

## 15 JUNE 2021: MACKAY HANNAH CONFERENCE – SPEECH 15 mins

Good morning. My thanks to Mackay Hannah for inviting me along and to you, for signing up to today's discussions.

Today will be about broadening your experience on how to influence Scotland's Government, Parliament and MSPs, finding good methods and advice on how you can influence these key individuals and institutions. The other speakers today will focus on that and do so in a way which I am sure you find very useful.

My job today however, is to help you in a different way. As you start to put your lobbying into practice, it's really important to be aware of the legal requirements around the reporting of lobbying. And, when representing your organisation, or your clients, it's essential to your reputation that you don't fall foul of these.

I am sure I don't need to tell you that lobbying, and the regulations around lobbying in different jurisdictions, has been a lively topic once again. So, it may be a worry perhaps for you and your organisation, that you are not complying with the necessary rules.

This morning, I am going to use my contribution to help you understand what you need to do. And crucially, to watch out for avoidable mistakes, that might lead your organisation into legal compliance issues.

I'll provide a little bit of background for those of you as yet unfamiliar with the Lobbying Register in Scotland; I'll provide some practical advice which will help you to be better-skilled at completing lobbying Information Returns. Finally, I'll also cover recent developments on the legislation which underpins lobbying in Scotland.

As I do this, I'll provide a few slides, to hopefully help with what I am describing. The programme set out three themes to cover.

So, turning to that first theme, **The Lobbying (Scotland) Act - what do you need to know?**

And that is a very key question. Typical enquiries we often get asked are:

- Do I need to register a letter I sent to an MSP?
- I bumped into a Minister and had a chat, but it wasn't anything formal?
- I called a Special Adviser and I asked they raise issues with a Minister, does that count?

To help you to be able to answer those types of question for yourself, I'll set out today what the Register covers, but just as importantly what it currently does not.

Before doing so, and for the benefit of anyone coming in completely cold to all this, I wanted to just say a few words on the background to the Lobbying Register, to provide that little bit of opening context.

First and foremost, the Lobbying Register is a transparency initiative. Its existence is not because of any scandal in relation to lobbying in Scotland. Nor was the Act introduced because of any views that lobbying is some sort of negative activity that needs to be monitored.

Indeed, it was widely acknowledged, during the passage of the Lobbying Bill in the Scottish Parliament, that lobbying is a fundamental need and right, for any organisation, to raise its ideas, issues or concerns.

Much of the knowledge gained from lobbying informs the policies of the Scottish Government and the legislation constructed and passed by the Scottish Parliament. Lobbying Registers in place across the world aim to make the process of lobbying a more transparent one, for whatever jurisdictions they represent. They do of course differ, in terms of scope and scale.

Put quite simply, the Lobbying Register in Scotland is an on-line database of fairly basic Information Returns, which are submitted electronically by those who undertake the lobbying. But these returns build up over time into a large body of information that was never previously available.

Before being published, all Information Returns are checked by our team in the Parliament; when complete they are then published on the Register, at [www.lobbying.scot](http://www.lobbying.scot). Anyone can then access the returns on the Register, free of charge. The Register pulls together information about who has been lobbied, when and where that lobbying happened and what was covered.

The idea of some form of statutory register of lobbying was first mooted in the earliest days of the modern Scottish Parliament, back in 1999. But it wasn't until 2016, following considerable scrutiny, debate and a parliamentary vote, the Lobbying (Scotland) Act made it on to the statute book.

Significantly, it was the Scottish Parliament, who I represent today, and not any external agency or the Government itself, that was given the duty under the Act to set up and then administer this new Register. The Act came fully into force on 12 March 2018 - so it's been a legal requirement now for over 3 years.

In that time, we've seen the Register grow. It now has around 1200 active registrant organisations, ranging from small consultancy firms to the largest multi-nationals; and literally an A-to-Z from Abellio Scotrail, through to Zurich Insurance.

Each organisation submits an Information Return for each instance of regulated lobbying it undertakes.

Where an organisation does not engage, they must submit a nil Information Return every six months, instead. The Register now has over 16,000 published returns, with around 22 per cent of those as nil returns.

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Now, the Act talks in the terminology of "regulated lobbying". And, it is only "regulated lobbying" which then goes on to the Lobbying Register. But to answer that key question of what is "regulated lobbying", we try to keep this simple.

