



An Roinn Caiteachais Phoiblí  
agus Athchóirithe  
Department of Public  
Expenditure and Reform

# First Review of the Regulation of Lobbying Act 2015

April 2017



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## Ministers Foreword

I am very pleased to publish this Report on the First Review of the Regulation of Lobbying Act 2015.

The Register of Lobbying became a legal requirement from 1st September 2015 and compliance has continued from that date with approximately 1,600 registrants having submitted over 11,000 returns by mid-January 2017.

The regulation of lobbying is part of a larger group of transparency initiatives which have been introduced in recent years in order to bring integrity, fairness, openness and inclusiveness to society as a whole.



The Regulation of Lobbying Act is designed to provide information to the public about:

- Who is lobbying?
- On whose behalf is lobbying being carried out?
- What are people lobbying about?
- What is the intended goal of the lobbying? and
- Who is being lobbied?

The Act aims to do this by providing for:

- A publicly accessible register of lobbying;
- Balanced / proportionate regulatory powers vested in the Standards in Public Office Commission;
- Obligations on lobbyists to register and to provide information regularly about their lobbying activities;
- A code of conduct on the carrying on of lobbying activities
- A “cooling off” period of one year for former Ministers, Advisers and senior officials.

There is no fee to register as a lobbyist and members of the public can view and search the register free of charge.

Lobbying is a term that has come to have negative connotations but lobbying by interested parties has proved invaluable to Government and my Department in informing decisions as we progressed this legislation and considered the implementation of the register. It is a vital component in maintaining a healthy and well-functioning democracy.

It is my view that the critical drivers of trust are transparency, citizen participation and collaboration with stakeholders. The new on-line register of lobbying has, from its inception as a policy proposal, continuing through to the launch of the website, been a shining example of best practice in using these drivers to the best advantage.

Neither Government nor the public service has a monopoly on wisdom. We cannot operate in a vacuum. We need to hear the perspectives of all sectors in order to make sound well informed decisions which best serve the needs of society as a whole. Interest groups, representative bodies, industry and civil society organisations provide crucial input and

feedback to the political and public administration systems through communication of their views and concerns.

However, since communication is the essence of good policy making, the introduction of lobbying regulation cannot be allowed to obstruct the information channels to the political system and to the public service. The international experience of lobbying regulation reassures us that regulation has not given rise to such unintended harmful effects nor is there evidence that it has made it more difficult to gain access to key decision makers.

It is my opinion that shining a light on lobbying activity will not only clearly demonstrate who is talking to whom about what, but will also encourage public bodies to continue to be open to lobbying approaches from the widest range of interests in society, which will ensure that a balance of opinion is sought in developing policy.

By so doing, I would hope to normalise those communications and let everyone see the degree of access, and I hope the equality of access, which business, civil society, NGOs and others have to both our politicians and the highest levels of our public administration. This in turn assists with better informed policy and better decision making based on input from a variety of stakeholders.

This first review is an important step in advancing the transparency initiatives of the Act. One of the aims of the legislation was to bring greater transparency while not restricting the flow of information, proposals, perspectives, and advice available to public servants in order that sound well informed decisions which best serve the needs of society as a whole are made. Confirmation of this objective being met is by virtue of the numbers of organisations who have fulfilled their obligations and submitted returns providing transparency on the communications they have engaged in with public servants.

In response to the public consultation process a total of 31 submissions were received by my Department from different sectors of society including academics, representatives of business, interest groups, Government Departments and public affairs organisations.

The submissions are broadly supportive of the legislation and consider that it provides an instrument for the public to gain insights into the decisions and actions of public servants and the communications that lead to these outcomes. As lobbyists have become more familiar with the Act, and their obligations under the Act, they require guidance on specific matters that have relevance to their own organisations and this need for assistance is evident in the submissions received.

Given the short time since commencement of the Act, I believe that it would be prudent to allow further time for the system to establish itself, and for additional evidence regarding how the operation of the Act is proceeding to be gathered and assessed. The suggestions made, topics raised, etc., in the submissions have been comprehensively considered and it has been concluded that a number of these can easily be handled administratively without any requirement for legislative change. I am not recommending, therefore, that any amendment be made to the Act at this stage. The next review, due to take place at the end of 2019, will provide further opportunity for evaluation to take place.

I would like to formally thank those who made submissions in answer to this consultation process, and in particular those who have assisted us in arriving at this innovative reform by contributing their views as the legislation was initially developed.

I will finish by saying that I believe that the extent of lobbying activity is a good measure of an engaged citizenry, but it should be open to public scrutiny as part of the desirable checks and balances in a democracy. Transparency is our strongest weapon in discouraging attempts to seek to exert undue or improper influence on the conduct of policy formulation.

Paschal Donohoe, T.D.

Minister for Public Expenditure and Reform

## Executive Summary

### Chapter 1: Introduction

Chapter 1 of this report provides the background to the regulation of lobbying in Ireland, covering the purpose of the legislation, how the policy was developed culminating in the enactment of the Regulation of Lobbying Act 2015, international views on the Act and the positive early results achieved.<sup>1</sup>

In line with Section 2 of the Regulation of Lobbying Act 2015, the first review of the operation of the Act commenced by 1 September 2016. This report provides analysis and evaluation of the operation of the Act and sets out findings and recommendations.

The report identifies that the key purpose of the Act is to provide appropriate transparency on “*who is lobbying whom about what*”. It discusses the collaborative approach taken throughout the process which served to strengthen the legislation by taking into account feedback from stakeholders and best practice from overseas. It demonstrates how internationally it has been very well received and the positive early results of significant levels of registrations demonstrates the high level of compliance achieved so far.

### Chapter 2: Positive Early Results

Chapter 2 of the report gives details of the levels of registrations on the register currently indicating a high level of compliance with legislative requirements.

### Chapter 3: Approach to Review

Chapter 3 of the report outlines the approach taken to the review of the operation of the Act. It provides details of the consultation process and specifies the questions identified for answer in submissions. The parties to whom invitations to make submissions were sent are detailed along with those organisations and bodies who submitted their views.

### Chapter 4: Analysis of Submissions Received

Chapter 4 of the report provides an analysis of the submissions, and evaluates the submissions, the issues raised and suggestions for improvements by categorising the issues under the following key thematic areas:-

1. Definition of Lobbying,
2. Issues around Exemptions from Registering Requirements,
3. Issues around Designated Public Officials,
4. Matters relating to the Register (content, registration details, etc.),
5. Code of Conduct for Lobbyists,
6. Offences Issues,
7. Investigations,
8. Guidance/ Information/ Education from the Standards Commission,
9. Other Issues Raised.

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<sup>1</sup> All references to the Act means the Regulation of Lobbying Act 2015.

## Chapter 5: Conclusion

Chapter 5 of the report identifies the leading issue specified in the submissions was a need for further education and guidance. A number of actions have been proposed to address this.

It also discusses how our legislation compares with legislation elsewhere. It mentions the investment by both this Department and the Standards in Public Office Commission (Standards Commission) in ensuring a registration system that works well. This lobbying legislation follows wide-ranging consultation and represents our view of the best system available. While it indicates that amendments to the legislation are not currently recommended, it does set out a number of areas where further action is recommended. The report also states that improvements will continue to be identified through stakeholder involvement and the next review in 2019 will offer an opportunity for these to be considered.



## Chapter 1: Introduction

### 1.1 Background

The Programme for Government, published following the election of 25 February 2011, contained a commitment to introduce a statutory register of lobbyists, and rules concerning the practice of lobbying. The Public Service Reform Programme launched by the then Minister for Public Expenditure and Reform on 17 November 2011 contained a commitment to prepare legislation to meet this objective.

### 1.2 Purpose of Legislation

The Regulation of Lobbying Act was commenced on 1 September 2015. The purpose of this Act is to provide appropriate transparency on "who is lobbying whom about what". This allows the wider population to reach informed evidence-based judgments regarding the extent to which different interest groups are able to access and influence decision-making.

**Who:** - Lobbyists are defined in the Act as the following persons who make or manage or direct the making of any relevant communications:-

- a. Persons with more than 10 employees,
- b. Representative bodies and advocacy bodies with at least 1 employee,
- c. Professional third party lobbyists i.e. those who are paid by a client to lobby on the clients behalf, or
- d. Any person lobbying about the development or zoning of land.

**Whom:** - In addition to elected politicians and special advisers, the two top levels in the Civil Service and in Local Authorities have been prescribed as Designated Public Officials (DPOs) or "the lobbied" – these are:-

- a. the Secretary General and Assistant Secretaries / Directors in the Civil Service, and
- b. CEOs and Directors of Services in Local Authorities.

Details of who are DPOs can be found on the website of each public body.

**What:** - Relevant matters are defined in the Act as communications about:-

- a. The initiation, development or modification of any public policy or programme,
- b. The preparation or amendment of legislation, or
- c. The award of any grant, loan, or other financial support, contract or other agreement, or of any licence or other authorisation involving public funds etc.

apart from matters relating only to implementation of any such policy, programme, enactment, award, etc. or matters of a technical nature.

So when a lobbyist communicates with one of the lobbied about a relevant matter then they must register on the lobbying register. Once registered, the lobbyist will have to make a return of their lobbying activities 3 times a year (at the end of April, August and December).

### 1.3 From Policy to Act

*"The information available on the register provides the Irish public with unprecedented insight into the role that lobbying plays in shaping policy and funding decisions."* The Standards Commission Chairperson, Mr. Justice Daniel O'Keeffe

([www.lobbying.ie/media/6053/regulation-of-lobbying-summary-report-2015-highlights.pdf](http://www.lobbying.ie/media/6053/regulation-of-lobbying-summary-report-2015-highlights.pdf))

From the outset, the task of the Department of Public Expenditure and Reform (DPER) has been twofold. The task was firstly, to formulate legislative proposals to meet the objective of registering lobbying activity in a transparent manner and secondly, to address the cultural shift required to ensure successful implementation of regulation in this area.

DPER began this process in 2011 with a very deliberate decision to devote extensive time to engage with a wide range of stakeholders as the process developed from conception, through public consultation phase to the preparation of the legislation. The phases of public consultation engaged in are set out in Appendix 2.

This collaborative approach has served to strengthen the legislation taking account of feedback from the consultation process and from best practice overseas. The aim was to develop a user friendly registration system which meets the public policy objective but minimises compliance costs in terms of both time and resources. The Act also benefited from a very informed and positive debate at all stages in the Oireachtas.

In an effort to continue to harness the experience and practical insights of stakeholders as we progressed from the development of the legal framework to implementation, an Advisory Group<sup>2</sup> of stakeholders, chaired by the Standards in Public Office Commission (the Standards Commission) was established.

The development of the Regulation of Lobbying Act 2015 has been lauded by independent commentators as an example of best practice, particularly in terms of the high level of transparency involved, and has been referenced as a model for public consultation processes in the "Consultation Principles & Guidance for Public Bodies" published by DPER last November<sup>3</sup>.

On 11<sup>th</sup> March 2015, the Regulation of Lobbying Act 2015 was signed into law by President Michael D. Higgins and the Act commenced, apart from Part 4 relating to enforcement, on 1 September 2015. Part 4 relating to enforcement commenced on 1 January 2017.

### 1.4 International Perspective

The lobbying regulation introduced in Ireland has been viewed internationally in a very positive light. The policy is seen as an example for other EU Members States and the current legislation is viewed as setting the bar at a very high level.

<sup>2</sup> <https://www.lobbying.ie/about-us/advisory-group/>

<sup>3</sup> <http://www.per.gov.ie/en/consultation-guidelines/>

Transparency International EU, in its publication “Lobbying in Europe”, (published in April 2015), stated

*“...the recently adopted Irish lobbying law raises the bar in terms of the quality of regulation in Europe.”*

They observe that

*“...Ireland has the potential to be the first national law in Europe to address astroturfing and make it more difficult for industries or others to conceal their interests behind such organisations, requiring them to disclose their indirect lobbying efforts...”*

and that Ireland’s legislation is a promising example of an effective accountability tool.<sup>4</sup>

The European Parliament’s Think Tank<sup>5</sup> viewed Ireland’s lobbying legislation and Register in a very positive light when they stated in July 2016 that it ...

*“presents an example which other Member States could follow, and might also be a source of inspiration for an EU system in transition. Its mandatory nature allows for a stricter approach, with investigations and sanctions available for non-compliance. Strict definitions enumerate those who fall under its scope, unlike the EU’s all-encompassing activity-based definition of interest representation”.*

It also states that

*“...returns are required three times a year and provide greater detail on all instances of lobbying activity carried out. Its scope is both broad and ambitious...”*

and that the register has met with a positive start, registering a high uptake.<sup>6</sup>

<sup>4</sup> [http://transparency.eu/wp-content/uploads/2016/09/Lobbying\\_web.pdf](http://transparency.eu/wp-content/uploads/2016/09/Lobbying_web.pdf) (Page 10, 17 and 31)

<sup>5</sup> The website for The European Parliament Think Tank can be found on the EU Parliaments website at <http://www.europarl.europa.eu/thinktank/en/home.html>

<sup>6</sup> [http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS\\_BRI\(2016\)586636](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2016)586636)

## Chapter 2: Positive Early Results

*“The significant efforts involved in establishing and implementing this new regulatory system have borne fruit, with very positive early results and compliance”* The Standards Commission Chairperson, Mr. Justice Daniel O’Keeffe

(<https://www.lobbying.ie/media/6059/regulation-of-lobbying-annual-report-2015-for-web.pdf> (page 5))

Lobbyists were required to register and make their first return with the Standards Commission on [lobbying.ie](http://lobbying.ie) by 21 January 2016, if they had engaged in lobbying activities during the first relevant period which was 1 September to 31 December 2015. Three returns in total per year are required. So relevant periods are: 1 January to 30 April, 1 May to 31 August and 1 September to 31 December.

The most recent return date was 21 January 2017 and at that time just over 11,000 returns had been submitted to the lobbying register and are now available for viewing by the public at [lobbying.ie](http://lobbying.ie). There is no charge to view material on the lobbying register. Almost 1,600 persons and organisations have registered on the lobbying register.

One important very recent change relating to the operation of the Act was the commencement on 1 January this year of the enforcement provisions, in Part 4 of the Act. It was considered prudent to allow a period of time between the commencement of the Act on 1 September 2015 and the enforcement provisions coming into effect. This decision to delay commencing the enforcement provisions was made to allay any concerns that stakeholders may have had about inadvertent non-compliance with the provisions of the Act and to allow those already engaged in lobbying a period of time to become familiar with their legal obligations and the registration system. The introduction of the enforcement provisions provides the Standards Commission with the authority to investigate and prosecute contraventions of the Act and to levy fixed payment notices for late filing of lobbying returns and thus support compliance.

*“I am very pleased with the level of compliance achieved in these initial return periods....The overall level of compliance is a very positive indicator that there is an acceptance of the need for openness and transparency in lobbying.”* Paschal Donohoe TD, Minister for Public Expenditure and Reform.

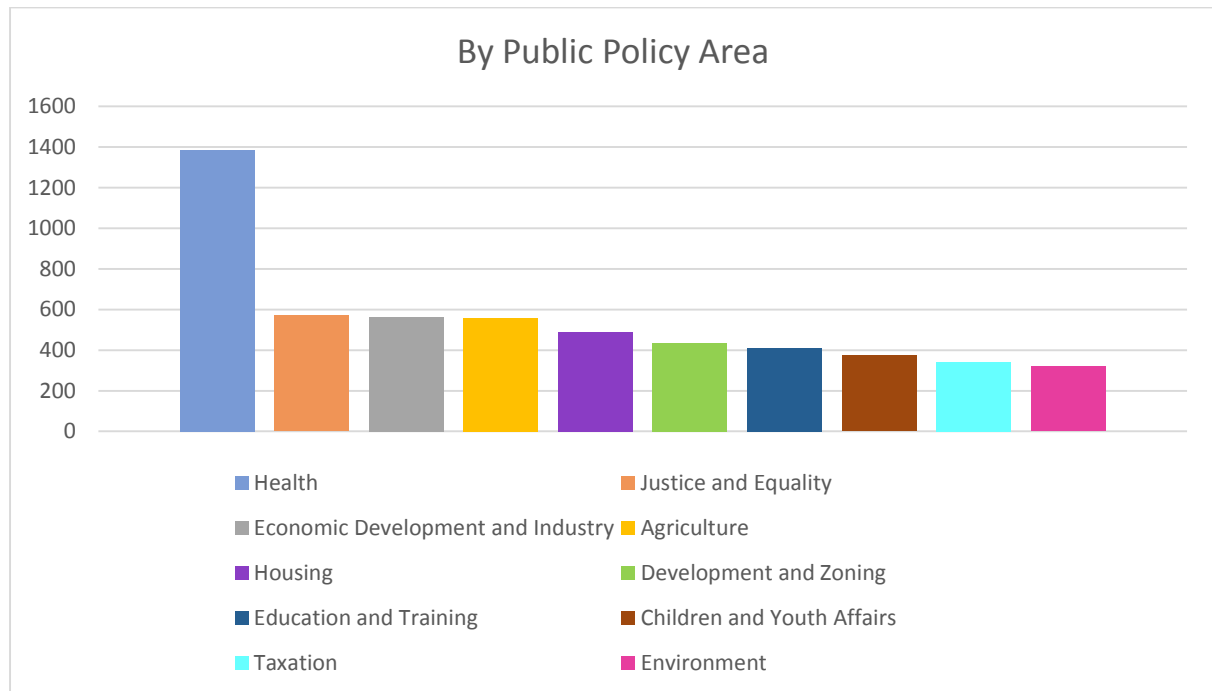
(PQ. On 31/05/2016 ref: 13087/16)

The following tables and charts give an indication of current activity on the register.

