

## **General Scheme of the Regulation of Lobbying Bill, 2013**

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**Part I**

General Provisions

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**Long Title**

*Provide a Long Title for the Bill.*

*AN ACT TO PROVIDE FOR A REGISTER OF LOBBYISTS, 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 AND PROVIDING FOR 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 AND TO PROVIDE FOR RELATED MATTERS.*

**Explanatory Note**

The Long Title of the Bill will be considered further in consultation with the Office of the Parliamentary Counsel.

**Head 1 – Short Title and Commencement**

**Provide for a short title**

- 1. This Act may be cited as the Regulation of Lobbying Act 2013; and*
- 2. This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.*

**Explanatory Note**

This is a standard provision relating to the title and commencement of the Bill and is based on section 1 of the Petroleum (Exploration and Extraction) Safety Act 2010.

## **Head 2 – Interpretation/Definitions**

### **Provide for definitions used in the Bill**

*In this Act,*

**“designated public officials or officeholders”** means

- (i) Ministers, Ministers of State,
- (ii) TDs, Senators and members of their staff,
- (iii) Members of Local Authorities,
- (iv) Special Advisers,
- (v) Senior Civil and Public Servants (as prescribed by the Minister),
- (vi) Ombudsman and Comptroller and Auditor General, and
- (vii) Such other persons or categories of persons as may be prescribed.

**“fees or remuneration”** means money or anything of value and includes a contract, promise or agreement to pay money or anything of value.

**“grass-roots communication”** means appeals to members of the public or members of a particular organisation through the mass media or by direct communication that seek to persuade members of the public to communicate directly with a designated public official or office holder in an attempt to influence the designated public official or office holder to endorse a particular opinion.

*Note 1:* Based on the definition in Interpretation Bulletin #8 issued on July 3, 2012 entitled *Grass-roots communication registration requirements* by the Office of the Integrity Commissioner Ontario.

**“lobbying”** has the meaning assigned by Head 4.

**“lobbyist”** means any individual, organisation or body who undertakes the activity falling under the definition of lobbying. In the case of a body of persons whether incorporated or not, the body shall nominate a person to carry out the registration functions of lobbyist on behalf of the body, under Head 8.

**“Minister”** means the Minister for Public Expenditure and Reform.

**“organisation or body”** includes any of the following

- (i) a business, trade, industry, professional, representative or voluntary organisation,
- (ii) a trade union or labour organisation,
- (iii) a chamber of commerce,
- (iv) a company incorporated under the Companies Act 1963,
- (v) a charitable or non-profit organisation, association, society or interest group,
- (vi) commercial semi-state bodies, in respect of communications in so far as they relate to policy or legislative matters affecting that organisation’s operation in a competitive market, or

- (vii) such other persons or categories of persons as may be prescribed.

**“registrar”** means the person designated as registrar under the Act.

**“register”** means the register established under the Act.

**“specific policy, legislative matters or prospective decisions”** means

- (i) the development of, or any amendment to, legislation,
- (ii) the development of, or any change in, the rules or regulations of, any scheme, public programme or policy,
- (iii) the development of, or any change in, the implementation arrangements for, or the administration of, any scheme or public programme or policy,
- (iv) the awarding of any grant, contribution or any financial benefit by a public body including communications prior to the commencement of any formal awarding process, and
- (v) any specific decision of the public body lobbied or any specific decision to which the public body was party that is of benefit or potential benefit to the person lobbying, or to a client of that person,

but in relation to (iii), (iv) and (v) does not include implementation matters of a purely technical nature within existing rules and regulations governing a programme or scheme or a decision that is a matter of existing specific statutory entitlement.

**“appeals officer”** means an appeals officer appointed under Head 29

### **Explanatory Note**

It is essential that clear and legally robust definitions which are straightforward to understand by lobbyists and public officials are used as these will be central to the efficacy of the regulatory system for lobbying.

Reference has been made to the Lobbyists Registration Act 2001 (British Columbia), Lobbyists Registration Act, 1998 (Ontario) and the Lobbying Act, 2008 (Canada).

### **Head 3 – Purpose of Act**

#### **Provide for the purpose of the Act.**

*The objects of the Act are to*

- (i) ensure that there is an appropriate degree of transparency in the development of public policy, preparation of legislation, public administration and decision-making,*
- (ii) establish a public statutory register to provide appropriate information to the public on the persons or bodies that are engaged in lobbying public officials on significant public policy issues,*
- (iii) allow for the introduction of a code of practice for the conduct of lobbying activities, and*
- (iv) introduce conditions and restrictions for senior public servants, Ministers, and special advisers which could apply to subsequent employments involving lobbying (as defined in Head 4 part 1) for a specified period of time involving an actual or potential conflict of interest with their previous public service role.*

#### **Explanatory Note**

It is important that the Bill contains a statement of purposes 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 so as to make information available to the public on the identity of those seeking to influence public policy decisions 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 also provides for restrictions to be placed on designated public officials and office holders when taking up employment involving lobbying (as defined in Head 4 part 1) which may involve a conflict of interest with their previous public service role.