If you have been engaged with an MSP, Minister, etc., we always recommend you start with these Five Key Steps, to think about whether your communication was regulated lobbying.

You will have been engaged in regulated lobbying when you meet these steps. The Act, at present, only covers in-person lobbying, so communications which are face to face (including by video conference); doing so for example to lobby on particular issues; offer views or make asks for action in relation to legislation, policy, contracts, campaigns and so on; and when paid in some capacity when doing so.

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The Information Return itself is short and basic. This is an example published last week. You just login, create a return, add the details shown and click Submit.

You will note I've highlighted in red the Purpose of the lobbying box.

This is because it's one of the key areas I want to touch on, under the **second theme today, around best practice in compliance.**

Including that Purpose of the lobbying box, there are three main areas I want to highlight. They are I hope fairly obvious and I know that if you manage these aspects well, it will make your life with the Register a whole lot easier.

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These are:

- As mentioned, making your return clear in the **Purpose of the lobbying** box.
- The importance of keeping your **login** details handy; checking your registered **inbox** regularly and keeping **registration** information up-to-date.
- And finally, knowing and not missing your **deadlines, including** nil returns.

The key area in an Information Return, the area you should most concern yourself with, is the **Purpose of the lobbying** box

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This is an extract of this area, from a recently published return, which hits the mark. Never forget that a Lobbying Register is about **your** organisation's lobbying and returns must say what **you** lobbied on.

Even if you don't like the term or would never describe yourself as a 'lobbyist', do think more in terms of "what did I lobby about" and not just "what did we discuss". A list of discussion points in a return does not really convey the full picture.

Returns are always better and more honest sounding when organisations address these types of questions when drafting their returns: [as listed on screen]. So, be prepared to say what **you** raised; be specific about what you were trying to get across; say what your organisation, not any others also present, said. Set out what **your** asks were and in doing so, what **you** were seeking to achieve.

As communicators on behalf of your organisations it is to be expected that you are in there, having these discussions with key influencers, pitching for your patch. And you should not be shy about saying this within any information return.

You will, I'm sure, almost always have had a reason about why you set that meeting up; delivered that presentation; arranged the stall at that exhibition; or indeed why you felt the need to mention something important in that impromptu meet. So, be prepared to say exactly that in the return.

Another good tip is to avoid repeating mistakes in your submitted returns. Don't rely on a draft you used before - use your latest published returns as a model instead – they've been through the process.

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Turning to **login details** and **registration** information, a key point to remember is that the account you use on the Register to submit returns is not your own account, but an account for your organisation.

For organisations where access may be required for a number of users, we do recommend using a **generic** email address, as your log-in address – again, as you can see in the slide here, for the fictional company of McLaren Industries, with [lobbying@mclarenindustries.com](mailto:lobbying@mclarenindustries.com). It's optional but using a generic email address will help if you are sick or leave the organisation - the email and account will stay the same.

It's quite common for us to get emails and calls about colleagues leaving, and details not being passed on or shared. We've found incidents like this have risen during the pandemic. Staff have been furloughed, moved quickly on to other areas of the business to work, or even more acutely made redundant. When the details were not passed on, or where a generic email address hadn't been used, this has led to problems for those having to pick up on these compliance tasks.

On some occasions, the task of providing returns, or a nil return, has been left altogether and it's not until we've gotten in touch to say the organisation has breached the Act, that this has been realised. Those colleagues are then under immediate pressure, as the organisation has now failed to comply with the Act.

And of course, it's one thing set up the best registered email address for you, but you then need to make sure it is regularly looked at. If our team needs more information on returns you have submitted, this is where you will find our emails, which ask for a response within two weeks.

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Turning to the registration details within your organisation's account, you may not be aware but when you submit a return, you are also actually ticking a box declaring your organisation's **registration** information is up-to-date.

Our experience is that these basic details are rarely being refreshed and, in some cases, it's probably never been checked since the original registration. This is actually a legal requirement, so be careful not to fall foul of this point.

Try to set a reminder to check this information every now and again, and especially so when you are aware of organisational changes. It doesn't take much time at all. When logged in, just go to [Update account](#) as shown here and make any changes.