**Table 1**

**Top ten policy areas cited in returns**

1	Health	1,387
2	Justice and Equality	572
3	Economic Development and Industry	563
4	Agriculture	559
5	Housing	489
6	Development and Zoning	436
7	Education and Training	411
8	Children and Youth Affairs	375
9	Taxation	341
10	Environment	320

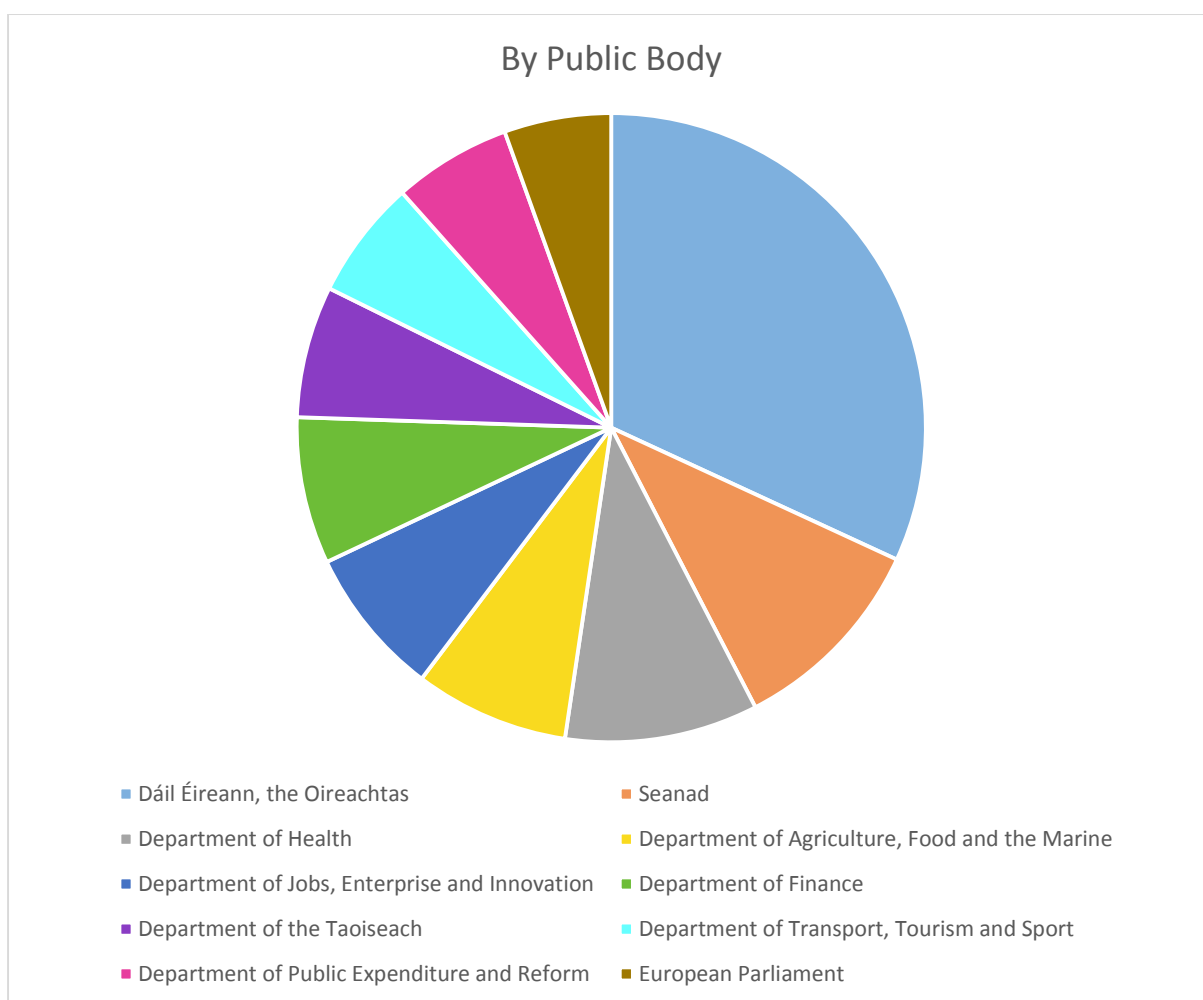


Data correct on 23 January 2017. Statistics for the relevant period reflect the total number of returns filed by subject matter. They do not reflect the volume or extent of lobbying activity conducted for each subject or within each return.

**Table 2**

**Top ten public bodies lobbied**

1	Dáil Éireann, the Oireachtas	2,863
2	Seanad	946
3	Department of Health	892
4	Department of Agriculture, Food and the Marine	713
5	Department of Jobs, Enterprise and Innovation	690
6	Department of Finance	678
7	Department of the Taoiseach	608
8	Department of Transport, Tourism and Sport	550
9	Department of Public Expenditure and Reform	545
10	European Parliament	494

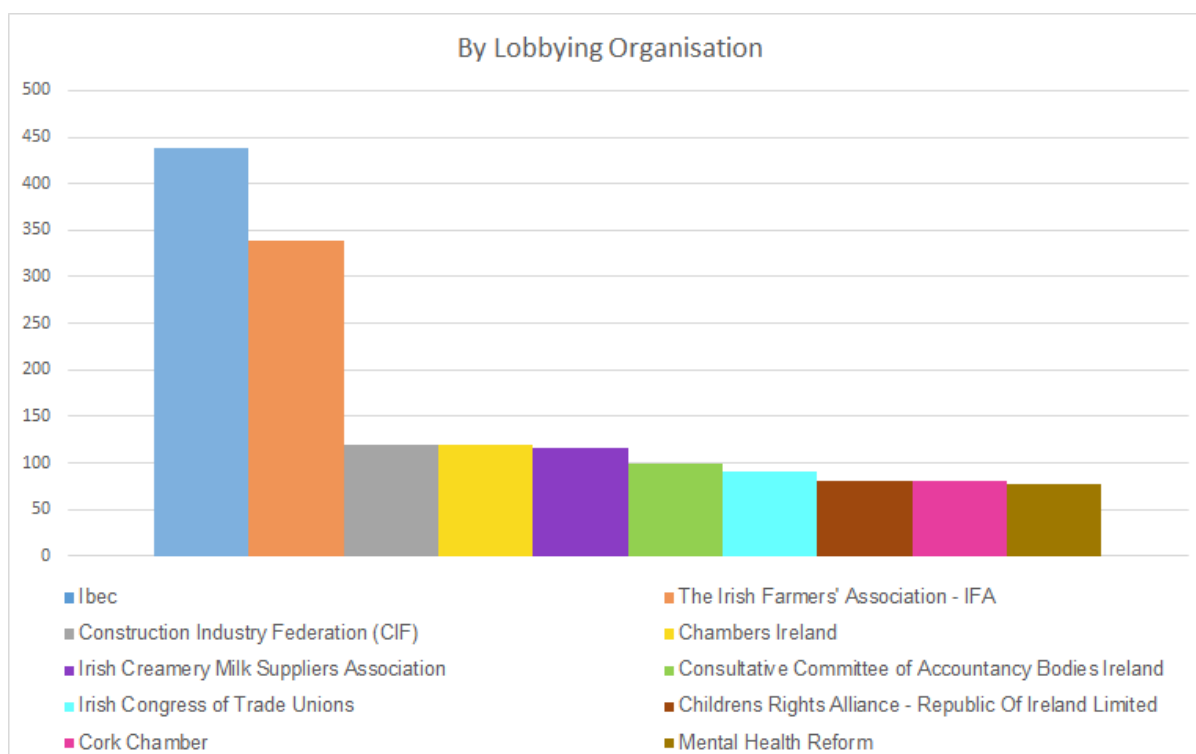


Data correct on 23 January 2017. Statistics for the relevant period reflect the total number of returns filed by subject matter. They do not reflect the volume or extent of lobbying activity conducted for each subject or within each return.

**Table 3**

**Top ten lobbying organisations**

1	Ibec	438
2	The Irish Farmers' Association – (IFA)	339
3	Construction Industry Federation (CIF)	119
4	Chambers Ireland	119
5	Irish Creamery Milk Suppliers Association	116
6	Consultative Committee of Accountancy Bodies Ireland	99
7	Irish Congress of Trade Unions	91
8	Children's Rights Alliance - Republic Of Ireland Limited	81
9	Cork Chamber	80
10	Mental Health Reform	77



Data correct on 23 January 2017. Statistics for the relevant period reflect the total number of returns filed by subject matter. They do not reflect the volume or extent of lobbying activity conducted for each subject or within each return.

*"It is clear that our efforts to build awareness and understanding of the Act have resulted in the high level of registration and returns so far."* Sherry Perreault, Head of Lobbying Regulation, The Standards Commission.

(<https://www.lobbying.ie/news/media-releases/launch-of-2015-annual-report/>)

## Chapter 3: Approach to Review

### 3.1 Structure of Report

The purpose of this review is to evaluate if the legislation has met its objectives of providing appropriate transparency on "who is lobbying whom about what"; drawing on the submissions received in the public consultation process.

Chapter 4 provides an analysis of the submissions received and our response to those issues which includes conclusions and recommendations.

Chapter 5 briefly outlines in the key issues arising from the submissions received and gives the conclusions arrived at as a result of the review.

The sources of information underpinning the assessment and recommendations are as follows:-

- submissions received,
- underlying policy initiatives, and
- Regulation of Lobbying Act 2015.

### 3.2 Public consultation

Under Section 2 of the Act the first review of the operation of the Act was required to commence by 1 September 2016. The Act requires that the Minister for Public Expenditure and Reform must undertake a consultation process to include the Standards Commission, Oireachtas Committees, persons carrying on lobbying and bodies representing them and any other persons as appropriate. The Report of the Review should cover the findings of the review, conclusions drawn from these findings and any recommendations for amendments to the legislation consequent to these findings. Subsequent reviews will be required every 3 years.

### 3.3 Advertisement

The public consultation process commenced with advertisements in daily newspapers on Thursday 1 September, in a Sunday paper on 4 September and in an Irish language publication on Wednesday 7 September. Submissions were invited from interested parties giving a closing date for receipt of submissions of Friday 30 September. A paper setting out the background to and details about this review was placed on DPER's website at <http://www.per.gov.ie/en/regulation-of-lobbying/>. (See Appendix 3 for details.) A press release was issued by the Minister on 31 August which is at Appendix 4.

The Department asked that the following points be considered in the submissions:-

- What are the positive features of the Act?
- Does the Act fulfil the objectives it set out to achieve?
- Have any unintended consequences occurred, in your view?
- Do you think the Act can be improved in any way and, if so, how?
- What suggestions for changes, if any, would you make?



### 3.4 Submissions Sought from Stakeholders

In addition to the advertisements, DPER circulated the background paper directly to:-

- the Standards Commission to allow them to notify all those currently registered as lobbyists on the lobbying register and members of the Advisory Group,<sup>7</sup>
- all Secretaries General of Government Departments,
- all TDs, Senators and Irish MEPs,
- all CEOs of Local Authorities,
- all elected members of Local Authorities,
- the secretariat to the Oireachtas Finance, Public Expenditure and Reform and Taoiseach Committee,
- the OECD and EU Commission,
- Irish University business schools,
- any organisation that had previously sent in a submission to DPER in response to previous consultation processes. (Appendix 5).

### 3.5 Submissions Received

A total of 31 submissions were received by the Department. All submissions can be viewed in full on the Department's website at <http://www.per.gov.ie/en/regulation-of-lobbying/>. Appendix 6 lists the organisations, groups and individuals who made submissions.

These organisations include interest groups, representative bodies, Government Departments, individual DPO's and of course lobbying firms. The submissions contain a range of opinions on the operation of the Act and are discussed in the following chapter.

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<sup>7</sup> The Advisory Group on the Regulation of Lobbying

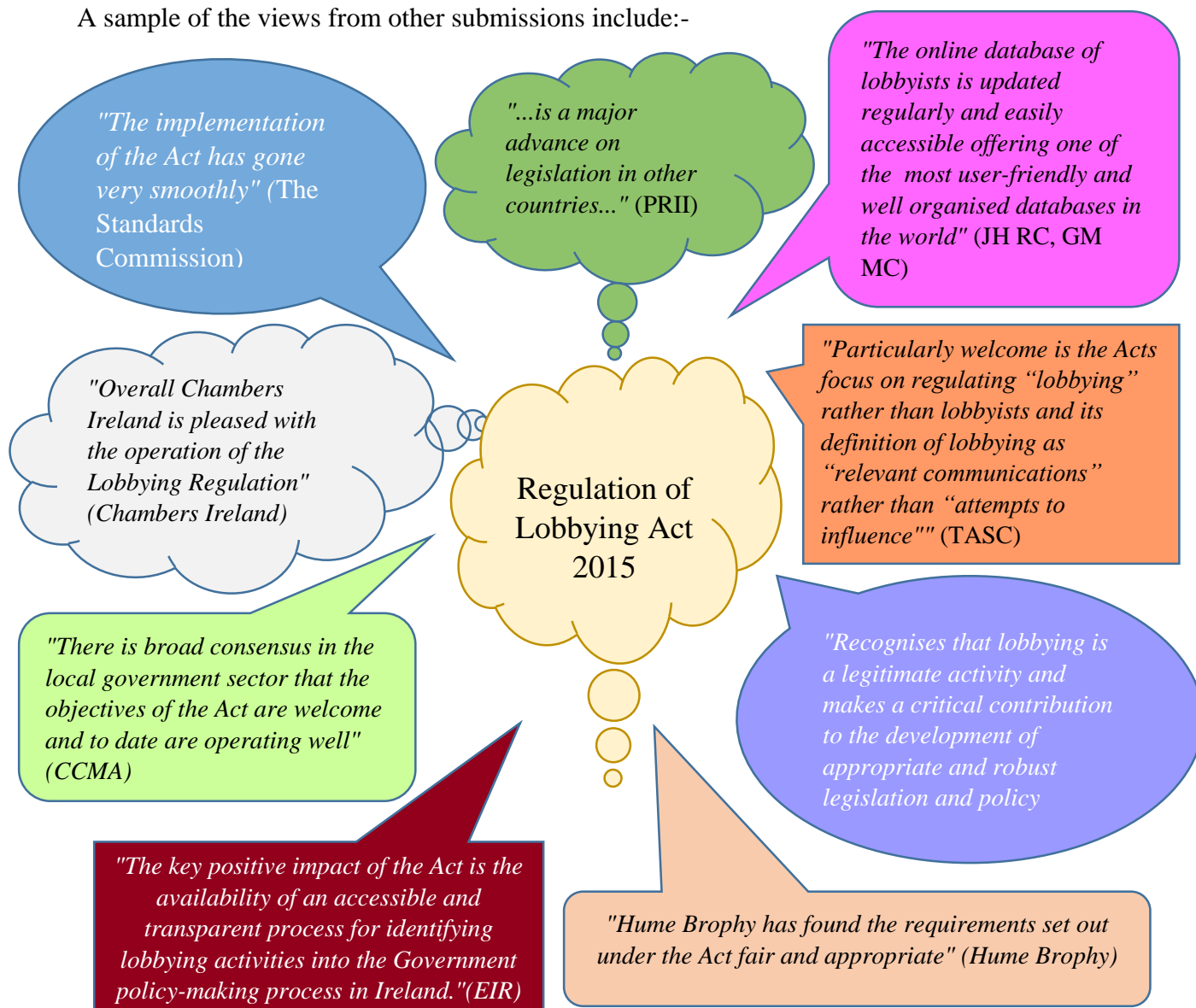
## Chapter 4: Analysis of Submissions Received

### 4.1 Overview of Submissions

31 submissions were received on foot of the public consultation process. The submissions received were broadly in favour and supportive of the legislation and the Act was seen as a positive development. For example, one submission stated that the numbers registered as engaging in lobbying activity is a clear indication that the legislation and its implementation is gathering pace, and that this is impressive, especially when compared to other jurisdictions that introduced legislation before Ireland. This submission also stated that the legislation has brought a level of transparency to Irish politics that was previously absent.<sup>8</sup>

Another submission states *“The Act aims not to restrict the flow of information or views on policy or legislation but to bring about significantly greater openness and transparency with respect to lobbying activities. In Ervia’s experience, the commencement of this legislation has not inhibited any necessary lobbying activities carried out by Ervia on behalf of the Group.”*

A sample of the views from other submissions include:-



<sup>8</sup> DIT

The majority of submissions expressed the opinion that there is a need for guidance, education and clarity in relation to the implementation of certain aspects of the Act. Where specific suggestions for amendments to the Act were made they have been reviewed in light of what is currently in the Act and how any amendment might increase the transparency initiative of the Act or reduce any unintended consequences.

