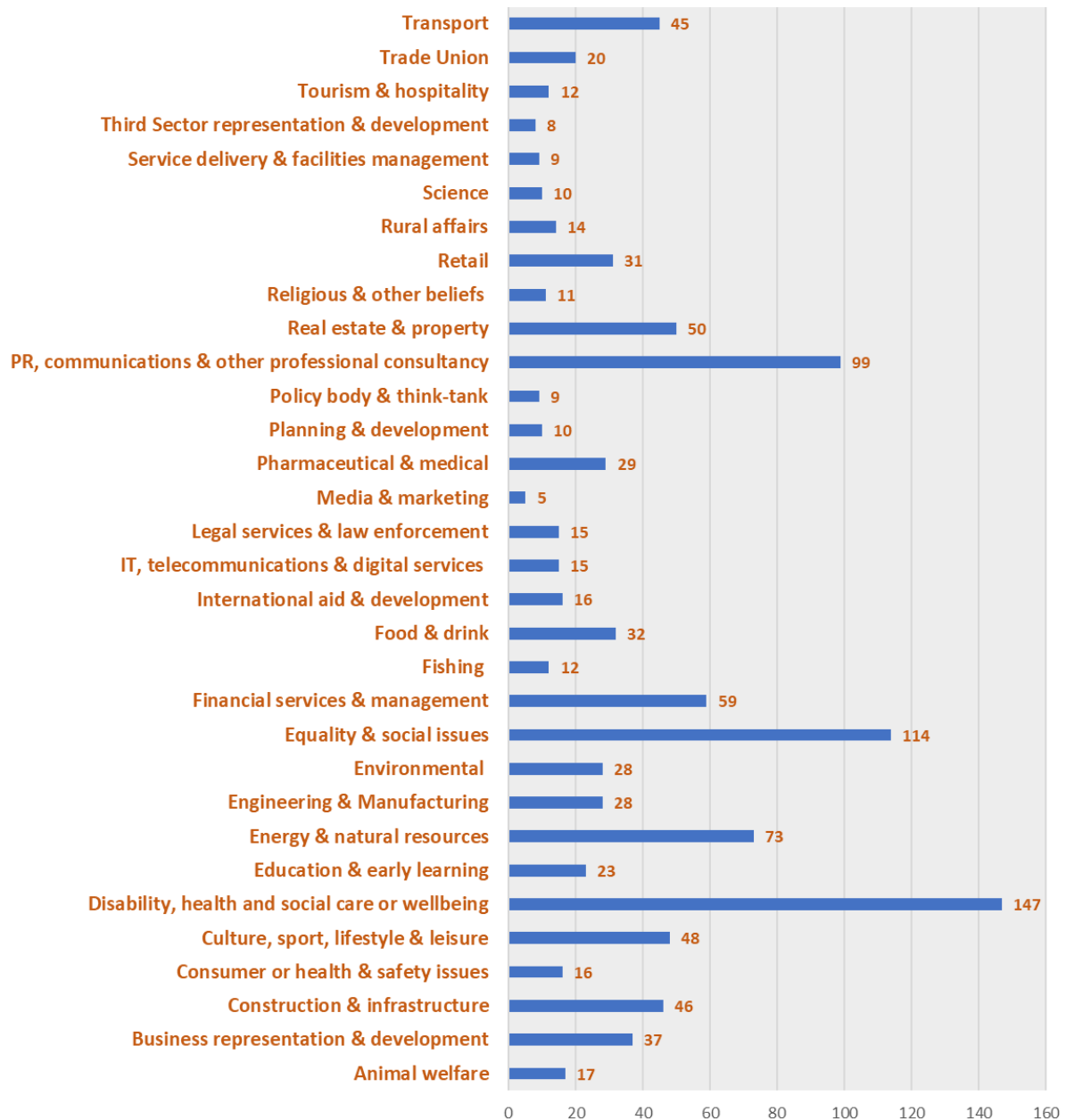


### Highlights

- The largest percentage of Registrant type is Company at **44%**.
- Registrants with a primary role as a Charity, Trust or Advocacy Body follow with **29%** and Representative Body at **21%**.

## Registrants by sector

The table below shows registrants split into different types of sector (again, reflecting the primary sector they operate within).



### Highlights

- Those registrants operating within the Disability, Health and Social Care or Wellbeing sectors account for the highest percentage rate, at **13.5%**.
- The next highest sectors are Equality & Social Issues at **10.5%** and PR, Communications & other Professional Consultancy at **9%**.

# Information Returns

Aithrisean Fiosrachaidh



## INFORMATION RETURNS

The Act sets out when a person engages in what is referred to as ‘regulated lobbying’. Not all forms of lobbying are covered by the Act.

