



Cabinet Office

THE STATUTORY REGISTER OF LOBBYISTS: DRAFT REGULATIONS

Contents

Introduction	3
Consultation Details	4
Consultation Questions	5
Summary of Questions for Consultation	9
Annex A: Draft Regulations	10

Introduction

The recently enacted Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014 (hereafter “The Act”) is designed to give the public more confidence in the way third parties interact with the political system.

Part 1 of the Act provides for, amongst other things, a statutory register of consultant lobbyists on which those who undertake the business of consultant lobbying will be required to register and to disclose the names of their clients and declare whether or not they subscribe to a relevant code of conduct.

The register will complement the Government’s transparency initiatives – which include the quarterly publication of details of ministers and permanent secretaries’ meetings with organisations – and the industry’s existing self-regulatory regime. It will address the specific problem that it is not always clear whose interests are being represented by consultant lobbyists and will increase transparency and help to drive up standards by enhancing scrutiny of the ethical principles to which lobbyists subscribe.

The register will be kept and published by the Registrar of Consultant Lobbyists who will be established as an independent, statutory office. The Registrar will have a duty to monitor compliance with the requirement to register and a power to undertake enforcement action in instances of non-compliance. He or she will be expected to develop and publish guidance for the industry on their duties under the Act. The Government is currently recruiting for the role of Registrar and we hope to appoint an individual in the autumn. Once appointed, we expect that the Registrar will wish to engage with interested stakeholders regarding the practicalities of launching the register and the content of the guidance on compliance.

While the framework for the statutory register is outlined in the Act, it is necessary to provide for further matters of detail in regulations (secondary legislation).

This consultation is an opportunity for all stakeholders to express their views on the content of the draft regulations, which are provided at Annex A. Your contributions will allow us to address any identified issues before the regulations are laid in Parliament. We also hope to gather data to allow us to make an accurate estimate of the charge level for the first year of the register’s operation, and to assess the impact more generally on the lobbying industry of the new regulatory requirements, now that they have been defined in statute.

Responses to the questions, and any other points you think relevant, are invited by 5pm on 17 October. The Government will take all responses and suggestions into account before producing the final version of the regulations.

Consultation Details

Purpose

The purpose of this consultation is to give all interested parties the opportunity to comment on the draft regulations to be made in advance of the establishment of the Register of Consultant Lobbyists.

Timetable

The closing date for submission of responses is 17 October.

How to respond

Please email your response to registerlobbyists@cabinet-office.gsi.gov.uk marking your response with Register of Consultant Lobbyists in the subject field of your email. Should you require this document or the consultation response template in a different format, please advise us of your specific requirements by contacting us at registerlobbyists@cabinet-office.gsi.gov.uk

Alternatively, please send your comments and views to:
Statutory Register of Lobbyists
Area 4/S1
1 Horse Guards Road
London SW1A 2HQ

Confidentiality

The Government may pass the information you send to colleagues within the Cabinet Office and other government departments. The Government may also publish your comments, including in a summary of responses to this consultation. The Government will assume that you are content with this and, when replying by email, your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system unless you specifically include a request to the contrary in the main text of your response.

Consultation Questions

The Regulations, which are attached at Annex A contain five substantive sections. These are:

- Form of application to be entered in the register;
- Form of information return.
- Limitations on duty to supply information;
- Charges;
- Supply of information regarding VAT registration.

This section sets out the aims of these parts of the draft regulations in turn and identifies questions to which we would appreciate responses. It also seeks information that will help us to make an accurate assessment of the impact of the new regulatory requirement on the lobbying industry

Content of the application to be entered in the Register; and Form of Information return

Draft Regulation 2 prescribes the information that must be included in the register entry of each consultant lobbyist covered by the terms of the Act. The provision of these details will allow the Registrar to update and maintain the register with the required information. The information that lobbyists or lobbying companies will be required to provide by this Regulation will be;

- Its name, its registered number and the address of its registered office, (where the registered consultant lobbyist is a registered company) and
- The names of its directors and of any secretary and any shadow directors (where the registered consultant lobbyist is a registered company);
- In the case of a partnership (including a limited liability partnership), the names of the partners and the address of its main office or place of business;
- In the case of an individual, the name of the individual's main place of business (or, if there is no such place, the individual's residence);
- Any name or names (not already included under any of the provisions above) which the person carries on the business of consultant lobbyist;
- A statement of whether or not 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; and
- If the person received payment in the pre-registration quarter (the 3 months prior to the date of registration) to engage in lobbying, the name of the person or persons on whose behalf lobbying was or is to be done.

