

Scottish Alliance for Lobbying Transparency (SALT)

Submission from the Scottish Alliance for Lobbying Transparency (SALT) to the Public Audit and Post-legislative Scrutiny Committee, February 2021.

Summary of recommendations

We thank the Committee for inviting SALT to respond to its draft report on the post-legislative review of the Lobbying (Scotland) Act 2016. Our response makes the following recommendations:

- In recognition of the growing importance of remote working and existing best practice in major democracies, we believe that the Committee should explicitly recommend that communications covered by the Act are extended to cover, at least, all calls made for the purposes of lobbying in whatever format.
- To provide much needed insight on whether or not the register provides sufficient transparency and accountability, we recommend that the Committee and any subsequent review by the Parliament or Government engages with journalists, researchers, and other experts who specialise in lobbying.
- To limit delays to much-needed changes to the Act, we recommend that the impact assessment should be completed promptly and be time-bound to ensure that the Committee has sufficient time to consider its conclusions and issue final recommendations before March 2022.
- To provide much-needed information regarding expenditure on lobbying and its impact on access to the democratic process, registered organisations should be required to submit annual estimates of any expenditure undertaken for the purpose of seeking to influence a decision of the Scottish Parliament or Scottish Government, with thresholds in place to prevent this requirement overburdening smaller organisations.
- To increase the efficiency and effectiveness of the reporting, we recommend moving to a campaign-focused disclosure system, as is the case in Canada, where registered organisations log their high-level objectives periodically, and individual interactions within these campaigns as and when they occur.
- To ensure that key decision-makers are covered by the lobbying register, we support the Committee's recommendation that the Act should be extended to cover civil servants, particularly those in SC1 or SC2 levels.
- To ensure meaningful scrutiny of decisions and how they were reached, we support the Committee's recommendation to increase the frequency of information disclosure to quarterly periods.

We would be happy to engage further with the Committee and any relevant civil servants on the implementation of these recommendations.

The impact and operation of the Act to date

Impact assessment

There should be recognition that registered organisations are not the end-users of the lobbying register. Understanding the needs of these end-users, namely journalists, researchers, civil society organisations, and the general public, is therefore essential if the Committee is to ensure that the lobbying register is widely used and contributes to transparency and accountability.

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We know from our own work that there is demand for tools which provide information on who decision-makers are meeting and why. For example, Transparency International UK's Open Access UK hub collates, cleans, and publishes ministerial meeting data in an accessible, searchable format, and is regularly used by journalists and researchers. The Committee should seek to understand what makes tools like these accessible, and what other lobbying registers do well. It can then apply these lessons to the review of the Scottish lobbying register itself.

One option for engaging with the end-users of the register include hosting focus groups. However, these should be conducted in a timely manner to avoid further delays to much-needed reforms of the register.

We also support the Committee's recommendation that the Scottish Government should commission a full impact assessment of the Act and provide this to the Scottish Parliament. We agree that this should consider not only the impact of the Act on registered organisations but also how well it meets broader transparency and accountability objectives.

To provide much needed insight on whether or not the register provides sufficient transparency and accountability, we recommend that the Committee and any subsequent review by the Parliament or Government engages with journalists, researchers, and other experts who specialise in lobbying.

Timeline

While we recognise the importance of the impact assessment for creating a lobbying register that is fit for purpose, we also wish to express our concern that the impact assessment does not lead to further delay to much needed changes. These changes are particularly pressing given the unforeseen challenges that the Covid-19 pandemic has posed for information gathering on lobbying activity in Scotland, which we provide further detail on below.

With the register coming into force in March 2018, the two year 'review period' ended in March 2020. Section 50 of the Lobbying (Scotland) Act 2016 specifies that a committee or sub-committee of the Scottish Parliament should publish a report on the operation of the Act no later than two years after the end of the review period, which will be March 2022. As the Committee recognises that its recommendations will need to be reviewed in light of the impact assessment's conclusions, we believe that the impact assessment should also be bound by this two-year timeframe.

To limit delays to much-needed changes to the Act, we recommend that the impact assessment should be completed promptly and be time-bound to ensure that the Committee has sufficient time to consider its conclusions and issue final recommendations before March 2022.