## **Head 4 – Definition of Lobbying and Exemptions from Registration**

### **Provide that –**

- 1. Lobbying means all communication, whether directly or indirectly communicated, including the management or direction of grass-roots communication,*
  - (i) by organisations or by an individual, relevant to his or her capacity as an employee in or shareholder of an organisation, or*
  - (ii) by an individual, relevant to his or her capacity as an officeholder of a body at national level including those in a purely voluntary capacity (other than officeholders of a purely voluntary body with no remunerated officers or employees), or*
  - (iii) by organisations or by an individual receiving fees or remuneration from a third party for making or organising or planning that communication on specific policy, legislative matters or prospective decisions with designated public officials or officeholders.*
  
- 2. The Registrar may issue guidance on what constitutes indirect lobbying to help achieve appropriate transparency of lobbying activity and to minimise the risk of lobbying activity taking place which if not registered would conflict with the objectives of this Act. A court determining any matter under this Act shall have regard to any such guidelines.*
  
- 3. The following communications are not subject to this Act:-*
  - (i) Communications by officials of foreign governments in the State;*
  - (ii) Communications by UN officials, EU officials and officials of other international organisations,(i.e. organisations representative of a number of different countries);*
  - (iii) Communications where the designated public official or office holder has requested*
    - a. strictly factual information for the purposes of carrying out a policy assessment, analysis or evaluation, or*
    - b. information, analysis, assessment or views and these are published by the public body;*
  - (iv) Communications by a person acting in a private and non-commercial capacity on his or her own behalf where the communication does not relate to any matter relating to planning, rezoning or development of land;*
  - (v) Communications by a person acting in a commercial capacity on his or her own behalf where –*
    - a The person is a micro sized enterprise (with less than 10 employees and a turnover of less than €2m) as defined by Commission Recommendation 2003/361/EEC,*
    - b The communication relates to that micro sized enterprise, and*
    - c The communication does not relate to any matter relating to planning, rezoning or development of land;*

- (vi) *Communications directly related to negotiations on terms and conditions of employment of public service employees undertaken by trade union representatives on behalf of their members;*
- (vii) *Any communications/contacts, the disclosure of which could cause a threat to the life or safety of a person;*
- (viii) *Public communication where all elements of the consultative process are a matter of public record, e.g. Oireachtas Committee hearings;*
- (ix) *Communications between any one or more of the following:-*
  - a. *designated public officials;*
  - b. *office holders;*
  - c. *other members of staff of public bodies;*
- (x) *Communication between a body corporate and its principal where the shareholder is an office holder, and the communication is made in the ordinary course of activities of the body and not related to the office holder's role in regulating the field of activity;*
- (xi) *Communications by a group or committee established on the initiative of a Minister*
  - a. *with the express purpose under its terms of reference to review, assess, analyse etc. any public policy issue with the objective of reporting to a Minister of the Government on that issue,*
  - b. *comprising designated public officials or officeholders under this legislation, as well as any persons, (in addition to staff of any other public body) participating in the work of the group to advise, assist, provide information, assessments etc to the group to support its work, providing the group operates in a transparent manner (including timely publication of membership of the group, minutes of meetings of the group and publication of any final report of the Group) and complies with the Transparency Code issued by the Minister under this Act; and*
- (xii) *Any other communications prescribed by the Minister having regard to (I) the public interest in the registration of the particular type of communications concerned or (II) any procedures for the communications in question to be open to public scrutiny apart from this Bill and (III) the purposes of the Bill as set out in Head 3.*

*4. In relation to the exemptions provided under (iv) and (v), these exemptions will not have effect if the contact / communication has already been the subject of a registrable communication by (i) any employee of the person making the communication or (ii) any employee / officeholder in a company in which the person has a shareholding or (iii) any person / company acting on behalf of the person making the communication or any employee of the person making the communication or company in which the person making the communication has a shareholding.*

*5. Public bodies shall be obliged to publish on their websites an up to date list of the names and grades of those designated public officials and office holders coming within the scope of the lobbying legislation.*

*6. For the purposes of this Head, a person makes a communication on behalf of another if he or she acts at the request or initiative of the other person. A person makes a communication on his or her own behalf if he or she acts on his or her own initiative.*

**Explanatory Note**

In line with the practice in most other jurisdictions it is proposed to include a list of exemptions/exclusions to the regulatory requirements.

**Head 5 – Regulations**

**Provide that –**

*The Minister may make regulations –*

- (i) For any matter referred to in this Act as prescribed or to be prescribed,  
and*
- (ii) Generally for the purposes of giving effect to this Act.*

**Explanatory Note**

This Head is based on Section 17 of the Lobbyists Registration Act, 1998 (Ontario).

**Head 6 – Expenses**

**Provide that –**

*The expenses incurred by the Minister in the administration of this Act shall, be paid out of monies provided by the Oireachtas.*

**Explanatory Note**

This is a standard provision.

**Part II**  
Register of Lobbyists

Head 7 – Establishment of and access to a register

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Head 9 – Form and content of returns

Head 10 - Ministerial Certificates

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**Head 7 – Establishment of and access to a register**

**Provide that –**

1. *The registrar shall establish and maintain a register, organised in such manner and kept in such form, as the registrar may determine, in which is kept a record of all returns and other information/documents submitted to the registrar under the Act.*
2. *The register should be an electronic based system which is publicly available at all times via the internet for viewing without charge.*

**Explanatory Note**

In line with most overseas jurisdictions this head provides for the establishment of an online register of lobbyists where information about lobbying activity is available to the public via the internet. This Head is based on Section 11 of the Lobbyists Registration Act, 1998 (Ontario).

