

General Scheme of the Regulation of Lobbying Bill, 2013

Explanatory Memorandum

Purpose of Bill

The purpose of the Regulation of Lobbying Bill 2013 is to provide for a register of lobbying to make information available to the public on the identity of those communicating on specific policy, legislative matters or prospective decisions with designated public officials or office holders as well as providing a framework for holding those engaged in lobbying accountable for the manner in which they conduct the activity. The Bill also provides restrictions and conditions on the taking up of certain employments by certain designated officials and office holders for a specified period of time where a possible conflict of interest arises.

The content of the Regulation of Lobbying Bill 2013 is summarised in this Explanatory Memorandum.

Part I Preliminary and General

Head 1 sets out the short title of the Bill and establishes that the Bill will come into effect on such day or days as the Minister may appoint by Order. This would allow for the later commencement, for example, of provisions relating to powers of investigation, offences and penalties.

Head 2 defines certain terms used in the Bill. It provides clear and robust definitions which will be central to the effectiveness of the regulatory system.

Head 3 sets out the key objective of the Bill in order to provide a clear overall context for the regulation of lobbying.

The key objective of this Bill is to introduce a register of lobbying to place information on the identity of those communicating on specific policy, legislative matters or prospective decisions with designated public officials or office holders in the public domain as well as providing a framework for holding those engaged in lobbying accountable for the manner in which they conduct the activity. This will allow the wider public to reach informed evidence-based judgements about the extent to which different interest groups are able to access and may be able to influence decision making.

It will allow for a code of practice to be introduced for lobbyists and provide for restrictions and conditions to be placed on certain designated public officials and office holders when taking up employment involving lobbying which may involve a conflict of interest with their previous public service role.

Head 4 provides for the definition of Lobbying and the exemptions to the regulatory requirements set out in the Bill. It defines the communications which constitute lobbying and those that are excluded. It provides that the registrar can issue guidelines on indirect lobbying. It also determines that normal citizen interaction with public representatives in a private and non-commercial capacity or micro enterprises acting in a commercial capacity will not be included in the register unless the communication is in respect of land re-zoning or development. This head establishes that public bodies will publish an up to date list of the name and grade of its designated public officials and office holders on its website.

Head 5 provides power for the Minister to make regulations in relation to matters to be prescribed.

Head 6 establishes that any expenses incurred in the administration of this Bill would be paid out of monies provided by the Oireachtas.

Part II

Register of Lobbyists

Head 7 provides that the registrar will establish an online register of lobbyists. The register will provide information about lobbying activity to the public via the internet.

Head 8 provides for returns to be filed. It establishes the number of returns per year and the final date of each return. It provides that anyone engaged in lobbying must file a return for each of the mandatory return dates. The registrar may require clarification and this must be supplied to the registrar within 15 working days of the request being made. Application may be made to the registrar for amendment of personal information that is inaccurate or incorrect. The information required for a return is defined in Head 9.

Head 9 provides for the information to be supplied when filing a return. It establishes a balance between the need for transparency and the need to avoid causing an unnecessary administrative burden on the registrant. It provides for the registrar to decide not to publish certain personal information in order to prevent misuse or to protect the person's right to privacy.

Head 10 provides for delayed registration where a Minister can certify that the registration of the lobbying activity would be expected to have a serious adverse effect on the financial interests of the State or Government's ability to manage the economy. In making a decision under this Head a Minister must have regard to the public interest. A copy of the certificate will be forwarded to both the registrar and the lobbyist concerned. The period of this delay should be no longer than 6 months but this period can be extended. Information that is subject to a certificate will be excluded from the scope of Freedom of Information legislation while the certificate is in force.

These certificates will be reviewed each year by the Taoiseach along with any relevant documentation. Where the Taoiseach is not satisfied with the grounds on which a certificate was issued the Taoiseach can ask the Minister to revoke the certificate.

Lobbying activity that was subject to a Ministerial Certificate will be published on the register with a statement notifying the public that it was subject to a Ministerial Certificate when the certificate has expired or been revoked. The number of certificates issued by each Minister will be published in the Annual report.

Head 11 provides for the Registrar to delay the publication of information where the publication could result in a material financial loss or gain to the person to whom the information relates or could seriously prejudice the competitive position of that person in the conduct of his or her profession or business or otherwise in his or her occupation, or could seriously prejudice the conduct or outcome of contractual or other negotiations of the person to whom the information relates. The Registrar would be required to consider

whether the public interest would on balance be better served by refusing to grant rather than by granting the application.

Head 12 provides for certification of both the filing date of the return and information provided in the return.

Head 13 provides for documents to be returned in electronic form.

Part III The Registrar

Head 14 establishes the office of the Registrar and states that the holder of that office will have the title of Lobbying Registrar. It establishes the independence of the Registrar and provides that the appointment will be made by the Minister following a resolution of both Houses of the Oireachtas.

Head 15 provides for the registrar to maintain the register and sets out the functions of the registrar. The registrar is obliged to maintain the register and to accept or refuse returns. Returns may be removed where they do not meet the terms laid down in Head 8. The individual who filed the return must be notified when a return is not accepted.

Head 16 provides for an annual report to be prepared by the registrar in respect of the administration and operation of the regulatory system. It establishes that the Report will be presented to both Houses of the Oireachtas within 3 months of the end of each year. It also provides for the Registrar to prepare 6 monthly reports on any implementation issues arising for the Minister for Public Expenditure and Reform and for the Finance, Public Expenditure and Reform Committee during the first 2 years of the Act.

Head 17 provides the registrar with powers to inspect relevant records of lobbyists. It allows for complaints to be made to the registrar. Where the registrar believes that non compliance with this Bill or any statutory code of conduct made in accordance with Head 21 has occurred, the registrar has the power to investigate. Any information that is in the registrar's possession will remain confidential unless this Bill requires its publication.

