

Consultation on registerable communications

1. About the Registrar of Consultant Lobbyists

The purpose of the Office of the Registrar of Consultant Lobbyists is to ensure that there is transparency in the engagement of consultant lobbyists with UK Government Ministers and Permanent Secretaries (and equivalents) on behalf of their clients, in accordance with the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014 ('the Act').

The Registrar is a statutory office holder, independent of government, the lobbying industry and others. Under the Act, the Registrar is required to:

- establish and manage the UK Register of Consultant Lobbyists;
- develop and publish detailed guidance for consultant lobbyists on their duties under the Act;
- monitor and enforce compliance with the Act's legal requirements; and
- publish an annual statement of accounts.

2. Background

Communications that meet the Act's definition of consultant lobbying trigger the requirement for the consultant lobbyist to register as such and to include activity in quarterly information returns.

The Registrar's published guidance provides examples of activity that is or is not registerable.

The Registrar is now consulting on this to ensure that current practice is as clear and definitive as possible for registrants and meets the needs of stakeholders within the confines of the Act.

The Registrar will consider your response to this consultation before publishing any revisions to the guidance on registration and quarterly information returns.

3. How to respond

This consultation opens on 1 July 2019 and closes on 12 August 2019.

Please answer the questions in section 6 below. Bear in mind that any changes to practice can only be made within the framework of the Act. Therefore, please do not offer responses that would require a change in the law, as this is outside the powers of the Registrar.

You can respond by emailing enquiries@orcl.gov.uk or writing to Office of the Registrar of Consultant Lobbyists, 1 Horse Guards Road (Room 3.26), London SW1A 2HQ.

If you have questions about this consultation, please email enquiries@orcl.gov.uk or call 020 7271 8827.

4. Confidentiality and data protection

All consultation responses will be published on the website of the Office of the Registrar, including the name (but not the personal contact details) of the responding person or organisation. If you do not wish us to publish your name or all or part of your response, please indicate this and the reason for your preference.

5. Statutory provision and Registrar's guidance

Section 2 of the Act provides that:

(1) ... a person carries on the business of consultant lobbying if—

(a) in the course of a business and in return for payment, the person makes communications within subsection (3) on behalf of another person or persons,

(b) the person is registered under the Value Added Tax Act 1994, and

(c) none of the exceptions in Part 1 of Schedule 1 applies.

...

(3) The communications within this subsection are oral or written communications made personally to a Minister of the Crown or permanent secretary relating to —

(a) the development, adoption or modification of any proposal of the government to make or amend primary or subordinate legislation;

(b) the development, adoption or modification of any other policy of the government;

(c) the making, giving or issuing by the government of, or the taking of any other steps by the government in relation to,—

(i) any contract or other agreement,

(ii) any grant or other financial assistance, or

(iii) any licence or other authorisation; or

(d) the exercise of any other function of the government.

The Registrar's *Guidance on registration and quarterly information returns* (2019) provides that:

Making communications personally means communicating with a UK Government Minister or Permanent Secretary (or equivalent) by name or by title, using oral, written or electronic communication. This means that:

- Communications made to a government department, special adviser, administrator, private secretary or private office, are not registerable. 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 communication from a Minister or Permanent Secretary (even if sought via an RSVP), do not need to be registered.*
- *If the communication is an invitation and contains material that meets the criteria for consultant lobbying, then it is registerable.*
- *Informal communications (for example at a social event or conference) are registerable, if they otherwise meet the criteria for consultant lobbying.*
- *'Lobbying' does not need to be mentioned – the test is the nature of the activity.*

6. Consultation questions

The questions and examples below refer to contact with Ministers, but should be taken to include both Ministers and permanent secretaries (and their equivalents, as defined by the Act).

Letter from a client sent by a consultant lobbyist

Current practice differentiates between the following circumstances, making one registerable and the other one not:

- **Non-registerable activity:** A letter or email signed by a client and sent by a consultant lobbyist to a Minister, with a covering email or letter attaching the client's letter, but saying nothing in the covering note about the subject matter.
- **Registerable activity:** A letter or email signed by a client and sent by a consultant lobbyist to a Minister, with a covering email or letter that describes the subject matter of the client's letter.

The Registrar is considering amending the guidance so that both circumstances would be registerable, because in both cases the consultant lobbyist is making a personal communication to a Minister on behalf of a client and the communication as a whole relates to government business.

Question 1: What is your view of this proposed change?

Meeting arranged by a consultant lobbyist

Current practice differentiates between the following circumstances, making one registerable and the other one not:

- **Non-registerable activity:** A consultant lobbyist arranges a meeting for a client with a Minister, but does not attend the meeting, or accompanies the client to the meeting, introduces the client to the Minister, but does not participate in the

meeting.

- **Registerable activity:** A consultant lobbyist arranges a meeting for a client with a Minister, attends and participates in the meeting.

The Registrar is considering amending the guidance, so that the action of communicating with the Minister to arrange the meeting on behalf of the client is registerable, irrespective of the participation or not of the lobbyist in the meeting. This is because there is a personal communication with the Minister about government business, even if it is simply the lobbyist using their contacts to arrange access to the Minister.

Where a lobbyist communicates with a Minister about the possibility of a meeting with or on behalf of a client and then follows-up with the Minister's private office or special adviser to fix the meeting details, the first communication is a registerable activity because of the personal communication with the Minister.

Question 2: What is your view of this proposed change?

In addition, the Registrar is considering amending the guidance so that if a consultant lobbyist participates in any way in a meeting between a client and a Minister, this would also be registerable activity. 'Participation' would include accompanying the client to the meeting or introducing the client and Minister at the meeting, even if the lobbyist said nothing else or sat outside the meeting.

Question 3: What is your view of this proposed change?

Letter drafted by a consultant lobbyist, but sent by a client

Current practice differentiates between the following circumstances, making one registerable and the other one not:

- **Non-registerable activity:** Letter or email drafted by the consultant lobbyist, but sent on the client's letterhead or from the client's email address – with no reference to the lobbyist.
- **Registerable activity:** Letter or email drafted by the consultant lobbyist and sent by them to the Minister.

The Registrar proposes to maintain this distinction because in the first circumstance, whilst the consultant may be advising the client, there is no personal communication from the consultant lobbyist to the Minister.

Question 4: What is your view of the proposal to make no change to this?