The status quo or legislative reform

Communications coverage

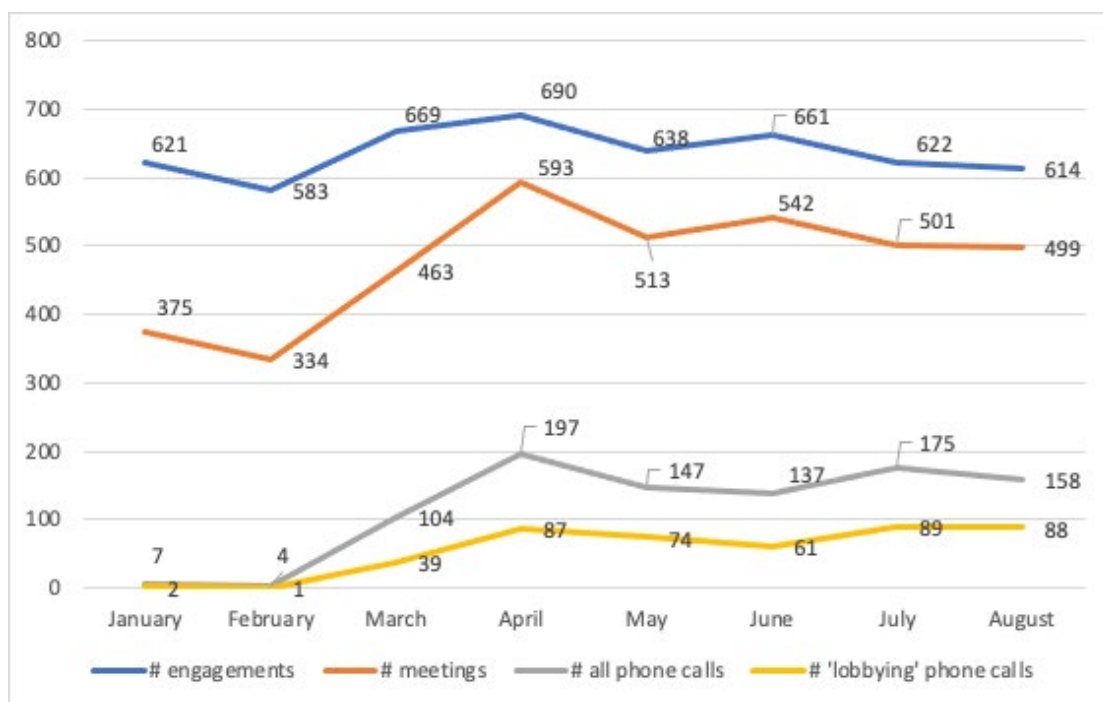
Although the Committee recognises that the register only provides a partial view of lobbying in Scotland, it stops short of recommending an extension of the Act to include a broader range of communications. We strongly urge the Committee to reconsider this position and recommend that the Act is extended to include, at the very least, phone calls within the definition of regulated communications.

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As we noted in our evidence to the Committee, the current definition of regulated lobbying is so narrow in scope as to be almost meaningless. This focus is notably out of step with other major democracies, with registers in Ireland and Canada covering all forms of communication with decision-makers, however made. Even countries with less comprehensive lobbying registers, such as the US and the UK, include oral and written communications in their definitions of lobbying. The focus on face-to-face lobbying has also led to notable confusion when using video conferencing software, leading to a 'Zoom loophole' in which the switch of a button to turn your camera off marks the distinction between unregulated and regulated lobbying.

More than this, in an era of socially distanced working, the omission of phone calls means that we understand very little about who has been lobbying policymakers and why. Phone calls have taken on increased importance as a form of communication over the past year - as is evidenced by monthly data provided by the Scottish Government on ministerial engagements. A mere seven phone calls are recorded in the Ministerial engagements data in January 2020, representing just over 1% of all engagements for that month. In April 2020, this had shot up to 197 calls, representing nearly 29% of all engagements for that month. The graph below shows far higher numbers of phone calls taking place during the 'Covid-19 period' of March - August 2020 than in the first months of the year when social distancing was not in place.

However, less than 2% of the 918 phone calls made by Ministers between March and August 2020 are recorded in the lobbying register. Of these phone calls, 438 took place with organisations which could conceivably be carrying out lobbying, namely private companies or businesses, representative bodies (including trade unions), and charities and NGOs. This represents nearly half (48%) of all the phone calls that took place in this time period. Please see Annex 1 for more information on this data.



This graph shows Ministerial engagements data for January - August 2020, broken down into subsets. Please see Annex 1 for more information.

