

Conclusions on the Consultation on the Scope of Guidance for the Register of Consultant Lobbyists

Tuesday 23 December 2014

**Alison J White
Registrar
Office of the Registrar of Consultant Lobbyists**

Background

As Registrar of Consultant Lobbyists, I consulted on guidance concerning the circumstances in which those who conduct the business of consultant lobbying will be required to join the Register. The consultation was open between 21 November 2014 and 12 December 2014, and 17 responses were received from individual organisations and representative bodies. I also attended a number of industry events during the consultation period where I had the opportunity to engage with questions and issues directly from a range of stakeholders. During this period, I set out to engage with stakeholders and listen carefully to what they had to say, whilst reiterating that I would make no comment on the content of the legislation, or the process of legislating, or express opinions about how the legislation might be changed or developed in future.

This paper presents a summary of my conclusions from the consultation, develops the clarification on frequently asked questions and sets out next steps for the publication of guidance. I envisage that building understanding and engagement will be a process, rather than an event, and I intend to continue to engage in the spirit in which I have started. I welcome continuing dialogue and encourage potential registrants, users and other stakeholders to engage with me in the development of the Register.

Registration process

In order to deliver the requirements of the Act, the following information will be required at the point of registration (further clarification has been provided in response to questions asked by respondents):

Company	<ul style="list-style-type: none"> • Its name, its registered number and the address of its registered office, and • the names of its directors and of any secretary and any shadow directors;
Partnership	<ul style="list-style-type: none"> • the names of <u>all</u> the partners and the address of its main office <u>or</u> place of business (this can be the address from which lobbying is conducted);
Individual	<ul style="list-style-type: none"> • the individual's name and the address of the individual's main place of business (or, if there is no such place, the individual's residence, or alternative business address where the individual may be contacted);
All	<ul style="list-style-type: none"> • VAT registration number;
All	<ul style="list-style-type: none"> • Any name or names, not included under paragraphs above, under which the person carries on business as a consultant lobbyist;
All	<p>A statement of:</p> <ul style="list-style-type: none"> • whether there is in place an undertaking by the person to comply with a <u>relevant</u> code of conduct, and • if so, where a copy of the code may be inspected. <p>Relevance is determined by relevance to consultant lobbying, and may be a code of conduct for organisations or individuals. One code of conduct is sufficient.</p>

Timing of registration

Part 1 Section 1(1) of the Act states: "...a person must not carry on the business of consultant lobbying unless the person is entered in the Register of consultant lobbyists." A consultant lobbyist individual or organisation could register in advance of having carried out any specific lobbying activities (or receiving payment to do so) even if there were no specific lobbying activities envisaged at the point of registration, if such activities were envisaged at some point in the future.

A number of individual organisations confirmed they would find it beneficial to register in such circumstances.

I recognise that there may be circumstances where relevant lobbying is carried out without having registered in advance (such as a consultant lobbyist inadvertently not realising registration was required). In these circumstances, I envisage that the consultant lobbyist will then register by the end of the quarter in which the lobbying activity took place.

Information updates

Under the Act, the following information will be required on a quarterly basis, starting with information from the quarter immediately prior to registration (the pre-registration quarter):

The name of the client(s) on whose behalf oral or written communications were made (or payment was received in order to make) to a Minister, Permanent Secretary (or equivalents) relating to the development, adoption or modification of any legislation, policy, financial arrangement or exercise of any function of Government. This includes lobbying for the status quo.

Within each return, the Register will be able to accommodate a separate information update for each client for whom the registrant has carried out relevant lobbying activity in that quarter (a "relevant lobbying activity" may consist of one, or many different, lobbying activit[y]ies).

I explored the appetite of the industry to provide additional information on a voluntary basis that would enable users of the Register to be able to identify which client's interests were being represented in a particular communication, by declaring the name of the Minister or Permanent Secretary to whom the communication was made. Such information is not mandated by the provisions of the Act, and would have to be provided voluntarily. There was no appetite to provide additional voluntary

information at this stage, although a number of organisations said they would provide it if asked to do so.

Nil returns

Nil returns will be required. I will give further consideration to the wording of the statement used for declaring nil returns, taking account of consultation feedback.

Points of clarification

I have further updated the points of clarification included in the consultation based on feedback received. It is my intention to include these frequently asked questions in a section on my website, which will be updated on a regular basis.

Q i: What constitutes “oral or written communications” (Act reference: Part 2(3)) made personally to a Minister of the Crown or Permanent Secretary.”

A: Oral and written communications include electronic communications such as email and social media where the Minister or Permanent Secretary is addressed personally, during the period when they hold that office.

Communications to a Government department, Special Adviser, administrator or Private Office do not require registration, nor does a tweet or any other message through social media, where a Minister is tagged but not directly addressed.

Exemption will not be provided if: a Minister is addressed in their capacity as a constituency MP; is being addressed in a party-political context such as at conferences; the nature of the discussion is considered confidential; the lobbyist attends a meeting but does not speak; or the Minister initiates the contact.

One incidence of direct communication will trigger the requirement to register; it will not be necessary to register all the different components which go to make up that incidence.

