

Office of the Registrar of Consultant Lobbyists

*Guidance on compliance with the Register of
Consultant Lobbyists*

July 2015

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Forward

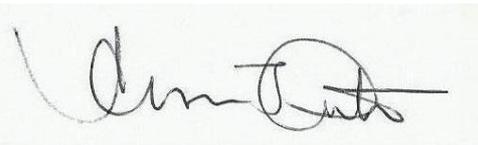
Today I am publishing guidance on compliance with the Register of Consultant Lobbyists in the context of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 (the Act). It forms the second tranche of guidance to support those that need to comply with the requirements of the legislation, and sets out the approach I intend to take to ensure that the requirements of the legislation are properly and fully implemented. I note that at the deadline of submission of the first set of quarterly information returns, there were a number outstanding-no enforcement action has been taken, but I have written to registrants reminding them of their responsibilities.

My approach is intended to be both proportionate and reasonable: I will continue to support and encourage potential registrants who are unsure whether their communications are defined as consultant lobbying in the context of this legislation and working in partnership with them to build experience and compliance. In addition to guidance and regular communications updates, I will continue to undertake round table events with stakeholder groups and answer questions personally and in writing with individual registrants and those who consider they might need to register.

This guidance now recognises the situation that in the event such engagement and support proves to be unsuccessful, I have a range of civil and criminal powers available to me to enable me to enforce the law. I will use those powers should it prove necessary to do so.

If you need support or have a question, please contact my Office at enquiries@orcl.gov.uk or by telephone 020 7271 8827

Yours sincerely



Alison J. White
Registrar of Consultant Lobbyists

1. 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.

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 use the following categorisations under which instances of non-compliance can be categorised and dealt with in a manner appropriate to each instance:

Administrative errors

Non-purposeful errors made in the course of attempting to comply with the requirements of the Act. It should be noted that my Office already checks the detail of the content of all registrations and returns as standard practice and engages with the registrant where errors are found to seek clarification and/or correction. Examples might include:

- Spelling errors made in either client returns or organisation information; and
- Minor inaccuracies in the information uploaded, especially where there are large numbers of directors, partners and/or clients;
- Minor discrepancies in VAT or company numbers;
- An occasional late quarterly return.

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 consider it proportionate and reasonable to discount administrative errors as “material particulars”.

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;
- Joining the Register without envisaging that relevant consultant lobbying will ever take place;
- An organisation’s entry is missing a material particular(s), such as the names of all Directors (but see administrative error above);
- Deliberately uploading of inaccurate or incomplete client names, or deliberately failing to disclose clients;
- Submitting information returns outside the period of two weeks at the end of a quarter on more than one occasion.

2. Offences

Whom is liable?

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 interpretation that if conducting the business of consultant lobbying whilst not being on the Register, then the organisation and certain individuals involved in that organisation will ordinarily be liable for the offence under section one of the Act. This would include:

- In the case of a company, the Directors and Shadow Directors;
- In the case of a partnership, the Partners;
- In the case of an individual (sole trader), that Individual.

By way of further clarification, 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 interpretation that an individual employee will not ordinarily be liable for an offence under the Act if they make communications in the course of an employer’s business: it is the employer (i.e. Director or Partner(s)) who would be liable on their behalf. 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.

In the unusual event that an employee acts outside an employer's business, the employer could still be liable. I would consider the facts on a case by case basis.

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.

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 the names of clients that have been lobbied on behalf of in a way described by the Act.

In respect of my approach to determining the severity of offences regarding Register entries and/or quarterly information returns, I will have regard to my previously stated approach to categorisation of administrative errors or non-compliance. I will consider the extent to which an organisation has engaged with my Office and the steps it has taken to rectify the error in determining whether there is an instance of non-compliance (i.e. whether there has been sufficient due diligence).

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. I encourage registrants to use this facility to ensure that their information always remains correct and up to date.

In accordance with Part 1, section 5(6) of the Act, information returns must be submitted two weeks after a relevant quarter. Whilst I would encourage registrants to correct their information at the earliest possible opportunity, there is no provision for me to require them to do so, until the due submission date.

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 potential defence, in the event of a material inaccuracy).

I intend to consult in due course about the length of time information should be retained in the Register. For the present, however, my view on correction of information applies to all information currently in the Register.

It is my intention to signpost corrections on the Register for the sake of transparency. I am currently considering the most appropriate method to do this.

Nil returns

I have said in previous guidance that registrants who have not made any communications that would meet the criteria of consultant lobbying within a quarter, should submit a nil return. I envisage that it will continue to be acceptable to submit nil returns, in circumstances where it is envisaged that consultant lobbying may potentially take place within a reasonable timescale. If however, nil returns are submitted for three consecutive quarters, my Office will engage with the registrant to establish whether continued registration is appropriate, and I reserve the right to issue an information notice, if I consider that to be necessary.

3. Information Notices

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 usually seek to engage with a registrant to resolve any issues. Potential examples of where information notices might be served include (but are not restricted to) where:

- 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, inconsistent with their past business practice;
- There is whistle-blowing from a reputable source.

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, provided that relevant exemptions do not apply:

- 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;
- The appearance of activity (such as award entries, blogs, case studies, interviews or other promotional material) that appear to indicate relevant consultant lobbying;
- Whistle-blowing from a reputable source.

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, recognising the additional administrative burden response to such notices might involve.

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

These regulations recognise that some documents attract legal professional privilege.

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 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); and
- Information which fails to address all requests made in an information return.

The fact of issuance of an information notice by the Registrar, indicates my expectation that the recipient should treat the provision of the required information with appropriate due diligence.

¹ http://www.legislation.gov.uk/ukxi/2015/379/pdfs/ukxi_20150379_en.pdf, p2

4. Defences

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.

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

- Has made themselves familiar with 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;
- Has organisational procedures/company policies in place of sufficiency to satisfy the Registrar that all personnel were enabled to identify and report instances of consultant lobbying.

It may be that an organisation is acting in accordance with legal advice, on which they may choose to waive legal professional privilege and share it with the Registrar, but they are not obliged to do so to support their defence.

5. Civil and Criminal Penalties

As Registrar, I have a range of civil and criminal penalties available to me, and I reserve the right to use them in the event that I judge circumstances require it. However, it is my intention to continue the approach I have taken so far, which is to engage with and provide help and support, to registrants and potential registrants, and to provide information and communications which enable them to understand their responsibilities under the legislation. At a later stage of development of the Register, I may wish to consult further about the imposition of penalties, in the light of my experience of operating the guidance I have issued so far.

6. 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. Recognising the sensitivity of this issue, I have decided to consult further on communication about enforcement activity, retention of information and how long disclosure should be in the public domain. I will issue a further consultation about this in due course.

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.

This information notice requires the recipient to supply the information specified. In requiring information to be provided, the Registrar recognises that public affairs, wider communications and other lobbying work, which do not require registration, may have taken place.

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.
2. 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

3. 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:
4. *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*
5. **This information can be supplied by hardcopy or electronically**

Failure to comply

6. 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

7. 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:	

8. 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