While we acknowledge that many of these phone calls would not be counted as regulated lobbying, there is still a significant body of communication with external stakeholders that is not being captured by the register. Furthermore, we flag this data not to suggest that there is any

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wrongdoing happening on these phone calls, but to demonstrate the problem with the limited scope of the lobbying register as it is. We only know that these phone calls happened because they were recorded elsewhere, yet the public is left entirely in the dark when it comes to the same interactions carried out by other decision-makers, such as MSPs.

Comparing the information captured by the lobbying register and Ministerial meetings data also highlights the complications that arise from the current definition of regulated lobbying, with some engagements noted as video calls in the lobbying register and as phone calls in the ministerial engagements data. These discrepancies demonstrate the arbitrary nature of the current definition; two parties to the same conversation can come to a different conclusion about the type of technology used to facilitate this conversation, but only one of these counts as regulated lobbying. This lack of clarity inevitably leads to important information being lost and could be easily resolved by expanding the communications coverage to include all calls in whatever format.

The draft report notes that the Committee would need to be persuaded that any 'extension to the scope of the Act would not only improve the overall transparency of lobbying activity but also contribute to the broader objectives of increasing openness, accountability and engagement in the work of Government and Parliament.' We argue that increasing openness and accountability will not be possible unless the Committee also acknowledges the fundamental shift towards remote working that has occurred. It is likely that at least some form of blended working will become increasingly common even if lockdowns are no longer required. With this, the use of calls - video or otherwise - to communicate will only increase.

This point applies to written communications as well, with letters and emails also critical in facilitating communication between decision-makers and registered organisations during social distancing. We reiterate our point, made in our written and oral evidence, that written forms of communication should also be included in the lobbying register, as is done in Canada, Ireland, the US and the UK, if Scotland's register is to provide any meaningful transparency over lobbying.

In recognition of the growing importance of remote working and existing best practice in major democracies, we believe that the Committee should explicitly recommend that communications covered by the Act are extended to cover, at least, all calls made for the purposes of lobbying in whatever format.

Civil servants

We welcome the Committee's recommendation that the Act should be extended to cover civil servants, in recognition of the significant impact and influence the civil service has on policy development, particularly at a senior level.

We agree with this assessment and recommend that, at the very least, senior civil servants are included in the register. We believe that this extension would not be onerous and therefore avoids the imposition of a serious burden on regulated organisations. The Scottish Government last published data on Senior Civil Service Pay in March 2018, covering the Permanent Secretary, Director Generals and Directors, which amounted to nearly fifty positions. Given that the Permanent Secretary's profile suggests there are more than 6,500 civil servants working for the Scottish Government, this represents less than 1% of the Scottish civil service. If we recognise the important role that civil servants play in policymaking, as the Committee does in its report, including such a limited number in the lobbying register's scope could hardly be seen as placing an unacceptable burden on registered organisations.

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To ensure that key decision-makers are covered by the lobbying register, we support the Committee's recommendation that the Act should be extended to cover civil servants, particularly those in SC1 or SC2 levels.

Financial disclosure

We welcome the Committee's openness to including information about expenditure on lobbying activity in the register, alongside their consideration of options such as minimum thresholds, banding systems, and good faith estimate disclosures. Having explained why we believe financial disclosure is important in our written and oral evidence to the Committee, we wish to now provide further detail on how this could operate.

To be able properly to monitor the impact of lobbying it is important not only to count instances of direct contact but also to understand the spending being made on a lobbying campaign. To include this in the Lobbying Register need not be at all onerous. A commercial lobbying company working for a client on a campaign will always have a budget for that campaign (which is what they charge the client). A large organisation with in-house lobbying capacity will usually have a defined budget for a campaign and should certainly be able to identify any spend beyond staff time. Staff time can be roughly allocated to a campaign and so the value of that time is easy to calculate. We believe that thresholds should be in place to avoid an unnecessary burden being placed on smaller registered organisations.

Lobbyists should be asked to estimate the value of their campaign and would not be expected to provide detailed breakdowns of costs. We believe that the definition of what should be included in a campaign is:

any expenditure undertaken for the purpose of seeking to influence a decision of the Scottish Parliament or Scottish Government.

This definition would include the cost of promotional materials and give-aways (even if they are not only given to the decision-maker), the preparation of support materials such as economic impact studies or opinion polling, commercial advertising or paid 'advertorial' and staff time (including on secondary activities such as media promotion), including where it has engaged a communications agency or other external body to carry out this activity. To avoid placing a disproportionate burden being placed on registered organisations, this information could be reported annually.

