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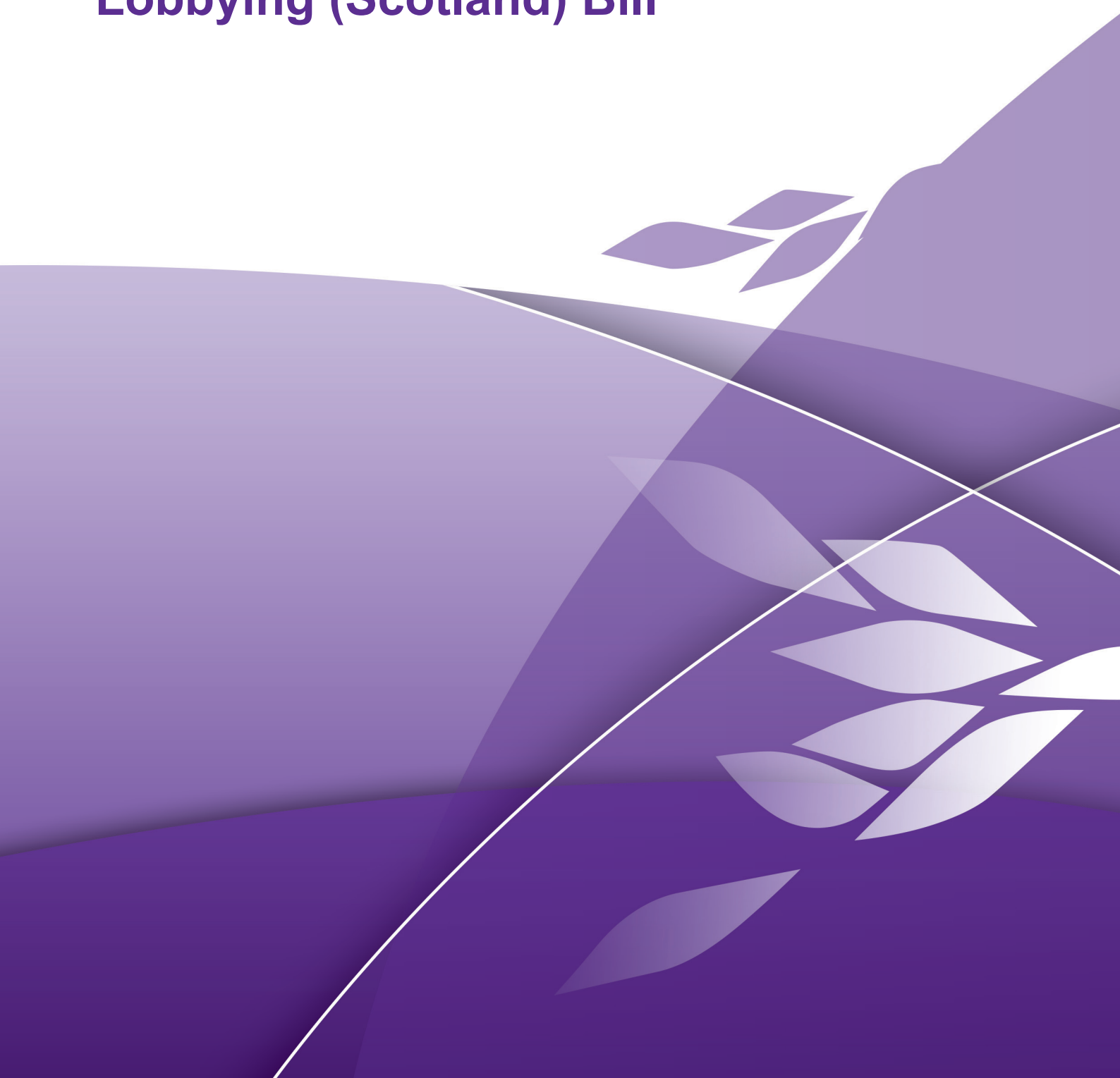
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Standards, Procedures and Public Appointments Committee

Stage 1 Report on the Lobbying (Scotland) Bill



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Standards, Procedures and Public Appointments Committee

1. The remit of the Standards, Procedures and Public Appointments Committee is to consider and report on—
 - a. the practice and procedures of the Parliament in relation to its business;
 - b. whether a member's conduct is in accordance with these Rules and any Code of Conduct for members, matters relating to members interests, and any other matters relating to the conduct of members in carrying out their Parliamentary duties;
 - c. the adoption, amendment and application of any Code of Conduct for members; and
 - d. matters relating to public appointments in Scotland.
2. Where the Committee considers it appropriate, it may by motion recommend that a member's rights and privileges be withdrawn to such extent and for such period as are specified in the motion.



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Introduction

Overview of scrutiny

1. The Lobbying (Scotland) Bill¹ was introduced on 29 October 2015 by the Minister for Parliamentary Business, Joe FitzPatrick MSP. The Parliamentary Bureau designated the Standards, Procedures and Public Appointments Committee as lead Committee in consideration of the Bill at Stage 1.
2. In anticipation of the Bill's referral, the Committee considered its approach to scrutiny of the Bill at its meeting on 8 October. It issued a call for views on 30 October and took evidence from organisations affected by the Bill and campaigners and academics on 12 November, and from the Commissioner for Ethical Standards in Public Life and the Minister for Parliamentary Business on 19 November.
3. The Finance Committee invited the Scottish Parliamentary Corporate Body to respond to its standard questionnaire on financial memoranda. The Finance Committee wrote to the Standards, Procedures and Public Appointments Committee on the Bill on 18 November to raise issues. The Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Bill at its meetings on 17 November and 1 December and published a report on 2 December.
4. The Committee has received a good number of written submissions, many of which raise specific concerns with the Bill. The Committee asks that the Scottish Government review these submissions carefully and consider whether any further action is merited.

Background to the Bill

Proposal for a Member's Bill

5. On 17 May 2013, Neil Findlay MSP lodged a final proposal for a Member's Bill to require certain individuals and organisations who lobby MSPs, Scottish Ministers or relevant public officials, either on their own account or on behalf of third parties, to record relevant information about their lobbying activity in a published register.
6. The Minister for Parliamentary Business wrote to Neil Findlay on 13 June 2013 indicating, under Rule 9.14.13 of Standing Orders, that it would initiate legislation within the parliamentary session to give effect to Mr Findlay's final proposal. This undertaking removed the right of the Member to introduce a Bill.
7. The Scottish Government also indicated that it considered parliamentary probity to be a matter for the Parliament and it therefore wished this Committee to play a central role throughout the development and scrutiny of the Bill. The press release it issued by the Government on 13 June stated: "the end product must be

something that everyone can stand behind” and “we will seek to obtain cross-party consensus for improving the transparency of lobbying practice, working with all political parties, Mr Findlay and a wide range of stakeholders.”

Previous work on Lobbying by the Standards, Procedures and Public Appointments Committee

8. The Committee conducted an inquiry into a Proposal for a register of lobbying activity between September 2013 and February 2015 with the following remit—

” To examine whether there is a problem, either actual or perceived, with lobbying and, if so, how this can most effectively be addressed; to what extent a register of lobbyists would help with this process, who such a register should cover and how it would be operated in practice; and whether other steps might be needed to improve probity and transparency in this area.

9. The Report² on the inquiry recognised that lobbying is a legitimate and valuable activity but that legislation was necessary and appropriate in the interests of transparency. The Report contained a series of recommendations which set out the core principles of a preferred lobbying regime. A central recommendation (Recommendation 8) was that any regulatory regime should be aimed only at organisations that undertake significant lobbying activity and proposed that an activity threshold be devised to ensure that minor instances of lobbying would not be registrable.

Executive Summary

10. The Committee listened carefully to those giving evidence to the inquiry and has agreed to recommend that the Scottish Government gives consideration to making some key changes to the Bill in order to broaden its coverage.
11. Firstly, a majority of the Committee is of the view that restricting registration only to lobbyists who engage in oral face to face communications could leave a great deal of important information unrecorded and create a loophole for those wishing to conceal their activity. We therefore recommend that the Government examines the consequences of amending the Bill to alter the definition of lobbying to include communication of any kind with a view to establishing what amendments to the Bill might be required.
12. We note that broadening the definition to include all forms of communication could increase the volume of information required to be registered. To address this, we are asking the Government to examine the requirements of the register in order to manage the burden on organisations and ensure that repetitive information does not need to be registered.
13. The Committee strongly agrees with the principle – reflected in the Bill – that individuals must be able to freely engage on their own behalf or in an unpaid capacity behalf of an organisation. With regard to organisations and those lobbying on their behalf, we endorse the Government's approach that it is only necessary to register the details of lobbying if the lobbyist is paid – either as a professional lobbyist or as part of their job.
14. We were concerned that the Bill's restriction only to lobbying of MSPs and Ministers was too narrow and have asked the Government to consider bringing forward amendments to broaden the definition to include communications made to other public officials.
15. We heard a number of arguments in favour of requiring lobbyists to disclose their expenditure on lobbying. We note that the Bill gives the Parliament powers to specify what must appear in the register and this can include financial disclosure if the Parliament chooses to go down that route.
16. Finally, any meetings which are not initiated by a lobbyist would be exempt from registration under the Bill as it stands. While we understand the concerns that led to this exemption being made, we remain concerned about its clarity and workability. Accordingly, we are asking the Government to re-examine the practicality of the exclusion and consider removing or replacing it at Stage 2.
17. We look forward to working with the Scottish Government to achieve these changes at Stage 2.

