



AN BILLE UM STOCAIREACHT A CHLÁRÚ, 2014
REGISTRATION OF LOBBYING BILL 2014

EXPLANATORY MEMORANDUM

Purpose of the Bill

The purpose of the Registration of Lobbying Bill 2014 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. The Bill allows for the development of a code of conduct by the Standards in Public Office Commission (Commission) it also provides restrictions and conditions on the taking up of certain employments by certain designated officials for a specified period of time where a possible conflict of interest arises.

The Bill will allow the wider public to reach informed evidence-based judgments about the extent to which different interest groups are accessing key decision makers across the political and public service systems. Regulation would be expected to increase public understanding of lobbying activity in Ireland.

The content of the Registration of Lobbying Bill 2014 is summarised in this Explanatory Memorandum.

PART 1

PRELIMINARY AND GENERAL

Section 1 sets out the short title of the Bill and provides the commencement arrangements for the Bill.

Section 2 provides for a regular review of the operation, implementation and effectiveness of the legislation.

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

Reports on the findings and the recommendations of each review will be presented to both Houses of the Oireachtas within 6 months of the end of the relevant period.

Section 3 establishes that any expenses incurred in the administration of this Bill shall be paid out of monies provided by the Oireachtas.

Section 4 provides for the Minister to make regulations under this Bill. All regulations will be laid before both Houses of the Oireachtas.

Section 5 defines lobbying activities. It establishes that lobbying activity is carried out by

- (a) persons in the course of their business in return for payment by a client,
- (b) an employer or his or her employee on behalf of the employer, or
- (c) any person on matters about the development or zoning of land.

It defines the communications which constitute lobbying and those that are excluded. It also determines that normal citizen interaction with public representatives relating to his or her private affairs or communications by employers with 10 employees or less relating to the affairs of that employer will not be included in the register unless the communication is in respect of land zoning or development. Planning matters relating to an individual's principal private residence would also be exempt.

This section also sets out other exemptions to the regulatory requirements in the Bill. Such exemptions include those relating to

- international relations,
- factual information sought by a public body or other information sought by and published by a public body,
- matters posing a threat to the safety of persons or the security of the State,
- communications between public officials acting in an official capacity,
- communications between members of a group, etc. established by a Minister or a public body subject to a requirement to comply with a Transparency Code,
- communications relating to trade union negotiations on terms and conditions of employment,
- communications in proceedings of an Oireachtas Committee, and
- communications between commercial State Bodies and their Minister/parent Department made in the ordinary course of business of the body corporate.

Section 6 sets out the meaning of “designated public official”. This term includes: Ministers, Ministers of State, special advisers, TDs and Senators, members of local authorities and MEPs representing the Irish State. It is envisaged that on commencement the Bill will apply to communications with officials at Secretary General and Assistant Secretary level in the civil service and equivalent levels in local authorities. The Minister may prescribe further public servants as designated public officials and will have regard to the public interest in arriving at a decision. Public bodies will maintain a list of designated officials with up to date details on their website.

Section 7 defines certain terms used in the Bill.

PART 2

REGISTRATION OF LOBBYING

Section 8 provides that a lobbyist must be registered before carrying on lobbying activities unless it is the first time to lobby. In that case the registration and the return must be completed before the next return date.

Section 9 provides that the Commission will establish a register of lobbyists. The Standards in Public Office Commission will be the Registrar (in accordance with section 7).

Section 10 provides that the information to be supplied when registering or in a return will be available on the register. It provides for the Commission to decide not to publish certain personal information in order to prevent misuse or to protect the person's right to privacy, e.g. private email addresses. It also sets out the role of the Commission should it deem that information given is inaccurate, out of date or misleading.

Section 11 provides for the registration details to be included on the Register and for confirmation that the details entered onto the Register are correct. It also allows for registrants to have their registration marked as ceased.

Section 12 provides for returns to be filed. It requires three returns per year. Persons engaged in lobbying, in accordance with the definitions in the Bill, must file a return for each of the mandatory return dates unless their registration is marked as ceased. It allows for a nil return to be submitted also.

