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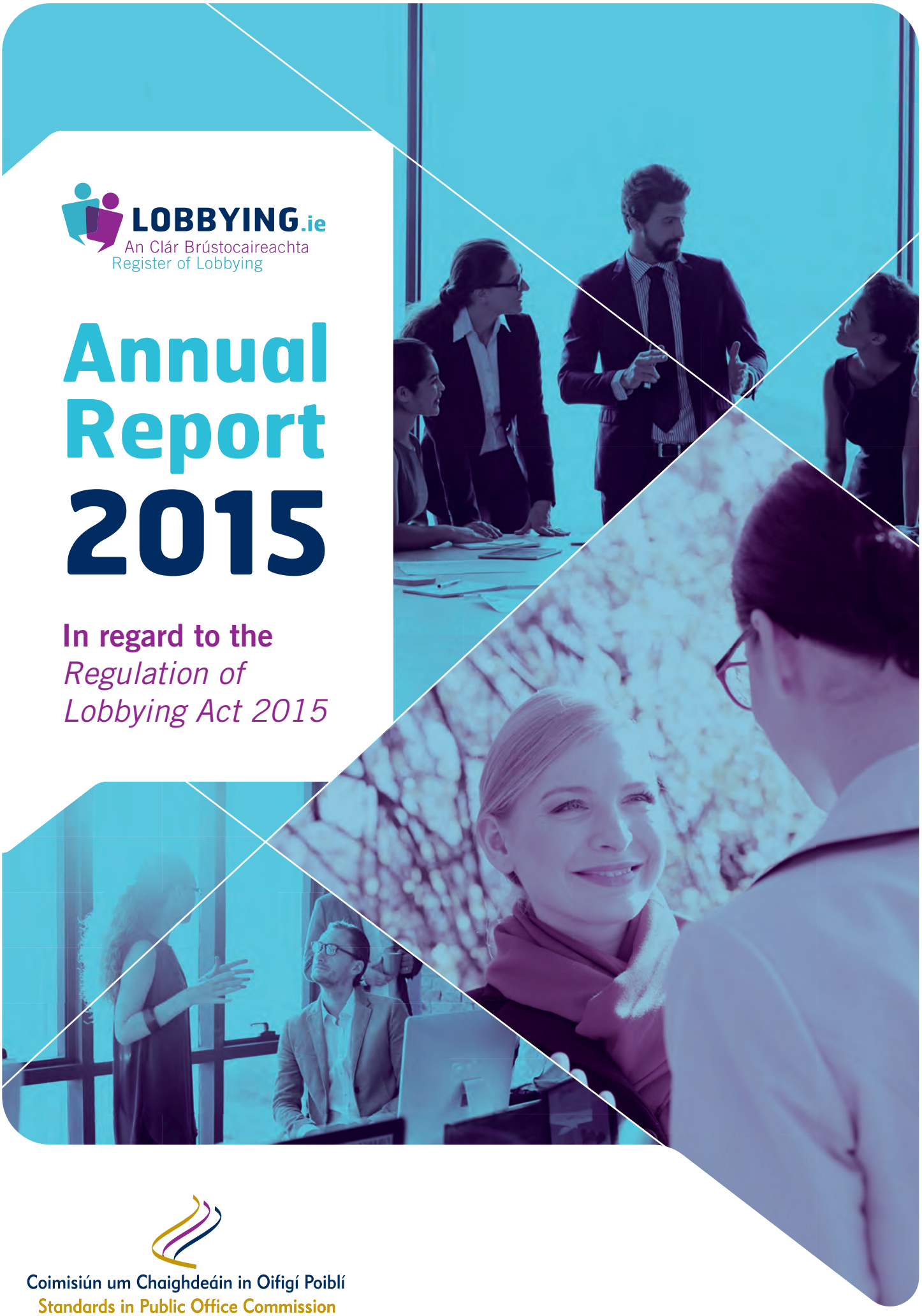
An Clár Brústocaireachta
Register of Lobbying

Annual Report 2015

In regard to the *Regulation of Lobbying Act 2015*



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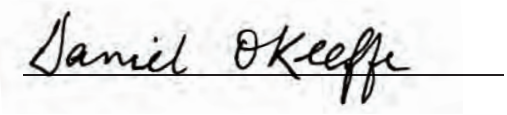
Foreword

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



Justice Daniel O'Keeffe
Chairperson
Standards in Public Office Commission
June 2016

Members of the Standards in Public Office Commission

Justice Daniel O'Keeffe
Chairperson

Seamus McCarthy
Comptroller and Auditor General

Peter Tyndall
Ombudsman

Peter Finnegan
Clerk of Dáil Éireann

Deirdre Lane
Clerk of Seanad Éireann

Jim O'Keeffe
Former member of Dáil Éireann

Introduction by the Chairperson

The Standards in Public Office Commission (the Commission) was established in 2001, and has supervisory responsibility under legislation dealing with ethics in public office, electoral regulation and political funding and financial reporting.

