

## Information Note

### Registration of Lobbying Bill 2014

#### **1. Background**

The Government has committed to introduce a statutory register of lobbyists and rules governing the conduct of lobbying. The Final Report of the Mahon Tribunal (the final Report of the Tribunal of Inquiry into certain planning matters and payments) also recommended the introduction of lobbying regulation and a code of practice governing the conduct of lobbying.

The fundamental objective of this initiative – which is an important part of a broader process of political reform - is to provide appropriate transparency on "who is lobbying whom about what". This will allow the wider population to reach informed evidence-based judgments regarding the extent to which different interest groups are able to access and seek to influence decision-making. The proposals also put in place a system for regulating lobbying where former public officials might seek to lobby the public body or the people they previously worked with for a one-year period after they have left public employment (i.e. 'cooling-off' period).

#### **2. Consultation Process**

In December 2011 the Department of Public Expenditure and Reform invited submissions from interested parties on key issues relating to options for an effective regulatory system for lobbying in Ireland. The consultation process was based on agreed OECD Principles for Transparency and Integrity in Lobbying. A review of international approaches to the regulation of lobbying was advised and informed by the work of three international experts on lobbying regulation<sup>1</sup>. The approach in place in the European Union institutions were also analysed as well as the Council of Europe Recommendations on lobbying.<sup>2</sup>

In July 2012 the Department published a policy paper entitled 'Regulation of Lobbying Policy Proposals' (<http://per.gov.ie/policy-paper/>). This paper sets out the policy rationale for the regulation of lobbying as well as an overview of the proposed policy framework and recommended options for further consideration on key features of the proposed policy regime. Full details of the consultation process can be found at <http://per.gov.ie/regulation-of-lobbying/>

---

<sup>1</sup> Professor Gary Murphy (DCU), Professor Raj Chari (TCD) and Dr John Hogan (DIT)

<sup>2</sup> Lobbying in a Democratic Society (European Code of Conduct on Lobbying), 5 June 2009

### **3. Key features of the Bill**

#### **Web-based**

- The establishment of a statutory web-based register of lobbying activity.

#### **Registrar**

- A Registrar will be appointed (the Standards in Public Office Commission) to oversee the implementation of the register, to monitor compliance, to provide guidance and direction and, where necessary, to investigate and pursue breaches of legal requirements in due course.
- The focus of the Registrar in the initial period of the operation of the legislation will be on guidance and information. It is intended that the Minister will not commence the provisions regarding the Registrar's powers of sanction until a review of the implementation of the legislation has been carried out one year after the commencement.

#### **Definition of Lobbyist**

- With regard to defining those who will come within the scope of the Bill, it adopts an approach similar to lobbying legislation elsewhere whereby lobbyists are specifically identified by virtue of their employment status within an organisation, receipt of payment on behalf of a third party, etc. The management or direction of grass-roots campaigns will also be captured by the Bill. The scope of the Bill is quite wide covering third party lobbyists, in-house lobbyists within corporations, representative bodies, charities, NGOs, etc.

#### **Registration requirements**

- Registration requirements will be balanced and proportionate and are not expected to impose a significant administrative burden on registrants. For this reason, it will not be necessary to register every contact with designated public officials, rather the focus is on the subject matter and desired result of the lobbying. Returns will be required on a four monthly basis at the end of April, August and December.

#### **Definition of the Lobbied**

- The following will be designated public officials or 'the lobbied' under the Bill:
  - (i) Ministers and Ministers of State;
  - (ii) Members of Dáil Éireann, Seanad Éireann;
  - (iii) Members of the European Parliament for constituencies in the State;
  - (iv) Members of local authorities;
  - (v) Special Advisers; and

(vi) Public servants as prescribed.

- With regard to prescribed public servants, it is intended that on commencement, the Bill will apply to the Head of Department level (Secretary General) and their senior management team (Assistant Secretary Grades) in the Civil Service and to equivalent grades in local authorities. The Minister for Public Expenditure and Reform will by regulation extend the provisions to other areas of the public service and to other grade levels, on a phased basis, in line with experience of implementation.