Section 13 provides that the Commission may require clarification or further information and this must be returned within 21 days of the date of the notice. Where a reply is not received within 21 days the inaccurate registration or return will be removed from the register for non-compliance and a notice of the removal will be issued. The registration or return will be considered as not having been made. In certain circumstances the Commission may also immediately remove the information from the Register.

Section 14 provides for delayed publication where the registrant believes the registration or the return relating to the lobbying activity would be expected to

- (a) have a serious adverse effect on—
 - (i) the financial interests of the State,
 - (ii) the national economy, or
 - (iii) business interests generally or the business interests of any description of persons, or
- (b) cause a material financial loss to the person to whom the information relates or prejudice seriously the competitive position of that person in the conduct of the person's occupation, profession or business or the outcome of any contractual or other negotiations being conducted by that person.

It establishes that the Commission on receipt of the application will consult with the relevant Ministers where appropriate before a decision is made in relation to matters coming within (a) above. The Commission would be required to consider whether the public

interest would, on balance, be better served by refusing to grant than by granting the application. The registrant will be notified of the Commission's decision within 21 days of receipt of the application. The Commission may decide to publish summary information only.

Section 15 establishes that any document which the Commission certified as a copy of an entry on the Register is deemed to be a true copy and can be used as evidence in legal proceedings unless it is proven not to be a true copy.

PART 3

CODE OF CONDUCT AND GUIDANCE

Section 16 allows for a statutory code of conduct to be created for lobbyists by the Commission. In developing a code the Commission must consult with interested organisations or individuals.

Section 17 allows the Commission to issue guidance particularly with a view to promoting understanding of the Bill.

PART 4

ENFORCEMENT

Section 18 defines the contraventions relevant to this Bill.

Section 19 provides the Commission with the power to authorise an investigation to be carried out. The Commission can appoint authorised officers to carry out the investigation on its behalf.

While conducting an investigation the authorised officer can request any information or copies of documentation deemed appropriate to the investigation and has the power to enter premises to seek copies of documents subject to the consent of the occupier or pursuant to a warrant. Any information that is in the authorised officer's possession will remain confidential unless this Bill requires its publication.

Section 20 provides for prosecution for serious offences under the legislation and the imposition of penalties for those offences.

Section 21 establishes that the Commission may serve fixed payment notices where an offence has been committed under section 20(1) in relation to the late filing of returns. A fixed payment notice will state the amount (€200), the payment method and payment date. Where payment is made within the timeframe court proceedings will not be initiated.

PART 5

MISCELLANEOUS AND SUPPLEMENTARY

Section 22 provides for certain designated public officials (Ministers, Ministers of State, special advisers, and on commencement Secretaries General and Assistant Secretaries in the civil service and equivalent grades in local authorities) to apply to the Commission for approval to carry out lobbying activities in an area that might cause a conflict of interest as a result of their former role in public employment, within one year of ceasing to be a designated public official. The Commission may permit, for example, the take up of employment but impose conditions or refuse to give consent.

Section 23 provides for appeals of certain decisions made by the Commission. It establishes that the Minister can appoint a panel of independent appeal officers. The role of the appeal officer is to determine if a decision made under section 10(5) relating to inaccurate or misleading information, section 14 relating to delayed publication or section 22 relating to post-term employment are confirmed, amended or revoked.

The appeal officer is not confined to deciding the appeal based on the grounds on which the original decision was made. The decision will be made within 30 days of receipt of the appeal and will include the reason for the decision. The person appealing the decision will be notified along with the Commission.

Section 24 establishes that a decision of the appeal officer may be appealed to the High Court on a point of law. This appeal must be brought within 21 days of the notice of the decision. The decision of the High Court is final.

Section 25 provides for an annual report to be compiled by the Commission. It sets out the types of information to be reported on and provides for the report to be laid before each House of the Oireachtas within 6 months of the end of the relevant year.

Section 26 makes amendments to the Ethics in Public Office Act 1995 to provide, as appropriate, for changes to the functions of the Commission in relation to its new role as Lobbying Registrar.

*Department of Public Expenditure and Reform,
June, 2014.*