



BRIEFING PAPER

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The register of consultant lobbyists

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Summary

Part 1 of the *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014* introduced a new registration system for consultant lobbyists, which came into operation in March 2015. The first Register was published on 25 March, and it included 53 entries.

The Registrar of Consultant Lobbyists is Alison White. Her post and the registration system are intended to be self-financing from the fees received. According to the *Explanatory Notes* to the Bill, the fees were expected to be £200-£450 per year, with the annual net cost to business estimated at £0.48 million by the Regulatory Policy Committee. The 2015 fee per lobbying individual or organisation was set at £750. Individuals or organisations joining the register later in the year pay a reduced fee “commensurate with the unexpired portion of the calendar year at that point”.¹

There have been reports that the costs of the register would not be met in 2015. The Cabinet Office announced on 10 December 2015 that the registration fee for 2016 would increase to £950 (plus £12.50 per quarterly update).²

The legislation was subject to criticism by the Political and Constitutional Reform Select Committee and others during its passage through Parliament as not being comprehensive enough to regulate all forms of commercial lobbying. Similar criticisms were made after the Act came into force by the think tank Transparency International UK, in a report evaluating lobbying legislation in the UK, published in September 2015. The limited scope of the register is also criticised by lobbying bodies the Association of Professional Political Consultants (APPC) and the Chartered Institute of Public Relations (CIPR), who have their own (non-statutory) registers.

[Part 1](#) of the Act defines consultant lobbyists and establishes a compulsory registration system. Full background to the passage of the legislation is provided in Library Briefing Paper 13/51 [Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill](#) produced for the Bill’s Second Reading in the Commons; Library Briefing Paper 6734 [Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill: Progress of the Bill](#) which details changes made in the Commons; and Library Briefing Paper 6796 [Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill: Lords amendments](#) which covers amendments made in the Lords.

Consultant lobbying covers communications with Ministers of the UK Government, Permanent Secretaries or equivalents; persons who lobby only officials of devolved administrations are not required to register.

Alison White issued [guidance](#) on 30 January 2015 in preparation for the first round of registration, which was updated on 25 March, the date when the Register was published. [Guidance](#) taking account of information provided since then was published in November 2015.

¹ [Statement from the Registrar of Consultant Lobbyists, 25 February 2015](#)

² [Registration of Consultant Lobbyists \(Amendment\) \(No. 2\) Regulations 2015/1998](#)

1. Background

In June 2007 the Public Administration Select Committee launched an inquiry into the lobbying industry. Its report, published in January 2009, recommended the introduction of a statutory register of lobbying activity to “bring greater transparency to the dealings between Whitehall decision makers and outside interests”.³ The Labour Government did not accept the Committee’s case for a statutory register.⁴ The Committee published a follow-up report in December 2009 reiterating its call for a statutory register.⁵

Following allegations about the lobbying activities of some former ministers in March 2010, the Labour Government announced that it would introduce a statutory register of lobbyists, although this did not happen before the May 2010 General Election.⁶

The Coalition Agreement published by the Conservative-Liberal Democrat Government in May 2010 said that it would introduce a statutory register of lobbyists and ensure greater transparency.⁷ Before introducing legislation to establish such a register, the Government launched a consultation.⁸

On 13 July 2012 the Political and Constitutional Reform Committee published a report recommending that the proposal for a statutory register of third-party lobbyists be dropped in favour of a wider register of anybody lobbying professionally in a paid role, thus including in-house lobbyists.⁹

Part 1 of the *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014* introduced a new registration system for consultant lobbyists, which came into operation in March 2015. The legislation was subject to criticism by the Political and Constitutional Reform Select Committee and others during its passage through Parliament, as not being comprehensive enough to regulate all forms of commercial lobbying.

The Registrar of Consultant Lobbyists, Alison White, published the first register in March 2015, with 53 organisations (the register currently includes 111 entries). The post of Registrar is intended to be self-financing from the fees received.

