

Office of the Registrar of Consultant Lobbyists

*Guidance on the requirements for
registration*

November 2015

Guidance on the requirements for registration

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Guidance on the requirements for registration

1. Foreword



As Registrar, I am committed to the effective operation of a statutory Register of Consultant Lobbyists that enables greater transparency of the lobbying process.

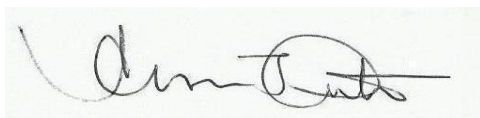
The Register is intended to enhance transparency of the work of those who seek to influence decision-makers and to allow the public to scrutinise whose interests are being represented by lobbyists of the Government.

It is also an opportunity for consultant lobbyists to make clear the codes of conduct to which they subscribe and to enable greater clarity of the role of lobbying in our democratic process.

Central to the success of the Register is ensuring that all stakeholders have the tools and information necessary to comply with the requirement to register. Since the launch of the Register on 25 March, I have issued a number of information bulletins and engaged individually with organisations and representative bodies to clarify and interpret the Act. I am now incorporating those clarifications into an updated version of the guidance; this document supersedes the previous registration guidance and information bulletins which are being removed from my website from 12 November 2015.

I have issued separate guidance about compliance, which is complementary to this guidance document. I have a range of civil and criminal powers of enforcement in the event of non-compliance, but it remains my primary intention to continue to communicate with and educate those who meet the criteria of consultant lobbying to help and support them to comply.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Alison White', written on a light-colored rectangular background.

Alison J. White

Registrar of Consultant Lobbyists

Office of the Registrar
of Consultant Lobbyists

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2. Introduction

Who this guidance is for

This guidance is for individuals and organisations who currently lobby representatives of government or are planning to do so. It is intended to help these organisations to understand whether they are required to join the statutory Register of Consultant Lobbyists as established by the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 (hereafter referred to as the Act).

The guidance should also be used to understand what information must be declared on the Register and at what point an individual or organisation should apply to join the Register under the Act.

This guidance covers:

The registration process

- Where and how to join the Register of Consultant Lobbyists
- What information is required to be submitted at the point of initial registration
- What information is required to be submitted in quarterly information updates.

The requirement to register

- Who is required to join the Register
- The criteria for conducting the business of consultant lobbying
- Who is exempt from joining the Register.

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3. Registration process

3.1. When to join the Register and the consequences of not registering

Section 1 of the Act specifies that an individual or organisation must not carry on the business of consultant lobbying unless they are entered in the Register of Consultant Lobbyists. The business of consultant lobbying is defined in chapter 4 of this guidance.

Any person or organisation intending to conduct the business of consultant lobbying must be entered into the Register before doing so.

Individuals and organisations will also be able to 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.

Section 12 specifies it is an offence to carry on the business of consultant lobbying if an individual or organisation is unregistered. It is also an offence if an entry in the Register is incomplete or inaccurate. This may result in a fine from a Court (although there is a defence of due diligence in such cases). The Registrar may impose a civil penalty (section 14 of the Act).

3.2. Information required at point of registration

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 (see further clarification below);
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 relevant code of conduct, and • if so, where a copy of the code may be inspected.

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Where relevant consultant lobbying has taken place by a trading division (A) (which is not itself a company and does not have a distinct legal personality), of another company (B), the directors of B should be declared. Senior managers (Chief Executive of Division or Head of Practice for example) of A might need to be declared if they were also Directors/Shadow Directors of B. For the avoidance of doubt, a senior manager of A who makes important final decisions on lobbying activity, should be considered a Shadow Director of B and should be declared. If A is a company (with a distinct legal personality, and a subsidiary of B), then the directors of A would need to be declared.

A 'shadow director', is a person in accordance with whose directions or instructions the directors of a UK limited company are accustomed to act. Such a person has the same duties and responsibilities as a director.

3.3. 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) personally to a Minister, Permanent Secretary (or equivalents) relating to the actual or proposed development, adoption or modification of any legislation, policy, financial arrangement or exercise of any function of Government.

