

# Guide to lobbying in Scotland

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## 1. Introduction

The Environmental Rights Centre for Scotland (ERCS) aims to increase awareness of environmental rights and to ensure that people can effectively exercise them.

This guide is intended to help members of the public better understand how lobbying is regulated, how to enforce lobbying laws when they are broken and how to find out about lobbying.



This is not a comprehensive legal guide. ERCS provides free advice to individuals, community groups and organisations on environmental and related planning law.

[Please contact us for advice if you have a query relating to this guide.](#)

## 2. What is lobbying?

‘Lobbying’ is where an individual or organisation tries to influence politicians and other government officials.

This is typically done to support or oppose particular policies, laws and decisions.

For example, the Scottish Government recently proposed introducing a deposit return scheme to increase recycling and reduce litter and greenhouse gas emissions. [In 2022 and 2023 there was significant lobbying by industry and retail bodies such as the Scotch Whisky Association.](#) The deposit return scheme’s introduction has been significantly delayed as a result.

## 3. The Lobbying (Scotland) Act 2016

The Lobbying (Scotland) Act 2016 (‘the 2016 Act’) is the main piece of legislation which regulates lobbying in Scotland - it does this in several ways:

- It defines ‘regulated lobbying’;
- It requires the establishment and maintenance of a lobbying register, and a parliamentary guide intended for those involved in lobbying;
- It sets out the enforcement provisions associated with lobbying rules – such as making it a crime to fail to provide information on regulated lobbying;
- It sets out the duties of the Clerk of the Scottish Parliament (‘the Clerk’) and of the Ethical Standards Commissioner in respect of registered lobbying. The Clerk is responsible for monitoring the lobbying register, while the Commissioner has the duty to investigate complaints submitted about incidents of unreported regulated lobbying;



## 4. Regulated lobbying

A person who engages in 'regulated lobbying' is required to register and report details of their lobbying activity.

Regulated lobbying is where a person makes a communication in relation to government or parliamentary functions to one of the following:

- a member of the Scottish Parliament;
- a member of Scottish Government;
- a junior Scottish Minister;
- a special adviser, or
- a permanent secretary.

The communication must be made in the course of a business or any other kind of professional activity.

The communication must have been made orally (including by sign language).

The communication must have been made either in person, or by such means so as to enable both visual and aural communication to take place. This includes different kinds of video communication (e.g. by zoom and teams).

Regulated lobbying can take place both inside and outside Scotland.<sup>i</sup>

A communication will not be considered regulated lobbying if it is one of the types of communication found in the Schedule of the 2016 Act. A person is not engaging in regulated lobbying if they make:

- A communication to a member of the Scottish Parliament on behalf of a region or a constituency;
- A communication which is not made in return for payment. 'Payment' is broadly defined but it does not include reimbursement for travel, subsistence or other reasonable expenses related to making the communication;



- A communication as a representative of an organisation of less than 10 full-time equivalent employees; or
- A communication made for the purposes of journalism.

## **5. The lobbying register**

The 2016 Act requires the Clerk to establish and maintain a lobbying register ('the register').<sup>ii</sup>

The register contains various information about regulated lobbying.

There are two types of information which must be included in the register- information about the identity of each 'registrant' (name and address, etc.) - and information about instances of individual lobbying activities.

The information that is required to be submitted to the register about lobbying activities must include:

- The name of the person lobbied;
- The date when the person was lobbied;
- The location where the person was lobbied;
- A description of the meeting/event when the lobbying occurred;
- The name of the individual who did the lobbying; and
- The purpose of the lobbying.<sup>iii</sup>

## **6. Duties of those carrying out regulated lobbying**

The main legal duties placed on individuals who engage in regulated lobbying are the duties to register and to submit information returns.



Individuals who engage in regulated lobbying have a **duty to register** within 30 days of the date on which the first instance of regulated lobbying occurs.<sup>iv</sup>

Once registered, a person becomes an ‘active registrant’. They then have a **duty to submit information returns** every six months.<sup>v</sup>

Information returns must contain either the necessary information for each instance of regulated lobbying carried out during the period in question; or a statement that the registrant did not engage in regulated lobbying during the period in question.<sup>vi</sup>

## 7. Enforcement

The 2016 Act is enforced in three ways:

- The Clerk has enforcement powers and duties;
- The Ethical Standards Commissioner (‘the Commissioner’) also has enforcement powers and duties;
- The 2016 Act creates several criminal offences.

### 7.1. The Clerk

The Clerk has a duty to monitor persons who engage in regulated lobbying for compliance with the 2016 Act.<sup>vii</sup>

The Clerk has the power to serve an ‘information notice’ on any person whom they have reasonable grounds for believing may be or may have been engaged in regulated lobbying.<sup>viii</sup>

An information notice requires the recipient to supply particular information to the Clerk.

