

TRANSPARENCY OF LOBBYING, NON-PARTY CAMPAIGNING AND TRADE UNION ADMINISTRATION ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Registration of Consultant Lobbyists

Section 1: Prohibition on consultant lobbying unless registered

17. **Section 1** prohibits any person from carrying on the business of consultant lobbying unless they (or, in the case of an employee, their employer) are entered on the register of consultant lobbyists. Breaching this prohibition is made a criminal offence by section 12 of the Act. Alternatively, breach of this provision can also result in the imposition of a civil penalty under section 14.

Section 2: Meaning of consultant lobbying and Schedule 1: Carrying on the business of consultant lobbying

18. **Section 2** defines the activity of “carrying on the business of consultant lobbying”. Schedule 1 provides further detail about the meaning of some terms used in that definition and provides that certain types of activity are excluded from the definition.
19. The main defining characteristics of being a consultant lobbyist are that ‘in the course of a business’ (which requires the person concerned to be engaged in a commercial activity, and so therefore excludes things such as the public duties of elected officials) a person makes communications (either in writing or orally):
- personally to a UK Government Minister or Permanent Secretary (including specified equivalent positions),
 - about government policy, legislation, the award of contracts, grants, licences or similar
 - about benefits, or the exercise of any other government function such as the exercise of the prerogative,
 - on behalf of another person, and
 - in return for payment.
20. A person carries on the business of consultant lobbying (and is therefore required to register) only if the person is VAT-registered. This means, in particular, that businesses with a turnover below the VAT registration threshold will not be required to appear on the register of lobbyists (unless they are voluntarily VAT-registered). It also means that employees of a company or firm will not be required to appear on the register of

lobbyists in their own names, because they will not be VAT-registered: their activities as employees will be covered by the VAT registration (if any) of the company or firm.

21. *Subsection (5)* provides a power for Ministers to make regulations to amend *subsection (3)* specifically to include communications made personally to a special adviser in the definition of consultant lobbying if and when that is considered necessary.
22. *Paragraph 1* of Schedule 1 describes an exception to the definition of "carrying on business of consultant lobbying". It provides that where a person's business mostly consists of activities other than the lobbying of Governments, and any communication that they make on behalf of someone else to Ministers and Permanent Secretaries of the UK government is incidental to those non-lobbying activities, then they will not be carrying on the business of consultant lobbying and so will not be required to register.
23. *Paragraphs 2 and 3* provide for further exceptions which will not come within the scope of "consultant lobbying". These exceptions include persons who act generally as representatives of people of a particular class or description and who make lobbying communications only as an incidental part of their representative function, and officials or employees of governments of other countries or international organisations who make communications on behalf of those bodies.
24. *Paragraph 4* clarifies that an individual is not considered to be carrying on the business of consultant lobbying if they are making communications in the course of their employer's business.
25. *Paragraphs 5 and 6* of Schedule 1 make it clear that any kind of payment given to a person for them to engage in lobbying will bring them within the definition of "consultant lobbyist" if the other conditions are engaged, and this includes both direct and indirect payment. Therefore, it will not be possible for lobbyists to avoid the need to register by, for example, structuring their business so as to receive payments from clients via a third party, or to be paid for periods of service rather than for specific communications, or in some non-monetary form. *Paragraph 5(2)* excludes the salaries or expenses paid to Parliamentarians for the exercise of their Parliamentary duties from the definition of payment, with the result that the usual activities of Parliamentarians are not captured by the definition of consultant lobbying. This provision therefore ensures that, even if Parliamentarians when carrying out their official role were to be regarded as carrying on a business under section 2, and even if they do not benefit from the 'incidental' exception in paragraph 1, they would not be required to register as consultant lobbyists.
26. *Paragraph 7* of Schedule 1 explains that communications should not be considered 'in return for payment' where the person conducting the lobbying on behalf of a particular class or description of persons is not wholly or mainly funded by, and does not receive payments for conducting the lobbying from, the person or persons on whose behalf the lobbying is done. Such communications are therefore excluded from the scope of the definition of consultant lobbying. This could for example cover bodies who lobby on a pro-bono basis or who are funded altruistically to undertake work that seeks to benefit others.
27. *Paragraph 9* of Schedule 1 excludes certain types of communication from the scope of consultant lobbying where it is required to be made under a statutory provision or a rule of law.
28. *Paragraph 10* provides that where an individual makes a communication in the course of the business of another, then both the individual and that other business/person are treated as making the communication. If the individual in these circumstances happens to be an employee (as opposed to a contractor or partner etc) then the employee is not to be regarded as making the communication on behalf of their employer, but rather only on behalf of their employer's client.

29. **Part 3** of Schedule 1 gives a list of positions which are considered to be equivalent to a permanent secretary for these purposes, so that communicating with them about government policy etc. will, if the other conditions for being a consultant lobbyist are fulfilled, mean that a person must register as a consultant lobbyist.

