

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

How to respond: Email your responses to enquiries@orcl.gov.uk with the subject line “Consultation Response”

Deadline for response: Friday 12th December 2014

Introduction

[The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act \(2014\)](#) (“The Act”) establishes the requirement to create an online statutory register of organisations that conduct the business of consultant lobbying as defined in Part 1, Section 2 of the Act. The Government’s intention behind the introduction of a register of consultant lobbyists was to enhance the transparency of those who seek to influence decision-makers and to allow the public to scrutinise the clients who are paying for representation. The Register is designed to complement the Government’s existing transparency regime, whereby Ministers and Permanent Secretaries publish details of meetings with external organisations.

As Registrar of consultant lobbyists, I have a duty to monitor compliance with the requirement to register and the power to undertake enforcement action in instances of non-compliance. In the first instance, I intend to work with all those affected by the Register to ensure they are clear on what is required of them and to encourage registration. It is my intention to issue guidance in stages, with priority given to the resolution of the most pressing issues.

There have been many questions about the circumstances in which those who conduct the business of consultant lobbying will be required to join the Register. The objective of this consultation is to explore the information that will be provided both in the process of registration and in the quarterly updates and to answer questions that have been asked in order to help potential registrants understand whether or not they are required to register.

Following this consultation I intend to publish guidance to cover the issues outlined in this document. I will then issue further guidance on matters of fees and charging in due course.

Registration Process

Under the requirements of the Act, consultant lobbyist organisations must join the Register and declare information about their organisations. They must also make information updates about lobbying activity conducted within a quarter.

In order to deliver the requirements of the Act, the following information will be required at the point of registration:

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 the partners and the address of its main office or place of business;
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);
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 relevant code of conduct, and • if so, where a copy of the code may be inspected.

1. Is there any aspect of the proposed information that is unclear or that you disagree should be provided?

Timing of Registration

I see no reason why a consultant lobbyist organisation could not register in advance of having carried out any specific lobbying activities (or receiving payment to do so) even if there were no particular lobbying activities envisaged at the point of registration, in order to demonstrate a commitment to transparency.

2. Do you agree that registration could happen ahead of an organisation carrying out specific lobbying activity?

3. Do you think organisations would be willing to register ahead of having carried out any specific lobbying activities?

Information Updates

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

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.

- 4. Is there any aspect of the proposed information that is unclear or that you disagree should be provided (please read the clarification which follows later in the document before answering this question)?**

Providing additional information

The Register of consultant lobbyists was introduced to complement existing Government transparency initiatives, as highlighted earlier. It was intended that members of the public could locate a consultant lobbyist organisation in a Ministerial meeting return and find which clients they represent using the Register.

It is my opinion that the spirit of the legislation would be better served if the public were able to identify which client's interests were being represented in a particular communication. Registrants would be able to optionally declare the name of the Minister or Permanent Secretary to whom they communicated and the dates on which communications were made. This would also allow registrants to publicly subscribe to a level of transparency and ethical business-practice beyond what is required by the legislation. To this end, I envisage encouraging organisations that have an interest in demonstrating principles of transparency to provide the following additional information:

Name of Minister, Permanent Secretary (or equivalents) to whom oral or written communications were made personally (or have received payment in order to make) relating to the development, adoption or modification of any legislation, policy, financial arrangement or exercise of any function of the Government.

The date on which this lobbying activity was conducted, if applicable.

- 5. Do you agree with the principle behind disclosing the identity of the Minister with whom a particularly communication was made?**
- 6. Would you provide this additional information if given the ability to do so?**

Nil Returns

It may be the case that a consultant lobbyist organisation does not conduct activities which meet the definition of consultant lobbying in every quarter within a financial year. Rather than have these organisations join and leave the Register depending on their activities, I intend to allow organisations to submit a statement declaring that no consultant-lobbying activity has been conducted.

I envisage organisations being able to join the Register without having conducted consultant lobbying activity in a quarter and therefore providing the following information on a quarterly basis:

A statement confirming that no lobbying activity has been conducted nor payment for lobbying activity has been received.

- 7. Do you agree that this information should be provided?**

- 8. Is there any aspect of the proposed information that is unclear or that you disagree should be provide**

Points of Clarification

I have received questions of clarification on a number of additional issues for which I have provided answers below:

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.

Communications to a Government department, administrator or Private Office do not require registration, nor does a tweet or any other message 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 or if the Minister initiates the contact. One incidence of direct communication will trigger the requirement to register.

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 making representations on behalf of a sovereign power or Government outside the UK, or an international organisation, registration is not required (Act reference: Schedule 1, Paragraph 3(1)).

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 their business.

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, but I expect potential registrants to err on the side of caution in respecting the principles of transparency and ethical business practice.

Situations may arise in which the main focus of a business may be law, accountancy or management consultancy but the way in which the organisation communicates with Ministers or Permanent Secretaries and/or the frequency of the communications requires them to register. It should be borne in mind that preparation including planning, research, analysis and travelling all contribute to the process of lobbying and must be taken into consideration when considering whether registration is required. For example the organisation may have a Government relations team 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, as the main course of the business of the Government liaison team is to make representations to the Government.

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 which clarifies that certain communications are not made "in return for payment"). However, if a charity received payments from the person upon whose behalf it made communications, it would be required to register.

- 9. With references to questions (i-iv) above and their respective answers, what are the outstanding areas of definition that are unclear?**
- 10. Do you have any further questions of clarification or definition?**
- 11. Based on your understanding of the requirement to register, how many organisations or individuals do you estimate would be required to register?**