Submission to the Department of Public Expenditure & Reform

on the Second Review of the Regulation of Lobbying Act

from

The Public Relations Institute of Ireland (PRII)

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PRII

PUBLIC
RELATIONS
INSTITUTE
OF IRELAND

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Background to this Submission

Established in 1953, the Public Relations Institute of Ireland (PRII) is dedicated to promoting the highest professional practice of public relations and communications in Ireland and to serving the best interests of people working in the profession. The Institute seeks:

- wider recognition of the role of public relations in business;
- higher standards of professionalism;
- better qualifications for public relations and communications practitioners; and
- to be an effective forum for members to share common interests and experiences.

Membership of the Institute is voluntary and there are currently just under 900 PRII members. They comprise public relations and communication professionals drawn from consultancies, industry, government, semi-state, voluntary/charity and business organisations.

All members subscribe to the following Codes:

- The European Code of Professional Practice adopted by the European Public Relations Confederation (CERP) in 1978 and commonly known as the Code of Lisbon;
- The International Code of Ethics commonly known as the Code of Athens; and
- The PRII Code of Practice for Public Affairs and Lobbying.

These Codes promote professional integrity in the implementation of public relations programmes. There is a disciplinary process attached to compliance. Adherence to these Codes is the major differentiating factor between members of the PRII and non-members.

Professional public affairs practice and lobbying are legitimate and important activities that are essential within any democratic system. These activities ensure an open dialogue between national and local government (including the Oireachtas, the entire public service, as well as other bodies funded wholly or mainly from public funds), the institutions of the European Union (EU) and bodies, large and small, whose activities and interests are governed, regulated, impacted or otherwise influenced by such institutions.

Public relations practitioners from time to time make representations to public representatives of all types, whether elected, co-opted, appointed, public servants, those employed in the public service, or those appointed to public bodies (henceforth to be referred to as public officials).

However, there are relatively few PRII members, or practitioners, in Ireland whose entire or main role could be defined as lobbying.

According to a survey of PRII members in 2015, 71% cited public affairs as part of their work. For most PRII members that engagement is limited and occasional: 82% of the 71% said it took up a quarter or less of their time; 13% said it took up about half of their time; and just 5% of the 71% said it comprised more than half of their time.

The PRII and The Regulation of Lobbying Legislation

The Public Relations Institute of Ireland (PRII) supports the Regulation of Lobbying Act 2015.

Since lobbying regulation in Ireland was first proposed by way of a Private Members Bill in the Seanad in 1999, the PRII has played a constructive role. In 2012, the PRII made a detailed contribution to the Department of Public Expenditure and Reform consultation on the proposed lobbying regulation, and subsequently participated in further engagements with the Department, politicians and other stakeholders to ensure that the perspectives of the public relations and the communications profession were considered in the drafting of the legislation.

Since 2015, the PRII has played a leading role promoting compliance with the Regulation of Lobbying Act among its membership. This has been achieved by holding training workshops, briefing events and providing updates on the Act to members.

Based on the experience it had acquired over the first year, the PRII suggested amendments to the Act during the first review of the legislation in 2016. The Report of the First Review of the Regulation of Lobbying Act made by the Minister for Public Expenditure and Reform was published in 2017. While the Report did not recommend any amendments be made to the Act, the PRII note that the Standards in Public Office Commission identified some areas where legislative provisions might be clarified or strengthened, and this review provides the opportunity to explore these and other issues.

The PRII welcome the opportunity to make constructive submissions to this second review based on our members extensive engagement with the legislation and register.

The PRII Code of Professional Practice for Public Affairs and Lobbying

Further evidence of the engagement and commitment of the PRII and its membership to regulation of lobbying lies in the fact that as far back as 2003, the PRII membership approved a specific Code of Professional Practice for Public Affairs and Lobbying, the only such code in Ireland and one of the few internationally.

Following the introduction of the Regulation of Lobbying Act 2015, the PRII conducted a review of its Code of Professional Practice and an updated version was approved by the membership in 2016.

The PRII made a submission to the Standards in Public Office Commission in relation to its work on a Code of Conduct for persons Carrying out Lobbying Activities. The PRII Code was referenced as one of the Codes used by SIPOC in the preparation of its 2018 Code of Conduct.