More recently, the Commission's remit was added to with the enactment of the *Regulation of Lobbying Act 2015* (the Act), which commenced on 1 September 2015. The Act provides the Commission with the role of Registrar of Lobbying, maintaining an online register, and overseeing most of the Act's provisions.

This report deals with the Commissionæn overseeing the Act for the 2015 reporting period. The other work of the Commission is reported on in a separate annual report. Such report is provided to the Minister for Public Expenditure and Reform in June of every year and is published online.

This past spring, the Commission was pleased to appoint Sherry Perreault as Head of Lobbying Regulation. Ms. Perreault took up her duties in May 2015 and heads the Secretariat's Lobbying Regulation Unit.

The Commission's focus in the first year of the Act's commencement is on building understanding and encouraging compliance with the Act. To that end, a significant amount of outreach and education initiatives throughout the year has served to create awareness and understanding of the Act and its obligations among those who may be lobbying.

The formal launch of the online Register of Lobbying and the website www.lobbying.ie took place on 30 April 2015.

The website has been populated with helpful information for both potential registrants and those whom they lobby – featuring tailored guidelines for lobbyists and designated public officials, instructional videos, sample returns and frequently asked questions.

The emphasis on education and outreach has proven effective. Since the Act's commencement in September, we have seen the numbers of registrants increase rapidly, with the first returns deadline in January 2016 resulting in high numbers of registrants and returns. The Commission is very pleased with the level of compliance achieved to date. It is a very positive early indicator that there is an acceptance of the need for openness and transparency in lobbying. The information available on the register provides the Irish public with unprecedented insight into the role that lobbying plays in shaping policy and funding decisions.

I wish to thank my fellow members of the Commission for their contributions during the year. All members of the Commission are cognizant of the importance of lobbying regulation in a robust ethics framework. Their support and guidance in establishing and implementing the new system has been invaluable.

I also want to thank the Commission Secretariat, including Ms. Perreault, the Lobbying Regulation Unit and support staff in the Information Technology, Corporate Services and Quality, Stakeholder Engagement and Communications units of the Office of the Ombudsman for their hard work over this past year. In a very short period of time, this group of individuals has provided extensive support to the Commission's efforts to develop the register of lobbying, website and instructional tools, establish regulatory procedures, and conduct an extensive outreach campaign.

The significant efforts involved in establishing and implementing this new regulatory system have borne fruit, with very positive early results and compliance. These achievements are due in no small measure to the unfailing dedication and hard work of the team, and I thank them for their excellent contributions.

1

The Work of the Standards in Public Office Commission

Chapter 1
The Work of 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 six members and is chaired by a former Judge of the High Court, Mr Justice Daniel O'Keeffe. Up to 2015 it has supervisory roles under four separate pieces of legislation.

- the *Ethics in Public Office Act 1995*, as amended by the *Standards in Public Office Act 2001*, (the Ethics Acts);
- the *Electoral Act 1997*, as amended, (the Electoral Acts);
- the *Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act 2014*, (the Parliamentary Activities Allowance Act); and
- the *Regulation of Lobbying Act 2015*.

In addition to supervising the disclosure of interests and compliance with tax clearance requirements, the disclosure of donations and election expenditure and the expenditure of state funding received by political parties, the Commission serves as the Registrar of lobbying, overseeing the Register of Lobbying. The Office of the Ombudsman provides secretariat staff to the Standards in Public Office Commission.

A separate annual report for 2015 on the administration of the Commission's other roles will be furnished to the Minister for Public Expenditure and Reform in June 2016.

Further information about the functions of the Commission may be accessed here: http://www.sipo.gov.ie/en/About-Us/Our-Functions/.

Further information about the regulation of lobbying may be accessed here: www.lobbying.ie.

2

Overview of the *Regulation of Lobbying Act 2015*

Chapter 2
Overview of the *Regulation of Lobbying Act 2015*

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

The register itself is a web-based system. 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 registrations and returns submitted by registrants.