³ Public Administration Select Committee, [Lobbying: Access and influence in Whitehall](#), 5 January 2009, HC 36 2008-09

⁴ Public Administration Select Committee, [Lobbying: Access and influence in Whitehall: Government response to the Committee’s first report of session 2008-09](#), 23 October 2009, HC 1058 2008-09

⁵ Public Administration Select Committee, [Lobbying: Developments since the Committee’s first report of session 2008-09](#), HC 108 2009-10, 16 December 2009

⁶ HC Deb 22 March 2010 cc25-26

⁷ HM Government, [The Coalition: Our programme for government](#), May 2010, p21

⁸ HM Government, [Introducing a Statutory Register of Lobbyists, Cm 8233](#), January 2012

⁹ Political and Constitutional Reform Committee, [Introducing a statutory register of lobbyists](#), 13 July 2012, HC 153 2012-13, p16

2. The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014

[Part 1](#) of this Act defines consultant lobbyists and establishes a compulsory registration system. Full background to the passage of the legislation is provided in Library Briefing Paper 13/51 [Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill](#) produced for the Bill's Second Reading in the Commons; Library Briefing Paper 6734 [Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill: Progress of the Bill](#) which details changes made in the Commons; and Library Briefing Paper 6796 [Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill: Lords amendments](#) which covers amendments made in the Lords.

Part 1 (Section 2) establishes who would qualify as a 'consultant lobbyist' and prohibits their practice without registration with the Registrar of Consultant Lobbyists. The [Registration of Consultant Lobbyists Regulations 2015](#) laid on 26 February 2015 provide more detail.

Consultant lobbying covers communications with Ministers of the UK Government, Permanent Secretaries or equivalents; organisations that only lobby officials of devolved administrations are not required to register.

The post of Registrar was first advertised in May 2014 and re-advertised in August 2014 at an increased daily rate of £420 on the expectation that the post would warrant 30 to 50 days in the first year and then the time commitment would decline. The Political and Constitutional Reform Committee held a pre-appointment hearing in September 2014 which expressed some disappointment with the preferred candidate Alison White, an ex-commercial director of Royal Mail who they considered lacked detailed knowledge of the lobbying industry, potential deficiencies in the Act, and knowledge of Parliament. Alison White was approved, however.

Alison White issued [guidance](#) on 30 January 2015 in preparation for the first round of registration. She published the first register on 25 March 2015.¹⁰ 53 organisations registered in the first tranche. [Guidance](#) taking account of information provided since March was published in November 2015.

¹⁰ [Register of Consultant Lobbyists 25 March 2015](#)

2.1 The Act in detail

Consultant lobbying

Section 1 prohibits consultant lobbying without registration. Section 2 defines a 'consultant lobbyist' as a person who, in the course of a business and in return for payment, personally makes communications on behalf of someone else to a Minister of the Crown or a Permanent Secretary. There is provision for 'special adviser' to be treated as an equivalent position to that of Permanent Secretary or Minister, through regulations under section 3(3). This follows an amendment tabled by Lord Tyler at Report Stage in the House of Lords. These regulations have not yet been made.

The communications fall within the scope of the legislation if they are about government policy, legislation, the award of contracts, grants, licences or similar benefits, or the exercise of any other government function. This applies to communications made abroad as well as in the UK, so that the offences created by the Bill have an extra-territorial dimension.

The consultant lobbying does not have to be on behalf of the person making the payment, nor does payment have to be linked to a particular communication. It appears to follow that if payment is received to engage in lobbying on behalf of a person, the person receiving the payment will need to register, whoever is paying (so long as the other conditions, such as lobbying being the main business, apply). Consultant lobbyists who do not earn enough to pay VAT are exempt from registration.

The Registrar issued guidance in January 2015 warning that law or accountancy firms with a Government Relations team, lead partner or any other employee whose job it is to communicate with Ministers and Permanent Secretaries on behalf of the firm's clients may be required to register. The fact that the firm considers this service incidental to their business does not mean that they are not lobbying: it is the making of relevant communications that is significant.

The guidance sets out when registration is required.

