

Regulation of Lobbying (Amendment) Bill 2022

General Scheme

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Long Title

An Act to amend the Regulation of Lobbying Act 2015 to extend the relevant period for review of that Act; to expand the application of the meaning of carrying on lobbying activities and increase the number of excepted communications; to provide for the improved operation of the Register of Lobbying; to introduce additional relevant contraventions; to provide for a scheme of administrative sanctions; and to provide for related matters.

Explanatory note:

The Long Title of the Bill will be considered further in consultation with the Office of the Parliamentary Counsel.

Part 1 - Preliminary and General

Head 1 – Short Title, Collective Citation and Commencement

Provide that –

- 1. (1) This Act may be cited as the Regulation of Lobbying (Amendment) Act 2022.*
- (2) The Principal Act and this Act may be cited together as the Regulation of Lobbying Acts 2015 and 2022.*
- (3) This Act comes into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.*

Explanatory note:

This is a standard provision and is based on section 13 of the Parental Leave (Amendment) Act 2006 and section 1 of the Regulation of Lobbying Act 2015.

Head 2 – Definition

Provide that –

In this Act ‘Principal Act’ means the Regulation of Lobbying Act 2015.

Explanatory note:

This is a standard provision and is based on section 1 of the Personal Insolvency (Amendment) Act 2015.

Head 3 – Extending the Relevant Period from 3 to 5 Years

Provide that –

Section 2(2) of the Principal Act is amended by the substitution of ‘5’ for ‘3’ in paragraph (c) and the addition of text to provide that the first period of 5 years will only begin to run on the date on which the amended paragraph comes into operation. The new paragraph will read as follows:

“(c) each subsequent successive period of 5 years beginning on the day on which this paragraph comes into operation.”

Explanatory note:

This Head provides for the amendment of section 2(2)(c) to extend the relevant period during which the Minister must commence a review of the operation of the Act and produce a report for each House of the Oireachtas from 3 to 5 years.

It further provides that the next statutory review (the 3rd one) would commence 5 years following the commencement of this amending provision, effectively resetting the clock in relation to the timing of the next required statutory review.

Head 4 – Amending the Definition of Lobbying Relating to the Development or Zoning of Land

Provide that –

Section 5(1) of the Principal Act is amended by the substitution of the following for paragraph (c):

“(c) makes, or manages or directs the making of, any relevant communications about the development or zoning of land under the Planning and Development Acts 2000 to 2021.”

Explanatory note:

This Head provides for the amendment of section 5 (1)(c) of the Act in order to extend the definition of lobbying in relation to the development or zoning of land to include the managing and directing of relevant communications as well as the making of relevant communications.

This amendment is designed to ensure that paragraph (c) captures all interested parties involved in the development and zoning of land.

Head 5 – Amending the Definition of Lobbying to Include Business Representative Bodies or Coalitions of Business Interests Irrespective of Number or Status of Employees

Provide that –

1. Section 5(2) of the Principal Act is amended by the insertion of the following paragraph after paragraph (c):

“(d) the person is a business representative body or coalition of business interests, where one or more of the members of the business representative body or coalition of business interests would fall within the scope of one of the paragraphs (a) to (c) above if they were to carry on lobbying activities outside of the business representative body or coalition of business interests and the relevant communications are made on behalf of any of the members or in the furtherance of any of those interests.”.

2. Section 5 (9) of the Principal Act is amended by the insertion of the following:

“‘business representative body’ means a body that primarily exists to represent the business interests of its members irrespective of the number or status of persons employed by such a body;

‘coalition of business interests’ means a coalition of business interests formed to advocate as a group on an issue of mutual industry interest irrespective of the number or status of employees engaged;”.

Explanatory note:

This Head provides for the amendment of section 5 to bring

- Business representative bodies that exist primarily to advocate on behalf of their members, and
- Coalitions of business interests that have been formed to lobby as a group of mutual industry interests,

within the scope of the Act, irrespective of the number or status of employees engaged by either type of organisation.