We wish to assess the impact on the industry of these requirements and particularly to identify whether these will introduce significant or relatively minor changes to existing procedures within the lobbying industry for recording details of clients and what (if any) will be the extra administrative costs. We would also like to identify any familiarisation costs associated with introduction – these are the costs of adapting to

the new requirement by ensuring that relevant members of staff within your organisation are familiar with them and are able to adopt new procedures that may be necessary to meet them. This could include the cost of any necessary training or issuing communications to staff and others.

The draft regulation specifies that an information return required by the Act must be made in writing rather than an update given by verbal means or in an informal setting; 'writing' includes written communications made by electronic means. The Registrar will specify the format in which this written submission will be expected to be made.

Questions

1. Do you expect the registration process to require you to adopt new procedures? If so, could you explain, briefly, what these will be?
2. What do you estimate to be the administrative costs of the requirement to register for your organisation?
3. What do you estimate to be the familiarisation costs of the requirement to register for your organisation?
4. Do you have any comments on draft regulations 2 and 3?

Limitation on duty to supply information

The Registrar will have a duty to monitor compliance with the requirement to register. In connection with this duty, the Registrar may serve an information notice on "any registered person" (i.e. a registered consultant lobbyist) or any person who is not entered in the register but whom the Registrar has reasonable grounds for believing to be a consultant lobbyist, requiring that person to supply information requested in the notice.¹ The Secretary of State has the power to make provision in Regulations to specify forms of information that the Registrar may not request² under this power.

In draft regulation 4 we have made provision that the Registrar may not request the communications which are subject to legal professional privilege. This is to guarantee the long standing confidentiality of such protected material and ensure that legal advice can be given freely without fear of it being disclosed to the Registrar in the future.

We believe that this is an appropriate and proportionate limitation on the ability of the Registrar to request information in order to monitor compliance with the requirements of this part of the Act. We do not believe that there are other categories of information that the Registrar should be prevented from requiring.

¹ Section 9, Transparency of Lobbying, Non-Party Campaigning and Trade union Administration Act 2014.

² Section 10, Transparency of Lobbying, Non-Party Campaigning and Trade union Administration Act 2014.

Questions

5. Do you agree with the limitation on lobbyists' duty to supply information in response to an information notice regarding legally professional privileged material?
6. Do you believe the Regulations should provide for the limitation on the duty to supply information to exclude other forms of communication from being requested by the Registrar? If so, why?
7. Do you have any other comments on draft regulation 4?

Charges

The Government has always been clear that the cost of the register should not be funded from the public purse but instead recovered from the consultant lobbying industry via a subscription charge. The Registrar will have the power to impose charges for or in connection with the making, updating and maintenance of entries in the register. The regulations must be set at such a level so as to recover the full costs incurred by the Registrar in exercising his or her statutory functions³. Draft Regulation 5 provides for those charges.

The charging structure we propose comprises the following charges:

- a. An application processing charge: an amount to cover the cost of processing an application to register;
- b. An information return processing charge: an amount to cover the cost of processing the return; and
- c. An annual maintenance charge that covers maintenance costs of the register. Maintenance costs could include compliance-monitoring activities, enforcement action, staffing costs and the cost of software necessary to support the register.

It will be for the Registrar to determine the practical arrangements for invoicing for those charges. However, we anticipate that the most practical approach will be for the Registrar to collect the charges as a flat fee comprising the different charges outlined above, rather than as separate charges. This charge will be set at the same level for all consultant lobbyists that are required to register and will not be graduated according to the size of the business concerned.

