



## Executive summary

- + We welcome the opportunity to contribute: this consultation, alongside the one carried out by the Cabinet Office, should give our industry the answers we have been seeking since the start of this process.
- + The information registrants will be asked for is clear: we support the recognition of voluntary codes of conduct.
- + We are concerned that pre-registration rests on the implication that there are two simultaneous definitions of a lobbyist. We recognise that expanding the register is desirable for many reasons, but there is only one way this can be done effectively and fairly: taking up one, proper, workable definition of lobbying. The definition the Lobbying Act provides is deeply flawed.
- + It is unlikely that the commitment to ensuring registrants fully understand the statutory register and the serious practical issues can be reconciled. The implication is clear: we believe the statutory register should be delayed.
- + We do not believe that disclosing the names of those being contacted will aid transparency for the reasons outlined below. Information on the statutory register should not be optional and – if more information can be included – in the first instance we should look towards covering vital information such as those actually conducting the lobbying.
- + We believe the nil returns suggestion is complicated by these two simultaneous definitions of a lobbyist and bound up with the Cabinet Office’s consultation concerning fees. We also suggest the statement is amended to aid the public, politicians and businesses when they come to inspect the statutory register.
- + We welcome the points of clarification: they raise a number of questions, but they represent the first step towards ensuring our industry understands the statutory register.

## Introduction

- + The PRCA is the UK professional body representing the public relations, public affairs and communications industry. Our membership includes consultancies (including around 75% of the “PR Week Top 150”), in-house teams (from banks to public sector teams to charities) and also individual practitioners.
- + We represented 1,117 lobbyists and public affairs practitioners.<sup>1</sup>
- + The PRCA is in favour in principle of a statutory register of lobbyists. We have a long standing commitment to this. We believe that lobbying should be open and transparent, which is why every member of the PRCA who provides public affairs and lobbying services is required to register their staff and clients on a quarterly basis and sign up to our Code of Conduct supported by rigorous disciplinary structures.
- + There are currently 80 organisations on the PRCA Public Affairs Register. This includes the largest consultancies such as MHP Communications, Weber Shandwick, H+K Strategies and Edelman, for

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<sup>1</sup> Found here (please note, the September – November 2014 entry is currently being gathered and uploaded): <http://prca.org.uk/paregister>



instance. We also represent in-house teams for organisations as diverse as the NSPCC, Nationwide, Visa, Local Government Association and The Law Society.

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## Registration process

1. Is there any aspect of the proposed information that is unclear or that you disagree should be provided?

We welcome the statement of whether or not registrants comply with the PRCA Code of Conduct; we believe this will allow businesses, the public and politicians to note those committed to transparency and easily recognise that more meaningful disclosure and information about these organisations can be found on the PRCA Public Affairs Register. 1,117 public affairs professionals are currently represented there. We would be interested to hear what provisions are being made for code of conducts that do not apply to the entire organisation but instead apply to an individual.

The PRCA has campaigned – and continues to campaign – for a register with a proper, working definition of lobbying and the sorts of disclosure and information found on our own register. One section of the proposed information seems to suggest that organisations are required to supply the names of these employees carrying out lobbying.<sup>2</sup> Whilst we do not believe this is currently the case, we would appreciate if this was clarified both now and at the point of registration. This was raised in our response to the Cabinet Office’s consultation which sought views on draft regulations relating to the register and we look forward to discussing the results.

## Timing of registration

2. Do you agree that registration could happen ahead of an organisation carrying out specific lobbying activity?

This consultation states that an organisation could “register in advance of having carried out any specific lobbying activities (or receiving payment to do so), even if there were no particular lobbying activities envisaged at the point of registration, in order to demonstrate a commitment to transparency”. This language raises a number of questions:

- + It implies that the statutory register could feature organisations and individuals who do not trigger the Act’s definition of a lobbyists. Would these individuals ever have to trigger this definition or will there be a specific-time limit?
- + It implies that there are to be two simultaneous definitions of lobbyists (both expressed in the same sentence): those who trigger the need to register and therefore defined as lobbyists under the Act and those who are deemed lobbyists by the Registrar despite not falling under the definition. Could this be clarified and how does this influence the validity of the Lobbying Act’s scope?

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<sup>2</sup> “Any name or names, not already included under the paragraphs above, under which the person carries business as a consultant lobbyist.”



- + It implies that appearing on the statutory register is not a requirement to be deemed – in the eyes of the Registrar – a “consultant lobbyist organisation”. We strongly agree. Could the logical implications of this be expanded upon?

We continue to advocate a quarterly, retrospective statutory register. This is how the PRCA Public Affairs register operates and guarantees that the information is a true reflection of the work carried out.