As noted previously, the **Five Key Steps** provide a ‘quick guide’ to help registrants assess whether, or not, they have engaged in regulated lobbying. These steps are expanded further in the Parliamentary Guidance.

If a communication made by a registrant fits with all the Five Key Steps, then that indicates the registrant will need to submit an Information Return, setting out what the regulated lobbying undertaken was.

Information Returns are completed by individuals logging into their organisation’s account on the Register at [www.lobbying.scot](http://www.lobbying.scot); creating a new Information Return and submitting this online to the Lobbying Team for initial checking.

### 6-month statutory periods

Every registrant is required to submit at least one Information Return during their **statutory 6-month period** - the start and end dates of which are unique to each registrant.

The first 6-month period for any registrant starts on the date of application to join the Register. However, if regulated lobbying by an applicant took place in advance of this, the **first** date on which any regulated lobbying took place becomes the start date for the 6-month period, instead.

Registrants are notified of these timescales during the registration process. In addition, an email reminder is also sent to the registrant’s email account, two weeks before the end date for every 6-month period.

Information Returns can however be submitted **at any time**. Taking this approach helps to avoid a ‘bottle-neck’ of returns (some of which may then need to be further discussed) just before a 6-month deadline.

In cases where the registrant has not engaged in regulated lobbying during a 6-month period, the requirement to submit at least one return is covered by the submission of a **nil Information Return**.

This nil return acts as a public declaration by the registrant that they have not taken part in any regulated lobbying during that 6-month period.

### Assessing an Information Return

Once an Information Return is submitted by the registrant it is assessed by the Lobbying Team to check whether the activity outlined appears to actually amount to regulated lobbying.

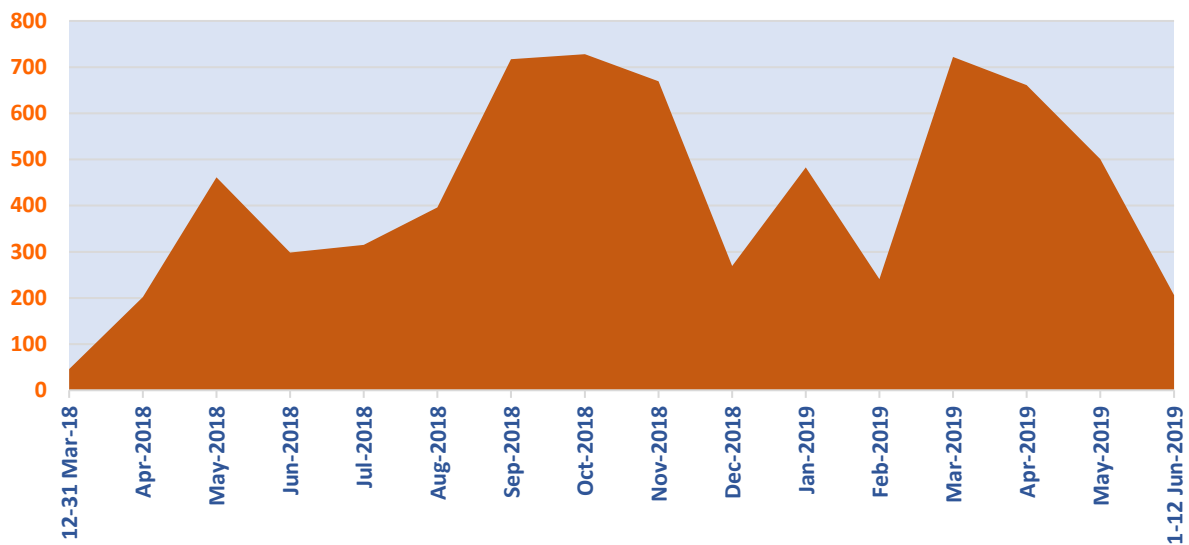


This check will include an analysis of the details provided and consideration of whether any exemptions in the Act might apply. Feedback is then offered to the registrant where required and changes sought before final publication.