Q ii: What is the relevance of the location of the consultant lobbyist and the person to whom the communication is made (Act reference: Section 2(4))?

A. The relevant issue is whether the recipient of the communication is a Minister of the Crown or Permanent Secretary (or equivalents). It does not matter whether they, or the communicator, are inside or outside the UK when the communication is made.

However, if the communicator is an official or member of staff of a sovereign power or Government outside the UK, or an international organisation, registration is not required (Act reference: Schedule 1, Paragraph 1(3)).

Q iii: When is lobbying considered to be “incidental” to the carrying on of non-lobbying business (Act reference: Schedule 1, Paragraph 1(1))?

A. “Incidental” means ancillary to the main focus of a business (which is not lobbying). The making of the communication is connected with the business, but is secondary to its main concern. For example, a doctor makes representations to a Government Minister on behalf of a patient (their client) to argue for provision of a drug necessary to the patient’s treatment being provided by the NHS. This could be done in person or in writing. In this case, the main focus of the consultant’s business is to provide care to their patient and therefore the nature of the communication is incidental to the main focus of it.

The making of communications cannot be considered to be merely incidental where it is a substantive part of the business, even if it is not the largest part. There is no specific threshold for the amount of interaction that would meet the definition of lobbying: the definition is qualitative, not quantitative.

Situations may arise in which the main focus of a business may be law, accountancy or management consultancy, but the subjects on which the organisation communicates with Ministers or Permanent Secretaries and/or the method and frequency of the communications, requires them to register. For example, the organisation may have a Government Relations team, lead Partner or any other person whose job it is to communicate with Ministers and Permanent Secretaries on behalf of the firm’s clients. The fact that the firm considers this service incidental to their business does not mean that they are not lobbying: it is the making of relevant communications that is significant.

In terms of client confidentiality, any professional would be expected to keep client affairs confidential unless disclosure is required by law. Here, the disclosure of client names would be required by the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act (2014) and professionals who are required to register, would have a duty to inform their client accordingly.

Q iv: Will organisations representative of a particular class or description of people be required to register (Act reference: Schedule 1, paragraph 2)?

A. This refers to a group of, for example, workers, club members or consultant lobbyist trade-body members. Those organisations representing such groups are exempt from having to register even if they lobby Ministers of the Crown or Permanent Secretaries.

Organisations such as the Institute of Directors, Trade Unions and Trade Associations are exempt from registration, but in the case that they were, for some reason, to accept payment from a third party who is not part of the group they normally represent, in exchange for communications made to Ministers or Permanent Secretaries, then they would be required to register.

Charities are exempt from registering as long as they do not receive payment for making communications from the person upon whose behalf it is made (Act reference: Schedule 1, paragraph 7). However, if a charity received payments from the person upon whose behalf it made communications; it would be required to register.

Q v: What is the definition of a Minister/Permanent Secretary?

A. According to the Act (Act reference: Section 2, paragraph 6) “Minister of the Crown” means the holder of an office in the Government, and includes the Treasury; and “Permanent Secretary” means a person serving the Government in the position of Permanent Secretary, or second Permanent Secretary, in the civil service of the state or an equivalent position listed below (Act reference: Schedule 1, Part 3, paragraph 11):

- Cabinet Secretary
- Chief Executive of Her Majesty’s Revenue and Customs
- Chief Medical Officer
- Director of Public Prosecutions
- First Parliamentary Counsel
- Government Chief Scientific Adviser
- Head of the Civil Service
- Prime Minister’s Adviser for Europe and Global Issues.

The critical issue is whether consultant lobbying activity as defined by the Act is taking place - in such circumstances, it is irrelevant if the Minister is also a constituency MP; if the matter is unrelated to the Minister’s ministerial role; if the Minister is appointed to an unrelated department or if the matter is a Party issue.

Other Issues

Guidance

It is my intention to issue formal guidance about the process of registration towards the end of January, to enable potential registrants to start to prepare. I will continue to engage with representative organisations during this period to address any issues of clarification which may arise. I also wish to encourage individuals and organisations to contact my office (using the email address enquiries@orcl.gov.uk) if they have individual queries which have not been resolved by the frequently asked questions. The FAQs will shortly appear on my website.

Technical solution

I am overseeing a project to develop a suitable technical solution for the Register. I anticipate wishing to engage potential users in testing and piloting the system, probably towards the end of February, and I will be seeking volunteers to support this in January. As part of the project, I am exploring where there is scope to enable any upload of data files direct by registrant organisations to minimise the burden of compliance.

Fees and charges

The quantum and structure of fee is not a matter for me, although I continue to engage with the Cabinet Office to provide information where that is helpful for them in development of policy.

Expressions of interest

Following the publication of guidance, it is my intention to seek expressions of interest in joining the Register, which I anticipate will assist me in my preparations for its launch. I will invite these expressions around the end of January.

Conclusion

Continuing in the spirit of positive engagement, I have published my initial response to the consultation on the process of registration. I have also set out what I anticipate will happen during the first quarter of 2015, and the plans I have to continue to engage with industry stakeholders, in order that we can move towards implementation with a structured plan.