

The Lobbying (Scotland) Act 2016 – RCGP Guidance

Introduction

The [Lobbying \(Scotland\) Act 2016](#) will come into force in Scotland on 12 March 2018. The Act is designed to increase the public transparency of lobbying by requiring those engaging in lobbying to record any '*regulated lobbying*' activity on a publicly accessible Lobbying Register. This note provides guidance for those connected with the RCGP. It sets out the principles we are adopting in seeking to meet the requirements of the register, the process for registering and some details about what is "*regulated lobbying*". It also sets out where you can get more information and guidance.

What is considered '*regulated lobbying*'?

The Act is concerned with what it defines as '*regulated lobbying*'. This refers to face-to-face communication with the following people when discussing Scottish Government or Scottish parliamentary functions:

- Members of the Scottish Parliament (MSPs)
- Scottish Government Ministers
- Special Advisers
- The Scottish Government's Permanent Secretary.

This will have significant implications on the work of the College in Scotland. In instances where '*regulated lobbying*' takes place i.e. conversations are had by College representatives with those listed above, the College will be required to register on each occasion with the Lobbying Register. The Act does not apply to email, telephone communication or written communication in general, with those listed above. There are some exemptions which are set out below.

Jurisdiction

The Act will significantly impact on all face-to-face communication with the above and will affect those carrying out influencing work in Scotland on a day-to-day basis. However, it will also impact on College representatives and staff outside of Scotland if they have contact with a Member of Scottish Parliament, or any of the above, who is covered by the Act. It is unclear how the legislation will be applied to face to face meetings which take place outside of Scotland.

The RCGP's approach

The College must comply with the Act. The legislation is untested and although we have spoken to the Lobbying Registrar to query several points in anticipation of the register coming into force, it is likely that this guidance and process will change over time. For now, the College is taking a risk adverse approach in complying with the legislation.

We will apply the following principles:

- 1) The College will register any representation made with those listed above when that representation takes place by anyone associated with RCGP on behalf of the College by someone who is being financially supported by the College, and lobbying on any matter affecting general practice.

- 2) 'General practice' will refer to any public policy area that impacts on the health and wellbeing of the public and its communities.
- 3) All face to face lobbying, unless clearly covered by an exemption should, in the first instance, be viewed as requiring registration until the College is specifically told otherwise by the Office of the Lobbying Registrar.

The process for registering our '*regulated lobbying*' activity.

All regulated lobbying must be uploaded to the lobbying register within six months of the instance of regulated lobbying taking place. This process will be done centrally by the College in Scotland. It is important to register each individual conversation, not just each event. We anticipate that registrable activity will occur infrequently enough for this approach to be proportionate. It is the responsibility of any one working on behalf of the College who considers that they might have had face-to-face communication that falls within the definition of a registrable act to contact the staff of the College with the relevant details.

The College has the following process for registering an act: A template form (Appendix A) needs to be filled in by anyone carrying out face to face lobbying. This must contain details of who the meeting was with and when and where the meeting took place, as well as a short description of the discussion. Contact details should also be provided to enable the College to contact you directly with any further queries.

Once completed, the form should be sent to a central lobbying email. Staff in the Scottish office will review these forms and establish if the meeting needs to be registered or if further advice or information is required.