This demonstrates the PRII's commitment not just to ensuring that there is compliance with the legal minimum but moving past that and setting high ethical standards for activity in this area.

The PRII Code of Practice for Public Affairs and Lobbying can be seen in *Appendix 1.* It covers conduct towards the public; conduct towards clients/employers; and conduct towards the profession.

The PRII Code directs members to the acceptable and appropriate standards of behaviour in public affairs activity. It reflects the requirement of the Regulation of Lobbying Act and complements the obligations of public officials under the Ethics in Public Office Acts, Local Government Acts, Electoral Acts and standard terms of employment and other rules which also govern the activities of such officials. However, it goes beyond the basic legal minimum requirements and speaks to the high professional standards demanded by, and of, PRII members.

The experience of working with the Regulation of Lobbying Act 2015 and its own Code of Professional Practice for Public Affairs and Lobbying since 2003 ensures the PRII is well placed to take part in this consultation as part of the review of the 2015 Act.

Taking into consideration contributions from Institute members over the past month, the submission of the PRII can be found below, in the recommended format.

Public Consultation on the Second Review of the Regulation of Lobbying Act

Q. What are the positive features of the Act?

The Regulation of Lobbying Act 2015 was a major step forward in improving transparency relating to decision making in this country and its passage and implementation was, and is, welcomed and supported by the PRII.

Citizens are entitled to know who is lobbying who, and about what. Along with the Freedom of Information Act, the Register of Lobbying, introduced by the Act, brought more of this information into the public domain.

The Tribunal of Inquiry into Certain Planning Matters and Payments (the Mahon Tribunal 2012) argued for this legislation and stated that a Register of Lobbying *"would not however, adversely affect the positive role played by lobbyists in the political system. On the contrary, it could well help promote a more positive perception of that role."*

This view, that registration is ultimately in the self-interest of our members as well as society, is one the reasons PRII support this Bill and why we believe that any weaknesses in the legislation should be addressed.

Q. Does the Act fulfil the objectives it set out to achieve?

By and large, the Act fulfils the objectives it set out to achieve and the Register and Returns elements are working well. The lobbying regulator, SIPOC, engaged with this new area of legislation in a positive fashion, communicating with stakeholders including outreach programmes to increase compliance in under-represented sectors and regions outside Dublin, and this approach is to be commended and, the PRII submits, continued. The PRII has in place its own ongoing training and communication programmes promoting compliance with the Act. The results of these efforts since 2015 are demonstrated in the returns published on www.lobbying.ie. Indeed, a survey carried out in 2016 among senior management of Irish public relations consultancies found 100% compliance with the legislation.

According to 2017 Annual Report from SIPOC, during 2017 almost 10,000 returns were submitted to the online Register of Lobbying and at the end of that year there were 1,648 persons registered on the Register of Lobbying.

Q. Have any unintended consequences occurred, in your view?

Exclusion of body corporates in which a Minister has a share-holding

Section 5 (5) of the Regulation of Lobbying Act provides an exemption for communications between body corporates in which a Minister has a share-holding when the matter relates to the "ordinary course of activities" of the body corporate.

The PRII has taken the view in its interpretation of the legislation that the "ordinary course of activities" would relate to standard corporate governance matters, but where an organisation engaged in lobbying activity, as defined by the legislation, that would fall under the requirement to Register.

However, we note, for example, coverage in the Irish Independent (22 May 2016) and The Sunday Times (20 January 2019) and in the Dáil (31 May 2016) which highlighted that a different interpretation appears to be taken by other bodies including state owned banks.

Publish DPO listings

Under the Act, and now in the SIPOC Code of Conduct 2018, there are few if any obligations placed on Designated Public Officials (DPOs). Yet the power in a lobbying relationship rests with the person being lobbied, not the person carrying out the lobbying activity.

Under Section 6 (4) of the Act, there is an obligation on public bodies that employ DPOs to publish on their websites listings showing "(a) the name and (where relevant) grade, and (b) brief details of the role or responsibilities".

This is the only requirement in the Act placed on public officials, and it is crucial to helping organisations comply with the Lobbying Act.