The Bill: overview of provisions and evidence received

Policy objectives

Overview

18. The Policy Memorandum³ (PM) on the Lobbying (Scotland) Bill states that the Bill's aim is to increase public transparency of elected representatives' activity and that the overarching objective of the Bill is to introduce a measured and proportionate register of lobbying activity.
19. The Government envisages that the legislation will complement existing parliamentary and governmental transparency mechanisms such as the Code of Conduct for Members of the Scottish Parliament and the Scottish Ministerial Code. In doing so, the Scottish government believes that it will not jeopardise the Parliament's founding principles that it should be "accessible, open, responsive and should develop procedures which make possible a participative approach to the development, consideration and scrutiny of policy and legislation."⁴
20. The PM states at paragraph 10 that the Bill "seeks to strike a balance between ensuring that important relevant information about lobbying activity is publicly available while at the same time ensuring that the obligations on those communicating with MSPs and Ministers are not unduly burdensome".

Regulated lobbying

Definitions and exclusions

21. "Regulated lobbying" is defined at Section 1 of the Bill as a communication which is made orally and in person to an MSP or Minister in relation to parliamentary or Government functions. Communications made via other means such as email, telephone, video conference or in writing are therefore not registrable (though "a communication of any kind" is to be covered by a (non-binding) code of conduct for persons lobbying MSPs (including Ministers).
22. The schedule excludes the following communications from registration:
 - communications by individuals on their own behalf
 - communications not made in return for payment
 - communications made in proceedings of Parliament (e.g. witnesses giving evidence)

- Meetings initiated by a member or Minister (but not where this was arranged in response to a request by a person attending or represented at the meeting or event).
 - communications in Cross-Party Groups
 - communications made for the purposes of journalism
 - communications by political parties
 - communications by judiciary
 - communications by Her Majesty
 - Government and Parliament communications
23. There was universal support among those responding to the Committee's inquiry for the principle that individuals who are lobbying on their own behalf are not required to register.
24. In terms of other possible exclusions, BMA Scotland was concerned about whether trade union negotiations will have to be registered. While such negotiations normally take place with civil servants and are not therefore registrable under the Bill as currently drafted, BMA Scotland was concerned that Ministers do sometimes get involved if there are difficulties reaching a settlement and that would trigger registration. They argue that "it would be wrong for a trade union engaged in collective bargaining activity to be considered to be lobbying".

The Committee notes that legislation in other jurisdictions contains an exemption for trade union negotiations and invites the Government to consider whether the Bill should be amended to introduce a similar exclusion to the schedule.

Restriction of the definition to "orally and in person"

25. The restriction of the definition of regulated lobbying to communications which are "made orally and in person" set out at Section 1 was the focus of much evidence. This definition means that the requirement to register is only triggered if oral, face to face, contact is made and organisations who engage via electronic means or over the telephone would not, therefore, be required to register.
26. Many of those responding to the inquiry were of the view that restricting registration only to those who make oral communications could create a "loophole" for lobbyists wishing to conceal their activity as they could very easily switch to an alternative form of communication such as email or telephone call.
27. Dr William Dinan, Spinwatch and ALTER EU, described this restriction as "ludicrous"⁵, while Neil Findlay MSP pointed out that "we have moved on

considerably since that was the way in which people lobbied politicians and the Bill must recognise that”.⁶ Unlock Democracy described the definition as a “gift to those who might wish to keep their activity out of the public gaze”.⁷ Professor Raj Chari, Trinity College, Dublin, was unaware of any other legislation that contained such a restriction.⁸ The Law Society of Scotland was concerned that if other communications were not included in the definition, “the policy aim of transparency may be only partially met.”⁹

28. ASH Scotland characterised the definition as “clearly insufficient”¹⁰ while Carers Trust Scotland described the approach as “an oversight”.¹¹ They, along with some others responding to the Committee called for the bill to adopt the definition given by the Sunlight Foundation which defines lobbying as—

“ oral and written communication, including electronic communication, with an elected official, their staff, or high and mid-ranking government employee who exercises public power or public authority, for the purposes of influencing the formulation, modification, adoption, or administration of legislation, rules, spending decisions, or any other government programme, policy, or position.”¹²

29. Unlock Democracy, who described the approach as “a significant loophole” cited an example of a lobbying campaign at Westminster which involved hundreds of texts, emails and phone calls. None of which would be recorded under this bill.¹³
30. The Minister for Parliamentary Business defended the definition in the Bill, pointing out that the new regime would sit within a broader transparency framework and argued that face to face meetings appeared to be of greatest value to lobbyists – an observation contained in the Committee’s report.¹⁴
31. Many of those responding to the Committee welcomed the limitation to oral face to face meetings as it would minimise the burden on organisations. The Association of Scottish Public Affairs explored the consequences of extending the definition to include social media – citing the example of tweets issued in a personal capacity by those who, nevertheless, had an interest in policy outcomes.¹⁵

The Committee understands that the definition of lobbying was restricted to oral communications in order to focus the scope of the information to be captured and produce a low burden, light touch regime.

Nevertheless, a majority of the Committee is of the view that restricting registration to oral communications is an artificial distinction which could leave a great deal of important information unregistered. The Committee recommends that the Government reviews the potential impact of altering the definition at Section 1 to include communication of any kind with a view to establishing what amendments to the Bill might be required.

A requirement for registrants to record other forms of communication?

32. The effect of altering the definition at Section 1 to include communication of any kind would be that registrants would be required (by virtue of Section 6) to record all of those contacts.
33. The Committee examined the merits of requiring registrants (under the current definition) to record all contacts and found some conditional support among those submitting evidence. ASH Scotland suggested that “this need not require the registration of every single email”.¹⁶ Willie Sullivan, Electoral Reform Society, argued that “it would be too onerous to record every single email, just the fact that contact was made with the person in question ... would be enough”.¹⁷ Unlock Democracy agreed that it would not be necessary to record each individual contact and suggested instead that lobbyists be required to register who they have contacted on which issues during the reporting period.¹⁸
34. The Minister was opposed to making a change in this area. He felt that requiring the registration of emails, phone calls and letter would be more onerous and therefore likely to encourage lobbyists to seek to avoid registration. He was particularly concerned about the administrative burden that would face smaller organisations and argued that the regime must not discourage participative engagement.¹⁹
35. BMA Scotland felt that extending the register to include other forms of communication “would be an unworkable bureaucratic burden that would deter many organisations from engaging”.²⁰ The Chartered Institute of Public Relations agreed that any such move would impact significantly on organisational resources.²¹ Shelter Scotland also felt that this would increase the burden, especially on smaller community groups, and involve a significant amount of unnecessary bureaucracy.²²

The Committee notes that altering the definition of regulated lobbying to include all forms of communication would mean that, under the Bill as drafted, the details of each contact would be required to be registered under Section 6. In the interests of proportionality, the Committee invites the Government to examine Section 6 in light of any changes to the definition, in order to determine whether some flexibility could be afforded that would mean that repeated contacts with the same individual on the same subject would not have to be recorded.

Trigger / threshold – “paid lobbying”

36. In any legislation of this type, it is necessary to draw a line designating which individuals or organisations should be subject to its provisions. This line – a threshold or a trigger, when combined with a definition of lobbying which is explored above – is used to shape the regime and define where the focus of scrutiny of lobbying will lie.