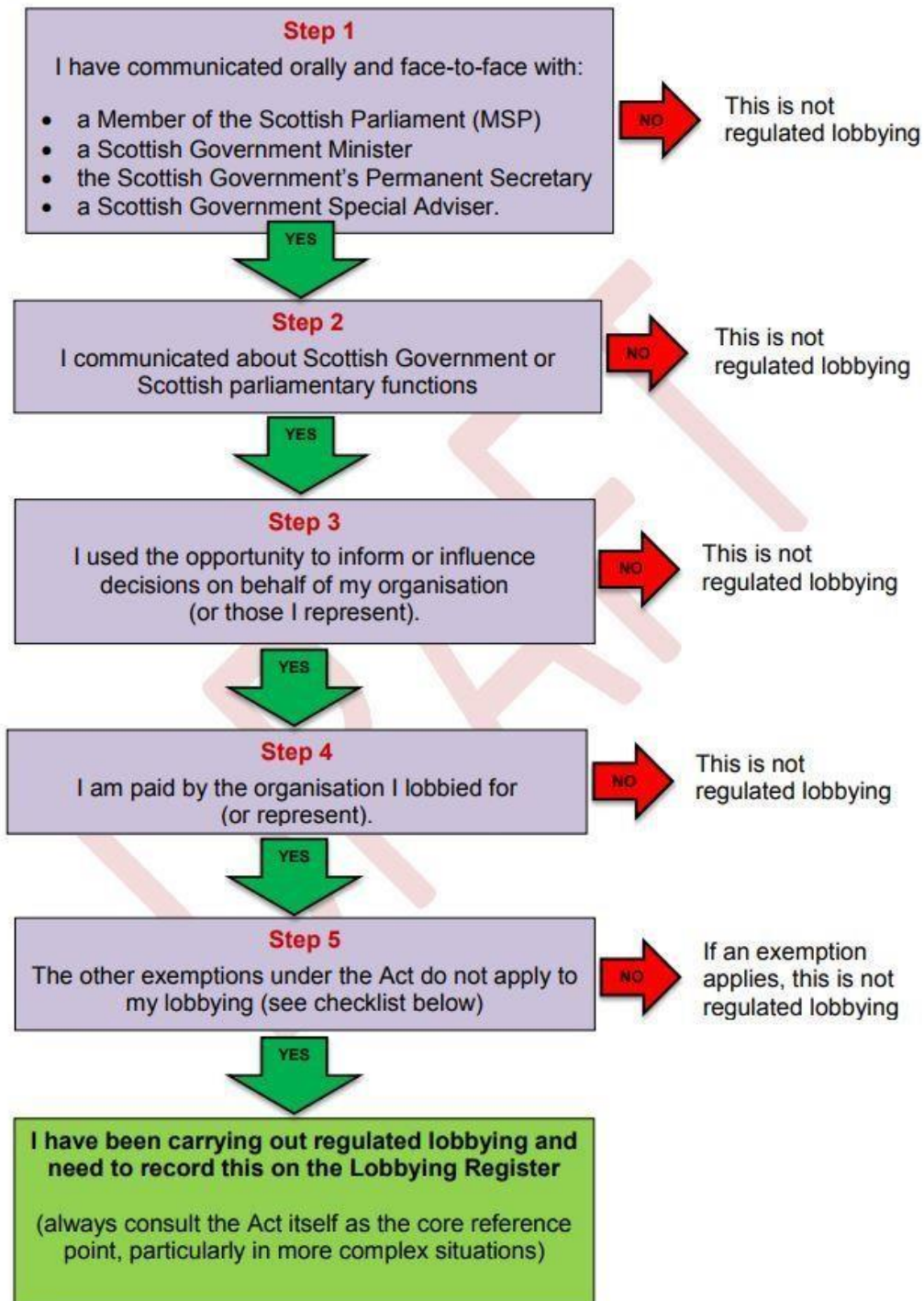
The consequences of non-compliance with the Act

Non-compliance with the act could result in a fine of up to £1,000 and for those organisations who fail to adequately comply with the Commissioner's investigation into non-compliance, a sentence of 3 month's imprisonment is possible. At present, it is unclear whether these sanctions would apply to the individual carrying out the lobbying or to the senior representatives of the organisation. Effective lobbying is a vital means for the College to shape the future of general practice and reach our strategic objectives. We therefore do not wish to curtail our lobbying activity due to the Act but to ensure that we continue to lobby in a way that complies with the new legislation.

Guidance from the Lobbying Registrar's office

The Lobbying Registrar's office has produced a flowchart through which to help determine if a piece of lobbying requires to be registered. The Registrar's Office is clear that this flowchart is *not* 'an absolute guide to determining whether your activities would amount to regulated lobbying'. It is to be used as a guide only. Further advice is available from the College's key contact points, as listed below and the from the links to further information.

Am I involved in regulated lobbying?



What does it mean to be 'paid'?

You should consider your activity regulated lobbying if, '*you are a paid individual, representing the views of your organisation (or those you represent). It is not regulated lobbying if you are not paid.*'

There is some uncertainty at this stage about how the Registrar will treat indirect payment such as Locum fees. Therefore, we will register any relevant face to face contact regardless of how payment has been made in line with principle 2 above.

Should a College representative be a representative of other organisations, it is for that representative to decide on behalf of which organisation the lobbying work was carried out. For example, should a representative hold a position with Scottish Government, it is for that representative to determine if any conversation held regarding general practice was, in fact, lobbying on behalf of RCGP or fell within the bounds of their contracted work for the Scottish Government. The College's approach is to be risk averse until we know more about the application of the legislation. We would rather be one of multiple organisations registering the same lobbying activity than be caught out.

Representatives of the College who are working in a purely voluntary capacity are exempt from registering their lobbying activity. It is the responsibility of all other representatives of the College to register their lobbying activity through the process set out in this guidance.

What does 'general practice' include?

Only matters relating to the College's business will be required to be registered under the Act. However, the boundaries of what constitute general practice are not clear. For example, increases to social security payments, broadband and digital access for practitioners and patients, housing planning, community groups available for social prescribing, the right to responsible access for exercise in the countryside and the funding of urban parkland could all be said to fall under the interest of general medical practice.