Unfortunately, despite it being a straightforward task, compliance with this provision has been weak. The relevant information is not displayed in a uniform fashion across government or updated at similar intervals. This makes compliance challenging for organisations.

As each Department knows its staff, there is little excuse for slow updates. Furthermore, when a Department's list of DPOs has not been updated for a considerable period it can be difficult to know if that is because there have been no changes, or merely that no one has updated the listing - or because it's there to facilitate someone making a late return.

"Cooling off" period

Section 22 of the Act provides that "relevant Designated Public Officials (DPOs)" (Ministers and Ministers of State, Special Advisers and Senior Public Servants) are subject to a one-year cooling-off period. During this period relevant DPOs cannot engage in lobbying activities in specific circumstances, or be employed by, or provide services to, a person carrying on lobbying activities in specific circumstances, namely the making of communications comprising the carrying on of lobbying activities (as defined in Section 5 of the Act) which:

1. *Involves any public service body with which the relevant DPO was connected, that is, employed or held an office or other position in the year prior to their leaving, or*
2. *is to a person who was also a DPO who was employed or held an office or other position with that public service body in the year prior to the person's leaving.*

A person subject to the one-year cooling-off period may apply to the Standards Commission for consent to undertake such activities or be employed by a person who is undertaking such activities. The Standards Commission may decide to give consent unconditionally or to give consent with conditions attached. The Standards Commission may also decide to refuse the application for all or part of the one-year "cooling off" period.

The SIPOC Annual Report 2017 records that the Commission received five applications for consent under Section 22 of the Act in 2017. In four of the five cases, the Commission granted its consent subject to conditions. In the fifth case the Commission did not grant its consent for a reduction or waiver of the cooling-off period. This information, while useful and indicative of the purpose of Section 22, is published - at a minimum - six months after the relevant year end and as such does not help to allay concerns, real or received, that Section 22 is not being adhered to and/or not being adhered to consistently.

The PRII submit that applications for consent under Section 22 and the outcome should be posted at more regular intervals, such as every four months, on lobbying.ie to avoid confusion and mis-perceptions.

Q. Do you think the Act can be improved in any way? If so, how?

Exempt activity

Many members have expressed a need for greater clarity around 'exempt activities.' For example, in the matter of the provision of factual information, does informing a Minister that her proposed policy/legislation will cause job losses in an affected sector qualify as 'providing factual information', (and therefore exempt from the need to file a return), or is it lobbying?

While we acknowledge that the SIPOC is very helpful when these and other queries are raised, this review provides an opportunity to provide much needed clarification.

The exclusion of MEPs within the scope of the legislation

Public policy and legislation are undefined in the Act. Given that lobbying of Irish MEPs is covered by the Act, that means that any organisation lobbying an Irish MEP is required to register their activities, even if the matter is entirely European of nature and related to the MEP's committee portfolio. While organisations domiciled in other countries are required to comply with this legislation, in practice only those with exposure to Ireland will do so.

This places a regulatory burden on Irish public affairs practitioners that does not exist in other countries. Given that there is already a European Lobbying Register, this is duplication. The PRCA believes that this should be amended and that an Irish MEP being lobbied in the course of fulfilling their duties as a Member of the European Parliament should be excluded from the Act.

That said, it is understood, that Irish organisations will, on occasion, lobby Irish MEPS as *members of political parties* and in this event such activity should not be excluded as there *would not be a duplication* with the European Lobbying register.

Compliance across the EU:

The PRII submit that the legislation needs to be strengthened to clearly apply to all lobbying activity of Irish public officials irrespective of where in the EU it is carried out.

Currently confusion exists regarding the application of the Lobbying Act to activity that takes place overseas. There is ambiguity as to whether lobbying activity that occurs outside of the State or is carried out by organisations based outside of the State, is required to be reported. This ambiguity results in a loophole that is open to exploitation by the unscrupulous.

It is the PRII position that neither the location of the lobbying activity or the location of the firm doing the lobbying should impact on the requirement to make a return. The current confusion creates an incentive for the unscrupulous to either carry out lobbying activity outside of the State, or alternatively, to hire lobbyists based abroad. The purpose of the 2015 Act is to ensure that the public know who is lobbying whom, and about what. That aim is being undermined by this confusion.