37. Lobbying regimes in other countries employ various thresholds and triggers that look at the status of the lobbyist or their activity levels and so on. The UK's Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014²³ ("the UK Act") requires only consultant lobbyists to register, for example, while Ireland's Regulation of Lobbying Act 2015 ("the Irish Act") captures professional lobbyists, firms over a certain size and advocacy and representative bodies.
38. This Bill makes no distinction between commercial and in-house lobbyists. This was welcomed by a majority of respondents, who felt that focussing on professional lobbying alone (as in some other legislation such as the UK Act) would mean that a great deal of lobbying activity would be overlooked. Royal College of Nursing Scotland disagreed that in-house lobbyists should be required to register, arguing that "it is clear who in-house lobbyists represent".²⁴
39. Rather than look at the status of the person lobbying, the Bill employs a trigger that captures all lobbying which is carried out in return for payment, regardless of who is lobbying. Commercial lobbyist organisations will clearly be required to register as will any organisation which either employs lobbying firms or has in-house lobbyists who are paid.
40. Under the terms of the Bill, campaign groups and volunteer organisations of any size will not have to register as long as no payment is made in return for the activity. Small firms, charities and third sector organisations (who may only undertake lobbying rarely) will generally be required to register. Large, influential NGOs could avoid registration as long as it is their volunteers or unpaid board members who are carrying out the lobbying. Pro bono work by professional lobbyists would not trigger registration. Carers Trust Scotland observed that the distinction could pose a difficulty for third sector organisations who may have both paid and unpaid staff engaged in lobbying.²⁵ The Scottish Grocer's Federation argued that representations made by Board members and trustees should not be excluded from registration.²⁶ The Public Relations Consultant Association agreed that it was "vital that those conducting lobbying in a voluntary or pro bono capacity are captured".²⁷ The Association of Scottish Public affairs agreed, pointing out that there could be equally powerful groups on either side of an argument and only one would have to register.²⁸ The Scottish Environmental Services Association's response echoed this concern specifically in relation to public sector organisations, which are exempted from registering by virtue of the schedule.²⁹
41. In practice, most "third sector" lobbying will be registrable under the Bill since at least some lobbying activity will tend to be carried out by salaried staff. Some of those responding to the Committee felt that third sector or civil society organisations should be considered on an entirely separate footing to lobbying which is conducted for commercial interests. This is partly because the motivations for lobbying were different and partly because there was a risk that third sector organisation might be inhibited from engaging due to concerns about the administrative burden of registration.³⁰ The Electoral Reform Society agreed

with the paid/unpaid trigger but argued for a threshold that would exclude smaller organisations who spend a small amount of time or money on lobbying activity.³¹

42. Some felt that the trigger lacked clarity. Quarriers sought clarification on the status of meetings with MSPs which they facilitate on behalf of people they support since staff would normally be present.³² Children in Scotland believed that removing the trigger would mean that there was no confusion over who needs to register.³³
43. The Minister was at pains to point out that the “paid lobbying” trigger was designed to ensure that individuals and small organisations were not inhibited from engaging and participating in the work of Parliament and Government. He said “those are exactly the sort of people whom we want to ensure that we do not put any barriers in the way of”.³⁴
44. BMA Scotland called for the trigger to be modified so that only those staff who are expected to lobby as part of their job descriptions should be included. This would, they argued, reduce the burden on organisations who will otherwise be required to “monitor the day to day activity of every employee”.³⁵ Cancer Research UK agreed, contending that “those who occasionally undertake lobbying activity to support broader aims of organisations’ role should not be included”.³⁶ The Federation of Small Businesses were similarly concerned, pointing out that “a number of our volunteer members across the country receive small honoraria or consultancy fees, for example if they hold an office-bearer position in a local branch.”³⁷ MND Scotland argued that charities should not have to register since staff are lobbying on behalf of those unable to lobby themselves. If this was not possible, then the names of individual staff members should not be a requirement of the register they felt.³⁸ The Chartered Institute of Public Relations pointed out that “full-time, unpaid volunteers and agencies may run campaigns ‘pro bono’ to avoid registration” and called for the Government to review the impact of the measure.³⁹
45. Neil Findlay MSP disagreed with the “paid lobbying” trigger. He felt that it was an oversimplification to regard all voluntary organisations as being there to “do good” and cited the example of organisations on either sides of the debate on same sex marriage each believing themselves to be a force for good.⁴⁰ For this reason, he saw no reason for voluntary organisations to be excused from registration just because the lobbyist is not paid and argued that both paid and unpaid activity should therefore be treated in the same way.
46. Peter Duncan, Association of Professional Political Consultants, was also opposed to the trigger, stating that “it excludes some very effective influence that is exerted by volunteers and enthusiasts who ... make a difference but they would not be captured by the Bill.”⁴¹ Various organisations agreed.^{42,43}
47. Another approach might be to treat paid and unpaid lobbying equally and remove the trigger, relying on the definition of lobbying (i.e. type and subject of communication) to scope what activity is registrable. Some witnesses were concerned about the administrative burden that would be placed on small

voluntary organisations if the trigger were to be removed. Andy Myles, Scottish Environment LINK, argued in favour of the trigger “in order to reflect the fact that ... not all lobbying is equal”.⁴⁴

48. An alternative trigger or threshold might be to specify an expenditure level above which organisations were required to register. This approach would mean that firms and organisations, regardless of size, who undertake infrequent lobbying would not be required to register. The Minister felt that the difficulty with this approach would be that quantifying expenditure in order to make a judgement about whether registration was triggered, while it would be simple for commercial lobbying firms, could be onerous for organisations with in-house lobbyists.⁴⁵
49. The pros and cons of an activity threshold in place of the paid/unpaid trigger were also explored. The Minister argued that replacing the “paid lobbying” trigger with an activity threshold would allow organisations to manage the number of contacts to stay below the threshold if they wished to avoid registration. He pointed out that a small number of meetings could have great significance and that the Government’s consultation on the Bill “was overwhelmingly in support of paid lobbying being the test”.⁴⁶

The Committee strongly agrees with the principle that individuals must be able to freely engage on their own behalf or in an unpaid capacity behalf of an organisation.

The Committee accepts that it is necessary to have a threshold or a trigger in order to focus scrutiny on lobbying activity likely to be of greatest public interest while ensuring that the regime is not over burdensome and does not inhibit those wishing to engage. On balance, the Committee agrees with the Government’s approach that paid lobbying is registrable and unpaid lobbying is not registrable as the best way to achieve this.

The subjects of lobbying activity

50. The definition at Section 1 means that a person engages in regulated lobbying if the oral communication is made to a member of the Scottish Parliament, a member of the Scottish Government or a junior Scottish Minister. There was some debate over whether other individuals should be included in addition to these.
51. Under regimes in other jurisdictions, other public officials are also included as recipients of lobbying. These could include senior civil servants, special advisers, senior staff in Non-Departmental Public Bodies and so on. The Irish legislation uses a definition of “Designated Public Officials”⁴⁷ which encompasses a much broader range of public roles. There was a good deal support for expanding the definition among those responding to the Committee.

52. Andy Myles argued that “a vast number of decisions are not made by Ministers”.⁴⁸ Will Dinan contended that the absence of other public officials in the definition “made no sense” since lobbying strategies are not always focused on MSPs.⁴⁹ Friends of Craighouse felt that “lobbying officials is probably more of an issue than lobbying politicians” since officials supplied information as the basis for elected representatives’ decisions.⁵⁰ Carers Trust Scotland described meetings with senior civil servants as “equally useful in lobbying significance”.⁵¹ Alcohol Focus Scotland agreed that the scope of the Bill should be extended to civil servants and special advisers.⁵²
53. The Minister countered that widening out the definition of regulated lobbying to include communications with other public figures would involve a greater resource burden on registrants and said that the line had been drawn in order to strike the right balance between burden and optimal transparency. He justified the distinction between advisers, who advise, and Ministers and MSPs, who make the decisions, and cautioned that broadening the scope beyond the decision makers would result in a greater administrative load both for lobbyists and the Parliament.⁵³
54. The Scottish Council for Voluntary Organisations and Shelter Scotland both proposed that, if the definition was to be extended, then it should be public officials who were responsible for publishing the information on regulated lobbying.⁵⁴

The Committee recommends that the Government consider bringing forward amendments to broaden the definition of regulated lobbying to include communications made to other public officials.