## **Head 8 – Requirement to file returns**

### **Provide that –**

*(1)*

1. *Returns must be filed with the registrar a minimum of three times a year. The final dates for filing each of these returns are not later than 15 working days (3 weeks) after,*
  - (i) the last day of April, in respect of the registration period from 1 January to 30 April,*
  - (ii) the last day of August, in respect of the registration period from 1 May to 31 August, and*
  - (iii) the last day of December each year in respect of the registration period from 1 September to 31 December.*
2. *Any person who was engaged in lobbying activity within any particular registration period must file a return with the registrar by the next return date. This return must be in the prescribed form and contain the information required in Head 9.*
3. *Any person who did not engage in lobbying activity but who wishes to remain as a lobbyist must file a return to that effect.*
4. *Where the lobbying activities are ongoing, confirmation of the information on the registry must be made by the next return date and each subsequent return date from the date of filing the return.*
5. *A lobbyist who completes or terminates an activity in respect of which the lobbyist has filed a return shall advise the registrar of that fact by the next return date.*
6. *A lobbyist who files a return shall provide the registrar with such information as the registrar may request to clarify any information that the person has provided to the registrar and shall do so within 15 working days (3 weeks) after the request is made.*
7. *Provide transitional provision for first registration period on commencement of the Scheme.*

*(2) A person may apply to the Registrar to seek correction or deletion of personal data published on the register which is incorrect or inaccurate and the Registrar shall, if satisfied that the data in question is incorrect or inaccurate, comply with the request.*

### **Explanatory Note**

This Head is based on Sections 4 to 8 of the Lobbyists Registration Act, 1998 (Ontario) but changes the period of notification to 4 months.



**Head 9 – Form and content of returns**

**Provide that –**

*The following material must be disclosed in the return under Head 8:*

1.
  - (i) *The name, business address, business email address, business telephone number, website address, company registration number and principal place of business of the lobbyist.*
  - (ii) *For those operating on behalf of third parties, the name, business address, email address, business telephone number, website address, company registration number and principal place of business of the lobbyist's client(s) on whose behalf lobbying is undertaken or of any person, partnership or organisation that controls or directs the activities of the client or has a direct interest in the outcome of the lobbyist's undertaking.*
  - (iii) *The general business/commercial interest, representative/advocacy role of the registrant/registrants client/s.*
  - (iv) *The subject-matter and purpose of the communications in relation to, the specific policy or legislative issues or areas of public administration of interest to the lobbyist, including the name of the Bill or other identifier of the legislation, on which lobbying has taken place.*
  - (v) *The name of the person who has primary responsibility for the lobbying carried out on behalf of the organisation.*
  - (vi) *The names of persons employed by the registrant organisations who are engaged in lobbying activity and who have previously held a position as a designated office holder or designated public official.*
  - (vii) *The office holder(s) and / or public service bodies who has/have been the subject of lobbying.*
  - (viii) *The access rights of the lobbyist or any employee of the lobbyist to Leinster House or any other premises used by public officials (if any).*
  - (ix) *Summary information to determine the type, nature and extent of lobbying activity/communication techniques undertaken.*
  - (x) *Where any lobbying activity previously registered has terminated during the registration period, details of that fact.*
2. *Such other information as may be prescribed, having regard to the need to balance the requirement for transparency with the need to avoid an undue burden on registrants and the right to privacy (including the need to minimise the collection of information which is personal in nature) in relation to the following matters:*

- (i) *Information relating to the identity of (a) the lobbyist, (b) the client, (c) any person or organisation, (d) any employee or officer or shareholder of any organisation, or (e) the employee of public body who have been the subject of lobbying activity, referred to in subsection (1) above.*
  - (ii) *Information relating to persons engaged in a voluntary capacity but holding positions at national level, who are engaged in lobbying activity on behalf of the organisation.*
  - (iii) *Information to determine the scope, volume and intensity and type of lobbying activity/communication techniques undertaken.*
  - (iv) *Information on the subject matter of the lobbying activity.*
  - (v) *Information to be provided under subsection (1) (i), (ii) and (iii) above.*
  - (vi) *Any other matters that appear appropriate to the Minister.*
3. *The Registrar may decide not to publish certain personal information to protect against misuse of such information, [to protect a person's security and/or right to privacy] or to ensure that the register operates efficiently and effectively.*

**Explanatory Note**

Subsection 1 sets out the information which must be disclosed on a return. It is proposed that provision may be made by regulations for further information to be entered on a register by those engaging in lobbying, having regard to the need to balance the requirement for transparency with the need to avoid undue administrative burden on the registrants.

This Head is partly based on Section 4 of the Lobbyists Registration Act, 1998 (Ontario).

## **Head 10 – Ministerial Certificates**

### **Provide that –**

*Where a Minister of the Government believes that*

- (i) the public registration of lobbying activity could reasonably be expected to have a serious adverse affect on the financial interests of the State or on the ability of the Government to manage the national economy, or*
- (ii) premature disclosure of information contained in the registration could reasonably be expected to result in undue disturbance of the ordinary course of business generally, or any particular class of business, in the State and access to the information contained in the registration would involve disclosure of the information that would, in all the circumstances, be premature, or*
- (iii) access to the information contained in the registration could reasonably be expected to result in an unwarranted benefit or loss to a person or class of persons,*

*he or she may declare, in a certificate issued by him or her ("a certificate"), to the Registrar that the public registration of the lobbying activity should be delayed while the certificate is in force.*

*In making his/her decision, the Minister of the Government must have regard to (I) whether the public interest would, on balance, be better served by not issuing than by issuing the certificate and (II) to the purpose of the Bill as set out in Head 3.*

*The period of delay should be no longer than 6 months or such other period as may be prescribed.*

*A document purporting to be a certificate and to be signed by a Minister of the Government shall, unless the contrary is proved, be deemed to be a certificate of that Minister of the Government and to be in force and shall be received in any proceedings in a court without further proof.*

*A certificate shall specify*

- (a) the date on which the certificate is signed by the Minister of the Government concerned and the date of its expiration,*
- (b) the name of the lobbyist and the subject matter of the lobbying activity,*