Persons within the scope of the Act include:

- persons with more than 10 employees,
- representative bodies and advocacy bodies with at least one employee,
- third parties communicating on behalf of a client (who fits one of the above criteria) in return for pay, and
- anyone lobbying about the development or zoning of land.

Designated public officials 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. The category also includes Special Advisors and the senior-most civil and public servants which 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 dealing with the zoning and development of land are relevant communications. The Act provides for a number of exemptions to what is considered a relevant matter, which are set out in section 5(5) of the Act.

Anyone who is lobbying must register and submit returns three times per annum, covering prescribed periods (1 January – 30 April, 1 May – 31 August, and 1 September – 31 December). The return must indicate who was lobbied, the subject matter of the lobbying activity and the results the person was seeking to secure, the type and extent of activity, the name of any person in the lobbying organisation who is or was a designated public official and carried out lobbying activity, and, if relevant, information about any client on whose behalf they are lobbying.

The Act also provides that specific classes of designated public officials (namely Ministers and Ministers of State, special advisors and public and civil servants) are subject to a one-year post-employment cooling-off period, during which they must not engage in specific lobbying activities.

While the Act does contain a number of investigative and enforcement provisions, those will not come into effect until the one-year anniversary of the Act's commencement. The focus in the first year is on education, outreach and encouraging compliance.

Finally, the Act provides for a legislative review, scheduled to take place one year after commencement. The review will be led by the Minister for Public Expenditure and Reform, who may then consider possible amendments to the Act.

Statutory Instruments under the Act

Three 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 (Designated Public Officials Regulations)* (S.I. 367 of 2015); and
- *Regulation of Lobbying Act 2015 (Appeals Regulations 2015)* (S.I. 366 of 2015).

The *Designated Public Officials Regulations* specify the positions in named public bodies that will be considered to be designated public officials for the purposes of the Act.

Finally, the *Appeals Regulations* prescribe the process by which appeals of the Commission's determinations under specific provisions of the Act may be made.

New laws for lobby groups

Peter O'Dwyer

Businesses which fail to comply with new lobbying legislation will not face sanctions for more than a year after the new laws come into force next month.

It is hoped the legislation which comes into force on September 1 will bring greater transparency to dealings between lobbyists and public officials with a register being established to keep track of such meetings.

Those found to be in breach of the rules will face fines of up to €200 for administrative breaches and more severe penalties up to and including imprisonment for serious failings. It will be at least a year however, before penalties can be levied against those breaking the rules, according to the country's new head of lobbying regulation, Sherry Perreault who said she expects people to comply.

"Initially, in the commencement of the legislation what we're trying to do is just encourage people and help them to get familiar with how the system works so that they're able to comply; we're trying to encourage compliance.

"There are investigation and enforcement provisions in the legislation but they won't come into force until after one year so the legislation commences the first of September this year, the enforcement provisions won't come into force for at least another year," said Ms Perreault. The legislation will require lobbyists to register online and submit returns three times a year, beginning in January 2016.

Those affected include third-party lobbyists paid to engage with public representatives; companies with 10 or more employees, representative bodies and advocacy groups discussing relevant issues; and anyone lobbying about the development or zoning of land.

A three-step online test is available at www.lobbying.ie for those unsure as to whether or not they must register. Public representatives encompass ministers; Dáil and Seanad members; MEPs; members of local authorities; special advisers and senior public and civil servants.

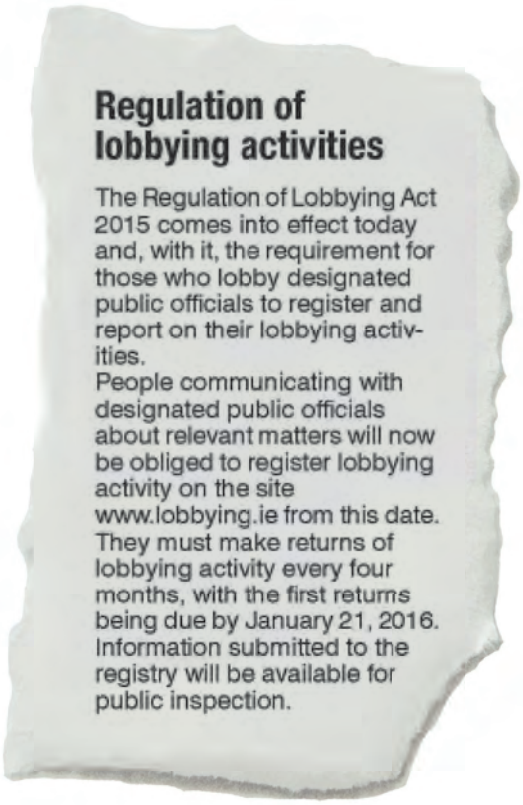
The former Canadian Conflict of Interest and Ethics Commissioner who yesterday visited Cork to discuss the legislation with local chambers of commerce said failure to submit a return on time would be constitute an administrative error.