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Finally, in this section covering compliance I wanted to mention the importance of not missing your deadlines. To put it quite simply, if you do, you'll have gotten your organisation into a position where it has breached the Act.

Here are the dates for that fictional entity again, McLaren Industries Limited.

Every organisation has had this information communicated when it registered and is reminded of these dates in each period. I also wrote to all Chief Executives of registered organisations on this just last Autumn, as part of a wider communication about our assistance during the pandemic.

Your own organisation's dates will depend on when you first registered, or when you first lobbied, whichever came first. The six-month statutory period for reporting is a generous time-frame, compared to other lobbying regulations in other countries. Remember, that you don't have to wait until the end of the period to submit your returns – where possible we actually recommend and prefer that that you submit returns more in real-time, rather than wait until it's getting too late.

If you do wait, as a fail-safe we do also send your organisation's registered email address a reminder, two weeks before the end of the six-month period and a whole month before the final date for getting your returns, or nil return, submitted. So, make sure you keep an eye out in your registered inbox for that too, as a final catch.

Where no returns, or a nil return, is forthcoming, a breach email warning will be issued, followed by a breach letter, issued to the Chief Executive or equivalent person in your organisation. We would much rather not have to do any of that.

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That nil return figure has been growing of course, as in-person lobbying has reduced quite significantly, due to COVID-19 restrictions. As we start to move out of this difficult time for everyone, we would hope to see a return to a routine from organisations, which will mean less finding themselves in compliance difficulties.

On the topic of COVID issues more generally, following an initially very quiet period around the first lockdown, it's been noticeable to us how a number of organisations have quickly adapted to carrying out lobbying by video conference. We've also seen a number of new organisations register, who hadn't felt they needed to lobby in-person before. Given the impacts on their sectors, some have now done so.

**The third and final theme I promised to cover today was about the review of the Lobbying Act and what that may mean in terms of future developments.**

I thought it would be helpful, therefore, to take you through the main points that the Committee has established and the actions they have asked to be taken.

Firstly, the Committee has asked the Scottish Government to consult, early in this parliamentary session, on changes that could be made to some of the existing exemptions the Scottish Government added into the Act. Some of these had been identified as potential issues by an External Working Group of experts, which we chaired, as far back as mid-2017. I am happy to take any questions on these but given the time today I will not cover these in depth at the moment.

Secondly and significantly, the Committee has asked the Scottish Government to commission an independent impact assessment of the Act and report back to the Parliament. This is to include:

- o a full and comprehensive analysis of the impact on registered organisations;
- o a view on whether the Act has delivered its broader transparency and public accountability objectives;

- o an assessment about extending the Register in to include other communications, such as telephone calls, texts or written correspondence.
- o an assessment on adding additional levels of the civil service within the scope of the Act – just now it only covers the most senior civil servant in the Scottish Government, Leslie Evans, its Permanent Secretary.
- o an opinion on whether information about expenditure on lobbying activity could be proportionally included in the register,
- o and, further information about whether government funding to individual organisations could also be declared in the Lobbying Register.

The Committee did not give a date on when this impact assessment should be completed by the Scottish Government but has asked they clearly set out the next steps required.

Finally, further legislative changes identified by the Committee include:

- o the shortening of the reporting timetable from six-month to a potential quarterly basis, to ensure information on the Register is more topical.
- o the Committee also agreed with a suggestion we made when giving oral evidence to the Committee in November last year, around the harmonising of dates for reporting. In short, instead of every organisation having its own specific deadline dates, the dates would be the same for everyone.

Upgrades and simplifications to the existing Lobbying Register IT were also sought by stakeholders and the Committee and many of these are already underway. As we are responsible for this area, we already have planned in a number of improvements for this financial year.

Finally, the Committee made clear that future guidance be clear on the tone of language expected for Information returns, to make sure they accurately reflect the

lobbying actually undertaken and avoid generalities – much the same thinking of what I covered already about what you should try to include in the Purpose of the lobbying box.

So, quite a lot in there which will keep the debate going for a few more years yet, I'm sure. The job for our team, as parliamentary officials independent of the politics of it all, is to make sure that wherever that debate goes, we work effectively with everyone involved. In that manner, I hope this has been useful for you and thank you for your time.

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