Meetings initiated by MSPs and Ministers

55. As set out above, meetings initiated by an MSP or junior Minister, or member of the Scottish Government (unless in response to a request by a person attending or represented at a meeting or event) do not constitute lobbying for the purposes of the Bill. This exemption reflects the motivation of the individuals involved and is designed to make a distinction between lobbying that serves the purposes of the lobbyist, and lobbying which may occur in the course of stakeholder fact-finding meetings and so on, which Ministers and MSPs seek in order to enhance their policy knowledge and gather views. The exclusion is also designed to rule out the sort of incidental lobbying that is not planned or sought by the lobbyist and could take place during conversation at dinners, visits and other events.
56. This approach was questioned by Professor Chari, who pointed out that early Canadian legislation on lobbying contained a similar exclusion but was later amended as it was felt to have created an unhelpful loophole. There was little support from other witnesses for the exclusion. The Commissioner for Ethical Standards in Public Life in Scotland (the Commissioner) felt there was a risk that it would result in a lack of clarity, making it more difficult for him to come to a view

on complaints. He reminded the Committee that many events are sponsored by MSPs and questioned whether communications at such events should be excluded since “if I were a lobbyist I would regard these sorts of events as quite a good opportunity”.⁵⁵

57. The Minister explained that the exclusion was aimed primarily at ensuring there were no barriers to engagement. He reiterated that the new regime will sit within a framework of other transparency mechanisms, pointing out that interactions with Ministers were already captured under the Ministerial Code. He did not wish to see a situation where Ministers and MSPs could not freely seek policy information, carry out fact-finding visits and so on without their contacts, who had not sought the engagement, being compelled to register.⁵⁶ BMA Scotland welcomed the exemption, believing it would reduce the risk that specialists would become unwilling to participate in providing expertise.⁵⁷
58. With regard to the onus to demonstrate who had initiated the meeting, the Minister said “there is a degree of self-regulation in that the MSP or Minister would know if they had initiated the meeting” and “we are trying to strike a balance to make sure that we are not debarring anyone, making it more difficult for people to engage with MSPs and Ministers or blocking access to factual information.”⁵⁸
59. Legislation in other areas approaches this challenge in different ways. The Irish Act, under its exempted communications, has a category for “factual information” which excludes communications requesting factual information or providing factual information in response to a request for information. An approach such as this may have the potential to achieve similar aims – i.e. to exclude fact-finding meetings which may be of little interest to the public – and it would remove the difficulty of demonstrating who initiated the meeting.
60. Alternatively, if it is accepted that “lobbying is lobbying” regardless of who initiated the contact, the exemption could be removed altogether.

The Committee is concerned about the workability of the exclusion in the schedule for meetings initiated by MSPs or Ministers. The Committee asks the Government to re-examine the practicality of the exclusion and consider removing or replacing it at Stage 2.

Exclusion for Journalism

61. One of the exclusions set out in the schedule is for “a communication made for the purposes of journalism”.
62. The Commissioner questioned the workability of this exclusion, observing that it was not well defined and could lead to difficult judgements about what constitutes journalism.⁵⁹ The Committee felt that some forms of journalism, such as writing for

trade journals, have the appearance of lobbying (although written forms are not captured by the Bill in its current form).

63. Neil MacLeod, Principal Legal Officer, Scottish Government Legal Department, drew the Committee's attention to the Explanatory Notes, which refer to the fact that, according to case law, a communication made for the purposes of journalism is not lobbying.⁶⁰

The Committee notes that any guidance on the Act must set out the definition of journalism in order to provide clarity on precisely what types of communication would attract the exemption.

Exclusion for Cross-Party Groups

64. Communications made in the course of a meeting of a group recognised as a cross-party group (CPG) are excluded from the definition of regulated lobbying. This avoids overlap with other transparency mechanisms since CPGs are already required to publish details of meetings. The Minister and his officials clarified that any activity carried out by CPG members outwith CPG meetings (such as writing to a Minister) would be subject to the same tests as any other activity and may, therefore, be registrable as regulated lobbying.⁶¹
65. The Committee notes that guidance on the regime will need to provide clarity for CPGs that meetings which are not quorate will not benefit from the exclusion and that registration will therefore be necessary if regulated lobbying takes place at such meetings.

Exclusion for communications by Judiciary

66. The Bill's schedule sets out an exemption for communications made by or on behalf of a holder of judicial office within the United Kingdom and a member of the judiciary of an international court. The Law Society of Scotland suggested that communications under this exemption should be limited to communications relating to court and judicial functions.⁶²

Lobbying outwith Scotland

67. Section 1(1)(3) of the Bill means that it does not matter for the purposes of the Bill whether a communication happens outwith Scotland. The Law Society of Scotland questioned how this would operate in practice and how, if a person fails to disclose a communication outwith Scotland, this would be evidenced.⁶³

The register

Identity of lobbyists

68. The Bill requires organisations, rather than individuals, to register. The name of the individual making the communication on the organisation's behalf is however required to appear in the register albeit not as the registrant. This means that those who may be concerned about former Government, party or Parliament staff being engaged in lobbying (so called "revolving door" concerns) will be able to identify whether any such individuals have engaged in lobbying. While this transparency was welcomed by some of those responding to the Committee, others questioned whether the Bill should go further and provide for a "cooling off period" which would prevent certain classes of individual from lobbying for a period following cessation of their employment.
69. The Committee raised these issues with the Minister, who pointed out that the Ministerial Code prevents former Ministers from lobbying Government for two years, and the Business Appointment Rules for civil servants means that there is a scrutiny structure for the future employment of civil servants and special advisers. Furthermore, the Independent Advisory Committee on Business Appointments scrutinises Ministers' future positions. The Minister felt that any provision that placed employment restrictions on MSPs, whose job security is subject to the outcome of elections, would be disproportionate. He reiterated that the Bill was intended to complement existing probity frameworks.⁶⁴
70. The Committee had an additional concern about whether Parliamentary Liaison Officers (PLOs)⁶⁵ represented a conduit to Ministers. While any initial contact between an external lobbyist and a PLO would be registrable (because PLOs are MSPs), any subsequent representations made by the PLO to a Minister on that lobbyist's behalf would not be captured by the Bill by virtue of the schedule's exclusion of Government and Parliament communications.

The Committee is satisfied that the inclusion of individuals' names on the register will enable those with an interest to probe the employment history of those involved in lobbying. The Committee further notes that Parliament would be able, following exercise of its resolution making power at Section 15(1) of the Bill, to make provision requiring information on the employment history of lobbyists to be included on the register itself.

Categories of registrant

71. The Bill envisages three categories of registrant at Section 3(1): Active, inactive and voluntary. The Law Society of Scotland felt that the different requirements on each category might lead to confusion.⁶⁶

Details of matters discussed during lobbying

72. With regard to recording details of lobbying activity, Professor Chari felt that requiring information on "the purpose of the lobbying" (Section 6(2)(g)) was vague and information about the outcome sought by the lobbyist should be required.⁶⁷

The Law Society of Scotland suggested that the register might lead to an increase in Freedom of Information requests from people seeking details of the meetings which would appear on the register.⁶⁸ The Minister pointed out that the Parliament could, through its powers under Section 15, make this type of information a requirement of the register.⁶⁹

73. NFU Scotland (NFUS) informed the Committee that lobbying activity undertaken with elected representatives will be in regard to sensitive or confidential matters on behalf of individual members and called for the Bill to recognise that the integrity of member interest organisations such as NFUS cannot be undermined by the requirement to publish details of meetings.⁷⁰

Disclosure of expenditure

74. Registrants are not required to disclose the amount they spend on lobbying. Several of those responding to the Committee welcomed this because it would protect commercial confidentiality. On the other hand, Dr Dinan regretted the absence of a requirement to record expenditure arguing that “the public, when looking in on the whole influence game in politics, involves the amount of resources that are devoted to influencing decision making”.⁷¹ Professor Chari agreed, observing that “if the end objective is accountability and in particular transparency, Scottish citizens might want to see that information”.⁷² Willie Sullivan asserted that financial disclosure “tells you how important it is to the people who are lobbying”.⁷³ ASH Scotland believed “the register should, as far as possible, catch influence as well as activity and that lobbyists should be required to declare ... how the activity is funded”. They added that “there should be an additional explicit requirement to declare links with the tobacco industry”.⁷⁴ Cancer Research UK believed that requirements on financial disclosure would strengthen the Bill as it would “help trace the impact that lobbyists may be having” and “provide valuable transparency”.⁷⁵ Alcohol Focus Scotland, the Reid Foundation and Unlock Democracy also called for a requirement on financial disclosure.⁷⁶
75. Richard Maughan, CBI Scotland argued against requiring financial disclosure, pointing out that it would create a significant burden on organisations to provide estimates of staff costs and overheads. He warned that expenditure “does not reveal anything about the quality of the lobbying or the influence that it achieved”.⁷⁷ Peter Duncan contended that some of the most effective representation is from people who are not paid.⁷⁸ The Chartered Institute of Public Relations said that quantifying costs would be complicated and unproductive as well as commercially disadvantageous and potentially misleading.⁷⁹
76. Neil Findlay MSP referred to his Member’s Bill consultation, which found that “people are interested whether a lobbyist spends a fiver or £500,000”. He proposed placing expenditure estimates within bands in order to overcome the issue of commercial sensitivity.⁸⁰

The Committee understands the public interest value in revealing how much is spent on lobbying and notes that it will be within the Parliament's powers (under section 15, Power to specify requirements about the register) to require registered organisations to disclose their level of expenditure on lobbying.