A sample of the views on the need for guidance from submissions include:-

- *“Clearer guidance on what constitutes a “relevant matter” under the Act.*
- *Access to greater detail on the application of the Act including lobbying a DPO outside the State.*
- *Greater clarification and detail on exempted communications e.g. governance of commercial state bodies” (IBEC)*

*“...there could be better definition and clarity of distinction regarding a communication re “implementation of a policy” and the “initiation, development or modification of a policy”?” (DAA)*

*“No official guidance has been provided in relation to what constitutes “ordinary course of business” and therefore, it has been left open for interpretation by commercial state bodies. It would be useful if guidance in relation to this particular exception was provided to ensure consistency in terms of reporting by the commercial state bodies, including Ervia.” (ERVIA)*

## 4.2 Key Thematic Issues Raised

The issues raised and suggestions for improvements in the submissions have been broadly categorised and organised into the following key thematic areas:-

1. Definition of Lobbying,
2. Issues around Exemptions from Registration Requirements,
3. Issues around Designated Public Officials,
4. Matters relating to the Register (content, registration details, etc.),
5. Code of Conduct for Lobbyists,
6. Offences Issues,
7. Investigations,
8. Guidance/ Information/ Education from the Standards Commission,
9. Other Issues Raised.

The key points raised under each of these thematic areas are discussed below.

### 4.2.1 Definition of Lobbying

The need for further clarity around the definition of lobbying contained in section 5 of the Act was a theme in a number of submissions. The specific aspects of the definition commented on in the submissions are reviewed under the following headings:

- Issues around what constitutes “implementation of policy” and “technical issues” and the difference between grassroots and mass communications,
- Indirect Communications,
- Non-remunerated officer holders,
- Representative Bodies,
- Consultants and Clients,
- Zoning and Development of Land,
- Extra Territorial Lobbying, and
- Obligations on DPOs.

Issues around what constitutes “implementation of policy” and “technical issues” and the difference between grassroots and mass communications:

In relation to policy matters, where a communication is in respect of a policy that is being commenced, developed or changed, then the communication must be returned on the register. However, if the communication is, for example, in relation to how to seek a benefit /grant or how to apply for a Department of Social Protection benefit, then that would not require registration, as this would fall under implementation or technical matters.

Clarification was sought on the distinction between the implementation of policy and the initiation, development or modification of policy and the difference between grassroots and mass communications.<sup>9</sup> Another submission made the point that an organisation might view a particular communication as a technical issue or a policy implementation issue, while the DPO might believe that it falls to be registered as a relevant matter.<sup>10</sup> It was also suggested that the implementation of policy should not be exempt from registration nor should issues of a technical nature.<sup>11</sup>

Guidance is already available on [lobbying.ie](https://www.lobbying.ie/help-resources/information-for-lobbyists/guidelines-for-people-carrying-on-lobbying-activities/are-you-affected-by-the-legislation/) on this issue at <https://www.lobbying.ie/help-resources/information-for-lobbyists/guidelines-for-people-carrying-on-lobbying-activities/are-you-affected-by-the-legislation/> - see Appendix 7. Having read this guidance, if a concern remains as to whether a particular communication requires registration, the Standards Commission may be contacted to provide further guidance.

DPER has checked the position with the Standards Commission as to whether any difficulties had arisen around the distinction between the implementation of policy and the initiation, development or modification of policy and whether this is a source of any particular confusion in the practical application of the Act. The Standards Commission advised that it has not observed any issues in this regard. It cannot be too prescriptive in its guidance, but where individual registrants have questions about specific matters, they may contact the Standards Commission for further guidance as needed.

As regards the difference between grassroots and mass communications, it is considered that a grassroots campaign would arise where an organisation asks its members or employees etc. to contact DPOs on a particular matter (e.g. their local representatives or members of the Government). In registering a grassroots communication, you would include the DPOs that you requested the communication to be made to. On the other hand an example of a mass

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<sup>9</sup> DAA

<sup>10</sup> ERVIA

<sup>11</sup> TASC

communication would be a communication (letter, email, etc.) to all TDs, members of the Government, or perhaps to all Government Departments, on behalf of the organisation. In order to further clarify the matter, DPER has asked the Standards Commission to consider providing some guidance on this issue under FAQs on the lobbying website [lobbying.ie](http://lobbying.ie).

If communications relating to implementation of policy or matters of a technical nature were to be included in the requirement to register, then communications, for example, on the general issues relating to the application of policy such as freedom of information, lobbying regulation, or indeed any other policy matter, would be required to be included on the register. This would increase the burden on registrants and add to the volume of information, without necessarily improving the transparency objective of the register around policy making.

### Indirect Communications

Section 5(4) of the Act defines “relevant communications” as communications on a relevant matter (whether oral, written or however made) made personally (directly or indirectly) to a designated public official, unless the communication is exempt.

In our view an indirect communication may be made:-

1. to a person who is not a DPO where it is intended for the DPO, or
2. by a person on behalf of another person to a DPO.

A concern was raised that incidents of indirect lobbying were not being reported.<sup>12</sup> The submission suggested a new definition for indirect lobbying to provide that “*indirect lobbying occurs when there is a communication on a relevant matter with a person who is not a DPO where it is known or intended at the time of the communication for a DPO to be the ultimate recipient of the communication*”

This proposed definition has some merit. However, scenario 2 above would not be covered by this suggested amendment. Where a person is required to register but uses a route which would not require registration, i.e. asks another person to carry out the lobbying activity, the communication remains registerable as if the original person made the communication.

*Example: - X asks Y to contact a DPO in respect of a relevant matter which would be subject to the requirement to register were it made by X. This is considered to be an indirect communication and must be registered.*

### Non-remunerated office holders

You must register if you are carrying on lobbying activities. You are carrying on lobbying activities if you meet the following conditions:-

1. You are communicating either directly or indirectly with a “Designated Public Official” and
2. That communication is about “a relevant matter” and

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<sup>12</sup> Banking and Payment Federation Ireland and IMO

3. That communication is not specifically exempted and
4. You are one of the following:
  - A professional lobbyist being paid to communicate on behalf of a client (where the client is an employer of more than 10 full time employees or is a representative body or an advocacy body which has at least one full-time employee),
  - An employer with more than 10 employees where the communications are made on your behalf,
  - A representative body with at least one employee communicating on behalf of its members and the communication is made by a paid employee or office holder of the body,
  - An advocacy body with at least one employee that exists primarily to take up particular issues and a paid employee or office holder of the body is communicating on such issues,
  - Any person communicating about the development or zoning of land.

One of the submissions received suggests changes to the definition of relevant communications and seeks that non-remunerated office holders be required to submit a return.<sup>13</sup>

The exemption for non-remunerated office holders has always been a policy intention. During the consultation process, stakeholders made it clear that, very often, they do not have information on what communications their volunteers are conducting, particularly in a large and dispersed organisation such as the IFA etc. Their concerns centred on the administrative burden of capturing such information, and a particular concern this stakeholder pointed out of inadvertent non-compliance given the likely incomplete nature of that information. In addition, much of the communications undertaken by local volunteers would not be of a sufficiently high-level to warrant inclusion on the register in the public interest. Therefore, it was concluded in developing the legislation that it would not be practical nor feasible to include non-remunerated office holders within the scope of Act and this remains the position.

### Representative Bodies

While representative bodies with one employee are captured by the legislation, where the representative body has no employees they are not required to register. Two of the submissions request that no exception should be provided in this respect and that these bodies should be included.<sup>14</sup> As one submission states...

*” Moreover, we have noted some informal coalitions of business interests that have been formed to lobby as a group on an issue of mutual industry interest. These informal coalitions are named and work together to represent their interests, but without a full-time employee, the coalition itself falls outside of the Act’s scope.”*

(The Standards Commission)

<sup>13</sup> The Standards Commission

<sup>14</sup> The Standards Commission and IFA

The purpose of this exemption was to allow for small local groups, such as residents associations, to discuss local issues with a DPO without the requirement to register.

In our view it could be very difficult to carve out these groups without inadvertently bringing smaller local groups into the requirement to register. Now that the enforcement provisions are in place, if indirect lobbying is being carried out, it would be a matter for the Standards Commission to deal with in accordance with the enforcement provisions. Given the short period of time since the commencement of the Act, it would be prudent to keep this issue under consideration before any decision to amend the Act is taken. This issue could be considered at the next review of the Act when more evidence of any impacts are available.

### Consultants and Clients

A lack of clarity around where the reporting obligation lies when a professional lobbyist makes communications on behalf of a client was mentioned in some submissions.<sup>15</sup> The Standards Commission recently updated the FAQs on [lobbying.ie](http://lobbying.ie) to provide greater clarity on this issue.<sup>16</sup>

One submission advises that there was confusion as to with whom the responsibility to return the activity rests.<sup>17</sup> Another submission proposed that the guidelines be amended so that where an organisation employs a consultant to lobby on their behalf, either the consultant or the client could submit a return.<sup>18</sup>

The purpose of the legislation is to provide transparency on “who is lobbying whom about what”. In order to ensure that it is apparent who the person carrying out the activity is, the obligation rests with the lobbyist, in this case the consultant, to return the activity when the lobbyist communicates on behalf of a client. Where any organisation (including a client) communicates on his or her own behalf, that organisation must return the details of the communication. (See Appendix 8).

We discussed this issue with the Standards Commission in the past and it advised that, in the interests of transparency, consultants should always be required to report lobbying activities. If a client is making, managing or directing separate lobbying activities (even on the same subject matter), the client should submit his/her own returns.

### Zoning and Development of Land

The requirement to register communications relating to the development or zoning of land is not found in other jurisdictions but is included in the Regulation of Lobbying Act 2015 to meet transparency requirements as a result, in particular, of the Mahon Tribunal findings.<sup>19</sup>

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<sup>15</sup> PRII and ERVIA

<sup>16</sup> FAQ <https://www.lobbying.ie/help-resources/frequently-asked-questions/> (questions 5 & 6)

<sup>17</sup> ERVIA

<sup>18</sup> PRII

<sup>19</sup> <https://planningtribunal.ie/reports/the-final-report/>

The Act currently meets the transparency requirements resulting from the Mahon Tribunal findings by both increasing transparency in the planning process and ensuring interventions made by elected members are transparent.<sup>20</sup>

In looking at the requirement to submit a return in relation to development or zoning of land, one submission enquired if the communication in relation to the development and zoning of land is linked to the definition of relevant matters.<sup>21</sup> The Act provides that registration is required for any relevant communication about the development or zoning of land under the Planning and Development Acts 2000 to 2014. A relevant communication can be made orally, be written, or made by any other means. It can be made directly or indirectly to a DPO on a relevant matter. A relevant matter is a matter relating to:-

- the initiation, development or modification of any public policy or of any public programme,
- the preparation or amendment of an enactment, or
- the award of any grant, loan or other financial support, contract or other agreement, or of any licence or other authorisation involving public funds,

apart from any matter relating only to the implementation of any such policy, programme, enactment or award or of a technical nature.

Another submission suggests excluding individuals and groups of individuals from the requirement to register in respect of zoning and development of land.<sup>22</sup> In relation to individuals being required to register, there is currently an exemption for the principal private residence including up to an acre of land, so that an individual contacting an elected representative in relation to development and zoning of their principal private residence, as defined in the Act, will not be required to submit a return. (See Appendix 9 for full definition of a principal private residence).

The Standards Commission has developed extensive guidance about lobbying in relation to the development and zoning of land and this is available on their website. Nonetheless, where an individual or body is uncertain if a particular issue requires to be registered, they should contact the Standards Commission for further guidance.

### Extra Territorial Lobbying

The extra territorial application of the legislation caused some confusion in the early implementation phases of the legislation and overall the submissions reflect that this is no longer a major issue, as only 4 submissions make reference to it. In the case of two of the submissions, the view that the legislation should be amended to reflect the United Kingdom's legislation was raised.<sup>23</sup> Another submission sought clarity on whether the legislation is

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<sup>20</sup> <http://www.housing.gov.ie/sites/default/files/migrated-files/en/Publications/DevelopmentandHousing/Planning/FileDownload,30749,en.pdf> , Page 2, Planning Recommendations 5 and 8.

<sup>21</sup> DAA

<sup>22</sup> SWAP

<sup>23</sup> PRCA and PRII



applicable to policy matters determined outside Ireland.<sup>24</sup> A fourth submission suggested changes to the guidelines.<sup>25</sup>

It is for the Standards Commission as the regulator under the Act to interpret the legislation and determine any particular case about this issue. Further advice should be sought from the Standards Commission where any uncertainty exists.

To assist in this regard, the Standards Commission has developed an FAQ on its website setting out the position regarding the extra territorial application of the legislation which reads as follows:-

***Does the Act apply to communications that take place outside of Ireland?***

*A person or organisation communicating with any Designated Public Official where that interaction meets the definitions contained in the Act (that is, a person within the scope of the Act, communicating with a Designated Public Official about a relevant matter) is required to register as a lobbyist and report the communication in their return for the relevant period. The Act makes no distinctions regarding where the communication takes place.*

*Determining whether a communication falls outside of jurisdiction is not based solely on whether it physically takes place outside of the country. Each case will have to be reviewed based on its own set of facts to determine in what circumstances a communication would fall within or outside of jurisdiction, and whether and how the Act may apply.*

*It is recognised that there may be difficulties with extra-territorial enforcement of the Act. All those lobbying Irish Designated Public Officials outside of the State are encouraged to comply with the spirit of the legislation to ensure transparency.*

**Obligations on DPOs and clarity on interactions**

The legislation places no obligations on DPOs and a submission proposes that obligations should be imposed. Where a DPO initiates the communication, the DPO should have to disclose the activity is one suggestion.<sup>26</sup> Another submission simply states that there are no obligations placed on DPOs and it can be difficult to clarify that the communication is a relevant matter.<sup>27</sup>

How a communication is initiated is not a consideration under the Act. While a DPO may initiate a communication, the DPO could not be expected to know the intent of the person making the communication, so the obligation must remain with the lobbyist. Also, placing the obligation on different persons depending on different circumstances would lead to confusion. In addition, DPOs are subject to other transparency initiatives such as freedom of information and ethics legislation. Where any organisation has a concern as to whether a communication falls under the Act, they should contact the Standards Commission for guidance.

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<sup>24</sup> DAA

<sup>25</sup> Department of Foreign Affairs and Trade.

<sup>26</sup> ERVIA

<sup>27</sup> IBEC

### **Summary of Findings and Conclusions about the Definition of lobbying**

**1:** The distinction between the implementation of policy and the initiation, development or modification of policy. In light of the Standards Commission's advice that they have not observed this to be a source of any particular confusion in the practical application of the Act, no change is considered necessary.

**2:** Guidance and advice to be provided if requested to relieve concerns around the definitions of grassroots communications and mass communication. It is recommended that the Standards Commission consider developing an FAQ to address this issue.

**3:** The exemption for the implementation of policy or matters of a technical nature lessens the burden on registrants while still meeting the transparency requirements. No change is considered necessary.

**4:** Organisations such as the IFA have large numbers of volunteers and non-remunerated officers and it would be impractical that all their communications be included on the register. No change is considered necessary.

**5:** The issue of representative bodies, representing professional and/or coalitions of business interests on issues of mutual industry interest, who have no full time employees to be included in the legislation should be kept under review.

**6:** The Standards Commission has recently added an FAQ to address the issue of who is required to submit a return when a consultant communicates on behalf of a client. No change is considered necessary.

**7:** The requirement for individuals who lobby on the development or zoning of land to register meets the requirements of the Mahon Tribunal. No change is considered necessary.

**8:** The FAQ already provided by the Standards Commission is expected to alleviate any concerns raised in relation to the extra territorial application of the legislation. No change is considered necessary.

**9:** Placing the onus on the person who initiated the communication would lead to confusion as to who had the responsibility to register. No change is considered necessary.

### **Summary of Further Action Recommended about the Definition of lobbying**

The Standards Commission: - Consider drafting an FAQ to relieve concerns around the definitions of grassroots communications and mass communication (point 2 above).

DPER: - Keep under review the issue of representative bodies, representing professional and/or coalitions of business interests on issues of mutual industry interest who have no full time employees to be included in the legislation (point 5 above).

#### 4.2.2 Issues around Exemptions from Registration Requirements

The Act contains a number of excepted or exempted communications which are not, therefore, regarded as lobbying activities. The submissions differed in their views on these exemptions and these are discussed below.

One submission proposes that communications by political parties to their members who are DPOs in their capacity as members should be exempted.<sup>28</sup> It is recommended that the Standards Commission could provide guidance on this issue.

A further suggestion was that consideration should be given to having fewer exceptions and to reducing the number of public service bodies that can avail of the exemption for communications between public service bodies contained in section 5(5)(k).<sup>29</sup>

The exemption that relates to public bodies exempts communications between public servants “in the normal course of their duties” from being placed on the register. It provides that communications, made by a person who is employed by or holds office or another position in a public service body, are exempt where the person is acting in their capacity within the body and they relate to the functions of the public service body. It also applies to persons engaged for the purposes of the body. The volume of communications between public servants generated in the course of carrying out the normal course of their duties would be such as to make their registration unworkable and impracticable and would not constitute lobbying.

