

Regulation of Lobbying Act 2015

The Regulation of Lobbying Act 2015 is relevant for everyone doing business in Ireland. The Act, with the exception of Part 4 (which deals with sanctions and enforcement), came into force on 1 September 2015.

The aim of the Act is to increase transparency in relation to lobbying so that the public knows who is lobbying political decision-makers and about what they are lobbying. The Act involves a public register on which businesses and others who engage in lobbying have to register key details of their lobbying activities.

The Act imposes a number of significant obligations on, among others, businesses and lobbyists. These obligations include a duty to register on a publicly-available online register maintained by the Standards in Public Office Commission (SIPO) and to make returns every four months in relation to their lobbying activities.

This guide sets out some of the key features of the Act.

What constitutes lobbying under the Act?

A person will be deemed to carry on lobbying activities under the Act in three circumstances, namely where they:

- Make, manage or direct the making of relevant communications (e.g., a business lobbying a politician);
- Make, manage or direct the making of relevant communications on behalf of another person in return for payment (in money or money's worth) (e.g., a lobbyist); or
- Make relevant communications in relation to the development or zoning of land.

To be obliged to register, the person making, managing or directing the making of the relevant communications (scenario 1 above) or the person on behalf of whom the communication is made (scenario 2 above) must be any one of the following:

- A person with more than 10 employees (and the relevant communications are made on that person's behalf);
- A representative body (e.g., a trade association) with at least one full-time employee (and the relevant communications are made on behalf of any of the members); or
- An advocacy body with at least one full-time employee (and the relevant communications are made in furtherance of any of the issues which that body exists to take up).

If a relevant communication is made, managed or directed by a representative or an advocacy body then the communication must be made by an employee of that body or a paid office holder whose functions relate to the affairs of the body as a whole in their capacity as such before it is subject to the Act.

What is a "relevant communication"?

In order to constitute a "relevant communication" under the Act, a communication (which can be oral or written) must be made personally (directly or indirectly) to a designated public official (DPO) and must relate to a relevant matter.

A "relevant matter" comprises any matter relating to:

- the initiation, development or modification of any public policy or programme;
- the preparation or amendment of an enactment; or

- the award of any grant, loan or other financial support, contract or other agreement, or of any licence or other authorisation involving public funds. (e.g., a discussion with a DPO about a contract subject to public procurement).

Matters relating to the implementation only of any such policy, programme, enactment or award or of a technical nature are expressly excluded from the definition of a "relevant matter."

Who are DPOs under the Act?

Ministers of Government and of State, TDs and Senators, MEPs for constituencies in the State, members of local authorities and special advisors appointed under section 11 of the Public Service Management Act 1997 are currently DPOs under the Act. In addition, the Minister for Public Expenditure and Reform has introduced regulations prescribing Secretaries General, Assistant Secretaries and Directors (and equivalent grades) in certain public service bodies as DPOs. The regulations also apply to Chief Executive Officers and Directors of Services (and equivalent grades) in local authorities. It is notable that the Minister retains the ability to prescribe other public servants, office holders or descriptions of persons as DPOs by way of Ministerial regulations and it is possible therefore that the remit of the Act will be extended over time.

Is there any exempted communication under the Act?

The Act contains a list of "excepted communications", all of which are excluded from the definition of a "relevant communication." At present, the following are among the most significant communications which are deemed to be excepted (for a complete list, please see section 5(5) of the Act):

- communications by or on behalf of an individual relating to his or her private affairs about any matter other than the development or zoning of any land apart from the individual's principal private residence;
- communications by or on behalf of a country or territory other than the State;
- communications by or on behalf of the European Union, the United Nations or any other international organisation;
- communications requesting factual information or providing factual information in response to a request for the information;
- communications requested by a public service body and published by it;
- communications by a DPO in his or her capacity as such;
- communications which— (i) are made by a person who is employed by, or holds any office or other position in, a public service body in his or her capacity as such, or (ii) are made by a person engaged for the purposes of a public service body in his or her capacity as such, and which relate to the functions of the public service body (the same applies in relation to communications by a person who is employed by or holds any office in a body which is not a public service body, but is a body by which a DPO is employed or in which a DPO holds any office or other position).