### **Matters on which lobbying takes place**

- The matters on which lobbying takes place are defined to include in overall terms, decisions at both senior administrative and ministerial level, on legislation, policy, rules, regulations, grants, loans, contracts etc for any scheme or public programme. Excluded from the scope of this definition are matters relating solely to implementation or matters of a technical nature.

- The introduction of registration requirements will not impede the normal interaction between citizens and their local political representatives. Communications relating to the private affairs of an individual are excluded under the Bill, with the exception of matters relating to planning and zoning. Planning matters in relation to an individual's principal private residence would be exempt. Communications by employers with 10 employees or less relating to the affairs of the employer are also similarly excluded unless the communication is in respect of land zoning or development.

### **Exemptions**

- Drawing on international precedent and significant issues raised in the course of extensive consultation a number of exemptions from registration requirements are included in the Bill.

The exemptions relate, for example, to:-

- (i) contacts entirely conducted between public officials or arising in an international or diplomatic context;
- (ii) where a contact was initiated by the public official and relates to the provision of factual information;
- (iii) where information is requested by a public service body and is published by it;
- (iv) communications between members of working groups, task forces etc. established by a Minister (or public service body) and with private sector representation as long as the group operates according to the principles of a Transparency Code to be developed by the Minister. It is envisaged that the Transparency Code would require, for example, publication of membership, agendas and minutes of the meetings of such groups;

- (v) communications related to negotiations on terms and conditions of employment undertaken by trade union representatives on behalf of their members;
- (vi) communications which could pose a threat to the safety of a person if they were disclosed;
- (vii) communications which could pose a threat to the security of State if they were disclosed; or
- (viii) communications in proceedings of an Oireachtas Committee;
- (ix) communication between a commercial state body and their parent Department / Minister in relation to matters coming within their ordinary course of business. It is intended that other such communications on broader issues relating for example to the regulation of the relevant sector would be captured by the Bill.

## **Review**

- A review of the legislation one year after its commencement will provide an opportunity to ensure that exemptions do not act as a conduit for what might be characterised as unregulated or ‘secretive’ lobbying lacking in transparency.

## **Protection of sensitive information**

- There is a process in the Bill allowing for the protection of sensitive information. Publication of information could be delayed which could have a serious adverse effect on the financial interests of the State or on the ability of the Government to manage the economy. This would only apply where immediate disclosure would not be in the public interest. Application may also be made to the Registrar for a delay in publication of information where the publication which could result in disclosure of commercially sensitive information. Regard must also be had to the public interest by the Registrar in considering a request to delay publication of such information.

## **Cooling off period**

- The approach to the “cooling off” period requires certain designated public officials or office holders (initially this will be Ministers, Ministers of State, special advisers and secretary general and assistant secretary grades in the civil service and equivalent grades in local authorities) to apply to the Registrar for approval to lobby their former colleagues in the public body in which they previously worked (or in a further public body to which such colleagues have subsequently transferred) during a period of one year subsequent to having left the public service. This approach allows the Registrar to permit, for example, the take up of employment or to impose conditions in relation to engagement in certain activities rather than a blanket ban.

## **4. Frequently asked questions**

- (i) What is the proposed policy approach to the regulation of lobbying based on?**

The development of policy on lobbying regulation has been informed by several valuable sources of information, analysis and experience.

The OECD has developed a set of principles for Transparency and Integrity in Lobbying which have been adopted as a recommendation by all OECD Member States. The OECD principles formed the basis of the consultation exercise carried out by the Department of Public Expenditure and Reform.

The project has also drawn on information on regulatory regimes operating for example in Canada, the US, Australia, and several European countries. The voluntary register in place in the European Union institutions was also analysed.

There have been five Private Members Bills published on the regulation of lobbying since 1999. These have proved useful in illustrating the possible shape of lobbying regulation.

The Department of Public Expenditure and Reform's assessment has also derived significant benefit from the work of Irish researchers in TCD, DCU and DIT<sup>3\*</sup> who have provided guidance and insights drawn from the authoritative work that they have published comparing global approaches to lobbying regulation.

## **(ii) What benefits are expected through the regulation of lobbyists?**

The aim of regulating lobbying activity through registration and reporting requirements is to strengthen public confidence in politics and in the business of government, to increase the accountability of decision makers and to subject public policy making, and those who seek to influence it, to greater openness and transparency. The Bill would facilitate the appropriate public scrutiny of lobbying activity.

