

LOBBYING (SCOTLAND) BILL

[AS AMENDED AT STAGE 2]

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

INTRODUCTION

1. As required under Rule 9.7.10 of the Parliament's Standing Orders, this Supplementary Delegated Powers Memorandum is published to accompany the Lobbying (Scotland) Bill (introduced in the Scottish Parliament on 29 October 2015) as amended at Stage 2.
2. The Memorandum has been prepared by the Scottish Government. It does not form part of the Bill and has not been endorsed by the Parliament. It should be read in conjunction with the original Delegated Powers Memorandum published to accompany the Bill as introduced.
3. The purpose of this Supplementary Delegated Powers Memorandum is to explain the purpose, effect and background to a power amended into the Bill at Stage 2.

THE POWER AMENDED INTO THE BILL AT STAGE 2

Section 1(4) – Power to amend schedule

Power conferred on: **the Scottish Parliament**
Power exercisable by: **Resolution by Parliament**
Parliamentary procedure: **Resolution by Parliament**

Provision

4. The schedule to the Bill contains in effect a list of 'exclusions': a list of communications which do not amount to regulated lobbying for the purposes of the registration regime established by the Bill.
5. New section 1(4) of the Bill as amended at Stage 2 confers a power on the Parliament, by resolution, to modify the schedule to the Bill to (a) add a description of a kind of communication and (b) modify or remove a description so added. While the power will therefore allow Parliament to add new types of communication to the schedule (i.e. new types of communication excluded from the regime) and to vary or remove such additions, the power does not allow Parliament to remove or modify any communication listed in the schedule at the point the Bill is enacted.

Reason for taking power

6. The Scottish Government identified communications which it viewed as necessary and appropriate for exclusion from the scope of the Bill on introduction and these were listed in the schedule. However, the Standards, Procedures and Public Appointments Committee's Stage 1 Report on the Bill invited the Government to consider whether a further type of communication (trade union negotiations in respect of terms and conditions of employment) should be added to the schedule. The Government's response to the Committee's report confirmed it would consider amending the Bill and a relevant amendment was lodged, and subsequently agreed by the Committee, at Stage 2 (see new paragraphs 8A to 8C of the schedule to the Bill as amended at Stage 2).

7. The identification of this further necessary and appropriate exclusion caused the Government to reflect further on the need for the Parliament to have flexibility to add further exclusions to the schedule (without having to resort to fresh primary legislation), particularly in light of practical experience of the operation of the register. The power is though a limited power to add (and vary) new exclusions. It does not enable the Parliament to remove or modify any communication listed in the Schedule at the point the Bill is enacted. That is because the Government considers the exclusion of the communications listed in the schedule to the Bill, as it stands, to be key to ensuring that the lobbying registration scheme put in place by the Bill is appropriate and proportionate.

8. Provision at section 47 of the Bill (Parliamentary resolutions) will apply to resolutions made by the Parliament under section 1(4) in the same way as it applies to other resolutions made by the Parliament under the Bill (see further paragraph 14 of the original Delegated Powers Memorandum for the Bill as introduced).

Choice of procedure

9. The Parliament has always taken the lead on matters relevant to its own operations, including arrangements such as the Code of Conduct for MSPs, which contains provisions on lobbying which apply equally to all Members (including Scottish Ministers) and the Government therefore recognises that the Parliament has a particular interest in the subject matter of the Bill. The Bill takes account of the findings of the recent Inquiry by the Parliament's Standards, Procedures and Public Appointments Committee ("the Committee") into lobbying in Scotland. The Committee concluded that legislation in this area was necessary and appropriate, and invited the Government to consider the proposals set out in its report dated 6 February 2015. In its report the Committee expressed the view that "the Parliament must be assured that the new registration process does not inhibit those seeking to legitimately lobby Parliament and Government. The Parliament must be able to change this new system if it considers this is the case."

10. It is these considerations which have informed the decision to confer power on Parliament to make provision by resolution. Adoption of the parliamentary resolution process means that the usual 'affirmative' or 'negative' procedure associated with Scottish Statutory Instruments ("SSIs") is not relevant in this context. As with resolutions made under the Interests of Members of the Scottish Parliament Act 2006, it is envisaged that any necessary further procedural provision in relation to the making of parliamentary resolutions under the Bill would be made in the Parliament's Standing Orders. By way of example Rule 1.8 of the Standing

Orders sets out procedural provision applicable to parliamentary resolutions under paragraph 10(2) of the schedule of the Interests of Members of the Scottish Parliament Act 2006.

11. The requirement (in terms of section 47(1) of the Bill) for prior consultation with Scottish Ministers reflects the fact that those requiring to register and report details of lobbying activity for inclusion in the lobbying register include not only persons communicating with MSPs in relation to ‘parliamentary functions’ but also those communicating with Ministers and, following amendment of the Bill at Stage 2, Special Advisers in relation to ‘Government functions’. The Scottish Ministers therefore also have a particular interest in any further provision which the Parliament proposes to make by resolution about the operational aspects of the regime.

12. The provision made in section 47(3) and (5) to (7) of the Bill for resolutions to be published in the same way as SSIs will, as noted above, ensure that resolutions under the Bill – which may impose or vary obligations on private individuals and other persons to register and report lobbying activity under the Bill – are published in a recognised format so as to be easily accessible.

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