

**Submission to the Department of Public Expenditure & Reform
on the Second Review of the Regulation of Lobbying Act**

from

The Public Relations Consultants Association (PRCA)



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Contact: PRCA CEO, Dr Martina Byrne



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Background to this Submission

The Public Relations Consultants Association Ireland (PRCA)

The PRCA is the representative body promoting the interests of Public Relations and Public Affairs Consultancy firms in Ireland. Founded in 1989, today there are thirty member firms in the PRCA:

1. Alice PR & Events
2. AM O'Sullivan PR Ltd.
3. Carr Communications
4. Cullen Communications
5. Drury|Porter Novelli
6. Edelman
7. Elevate
8. FleishmanHillard
9. FTI Consulting Ireland Limited
10. Gibney Communications
11. Hanover Communications
12. Heneghan PR
13. Hume Brophy
14. Insight Consultants
15. Instinctif Partners (Ireland)
16. Keating & Associates
17. Limelight Communications
18. Mary Crotty Public Relations
19. MKC Communications
20. Murray
21. O'Leary PR & Marketing
22. Paul Allen & Associates PR
23. Powerscourt Group
24. PSG Communications
25. RPS Project Communications
26. The Reputations Agency
27. Thinkhouse
28. Walsh:PR
29. Weber Shandwick
30. Wilson Hartnell

The concentration of members is in Dublin.

With an estimated combined income of over €50 million, the total number employed by the PRCA member firms is more than 500 people.

The PRCA member firms provide Public Relations and Public Affairs services to their clients in a broad range of sectors including industry, academia, government, public sector, voluntary / charity sector and professional services. Services include strategic communications planning, public information campaigns, internal communications, media relations, event management, stakeholder engagement programmes and lobbying.

Some members of the PRCA, from time to time, as part of their Public Affairs service to clients 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.

PRCA Standards, Ethics and Codes

Members of the PRCA must attain the internationally recognised CMS Consultancy Management Standard. In Ireland, this standard is exclusive to PRCA members and demonstrates that the firm has been independently audited against internationally recognised standards and operates to these high standards.

The PRCA is a member of the International Communications Consultancies Organisation (ICCO). All associations affiliated to ICCO and their member agencies have agreed to conform to the Stockholm Charter. This document was adopted in 2003 and replaced the Rome Charter, originally adopted by ICCO in 1986. The Stockholm Charter lays out a code of professional standards that aims to define the profession. All members of the PRCA subscribe to the International Communications Consultancies Organisation (ICCO) Stockholm Charter, a copy of which is attached in *Appendix One*.

In 2017, the ICCO board also voted to approve a statement of ethics, called the Helsinki Declaration. Mindful of the considerable and increasing influence and importance of public relations, ICCO launched the Helsinki Declaration, a set of principles aimed at uniting the global PR industry under a single banner of ethical behaviour. This Declaration is attached in *Appendix Two*.

Lobbying Regulation

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 *An 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 whose activities and interests are governed, regulated, impacted or otherwise influenced by such institutions.

For over twenty years, since lobbying regulation was first proposed in Ireland, the PRCA has sought to play a constructive and positive role in relation to the development of that legislation.

In particular the PRCA has sought to highlight the nature of lobbying in Ireland, in that lobbying activity is carried out by a wide variety of organisations and functions, such as charities, residents' associations, NGOs and not-for-profits. It is not only carried out by individuals and organisations that describe themselves as public affairs consultants or lobbyists but also, for example, by CEOs, lawyers, management consultancies, accountants and others.

Since the Regulation of Lobbying Act 2015 was signed into law, the PRCA has put significant resources into promoting compliance and understanding of the Act among its members. The PRCA has issued guidelines on compliance to its members and holds regular information meetings. In addition, through the PRCA's membership of the Advisory Group on the Implementation of Regulation of Lobbying Act, the PRCA acted as conduit between the Standards Commission and the profession on concerns and challenges as they arose.

The results of these efforts are demonstrated in the returns published on www.lobbying.ie.

Indeed, a survey carried out in 2016 among PRCA member companies found 100% compliance with the legislation.

The PRCA supports the fundamental goal of the Regulation of Lobbying Act to let the public know who is lobbying whom and about what. The wide definition of lobbying activity within the Act goes a significant way to achieving that aim. However, despite the generally very positive operation of the Act in the first four years, challenges remain. It is in the spirit of addressing those challenges and improving the Act, that this submission on the second review of the Regulation of Lobbying Act is made.