Therefore, 'general practice' will refer to any area of public affairs that impacts on the health and wellbeing of the public and its communities. To this end, it is important to ensure any contact with lobbyees, on any subject, which does not qualify under the stipulated exemptions (below), is registered.

A short guide to exemptions

There are some exemptions to what is registrable. The Office of the Lobbying Registrar has stipulated that it will refuse registrations which it deems to not be under the bounds of the Act. This includes errors in understanding the scope of the Act and lobbying which has taken place in such a way as to fall under one of the exemptions listed within it.

These exemptions are communications:

- 1) made by individuals raising issues on their own behalf
- 2) made during discussions with local MSPs (excluding Ministers)
- 3) made by those who are unpaid
- 4) made by those in *some* small organisations
- 5) made in formal proceedings of the Scottish Parliament or required under statute
- 6) made in response to requests for factual information or views on a topic (from a MSP, Minister, etc.)
- 7) made during quorate meetings of Cross-Party Groups of the Scottish Parliament
- 8) made for the purposes of journalism

- 9) made during negotiations about terms and conditions of employment 10) made by political parties and some public figures, bodies and professions.

Again, there is likely to be some ambiguity for those contracted with the College on how these exemptions will apply. Therefore, all face to face lobbying should, in the first instance, be viewed as requiring registration until the College is specifically told otherwise by the Office of the Lobbying Registrar.

Some examples

The Act does not limit where or when regulated lobbying occurs. Rather, it is concerned with the nature of the conversation held and with whom. This distinction is vital to understanding the full requirements of the Act.

The use of the '5 key steps' process, guided by the principles (above), will usually result in a clear understanding of whether the activity requires registration under the Act. Some instances of lobbying should therefore be obvious. For example, a meeting is organised and a member of staff and an RCGP Scotland Executive Officer visit an MSP, during which they explain agreed College policy on the benefits of mental health teams appended to schools. That is clearly an instance of regulated lobbying.

Representatives must be mindful of some of the potential pitfalls of the Act as currently described, however:

- For example, if a Clinical Innovation & Research Centre (CIRC) Clinical Lead addresses a conference or takes part in a multi-professional workshop, and any member of the specified group of lobbyists is in attendance, that activity needs to be registered.
- Should a representative of the College have a 'chance' meeting with a member of one of the specified groups, and should issues relevant to health and wellbeing come up, however tangentially, regulated lobbying has occurred.

How do I recognise those with whom activity must be registered?

The burden of recognition of each member of the specified groups of individuals with whom relevant conversations must be registered lies with the representative. However, no undertaking has been offered by the Scottish Parliament or Scottish Government to provide a reliable guide to whom the relevant people are and what they may look like. Neither has any duty been placed on the members of the group to identify or introduce themselves.

It is our understanding that the Lobbying Registrar do not plan on providing a centralised location for photos. However, the College will ensure all representatives have access to relevant links where information on these individuals can be found. You can contact the central lobbying act email address for further information.

It will be prudent to ask each person met in an arena where these people may reasonably be expected to be, such as the hypothetical conference mentioned above, whether they fall into the specified group

Links to further information

- [The Lobbying \(Scotland\) Act 2016 may be read in full here.](#)
- [The Scottish Parliament's own Parliamentary Guidance on the Act and its requirements may be found here.](#)
- [The Scottish Parliament's Common Scenarios document, offering further examples through which to understand the Act, may be found here.](#)
- Frequently asked questions on the Act from the Scottish Parliament.
- Links for further information on the individuals comprising the specified group of lobbyees may be found here (links as of July 2017):
 - 1) [MSPs](#)
 - 2) [Scottish Government Ministers](#)
 - 3) [Scottish Government Permanent Secretary](#)
 - 4) [Scottish Government Special Advisers](#)

Where to go for further information

All queries regarding the Lobbying Act should be sent to the central lobbying act email address, scotlandlobbyingact@rcgp.org.uk and further information can be sought from RCGP Scotland's Communications and Public Affairs Manager by email at scotlandlobbyingact@rcgp.org.uk or by phone on 0203 188 7730.

Appendix A

Regulated activity response form.

The College will register centrally any regulated lobbying activity. Following any face to face communication with an individual covered by the Lobbying Act, the below form should be completed. Please email this form to scotlandlobbyingact@rcgp.org.uk. You can also request advice and support with completing the form by emailing this address.

Your name	
Your role	

Met with	
Date of meeting	
Location of meeting	
Who was present	
Description of discussion (150 words)	
Actions requested	
Your contact details	