Care should be taken to provide the names of clients correctly and in full (acronyms should not be used, unless the acronym is the registered name of the client company). It is important that client names are consistent in all quarterly returns, and also when they are declared by more than one registrant, to ensure the integrity of the information across the Register.

Only one act of consultant lobbying on behalf of a client is required to trigger the need to submit the name of that client in an information update.

Registrants will only have to submit the client name: there is no requirement to list individual communications made on behalf of that client. It does not matter whether a registrant lobbied 20 times for client A and once for client B, the registrant would only be required to submit both client names.

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Registration is required prior to undertaking relevant lobbying activity, but registrants have until 14 days after the end of each quarter to declare their clients (so clients do not need to be declared 'pre-emptively').

Clients must be declared if either relevant lobbying has taken place or payment has been received. This means the same client may be registered in two different quarters for the same lobbying activity. A retainer payment does not trigger the need for a client declaration unless relevant direct communication has taken place.

3.4. Nil returns

Registrants who have not made any communications that would meet the criteria of consultant lobbying within a quarter should submit a nil return, by 14 days after the end of each quarter.

Registrants will have to actively declare that no consultant lobbying had taken place as defined by the Act in this quarter. The following wording will appear on the Register after declaration:

[Organisation] confirms that, during this quarter, it has made no communications which meet the definition of consultant lobbying as defined by the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act.

3.5. Declaring a code of conduct

When joining the Register, registrants will have to declare whether they subscribe to a relevant code of conduct and if so, where that code can be found. A hyperlink to a code which is hosted online can be provided, or the address of the individual or organisation that holds the code.

- Relevance is determined in relation to consultant lobbying, and may be a code of conduct for organisations or individuals. If a code of conduct concerning individuals is declared on behalf of an organisation, it should be so declared only if every member of that organisation subscribes to that code.
- It may be the case that an organisation subscribes to multiple codes of conduct. In this case, declaration of one code of conduct is sufficient and the registrant can choose which they feel is most relevant.
- In the case that the registrant does not subscribe to a code of conduct, the following text will be displayed on the Register:

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[Organisation] does not subscribe to a relevant code of conduct.

3.6. Leaving the Register

If a registrant has decided to discontinue the business of consultant lobbying, they may advise the Office of the Registrar of consultant lobbyists at enquiries@orcl.gov.uk that they wish to be removed from the Register.

- After leaving the Register, a note will appear on the registrant's page confirming that they have discontinued the business of consultant lobbying as defined by the Act. Historical registration information will be kept on the Register for at least one year.
- Should they leave the Register part way through a calendar year, the registrant can apply for a refund of the remainder of the year's fee by contacting the Office of the Registrar of consultant lobbyists at enquiries@orcl.gov.uk
- If, in future, the registrant wishes to recommence the business of consultant lobbying as defined by the Act, they must reapply to join the Register and pay the appropriate fee.

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4. Requirement to register

4.1. Who is required to register?

Section 1(1) of the Act states that a person must not carry on the business of consultant lobbying unless they are entered in the Register of Consultant Lobbyists.¹

Organisations and individuals are considered to be carrying out the business of consultant lobbying if they fulfil the following criteria:

They have made direct oral, written or electronic communications personally to:

a Minister of the Crown, Permanent Secretary (or equivalents) currently in post, referred to as “Government Representatives”

relating to:

- The development, adoption or modification of any proposal of the government to make or amend primary or subordinate legislation
- The development, adoption or modification of any other policy of the government
- The taking of any steps by the Government in relation to any contract, grant, financial assistance, licence or authorisation; or
- The exercise of any other function of government.

This communication is made in the course of a business and in return for payment on behalf of a client, or payment is received with the expectation that the communication will be made at a later date.

They are registered under the Value Added Tax Act (1994).

4.2. What are Government Representatives?

Government Representatives are Ministers of the Crown, Permanent Secretaries (and any equivalents as specified by the Act) of Her Majesty’s Government, in post at the time when

¹ http://www.legislation.gov.uk/ukpga/2014/4/pdfs/ukpga_20140004_en.pdf, , Section 1, pg. 1

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an act of consultant lobbying is carried out. Any communications made to Government Representatives prior to accepting this post, or made after they have left their post, will not trigger the need for registration.

