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Relate

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Regulation of lobbying

Lobbying usually involves making views known to politicians and public servants about laws, policies and practices and possibly seeking to have those laws, policies and practices changed. Lobbying takes many different forms. You may be making your views known as a private citizen on issues which directly affect you, for example, you may be arguing that you should be entitled to a medical card; you may be making submissions or representations on issues that affect many people, for example, you may be part of a group seeking to change the law or policy in relation to housing; or you may be representing a commercial organisation seeking, for example, to have the tax laws changed. You may be lobbying in person or you may get someone else to lobby on your behalf; you may conduct the lobbying in writing or orally.

Material for this issue of Relate was taken from the Standards in Public Office Commission website, lobbying.ie.

The Regulation of Lobbying Act 2015 comes into effect on 1 September 2015. It provides that certain people who are carrying on lobbying activities must register with the Standards in Public Office Commission and must provide information about their lobbying activities. The Register of Lobbying which is being established and will be maintained by the Standards in Public Office Commission will be publicly accessible. It will have information about:

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

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In general, the people who must register are professional lobbyists; individuals and commercial organisations with more than 10 full-time employees; representative bodies with at least one full-time employee; and advocacy groups, non-governmental organisations and charities which have at least one full-time employee and which promote particular interests or causes. Other individuals may be obliged to register if they are engaged in lobbying in relation to the development or zoning of land.

Here we describe the main aspects of the legislation with an emphasis on how voluntary organisations and individuals may be affected. The Standards in Public Office Commission has published general *Guidelines for people carrying on lobbying activities* and separate *Guidelines on lobbying in relation to the development and zoning of land*. These guidelines give examples of the sort of activities that are covered by the legislation. The examples provided here come from those guidelines.

Detailed information about the legislation is available at **lobbying.ie**. This is the website on which the Register of Lobbying will be available.

Who is affected by the legislation?

You are affected by the legislation if you meet all of the following conditions:

- You are carrying on lobbying activities
- The person being lobbied is a designated public official
- You are making a relevant communication
- That communication is about a relevant matter
- That communication is not an excepted communication

The Act clearly applies to professional lobbyists. They are people who are paid to make, manage or direct the making of a relevant communication on behalf of clients. Individuals who are not professional lobbyists may also be carrying on lobbying activities and be required to register.

Employers of 10 or more people

You may be carrying on lobbying activities and be required to register if you employ more than ten people and you lobby on behalf of yourself or your business or organisation. This applies regardless of the legal structure you operate – you could be a sole trader, a company or a partnership.

If you employ a professional lobbyist, then it is the lobbyist who must register and must provide full details about you, the client. The information on the register about you will be similar whether you are a registered lobbyist or you are the client of a professional lobbyist.

Representative and advocacy organisations

Representative bodies are bodies that exist primarily to represent the interests of its members, for example trade unions, professional bodies, industry associations or sporting bodies. Advocacy bodies are bodies that exist primarily to take up particular issues, for example, organisations promoting human rights issues or campaigning for homeless people.

Representative and advocacy organisations may be carrying on lobbying activities and obliged to register if they have more than one full-time employee and the relevant communications are made on behalf of any of the members. Organisations which are composed entirely of volunteers are not obliged to register. For example, residents' associations may be lobbying but would only have to register if they have at least one full-time employee.

Representative and advocacy organisations which employ professional lobbyists to carry out their lobbying do not have to register but the professional lobbyist does and does have to provide all the relevant information about the organisations (if the organisation has more than one full-time employee).

In the case of representative bodies and advocacy bodies, the relevant communication must be made by an employee of the body or by a person who holds a paid office (for example, the chairman) in the body whose functions relate to the affairs of the body as a whole and where the communication is made in their capacity as such. This means that, in general, communications made by unpaid volunteers are not considered to be lobbying which requires to be registered. Office holders such as chairmen and secretaries may be unpaid volunteers. If they are, communications made by them do not generally constitute carrying on lobbying activities for the purposes of the Act. However, a relevant communication may be direct or indirect so, if the communication is made by an unpaid volunteer on the direction of an employee or paid office holder, it is lobbying for the purposes of the Act.

