

<b>Lead topic:</b> Regulation of Lobbying Act 2015	<b>Sub-topic:</b> None	<b>Contact:</b> Joyce Nolan or Bernie Orr Ext. 5486 or 5077
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#### **FAST FACTS**

- **The Regulation of Lobbying Act 2015 was commenced on 1 September 2015. It is designed to provide appropriate transparency on “who is lobbying whom about what” and is viewed as an exemplar to others.**
- **It allows all sections of society to reach informed evidence-based judgments regarding the extent to which different interest groups are able to access and influence decision-making.**
- **The Act sets out arrangements for bringing transparency to lobbying activities through a web-based register.**
- **There are currently just over 1,600 organisations and individuals who have registered on the lobbying register, and approximately 12,600 returns have been submitted and are available for viewing on lobbying.ie.**
- **It is clear that the work undertaken by the Department of Public Expenditure and Reform and the Standards Commission in leading awareness and understanding of the Act has been effective.**

#### **Q&A'S**

##### **Q1. What is the Regulation of Lobbying Act 2015 intended to achieve?**

The Regulation of Lobbying Act 2015 (the Act) commenced on 1 September 2015 and is designed to provide information to the public about:

- Who is lobbying
- On whose behalf lobbying is being carried out
- The issues involved in the lobbying
- The intended result of the lobbying
- Who is being lobbied.

Lobbying is an essential part of the democratic process. It enables or facilitates citizens and organisations to make their views on public policy and public services known to politicians and public servants.

## **Q2. What are the main provisions of the Act?**

The Act does not aim to prevent or inhibit lobbying. It does aim to make the process more transparent. The Act aims to do this by providing for:

- The establishment and maintenance of a publicly accessible register of lobbying
- The Standards in Public Office Commission (The Standards Commission) to be the regulator of lobbying
- Obligations on lobbyists to register and to provide information regularly about their lobbying activities, including, in the case of professional lobbyists, information about their clients
- A code of conduct on the carrying-on of lobbying activities
- The introduction of a "cooling-off" period during which lobbying activity may not be carried out by some former officials.

## **Q3. What do lobbyists need to do?**

If you are involved in lobbying, you may need to:

- Register on the Register of Lobbying website which is maintained by Standards Commission: [www.lobbying.ie](http://www.lobbying.ie)
- Provide information to the Standards Commission about your lobbying activities three times a year.

There is no cost to register as a lobbyist. Members of the public can view and search the register free of charge.

## **Q4. Who should register?**

You must register if you are carrying on lobbying activities. You are carrying on lobbying activities if you meet the following conditions:

1. You are communicating either directly or indirectly with a "Designated Public Official" and;
2. That communication is about "a relevant matter" and
3. That communication is not specifically exempted and;
4. You are one of the following:

- A professional lobbyist being paid to communicate on behalf of a client (where the client is an employer of more than 10 full time employees or is a representative body or an advocacy body which has at least one full-time employee)
- An employer with more than 10 employees where the communications are made on your behalf
- A representative body with at least one employee communicating on behalf of its members and the communication is made by a paid employee or office holder of the body.
- An advocacy body with at least one employee that exists primarily to take up particular issues and a paid employee or office holder of the body is communicating on such issues.
- Any person communicating about the development or zoning of land.

**Q5. Who are the Designated Public Officials?**

They are:

- Ministers and Ministers of State
- TDs and Senators
- MEPs for constituencies in this State
- Members of local authorities
- Special Advisers
- Secretaries General and Assistant Secretaries in the Civil Service
- Chief Executive Officers and Directors of Services in Local Authorities

The above list may be extended by Ministerial Order to other categories over time. Public bodies were required to publish a list of Designated Public Officials within their organisations on their individual organisation websites from 1 September 2015.

**Q6. What is "a relevant matter"?**

A relevant matter is one which relates to:

- The initiation, development or modification of any public policy or of any public programme;
- The preparation or amendment of any law (including secondary legislation such as statutory instruments and bye-laws); or
- The award of any grant, loan or other financial support, contract or other agreement, or of any licence or other authorisation involving public funds;
- other than the implementation of any such policy, programme, enactment or award or any matter of a technical nature only.

