

# **Guidance for Designated Public Officials on the Regulation of Lobbying Act 2015**

## **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.

Designated public office holders (see page 3 for an explanation of who these are) are not subject to rules regarding the registration and reporting of lobbying. 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 designated public office holders 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**

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 officials;
- The Standards in Public Offices 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 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 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.

The move to a more open and transparent approach to consultation on public policy matters is also a key element of the Civil Service Renewal Plan [www.per.gov.ie/civil-service-renewal/](http://www.per.gov.ie/civil-service-renewal/) and in particular for those Actions which are focused on a more open and accountable civil service. Ireland's participation in the Open Government Partnership (OGP) Initiative also aims to promote transparency and empower citizens. (For more information on the OGP Initiative visit <http://www.ogpireland.ie/> )

## **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.**

### **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 PPC<sup>1</sup> 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

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<sup>1</sup> 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.

- 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 must publish a list of Designated Public Officials within their organisation on their individual organisation websites. Public bodies will be asked to nominate 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**

Public servants should be proactive in advising possible lobbyists that you or a colleague attending a meeting, participating in a conference call, etc. is a DPO. This may be particularly useful in meetings where there are large numbers of officials present and the identity and grade of each official may not be known to those outside of the public service. 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](http://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 next. However, they would not legally be obliged to do so as there are practical and legal difficulties in terms of the extra-territorial application and enforcement of Irish law. 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.
- **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).

### **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 attached at Appendix 1.

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 body<sup>2</sup>, and
2. Its membership consists of at least one designated public official (DPO)<sup>3</sup> 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)

The Transparency Code sets out the transparency criteria which relevant groups must meet in order to avail of the exemption set out in section 5(5)(n) of the Act:

**Transparency criteria:**

Information must be published on the Public Body’s web-site 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;

<sup>2</sup> A public service body is defined in the Regulation of Lobbying Act 2015, section 7.

<sup>3</sup> A designated public official is defined in the Regulation of Lobbying Act 2015, section 6.

6. Minutes of each meeting;
7. Expected timeframe for the work 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.

**Timeliness of Publication:**

Ideally the information should be published in as timely a fashion as possible, having regard to the public interest in safeguarding the integrity of the deliberative process.

At a minimum, the information on the public bodies' website must be updated at least every 4 months in relation to each such group.

This timeframe is in line with the transparency requirements of the Regulation of Lobbying Act for groups which are engaging in lobbying communications but are not operating in accordance with the Transparency Code.

Public service officials should take the following steps having regard to the Transparency Code:

1. Consider whether any of the existing groups within their Department or Office meet the first three conditions of "relevant body" set out above;
2. If so, consult with the Chairperson and membership of the Group as to whether the Group now wishes to operate in accordance with the Transparency Code;
3. If the Group wishes to operate in accordance with the Code, make appropriate arrangements for the information identified above under the heading "Transparency Criteria" to be published on the public body's website;
4. If the Group does not wish to operate in accordance with the Code, the members of the Group should be reminded that from 1 September, 2015 they will need to consider whether any communications with Designated Public Officials who are part of the group fall within the scope of the Regulation of Lobbying Act.



## **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 unless they get permission from the Standards Commission – 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, Senators, MEPs and local authority members.

Unless they have first received permission from the Standards Commission, the public officials who are covered by this provision may not

- carry on lobbying activities or
  - be employed by, or provide services to, a person carrying on lobbying activities
- in certain circumstances.

These circumstances are where the lobbying activity

- Involves any public service body with which the public official was connected, that is, employed or held an office or other position in the year prior to his/her leaving, or
- Is to a person who was also a designated public official connected with that public service body in the year prior to the first public official's leaving.

As set out above the public officials concerned may apply to the Standards Commission for consent to engage in such lobbying. The Standards Commission may decide to give consent unconditionally or give consent with conditions attached or refuse the application for all or part of the period (Section 22 (5)).

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. It is expected that this provision will apply in the main to former Ministers, Politicians, Special Advisers and senior public servants.

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**

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 is available at

[www.lobbying.ie](http://www.lobbying.ie).

Any public body or designated public official to wishes to attend a briefing session on the Act should register their interest by emailing

[info@lobbying.ie](mailto:info@lobbying.ie)

July 2015

## **Transparency Code**

# **Prepared in Accordance with Section 5(7) of the Regulation of Lobbying Act 2015**

### **Introduction**

The Regulation of Lobbying Act 2015 will commence on 1 September 2015.

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 should continue to facilitate and encourage such communications to the greatest extent possible.

However, in light of the different nature of engagement between public officials and non-public officials in certain forums such as task forces and working groups, the Act does not seek to capture and register interactions within these groups as lobbying communications where appropriate transparency arrangements are in place. This Transparency Code outlines the groups to which these arrangements apply and the transparency arrangements themselves.

### **Objectives of the Regulation of Lobbying Act**

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 does not aim to prevent or inhibit lobbying activity. Its objective is 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;
- 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 officials;
- The Standards in Public Offices Commission (The Standards Commission) to be the regulator of lobbying.

### **Exemption for Certain Types of Working Groups, Committees, 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 a particular policy issue or set of related issues.

The work of these groups is intended to contribute to 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 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 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 this Transparency Code.

