

## Public Audit and Post-legislative Scrutiny Committee

### Review of the Lobbying (Scotland) Act 2016

#### SPICe summary of evidence

#### Who responded

A total of 41 responses were received which are broken down by category of respondent in Table 1 below.

**Table 1. Responses by respondent category**

Category of respondent	Number of responses
Business	2
Charity/NGO	19
Commercial representative body	12
Individual	3
MSP	1
Professional body	3
Public body	1
<b>Total</b>	<b>41</b>

Further information about the lobbying activity of respondents is presented in the Annex at the end of this briefing.

#### 1. GENERAL VIEWS ON THE ACT

##### What concerns was the Act seeking to achieve?

Respondents identified that the Act intended to increase transparency about how lobbying influences the development of public policy. Public trust, openness and accountability were commonly cited.

However, several organisations were of the opinion that there was no clarity about what the legislation set out to achieve. Furthermore, some respondents felt that there was no evidence to suggest that there was a problem with lobbying in Scotland that needed to be addressed prior to the introduction of lobbying legislation. For example, CBI Scotland referred to the Act as a “solution looking for a problem”.

As the Law Society of Scotland’s submission explained, a 2013-2014 inquiry by the Parliament’s Standards, Procedures and Public Appointments committee found no evidence of issues with lobbying of Members of the Scottish Parliament. The remit of that committee inquiry was:

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

The Committee recommended legislation to address negative public perceptions of lobbying. During the passage of the Bill, a consensus emerged that the Act was necessary as a precaution to deter future risk and to address public perceptions of lobbying.

Some submissions identified that freedom of information legislation and the MSPs’ Code of Conduct were existing mechanisms available to support transparency.

### **Overall support for a legislative approach**

The Table 2 below shows a breakdown of how respondents felt about a legislative approach broken down by category of respondent

**Table 2. Views on a legislative approach by category of respondent**

<b>Category of respondent</b>	<b>Supportive</b>	<b>Not supportive</b>	<b>Not clear</b>
Business	1	-	1
Charity/NGO	12	3	4
Commercial representative body	4	3	5
Individual	2	1	-
MSP	1	-	-
Professional body	2	1	-
Public body	-	-	1
<b>Grand Total</b>	<b>22</b>	<b>8</b>	<b>11</b>

A majority (22 respondents) stated they are in favour of a legislative approach, mostly from the charity/NGO category. Eight respondents stated they were against a legislative approach.

However, **support for a legislative approach was nuanced**. Some respondents who were against a legislative approach had accepted the legislation and were focussed on improving its implementation. For example, the Association for Scottish Public Affairs (ASPA) said:

*“We remain sceptical, but realistic. We do not believe the benefits of the regulations have outweighed the costs, but believe that argument has been lost and we do not argue for the removal or rolling back of the regulations as they stand. The Act is not going to be reversed, or repealed, but we can make it better, particularly in the way it has been implemented.”*

Similarly, the Scottish Council for Voluntary Organisations (SCVO) said:

*“We remain unclear as to what the Act truly seeks to achieve (and therefore whether the Act has been a success) [...] However as [sic] at SCVO, we have detected a general softening of attitudes within the sector and there appears to be an overall acceptance that the register offers useful insight into lobbying behaviour in Scotland.”*

Homes for Scotland were not explicit in supporting a legislative approach but said that the register provides information to allow them to benchmark against lobbying activity of similar organisations.

Other respondents such as Scottish Land and Estates felt that the Act has achieved the right balance between increased transparency without being overly burdensome.

### **Criticisms of the Act**

Many respondents, including those in support of legislation, shared **criticisms of the Act’s approach and implementation**. Issues identified included the following:

- High administrative burden
- Greater impact on small organisations particularly charities/NGOs
- No distinction between commercial and non-profit lobbying
- The Act is too ‘light touch’
- Too many exemptions/loopholes
- Burden to report should be on regulated individuals rather than lobbyists

Respondents who were **not supportive of the legislation** gave the following reasons for this view:

- No evidence of unethical lobbying behaviour
- High administrative burden, particularly on small organisations
- Regulation discourages engagement in policy development
- Commercial lobbyists already have transparent working practices

## **2. THE ACT IN PRACTICE**

### **Has the Act Increased transparency?**

There were mixed views on whether or not the Act has increased transparency. Some respondents appreciated having access to information about lobbying activity and said that the Act has **enforced a minimum standard and created a level playing field**.