The Head also includes definitions of ‘business representative body’ and ‘coalition of business interests’.

Head 6 – Inclusion of Non-Remunerated Office Holders within the Scope of the Act

Provide that –

Section 5 of the Principal Act is amended by the substitution of the following for subsection (3):

“(3) For the purposes of the operation of subsection (1)(b) in relation to a body in circumstances in which paragraph (b) or (c) of subsection (2) applies to the body, the body ‘makes’ a relevant communication only—

(a) where it is made by an employee of the body, or

(b) where it is made by a person who holds, in the body, any office the functions of which relate to the affairs of the body as a whole,

in his or her capacity as such.”

Explanatory note:

This Head provides for the amendment of section 5(3)(b) so that where an office holder makes a relevant communication on behalf of an organisation that falls within the scope of the Act, it will be regarded as a lobbying activity, regardless of whether or not the office holder concerned is remunerated for the position.

Head 7 - Exempting Communications of Political Parties to Party Members Who Are Also Designated Public Officials

Provide that –

1. Section 5(5) of the Principal Act is amended by the insertion of the following paragraph after paragraph (o):

“(p) communications by a political party to its members who are designated public officials and which are made exclusively in their capacity as members of the political party concerned.”

2. Section 5(9) of the Principal Act is amended by the insertion of the following:

“‘political party’ means a political party registered in the Register of Political Parties in accordance with section 25 of the Electoral Act 1992.”

Explanatory note:

This Head provides for the insertion of an additional excepted communication in section 5(5). It provides that communications made by a political party to its members, who are designated public officials (DPOs), only in their capacity as members of the party, is an excepted communication.

The Head also makes provision for the inclusion of a definition of the term ‘political party’ in section 5(9). The text of this portion of the Head is taken from section 2 of the Data Protection Act 2018.

The effect of this amendment is that communications made by political parties to their members who are also DPOs will not be regarded as lobbying activity and so will be outside of the scope of the legislation.

Part 2 – Registration

Head 8 – Prohibition on Registered Persons from Lobbying where They Have Notified the Commission that They Have Ceased to Carry on Lobbying Activities

Provide that –

Section 8 of the Principal Act is amended by the insertion of the following subsection after subsection (1):

“(1A) Notwithstanding subsection (1), a registered person whose entry on the Register has been marked with a statement that the person has ceased to carry on lobbying activities in accordance with section 11(4) shall not carry on such activities.”

Explanatory note:

This Head provides for the amendment of section 8 to close off the legal loophole whereby a ‘registered person’ who has either permanently ceased lobbying (current provision) or ceased lobbying (proposed amended provision) in accordance with section 11 may nevertheless continue to carry on lobbying activities as they remain a ‘registered person’, but not be legally obliged to make returns, given the exemption under section 12(2).

It also ensures that a ‘registered person’ who has ceased lobbying in accordance with section 11 cannot avoid committing a ‘relevant contravention’ under section 18(a) given that at present, taking sections 7 and 8(1) together, a person can carry on lobbying activities once that person is a ‘registered person’, i.e. the person’s name is included on the Register, regardless of whether that registration is marked with a statement that the person has ceased lobbying.

Head 9 – Additional Details to be Supplied by Applicants for Inclusion on the Register

Provide that –

Section 11(1) of the Principal Act is amended by the substitution of the following for paragraph (b):

“(b) the address (or principal address) at which the person carries on business or their main activities or (if there is no such address) the address at which the person ordinarily resides.”

Explanatory note:

This Head provides for the amendment of section 11(1)(b) to enable SIPO to require that a person making an application to be included on the Register must supply the address at which they carry on their ‘main activities’, if applicable.