Organisations and individuals are considered to be carrying out the business of consultant lobbying if they fulfil the following criteria:

They have made direct oral, written or electronic communications personally to:

a Minister of the Crown, Permanent Secretary (or equivalents) currently in post, referred to as "Government Representatives", relating to:

- The development, adoption or modification of any proposal of the Government to make or amend primary or subordinate legislation;
- The development, adoption or modification of any other policy of the Government;
- The taking of any steps by the Government in relation to any contract, grant, financial assistance, licence or authorisation; or

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- The exercise of any other function of Government.

This 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.

They are registered under the Value Added Tax Act 1994.¹¹

Practical issues as to how the legislation's definition of communications would operate in practice were dealt with as follows:

Making communications personally means communicating directly with a Government Representative by name or by title, using oral, written or electronic communication. An example would be writing an email to a Minister of the Crown in which the email is addressed to the Minister specifically

- Communications made to a Government Department, special adviser, administrator or a private secretary are not made to a Government Representative personally. However, communications addressed to a Minister but sent to a private office would have to be registered.
- It does not matter from where the communication is made: it could be a face-to-face meeting within a government office, at a restaurant, at a party-political conference or made from overseas: if the criteria for consultant lobbying are met, then this will trigger the requirement to join the Register.
- In the case of electronic communications, emails that are sent directly to a Minister's address will trigger registration. If using social media where a message directed to a Minister's (official or personal) account is made which fits the criteria for consultant lobbying, this will require registration. However, if an organisation were to refer to a Minister's account indirectly, such as by mentioning that the Minister is speaking at an event and tagging the Minister's account, then this would not require registration.¹²

FAQs subsequently issued by the Registrar at the request of the lobbying industry make clear that drafting communications for a client to send would not be an act that requires registration as no direct communication with a Government Minister has taken place. Moreover: (emphasis in the original)

Inviting a Minister or Permanent Secretary (or equivalents) to a meeting or event will not trigger the requirement to register in of itself unless it involves the subjects above and is made on behalf of a paying client. An example might be issuing an invitation to a Minister for a meeting which also contains text that relates to Government policy or legislation – **this would require registration.**¹³

Where a person's business mostly consists of activities other than the lobbying of Government, and communications with Government are incidental to non-lobbying activities, they are exempt under Schedule 1.

¹¹ [Register of Consultant Lobbyists: guidance on requirement to join](#) March 2015

¹² Ibid

¹³ Registrar of Consultant Lobbyists, [Questions on the requirement to join the Register of Consultant Lobbyists](#), 25 March 2015

People who act generally as representative of people of a particular class or description and whose communications with Government are also incidental to their main business are also exempt. But trade or membership organisations are exempt only when lobbying on behalf of a class or body of people; their income is derived wholly from that class or body of people and their communications are incidental to their general activity. Charities are exempt from registering as long as they do not receive payment for making communications from the person upon whose behalf they are made.

MPs

Following concerns from Members, Schedule 1, para 5 makes clear that payment for consultant lobbying does not include salaries or allowances paid to MPs and peers. This does not mean that these representatives cannot be consultant lobbyists, simply that the mere fact of receiving these payments is not enough on its own to qualify them. The Registrar attempted clarification in February 2015, stating “although the Lobbying Act is not specific on this point, my view is that serving MPs and members of the House of Lords in the context of their normal duties would not be required to register. But if they undertook activities outside their normal duties which might be defined by the Act as consultant lobbying, and where other exemptions such as VAT registration did not apply, they would be required to register.” She would expect MPs to register meetings with Ministers under the Act when they knew they were lobbying on behalf of a paid client, and were not otherwise exempt.¹⁴

