



Regulation of Lobbying in

2017

Annual Report



Coimisiún um Chaighdeán in Oifigí Poiblí
Standards in Public Office Commission

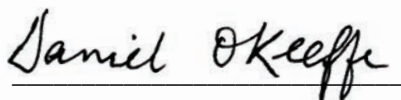
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Foreword

The Standards in Public Office Commission (the Commission) was established in 2001, and serves as the Registrar of Lobbying. This report deals with the Commission's activities during 2017 as Registrar of Lobbying and in overseeing the Regulation of Lobbying Act 2015.

In accordance with the provisions of section 25(1) of the Regulation of Lobbying Act 2015, I am pleased to submit the Standards in Public Office Commission's Annual Report on the Regulation of Lobbying in 2017 to be laid before each House of the Oireachtas.



Justice Daniel O'Keeffe
Chairperson
Standards in Public Office Commission
June 2018

The Standards in Public Office Commission

The Standards in Public Office Commission (the Commission) is an independent body established in December 2001 by the Standards in Public Office Act 2001. It has supervisory responsibility under separate sets of legislation dealing with ethics in public office, electoral regulation and political funding and financial reporting.

The Commission's remit was extended in 2015 with the enactment of the Regulation of Lobbying Act 2015. The Commission's supervisory role under the Regulation of Lobbying Act is set out in Appendix 1 of the report.

There are six members of the Commission, which is chaired by a former judge of the High Court. The members of the Commission are:

- Justice Daniel O'Keeffe, Chairperson;
- Seamus McCarthy, Comptroller and Auditor General;
- Peter Tyndall, Ombudsman;
- Peter Finnegan, Clerk of Dáil Éireann;
- Martin Groves, Clerk of Seanad Éireann; and
- Jim O'Keeffe, Former member of Dáil Éireann.

The Secretariat to the Standards in Public Office Commission is provided by the Office of the Ombudsman.

Introduction by the Chairperson

Under the Regulation of Lobbying Act (the Act), the Standards in Public Office Commission (the Commission) is responsible for maintaining the online Register of Lobbying (the Register), for providing guidance about the operation of the Act, for carrying out decision-making functions provided for in the Act, for overseeing compliance with the provisions of the Act, and, with effect from 1 January 2017, is responsible for investigating relevant contraventions of the Act and administering the appropriate sanctions.



Justice Daniel O'Keefe
Chairperson

Returns to the Register in 2017

During 2017 almost 10,000 returns were submitted to the online Register of Lobbying in respect of the three reporting periods in 2017. On 31 December 2017 there were 1,648 persons registered on the Register of Lobbying. These numbers reflect the fact that compliance with the Act is becoming the norm.

Commencement of enforcement provisions

The Act's enforcement provisions came into effect on 1 January 2017 and gave the Commission the necessary legal powers to ensure the Act's effective implementation. They also empower the Commission to initiate prosecutions. This is the first time the Commission has had such a role.

Preparations for implementation took place during 2016. The Commission established a separate Complaints and Investigations Unit to manage all investigations and prosecutions arising under the Act, and developed procedures for dealing with non-returns and late returns. These processes and procedures were incorporated into the online registration system. An online system for issuing, paying and administering Fixed Payment Notices was also put into effect.

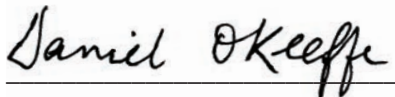
First review of the operation of the Act

The Minister for Public Expenditure and Reform launched the first review of the operation of the Act on 31 August 2016. The Commission provided a submission to the Minister which was based on the experience it had acquired over the first year of administering the Act.

The Minister's report on the results of the legislative review was published on the Department's website on 2 May 2017. The report did not recommend that any amendments be made to the Act. The report recommended a number of administrative and operational actions to be taken by the Commission to address some of the concerns raised in the review.

Subsequent reviews of the Act are required every three years. The Commission has identified some further areas where the legislative provisions might be clarified or strengthened and will look ahead to the next review, scheduled for 2019, as a further opportunity to explore issues relating to the Act's administration.

Finally, I would like to thank my fellow members of the Commission for their contributions during 2017. I also want to thank Sherry Perreault, Head of Ethics and Lobbying Regulation, and the Lobbying Regulation Unit for their hard work over this past year.



Justice Daniel O'Keeffe
Chairperson

Statement by the Head of Ethics and Lobbying Regulation

Since the passage of the Regulation of Lobbying Act 2015, its administration has been marked with a series of milestones: the launch of the Register, the first returns deadline, the first annual report, the first legislative review, and - this past year - the commencement of the Act's enforcement provisions. With each marker passed, there is an opportunity to reflect on progress to date, while still keeping an eye on what remains to be done.

In addition to operationalising the new legislation, a significant priority in 2016 was to prepare for enforcement. The necessary technical modifications were made to the Register to allow for clear and consistent management of new Fixed Payment Notices. New policies and administrative procedures were put in place to ensure consistency in the approach to enforcement, and additional staff were recruited and trained. All of these measures have helped to ensure the efficient and effective implementation of the Act's enforcement provisions.

The emphasis, however, remains on encouraging compliance in the first instance. Following on from priorities identified in last year's annual report, new registrations are regularly reviewed to ensure that those registering are genuinely required to do so. All returns are reviewed and feedback provided where needed to ensure the information contained in them is accurate, comprehensive and meaningful. And further tailored outreach has been conducted to increase compliance in underrepresented sectors and regions outside Dublin. Information on our website is continually updated, and communications with stakeholders are viewed as an ongoing responsibility.

Improving the quality of the information on the Register has been a key priority this year. With experience, registrants have honed their skills, and combined with tailored feedback, the quality of returns has improved from one deadline to the next.

Over the past few years, the Commission has often been asked to share its experience with other regulators, institutions and academics interested in the regulation of lobbying.



Sherry Perreault
Head of Ethics and Lobbying
Regulation

Given the enormous benefit of such exchanges, and the growing number of European countries regulating in the field, a network of European lobbying regulators will be launched. A practitioners' workshop will be held in Dublin in the spring of 2018 to provide a first opportunity to share experiences and best practices.

The last key milestone not yet crossed is the development and implementation of a Lobbying code of conduct, provided for in section 16 of the Act. While the Act provides that those who lobby must register and submit returns, a code will seek to ensure that the lobbying activity itself is done in the most ethical and transparent way possible. When conducting their lobbying activities, those who lobby will be expected to have regard to the Lobbying code of conduct. In order to ensure that the code is meaningful and resonates with those subject to it, the Commission intends to launch a consultative process early in 2018, with a view to having a code in place by the end of 2018. Other operational priorities in the year ahead include a review of the Register system to ensure it is as user-friendly as possible, and a revision of all existing guidelines.

I would like to take this opportunity to thank the team of the Lobbying Regulation Unit and the broader Standards Commission Secretariat for their efforts over the past year, and in particular for their excellent work in implementing the Act's enforcement provisions. Their work is appreciated by Commission members and myself.



Sherry Perreault
Head of Ethics and Lobbying Regulation



CHAPTER 1

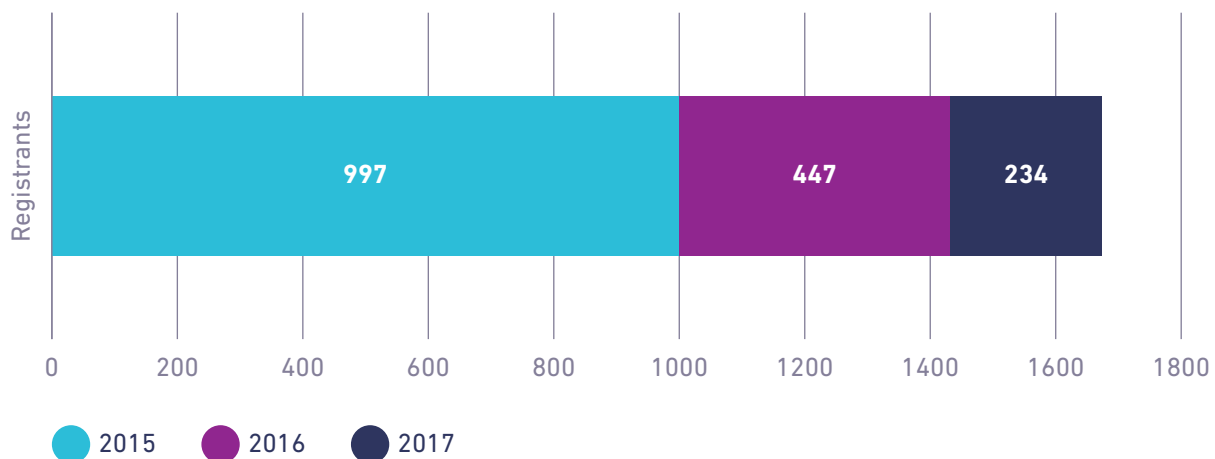
Registration
and Returns



Chapter 1 - Registration and Returns

The Commission is reporting on returns received in respect of three reporting periods during 2017. These periods are 1 January - 30 April, 1 May - 31 August and 1 September - 31 December. The respective reporting deadlines for these three periods were 21 May 2017, 21 September 2017 and 21 January 2018.