What obligations are imposed on lobbyists under the Act?

Those carrying on lobbying activities are prohibited from lobbying unless they register their details on a publicly-available online register maintained by SIPO. A person will not be deemed to have contravened this prohibition in the first period in which they carry on lobbying activities

if they register within 21 days of the end of the relevant period in which the lobbying takes places. The “relevant periods” which apply under the Act are 1 September – 31 December, 1 January – 30 April and 1 May – 31 August.

In addition, online returns must be made within 21 days after the end of each relevant period (including where no lobbying was carried on by a registered person during the relevant period). These must contain specified details which include the identity of the individual with primary responsibility for carrying on the lobbying, the identity of the DPO, the subject matter of the communications and the results they were intended to secure and the type and extent of the lobbying activities carried on.

May an application be made for delayed publication?

Yes, an application for delayed publication may be made where a person who gives information to SIPO pursuant to their obligation to register as a lobbyist, or to make a return, considers that making any such information available for inspection could reasonably be expected to have a serious adverse effect on certain interests. These include the financial interests of the State, the national economy, business interests generally or the business interests of any description of persons. Alternatively, an application may be made where publication could reasonably be expected to cause a material financial loss to the person to whom the information relates or seriously prejudice the competitive position of that person in the conduct of their occupation, profession or business or the outcome of any contractual or other negotiations being conducted by that person. The decision whether to permit delayed publication rests with SIPO.

SIPO must consult with any relevant Minister(s) of Government in the case of applications which claim serious adverse effects on the financial interests of the State, the national economy or business interests and must reach a decision within 21 days of the date of receipt of an application. If successful, a determination may permit exclusions from what is made available for inspection or allow material to be made available for inspection in summary form for a period of up to 6 months or until the determination is revoked (if this happens sooner).

Is there a period of “garden leave” for former DPOs under the Act?

Yes, the Act provides that in certain circumstances, “relevant” DPOs may not carry on lobbying activities or be employed by or provide services to a person carrying on lobbying activities for a period of one year from the day on which they cease to be a relevant DPO without the consent of SIPO. “Relevant” DPOs in this context encompass Ministers of Government and of State, special advisors appointed under s.11 of the Public Service Management Act 1997 and the public servants which have been prescribed by way of Ministerial regulations.

What sanctions apply in the event of non-compliance with the Act?

Part 4 of the Act (for which a commencement date has not yet been set) makes it an offence to carry on lobbying activities without being a registered person, to fail to make a return in the manner and form required by SIPO by the relevant date, to provide information to SIPO which is known to be inaccurate or misleading, to obstruct an investigation by SIPO or to fail to comply with certain requests made by an authorised officer of SIPO during an investigation. Where a person makes a return after the relevant date, they will be liable on summary conviction to a so-called “Class C” fine (now, typically, €2,500). Alternatively, a fixed payment notice may be served on that person. In all other cases, a person who commits an offence under the Act is liable on summary conviction to a Class C fine or on conviction on indictment to a fine or imprisonment for up to 2 years or both. It is a defence for a person charged with an offence to show that they took all reasonable steps to avoid the commission of that offence.

What are the practical implications for businesses?

Businesses need to be very careful to ensure that they comply with the Act. In particular, they need to ensure that all employees are aware of the Act and its implications because lobbying can take any form including employees’ private discussions with politicians. Businesses need to consider whether they need to register and, if so, whether they are engaged in lobbying activity and how to describe such activity fairly and accurately. Accidental omissions to register could be quite common, particularly in the early years of the Act’s operation. SIPO has published a great deal of very helpful information and guidance on the Act which executives should take time to read to help ensure that their businesses have the appropriate regime in place to ensure compliance.

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