Details of this exception is set out in section 5 of the Act:

**Relevant Extracts from Section 5 of the Act:**

The Act states that the following are excepted communications (section 5(5)(n)):

*communications between members of a relevant body appointed by a Minister of the Government, 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 of the Government or public service body on it.*

Section 5(6) defines *relevant body* as follows:

(6) *In subsection (5)(n) “relevant body” means a body—*

- (a) the members of which are appointed by a Minister of the Government or by a public service body and include one or more persons who are designated public officials and one or more persons who are neither public servants nor engaged for the purposes of a public service body, and*
- (b) which conducts its activities in accordance with the Transparency Code.*

Section 5(7) provides for the development of the Transparency Code:

*(7) The Minister shall prepare and publish a code, to be known as “the Transparency Code”, setting out how, having regard to the public interest in their doing so with an appropriate level of transparency, bodies meeting the condition in subsection (6)(a) are to conduct their activities if they are to constitute a relevant body for the purposes of subsection (5)(n)*

## What types of groups are affected?

This provision therefore applies to a “relevant body” which meets the following four conditions:

5. The group is set up by a Minister or public service body<sup>4</sup>, and
6. its membership consists of at least one designated public official (DPO)<sup>5</sup> and at least one person from outside of the public service, and
7. 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
8. the group conducts its activities in accordance with the criteria set out in the Transparency Code.

The provisions of this Code apply only where the issue of public policy being considered by the group is within the definition of “relevant matter” for the purposes of the Regulation of Lobbying Act 2015.

*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.*
- other than the implementation of any such policy, programme, enactment or award or any matter of a technical nature only.***

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<sup>4</sup> A public service body is defined in the Regulation of Lobbying Act 2015, section 7.

<sup>5</sup> A designated public official is defined in the Regulation of Lobbying Act 2015, section 6.

## **Transparency Code – Public Interest Considerations**

In preparing this code the Minister for Public Expenditure & Reform has, in accordance with section 5(7) of the Act, had regard to the public interest in considering how such groups are to conduct their activities if they are to constitute a relevant body for the purposes of subsection (5)(n).

The Minister has taken the following public interest factors into account:

- The public interest in the Government and the public service having access to as wide a range of stakeholder views as possible in formulating public policy;
- The public interest in the effective workings of relevant bodies established to review, assess or analyse issues of public policy;
- The public interest in ensuring a wide range of stakeholders participate in such relevant bodies;
- The right of the public to have access to information about the workings of such relevant bodies;
- The accountability of administrators and scrutiny of decision making processes;
- The public interest in the public being better informed to comment on and contribute to public affairs and public debate on public policy issues;
- The need to ensure democratic control and accountability to the greatest extent possible over the workings of government and public bodies;



## **Transparency Code – Criteria which must apply to avail of the exception under section 5(5)(n) of the Act**

Relevant groups must meet the following transparency criteria in order to be regarded as a “relevant body” (as defined in the Act) and to avail of the exemption set out in section 5 (5) (n) of the Act:

### **Transparency criteria:**

Information must be published on the Public Body’s web-site setting out the following information:

9. Name of Chairperson together with details of his or her employing organisation;
10. Names of Members together with details of their employing organisation;
11. Whether any non-public servant members were previously designated public officials;
12. Terms of reference of the group;
13. Agenda of each meeting;
14. Minutes of each meeting;
15. Expected timeframe for the group to conclude its work;
16. 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.

### **Timeliness of Publication:**

Ideally the information should be published in as timely a fashion as possible, having regard to the public interest in safeguarding the integrity of the deliberative process.

At a minimum, the information on the public bodies' website must be updated at least every 4 months in relation to each such group.

This timeframe is in line with the transparency requirements under the Regulation of Lobbying Act for persons who are engaging in lobbying communications. A return must be submitted every four months in respect of such activity.

## **Planning for the Future**

The Minister for Public Expenditure and Reform has already indicated his intention that on commencement of the Act on 1 Sept 2015 the public servants who will be prescribed as designated public officials under the Act will be officials at Secretary General, Assistant Secretary and Director level in the civil service and officials at Chief Executive Officer and Director of Services level in local authorities. He has further indicated his intention to extend the Act on a phased basis and to prescribe further grades within the civil service and other areas of the public service as designated public officials in the light of experience with implementation. This will begin with an extension of the Act to Principal Officer level grades in the civil service within the first 12 months of the operation of the Act. Given this extension to Principal Officers in the relatively near future it is advisable that public bodies consider the benefits of applying this code to other / all groups operated by that body.

## **Principles of Open Government**

In addition, public bodies should have regard to the principles of the Open Government Partnership Initiative. As part of the Open Government Partnership National Action Plan 2014-2016, Ireland has committed to '*greater citizen consultation and involvement to strengthen democracy and improve public services.*' <http://per.gov.ie/wp-content/uploads/OGP-National-Action-Plan.pdf>

## **Review of this Code**

The Minister for Public Expenditure & Reform will keep the operation of this Transparency Code under review and may update it from time to time to ensure that it is operating effectively and in accordance with the objectives of the Act.

Brendan Howlin TD,  
Minister for Public Expenditure & Reform  
2015