The Law Society of Scotland stated that:

“A legislative approach ensures that all organisations, which carry out lobbying activities, are treated on an equal basis with clear mechanisms to set

out rules, responsibilities, duties and enforcement powers...voluntary register approach may result in the unequal treatment of lobbyists, the development of a two-tier profession and may not achieve the objectives of transparency and accountability in any meaningful way.”

The Law Society of Scotland also stated that the Act may have changed attitudes towards transparency and gave the following example:

*“We are aware of examples of MSPs contacting lobbyists to ensure details of the communication are entered on the register and checking the register to see if those they are intending to meet with are registered as ‘active’ lobbyists.”*

Other respondents were more sceptical and thought that the Act had only led to superficial transparency. Some respondents suggested that large organisations already had contacts with influence and suggested there are problems associated with relatives, friends and close contacts who would continue not to record lobbying. However, no evidence was provided to support suggestions of unlawful lobbying.

There were also concerns that the Act has encouraged changes in lobbying practice. Some respondents suggested that lobbying had shifted from face-to-face meetings to telephone and written communications, particularly in the context of the Covid-19 pandemic. Others indicated that the Act had not changed the nature of lobbying.

### **Administrative burden**

Many respondents stated that the Act had introduced an additional administrative burden, particularly for small organisations with fewer resources dedicated to complying with the Act.

SCVO highlighted the findings of the Lobbying Register annual report 2019 that showed that ‘Charity, Trust or Advocacy Board’ made up the largest percentage of overall returns (40%).

A survey conducted by the SCVO to its members showed that 79% of respondents said the Act had placed an additional administrative burden. However, 91% of respondents also said it had no negative impact on the way they conducted lobbying. In the debate at the time of the introduction of the legislation, there were concerns that there may be a ‘chilling effect’ on lobbying from the third sector.

Some third sector organisations suggested that the disproportionate impact on small organisations was counter to the original intentions of the Act. MND Scotland stated that larger organisations know “how to work the system” and some organisations also suggested it is unclear that the public are interested in lobbying by small charities.

Responses from commercial lobbying organisations such as the Public Relations and Communications Association (PRCA) and the Association for Scottish Public Affairs (ASPA) disagreed and stated that the Act created a level playing field.

Large events such as parliamentary receptions were identified as being particularly problematic because they involved multiple interactions between lobbyists and MSPs, Ministers and Special Advisers that all required individual entries to the register. This is exemplified below in the response from the Food and Drink Federation Scotland:

*“FDF Scotland holds an annual MSP sponsored reception at the Scottish Parliament, with over 120 participants. This event celebrates the importance of our sector and adds great value to members allowing them to directly engage with MSPs from across all parties.*

*We are required to register speeches that take place at the reception where we highlight the key successes and challenges of our industry.*

*We are also required to include the content of conversations at the event. Although we believe being open and transparent about this activity is important, we are not able to track all MSPs, Scottish Government Ministers, and Special Advisors that have attended the event and indeed which were present when we were delivering our speech. We do the best job we can in accurately reporting this information but cannot guarantee we capture all the relevant contacts.*

*It can also be difficult for those attending to recall all MSPs they spoke to and whether that conversation would constitute lobbying.”*

Some third sector organisations such as Shelter Scotland and Inclusion Scotland suggested that the burden should be on regulated individuals (MSPs, Ministers, Permanent Secretary and SPADs) to record and register lobbying activity. A number of respondents were supportive of MSPs and others publishing their calendars either in addition to, or instead of, the Lobbying Register.

### **3. IMPROVEMENTS WITHOUT LEGISLATION**

Many submissions noted the valued support they had received from the Lobbying Register team and the outreach work which had been done ahead of the register commencement date.

Organisations provided a number of suggestions for improvements to the Lobbying Register IT system and to guidance provided by the registrar.

#### **Lobbying Register IT system**

Issues with the Lobbying Register IT system were among the most commonly identified. **Respondents described the current system as cumbersome, clunky**

**and time consuming.** Respondents suggested a number of improvements to help reduce the administrative burden for completing returns.