The experience of the PRCA of engagement with the lobbying regulator, the Standards Commission, over the past three years has been a positive one. The Commission has proven open and willing to engage with stakeholders and has produced a high standard of guidance and information. The website, www.lobbying.ie, is well designed and user-friendly. The Advisory Group established to support the Standards in Public Office Commission (SIPOC) work as regulator, on which the PRCA was represented, was a useful forum to ensure that the perspectives of shareholders on the Act's implementation were shared.

These first years of the Act's implementation have been successful. 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. The lobbying regulator, SIPOC, engaged in 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. The PRCA submit that this outreach should be resourced and broadened to reach as many sectors, professions and geographical regions as possible.

Based on the experience it acquired over the first year, 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 to the Act, the PRCA note that the SIPOC identified some areas where legislative provisions might be clarified or strengthened; this second review provides further opportunity to explore those issues.

Taking the above into consideration, and having invited contributions from its Association members, the submission of the PRCA can be found below, in the requested template 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 PRCA.

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 members of the PRCA and their employees, as well as society, is one of the reasons the PRCA support this Bill and why it believes 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 PRCA submits, continued.

The PRCA 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 PRCA takes 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.

The PRCA note, however, 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 no one 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 perceived, that Section 22 is not being adhered to and/or not being adhered to consistently.

The PRCA 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 PRCA submits 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 PRCA 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 SIPOC 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 SIPOC has now expanded the options available to registrants for selecting their main business activity and has removed “other” as an option. The PRCA 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. 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. 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 shareholding when the matter relates to the “ordinary course of activities” of the body corporate.

The PRCA takes 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 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 not be exempt.
7. To narrow the exemption (Section 5 (5)(f)) in relation to Trade Union negotiations so that 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 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 PRCA, 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 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.

The PRCA suggests 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 note page 7.

12. The PRCA submit a requirement should be placed 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, the PRCA 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 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 PRCA submits 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 note page 7.

15. Finally, and most importantly, under Section 25 (2) 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 than 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 SIPOC cannot do likewise.

APPENDIX One: The ICCO Stockholm Charter

Public Relations consultancies are professional service firms who help clients influence opinions, attitudes and behaviour. Along with this influence comes responsibility to clients, staff, our profession and society at large.

Objective Counsel and Advocacy

Public relations consultancies may not have interests that might compromise their role as an independent consultant. They should approach their clients with objectivity, in order to help the client adopt the optimum communications strategy and behaviour.

Society

An open society, freedom of speech and a free press create the context for the profession of public relations. Consultants operate within the scope of this open society, comply with its rules, and work with clients that share the same approach.

Confidentiality

Trust is at the heart of the relationship between a client and a public relations consultancy. Information that has been provided in confidence by a client and that is not publicly known should not be shared with other parties without the consent of the client.

Integrity of Information

Public relations consultancies should not knowingly mislead an audience about factual information, or about the interests a client represents. Consultancies must make their best efforts to strive for accuracy.

Delivering Promises

Consultancies must work with clients to establish clear expectations in advance about the output of their efforts. They must define specific goals for communications actions and then work to deliver on their promises. Consultancies must not offer guarantees which are not supportable, or which compromise the integrity of the channels of communication.

Conflicts

Consultancies may represent clients with conflicting interests. Work may not commence for a new and conflicting interest without the current client first being offered the opportunity to exercise the rights under any contract between the client and consultancy.

Representation

Consultancies may refuse or accept an assignment based on the personal opinions of the firm's management or the organisation's focus.

Governance and Business Practices

Public relations consultancies are committed to ethical behaviour and implementation of best business practices in dealing with all audiences.

APPENDIX Two: The Helsinki Declaration

- To work ethically and in accordance with applicable laws;
- To observe the highest professional standards in the practice of public relations and communications;
- To respect the truth, dealing honestly and transparently with employees, colleagues, clients, the media, government and the public;
- To protect the privacy rights of clients, organisations, and individuals by safeguarding confidential information;
- To be mindful of their duty to uphold the reputation of the industry;
- To be forthcoming about sponsors of causes and interests and never engage in misleading practices such as “astroturfing”;
- To be aware of the power of social media, and use it responsibly;
- To never engage in the creation of or knowingly circulate fake news;
- To adhere to their Association’s Code of Conduct, be mindful of the Codes of Conduct of other countries, and show professional respect at all times;
- To take care that their professional duties are conducted without causing offence on the grounds of gender, ethnicity, origin, religion, disability or any other form of discrimination