

Public Relations Consultants Association Ireland (PRCA)

*Submission to the Department of Public Expenditure and Reform's
consultation on the Regulation of Lobbying Act 2015*

September 2016

The **Public Relations Consultants Association Ireland (PRCA)** is the trade representative body promoting the business interests of Public Relations and Public Affairs Consultancy firms in Ireland.

Founded in 1989, there are 27 member firms in the PRCA. They are:

- AM O’Sullivan PR Ltd.
- Carr Communications
- Cullen Communications
- Drury|Porter Novelli
- Edelman
- Elevate
- FleishmanHilliard
- FTI Consulting Ireland Limited
- Gibney Communications
- H+A Markeing + PR
- Heneghan PR
- Insight Consultants
- Instinctif Partners (Ireland)
- Keating & Associates
- Limelight Communications
- Mary Crotty Public Relations
- MKC Communications
- O’Leary PR & Marketing
- Paul Allen & Associates PR
- PSG Communications
- RD|Communications
- RPS Project Communications
- The Reputations Agency
- Thinkhouse
- Walsh:PR
- Weber Shandwick
- Wilson Hartnell

The vast concentration of members is in Dublin. With an estimated combined income of over €50 million, the total number employed by PRCA member firms is in excess of 500 people.

PRCA member firms provide Public Relations and Public Affairs services to their clients in a broad range of sectors including industry, academia, government, public sector, voluntary / charity sector and professional services. Services include strategic communications planning, public information campaigns, internal communications, media relations, event management, stakeholder engagement programmes and lobbying.

Members of the PRCA must attain the internationally recognised CMS Consultancy Management Standard. In Ireland, this standard is exclusive only to PRCA members and demonstrates that the firm has been independently audited against internationally recognised standards and operates to these high standards.

All members of the PRCA subscribe to the International Communications Consultancies Organisation (ICCO)’s Code of Stockholm. This Code is at Appendix One.

Lobbying Regulation

In the twenty years since lobbying regulation was first proposed in Ireland, the PRCA has sought to play a constructive and positive role in relation to the development of that legislation. In particular, the PRCA has sought to highlight the nature of lobbying in Ireland whereby lobbying activity is carried out by a wide variety of organisations and functions.

Lobbying is carried out by charities and other NGOs and not-for-profits, it is carried out by CEOs, lawyers, accountants and others, not just individuals or organisations who describe themselves as public affairs consultants or lobbyists. Therefore, the PRCA was pleased to note that when the Regulation of Lobbying Bill was originally published that the definition of lobbying activity employed captured all this lobbying activity. The experience of the first year of the Lobbying Act demonstrates the appropriateness of this wide definition.

Since March 2015, when the Regulation of Lobbying Act 2015, was signed into law, the PRCA has put a large proportion of its resources into promoting compliance and understanding of the Act among its members. The PRCA has issued guidelines on compliance to its members (Appendix Two), and has held a number of information meetings. In addition, through the PRCA's membership on the Advisory Group on the Implementation of Regulation of Lobbying Act, the PRCA has acted as conduit between the Standards Commission and the industry on concerns or challenges as they arise.

The PRCA wants to see the Regulation of Lobbying Act achieve its fundamental goal of letting the public know who is lobbying whom and about what. The wide definition of lobbying activity within the Act goes a significant way to achieving that aim. However, challenges remain despite in general, a very positive first year of the Act's operation. It is in the spirit of addressing those challenges and improving the Act, that this submission is made.

Standards Commission

The experience of the PRCA and its members of engagement with the lobbying regulator, the Standards Commission, over the past year has been positive. It has proven open and willing to engage with stakeholders and has produced a high standard of guidance and information. The website, www.lobbying.ie, is well designed and user-friendly. It is important the website is constantly updated and improved, as given the advances in technology it will soon become dated.

The role of the Commission will naturally change from January 2017, when it takes on an enforcement function. It is important that the Department of Public Expenditure ensures in this review that the Standards Commission has the resources to carry out its enforcement and education functions. The development of one cannot be at the expense of the other, and this may require the allocation of greater financial or human resources to the Standards Commission.

The Advisory Group established to support the Standards Commission's work as regulator, of which the PRCA is represented, has been a useful forum to ensure that the perspectives of shareholders on the Act's implementation are shared. This Group should be continued, although in light of the first year's returns there may be a need to review the existing membership of the group, as well as the group's Terms of Reference.

Education of Designated Public Officials

There is a high level of awareness and understanding of the Lobbying Act among Designated Public Officials (DPOs) in the Civil Service in particular. However, the PRCA has concerns that there is a low level of awareness and understanding among elected officials, be they elected to national office or

local government. Obviously this is a challenging area for the Standards Commission and the PRCA acknowledges that it has done outreach work in those sectors. Nevertheless, this work needs constant focus as ignorance of the Act or misinformation provided by DPOs undermines compliance with this legislation.