- **Bulk uploads:** the ability to submit multiple returns as a bulk upload from a data import such as an excel spreadsheet (see previous section regarding issues with large events). The annual report of the Lobbying Register notes that there is now a bulk upload feature. The feature does not, however, allow for excel sheets to be uploaded and pull through information. It does allow the registrant to add an additional person lobbied to a return. This addresses some respondents' concerns around multiple uploads being required after, for example, conferences and events. Nevertheless, it appears that all other information about the return (who undertook the lobbying, the nature of the lobbying, what the 'ask' was) to be identical.
- **Pre-populated entry fields:** basic information in key fields such as MSPs' names, constituency or region and Scottish Parliament address. Also, the inclusion of MSPs' photographs to enable quicker identification.
- **Individual accounts:** the ability to register an account and save previous returns to use as a template for future entries.
- **A mobile app:** to make it easier to record information for smaller organisations.
- **Improved search function:** the ability to search for key words rather than having to search for exact matches of organisation names. This it was suggested would improved transparency.

## Lobbying Register Guidance

Respondents suggested the following improvements to guidance provided by the registrar:

- **Provide a clearer definition of lobbying** to remove subjectivity around deciding whether or not a meeting constituted lobbying.
- **Provide clearer guidance around the use of video conferencing software** (i.e. does switching off the camera mean that the communication is a telephone call and therefore does not have to be registered). The Lobbying register team has recently updated its [news page](#) to provide more guidance on this issue given the increased use of this kind of technology during the COVID-19 public health emergency. Nevertheless, it does not directly address

whether a return should be completed if the camera is turned off which was a question posed by respondents.

- **Provide templates on how to record submissions** allowing organisations to see the detail, language and tone required for ideal submissions. Some respondents complained about returns being rejected because of insufficient detail or incorrect language used.

### Clarification of exemptions

Respondents sought clarification on the following exemptions listed under the schedule. The written evidence indicated that a lack of clarity in these exemptions led to organisations taking a cautious approach leading to unnecessary returns in some cases. These were also highlighted in [the Lobbying Register annual report](#) as areas which the review may like to consider.

- **Para. 2(c) - Communications made to member for constituency or region:** respondents stated the definition which exempts any discussion with MSPs (unless a Minister) if business is “ordinarily carried on” in their constituency or region was unclear. Respondents were unsure if this applied to umbrella organisations, utility companies, online businesses and national organisations that operate in or have premises in constituencies across Scotland. There was concern that this exemption can be interpreted differently by different organisations.
- **Para. 12 - Communication made on request:** discussions are exempt if they are invited “in response to requests for factual information or views on a topic”. Respondents found this difficult in practice because conversations can stray into topics that should be covered by the Act even when they are conducted in response to an invite requesting information. For example, the NFUS highlighted its regular standing meeting with the Cabinet Secretary.

### Knowledge gaps

A number of respondents indicated that it was not clear to what extent the Act has been successful due to a lack of understanding or evidence demonstrating its impact. Evidence submissions suggested the Committee may wish to explore the following knowledge gaps.

- **Public awareness:** awareness and interest among the general public, how often the register is used, for what purpose and whether the public is better informed.

- **Behaviour change:** if and how the Act has changed the behaviour of MSPs and lobbyists, how the method and frequency of lobbying has changed and whether the Act has led to unintended consequences.
- **Regulation in other jurisdictions:** the Law Society of Scotland suggested the Committee should look at how lobbying is regulated in other jurisdictions, particularly concerning what individuals and communications are regulated.

#### **4. IMPROVEMENTS REQUIRING LEGISLATIVE CHANGE**

Suggestions for legislative change tended to focus around whether or not the Act should be expanded and reviewing certain exemptions.

##### **Expanding the Act to further groups**

**A majority of respondents (19 responses – 46%) were against expanding the Act to further groups.**

Concerns about deterring engagement and further increasing administrative burden were commonly cited.

**Six respondents (15%) suggested that the Act should be expanded** to cover more groups. The rest did not respond or did not give a clear indication either way.

Those for expanding the Act suggested including current civil servants and also addressing the “revolving door” issue by covering former Ministers, senior civil servants, SPADs and MSPs who become lobbyists.

The CBI and NFUS raised concerns about politicising the civil service and preventing information sharing if the Act was to include discussions with civil servants.

Some respondents such as Friends of the Earth Scotland, the SCVO and Scottish Environment Link suggested that regulated individuals should publish diaries of lobbying activities as recommended in the MSP Code of Conduct.