Register

Section 3 establishes a Registrar of consultant lobbyists and Schedule 2 sets out the details of the appointment and the powers of the new official. The Registrar is an independent statutory office holder, not an Officer of Parliament like the Parliamentary Ombudsman or Comptroller and Auditor General. The maximum term of office is four years, and the Registrar can be dismissed if they are considered to be unfit to fulfil the functions of the office. There is no parliamentary involvement in appointment or dismissal. Former Ministers, Permanent Secretaries and consultant lobbyists are ineligible until five years have elapsed since they left office or employment. There can be up to two re-appointments, for a maximum of three years each. Civil servants are to be seconded to the Registrar’s office, which is subject to legislation on the Parliamentary Ombudsman, public records and Freedom of Information. The Cabinet Office acts as the sponsoring department for the Registrar; relations between the Cabinet Office and the Registrar are defined in a memorandum of understanding published on 30 June 2015.¹⁵

Section 4 provides for the register and its contents. Each entry on the register must include:

¹⁴ “New Whitehall lobbyist register to be launched within weeks”, *Guardian*, 25 February 2015

¹⁵ Office of the Registrar of Consultant Lobbyists, [Memorandum of understanding between the Cabinet Office and the Registrar of Consultant Lobbyists](#), 30 June 2015

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- For companies: the name, registered number and registered address, and names of directors, company secretaries and shadow directors;
- For partnerships: the names of partners and address of main office;
- For individuals: the name and address of main office (or home if no office).

All entries must include any other names under which the person or organisation does business as a consultant lobbyist and their “client information.” The latter, which is to be submitted in a quarterly “information return,” is defined in Section 5 as the names of anyone on whose behalf they lobbied during that quarter in return for payment (regardless of whether the payment was actually received) and anybody who paid them to lobby during the quarter (regardless of whether the lobbying took place). Lobbyists must also include the names of anyone on whose behalf they were paid to lobby in the three months preceding registration.

When joining the register, registrants will have to declare whether they subscribe to a relevant code of conduct (from a lobbying association) and, if so, where that code can be found.

The Registrar has a duty to keep the register up to date in section 6 and publish it on a website and in another form in section 7. She must monitor compliance with the register, and has powers under section 9 to serve “information notices” requiring recipients to reveal certain information. These may be served on registered lobbyists and on those whom the Registrar has reasonable grounds to believe are consultant lobbyists. Appeals against a notice are provided for in section 11. Section 21 gives the Registrar power to issue guidance on the operation of the registration scheme. Guidance was issued on [30 January 2015](#) and in [November 2015](#).

Offences

The Act creates both civil and criminal liability for not complying with the registration requirements. Section 12 criminalises the following activity:

- carrying on the business of consultant lobbying whilst unregistered [Section 12(1)];
- carrying on the business of consultant lobbying without an accurate and up-to-date entry on the register [Section 12(2)];
- failing to supply information required in an information return [Section 12(3)(a)];
- providing inaccurate or incomplete information in an information return [Section 12(3)(b)];
- failing to supply information in response to an information notice [Section 12(4)(a)]; and
- providing inaccurate or incomplete information in response to an information notice [Section 12(4)(b)].

The Act provided that fines could be levied to the statutory maximum of £5000 in the magistrates’ court, or an unlimited fine in the crown court. The limit on fines levied in magistrates’ courts in England and Wales was

removed when the relevant parts of Section 85 of the *Legal Aid, Sentencing and Punishment of Offenders Act 2012* were brought into force on 12 March 2014.¹⁶

Section 14 provides the Registrar with the power to impose civil penalties on a person if the Registrar is satisfied that their conduct amounts to one of the four offences specified in Section 12(1) to (4). It is envisaged that civil sanctions would be used in less serious cases of non-compliance, such as administrative oversight. Under Section 18, it is not possible for an individual to be both prosecuted and subject to civil sanctions for the same conduct.

A defence against failure to register or failure to supply the required information by the deadline is the exercise of all due diligence to avoid committing the offence. However, the defence of due diligence will not apply in the case of a civil penalty, although there is an opportunity to make written representations and appeal to the Tribunal. The maximum civil penalty which can be levied is £7000.