#### **Q7. What are "the excepted / exempted communications"?**

The following are "Excepted or Exempted Communications" and are not, therefore, regarded as lobbying activities:

- **Private affairs:** Communications by or on behalf of an individual relating to his or her private affairs about any matter other than the development or zoning of any land apart from the individual's principal private residence.
- **Diplomatic relations:** Communications by or on behalf of a foreign country or territory, the European Union, the United Nations or other international intergovernmental organisations.
- **Factual information:** Communications requesting factual information or providing factual information in response to a request for the information.
- **Published submissions:** Communications requested by a public service body and published by it.
- **Trade union negotiations:** Communications forming part of, or directly related to, negotiations on terms and conditions of employment undertaken by representatives of a trade union on behalf of its members.
- **Safety and security:** Communications the disclosure of which could pose a threat to the safety of any person or to the security of the State.

- **Oireachtas committees:** Communications which are made in proceedings of a committee of either House of the Oireachtas.
- **Communications by Designated Public Officials or public servants:** Communications by a designated public official in his or her capacity as such; communications by public servants (or those engaged on contract by a public service body) made in that capacity and relating to the functions of the public service body.
- **Governance of Commercial State bodies:** Communications by or on behalf of a commercial state body made to a Minister who holds shares in, or has statutory functions in relation to, the body, or to designated public officials serving in the Minister's department, and which are made in the ordinary course of the business of the body.
- **Policy working groups:** Communications between members of a relevant body appointed by a Minister, or by a public service body, for the purpose of reviewing, assessing or analysing any issue of public policy with a view to reporting to the Minister or public service body on it.

#### **Q8. Has the review of the Act been carried out?**

In line with Section 2 of the Regulation of Lobbying Act 2015, the first review of the operation of the Act commenced by 1 September 2016. The purpose of this review was to evaluate if the legislation has met its objectives of providing appropriate transparency on "who is lobbying whom about what" by drawing on the submissions received in the public consultation process.

A total of 31 submissions were received by the Department on foot of a public consultation process and all submissions can be viewed in full on the Department's website at <http://www.per.gov.ie/en/regulation-of-lobbying/>. These organisations include interest groups, representative bodies, Government Departments, individual DPO's and of course lobbying firms.

The report provides analysis and evaluation of the operation of the Act and sets out findings and recommendations and can be viewed at <http://www.per.gov.ie/en/regulation-of-lobbying/>. In the report it was not recommended that any amendment be made to the Act at this stage. Given the short time since commencement of the Act, and even shorter time since the enforcement provisions have commenced, it was felt that it would be

prudent to allow further time for the system to establish itself, and for additional evidence of how the operation of the Act is progressing to be amassed and assessed, before any decision of this type is made. The next review, due to take place at the end of 2019, will provide further opportunity for such evaluation to take place.

**Q9. Does the Act apply to communications that take place outside of Ireland?**

A person or organisation communicating with any Designated Public Official where that interaction meets the definitions contained in the Act (that is, a person within the scope of the Act, communicating with a Designated Public Official about a relevant matter) is required to register as a lobbyist and report the communication in their return for the relevant period. The Act makes no distinctions regarding where the communication takes place. **Furthermore advice may be sought from the Standards in Public Office Commission (SIPOC) if any uncertainty exists.**

Determining whether a communication falls outside of jurisdiction is not based solely on whether it physically takes place outside of the country. Each case will have to be reviewed based on its own set of facts to determine in what circumstances a communication would fall within or outside of jurisdiction, and whether and how the Act may apply.

It is recognised that there may be difficulties with extra-territorial enforcement of the Act. All those lobbying Irish Designated Public Officials outside of the State are encouraged to comply with the spirit of the legislation to ensure transparency.

