

Consultation on Compliance Policy for the Register of Consultant Lobbyists

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

Deadline for response: Friday 12 June 2015

CONSULTATION ON COMPLIANCE

Introduction

[The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014](#) ('The Act') defines the business of consultant lobbying and creates a prohibition on this business unless first entered on the Register of Consultant Lobbyists. On 25 March 2015, the Register was launched, bringing the prohibition into effect. Once registered, consultant lobbyists are required to make quarterly information updates in which they declare the clients on whose behalf they have conducted the business of consultant lobbying.

Under Part 1 of the Act, the Registrar of Consultant Lobbyists has "*a duty to monitor compliance with the obligations imposed by or under*" the Act. Since the opening of the Register on 25 March, my approach has been to encourage potential registrants to engage with the Register and to provide the information they need to help them to comply with the legislation. I have previously said that I would issue guidance in stages, with priority given to resolution of the most pressing issues.

Since the launch of the Register, there have been a number of questions about how I intend to enforce compliance, and the potential activities that would bring an organisation into any disciplinary procedures. The purpose of this consultation is to engage with these questions and seek the views of stakeholders about the components of policy on compliance, which I intend to issue in the summer of 2015. This consultation is also an opportunity to build knowledge of the powers to enforce compliance that my position holds and engage organisations that have not interacted with the Register or my Office to date.

I wish to encourage interested stakeholders to participate in the consultation and look forward to receiving their responses.

ALISON J WHITE
Registrar of Consultant Lobbyists

26 May 2015

Matters for Compliance

Under Part 1, section 8 of the Act, the Registrar of Consultant Lobbyists has “a duty to monitor compliance with the obligations imposed by or under this part.”

In order to deliver the requirements of the Act, it is understood that the Registrar has a duty to monitor compliance with the following obligations:

- The requirement to be entered on the Register before conducting [the business of consultant lobbying as defined by the Act](#).
- The requirement to submit complete and accurate information on all registered persons, including for example, address, company number (where appropriate), directorships and code of conduct subscribed to when joining the Register.
- The requirement to submit complete and accurate information updates about clients that registrants have provided consultant lobbyist services on behalf of, in a way described by the Act.
- The requirement to make information updates within the two weeks ending at the end of a quarter.
- The requirement for registrants to provide accurate information about their organisation if there are any changes (such as a change in Directors) whilst on the Register.

1. Is there any aspect of the proposed obligations which the Registrar has a duty to monitor, that are unclear?

It is clear that these obligations present a number of ways in which an organisation can demonstrate non-compliance which differ in severity. It is my intention to develop a framework under which instances of non-compliance can be categorised and dealt with in a manner appropriate to each instance.

I am minded to use the following categorisations:

- **Administrative errors**

Non-purposeful errors made in the course of attempting to comply with the requirements of the Act. Examples might include:

- Spelling errors made in either client returns or organisation information; and
- Minor inaccuracies in the information uploaded.

In instances of administrative error, it would be my intention to engage with the organisation to rectify the mistake and elevate the matter to an issue of non-compliance only if:

- a) No attempt is made to rectify the error; and/or
- b) The error is made repeatedly.

I am minded to discount administrative errors as “material particulars” (see Question 5).

- **Non-compliance**

Where an organisation seeks to avoid joining the Register though legally required to do so, or attempts to interfere with the transparency of the Register by uploading false or inaccurate information. Examples might include:

- Conducting the business of consultant lobbying without first joining the Register;
- An organisation's entry is missing a material particular(s), such as the names of all Directors;
- Uploading of inaccurate or incomplete client names, or failing to disclose clients;
- Submitting information returns outside the period of two weeks at the end of a quarter.

- 2. Is there any aspect of the proposed categories that are unclear or that you disagree with?**
- 3. Do you agree that matters of administrative error should be elevated to matters of non-compliance in the instances stated?**

Offences

Part 1, section 12 of the Act states that:

(1) If a person carries on the business of consultant lobbying in breach of section 1(1) (lobbying whilst unregistered), an offence is committed by:

- (a) the person; and
- (b) any individual who, not being entered in the Register, engages in lobbying in the course of that business.

It is my understanding that if conducting the business of lobbying whilst not being on the Register, then the organisation and certain individuals involved in this business are liable for the offence under section one of the Act. This could include:

- In the case of a company, the Directors of the business;
- In the case of a partnership, the Partners of the business.

In schedule 1, paragraph 4 of the Act states:

“An individual does not carry on the business of consultant lobbying by reason of making communications as an employee in the course of a business carried on by the individual’s employer.”