"I would say that Ireland is now a member of a fairly small group of countries that has a robust ethics framework in place," Ms Perreault added.

Role of the Standards Commission

The Act sets out the role of the Commission in administering the Register of Lobbying. The legislation provides that the Commission will establish and oversee a web-based public Register of Lobbying. The Commission will also monitor compliance with the legislation, provide guidance and assistance and where necessary investigate and pursue breaches of legal requirements in due course. The Act also provides that the Commission will:

- remove any information from the register which the Commission believes to be inaccurate, out of date or misleading;
- decide on requests to delay publication of information contained in a registration or a return of lobbying activity, whereby the Commission may decide to publish the information in whole, in part or to delay publication for a prescribed period;
- decide on requests to waive or reduce the post-employment cooling off period for specific categories of designated public officials subject to it;
- develop and oversee a code of conduct;
- provide guidance and promote understanding of the Act;
- investigate and prosecute contraventions of the legislation;
- issue fixed payment notices for specific contraventions; and
- make annual reports to the Oireachtas.



Regulation of lobbying activities

The Regulation of Lobbying Act 2015 comes into effect today and, with it, the requirement for those who lobby designated public officials to register and report on their lobbying activities.
People communicating with designated public officials about relevant matters will now be obliged to register lobbying activity on the site www.lobbying.ie from this date. They must make returns of lobbying activity every four months, with the first returns being due by January 21, 2016. Information submitted to the registry will be available for public inspection.

3

Preparing for Commencement

Chapter 3
Preparing for Commencement

The Act was signed into law in March 2015, and came into effect on 1 September.

The preparatory work undertaken in the lead-up to the commencement of the Act on 1 September 2015 ensured that the necessary systems, resources and supports were in place and functioning prior to commencement. It also helped build greater awareness of the legislation among potential registrants and designated public officials.

People

A regulatory unit was established within the Commission Secretariat, with support functions provided by the Office of the Ombudsman, including Communications, Finance, Human Resources and Information Technology. The unit was tasked with overseeing the day-to-day development and administration of the register and website.

The new position of Head of Lobbying Regulation was filled through an open recruitment process managed by the Public Appointments Service. Sherry Perreault took up this post in May 2015. The team now comprises six full-time staff.

Development of the website and register

A contract was awarded late in 2014 on foot of a competitive tender process to an external firm to develop the website and online lobbying register. Both the website and the register were subject to extensive user acceptance testing by Commission staff and by external stakeholders throughout the winter and spring to ensure that the system was user-friendly and easy to navigate. The register and website were completed and publicly launched at an event on 30 April 2015.

The website, www.lobbying.ie, serves as the first stop for anyone seeking to register, to submit returns or simply to search for information about lobbying regulation. In addition to housing the register, the website includes information and guidance tools, such as guidelines for persons carrying on lobbying activities, guidelines on zoning and development and guidelines tailored to groups of designated public officials. The site also includes a series of how-to videos, explaining the registration and return processes, sample returns of lobbying activity, regularly updated "frequently asked questions" and other documents to illustrate various elements of the Act. A list of publications is included in **Appendix 1**.

The launch of the register four months prior to the commencement of the Act allowed those who were likely to have obligations under the Act to register, create practice returns and familiarise themselves with the system in a risk-free environment. At the end of August, registrants were given the option to carry forward their registration information to the live system. All practice returns were erased from the register, and on 1 September the live system was launched, in both Irish and English.

Advisory Group on the Regulation of Lobbying

An Advisory Group on the regulation of lobbying was established, composed of relevant experts and stakeholders (see **Appendix 2**). The Group's role is to provide information and input on implementation matters, including conducting user acceptance testing of the register; to serve as a problem-solving forum, identifying issues, risks and gaps likely to impact on the system's operation; and to inform the development of communications strategies and materials, including legislative guidelines, to ensure that those subject to the Act are aware of their obligations. Input from members of the Group has been invaluable in assisting the Commission in addressing key implementation issues arising from the establishment of the register.