Access

Currently to gain access to attend committee hearings and so on one needs to be signed in by a member of the Oireachtas. In other countries, registered lobbyists are provided with access to parliament as a "carrot" for registering. There could, for example, be a formalised process whereby registered lobbyists can apply to the Dail/Seanad/Committee Clerks to attend a hearing. On arrival they are 'signed in' through the normal process and escorted by staff to the chamber/committee staff.

Separately, the legislation places all the emphasis on the person lobbying, but none on the person being lobbied. The person with all the power in lobbying is the person being lobbied; the government minister, the TD or senior civil servant. They have the power and the influence. Yet there is no obligation on them to make sure that they are only dealing with those on the register or even to oblige them to let the person know that they should be registered. This is a major weakness and may encourage unscrupulous operators not to declare their lobbying activities.

Inclusion of all professional services sectors

The Regulation of Lobbying Act 2015 is a major advance on legislation in other countries, as it clearly aims to capture all remunerated lobbying activity irrespective of whether those activities were carried out by lawyers, public relations or public affairs professionals, accountants, CEOs, etc. It is imperative that this advance in transparency is not undermined by any sector or profession not engaging fully with this legislation.

While the public relations and communications sector has demonstrated strong compliance with the Regulation of Lobbying legislation, other professions and sectors have not. The Regulation of Lobbying Act applies to all those engaged in lobbying activity in return for payment and no profession or sector is or should be exempted from reporting lobbying activity.

The Standards Commission and the Minister for Public Expenditure and Reform must satisfy themselves that there is a compliance culture across all professions and sectors.

The Regulation of Lobbying in 2017 Annual Report records that, during 2017, over 900 registrants identified as "other" when selecting their main business activity on their application to register. The Report of the First Review of the Regulation of Lobbying Act made by the Minister for Public Expenditure and Reform in 2016 contained a recommendation that the Commission seek to reduce the numbers categorised under "other".

The Commission has now expanded the options available to registrants for selecting their main business activity and has removed "other" as an option. The PRII commend the Commission for this action and submits that the range of options available remain under review to capture and reflect the wide range of individuals, bodies, professions, organisations that can and do engage in lobbying.

Q. What suggestions for changes if any would you make?

1. To change the current exemption (Section 5 (2) (a)) where there are less than 10 full-time employees to one based not on employee numbers but turnover or assets. Significant and influential organisations can have less than 10 full-time employees.

2. PRII agree with a previous submission by SIPOC to remove the requirement that professional, representative or lobbying organisations must have one full-time employee before being required to register (Section 5 (2) (b) and Section 5 (2) (c)). There are several bodies, including, informal coalitions of interests, that are influential but do not have full-time staff and consideration of some other form of threshold would be useful.

3. There is also a need to examine Section 5 (3) (b) which requires the person to be an office holder and in receipt of remuneration for the activity to be covered by the Act. The issue here is where a person is a non-remunerated Director as would be common in many NGOs and not-for-profits.

4. Section 5 (5) of the Regulation of Lobbying Act provides an exemption for communications between body corporates in which a Minister has a share-holding when the matter relates to the "ordinary course of activities" of the body corporate.

   The PRII has taken the view in its interpretation of the legislation that the "ordinary course of activities" would relate to standard corporate governance matters, but where an organisation engaged in lobbying activity as defined by the legislation, that would fall under the requirement to Register.

   See our note on page 7.

5. Further clarification is needed regarding Section 5 (5)(d) referring to an exemption to requesting or providing factual information in response to a request for same.

6. Section 5 5(e) should be made stronger so that it is clear that all public consultation responses are covered by this and that the nature of publication does not need to be in a written format but could include a recorded presentation. It should also be clarified that if a submission to a public consultation is sent directly to a DPO rather than/in addition to the public body seeking the submission, this may be not be exempt.

7. To narrow the exemption (Section 5 (5)(f)) in relation to Trade Union negotiations so it only refers to where the person lobbied is the employer.

8. To remove the exemption that exists (to the definition of lobbying) (Section 5 (9)) when the matter is of a 'technical nature' or, at a minimum, define what it covers. It is not defined in the Regulation of Lobbying Act, is confusing, and potentially open to abuse.

