



Technical Release

ICAEW Technical Release

TECH 01/17BL

Registration of Consultant Lobbyists – Implications for Member Firms Updated Guidance as at February 2017

ABOUT BUSINESS LAW

The ICAEW Business Law Committee includes representatives from public practice and the business community. The Committee is responsible for ICAEW policy on business law issues.

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ISBN 978-1-78363-920-5

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INTRODUCTION

1. Under the *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014*, (the Act), the Register of Consultant Lobbyists is maintained by the Office of the Registrar of Consultant Lobbyists (ORCL). The Registrar reports directly to Parliament.
2. Any member firm, or any other organisation, that makes representations to Government Ministers or very senior civil servants, as part of their professional services to clients, will be deemed to be conducting business as a consultant lobbyist, and will need to apply to join the Register and submit quarterly returns.
3. Registration needs to occur before contact is initiated.
4. The Register is open to public inspection and includes the firm's name, function, directors/partners and the parties on whose behalf it is lobbying. It was launched on 27 March 2015.
5. This Technical Release has been produced to expand upon the guidance given in TECH04/16BL. Nothing included in TECH04/16BL has become inappropriate, but further discussions with the Registrar have clarified some of the provisions of the legislation and their interpretation. For this reason, TECH04/16BL has been withdrawn with immediate effect and replaced with TECH01/17BL.

DEFINITION OF CONSULTANT LOBBYING

6. An organisation is a consultant lobbyist if it meets both of the following criteria:
 - in the course of business, and in return for payment, it communicates directly with a UK Government Minister or Permanent Secretary (or an equally senior Civil servant, such as the Director of Public Prosecutions or Chief Medical Officer) with regard to any function, policy or legislation of the UK government; and
 - it is registered for VAT.

APPLICATION AND EXEMPTIONS

7. The Act applies to:
 - all consultant lobbying with regard to the development of legislation, other government policy or functions of government, including the award of contracts, grants, licences or similar benefits by the UK government. It does not apply to communications with the EU, local authorities or devolved administrations;
 - all communications made directly, but where or how the contact is made is irrelevant. So, for example, an email to a Minister or Permanent Secretary's direct address or to their official or personal account on social media falls within the definition of acting as a consultant lobbyist, if the aim was to support the interests of a particular client or group of clients. Similarly, personal contact in a social or other context (including, for example, at constituency party meetings) will be included.
 - communications initiated by the Minister or a Civil Servant, where the aim of the consultant lobbyist is to support the interests of a particular client or group of clients, and the consultant lobbyist is expecting to be paid (directly or indirectly) for providing that service.

- all paid-for consultant lobbying: payment can take any form, direct or indirect and can include payments made by a party other than that expected to benefit from the lobbying by the consultant lobbyist.
8. Paid-for consultant lobbying will include communications with Government ministers or senior civil servants which are paid for under any contract, formal or informal, or are paid for in forms that purport to represent gifts or other non-financial inducements. For example, members should take particular care not to imply to clients in any way that they will be charging a higher than normal rate, due to their ability to influence Government policy to the client's benefit, unless they are registered consultant lobbyists. For more guidance on the interpretation of 'in return for payment' see 'Activities Provided other than under Contract' below.
 9. There are exceptions to the definition of consultant lobbying covering:
 - individuals making communications on behalf of their employer;
 - international organisations, foreign governments or their officials or staff members;
 - trade or membership organisations when acting on behalf of a class or body of people, and if their income is derived wholly or mainly from that class or body of people and their communications are incidental to their general activity (so ICAEW itself is not acting as a consultant lobbyist, when making communications on behalf of its members); and
 - Charities provided they are not paid to make communications.
 10. There is also an exception for communications which are 'incidental' to the carrying on of a business which consists mainly of non-consultant lobbying activities. The Registrar has interpreted 'incidental' to mean 'ancillary to the main focus of a business' and 'secondary to its main concern.' However, the interpretation of this provision is not clear, and it may not cover activities solely on the grounds that the consultant lobbying activities form a small proportion of the activities of the firm as a whole nor that they form a relatively small proportion of the services supplied to an existing client. For example, the Registrar has indicated that she is unlikely to interpret as 'incidental' any communications made by specialist lobbying departments or individuals within a firm, or consultant lobbying communications which are included within a firm's contract terms (formal or informal) with its clients.
 11. The Registrar has indicated that a key determinant of whether a communication counts as 'lobbying' is based on to whom the communication is made. This means that any direct communication with a government minister or senior civil servant, conducted on behalf of a paying client or group of clients, is prima facie lobbying unless there is evidence to the contrary. For this reason the Registrar believes that it is likely that the large accountancy firms (as with the large law firms) should register as they are almost certain to come into contact with ministers or senior civil servants and discuss the affairs of clients. For other member firms (as with the majority of law firms) it will be necessary to decide on a case by case basis whether any activity counts as lobbying.
 12. The Registrar has advised that If an individual or firm works behind the scenes to advise their clients or draft letters, but never write or attend meetings personally even if they have arranged them for their clients, then this will not constitute lobbying. This is because there is no direct communication between the organisation and the minister or senior civil servant.