Figure 1 – Registrants on the Register



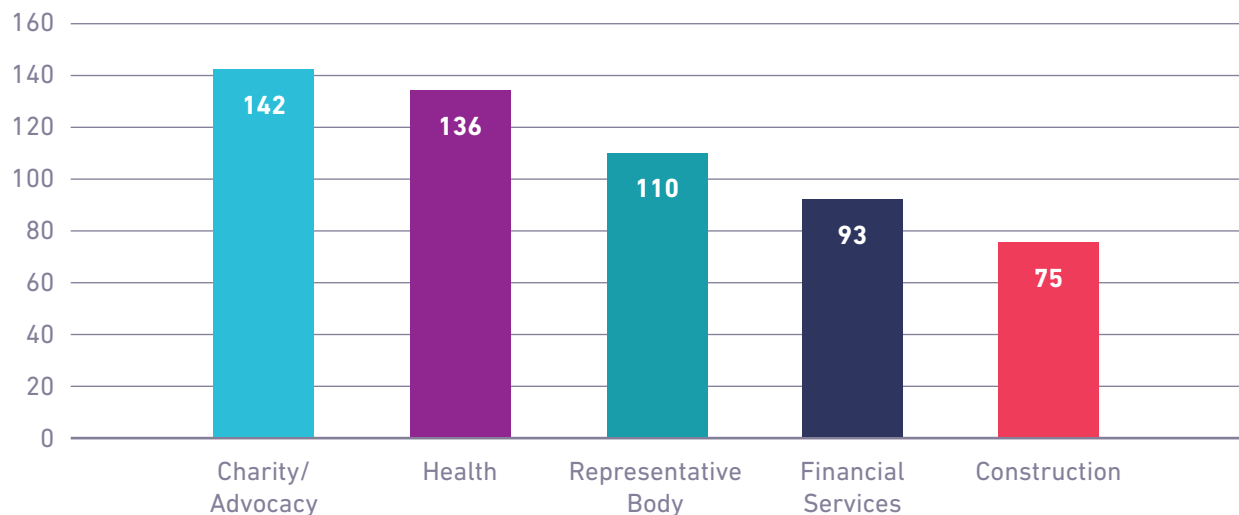
Applications to register

During 2017, there were 244 new applications to register. All applications are now reviewed to ensure that the person is required to register and to ensure that they have registered correctly. Each new applicant is sent a letter which highlights the reporting period deadlines, best practices for account administration and details of enforcement provisions.

During 2017, it was noted that over 900 registrants had 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 contained a recommendation that the Commission seek to reduce the numbers categorised under “other”. The Commission has now expanded the options available to registrants for selecting their main business activity and has removed “other” as an option.

The Commission sent an email to all registrants who had previously selected “other” as their main business activity requesting that they update their registration. Over half of these organisations have done so. The Commission will continue to engage with those who have yet to amend their application to register. The top five main business activity descriptors are displayed below.

Figure 2 - Top 5 main business activity descriptors on applications to register



Returns of lobbying activities

Almost 10,000 returns of lobbying activities were submitted in respect of the three reporting periods in 2017. The graphs below set out the number of returns which were received in respect of each relevant period; the “relevant matters” on which the lobbying activities were carried out; and the most popular policy areas on which lobbying activities were carried out.

The number of returns received also includes “nil” returns. Some registrants submitted more than one return, reflecting the fact that they lobbied on more than one subject. Equally some registrants may not have submitted a return for a relevant period.

Figure 3 - Breakdown of returns per reporting period (2017 vs 2016)