*and shall be signed by the Minister of the Government by whom it is issued.*

*Upon the issue of a certificate, the Minister of the Government concerned shall cause a copy of the certificate to be furnished forthwith to the Registrar and the lobbyist concerned.*

*The Taoiseach shall, as soon as may be after the expiration of each period of 12 months beginning with the period from the commencement of this Act, review the certificates issued during that period. The Taoiseach should take into account any views furnished by the Registrar.*

*A Minister of the Government shall not take part in a review in so far as it relates to a certificate issued by him or her but may make submissions to the Taoiseach in relation to the part of such a review in which he or she is precluded as aforesaid from taking part.*

*If, following a review under this subsection, the Taoiseach is not satisfied that any of the information contained in the registration is of sufficient sensitivity or seriousness to justify the continuance in force of the certificate, he shall request the Minister of the Government concerned to revoke the certificate.*

*The Taoiseach may, for the purposes of a review, examine all relevant records held by or on behalf of or under the control of the Minister.*

*A Minister of the Government may, and shall, if so requested by the Taoiseach following review by instrument signed by him or her, revoke a certificate issued by that Minister of the Government and, if he or she does so, he or she shall cause the Registrar and the Lobbyist concerned to be furnished forthwith with a copy of the instrument.*

*The Registrar shall, in each year after the year in which this section comes into operation, cause to be prepared and published a report in writing specifying the number of certificates issued by each Minister of Government the preceding year and the number still in force.*

*Where a certificate is revoked or has expired the registration will be published in the Registry along with the statement that the information was previously subject to a Ministerial Certificate.*

*Any matter relating to the lobbying activity that is the subject matter of the certificate will fall outside the scope of the Freedom of Information Acts 1997 and 2003 for the period during which the certificate is in force.*

### **Explanatory Note**

This Head is based on Sections 25 and 31 of the Freedom of Information Act 1997.

**Head 11 – Delayed publication of registration information**

**Provide that -**

*(1) The Registrar may decide, following receipt of an application by a lobbyist to the Registrar, to delay (in whole or in part), the publication of registration information relating to lobbying activity carried out by that lobbyist for a period of no longer than six months on the grounds that the lobbyist believes that disclosure of the information which is the subject of an application could*

- (a) reasonably be expected to result in a material financial loss or gain to the person to whom the information relates, or*
- (b) seriously prejudice the competitive position of that person in the conduct of his profession or business or otherwise in his or her occupation, or*
- (c) seriously prejudice the conduct or outcome of contractual or other negotiations of the person to whom the information relates.*

*(2) A decision made under subhead (1) shall require the Registrar:-*

- (i) to have regard to the purpose of the legislation as set out in Head 3,*
- (ii) to refuse to grant an application and publish the registration information which is the subject of an application if in the opinion of the Registrar the public interest would, on balance, be better served by refusing to grant than by granting the application,*
- (iii) to consider as an alternative to granting an application, the publication of summary registration information that does not give rise to the harm referred to in subhead (1),*
- (iv) if granting the request and delaying the publication of registration information, to give the reason for the delayed publication of the registration information at the time that information is published.*

*(3) Where the Registrar makes a decision to delay publication of registration information under this Head, the period of such delayed publication shall be at the discretion of the Registrar.*

**Explanatory Note**

This provides that the Registrar can decide to delay the publication of information where the publication could result in a material financial loss or gain to the person or could seriously prejudice the competitive position of the person. The registrar would be required to consider whether the public interest would, on balance, be better served by

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refusing to grant than by granting the application. This Head draws on Section 27 of the Freedom of Information Act 1997.

**Head 12 – Certification of documents and date of receipt**

**Provide that –**

1. *Every lobbyist who submits a return or other document to the registrar shall certify on the return or other document that the information contained in it is true to the best of his or her knowledge and belief.*
2. *The date on which the return or document is received by the registrar is the date on which the return or document is considered to have been filed.*

**Explanatory Note**

This is a provision regarding certification and date of receipt of returns etc. This Head is based on Section 5 of the Lobbyists Registration Act 2001 (British Columbia).

**Head 13 – Submission of documents in electronic form**

**Provide that –**

*Any return or other document that is required to be submitted to the registrar shall be submitted in such form (including electronic) and in such manner as may be specified by the registrar.*

**Explanatory Note**

This is straightforward provision regarding submission of returns in electronic form. This Head is based on Section 6 of the Lobbyists Registration Act 2001 (British Columbia).



**Part III**  
The Registrar

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**Head 14 – Establishment of the Office of the Registrar**

**Provide that –**

- (1) There is hereby established the Office of the Registrar and the holder of the office shall be known as the Lobbying Registrar.*
- (2) The Registrar shall be independent in the performance of his or her functions.*
- (3) The appointment of a natural or legal person to be the Registrar shall be made by the Minister following a resolution passed by Dáil Éireann and by Seanad Éireann recommending the appointment of the person.*

**Explanatory Note**

This 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 – Designation and functions of Registrar**

### **Provide that –**

1. *The registrar established under Head 14 must establish and maintain a registry in which a record of all returns and other documents submitted to the registrar under this Act are to be kept.*
2. *The registrar may do one or more of the following:*
  - (a) *verify the information contained in any return or other document submitted under this Act;*
  - (b) *subject to (d) below, refuse to accept a return or other document that does not comply with the requirements of this Act or any regulations made under this Act or that contains information not required to be supplied under this Act;*
  - (c) *remove a return from the registry if the individual who filed the return does not comply with Head 8(4);*
  - (d) *On refusing to accept a return or other document under (b) above, the registrar must inform the individual who submitted it of the refusal and the reason, and of his or her duty forthwith to file a return in accordance with this Scheme.*
3. *If a return is removed from the registry under 2 (c),*
  - (a) *the registrar must inform the individual who filed the return of its removal and the reason, and*
  - (b) *that individual is deemed not to have filed the return.*

### **Explanatory Note**

This sets out the functions of the registrar. It is based on Section 7 of the Lobbyists Registration Act 2001 of British Columbia, Canada.

