

## **Consultation on the incidental exception and APPG secretariats March 2022**

### **A. 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 considers that transparent, ethical lobbying can be an important part of effective public policy formation and the work of the Registrar supports that by putting the activities of consultant lobbyists into the public domain.

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.

### **B. This consultation**

This consultation seeks views on two matters and the Registrar will consider responses before making changes to guidance or practice:

1. The incidental exception – see section E below
2. All-Party Parliamentary Group (APPG) secretariats – see section F below

### **C. How to respond**

This consultation runs from 3 March 2022 to 30 March 2022.

Please answer the questions in section G below. Bear in mind that any changes to guidance can only be made within the framework of the Act.

Please respond by emailing [office@orcl.gov.uk](mailto:office@orcl.gov.uk) no later than 2300 on 30 March 2022.

If you have questions about this consultation, please email [office@orcl.gov.uk](mailto:office@orcl.gov.uk) or call 020 7271 8827.

### **D. Confidentiality and data protection**

All consultation responses will be published on the website of the Office of the Registrar. In accordance with our [privacy notice](#) we will publish the name of responding organisations, but not of private individuals. 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.

## E. Background and proposals on the incidental exception

The Act sets out the obligations on those who engage in consultant lobbying as defined by the Act.

Schedule 1 of the Act sets out the ‘incidental exception’ which says that a person does not carry on the business of consultant lobbying when they make a communication if:

- a. They carry on a business which consists mainly of non-lobbying activities, and
- b. The particular communication is incidental to the carrying on of those activities.

“Non-lobbying activities” is also defined in schedule 1. Broadly, this is everything other than relevant communications to any minister or official or staff of a central government department, any of the devolved governments, any local government body and any EU institution.

To take advantage of the incidental exception a person or organisation must meet both tests: their business consists “mainly of non-lobbying activities” and the particular communication is “incidental to the carrying on of those activities”. Consequently:

- If a business does not consist mainly of non-lobbying activities, then they will not be able to rely on this exception, regardless of how “incidental” the particular communication is; and
- Even a person whose business consists mainly of non-lobbying activities will be subject to the Act if the particular communication is not incidental to those activities.

The incidental exception, as defined in the Act, is complex and the interpretation of words such as ‘incidental’ and ‘mainly’ is not always clear or universally agreed. The Registrar’s guidance therefore seeks to illustrate how he will exercise his functions in relation to this. Current guidance can be found [here](#).

In order to aid clarity, consistency and ease of interpretation, the Registrar is proposing to amend this part of the guidance as follows:

### **5.1. Lobbying that is incidental to non-lobbying activities**

*A person does not carry on the business of consultant lobbying when they make a communication if:*

1. *they carry on a business which consists mainly of non-lobbying activities, and*
2. *the making of the communication is incidental to those activities.*

*In this context, ‘incidental’ means: a minor accompaniment to the main focus of a business’s activities. This is a narrow exception and will not apply to most businesses or individuals that engage in consultant lobbying.*

*A communication is not incidental when it is a substantive part of the main business assessed either:*

- *by volume; or*
- *by the value of the work undertaken; or*
- *by its significance to the client offering; or*
- *by the significance of its contribution to the business’s non-lobbying activities.*

*This means that:*

- *If lobbying forms a significant proportion of an organisation's activities, even if it is not the majority of its work, it will not be incidental.*
- *If lobbying is a small proportion of an organisation's activities, but is a recognised part of its offer to clients, it will not be incidental.*
- *If lobbying is a small proportion of an organisation's activities but generates a significant amount of income, it will not be incidental.*
- *If lobbying is a small proportion of an organisation's activities but makes a significant contribution to the non-lobbying activities, it will not be incidental.*

*If an organisation undertakes only a small amount of lobbying work but that lobbying work makes a significant contribution to its non-lobbying work – either, for example, because it enhances its public profile or because it makes a substantive difference to some aspect of the business's non-lobbying work - then these activities will be registrable. So, a relatively small piece of lobbying work which made a decisive difference to an organisation's non-lobbying business – for example, by seeking a change to regulation which would enable a large construction project to proceed - would be registrable.*

*If an organisation has employees whose job includes communicating with Ministers on behalf of clients or if the organisation offers a lobbying service to clients, then these activities will be registrable.*

*The fact that an organisation considers this service a minor part of their business or they do not think of themselves as lobbyists does not mean that they are not lobbying.*

*As a result, most lawyers, accountants, management consultants and others that communicate with Ministers on behalf of clients are required to register.*

Please see questions 1 and 2 below.

## F. Background and proposals on APPG secretariats

Part 6.2 of current guidance looks at issues that are relevant to ['Providers of support services to All-Party Parliamentary Groups \(APPGs\)'](#). These 'support providers' are more generally known as 'secretariats' and the Registrar proposes to use that description in the next version of the guidance.

The Registrar proposes to amend this part of the guidance, to give greater simplicity about who should be declared as clients by secretariats. The purpose of the Act is to ensure that it is clear whose interests a consultant lobbyist is representing. Therefore, the proposed guidance provides that the APPG and all external funders must be declared as clients. The proposed section is:

### **6.3.1 Who is the client?**

*Where a secretariat is paid and communicates with a Minister on behalf of an APPG, the APPG must be declared as the client on the Quarterly Information Return.*

*In addition, where external funders provide funding for the secretariat, either directly to the secretariat or via the APPG, then the funders must also be declared as clients on the QIR. The purpose of the Act is to ensure that it is clear whose interests the consultant lobbyist is representing.*

*If a secretariat makes relevant communications for any of the APPG funders separately, these sponsors are then individual clients and must be declared as such on the registrant's return.*

Please see questions 3 and 4 below.

## G. Consultation questions

### The incidental exception

**Question 1: What are your views on the proposed revised guidance?**

**Question 2: How might the proposed guidance be made clearer or simpler, within the confines of the Act?**

### APPG secretariats

**Question 3: Do you agree or disagree with using 'secretariat' rather than 'support provider' in the guidance? If you disagree, please say why.**

**Question 4: What are your views on the proposed revised guidance as to who are the clients of a secretariat?**