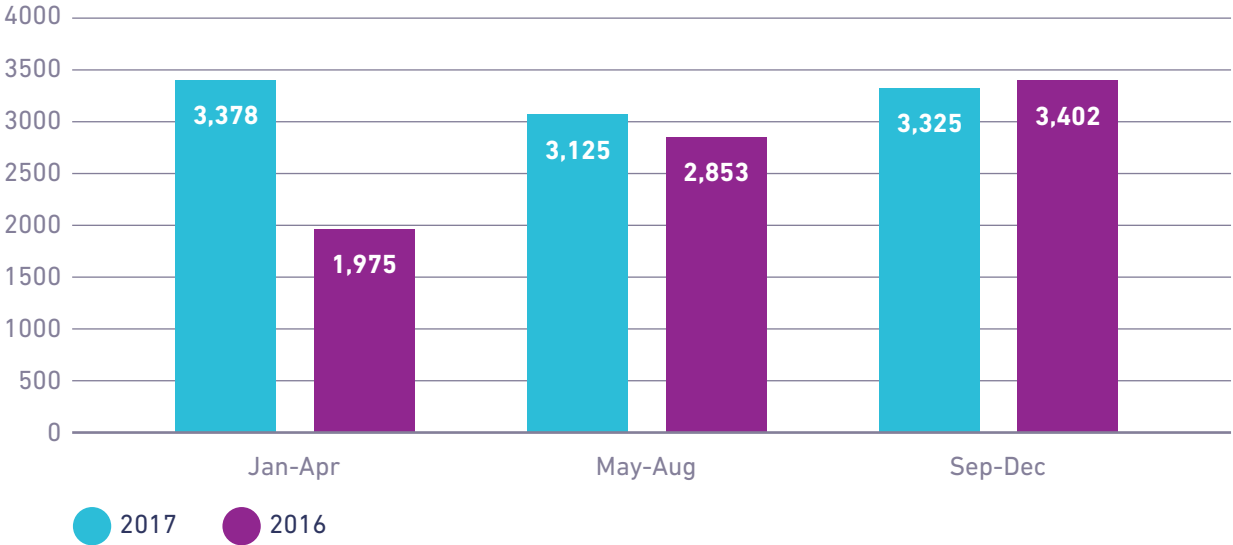


Figure 4 - "Relevant Matters" on which lobbying activities were carried out

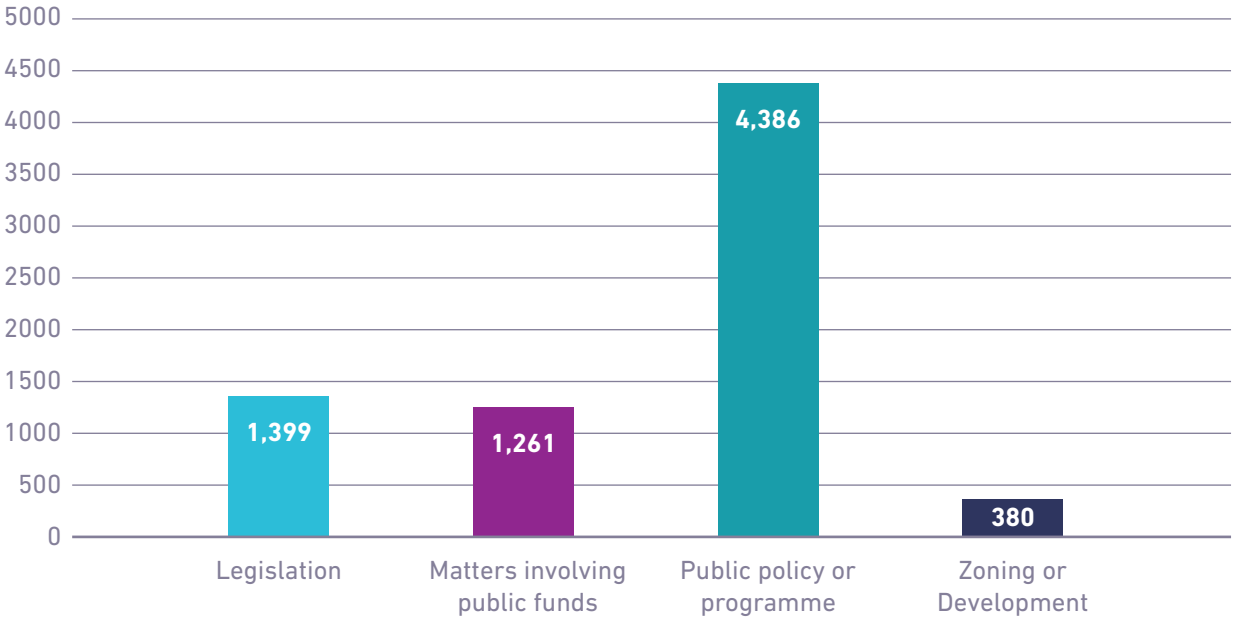
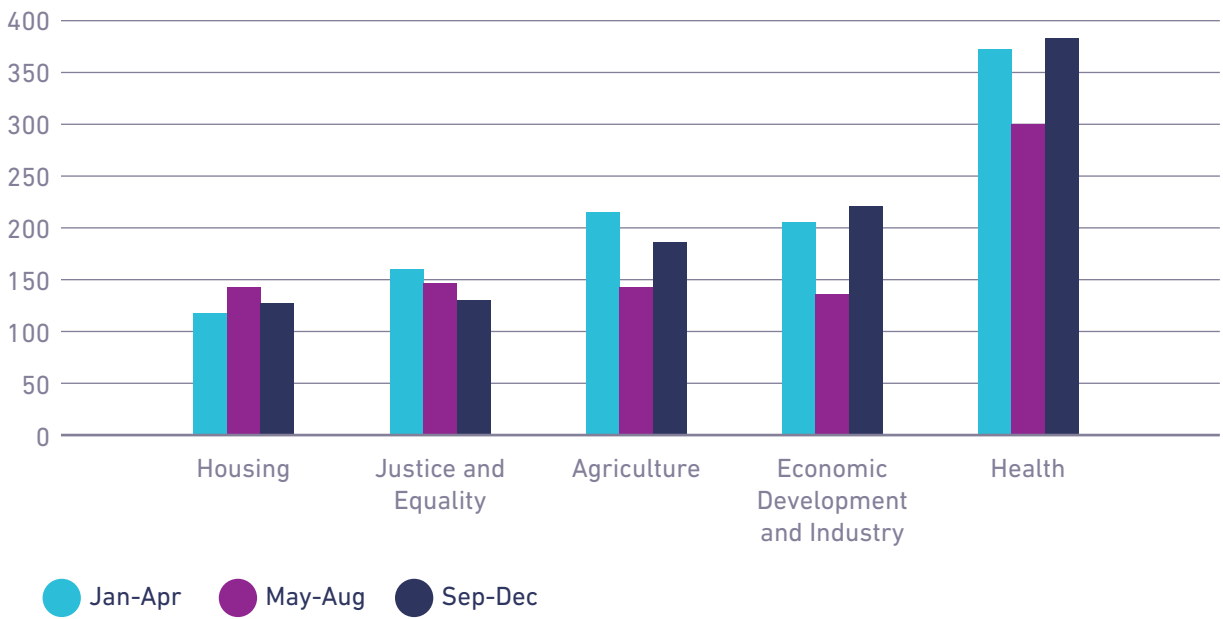


Figure 5 - Top 5 policy areas (per relevant period in 2017) on which lobbying activities were reported



The quality of information submitted to the register is kept under review. Where the Commission considers that information contained in an application to register or a return of lobbying activities is inaccurate, misleading or is not sufficiently detailed, the Commission will request (under section 13 of the Act) that the person amend their application or return, as the case may be. The Commission has published on its website a list of common pitfalls to avoid when submitting a return.

The performance of the online register is kept under review both from a user’s perspective and from the Commission’s perspective as administrator to ensure that it is operating as effectively as possible. There are plans in place to carry out further development work during 2018 to continue to improve the usability and functionality of the Register.

Lobbying activities in relation to zoning and development

A significant number of persons who failed to submit a return of lobbying activities were persons who had permanently ceased their lobbying activities but had not modified their registration. A registrant has an ongoing requirement to submit returns of lobbying activities (including “nil” returns if no lobbying activities have been carried out) as long as their registration remains active.

A significant number of these persons were individuals who had registered in relation to lobbying activities concerning the zoning or development of land (provided for under section 5(1)(c) of the Act). The provisions of section 5(2) of the Act (the requirement to have 10 full-time employees or one full-time employee in the case of representative or advocacy bodies) does not apply to lobbying activities concerning the zoning or development of land. This means that individuals or bodies that would not normally come within the scope of the Act are captured by its provisions if they are carrying out a relevant communication concerning the zoning or development of land.

Unlike sections 5(1)(a) and 5(1)(b) of the Act, section 5(1)(c) does not include the term “manages or directs the making of” relevant communications. Section 5(1)(c) of the Act could be interpreted to mean that if a residents’ association is campaigning against the zoning or development of land and organises the residents of an area to communicate with their local representatives on the matter, each person who contacts their local representative in accordance with the residents’ association’s request has an individual requirement to register and submit a return of lobbying activities. Furthermore, each such person would have an ongoing requirement to submit returns of lobbying activities (including “nil” returns) unless the person had modified their registration to indicate that he/she had permanently ceased lobbying.

The Commission is of the view that it was not intended that the Register would contain multiples of such registrations and returns. The Commission has adopted a practical approach to the provisions of section 5(1)(c). Where a residents’ association or similar body is organising a grassroots campaign regarding a particular zoning decision or development matter, the association/body may file a single application to register and return of lobbying activities in respect of the lobbying activities carried out on behalf of the association/body. The application/return must, however, provide details of the persons (Committee etc.) responsible for managing the campaign.

The Commission is of the view that the next review of the Act should consider whether there is a need to limit the scope of the provisions of section 5(1)(c) of the Act.



CHAPTER 2

Commencement
of Enforcement
Provisions

Chapter 2 - Commencement of Enforcement Provisions

The Minister announced in July 2016 that Part 4 of the Act would commence on 1 January 2017. The provisions contained in Part 4 give the Commission the authority to investigate and prosecute relevant contraventions of the Act and to issue Fixed Payment Notices of penalties (FPNs) for late filing of lobbying returns.

Section 20(1) of the Act provides that it is an offence to submit a late return of lobbying activity. Section 21(1) of the Act provides that a person who is late submitting a return of their lobbying activities may be served with an FPN of €200. The online register is designed to ensure that an FPN issues automatically to any person submitting a late return of lobbying activities.

Section 20(2) of the Act provides for more serious sanctions for other offences including:

- carrying on lobbying activities without being registered on the Register;
- failing to submit a return of lobbying activities;
- submitting a late return of lobbying activities;
- providing information to the Commission which is known to be inaccurate or misleading;
- obstructing an investigation by the Commission under section 19 of the Act; and
- failing to comply with a requirement under section 19(4) of the Act, namely a request by an “authorised officer” to assist him/her in the carrying out of an investigation under section 19(4) of the Act.

If a return is made late, an FPN will issue for the offence. If the fixed penalty is not paid, however, the person may be prosecuted for the late return.

Under section 19 of the Act, the Commission has the power to carry out investigations. Details of investigations carried out under section 19 of the Act, convictions for offences under section 20 of the Act, and FPNs issued under section 21 of the Act during 2017 are set out in Chapter 3 of the report.

The enforcement provisions applied to returns due by the first deadline after the commencement of enforcement provisions (21 January 2017). Anyone undertaking a lobbying activity in the relevant period 1 September - 31 December 2016 was subject to the Act's enforcement provisions and penalties, including those for late returns and non-returns.

The Commission established a separate Complaints and Investigations Unit to manage all investigations and prosecutions arising under the Act. It developed procedures for investigating non-compliance in relation to unreported lobbying by both registered and non-registered persons. Procedures were also put in place to deal with non-compliance by registered persons relating to non-returns and late returns of lobbying activity.

