

**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 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:

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)	Irish Medical Organisation
Address	10 Fitzwilliam Place, Dublin 2, D02 Y322
Phone	01 676 7273
Email Address	codowd@imo.ie

What are the positive features of the Act?

The Act provides for the reporting and monitoring of lobbying activity for the first time in the history of the State, and could be said to improve transparency in political activity. The excepted communications that fall outside the remit of the Act are reasonable in scope and, in general, facilitate communication between parties and Designated Public Officials, the reporting of which may be inappropriate or present challenges to privacy.

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

The Act can be said to largely fulfil its objectives, as it requires lobbyists to give a reasonably detailed account of the matters about which they are communicating to Designated Public Officials. In this respect transparency about the types of communication received by Designated Public Officials has been improved.

Have any unintended consequences occurred, in your view?

Section 5(5)(e) of the 2015 Act excepts “communications requested by a public service body and published by it” from falling under the definition of “relevant communications”. It is possible that the intention here was to except submissions to major public consultations by government or public bodies from the remit of the Act. This provision is, however inadequately drafted, and could likely only be relied upon where the submission was both “requested” and “published” by a public service body at a time before the end of the relevant period in which it was submitted, given that both of these words are presented in the past tense.

The interpretation of this provision detailed on page twenty-two of the Standards in Public Office Commission’s Annual Report 2015 in Regard to the Regulation of Lobbying Act 2015, which reads: “[i]f the public body has indicated it plans to publish the submissions, there is no obligation for the registrant to include it in their lobbying return”, is highly suspect. It is beneficial to note that the Standards in Public Office Commission will not investigate an offence it believes arises from failure to report the communication of a submission as part of a public consultation where the public service body, to which the submission has been made, has indicated that it will publish the communication at some point thereafter. Despite this assurance, section 5(5)(e) does not provide certainty, in law, to those who accept a guarantee from a public service body that the relevant material will be published. Section 5(5)(e), as currently structured, does not provide an exception for communication requested by a public service body which the public service body has either published or has communicated an intention to publish. It merely provides an exception for “communications requested by a public service body and published by it”. An amendment should be made to this section to also clearly except communications requested by a public service body where the public service has communicated an intention to publish that communication.

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

In addition to the amendment to section 5(5)(e) of the 2015 Act suggested above, there are other manners in which the Act could be improved.

The purpose of the Act is to provide greater transparency to lobbying in Ireland, and to inform the public about “who is contacting whom about what”. There is a responsibility, however, on the legislature not to overly burden those advocating for positive change in the amendment or development of public policy. Advocacy efforts, which are publicly communicated in a manner that is open and transparent, should not bear a requirement to be reported. Such communication does not attempt to covertly influence political or policy decision-makers, and is accessible by all members of the public. Requiring that bodies that engage in lobbying, many of which are small organisations with limited resources, report on a large amount of publicly-delivered communication may prove burdensome, and effectively restrict or discourage some organisations from communicating with public officials.

This is particularly so in the case of public social media posts which are either addressed to a Designated Public Official or “tag” or “mention” a Designated Public Official. There is little additional benefit to the cause of transparency to have these already public communications re-published as part of a register of lobbying activity, however compelling all organisations to maintain internal registers of all public social media activity

that may address, “tag” or “mention” a Designated Public Official places and undue burden on organisations, especially those with limited resources. Accordingly section 5(5) of the Act should be amended to except communications that are have already been published by the lobbyist.

Section 5(4) of the 2015 Act reads: ““relevant communications” means communications (whether oral or written and however made), other than excepted communications, made personally (directly or indirectly) to a designated public official in relation to a relevant matter”. However no definitions of directly or indirectly made communication are provided within the Act.

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

Please see the responses to the above questions.

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.