Frequency of information returns

77. The Bill provides for a 30 day “grace” period in which a lobbyist must register following his or her first instance of regulated lobbying. This is to ensure that people at an event or a chance meeting, for example, are not inhibited from engaging and nor is there any risk that they could find themselves inadvertently committing an offence.
78. The Bill provides for a six-monthly cycle for the provision of information returns by registrants. There was some debate among witnesses about the ideal reporting cycle. Some felt that more frequent returns were preferable since lobbyists would not need to delve into records going back over long periods. It was pointed out that monthly intervals were in use in other countries and there was no requirement to lodge a return if contact had not been made during that period.⁸¹
79. There was some support for harmonising returns with a so called “census day” that would require returns from all registrants on the same day. This, it was argued, would be simpler and clearer for registrants and may assist with publicity and ease of understanding.^{82,83} The Minister argued that the six-monthly cycle beginning with the date of registration would involve a lower administrative burden by spacing out the workload and pointed out that registrants could update their registers as frequently as they wished subject to the Clerk's agreement.⁸⁴
80. The Committee notes that the Bill's powers under Section 15 (power to specify requirements about the register) would allow Parliament to alter the frequency of information returns if there is thought to be merit in so doing.
81. Some of those responding to the Committee said that the proposed cycle for returns would not sit well with the cycle for returns under the EU and UK systems and any voluntary industry regulatory statements.⁸⁵ Children in Scotland felt that quarterly returns would offer greater transparency.⁸⁶ Unlock Democracy suggested that organisations who expend a small amount of resources on lobbying should only be required to report on an annual basis.⁸⁷

Voluntary registration

82. There are arrangements for voluntary registration. This will enable those organisations which are not required to register to do so in order to raise their profile or simply in the interests of transparency and good practice. The question arose of whether registered lobbyists could register information on activity other than regulated lobbying.

83. The Committee sought and received reassurance that the Bill (at Section 7(b)) would allow those who are required to register and who engage in both regulated and unregulated lobbying to register instances of unregulated lobbying voluntarily (under Section 7 – “additional information” – of the Bill) albeit at the Clerk’s discretion. Neil MacLeod added that the guidance to be issued by the Parliament on the operation of the Act (under Section 43) could ensure registrants had the opportunity to register additional information on a voluntary basis.

Participation

84. Throughout discussion of the provisions, the issue cropped up of whether the Bill would inhibit participation with the work of Parliament and Government and act as a barrier, particularly to smaller organisations by creating an administrative burden. Will Dinan said that there was evidence to demonstrate the reverse. He said that “the fact that there are registers begins to explain the system to people a bit more, and they understand how they can interact”.⁸⁸ Professor Chari agreed that “a register is a very good professional tool for lobbyists, as it allows them to see what they need to do to try to influence Government”.⁸⁹ Unlock Democracy stated that “there is no evidence from other jurisdictions that a register presents a barrier to participation”.⁹⁰
85. On the other hand the Federation of Small Business felt that “the Bill potentially places a barrier to genuine dialogue between politicians and many Scots about their business” and provided a few examples.⁹¹ The Health and Social Care Alliance Scotland were also concerned that the requirements of the bill may run counter to the values of openness and accessibility.⁹² MND Scotland felt that the bill may discourage some staff from attending Parliament receptions.⁹³ The Scottish Council for Voluntary Organisations believed that the Bill would make employees of small third sector organisations less likely to engage with the Parliament and that valuable frontline experience could, therefore, be denied to parliamentarians.⁹⁴ Volunteer Scotland were also concerned that small and medium sized charities and organisations may refrain from engaging.⁹⁵

Oversight and enforcement

86. Following the recommendations of the Committee, the Scottish Government has, it believes, taken an “educative, light-touch approach” to compliance and a regime where inadvertent breaches can be addressed without recourse to sanctions. The Policy Memorandum sets out the three tier oversight and enforcement system the Bill provides for (paragraphs 32-37), with criminal offences a “last resort” for “wilful non-compliance”.

Complaint handling

87. The Commissioner warned that the process for complaint handling – which is modelled on the Parliamentary Standards Commissioner Act 2002 (the 2002 Act) – could prove onerous and bureaucratic. He set out a scenario whereby a single complaint could potentially oblige him to produce up to five reports. He said “while

I appreciate the need for parliamentary oversight of the process, it does strike me that in that sort of situation it is verging on overkill”.⁹⁶

88. There was some discussion of whether the power to provide the Commissioner with directions (Section 31) could be used to allow the Commissioner to refer minor complaints to the Committee or the Clerk of the Parliament rather than carrying out the full process of investigation.⁹⁷ Section 31 enables the Parliament to issue directions to the Commissioner setting out circumstances in which he or she may decide not to conduct an assessment or an investigation, and may not be required to report to Parliament.

Offences and sanctions

89. Richard Maughan expressed concerns about the criminal sanctions in the Bill and said “it must be made clear that we do not want criminal sanctions for someone getting something wrong on a form”.⁹⁸ Andy Myles predicted that rival organisations would be most likely to make a complaint about one another and warned of the consequences for workloads involved in responding to complaints.⁹⁹ The Federation of Small Businesses were concerned that the quantity of information required to be registered would inevitably lead to errors in returns.¹⁰⁰
90. The Committee was concerned that individuals or organisations who inadvertently fail to register or fail to submit a return could be denied an opportunity to address the matter since an offence will, technically, have been committed (Section 42) and there is therefore the potential for complaints to be made directly to the police or the Procurator Fiscal. This could mean that individuals who make a mistake – perhaps because they were unaware of the law – could find themselves reported to the Procurator Fiscal. The Association for Scottish Public Affairs was concerned that Parliamentary censure could have significant commercial and reputational consequences for lobbying consultancies in particular and could result in deprivation of livelihood.¹⁰¹
91. The Commissioner indicated that he would feel uncomfortable in principle with not referring criminal offences to the Procurator Fiscal once he became aware of them. He said—

” Under my existing powers, if I come across something that may be a criminal offence, I report it immediately to the procurator fiscal, as that is obviously the system by which potential criminal offences are investigated. I cannot see anything in the Bill that would change that. In other words, quite a lot of the complaints that might come to me could be about criminal offences, and I would have to report them to the procurator fiscal.¹⁰²

92. He pointed out that—

” I have no role at all in the system of criminal prosecution. I fear that, if I or any successor of mine were to have that sort of discretion, it could be seen

as effectively usurping the role of the Crown Office and the procurator fiscal with regard to whether a potential offence should be prosecuted.¹⁰³

93. He added that any referrals would slow down the completion of his investigation and could necessitate extra reports if the delay led to an investigation taking longer than six months (Section 25).¹⁰⁴
94. The Commissioner drew the Committee's attention to different approaches to similar situations. The Electoral Commission's approach on political donations for example, which involves a range of civil sanctions that can be used before criminal sanctions are invoked. In relation to this, Steve Goodrich, Transparency International UK questioned—

” why there are two different bodies, doing two different functions, for what is essentially one purpose. Having worked for a regulator, I think that it is clear that having the compliance staff, the advice and guidance staff and the enforcement staff in one body helps to ensure that there is co-ordination and an understanding of how those different pieces fit together.¹⁰⁵

95. The Minister pointed out that “there is no requirement in the bill for the commissioner to report to the procurator fiscal. That is not the intention”.¹⁰⁶ Neil MacLeod confirmed—

” there is no requirement for [the Commissioner] to escalate things, but there is the facility for Parliament to issue directions to the Commissioner in whatever terms it sees fit. One particular type of direction that could be issued would be to allow the Commissioner to refer matters to the clerk, in the first instance.¹⁰⁷

While the Committee accepts there is nothing in the Bill that compels the Commissioner – or for that matter, the Clerk – to refer offences to the Procurator Fiscal, it wishes to be reassured that an arrangement for the referral of minor and first time offences to clerks for educative steps was acceptable to all parties – including the Crown Office and Procurator Fiscal Service.



Minister for Parliamentary Business Joe FitzPatrick and his officials give evidence to the Committee on the Bill

Flexibility

96. The bill provides for a certain amount of flexibility for the Parliament to make changes to the regime in the light of experience. Provisions about the lobbying register may be modified which would allow the Parliament to alter such things as what information is to be recorded on the register and with what frequency information returns must be made.
97. Provisions relating to definitions, thresholds and exclusions cannot be amended through delegated powers. The Minister explained that the Bill was designed to give the Parliament maximum powers over the operation of the regime but that the significant, core principles of definition (and exclusions), thresholds and identity should be prescribed by the Bill and “if there were to be a major change to the core principles, it would be appropriate to alter the primary legislation”.¹⁰⁸
98. He described the process by which the powers will operate, envisaging a lead role for the Committee in recommending changes for approval by the Parliament. This arrangement would be subject to Standing Order Rule changes.¹⁰⁹
99. The Parliament is also given powers to direct the Commissioner in his duties in relation to the Bill. This would allow the processes to be amended in the light of experience. This is explored in greater detail under the section on oversight and enforcement above.

100. A number of those responding to the Committee called for a review after an agreed period so that Parliament could revisit and revise the legislation.¹¹⁰

The Committee agrees that the core principles of the Bill should be agreed at this legislative stage and appear in the Act. It is content that the powers delegated to the Parliament, including those to make further provision on the operation of the register about information notices and to direct the Commissioner and produce guidance about the regime, afford an appropriate level of flexibility that will ensure that lessons learned in the course of implementation can be addressed.