Development or zoning of land

There are specific rules for the registration of people who lobby about the development or zoning of land. This is the aspect of the new legislation which is likely to affect many individuals who would not normally see themselves as being involved in lobbying. The rules are quite complex and are described in more detail below.

Designated public officials

You may be affected by the legislation if the person you are lobbying is a designated public official. Designated public officials are:

- Ministers of the Government and Ministers of State
- Other members of Dáil Éireann and Seanad Éireann
- Members of the European Parliament for the three constituencies in Ireland
- Members of local authorities
- Special advisers
- Secretaries-General and Assistant Secretaries-General of Government departments, Chief Executive Officers and Directors of Services in local authorities
- Other public servants will be prescribed by the Minister for Public Expenditure and Reform over time

Public bodies are obliged to publish the names of their employees who are designated public officials and a brief description of their roles and responsibilities for the purposes of the lobbying legislation. It is expected that this information will be made available on the websites of the public bodies from 1 September 2015.

Relevant communication

You may be affected by the legislation if you are making a relevant communication. A relevant communication is a communication that:

- May be written or oral
- Is made personally (directly or indirectly)
- Is made to a designated public official
- Relates to a relevant matter
- Is not an excepted communication

A relevant matter is any matter relating to:

- The initiation, development or modification of any public policy or of any public programme, for example, proposals for changes in taxation, proposals for changes in agricultural policy, proposals for changing entitlement to health services
- The preparation or amendment of any law (including secondary legislation such as statutory instruments and by-laws), for example, proposals to change the law on adoption, proposals to change by-laws relating to traffic
- The award of any grant, loan or other financial support, contract or other agreement, or of any licence or other authorisation involving public funds, for example, the criteria for the award of housing grants for people with disabilities, the purchase or sale of a property or other assets by the government

However, the implementation of any such policy, programme, enactment or award is not a relevant matter. Any matter of a technical nature is also not a relevant matter.

Distinguishing between the initiation, development or modification of policies and programmes and their implementation is likely to be quite difficult. The Standards in Public Office Commission give the following example of the distinction: communications relating to the development of criteria for schemes of housing grants, development of criteria for selecting builders to build schools or development of criteria for the awarding of a licence to provide transport on a specific route would be regarded as lobbying activity. The implementation of those grant schemes (the assessment of whether or not an individual would qualify) or licence competitions, or the implementation of tender processes through e-tenders would be regarded as implementation matters.

Excepted communications

Certain kinds of communications are specifically regarded as not constituting lobbying for the purposes of the Act. From the point of view of individuals, the most important exemptions are the "private affairs" and the "factual information" exemptions.

Private affairs

A communication by you or on your behalf relating to your private affairs is not lobbying for the purpose of the Act unless it relates to the development or zoning of any land (see page 4). So, if you write or talk to your TD or local councillor about, for example, your eligibility for, or entitlement to, a social welfare payment, a local authority house or a medical card, you may be lobbying in the ordinary sense of the word but you are not carrying on lobbying that requires to be registered under the Act.

Factual information

Communications requesting factual information or providing factual information in response to a request for the information are not considered to be lobbying for the purposes of the Act. So, if you ask a designated public servant about how to qualify for a grant or how to go about getting planning permission, you are not lobbying.

Other exemptions

The following are also exempted communications:

- **Diplomatic relations:** communications by or on behalf of a foreign country or territory, the European Union, the United Nations or any other international intergovernmental organisation
- **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

- **Safety and 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. For example, communications by county councillors to local authority managers or other public servants do not constitute lobbying.
- **Governance of commercial State bodies:** communications by or on behalf of a commercial State body made to the relevant Minister or public servants in the ordinary course of the business
- **Policy working groups:** communications between members of a relevant 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

Zoning and development of land

As already stated, the legislation has specific rules about the requirement to register if you are carrying on lobbying in relation to the zoning and development of land.