##### **Expanding the Act to further communications**

**There was equal support for and against (17 responses each) expanding the Act to cover more communications** such as telephone calls and written communications.

Those against expanding the Act again raised concerns around administrative burden and deterring engagement.

Those in favour of expanding communications suggested that not including all forms of communication left loopholes for individuals to avoid registering lobbying activity. Changing working practices resulting from Covid-19 was also highlighted.

Some respondents from third-sector such as the SCVO, Inclusion Scotland and Paths for All recognised the logic in expanding the Act to cover other forms of communication but did not support it due to concerns over potential administrative burden. Some suggested that if the Act were to be expanded, this information should be registered by regulated individuals (MSPs, Ministers etc.).

### **Recording lobbying cost information**

Some respondents suggested that **the Act should require organisations to record information about how much money is spent on lobbying activity**. Women Scotland and the Scottish Alliance for Lobbying Transparency (SALT) suggested this would reveal disparity between corporate and grassroots organisations. SALT stated:

*“A substantial imbalance in spending between interest groups would raise questions about whether money was affecting interest groups’ ability to participate equally and meaningfully in Scottish democracy.”*

Neil Findlay MSP suggested that this information could be used to set thresholds for organisations that are subject to the Act to reduce the burden on small organisations.

Those against the inclusion of cost information stated that such a requirement would be difficult and time consuming to calculate and may be business sensitive for commercial lobbyists.

### **Reporting period**

For Women Scotland, the SCVO, SALT and the Law Society of Scotland suggested shortening the statutory 6-month reporting period. These respondents felt that the current reporting period might lead to information on lobbying activity only be available after legislation or significant policy decisions had been made.

SALT highlighted the critical policy decisions made in short timeframes during the current Covid-19 pandemic.

One individual suggested more severe punishment for failure to report including a £100 fine for failing to submit a return and every week thereafter and a “well publicised” lobbying ban if fines are unpaid for a month.

### **Review of exemptions**

In addition to issues related to the clarity of exemptions outlined in the previous section, some respondents suggested a further review of the following exemptions listed in the schedule:

- **Para. 5 - Communications not made in return for payment:** lobbying conducted by individuals who hold unpaid or honorary positions with

organisations are exempt. Some respondents highlighted that such individuals can be influential lobbyists.

- **Para. 7 - Communications by small organisations:** organisations with fewer than 10 full-time equivalent employees are exempt (so long as lobbying on behalf of others is not the main activity). Some respondents were concerned that small organisations with significant influence can be exempt.
- **Para. 12 - Communication made on request:** as discussed in the previous section, some respondents suggested removing this exemption as they regarded it as a loophole for avoiding the requirement to register.
- These exemptions were also highlighted in the 2019 annual report of the Lobbying Register as issues which the External Working Group, registrants and others had raised and which the review may like to consider.

## **5. INTERACTION BETWEEN FREEDOM OF INFORMATION AND THE ACT**

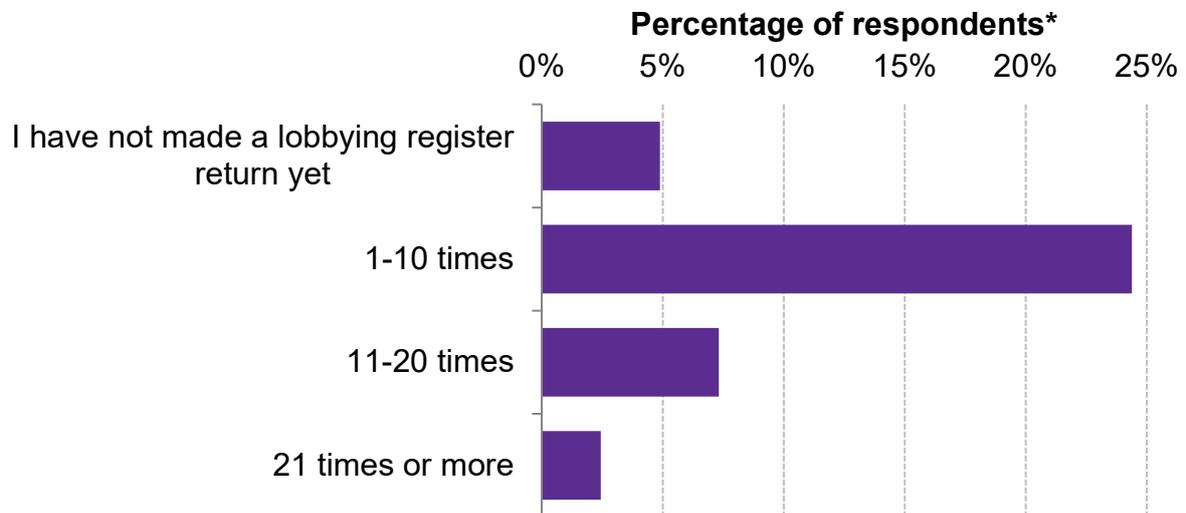
The submission from the Scottish Information Commissioner raised a number of points regarding how the Freedom of Information (Scotland) Act 2002 and the Lobbying (Scotland) Act 2016 complement each other. The Committee may wish to explore this further. Key points include:

- How FOISA can complement the lobbying register by allowing the public to find out about meetings that have taken place, then seek further information about the details of that meeting through FOISA.
- How the register may capture communications not captured by FOISA – e.g. unplanned, impromptu meetings where not minutes/recording was taken.
- Whether the Lobbying Act needs to be extended to written communications that are already covered by FOISA.
- Issues related to record creation and retention. How much detail should be recorded on the register? Content of such communications may be subject to exemptions under FOI law, meaning that some content may be redacted before disclosure under FOISA.
- The increasing complexity of the designation of public bodies subject to FOISA (i.e. for specific functions) and whether the Committee may wish to consider how exemptions should apply to such public bodies.

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**SPICe**  
**14 September 2020**

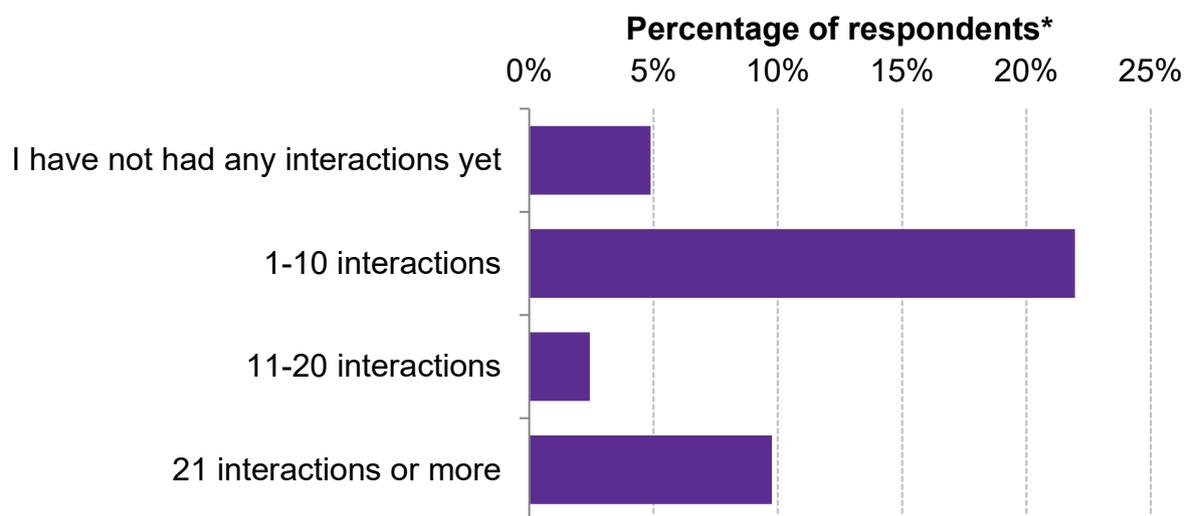
**ANNEX: Respondent's responses to questions about their lobbying activity**