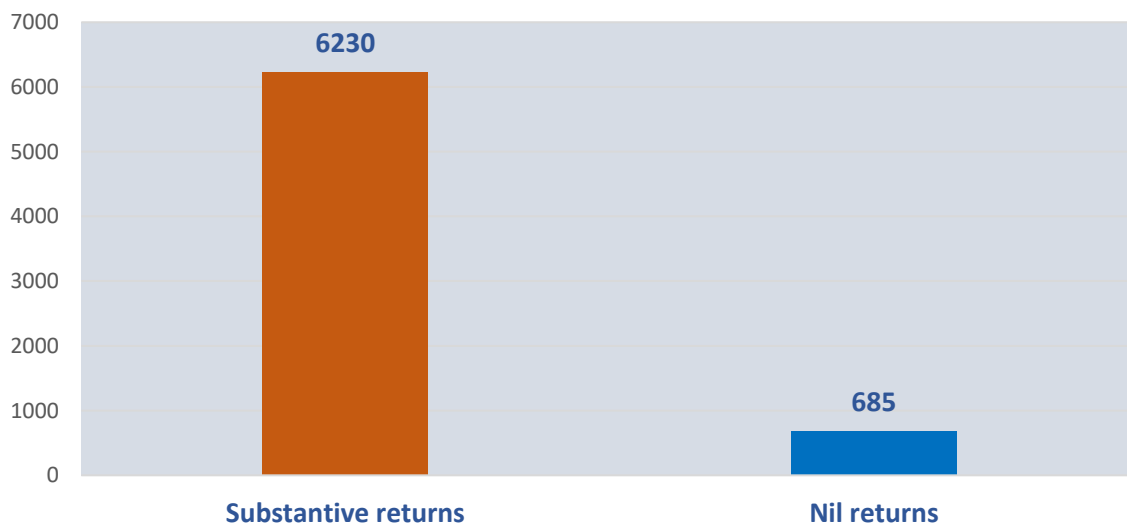
Where only minor edits are required, the team has made them in a pragmatic effort to publish Information Returns as soon as possible. Again, further feedback may then be provided to assist the submission of future returns by the registrant.

### Information Returns by number

(a) The table below shows the number of Information Returns published each month between 12 March 2018 – 12 June 2019 (6915 in total).



(b) The table below shows that number split between substantive Information Returns and 'nil' Information Returns published in the first 15 months.

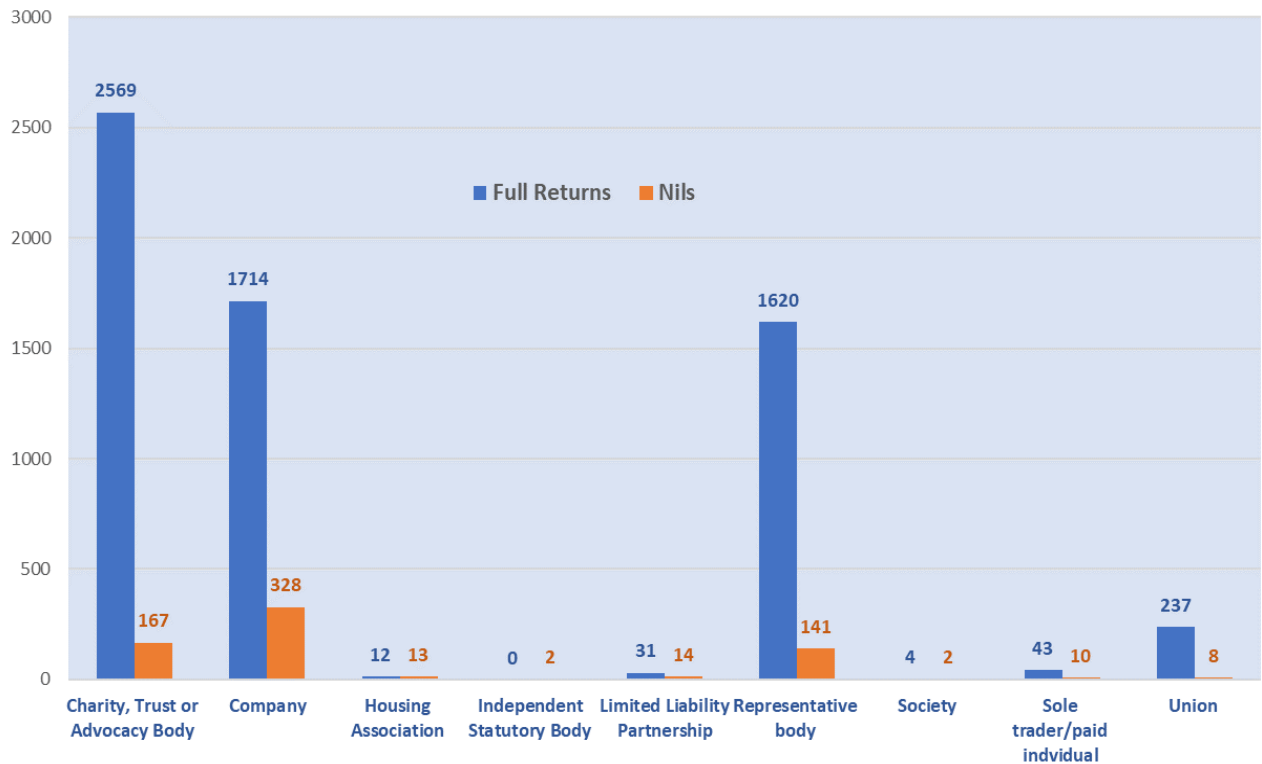


## Highlights

- The 'peak periods' shown in table (a) above, indicate that, so far, most returns are published during Q4 (2018) and Q2 (2019). This indicates a strong relationship to end dates on the first two six-month periods for the majority of registrants.
- Of the 844 organisations having completed two 6-month statutory periods by 12 June, **256** (30%) have provided only nil returns to date.