It is suggested that the exemption in relation to trade union negotiations be “...tightened so that it only relates to communications where the Designated Public Official is either the employer, in the case of a Minister, or employed by an employer of the members of the trade union”.<sup>30</sup>

This proposal was discussed with the Standards Commission which advised that trade unions have registered on the register and it sees no problem with the current position.

The lack of an exemption for social media is a cause for concern in one submission which advised that where a social media post is addressed to, tags or mentions a DPO then this should be exempt.<sup>31</sup>

The purpose of the register is to provide a single point of reference on who is lobbying “whom about what”. Any exemption for publication made through social media without the requirement to include it on the register could provide a loophole which could reduce transparency. The information would not be easily available to sections of the public who may not be familiar with social media.

Two submissions proposed that the exemption from registering communications involving submissions requested by a public body and published by it, should be amended to provide that the public body must have communicated its intention to publish the communication.<sup>32</sup>

Public bodies are encouraged to make explicit their intentions when conducting consultation processes, as this would be good practice, and be of benefit to those who may have

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<sup>28</sup> The Standards Commission

<sup>29</sup> DIT and JH RC GM MC

<sup>30</sup> PRCA

<sup>31</sup> IMO

<sup>32</sup> The Standards Commission and IMO

obligations under the Act. If it is unclear whether a public body intends to publish submissions, it is best to verify the position directly with the public body.

### Transparency Code

The Act provides that communications between members of relevant bodies appointed by Ministers or a public service body to examine or evaluate public policy and report to the Minister on it fall outside the registration requirements. In order to avail of this exemption the bodies must comply with the terms of the Transparency Code which has been drawn up by the Minister for DPER in line with section 5(7) of the Act. The Transparency Code is available on [lobbying.ie](http://lobbying.ie).<sup>33</sup>

A number of submissions provide views and suggestions for amendments in relation to the Transparency Code and the groups that may avail of it as follows:-

- one proposal was that a review of the operation of the Transparency Code should be held,<sup>34</sup>
- another proposal was to provide for the Standards Commission to have responsibility for the operation of the code and maintain a list of bodies operating under the code,<sup>35</sup>
- it was also suggested that Government Departments should have responsibilities in respect of the code,<sup>36</sup>
- The Standards Commission states:-

*“...it is not clear which groups have committed to complying with the Transparency Code, and whether or not the group is complying with the commitment. There is no list on public bodies’ websites, nor in a central location. It would be helpful to the external stakeholders who sit on such bodies to know definitively if the Code is being applied and whether their communications within the group are therefore exempt. Public bodies may support the effective implementation of this exemption in the Act by identifying advisory bodies or working groups that may operate under the Transparency Code and making that list public.”*

In light of the nature and frequency of communications between public officials and non-public servants in this type of forum, it would in practical terms be quite challenging to seek to capture and include those interactions on the register. The Act provides, therefore, for an exemption from the requirement to register in such cases once specified transparency criteria apply. The exemption is also intended to lessen the administrative burden on registrants who are members of a relevant body appointed by Ministers or public service bodies and where the relevant body will be providing a report which will be placed in the public domain.

The relevant bodies are defined in subsection (6) of section 5 as including at least one DPO and at least one person who is not a DPO nor is engaged by the public service body in any role. The body must operate in a manner that complies with a Transparency Code published

<sup>33</sup> <https://www.lobbying.ie/media/5986/2015-08-06-transparency-code-eng.pdf>

<sup>34</sup> PRII and TASC

<sup>35</sup> PRII and the Standards Commission

<sup>36</sup> IBEC

by the Minister for Public Expenditure and Reform.<sup>37</sup> Under the Transparency Code, it is considered that the responsibility for ensuring compliance with the Code rests with the Chairman of the Group.

The Transparency Code provides that:-

- material must be published on the public body's website setting out the following information:
  - i. Name of Chairperson together with details of his or her employing organisation,
  - ii. Names of Members together with details of their employing organisation,;
  - iii. Whether any non-public servant members were previously designated public officials,
  - iv. Terms of reference of the group,
  - v. Agenda of each meeting,
  - vi. Minutes of each meeting,
  - vii. Expected timeframe for the group to conclude its work,
  - viii. Reporting arrangements.
- this information should be in a prominent place on the website of public bodies and should be easily accessible,
- the Chairman of the group or body is responsible for overseeing and conducting the work of the Group in a manner which ensures that the Group operates in accordance with its terms of reference and in the public interest,
- information should be published in as timely a fashion as possible, having regard to the public interest in safeguarding the integrity of the deliberative process. All groups should publish information about their membership, terms of reference, expected timeframe and reporting arrangements on their establishment,
- the information on the public bodies' website must be updated at least every 4 months with details of agendas, minutes, etc. in relation to each such group.<sup>38</sup>

The Standards commission has advised that it disagrees with the view that it should be responsible for the operation of the Transparency Code and says that it is for the parent public body to ensure it is being complied with. It argues that the Code does not remove the primary obligation on lobbyists to register any non-exempt communications. The Standards Commission's view is that where the Code is not being adhered to, the obligation to include any relevant communications in their returns remains with the lobbyist. It also believes there is no need for a further obligation or enforcement mechanism.

The Standards Commission made some recommendations as to how issues arising could be addressed as follows:-

- A possible solution would be for a central repository for the list of bodies who are operating in line with the terms of the Transparency Code to be housed on [lobbying.ie](http://lobbying.ie). In order to facilitate this, it was recommended that the Act be amended to include a requirement for public bodies to inform the Standards Commission before

<sup>37</sup> <https://www.lobbying.ie/help-resources/information-for-public-bodies/transparency-code/>

<sup>38</sup> <https://www.lobbying.ie/media/5986/2015-08-06-transparency-code-eng.pdf> (page 5)

the end of every relevant period of the relevant bodies that are adhering to the Transparency Code.<sup>39</sup>

- The Standard Commission indicated that there is no clear authority in the Act to verify that said groups are actually adhering to the obligations set out in the Code. Their view is that “*responsibility for such verification would rest with the head of the parent public body. Rather than including this obligation in the Act, it would more properly fit within the Transparency Code itself*”.

In DPER’s view, there is nothing in the Act to prevent the Standards Commission becoming a central repository for groups operating under the Code and from seeking this information from Government Departments.

### Ordinary Course of Business

The Act specifies that communications between commercial state bodies and their Minister / parent Department, made in the ordinary course of business of the body corporate are excluded. Communications on wider issues, for example, relating to policy or regulation in the sector in which the body operates would be included within the scope of the Act and would be registerable.

Clarification on what is considered to constitute “ordinary course of business” has been requested in a number of submissions.<sup>40</sup> Another submission suggested that DPER issue guidelines on this issue to all state bodies.<sup>41</sup>

The examples below provide clarification on the matter:-

- providing the Minister with an annual report for tabling in the Oireachtas, or providing progress reports where the body delivers a programme on behalf of the government, may be considered to be “in the ordinary course of business” and therefore eligible for the exemption.
- A request for additional funding, a request for legislative change or policy change or a request for additional or expanded powers would not be considered eligible for the exemption.

Furthermore, the Standards Commission is developing a new FAQ to address this issue, which will further clarify to which communications the exemption may apply.

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<sup>39</sup> The Standards Commission

<sup>40</sup> IBEC, EIR and ERVIA

<sup>41</sup> PRII

### **Summary of Findings and Conclusions about Exemptions from Registering Requirements:-**

**10:** Communications made to a person who is member of a political party by the political party in that person's capacity as a member the political party are exempt. It is recommended that the Standards Commission should issue guidance to clarify this issue.

**11:** Communications between public servants in the normal course of their duties would not constitute lobbying and therefore, should not be included on the register. Such communications would be available under the Freedom of Information provisions.

**12:** In light of the Standards Commissions' opinion, that there is no issue with the current position on the exemption for Trade Union negotiations on terms and conditions of employment, no amendment is considered necessary.

**13:** An exemption for social media publications and tags, (a means to allow the DPO to view content that may refer to the DPO), to DPOs would reduce the transparency of the information on the register as the register would no longer be a single point of reference for lobbying activity. Making such an exemption is not considered necessary.

**14:** Notification by public bodies of the intention to publish submissions on foot of a public consultation process is not explicitly required by the exemption, nor is there a timescale for the publication. However, we would encourage public bodies to make explicit their intentions to publish submissions received and to do so as soon as possible following the closing date for same.

**15:** The Transparency Code already provides that the Chairman of the group or body is responsible for overseeing and conducting the work of the Group in a manner which ensures that the Group operates in accordance with its terms of reference and in the public interest. This in turn would place responsibility on the Chairman to ensure compliance with the Transparency Code obligations. No change is considered necessary.

**16:** It is proposed to ask the Standards Commission to provide a central repository for a list of bodies operating under the Transparency Code. Public bodies will need to provide the Standards Commission with details of such groups.

**17:** The Standards Commission is drafting an FAQ to provide clarity on what can be considered "ordinary course of business".

### **Summary of Further Action Recommended about Exemptions from Registering**

The Standards Commission: - Consider drafting guidance to alleviate concerns concerning communications made to a person who is member of a political party by the political party in that person's capacity as a member the political party (point 10 above).

DPER and the Standards Commission: Public bodies should be further encouraged to make explicit their intentions when conducting consultation processes, as this would be of benefit to those who may have obligations under the Act (point 14 above).

The Standards Commission: - Consider the Standards Commission becoming a central repository for groups operating under the Code and seeking this information directly from Government Departments (point 16 above).

The Standards Commission: - FAQ to provide clarity on what can be considered "ordinary course of business" is currently under development (point 17 above).

#### 4.2.3 Issues around Designated Public Officials

The Act specifies that DPOs (those persons lobbied) are:-

- (a) Ministers and Ministers of State,
- (b) TDs and Senators,
- (c) MEPs representing the Irish State,
- (d) Members of Local Authorities,
- (e) Special Advisers,
- (f) Public servants of a prescribed description of persons.

The public servants currently in (f) above are Secretary General, Assistant Secretary and Director levels in the civil service, and equivalent levels in local authorities i.e. CEO and Directors of Service.

More than half of the submissions received suggested changes to those designated as public officials under the Act. These changes included expanding the list of DPOs to include senior officials in influential public bodies and to Principal level in the civil service on a case by case basis, but that the Head of Lobbying Regulation be exempted.<sup>42</sup> Further proposals are as follows:-

- semi-state and publicly funded bodies should be included as the lobbied<sup>43</sup>

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<sup>42</sup> The Standards Commission

<sup>43</sup> DIT and PRCA



- grade levels in local government should include those prescribed in the Local Government Act 2001 (Part 15) Regulations 2015<sup>44</sup>
- a list of those who should be considered as DPOs in relation to planning activities and those in the wider public service was provided in a submission<sup>45</sup>
- MEPs should be removed from the definition of DPOs<sup>46</sup>
- a definition of Designated Elected Member (DEM) to be included as DPOs<sup>47</sup>
- the extension of the DPOs should be delayed until the next review of the Act in 2019.<sup>48</sup>

The majority of views articulate that any changes to include the grade of Principal in the civil service or any other categories would place a greater burden on lobbyists to report those relevant communications. In the view of the Standards Commission *“this would, in the Commission’s view, make the scope of the Act unwieldy and create challenges in its effective implementation and enforcement.”*

As currently provided in legislation the categories of DPOs cover the major categories of positions who are the decision makers in respect of both the civil service and the local authorities. The Act was commenced in September 2015 and the first four return periods for those lobbying have now passed. In addition the enforcement provisions only commenced in January this year. In considering the categories of persons that might be included as DPOs this period of implementation of the Act is a relatively short time span.

The submissions themselves disagree on the categories of persons who should be included as DPOs and as a consequence of this, further evidence of the groups of persons to be considered for inclusion as DPOs needs to be gathered.

Taking into account both the short period of time since the commencement of the Act and its enforcement provisions and the need to gather further evidence, it is proposed that the DPO cohort should remain as it is pending the outcome of the next review of the Act.

While the term DEM may accurately reflect those in local government who fall within those designated under the Act, it does not reflect the entire DPO grouping. Designated public officials under the Act refers to all those encompassed by the framework of broad categories of persons that make up the lobbied. It would not be in the spirit of transparency to cause confusion by providing for two different definitions of those lobbied by referring to the lobbied as DPOs and DEMs.

### List of DPOs published on Departments Websites

A number of submissions suggested that the Act be amended so that the list of DPOs published on Department’s websites:-

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<sup>44</sup> Dun Laoghaire Rathdown County Council and CCMA

<sup>45</sup> IPI and TASC

<sup>46</sup> PRII, PRCA, Hume Brophy and Chambers Ireland

<sup>47</sup> Association of Irish Local Government

<sup>48</sup> DAA, ERVIA, EIR, PRII, PRCA and IFA

- (a) includes Special Advisers,<sup>49</sup>
- (b) is updated at least prior to each relevant period,<sup>50</sup>
- (c) is updated on a frequency and in a format specified by the Standards Commission.<sup>51</sup>

Section 6(4) of the Act provides for public bodies to maintain a list of designated officials with up to date details on their website. While it is not specifically required under the Act to include Special Advisers in this list, to date all Departments have included them in the DPO lists. The Standards Commission may request information on these lists be updated at any time and it is recommended that it does so and issues guidance in relation to the format and content of the information to be provided to ensure uniformity in the provision of this information.

### Contact with Lobbyists

One submission proposed that DPOs be obliged by the Standards Commission to refuse communications with lobbyists who have not registered previous activity by the relevant date (see Appendix 10). It further suggested that breaches of this obligation should be subject to an enforcement mechanism including the investigation of any such breaches.<sup>52</sup>

Public officials have no statutory responsibilities under the Act. Public officials are, of course, subject to other transparency measures such as the Ethics Acts and Freedom of Information provisions. It is the intention that this legislation will have a positive impact in terms of the openness of public officials. The register will shine a light on any area of the public service which is not engaging in balanced stakeholder consultation and will create its own pressures to improve access to public officials. Entries on the register will also inevitably lead to freedom of information and media requests which may result in better record keeping in relation to such consultations.

It is not considered appropriate for public officials to police the activities of lobbyists, nor would it be possible on a practical level. In relation to the Standards Commission being able to request that a DPO should not communicate with a lobbyist until the lobbyist becomes compliant with the Act, the implementation of this proposal could change the nature of the relationship between organisations that are lobbying and the State, and may act as a disincentive to public officials to encourage and facilitate contact with stakeholders. It has the potential to reduce the level of communication between DPOs and the broad spectrum of stakeholders, thereby limiting the information available to the public service. It is essential that lobbying continues to be supported and assisted as it is an essential element of a democracy. Having said that, the Lobbying Regulator has indicated that DPOs may approach the Standards Commission if they wish to report any suspicions of non-reporting of lobbying activities.

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<sup>49</sup> The Standards Commission, PRCA and PRII

<sup>50</sup> The Standards Commission

<sup>51</sup> PRII, PRCA and IBEC

<sup>52</sup> The Standards Commission

### Cooling Off Period

Two of the submissions suggested that the current cooling off period of 1 year be amended. One suggested that a period of 2 to 5 years would be appropriate whereas another provided different time frames for different categories of DPOs.<sup>53</sup>

In relation to the cooling off period, the approach taken in the Act reflects a review of the duration of similar provisions in other jurisdictions which highlighted that the introduction of a 2 year restriction for a relatively wide body of public officials would fall into the upper-end of the international norms in this area (notwithstanding that there are significantly longer cooling-off periods in force in some jurisdictions). The 1 year period also aligns with the current post-public employment restriction in place under the Civil Service Code of Standards and Behaviour.<sup>54</sup>

### Identification Cards

The subject of identification cards (ID) being issued to all registered lobbyists as a form of ID to be presented to DPOs was raised by one submission.<sup>55</sup>

Firstly, the issuing of ID cards would have the effect of changing the Act so that potential lobbyists would have to register prior to communicating with a DPO. It would also impact on any individual communicating with a DPO on the zoning or development of land. As it would not always be the same person communicating with DPOs on every occasion on behalf of an organisation, this would create a greater burden on organisations who would be required to ensure that anyone who was lobbying on their behalf had an ID card prior to lobbying.

It would not be appropriate for public officials to police the activities of lobbyists, even by way of ID cards, nor would it be possible on a practical level. It could also change the nature of the relationship between organisations lobbying and the State, and may act as a disincentive to public officials to allow and encourage contact with stakeholders.

### **Summary of Findings and Conclusions about Designated Public Officials**

**18:** As currently provided for in legislation the categories of DPOs cover the major categories of those who are the decision makers in respect of both the civil service and the local authorities. Taking into account the short period of time since the commencement of the Act and the even shorter period since the commencement of the enforcement provisions, and the need to gather further evidence so that an informed decision can be made on the groups of persons to be included as DPOs, it is proposed that the DPO cohort should remain as it is at this time. This is something that can be considered further in the context of the next review of the Act. No change is considered necessary.