In accordance with Section 5(7) of the Act, the Minister for Public Expenditure and Reform published a *Transparency Code* which sets out how certain relevant public bodies, such as ministerial advisory groups, may conduct their activities in a transparent way. By adhering to the *Transparency Code*, communications within these bodies meet the exemption, contained in section 5(5)(n) of the Act, from the requirement to register and report on lobbying activities.

Accordingly, the Commission has complied with the requirements of the *Transparency Code*, and the necessary information about the Advisory Group has been published on the website www.lobbying.ie.

Communications and outreach

An extensive communications and outreach strategy was developed and implemented to ensure that all those who might have obligations under or an interest in the new Act were aware of its provisions. Outreach activities included numerous presentations to stakeholder groups throughout Ireland, including businesses and business associations, charities, representative and advocacy bodies.

In addition, presentations were given to groups of designated public officials, including: Members of the Dáil and the Seanad, local authority members, management and staff, and a number of management teams for various departments and agencies. While designated public officials do not have obligations under the legislation, they have an interest in the register as they will be named in lobbying returns as having been lobbied. We have asked that designated public officials self-identify as such in their communications with those lobbying them. This will enhance awareness of the Act and will assist persons lobbying to submit accurate returns.

Other outreach activities included establishing a Twitter presence to highlight significant events, dates and milestones. Several articles regarding the regulation of lobbying were submitted for publication in a number of newspapers and journals. Correspondence was sent to over 2,000 public and private sector bodies, and to the top 1,000 companies in Ireland to inform them of the Act and its obligations. Finally, a national advertising campaign designed to raise general awareness of the Act was launched in September.

Information tools and resources

Section 17 of the Act provides the Commission with the authority to issue guidance about the Act. The Commission may also make information available for the purpose of promoting awareness and understanding of the Act.

The Commission has published a suite of guidelines tailored to various parties with an interest in the Act. Guidelines published on the website in August 2015 included:

- *Guidance for Designated Public Officials,*
- *Guidance for Local Authority Members,*
- *Guidance for TDs, Senators and MEPs,*
- *Guidelines for persons carrying on lobbying activities, and*
- *Guidelines on lobbying in relation to zoning and development.*

A range of other helpful information has been published on the website, including frequently asked questions, sample returns, instructional videos and a Three Step Test to help people determine whether their activity is lobbying.

Canadian to supervise Irish lobbyists

STEPHEN COLLINS

An experienced Canadian official has been appointed to run Ireland's new lobbying system which will come into operation next week.

Sherry Perreault, a senior director from Canada's Office of the Conflict of Interest and Ethics Commissioner, has been appointed as the first head of lobbying regulation in this country.

The appointment has been announced in advance of next week's launch of the online registration system for lobbying which follows the recent enactment of the Regulation of Lobbying Act 2015.

"I am very much looking forward to playing a role in this important new development in Ireland, which seeks to add a new level of transparency to the process of policy development and political decision-making," said Ms Perreault. People engaged in lobbying activity will be able to register on the regulator's website from May 1st and will be obliged by law to register lobbying activity that takes place from September 1st.

The appointment was welcomed by the chairman of the Standards in Public Office Commission, Mr Justice Daniel O'Keeffe.

4

Operations since Commencement

Chapter 4
Operations since Commencement

Section 25(2) of the Act requires that the following information be included in this report, in a form which does not enable the identification of persons involved:

- Any determinations under section 14 made or in force that year [delayed publication requests];
- Any investigations under section 19 concluded in that year;
- Any applications for consent 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.

The following information related to the 2015 calendar year. It does not include information for the 21 January 2016 returns.

Determinations under section 14

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

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

In 2015, there were 7 applications to delay publication of registration details. Of these:

- Five had registered in error due to a misunderstanding of the Act's requirements. These persons were not lobbying for the purposes of the Act, and subsequently requested to have their registrations removed from the system. As the registrations themselves had been submitted in error, no determination under s. 14 was required. The registration details were removed from the register.
- One had misunderstood the application of the delayed publication provisions, and had submitted the request in error. As the applications had been submitted in error, no determination under s. 14 was required. The registration details were subsequently published.
- One actual application to delay publication of registration details was received and was rejected. The registration details were subsequently published.

In 2015, there were no applications to delay publication of details submitted in a registrant's return.

There has therefore been one determination made under this section in 2015.

Determinations under sections 19–22

Section 19 of the Act provides the Commission with the authority to conduct investigations into possible contraventions of the Act. Section 20 describes offences under the Act, and section 21 provides for fixed payment notices for specific contraventions.

As the investigation and enforcement provisions of the Act, including sections 19, 20 and 21, are not yet in force, the Commission has nothing to report in relation to those sections.