### 7.2. The Commissioner

The Ethical Standards Commissioner has a duty to investigate and report on complaints that a person has:



- Failed to comply with the duty to register;
- Failed to comply with the duty to submit information returns;
- Failed to supply accurate and complete information in response to an information notice from the Clerk.<sup>ix</sup>

When the Commissioner receives a complaint, they must assess whether it is admissible, and if it is, they must investigate the complaint and report on the outcome of their investigation to Parliament.<sup>x</sup> Parliament has the power to censure the person who is the subject of the report.

### 7.3. Criminal Offences

The following are criminal offences under the 2016 Act:

- Failure to supply information as required in an information notice.<sup>xi</sup>
- Failure to comply with the duty to register.<sup>xii</sup>
- Failure to comply with the duty to submit information returns.<sup>xiii</sup>

The penalties for those found guilty of the above offences are fines of up to £1,000.<sup>xiv</sup>

## 8. Making a complaint to the Commissioner

If the laws on lobbying have been broken, then you may be able to submit a complaint to the Ethical Standards Commissioner.

You can make a complaint [online using the complaints form on Commissioner's website](#).

The complaint form requires information about the identity of the complainer and details of the complaint. You can include supporting evidence such as documents and details of witnesses where relevant.

**There is a short time limit for making complaints to the Commissioner.** The 2016 Act says that complaints must be 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”.<sup>xv</sup>

## 9. Accessing information on lobbying

There are several things you can do to find out where lobbying has taken place (both regulated lobbying and lobbying which is not covered by the 2016 Act).

### 9.1. The Lobbying Register

[Check the register](#) to access information on regulated lobbying activity.

### 9.2. Freedom of information

You can make a freedom of information request for information relating to lobbying of public bodies such as the Scottish Government, SEPA and NatureScot.

Think carefully about what information you are looking for when you make your request.

The [Scottish Information Commissioner's website](#) contains useful information on your rights to get information from Scottish public bodies.

### 9.3. Ministerial engagements

Information on the ‘engagements’ of Scottish Government Ministers can be accessed on [the Scottish Government's website](#). It includes details of meetings and gifts received.

### 9.4. Donations and Loans

Information about donations and loans can be found in the Electoral Commission's [public register](#). Information can be accessed on donations made to political parties, minor parties, non-party campaigners, referendum participants and regulated donees.

‘Regulated donees’ are people and organisations engaged in politics. These are:



- Holders of some elective offices;
- Members of political parties; or
- Groups of party members (also known as members associations).

Information about loans granted to the same recipients can also be accessed through the link above.

## 9.5. Register of Interests

Members of the Scottish Parliament are legally required to disclose information related to their financial interests and benefits.<sup>xvi</sup> Anything that could be perceived as influencing an MSP's votes, words or actions should be included, such as:

- Payment for work done outside of MSP duties;
- Property and land ownership;
- Gifts; or
- Overseas visits (related to work).

This information recorded in the [register of interests](#). The register of interests is updated every time there is a change, and MSPs must register any changes within 30 days.

## 9.6. Open Access UK

[Transparency International](#) is a global anti-corruption organisation. The UK chapter of the organisation produces a database called [Open Access UK](#) which provides details of lobbying meetings involving UK Government Ministers. The database provides information going back to the year 2012.

The information available on Open Access UK includes the most prominent lobbyists, most prominent hosts for lobbyists, and a search engine which provides details on the purpose of each meeting with a UK Government Minister.





## 10. Further resources

For more information on lobbying in Scotland, one may refer to the following:

[The Lobbying \(Scotland\) Act 2016](#)

[Parliamentary Guidance on the Lobbying \(Scotland\) Act 2016](#)

[Accessible guidance in British Sign Language](#)

[Audio version of the Parliamentary Guidance](#)

[Code of Conduct for lobbying MSPs](#)

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<sup>i</sup> Section 1(4) Lobbying (Scotland) Act 2016.

<sup>ii</sup> Section 3(1).

<sup>iii</sup> Section 6(2).

<sup>iv</sup> Section 8.

<sup>v</sup> Section 11(1).

<sup>vi</sup> Section 11(3).

<sup>vii</sup> Section 16.

<sup>viii</sup> Section 17(1) – (2).

<sup>ix</sup> Section 22(1).

<sup>x</sup> Section 22(2).

<sup>xi</sup> Section 21.

<sup>xii</sup> Section 42(1) – (2).

<sup>xiii</sup> Section 42(3).

<sup>xiv</sup> Sections 21(3) and 42(5).

<sup>xv</sup> Section 23(3)(e).

<sup>xvi</sup> Interests of Members of the Scottish Parliament Act 2006, Section 13.