<sup>53</sup> JH RC GM MC and DIT

<sup>54</sup> <http://www.sipo.gov.ie/en/Codes-of-Conduct/Civil-Servants/>

<sup>55</sup> DIT

**19:** Removing MEPs from the cohort of DPOs would provide a possible loophole. If MEPs were removed, communication could be made to MEPs where registration would not be required, rather than to a DPO where registration is required. No change is considered necessary

**20:** Providing a second definition for DPOs using the term “Designated Elected Members” to define local government DPOs could lead to confusion. No change is considered necessary

**21:** The Act currently provides that up to date lists of DPOs be maintained on the public bodies’ websites and, although there is no requirement for Special Advisers to be included in these lists, Departments have already included them. This is an administrative matter and no change is considered necessary.

**22:** Providing the Standards Commission with the power to request a DPO not to communicate with a lobbyist until the lobbyist becomes compliant with the legislation is not recommended, as it would change the relationship between the lobbyist and public servants, and could disincentivise lobbying, which is an essential element of an effectively functioning democracy.

**23:** The current 1 year cooling off period is in line with international norms and post public employment restrictions under the Civil Service Code of Standards and Behaviour. No change is considered necessary.

**24:** Identity Cards would increase the administrative burden on organisations and individuals. No change is considered necessary.

#### 4.2.4 Matters relating to the Register (content, registration details, etc.)

Submissions had diverging views on what should be included on the register, from simplifying the returns in order to reduce the burden on larger organisations, to including details of time and dates of communications which would have the effect of increasing the burden on all registrants. The question of how long information should remain on the register and when and how it should be destroyed was also raised.<sup>56</sup>

It is proposed that the question of how long information should remain on the register and how it should be destroyed should be considered further by the Standards Commission. In order to ensure compliance with data protection requirements, the Standards Commission should seek the advice of the Office of the Data Protection Commissioner and any other relevant bodies in relation to the time limits for holding data on websites. This would ensure

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<sup>56</sup> The Standards Commission

that the requirement of the Office of the Data Protection Commissioner to “*Retain it [data] for no longer than is necessary for the purpose or purposes*” it was collected can be met.<sup>57</sup>

## Content

One submission proposed that complete details of communications be returned on the register. For example, attendees at meetings, location, time and dates of communications should be included to increase the transparency of the register.<sup>58</sup> A further submission suggested that representative bodies should include the names of those they are representing in their returns.<sup>59</sup>

The main themes in relation to the content of the returns on the register were that:-

- (a) organisations should disclose their financial information,<sup>60</sup>
- (b) bodies should be able to indicate if they subscribe to a Code of Conduct,<sup>61</sup>
- (c) compliance should be simplified for larger organisations,<sup>62</sup>
- (d) where lobbying activity is carried out by a consultant on behalf of a client, the return should be linked to the client,<sup>63</sup>
- (e) it should be possible for registrants to view previous returns while uploading a new one,<sup>64</sup> and,
- (f) the absence of a submitted return should be treated as a nil return.<sup>65</sup>

At the policy development stage, the options for requiring financial disclosure were examined. It was considered that including financial disclosure on the register would require striking an appropriate balance between required transparency and ensuring the confidentiality of commercially sensitive information and safeguarding the right to privacy. There would be significant administrative issues in establishing consistent and comparable financial data that could be included in the register and it would require auditing by the Standards Commission. Therefore, it was decided that it should not be a requirement to include such data.

The inclusion of subscription details to a code of conduct would not necessarily add to the transparency of communications on the register.

In formulating the legislation the conflicting views on the amount of data to be returned was considered. Providing the details of each individual communication would significantly add to the volume of returns and substantially increase the burden of administration and reporting on lobbyists. It is considered that the aim of this transparency initiative which is to shine a light on “who is communicating with whom on what” is currently being adequately met.

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<sup>57</sup> <https://www.dataprotection.ie/docs/A-Guide-for-Data-Controllers/696.htm>

<sup>58</sup> Association of Irish Local Government

<sup>59</sup> Alcohol Health Alliance Ireland

<sup>60</sup> DIT and JH RC GM MC

<sup>61</sup> PRCA

<sup>62</sup> IFA and IBEC

<sup>63</sup> PRII

<sup>64</sup> Chambers Ireland

<sup>65</sup> Mr O’Donohoe

Account was taken of the larger organisations, particularly those with voluntary members when developing the policy. An exemption was provided that only communications by remunerated employees should be included in returns. To assist these larger organisations to meet the compliance requirements, the Standards Commission has also provided for bulk up loading of returns.<sup>66</sup>

The Standards Commission have advised that linking a consultant's return with the client's registration would be a useful mechanism and has indicated that it will explore whether and how such functionality might be introduced in future updates to the register.

In relation to the facility to view previous returns it is currently possible to view previous returns while uploading new ones.

There is a requirement for registrants to complete a nil return when they have not carried out lobbying activity within the relevant period. This ensures that the data on the register is fully up to date. However, in order to balance this ongoing requirement a facility also exists, under section 11(4) of the Act, for people who are not lobbying to deregister from the register, thus avoiding the requirement to make nil returns. If a registrant is unsure of the procedure involved in this process or would like further clarification on the issue, they should contact the Standards Commission.

### Registration Details

The details required to be supplied for the registration of organisations was raised in the submissions received including one proposal that lobbyists should register as soon as they commence lobbying and should provide a photo of themselves.<sup>67</sup> A further proposal was to have all contact details related to the lobbyist's main activities included on the register and on returns where applicable.<sup>68</sup>

Another submission suggested that the categories of main activities of the organisation provided on the website registration form, should be amended to reduce the numbers who are categorised under "other".<sup>69</sup> While registration is currently free, it was recommended that the register should remain free from fees.<sup>70</sup>

If photos were to be included on the register consideration would need to be given as to whose photo should be included, the CEO of the company or, perhaps, the lobbyists who actually communicate with the DPO. There would be data protection issues where members of the public were communicating on zoning and development issues. It would not increase transparency objectives of the legislation and would give rise to an increased burden for registrants.

The Act provides for any email, telephone number or web address associated with the business to be provided. In order to provide that any of the methods of contact that relate to the business would be available on the register, the Standards Commission could make any or

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<sup>66</sup> A bulk upload provides for all records to be uploaded electronically on the register

<sup>67</sup> JH RC GM MC

<sup>68</sup> The Standards Commission

<sup>69</sup> TASC

<sup>70</sup> DIT

all of these fields mandatory on the register, which would ensure that contact details were supplied in each field.

In relation to changes to the list of main activities of organisations, this would be an administrative matter for the Standards Commission, as the categories of organisations are not defined in the Act.

Submissions to the original consultation process, when the policy was being developed, were opposed to the introduction of a fee and the Policy Paper on the Regulation of Lobbying states that examination of practices abroad, showed that in the majority of jurisdictions where a register of lobbyists had been introduced there is no charge for online registration but a fee is charged for paper registration. There is no intention to introduce a registration fee at this time.

### **Summary of Findings and Conclusions about Matters relating to the Register**

**25:** The inclusion of financial data on the register would cause significant administrative issues in establishing consistent and comparable financial data, and require auditing by the regulator. No amendment is considered necessary.

**26:** Including an indication of subscription to a code of conduct, as part of registration requirements, would not add to the purpose of the register in showing who is contacting whom about what. No amendment is considered necessary.

**27:** Regarding the burden on large organisations, the information required on returns is of a high level and an exemption was provided so that only communications by remunerated employees should be included in returns. The proposal to simplify compliance for larger organisations is not accepted.

**28:** Providing details of each individual communication on the register would be unworkable, as it would considerably add to the volume of returns and significantly increase the burden of administration and reporting on lobbyists. No amendment is considered necessary.

**29:** Consideration was given to easing requirements on larger organisations to meet the compliance requirement. The information required is already at a high level and a bulk upload facility for returns has already been provided. No amendment is considered necessary.

**30:** The Standards Commission is to consider linking consultant returns with client registration in a future update of the register.

**31:** Providing for photos on the register could cause data protection issues, without adding to the transparency initiative and therefore, it is not proposed to provide for it.

**32:** In line with the original policy intentions and practice abroad, it is recommended that the register should remain free from charge.

### **Summary of Further Action Recommended about Matters relating to the Register**

The Standards Commission: - Consider linking consultant returns with client registration in a future update of the register (point 30 above).

#### 4.2.5 Code of Conduct for Lobbyists

Three submissions provided their views on the code of conduct provided for in section 16 of the Act. One submission is of the opinion that DPER should review the usefulness of the code.<sup>71</sup> Another submission stated that where a code of conduct does not exist, lobbyists acting in the area of the development and zoning of land on behalf of clients must be a member of a professional planning institute, meaning they are subject to that institute's Code of Conduct.<sup>72</sup> A third submission recommended that the Standards Commission should be required to consult with interested stakeholders in developing a code and to lay the code before the Oireachtas. The same submission proposed that the Standards Commission should be required to provide guidance on the code and be able to conduct inquiries into breaches of the code, and report on any breach of the code.<sup>73</sup>

As part of the first consultation process in developing the legislation the question of the need for a code of conduct was raised and respondents were in favour of having a code.

The Act currently provides that the Standards Commission may create a code of conduct for lobbyists to support high professional standards and good practice. No code has been created to date. The Act currently provides that in creating or revising the code, those carrying out lobbying activities and their representatives should be consulted by the Standards Commission. The Act also provides for different provisions for different descriptions of persons.

The Office of the Attorney General has advised that the establishment of a code of conduct should be discretionary, and that it is more usual to require that regard be had to the provisions of a code rather than for mandatory provisions to apply. Should the Standards Commission consider it helpful it may issue guidance on any code of conduct that is produced.

### **Summary of Findings and Conclusions about the Code of Conduct**

**33:** In line with advice from the Office of the Attorney General, the establishment of a code of conduct should be discretionary. No amendment is considered necessary.

<sup>71</sup> PRII

<sup>72</sup> IPI

<sup>73</sup> The Standards Commission.



#### 4.2.6 Offences Issues

The enforcement provisions commenced on 1 January 2017. The offences provisions raised a few issues, with proposals ranging from increasing the penalties applicable under the fixed payment notices to providing the Standards Commission with the facility of naming and shaming those who do not comply with the legislation. The proposals include:-

- Provide that avoiding the requirement to apply to the Standards Commission for approval to carry out lobbying activities, or to provide services to a person carrying out lobbying activities within the relevant period of ceasing to be a designated public official should be an offence,<sup>74</sup>
- An offence of avoiding obligations under the Act should be included as a relevant contraventions,<sup>75</sup>
- To amend section 20 so that it shall be considered a defence in proceedings, if a person took all reasonable steps including steps based on guidance issued to comply with the Act,<sup>76</sup>
- Introduce a penalty point system which would include a naming and shaming report on the register and increase the levels of fines,<sup>77</sup>
- To name and shame those who do not comply with the legislation,<sup>78</sup>
- Provide for public service bodies to have committed an offence in instances where their DPO list is not in updated as specified by the Standards Commission and to name and shame those bodies,<sup>79</sup>
- Provide for non-adherence to the Transparency Code to be an offence,<sup>80</sup>
- Clarity is required on who might be prosecuted for a relevant offence and it is proposed that the registered person be explicitly included.<sup>81</sup>

As the Standards Commission has stated, there is currently no offence provision in the Act in respect of non-compliance with the requirement to apply to the Standards Commission for approval to carry out lobbying activities post public employment, as provided in section 22(1). The enforcement provisions only came into effect on 1 January 2017 and it is considered to be too early to consider an amendment of these provisions at this stage. Evidence should be gathered in light of experience of implementation, before any informed decision could be taken on this issue.

The proposed offence of avoiding obligations under the Act is catered for under section 19 which provides for the Standards Commission to investigate relevant contraventions of the Act. There is also section 18(e) which provides that it is an offence to obstruct an investigation.

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<sup>74</sup> The Standards Commission

<sup>75</sup> The Standards Commission

<sup>76</sup> PRII

<sup>77</sup> DIT and JH RC GM MC

<sup>78</sup> TASC, The Standards Commission, PRCA, and PRII

<sup>79</sup> PRII

<sup>80</sup> TASC

<sup>81</sup> Banking and Payments Federation Ireland

The defence that all reasonable steps have been taken is already provided for under section 20(3). This establishes that where proof is available that all reasonable steps have been taken to avoid committing the offence, this will be accepted as a defence.

The possibility of naming and shaming was considered in drafting the original legislation, however, legal advice indicated that it would not be possible to include naming and shaming provisions as part of administrative penalties as this could contravene data protection provisions. As an alternative, an administrative penalty system using a fixed payment notice charge was considered and adopted. By using a penalty points system or a register of delinquent lobbyists, and allowing these penalty points to be viewed, it would in effect be naming and shaming, thus contravening data protection provisions.

Legal advice is that a fixed notice penalty is only appropriate for minor matters and not for more serious offences, and indictable offences would be clearly well outside scope of a fixed penalty notice. Even matters at the upper levels of the District Court jurisdiction are not appropriate for a fixed penalty notice. The offences to be covered should really be of a very minor nature. The classes of fines imposed are in line with legal advice, (i.e. a class c fine on summary conviction and on conviction on indictment to a fine or imprisonment for a term not exceeding 2 years).

The Transparency Code is a mechanism available to bodies appointed by a Minister or a public service body to examine or evaluate public policy and report to the Minister. These bodies are defined as including at least one DPO and at least one person who is not a DPO nor engaged by the public service body in any role. The purpose of this exemption is to lessen the administrative burden on registrants who are members of groups appointed by Ministers or public service bodies. The Chairperson of the body is responsible for overseeing and conducting the work of the group in a manner which ensures that the group operates fully in accordance with its terms of reference and in the public interest.

In relation to who might be prosecuted for an offence, section 20(6) is a standard provision which specifies that where the offence is committed by a corporate body with the knowledge or involvement of any person who was, or claimed to be, an officer of the body, particularly at manager, director or secretary level, both the person and the body are guilty of the offence and are liable to be prosecuted. As this is a standard provision and the enforcement provisions only came into force on 1 January 2017, no amendment should be considered at this stage. Further experience of enforcement provisions would be necessary before any informed decision could be taken.

### **Summary of Findings and Conclusions about Offences Issues**

**34:** Naming and shaming of those who do not comply with the legislation, including by means of a penalty point system, would contravene data protection provisions. No amendment is considered necessary.

**35:** Proof that all reasonable steps have been taken to avoid committing an offence is currently accepted as a defence. No amendment is considered necessary.

**36:** The proposed offence of avoiding obligations under the Act is catered for under sections 18 and 19 of the Act.

**37:** Fixed Penalty Notices are only applicable to minor offences and the classes of fines are in line with legal advice. No amendment is considered necessary.

**38:** We recommend that no amendment be made in respect of the offences provisions, as the enforcement provisions only came into effect on 1 January 2017. Any consideration of an amendment to these provisions should await the experience of implementation and would be more appropriate to the next review of the Act.

**39:** The Transparency Code is intended to lessen the burden on those who participate in groups, where the group meets the transparency code requirements. No amendment is considered necessary.

**40:** The provision outlining the individuals that might be prosecuted for an offence is a standard provision in legislation. No amendment is considered necessary.

### **Summary of Further Action Recommended about Offences Issues**

The Standards Commission and DPER: - Enforcement provisions in general should be kept under review over the next 3 years (point 38 above).

#### 4.2.7 Investigations

One emerging theme from the submissions was that a compliance review should be held. An examination of the register to include spot checks of the information included in returns with particular emphasis on the intended results was suggested.<sup>82</sup> Another opinion was that an analysis should be carried out on the level of returns to date including an examination of the active sectors of the economy and society.<sup>83</sup> A further view is that the compliance review should also examine the communications of certain DPOs in a reporting period against the related returns.<sup>84</sup>

A submission recommended that the Act be amended to give the Standards Commission the authority to make investigation reports public.<sup>85</sup> Another suggested that the Standards Commission be provided with sufficient resources to allow it to conduct thorough spot

<sup>82</sup> TASC

<sup>83</sup> IBEC and PRCA

<sup>84</sup> PRII and PRCA

<sup>85</sup> The Standards Commission

checks of a certain proportion of all filed returns. It also sought that explicit powers to receive complaints, inspect records and returns, and verify information should be given to the Standards Commission.<sup>86</sup>

As mentioned earlier in this report, legal advice indicated that it would not be possible to include naming and shaming provisions as part of a report as this would contravene data protection provisions. Where an anonymised report was issued following an investigation, it could inadvertently provide information that could identify the individual or organisation involved which would contravene data protection provisions.

In relation to the conduct of a compliance review of the register, the Standards Commission is an independent body and is responsible for the maintenance of the Register of Lobbying. As an independent statutory body, it is not accountable to the Department of Public Expenditure and Reform in the performance of its functions and it would be for the Standards Commission to consider whether a review is necessary.

It is a matter for the Standards Commission to determine the resources it requires and the allocation of those resources. It is open to the Standards Commission to accept complaints, inspect registrations or returns, or verify information, and it is expected it will do so.

On the publication of their first Annual Report in June 2016, the Standards Commission's Head of Lobbying Regulation, Sherry Perreault said:-

*"This report marks an important milestone in the evolution of ethics regulation in Ireland. It is clear that our efforts to build awareness and understanding of the Act have resulted in the high level of registration and returns so far. While we are very pleased with the early results, there is still work to be done to ensure that all those lobbying are aware of their obligations under the Act."*

### **Summary of Findings and Conclusions about Investigations**

**41:** Providing for the publication of reports of investigations could contravene data protection provisions and contravene legal advice, as it could "name and shame" inadvertently. No amendment is considered necessary.