The Commission actively monitors possible unregistered lobbying activity via open source intelligence, such as media articles, social media notifications and proposed legislation, or from complaints received. Where possible lobbying activity is identified, an assessment is carried out to gather all available information and to assess whether the activity meets the three step test (i.e. whether the body is within scope, whether the communication was with a relevant DPO and whether it related to a relevant matter). An investigation may be launched to gather necessary evidence. Following the investigation, a report is prepared for decision by the Commission whether to proceed to prosecution.

Following each return deadline, information is extracted from the lobbying register relating to the number of late returns and non-returns for that period. This information provides the basis for pursuing non-compliance by registered persons.

A person who submits a late return is automatically issued with an FPN. The FPN specifies the date by which the penalty must be paid. Section 21 of the Act provides that a prosecution will not be initiated if the penalty is paid by the specified date. If the FPN is not paid then the Commission will prosecute the offence (under section 20(1) of the Act) of submitting a late return.

Where a person has failed to make a return the Commission will usually try to contact the person and request them to submit a return. The main focus of the Commission is to try to encourage compliance with the lobbying legislation. Every reasonable effort is made to engage with registrants to resolve the matter before initiating prosecution proceedings.

Where a person has contravened the Act, for example by either failing to make a return for the required period or by making a late return and not paying the associated FPN, the Commission will issue a notification of offence letter to the responsible person, providing details of the offence and instructions on how to proceed in order to avoid possible prosecution. If the matter cannot be resolved, for example, where there is no engagement by the registrant or they refuse to comply, a report is prepared for the Commission to consider whether to proceed to prosecution.



CHAPTER 3

Operations



Chapter 3 - Operations

Section 25(2) of the Act requires that the following information be included in this report:

- any determinations made under section 14 made or in force that year (delayed publication requests);
- any investigations carried out under section 19 and concluded in that year;
- any applications for consent made under section 22 (post-employment restrictions) and all decisions on such applications, made in that year;
- any convictions for offences under section 20 in that year; and
- any Fixed Payment Notices served under section 21 in that year.

This information must be provided in a form which does not enable the identification of the persons involved.

Determinations under section 14 of the Act

Under section 14 of the Act, a person may apply to delay publication of the information contained in the person's application to register or in their return of lobbying activities if making the information could reasonably be expected to:

1. 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 description of persons; or
2. 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.

The Commission's role in determining applications to delay publication is set out in Appendix 1 of this report.

Fig 6 - Applications to delay publication of returns of lobbying activities

Descriptor	Outcome	No of applications
Total Applications received		2
Delayed publication request approved	Publication of full return delayed. Return published in summary format.	2

Both applications were submitted by the same person and related to the same subject matter. Both applications were deemed to have been made under section 14(1)(b) of the Act.

The first application related to a return of lobbying activities for the period 1 January - 30 April 2017. Delayed publication was requested until 1 September 2017. The Commission considered it appropriate to consult with the relevant Government Minister on the matter. The Commission was satisfied that publication of all of the information contained in the return could reasonably be expected to prejudice seriously the outcome of negotiations being conducted by the person. The Commission determined, therefore, that information contained in the return should be published in summary format only and that publication of all information contained in the return would be delayed until 1 September 2017.

The applicant subsequently applied to extend the period of delayed publication by a further two weeks. The Commission was satisfied that the conditions which informed its original decision to delay publication continued to exist. It determined that publication of all information contained in the return of lobbying activities should be delayed until 30 September 2017, at which point a full review of the decision would be carried out.

The second application related to a return of lobbying activities in respect of the following reporting period 1 May - 31 August 2017. The application requested to delay publication until 30 September 2017. As the Commission had already determined that the return of lobbying activities for the previous reporting period 1 January - 30 April 2017 should continue to be published in summary format until 30 September 2017, it was satisfied that the return of lobbying activities for the new period should also be published on the Register in summary format for the same timeframe.

Both returns of lobbying activities were subsequently published in full on the Register on 11 October 2017. The Commission published an explanation along with the returns as to why the information contained in the returns had previously been in summary format only.

Investigations under section 19 of the Act

Section 19 provides the Commission with the authority to conduct investigations into possible contraventions of the Act. No investigations were concluded during 2017.

Applications for consent under section 22 of the Act

Section 22 of the Act provides that Ministers, Ministers of State, special advisers and senior public officials who have been prescribed for the purposes of section 6(1) of the Act are subject to a one-year “cooling-off” period, during which time they 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. The cooling-off period is the period of one year from the date the person ceased to be a Designated Public Official (DPO).

A person subject to the one-year cooling-off period may apply to the Commission for a reduction or waiver of the cooling-off period. Further information regarding the provisions of section 22 of the Act and the Commission’s role in relation to section 22 of the Act is set out in Appendix 1 of this report.

When considering applications for consent under section 22 of the Act, the Commission will consult with the applicant, his/her former employer, his/her prospective employer (or the person they intend to provide services to) and with any other person the Commission considers appropriate. The Commission may also consider:

- the nature of and responsibilities associated with the person’s role as a DPO;
- the nature of and responsibilities associated with the person’s proposed role in his/her new employment or contract to provide services;
- any previous dealings with his/her prospective employer or clients of his/her prospective employer;
- the duration of the relevant period for which the waiver is sought;
- what measures, if any, could be put in place to sufficiently ensure that the Act’s objectives are met;
- whether the ability to earn a livelihood was being unduly impeded by the application of the Act; and
- whether the position of employment or contract to provide services was publicly advertised.

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.

Case No 1

The applicant had been a senior civil servant in a government department and was seeking to provide consultancy services to a company on the Register that had previously carried out lobbying activities with that department. The applicant was seeking to waive the final 6 months of the cooling-off period in order to provide these consultancy services.

In this particular instance the Commission had regard to the fact that the applicant had already served 6 months of the cooling-off period provided for in the Act. The applicant, and the company the applicant was seeking to provide services to, had each confirmed that the applicant would not be expected to participate in or advise on any prohibited lobbying activities during the relevant period and that the offer to provide services was not contingent on the applicant being involved in lobbying activities during the relevant period.

The Commission also noted that the applicant had applied to the Outside Appointments Board for its consent to provide the consultancy services concerned and had provided a copy of the Board's decision to approve the request.

The Commission agreed to grant a waiver for the final 6 months of the cooling-off period. The waiver was subject, however, to a number of conditions which were designed to ensure that the applicant could not carry on lobbying activities in circumstances set out in section 22.

No appeal was received.

Case No 2

The applicant had been a special adviser in two separate government departments and was seeking to take up employment with a company on the Register. The applicant was seeking to waive the final nine months of the cooling-off period in order to take up this employment.

The Commission had regard to the fact that the company in which the applicant was seeking to take up employment had not previously carried out lobbying activities with the applicant or with either of the applicant's former employers.

The applicant and the company each confirmed that the applicant would not be expected to participate in or advise on any prohibited lobbying activities (including to the applicant's former employers or any connected DPOs) during the relevant period. The offer of employment with the company was not contingent on the applicant being involved in any such lobbying activities during the relevant period.

The Commission agreed to grant a waiver for the final nine months of the cooling-off period. The waiver was subject, however, to a number of conditions which were designed to ensure that the person could not carry on lobbying activities in circumstances set out in section 22.

No appeal was received.

Case No 3

The applicant had been a special adviser in a government department and was seeking to take up employment with a company on the Register. The applicant was seeking to waive the final 10 months of the cooling-off period in order to take up this employment.

The Commission had regard to the fact that the company in which the applicant was seeking to take up employment had not previously carried out lobbying activities with the applicant or with the applicant's former employer. The Commission also had regard to the fact that the applicant had been offered the position following a competitive process.

The applicant and the company each confirmed that the applicant would not be expected to participate in or advise on any prohibited lobbying activities (including to the applicant's former employers or any connected DPOs) during the relevant period. The offer of employment with the company was not contingent on the applicant being involved in any such lobbying activities during the relevant period. The company had also advised that its lobbying activities were carried out by another senior staff member.

The Commission agreed to grant a waiver for the final 10 months of the cooling-off period. The waiver was subject, however, to a number of conditions which were designed to ensure that the person could not carry on lobbying activities in circumstances set out in section 22.

No appeal was received.