**Q1. On average over a six-month period, how many times do you make a lobbying register return?**



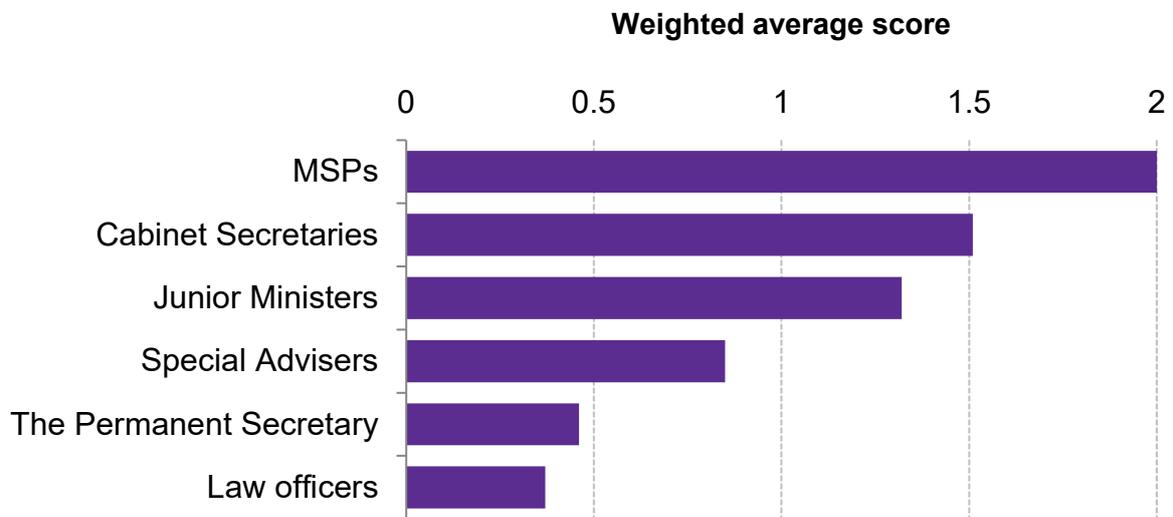
\*25 respondents did not answer this question

**Q2. On average over a six-month period, how many interactions do have you with MSPs/Members of the Scottish Government (Cabinet Secretaries, law officers, junior ministers, special advisers and the Permanent Secretary) which do not require lobbying register returns?**

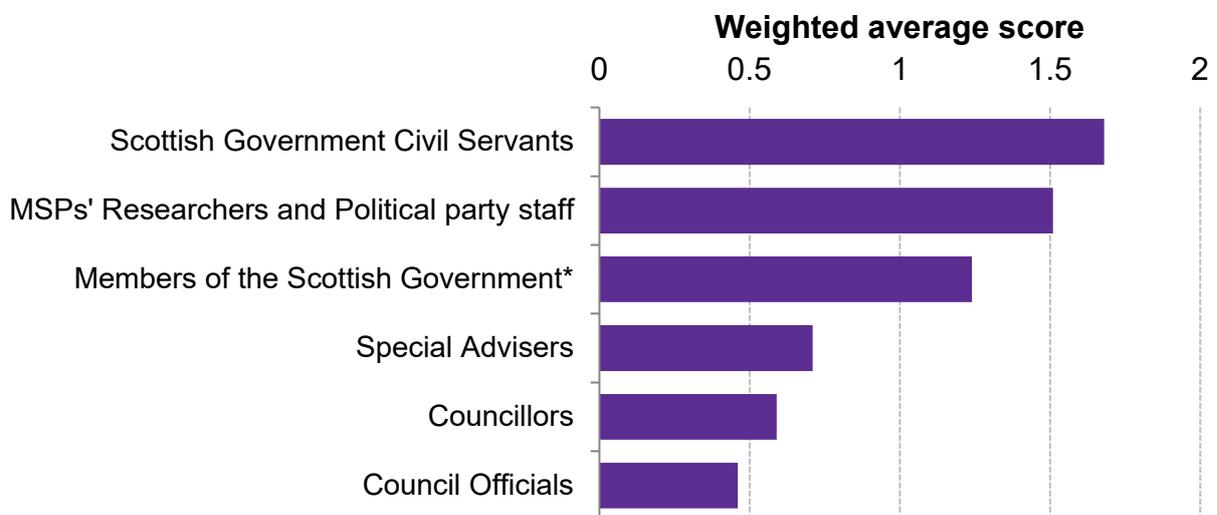


\*25 respondents did not answer this question

**Q3. Using 1-6 (with 1 being the most frequent and 6 being the least frequent) please rank your regulated lobbying activity with the following groups:**



**Q4. Using 1-7 (with 1 being the most frequent and 7 being the least frequent) please rank your engagement activity (which is not regulated lobbying) with the following groups:**



\*including cabinet secretaries, junior ministers, law officers and the permanent secretary