Section 22 of the Act provides for post-employment restrictions for specific categories of designated public officials. A designated public official may apply to the Commission for consent to waive or reduce these restrictions.

No applications for consent under section 22 have been received from either current or former designated public officials seeking to waive or reduce the post-employment restrictions to which they may be subject.

Internal procedures and appeal processes

The Commission has put in place a range of internal procedures and protocols to support decision-making in accordance with its statutory responsibilities under the Act, and to provide guidance to staff in fulfilling their responsibilities in a fair, consistent and efficient manner.

Section 23 of the Act provides for appeals of specific decisions of the Commission, namely decisions relating to the removal of information contained on the register (section 10(5)), applications for delayed publication (section 14), and applications to waive or reduce the post-employment cooling-off restrictions applicable to certain classes of designated public official (section 22).

The Department of Public Expenditure and Reform has established panels of independent appeal officers who will be able to hear appeals in Irish or English.

Under the Act, the independent appeal officer may uphold a decision of the Commission, or overturn it and replace it with another decision. Decisions of the appeal officer may in turn be appealed on a point of law to the High Court.

Engaging with others

With a view to exchanging experiences and learning from best practice in other jurisdictions, the Commission has engaged with several international practitioners and organisations, as well as academics both in Ireland and abroad:

- In November, Sherry Perreault spoke at a workshop on the regulation of lobbying hosted by the University of Stirling, Scotland. Targeted at Scottish parliamentarians, policy-makers and academics as Scotland was considering draft lobbying legislation, the workshop brought together lobbying registrars from Ireland, the United Kingdom, and the European Union. The registrars spoke of their experience in establishing and managing a register of lobbying activities. Other speakers at the event included a subject-matter expert from the OECD, and academics from Scotland and the United States.

- The Commission Secretariat also responded to several queries from France, the European Union, and the Organisation for Economic Co-operation and Development (OECD). In November, the Commission secretariat met with a visiting delegate from the French office of La Haute autorité pour la transparence de la vie publique [the High Authority for Transparency in Public Life].

- The Commission Secretariat has joined the Council on Governmental Ethics Laws (COGEL), a U.S.-based international body for ethics practitioners, including lobbying regulators. COGEL provides a forum in which members may share information, exchange best practices and undertake professional development via an annual conference.

New lobbying legislation aims to take on 'closed door' meetings

Lobbyists can have a very significant influence in both the public and private sectors

Mark Hilliard

You can nearly picture the scene: a grinning politician presses the palm of a tilt-suited stranger, smiling as he is ushered into a quiet room. The door closes so no one might peer inside and the meeting begins. But what's being discussed?

This may be an unjustly suspicious caricature of lobbying – a common and legitimate practice where democracies engage with outside interests – but where things are done discreetly in back rooms or closed offices, a public is entitled to be cynical. The best lobbying, after all, is that which we never hear about.

This probably explains the need for legislation that will finally record who has been talking to whom, about what and with which outcome. There are of course concerns, but the true grit of such law will only become known in time.

The Regulation of Lobbying Act 2015 was enacted last month. An online lobbying register, due to be launched next month, will require anyone involved in such activity to record details of clients, names of public officials contacted, subject matter and the intended results of communications.

"Over the last 10 years in particular, there has been an effort to regulate all kinds of different sectors and professions," says JP McDowell, solicitor at McDowell Purcell.

"Lobbyists have been a feature of our business and political landscape now for some considerable time. They can have a very significant influence both in the public and private sector."

Exceptions

It is the pathways to such influence that the recording system is designed to map. There are exceptions. For example, a discussion of private affairs is exempt, although this does not extend to matters of planning and land zoning (barring principal private residences).

Where a communication relates to the initiation, development or modification of public policies or programmes, preparation of an enactment or the awarding of a grant, exchanges must be registered. TDs, MEPs, councillors, special advisers and secretaries general of government departments are all included as obligated parties.

"There is possibly the perception that all of this stuff goes on behind closed doors and this shines a light on that," says Brian Ormond of the same legal firm.

"It is all about ensuring that where this is going on, the public is aware of what is going on. When these things happen in the shadows there is always a risk of abuse."

Question marks

There are question marks however as to the extent registrations will bring lobbyists in from the cold, the effect the legislation might have on business practices and the strength of disincentives to avoid transparency.

"I have no idea of how many they are expecting," says Mr McDowell. "I am thinking this is a register that won't contain more than a few hundred names. Do we have an industry out there that is comprised of a few thousand people? The register of dentists is 2,000 people. Are there going to be more than 1,000 lobbyist registrations with the commission? I doubt it."

