

Public Consultation on the First Review of the operation of the

Submissions please by: Friday 30 September 2016

Email to: 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

Regulation of Lobbying Act 2015

Details about the Regulation of Lobbying Act 2015:

1. 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/>

2. 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.

3. 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”.
4. Lobbyists were required to register and make their first return with the Standards in Public Office Commission (SIPOC) on 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.

5. 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 . There is no charge to view material on the lobbying register.

6. To date just over 1,400 persons and organisations have registered on the lobbying register.
7. Guidance notes and other supports are available on www.lobbying.ie including the first annual report issued on 28 June 2016 by SIPOC. 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 SIPOC, 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.

- 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.

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

Next Steps:

Submissions should be forwarded to 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

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
- 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

Template submission response.

Name (Organisation name or name of individual)	Ibec
Address	86 Lower Baggot Street, Dublin 2
Phone	01 6051651
Email Address	Siobhan.masterson@ibec.ie

What are the positive features of the Act?

1. Provides a level of transparency to lobbying in Ireland which previously did not exist.
2. Recognises that lobbying is a legitimate activity and makes a critical contribution to the development of appropriate and robust legislation and policy making.
3. The Lobbying Regulator and office are providing strong support to lobbyists and have been proactive in terms of outreach.

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

The Act partially achieves the objectives it sets out however it has a number of shortcomings;

1. The legislation places all responsibility on the lobbyist.
2. The Transparency Code for Government initiatives under the legislation is not being implemented consistently.
3. The legislation does not place any obligations on the individual or organisation being lobbied.
4. In some cases it can be difficult to clarify if an interaction with a DPO falls within the remit of the legislation.
5. All stakeholders in Irish society are given an opportunity to use

the register of lobbying as a channel to communicate their priorities.

Have any unintended consequences occurred, in your view?

- While at this early stage it is difficult to determine, the Act may have the unintended consequence of changing the nature of lobbying.

-That said it is evident that for organisations making a large number of lobbying returns the online register presents administrative, technical and resourcing challenges which have been outlined in correspondence and meetings with the Lobbying Regulator.

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

- 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.
- Greater responsibility on the Regulator and/or DPOs to ensure that the register of names is up to date as there are currently many gaps and errors.
- Additional resourcing for the Regulator in the short term to address the technical and administrative shortcomings of the register and ensure its appropriateness for large users.
- Greater responsibility on Government Departments to ensure that initiatives involving the establishment of working groups or councils follow the transparency code guidelines.

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

- The focus of any improvement should be to provide greater clarity for proper implementation.
- Some analysis should be carried out on the level of returns to date including an examination of the active sectors of the economy and society. This could be instructive in identifying weaknesses within the legislation, awareness and the technical structure in which returns are made.

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.