Low levels of compliance by other professional services

As highlighted previously, the Regulation of Lobbying Act 2015 is an impressive piece of legislation, as it captures one of the fundamental truths of lobbying activity; that lobbying activity is carried out by a wide range of people and organisations and few of those would be categorised as full-time lobbyists.

However, the PRCA is deeply concerned about the level of compliance by certain professional services. It is clear from the returns on www.lobbying.ie that the public relations and communications industry, which the PRCA represents, has had a high level of compliance since the first returns were submitted. Other sectors have not. For example, only very limited returns have been made by legal firms, and only a handful of those returns were on behalf of clients. This would appear to be quite low. To address this issue, the PRCA proposes that the Department of Public Expenditure and Reform and the Standards Commission conduct a 'compliance review'. This would be a random review of correspondence and engagements of certain Designated Public Officials in the May to August 2016 reporting period, and to assess compliance against returns returned by September 21st, 2016.

With penalties for non-compliance coming into force from January 1, 2017 the Standards Commission should focus its initial efforts on investigating those areas where there appear to be low levels of compliance.

Application of the Regulation of Lobbying Act 2015 to overseas lobbyists

In the PRCA's submission to the Department of Public Expenditure and Reform's 2012 consultation concern was highlighted about the application of any potential legislation to overseas lobbyists. Specifically, concern was raised that failure to address this issue "could serve to drive lobbying activity offshore." Unfortunately, the 2015 Act did not address this issue, and the guidance issued subsequently on the matter has only highlighted the fact that compliance by lobbyists based outside Ireland is desirable rather than required.

Therefore, there is an urgent need to ensure that any lobbying activity, irrespective of where it is carried out, is captured by this legislation. The British [Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014, Section 2.4](#) clearly deals with this issue whereby it includes the following provision:

It does not matter whether the person to whom the communication is made, or the person making it, or both, are outside the United Kingdom when the communication is made.

The PRCA believes that a similar provision needs to be included within the Regulation of Lobbying Act, otherwise a significant loophole is being allowed for overseas lobbyists to lobby DPOs without any need to report or register. Given that a large number of DPOs, in particular MEPS and Department of Foreign Affairs staff, are based overseas this is a major issue that imposes a regulatory burden on Irish operators but allows the unscrupulous an opportunity to evade compliance. It is acknowledged that there will be issues of enforcement with such an amendment,

but organisations' value their reputation. If there is a clear and unambiguous requirement to comply then most organisations will comply for fear of reputational damage.

Register to allow organisation and lobbyists to declare membership of trade associations, professional bodies and adherence to codes of conduct

A useful aspect of the European Transparency Register is that it allows for organisations to state on their returns if they subscribe to a code of conduct, or are members of any professional body or trade association. This provides an additional layer of accountability, as it brings into sharp relief if a body subscribes to codes that demand behaviour beyond the legal minimum. The inclusion of such information would be optional and therefore it should not require any legislative change to achieve this. Rather, it can be achieved by the Standards Commission carrying out minor changes to www.lobbying.ie. However, if legislation is required the Minister for Public Expenditure and Reform has the powers to request such information on returns under Section 12 (7) (b) of the Act.

Trade Union exemptions

Under the Regulation of Lobbying Act, registered trade unions enjoy considerable leeway to engage in lobbying activity and not report it provided such communication are "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".

This appears to allow a large amount of interpretation as to whether lobbying activity, which if it were undertaken by a trade association or professional body on behalf of its members would require to be reported, needs to be reported.

The PRCA does not object to the principle of this exemption. However, the provisions should 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. To achieve that the following amendment is proposed:

To delete the existing Section 5(5)(f) and replace it with the following:

"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 where the Designated Public Official is either the employer, in the case of a Minister, or employed by an employer of the members of that trade union.;"

Remove MEPS from the legislation.

The requirement of the legislation for relevant communications with MEPSs to be reported on the register should be removed. MEPs are already captured by European Transparency Register, and by including Irish MEPs within this legislation there is a dual requirement to register and report. This is unnecessary duplication, which based on the current returns is being ignored by lobbyists from outside of Ireland. As of July 31st 2016, there were 262 Irish MEP lobbying activities reported. However, only 11 of those were reported by organisations that did not have some meaningful Irish presence. Even with the inclusion of the proposed overseas lobbying amendment, without the Standards Commission undertaking a major sustained, expensive and multi-lingual outreach work in Brussels and across Europe, this provision will continue to be ignored.

It should also be noted that Ireland is the only EU member state that requires reporting of lobbying of MEPs on a national register. Finally, it may also discourage foreign organisations from engaging with Irish MEPs, if they are going to be required to report activity that they would not need to report

if the MEPs was from any other member- state. Therefore, it is proposed to delete Section 6(1)(c) of the Act.