## Information Returns by organisational type

The chart below shows the same Information Returns split into different types of organisation.

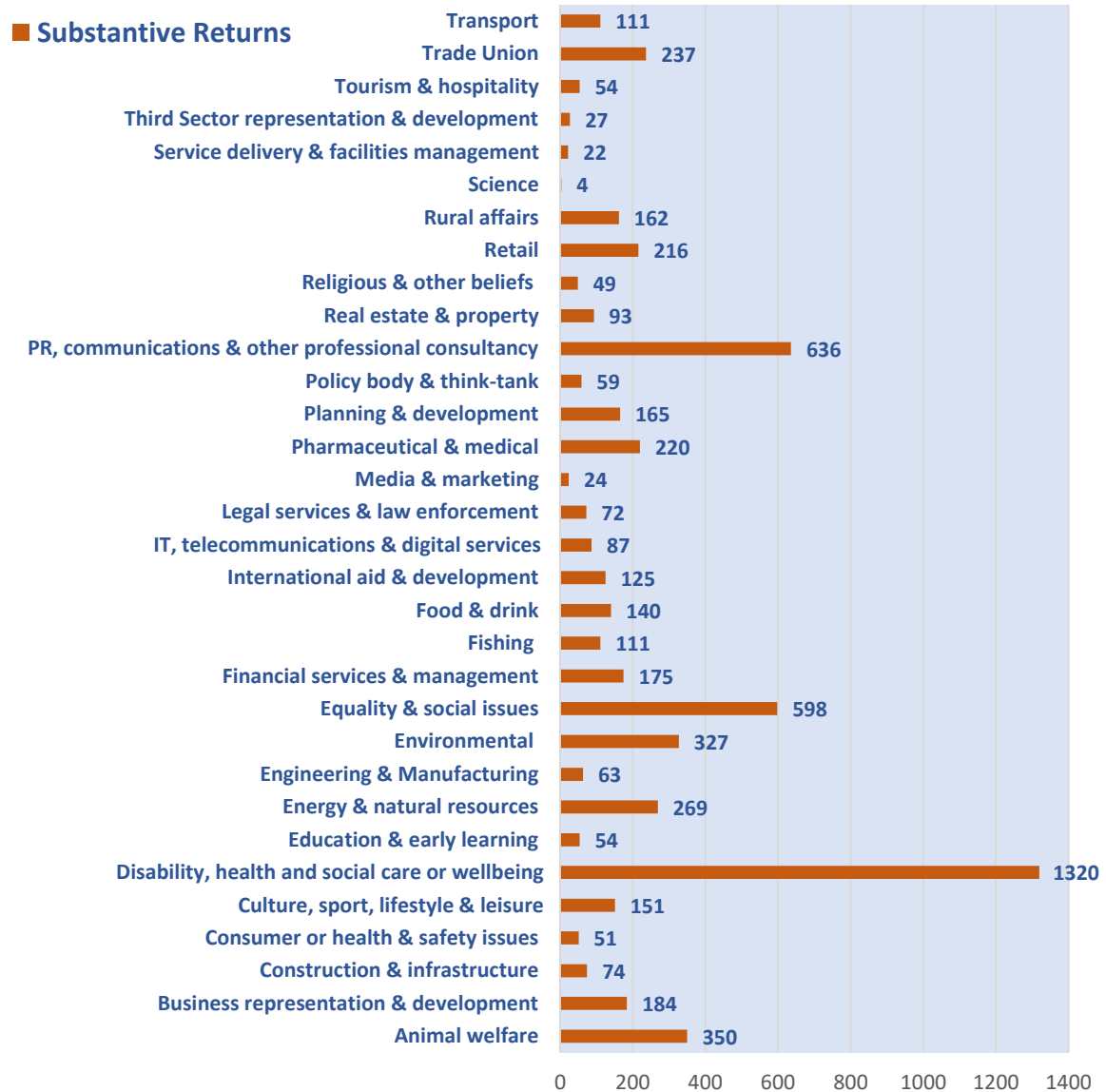


## Highlights

- The largest percentage of overall Information Returns published by organisational type was Charity, Trust or Advocacy Body with **2736** (40%).
- This was followed by Company at **2024** (29%) and Representative Body at **1761** (25%).