**Head 16 – Reports of the Registrar**

**Provide that –**

- 1. During the initial 2 year term of the registrar as provided for in Head 26, the registrar shall prepare 6 monthly reports highlighting any issues arising in relation to the administration and operation of the legislation and such reports must be submitted to the Minister and to the Oireachtas Committee on Finance, Public Expenditure and Reform.*
- 2. The registrar shall prepare an annual report regarding the administration and operation of the legislation and present the report to both Houses of the Oireachtas within three months after the end of each year.*

**Explanatory Note**

It is intended that the body responsible for oversight and supervision of the regulatory system for lobbying should be subject to a legal requirement under the proposed legislation to prepare a six monthly issues report during the initial 2 year term of the registrar for the Minister and the Oireachtas Committee on Finance, Public Expenditure and Reform. In addition an annual report regarding the administration and operation of the legislation should also be prepared and presented to both Houses of the Oireachtas within three months after the end of each year.

This Head draws on Section 11 of the Lobbying Act, 2008 (Canada).

**Head 17 – Powers to carry out investigations**

**Provide that –**

1. *The registrar is empowered to carry out inspections of the records of persons engaged in lobbying activity that in the opinion of the registrar are relevant to the purpose of the inspection to ensure compliance with the provisions of this Act.*
2. *Complaints can be made to the registrar regarding the conduct of lobbyists where it is alleged that a breach of this Act or any statutory Code of Conduct made in accordance with Head 21 has taken place including:*
  - a. *failure to register if undertaking lobbying activity,*
  - b. *providing false /incomplete information for the register,*
  - c. *late reporting of information,*
  - d. *breaching any regulation contained in the legislation,*
  - e. *non-compliance with the requirements of any code of conduct (if a statutory code is put in place).*
3. *Where the registrar believes on reasonable grounds that a person may have breached any provisions of the legislation the registrar may investigate and determine whether a breach has occurred.*
4. *Where the registrar, following investigation, finds that an error or omission which they consider to be minor and inadvertent, the registrar shall furnish to the person details of the error or omission and inform that person that they may correct the error or make good the omission within 15 working days from the date of the notification.*
5. *Where a person corrects the error or makes good the omission to the satisfaction of the registrar no further action will be taken.*
6. *For the purposes of investigation under 3 above, the registrar may make such inquiries as is considered appropriate and may require any person to furnish any information, document or thing in the possession or procurement of the person which the registrar may require and that, in the opinion of the Registrar, are relevant to the investigation.*
7. *Provide for powers of entry on premises and to seek copies of documents that the registrar may reasonably require for the purposes of an investigation and that, in the opinion of the Registrar, are relevant to the investigation.*

*In this regard the registrar may not enter a private dwelling or the part of any premises that is used as a private dwelling, except -*

- (a) with the consent of the occupier, or*

*(b) under the authority of a warrant issued by a judge of the District Court.*

*The registrar may be accompanied by a member of the Garda Síochána when exercising powers given under this section.*

*The production of a document in compliance with a direction under this section does not prejudice a person's lien on the document.*

*Where satisfied on the sworn information of the registrar that there are reasonable grounds for suspecting that in any private dwelling or on any premises part of which is used as a private dwelling there are any documents, or there is information, in any form, relating to the relevant matter and within the terms of reference for the investigation and required by the registrar for the purposes of the investigation, a judge of the District Court may issue a warrant authorising a named person to enter, on production of the warrant, the private dwelling or the part of those premises used as such a dwelling, at any time or times within one month after the date of issue of the warrant, for the purpose of exercising there the powers given under this section.*

*The warrant issued by a judge of the District Court may also permit -*

- (i) the named person to be accompanied during the entry and inspection of the private dwelling or the part of the premises used as such a dwelling by such other persons and members of the Garda Síochána as the named person thinks necessary, and*
- (ii) the use of such reasonable force as is necessary for the purposes of entry.*

8. *The registrar is required to keep confidential any information coming into his/her possession that is not required to be published or otherwise made available under this Act.*

### **Explanatory Note**

This Head give the registrar powers to carry out (i) inspection of records and (ii) investigations to ensure compliance by lobbyists with the provisions of the legislation.

This Head draws on Section 11 of the Labour Private Members Bill entitled Registration of Lobbyists Bill 2008.

## **Head 18 – Administrative penalties**

### **Provide that –**

*(1) If after an investigation under Head 17 the registrar believes that a person under investigation has not complied with a provision of the legislation or regulations hereunder, the registrar must, having taken account of any steps taken or not taken by the person to correct the error or omission or to provide the information necessary to ensure compliance with the relevant provision of the legislation:*

- (a) give notice to the person*
  - (i) of the alleged contravention,*
  - (ii) of the reasons why the registrar believes there has been a contravention, and*
  - (iii) Informing the person as to how s/he may exercise an opportunity to be heard under paragraph (b),*

*and*

- (b) give the person a reasonable opportunity to be heard respecting the alleged contravention.*

*(2) If after giving a person under investigation a reasonable opportunity to be heard respecting an alleged contravention the registrar determines that the person has not complied with a provision of this Bill or regulations hereunder, the registrar*

- (a) must inform the person of the registrar's determination that there has been a contravention,*
- (b) may (i) name the person on the Registrar's website and/or (ii) name the person in an annual report to the Oireachtas,*

*and*

- (c) must give to the person notice,*
  - (i) of the registrar's determination that the person has not complied with a prescribed provision and the reason for the decision, and*
  - (ii) as to how the person may request reconsideration of the determination of non-compliance.*

*(3) Provide that a standard of proof of that applying in civil proceedings in a court will apply in relation to decisions of the registrar under this Head.*

### **Explanatory Note**

This Head provides for administrative penalties to be imposed by the registrar 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 16.