Require Regular updating of Departmental listings of Designated Public Officials

To allow organisations to comply with the Act, it is imperative that the listings of Designated Public Officials on Departmental websites are regularly updated. While it is relatively straightforward to identify who is or who is not a TD, Minister, Senator or other elected official, confusion exists as to which public servants are Designated Public Officials and therefore covered by the Act. To aid organisations in their compliance, the Act places a requirement on public bodies to provide on their website listings of all relevant Designated Public Officials. However, there is no requirement for them to update these listings at any set interval; this creates a problem as even in the first year of the Act, problems have emerged with certain public bodies not complying with the requirement to publish the listings and then when eventually doing so, not keeping that information up to date.

Considering that the public body knows better than anyone else who its staff are, there is little excuse for slow updates. Furthermore, when a Department's list of DPOs has not been updated for a considerable period of time, it can be difficult to know if that is because there have been no changes, or merely no one updated the listing.

The PRCA proposes that the Standards Commission be given the authority to specify the format of the information to be published by Departments and the frequency with which the information should be updated as a minimum. The PRCA suggests that the following amendment is added to the Lobbying Act, creating a new Section 6.5 stating:

The Commission shall specify the format and frequency under which a body shall publish the required listings.

It is also suggested that the Commission be required to report on compliance with this provision as part of their annual report.

In the same vein, the Act should also be updated to place a requirement on public bodies to list all Designated Public Officeholders on their website and not just public servants i.e. include Ministers and Special Advisers. While it is obvious who Ministers in a Department are, it is not frequently so with Special Advisers. Therefore, [Section 6.4](#) should be amended to require such reporting, which the following amendment would achieve:

A body shall publish up-to-date lists showing—

(a) the name and (where relevant) grade, and

(b) brief details of the role or responsibilities,

of each person employed by, or holding any office or other position in, the body who is a designated public official by virtue of subsection (1)(a) (e) (f) or (g).

Reporting by consultants of clients' activity

The fundamental purpose of the Lobbying Act is to give the public information as to who is lobbying whom and about what. While some lobbying activity is carried out by consultants on behalf of clients, the 'who' in the equation is the client, not the consultant.

Where a lobbying activity is carried out by a consultant on behalf of a client, with the executive actions carried out by the consultant, then that activity should be reported by the consultant on

behalf of the client. Similarly, where the activity of the consultant is advisory and the actual actions are carried out by the client, then the client should report that activity. However, an interpretation of the legislation has emerged that states where an action is carried out in tandem between the consultant and the client (e.g. both attend a meeting together) then the consultant must report.

There is a clear public interest in the activity being reported. However, there is no public interest in requiring the consultant to report it over and above the client. In this situation, it should be optional which party reports the activity provided that one or other party reports it.

The PRCA does not believe that legislative change is required here, but rather the Standards Commission's guidelines should be updated. The reason being that under the Act, the reporting requirement rests with the body that "makes, or manages or directs" the communication. Ultimately the consultant is an agent of the client, and operates under their direction. However, if it is believed that the consultant is required to report when an activity is carried out in tandem, then the legislation should be amended so that it is up to either party, but not both, to report.

Expansion of Designated Public Officials

The PRCA believes that consideration of any extension of Designated Public Officials (DPOs) to grades below Assistant Secretary in the Civil Service or Directors of Services in local authorities should be delayed until the 2019 Review of the Act. Such an expansion would increase the number of civil servants captured by the legislation by a factor of four and could overwhelm the current system. It would also create major compliance challenges, and over the next three years the focus must be on ensuring the existing provision work effectively rather than expanding too quickly.

There may be a case for expanding the application of the existing grades of DPOs into other public bodies that have a policy function but are currently not covered by the Act. For example, the Central Bank has significant policy making autonomy and it would appear to be little justification as to why senior officials in the Department of Finance are captured by the Lobbying Act but not their counterparts in the Central Bank.

Naming and shaming

The PRCA believes that there should be a requirement that the Standards Commission name and shame organisations who breach the legislation. Reputational damage will be far more impactful than any fine of €200. The public relations and communications industry has been to the fore in complying with this legislation and the PRCA does not want to have a situation where non-complaint operators are hidden from public view and scrutiny. Therefore, the PRCA propose that the prohibition (Section 25.2.2) on reporting non-compliant organisations in the Annual Report of the Commission be removed. The Revenue Commissioners regularly publish lists of non-compliant tax payers, and therefore it is difficult to see the rationale why the Standards Commission cannot do likewise.

Government responsibility to demonstrate Transparency

In the PRCA's 2012 submission when the Lobbying Act was being originally drafted, the case was made that there is also a responsibility on Government to demonstrate to its citizens that all arms of government are acting in an ethical, open and transparent manner. The burden of that responsibility should not be shifted to other sectors of society and there is a danger that this is what is being done by the Regulation of Lobbying Act.