Code of conduct

101. Section 44 provides for the publication of a code of conduct for persons lobbying MSPs (and, as such, will also pertain to Ministers). The code of conduct is to encompass all forms of lobbying and is therefore not restricted only to those who carry out regulated lobbying. The Minister explained that a distinction had been made because the code had a different purpose and “it would be appropriate for the code to go wider”.¹¹¹
102. The Delegated Powers and Law Reform (DPLR) Committee noted that the Bill does not require persons to comply with or have regard to the code of conduct nor were there any sanctions of enforcement provisions in relation to the Code. The DPLR Committee regarded this as “highly unusual”. In its response, the Scottish Government pointed out that the Committee had recommended, following its inquiry into a proposal for a register of lobbying that any code of conduct should not be binding. The DPLR concluded that it be more appropriately expressed as a power to issue guidance.

The Committee welcomes the provisions on the code of conduct, which will allow the Parliament to direct and guide those making communications of any kind and need not be restricted only to contacts which conform to the definition of regulated lobbying.

Policy and Financial Memorandums

103. The lead committee is required under Rule 9.6.3 of Standing Orders to report on the Policy Memorandum which accompanies the Bill. The Committee considers that the Policy Memorandum adequately sets out the policy intention behind the provisions of the bill and the alternative approaches that had been considered. The Committee found the memorandum useful in assisting its scrutiny of the Bill.
104. The same rule also requires the lead committee to report on the financial Memorandum (FM). The FM sets out a range of costs likely to fall on the Scottish Parliamentary Corporate body (SPCB) and the Commissioner for Ethical Standards in Public Life in Scotland. It also estimates the potential costs falling to organisations which undertake regular and co-ordinated lobbying.
105. The Finance Committee wrote to the Committee on 18 November 2015 regarding the Bill's Financial Memorandum. The Finance Committee had received confirmation from the SPCB that the FM accurately reflected the indicative costs provided by the Parliament. The SPCB's response also drew attention to the Bill's cost implications for the Commissioner for Ethical Standards in Public Life, whose office is funded by the SPCB. The SPCB considered that there may have been a misinterpretation regarding whether the Commissioner's office could absorb the costs of implementing the Bill.
106. The Committee raised the matter with both the Commissioner and the Minister during oral evidence. Both parties confirmed that the Financial Memorandum had misrepresented the Commissioner's position and it would not be possible for his office to absorb the estimated cost of implementing the Bill. The Minister undertook to formally clarify the position with the Committee.¹¹²
107. Correspondence relating to the Financial Memorandum is set out at Annexe A.
108. The Public Relations Consultant Association felt that the figures in the FM underplayed the costs that organisations would bear to comply with the legislation. The Association for Scottish Public Affairs agreed and also pointed out that no costs had been estimated for organisations who found themselves the subject of complaints.¹¹³

General principles

109. Under Rule 9.6.1 of Standing Orders, the lead committee is required to report to the Parliament on the general principles of the Bill.
110. There was overwhelming support for the Bill from those responding to the Committee although several responses did suggest that it amounted to a solution without a problem. It was generally accepted that there is not, currently, any evidence of a serious problem with lobbying in Scotland but there was a general consensus that greater transparency was desirable as a preventative measure as it would help to detect and deter wrongdoing. Steve Goodrich asserted that “it is a question of citizens being able to hold representatives, public officials and lobbyists to account.”¹¹⁴ Similarly, Willie Sullivan argued that greater transparency would play a part in addressing people’s perception of political inequality.¹¹⁵
111. The Committee has long been of the view that lobbying is a positive and necessary part of any democracy but that a register which operated a fairly light burden would promote transparency and political equality.

The Committee supports the general principles of the Bill that a lobbying register should be established and that it is backed by a code of conduct and an educative compliance regime with sanctions as a last resort.

¹ [Lobbying \(Scotland\) Bill](#), as introduced (SP Bill 82, Session 4 (2015))

² Standards, Procedures and Public Appointments Committee. 1st Report, 2015 (Session 4): Proposal for register of lobbying activity Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/86491.aspx>

³ [Lobbying \(Scotland\) Bill, Policy Memorandum](#)

⁴ White Paper – Scotland’s Parliament (Cm 3658) 24 July 1997.

⁵ Standards, Procedures and Public Appointments Committee. *Official Report*, 12 November 2015, Col 19.

⁶ Standards, Procedures and Public Appointments Committee. *Official Report*, 12 November 2015, Col 9.

⁷ Unlock Democracy. Written submission.

⁸ Standards, Procedures and Public Appointments Committee. *Official Report*, 12 November 2015, Col 21.

⁹ The Law Society of Scotland. Written submission.

¹⁰ ASH Scotland. Written Submission.

¹¹ Carers Trust Scotland. Written submission.

¹² ASH Scotland. Electoral Reform Society. Unlock Democracy. Written submissions.

¹³ Unlock Democracy. Written submission.

¹⁴ Standards, Procedures and Public Appointments Committee. 1st Report, 2015 (Session 4): Proposal for register of lobbying activity Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/86491.aspx>

¹⁵ Association of Scottish Public Affairs. Written submission.

¹⁶ ASH Scotland. Written submission

¹⁷ Standards, Procedures and Public Appointments Committee. *Official Report*, 12 November 2015, Col 8.

¹⁸ Unlock Democracy. Written submission.

¹⁹ Standards, Procedures and Public Appointments Committee. *Official Report*, 19 November 2015, Col 11.

²⁰ BMA Scotland. Written submission.

²¹ Chartered Institute of Public Relations. Written submission.

²² Shelter Scotland. Written submission.

²³ [Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014](#).

²⁴ Royal College of Nursing Scotland. Written submission.

²⁵ Carers Trust Scotland. Written submission.

²⁶ Scottish Grocer’s Federation. Written submission.

²⁷ Public Relations Consultant Association. Written submission.

²⁸ Association of Scottish Public Affairs. Written submission.

²⁹ The Scottish Environmental Services Association. Written submission.

³⁰ Association for Scottish Public Affairs. Written submission.

³¹ Electoral Reform Society. Written submission.

³² Quarriers. Written submission.

³³ Children in Scotland. Written submission.

³⁴ Standards, Procedures and Public Appointments Committee. *Official Report*, 19 November 2015, Col 24.

³⁵ BMA Scotland. Written submission.

³⁶ Cancer Research UK. Written submission.

³⁷ Federation of Small Businesses. Written submission.

³⁸ MND Scotland. Written submission.

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- ³⁹ Chartered Institute of Public Relations. Written submission.
- ⁴⁰ Standards, Procedures and Public Appointments Committee. *Official Report*, 12 November 2015, Col 9.
- ⁴¹ Standards, Procedures and Public Appointments Committee. *Official Report*, 12 November 2015, Col 25.
- ⁴² Association of Professional Political Consultants. Written submission.
- ⁴³ Association of Scottish Public Affairs. Written submission.
- ⁴⁴ Standards, Procedures and Public Appointments Committee. *Official Report*, 12 November 2015, Col 23.
- ⁴⁵ Standards, Procedures and Public Appointments Committee. *Official Report*, 19 November 2015, Col 25.
- ⁴⁶ Standards, Procedures and Public Appointments Committee. *Official Report*, 19 November 2015, Col 23.
- ⁴⁷ Designated Public Officials under the Irish model include elected members (including MEPs), Ministers, elected representatives at local government level, Special Advisers, senior Civil Servants and Chief Executive Officers and Directors of Services in Local Authorities.
- ⁴⁸ Standards, Procedures and Public Appointments Committee. *Official Report*, 12 November 2015, Col 5.
- ⁴⁹ Standards, Procedures and Public Appointments Committee. *Official Report*, 12 November 2015, Col 19.
- ⁵⁰ Friends of Craighouse. Written submission.
- ⁵¹ Carers Trust Scotland. Written submission.
- ⁵² Alcohol Focus Scotland. Written submission.
- ⁵³ Standards, Procedures and Public Appointments Committee. *Official Report*, 19 November 2015, Col 19.
- ⁵⁴ Scottish Council for Voluntary Organisations. Shelter Scotland. Written submission.
- ⁵⁵ Standards, Procedures and Public Appointments Committee. *Official Report*, 19 November 2015, Col 8.
- ⁵⁶ Standards, Procedures and Public Appointments Committee. *Official Report*, 19 November 2015, Col 14.
- ⁵⁷ BMA Scotland. Written Submission.
- ⁵⁸ Standards, Procedures and Public Appointments Committee. *Official Report*, 19 November 2015, Col 14.
- ⁵⁹ Standards, Procedures and Public Appointments Committee. *Official Report*, 19 November 2015, Col 9.
- ⁶⁰ Standards, Procedures and Public Appointments Committee. *Official Report*, 19 November 2015, Col 31.
- ⁶¹ Standards, Procedures and Public Appointments Committee. *Official Report*, 19 November 2015, Col 18.
- ⁶² The Law Society of Scotland. Written submission.
- ⁶³ The Law Society of Scotland. Written submission.
- ⁶⁴ Standards, Procedures and Public Appointments Committee. *Official Report*, 19 November 2015, Col 21.
- ⁶⁵ PLOs are MSPs appointed by the First Minister on the recommendation of Ministers whom they assist in discharging their duties. PLOs are unpaid and are not part of the Scottish Government.
- ⁶⁶ The Law Society of Scotland. Written submission.
- ⁶⁷ Standards, Procedures and Public Appointments Committee. *Official Report*, 12 November 2015, Col 21.
- ⁶⁸ The Law Society of Scotland. Written submission.
- ⁶⁹ Standards, Procedures and Public Appointments Committee. *Official Report*, 19 November 2015, Col 27.
- ⁷⁰ NFU Scotland. Written submission.
- ⁷¹ Standards, Procedures and Public Appointments Committee. *Official Report*, 12 November 2015, Col 19.
- ⁷² Standards, Procedures and Public Appointments Committee. *Official Report*, 12 November 2015, Col 22.

