

Lobbying (Scotland) Bill – PRCA FAQ for members

Wednesday 16th March 2016

- + The PRCA is the professional body representing lobbyists and communications professionals. Our membership includes consultancies (including around 75% of the “PR Week Top 150”), in-house teams and individual practitioners. Members include organisations as diverse as charities, banks, professional bodies, law firms and the entire Government Communications Service. We represent around 350 consultancies and 250 in-house teams. We are the largest association of our type in Europe and MENA and of the 20,000 individuals employed by members of the PRCA, around 1,500 are lobbyists.
- + The Lobbying (Scotland) Bill passed on Thursday 10th March 2016. It will establish a Lobbying Register in Scotland.
- + All members in Scotland – and all of those who engage with the Scottish Parliament – should ensure they are aware of what will be required of them once this Register is launched. It covers both consultant lobbyists and in-house lobbyists.
- + The below FAQ covers a number of key areas: the types of lobbyists covered (and any exemptions); the type of lobbying covered (and any exemptions); the targets of this lobbying covered; their definition of “regulated lobbying”, the types of communications that are included and the topics these have to cover; the information required from registrants (the type); the cost; the timescale; the review period; and how this will work alongside your current self-regulatory framework.

Who does it cover?

- + It covers both in-house lobbyists and those undertaking lobbying on behalf of another person or organisation (most commonly those working for consultancies or those working in a freelancer capacity).

What is their definition of “regulated lobbying”?

- + The Bill as passed makes it clear that “regulated lobbying”, in the view of the Scottish Parliament, is only communication “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”. Throughout, the Government and indeed the Committee made it clear that they were not concerned with all lobbying but only what they sought to define as “regulated lobbying”.
- + This communication should be carried out in the course of business so the individual would be making the communication as an employee, director (or shadow director), partner, member of the person or other office holder.
- + It has to be made in person (so telephone calls and emails are exempt) or if not in person using AV equipment allowing both parties to “see and hear each other while that communication is being made”. Video calls, for instance, would be covered by this. An amendment at Stage 3 specifies that British Sign Language or other communication made with signs is included.
- + For background, it does not matter whether the communication occurs “in or outwith” Scotland.

Will it apply to everyone I lobby in Scotland?

- + Whilst it is much broader than Westminster’s Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014, it remains limited to the categories above. The lobbying of local authorities, for instance, is completely exempt from being considered “regulated lobbying” by the Bill.

Does it cover every topic I might communicate with them about?

- + The communication has to be made in relation to “Government or parliamentary functions”.
- + This is a relatively broad area and is defined as:

2 Government or parliamentary functions

- (1) Government or parliamentary functions are—
- 5 (a) the development, adoption or modification of any proposal to make or amend primary legislation in the Parliament,
- (b) the development, adoption or modification of any proposal to make a Scottish statutory instrument,
- 10 (c) the development, adoption or modification of any policy of the Scottish Ministers or other office-holder in the Scottish Administration,
- (d) the making, giving or issuing by the Scottish Ministers or other office-holder in the Scottish Administration of, or the taking of any other steps by the Scottish Ministers or office-holder in relation to—
- 15 (i) any contract or other agreement,
- (ii) any grant or other financial assistance, or
- (iii) any licence or other authorisation,
- (e) speaking, lodging a motion, voting or taking any other step in relation to a matter raised in proceedings of the Parliament,
- 20 (f) representing as a member of the Parliament the interests of persons other than in proceedings of the Parliament.
- (2) But the retained functions of the Lord Advocate (within the meaning of section 52(6) of the Scotland Act 1998) are not Government or parliamentary functions for the purposes of this Act.

- + Throughout the course of this Bill, the Scottish Government made clear that the intention was to cover as all the areas lobbyists might be communicating on without stopping anyone from engaging in conversation and personal contact. “Small talk” or “personal talk”, for instance, is not a matter of concern.

Are any types of “in person” communication exempt? Are any types of lobbyist exempt?

- + To reiterate, emails and telephones calls (to cover common forms) are already exempt.
- + The schedule for this section of the Bill excludes a number of categories:
1. A communication made by an individual on the individual’s own behalf, so constituents getting in touch with their local MSP, for instance, are exempt.
 2. A communication made by an employee in the course of business to a member of the Scottish Parliament for the constituency or region in which either the “place where the person’s business is ordinarily carried on”, “a place where the person’s activity is ordinarily carried on” or “the individual’s residence”. This does not apply if the target of the communication is also a member of the Scottish Government or a junior Scottish Minister. This exemption is meant to cover businesses which might be discussing local issues or business plans with their MSP.
 3. A communication made by an individual that is not in receipt of payment. This payment does not have to directly relate to “making communication” but means payment of any kind “whether made directly or indirectly for making the communication”. It does not include reimbursement for travel, subsistence or “other reasonable expenses”. Therefore pro-bono or voluntary lobbyists, even if you cover the cost of their travel and involvement, are completely exempt.