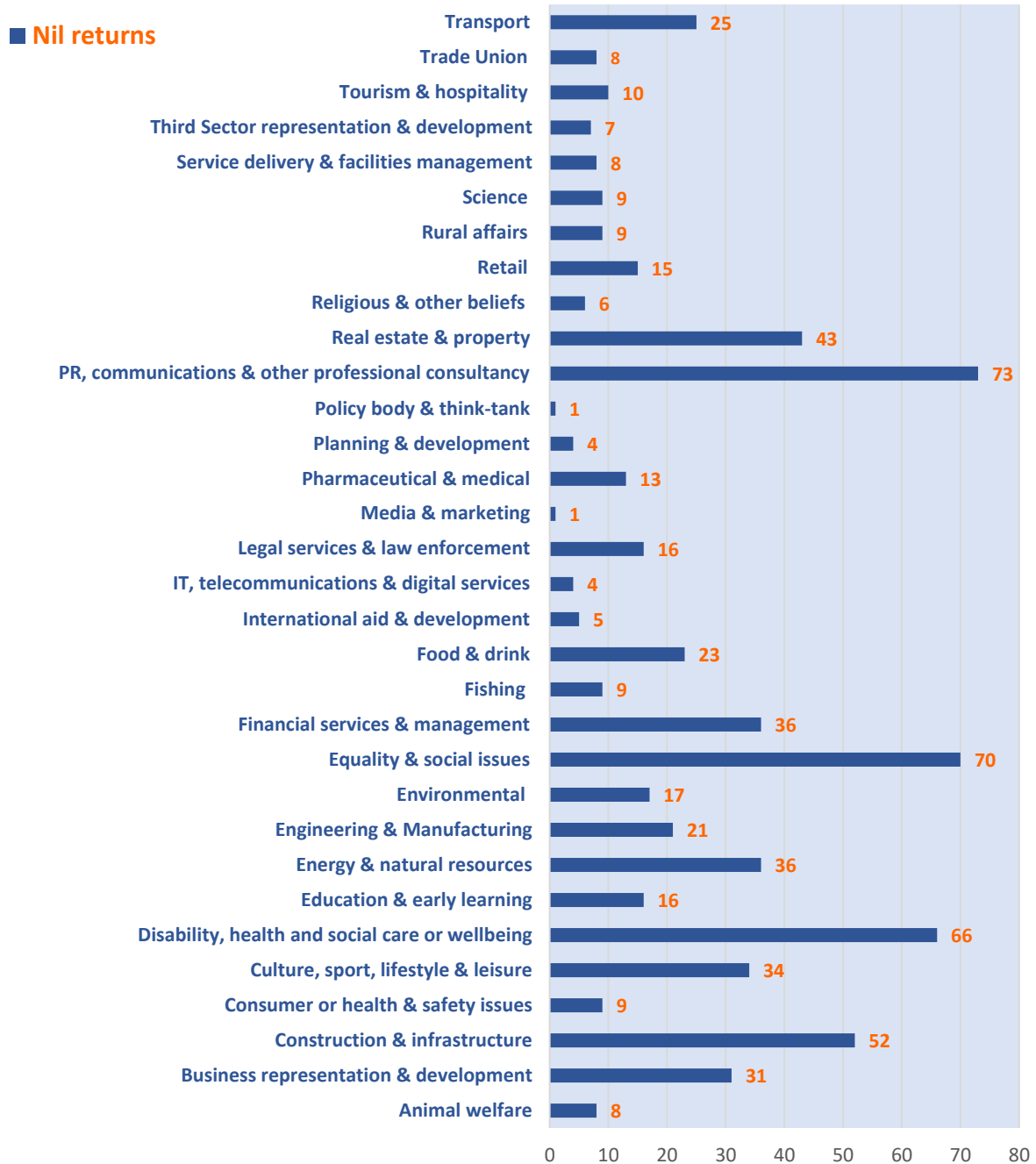
## Information Returns by sector

The tables on the following two pages show published Information Returns split into different types of sector – first, substantive returns and secondly, nil returns.



### Highlights

- The largest percentage of Information Returns published by sector was **1320** (21%) for Disability, Health and Social Care or Wellbeing.
- This was followed by PR, Communications & other Professional Consultancy at **636** (10%) and Equality or Social Issues at **598** (9.5%).



### Highlights

- The largest percentage of nil Information Returns published by sector was **73** (10.5%) by PR, Communications & other Professional Consultancy.
- This was followed by Equality or Social Issues with **70** (10%) and Disability, Health and Social Care or Wellbeing at **66** (9.5%).