Equivalent positions are listed as follows:

- 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.²

If communications are general and not made on behalf of any client or group of clients, and are made for the purpose of business development, brand enhancement or in the professional interest of the organisation or wider public interest, such communications are not registerable.

When communicating with a Government Representative, the critical issue is whether consultant lobbying activity as defined by the Act is taking place. If the [criteria for consultant lobbying](#) are met, it is irrelevant whether the subject of the communication is unrelated to the Minister's portfolio, if the Minister is appointed to an unrelated department, if the matter is considered to be a party issue or whether the Minister is considered to be acting as a constituency MP – the communication will trigger the requirement to join the Register.

In the event of a reshuffle or reappointment, communications made to a Government Representative will only trigger the requirement to register after they have come in to post as a Minister or Permanent Secretary.

4.3. What communications require registration?

Making communications personally means communicating directly with a Government Representative by name or by title, using oral, written or electronic communication. An example would be writing an email to a Minister of the Crown in which the email is addressed to the Minister specifically.

² Ibid, Schedule 1, Part 3, Paragraph 11, pg. 58

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- Communications made to a government department, special adviser, administrator, a private secretary or a private office, are **not** made to a Government Representative personally. However communications addressed to a Minister but sent via a private office would have to be registered.
- Communications sent by a client (whoever drafted them) or a reply sent from a Minister/Permanent Secretary (even if sought via a RSVP), do not need to be registered.
- If the communication is an invitation, and contains material which meet the criteria of consultant lobbying, then it is registrable. If the invitation contains no such material, it is not registrable.
- Communication with a Minister only needs to be registered if it relates to matters of Her Majesty's Government; this does not include matters relating to local government. An example might be writing to a constituency MP about a local planning issue. In the event that a planning issue is 'called in' to the level of Secretary of State any communications from this point would need to be registered as they then involve matters of Her Majesty's Government.
- In the event that an organisation anticipates at an earlier time that a planning application will be "called in", it would be sensible for registration to take place at that earlier point (consistent with the approach that registration may be made in advance of any specific lobbying activity being envisioned).
- It does not matter from where the communication is made: it could be a face-to-face meeting within a government office, at a restaurant, at a party-political conference or made from overseas: if the [criteria for consultant lobbying](#) are met, then this will trigger the requirement to join the Register.
- In the case of electronic communications, emails that are sent directly to a Minister's address will trigger registration. If using social media where a message directed to a Minister's (official or personal) account is made which fits the criteria for consultant lobbying, this will require registration. However if an organisation were to refer to a Minister's account indirectly, such as by mentioning that the Minister is speaking at an event and tagging the Minister's account, then this would not require registration.
- At times, it may be the case that a Government Representative initiates communications with an organisation or requests a meeting. If in the course of this exchange, the [criteria for consultant lobbying](#) have been met, then the organisation is required to join the Register, regardless of whether they initiated the communications.
- Direct communications can be planned or unplanned – a chance encounter with a Minister would be registerable if all the other criteria are fulfilled.

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4.4. Communicating on behalf of multiple clients

It may be that a consultant lobbyist makes a communication on a single issue on behalf of multiple clients. In the case that the consultant lobbyist was being paid by all clients for this communication, they would have to register each client's name in their quarterly update, no matter how many clients were involved to ensure transparency.

4.5. When is a communication considered to be made?

A communication is considered to be made in the moment that it is sent to a Government Representative. It does not matter if for some reason the recipient does not receive the communication. If the [criteria for consultant lobbying](#) are met, then the organisation making the communication should have joined the Register.

4.6. What constitutes payment?

Lobbying "in the course of a business" requires that an individual or organisation is engaged in lobbying as a commercial activity and in return for payment.

Payment can be in any form and can be made directly or indirectly, meaning a consultant lobbyist cannot avoid registration by receiving payments via a third party. Payment could be made for a specific communication or a retainer that includes a number of communications. It does not matter whether the person or persons making the payment is, or are, the person or organisation on behalf of whom the communications are made.