Those eventual numbers should help shape a hitherto amorphous industry. The register, controlled by the Standards in Public Office Commission, will be updated three times a year and fully open to public inspection. It is likely to prompt considerable interest and this, in its own way, invites problems. While there are some exemptions, as detailed, there is no regard for legal privilege.

Contradictory forces

Writing in the *Law Society Gazette*, solicitor Cormac Ó Culáin outlines the contradictory forces of legal professional privilege and duty of confidentiality.

"The [Law] society's key concerns with the act relate to the obligations that may be placed on our members in the context of their relationship as legal advisers to their clients," he wrote.

"The solicitor/client relationship is founded on client confidentiality and legal professional privilege. These tenets occupy the core of the property administration of the legal system.

"The [legislation] has more of an impact on the former tenet as it requires disclosure of the very existence of the solicitor/client relationship. The society submitted that any interference or competing public interest with these long-established norms must be carefully considered against the possible damage to the integrity of the legal system."

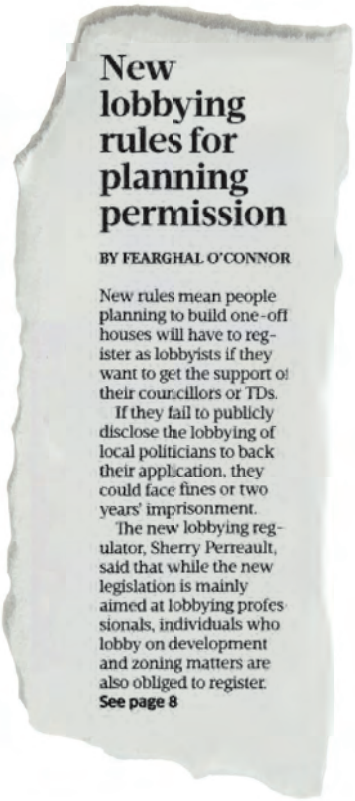
Then there is the issue of penalties and whether there is enough incentive for full compliance. Contraventions of the Act – making a late return (disclosure); failing to make a return; making a false or misleading return – can be sanctioned in the first instance by a fine of up to €200. Failure to comply could inflate that to €2,500 or, on conviction, up to two years in prison.

Transparency

The Act appears designed to focus on transparency in an often opaque world. As Mr Ormond points out, there does not seem to be a provision to remove someone from the register for a serious offence.

"It seems the focus of the Act is on letting the public know who is talking to whom," he says. "It's more for transparency."

Guidelines for lobbyists will be issued later this month. The register opens in May and will be followed by a three month period during which users can familiarise themselves with the system. From then on, we will all know who's in what meeting.



New lobbying rules for planning permission

BY FEARGHAL O'CONNOR

New rules mean people planning to build one-off houses will have to register as lobbyists if they want to get the support of their councillors or TDs.

If they fail to publicly disclose the lobbying of local politicians to back their application, they could face fines or two years' imprisonment.

The new lobbying regulator, Sherry Perreault, said that while the new legislation is mainly aimed at lobbying professionals, individuals who lobby on development and zoning matters are also obliged to register.

See page 8

5

Key Issues in 2015

Chapter 5
Key Issues in 2015

It is important to note that the Act must be interpreted and applied in the context of real-life situations. It is impossible to anticipate every possible situation and have guidance in place. However, where it is possible to extract general guidance from them, queries and their responses have helped inform the development and continued refinement of reference tools and information on the lobbying.ie website, including frequently asked questions. It is expected that this content will continue to be expanded over time, as the Commission gains more experience in administering the Act.

The Commission will of course monitor any unintended negative consequences of the application of the Act, and will provide any input to the forthcoming legislative review that will be led by the Department of Public Expenditure and Reform.

The following are a sample of some of the issues that have been raised. More information on many of these issues is available in the Frequently Asked Questions section of www.lobbying.ie.

Lobbying outside of Ireland

There has been a great deal of interest in the question of whether a communication that takes place outside of Ireland must be registered.

The Act makes no distinction regarding where a relevant communication takes place. Moreover, the Act and its supporting statutory instruments explicitly identify Irish Members of European Parliament and senior civil servants, including some in positions based abroad, as designated public officials.

Determining whether a communication falls outside of jurisdiction is not based solely on whether it physically takes place outside of the country. Each case will have to be reviewed based on its own set of facts to determine in what circumstances a communication would fall within or outside of jurisdiction, and whether and how the Act may apply. There are many issues that must be considered in assessing whether a particular communication is registrable lobbying, for example who was party to the communication, where it originated or was received, and who was making, managing or directing the activity.