Head 10 – Deletion of ‘Permanently’ and Removal of Statement on Ceasing to Carry on Lobbying Activities

Provide that –

1. Section 11 of the Principal Act is amended by the deletion of all instances of the word ‘permanently’ from subsection (4), so that the provision would read as follows:

“(4) A registered person who has ceased to carry on lobbying activities may notify the Commission, in such manner and form as the Commission may require, that the registered person wishes the person’s entry on the Register to be marked with a statement indicating that the person has ceased to carry on lobbying activities and, on receipt of such notification, the Commission shall mark the person’s entry on the Register with such a statement.”

2. Section 11 of the Principal Act is amended by the insertion of the following subsection after subsection (4):

“(5) A registered person referred to in subsection (4) whose entry on the Register has been marked by the Commission with a statement indicating that the person has ceased to carry on lobbying activities, and who subsequently wishes to carry on such activities, shall notify the Commission of this fact, in such manner and form as the Commission may require, and, on receipt of such notification, the Commission shall remove the statement referred to in subsection (4) from the person’s entry on the Register.”

3. Section 12 of the Principal Act is amended by the deletion of all instances of the word ‘permanently’ from subsection (2), so that the provision would read as follows:

“(2) Subsection (1) shall not apply to a registered person whose entry on the register has been marked under section 11(4) with a statement indicating that the person has ceased to carry on lobbying activities.”

Explanatory note:

This Head provides for the amendment of section 11(4) to provide that a registered person’s entry on the Register can be marked by the Commission with a statement that the person has ceased to carry on lobbying activities – not necessarily permanently - once the Commission has been notified of this fact by the person concerned in the manner and form set out by the Commission.

It also provides that a registered person must notify the Commission when the person wishes to re-commence carrying on lobbying activities and permits the Commission to reflect this change on the Register by removing the ‘ceased lobbying’ statement from the registered person’s entry on the Register.

The Head finally provides for the deletion of the word ‘permanently’ from section 12(2) to bring this provision into line with the amendment made to section 11(4).

Head 11 – Increasing the Amount of Information to be Included in Returns

Provide that –

1. Section 12 (4) of the Principal Act is amended by the deletion of the last instance of the word “and” in paragraph (f).

2. Section 12(4) of the Principal Act is also amended by the insertion of the following paragraph after paragraph (f):

“(ff) the names of individual persons who carry on lobbying activities as part of a business representative body or coalition of business interests as provided for in section 5(2)(d), and”.

Explanatory note:

This Head provides for the amendment of section 12 to increase transparency in respect of lobbying activities by requiring members of these bodies/coalitions to be named on lobbying returns.

Part 3 – Enforcement

Head 12 – Contravening Subsections (1) or (1A) of Section 8 is a Relevant Contravention

Provide that -

Section 18 of the Principal Act is amended by the substitution of the following for paragraph (a):

“(a) contravening section 8(1) or 8(1A);”.

Explanatory note:

This Head provides for the amendment of paragraph (a) of section 18 so that contravening section 8(1A), i.e. carrying on lobbying activities while one’s registration has been marked as having ceased, is made a relevant contravention as well as contravening section 8(1).

Head 13 – Anti-Avoidance Clause as a Relevant Contravention

Provide that –

Section 18 of the Principal Act is amended by the insertion of the following paragraph after paragraph (e):

“(f) the taking of any action by a person that has as its intended purpose the avoidance or circumvention of his or her obligations under sections 8(1) or 12(1).”

Explanatory note:

This Head provides for the insertion of an anti-avoidance clause as an additional ‘relevant contravention’ in section 18.

Furthermore, in accordance with section 20(2), a person who is found to have committed this new ‘relevant contravention’ is guilty of an offence and liable: on summary conviction to a class C fine, or on conviction on indictment, to a fine or imprisonment for a term not exceeding 2 years or both.