**18 April, 2013**

The Head is based on Section 7.2 from the Lobbyists Registration Act 2001 of British Columbia, Canada.



**Head 19 – Special Reports of investigations**

**Provide that –**

*After conducting an investigation under Head 17 and where the breach is not minor or inadvertent the registrar shall prepare a report of the investigation including the findings, conclusions, reasons for the registrar’s conclusions, any administrative penalty imposed and cause a copy of the report to be laid before each House of the Oireachtas.*

**Explanatory Note**

This Head provides for the placing of reports of investigations by the registrar before the Houses of the Oireachtas.

This Head is based on section 7.8 of the Lobbyists Registration Act 2001 of British Columbia, Canada.

## **Head 20 – Offences and penalties**

### **Provide for –**

*(1) A person is guilty of an offence if he or she –*

- (i) fails to register in accordance with the Bill,*
- (ii) provides false or misleading information, and/or*
- (iii) obstructs an investigation.*

*(2) A person guilty of an offence under this Act shall be liable—*

- (i) on summary conviction, to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 12 months or to both, or*
- (ii) on conviction on indictment, to a fine as determined by the Court or to imprisonment for a term not exceeding 5 years or to both.*

*Proceedings for a summary offence under this Bill may be brought and prosecuted by the Registrar.*

*(3) Where an offence under this Act is committed by a body corporate and is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in such capacity, that person shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.*

*(4) Where a person is convicted of an offence under this Act the court shall order the person to pay to the registrar the costs and expenses, measured by the court, incurred by the registrar in relation to the investigation, detection and prosecution of the offence, unless the court is satisfied that there are special and substantial reasons for not so doing.*

*(5) A person subject to an administrative penalty must not be prosecuted for an offence in respect of the same incident that gave rise to the administrative penalty.*

### **Explanatory Note**

This Head provides for prosecution for serious offences under the legislation and the imposition of penalties for those offences.

The Head draws on Section 10 of the Charities Act 2009 and Section 3 of the Pensions Act 1990.

**Head 21 – Code of conduct**

**Provide that –**

1. *The registrar may, for the purpose of promoting high professional standards and good practice in relation to lobbying activities develop a statutory code of conduct for lobbyists in relation to the following matters:-*
  - (a) *General professional obligations,*
  - (b) *Transparency,*
  - (c) *Confidentiality,*
  - (d) *Conflict of interest,*
  - (e) *In the case of Lobbyists acting on behalf of clients, specific professional obligations towards:*
    - (i) *Clients / employers,*
    - (ii) *Public opinion and the information media,*
    - (iii) *Fellow practitioners, and*
    - (iv) *The profession,*
  - (f) *Improper influence,*
  - (g) *Such other matters as the Registrar considers appropriate.*
2. *In developing the code the registrar shall consult persons and organisations that the registrar considers are interested in the code.*
3. *Any person defined as a lobbyist under Head 2 shall comply with the code.*
4. *The registrar may develop different codes for different categories of registrants.*

**Explanatory Note**

This Head allows for the development of a lobbyists codes of conduct at the discretion of the Registrar.

Some elements of the Head are taken from Sections 10.2 and 10.3 of the Lobbying Act, 2008, (Canada).

## **Head 22 – Education and advice**

### **Provide that –**

- 1. The registrar shall have an explicit outreach and education mandate to raise awareness of the rationale and requirements of this Act for lobbyists, their clients and public office holders.*
- 2. The registrar shall develop and implement information programs in consultation with users to foster public awareness and understanding of the requirements of the Act particularly on the part of lobbyists, their clients and public office holders.*
- 3. The registrar may issue advisory opinions and interpretation bulletins with respect to the enforcement, interpretation or application of the Act.*
- 4. The registrar may, by request, give advice to any person in relation to any provision of this Act. When a request is made for advice, the section concerned of this Act shall not, as respects the person who made the request, apply in relation to that case during the period from the making of the request to the time when advice is given by the registrar in relation to the case or the registrar declines to give such advice. The registrar shall, within 21 days of the receipt by it of a request for advice, furnish the advice to the person concerned or notify him or her of their decision to decline to do so.*

### **Explanatory Note**

This Head seeks 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. The registrar shall have responsibility for providing education, guidance, information and support to assist the effective operation of the regulatory system.

Interpretation bulletins and advisory opinions may be issued.

The Head draws on Sections 4.2 (2) and 10 (1) and (2) of the Lobbying Act, 2008, (Canada).

**Head 23 – Storage of documents and use of documents as evidence**

**Provide that –**

1. *Any return or other document that is received by the registrar under this Act may be entered or recorded by any information storage device, including any system of mechanical or electronic data processing, that is capable of reproducing the stored return or other document in intelligible form within a reasonable time.*
2. *In any prosecution for an offence under this Act, a copy of a return or other document that is reproduced as permitted by 1 above and certified under the registrar's signature as a true copy:*
  - (a) *is admissible in evidence without proof of the official character of the person appearing to have signed the copy, and*
  - (b) *has, in the absence of evidence to the contrary, the same evidentiary value as the original would have if it were proved in the ordinary way.*

**Explanatory Note**

This Head has been copied from Section 9 of the Lobbyists Registration Act 2001 (British Columbia).