⁷³ Standards, Procedures and Public Appointments Committee. *Official Report*, 12 November 2015, Col 24.

⁷⁴ ASH Scotland. Written submission.

⁷⁵ Cancer Research UK. Written submission.

⁷⁶ Alcohol focus Scotland. The Reid Foundation. Unlock Democracy. Written submission.

⁷⁷ Standards, Procedures and Public Appointments Committee. *Official Report*, 12 November 2015, Col 23.

⁷⁸ Standards, Procedures and Public Appointments Committee. *Official Report*, 12 November 2015, Col 24.

⁷⁹ Chartered Institute of Public Relations. Written submission.

⁸⁰ Standards, Procedures and Public Appointments Committee. *Official Report*, 12 November 2015, Col 23.

⁸¹ Standards, Procedures and Public Appointments Committee. *Official Report*, 12 November 2015, Col 30.

⁸² Standards, Procedures and Public Appointments Committee. *Official Report*, 12 November 2015, Col 30.

⁸³ Association of Professional Political Consultants. Written submission.

⁸⁴ Standards, Procedures and Public Appointments Committee. *Official Report*, 19 November 2015, Col 27.

⁸⁵ Association of Professional Political Consultants. Written submission.

⁸⁶ Children in Scotland. Written submission.

⁸⁷ Unlock Democracy. Written submission.

⁸⁸ Standards, Procedures and Public Appointments Committee. *Official Report*, 12 November 2015, Col 20.

⁸⁹ Standards, Procedures and Public Appointments Committee. *Official Report*, 12 November 2015, Col 33.

⁹⁰ Unlock Democracy. Written Submission.

⁹¹ Federation of Small Businesses. Written submission.

⁹² The Health and Social Care Alliance Scotland. Written submission.

⁹³ MND Scotland. Written submission.

⁹⁴ Scottish Council for Voluntary Organisations. Written submission.

⁹⁵ Volunteer Scotland. Written submission.

⁹⁶ Standards, Procedures and Public Appointments Committee. *Official Report*, 19 November 2015, Col 4.

⁹⁷ Standards, Procedures and Public Appointments Committee. *Official Report*, 19 November 2015, Cols 6, 29 and 30.

⁹⁸ Standards, Procedures and Public Appointments Committee. *Official Report*, 12 November 2015, Col 17.

⁹⁹ Standards, Procedures and Public Appointments Committee. *Official Report*, 12 November 2015, Cols 33-34.

¹⁰⁰ Federation of Small Businesses. Written submission.

¹⁰¹ Association for Scottish Public Affairs. Written submission.

¹⁰² Standards, Procedures and Public Appointments Committee. *Official Report*, 19 November 2015, Col 3.

¹⁰³ Standards, Procedures and Public Appointments Committee. *Official Report*, 19 November 2015, Cols 7-8.

¹⁰⁴ Standards, Procedures and Public Appointments Committee. *Official Report*, 19 November 2015, Col 4.

¹⁰⁵ Standards, Procedures and Public Appointments Committee. *Official Report*, 12 November 2015, Col 31.

¹⁰⁶ Standards, Procedures and Public Appointments Committee. *Official Report*, 19 November 2015, Col 29.

¹⁰⁷ Standards, Procedures and Public Appointments Committee. *Official Report*, 19 November 2015, Col 30.

¹⁰⁸ Standards, Procedures and Public Appointments Committee. *Official Report*, 19 November 2015, Col 28.

¹⁰⁹ Standards, Procedures and Public Appointments Committee. *Official Report*, 19 November 2015, Col 28.

¹¹⁰ The Law Society of Scotland; Dr Will Dinan. The Association for Scottish Public Affairs. Shelter Scotland. Scottish Council for Voluntary Organisations. RNIB Scotland. Written submissions.

¹¹¹ Standards, Procedures and Public Appointments Committee. *Official Report, 19 November 2015*, Col 16.

¹¹² Standards, Procedures and Public Appointments Committee. *Official Report, 19 November 2015*, Cols 3 and 32.

¹¹³ Association for Scottish Public Affairs. Written submission.

¹¹⁴ Standards, Procedures and Public Appointments Committee. *Official Report, 12 November 2015*, Col 10.

¹¹⁵ Standards, Procedures and Public Appointments Committee. *Official Report, 12 November 2015*, Col 7.

Annexe A: Correspondence on the financial Memorandum

Letter from the SPCB to the Finance Committee

Kenneth Gibson MSP
Convener, Finance Committee
Room T3.60
The Scottish Parliament
EDINBURGH
EH991SP

11 November 2015

Dear Kenneth

Lobbying (Scotland) Bill: Financial Memorandum

Thank you for your letter of 4 November regarding the Lobbying (Scotland) Bill.

Please find attached the SPCB's response to your Committee's questionnaire.

Yours sincerely

TRICIA MARWICK

Finance Committee Questionnaire

This questionnaire is being sent to those organisations that have an interest in, or which may be affected by, the **Lobbying (Scotland) Bill's Financial Memorandum** (FM) (page 27 of the *Explanatory Notes*).

In addition to the questions below, please add any other comments you may have which would assist the Finance Committee's scrutiny of the FM.

Consultation

1. Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?

The Parliament's views were sought on the cost of implementing the Bill. Our response made clear that the extent of the costs involved in establishing and maintaining a register was largely dependent on the number of organisations required to register and on the detail of how the register will operate.

With this in mind, parliamentary officials provided some unit staffing costs which the Scottish Government has combined with its own estimates of registrant numbers.

We also provided a range of IT costs in relation to establishing and maintaining the register, an estimate of costs in relation to awareness raising and an estimate of costs likely to be incurred by our legal office.

2. If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?

As above.

3. Did you have sufficient time to contribute to the consultation exercise?

Yes.

Costs

4. If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.

The FM accurately reflects the indicative costs and assumptions provided by the Parliament.

At the time of submitting the figures, there was some uncertainty about the role the Parliament would play in ensuring compliance with the Register and the code of conduct for lobbyists. The Policy Memorandum states "It is envisaged that the Clerk's duty to monitor compliance will mainly consist of checking and processing the information received, and addressing any relevant issues raised by potential registrants and from the public."

The costs set out in the FM would support this level of involvement with compliance (a range is provided at paragraph 29 to reflect different numbers of registrants).

If a more hands-on "policing" role (eg, monitoring diaries, monitoring attendance at meetings or events initiated by external parties, media monitoring) is required then costs will increase.

As the Committee will be aware the SPCB also funds the Commissioner for Ethical Standards in Public Life. In the FM, costs have been provided dependent on the number and complexity of investigations ranging from zero for no cases to £70k for more complex cases.

The FM states that such costs could be absorbed within his existing resources. We consider there may have been a misinterpretation here as we understand the Commissioner advised that based on his current workload any costs could not be absorbed within his existing budget. There are therefore additional Commissioner costs to factor into the total.

5. Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

With the exception of Commissioner costs, we believe the figures shown are reasonable and accurate. We note the Scottish Government has estimated that a range of between 255 and 2,550 organisations would be required to register.

6. If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?

There will be minor costs to many of the offices of the Parliament which it will be possible to absorb. In addition to these, there will be costs to the SPCB in relation to establishing and running the register and associated regime. This point was made in our submission to the Scottish Government and is reflected at paragraph 15 of the FM. We will endeavour to mitigate these costs as much as we can, particularly in the first half of 2016/17 but additional resources will be required .

