

Regulation of Lobbying in Ireland - Recent Developments

1. Background

The current Government has committed to introduce a statutory register of lobbyists and rules governing the conduct of lobbying. The Final Report of the Mahon Tribunal (the final Report of the Tribunal of Inquiry into certain planning matters and payments) also recommended the introduction of lobbying regulation and a code of practice governing the conduct of lobbying.

The fundamental objective of this initiative – which is an important part of a broader process of political reform - is to provide appropriate transparency on "who is lobbying whom about what". This will allow the wider population to reach informed evidence-based judgments regarding the extent to which different interest groups are able to access and seek to influence decision-making. The proposals also put in place a system for regulating lobbying where former public officials might seek to lobby the public body or the people they previously worked with for a one-year period after they have left public employment (i.e. 'cooling-off' period).

2. Consultation Process

In December 2011 the Department of Public Expenditure and Reform invited submissions from interested parties on key issues relating to options for an effective regulatory system for lobbying in Ireland. The consultation process was based on agreed OECD Principles for Transparency and Integrity in Lobbying. The response was very positive and approximately sixty organisations and individuals submitted views to the Department with meetings taking place subsequently with those who had made submissions.

In addition to the consideration of the OECD principles, a review of international approaches to the regulation of lobbying was advised and informed by the work of three international experts on lobbying regulation¹. The approach in place in the European Union institutions were also analysed as well as the Council of Europe Recommendations on lobbying.²

In July 2012 the Department published a policy paper entitled 'Regulation of Lobbying Policy Proposals' (<http://per.gov.ie/policy-paper/>). This paper sets out the policy rationale for the regulation of lobbying as well as an overview of the proposed policy framework and recommended options for further consideration on key features of the proposed policy regime. The paper was the subject of a seminar with large numbers of stakeholder interests and experts. The proposals have been carefully framed to take account of the issues raised throughout this consultation process.

Full details of the consultation process can be found at <http://per.gov.ie/regulation-of-lobbyists/>

¹ Professor Gary Murphy (DCU), Professor Raj Chari (TCD) and Dr John Hogan (DIT)

² Lobbying in a Democratic Society (European Code of Conduct on Lobbying), 5 June 2009

3. Key features of the Bill

- The establishment of a statutory web-based register of lobbying activity.
- The appointment of a Registrar to oversee the implementation of the register, to monitor compliance, to provide guidance and direction and, where necessary, to investigate and pursue breaches of legal requirements in due course.
- The focus of the Registrar in the initial period of the operation of the Act will be on education, guidance and information. The Registrar's powers of sanction will not come into force until a review of the implementation of the Act has been carried out one year after the commencement of the proposed legislation.
- Registration requirements will be balanced and proportional and are not expected to impose a significant administrative burden on registrants. For this reason, the focus is on the subject matter and purpose of the lobbying.
- It is intended that on commencement, the Bill will apply to the Head of Department levels and their senior management team in the Civil Service and to equivalent grades in Local Authorities. The Minister for Public Expenditure and Reform may by regulation extend the Act to other areas of the public service and to other grade levels, on a phased basis, in line with experience of implementation.
- The matters on which lobbying takes place are defined to include in overall terms, decisions at both administrative and ministerial level, on legislation, policy, rules and regulations for any scheme or public programme. Excluded from the scope of this definition are technical implementation matters within existing rules and regulations or a decision that is a matter of existing specific statutory entitlement.
- The Bill proposes review of the legislation 12 months after commencement.
- The introduction of registration requirements will not impede the normal interaction between citizens and their local political representatives. These communications are excluded under the Bill, with the exception of matters relating to planning and zoning. Micro enterprises are also similarly excluded where the communication relates to that micro-enterprise.
- Drawing on international precedent and significant issues raised in the course of extensive consultation a number of important exemptions from registration requirements are included in the Bill.

The exemptions relate, for example, to:-

- (i) contacts entirely conducted between public officials or arising in an international or diplomatic context;

- (ii) where a contact was initiated by the public official and relates to the provision of factual information, assessments or analysis required for policy development; or
 - (iii) the activities of public service directed groups with private sector representatives with terms of reference relating to some broader public policy objective, where transparency criteria apply.
- A review of the legislation one year after its commencement will provide an opportunity to ensure that exemptions do not act as a conduit for what might be characterised as unregulated or ‘secretive’ lobbying lacking in transparency.
 - There is a process in the draft Bill allowing for the protection of sensitive information. Publication of information could be delayed which could have a serious adverse affect on the financial interests of the State or on the ability of the Government to manage the economy. This would only apply where immediate disclosure would not be in the public interest.
 - Application may be made to the Registrar for a delay in publication of information where the publication which could result in disclosure of commercially sensitive information. Regard must be given to the public interest.
 - The approach to the “cooling off” period requires certain designated public officials or office holders to apply to the Registrar for approval to lobby their former colleagues. The Registrar could permit, for example, the take up of employment but impose restrictions in relation to engagement in certain activities rather than a blanket ban.

4. Recent Developments

Government approval has now been secured for the drafting of the Lobbying Regulation Bill by the Office of the Parliamentary Counsel. The Bill has also been submitted for pre-legislative scrutiny by the Finance, Public Expenditure and Reform Committee (FPER). Drafting of the Bill has now commenced and the views of FPER will feed into this drafting process. It is anticipated that the Bill will be published this summer and enacted by year end. Following publications it is intended to establish an Advisory Group composed of relevant experts and key stakeholders who will be in a position to provide information and guidance that will assist in addressing key implementation challenges.

It is expected that the Bill will be published and enacted in the Autumn.