The easiest way to structure this would be for lobbying organisations to register individual campaigns. Most will involve multiple contacts with politicians and so having a system where individual campaigns are registered (with purpose and financial disclosure included there) and then each individual entry from a lobbying organisation would be linked to a stated campaign. This greatly reduces duplication for organisations with multiple entries for the same overall purpose. The campaign spend would then be registered with the campaign and that also means that, if a campaign grows over time and so the total expenditure rises, simply amending the overall campaign spend would amend each individual entry in the register. We provide further details on this in the non-legislative improvements section below.

To provide much-needed information regarding expenditure on lobbying and its impact on access to the democratic process, we recommend that registered organisations are required to submit annual estimates of any expenditure undertaken for the purpose of seeking to influence a decision of the Scottish Parliament or Scottish Government, with thresholds in place to prevent this requirement overburdening smaller organisations.

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Frequency of submissions

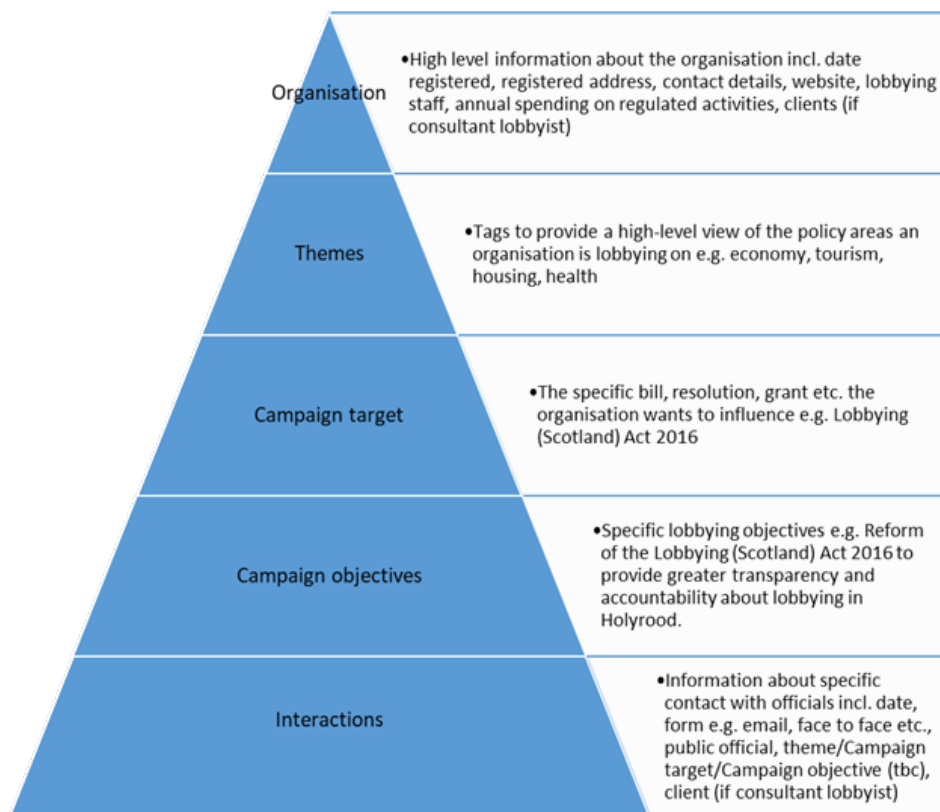
We support changing the reporting timelines to every three months instead of every six. We further note that this change should be brought forward as promptly as possible given the frequency and pace of important decisions being made due to the pandemic.

To ensure meaningful scrutiny of decisions and how they were reached, we support the Committee's recommendation to increase the frequency of information disclosure to quarterly periods.

Non-legislative improvements

We support the Committee's recommendations to make the lobbying register less burdensome and resource intensive for registered organisations and more accessible for members of the media and general public. To achieve these goals, we recommend that Scotland's lobbying register adopts a similar system to that used in Canada.

One of the issues with the current register is that the details of organisations' campaign objectives are hidden in individual disclosures, making them harder to find and more repetitive. Ideally, lobbying registers should act as indexes – a quick and easy way for interested parties to navigate through the library of public policy decisions made by ministers and others.



However, in Scotland's current lobbying register, all of the triangle is combined into one disclosure in the information return. This leads to repetition of data entry by registrants and reduces the analysability of returns.

Feasibly, the top three to four parts of this period could be reported every 6-12 months and nothing much will change. This would cut out repetition. The bottom one (interactions) are much more

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regular and should be reported more regularly. We would recommend that they are reported quarterly, in line with the Committee's current recommendations. These interactions would be broadly similar to the 'Communication reports' in the Canadian system, however we recommend that the intent or objective of the interaction is included too, as is the case in Ireland.