It is therefore my understanding that an employee cannot be liable for an offence under the Act if they make communications in the course of an employer’s business. This could include:

- Staff who directly communicate with Ministers in meetings in the course of an employer’s business;
- Staff who send communications to Ministers in the course of an employer’s business.

4. Is there any part of this interpretation of who is liable for an offence under the Act that you find unclear or that you disagree with?

Register entry

Part 1, section 12 (2) of the Act states that:

It is an offence for a registered person to engage in lobbying if:

- (a) The person’s entry in the Register is inaccurate or incomplete in a material particular; and
- (b) The person has failed, when required to submit an information return under section 5, to provide sufficient information in or accompanying the return, to enable the inaccuracy or omission to be rectified.

I consider material particulars to be the information required by the Act to be submitted by consultant lobbyists when joining the Register.
I would consider administrative errors to be: <ul style="list-style-type: none"> – Inaccurate information such as misspelling of the names of Directors, typos in addresses and typos in links to code of conduct, and therefore not material.
I would consider non-compliance to be: <ul style="list-style-type: none"> – The declaration of Directors/Partners who do not hold this position (or the omission of Shadow Directors, who should be included); – The declaration of a code of conduct which does not exist or to which the organisation does not subscribe, (for example by stating the code of conduct of a trade body of which the company is not a member); – Missing information such as not declaring the name of a Director or Partner.

5. Do you agree with the interpretation of these terms?

Quarterly Information Returns

Part 1, section 12 of the Act states that:

(3) Where a person is required to submit an information return under section 5, it is an offence for the person:

- (a) to fail to do so within the period specified in section 5(6); or
- (b) to provide information which is inaccurate or incomplete in a material particular.

I consider material particulars to be: <ul style="list-style-type: none"> – The names of clients that have been lobbied on behalf of in a way described by the Act.
I would consider administrative errors to be: <ul style="list-style-type: none"> – Inadvertently misspelled client names, and therefore not material.
I would consider non-compliance to be: <ul style="list-style-type: none"> – Failing to disclose clients correctly, either through omission; or declaring clients not required to be declared under the legislation; – A deliberate attempt to obfuscate or mask the identity of clients; and therefore material.

6. Do you agree with the interpretation of these terms?

7. Do you agree that over-declaration of clients should be considered non-compliance?

Update of information

Part 1, section 5 of the Act specifies that organisations should make updates to their company information (e.g. directorship and address) when making information updates. However, in response to requests from stakeholders, the technical solution was designed to allow registrants to complete information returns and update their information anytime within a quarter.

As updates can be made anytime, as opposed to only on a quarterly basis, registrants should make every effort to ensure that their company information is accurate after any changes occur. I propose that there should be a grace period of 15 working days from the point of any change for an organisation to update their information or contact the Office to arrange for this information to be updated.

- 8. Do you agree that an organisation should be given 15 working days to update their information from the point of it changing?**

Correction of Information

I have been contacted by organisations that wish to know more about correcting information on the Register and whether there would be repercussions for highlighting mistakes they have made. In particular this question focused on clients which have mistakenly been declared and/or mistakenly believed to have been lobbied on behalf of.

In the interests of transparency it is imperative that the Register holds complete and accurate information and I want to encourage registrants to contact the Office at the earliest opportunity to report information they have found to be inaccurate. It makes no difference if the inaccuracy was historic: either it was not material (in which case, no offence) or there was due diligence (in which case, there is a defence). There then remains the question of whether corrections should be signposted to the public.

- 9. Is my interpretation of historic inaccuracies clear, and if not, what further clarification would be helpful?**
- 10. Should corrections be signposted on the Register for the sake of transparency?**

Information Notices

Part 1, section 9 of the Act states that in connection with the duty to monitor compliance, the Registrar may serve an information notice requiring the recipient to provide specified information. Information notices can be served on:

- a) any registered person;
- b) any person who is not entered in the Register but whom the Registrar has reasonable grounds for believing to be a consultant lobbyist.

Registrants

The Registrar is able to serve information notices on any registered person. In instances of inaccuracies of registered information, or the submission of potentially inaccurate client information, the Office would first seek to engage with a registrant to resolve any issues. By way of example, information notices could be served in the following instances:

- A registrant refuses to engage with the Office on matters of inaccuracy or inconsistency;
- During the course of engagement, the registrant provides incomplete or misleading information to the Office;
- A registrant substantially increases or decreases the volume of clients they declare without sufficient explanation.