The value of regulation of lobbying in fostering a culture of integrity is supported by the Organisation for Co-operation and Development (OECD) which states that:-

*"...a sound framework for transparency in lobbying is crucial to safeguard the public interest, promote a level playing field for business and avoid capture by vocal interest groups..."*

The aim of this process is unequivocally not to restrict the flow of information, opinions, perspectives or proposals feeding into policy making or legislation but rather to bring about greater transparency so that the public at large will know who is seeking to influence whom in respect of what.

The reports of the Mahon and Moriarty Tribunals have highlighted *inter alia* the risk that the legitimacy of the political system might be eroded by the corrosive impact of secrecy and undue influence.

## **(iii) How will the regulation of lobbyists impact on the access of constituents to their representatives?**

It is essential that normal local and constituency-related interactions should be unaffected by the proposals to regulate lobbying. Such interaction includes contact between individual citizens and their local political representatives, constituency TD, Councillor or public

---

<sup>3</sup> Dr Raj Chari, Professor Gary Murphy and Dr John Hogan respectively

representative by a person acting in a private capacity and relating to their private affairs. Matters relating to the zoning or development of land will, however, be captured to ensure that the lessons from the Planning Tribunal are fully learned. Planning matters in relation to an individual's principal private residence would be exempt.

**(iv) Won't these proposals cut across the right of individuals, representative bodies, charities and NGOs to make their case to Government representing the public interest?**

The proposed legislation is not intended to change behaviour but rather to shine a light on what is happening – “who is contacting whom and about what”.

These proposals should not be characterised as restricting the important flow of information between government and its citizens or interfering with the right of access of any individual, organisation or interest group to political representatives.

The key objective of the initiative is to ensure greater transparency regarding public policy and decision making.

It is clearly important to ensure that the implementation arrangements for lobbying regulation are well designed and work effectively. A requirement to provide information on the scope and extent of this activity – whether it is described for example as lobbying, advocacy or public affairs - should not create an obstacle to the political system being fully informed of the views of important stakeholders and interests in relation to particular policy proposals or legislation.

**(v) Will the proposals implement the recommendations on the regulation of lobbying contained in the final report of the Mahon Tribunal?**

Yes, it is intended that the proposals would lead to the implementation of these recommendations.

There is a close alignment between the commitment included in the Programme for Government and recommendations made in the report of the Tribunal relating to the establishment of statutory register of lobbying and professional code governing the conduct of lobbying.

Indeed, in light of the key objective of securing greater transparency in relation to the development of public policy and legislation the intention is to adopt a comprehensive definition of lobbying encompassing a broad range of interest groups beyond the relatively small number of consultant or multi-client lobbyists which were the primary focus of the recommendations and findings of the Tribunal.

**(vi) Could you provide further information on who made submissions as part of the consultative process?**

Submissions were received from a broad range of interest groups, representative bodies, industry and civil society organisations, NGOs, charities third party professional lobbyists and individuals.

The submissions have been published and can be viewed on the Department of Public Expenditure and Reform's website ([per.gov.ie](http://per.gov.ie))

A number of groups which had submitted documents during the written consultation period were invited to the department to further discuss and elaborate on the issues raised in their submissions.

**(vii) What are the implication for Departments and Public Bodies?**

This Bill won't commence until 2015 so we have time to prepare for any changes that are required.

- The onus is on the lobbyists to register lobbying activities. There will be no onus on Ministers or other designated public officials to register the communication.
- Departments and public bodies will be required to publish an up to date list of the designated public officials in that body giving details of their name, grade and a brief description of their role within the body.
- Groups and task forces appointed by a Minister or a public service body for the purpose of reviewing, accessing or analysing any issue of public policy with a view to reporting to the Minister on it must conduct their activities in accordance with the Transparency Code. The Department of Public Expenditure and Reform will prepare a Transparency Code in consultation with other Government Departments and Offices.
- Communications between a commercial state body and their parent Department / Minister in relation to matters within their ordinary course of business will be exempt e.g. normal communications relating to governance, etc. It is intended that communications on broader policy issues relating for example to the regulation of the relevant sector would be captured by the Bill.
- Factual communication sought by a public body will not be considered a lobbying communication. Information sought by a public body covering non-factual analysis, opinions, etc. will only be exempt from registration if the information is published by that public body.