Initial work on developing this policy proposal drew from the content of section 18, Conflict of Interest Act (Canada): [Conflict of Interest Act \(justice.gc.ca\)](http://justice.gc.ca) and section 41.1(2), Parliament of Canada Act: [Parliament of Canada Act \(justice.gc.ca\)](http://justice.gc.ca).

Head 14 – Contravening Section 22 is a Relevant Contravention

Provide that -

Section 18 of the Principal Act is amended by the insertion of the following paragraph after paragraph (f):

“(g) contravening section 22(1).”

Explanatory note:

This Head provides for the insertion of a new provision making the contravention of section 22 (1) a relevant contravention under the Act.

This will allow the Commission to carry out an investigation under section 19 of the Act where the Commission believes that a person has not complied with the section 22 cooling off provisions.

Head 15 – Contravening Section 22 is Not an Offence

Provide that -

Section 20 of the Principal Act is amended by the substitution of the following subsection for subsection (2):

“(2) A person who commits a relevant contravention under any of paragraphs (a), (b), (c), (d), (e) or (f) of section 18 is guilty of an offence and liable—

(a) on summary conviction to a class C fine, or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 2 years or both.”

Explanatory note:

This Head provides for the amendment of section 20(2) in order to specifically set out which relevant contraventions in section 18 (all except (g)) are classed as criminal offences. The policy position is that contravening section 22(1) should not be a criminal offence under the Act.

Head 16 – Civil and Administrative Sanctions for Contravening Section 22

Provide that –

1. (1) If after conducting an investigation under section 19, the Commission believes that a person under investigation has not complied with section 22 (1), the Commission must

(a) give notice to the person

(i) of the alleged contravention,

(ii) of the reasons why the Commission believes there has been a contravention, and

(iii) respecting how the person may exercise an opportunity to be heard under paragraph (b) of this subsection,

(b) give the person a reasonable opportunity to be heard, either by means of an oral hearing or a written submission, respecting the alleged contravention .

(2) If after giving a person under investigation a reasonable opportunity to be heard respecting an alleged contravention, the Commission determines that the person has not complied with section 22 (1), the Commission

(a) shall inform the person of the Commissions determination that there has been a contravention, and

(b) may issue a caution or reprimand, and / or

(c) may impose a monetary administrative penalty of up to €25,000, and/or

(d) if the Commission considers it to be in the public interest, taking into account the gravity of the contravention and the number of previous contraventions or administrative penalties imposed, if any, may impose a prohibition on registering on the Register and on making or on having a registration return made in respect of the person, for a period of not more than 2 years, and

(e) shall give to the person notice

(i) if the Commission determines that the person has contravened section 22 (1), and the reason for the determination,

(ii) if a caution or reprimand is issued, of the reason for the caution or reprimand,

(iii) if a monetary administrative penalty is imposed, of the amount and the date by which the penalty must be paid,

(iv) if an administrative penalty of prohibition is imposed, of the reason for the prohibition and the start date and end date of the prohibition.

(3) Notwithstanding subsection (2), the Commission shall not impose an administrative penalty if more than 1 year has passed since the date of the contravention, such date which will be determined by the investigator.

(4) To ensure all DPOs are aware of who is prohibited from registering on the Register, information relating to a prohibition imposed under subsection (2) must be made publicly available by the Commission for the duration of the prohibition as soon as is reasonably practicable after the time for applying for an appeal under Head 19 has expired.

2. (1) *A person on whom a monetary administrative penalty is imposed must pay the monetary administrative penalty by the date stated in the notice.*

(2) A monetary administrative penalty constitutes a debt due to the government by the person on whom the penalty is imposed.

(3) If a person fails to pay a monetary administrative penalty as required under subsection (1), the Commission may file with the relevant Court a certified copy of the notice imposing the monetary administrative penalty and, on being filed, the notice has the same force and effect, and all proceedings may be taken on the notice, as if it were a judgment of that court.

(4) All monetary administrative penalties received under this section shall be paid into or disposed of for the benefit of the Exchequer as the Minister directs.

