

Lobbying Act: what you need to know

Lobbying is a vital part of our democratic process. It gives students' associations across Scotland, and membership organisations like NUS Scotland, the ability to influence decision-makers like MSPs and the Scottish Government, and inform the policy-making process. From **12 March 2018** the Lobbying (Scotland) Act 2016 is in force, which places new duties on those who carry out 'regulated lobbying'. Most students' associations may not carry out much 'regulated lobbying', and some students' associations may even be exempt. This briefing explains how the Lobbying (Scotland) Act works and has been produced to help keep you right.

What is the Lobbying (Scotland) Act 2016 and what does it mean?

The Lobbying (Scotland) Act 2016 was passed by the Scottish Parliament in March 2016. The Act is in force as of 12 March 2018 and places new duties on individuals or organisations who are engaged in specific types of lobbying, known as 'regulated' lobbying.

What's 'regulated lobbying'?

'Regulated lobbying' includes lobbying that takes place face-to-face with:

- Members of the Scottish Parliament (MSPs)
- Members of the Scottish Government (including the Scottish Law Officers)
- Junior Scottish Ministers
- The Permanent Secretary of the Scottish Government (aside from Special Advisers, the only civil servant covered by 'regulated lobbying' within the Act)
- Scottish Government Special Advisers

If you communicated face-to-face, or via video-conference, with any of the above in relation to Scottish Government or Scottish Parliamentary functions; used the opportunity to inform or influence decisions on behalf of your students' association, and are paid by your students' association, then this is 'regulated lobbying' and should be

recorded on the Lobbying Register. Under the Act, British Sign language (BSL) is also considered to be a form of oral face-to-face communication.

The Scottish Parliament has produced an information leaflet, which includes '5 key steps' on when to record an instance of lobbying (referred to as an "Information Return"), [available here](#). The Scottish Parliament has also produced a "[common scenarios](#)" document, which includes a range of examples of what constitutes "regulated lobbying". If you read on, we've also provided some scenarios particularly relevant to the work of students' associations.

What's not 'regulated lobbying'?

The Act sets out a number of communications which do not amount to regulated lobbying. These include communications made:

- by individuals raising issues on their own behalf
- during discussion with local MSPs (this exemption does not cover communications with MSPs who are also Scottish Ministers)
- by those who are unpaid
- by those representing some small organisations (i.e. an organisation with fewer than ten employees of full-time equivalent (FTE) around the time of an instance regulated lobbying)
- in formal proceedings of the Scottish Parliament or required under statute
- in response to requests for information or views on a topic (from an MSP, Minister, Law Officer, etc.)
- during quorate meetings of Cross-Party Groups of the Scottish Parliament
- made for the purposes of journalism
- during negotiations about terms and condition of employment
- made by political parties and some public figures, bodies and professions (including those made on behalf of public authorities subject to freedom of information legislation, like colleges and universities)

As part of your students' association's work, you may be in regular contact with your constituency or regional MSPs. Some student associations, however, will be based and will operate in different locations across Scotland, in different Scottish Parliament constituencies and regions. The Act exempts any discussions between you and your local MSP (unless they are also a Scottish Government Minister) if your business or activity is "ordinarily carried on" in their constituency or region. The parliamentary guidance for the Lobbying (Scotland) Act states that "you should consider whether your

business or activities are significant or relevant enough to be those which are “ordinarily carried on” in that local area.” The Act does not, however, set out any specific provision for the level of activity that should be undertaken in a constituency or region for the local exemption to apply.

NUS staff will carry out ‘regulated lobbying’ on behalf of student associations across Scotland. NUS will register this activity, and student associations will not be required to do so. However, if your student association engages directly in ‘regulated lobbying’ outside of NUS lobbying activities, your student association needs to be registered and needs to record this activity through an Information Return.

The Lobbying Register: what it is and what you need to do

The Scottish Parliament has introduced a new Lobbying Register, which can be accessed at www.lobbying.scot.

The Lobbying Register will enable members of the public to view information submitted by individuals and organisations taking part in ‘regulated lobbying’.

Registering

Under the Lobbying (Scotland) Act, an individual or organisation is required to register no later than 30 days after the first instance of regulated lobbying occurs. You don’t have to wait, however. You can register beforehand, especially if you know you intend to carry out regulated lobbying. If you register proactively you will have up to six months to submit details of each instance of regulated lobbying by your organisation in that period.

If your organisation is registering, [you can do that here](#). There is no charge to register. Each organisation can have only one account. If you want more than one individual in your students association to use the account, it’s recommended that you use a generic email address, and a shared password.

Once registered, you’ll be sent an email asking you to edit account details. To do this, log in, click the “update account” tab, and select “edit account details”. Here you’ll be asked to provide additional details.