ACTIVITIES PROVIDED OTHER THAN UNDER CONTRACT

13. The Act does not apply to representations made other than for payment. It will therefore not apply to representations made on a pro bono basis (including on behalf of ICAEW) even where the firm hopes that they will result in improvements to legislation, regulation or other government policy in ways which will benefit the firm's clients, either specifically or generally. It is recognised that government will benefit from the experience of members of business matters generally or relating to some or all of the members' own clients. Provided that the passing on of that experience is not part of their paid-for services, this does not come within the definition of consultant lobbying. Nor do any research or thought leadership publications prepared for purposes of marketing, or the raising of the profile of the firm, even where a copy of the publication is sent to the minister or public official personally, as part of the general distribution of the publication.
14. It is not possible to give definitive guidance on what does or does not constitute consultant lobbying that can cover all eventualities. In certain circumstances members may need to make a judgement call when deciding whether a particular paid activity does constitute consultant lobbying or not or seek legal advice.
15. Members are reminded that a contract may be made informally, including orally, and consultant lobbying carried out as a result of an informal contract will be included within the scope of the Act. Particular caution should be employed where it is possible that a client has chosen a particular firm because of their perceived ability to influence government policy; where discussions may concern areas of policy on which public interest concerns have been raised (such as tax avoidance schemes); or where the issues concerned have a particular impact on a single client or group of clients.
16. Where members are in a position where they may be in contact with government ministers or senior civil servants regularly or on an occasional basis (including, for example, where their constituency MP is a minister) or where the expectations of their clients may be in doubt, they may wish to include in their engagement letters specific terms clarifying whether or not they have been contracted to make representations on behalf of their clients, either individually or jointly.
17. A client, for this purpose, includes any third party organisation on whose behalf the consultant lobbyist is paid to act. This will include public and private companies, representative bodies, charities and individuals. If a consultant lobbyist makes a communication for a number of clients, and was paid by all or any, then each paying client would have to be included on the register.
18. It would not normally be expected that 'professional accountancy services' include consultant lobbying services, so that where a firm agrees to provide professional accountancy services, this should not of itself, in ordinary circumstances, amount to an agreement to provide consultant lobbying services (through implied terms or otherwise).
19. An organisation should ensure that compliance processes are introduced to ensure that if direct lobbying communication with a minister or senior civil servant is being considered, registration takes place in advance of the communication. If the communication does not materialise, a 'nil' quarterly return will be required.

CO-OPERATION WITH THE REGISTRAR

20. The Registrar has wide powers to seek information, which over-ride normal considerations of confidentiality. For example, she may monitor the contacts of qualifying public officials via ministerial diaries and may send 'Information Notices' to member firms, where a particular meeting or event could have involved consultant lobbying. Members should respond appropriately. If they have concluded that any communications do not represent consultant lobbying, they would be advised to make the grounds for that conclusion clear to the Registrar.

PENALTIES

21. Carrying out any consultant lobbying without prior registration may result in civil or criminal penalties.

FURTHER SOURCES OF INFORMATION

22. Members may wish to seek their own legal advice on the requirements of the Act, or can consult ICAEW's Technical Advisory Service on +44 (0) 1908 248250.
23. Members may also contact the ORCL enquiry line via email (enquiries@orcl.gov.uk) or by telephone (020 7271 8827). Online information is also available from [here](#).

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