11. Is there any aspect of the situations in which a registrant may be served with an information notice that are unclear or that you disagree with?

12. Are there any other situations in which you feel it appropriate for an information notice to be served on a registrant?

Non-registrants

The Registrar is able to serve information notices on any organisation or person not on the Register who she believes to be conducting the business of consultant lobbying. Whilst the following criteria alone do not prove that an organisation is conducting the business of consultant lobbying, they are considered grounds for further investigation into the lobbying activities of an organisation:

- Appearance in Ministerial diary return;
- Appearance on APPC or other relevant trade body membership list;
- Presence of a public affairs or public engagement team;
- Description of business activities is similar or identical to that of existing registrants;
- Whistle-blowing from a reputable source.

13. Do you agree that one or more of these criteria could be considered reasonable grounds for believing an organisation to be conducting the business of consultant lobbying?

14. Are there any other criteria which would suggest that an organisation is carrying out the business of consultant lobbying?

Content of information notices

Part 1, section 9(4) of the Act states that an information notice must:

- a) specify the form in which the information must be supplied;
- b) specify the date by which the information must be supplied; and
- c) contain particulars of the right to appeal.

When sending an information notice, it would be my intention to specify under what section of the Act the information notice is being served, and for what purpose the information will be used. An example of an information notice is included in **Annex A**.

There is no limit to the number of information notices that may be issued or the type/extent of information required, though my intention would be to use the tests of proportionality and the public interest in my general approach to the use of such notices.

15. Is there any aspect of the content of/approach to the proposed information notices that is unclear or that you disagree with?

Limitations to information notices

Part 1, section 10(1) of the Act states that an information notice does not require a person to supply information if:

- (a) doing so would disclose evidence of the commission of an offence, other than an offence excluded by subsection (2): the relevant offences are listed below; and
- (b) the disclosure would expose the person to proceedings for that offence.

These offences are:

- (a) an offence under [Part 1 of the Act];
- (b) an offence under section 5 of the Perjury Act 1911 (false statements made otherwise than on oath);
- (c) an offence under section 44 of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath);
- (d) an offence under Article 10 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)) (false statutory declarations etc).

Regulations implemented by the Cabinet Office also introduced the following limitations on information that can be supplied by information notice:

- (a) any communication between a professional legal adviser and the adviser's client in connection with the giving of legal advice to the client about the client's obligations, liabilities or rights; or
- (b) any communication between a professional legal adviser and the adviser's client, or between such an adviser, the adviser's client and any other person, in connection

with or in contemplation of proceedings (including proceedings before the Tribunal and for the purposes of such proceedings).¹

16. Is there any aspect of these limitations that is unclear or that you disagree with?

Information notice offences

Part 1 section 12(3) of the Act states that:

Where an information notice has been served on a person, it is an offence for the person:

- (a) to fail to supply the required information on or before the date by which the person is required to do so; or
- (b) to provide information which is inaccurate or incomplete in a material particular.

In the context of the Act I would consider examples of incomplete or inaccurate responses to an information return to be:

- Information that has been fabricated;
- Information that is incorrect (for example by providing communications between March-May when an organisation was asked to provide information from February-April);
- Information which fails to address all requests made in an information return.

17. Is there any aspect of the interpretation of this offence that is unclear or that you disagree with?

¹ http://www.legislation.gov.uk/uksi/2015/379/pdfs/uksi_20150379_en.pdf, p2

Defences

In January 2015, I published guidance on the requirement to join the Register and make information updates and I have encouraged engagement both with trade bodies and individual organisations from a number of sectors. Where organisations have sought further help beyond the guidance, I have worked with them to answer questions specific to their business.

The Act states that it is a defence for anyone charged under offences under the Act to show that they exercised all due diligence to avoid committing the offence and that:

- (6) A person is taken to have shown [due diligence] if:
- (a) sufficient evidence of the fact is adduced to raise an issue with respect to it; and
 - (b) the contrary is not proved beyond reasonable doubt.

I am seeking views on the circumstances in which an organisation could be considered to have exercised due diligence to comply with the requirements under the Act.

In the case of joining and declaring accurate information on the Register, this could take into account that the organisation:

- Has read the guidance/FAQs available and if unsure, has contacted the Office to confirm points of clarification;
- Genuinely believes that the guidance is incorrect in its interpretation of the Act or does not apply to their business;
- Has attempted to access the online registration system and make a payment, and that in the instance that the Register is unavailable they have contacted the Office to make a paper payment.