## Returned and deleted Information Returns

As previously described, the Lobbying Team carry out an assessment of every return to check that the activity described appears to amount to regulated lobbying under the Act. Because of that checking, 7% of draft Information Returns submitted have subsequently been deleted, to date. A deletion will only happen after confirmation by the registrant that, in fact, no regulated lobbying did occur.

With a new process such as this, an initially over-cautious approach from registrants is to be expected and this accounts for this level of deletions. The number of deletions will be monitored for subsequent annual reports, with the expectation that through time and a growing understanding on the part of registrants, this number will drop.

## Six-month period and breaches

As covered earlier in this report, the Act makes it a requirement for every registrant to provide at least one Information Return, or where appropriate a nil Information Return, every six months. Following the end date of a statutory six-month period, registrants have a further two weeks to ensure they submit all relevant returns for that period (or provide a nil return, instead). Failure to do so is a breach of the Act.

When a registrant has failed to provide any return by that final day, the Lobbying Team will email the registrant asking for reasons why a return has not been forthcoming. If no reply is received, this is followed up by a recorded delivery letter (also emailed) from the team to a senior responsible person in the organisation. This approach to date has led, ultimately, to full compliance.

Of those registrants who had completed their second six-month period ("period 2") by the time of this report, 186 registrants (17%) failed to submit an Information Return (or nil return) within the specified dates. The reasons for missing this period 2 deadline were largely administrative issues within organisations themselves (e.g. deadlines missed due to staff sickness; organisations not understanding a nil return was required; staff moves creating communication breakdowns).

If further concerns are identified in future return periods for organisations who have already committed a breach, then this will be taken forward with senior management within that organisation, to ensure the situation is not further repeated. With new legislation of this nature however, education and familiarity are vitally important as it develops, and it should be emphasised that the Lobbying Team are always on hand to assist, where problems occur.

## Peak periods

The Parliament continues to encourage registrants to submit Information Returns on a regular basis, rather than wait until the end of a 6-month period. Apart from the obvious benefit that information on the Register will be more current, it also helps alleviate peak periods, and assists the Lobbying Team to provide responses to Information Returns more quickly. Peak periods are occurring during late March-May and again in late September-November, as the end dates for many registrants (around three quarters of the total at present) fall within this time-frame.

# **Further Assistance to Registrants**

Taic a Bharrachd do  
Bhuidhnean Clàraichte

## **FURTHER ASSISTANCE TO REGISTRANTS**

### **Workshops**

During the first half of 2019, a series of Information Return Compliance Workshops for registrants were delivered, with over 130 organisations attending.

The main aim of the workshops was to improve the understanding of registrants on the content required for an Information Return and to answer any queries they had on the Lobbying Register IT system in general. These two-hour workshops covered:

- Common issues of registrants such as forgotten passwords and how to update account details;
- How to complete and submit an Information Return, including guidance on different lobbying scenarios; and
- What happens once an Information Return has been submitted and how it is processed by the Lobbying Team.

Further workshops will run during the rest of the year.

The team are also available to meet with registrants if visiting Parliament; at their own location or by video-conference.

### **IT enhancements**

Since the Act came into force in March 2018, the Register has been refreshed with new functionality to allow registrants to submit Information Returns in a 'batch' format, rather than having to submit each Information Return individually.

The search facility was also expanded to allow for a wider range of results.

Both changes were in response to helpful feedback from registrants.

# Issues for Review

Cùisean airson  
Lèirmheas



## ISSUES FOR REVIEW

### Parliamentary Committee review

The Lobbying (Scotland) Act 2016 was taken forward as a Scottish Government Bill. As such it was drafted and taken through Parliament by the Scottish Ministers, assisted by Scottish Government officials.

However, the Act places the responsibility for the administration of the Act, and the Register itself, on the Scottish Parliament. A committee of the Parliament is to be responsible for reviewing the operation of the Act and recommending whether changes should be made to it.

Section 15 of the Act does provide some scope for the Parliament to make changes within defined areas, by means of subordinate legislation, in the form of a parliamentary resolution. However, those powers are limited, and it has not been considered necessary to make use of them to date. In any event, the review of the Act to take place under section 50 is regarded as the platform to do so, where significant changes are concerned. That section provides for a committee-led report on the operation of the Act to be carried out, following the legislation having been in force for two years.

The Minister for Parliamentary Business commented during Stage 3 of the Bill:

*“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.”*

With the Register’s second anniversary falling on 12 March 2020, this section of the report provides feedback received from our External Working Group, registrants and others, which may be useful for when the Committee is established.

