

May 2016

Practice Group(s):
Public Policy and
Law

The UK Lobbying Act - Do You Have to Register and Name Your Clients?

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The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act (the “**Act**”) was first introduced in the House of Commons in 2013 and it came into force into force in full on 1 April 2015.

The main purpose of the Act is to ensure that people know whose interests are being represented by consultant lobbyists who make representations to the UK Government. As set out further below, the Act enhances transparency by requiring consultant lobbyists to disclose the names of their clients on a publicly available register and to update those details on a quarterly basis. The register will complement the existing transparency regime whereby government ministers and permanent secretaries of government departments voluntarily disclose information about who they meet on a quarterly basis.

The UK government had previously made clear its commitment to increasing the transparency of the lobbying process in a White Paper published in 2012. Accordingly, businesses seeking to influence UK government decision-makers on behalf of their clients may now have to register under the Act, and name their underlying clients. The UK government believes this will enable the public to better scrutinise the interests that are represented by professional policy advocates and lobbying firms.

Who has to register?

The lobbying provisions of the Act require any person (corporate or natural) who carries on “**the business of consultant lobbying**” to be entered in the Register of Consultant Lobbyists (the “**Register**”).

The Register is kept by the Registrar of Consultant Lobbyists (the “**Registrar**”) (currently, Alison White) and the Office of the Registrar of Consultant Lobbyists (the “**ORCL**”) is sponsored by the UK Cabinet Office. The Registrar is independent from the lobbying industry and government.

What is “the business of consultant lobbying”?

A person (legal or natural) carries on “the business of consultant lobbying” if:

- for a fee (“in return for payment”);
- it lobbies (in plain language; see the description below);
- on behalf of a client (“for another person or persons”);
- a UK government minister (including a junior minister) (a “**Minister**”) or a permanent/second permanent secretary in the UK civil service (or one of eight other specified “equivalent” UK civil servants) (a “permanent secretary”); and
- it is registered for VAT,

unless:

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- the UK lobbying is “incidental” to a business carried on by it “which consists mainly of non-lobbying activities” - that is, of activities other than lobbying any central government, anywhere in the world, UK local government, any UK devolved administration (Scottish, Welsh or Northern Irish) or any EU institution, at any level (so, not just “Ministers”, “permanent secretaries” or equivalents); or
- it “acts generally as a representative of persons of a particular class or description” - for example, then, it is a trade or professional body - and its UK lobbying is “no more than an incidental part of that general activity”; or
- he/she is an individual acting as “an official or member of staff” of a state other than the UK, of a government of such a state or of an international organisation of which the UK and at least one other state are members (for example, the UN); or
- he/she is an individual acting only as an employee of a person which is itself required to register.

What is “lobbying”?

“Lobbying” is not directly defined in the Act. Instead, it is described as the making of: “... *oral [spoken] or written communications ... personally to a Minister of the Crown or permanent secretary relating to -*

- a) the development, adoption or modification of any proposal of the [UK] government to make or amend primary or subordinate [UK] legislation;*
- b) the development, adoption or modification of any other policy of the [UK] government;*
- c) the making, giving or issuing by the [UK] government, or the taking of any other steps by the [UK] government in relation to, -*
 - i. any contract or other agreement,*
 - ii. any grant or other financial assistance, or*
 - iii. any licence or other authorisation; or*
- d) the exercise of any other function of government.”*

The two key tests - the level of government where the lobbying occurs and whether it is “incidental”

In determining whether a person is required to register, the key points are therefore likely to be:

- 1) Whether it performs lobbying activities for fee-paying clients **at the level of a “Minister” or “permanent secretary”**. The lobbying here must be “personal”. An approach to a central government department, as distinct from to an individual “Minister” or “permanent secretary”, is therefore excluded.
- 2) Even if it does, whether the lobbying “incidental” to a “non-lobbying” business carried on by it or (if applicable) to its trade/professional representation activities - and that, for this reason, it does not therefore need to register.

Note that a “non-lobbying” business is a business consisting “mainly” of activities other than (broadly) lobbying any government, anywhere in the world, or any EU institution, at any level. So, if the main business is, for example, lobbying EU institutions, or lobbying UK civil servants below “permanent secretary” level, and the lobbying of “Ministers” and

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“permanent secretaries” is merely incidental to this, registration still cannot be avoided. The activity at “Minister” and “permanent secretary” level is not incidental to a “non-lobbying” business.

What is “incidental”?

On the meaning of “incidental” to a “non-lobbying” business, the ORCL states, as guidance, that:

*“... Incidental means ancillary to the main focus of a business (which is not lobbying). ... The making of the [relevant lobbying] communication [at “Minister” or “permanent secretary” level] is **not** considered to be incidental when it is a substantive part of the main business, even if it is not the largest part. There is no specific threshold for the amount of interaction that would meet the definition of lobbying: the definition is qualitative, not quantitative.”*

Assuming, then, that the main business is not lobbying, the issue is therefore whether the UK lobbying at “Minister” and “permanent secretary” level is a “substantive” part of the main business.