We believe that expanding the statutory register – if this is the case – is the right move. We would suggest that both the Registrar and the PRCA desire, in this instance, the same outcome: more registrants which will result in greater transparency and low, fair fees.<sup>3</sup> We do not believe this can truly be achieved by creating a two-tiered system with two definitions of lobbyists, which would be the real result of the above.

This situation is the result of a flawed definition of a lobbyist and we believe that the aims above – on which the PRCA and Registrar are seemingly in agreement – can only be achieved by fundamentally rewriting the definition to cover all those who influence government or advise others how to influence government.<sup>4</sup>

With the above taken into account, there will be a divergence of views on this issue. Many submissions might welcome the fact the scope is seemingly being expanded whilst others might suggest the statutory register should be delivered precisely as it is laid out in the Act and improved after implementation. A third category might raise the fact that the General Election in May 2015 could well result in significant change. Our members’ views are diverse and are underpinned by a tangible commitment to transparency. Our aim here is to bring this to the forefront, highlight the implications of this consultation and note that the goal of both parties here is a wider register.

3. Do you think organisations would be willing to register ahead of having carried out any specific lobbying activities?

This consultation states that registering ahead of having carried out the work “demonstrate[s] a commitment to transparency”. Any discussion of transparency such as this must be framed and understood in relation to the industry’s pre-existing voluntary registers: they have (and will continue to) provide a far greater level of transparency than the statutory register in its current form. For this reason we do not, therefore, believe that an organisation’s commitment to transparency is determined by appearing on the statutory register ahead of triggering the need to.

Should organisations respond to this consultation stating they will register beforehand, this does not guarantee such registration will take place in every instance. It will most likely be determined on a case-by-case basis. Additionally, the potentially high fee for registration will have a palpable effect on whether or not organisations carry out the work which will require them to register at all, let alone ahead of triggering the need to.

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<sup>3</sup> Our response to the Cabinet Office’s consultation raises this at length:  
<http://prca.org.uk/assets/files/PRCA%20response%20-%20%20Register%20of%20Consultant%20Lobbyists.pdf>

<sup>4</sup> Please find our full suggested definition here:  
<http://prca.org.uk/assets/files/Definition%20of%20Lobbying.pdf>

4. Is there any aspect of the proposed information that is unclear or that you disagree should be provided?

It would be helpful to have a sense of timescale; one which went beyond the commitment – as discussed with the Registrar – for the statutory register to be in place before the General Election in May 2015. As noted when we met the Registrar on Tuesday 14<sup>th</sup> October, we are pleased that the initial period will be used to help potential registrants understand what is required of them. This reflects the attitude of the Electoral Commission who are responsible for administering other parts of the Lobbying Act and this consistency is a benefit for those consultants who might be required to register under Part I and Part II.

If registration is to take place in March, for instance, systems and processes would need to be in place to record these “oral or written communications to a Minister, Permanent Secretary (or equivalents) relating to the development, adoption or modification of any legislation, policy, financial arrangement or exercise of any function of Government” by January.

This looks unlikely and reconciling this commitment to ensure registrants fully understand the statutory register with the serious practical issues they will face will take time.

The implication is clear: implementation should be deferred until after the General Election.

#### **Providing additional information**

5. Do you agree with the principle behind disclosing the identity of the Minister with whom a particularly communication was made?

The PRCA does not agree with this principle.

If the “spirit of the legislation” can be determined and acted upon, this action would result in the inclusion of more useful information. Specifically, a full list of employees that have conducted wider public affairs services and a full list of clients for whom these wider services have been provided.

If the public were to be “better served” by this legislation, just in this instance, any additional disclosure would apply to every registrant. Whilst we do not agree with the principle above, its inclusion in this consultation does at least highlight the risk of creating two-tiered disclosure by making any additional information voluntary. It should be noted that Ministers need only ensure their diaries of meetings are published in a timely manner and scrupulously contain full details of attendees to meet both the Registrar’s aim and to ensure our industry is not unfairly burdened with another layer of complexity. Registrants will have to adopt specific systems and processes to capture the information already required by the legislation.

If this proposed addition to the statutory register is a suggestion that the legislation is seriously lacking, we would support the Registrar were she to call for change.

6. Would you provide this additional information if given the ability to do so?

We anticipate a divergence of views on this issue from other consultation responses. For context, this information is not included on any of the voluntary registers.<sup>5</sup>

**Nil returns**

7. Do you agree that this information should be provided?

From the practical experience of operating the PRCA Public Affairs Register, even our wider definition of lobbying results in organisations and individuals joining and leaving depending on their activities.

As raised earlier in this response (q2.), this consultation – as the PRCA understands it – seems to propose two simultaneous yet markedly different definition of lobbyists: those who trigger the need to register and therefore defined as lobbyists under the Act and those who are deemed lobbyists by the Registrar despite not falling under the definition.