### Exemptions – issues raised

The Schedule of the Act sets out, under different categories of exemption, communications which are not considered to be regulated lobbying. The following exemptions have raised issues or concerns.

It may be worth noting that the first and fourth of these resulted from later additions to the list of exemptions under the legislation during Stage 3 of the Bill.

- 1. The Communications made to a Member for constituency or region (MSP)** exemption excludes from regulated lobbying a communication made to an MSP (other than a Scottish Minister) if the individual or entity (“person”) are situated in:

- “(i) a place where the person’s business is ordinarily carried on,*
- (ii) a place where the person’s activity is ordinarily carried on,*
- (iii) the individual’s residence.”*

Firstly, the issues raised in relation to (i) and (ii) above, are that the Act and Explanatory Notes are silent on the matter of what **ordinarily carries on** means. In the absence of any elaboration of this, it is then essentially for the company, organisation or individual concerned to consider whether the exemption applies, so far as their particular circumstances are concerned.

For companies or organisations which are based or operate across **multiple locations**, there has been some uncertainty about the application of the exemption. They often have different levels of business or activity in different areas. It has been suggested to the Lobbying Team that further clarity or some form of threshold be provided on this aspect.

#### *Example*

A major telecommunications company has infrastructure to deliver its services to all constituencies and regions across Scotland but has different levels of uptake. In the absence of further assistance within the Act itself or supporting documents, it is unclear whether the exemption is therefore relevant to all its lobbying activity (apart from that with Scottish Ministers).

Secondly, the Act and Explanatory Notes are again silent on **(a)** whether certain **subjects** of communication only are covered by this exemption and **(b)** if the **location** of where any communication is made is also a factor.

In this respect, the Minister for Parliamentary Business, during Stage 3 of the Bill, made clear that the exemption would apply to **(a)** a communication made regardless of the subjects raised (i.e. any subject, local/national etc.) and **(b)** regardless of where it was made (i.e. not just communications made within the boundaries of an MSP’s constituency or region).

*“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.”*

As a result, some companies and organisations have raised concerns about this effectively meaning that they are unable to submit certain Information Returns, on issues they feel are of wider relevance to just an MSP’s constituency or region. Again, it has been suggested to the Lobbying Team that further clarity would be useful.

### *Example*

A Chief Executive of a major bank asks an MSP to raise questions on their behalf, in relation to a national banking issue, during a dinner held in the Parliament.

This raises issues about the submission of an Information Return, as the bank has (a) a local branch in the MSP's constituency/region and (b) the subject, or where the communication took place, is also not a determining factor.

Finally, in specific relation to (iii) above, questions have been raised about this element of the exemption and it excluding from regulated lobbying any communications made between an MSP and their constituent, even if the constituent is lobbying on behalf of the company or organisation they are employed by (and which itself has no business or activities in that MSP's constituency).

### *Example*

An employee of a large charity based in Glasgow resides in Ayr. The employee engages in lobbying as part of their job, with a number of MSPs from across Scotland. This includes MSPs from the constituency and region in which the employee lives.

Although the lobbying is on behalf of their employer, this raises issues about whether the exemption effectively excludes the employee's lobbying activity specific to their local MSPs, from the requirement of being registered.

Additionally, there is no definition of residence in the Act or Explanatory Notes.

2. The **Communications made on request exemption** excludes from regulated lobbying:

*“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.”*

The issues raised with the Lobbying Team concern instances where the request is either not sufficiently clear to begin with or the request is issued in a 'cover-all and anything' manner. Some registrants have expressed concern on both these points, in terms of clarity and because of a desire to provide full transparency.

### Example

A trade body is invited to meet a Scottish Government Minister to discuss several issues - those issues are all that are discussed at the meeting, so it is clear the exemption applies, as they have been 'requested'.

On another occasion, the trade body decides to take the opportunity of meeting the Minister to lobby beyond the issues they have been requested to discuss – again, it is clear the exemption does not apply in this case, as they have lobbied beyond the scope of the Minister's request during the meeting.

However, a different Minister invites the trade body to a meeting but this time the request is unclear, as it has been described as just a 'catch-up'. The trade body are keen to register their activity within this meeting as the discussions were wide-ranging but are unsure what to do, as they are not clear what was within 'scope'.

### 3. The **Communications made in return for payment** exemption excludes from regulated lobbying:

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

*Payment:*

- *means payment of any kind, whether made directly or indirectly for making the communication,*
- *includes entitlement to a share of partnership profits,*
- *does not include reimbursement for travel, subsistence or other reasonable expenses related to making the communication."*

The first issue raised relates to the Act having no minimal time limits or threshold in place, in terms of any payment, beyond what is set out above.