18. Do you agree that these circumstances constitute due diligence to comply with the requirement to Register?

19. Are there any other measures that an organisation could take to exercise due diligence?

Communications

The Act makes no comment on the ability or the requirement to publicise compliance activities, including information notices or responses received in relation to notices. I am interested in receiving views on whether any activities should be made available to the public, for how long and whether it is lawful to do so.

Organisations such as the Information Commissioner's Office (ICO) occasionally publicise enforcement activities and the ICO [has a policy](#) that supports the decision on whether, or not to, make such activity public.

We may wish to disclose information because:

- Doing so provides an opportunity for education and will deter others from the same activity;
- Doing so helps to clarify a position of contestation (such as determining under what situation clients should be declared);
- The issue is already in the public domain and publishing details would help to mitigate incorrect speculation.

We may wish not to disclose information because:

- Although steps could be taken to anonymise reports, publishing would still carry a risk of disclosing personal information;
- Publishing would negatively affect or hinder an existing investigation or legal proceeding;
- It is not in the public interest to do so.

20. Do you agree that the Registrar should disclose conclusions to enforcement matters public interest to do so?

21. Should the Registrar record enforcement activity taken against a registrant on the Register?

22. For how long should disclosure of enforcement activity be kept in the public domain?

Annex A: Draft Information Notice

Office of the Registrar of Consultant Lobbyists Information Notice

Transparency of Lobbying, Non-Party Communication and Trade Union Administration Act 2014 section 9

Organisation: Sample Company Ltd
Address: 123 Policy House
Address Rd
London
N10 IK0

Notice to supply information

Under part 1, section 9 of the Transparency of Lobbying, Non-Party Communication and Trade Union Administration Act 2014 (the Act) the Registrar of Consultant Lobbyists (the Registrar) may serve an “information notice” on an individual or organisation in connection with the duty to monitor compliance with the obligations imposed under the Act.

An information notice can be served on:

- (a) any registered person on the Register of Consultant Lobbyists;
- (b) any person who is not entered in the Register but whom the Registrar has reasonable grounds for believing to be a consultant lobbyist.

The information notice requires the recipient to supply information specified in the notice.

Compliance

Under Part 1 of the Act, the Registrar has “a duty to monitor compliance with the obligations imposed by or under” the Act. These are:

- A prohibition on conducting the business of consultant lobbying unless entered into the Register of Consultant Lobbyists
- The duty to supply complete and accurate company information to the Register as required by the Act.
- The duty to provide complete and accurate information in quarterly information returns as required by the Act.

Guidance on the requirements of the Act can be found at:

<https://www.gov.uk/government/publications/register-of-consultant-lobbyists-guidance-on-requirement-to-join>

Nature of complaint

1. Text here will confirm the steps leading to the issuance of an information notice:
 - In the case of a registrant this could include e.g. a description of joining the Register, quarterly returns to date and a history or engagement between the Office and the registrant.
 - In the case of an organisation the Registrar suspects should be on the Register, this could include a description of the reasons for suspicion e.g., Ministerial diaries and correspondence and history of engagement with the Office.

- This will be followed by a description of the compliance issue in relation to the requirements under the Act and how the request for information aids towards an investigation.

Information requested

- Text here will confirm the exact information required by the notice and the date by which it must be supplied. A hypothetical request is as follows:
- In view of the matters described above, the Registrar hereby gives notice of the exercise of her powers under section 9 of the Act. The Registrar requires that [Sample Company Ltd] shall within **[30 days] of the date of this notice**, furnish the Office of the Registrar of Consultant Lobbyists with a copy of the information specified below:*
 - All minutes of meetings and correspondence made to the Minister for [] dating from 1st January 2015 – 31st March 2015.*
 - A copy of the contractual terms of services and all associated documents arranged between Sample Company Ltd and its client Example Group plc*
- This information can be supplied by hardcopy or electronically**

Failure to comply

- Failure to comply with the information requested is an offence under section 12 of the Act and can result in the Registrar making written certification of this fact to the High Court under section 12.

Right to appeal

- There is a right to appeal against this information notice under section 11 of the Act. Appeals can be made to the [] Tribunal. Information about the appeals process can be found at:

Address:	
Email:	
Website:	

- Any notice of appeal should be served to the Tribunal within 28 calendar days of the date on which this information notice was sent. If a notice of appeal is served outside the 28 days it may not be accepted by the tribunal unless it is deemed just and right to do so by reason of special circumstances.

Dated: xx/xx/xxx

Signed:

Alison J White
Registrar of Consultant Lobbyists