

Consultation on registerable communications – 2019

Registrar's conclusions – 6 November 2019

From 1 July 2019 to 12 August 2019 the Registrar of Consultant Lobbyists consulted on possible changes to the published guidance in relation to registerable communications. The consultation and responses to it are available on the Office of the Registrar's website.

The Registrar has considered the responses in the context of his duties under the Act and has reached the conclusions below. The Registrar will publish amended guidance in due course. Current guidance remains in force until the revised guidance is published.

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Letter from a client sent by a consultant lobbyist

Consultation text:

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?

Registrar's conclusion:

Respondents to the consultation agreed with the Registrar's proposal that both circumstances should be registerable activity. This change will be implemented in the next revision of the guidance.

Meeting arranged by a consultant lobbyist

Consultation text:

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?

Registrar's conclusion:

Most respondents to the consultation agreed with the Registrar's proposal to focus principally on the registerable communication being the act of arranging a meeting, rather than the current distinctions around the presence or absence and level of participation in a meeting by a consultant lobbyist.

This change will be implemented in the next revision of the guidance.

One response raised concerns in relation to the interaction between clients, consultant lobbyists and Ministers in a variety of 'meeting' scenarios. Each situation must be judged on its own terms, but the revised guidance will be clear that if the 'meeting' concerned can reasonably be deemed to have come about by virtue of the client's status as a paying client, then the associated communication is registerable, otherwise not.

Consultation text:

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?

Conclusion:

Most respondents to the consultation agreed with the Registrar's proposal that the presence of a consultant lobbyist at the meeting in any role should be registerable.

One response raised concerns in relation to the interaction between clients, consultant lobbyists and Ministers at different types of 'meeting'. The proposed change to the guidance (set out above) is intended to focus on the presence of the consultant lobbyist when a client meets a Minister. The fundamental tests as to whether an activity was a registerable communication would remain unchanged, as set out in section 2 of the Act. But the complexity around the meaning of 'participation' would be removed.

This change will be implemented in the next revision of the guidance.

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

Consultation text:

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?

Conclusion:

Respondents to the consultation agreed with the Registrar's proposal. This distinction will be maintained in the next revision of the guidance.