Section 3: The Registrar of Consultant Lobbyists, Section 4: The Register and Schedule 2: The Registrar of Consultant Lobbyists

30. **Sections 3 to 7** and Schedule 2 establish a Registrar of Consultant Lobbyists ("the Registrar") and require them to keep a register with specified information on it and to make that register publicly available. The Registrar will be an independent statutory office-holder appointed by the Secretary of State or the Lord President of the Council ("the Minister") and Schedule 2 sets out more detail about how the Registrar is to be constituted.
31. **Section 4** sets out the obligation to keep the register. In particular, it provides that each register entry must contain the name of the relevant registered consultant lobbyist, together with its registered company number (where relevant), its address, the names of any partners or directors (or equivalent), and any other information specified by regulations. Each entry must also contain the names of the clients for whom the entity has engaged in consultant lobbying for (or has received pre-payment to do so) for every quarter that person has been registered and the names of any clients from whom pre-payment has been received in the three months immediately preceding the person's application to join the register. Further, Section 4 provides that each consultant lobbyist must declare in their register entry whether it subscribes to a publicly available code of conduct in relation to its lobbying activity and, if so, where a copy of the code can be accessed.
32. **Schedule 2** provides that the Registrar will be a corporation sole. Being a corporation sole will ensure that the Registrar is able to enter into contracts, and to sue and be sued, in his or her capacity as an office holder rather than in any individual capacity and so allows for continuity from one Registrar to the next.
33. The Registrar will be appointed by the Minister after a process of fair and open competition. The Registrar may be appointed for an initial term of up to four years and for one or two further terms of up to three years. The Registrar may resign from the post by giving the Minister written notice. During a term the Minister may dismiss the Registrar if satisfied that he or she is unable, unwilling or unfit to perform his or her functions.
34. Any individual who has been a Minister or permanent secretary or has carried on the business of a consultant lobbyist (or has been the employee of a consultant lobbyist) at any time in the previous 5 years is not eligible to fill the post of Registrar.
35. The Registrar may pay remuneration and other amounts to the individual appointed Registrar but the amounts will be controlled by the Minister. The Minister may make grants or loans to the Registrar.
36. It is not expected that the Registrar will engage staff directly but may make arrangements for staff to be seconded by the Minister or other persons. Those staff may be paid by the Registrar either directly or via the Minister or other persons.
37. The Registrar is required to prepare a statement of accounts for each financial year, reported on by the Comptroller and Auditor General and laid before Parliament. The Registrar is also required to abide by the requirements of the Public Records Act 1958 and will be subject to the provisions of the Freedom of Information Act 2000. The Registrar is also an authority which is subject to investigation by the Parliamentary Commissioner (who is also known as the Parliamentary and Health Service Ombudsman).

Section 5: Notification of client information and changes

38. Registered lobbyists must update their register entry each quarter by providing details of any clients for whom they have engaged in consultant lobbying in the previous quarter (whether or not the payment for it has actually been received) or from whom they have received payment in that quarter to engage in lobbying in the future (whether or not the lobbying has actually been done). Registered lobbyists must also update their register entry by notifying the Registrar of any changes to the particulars outlined in section 4 (i.e. company name, number, address, directors etc). These updates must be made within 2 weeks of the end of the quarter to which the update relates.
39. If registered persons have not engaged in consultant lobbying nor received payment to lobby in the future in the previous quarter, they must submit a statement to that effect (see *subsection (5)* of section 5). If they have ceased to act as a consultant lobbyist, they can seek to discontinue their registration (see section 6(6)). In the former case the lobbyist may be listed as inactive but remains registered and so can still return to lobbying at any time with immediate effect, as they remain on the register. They also remain obliged to provide any updates necessary in relation to the company name, number, address, directors etc. and information for their registration. In the latter case the lobbyist's register entry will be discontinued (though the historic record will remain) and they will no longer be obliged to provide updates regarding their business and clients. As such, they will be prohibited from lobbying unless they apply to register again and are entered on to the Register.

Section 6: Duty to update the register and Section 7: Duty to publish the register

40. The Registrar must keep the register up to date by processing register entries, and updates to entries, within 4 working days of receiving them if they are received by the Registrar within the 2 week period set by section 5(6), or within 8 working days where updates are received after that deadline.
41. If the Registrar considers that a registered person is no longer a consultant lobbyist, the Registrar may mark the entry as inactive or remove it from the register.
42. The Registrar must publish the register online and in any other format he or she thinks appropriate. The Registrar may also publish the historic entries, in part or in full, of persons who were previously entered on the Register but who are no longer registered.

Section 8: Duty to monitor

43. This section places a duty on the Registrar to monitor the compliance of consultant lobbyists with the registration requirement and the other obligations imposed by this Part.

Sections 9 and 10: Notice to supply information and limitations on duty to supply information and use of information supplied

44. The Registrar has the power to issue an information notice in order to obtain from a consultant lobbyist, or someone he or she reasonably believes is a consultant lobbyist, information relating to compliance with the requirements imposed by this Part.
45. The information notice must specify what information must be supplied and by what date, and must contain details of the appeals procedure. The Registrar may cancel an information notice. Regulations may make provision prohibiting certain descriptions of information from being requested under an information notice, such as information engaging legal professional privilege.
46. **Section 10** sets limitations on the information which may be demanded under an information notice, and limits the use which may be made of that information. These limits give effect to the existing privilege against self-incrimination. However, *subsection (2)* of section 10 provides in effect that the privilege against self-

incrimination does not apply in relation to offences under this Part and various false statement offences that could be used in relation to false responses to information notices. This is justified and proportionate because the purpose of the power to issue an information notice is to investigate possible offences under this Part and so applying the principle against self incrimination to those offences would render the information notice power pointless.