**Q10. When did the enforcement provisions of the Regulation of Lobbying Act 2015 commence?**

Initially, part 4 of the Regulation of Lobbying Act 2015, which relates to enforcement provisions, was not commenced. This was a deliberate decision made to allay any concerns that stakeholders may have had about inadvertent non-compliance with the provisions of the Act and to allow those lobbying a period of time to become familiar with their legal obligations and the registration system.

Given the success of the system, and the high levels of compliance, it was decided to commence these provisions from 1 January 2017. The Standards in Public Office Commission prepared for the commencement of these enforcement provisions and has been and will continue to actively engage with Registrants to ensure that they are aware of the requirement to submit returns (including nil returns) on time and to make them aware that enforcement provisions commenced with effect from 1 January 2017.

**Q11. Why not commence the enforcement provisions earlier?**

It was important to ensure that the technical development of the Register was completed prior to the commencement of the enforcement provisions. This work incorporated the facility to levy and accept payment for fixed payment notices for any late returns made after the commencement date.

It would have proved challenging for SIPOC to have all the development work completed by an earlier deadline and there would have been difficulties in administering the fixed payment notices in an efficient and timely way.

**Q12. How have the provisions of the Regulation of Lobbying Act 2015 been communicated to people?**

The Commission's focus in the first year of the Act's operation was on building understanding and encouraging compliance with the Act. To that end, a significant amount of outreach and education initiatives throughout the past year has served to create awareness and understanding of the Act and its obligations among those who may be lobbying. The website has been populated with helpful information for both potential registrants and those whom they lobby – featuring tailored guidelines for lobbyists and designated public officials, instructional videos, sample returns and frequently asked questions.

This emphasis on education and outreach has proven effective. SIPOC continues to regularly engage with stakeholders through presentations, publications and events, as well as through its website. It also conducts regular information sessions for any interested member of the public, who may register their interest on [lobbying.ie](http://lobbying.ie).

**Q13. Why is the Transparency Code needed?**

A critical element of public policy formulation is the availability to Ministers and Public Bodies of expertise, skills and knowledge from persons outside of the public service. Often this process is formalised by the establishment of a task force, working group, etc. to focus on a particular policy issue or set of related issues. The work of these groups is intended to contribute to the quality and effectiveness of the policy formulation process in the public interest.

Given the importance and value of the work carried out by such groups in terms of the promotion of economic and social priorities, it is essential that the incentive for all key stakeholders to participate in and engage with such work is fully supported. The legal definition included in the Regulation of Lobbying Act 2015 categorises lobbying activity on the basis of communication between certain persons and Designated Public Officials. In light of the nature and frequency of communications between public officials and non-public servants in that type of forum, it would in practical terms be quite challenging to seek to capture and include those interactions in the proposed Register.

The Act therefore provides for an exception from the requirement to register in such cases once specified transparency criteria as per the Code apply. The particular exception in the Act is for communications between members of certain types of such working groups, task forces, committees, etc. where the group in question complies with this Transparency Code.

As part of a significant outreach and education programme, all Departments have been made aware of the Transparency Code by both my Department and SIPOC.

#### **Q14. What transparency criteria are included in the Transparency Code?**

##### Transparency criteria

Information must be published on the public body's website setting out the following details:

1. Name of Chairperson together with details of his or her employing organisation;
2. Names of Members together with details of their employing organisation;
3. Whether any non-public servant members were previously designated public officials;
4. Terms of reference of the group;
5. Agenda of each meeting;
6. Minutes of each meeting;
7. Expected timeframe for the group to conclude its work;
8. Reporting arrangements.

This information should be in a prominent place on the website of public bodies and should be easily accessible.

In addition the Chairperson of the Group is responsible for overseeing and conducting the work of the Group in a manner which ensures that the Group operates in a manner fully in accordance with its terms of reference and in the public interest.

The Chairperson will include with the final or annual report of the Group a statement confirming its compliance with the Transparency Code.

##### Sub-groups

The requirements of the Transparency Code also apply to sub-groups of the principal group where the membership of the sub-group consists of at least one Designated Public Official and at least one person from outside of the public service.