It has been suggested to the Lobbying Team that a form of de minimis threshold could help clarify this aspect of the Act.

### Example

An unpaid member of an organisation received a very small gift from the organisation several years ago. As they are unpaid, they would be otherwise exempt from regulated lobbying.

However, as the Act does not set out any thresholds, there is uncertainty on whether this small gift applies and if so, for how long.

Others have raised the example of those circumstances where senior representatives of companies or organisations engage in lobbying, but they are doing so in an unpaid capacity. Again, it has been suggested to the Lobbying Team that this type of activity be included, because of a desire to provide full organisational transparency.

#### *Example*

A senior business person is also an unpaid Director for a sizeable Trust. They meet the Minister with policy responsibility for the area the Trust operates within, at a social event.

They take the opportunity to lobby the Minister on behalf of the Trust on several concerns that were raised at its last board meeting.

The activity is reported back to the Trust by the unpaid Director, however the Trust cannot register this activity, as the Director is unpaid.

#### 4. The **Communications by small organisations** exemption excludes from regulated lobbying:

##### *“7. Communications made:*

- *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,*
- *on the other person's behalf and not on behalf of a third party, and*
- *on a date when the other person has fewer than 10 full-time equivalent employees.....*

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

The Minister for Parliamentary Business did make clear during the Stage 3 debate that:

*“representative bodies will not benefit from the small-organisation exemption”.*

The issue raised with the Lobbying Team in relation to this exemption is that the Act and Explanatory Notes are silent on what a ‘representative body’ might mean.

In the absence of any elaboration of this, it is then essentially for the company, organisation or individual concerned to consider whether the exemption applies, so far as their particular circumstances are concerned.

Many such potential bodies are small organisations within the third sector and it has been suggested to the Lobbying Team that further clarity on what was intended as a 'representative body' should be provided.

#### *Example*

A small charity (with only 3 staff members) represents the views of those having to deal daily with a life-debilitating condition.

Although they receive donations, the policy directions are set by the charity in discussion with those who have the condition, their families and others with a wider policy interest, including other similar charities who they sometimes jointly campaign with.

As such, they do lobby MSPs and others on funding and other issues, but they are unclear from the Act whether they are a representative body or not.

### **Multiple returns**

One final matter which has been raised with the Lobbying Team (which does not relate to an exemption) concerns what some registrants see as the administrative burden of providing **multiple returns for events** (etc.).

For example, where a registrant holds a large reception in the Garden Lobby; or hosts an exhibition in one of the designated areas within the Parliament (over several days) or even attends an external event such as a party conference, where many MSPs are present, they can of course lobby several of them.

Predominately, the lobbying will be on matters which are common to almost all the conversations held with those Members, as the purpose of the lobbying will be to raise issues they have identified in advance.

However, the Act currently requires a return for each 'instance' of lobbying. There have been requests for this to be reviewed, as it is felt that the process of submitting multiple returns is overly time-consuming and a 'one event return' approach could manage the same or similar outcomes on the Register.

# ADDENDUM



## **ADDENDUM**

### **Data for the Report**

The data for this report covers the period 12 March 2018 until 12 June 2019 and is published as an accompaniment to the Report, within a searchable excel spreadsheet. This includes:

- Registrant: date of registration
- Registrant: name
- Registrant: type
- Registrant: (primary) subject area
- Registrant: final date for end of Period 1
- Registrant: final date for end of Period 2
- Registrant: current Period (at 12 June)
- Registrant: number of substantive Information Returns published (at 12 June)
- Registrant: number of nil Information Returns published (at 12 June)
- Registrant: breaches in Period 2.

### **Conclusion from the Lobbying Registrar**

I hope you have found the analysis contained in this annual report, covering our formative 15 months up to 12 June 2019, a useful read. Since that point we have continued to see the number of registrants and published Information Returns increase, to 1135 and 8093 respectively, by 12 September (after 18 months).

The tasks for the Lobbying Team in setting up and administering the new Register have been extensive. When developing the new IT system and Parliamentary Guidance we tried to take a pragmatic and practical approach, in response to the extensive feedback we received from stakeholders.

We always aim to be accessible and supportive when answering calls and emails or, in person, during meetings, events and workshops. We recognise any new legal requirement needs time to be understood properly and incorporated into good practice over time, and certainly before it can be seen as an everyday task.

As the Clerk/Chief Executive mentions in his foreword, next year will see an anticipated review of the Act. That review will allow the opportunity for comment on progress so far on the Register and to examine current aspects of the Act which can be improved, directly with a committee of the Parliament.

I have touched on some of the key issues raised with me and the team so far, in the chapter above, which I hope will be helpful for when that committee starts its considerations.

**Billy McLaren**  
Lobbying Registrar





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