While there have been laudable initiatives from government to improve transparency in terms of Open Government and reform of Freedom of Information legislation, that process requires continuation. In 2012, the PRCA proposed that all Ministerial / Departmental diaries should be published by the Irish Government as a matter of course. This is done by some Ministers and by some Departmental Secretary Generals. The PRCA believes this should be done in a systematic fashion by all Designated Public Officials in the public services as well by Ministers. This would be an effective way of policing the accuracy of returns on the lobbying register and provide another window for the public into the operations of Government.

Appendix One

Code of Conduct -The ICCO Stockholm Charter

The International Communications Consultancies Organisation (ICCO) Professional Charter

"Public Relations consultancies are professional service firms who help clients influence opinions, attitudes and behaviour. Along with this influence comes responsibility to our clients, our people, our profession and society at large"

1. Objective Counsel and Advocacy:

Public relations consultancies may not have interests that might compromise their role as an independent consultant. They should approach their clients with objectivity, in order to help the client adopt the optimum communications strategy and behaviour.

2. Society:

An open society, freedom of speech and a free press create the context for the profession of public relations. Consultants operate within the scope of this open society, comply with its rules, and work with clients that share the same approach.

3. Confidentiality:

Trust is at the heart of the relationship between a client and a public relations consultancy. Information that has been provided in confidence by a client and that is not publicly known should not be shared with other parties without the consent of the client.

4. Integrity of Information:

Public relations consultancies should not knowingly mislead an audience about factual information, or about the interests a client represents. Consultancies must make their best efforts to strive for accuracy.

5. Delivering Promises:

Consultancies must work with clients to establish clear expectations in advance about the output of their efforts. They must define specific goals for communications actions and then work to deliver on their promises. Consultancies must not offer guarantees which are not supportable, or which compromise the integrity of the channels of communication.

6. Conflicts:

Consultancies may represent clients with conflicting interests. Work may not commence for a new and conflicting interest without the current client first being offered the opportunity to exercise the rights under any contract between the client and consultancy.

7. Representation:

Consultancies may refuse or accept an assignment based on the personal opinions of the firm's management or the organisation's focus.

8. Governance and Business Practices

Public relations consultancies are committed to ethical behaviour and implementation of best business practices in dealing with all audiences.

Appendix Two

PRCA Guidelines on Regulation of Lobbying Act Compliance

- Lobbying is a fundamental part of the democratic process and good decision making requires that all stakeholders' voices are heard.
- All PRCA members are encouraged to have clearly set out internal procedures for compliance with the Act. These procedures should be regularly communicated to all staff.
- Each PRCA member firm should appoint an internal compliance officer to ensure that all reportable activities that the firm engages in are recorded and reported.
- Any staff that might engage with public officials, be they elected officials or public servant, or engage with the planning and development process, must be aware of their obligations under the Act. All PRCA firms are encouraged to provide appropriate training in the Regulation of Lobbying Act for all such staff.
- Where a firm is unsure as to whether a communication with a public official constitutes lobbying it is encouraged to contact the Standards in Public Office Commission's Regulation of Lobbying unit in good time to clarify the matter. The Standards Commission requests that such requests for clarification are received when the communication has taken place and not when the return is being submitted. This is to allow the Standards Commission sufficient time to respond before the deadline for receipt of returns. If after contacting the Standards Commission, the firm is still in doubt about whether a matter falls under the definition of lobbying, the activity should be registered and reported.
- Firms are strongly encouraged to record their activities in real time, so as to prevent inadvertent non-compliance or error.
- When engaging in activities on behalf of a client that may be captured by this legislation, there should be a shared understanding between the client and the agency as to who will be responsible for reporting what activities. This should be agreed and clearly specified to the greatest extent possible at the start of the campaign.
- If a consultant carries out an activity in tandem with their client (e.g. attends a meeting with their client and with a Designated Public Official) then only one registration is required. This should be done by the consultant. However, if the client carries out any further engagement with the Designated Public Officials independently of the consultant, it is the client's responsibility to report that activity.
- While all reporting under the Act should be discussed in advance with the client, the obligation of the agency is to report their activities in accordance with the law. If in doubt, the firms should register and report the activity.
- Where the role of the agency is to provide advice to a client on a public affairs campaign, but the agency itself does not engage in lobbying activities, then the agency's activities do not fall under the definition of lobbying activities. However they should ensure that their client is made aware of the Regulation of Lobbying Act and the requirements arising from it for the client.

- Where a PRCA agency is part of a broader international network or agency, if it becomes that any of its international colleagues are engaging with Irish elected officials (Ministers, Councillors, TDs, Senators or MEPs) or public servants, it should inform them of the requirements of the Regulation of Lobbying Act.

Updated in August 2016