7. Does the FM accurately reflect the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise?

The cost ranges in the tables at paragraph 33 of the FM reflect our view on the margins of uncertainty if compliance is limited to what is set out in paragraph 34 of the Policy Memorandum (see above).

The timescales in the tables at paragraph 33 reflect the potential profile of estimated expenditure.

Wider Issues

8. Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?

We did not make any comment on the potential resource implications for the Commissioner for Ethical Standards in Public Life in Scotland in our submission to the Scottish Government. The committee's attention is, however, drawn to our answer at Question 4 about Commissioner costs. Our understanding is that despite what is stated in the FM, the Commissioner does not consider that the costs can be absorbed within his existing resources.

9. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

The Bill contains a number of powers to make further provision.

Section 15 is concerned with the requirements of the register, including the duties of the Clerk. This power clearly has the ability to impact on the work¹ of staff at the Parliament

and could, therefore, lead to greater costs in the future, depending on what staff were required to do.

It is not possible to quantify these costs except to say that anything involving an increase in the responsibilities of the Clerk or an alteration in the volume or complexity of the register will increase staff time and, therefore, increase costs.

It is not thought that the power at section 20 to make further provision about information notices has the potential to impact on costs significantly.

Section 41 requires to the Parliament to make provision about procedures to be followed when the Commissioner submits a report to the Parliament and is not thought to have any significant potential cost implications.

Letter from the Finance Committee to the Standards, Procedures and Public Appointments Committee

Stewart Stevenson MSP,
Convener,
Standards, Procedures and Public
Appointments Committee
The Scottish Parliament
By email

Room T3.60
The Scottish Parliament
EDINBURGH
EH99 1SP

Direct Tel: (0131) 348 5215
finance.committee@scottish.parliament.uk

18 November 2015

Dear Stewart,

Lobbying (Scotland) Bill: Financial Memorandum

The Finance Committee invited the Scottish Parliamentary Corporate Body (SPCB) to respond to our standard questionnaire on financial memoranda (FM) in respect of the above Bill. A copy of its response is attached.

The completed questionnaire confirms that “the FM accurately reflects the indicative costs and assumptions provided by the Parliament” which the SPCB believes to be “reasonable and accurate.”

However, the submission draws the Committee’s attention to the Bill’s potential cost implications for the Commissioner for Ethical Standards in Public Life who is funded by the SPCB. On the basis of figures provided by the Commissioner, the FM estimates that he would incur additional costs of “between £0 in the case of no investigations and £70,000 in the case of 10 complex investigations.”

The FM further states that “the Commissioner does, however, believe that any additional investigations arising as a result of the Bill can be absorbed within his existing resource.” However, the SPCB submission states—

“The FM states that such costs could be absorbed within his existing resources. We consider there may have been a misinterpretation here as we understand the Commissioner advised that based on his current workload any costs could not be absorbed within his existing budget. There are therefore additional Commissioner costs to factor into the total.”

Your committee may therefore wish to seek clarification from the Scottish Government regarding the additional costs to the Commissioner as a result of the Bill.

Yours sincerely,

Kenneth Gibson MSP
Convener

Letter from Minister for Parliamentary Business to the Convener of the Finance Committee

Kenneth Gibson MSP
Convener
Finance Committee
Room T3.60
Scottish Parliament
Edinburgh
EH991SP

30 November 2015

Dear Kenneth

On 19 November I gave Stage 1 evidence to the Standards, Procedures and Public Appointments Committee on the Lobbying (Scotland) Bill. During that session Stewart Stevenson mentioned correspondence received from your Committee about an aspect of the Financial Memorandum in respect of the Bill.

The issue centres on paragraph 49 of the Government's Financial Memorandum which reads as follows:

"The Commissioner [for Ethical Standards in Public Life] also notes the current pressure of work in his office. The Commissioner does, however, believe that any additional investigations arising as a result of the Bill can be absorbed within his existing resource."

However the Scottish Parliamentary Corporate Body, in its response to your Committee's questionnaire on financial memoranda, advised that a misinterpretation of the Commissioner's views may have occurred as the Commissioner considers that such costs could not be absorbed and should rather be considered as additional in

nature. The table following paragraph 50 of the Financial Memorandum did offer an assessment of the cost burden of potential lobbying complaints, based on information provided by the Commissioner. These were only indicative, given the clear uncertainty over the number of investigations that might require to be conducted.

The information set out in the Memorandum flows from exchanges my officials had with the Commissioner. It is now clear that officials did not fully appreciate Mr Thomson's explanation of his inability to absorb additional costs in terms of the Commissioner's remit as a whole with the potential resourcing impact that specific complaints that may arise from the Bill would have. Now that the Corporate Body has helpfully clarified the matter I am happy to accept that position.

Whilst the evidence I gave to Stewart's Committee puts on record the Government's explanation of the misinterpretation that arose, this letter meets my subsequent commitment to clarify the position in writing. I am copying this letter to Stewart Stevenson.

JOE FITZPATRICK –

Annexe B: Extract from minutes and associated written evidence

16th Meeting 2015 (Session 4), Thursday 8 October 2015

Decision on taking business in private: The Committee agreed to take items 4, 5 and 6 in private.

Lobbying (Scotland) Bill (in private): The Committee agreed its approach to the scrutiny of the Bill at Stage 1.

18th Meeting 2015 (Session 4), Thursday 12 November 2015

Decision on taking business in private: The Committee agreed to take items 5 and 6 in private.

Lobbying (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Professor Raj Chari, Department of Political Science, Trinity College Dublin;
[Dr William Dinan, Director, Spinwatch, Steering Committee, ALTER EU](#);
[John Downie, Director of Public Affairs, Scottish Council for Voluntary Organisations](#);
[Peter Duncan, Chairman, Association of Professional Political Consultants in Scotland](#);
Neil Findlay;
Steve Goodrich, Senior Research Officer, Transparency International UK;
[Richard Maughan, Head of Campaigns, CBI](#);
Andy Myles, Advocacy Officer, Scottish Environment Link;
[Willie Sullivan, Director, Electoral Reform Society Scotland](#).

Lobbying (Scotland) Bill (in private): The Committee considered the evidence heard earlier in the meeting

19th Meeting 2015 (Session 4), Thursday 19 November 2015

Lobbying (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Bill Thomson, Commissioner for Ethical Standards in Public Life in Scotland;

Joe FitzPatrick, Minister for Parliamentary Business, Al Gibson, Bill Team Leader, Parliament and Legislation Unit, and Neil MacLeod, Principal Legal Officer, SGLD, Scottish Government.

Lobbying (Scotland) Bill (in private): The Committee considered the evidence heard earlier in the meeting.

21st Meeting 2015 (Session 4), Thursday 3 December 2015

Lobbying (Scotland) Bill (in private): The Committee considered a draft Stage 1 report and agreed to finalise by correspondence.

22nd Meeting 2015 (Session 4), Thursday 10 December 2015

Lobbying (Scotland) Bill (in private): The Committee agreed a draft Stage 1 report.

Annexe C: Other written evidence

- [Alcohol Focus Scotland \(27KB pdf\)](#)
- [the ALLIANCE \(150KB pdf\)](#)
- [ASH Scotland \(151KB pdf\)](#)
- [ASPA \(15KB pdf\)](#)
- [BMA Scotland \(146KB pdf\)](#)
- [Cancer Research UK \(148KB pdf\)](#)
- [Carers Trust Scotland \(143KB pdf\)](#)
- [CPG on Volunteering and the Voluntary Sector \(140KB pdf\)](#)
- [Children in Scotland \(143KB pdf\)](#)
- [CIPR \(152KB pdf\)](#)
- [Dr Will Dinan \(242KB pdf\)](#)
- [Friends of Craighouse \(10KB pdf\)](#)
- [FSB Scotland \(171KB pdf\)](#)
- [Steve Hay \(6KB pdf\)](#)
- [Information Commissioner's Office \(126KB pdf\)](#)
- [Law Society of Scotland \(249KB pdf\)](#)
- [MND Scotland \(76KB pdf\)](#)
- [NFU Scotland \(72KB pdf\)](#)
- [OSCR \(122KB pdf\)](#)
- [PRCA \(174KB pdf\)](#)
- [Quarriers \(70KB pdf\)](#)
- [RCN Scotland \(125KB pdf\)](#)
- [Reid Foundation \(184KB pdf\)](#)
- [RNIB Scotland \(150KB pdf\)](#)
- [Royal Society of Edinburgh \(164KB pdf\)](#)
- [RSPB Scotland \(150KB pdf\)](#)
- [Scottish Environmental Services Association \(148KB pdf\)](#)
- [Scottish Grocers Federation \(170KB pdf\)](#)
- [Shelter Scotland \(196KB pdf\)](#)
- [Unlock Democracy \(133KB pdf\)](#)
- [Volunteer Scotland \(117KB pdf\)](#)
- [Mark Whittet \(70KB pdf\)](#)