In future years, the calculation of the charge will be straightforward as it will be informed by the number of lobbyists registering in the previous year and the total costs of the Registrar's activities in the previous year (these are expected to be fairly stable). However, for the first year it will be necessary for us to estimate the level of the maintenance charge to be included in the Regulations for the year of its implementation. We are in the process of determining the likely costs of the

³ section 22 (3), Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014.

Registrar. However, one of the purposes of this consultation is to help us assess the number of lobbyists who will be covered by the registration requirement. As such, we are asking respondents from the lobbying industry to indicate if they believe they will be covered by the provisions and therefore required to register. While we acknowledge that there are limitations to estimates based on this approach, we wish to gain as accurate a picture as possible of the coverage of this Act in order to allow us to set the fee at a level which reflects the number of those subscribing to the Register. It would be helpful if consultees from the lobbying industry could provide information on this point.

Questions

8. Do you have any comments on the proposed charging structure?
9. Do you have any additional comments on draft regulation 5?
10. Do you expect you will be required to register?

Supply of Information Regarding VAT registration

Section 2 (1) (b) of the Act provides that one of the criteria for determining if a person is a consultant lobbyist is that “ the person is registered under the Value Added Tax Act 1994.” It may therefore be necessary for compliance monitoring or enforcement purposes for the Registrar to determine the VAT-registration status of a firm or individual. Draft regulation 6 therefore provides that Her Majesty’s Revenue and Customs may confirm to the Registrar whether or not someone is (or was previously) VAT-registered so that the Registrar may determine whether or not the firm or individual is exempt from the requirement to register.

Questions

11. Do you have any comments on draft regulation 6?

Conclusion

This consultation is intended to elicit comments on the proposed draft regulations and data on the impact of the regulations on industry. We would encourage all interested stakeholders to contribute to ensure that your views are taken in to account as the Government finalises the details of the regulatory framework for the register. We expect that you will also have an opportunity to contribute views on the practicalities of the system to the Registrar once appointed.

Summary of Questions for Consultations

1. Do you expect the registration process to require you to adopt new procedures? If so, could you explain, briefly, what these will be?
2. What do you estimate to be the administrative costs of the requirement to register for your organisation?
3. What do you estimate to be the familiarisation costs of the requirement to register for your organisation?
4. Do you have any comments on draft regulations 2 and 3?
5. Do you agree with the limitation on lobbyists' duty to supply information in response to an information notice regarding legally professional privileged material?
6. Do you believe the Regulations should provide for the limitation on the duty to supply information to exclude other forms of communication from being requested by the Registrar? If so, why?
7. Do you have any other comments on draft regulation 4?
8. Do you have any comments on the proposed charging structure?
9. Do you have any additional comments on draft regulation 5?
10. Do you expect you will be required to register?
11. Do you have any comments on draft regulation 6?

STATUTORY INSTRUMENTS

DRAFT FOR CONSULTATION

2014 No.

CONSULTANT LOBBYING

THE REGISTRATION OF CONSULTANT LOBBYISTS REGULATIONS 2014

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Lord President of the Council makes these Regulations in exercise of the powers conferred by sections 4(5), 9(3), 22(2), 23(2) and 24(2) of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014⁽⁴⁾.

Citation, extent and interpretation

- 1.—(1) These Regulations may be cited as the Registration of Consultant Lobbyists Regulations 2014.
- (2) These Regulations extend to the United Kingdom.
- (3) In these Regulations a reference to a numbered section means the section so numbered in the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014.
- (4) These Regulations come into force on 1st January 2015.

