



**Banking & Payments
Federation Ireland**

**Public Consultation on the Review of the Operation
of the Regulation of Lobbying Act 2015**

**Banking & Payments Federation Ireland
Submission**

September 2016



Introduction

As the voice of banking and payments in Ireland, representing over 70 domestic and international member institutions, Banking and Payments Federation Ireland (BPFI) welcomes the opportunity to participate in this first review of the operation of the Regulation of Lobbying Act 2015.

Proposed Improvements

Designated Public Official (DPO)

In our view the current listing of public officials, as recorded in the Statutory Instrument, sufficiently covers the types of activities on which BPFI and our member banks could potentially lobby. Should any consideration be given to changing it, we would welcome the opportunity to discuss this in more detail.

We note that a relevant public service body is required under Section 6 (4) of the Act to publish a list of Designated Public Officials (DPOs) to assist persons who would be lobbying to identify if they are communicating (on a relevant matter) with a DPO. However, we believe that DPOs should also be required to self-identify their designation, as it is not always practicable to know precisely who is or is not a DPO. If applied at meetings and in correspondence, we feel this would benefit both DPOs and parties engaging with them and would bring greater transparency to interactions.

Where a non-DPO is in receipt of representations which s/he intends to make known to a DPO, it would be helpful that the non-DPO would be required to disclose this to the party making the representations. Such an obligation would assist in further capturing lobbying activity.

Indirect Lobbying

It would be helpful if the Act provided a definition of 'indirect lobbying' to ensure that all indirect lobbying is properly captured. While we understand that it may not be possible to provide for every scenario of indirect lobbying, even a broad wording along the following lines would assist: "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".

Requirement for further or connected information

Section 13 (3) of the Act states that, where the Commission considers that any information contained in an application made by a person under Section 11 or a return made by a person under Section 12 is inaccurate or misleading, the Commission may immediately remove from the Register the information contained in the application or return pending provision of corrected information; and the person shall be treated for the purposes of this Act as never having made the application or return unless and until the corrected information is provided.

There is a general right for the Commission to seek additional information reserved in 13(1). However, as we move to an enforcement regime, it is unclear what circumstances might lead to the implementation of 13(3). Clarification here would be helpful.

Could a party be penalised in circumstances where its return was removed by the Commission for “inaccuracy” placing that party in the position of not having made a return? Clarification in relation to “inaccuracy” and “misleading” and as to what happens if there is a dispute would also be of assistance. The right to appeal against the decision of the Commission is limited in that Section 23 (1) states simply that a person aggrieved by a decision of the Commission under Section 10(5), 14 or 22 may appeal against the decision by giving notice to the Commission.

This also raises a concern as follows from a public perspective. If the Regulator were to remove a return due to an actual/alleged inaccuracy, the return once remedied/agreed would appear late to anyone inspecting the Register. The process of removing the information pending clarification could deny the registered party the opportunity to evidence that it made a return on time but that same was queried. We believe that an add on to this section to remedy this gap would be beneficial.

Offences

In anticipation of the Enforcement Regulations entering into force, we believe clarity is required in relation to “persons” who might be prosecuted for a relevant contravention. It is understood that, in the case of a body corporate, that it would be the body corporate who may have committed the offence for a relevant contravention. However, if an offence is proven to have been committed with ‘consent or connivance’ of an individual with management functions within that body corporate, that individual(s) may be prosecuted also.

As currently drafted, the Act and associated definitions suggest the “person” who would be liable is the Official within the institution who is registered to make submissions “on behalf” of the institution and may have the day-to-day contact with the Regulator in that regard. We wish to understand whether the person



who is responsible solely for the administration of returns might be held accountable for any contraventions under the Act.

Given the significance of this for the individuals concerned, we would welcome an opportunity to engage with the Department to obtain clarity. Absent that engagement, we would propose that “registered person” be explicitly referenced in Section 20, sub-sections (1) and (2).

Conclusion

We believe that the suggested improvements identified here will further help to provide clarity regarding the lobbying legislation.

The guidance and resource support from the Regulator to date has been helpful and we would very much welcome and support its continuation.

Contacting us

BPFI and our member banks look forward to progressing the agenda set out in this submission in co-operation with the Regulator and is happy to meet to discuss the contents of this document as necessary. Please contact the following persons for this purpose or for further information regarding the contents of this document:

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