

Regulation of Lobbying Act 2015

PRII Briefing Paper – March 2015

Status of the Act

On March 11th, the Regulation of Lobbying Act 2015 was signed into law by President Michael D. Higgins. On the same day, the Minister with responsibility for this legislation, the Minister for Public Expenditure and Reform Brendan Howlin, announced that the legislation would come into force on September 1st 2015.

Lobbying Activities

The Act is concerned with the activity of lobbying. In the Act, lobbying is defined as communication (in any form) made personally (directly or indirectly) to a designated public official in return for payment or as part of their work, relating to:

- (a) *“the initiation, development or modification of any public policy or of any public programme*
- (b) *the preparation of an enactment, or*
- (c) *the award of any grant, loan or other financial support, contract or other agreement, or of any licence or other authorisation involving public funds*

apart from matters relating only to the implementation of any such policy, programme, enactment or award of a technical nature.”

In addition to that, any communication *“about the development or zoning of land under the Planning and Development Acts 2000 to 2014”* with the exception of that relating to a person’s own principal private residence is captured under the Act. It is important to note, therefore, that lobbying does not cover all engagement with public officials, but rather only those related to the development or zoning of land, seeking the initiation or amendment of public policy, the preparation of a bill or the award of public funds.

The lobbying has to be done by or on behalf of a company with more than ten employees. Lobbying activities carried out for companies with ten or less employees are exempted this legislation. However this exemption does not apply to representational bodies (e.g. the PRII) or to bodies whose primary purpose is to further a particular issue. Those bodies, provided they have at least one full time employee, must register their activities.

A designated public official in this context is a Government Minister, a Minister of State, any member of the Oireachtas or local authorities, a Special Adviser or a prescribed public servant. The Department of Public Expenditure and Reform (D/PER) have advised that the prescribed public servants will be at the Secretary General or Assistant Secretary level in the Civil Service and the equivalent level in local authorities. It will then be expanded to other levels of the public service over time. The Act does not apply to communications with state agencies (e.g. bodies such as the HSE) at this time. However the Minister will have the power to extend this legislation to such bodies if he so wishes.

Under the Act each public body will be required to publish on their website a list of the prescribed public servants.

There are 14 exemptions within the Act to the above communication. The majority of these exemptions are to be expected and it should be noted that accountancy or legal practices will not be exempted from these requirements. One exemption of note relates to public consultations or requests for factual information by public officials. Responses to both are not included under the requirement to register.

Requirement to register

A person will be required to register if they make, manage or **direct** the aforementioned communications on behalf of a client or for their employer, or they do so in relation to the development or zoning of land that is not their own principal private residence.

A person is the relevant legal personality carrying out the activity (i.e. a company, sole trader, NGO, etc.) rather than each individual person who does the lobbying. The lead individual with overall responsibility for lobbying will be required to register as part of this.

Register of Lobbying

It will be an offence if a person (as clarified above) carries out lobbying activities but are not registered (the exception to this is the first time someone lobbies: in those circumstances, you are required to register at the next return date). The information requirement for registration will include:

- the person/companies/organisation's name;
- business address;
- main business activities; and
- email, telephone or website address relating to their business activities.

Once registered three returns a year will be required to be made to the Standards in Public Office (SIPO), who will be responsible for the Register. The returns are required for every four month period (i.e. the first return period will cover 1 September 2015 to 31 December 2015) and have to be made 21 days after the end of that period.¹ The return shall include:

- if applicable, the details of the client;
- the details of the designated official to whom the activities were directed;
- the subject matter of those activities;
- the type and extent of those activities;
- the name of the person who had primary responsibility for carrying out the lobbying activities; and
- any relevant former designated public officials who are engaged in these activities.

¹ A person who has advised SIPO that they are no longer carrying out lobbying activities will be marked on the Register as such, and will not be required to make further returns.

Delayed Publication

Applications may be made to delay the publication of information if it will have an adverse effect on: the financial interest of the State; the national economy; business interests generally, or of any group of people. Applications to delay can also be made where publication could be expected to cause financial loss to a person or prejudice their competitive position. Where such a delay is requested in the national interest, then SIPO shall consult with the Minister. Where such a delay is related to an individual interest, SIPO make the decision themselves. A decision shall take place within 21 days of the application on whether to delay publication, only publish a summary or reject the application.

Offences

D/PER have advised that in the first year a “phased and measured” implementation of this legislation may be appropriate. Therefore while there will be a legal obligation to register, the main focus of SIPO when the legislation is introduced will be to promote compliance with the legislation rather than using its enforcement powers. Only after the first year is it proposed that the Registrar will employ its full powers.

The offences in the legislation are:

- carrying out lobbying activities without being registered;
- failing to make returns;
- providing misleading or false information to SIPO; and
- failing to co-operate with or obstructing an investigation.

When in force, SIPO will be able to issue Fixed Payment Penalties (fines like those under the Road Traffic Acts) of €200 for late filings. If that fine is paid within a specified time period, the matter will not go to Court. If it does, it will be a summary offence and the person will be liable on conviction to a fine of up to €2,500. The other offences within this Bill will result, if a person is found guilty of an offence, on summary conviction to a fine of €2,500 or on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both.

Code of Conduct

The Bill will allow SIPO to produce and revise “*a code of conduct for persons carrying on lobbying activities with a view to promoting high professional standards and good practice.*” There is no obligation on SIPO to produce such a code, but rather that it may. There are currently no plans for the development of any such code.

However if SIPO does decide to draw up such a code, they will be required to consult “*with persons carrying on lobbying activities and bodies representing them and such other persons and bodies as the Commission consider appropriate.*” The legislation states that a “*person carrying on lobbying activities shall have regard to the code of conduct.*” However there are no penalties in the Act associated with a failure to comply with the Code of Conduct.

Review of the Legislation and Annual Reports

The legislation requires the Minister for Public Expenditure and Reform to initiate a review of the operation of the legislation within a year of the commencement of the Act and to report on this to the Oireachtas within the following six months.

This report *“shall include any such recommendation for amendments to this Act, or any instrument made under it, as appear to the Minister to be appropriate in consequence of the findings resulting from the review.”* This process is to be repeated at least once every three years thereafter.

There is a requirement on the Minister carrying out these reviews to consult with *“such persons carrying on lobbying activities and such bodies representing them, and such other persons, as the Minister considers appropriate.”* This ensures that those impacted on the legislation will have the opportunity to have their voices heard during the review process.

Post-Employment Restrictions

A designated official shall not carry out lobbying activities or be employed or provide services to a person carrying out lobbying activities within the first year after their employment without the consent of SIPO. In this section, a designated official is a former Minister, a Special Adviser or a designated public servant. This section does not apply to other members of the Oireachtas, MEPs or local authority members

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