

(Draft) Transparency Code

Prepared in Accordance with Section 5(7) of the Regulation of Lobbying Act 2015

Introduction

The Regulation of Lobbying Act 2015 will commence on 1 September 2015.

Lobbying is an essential part of the democratic process. Organisations such as interest groups, representative bodies, industry, NGOs, charities and third party professional lobbyists all provide necessary input and feedback through communication of the views and concerns of the public to government.

This interaction is a welcome and necessary element of policy development. Public bodies should continue to facilitate and encourage such communications to the greatest extent possible.

However, in light of the different nature of engagement between public officials and non-public officials in certain forums such as task forces and working groups, the Act does not seek to capture and register interactions within these groups as lobbying communications where appropriate transparency arrangements are in place. This Transparency Code outlines the groups to which these arrangements apply and the transparency arrangements themselves.

Objectives of the Regulation of Lobbying Act

The Act is designed to provide information to the public about:

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

The Act does not aim to prevent or inhibit lobbying activity. Its objective is to make the process more transparent. The Act aims to do this by providing for

- The establishment and maintenance of a publicly accessible register of lobbying;
- Obligations on lobbyists to register and to provide information regularly about their lobbying activities, including, in the case of professional lobbyists, information about their clients;
- The introduction of a "cooling off" period during which lobbying activity may not be carried out by some former officials;
- The Standards in Public Offices Commission (The Standards Commission) to be the regulator of lobbying.

Exemption for Certain Types of Working Groups, Committees, etc.

A critical element of public policy formulation is the availability to Ministers and Public Bodies of expertise, skills and knowledge from persons outside of the public service. Often this process is formalised by the establishment of a task force, working group, etc. to focus on a particular policy issue or set of related issues.

The work of these groups is intended to contribute to quality and effectiveness of the policy formulation process in the public interest. Given the importance and value of the work carried out by such groups in terms of the promotion of economic and social priorities, it is essential that the incentive for all key stakeholders to participate in and engage with such work is fully supported.

The legal definition included in the Regulation of Lobbying Act categorises lobbying activity on the basis of communication between certain persons and Designated Public Officials. In light of the nature and frequency of communications between public officials and non-public servants in that type of forum, it would in practical terms be quite challenging to seek to capture and include those interactions in the proposed Register.

The Act provides for an exception from the requirement to register in such cases once specified transparency criteria apply. The particular exception in the Act is for communications between members of certain types of such working groups, task forces, committees, etc. where the group in question complies with this Transparency Code.

Details of this exception is set out in section 5 of the Act:

Relevant Extracts from Section 5 of the Act:

The Act states that the following are excepted communications (section 5(5)(n)):

communications between members of a relevant body appointed by a Minister of the Government, 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 of the Government or public service body on it.

Section 5(6) defines *relevant body* as follows:

(6) In subsection (5)(n) "relevant body" means a body—

- (a) the members of which are appointed by a Minister of the Government or by a public service body and include one or more persons who are designated public officials and one or more persons who are neither public servants nor engaged for the purposes of a public service body, and*
- (b) which conducts its activities in accordance with the Transparency Code.*

Section 5(7) provides for the development of the Transparency Code:

(7) The Minister shall prepare and publish a code, to be known as "the Transparency Code", setting out how, having regard to the public interest in their doing so with an appropriate level of transparency, bodies meeting the condition in subsection (6)(a) are to conduct their activities if they are to constitute a relevant body for the purposes of subsection (5)(n)

What types of groups are affected?

This provision therefore applies to a “relevant body” which meets the following four conditions:

1. The group is set up by a Minister or public service body¹, and
2. its membership consists of at least one designated public official (DPO)² and at least one person from outside of the public service, and
3. the group is reviewing, assessing or analysing any issue of public policy with a view to reporting to the Minister of the Government or the public service body on it, and
4. the group conducts its activities in accordance with the criteria set out in the Transparency Code.

The provisions of this Code apply only where the issue of public policy being considered by the group is within the definition of “relevant matter” for the purposes of the Regulation of Lobbying Act 2015.

