



Guidance for Local Authority Members on the Regulation of Lobbying Act 2015

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Table of Contents

Introduction	3
Objectives of the Regulation of Lobbying Act 2015	3
Central Role of Lobbying in a Healthy Democracy	3
What communications are covered by the Act?	4
Local Authority Members Clinics	4
Who are the Designated Public Officials (the lobbied)?	5
Publication of List of Designated Public Officials	5
Openness in Identifying Designated Public Officials	6
What is “a relevant matter”?	6
Extra-territorial application of the Act.....	6
What are “the excepted/exempted communications”?	7
Development and Zoning of Land.....	8
<i>Transparency Code</i> for a “relevant body” (working groups etc.)	8
Checking the Accuracy of the Register	9
Cooling-off Period	9
Former or Current Public Officials Employed by or Providing Services to a Lobbyist.....	9
Assistance on Implementation of the <i>Regulation of Lobbying Act 2015</i>	10
Further Information	10

Introduction

The *Regulation of Lobbying Act 2015* was signed into law in March 2015. The *Regulation of Lobbying Act 2015* (no 5 of 2015) (the Act) will commence on 1 September 2015.

Local Authority Members are Designated Public Officials (see page 3 for an explanation of who these are). **Local Authority Members are not required to register or submit a return when lobbied.** Their interactions when lobbied must be reported by the lobbyists in accordance with the *Regulation of Lobbying Act 2015*. These guidelines have been drafted to ensure that Local Authority Members understand how the system works, how they fit in to it and their part in supporting the effective implementation of the arrangements.

Objectives of the Regulation of Lobbying Act 2015

The Act is designed to provide information to the public about:

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

The Act provides for:

- The establishment and maintenance of a publicly accessible register 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;
- The introduction of a “cooling off” period during which lobbying activity may not be carried out by some former Designated Public Officials. **This provision does not apply to Local Authority Members;** and
- The Standards in Public Office Commission (The Standards Commission) to be the regulator of lobbying.

Central Role of Lobbying in a Healthy Democracy

Lobbying is an essential part of the democratic process. Organisations such as interest groups, representative bodies, industry, NGOs, charities and third party professional lobbyists all provide necessary input and feedback through communication of the views and concerns of the public to government.

This interaction is a welcome and necessary element of policy development. Public bodies, public officials, TDs, Senators, Local Authority Members and other elected officials should continue to actively facilitate and encourage such communications to the greatest extent possible.

The Act does not aim to prevent or inhibit lobbying activity. Its objective is to make the process more transparent while supporting the interaction of public bodies, public officials and elected officials with all stakeholder organisations. It is important that registering on the lobbying website or engaging in lobbying activity should not have, or be perceived to have, any negative impact on a person's application for or consideration of any 'relevant matter'.

There may, of course, already be rules in place in relation to certain matters where lobbying is inappropriate and may disqualify one for consideration. In those instances, the Act does not change the current arrangements but does throw light on those communications, if they constitute 'relevant matters' as defined in the Act.

What communications are covered by the Act?

Persons are carrying on lobbying activities if they meet the following conditions:

1. They 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. They 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 the employer's 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.** Separate guidelines have been developed on lobbying activity regarding the **development or zoning of land** and are available online at <https://www.lobbying.ie/media/2215/regulation-of-lobbying-planning-guidelines-23062015.pdf>.

Local Authority Members Clinics

A significant amount of clinic communications will be exempt where the matter relates to an individual's private affairs or is communications by a micro-business with less than 10 employees.

Who are the Designated Public Officials (the lobbied)?

The lobbied under the Act are:

- Ministers and Ministers of State
- TDs and Senators
- MEPs for constituencies in this State
- **Members of local authorities**
- Special Advisers to Ministers and Ministers of State who have been appointed under section 11 of the Public Service Management Act 1997
- Public Servants as prescribed
- Other categories of persons as prescribed

In relation to **the Civil Service** the Minister for Public Expenditure & Reform is preparing regulations which will provide that any persons in positions in the Civil Service in respect of which the maximum salary is €110,014 or higher non PPC or €115,576 or higher PPC¹ are prescribed as Designated Public Officials. This will bring the following civil service grades within the scope of the Act from commencement:

- Secretary General and equivalent grades
- Assistant Secretary and equivalent grades
- Director and equivalent grades

In relation to **local authorities** the Minister for Public Expenditure & Reform is preparing regulations which will provide that any persons in positions in local authorities in respect of which the maximum salary is €100,348 or higher are prescribed as Designated Public Officials. This will bring the following local authority grades within the scope of the Act:

- Chief Executive Officers and equivalent grades
- Directors of Services and equivalent grades

The above list may be extended by Ministerial Order to other categories over time.

Publication of List of Designated Public Officials

Public bodies, including Local Authorities, must publish a list of Designated Public Officials within their organisation on their individual organisation websites. Public bodies will be asked to nominate

¹ The terms personal pension contribution salary or PPC salary and non personal pension contribution salary or Non-PPC salary are used extensively in circulars etc. to distinguish between salary scales payable to civil servants appointed either before or after 6 April 1995. PPC salary scales are paid to those appointed either on or after this date and required to make a personal pension contribution and Non-PPC salary scales are paid to those appointed on or before this date and not required to make a personal pension contribution.

a member of staff with whom the Standards Commission may liaise regarding maintenance of its list of Designated Public Officials.