Zoning

Local authorities regularly draw up development plans and local area plans for their areas. Among other things, these plans outline the use to which land may be put, for example, land may be designated for residential use; for industrial, commercial, agricultural or recreational use; as open space; or a mixture of those uses. This is generally described as *zoning*. From time to time, the local authority may consider changing the designation of particular lands (*rezoning*).

When drawing up development plans or local area plans, local authorities engage in a formal public consultation process. This means that you may make a submission to the local authority setting out your views on the proposed plan. Making your views known to a local authority as part of a formal public consultation process is not lobbying which requires to be registered.

Communicating, however, with a designated public official outside the formal public consultation process about a development plan or local area plan or a proposal to zone or rezone particular lands may be lobbying, for example contacting your local TD or county councillor about a development plan or a proposal to zone or rezone particular lands outside the formal public consultation process.

Development

“Development” is defined in the Planning and Development Acts as the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

Development may require planning permission. In general, applications for planning permission are made to the local authority. These applications are publicly available. An application for planning permission is not lobbying. Seeking declarations or referrals under the Planning and Development Acts on development and exempted development is not lobbying.

You are also entitled to make any submissions about any application for planning permission. (For example you may object to a particular planning permission.) Such submissions are also available for the public to examine. You are not lobbying if you lodge a submission with your local authority to an application for planning permission.

A communication, however, with a designated public official about a planning application which is outside of the formal planning process may be regarded as lobbying.

Enforcement of planning decisions

The local authorities are responsible for the implementation of the planning laws. You may complain to the local authority if you consider that development is taking place or has taken place which is contrary to the planning laws or the conditions attached to a particular planning permission. Such complaints are not lobbying as they involve the implementation of the planning laws.

Major infrastructural projects

Planning applications in respect of certain major infrastructure projects are made directly to An Bord Pleanála. Appeals against planning decisions made by local authorities are also made to An Bord Pleanála. Communications to An Bord Pleanála do not constitute lobbying activities as its members and officials are not currently designated public officials.

Communicating with designated public officials, however, about planning applications or planning appeals for such projects may constitute lobbying.

Your principal private residence

You are not lobbying if you communicate with a designated public official about obtaining planning permission to build or extend your principal private residence. This is specifically exempted from the legislation.

Your principal private residence is a dwelling or part of a dwelling occupied by you as your only or main residence and includes gardens or grounds of not more than one acre (0.4 ha) which are used for your own occupation and enjoyment.

Examples of lobbying in relation to zoning and development

The Standards in Public Office Commission *Guidelines on lobbying in relation to development and zoning of land* list the following communications to designated public officials as constituting lobbying or being likely to be lobbying:

- A communication about a development plan or local area plan or the zoning or rezoning of land which is outside of a formal consultation process is lobbying
- A communication about a planning application for a residential development on land that is already zoned residential may be lobbying if the planning application involves a modification of policy, for example, if the application involves a housing density greater than that outlined in the development plan or local area plan
- A communication about a planning application which is outside of the formal planning process may be regarded as lobbying
- A communication about planning applications or planning appeals for major infrastructural projects may constitute lobbying
- A communication in relation to a planning application for a wind farm on land that is zoned agricultural or amenity (either promoting or opposing same) is lobbying as it involves a modification of a policy
- A communication in relation to a planning application for building pylons (either promoting or opposing same) is likely to be lobbying

The following examples of communications in relation to zoning and development are not likely to be regarded as lobbying:

- A communication about your principal private residence is not lobbying
- An application for planning permission is not lobbying
- Seeking declarations or referrals under the Planning and Development Acts on development and exempted development is not lobbying
- Lodging a submission to an application for a planning permission with a local authority is not lobbying
- A communication to a local authority or a designated public official about enforcement of a planning condition is not lobbying as it involves implementation
- A communication to a designated public official about a planning application for a residential development on land that is already zoned residential is not lobbying if the planning application involves the implementation of a policy and it complies with all the requirements of that policy and does not seek a modification of that policy
- Making a submission to the local authority setting out your views on a proposed development plan or local area plan as part of a public consultation process is not lobbying
- Requesting information about the planning, development or zoning process is not lobbying

Register of Lobbying

The Standards in Public Office Commission is responsible for establishing and maintaining the Register of Lobbying at lobbying.ie. This register will be publicly accessible and free of charge.