A “relevant matter” is one which relates to:

- *The initiation, development or modification of any public policy or of any public programme*
- *The preparation or amendment of any law (including secondary legislation such as statutory instruments and bye-laws)*
- *The award of any grant, loan or other financial support, contract or other agreement, or of any licence or other authorisation involving public funds.*

other than the implementation of any such policy, programme, enactment or award or any matter of a technical nature only.

¹ A public service body is defined in the Regulation of Lobbying Act 2015, section 7.

² A designated public official is defined in the Regulation of Lobbying Act 2015, section 6.

Transparency Code – Public Interest Considerations

In preparing this code the Minister for Public Expenditure & Reform has, in accordance with section 5(7) of the Act, had regard to the public interest in considering how such groups are to conduct their activities if they are to constitute a relevant body for the purposes of subsection (5)(n).

The Minister has taken the following public interest factors into account:

- The public interest in the Government and the public service having access to as wide a range of stakeholder views as possible in formulating public policy;
- The public interest in the effective workings of relevant bodies established to review, assess or analyse issues of public policy;
- The public interest in ensuring a wide range of stakeholders participate in such relevant bodies;
- The right of the public to have access to information about the workings of such relevant bodies;
- The accountability of administrators and scrutiny of decision making processes;
- The public interest in the public being better informed to comment on and contribute to public affairs and public debate on public policy issues;
- The need to ensure democratic control and accountability to the greatest extent possible over the workings of government and public bodies;

Transparency Code – Criteria which must apply to avail of the exception under section 5(5)(n) of the Act

Relevant groups must meet the following transparency criteria in order to be regarded as a "relevant body" (as defined in the Act) and to avail of the exemption set out in section 5 (5) (n) of the Act:

Transparency criteria:

Information must be published on the Public Body's web-site setting out the following information:

1. Name of Chairperson together with details of his or her employing organisation;
2. Names of Members together with details of their employing organisation;
3. Whether any non-public servant members were previously designated public officials;
4. Terms of reference of the group;
5. Agenda of each meeting;
6. Minutes of each meeting;
7. Expected timeframe for the group to conclude its work;
8. Reporting arrangements.

This information should be in a prominent place on the website of public bodies and should be easily accessible.

In addition the Chairperson of the Group is responsible for overseeing and conducting the work of the Group in a manner which ensures that the Group operates in a manner fully in accordance with its terms of reference and in the public interest.

The Chairperson will include with the final or annual report of the Group a statement confirming its compliance with the Transparency Code.

Timeliness of Publication:

Ideally the information should be published in as timely a fashion as possible, having regard to the public interest in safeguarding the integrity of the deliberative process.

At a minimum, the information on the public bodies' website must be updated at least every 4 months in relation to each such group.

This timeframe is in line with the transparency requirements under the Regulation of Lobbying Act for persons who are engaging in lobbying communications. A return must be submitted every four months in respect of such activity.

Planning for the Future

The Minister for Public Expenditure and Reform has already indicated his intention that on commencement of the Act on 1 Sept 2015 the public servants who will be prescribed as designated public officials under the Act will be officials at Secretary General, Assistant Secretary and Director level in the civil service and officials at Chief Executive Officer and Director of Services level in local authorities. He has further indicated his intention to extend the Act on a phased basis and to prescribe further grades within the civil service and other areas of the public service as designated public officials in the light of experience with implementation. This will begin with an extension of the Act to Principal Officer level grades in the civil service within the first 12 months of the operation of the Act. Given this extension to Principal Officers in the relatively near future it is advisable that public bodies consider the benefits of applying this code to other / all groups operated by that body.

Principles of Open Government

In addition, public bodies should have regard to the principles of the Open Government Partnership Initiative. As part of the Open Government Partnership National Action Plan 2014-2016, Ireland has committed to '*greater citizen consultation and involvement to strengthen democracy and improve public services.*' <http://per.gov.ie/wp-content/uploads/OGP-National-Action-Plan.pdf>

Review of this Code

The Minister for Public Expenditure & Reform will keep the operation of this Transparency Code under review and may update it from time to time to ensure that it is operating effectively and in accordance with the objectives of the Act.

Brendan Howlin TD,
Minister for Public Expenditure & Reform
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