Form of application to be entered in the register

2. An application to be entered in the register must be made in writing and must contain the following information—

- (a) in the case of a company—
- (i) its name, its registered number and the address of its registered office, and
 - (ii) the names of its directors and of any secretary and any shadow directors;
- (b) in the case of a partnership (including a limited liability partnership), the names of the partners and the address of its main office or place of business;
- (c) in the case of an individual, the individual's name, the address of the individual's main place of business (or, if there is no such place, the individual's residence);
- (d) any name or names (not included under paragraphs (a) to (c)) under which the person carries on the business of consultant lobbyist;

⁽⁴⁾ 2014 c.4. "The Minister" is defined in section 25(1) to include the Lord President of the Council.

- (e) a statement of—
 - (i) whether there is in place an undertaking by the person to comply with a relevant code of conduct; and
 - (ii) if so, where a copy of the code may be inspected; and
- (f) if the person received payment in the pre-registration quarter to engage in lobbying, the name of the person or persons on whose behalf lobbying was or is to be done.

Form of information return

3. An information return required under section 5(1) must be made in writing.

Limitations on duty to supply information

- 4.—(1) The Registrar may not require a person to supply under section 9 any information in respect of—
- (a) any communication between a professional legal adviser and the adviser’s client in connection with the giving of legal advice to the client about the client’s obligations, liabilities or rights, or
 - (b) any communication between a professional legal adviser and the adviser’s client, or between such an adviser, the adviser’s client and any other person, in connection with or in contemplation of proceedings (including proceedings before the Tribunal) and for the purposes of such proceedings.
- (2) In this regulation references to the client of a professional legal adviser include references to any person representing such a client.

Charges

- 5.—(1) The charges which may be imposed under section 22(2) are —
- (a) a charge of [] in respect of processing each application to register;
 - (b) a charge of [] in respect of processing each information return submitted under section 5(1);
 - (c) an annual charge of P per registered consultant lobbyist in respect of maintenance of the register, where

(i) in the consultant lobbyist’s first year of registration $P = \text{[]} \times \left(\frac{N}{365} \right)$; and

(ii) in any other year of registration $P = \text{[]}$,

with N being the number of days remaining until 31 December starting on the day on which the consultant lobbyist is added to the register.

(2) The Registrar may request payment of charges in advance or in arrear or in instalments.

(3) If any payment requested under paragraph (2) is not made by the date requested, the Registrar may recover the amount of the payment as a debt.

(4) If a registered consultant lobbyist ceases to be registered having paid some or all of the annual charge provided for by paragraph 5(1)(c), the Registrar must issue a refund of R, where;

(a) $R = \left(P \times \frac{Q}{365} \right) - A - C$;

- (b) P has the same meaning as in paragraph (1)(c)(i) or (ii) as the case may be;
- (c) Q is the number of days remaining until 31 December, starting on the day on which the consultant lobbyist ceases to be registered;
- (d) A is the amount, if any, of P for the relevant year that has yet to be paid on the date the consultant lobbyist ceases to be registered; and
- (e) C is the cost of processing the refund.

Supply of information regarding VAT registration

6. On request from the Registrar, the Commissioners for Her Majesty's Revenue and Customs may supply the Registrar with—

- (a) confirmation that any person is or was registered under the Value Added Tax Act 1994⁽⁵⁾;
- (b) the date on which any such registration took effect; and
- (c) the date on which the person ceased to be registered (if applicable).

Signatory text

	<i>Name</i>
	Parliamentary Under Secretary of State
Date	Department

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make miscellaneous provisions to establish the system for the registration of consultant lobbyists.

Regulation 2 sets out the information that must be contained in an application to be entered in the register and regulation 3 specifies that an information return must be made in writing.

Regulation 4 specifies that the Registrar may not issue a notice to supply information under section 9 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 in relation to any information which falls within the description of legally professionally privileged material.

Regulation 5 specifies the charges that the Registrar must impose in connection with processing an application to register or an information return and in respect of maintenance of the register and makes provision for requesting and recovering those charges.

Regulation 6 provides that the Commissioners for Her Majesty's Revenue and Customs may confirm to the Registrar whether or not someone is (or was) VAT-registered so that the Registrar may confirm whether section 2(1)(b) of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 applies.

⁽⁵⁾ 1994 c.23.

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