**42:** It is open to the Standards Commission to accept complaints, inspect registrations or returns, or verify information, and it is expected it will do so.

<sup>86</sup> TASC

### **Summary of Further Action Recommended about Investigations**

The Standards Commission – Should undertake regular monitoring and analysis of the registers data to ensure full compliance with the provisions of the Act (point 42 above).

#### 4.2.8 Guidance/ Information/ Education from the Standards Commission

Submissions provided their views on the changes they would like to see in the guidance and education on different aspects of the lobbying regulation. As mentioned earlier in the report, one submission stated that it should not matter who submits the return when both a consultant and client are carrying out lobbying activity and guidance should reflect this position. Further guidance was also suggested about the exemptions relating to trade union negotiations, matters which are of a technical nature, and for the exemption in respect of commercial state agencies.<sup>87</sup>

As regards education on lobbying matters it was recommended that an outreach campaign be carried out to increase the awareness among some groups of DPOs.<sup>88</sup> It was also suggested that an awareness campaign should be developed for organisations and sectoral advocacy groups.<sup>89</sup>

Another suggestion was the use of a YouTube channel, (an area on YouTube where the owner of the area provides information), for important announcements, to provide guidance and information and as a resource for lobbyists. Also proposed was the use of social media for alerts and updates and to explain the nuances of lobbying, for example, what differentiates lobbying from approaching a TD on a personal matter.<sup>90</sup> An app, (software programme for mobile phones and tablets), for the register's website, and facilities to register through Facebook accounts and other social media were proposed.<sup>91</sup>

In relation to lobbying activity carried out by both a consultant and a client, the Standards Commission is of the opinion that, in the interests of transparency, consultants should always have to report lobbying activities. If a client is making, managing or directing separate lobbying activities (even on the same subject matter), the client should submit his/her own returns.

Section 17 of the Act provides the Commission with the authority to issue guidance about the operation of the Act. The Commission may also make information available for the purpose of promoting awareness and understanding of the Act.

The Commission has published a suite of guidelines tailored to various parties with an interest in the Act. Guidelines published on the website include:

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<sup>87</sup> PRII

<sup>88</sup> PRII, PRCA, and Councillors J. Flynn and C. Curtin

<sup>89</sup> Ervia and CCMA

<sup>90</sup> DIT, JH RC GM MC and IPI

<sup>91</sup> DIT and JH RC GM MC

- Guidance for Designated Public Officials,
- Guidance for Local Authority Members,
- Guidance for TDs, Senators and MEPs,
- Guidelines for persons carrying on lobbying activities, and
- Guidelines on lobbying in relation to zoning and development.

A range of other helpful information has been published on the website, including frequently asked questions, sample returns, instructional videos and a Three Step Test to help people determine whether their activity is lobbying and requires registration.

An extensive communications and outreach strategy was developed and implemented to ensure that all those who might have obligations under, or an interest in, the new Act were aware of its provisions. Outreach activities included numerous presentations to stakeholder groups throughout Ireland, including businesses and business associations, charities, representative and advocacy bodies.

In addition, presentations were given to groups of designated public officials, including Members of the Dáil and the Seanad, local authority members, management and staff, and management teams of various departments and agencies. While designated public officials do not have obligations under the legislation, they have an interest in the register as they will be named in lobbying returns as having been lobbied. DPER has asked that DPOs self-identify as such in their communications with those lobbying them and the Standards Commission provides guidance on the website in this respect.<sup>92</sup> This will enhance awareness of the Act and will assist persons lobbying to submit accurate returns.

Other outreach activities of the Standards Commission included establishing a Twitter presence to highlight significant events, dates and milestones. Several articles regarding the regulation of lobbying were submitted for publication in a number of newspapers and journals. Correspondence was sent to over 2,000 public and private sector bodies, and to the top 1,000 companies in Ireland to inform them of the Act and its obligations. Finally, a national advertising campaign designed to raise general awareness of the Act was launched in September 2016.

It is clear that a significant amount of outreach has been undertaken by the Standards Commission to designated public officials across Ireland in various forums, and there are tailored guidelines on the website. The Standards Commission has also instituted an annual outreach letter to DPOs, and has indicated that any further outreach efforts will be undertaken as needed to the DPO community.

However, it is important to note that DPOs have no obligations under the Act with respect to registration and returns. Accordingly, the Standards Commission had advised that it intends to continue targeting the majority of its outreach efforts to persons with obligations under the Act. DPER supports this approach.

In relation to social media specifically, the Standards Commission already has a dedicated lobbying website, a Twitter account, and a Vimeo account, (an account on a video sharing network on the web), which are used to disseminate announcements and instructional tools.

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<sup>92</sup> <https://www.lobbying.ie/help-resources/information-for-public-bodies/guidance-for-designated-public-officials/openness-in-identifying-designated-public-officials/>

Instructional tools which are already available include videos demonstrating how to register and how to submit a return. The Standards Commission is considering what other social media channels may be useful to help further disseminate information. Currently an RSS feed, (a means of getting live web feeds directly to your computer), exists on the lobbying register for updates, however, consideration will also be given as to whether an RSS feed may be added to the website as well. It is unclear what other needs may exist that a video/YouTube format would suit and that have not already been addressed.

While the Standards Commission is keen to ensure that the register is user-friendly and the returns process is simple and intuitive, it is the Standards Commission's view that the development of an app would not be a useful investment at this time. Such an app would likely appeal only to a very small group of frequent users, and would very likely bring with it high development costs.

The Standards Commission would have serious concerns about data protection and the information security risks of linking the register to a social media site.

#### **Summary of Findings and Conclusions about Guidance/ Information/ Education from the Standards Commission**

**43:** The Standards Commission has a specific role to provide guidance and education as set out in the Act. Guidance in line with the needs of particular audiences is provided and updated on the website. Outreach and education is provided as required.

**44:** The use of social media as a facility for publishing or the provision of information is a matter for the Standards Commission.

#### **Summary of Further Action Recommended about Guidance/ Information/ Education from the Standards Commission**

The Standards Commission – to consider if an RSS feed should be added to the website.

#### 4.2.9 Other Issues Raised

A number of submissions expressed the view that the resources of the Standards Commission should be sufficient to carry out its enforcement and education functions, spot check returns and address any shortcomings with the register to meet the needs of larger users.<sup>93</sup>

<sup>93</sup> PRCA, PRII, DIT, TASC and IBEC

The submissions also raised views and concerns in respect of:-

- the Advisory Group on the Regulation of Lobbying - that its remit should be changed and membership reviewed,<sup>94</sup>
- access to the Leinster House complex should be linked to the lobbying register,<sup>95</sup>
- Ministerial and Departmental Diaries should be published,<sup>96</sup>
- DPOs should maintain records of all communications,<sup>97</sup>
- increased freedom of information requests arising as a result of organisations reviewing the register,<sup>98</sup>
- reporting of communications which do not fall under the Act,<sup>99</sup>
- regulation should be strengthened in line with those regulations in the United States,<sup>100</sup>
- focus on providing greater clarity for proper implementation,<sup>101</sup>
- the register provides all stakeholders with the opportunity to use the register to communicate and highlight their priorities.<sup>102</sup>

In relation to the issue of resources the Standards Commission is an independent body and it is a matter for it to determine the resources required and to allocate those resources as deemed necessary. The Standards Commission has indicated that it is satisfied that existing resource levels are satisfactory to meet current operational requirements within the existing mandate/legislation. However, it has indicated that resource needs may change based on the following:-

- Compliance concerns based on analysis of returns/registrations
- Volume of investigations/enforcement actions
- Potential resource implications of any changes to the legislation.

The Advisory Group on the Regulation of Lobbying was set up to assist with the implementation of the Act. The Standards Commission has advised that it does not see the need for the group to meet on a formal basis at this point in time, but has not dissolved the group and may reconvene the group at a future date if appropriate.

The regulation of access to the Leinster House complex is a matter for the Houses of the Oireachtas. Particular rules apply to lobby groups. Any changes to the current arrangement would be a matter for the Houses of the Oireachtas to determine. Our understanding is that the age and consequent layout of the building does not lend itself to this proposal from a security point of view.

The diaries of both the Minister and Secretary General of the Department of Public Expenditure and Reform are available on the Department's website ([per.gov.ie](http://per.gov.ie)) and include

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<sup>94</sup> IFA, PRCA and PRII

<sup>95</sup> IFA and PRII

<sup>96</sup> PRCA

<sup>97</sup> An official from the Department of Communications, Climate Action and Environment

<sup>98</sup> Department of Foreign Affairs and Trade and Official from Department of Communications, Climate Action and Environment

<sup>99</sup> Department of Foreign Affairs and Trade

<sup>100</sup> DIT

<sup>101</sup> IBEC

<sup>102</sup> IBEC



details of the previous month's meetings. Under freedom of information legislation, departmental publication schemes provide for frequently sought records to be published. Should records relating to individual DPO diaries be frequently sought under FOI, DPOs could consider publication of same.

In relation to an increase in freedom of information requests, this was an expected consequence of the legislation. It was always likely that entries on the register would inevitably trigger freedom of information and media requests. This may have the result of promoting better record keeping by officials in relation to such consultations.

It is for the lobbyist to decide if any communication requires to be registered under the Act. If a Department (or DPO) finds that communication included on the register is inaccurate or misleading, the Department (or DPO) should contact the Standards Commission and request that the information be corrected in accordance with section 10(5) of the Act.

The purpose of the Act is to provide transparency on "who is communicating with whom on what" without producing an excessive burden of compliance for lobbyists. In introducing the policy on the Regulation of Lobbying, lobbying regulation in the United States was researched, and it was felt that the high level of regulation in the United States would not be in line with the Irish culture. It would not seem appropriate to increase the administrative burden on lobbyists by strengthening the regulations in line with those of the United States, as the transparency initiative of "who is communicating with whom on what" is currently being achieved.

In order to further clarify implementation of the legislation, the Standards Commission has issued guidelines on broad-ranging matters for specific audiences. It also uses other mechanisms including FAQs on its website for other matters where there is a need, based on queries received.

### **Summary of Findings and Conclusions about Other Issues Raised**

**45:** It is a matter for the Standards Commission to determine and allocate its resources.

**46:** The Standards Commission does not consider that the Advisory Group should meet on a formal basis at this point. It may reconvene the group as the need arises.

**47:** The regulation of access to the Houses of the Oireachtas is a matter for the Houses to determine

**48:** Publishing of DPO diaries is a matter for individual DPOs to consider, should these diaries be sought frequently.

**49:** Strengthening the regulations in line with those of the United States would significantly increase the administrative burden on lobbyists. Given the short period of time since the commencement of the Act, a further period of time is needed for lobbyists and DPOs to familiarise themselves with all the provisions of the Act.

## Chapter 5: Conclusion

### 5.1 Key Issues from the Submissions

The key issues arising from the submissions broadly fall in line with the themes explored in Chapter 4 above. As mentioned in Chapter 4.1 the leading issues for most lobbyists who submitted views are guidance, education or clarity in relation to the implementation of the Act. This requirement is currently being met by the Standards Commission who are updating guidance notes to provide direction on specific matters in line with the queries they receive. FAQs are also published and an outreach programme continues as the need arises.

The definitions included in the Act were reviewed in the submissions and most definitions caused no concerns. However, guidance was requested for the distinction between the implementation of policy and the initiation, development or modification of policy. This has not been noted as an issue in queries raised with the Standards Commission. An example from the lobbying website, ([lobbying.ie](http://lobbying.ie)), to illustrate the differences is available at Appendix 11.

Exemptions were another concern with the suggestion that there should be fewer exemptions and the exemption for public bodies should be curbed by reducing the number of public bodies. Also the exemption for those operating under the terms of the Transparency Code is mentioned in a number of submissions.

Social media was proposed as a modern means of dissemination of information and as a method to include information on the register.

Changes to those prescribed as DPOs were raised, with most submissions suggesting no change or reducing the categories by removing MEPs.

The content of the register was mooted, with suggestions for increasing the detail included and reducing the compliance requirements proposed.

The facility to name and shame those who do not comply with the legislation was suggested, and a penalty point system and a register of delinquent lobbyists were also proposed.

Issues around guidance on specific matters was discussed in most submissions. As mentioned in section 4.2.8, the Standards Commission provides guidance on their website. This guidance is tailored to meet the needs of target audiences and is not too prescriptive.

A summary of all the finding and conclusions of the review and any further action recommended is contained in Appendix 1.

### 5.2 Conclusion

The scope of our legislation compares very well with similar regulation elsewhere. Whereas some jurisdictions seek to regulate only consultant lobbyists, our Act covers in-house lobbying by corporations, lobbying by representative bodies and advocacy groups, and the activities of consultant lobbyists. We also have included a broad provision covering lobbying in relation to the zoning and development of land.

The important lesson for us is that the legislation is not an end in itself. The real test is successful implementation and that is why this Department and the Standards Commission have been investing significant time and resources in ensuring that our lobbying registration system works well.

The issues raised were carefully considered but as outlined in Chapter 4, the vast majority of the suggestions made, issues raised, etc., in the submissions have either already been dealt with by the Standards Commission through its work and use of the website or, in our view, can be handled administratively through further FAQs, guidance, or other means without any requirement for legislative change. Our strong view is that legislative change is not something that should be embarked upon unless there is a compelling business case for change, such as in circumstances where the legislation is not functioning effectively in a significant way, in terms of the policy objectives for the legislation. This is clearly not the situation we find ourselves in with this Act as reflected in the positive results to date set out in Chapter 2 and in international commentary. We are in a small leading group of countries with effective lobbying regulation and introducing the prospect of potential legislative change clearly has the potential to give rise to significant uncertainty regarding the future shape of the legislation which runs the risk of adversely affecting the operation of the lobbying regime.

Therefore, it is not recommended that any amendment be made to the Act at this stage. Given the short time since commencement of the Act, and even shorter time since the enforcement provisions have commenced, it is felt that it would be prudent to allow further time for the system to bed down and for more evidence of how the operation of the Act is progressing to be amassed and assessed, before any decision of this type is made. The next review, due to take place at the end of 2019, will provide further opportunity for such evaluation to take place.

This legislation came after extensive consultation at the time and represents our view of the best system available. However greater wisdom may come through experience and if we can (through communication from our stakeholders) identify changes that would improve the system, then those changes will be considered and made during our next review in 2019.

## Appendix 1 – Summary of the Findings and Conclusions of the Review of the Regulation of Lobbying Act 2015 and any Actions Recommended

### **Summary of Findings and Conclusions**

#### **Definition of lobbying**

- 1:** The distinction between the implementation of policy and the initiation, development or modification of policy. In light of the Standards Commission’s advice that they have not observed this to be a source of any particular confusion in the practical application of the Act, no change is considered necessary.
- 2:** Guidance and advice to be provided if requested to relieve concerns around the definitions of grassroots communications and mass communication. It is recommended that the Standards Commission consider developing an FAQ to address this issue.
- 3:** The exemption for the implementation of policy or matters of a technical nature lessens the burden on registrants while still meeting the transparency requirements. No change is considered necessary.
- 4:** Organisations such as the IFA have large numbers of volunteers and non-remunerated officers and it would be impractical that all their communications be included on the register. No change is considered necessary
- 5:** The issue of representative bodies, representing professional and/or coalitions of business interests on issues of mutual industry interest, who have no full time employees to be included in the legislation should be kept under review.
- 6:** The Standards Commission has recently added an FAQ to address the issue of who is required to submit a return when a consultant communicates on behalf of a client. No change is considered necessary.
- 7:** The requirement for individuals who lobby on the development or zoning of land to register meets the requirements of the Mahon Tribunal. No change is considered necessary.
- 8:** The FAQ already provided by the Standards Commission is expected to alleviate any concerns raised in relation to the extra territorial application of the legislation. No change is considered necessary.
- 9:** Placing the onus on the person who initiated the communication would lead to confusion as to who had the responsibility to register. No change is considered necessary.

#### **Exemptions from Registering Requirements:-**

- 10:** Communications made to a person who is member of a political party by the political party in that person’s capacity as a member the political party are exempt. It is recommended that the Standards Commission should issue guidance to clarify this issue.

**11:** Communications between public servants in the normal course of their duties would not constitute lobbying and therefore, should not be included on the register. Such communications would be available under the Freedom of Information provisions.

**12:** In light of the Standards Commissions' opinion, that there is no issue with the current position on the exemption for Trade Union negotiations on terms and conditions of employment, no amendment is considered necessary.

**13:** An exemption for social media publications and tags, (a means to allow the DPO to view content that may refer to the DPO), to DPOs would reduce the transparency of the information on the register as the register would no longer be a single point of reference for lobbying activity. Making such an exemption is not considered necessary.

**14:** Notification by public bodies of the intention to publish submissions on foot of a public consultation process is not explicitly required by the exemption, nor is there a timescale for the publication. However, we would encourage public bodies to make explicit their intentions to publish submissions received and to do so as soon as possible following the closing date for same.