This second category is undefined and appears, without any additional details, to be based on the Registrar’s judgement. There must be some parameters which shape this idea of organisations who can and cannot register nil returns without ever carrying lobbying as the Act defines it. Even if these were defined, we believe it would be exceptionally confusing. Furthermore, as outlined throughout this response, this brings into serious question the validity of the Act’s definition.

We remain concerned about the potential cost for organisations who might submit nil returns almost every quarter, especially given the potentially high fee (considering the original impact assessment alongside the potentially low number of registrants due to the narrow definition of lobbying). This was raised in our response to the Cabinet Office’s consultation which sought views on draft regulations relating to the register and we look forward to discussing the results.

8. Is there any aspect of the proposed information that is unclear or that you disagree should be provide

We suggest that the information be amended to the following:

A statement confirming that no lobbying activity has been conducted nor payment for lobbying activity has been received. Public affairs, wider communications and lobbying work which does not trigger the precise need to appear on this statutory register may have taken place.

For transparency and to help the businesses, the public and politicians need to understand that there will be disparity between the statutory register and the voluntary registers and we believe that this amended statement is a necessary step. The register has a responsibility to highlight this in the first instance.

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<sup>5</sup> Found here (please note, the September – November 2014 entry is currently being gathered and uploaded): <http://prca.org.uk/paregister>



## Points of clarification

9. With references to questions (i-iv) above and their respective answers, what are the outstanding areas of definition that are unclear?

10. Do you have any further questions of clarification or definition?

i. What constitutes “oral or written communications”?

Ambiguity surrounding this is one of the major problems facing lobbying organisations.

Erring on the side of caution is a crucial aspect of the PRCA’s own approach to lobbying disclosure: the very definition we use positively facilitates it. Given the potential penalties, we do not believe that it is sound to “expect potential registrants to err on the side of caution” when it comes the statutory register. We seek assurances that this suggestion will not be used during implementation to cover difficult, unusual and unaccounted for scenarios and questions. The guidance must be clear from the very start.

The PRCA has previously sent through multiple scenarios and questions to the Registrar’s office and we look forward to discussing those not covered in this clarification. These included: overservicing; foreseeable situations where communications would fall outside of the “personally” qualifier; and situations in the line of work where communications made might not pertain to the “development, adoption or modification of any proposal of government” &c.

ii. Relevance of location?

The PRCA has not further comments.

iii. When lobbying is considered “incidental”?

The PRCA represents a broad range of members. As the largest PR, Communications and Public Affairs trade association in Europe, we represent around 76% of the “PR Week Top 150” consultancies. Our membership includes large, integrated organisations such as Weber Shandwick, H+K Strategies, MHP Communications, Grayling and Edelman as well as consultancies who focus on public affairs and lobbying such as Bellenden, The Whitehouse Consultancy and PB Political Consulting. We also represent a number of consultancies for whom the meaning of “incidental” is acutely relevant. These organisations can usually be recognised on the PRCA Public Affairs Register by the small number of clients for whom they carry out public affairs work for.

Given the facts outlined above, the PRCA Public Affairs Register might seem like a natural starting point, but we seek assurances that we will not be one of only a handful sources. The meaning of “incidental” must not become a means by which other industries who carry out lobbying – such as law firms – circumvent the statutory register. The Cabinet Office has previously offered us assurances and we are confident that the Registrar understands and appreciates this.

This clarifications references some organisations as having a “Government relations team”. This merits discussion. As an example, H+K Strategies in the UK is structured by sector. Public affairs and lobbying services are carried out for some clients of the Energy+Industrials team and the Financial+Professionals Services team. What, precisely, a team calls itself is irrelevant: it is the act of lobbying which should concern us here.



This clarification also states: “It should be borne in mind that preparation including planning, research, analysis and travelling all contribute towards to the process of lobbying and must be taken into consideration when considering whether registration is required”. As the PRCA understands it, none of these actions trigger the need to register.

Does the above suggest that lobbying is again being defined differently here: must potential registrants firstly consider whether they have carried out the “oral or written communications” under one definition and then consider whether or not the lobbying work they carry out is “incidental” under a second definition? We believe this would be exceptionally confusing.

iv. Do certain “class[es]” of organisations have to register?

80% of the public affairs industry work in-house and a great many are employed by the types of organisations described in this provision. The majority of our industry will not be represented on the statutory register. Despite this, it is encouraging that this clarification at least recognises these professionals lobby.

11. Based on your understanding of the requirement to register, how many organisations or individuals do you estimate would be required to register?

The PRCA has encouraged its members to respond to this consultation separately. This consultation and the consultation recently carried out by the Cabinet Office are routes to properly clarifying the cost of the statutory register and the scope of activities covered. Until these details are released, many organisations will not be able to accurately state whether or not they will be required to register, let alone estimate the total number of organisations.