

Our Ref. 14/0108/PER

23 January 2015

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CORMAC Ó CULÁIN  
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Dear Mr Ó Culáin,

The Minister for Public Expenditure and Reform, Mr. Brendan Howlin, T.D., has asked me to refer to your correspondence dated 25th November 2014 regarding the Registration of Lobbying Bill 2014. I have attached a copy of the latest version of this Bill as passed by Dáil Éireann for your information. The Bill is due to be considered by the Seanad shortly, with Second Stage scheduled for 29<sup>th</sup> January next.

Under section 5 "excepted communications" you raised the issue regarding the need for a "definition of private affairs". The Minister has sought further legal advice on this issue and is satisfied that the term remain undefined in the Bill and be given its ordinary meaning. In relation to the issue of sole trader the position is that where the sole trader for example has less than 10 employees he or she will be outside of the scope of the Bill.

The Minister proposed an amendment at Committee Stage to Section 5(2) which clarifies that the provision refers to "full-time" employees. This amendment was passed and is included in the attached copy of the Bill.

You raised the issue of an individual professional or expert in a particular field (and who is not acting on behalf of a client) who might be reluctant to input on particular policy matters. The scenarios outlined suggest that it would be an individual, who is not acting (a) on behalf of an employer (i.e. a person with more than 10 full-time employees under section 5(2)(a)) or (b) on behalf of a client under section 5(1)(a), who is making the communication. In that instance, that person should not be subject to the registration requirement other than on matters relating to the development or zoning of land under the Planning and Development Acts 2000 to 2014 in accordance with section 5(1)(c).

As you will be aware the Minister proposed an amendment at Committee Stage to clarify the scope of "carrying on lobbying activities" in section 5(1) and (2) of the Bill. This amendment was passed and is included in the attached copy of the Bill.

The issue of legal profession privilege is a matter which officials from this Department carefully examined during the preparation of the Bill. The most important issue here is the nature of the information which is required to be put on the Register. The type of information sought in a return under section 12 would not include the type of information which would be subject to legal professional privilege. A client might also have regard to section 14 provisions relating to delayed publication if, in a particular instance, the premature disclosure of certain communications could reasonably be expected to cause a material financial loss to that client.

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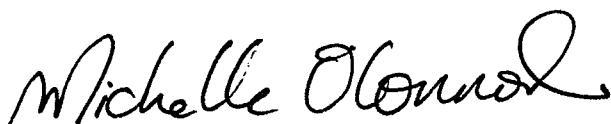
In relation to the issue you raised with regard to nil returns it is not intended that the submission of a nil return would lead to an administrative burden. The focus in designing the web-based register will be to ensure that all interactions are as easy as possible. The requirement for a nil return is a practical way of informing the Commission as to the current position. In their role of aiding compliance, the Minister expects that it will be their intention to send reminders and updates regarding registration dates focused solely on those engaged in active lobbying. It is intended that a nil return would require no more than logging on and clicking a button. An Advisory Group of stakeholders has been put in place to assist the Commission with implementation and to ensure that the register is a user-friendly system in practice and I understand that you will represent the Law Society on this Group.

With regard to conflict with FOI, we are of course dealing with very different transparency arrangements. FOI provides for the release of records which could of course be subject to the type of sensitivities detailed by the Law Society. The type of high level information sought in a return under section 12 would not include the type of information which would be subject to legal professional privilege. As I have mentioned earlier, a client might also have regard to the section 14 provisions relating to delayed publication if, in a particular instance, the premature disclosure of certain communications could reasonably be expected to cause a material financial loss to that client. Section 14(13) specifically provides that FOI will not apply to a record which is the subject of a determination made under section 14, while that determination is in force.

You raise the issue of the Commission or a designated public official being empowered to make an application for delayed publication. The Bill is consistent throughout in placing the onus for registration on the person lobbying. There is nothing in the Bill to prevent a person consulting with a Minister, at the time of the lobbying communication or subsequently, regarding the sensitivity of the information prior to making a return if he or she is in doubt about whether the section might apply. In addition, section 14 requires the Commission to consult with any relevant Minister or Ministers before making a decision under section 14.

In relation to your concern regarding delaying publication for a period of 6 months, section 14(11) of the Bill provides that nothing in that section prevents the making of a determination under that section in relation to any information on more than one occasion. The checks and balances in the Bill include a provision that decisions by the Commission (including the decision to revoke a determination) are subject to the appeal procedure under section 23.

Yours sincerely,



Michelle O'Connor

Private Secretary

Minister for Public Expenditure and Reform