Case No 4

The applicant had been a special adviser in a government department and was seeking to take up employment with joint operational leadership of two separate organisations. Both organisations had carried out lobbying activities with the person's former department and, in the case of one of the organisations, had communicated recently and directly with the applicant.

The applicant was seeking to waive the final 10 months of the cooling-off period in order to take up this employment. Based on the information provided, the Commission considered that to consent to the application would not be in keeping with the objectives set out by the Act and would not be in the public interest. The application for consent was refused.

The Commission took into account that the person was seeking to take up employment within a very short period of having ceased to be a DPO with an organisation that had recently and directly lobbied the person and the department with which they were connected. Moreover, the person had been offered the position without a competitive process.

The applicant appealed the Commission's decision. The appeal was referred to an independent appeal officer. The appeal officer upheld the Commission's decision.

The appeal officer's decision was not appealed to the High Court.

Case No 5

The applicant had occupied a position in a government department which was regarded as a relevant designated public official position for the purposes of section 22 of the Act. The person was seeking to take up employment with a company on the Register. The applicant was seeking to waive the final 10 months of the cooling-off period in order to take up this employment.

The Commission had regard to the fact that the company in which the applicant was seeking to take up employment had not previously carried out lobbying activities with the applicant or with the applicant's former employer. The Commission also had regard to the fact that the position of employment had been publicly advertised and that the applicant had been offered the position following a competitive process.

The applicant and the company each confirmed that the applicant would not be expected to participate in or advise on any prohibited lobbying activities concerning the applicant's former employers or any connected DPOs during the relevant period. The offer of employment with the company was not contingent on the applicant being involved in any such lobbying activities during the relevant period.

The Commission agreed to grant a waiver for the final 10 months of the cooling-off period. The waiver was subject, however, to a number of conditions which were designed to ensure that the person could not carry on lobbying activities in circumstances set out in section 22.

No appeal was received.

Concerns regarding the provisions of section 22 of the Act

The Commission has received a total of seven applications for consent under section 22 since the commencement of the Act. In some cases the Commission has noted that the person applying for consent, while employed by a particular public service body, may as part of their role or functions have established a number of contacts or a degree of influence in another public body or bodies.

The restrictions in section 22 are quite specific. They apply only to the public service body with which the person was “connected” in the year prior to the person’s leaving or to any other person who was also a DPO connected to that public service body. For the purposes of section 22 of the Act “connected” means employed by, or holding an office or other position in, a public service body.

The purpose of post-employment restrictions or “cooling-off” periods is generally to prevent the use of insider information, to prevent preferential treatment and to prevent what are commonly referred to in the ethics field as “revolving door” practices. The purpose is generally also to ensure that any particular person does not gain unfair advantage in terms of the knowledge and connections a former DPO may bring to a post-employment position. This is recognised in section 22 of the Act by the specific reference to the public body and/or DPOs connected to the applicant. The Act does not recognise, however, that some individuals in some public bodies have a broad reach in their capacity as DPOs. Their knowledge, influence or connections are not limited solely to the public body with which they were formerly employed or held office.

While the Commission can refuse to grant consent for a reduction or waiver of the cooling-off period, this refusal can only be in accordance with the provisions of section 22 of the Act. Similarly while the Commission can grant its consent subject to conditions those conditions can only apply to the public service body or DPOs with which the person was “connected”.

There have been some applications for consent under section 22 where the Commission considered that the applicant’s role or functions as a DPO brought them into contact with other public service bodies or DPOs in other public service bodies. That involvement was such that it would not have been out of keeping with the spirit of the Act or the purpose of section 22 to have imposed restrictions on lobbying activities relating to functional areas of those other public service bodies or with DPOs from those other public service bodies.

The provisions of the Act, however, do not allow for this. The Commission cannot impose conditions relating to a public service body or DPOs with which the person is not “connected”. The Commission is of the view, therefore, that the Act would be strengthened if the definition of “connected” was expanded to include bodies or DPOs with which, “in the Commission’s opinion”, the person has had a sufficient degree of knowledge, influence or connections to warrant post-employment restrictions on lobbying activities with those other public service bodies and/or their DPOs.

Convictions for offences under section 20 of the Act

Offences under section 20(1) of the Act - Late returns

Section 21 provides that the Commission may serve a Fixed Payment Notice (FPN) to a person who has submitted a late return of lobbying activities. If a person fails to pay the Fixed Payment within the 21 days provided for in the FPN the Commission may proceed to prosecute the offence, under section 20(1) of the Act, of submitting a late return. A person who commits an offence under section 20(1) of the Act is liable on summary conviction to a Class C fine (currently €2,500).

In 2017, the Commission issued 64* notices during the year to persons informing them of an intent to prosecute for the offence of making a late return if they did not pay the FPN (section 20(1) notice). Most complied once they received this notice. Five files were prepared for examination, of which two resulted in prosecution proceedings being initiated by the Commission and summonses issued. In all cases, compliance was achieved without proceeding to court. Accordingly there were no convictions in 2017 under this section of the Act.

** This figure includes duplicate letters that issued to a number of registrants where the original letter was returned.*

Offences under section 20(2) of the Act - Failure to submit a return of lobbying activities

In 2017 the Commission issued 198* notices to persons informing them of the intent to prosecute if the person did not submit a return of lobbying activities (section 20(2) notice). Eight files were prepared for examination relating to non-returns, of which six were referred by the Commission to initiate prosecution proceedings and summonses were issued. While prosecution proceedings were initiated for these files, compliance was achieved in all cases and there were no convictions during 2017 for persons who failed to submit a return of lobbying activities.

**This figure includes duplicate letters that issued to a number of registrants where the original letter was returned.*

Fixed Payment Notices served under section 21 of the Act

Section 21 provides that the Commission may serve a Fixed Payment Notice to a person who has submitted a late return of lobbying activities. As stated in Chapter 2 above, the online register is designed to ensure that an FPN issues automatically to the person submitting the late return. The FPN informs the person that they have 21 days to pay the FPN.

During 2017, 522 Fixed Payment Notices were issued. Of these, 434 were paid (€86,800) and 12 remain unpaid. 76 FPNs were cancelled where it was determined that there were valid reasons to do so.

FPNs are generally cancelled for the following reasons only:

- where a technical problem on Lobbying.ie prevented the person from submitting a return on time;
- where an administrative error occurred in which the person erroneously submitted a duplicate return for the wrong period; and/or
- where the person was not required to register and had registered in error.



CHAPTER 4

Communications
and Outreach

Chapter 4 - Communications and Outreach

Outreach activities

In its annual report for 2016 the Commission stated that it intended to engage in a targeted outreach programme during 2017 to ensure that persons in areas and sectors which may be under represented on the Register are fully aware of the requirements of the Act. In that regard, a strategic regional outreach campaign was conducted during August and September 2017.

An article highlighting the regional disparity in the number of registrations and returns received and emphasising the scope of the Act in relation to zoning and development was published in a number of regional papers. The article and accompanying press release was tailored in each case for those counties where the number of registrations and returns was considered to be particularly low. The Head of Ethics and Lobbying Regulation also gave a number of follow-up interviews to regional newspapers and radio stations and presented at the annual conference of the Association of Local Government in Ireland (AILG), in Ballinasloe. This outreach has resulted in a small increase in registrations in targeted areas.

In order to highlight awareness of the scope of the Act in relation to zoning and development, members of the Commission staff also attended the Fourth Annual National Construction Summit at the RDS.

As part of its general communication strategy, the Commission hosted some open house information sessions for persons who may be carrying out lobbying activities and members of the Commission staff participated in a workshop and training session held for members of The Wheel.

Internationally, the Head of Ethics and Lobbying Regulation was invited to present on behalf of the Commission at a conference on lobbying hosted by the EU Transparency Register in Brussels, and at a conference on conflicts of interest and revolving doors, held by the European Commission in Barcelona.

The Commission was also invited to participate in an Advisory Group set up by the Scottish Registrar of Lobbying where members of the Commission staff provided their experience of implementing Ireland's Register of Lobbying.

The Commission separately hosted visiting delegations from the University of Groningen, Holland, and from Beijing Peoples' Court, China.

The Commission continues to be a member of the Council on Governmental Ethics Laws (COGEL).

Information tools and resources

Section 17 of the Act provides the Commission with the authority to issue guidance and to make information available for the purpose of promoting awareness and understanding of the Act. The Commission has published a series of guidelines which have been tailored to various parties with an interest in the Act. These guidelines are published on the website and are kept under review and updated as appropriate. The Commission will be carrying out a full review of its guidelines during 2018.