**(viii) What are the implications for those carrying on lobbying activities?**

This Bill won't commence until 2015 stakeholders have time to prepare for any changes that are required.

- The Bill will establish a statutory web based register of lobbying activity.
- It will require registration of communications about policy, programmes, enactments or awards made to designated public officials by employers or their staff, 3rd party lobbyists or by anyone in relation to development or zoning of land. Communications solely about implementation or technical issues will be excluded.

- It has been a major priority to ensure that the proposals do not impact on individuals who wish to make representations to their political representatives relating to their own private affairs. These communications are excluded under the Bill, with the exception of matters relating to development and zoning. Planning matters in relation to an individual's principal private residence would also be exempt. Communications by employers with 10 employees or less relating to the affairs of that employer are also similarly excluded unless the communication is in respect to land zoning or development.
- Anyone engaged in lobbying, must file three returns per year (end April, August and December).
- Registration requirements will be balanced and proportionate and are not expected to impose a significant administrative burden on registrants. For this reason, it will not be necessary to register every contact with designated public officials, rather the focus is on the subject matter and desired result of the lobbying.
- What type of information will a lobbyist have to put on the register?

(i) Registration Details

- (a) The person's name (i.e. the name of the business, corporate body, etc. conducting lobbying activities);
- (b) The persons business address or if there is no business address the address at which the person normally resides;
- (c) The person's business or main activities;
- (d) Any e-mail address, telephone number or website address relating to the person's business or main activities;
- (e) Any registration number issued to the person by the Companies Registration Office; and
- (f) (If a company) the person's registered office.

(ii) Return Details

- (a) The names of any public service body and the designated public officials communicated with;
- (b) The subject of the lobbying communications and the results they were intended to secure;
- (c) The extent and type of lobbying activities (while this doesn't require details of each individual contact, the information supplied must be sufficient to meet the transparency objectives of the Bill);
- (d) The name of the person who has primary responsibility for carrying on lobbying activities within the organisation;

- (e) The name of any person who is or was a designated official, who is employed by or providing services to the registered person, and is engaged in lobbying activities; and
- (f) 3rd party lobbyists will also have to provide information about their clients similar to the information required under 'registration details' above.

**(ix) What are the implications for charitable organisations?**

Concerns were expressed during the consultation process by the charity sector that the tax exempt status of charities could be compromised by their inclusion in a Lobbying Register. A specific Head covering this issue was included in the General Scheme of the Bill.

It is understood that it is the Minister for Justice and Equality's intention to commence provisions of the Charities Act later this year. The first Chief Executive of the new Charities Regulatory Authority was appointed in March and the Authority is due to be formally established in October of this year under the terms of the Charities Act 2009. It will therefore be up and running before the Lobbying Act commences (anticipated for mid-2015).

Legal advice is to the effect that the Registration of Lobbying Bill will not change the current legal position in relation to the status of charities. Therefore, in light of that advice it was unnecessary as a matter of law to include anything on charities in the Registration of Lobbying Bill as previously proposed in the General Scheme of the Bill.

Officials from the Department of Public Expenditure & Reform have recently met with the Revenue Commissioners and with the Charities Regulatory Authority. Under the Charities Act, a body that promotes a political cause, unless the promotion of that cause relates directly to the advancement of the charitable purposes of the body, is excluded from charitable status. The Charities Regulatory Authority has confirmed its intention to develop written guidance for charities on how the Authority will implement these provisions of the Charities Act. The Charities Regulatory Authority and Revenue have confirmed that this guidance will be developed in full consultation with the Office of the Revenue Commissioners.

Eligibility for a charitable tax exemption is and will, of course, remain a matter for the Revenue Commissioners.

**(x) When will the Bill be published?**

The intention is that the Bill will be published in the week ending 20<sup>th</sup> June 2014. It is hoped that its passage through the Dáil will commence in the autumn.

A period of preparation will be required prior to commencement to enable development of a web-based register and the preparation of an information and education campaign by SIPO. It is anticipated that the Act could commence in early summer 2015.