The Register of Lobbying will contain:

- The registration details provided by each registered person to the Standards in Public Office Commission and
- The information contained in the returns made by each registered person

Requirement to register

When the Act is fully in operation, it will be an offence to carry on lobbying activities unless you are registered on the Register of Lobbying. You must register within 21 days of the end of the relevant period in which you first start lobbying activities. The relevant period is the four months ending on the last day of April, August and December each year. If you start lobbying between:

- 1 January and 30 April, you must register by 21 May
- 1 May and 31 August, you must register by 21 September
- 1 September and 31 December, you must register by 21 January

The Act comes into effect on 1 September 2015. This means that anyone who carries on lobbying activities in the period 1 September 2015 to 31 December 2015 must register by 21 January 2016 and provide information about their lobbying activities in the period 1 September 2015–31 December 2015. The website for registration **lobbying.ie** is open for registration at present but there is no obligation to register until 21 January 2016.

Information which must be provided when registering

In order to be registered, you must supply the Standards in Public Office Commission with the following information:

- Your name
- The address (or principal address) at which you carry on business or (if there is no such address) the address at which you normally live
- Your business or main activities
- Any email address, telephone number or website address relating to your business or main activities
- Any registration number issued to you by the Companies Registration Office, and if a company, your registered office

You do not have to be a company. The legislation applies to individuals, sole traders, partnerships, representative bodies, advocacy bodies and companies. The legal structure is not relevant. You must state that the information contained in your registration details is correct. When you provide this information and the statement, you become a registered person and the information you have provided will be immediately available on the Register.

Requirement to make returns

As a registered person, you are required to make returns to the Standards in Public Office Commission within 21 days of the end of each relevant period. If you have not carried out any lobbying activities in the relevant period, your return must state that.

The requirement to make returns does not apply to you if your entry on the Register notes that you have permanently ceased carrying out lobbying activities.

Information in your returns

If you have carried on lobbying activities in the relevant period, your return must state:

- The designated public officials who were lobbied and the relevant public service body

- The subject matter of the lobbying and the results it was intended to secure
- The type and extent of the lobbying activities carried on
- The name of the individual in your organisation who had primary responsibility for carrying on the lobbying activities
- Similar information about your client where you were lobbying on behalf of another person or other people
- The name of each person who is or ever has been a designated public official and who is employed by, or providing services to you and who was engaged in carrying on the lobbying activities for which the return is being made
- Any change which occurred in the relevant period in respect of the information supplied by you for the purposes of registration
- That the information contained in the return is correct

Requirement for further or corrected information

The Standards in Public Office Commission may ask for further information in relation to the application and the returns made if it considers that:

- Further information is required to ensure that the application or return complies with the legislation or
- The information provided in the application or returns is inaccurate or misleading

You will be given 21 days in which to provide the necessary further or corrected information.

If you fail to do so, the Standards in Public Office Commission will remove from the Register the information provided in your registration or your return. You will be told the reason for the removal and you will be treated as never having registered or made a return.

If the Commission considers that any information contained in your registration details or in a return is inaccurate or misleading, it may immediately remove that information from the Register. You will be regarded as not having registered or not having made a return unless and until corrected information is provided.

Content which may be excluded from the Register

Personal data

Personal data may be excluded from the information which is publicly available. This will happen if the Standards in Public Office Commission considers it necessary to exclude it in order:

- To prevent it being misused or
- To protect the safety of any person or
- To protect the security of the State

Personal data is defined in the data protection legislation as data relating to a living individual who is or can be identified either from the data or from the data in conjunction with other information. Website: dataprotection.ie

Inaccurate, out of date or misleading information

If you consider that there is information about you on the Register which is inaccurate, out of date or misleading, you may provide evidence of this to the Standards in Public Office Commission (you could be a person carrying on lobbying activities, a person being lobbied or a client of a professional lobbyist).