Explanatory note:

This Head provides for the introduction of a system of civil and administrative sanctions to be administered by the Commission relating to breaches of section 22(1) of the Act.

The sanctions proposed are a caution or reprimand, a monetary penalty of up to €25,000 and a prohibition from lobbying of up to 2 years.

This Head is based on sections 7.2 and 7.4 of the Lobbyists Transparency Act [SBC 2001] Chapter 42 of British Columbia, Canada (see https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/01042_01#section7.2).

Initial work on developing this policy proposal drew on the administrative sanctions available to the Central Bank of Ireland (see <https://www.centralbank.ie/regulation/how-we-regulate/enforcement/administrative-sanctions-procedure>).

Part 4 - Miscellaneous and Supplementary

Head 17 – Procedures for Applications for Consent under Section 22

Provide that –

Section 22 of the Principal Act is amended by the substitution of the following subsection for subsection (5):

“(5) On an application for consent made to the Commission in such manner and form as the omission may require, the Commission shall –

(a) undertake any appropriate consultation,

(b) set a date or dates by which any information required by the Commission as part of this consultation process is to be received by the Commission,

(c) as soon as practicable, and in any event not later than 14 days after the receipt of the information referred to in paragraph (b), decide to—

(i) give consent unconditionally or subject to conditions, or

(ii) refuse to give consent for the whole or any part of the relevant period.

(d) Notwithstanding the deadline of 14 days set out in paragraph (c), where an unforeseen circumstance arises, an extension of no more than 14 days may be permitted for the Commission to give its decision, but only with the consent of the relevant designated public official concerned.”

Explanatory note:

This Head provides for the introduction of clear timelines for the processing of section 22 applications by the Commission.

In particular, the Head allows the Commission to set dates for the receipt of requested information as part of the consultation process to enable the Commission to make decisions on section 22 applications.

It further requires that the Commission must decide on section 22 applications no later than 14 days following the receipt of this required information, with the possibility of a further extension of up to 14 days being permitted – with the relevant DPO’s consent – where unforeseen circumstances arise.

Head 18 – Notification of Post-Employment Obligations to Relevant Designated Public Officials

Provide that -

Section 22 of the Principal Act is amended by the insertion of the following subsection after subsection (5):

“(6) (a) Each public service body shall inform every person who is a relevant designated public official employed by, or holding any office or other position in, that public service body, of his or her obligations and duties under this section, both when taking up such employment, office or position, and when leaving such employment, office or position, in that public service body.

(b) In order to allow the Commission to carry out its functions under subsection (1), as soon as a public service body is aware that a relevant designated public official will be leaving his or her employment or office or other position held in that public service body, the public service body shall notify the Commission of the name (where relevant), grade and date on which each such person took up employment or was appointed to any office or other position in that public service body, and also the date on which said person will leave such employment, office or other position in that public service body.

(c) Each public service body and any person who is a relevant designated public official may seek guidance and advice from the Commission in respect of paragraphs (a) or (b) above.”

Explanatory note:

This Head provides that all public service bodies that employ relevant designated public officials must ensure that these relevant designated public officials are made aware of their post-employment obligations under section 22, both when they commence employment/take up an office or position in the public service body concerned, and on leaving such employment, office or position.

It further provides that these public service bodies must notify the Commission, as soon as is possible after they become aware that a relevant designated public official will be leaving their employment or office or other position held in that public service body, of the name, grade and dates of appointment and departure of the relevant designated public official concerned. This information will assist the Commission in the administration of new sanctions proposed regarding section 22.

Finally, this Head also provides that the public service bodies and relevant designated public officials can seek the advice of the Commission on this matter as needed.

Head 19 – Appeals of Administrative Sanctions for Contravening Section 22

Provide that-

1. (1) A person the subject of a decision of the Commission regarding the imposition of administrative sanctions for contravening section 22 may, within 28 days from the date on which notice of the decision concerned was given to him or her under Head 16.1 (2)(e), appeal to the Circuit Court against the decision to impose an administrative sanction and/or the quantum of any monetary penalty and/or the start date and/or end date of any prohibition.