**Head 24 – Review procedures**

**Provide that –**

*The Minister for Public Expenditure and Reform shall—*

*(a) not later than 1 years after the commencement day and every 5 years thereafter, commence a review of the operation of this Act, and*

*(b) not later than 6 months after the expiration of the said 1 year and every 5 years thereafter, make a report to each House of the Oireachtas of his or her findings and conclusions, which should include a statement of any recommended changes to the legislation, or regulations under this Act, or its operation, resulting from that review.*

*The review should be undertaken in consultation with the registrar. Formal consultations should be carried out with relevant Oireachtas committees in the course of the review process.*

**Explanatory Note**

This Head allows for regular review of the operation, implementation and effectiveness of the legislation.

It is partly based on Section 14.1 of the Lobbying Act, 2008, (Canada) and Section 6 of the Charities Act 2009.

**Head 25 – Delegation by the Registrar**

**Provide that –**

*The registrar may authorise any person / any person employed in the registrar's office etc to exercise or perform, subject to any restrictions or limitations that the registrar may specify, any of the powers, duties or functions of the registrar under this Act.*

**Explanatory Note**

The Head draws on Section 4.4 of the Lobbying Act, 2008, (Canada), Section 16 (1) of the Lobbyists Registration Act, 1998 (Ontario) and Section 7(4) (d) of the Lobbyists Registration Act 2001 (British Columbia).

**Head 26 - The Registrar**

1. *Subject to the provisions of this Section a person appointed to be the Registrar shall hold the office for an initial term of 2 years. The term of office of the Registrar appointed after the initial appointment shall be 5 years. The Registrar may be a natural or legal person.*
2. *A person appointed to be the Registrar—*
  - (a) *may at his or her own request be relieved of office by the Minister,*
  - (b) *may be removed from office by the Minister but shall not be removed from office except for stated misbehaviour, incapacity or bankruptcy and then only upon resolutions passed by Dáil Éireann and by Seanad Éireann calling for his or her removal,*
  - (c) *shall in any case vacate the office on attaining the age of 67 years.*
3. *(1) Where a person who holds the office of Registrar is—*
  - (a) *nominated as a member of Seanad Éireann,*
  - (b) *elected as a member of either House of the Oireachtas or a local authority or to the European Parliament, or*
  - (c) *regarded, pursuant to section 15 (inserted by the [European Parliament Elections Act, 1993](#) ) of the [European Assembly Act, 1977](#) , as having been elected to the European Parliament to fill a vacancy,*  
*he or she shall thereupon cease to be the Registrar.*

*(2) A person who is for the time being entitled under the standing orders of either House of the Oireachtas to sit therein or who is a member of the European Parliament or a local authority shall, while he or she is so entitled or is such a member, be disqualified for being appointed to be the Registrar.*
4. *A person who holds the office of Registrar shall not hold any other office or employment in respect of which emoluments are payable.*
5. *The Registrar shall be paid, out of moneys provided by the Oireachtas, such remuneration and allowances for expenses as the Minister may from time to time determine.*



6. (1) *The Minister may make and carry out, in accordance with its terms, a scheme or schemes for the granting of pensions, gratuities or allowances on retirement or death to, or in respect of, persons who have held the office of Registrar.*
- (2) *The Minister may at any time make and carry out, in accordance with its terms, a scheme or schemes amending or revoking a scheme under this sub-section.*
- (3) *A scheme under this sub-section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.*
7. (1) *The Minister may appoint to be members of the staff of the Registrar such number of persons as the Minister may determine from time to time.*
- (2) *Members of the staff of the Registrar shall be civil servants in the Civil Service of the State (within the meaning of the [Civil Service Regulation Act, 1956](#)).*
- (3) *The Minister may delegate to the Registrar the powers exercisable by him or her under the [Civil Service Commissioners Act, 1956](#), and the Civil Service Regulation Acts, 1956 and 1958, as the appropriate authority in relation to members of the staff of the Registrar and, if the Minister does so, then, so long as the delegation remains in force—*
- (a) *those powers shall, in lieu of being exercisable by the Minister, be exercisable by the Registrar, and*
- (b) *the Registrar shall, in lieu of the Minister, be for the purposes of this Act the appropriate authority in relation to members of the staff of the Registrar.*
8. (1) *The Registrar shall keep, in such form as may be approved of by the Minister, all proper and usual accounts of all moneys received or expended by him or her and all such special accounts (if any) as the Minister may direct.*
- (2) *Accounts kept in pursuance of this paragraph in respect of each year shall be submitted by the Registrar in the following year on a date not later than a date specified by the Minister to the Comptroller and Auditor General for audit and, as soon as may be after the audit, a copy of those accounts, or of such extracts from those accounts as the Minister may specify, together with the report of the Comptroller and Auditor General on the accounts, shall be presented by the Registrar to the Minister who shall cause copies of the documents presented to him or her to be laid before each House of the Oireachtas.*

**Explanatory Note**

This Schedule is based on the Second Schedule to the Freedom of Information Act 1997.

**Part IV**  
Other Provisions

- Head 27 – Charitable Tax Exemption
- Head 28 – Restrictions on Post-Term Employment
- Head 29 – Administrative Appeal
- Head 30 – Amendment of other Acts

**Head 27– Charitable Tax Exemption**

**Provide that –**

*The registration of a charitable organisation on the register in respect of lobbying activities in relation to matters connected with the organisation’s charitable purpose and where such matters are of public benefit, shall not of itself -*

*(i) preclude the organisation from applying for, availing of, or*

*(ii) as the case may be retaining*

*exemption from liability to tax under the relevant provisions of the Taxes Consolidation Act 1997, the Capital Acquisitions Tax Consolidation Act 2003 or the Stamp Duties Consolidation Act 1999.*

**Explanatory Note**

A number of submissions received by the Department of Public Expenditure and Reform in response to the consultation process expressed a concern that the tax exempt status of charities should not be compromised by their inclusion in a lobbying register.