Openness in Identifying Designated Public Officials

Elected officials should be proactive in advising possible lobbyists when attending a meeting, participating in a conference call, etc. that you are a DPO. This may be particularly useful in meetings where there are large numbers of persons including elected officials present and the identity and status of each person may not be known to those attendees from the private sector. One such means of being proactive for a DPO would be to include a line in his or her email signature stating:

***Designated Public Official under *Regulation of Lobbying Act, 2015*. See www.lobbying.ie.**

This could be included when issuing invitations to meetings or accepting an invitation.

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);
- 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 the implementation of any such policy, programme, enactment or award or any matter of a technical nature only.

Extra-territorial application of the Act

The Act applies to lobbying activities which take place within the State whether the lobbyist is based in Ireland or abroad. Foreign lobbyists who run a lobbying campaign aimed at Irish officials within the State cannot assume that their activities are exempt from the Act.

As regards lobbying activities which take place outside of the State, in line with the objectives of the Act, a person or organisation who is based outside the State and is lobbying an Irish Designated Public Official outside the State is encouraged to register such communications on the new web-based register from 1 September 2015. However, they would not legally be obliged to do so. Notwithstanding the issues in relation to the extra-territorial application and enforcement of the Act, each person or organisation lobbying would need to take into account reputational issues if they fail to register relevant lobbying communications with Irish Designated Public Officials.

As part of the review of the operation of the Act one year after commencement, the intention is to keep this aspect of the legislation under review during that period including any need for appropriate protocols for Designated Public Officials when operating abroad.

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. This exemption will mean that a significant amount of constituency office communications will be exempt where the matter relates to an individual’s private affairs or is communications by a micro-business with less than 10 employees.
- 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.
- Public Safety and National 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 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. This exception only applies where the body is “a relevant body” and complies with a Transparency Code (see below).

Development and Zoning of Land

Separate guidelines have been developed on lobbying activity regarding the **development or zoning of land** and these are available online at <https://www.lobbying.ie/media/2215/regulation-of-lobbying-planning-guidelines-23062015.pdf>.

Transparency Code for a “relevant body” (working groups etc.)

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 the examination of a particular policy issue or set of related issues. These groups are representative of key stakeholders and experts in relation to the matters being reviewed.

In light of the different nature of engagement between public officials and non-public servants in that type of forum, the Act does not seek to capture and register those interactions as lobbying communications where appropriate transparency arrangements are in place.

The Act, therefore, provides for an exception from the requirement to register in such cases once specified transparency criteria 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 a *Transparency Code*. Such groups are defined in the Act as a “relevant body”. A copy of the Code is available online at <https://www.lobbying.ie/help-resources/information-for-public-bodies/transparency-code/>.

The exception in relation to Policy Working Groups only applies to a “relevant body” as defined in the Act. In order to be regarded as a relevant body the group must meet the following four conditions:

1. The group is set up by a Minister or public service body², and
2. Its membership consists of at least one Designated Public Official (DPO)³ and at least one person who is neither employed or engaged by a public service body, and
3. The group is reviewing, assessing or analysing any issue of public policy with a view to reporting to the Minister of the Government or the public service body on it, and
4. The group conducts its activities in accordance with the criteria set out in the *Transparency Code* (see below)
- 5.

² A public service body is defined in the *Regulation of Lobbying Act 2015*, section 7.

³ A Designated Public Official is defined in the *Regulation of Lobbying Act 2015*, section 6.

Checking the Accuracy of the Register

It is recommended that DPOs check the lobbying register on a periodic basis to ensure their name is associated with the correct lobbying activities and the information is factually correct. Persons have a right to seek correction from the Standards Commission where information is inaccurate.

Cooling-off Period

The Act provides that certain Designated Public Officials are restricted from being engaged in lobbying in certain circumstances for a year after they leave their employment or office in effect, they are potentially subject to a “cooling-off” period in respect of involvement in particular lobbying activities.

The Designated Public Officials concerned are Ministers and Ministers of State, special advisers to Ministers and Ministers of State and prescribed public servants (Section 22 (2)).

Others who are Designated Public Officials for the purposes of the lobbying registration requirements are not covered by this provision, that is, TDs and Senators (who are not Ministers or Ministers of State), MEPs and local authority members.

Designated Public Officials subject to this provision may apply to the Standards Commission for consent to waive these restrictions for all or part of the relevant period. The Commission may consent, may impose certain conditions, or may refuse consent. A public official who is unhappy with the decision may appeal the decision of the Standards Commission to an independent Appeal Officer.

Former or Current Public Officials Employed by or Providing Services to a Lobbyist

The Act requires individuals who are engaged in lobbying activity on behalf of a lobbyist and who were at any time a Designated Public Official to be named in returns on the Lobbying Register.

Section 12 of the Act provides that if you are or were a Designated Public Official (whether before or after the passing of the Act), and

- are employed by or providing services to a lobbyist, and
- were engaged in lobbying communications during a relevant reporting period,

your name is required to be included in a return by the lobbyist for that period and your name will appear on the Lobbying Register.

Assistance on Implementation of the *Regulation of Lobbying Act 2015*

It is advised that you become familiar with the Act and be in a position to advise persons engaged in lobbying on how to find out further information on the Act, if requested.

Further Information

Further information on the *Regulation of Lobbying Act 2015* is available at www.lobbying.ie.

Any public body or Designated Public Official who wishes to attend a briefing session on the Act should register their interest by emailing info@lobbying.ie

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