We believe that these changes would be beneficial to the Lobbying Registrar team, registered organisations, and end-users. They would enable the team to gather more information, with less frequent input from organisations, and present the information in a far clearer and more accessible format for end-users.

To increase the efficiency and effectiveness of the reporting, we recommend moving to a campaign-focused disclosure system, as is the case in Canada, where registered organisations log their high-level objectives periodically, and individual interactions within these campaigns as and when they occur.

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ANNEX 1: Phone Calls in Ministerial Engagements Data and the Lobbying Register

This Annex provides more detail on our research comparing data available in the ministerial engagements data and the lobbying register. All of this information is publicly available and was accessed on 21 January 2021.

To ensure clarity, we use the following definitions:

- **Engagements** is a catch-all term for all types of engagements carried out by Ministers as part of their duties, including meetings but also activities like openings, launches, and media briefings or interviews.
- **Meetings** are a sub-set of these engagements and can take place in-person, via video-conferencing, or over the phone.
- **Phone calls** are a sub-set of meetings and describe everything that is classified explicitly as such in the diaries. We wish to flag that inconsistencies in the data mean that this may miss out on some conference calls or similar which may have been phone calls and were not recorded as such; conversely, it may also include some calls which were actually video conferences but were recorded incorrectly.

We look at Ministerial engagements data from January to August 2020 as this information can be cross-referenced with the lobbying register, which contained information up to August 2020 at the time of access.

Ministerial diaries

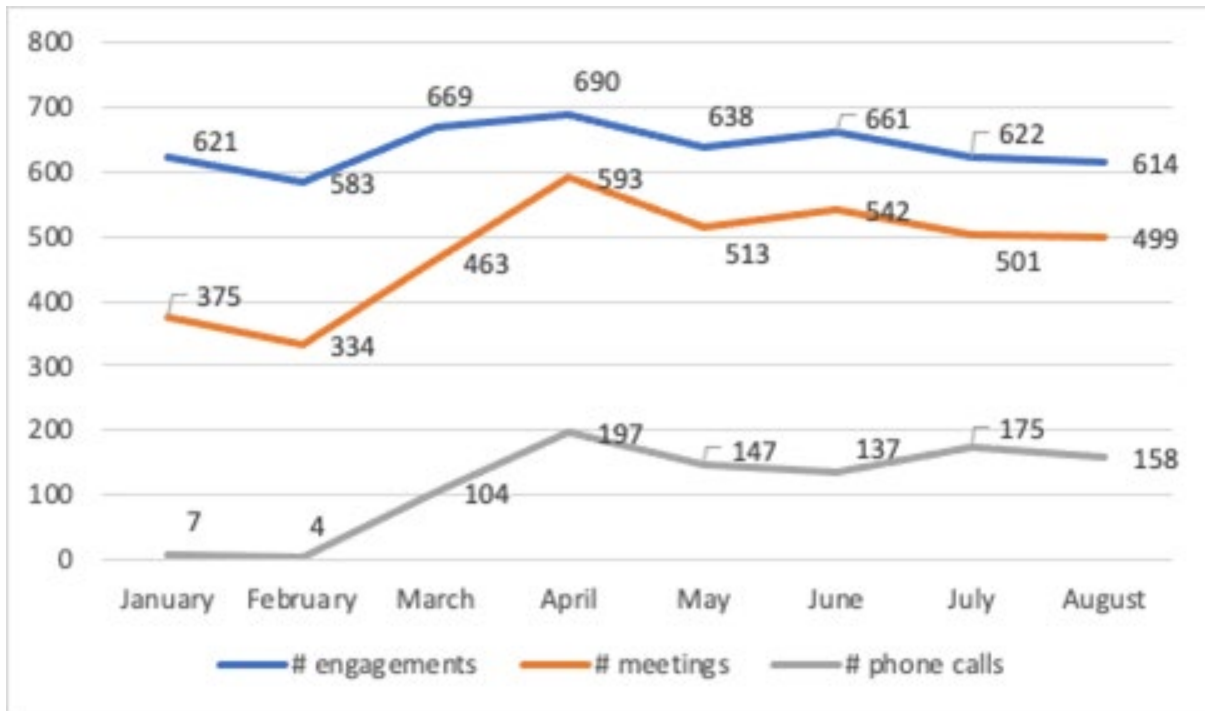
The table and chart below summarise the data from the ministerial engagement diaries, showing how many engagements, meetings and phone calls there were in the available months in 2020.