Details you’ll be asked for include selecting a “lobbying role”, i.e. whether you are registering as an “individual”, “company”, “partnership” or “other”.

If your student association is a legal entity in its own right, it should be registered. If your students' association is a charity, and is registered with Companies House as a company, you should register as a "company". For charities and unincorporated associations that have no other status, they would probably fall into the 'other' category.

If your students' association is not a separate legal entity but is, instead, part of a university college, you will need to consider whether you want to register. Universities and colleges subject to Freedom of Information legislation benefit from a general exemption under the Act. So, it would be legitimate for any such institution to decide not to register lobbying by an association which is not itself a separate legal entity. This will, ultimately be a decision for your institution, however. In this instance, if a decision is taken by the relevant college or university to register, the students' association could make the relevant institution aware of "regulated lobbying" paid staff may have engaged in so that it can be logged.

If you are unsure about your status, you should (1) establish what your legal status is, and (2) establish with the Lobbying Registrar's office which category your student's association falls into, by emailing lobbying@parliament.scot or by telephone on **0131 348 5408.**

Submitting an Information Return

After initial registration it is a requirement to provide information Returns every six months – and the Lobbying Register will send a reminder by email. You will also have a further two weeks after the end of that period to ensure that all return information has been fully submitted to the Lobbying Register.

Once registered, you can submit an Information Return by logging in, opting to submit an information return, and filling in the required details. The "purpose of lobbying" box should be populated with information that is "meaningful, accurate and allow readers to understand the content of the conversation". [A how-to video is available here.](#)

Keeping returns up-to-date

If regulated lobbying has taken place, organisations may wish to submit an Information Return shortly after an instance of lobbying, or may wish to submit all Information Returns at the same time within the statutory period (every six months).

Going forward, you should have a think about how you're going to keep on top of duties. For example:

- How will you keep track of instances of regulated lobbying, and what systems will you put in place?
- Who will oversee making submissions to the register? If your student association is part of a college for example, will someone who works for the college be registering this on behalf of your student's association?
- How will you make sure staff know what their duties are?

Examples of what is and what isn't 'regulated lobbying'

Communication that isn't face-to-face

I work in a student's association and phoned an MSP's office to influence their decision on behalf of my students' association. Do I need to log this on the Lobbying Register?

No, this does not need to be logged. The phone-call was not face-to-face contact with an MSP. 'Regulated lobbying' does not include communication that is not face-to-face. Phone calls, emails, letters, tweets, therefore, are not included in the scope of the Act.

Volunteer communications

I'm a volunteer officer at my Students' Association. Does the Act apply to me?

No, unpaid volunteer activity is exempt from the register.

Contact with local MSPs

I'm the Vice-President (Welfare) of my Students' Association. I met the local MSP for my student's association to discuss a local bus service that is under threat and affects students attending my institution. Does this need to be logged on the Lobbying Register?

No. This type of face-to-face contact with a constituency or regional MSP is exempt, **so long as the MSP is not also a Scottish Government Minister and you are not communicating on behalf of a third party.**

Attending Cross-Party Groups

I'm a paid member of staff at a students' association and attend a Cross-Party Group at the Parliament. I speak to MSPs before and after the CPG. Does this need to be recorded?

While there is an exemption for discussions taking place during a quorate meeting of a Cross-Party Group (i.e. when two MSPs who are members are in attendance), there's no exemption for discussions taking place outside of this. Regulated lobbying could, therefore, take place in this instance.

Speaking with MSPs at parliamentary receptions

I'm employed by students' association and attended a parliamentary reception, where I got chatting to a number of MSPs – none of which were my local representatives – and used the opportunity to raise the issue of students at our college not getting their bursaries in time.

Yes, this counts as 'regulated lobbying' as it is (1) face-to-face (2) with MSPs other than your local representatives, and (3) you are a paid member of staff, (4) advocating on behalf of your organisation.

"Each instance" must be logged on the lobbying register, whether this was part of one conversation with a number of MSPs, or a number of separate conversations matters. If it was one conversation, this could be logged as single return. Separate one-to-one discussions would require separate returns.

Here, it will be important to make sure you got the name of the MSP, Minister or Special Adviser that you speak to, so you'll be able to register accurately the instance of lobbying.

Communications which don't relate to the work of your employer

I'm the President of a university students' association. I attended a parliamentary lobby where I spoke to the Minister about NUS Scotland's campaign on protecting college budgets. Does this count as 'regulated lobbying'?

No. This doesn't count as 'regulated lobbying' as you're making a communication, in an unpaid capacity, about a campaign run by NUS Scotland rather than the organisation you represent and are paid by.

Useful resources

The Scottish Parliament has provided a number of materials on the Lobbying (Scotland) Act, and how to use the Lobbying Register, which are available [here](#).

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