(2) The Circuit Court, on hearing an appeal under subsection (1), may consider any evidence adduced or argument made by the person concerned, whether or not already adduced or made to an authorised officer or investigator or the Commission.

(3) The Circuit Court may, on the hearing of an appeal under subsection (1)—

(a) confirm the decision the subject of the appeal,

(b) replace the decision with such other decision as the court considers just and appropriate, including a decision to impose a different monetary penalty or no monetary penalty, or a different start date and/or end date of any prohibition, or no prohibition, or

(c) annul the decision.

Explanatory note:

This Head provides for a person the subject of a decision of the Commission to impose administrative sanctions for contravening the provisions of section 22 to appeal such a decision.

A legislative basis is provided to the Circuit Court to confirm, vary or annul the decision. The involvement of the Circuit Court at an appeal stage in the administrative sanctions regime anticipates any argument that the Commission is exercising judicial powers or functions not of a limited nature. An appeal to the Circuit Court diminishes risk of successful challenge based on a perceived administration of justice contrary to Article 37 of the Constitution. Therefore Circuit Court oversight of the administrative sanctions procedure is a key safeguard to ensure that the imposition of such sanctions cannot be considered to be an administration of justice by the Commission.

Head 20 – Circuit Court to Confirm Decision to Impose Administrative Sanctions

Provide that-

1. (1) Where a person does not appeal against a decision by the Commission to impose an administrative sanction in accordance with Head 19, the Commission shall, as soon as is practicable after the expiration of the period referred to in that Head, and on notice to the person concerned, make an application in a summary manner to the Circuit Court for confirmation of the decision.

(2) At any time prior to making an application under subsection (1), the Commission may seek the consent in writing of the person concerned to the imposition of the relevant administrative sanction.

(3) Where a person consents in writing to the imposition of the relevant administrative sanction, the sanction shall take effect regardless of whether or not the decision of the Commission has been confirmed by the Circuit Court in accordance with this section.

(4) The Circuit Court shall, on the hearing of an application under subsection (1), confirm the decision the subject of the application unless the Court sees good reason not to do so.

Explanatory note:

This Head provides for confirmation by the Circuit Court of a decision by the Commission to impose an administrative sanction where the person concerned does not appeal the Commission's decision in accordance with Head 19.

An application under this section would not be contentious and would not provide a venue for an alternative form of appeal, but it would provide for the Commission's decision to be subject to the oversight of the Court.

The addition of this provision whereby the Circuit Court will have a 'confirming role' in the imposition of financial sanctions and prohibitions is to allow for and ensure a Constitutionally-sound process.

This Head also allows for a person to elect for the Commission to impose an administrative sanction without Circuit Court confirmation. This reflects the desire to create a constructive engagement between the Commission and the persons subject to its decisions.

Schedule

Head 21 – Amendment of the Schedule to the Principal Act

Provide that –

The Schedule to the Principal Act is amended by the deletion of paragraph 11 and the insertion of the following paragraphs:

- “22. Dublin Port Company.*
- 23. Port of Cork Company.*
- 24. Shannon Foynes Port Company.*
- 25. Port of Waterford Company.*
- 26. Drogheda Port Company.*
- 27. Galway Harbour Company.”.*

Explanatory note:

This Head provides for the amendment of the Schedule to the Act to delete the citation relating to the Harbours Acts and to include the individual names of the State commercial port companies.

This change is required as under the current harbours legislation, the term ‘harbour authority’ as a statutory entity no longer exists and the Harbours Acts 1946 to 2005 have been repealed in respect of each of the State commercial port companies upon their establishment as a company.

Each port company needs to be specifically named in the Schedule to the Principal Act.