While conducting this investigation the registrar can request any information or copies of documentation deemed appropriate to the investigation. On receiving consent from the occupier or a warrant issued by a District Court judge the registrar has the power to enter the premises of the lobbyist to seek copies of documents where appropriate. If as a result of the investigation the registrar believes that a minor and unintentional omission has occurred the registrar may allow the omission to be corrected within 15 working days.

Head 18 establishes that where the registrar believes a lobbyist has not complied with the regulations following an investigation the registrar may name the person on the

Registrar's website and/or in the annual report to the Oireachtas for breaches of the legislation other than minor or inadvertent breaches which have been corrected within the appropriate time limit by the lobbyist under Head 17. It also provides that the standard of proof for contraventions of this legislation is similar to that applying in civil proceedings in a court.

The registrar will inform the lobbyist of the breach and provide the reason for the alleged contravention. The lobbyist will be provided with an opportunity to be heard. All steps taken by the lobbyists to comply with legislation or action not taken to correct errors will be taken into account.

Head 19 establishes that a special report will be prepared for investigations carried out under Head 17 detailing the findings, reasons and the conclusions reached. It requires these reports to be placed before the Houses of the Oireachtas.

Head 20 provides for prosecution for serious offences under the legislation and the imposition of penalties for those offences. It establishes the maximum penalty and maximum term of imprisonment for summary conviction. It also establishes the maximum term of imprisonment for a conviction on indictment and provides for fines to be determined by the Court.

It establishes that both the individual and company will be guilty of an offence where it is proven the offence was committed with the consent or involvement of a person in the capacity as detailed in this head. Where a person is convicted of an offence the Court will order the person to pay all costs associated with the investigation, detection and prosecution of the offence, unless the Court is satisfied that the reasons for not doing so are special and substantial. It also provides that Court proceedings cannot be brought for the same incident that incurred an administrative penalty.

Head 21 provides for a statutory code of conduct to be created for lobbyists. It allows for different codes to be developed for different categories of registrants. These codes would apply to anyone defined as a lobbyist under Head 2. In developing the codes the registrar must consult with interested organisations or individuals.

Head 22 provides that the registrar shall have and an explicit outreach and education mandate to raise awareness of the rationale and requirements of this Bill. The registrar is required to ensure that effective communication strategies be put in place to educate and inform potential registrants on the obligations they are required to meet under the proposed regulatory system. This will help underpin compliance and could be achieved by both information sessions and publicity campaigns

Interpretation bulletins and advisory opinions may be issued. It provides that the registrar may give advice to an individual lobbyist on any Head of this Bill and within 21 days of receiving a request furnish the advice or notify the requester of his or her decision to decline to do so.

Head 23 provides for any document to be recorded on an electronic system. It also establishes that an understandable reproduction of an electronic copy of any document signed and certified by the registrar as being a true copy is admissible as evidence including for the purpose of a prosecution of an offence under this Bill unless it can be proven that it is not a true copy.

Head 24 provides for a regular review of the operation, implementation and effectiveness of the legislation. Both the registrar and the relevant Oireachtas committee should be consulted during each review. Reports on the findings and the recommendations of each review will be presented to both Houses of the Oireachtas.

The first review should be held no later than 1 year after commencement day. Each subsequent review should be held every 5 years thereafter.

Head 25 provides for the registrar to confer the powers to carry out the duties of the office on any person employed by the registrar. The registrar may put any restriction believed necessary on these powers.

Head 26 establishes that the initial appointment of the Registrar will be for a period of up to two years and each appointment thereafter will be for a period of 5 years. Appointments will be made by the Minister following a resolution of both Houses of the Oireachtas. A registrar may be appointed for more than one term, may resign at anytime and must leave office on reaching 67 years of age. It provides for the registrar being removed from office by the Minister following a decision by the Houses of the Oireachtas for reasons of misbehaviour, incapacity or bankruptcy.

It also establishes the power of the Minister to make a scheme to grant a pension, gratuity or allowance.

The Minister can appoint civil servants to staff the office of the registrar. The Minister has the right to assign powers to the Registrar to act in place of the Minister in relation to staff.

It states that the registrar will maintain accounts of all money received or spent by the Office, in a manner approved by the Minister. These accounts will be submitted to the Comptroller and Auditor General (C&AG) on a yearly basis along with any documentation or extracts of accounts required. The annual report along with the C&AG report will be presented to both Houses of the Oireachtas.

Part IV Other Provisions

Head 27 establishes that the registration of a charitable organisation in respect of lobbying activities on matters connected with the organisation's charitable purpose and where such matters are of public benefit shall not of itself affect the determination of the tax exemption status of charities.

Head 28 places restrictions on post-term employment. It provides for certain designated public officials to apply to the Registrar for approval to carry out lobbying activities within one year of having left the public service to lobby their former colleagues in the public body in which they previously worked or in a further public body to which they have subsequently transferred. This approach allows the registrar to permit, for example, the take up of employment but to impose restrictions in relation to engagement in certain activities rather than a blanket ban.

Head 29 provides for a system of administrative appeal. It establishes that the Minister can appoint a panel of independent appeals officers. The role of the appeals officer is to determine if a decision made under Heads 11, 18 and 28 are confirmed, amended or revoked. Appeals must be made in writing within the timeframe allowed.

The appeals officer is not confined to deciding the appeal based on the grounds on which the original decision was made. The decision will be made in writing and will include the reason for the decision along with any directions the appeals officer deems appropriate. The person appealing the decision will be notified along with the registrar. It also provides for an appeal of the decision to the Circuit Court.

Head 30 provides for the term "lobbyist" as defined under this Bill to be consistent with the legislation named in this head.