9. To remove MEPs (Section 6 (c)) from the scope of the legislation. MEPs are already captured by European Transparency Register and by including Irish MEPs within this legislation there is a dual requirement to register and report. This is unnecessary duplication. It may also discourage foreign organisations from engaging with Irish MEPs, if they are going to be required to report activity that they would not need to report if the MEP was from any other member state.

See our note on page 8.

10. To clearly ensure that any lobbying activity, irrespective of *where* it is carried out, is captured by this legislation. The issue of overseas lobbying has been consistently raised by the PRII, and we are concerned that the current provisions do not clearly deal with lobbying activity that takes place outside of jurisdiction.

    The British Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014, Section 2 (4) clearly deals with this issue whereby it includes the following provision:

    > *It does not matter whether the person to whom the communication is made, or the person making it, or both, are outside the United Kingdom when the communication is made.*

    We believe that a similar provision needs to be included within the Regulation of Lobbying Act, otherwise a significant loophole is being allowed for overseas lobbyists to lobby DPOs without any need to report or register.

See our note on page 9.

11. The Regulation of Lobbying Act information in relation to DPOs provided by Departments is updated at different speeds and not in a consistent fashion. Under Section 6 (4) there is an obligation on public bodies that employ DPOs to publish listings on their websites showing "(a) the name and (where relevant) grade, and (b) brief details of the role or responsibilities".

    This is the only requirement in the Act placed on public officials and it is crucial to helping organisations comply with the Lobbying Act.

    In its absence, compliance is made challenging for organisations.

    We suggest the addition of a new Section 6 (5) stating

    > *The Commission shall specify the format and frequency under which a body shall publish the required listings.*

See our note page 7.

12. We would also place a requirement on public bodies to list all DPOs on their website and not just public servants i.e. include Ministers and Special Advisers. While it is obvious who Ministers in a Department are, it is not frequently so with Special Advisers. Therefore, we would suggest that Section 6 (4) be amended so that it reads:

A body shall publish up-to-date lists showing—

(a) the name and (where relevant) grade, and

(b) brief details of the role or responsibilities,

of each person employed by, or holding any office or other position in, the body who is a designated public official by virtue of subsection (1)(a) (e) (f) or (g).

See our note page 7.

13. The legislation should be amended so that it is clear there is no dual reporting requirement with activity carried out by a consultant and a client, and that there is no requirement on the consultant to register activity if separately reported by the client, or vice-versa. The purpose of the Act is to know who is lobbying whom, and about what. The object of this (the who) is the client or organisation. This would appear to require amendment to Section 12 (4).

14. Section 22 refers to restrictions on post-term employment.

Currently Section 22 of the Act provides that "relevant Designated Public Officials (DPOs)" (Ministers and Ministers of State, Special Advisers and Senior Public Servants) are subject to a one-year cooling-off period. During this period relevant DPOs cannot engage in lobbying activities in specific circumstances, or be employed by, or provide services to, a person carrying on lobbying activities in specific circumstances, namely the making of communications comprising the carrying on of lobbying activities (as defined in Section 5 of the Act) which:

Involves any public service body with which the relevant DPO was connected, that is, employed or held an office or other position in the year prior to their leaving, or

Is to a person who was also a DPO who was employed or held an office or other position with that public service body in the year prior to the person's leaving.

A person subject to the one-year cooling-off period may apply to the Standards Commission for consent to undertake such activities or be employed by a person who is undertaking such activities. The Standards Commission may decide to give consent unconditionally or to give consent with conditions attached.

The Standards Commission may also decide to refuse the application for all or part of the one-year "cooling off" period.

The PRII submit that applications for consent under Section 22 and the outcome should be posted at more regular intervals, such as every four months, on lobbying.ie.

See our note page 7.

15. Finally, and most importantly, under Section 25 (2) PRII submit there should be a requirement that the Standards Commission publicise the names of organisations

who breach the legislation. Reputational damage will be far more impactful that any fine of €200. The public relations and communications profession have been to the fore in complying with this legislation and we do not want a situation where non-compliant operators are hidden from public view and scrutiny.

Therefore, we propose that the prohibition on reporting non-compliant organisations in the Annual Report of the Commission be removed. The Revenue Commissioners regularly publish lists of non-compliant tax payers, and therefore it is difficult to see the rationale why the Standards Commission cannot do likewise.