A Frequently Asked Questions document is also available on the website. This document deals with specific areas of the legislation and is informed by the Commission's responses to queries arising and the Act being interpreted in the context of real-life situations. The FAQ document is regularly updated to reflect guidance given by the Commission on particular matters. The Report on the First Review of the Regulation of Lobbying Act issued by the Minister for Public Expenditure and Reform highlighted a number of areas on which the Commission might produce additional guidance material. Arising from these recommendations, the Commission produced a number of additional FAQs or updated its original FAQ on the following matters:

- the difference between grassroots communications, mass communications and targeted communications;
- communication between a political party and its elected representatives;
- an explanation of the "excepted" (exempt) communication under section 5(5)(m) of the Act relating to "the ordinary course of the business" of a body corporate in which a Minister holds shares in, or has statutory functions;
- the application of the Act to communications that take place outside of Ireland;
- implementation matters or matters of a technical nature which are not regarded as lobbying;
- nil returns;
- registering in error;
- permanently ceasing lobbying; and
- public consultation processes.

Central repository of bodies operating under the Transparency Code

The Report on the First Review of the Regulation of Lobbying Act issued by the Minister for Public Expenditure and Reform also contained a recommendation that the Commission provide a “central repository” for a list of “relevant bodies” operating under the Transparency Code provided for under section 5(7) of the Act. (See <https://www.lobbying.ie/help-resources/information-for-public-bodies/transparency-code/> for further information concerning “relevant bodies” and the Transparency Code.)

Section 6(4) of the Act requires each public body with DPOs appointed under section 6 of the Act to publish up to date lists of their DPOs. Lobbying.ie contains a DPO list which has links to the relevant DPO pages on the public bodies’ websites. Public bodies are also asked to appoint a liaison officer whom the Commission can contact in relation to the DPO list.

The Commission asked all public bodies (if they have not already done so) to create a “Regulation of Lobbying” page on their website. In addition to providing details of their DPOs on that page, public bodies were also requested to provide details of “relevant bodies” under their remit. The page might also include the information the public body is required to publish under the Transparency Code in respect of its relevant bodies.

Without a legal requirement for public bodies to provide such information, however, a repository cannot be definitive. The Commission decided, therefore, to ask the public bodies to provide this information and to publish information where it has been provided, with a disclaimer that the list is not exhaustive. The Commission has designated the page on lobbying.ie (<https://www.lobbying.ie/help-resources/information-for-lobbyists/dpo-list/>) which contains the links to the various public bodies’ “Regulation of Lobbying” pages, as the repository for “relevant bodies” details. The Commission cannot, however, be responsible for updating information relating to individual public bodies’ relevant bodies.

Public bodies are asked prior to the end of each return period to check and update their website both in relation to their DPOs and their relevant bodies.



CHAPTER 5

Key Issues in 2017
and Next Steps

Chapter 5 - Key Issues in 2017 and Next Steps

Greater focus on quality of information submitted to the Register

Applications to register

During the first year of operation of the Act, over 1,500 applications to register were received. With this volume of registration, it was not possible for the Commission to verify with each registrant whether the person was in fact required to register. It is, however, the responsibility of a person making an application to register to satisfy themselves that they are within the scope of the Act and that they have carried out a lobbying activity as defined in the Act.

As stated in Chapter 1 above, supervision of the enforcement provisions highlighted that a significant number of registrants who had not complied with the Act either by failing to submit a return of lobbying activities or by furnishing a late return of lobbying activities were not actually required to register. They were either outside the scope of the Act or were not carrying out a lobbying activity. Instead of prosecuting a person for the above offences (where the person did not have an obligation to register in the first place), the Commission sought to remove the relevant persons from the Register.

As expected, the number of new applications to register has decreased over time. This has allowed the Commission to give greater attention to new applications and to review previous registrations where there is a doubt as to whether the person was obliged to register. As stated earlier, all applications to register are now reviewed to ensure that the person is required to register. If the Commission considers that a person may not be required to register, the Commission will contact the person and review the Act's requirements.

The Commission intends during 2018 to continue to engage with new registrants to ensure that they are fully informed of the requirements of the Act and that they are satisfied that they are required to register. It is expected that this will ensure that only those who are required to register actually remain on the Register.

Returns of lobbying activities

The Commission made a concerted effort during 2017 to ensure that the quality of information contained in returns of lobbying activities was improved. All returns of lobbying activities are now checked to ensure that the information provided is clear and meaningful.

If the Commission finds that information contained in a return of lobbying activities is incorrect or misleading or is not sufficiently detailed, the Commission may use its powers under section 13 to ask the Registrant to remove or correct the return of lobbying activity as appropriate. If the information is not corrected or removed the Commission may, under section 13(3), immediately remove the information from the Register.

If the Commission removes an application to register or return of lobbying activities from the Register under section 13 the person will be regarded as never having registered or submitted the return of lobbying activities. The removal of information under section 13 may, therefore, have consequences for a person in terms of sanctions for non-returns or late returns.

Section 10(5) of the Act provides that any person may inform the Commission if he/she considers that information contained on the Register is inaccurate or misleading. Where it is brought to the Commission's attention that information contained in a return of lobbying activities is incorrect or misleading (whether through a report under section 10(5) of the Act or otherwise) the Commission will make any necessary enquiries and, if necessary, seek amendment of the information concerned. The Commission will inform the person reporting the inaccurate information of the outcome of its enquiries.

Development of a code of conduct

Section 16(1) of the Act provides that the Commission "*may produce, and from time to time revise, a code of conduct for persons carrying on lobbying activities...*"

When the Act commenced, the Commission took the decision to defer development of a code of conduct until such time as all provisions of the Act had been commenced and had sufficient time to be fully implemented. It was also considered prudent to wait until the first review of the Act had been completed. As the Act is fully commenced and the review has been completed without any new legislative proposals, the Commission now considers it timely to develop a code of conduct.

Work has already commenced on the preparation of a draft consultation paper and a draft code of conduct. In preparing the consultation paper and draft code of conduct, the Commission has had regard to a number of similar codes and consultation processes in other jurisdictions.

Section 16(3) of the Act provides that the code of conduct may "*contain different provisions in relation to different descriptions of persons carrying on lobbying activities.*" While the diversity and range of persons who may be captured by the scope of the Act presents a challenge in terms of defining a set of shared standards on which a code of conduct might be based, the Commission is confident that it can agree a set of shared principles and standards which can be applied equally to professional lobbyists and to employers, representative / advocacy bodies and individuals alike. In that regard, given the broad scope of persons to whom the Act applies, it is considered that a principles-based code of conduct rather than a rules-based code of conduct may be more suitable.

Section 16(2) of the Act provides that the Commission before producing a code of conduct “*shall consult such persons carrying on lobbying activities and such bodies representing them, and such other persons, as the Commission considers appropriate.*” It is proposed to begin the consultation process early in 2018.



CHAPTER 6

Recommendations
for Change

Chapter 6 - Recommendations for Change

Previous recommendations

The Commission's submission to the first review of the Act included a number of recommended changes which in the Commission's opinion would, if implemented, strengthen and help clarify the Act. Details of the recommendations made by the Commission can be found in Appendix 1 of the Commission's submission.

<https://www.lobbying.ie/about-us/legislation/legislative-review-of-the-regulation-of-lobbying-act-2015-submission-by-the-standards-in-public-office-commission/>

New recommendations

In this annual report the Commission is suggesting two further areas where it considers the legislative provisions could be clarified or amended to strengthen and help clarify the Act.

1) Section 22 - Cooling off period

It is recommended that section 22 of the Act might be reviewed to allow for situations where the Commission considers it would be appropriate to impose restrictions on lobbying activities relating to functional areas of other public service bodies or with DPOs from other public service bodies with which the applicant is not "connected". This might arise where the applicant has had sufficient involvement, influence or contacts in another public body or bodies and consenting to the applicant carrying on lobbying activities with the other public body(ies) or persons connected with those bodies would not be in keeping with the spirit of section 22 of the Act.

2) Lobbying activities in relation to zoning or development

The next review of the Act should consider whether there is a need to limit the scope of the provisions of section 5(1)(c) of the Act.