Fees

Section 22 allows the Registrar to impose charges in accordance with regulations, which are to be paid into the consolidated fund. The registration scheme is meant to be self-financing. According to the *Explanatory Notes* to the Bill, the fees were likely to be £200-£450 per year. The annual net cost to business was estimated at £0.48 million by the Regulatory Policy Committee. The 2015 fee was set at £750. Individuals or organisations joining the register later in the year pay a reduced fee “commensurate with the unexpired portion of the calendar year at that point”.¹⁷

The Cabinet Office announced on 10 December 2015 that the registration fee for 2016 would increase to £950 (plus £12.50 per quarterly update).¹⁸

Schedule 2 of the 2014 Act specifies that the Registrar is required to prepare a statement of accounts for each financial year (ending 31 March). A copy must be sent to the Comptroller and Auditor General, who examines, certifies and reports on the Statement ahead of laying a copy before Parliament. A statement for the 2014-2015 financial year is available on the website of the [Office of the Registrar of Consultant Lobbyists](#).

¹⁶ [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Commencement No. 11\) Order 2015](#)

¹⁷ [Statement from the Registrar of Consultant Lobbyists, 25 February 2015](#)

¹⁸ [Registration of Consultant Lobbyists \(Amendment\) \(No. 2\) Regulations 2015/1998](#)

3. Further reform?

Prior to the 2015 General Election, the Labour Party promised to repeal the 2014 legislation with an immediate focus on relaxing the election campaigning controls on third parties in part 2, but there was also a commitment to introduce a “universal register” and to create a statutory code of conduct, banning “inappropriate financial relations between lobbyists and MPs and peers.”¹⁹

The Conservative and Liberal Democrat manifestos did not mention lobbying. The Scottish National Party promised reform of part 2 of the 2014 Act only.

3.1 Limited scope

The think tank Transparency International UK published a report in September 2015 that reviewed the regulation of lobbying in the UK.²⁰ The report argued that the current register is too limited in scope, both in terms of the lobbyists it includes, and in terms of the information it collates and publishes. Allegedly, only about 1 percent of those involved in lobbying in the UK are on the register.

The report noted that the register does not include in-house lobbyists working for big organisations including NGOs, law firms, and companies; and also does not cover lobbyists who target mid-level civil servants and parliamentarians, who also have an influence over decisions on policy and legislation. Transparency International UK also noted that the current register does not give any details of the money spent on lobbying, and the topics and goals that lobbyists pursue.

Among other things, Transparency International UK recommended extending the scope of the statutory register to increase the transparency of lobbying in the UK. Lobbying bodies also consider the register too limited in scope and have established parallel registers:

- The [Chartered Institute of Public Relations](#) (which represents public relations firms) has established a voluntary register for all lobbyists (the [UK lobbying register](#)). Lobbyists who register must be bound by a relevant and effective code of conduct of their choosing. The CIPR enforces its own code and refers complaints about breaches of other codes to the relevant organisation for enforcement;
- The register of the [Association of Professional Political Consultants](#) (which represents professional lobbying companies) lists all the clients and consultants of APPC member firms. APPC members listed on the register are all subject to a complaints and disciplinary process if they breach the APPC Code of Conduct.

While subject to enforcement, these registers are not statutory. By contrast, the register of consultant lobbyists is based on a legal

¹⁹ [Reversing our democratic decline: Labour’s plan for Parliament and political reform](#) April 2015

²⁰ Transparency International UK, [Accountable influence: bringing lobbying out of the shadows](#), September 2015

requirement to register before carrying out certain types of lobbying activities; breaches of this requirement are subject to substantial civil and criminal penalties.

3.2 Cost

The register was intended to be self-funding, but there have been reports that so far, registration fees have not covered the cost of the register. *Politics Home* reported on 23 October 2015 that since its launch, the running costs of the register were more than £264,000, while only £2,463 had been collected in fees.²¹

On 1 September, there were 95 entries on the register who would in total have been charged approximately £48,000 in fees (based on taking the annual fee of £750 and pro-rating this from the date of registration up to the end of the calendar year).

²¹ 'Cameron's lobby register hit by huge losses', [Politics Home](#), 23 October 2015

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