APPENDIX 1: **The PRII Code of Professional Practice for Public Affairs and Lobbying**

Last revised 2016

All members of the Public Relations Institute of Ireland:

A. Conduct towards the public.

1. Shall at all times be familiar with and observe all relevant EU, local, national and international law in force, with particular regard to the Regulation of Lobbying Act 2015; shall have due regard for the public interest and shall not seek to improperly influence the decision-making processes of government, whether local or national, or the E.U. Institutions.

2. Shall take reasonable steps to ensure that all information supplied, and representations made, by them to third parties is factually accurate and honest.

3. Will actively disclose, at the earliest possible opportunity, the identity of clients on whose behalf they are making representations on matters of public policy or decision-making, current or proposed legislation, or in respect of the business of the Oireachtas, Northern Ireland Assembly, local authorities, the European Parliament or any other parliament or legislative assembly.

4. Shall ensure that any financial relationships involved in their professional dealings are legal and ethical. Members shall not act in such a way as to place public officials in a real or potential conflict of interest, or to make any offer, inducement, reward (direct or in-direct) that would result in the public official being in apparent breach of his/her obligations under ethics legislation or statutory codes of conduct.

5. Shall act at all times in a professional, ethical and reasonable manner and shall not bring unreasonable or undue pressure or influence to bear in their activities as public affairs practitioners. All public officials should, at all times, be treated with courtesy and respect.

6. Where he/she is a member of a local authority or is appointed by the government to any state or semi-state body, or is engaged by such organisations on a consultancy basis, shall not offer public affairs consultancy services to third parties in respect of the business or related activities of that authority, body or organisation as well as to related, linked or subsidiary organisations.

7. Shall not offer public affairs consultancy services and simultaneously be a member of the Oireachtas, Northern Ireland Assembly, UK Parliament, European Parliament, or other parliaments or legislative assemblies.

8. Shall not offer public affairs consultancy services for financial reward or other inducements and simultaneously be employed in the Public Service or engaged as a full-time adviser to government.

9. Shall, while attending any parliamentary or other representative assembly, national or local government building, observe the rules and procedures of that institution.

B. Conduct towards clients / employers

10. Recognise their duty of professional care to their clients and/or employers.

11. Shall make their clients/employers aware of their obligations under the Regulation of Lobbying Act 2015 if relevant.

12. Shall take all necessary steps to ensure that they are properly informed of their clients' or employers' relevant concerns and interests and shall at all times properly and honestly represent these interests.

13. Shall properly inform clients about any potential conflicts of interest, or of any competing interests arising from their professional practice or other business, family or social associations. If it should emerge that an actual conflict of interest exists and it cannot be resolved, the member must cease to act for that client. A member may represent such competing interests only:

    a. where he/she has obtained the explicit and informed consent of all the parties involved, and;
    b. where the member is enabled to act for each of the parties with an equal professionalism and duty of care.

14. Shall, in all cases where any conflict of interest or potential conflict arises between their professional duties and their personal activities, give precedence to their professional responsibilities and where necessary either cease the relevant personal activity or withdraw from their professional duty.

15. Have a positive duty in all their professional dealings to maintain full and proper client confidentiality.

16. Where he/she forms the opinion that the objectives or activities of his or her client/employer may be unethical, illegal or contrary to good professional practice, including this code of conduct, are required to so advise the client/employer. In circumstances where this advice is not acted upon in the appropriate manner, the member shall forthwith cease to act on behalf of the client/employer in such matters.

17. Shall not make improper claims regarding their access to, or influence over any institution of the European Union, national or local government, public official or member of the media.

18. Shall not knowingly guarantee the achievement of results nor undertake assignments which are beyond the member's capabilities.

C. Conduct towards the profession

19. Reaffirm their commitment to the European Code of Professional Practice (Code of Lisbon) and the International Code of Ethics (Code of Athens) and their successors.

20. Shall not bring professional public affairs and public relations practice into disrepute.

Breaches of the PRII Code

Breaches of this Code of Conduct shall be treated as breaches of the Disciplinary Code of the Public Relations Institute of Ireland and shall be subject to such procedures and sanctions as provided for in the Disciplinary Code.