Conclusion

The Commission will continue to identify opportunities to raise awareness and understanding of the Act in order to promote compliance. In ensuring the effective administration of the Regulation of Lobbying Act 2015, the Commission will strive to support transparency and good governance in Irish public life.



APPENDICES



Appendix 1 - Supervisory Role under the Regulation of Lobbying Act 2015

General overview

The Regulation of Lobbying Act 2015 (the Act) provides that a person who falls within the scope of the Act makes a relevant communication (is lobbying) if the person communicates with a designated public official about a relevant matter. Anyone lobbying must register and submit regular online returns of their lobbying activity.

Section 5(1) and (2) of the Act sets out the categories of person who are within scope of the Act, namely:

- a person with more than 10 full-time employees;
- a representative body which has one or more full-time employees and the relevant communications are made on behalf of any of the members;
- an advocacy body which has one or more full-time employees and the relevant communications are concerned with any of these issues;
- any person (individual or organisation) making a “relevant communication” concerning the development or zoning of land which is not their principal private residence; and
- a “professional lobbyist” who is paid to carry on lobbying activities on behalf of a person who fits within one of the categories of persons above.

Designated Public Officials (DPOs) include Ministers and Ministers of State, Members of Dáil Éireann and Seanad Éireann, Members of the European Parliament for Irish constituencies, and Members of Local Authorities. DPOs also include special advisors and the senior-most civil and public servants who have been designated by Ministerial Order.

A relevant matter is one to do with the initiation, development or modification of any public policy or of any public programme; the preparation 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. Matters relating to the zoning and development of land are also relevant communications.

Section 5(5) of the Act provides for a number of exemptions to what is considered a relevant communication.

The Register

The Register itself is a web-based system. In addition to housing the online register, the website www.lobbying.ie includes information and guidance tools explaining the registration and return processes.

There is no cost to register, to submit returns or to access the information contained therein. While the Commission has oversight responsibility for the establishment and maintenance of the register, the content is driven by the information contained in the applications to register and returns submitted by registrants.

Anyone who is lobbying must register and submit returns three times per year, covering prescribed “relevant periods” (1 January - 30 April, 1 May - 31 August, and 1 September - 31 December). The returns must be submitted by the respective prescribed “relevant dates” (21 May, 21 September and 21 January, respectively).

The return must indicate who was lobbied, the subject matter of the lobbying activity and the results the person was seeking to secure. The returns must also indicate the type and extent of the lobbying activity. If the lobbying activity was carried out on behalf of a client, the return must provide details of the client.

Other provisions

Applications to delay publication under section 14 of the Act

Under section 14 of the Act, a person may apply to delay publication of the information contained in the person’s application to register or in their return of lobbying activities if making the information could reasonably be expected to:

1. 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 description of persons (an application made under section 14(1)(a) of the Act), or
2. 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 (an application made under section 14(1)(b) of the Act).

If an application is made under section 14(1)(a), the Commission is required to consult with any relevant Minister(s) of the Government. The Commission is not required to consult with a Minister(s) if an application is made under section 14(1)(b).

Section 14(9) of the Act provides that when the returns are subsequently published the Commission must publish an explanation as to why publication of the information was delayed.

Section 14(11) of the Act provides that the Commission may make a determination to delay publication on more than one occasion in relation to information contained in a return of lobbying activities.

“Cooling-off” period provided for under section 22 of the Act

Section 22 of the Act provides that Ministers, Ministers of State, special advisers and senior public officials who have been prescribed for the purposes of section 6(1) of the Act are subject to a one-year “cooling-off” period, during which time they 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. The cooling-off period is the period of one year from the date the person ceased to be a DPO.

The circumstances in which section 22 of the Act applies are the making of communications comprising the carrying on of lobbying activities which:

1. involve any public service body with which the person was employed or held an office or other position in the year prior to his/her leaving, or
2. are 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 Commission for a reduction or waiver of the cooling-off period.

The Commission may decide to give consent unconditionally to a reduction or waiver of the cooling-off period or may decide to give consent with conditions attached. The Commission may decide to refuse the application for all or part of the cooling-off period.

Under section 23 of the Act a person who is aggrieved by a decision of the Commission under section 22 may appeal the Commission’s decision. The Department of Public Expenditure and Reform has established panels of independent appeal officers to hear such appeals. Under section 23 the appeal is referred to an independent appeal officer who may uphold a decision of the Commission, or overturn it and replace it with another decision.

Section 24 of the Act provides that the appeal officer’s decision may be appealed to the High Court.

The Act contains a number of investigative and enforcement provisions which were commenced on 1 January 2017. It also provides for an independent appeal mechanism for certain decisions / determinations made by the Commission under the Act in relation to reports of incorrect information; delayed publications and applications to waive the one year cooling-off period.

Finally, section 2 of the Act provides for a legislative review. Following the review, the Minister may consider possible amendments to the Act. The Minister must report to the Houses of the Oireachtas on the outcome of the review and any recommendations for amendments to the Act.

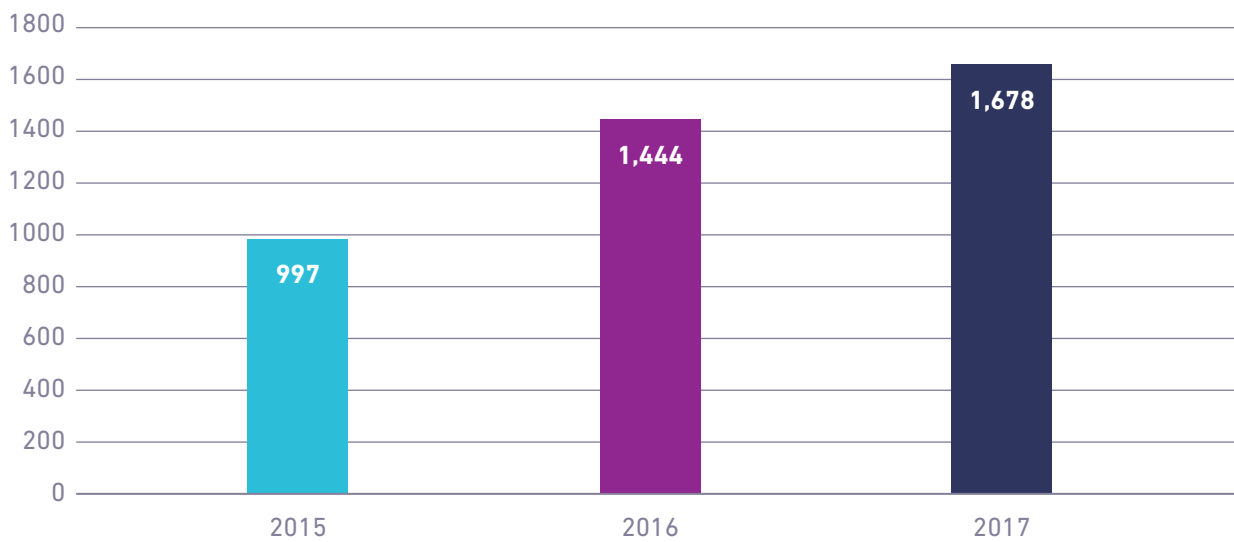
Statutory instruments under the Regulation of Lobbying Act

Six statutory instruments have been introduced under the Act, namely:

