

Guidance on compliance, offences and penalties
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1. Introduction

This guidance sets out the main details of the compliance framework of the [Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014](#) ('the Act').

The principal requirements of the Act are for those engaged in [consultant lobbying](#), as defined in the Act) to register their activity and submit a Quarterly Information Return. The Act also includes:

- The requirement to provide information that supports compliance and investigations into potential non-compliance.
- Civil and criminal penalties for non-compliance or failing to provide the required information.

This guidance should be read alongside the Act and other guidance issued by the Registrar of Consultant Lobbyists. It does not aim to deal with unusual or complex situations and the Office of the Registrar of Consultant Lobbyists ('the Office of the Registrar') is happy to provide further information or guidance in specific cases.

This guidance supersedes the *Compliance with the Act* guidance dated September 2018.

2. Monitoring compliance

The Registrar has a legal duty to monitor compliance with the provisions of the Act. The Registrar carries out this duty in a proportionate way that encourages and supports compliance by consultant lobbyists and others, so that the Register is accurate and useful.

The obligations of the Act are set out in detail elsewhere, but broadly they are:

- Register before conducting the business of [consultant lobbying](#).
- Provide the required information about the consultant lobbying organisation at registration.
- Submit Quarterly Information Returns on time, including client names and any changes and updates to the registrant's information on the Register.
- Provide information to the Registrar as specified in an Information Notice.

The Office of the Registrar relies on consultant lobbyists to register and to provide accurate and timely Quarterly Information Returns. In addition, the Office of the Registrar monitors compliance by:

- Cross-checking the published diaries of Ministers and Permanent Secretaries against the information in the Register.
- Considering and, where appropriate, investigating information from third parties about alleged non-compliance.
- Initiating enquiries where there are doubts about the consistency or accuracy of information.
- Issuing formal Information Notices where the voluntary provision of information is inadequate.

3. Offences and penalties

3.1. What are the offences?

The following are offences under the Act:

- [Consultant lobbying](#) when unregistered.
- [Consultant lobbying](#) when the information required to be on the Register is inaccurate or incomplete and the registrant has not updated it in their Quarterly Information Return.
- Submitting a late, incomplete, or inaccurate Quarterly Information Return.
- Not responding to an Information Notice by the specified deadline or providing information that is inaccurate or incomplete.

3.2. Penalties

If a person or organisation commits an offence under the Act the Registrar can impose a civil penalty of up to £7500 or refer the matter to the Director of Public Prosecutions for potential criminal prosecution.

Process:

Before imposing a civil penalty, the Registrar serves a notice of intention setting out details of the offence and the proposed penalty. The Registrar considers any written representations made by the recipient within the period specified in the notice of intention, and decides whether or not to impose the proposed penalty or to vary it. If proceeding with a penalty, the Registrar serves a penalty notice setting out details of: the offence; the amount of the penalty; the deadline and method for payment; and the right to appeal.

Civil penalty levels:

There is no fixed tariff for the level of penalty for particular offences and the Registrar considers the facts of each case. All breaches of the Act are offences, but the Registrar is likely to consider the following categories, with increasing levels of seriousness:

1. Administrative: such as spelling or data input errors that are one-off, corrected rapidly and not repeated.
2. Negligent or careless: such as late Quarterly Information Return, repeated administrative errors or more consequential errors.
3. Deliberate, misleading, or in clear contravention of the purpose of the Act: such as unregistered [consultant lobbying](#) (even if ignorant of the requirement to register), failing to respond to an Information Notice, giving significantly false or misleading information or knowingly giving incorrect information.

In setting the level of a penalty the Registrar will also take account of mitigating and aggravating factors, such as:

- Mitigating factors: proactive admission and/or speedy correction of errors and omissions by the registrant, accidental error despite taking reasonable care, cooperation with the Office of the Registrar
- Aggravating factors: repeated and/or persistent breaches, lack of cooperation or engagement with the Office of the Registrar, wilful or negligent behaviour

3.3. Who is liable?

An individual employee is not usually liable for an offence under the Act if they make communications in the course of an employer's business. It is generally the employer who is liable. On the other hand, where an offence is committed by a company or partnership with the consent or connivance of a person in control, that person is also liable for the offence.

4. Defences

It is a defence against charges under the Act to show that the alleged offender exercised all due diligence to avoid committing the offence. Evidence is required to demonstrate this and the defence will not be effective if the contrary is proved beyond reasonable doubt.

Examples of due diligence can include situations where the registrant:

- Has made themselves familiar with the guidance available and if unsure has contacted the Office of the Registrar for clarification;
- Has procedures and policies in place so that staff could identify and register instances of consultant lobbying.

5. Information Notices

5.1. Purpose and use of Information Notices

The Registrar has a duty to monitor compliance with the Act and will seek information to enable this from registrants and others in an informal and collaborative way in the first instance.

However, where this is inadequate, the Registrar can issue statutory Information Notices to registrants or to non-registrants who the Registrar has reasonable grounds to believe are engaging in [consultant lobbying](#). It is an offence to fail to supply the required information on time or to provide inaccurate or incomplete information.

Examples of situations where the Registrar might issue an Information Notice to a registrant include:

- Failure to engage with the Office of the Registrar on matters of inaccuracy or inconsistency
- Responding to enquiries from the Office of the Registrar with incomplete or misleading information
- Whistleblowing or provision of information from a credible source

- Information in the published diary of a Minister or Permanent Secretary suggests possible undeclared consultant lobbying
- A significant increase or decrease in the volume of declared clients without adequate explanation

Examples of matters that might prompt the Registrar to issue an Information Notice to a non-registrant include:

- Appearance in the published diary of a Minister or Permanent Secretary
- Whistleblowing or provision of information from a credible source
- Membership of a relevant trade or professional body
- Presence of a public affairs or public engagement team in the organisation
- Promoting services that appear to have the characteristics of consultant lobbying
- Activity such as award entries, blogs, case studies or interviews that appear to indicate consultant lobbying

5.2. Content and scope

Information Notices set out how and by when the required information should be supplied and the right of appeal against the notice.

The scope of information that the Registrar can require is broad, as long as it supports the Registrar's duty to monitor compliance with the Act. There is no limit to the number of information notices that may be issued, but the Registrar will always seek to be proportional, balancing legal requirements, the public interest and the administrative burden on recipients.

5.3. Limits on disclosure

Recipients of Information Notices must disclose information even if that demonstrates a breach of the Act. However, with a number of specific exceptions, they are not obliged to disclose evidence that would expose them to proceedings for other offences outside the Act.

The usual principles privileging certain communications between professional legal advisers and clients apply.

6. Transparency

In order to support compliance and in the interests of transparency the Registrar publishes information about the following on the website of the Office of the Registrar:

- Notices of intention to impose civil penalties and the outcomes of each;
- Referrals to the Director of Public Prosecutions;
- Information Notices;
- Investigations conducted by the Registrar into possible non-compliance;
- Formal correspondence and communications by the Registrar; and
- Meetings and events attended by the Registrar.

Appendix: Criteria for consultant lobbying

Organisations and individuals are considered to be carrying out the business of consultant lobbying if they fulfil these three tests:

- 1) They make oral, written or electronic communications personally to a Minister of the Crown or Permanent Secretary (or equivalents specified in the Act), 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 taking of any steps by the government in relation to any contract, agreement, grant, financial assistance, licence or authorisation; or
 - d) the exercise of any other function of the government.

and

- 2) The 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.

and

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