Lobbying which is conducted without payment, for example as pro-bono, is not required to be registered.

If an employee is on annual or unpaid leave and / or is seconded to / working for a Minister/client, and under direction of that Minister or client (and NOT the lobbyist's employer) this activity is not registrable.

In the case of indirect payments, it is the nature of the relationship and expectation of the client, which are important. The fact that direct communications are not listed as a line item on a contract or an invoice would not preclude the requirement to register, if the client's expectation was that direct communications with a Government Representative would take place.

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5. Exemptions from Registration

The following circumstances exclude a person from the definition of consultant lobbying and therefore do **not** require registration:

- [Individuals and organisations not registered under the Value Added Tax Act (1994)]
- Individuals making communications in the course of their employer's business (only the employer is required to be registered)
- Officials or employees of governments of countries other than the United Kingdom
- International organisations as defined by section 1 of the International Organisations Act 1968 such as the United Nations
- 'In-house' lobbyists defined as those who are lobbying on behalf of their own organisation
- Organisations that carry on a business which is mainly non-lobbying and communicate with Ministers in a way that is incidental to the main course of their business
- Organisations that represent a particular class or body of people and whose income is derived wholly or mainly from those people, and where the lobbying is incidental to their general activity.

5.1. Lobbying that is incidental to non-lobbying activities

The Act states that a person does not, by reason of making a communication, carry on the business of consultant lobbying if:

- a) the person carries on a business which consists mainly of non lobbying activities, and
- b) the making of the communication is incidental to the carrying on of those activities.

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.

An example is when a doctor communicates with a Minister of the Crown 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, in writing or otherwise. In this case, the main focus of the doctor's business is to provide care to their patient and therefore this communication is incidental to the main focus of their business.

The making of communications is **not** considered to be incidental when it is a substantive

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part of the main 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, management consultancy or any other, 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 employee, 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.

5.2. Client confidentiality

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 Act and professionals who are required to register, would have a duty to inform their client accordingly. There may be isolated instances where the Registrar might consider restriction on publication if this was clearly not in the public interest.

5.3. Officials of governments outside the UK

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.³

However, a consultant lobbying organisation representing an official of a government outside the UK would be required to register and declare this government as a client if they meet the criteria of consultant lobbying.

5.4. Membership organisations

The Act states that organisations that represent a particular class or body of people, whose income is derived wholly or mainly from those people and who communicate on behalf of those people in a way that is an incidental part of that general activity are exempt from the requirement to register.⁴

This refers to a group of, for example, workers, club members, professional-body, or trade-body members. Those organisations representing such groups are exempt from having to

³ Ibid, Schedule 1, Part 1, Paragraph 3, pg. 57

⁴ Ibid, Schedule 1, Part 1, Paragraph 2, pg. 56

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register even if they lobby Ministers of the Crown or Permanent Secretaries, provided their communications are only made in their capacity as representatives of those organisations. However, 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 in a way that is not incidental to their general activity, then they would be required to register.

5.5. Management of trade or membership organisations

It might be the case that a consultant lobbyist organisation is also linked to the management of a trade or membership organisation and lobbies on behalf of both its members and its clients.

When deciding whether or not to register as a result of a specific communication, the organisation should consider the [criteria for consultant lobbying](#) and on whose behalf payment was received.

Trade or membership organisations are exempt only when lobbying on behalf of a class or body of people; their income is derived wholly or mainly from that class or body of people and their communications are incidental to their general activity.

If lobbying is conducted on behalf of a client who is not represented by that trade or membership organisation in a way that is not incidental to their general activity, this is an act of consultant lobbying and will need to be registered, regardless of whether they are a trade or membership organisation or not.

In this case, the trade or membership organisation would be required to join the Register as a separate entity (and pay the registration fee) in addition to any registration made on behalf of the individual's consultant lobbyist organisation.

5.6. Charities

Charities are exempt from registering as long as they do not receive payment for making communications from the person upon whose behalf they are made.⁵

However, if a charity received payments from the person upon whose behalf it made communications, it would be required to register.

⁵ Ibid, Schedule 1, Part 2, Paragraph 7, pg. 57