If the Standards in Public Office Commission considers that the information is inaccurate, out of date or misleading, it may amend or delete the information as appropriate. If it does not consider the information to be inaccurate, misleading or out of date, it must notify you of this and give you reasons for its decision.

If you are unhappy with the Standards in Public Office Commission decision in relation to amending or deleting the information, you may appeal.

Delayed publication

You may apply to the Standards in Public Office Commission to delay the publication of certain information contained in your registration details or your returns. You may do this if you give information at registration or in a return and you consider that making it publicly available could reasonably be expected to:

- Have a serious adverse effect on the financial interests of the State, the national economy, or business interests generally or the business interests of any particular set of people or
- Cause a material financial loss to the person to whom the information relates or prejudice seriously the competitive position of that person in the conduct of the person's occupation, profession or business or the outcome of any contractual or other negotiations being conducted by that person

If the Standards in Public Office Commission considers that making the information publicly available could reasonably be expected to have the consequences you suggest, it may make a determination:

- To exclude some or all of this information from immediate publication
- To make some or all of it available only in summary form

It may make such a determination if it considers that the public interest would be better served by delaying making the information publicly available.

Such a determination may apply for a specified period of not more than six months or until it is revoked, whichever happens first.

While a determination is in force, the Freedom of Information Act 2014 does not apply to a record relating to any information which is the subject of a determination.

If your application for delayed publication is rejected in whole or in part, the Standards in Public Office Commission will give you reasons.

The Commission may review its determination at any time and may decide to revoke it if it appears that the public interest would be better served by making the information publicly available immediately than by delaying it.

If information is published in summary form, this will be stated on the Register.

When delayed publication has occurred or where information was published only in summary form and publication or full publication occurs, the Commission will publish on the Register an explanation for why the publication was delayed or the information summarised.

Any person who is unhappy with any decision made by the Commission in relation to delayed publication may appeal.

The Commission will not make information which was delayed or summarised publicly available until 14 days after its decision to do so. This is to allow for the making of an appeal. If you appeal, publication will not occur until the appeal process is complete or the appeal is withdrawn.

Restrictions on post-term employment as a lobbyist

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 in Public Office Commission – in effect, they are subject to a cooling-off period.

The Citizens Information Board provides independent information, advice and advocacy on public and social services through citizensinformation.ie, the Citizens Information Phone Service and the network of Citizens Information Services. It is responsible for the Money Advice and Budgeting Service and provides advocacy services for people with disabilities.

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The designated public officials concerned are Ministers and Ministers of State, special advisers and prescribed public servants. 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.

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 their leaving, or
- Is to a person who was a designated public official connected with that public service body in the year prior to their leaving

The public officials concerned may apply to the Commission for consent to engage in such lobbying. The Commission may decide to give consent unconditionally or give consent with conditions attached or refuse the application for all or part of the period. A public official who is unhappy with the decision may appeal.

Enforcement

The Act provides for penalties, including on the spot fines, for failure to abide by its requirements. However, it is not proposed to bring these into effect until after the first review of the Act. That review will take place when the Act has been in operation for a year, that is, in September 2016.

Appeals

If you are aggrieved by certain decisions of the Standards in Public Office Commission, you may appeal against the particular decision within 14 days stating the reasons for your appeal. The decisions in question are:

- A decision in relation to whether information about you contained in the Register of Lobbying is inaccurate, out of date or misleading
- A decision in relation to delayed publication
- A decision in relation to restrictions on post-term employment as a lobbyist

The Minister for Public Expenditure and Reform is appointing independent Appeal Officers to consider such appeals. The Appeal Officers may not be civil servants.

The Appeal Officer will give a decision on the appeal within 14 days. They may:

- Confirm the decision made by the Commission or
- Revoke the decision and replace it with a decision which they consider appropriate

You may appeal the Appeal Officer decision to the High Court on a point of law within 21 days. The High Court decision is final and there is no further appeal.

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