When do you have to register?

A person must be registered before it commences “the business of consultant lobbying”. So, if it is already carrying on this business, it must apply to register now.

The registered person must then make a return to the Registrar every calendar quarter.

What - and what clients - do you have to register?

Initial registration is of:

- the name of the registering person;
- the names of its directors, shadow directors and (if any) company secretary or (if a partnership) of its partners;
- any trade name for its business within the Act;
- the address of its registered office or (if not a UK company) its “*main office or place of business*”;
- its VAT registration number;
- a statement as to whether it has undertaken to comply with “*a code of conduct which governs the carrying on of the business of consultant lobbying ... and is open to inspection by members of the public*”; and, if so, as to where a copy of the code can be inspected; and
- if, in the 3 months before it applied for registration, it “*received payment to engage in lobbying [within the Act]*”, the name/s of the relevant clients on whose behalf it has lobbied or is engaged to lobby.

The quarterly returns are of the names of the clients for which the registered person has engaged in lobbying within the Act in the previous calendar quarter.

Note here that even a single conversation with a “Minister” or “permanent secretary” can amount to lobbying, and irrespective of the context (so, whether business or social), if conducted on behalf of a fee-paying client.

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The obligation to disclose the names of clients overrides any conflicting “client confidentiality” obligation - although the ORCL states that: “...*there may be isolated instances where the Registrar might consider restriction on publication if this was clearly not in the public interest*”.

Who is a “Minister”?

A “Minister” is called in the Act a “Minister of the Crown”, defined as “*the holder of an office in the [UK] government*”.

As of July 2015, the UK Cabinet Office listed 108 such officeholders, including government Whips who also held a government office.

Politicians below this level are therefore excluded - including government MPs who are not “Ministers”.

The “government” here is the UK central government - not the devolved Scottish, Welsh or Northern Irish administrations, nor UK local government entities (e.g., the county councils and London boroughs). Lobbying the Scottish administration, though, will probably soon be regulated by a separate Scottish Act (see “North of the Border” below).

Note that, constitutionally, the Channel Islands (including Guernsey and Jersey) and Isle of Man are not part of the UK.

Who are “permanent secretaries”?

The permanent secretary and (if any) second permanent secretary are the most senior civil servants in any UK central government department.

Who are the “permanent secretary” “equivalents”?

The eight currently specified UK civil service positions treated by the Act as “equivalent” to a “permanent secretary” for lobbying purposes are:

- Cabinet Secretary;
- Chief executive of HMRC (the UK tax authority);
- Chief Medical Officer;
- Director of Public Prosecutions (DPP);
- First Parliamentary Counsel;
- Government Chief Scientific Adviser;
- Head of the Civil Service; and
- Prime Minister’s Adviser for Europe and Global Issues.

Local government matters excluded

Lobbying UK central government on local government matters is outside the Act. So, for example, writing to a “Minister” about a local planning matter is not “lobbying”.

A local planning matter is within the Act, though, if no longer exclusively local, because the outcome depends on a central government decision. For example, then, a local planning application “called in” by central government is within the Act - as is the topical issue of airport capacity in South East England (i.e., the London area), since it will be determined by central government.

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For lobbying the devolved Scottish administration, see “North of the Border”, below.

“In-house” and “pro bono” excluded

If a person lobbies on its own behalf (“in-house”), or on behalf of what it considers the good of society generally, rather than on behalf of clients, the Act does not apply.

The UK lobbying industry regards this “in-house” exclusion as significant.

Territorial extent

Lobbying at “Minister” or “permanent secretary” level is within the Act, even if conducted outside the UK - and so even if both “lobbied” and “lobbyist” are outside the country at the time.

Sanctions

Failure to register, or to provide information, or providing inaccurate or incomplete information, are criminal offences, punishable by a fine or civil (non-criminal) penalties. There is a “due diligence” defence to criminal charges.

The Registrar can serve an “information notice”, requiring information, on any registered person, or on any unregistered person she reasonably considers should be registered. There is a defence of “legal professional privilege” to disclosure to such a notice.

Fees

From 1 January 2016, the annual registration fee is £950, plus £12.50 per quarter for the quarterly returns, making a total of £1,000 per annum.

For the first year of registration, the annual fee is pro-rated, on a time basis, from the date of registration.

Take-up

So far, take-up of registration has been low.

As at the time of writing, almost ten months after the Register opened, only 120 lobbying businesses had registered, against a reported government estimate of 700.

North of the Border

The Lobbying (Scotland) Bill is currently going through the Scottish parliament. It was introduced on 29 October 2015.

If enacted, it will catch the lobbying of MSPs (MPs in the Scottish parliament), as well as ministers in the devolved Scottish administration - although not of civil servants in the administration. So far as politicians are concerned, it will therefore be wider than the UK Act. Interestingly, though, it will catch only “face-to-face” (“oral”) lobbying - not written.

If a person registered under the UK Act is lobbying MSPs or Scottish ministers, it will accordingly also have to register under the Scottish Act, if and when in force - unless that Act contains an applicable exemption.

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