Section 11: Right to appeal against information notice

47. If served with an information notice, a person may appeal against the notice to the Tribunal. If they do so, they will not be required to provide the information until the appeal is finally determined or withdrawn.

Section 12: Offences and Section 13: Bodies corporate and Scottish partnerships

48. It is an offence to carry on the business of consultant lobbying without an accurate and up to date register entry. This offence may be committed by an individual or an organisation, as well as by any person engaging in lobbying in the course of the business of that individual or organisation. It is also an offence to fail to supply an information return required under section 5, or information required by an information notice under section 9, or to supply inaccurate or incomplete information. It is a defence to demonstrate that the person exercised all due diligence to avoid committing any of these offences.
49. The offences in section 12 may be tried in either the Magistrates Count or the Crown Court. A person guilty of either offence is liable to a fine not exceeding the statutory maximum on summary conviction (currently £5000) or an unlimited fine if convicted in the Crown Court. When section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force, the fine on summary conviction in England and Wales will be unlimited.
50. Where an offence is committed by a body corporate, such as a company, then senior individuals within a company (such as directors or managers) or partners of a partnership in Scotland may also be guilty of the offence if the individuals have consented to, planned, or allowed through their neglect the criminal behaviour to take place.

Section 14: Civil penalties

51. This section enables the Registrar to choose to impose a civil penalty instead of prosecuting a person for committing any of the offences set out in section 12. The defence of due diligence does not apply in relation to a penalty and for the purposes of civil penalties a person's conduct also includes a failure to act. It is anticipated that the Registrar will wish to pursue this option for less serious instances of non-compliance, for example due to administrative oversight.

Section 15: Notice of intention to impose civil penalty

52. Before imposing a civil penalty the Registrar must serve a notice of intent detailing the suspected breach, the reasons the Registrar is satisfied that the person did engage in that conduct and the anticipated amount of the associated penalty. The notice must also provide details of the period in which the person may make written representation in response to the notice and the Registrar must consider any such representation before proceeding with the imposition of the penalty.

Section 16: Imposition of penalty

53. Where the Registrar decides to impose a civil penalty, he or she must serve a penalty notice detailing the transgression committed, the reasons the Registrar is satisfied that the person did engage in that conduct, the amount of the penalty (which must not exceed

£7,500), the time period within which it should be paid, and details of the appeals procedure. The Registrar may vary or cancel a penalty notice.

Section 17: Right to appeal against imposition of a civil penalty

54. Both the decision to impose a penalty and the amount of that penalty may be appealed to the Tribunal, as may any decision to vary a penalty notice. If an appeal is brought, the person will not be required to pay the penalty until the appeal is finally determined or withdrawn. Regulations may make further provision about the determination of such appeals.

Section 18: Civil penalties and criminal proceedings

55. The Registrar may not impose a civil penalty on a person who is currently subject to criminal proceedings for the same offence or who has been convicted of an offence under this Part. Nor may a person who has had a civil penalty imposed on them be convicted of a criminal offence under this Part for the same conduct.

Section 19: Enforcement

56. This section makes provision to ensure that penalties can be enforced if they are not paid. It also provides that any sum received in response to a penalty notice is to be paid in to the Consolidated Fund, rather than being retained by the Registrar.

Section 20: Further provision about civil penalties

57. This section allows regulations to make further provision in relation to civil penalties.

Section 21: Guidance

58. This section provides that the Registrar may issue guidance regarding compliance with the requirement to register and the Registrar's functions under the Part more generally, particularly in relation to who may, or may not, be considered to be carrying on the business of consultant lobbying. The Registrar may also issue guidance in relation to the circumstances in which the Registrar would consider removing or making inactive a consultant lobbyist's entry on the register, the circumstances where it would be appropriate to impose a civil penalty, and the method by which the amount of a civil penalty is determined. The Registrar may revise or replace any such guidance issued, and the Registrar must publish the guidance by making it available online and in other such forms as they think appropriate.

Section 22: Charges

59. This section includes a power for the charges to be imposed by the Registrar. It is intended that these charges recover the full cost of all of the activities of the Registrar.
60. The charges will either be specifically set by the regulations or the regulations will set the method for determining the charges.

Section 23: Power to make further provision; Section 24: Regulations; and Section 25: Interpretation

61. There is also a general power for the Minister to make regulations to give effect to provisions of this Part. Wherever regulations are made which amend or modify a provision of this Part, the affirmative resolution procedure must be used. In other cases a negative resolution procedure is to be used. Further, regulations under clauses 4(5) (a) or 5(4), and the first regulations to be made under clauses 11(3) and 17(3) must be made by the affirmative procedure.