EXPLANATORY MEMORANDUM TO

THE REGISTRATION OF CONSULTANT LOBBYISTS REGULATIONS 2015

2015 No. 379

1. This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the Instrument

2.1 This instrument establishes certain practical procedures related to the statutory register of consultant lobbyists which is provided for by the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 ("The Act") and will be kept and maintained by the independent Registrar of Consultant Lobbyists. This instrument establishes procedures related to the requirement for consultant lobbyists to register, provide certain information and pay charges to cover the cost of maintaining and updating the register. It establishes procedures in relation to the following:

- Form of application to be entered in the register
- Form of information return
- Limitations on duty to supply information
- Charges
- Supply of information regarding VAT registration.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 This instrument is being made to support the implementation of the statutory register of lobbyists, provided by part 1 of Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014. This part of the Act is expected to come into force on 1st April 2015, and this instrument is necessary to ensure the important practical matters covered by this instrument, for example the imposition of charges, can come into force at the same time as the register is implemented.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The introduction of a statutory register of consultant lobbyists, by Part 1 of the Act, will meet a commitment in the *The Coalition: Our Programme for Government*, published in 2010. The objective of introducing the Register is to increase the transparency of the consultant lobbying industry and its relationship with the Government. The Register, which the Act will introduce, is intended to complement the Government's transparency initiatives – which include the quarterly publication of details of ministers and permanent secretaries' meetings with organisations – and the industry's existing self-regulatory regime. The Register is intended to address the specific problem that it is not always clear whose interests are being represented by consultant lobbyists

7.2 The Register will be statutory in order to ensure that consultant lobbyists are required to register and that any failure to do so can result in the imposition of sanctions.

7.3 The policy is of interest to a range of organisations and individuals including members of the consultant lobbying industry, a number of campaign groups and civil society. A consultation on proposals for a statutory register conducted in 2012 received 259 responses. A consultation on a draft of this instrument received 13 responses.

7.4 The Policy background of the specific elements of the Regulations is explained below.

Form of application to be entered in the register

7.5 Regulation 2 prescribes the information that must be included in the register entry of each consultant lobbyist covered by the terms of the Act. The provision of these details will allow the Registrar to update and maintain the register with the required information. It will allow people to identify consultant lobbyists who have registered, the clients they represent, whether

they comply with a relevant code of conduct and where that code of conduct can be found, which is the essential aspect of the Register.

Form of information return

7.6 Regulation 3 requires that an information return be made in writing in order that it can be processed and entered on the Register. Writing includes written communications made by electronic or digital means.

Limitations on duty to supply information

7.7 Regulation 4 provides that, when serving an information notice, the Registrar may not request communications which are subject to legal professional privilege. This is to guarantee the long standing confidentiality of such protected material and ensure that legal advice can be given freely without fear of it being disclosed to the Registrar in the future.

Charges

7.8 Regulation 5 sets the level of the charges to be paid by registered consultant lobbyists. In accordance with section 22 of the Act, the charge is set to recover all costs incurred by the Registrar in exercising her statutory functions, other than those where services are provided by the Cabinet Office. The charging structure comprises three separate charges:

- An application processing charge: an amount to cover the cost of processing an application to register;
- An information return processing charge: an amount to cover the cost of processing the return; and
- An annual maintenance charge that covers maintenance costs of the register.

7.9 These charges have been specified separately to ensure transparency about what functions are being paid for by each charge. It will be for the Registrar to determine the practical arrangements for invoicing for those charges.

Supply of information regarding VAT registration

7.10 Section 2 (1) (b) of the Act provides that one of the criteria for determining if a person is a consultant lobbyist is that " the person is registered under the Value Added Tax Act 1994." It may therefore be necessary for compliance monitoring or enforcement purposes for the

Registrar to determine the VAT-registration status of a firm or individual. Regulation 6 therefore provides that Her Majesty's Revenue and Customs may confirm to the Registrar whether or not someone is (or was previously) VAT-registered so that the Registrar may determine whether or not the firm or individual is exempt from the requirement to register. This is an important aspect of the Registrar's monitoring and enforcement powers.

8. Consultation Outcome

8.1 The Government conducted a consultation on draft regulations. This ran from 11 September to 17 October 2014. 13 responses were received. The Regulations have been laid as drafted in the consultation save for a minor drafting change to ensure regulation 5(1) (c) with section 22(1) of the Act. The Government's response is available on www.gov.uk.

9. Guidance

9.1 Guidance on the application of the statutory register will be provided by the independent Registrar of Consultant Lobbyists.

10. Impact

10.1A Regulatory Impact Assessment has been published and is available at http://www.parliament.uk/documents/impact-assessments/IA13-22A.pdf.

10.2 The impact on the public sector is a one-off implementation cost of £111,000 and an annual cost of £147,000 for the initial years of the register's operation. It is anticipated that the annual cost will decrease in future years. This impact represents the cost of certain services, including accommodation, and IT, and secretariat staff which will be provided to the Office of the Registrar by the Cabinet Office under the terms of Paragraph 8, Schedule 2 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration 2014. These costs form a proportion of the overall costs of the Office of the Registrar, the remainder of which will be recovered by a charge on consultant lobbyists, as set out in this instrument. The accommodation and IT will be provided as part of existing Cabinet Office resources; the secretariat staff are existing civil service staff. These costs will be reviewed on an annual basis.

11. Regulating Small Business

11.1 The legislation does not apply to companies who are not registered under the Value Added Tax Act 1994.

12. Monitoring and Review

12.1 The Government will keep under review the impact and the level of charges levied on consultant lobbyists.

13. Contact

13.1 Katy Budge at the Cabinet Office Tel: 020 72763513 or email: registerlobbyists@cabinetoffice.gov.uk can answer any queries regarding the instrument.