4. A communication made by a “small organisations”. This is defined as an organisation which has fewer than 10-full time equivalent employees unless one of those employees “principal purpose is to represent the interests of other persons”. This effectively excludes a great many local businesses but covers representative bodies with a low staff number. Your business sizes is calculated with the following equation:

<p>3B</p> <p>10</p> <p>3C</p>	<p>For the purposes of paragraph 3A, the number of full-time equivalent employees a person has is calculated as follows—</p> <p>(a) find the total number of hours worked by all the employees of the person in the 28 days ending with the date on which the communication was made,</p> <p>(b) divide that number by 140.</p> <p>For the purposes of the calculation in paragraph 3B, any employee who worked more than 140 hours during the period of 28 days is to be treated as having worked 140 hours.</p>
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5. A communication that is required under statute or other rule of law.
6. A communication made about a topic which in response to a request for “factual information or views on that topic”. This is meant to exempt those who are contacted by MSPs rather than the other way around.
7. A communication made by a cross-party group.
8. A communication made for the purpose of journalism.
9. A communication made in relation to terms and conditions of employment. This was properly included in the Bill to ensure that trade unions, negotiating on behalf of members, would be exempt. It does not completely exempt trade unions.
10. A communication made by political parties.
11. A number of other common-sense exemptions also exist such as communications by judiciary, communications by Her Majesty and communications by Government and Scottish Parliament, UK Parliament and Assemblies.

What information will be required from me?

- + Each instance of a registrant engaging in “regulated lobbying” requires the following information:
 1. Name of person lobbied;
 2. Date on which this person was lobbied;
 3. Location at which person was lobbied;

4. Description of meeting, event “or other circumstances” in which the lobbying occurred;
 5. Name of individual who made the communication;
 6. Either a statement that the lobbying was undertaken on your own behalf (in-house professional) or the name of the person on whose behalf the lobbying was undertaken (consultancy professionals);
 7. The purpose of the lobbying.
- + The PRCA sought to reduce the regulatory burden this will create and align the information required with the PRCA Public Affairs Register, which only captures the offices conducting lobbying, the best contact, the people carrying out lobbying and (if relevant) clients for whom lobbying services were provided.
 - + Given the range of information required, we expect there will be a number of issues when it comes to implementation. For instance, we expect “the purpose of the lobbying” returns to lead to some confusion. A number of registrants will over-disclose out of concern whereas a number of registrants might find it difficult to answer above and beyond “industry body represent X sector met Committee member covering this sector”.

Is there a cost? How often would I need to be on there?

- + There is no cost for registrants, unlike the UK Statutory Register of Consultant Lobbyists, and returns will be submitted every six months.

Do I have to register before I actually carry out “regulated lobbying”?

- + Information returns must be submitted within 2 weeks after the lobbying occurred.
- + The PRCA argued for this grace period to ensure no one was prevented from lobbying by having to register before carrying out work which might arise ad-hoc.

Do I have to trigger the definition of “regulated lobbying” in the Bill to feature on the Lobbying Register in Scotland?

- + The Bill makes it clear that there will be three types of registrant: active, inactive and voluntary.
1. An active registrant is someone who is compelled to be on the Register because they have triggered the definition of “regulated lobbying” and are not one of the listed exemptions.
 2. An inactive registrant either did not, effectively, engage in “regulated lobbying” during the period covered or did not engage in this other than the first instance. There is a process by which the

Clerk will decide whether or not to reclassify an active registrant as inactive. You can either apply for this to happen or the Clerk can do this on their own accord without your application.

3. A voluntary registrant may apply to the Clerk to be entered onto the Register. This will be a form of voluntary disclosure which obviously differs to the previous two categories. The Clerk may remove a voluntary registrant if they apply to be removed and the Clerk considers it appropriate. Similarly, the registrant may be changed to active if this is instead required.

What is the timeframe? Are we near implementation?

- + The *Final Business and Regulatory Impact Assessment* published in October 2015 notes it is “unlikely” that the registration framework will be fully operational until 18 – 24 months after the Bill’s parliamentary passage is concluded.
- + With this in mind, members should expect the Lobbying Register in Scotland to start somewhere between September 2017 and March 2018.
- + For comparison, the UK Statutory Register of Consultant Lobbyists was not launched until just two days before the deadline. Many stakeholders, including ourselves, therefore called for it to be delayed.
- + The PRCA will continue to engage with relevant parties throughout the process given our extensive experience with the UK Register and our management of the industry’s largest voluntary register. There are a number of issues to codify and clarify. The Minister made it clear when PRCA met him in November 2015 that this legislation is meant to empower parliament to create the Lobbying Register in Scotland, rather than specify every detail, and should “not be looked to” as an absolute guide for potential registrants.

How does this work alongside my PRCA self-regulatory disclosure? Is this indicated on the Register?

- + We will continue to run the PRCA Public Affairs Register and all members will continue to be regulated by the PRCA Code of Conduct. Throughout the process, the Scottish Government signalled their intention to recognise voluntary codes of conduct on the Lobbying Register in Scotland.

How will it potentially change in the future? What is the review period?

- + The Scottish Government introduced an amendment to ensure there was a proper review process.
- + The Scottish Parliament has to make arrangement for one of its committees or sub-committees to report on the Act within two years to the day of the Lobbying Register in Scotland launching.
- + This review will cover recommendations as to whether the Act should be modified. It will look at, among other things, the people to whom the communications are made (and potentially whether



it should be widened), the types of communications which are made (and potentially whether other categories should be included) and “expenditure incurred by the person in engaging in regulated lobbying”.

- + We remain concerned about this review period, particularly given it specifies financial disclosure.