Meetings constitute 75% of all ministerial engagements in the period January - August 2020, while phone calls comprise 18% of all engagements and 24% of all meetings in the same period. During the 'Covid-19 period' (March-August 2020), 80% of all ministerial engagements are meetings, while phone calls represent a quarter of all engagements (24%) and almost a third (30%) of all meetings.

It is important to reiterate that many of these phone calls will be between policymakers or other non-regulated groups and would therefore not constitute lobbying under any definitional changes we propose.

	January	February	March	April	May	June	July	August	Totals for entire period	Totals March-August
# engagements	621	583	669	690	638	661	622	614	5098	3894
# meetings	375	334	463	593	513	542	501	499	3820	3111
# phone calls	7	4	104	197	147	137	175	158	929	918

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Lobbying register

There was a total of 358 records in the January-August 2020 period which related to lobbying of a Minister, with 170 of these taking place during the 'Covid-19 period' of March - August 2020. It is important to note that not all of these lobbying records relate to meetings – some relate to virtual roundtables, speeches and so on, i.e. all kinds of engagements someone might have had with a minister. There are also inconsistencies in the data, with some entries in the lobbying register noted as video calls but recorded as phone calls in ministerial diaries. We only use the latter in our analysis.

Looking at the March - August 2020 period, we can see that most lobbying is recorded in the ministerial diaries - 123 lobbying records can be matched back, which represents 72% of all ministerial lobbying records. With 4 records uncertain, this number could be higher still. 43 records, which represents 25% of all ministerial lobbying records, are not noted in the ministerial diaries.

However, if ministerial engagements are narrowed down to phone calls, very few can be matched back to the lobbying register. Only 13 or 14 phone calls appear in the register, which represents 1.4-1.5% of all 918 phone calls. Again, not all of these 918 phone calls would be counted as lobbying in any definitional expansion that we advocate, because they may have taken place with unregulated groups such as fellow Ministers, MSPs, and MPs. However, some of them may have, which we identify in the following section.

	January	February	March	April	May	June	July	August	Totals for entire period	Totals March-August

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Total ministerial lobbying records	123	65	60	16	19	27	19	29	358	170
All engagements										
Lobbying noted in ministerial diaries	58	47	44	11	14	18	13	23	228	123
Unsure	1	0	2	1	0	0	0	1	5	4
Not in ministerial diaries	64	18	14	4	5	9	6	5	125	43
Phone calls										
Phone calls in lobbying register	0	0	1	5 or 6	2	2	2	1	13 or 14	13 or 14
Phone calls not in lobbying register	7	4	103	191 or 192	145	135	173	157	915 or 916	904 or 905

(Numbers in red indicate where a lobbying engagement took place with more than one minister, but is not noted in all relevant ministers' diaries)

Possible instances of lobbying not captured by the register

In identifying which engagements could have constituted lobbying if the Act covered phone calls in its definition of regulated lobbying, we excluded phone calls that took place between Ministers and:

- Fellow Ministers, MSPs, MPs, AMs, and MLAs
- Councillors (except those with councillors representing COSLA)
- Diplomats
- Police chiefs (SPS, SPF, SPA, Chief Constables and so on)
- Academics, universities, and teachers (except those representing organisations, such as Early Years)
- Government bodies, members of government programmes (such as the Banking and Economy Forum), non-departmental public bodies (such as Scottish Futures Trust and Creative Scotland), and government-owned companies (such as David MacBrayne Ltd)
- NHS regional representatives or bodies

In cases of uncertainty, we were guided by the 'subject' of the meeting. This definition therefore only leaves private companies and businesses, representative bodies (including trade unions), and charities and NGOs. Again, we recognise that not all phone calls between these groups and Ministers will constitute lobbying, however we believe the following data gives a useful illustration of how much information the lobbying register *could* be missing.

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Based on the above criteria, phone calls which could constitute lobbying represented 11% of all engagements of all Ministerial engagements, 14% of all meetings, and almost half (48%) of all phone calls that took place between March and August 2020.

	January	February	March	April	May	June	July	August	Totals March- August	Totals for entire period
# engagements	621	583	669	690	638	661	622	614	3894	5098
# meetings	375	334	463	593	513	542	501	499	3111	3820
# phone calls (all)	7	4	104	197	147	137	175	158	918	929
# 'lobbying' phone calls (i.e. with exclusions outlined above)	2	1	39	87	74	61	89	88	438	441