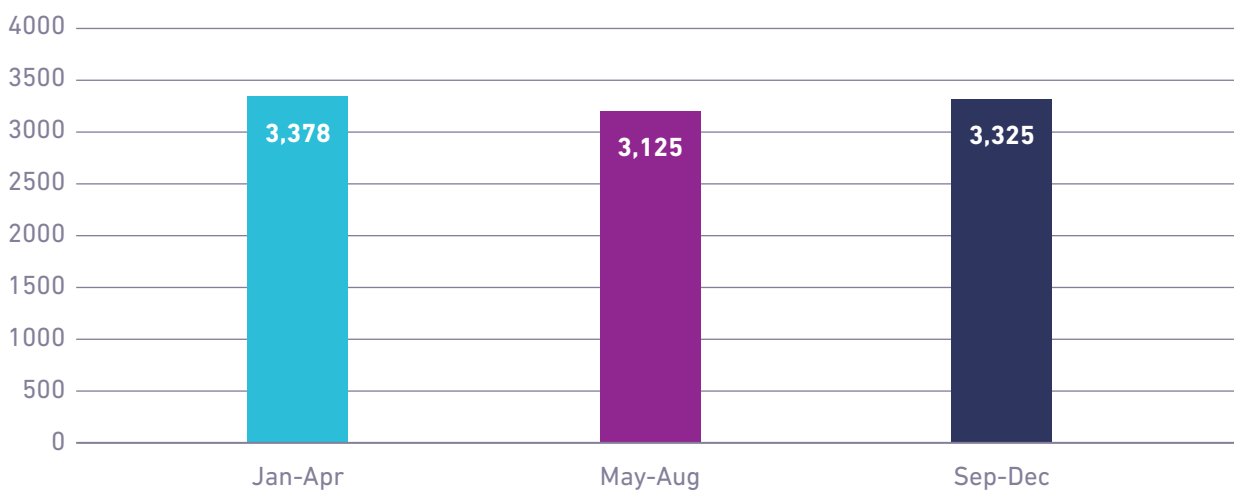
- Regulation of Lobbying Act 2015 (Commencement) Order (S.I. 152 of 2015);
- Regulation of Lobbying Act 2015 (Appeals) Regulations 2015 (S.I. 366 of 2015);
- Regulation of Lobbying Act 2015 (Designated Public Officials) Regulations (S.I. 367 of 2015);
- Regulation of Lobbying Act 2015 (Commencement) Order 2016 (S.I. 360 of 2016);
- Regulation of Lobbying Act 2015 (Fixed Payment Notice) Regulations 2016 (S.I. 361 of 2016); and
- Regulation of Lobbying Act 2015 (Designated Public Officials) Regulations 2016 (S.I. 362 of 2016).

Appendix 2 - Statistics

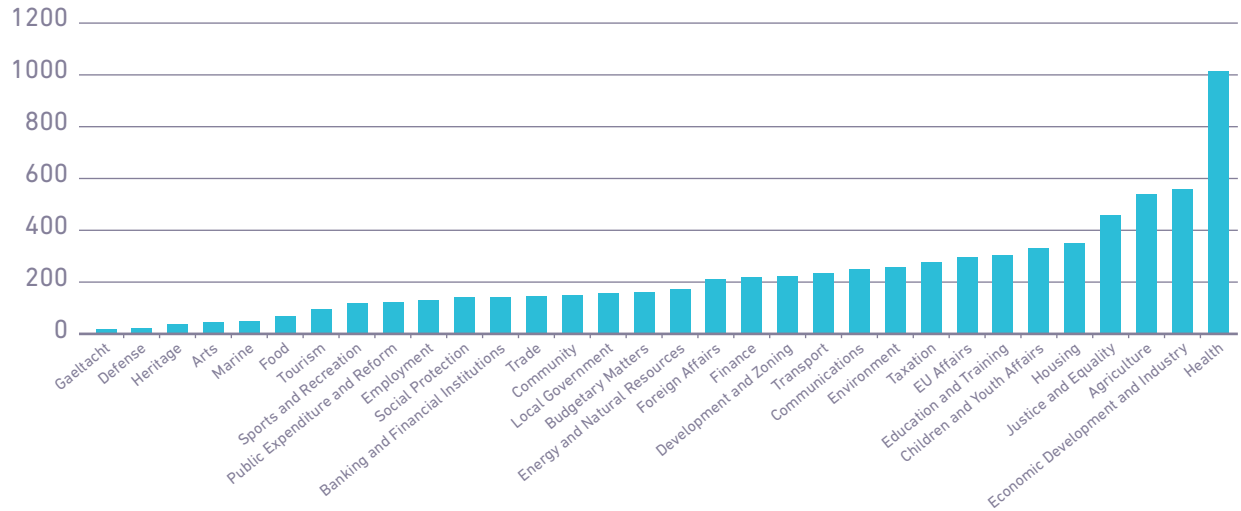
Total registrants by year



No of returns per reporting period in 2017

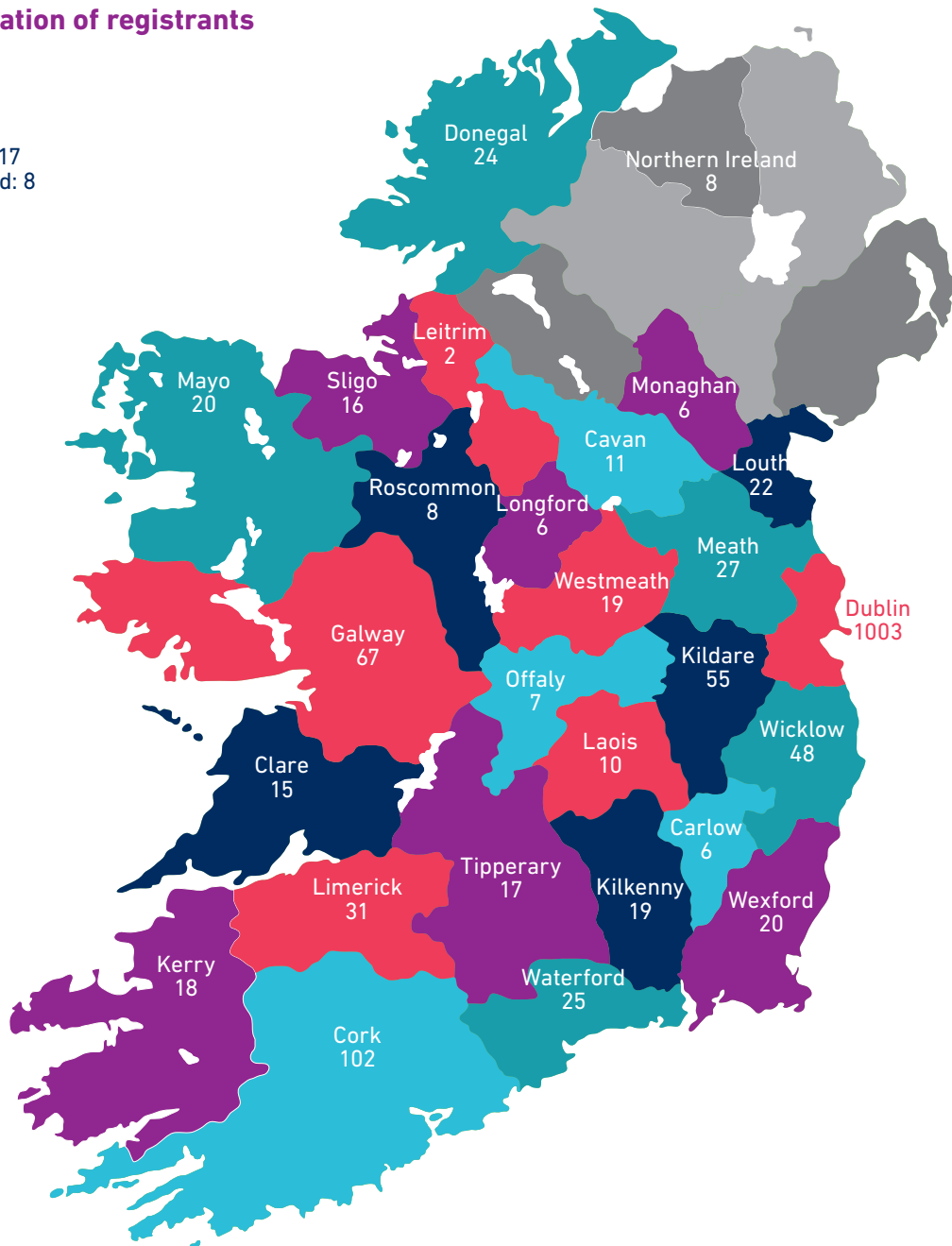


No of returns per Public Policy Area Jan - Dec 2017



Regional location of registrants

Great Britain: 41
 Rest of Europe: 17
 Rest of the World: 8
Total: 1678



As was the case last year, the Commission notes with concern the low level of registrants in several counties. While it is not surprising that Dublin, as the national capital city, has the highest percentage of registrants, it is surprising that a number of counties have single digit numbers of registrants. As Designated Public Officials include local authority members and senior staff as well as TDs, Senators and others, it is to be expected that all counties would have lobbying activities taking place at a local level and a significantly higher number of registrants.