**15:** The Transparency Code already provides that the Chairman of the group or body is responsible for overseeing and conducting the work of the Group in a manner which ensures that the Group operates in accordance with its terms of reference and in the public interest. This in turn places responsibility on the Chairman to ensure compliance with the Transparency Code obligations. No change is considered necessary.

**16:** It is proposed to ask the Standards Commission to provide a central repository for a list of bodies operating under the Transparency Code. Public bodies will need to provide the Standards Commission with details of such groups.

**17:** The Standards Commission is drafting an FAQ to provide clarity on what can be considered "ordinary course of business".

### **Designated Public Officials**

**18:** As currently provided for in legislation the categories of DPOs cover the major categories of those who are the decision makers in respect of both the civil service and the local authorities. Taking into account the short period of time since the commencement of the Act and the even shorter period since the commencement of the enforcement provisions, and the need to gather further evidence so that an informed decision can be made on the groups of persons to be included as DPOs, it is proposed that the DPO cohort should remain as it is at this time. This is something that can be considered further in the context of the next review of the Act. No change is considered necessary.

**19:** Removing MEPs from the cohort of DPOs would provide a possible loophole. If MEPs were removed, communication could be made to MEPs where registration would not be required, rather than to a DPO where registration is required. No change is considered necessary

**20:** Providing a second definition for DPOs using the term "Designated Elected Members" to define local government DPOs could lead to confusion. No change is considered necessary

**21:** The Act currently provides that up to date lists of DPOs be maintained on the public bodies' websites and, although there is no requirement for Special Advisers to be included in these lists, Departments have already included them. This is an administrative matter and no change is considered necessary.

**22:** Providing the Standards Commission with the power to request a DPO not to communicate with a lobbyist until the lobbyist becomes compliant with the legislation is not recommended, as it would change the relationship between the lobbyist and public servants, and could disincentivise lobbying, which is an essential element of an effectively functioning democracy.

**23:** The current 1 year cooling off period is in line with international norms and post public employment restrictions under the Civil Service Code of Standards and Behaviour. No change is considered necessary.

**24:** Identity Cards would increase the administrative burden on organisations and individuals. No change is considered necessary.

### **Matters relating to the Register**

**25:** The inclusion of financial data on the register would cause significant administrative issues in establishing consistent and comparable financial data, and require auditing by the regulator. No amendment is considered necessary.

**26:** Including an indication of subscription to a code of conduct, as part of registration requirements, would not add to the purpose of the register in showing who is contacting whom about what. No amendment is considered necessary.

**27:** Regarding the burden on large organisations, the information required on returns is of a high level and an exemption was provided so that only communications by remunerated employees should be included in returns. The proposal to simplify compliance for larger organisations is not accepted.

**28:** Providing details of each individual communication on the register would be unworkable, as it would considerably add to the volume of returns and significantly increase the burden of administration and reporting on lobbyists. No amendment is considered necessary.

**29:** Consideration was given to easing requirements on larger organisations to meet the compliance requirement. The information required is already at a high level and a bulk upload facility for returns has already been provided. No amendment is considered necessary.

**30:** The Standards Commission is to consider linking consultant returns with client registration in a future update of the register.

**31:** Providing for photos on the register could cause data protection issues, without adding to the transparency initiative and therefore, it is not proposed to provide for it.

**32:** In line with the original policy intentions and practice abroad, it is recommended that the register should remain free from charge.

## **The Code of Conduct**

**33:** In line with advice from the Office of the Attorney General, the establishment of a code of conduct should be discretionary. No amendment is considered necessary.

## **Offences Issues**

**34:** Naming and shaming of those who do not comply with the legislation, including by means of a penalty point system, would contravene data protection provisions. No amendment is considered necessary.

**35:** Proof that all reasonable steps have been taken to avoid committing an offence is currently accepted as a defence. No amendment is considered necessary.

**36:** The proposed offence of avoiding obligations under the Act is catered for under sections 18 and 19 of the Act.

**37:** Fixed Penalty Notices are only applicable to minor offences and the classes of fines are in line with legal advice. No amendment is considered necessary.

**38:** We recommend that no amendment be made in respect of the offences provisions, as the enforcement provisions only came into effect on 1 January 2017. Any consideration of an amendment to these provisions should await the experience of implementation and would be more appropriate to the next review of the Act.

**39:** The Transparency Code is intended to lessen the burden on those who participate in groups, where the group meets the transparency code requirements. No amendment is considered necessary.

**40:** The provision outlining the individuals that might be prosecuted for an offence is a standard provision in legislation. No amendment is considered necessary.

## **Investigations**

**41:** Providing for the publication of reports of investigations could contravene data protection provisions and contravene legal advice, as it could “name and shame” inadvertently. No amendment is considered necessary.

**42:** It is open to the Standards Commission to accept complaints, inspect registrations or returns, or verify information, and it is expected it will do so.

## **Guidance/ Information/ Education from the Standards Commission**

**43:** The Standards Commission has a specific role to provide guidance and education as set out in the Act. Guidance in line with the needs of particular audiences is provided and updated on the website. Outreach and education is provided as required.

**44:** The use of social media as a facility for publishing or the provision of information is a matter for the Standards Commission.

### **Other Issues Raised**

**45:** It is a matter for the Standards Commission to determine and allocate its resources.

**46:** The Standards Commission does not consider that the Advisory Group should meet on a formal basis at this point. It may reconvene the group as the need arises.

**47:** The regulation of access to the Houses of the Oireachtas is a matter for the Houses to determine.

**48:** Publishing of DPO diaries is a matter for individual DPOs to consider, should these diaries be sought frequently.

**49:** Strengthening the regulations in line with those of the United States would significantly increase the administrative burden on lobbyists. Given the short period of time since the commencement of the Act, a further period of time is needed for lobbyists and DPOs to familiarise themselves with all the provisions of the Act.

## **Further Action Recommended**

### **Definition of lobbying**

The Standards Commission: - Consider drafting an FAQ to relieve concerns around the definitions of grassroots communications and mass communication (point 2 above).

DPER: - Keep under review the issue of representative bodies, representing professional and/or coalitions of business interests on issues of mutual industry interest who have no full time employees to be included in the legislation (point 5 above).

### **Exemptions from Registering**

The Standards Commission: - Consider drafting guidance to alleviate concerns concerning communications made to a person who is member of a political party by the political party in that person's capacity as a member the political party (point 10 above).

DPER and the Standards Commission: Public bodies should be further encouraged to make explicit their intentions when conducting consultation processes, as this would be of benefit to those who may have obligations under the Act (point 14 above).

The Standards Commission: - Consider the Standards Commission becoming a central repository for groups operating under the Code and seeking this information directly from Government Departments (point 16 above).

The Standards Commission: - FAQ to provide clarity on what can be considered "ordinary course of business" is currently under development (point 17 above).



### **Matters relating to the Register**

The Standards Commission: - Consider linking consultant returns with client registration in a future update of the register (point 30 above).

### **Offences Issues**

The Standards Commission and DPER: - Enforcement provisions in general should be kept under review over the next 3 years (point 38 above).

### **Investigations**

The Standards Commission – Should undertake regular monitoring and analysis of the registers data to ensure full compliance with the provisions of the Act (point 42 above).

### **Guidance/ Information/ Education from the Standards Commission**

The Standards Commission – to consider if an RSS feed should be added to the website

## Appendix 2 - Development of the Policy in relation to the Regulation of Lobbying - Consultation process (2011-2015)

- An internal desk-based review of international approaches, of academic research, and of previous Private Members' Bills on the regulation of lobbying was undertaken. Contact with academics was initiated and maintained throughout the process;
- Submissions were invited from interested parties on the key issues relating to options for the design, structure and implementation of an effective regulatory system for lobbying. This involved the placing of a newspaper advertisement, and separately contacting directly a number of organisations involved in lobbying. This six week consultation process was based on the agreed OECD Principles for Transparency and Integrity in Lobbying. The main issues in respect of which information and views were requested were identified and structured in a number of questions related to each of the OECD Principles. The submissions/letters/documents received were placed on [www.per.gov.ie](http://www.per.gov.ie) as well as the key issues emerging.
- A number of contributors were subsequently invited (some of which specifically requested a meeting) to meet with officials in the Department of Public Expenditure and Reform (the Department) to discuss specific issues contained in their submissions. A summary of the key points, including the list of contributions, was posted on [www.per.gov.ie](http://www.per.gov.ie)
- On the basis of further internal research, analysis, and contact with a number of international Lobbying Regulators, in particular in relation to the key issues highlighted in the submissions received as well as from subsequent meetings with some contributors, a policy paper was finalised and published online by the Department. Its objective was to communicate the main elements of the proposed policy approach to the development of legislation. It was also intended to allow stakeholders to provide their views on, for example, key implementation issues relating to the proposed policy approach;
- Following publication of the policy proposals, an open public seminar on the regulation of lobbying was hosted by the Department. This was intended to discuss these proposals and options, and to debate issues that emerged from the consultation process. The keynote speaker at this event was Ms. Lynn Morrison, Integrity Commissioner & Lobbyists Registrar of Ontario. At this stage, contact was initiated with the Standards in Public Office Commission, the body responsible for the implementation of the legislation,
- Following the seminar, a summary of the issues raised was emailed to participants, and meetings were arranged with individual stakeholders that has specific issues in relation to the proposed policy. A further consultation phase on lobbying then took place focusing on the issues raised at the seminar. This included the Department accepting feedback from stakeholders and government departments on their assessment of issues

highlighted in the consultation paper and from issues raised at the seminar. Submissions received were posted on [www.per.gov.ie](http://www.per.gov.ie) as well as a summary of the key issues.

- Following the publication of the General Scheme of the Regulation of Lobbying Bill, submissions were received from interested parties who has previously engaged with the process, and posted on [www.per.gov.ie](http://www.per.gov.ie)
- The General Scheme of the Regulation of Lobbying Bill was sent to the Joint Committee of Finance, Public Expenditure and Reform for pre-legislative scrutiny. The review included a video conference with Mr. Janos Bertok, Head of Public Sector Integrity Division, OECD; Paris which allowed members discuss with Mr. Bertok the Principles for Transparency and Integrity in Lobbying developed by OECD in the context of the issues that were identified in the summary prepared by the secretariat.
- Items raised in submissions received were considered in the drafting of the Heads of the Bill. The legislative process continued with the usual consultation across all Government Departments.
- In advance of the enactment of the legislation, a paper-based pilot of the proposed lobbying register was developed. Stakeholders (i.e. five groups in total including representative organisations) were invited to engage with this pilot, and highlight issues encountered.
- Since enactment of the Regulation of Lobbying Act 2015, officials have proactively, and on invitation, given presentations on the requirements of the legislation to many stakeholders. In addition, an Advisory Group has been establishment for the implementation of the legislation, and its membership includes Government Departments/Offices, relevant stakeholders and representative organisations. Such involvement is assisting organisations in addressing their individual concerns about the registration of lobbying process, and informing them of the requirements of the process.
- Throughout the entire process, contact was maintained with interested parties, and meetings between officials and stakeholders were facilitated including on request.

## Appendix 3- Newspaper Advert and Paper for Public Consultation Process

### Department of Public Expenditure and Reform

#### Public Consultation regarding the First Review of the Regulation of Lobbying Act 2015

Submissions are invited from interested parties as part of the Department's first review of the operation of the Regulation of Lobbying Act 2015. A paper setting out the background to and details about this review can be found on the Department's website at <http://www.per.gov.ie/en/regulation-of-lobbying/>

Submissions should be forwarded to [lobbying@per.gov.ie](mailto:lobbying@per.gov.ie) as soon as possible, but **no later than Friday 30 September 2016**.

It should be noted that submissions received and reports of any meetings undertaken by the Department with any external parties in response to this request will be published on the Department's website and will be subject to Freedom of Information.

Copies of the paper referred to above can also be obtained by contacting Joyce Nolan, Government Reform Unit, Department of Public Expenditure and Reform, 7-9 Merrion Row, Dublin 2 or by telephone at 01 604 5486.

## **Public Consultation on the First Review of the operation of the Regulation of Lobbying Act 2015**

Submissions please by: Friday 30 September 2016

Email to: [lobbying@per.gov.ie](mailto:lobbying@per.gov.ie) using subject line “Review of Lobbying Legislation”

Or post to: Ms. Bernie Orr  
Government Reform Unit  
Department of Public Expenditure and Reform  
7-9 Merrion Row  
Dublin 2

### **Details about the Regulation of Lobbying Act 2015:**

2. The Regulation of Lobbying Act was commenced on 1 September 2015. This means that from that date there has been a requirement for those who lobby designated public officials (DPOs) to register and report on their lobbying activities every four months. The Act and related statutory instruments can be viewed at <https://www.lobbying.ie/about-us/legislation/>
3. In addition to elected politicians and special advisers, the two top levels in the Civil Service and in Local Authorities have been prescribed as DPOs or “the lobbied” – these are
  - a. the Secretary General and Assistant Secretaries / Directors in the Civil Service and

b. CEOs and Directors of Services in Local Authorities.

Details of DPOs can be found on the website of each public body.

4. The purpose of this Act was to establish a web based register of lobbying activity and to deliver appropriate transparency on “who is contacting whom about what”.
5. Lobbyists were required to register and make their first return with the Standards in Public Office Commission (the Standards Commission) on [www.lobbying.ie](http://www.lobbying.ie) by 21 January 2016, and the second return by 21 May 2016, if they had engaged in lobbying activities during the first two relevant periods which were 1 September to 31 December 2015 and 1 January 2016 to 30 April 2016.

Three returns in total per year are required. So relevant periods will be: 1 January to 30 April, 1 May to 31 August and 1 September to 31 December.

6. Just over 4,600 returns have been submitted to the lobbying register and are now available for viewing by the public at [www.lobbying.ie](http://www.lobbying.ie) . There is no charge to view material on the lobbying register.
7. To date just over 1,400 persons and organisations have registered on the lobbying register.
8. Guidance notes and other supports are available on [www.lobbying.ie](http://www.lobbying.ie) including the first annual report issued on 28 June 2016 by the Standards Commission. Some further background material in the form of a Q&A is available at Appendix 1 attached.

## **First Review of the Act:**

Under Section 2 of the Act the first review of the operation of the Act should commence by 1 September 2016. The Act requires that the Minister for Public Expenditure and Reform must undertake a consultation process to include the Standards Commission, Oireachtas Committees, persons carrying on lobbying and bodies representing them and any other persons as appropriate. The Report of the Review should cover the findings, conclusions drawn from these findings and any recommendations for amendments to the legislation consequent on these findings. Subsequent reviews will be required every 3 years.

## **Consultation Process:**

Submissions are now invited from interested parties as part of the Department of Public Expenditure and Reform's first review of the operation of the Act.

Submissions can relate to any aspect of the Act.

You might consider the following points when making your submission.

- 5 What are the positive features of the Act?
- 6 Does the Act fulfil the objectives it set out to achieve?
- 7 Have any unintended consequences occurred, in your view?
- 8 Do you think the Act can be improved in any way and, if so, how?
- 9 What suggestions for changes, if any, would you make?

Please remember to include in your submission

- specific examples from your own experience which confirm your position where you are making points regarding the Act, and

- reasons for any suggestions for changes or improvements to the Act and sufficient and appropriate current evidence / data / examples to support these suggestions.

For your assistance we have included at Appendix 2 a template submission response.

**Next Steps:**

Submissions should be forwarded to [lobbying@per.gov.ie](mailto:lobbying@per.gov.ie) using a subject line of “Review of Lobbying Legislation” as soon as possible but no later than Friday 30 September 2016.

It should be noted that submissions received and reports of any meetings undertaken by the Department with any external parties in response to this consultation process will be published on the Department’s website and will be subject to Freedom of Information.



## **Appendix 1 (Public Consultation Appendix)**

### **Background Q&A material on the Regulation of Lobbying Act 2015:**

#### **What is the Regulation of Lobbying Act 2015 intended to achieve?**

The *Regulation of Lobbying Act 2015* (the Act) commenced on 1 September 2015 and is designed to provide information to the public about:

- Who is lobbying
- On whose behalf lobbying is being carried out
- The issues involved in the lobbying
- The intended result of the lobbying
- Who is being lobbied

Lobbying is an essential part of the democratic process. It enables or facilitates citizens and organisations to make their views on public policy and public services known to politicians and public servants.

#### **What are the main provisions of the Act?**

The Act does not aim to prevent or inhibit lobbying. It does aim to make the process more transparent. The Act aims to do this by providing for:

- The establishment and maintenance of a publicly accessible register of lobbying
- The Standards in Public Office Commission (The Standards Commission) to be the regulator of lobbying

- Obligations on lobbyists to register and to provide information regularly about their lobbying activities, including, in the case of professional lobbyists, information about their clients
- A code of conduct on the carrying-on of lobbying activities
- The introduction of a “cooling-off” period during which lobbying activity may not be carried out by some former officials.

### **What do lobbyists need to do?**

If you are involved in lobbying, you may need to:

- Register on the Register of Lobbying website which is maintained by Standards Commission: [www.lobbying.ie](http://www.lobbying.ie)
- Provide information to the Standards Commission about your lobbying activities three times a year.