This Head is based on Section 7(1) of the Charities Act 2009.

**Head 28 – Restrictions on post-term employment**

**Provide that –**

1. *During a period of up to one year after the day on which a person ceases to be a designated public official or office holder (in categories (i), (iv) or (v) of the definition of designated public official or office holder), the person shall apply to the registrar for approval to engage in any activity involving lobbying (as defined in Head 4 part 1)*
  - a. *the public body or public bodies in which the person was a designated public official or office holder over the last 12 month period of their employment as a designated public official or office holder, or*
  - b. *former colleagues within that public body or those public bodies during that period wherever they are now employed in the public service.*
2. *On application by a person to the Registrar, the Registrar may:-,*
  - (i) *give approval to the person for the proposed activities referred to in subhead (1) subject to any conditions that the Registrar specifies, or*
  - (ii) *refuse to give such approval for a specified period,*

*if the registrar is of the opinion that this would be fair and proportionate and not be contrary to the purposes of this Act having regard to any circumstance or factor that the registrar considers relevant, including*

    - (a) *the nature of the proposed lobbying activity;*
    - (b) *the length of the period for which the individual was a designated public official or office holder in the public body concerned;*
    - (c) *the specific nature of the role and responsibilities discharged by the person as a designated public official or office holder;*
    - (e) *the measures that can potentially be taken to mitigate or limit any conflict of interest;*
    - (f) *any decision made by a Secretary-General or the Outside Appointments Board under the Civil Service Code of Standards and Behaviour;*
    - (g) *any decision made by a City or County Manager or the Outside Appointments Board for the Local Government Employees under the Code of Conduct for Employees.*
3. *The specified period at 2(ii) above must end not more than one year after the person has left their former position as a designated office holder or public official but may be less, having regard to the need for fairness and proportionality and taking account of relevant circumstances or factors including those set out in section 2(a) to (f) above.*

*4. The registrar shall without delay cause every decision and the Registrar's reasons for it to be made available to the public.*

*5. The Registrar shall consult as appropriate with persons referred to in subsection 2(f) and 2(g) when making their decision under subsection 2.*

**Explanatory Note**

The Programme for Government commits to amending "...the rules to ensure that no senior public servant (including political appointees) or Minister can work in the private sector in any area involving a potential conflict of interest with their former area of public employment, until at least two years have elapsed after they have left the public service."

The Head 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 – Administrative Appeal**

**Provide that –**

1. *The Minister may appoint a panel of suitable persons as he or she considers appropriate, to be appeals officers for the purposes of this Act.*
2. *The functions of appeals officers shall be to consider and make determinations on appeals made by affected person, organisation or body against a decision under heads 11, 18 and 28 made by the Registrar under this Act.*
3. *Appeals officers shall, subject to this Act, be independent in the performance of their functions.*
4. *Where a person is dissatisfied with a decision given by the Registrar the person may appeal the decision in writing, within the prescribed time and in the prescribed form, the decision may be referred to an appeals officer.*
  - a. *Regulations may provide for the procedure to be followed on appeals under this Act.*
  - b. *An appeals officer, when deciding an appeal referred under subsection (a), may not be confined to the grounds on which the decision of the Registrar was based, but may decide the appeal as if it were being decided for the first time.*
  - c. *An appeals officer shall determine an appeal, as soon as is practicable, having regard to any guidelines issued or regulations made in this regard by the Minister or Registrar.*
  - d. *make a decision in writing determining the appeal, which may be a decision to—*
    - i. *confirm the decision of the Registrar,*
    - ii. *revoke that decision and replace it with such other decision as the appeals officer believes appropriate, or*
    - iii. *refer the matter concerned back to the Registrar for reconsideration in accordance with such directions as the appeals officer believes appropriate,*
    - iv. *send a copy of the relevant decision to the appellant and the Registrar together with the reasons for the decision, and*
    - v. *give the Registrar such directions as the appeals officer believes to be appropriate.*

***Appeal to the Courts***

5. *Provide for a right of appeal to the Circuit Court against a decision of an Appeals Officer under this Head.*

**Explanatory Note**

The purpose of this Head is to provide for independent appeals process and appeals officers. It is based on Section 35 of the Nursing Homes Support Scheme Act 2009 and the Agriculture Appeals Act 2001.



**Head 30 – Amendment of other Acts**

*1. For the purposes of an enactment referred to in subhead 2, the term “lobbyist” shall mean a lobbyist required to register under this Bill.*

*2. This head applies to-*

- (a) section 2 of the Broadcasting Act 2009*
- (b) section 28 of the Grangegorman Development Agency 2005*
- (c) section 24 of the Digital Hub Development Agency Act 2003*
- (d) section 9 of the Gas (Interim) (Regulation) Act 2002*
- (e) section 17 of Aviation Regulation Act 2001*
- (f) section 175 of the Local Government Act 2001*
- (g) section 28 Transport (Railway Infrastructure) Act 2001*
- (h) section 41 of the Food Safety Authority of Ireland Act 1998*
- (i) Schedule 2 of the Ethics in Public Office Act 1995]*
- (j) Any relevant statutory instruments referring to lobbyists*

**Explanatory Note**

The purpose of this amendment is to ensure consistency in the term “lobbyist” in other legislation. Further consultation with relevant Parent Departments will take place on this head.