There will be no cost to register as a lobbyist. Members of the public can view and search the register free of charge.

### **Who should register?**

You must register if you are carrying on lobbying activities. You are carrying on lobbying activities if you meet the following conditions:

1. You are communicating either directly or indirectly with a “Designated Public Official” and;
2. That communication is about “a relevant matter” and
3. That communication is not specifically exempted and;

4. You are one of the following:

- A professional lobbyist being paid to communicate on behalf of a client (where the client is an employer of more than 10 full time employees or is a representative body or an advocacy body which has at least one full-time employee)
- An employer with more than 10 employees where the communications are made on your behalf
- A representative body with at least one employee communicating on behalf of its members and the communication is made by a paid employee or office holder of the body.
- An advocacy body with at least one employee that exists primarily to take up particular issues and a paid employee or office holder of the body is communicating on such issues.
- Any person communicating about the development or zoning of land.

**Who are the Designated Public Officials?**

They are:

- Ministers and Ministers of State
- TDs and Senators
- MEPs for constituencies in this State
- Members of local authorities
- Special Advisers
- Secretaries General and Assistant Secretaries in the Civil Service

- Chief Executive Officers and Directors of Services in Local Authorities

The above list may be extended by Ministerial Order to other categories over time. Public bodies were required to publish a list of Designated Public Officials within their organisations on their individual organisation websites from 1 September 2015.

### **What is “a relevant matter”?**

A relevant matter is one which relates to:

- The initiation, development or modification of any public policy or of any public programme;
- The preparation or amendment of any law (including secondary legislation such as statutory instruments and bye-laws) ; or
- The award of any grant, loan or other financial support, contract or other agreement, or of any licence or other authorisation involving public funds;

**other than** the implementation of any such policy, programme, enactment or award or any matter of a technical nature only.

### **What are “the excepted / exempted communications”?**

The following are “Excepted or Exempted Communications” and are not, therefore, regarded as lobbying activities:

- **Private affairs:** Communications by or on behalf of an individual relating to his or her private affairs about any matter other than the development or zoning of any land apart from the individual’s principal private residence.

- **Diplomatic relations:** Communications by or on behalf of a foreign country or territory, the European Union, the United Nations or other international intergovernmental organisations.
- **Factual information:** Communications requesting factual information or providing factual information in response to a request for the information.
- **Published submissions:** Communications requested by a public service body and published by it.
- **Trade union negotiations:** Communications forming part of, or directly related to, negotiations on terms and conditions of employment undertaken by representatives of a trade union on behalf of its members.
- **Safety and security:** Communications the disclosure of which could pose a threat to the safety of any person or to the security of the State.
- **Oireachtas committees:** Communications which are made in proceedings of a committee of either House of the Oireachtas.
- **Communications by Designated Public Officials or public servants:** Communications by a designated public official in his or her capacity as such; communications by public servants (or those engaged on contract by a public service body) made in that capacity and relating to the functions of the public service body.
- **Governance of Commercial State bodies:** Communications by or on behalf of a commercial state body made to a Minister who holds shares in, or has statutory functions in relation to, the body, or to designated public officials serving in the Minister's department, and which are made in the ordinary course of the business of the body.

- **Policy working groups:** Communications between members of a relevant body appointed by a Minister, or by a public service body, for the purpose of reviewing, assessing or analysing any issue of public policy with a view to reporting to the Minister or public service body

## **Appendix 2 (Public Consultation Appendix)**

### **Template submission response.**

Name  (Organisation name or name of individual)	
Address	
Phone	
Email Address	

What are the positive features of the Act?

Does the Act fulfil the objectives it set out to achieve?

Have any unintended consequences occurred, in your view?



Do you think the Act can be improved in any way and, if so, how?

What suggestions for changes, if any, would you make?



Please remember to include in your submission

- \* specific examples from your own experience which confirm your position where you are making points regarding the Act, and
- \* reasons for any suggestions for changes or improvements to the Act and sufficient and appropriate current evidence / data / examples to support these suggestions.

## Appendix 4 – Minister Launches Public Consultation Process

### Minister Donohoe launches public consultation process for first review of the Regulation of Lobbying Act 2015

**Minister for Public Expenditure and Reform, Paschal Donohoe T.D., today (Wednesday) launched the public consultation process for the first review of the Regulation of Lobbying Act 2015. The closing date for receipt of submissions is Friday 30 September 2016.**

Minister Donohoe said: “I am delighted to be taking this innovative step to commence a public consultation process on the operation of the Regulation of Lobbying Act 2015 as we approach the first anniversary of the commencement of the Act. Given the success of the system, and the high levels of compliance, it is clear that the work undertaken by both my Department and the Standards in Public Office Commission (the Standards Commission) in building awareness and understanding of the Regulation of Lobbying Act has been effective, and I am confident that this momentum will be maintained as this work continues.”

A paper setting out the background to and details about this review can be found on the Department’s website at <http://www.per.gov.ie/en/regulation-of-lobbying/>

Submissions should be forwarded to [lobbying@per.gov.ie](mailto:lobbying@per.gov.ie) as soon as possible, but **no later than Friday 30 September 2016**.

The Register, which may be viewed at [www.lobbying.ie](http://www.lobbying.ie), is overseen by the Standards Commission. The website, which includes the online register, also has a suite of information tools designed to help lobbyists, designated public officials and the public to fully understand the Act and its obligations.

**Ends**

#### Notes for Editors

The purpose of the Regulation of Lobbying Act 2015 is to deliver appropriate transparency on ‘who is contacting whom about what’ and this was achieved by the establishment of a web-based register of lobbying activity.

Under Section 2 of the Act the first review of the operation of the Act should commence by 1 September 2016 and be finalised by end February 2017. The Act requires that the Minister for Public Expenditure and Reform must undertake a consultation process to include the Standards Commission, Oireachtas Committees, persons carrying on lobbying and bodies representing them and any other persons as appropriate. The Report of the Review should cover the findings, conclusions drawn from these findings and any recommendations for amendments to the legislation consequent on these findings. Subsequent reviews will be required every 3 years.

## Appendix 5 – List of Those Invited to make Submissions

### **Organisation**

Age Action  
Alcohol Action Ireland  
AOI - Association of Optometrists Ireland  
Arthur Cox  
ASH Ireland - Action on Smoking and Health  
ASI - The Alzheimer Society of Ireland  
Banking & Payments Federation Ireland  
Bar Council;  
Barnardos  
BirdWatch Ireland  
Bord na Mona  
CAI - Chartered Accountants Ireland  
CCMA - The County and City Management Association  
CER - Commission for Energy Regulation  
Chambers Ireland  
CIE Group  
CIF - Construction Industry Federation  
CILT - Chartered Institute of Logistics & Transport in Ireland  
ComReg  
Conor McGrath Public Affairs  
Consultative Committee of Accountancy Bodies  
Cúram  
DIMA - Dublin International Insurance & Management Association Ltd  
DPC - Data Protection Commission  
Dr Elaine Byrne - Dept. of Political Science TCD  
Eircom;  
ESB – Electricity Supply Board  
FLAC - Free Legal Advice Centres Ltd  
FODO Ireland - Federation of (Ophthalmic and Dispensing) Opticians  
Gary Murphy - Dublin City University  
GCF Consulting  
GlaxoSmithKline  
Hume Brophy  
IBEC - Irish Business and Employers' Confederation  
ICS - Irish Cancer Society  
ICSH - Irish Council for Social Housing  
ICTR - Irish Charities and Tax Reform Group  
ICTU - Irish Congress of Trade Unions  
IFA - Irish Farmers Association  
IHF - Irish Heart Foundation  
IHF - Irish Hospice Foundation

IMO - Irish Medical Organisation  
IMPACT - Irish Municipal, Public and Civil Trade Union  
INOUE - Irish National Organisation of the Unemployed  
IPAV - Institute of Professional Auctioneers and Valuers  
IPOA - Irish Property Owners Association  
IPU - Irish Pharmacy Union  
Irish Planning Institute  
ISCP - Irish Senior Citizens Parliament  
ISME - Irish Small and Medium Enterprises Association  
ITI - Irish Tax Institute  
ITIC - Irish Tourist Industry Confederation  
JG Consulting  
John Hogan - Dublin Institute of Technology  
John Player  
Law Society  
MCIB - Marine Casualty Investigation Board  
MHC - Mason Hayes & Curran  
Murray Consultants Public Relations  
Nessa Childers  
Older & Bolder  
One Family  
PIBA - Professional Insurance Brokers Association  
Policy Action  
PRCA - Public Relations Consultants Association of Ireland  
PRII - The Public Relations Institute of Ireland  
RAI - Restaurant Association of Ireland  
Raj Chari - Trinity College Dublin, the University of Dublin  
RGDATA  
RSA - Road Safety Authority  
SFA - Small Firms Association  
SJI - Social Justice Ireland  
SVP - Society of St. Vincent de Paul  
TASC - Think Tank for Action on Social Change  
The Advocacy Initiative  
The Wheel  
TII - Transparency International Ireland  
Treoir - The National Federation of Services for Unmarried Parents and their Children  
University of the West Scotland  
VOICE - Voice of Irish concern for the Environment

## **Departments**

Department of Agriculture, Food and Forestry  
Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs  
Department of Children and Youth Affairs

Department of Communications, Climate Action & Environment  
Department of Defence  
Department of Education and Skills  
Department of Finance  
Department of Foreign Affairs and Trade  
Department of Health  
Department of Housing, Planning, Community and Local Government  
Department of Jobs, Enterprise and Innovation  
Department of Justice and Equality  
Department of Social Protection  
Department of the Taoiseach  
Department of Transport, Tourism and Sport  
The Houses of the Oireachtas  
The Finance and Public Expenditure and Reform Committee

## Appendix 6 – Submissions Received

No	Received From
1	Department of Education and Skills
2	Standards in Public Office Commission
3	Johnny Flynn , Cllr
4	Cork County Council
5	Public Relations Institute of Ireland
6	DRL Co Council
7	Dublin Institute of Technology
8	Alcohol Health Alliance Ireland
9	John Hogan, Raj Chari, Gary Murphy and Michele Crepaz
10	PRCA
11	DAA
12	Christy Curtin Cllr Clare
13	EIRVIA
14	IPI
15	Banking & Payments Federation Ireland
16	IFA
17	Association of Irish Local Government
18	TASC
19	IMO
20	Chambers Ireland
21	CCMA
22	EIR
23	Hume Brophy
24	Department of Transport
25	Department of Foreign Affairs
26	IBEC
27	Committee on Finance, Public Expenditure and Reform, and Taoiseach
28	Department of Justice
29	An official from the Department of Communications, Climate Action & Environment
30	SWAP - Braywatch
31	Mr Jim O'Donohoe

## Appendix 7 – Policy Implementation

### Provision and examples in relation to Policy Implementation

This provision in the Act (providing for an exemption for any communications that relate to “the implementation of any such policy, programme, enactment or award or any matter of a technical nature”) is explained in the Standards Commission Guidelines for persons carrying on lobbying activities, as follows:-

Excerpt from Part D of the Standards Commission Guidelines (“What is a relevant matter?”)

A relevant matter is any matter relating to

- (a) The initiation, development or modification of any public policy or of any public programme (for example, proposals for changes in taxation, proposals for changes in agricultural policy, proposals for changing entitlement to health services)
- (b) The preparation or amendment of any law (including secondary legislation such as statutory instruments and bye-laws) (for example, proposals to change the law on adoption, proposals to change bye-laws relating to traffic)
- (c) The award of any grant, loan or other financial support, contract or other agreement, or of any licence or other authorisation involving public funds (for example, the criteria for the award of housing grants for people with disabilities, the purchase or sale of a property or other assets by the government.)

APART FROM the implementation of any such policy, programme, enactment or award or any matter of a technical nature. (For example, communications relating to the development of criteria for schemes of housing grants, development of criteria for selecting builders to build schools or development of criteria for the awarding of a licence to provide transport on a specific route would be regarded as lobbying activity. The implementation of those grant schemes (the assessment of whether or not an individual would qualify) or licence competitions, or the implementation of tender processes through e-tenders would be regarded as implementation matters)



## Appendix 8 – Consultants and Clients

### FAQ on Consultants and Clients from the Standards Commission Guidelines [lobbying.ie](http://lobbying.ie)

#### **“5) When a person undertakes lobbying activities on behalf of a client, who registers and submits a return – the client or the professional representative?”**

Where a person makes, manages or directs the making of relevant communications on behalf of a client in return for payment, he or she must register and submit a return of lobbying activities. In the return, the client must be identified. In such an instance, it would not be appropriate for the client to submit a return in place of the professional representative, as the client’s return would not make transparent the involvement of the professional in making, managing or directing the communication.

If both the hired professional and the client undertake the same lobbying activities, the professional should submit the return, which would identify the client.

The client may also carry out additional lobbying activities independent of their hired representative (that is, where the client is the one making, managing or directing the making of the relevant communication). In this case, both the client and the hired professional should submit returns. In such circumstances the client submits a return in respect of those lobbying activities which are additional and separate to those carried out on the client’s behalf by the professional lobbyist.

If a hired professional advises a client regarding the client’s lobbying activities, but does not make, manage or direct the making of the relevant communication, then in that instance it is only the client who must register and submit a return.”

## Appendix 9 – Principal Private Residence

“Principal private residence” means a dwelling house or part of a dwelling house occupied by an individual as his or her only or main residence and includes land which the individual has for his or her own occupation and enjoyment with that residence as its garden or grounds up to an area (exclusive of the dwelling house) not exceeding one acre;

## Appendix 10 – Relevant Date

### **The Relevant Date:**

This is 21 days after the last date of the relevant period.

### **The Relevant Period:**

The relevant period is the next period in which returns must be filed on the register. Registration of lobbying activities will be required 3 times annually. The periods end on the last day of April, September and December.

### **The definitions in the Regulation of Lobbying Act 2015 section 7:**

“relevant date”, in relation to a relevant period, means the date falling 21 days after the end of the relevant period;

“relevant period” means the period of 4 months ending with the last day of April, August and December in any year;

## Appendix 11 – Relevant Matter

### **D What is a relevant matter?**

A relevant matter is any matter relating to

The initiation, development or modification of any public policy or of any public programme (for example, proposals for changes in taxation, proposals for changes in agricultural policy, proposals for changing entitlement to health services)

The preparation or amendment of any law (including secondary legislation such as statutory instruments and bye-laws) (for example, proposals to change the law on adoption, proposals to change bye-laws relating to traffic)

The award of any grant, loan or other financial support, contract or other agreement, or of any licence or other authorisation involving public funds (for example, the criteria for the award of housing grants for people with disabilities, the purchase or sale of a property or other assets by the government.)


APART FROM the implementation of any such policy, programme, enactment or award or any matter of a technical nature. (For example, communications relating to the development of criteria for schemes of housing grants, development of criteria for selecting builders to build schools or development of criteria for the awarding of a licence to provide transport on a specific route would be regarded as lobbying activity. The implementation of those grant schemes (the assessment of whether or not an individual would qualify) or licence competitions, or the implementation of tender processes through e-tenders would be regarded as implementation matters)

<https://www.lobbying.ie/help-resources/information-for-lobbyists/guidelines-for-people-carrying-on-lobbying-activities/are-you-affected-by-the-legislation>

## Appendix 12 – Acronyms and Abbreviations

APP	Application - a software programme for mobile phones and tablets
CCMA	County and City Management Association
CEO	Chief Executive Officer
DAA	Dublin Airport Authority
DEM	Designated Elected Member
DIT	Dublin Institute of Technology
DPER	Department of Public Expenditure and Reform
DPO	Designated Public Official
DTTAS	Department of Transport, Tourism and Sport
EIR	EIR (telecommunications)
ERVIA	Ervia (formerly known as Bord Gáis Éireann) is a commercial semi-state company with responsibility for the delivery of gas and water infrastructure and services in Ireland
FAQ	Frequently Asked Questions
FOI	Freedom of Information
IBEC	Irish Business and Employers' Confederation
ID	Identification cards
IFA	Irish Farmers' Association
IMO	Irish Medical Organisation
IPI	Irish Planning Institute
JH RC GM MC	Dr. John Hogan, Research Fellow, College of Business, Dublin Institute of Technology, Aungier Street, Dublin 2 Prof. Raj Chari, Associate Professor, Department of Political Science, Trinity College Dublin, College Green, Dublin 2 Prof Gary Murphy, Professor, School of Law and Government, Dublin City University, Ballymun, Dublin 11. Michele Crepaz, Department of Political Science, Trinity College Dublin, College Green, Dublin 2.
MEPs	Members of the European Parliament
NGO	Non-Governmental Organisation
OECD	Organisation for Economic Cooperation and Development's
PRCA	Public Relations Consultants Association
PRII	Public Relations Institute Ireland
RSS	A means of getting live web feeds directly to your computer. Rich Site Summary, often called Really Simple Syndication) uses a family of standard web feed formats to publish frequently updated information: blog entries, news headlines, audio, video.
Standards Commission	The Standards in Public Office Commission
SWAP	(Braywatch) Community Group
Tags	A means to allow the DPO to view content that may refer to the DPO
TASC	Think Tank for Action on Social Change





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