Ultimately, regardless of where a communication takes place, if a person within the scope of the legislation communicates with an Irish designated public official about a relevant matter, it is lobbying for the purposes of the Act. We would expect all those lobbying to register.

The registration of charities and the question of charitable status

Many charitable and not-for-profit organisations undertake lobbying activities, which may trigger their obligation to register under the *Regulation of Lobbying Act 2015*. A number of charitable organisations have asked about whether registering as a lobbyist will impact in any way their charitable status or charitable tax exemptions. While it is of course a matter for Revenue and the Charities Regulator to determine whether an organisation is eligible for charitable status or to avail of tax exemptions, there is no barrier to charities lobbying as long as the lobbying activity adheres to the provisions of the *Charities Act*, namely, that it fits within the organisation's primary objectives.

An organisation does not risk its charitable status simply by registering as a lobbyist. They must, however, consider whether the specific lobbying activity they are proposing to undertake is acceptable. Charities may have to satisfy Revenue and/or the Charities Regulatory Authority that their lobbying activity is in keeping with their primary objectives. If in doubt as to whether a lobbying activity is appropriate, organisations are encouraged to seek guidance from Revenue or the Charities Regulatory Authority.

Under the *Regulation of Lobbying Act 2015*, a person with more than ten employees, or a representative or advocacy body with at least one employee that is communicating with a designated public official about a relevant matter, must register and submit returns of lobbying activity. There is no exemption to this requirement for charities.

The method or venue of the communication

The *Regulation of Lobbying Act 2015* makes no distinction as to the method, venue or formality of a relevant communication. If a person within the scope of the legislation communicates with a designated public official about a relevant matter, it counts as lobbying and must be registered.

Under the Act, informal encounters that take place socially, in a business premises or on the street may be considered lobbying, just as a meeting in a councillor's office or inside Leinster House. Texts or emails may count as lobbying, as indeed might the use of social media in certain cases.

Many have asked specifically about the use of Twitter. Generally a tweet directed at a broad audience and not targeted at someone would not be considered lobbying. However, if a tweet is sent to an individual designated public official, or that official is tagged in the tweet, it may be registrable lobbying depending on whether the person sending it falls within the scope of the Act and whether the subject of the tweet concerns a relevant matter.

Submissions to public consultations

Subsection 5(5)(e) of the *Regulation of Lobbying Act 2015* states that "communications requested by a public service body and published by it" are exempt. Any submissions made as part of a public consultation process would therefore be exempt as long as they were requested by the public service body and the public service body publishes them. The definition of public service body for the purposes of this section is set out in section 7 of the Act.

There have been some concerns expressed by registrants that a submission may not be published by the requesting public body in advance of the lobbying returns deadline. If the public body has indicated it plans to publish the submissions, there is no obligation for the registrant to include it in their lobbying return. If it is unclear whether the public body intends to publish the submissions, it is best to verify with the public body.

Public bodies are encouraged to make explicit their intentions when conducting such consultation processes, for the benefit of those who may have obligations under the Act.

Who initiates contact

Often a designated public official will contact a stakeholder to seek their views, formally or informally, on a relevant matter. The Act makes no distinction regarding who initiates a relevant communication. If a designated public official contacts someone who falls within the scope of the Act, and that person makes a relevant communication, it would have to be registered, regardless of who initiated the conversation.

It is important to distinguish these forms of consultation from the formal public consultations referred to above, where a public body seeks written submissions on an issue and intends to publish them.

Role of representative bodies

Section 5(2)(b) of the Act explicitly provides that a representative body, that is "a body which exists primarily to represent the interests of its members and the relevant communications are made on behalf of any of the members", with at least one employee, falls within scope of the Act. Representative bodies may advocate on behalf of the interests of a member or members. If the representative body makes, manages or directs the lobbying activity, it is the responsibility of the body to register and submit returns of its lobbying activity.

If an individual member of a representative body also makes, manages or directs his or her own lobbying activities, separate and apart from those undertaken by the representative body, then the member must assess their own obligations under the Act. If the member falls within the scope of the Act, he/she must register and submit separate returns of their own lobbying activities.

Client confidentiality

Professionals from a wide range of sectors may communicate on behalf of a client. Such persons include solicitors, tax professionals, accountants and management consultants. If communicating on behalf of a client, the lobbyist must register and identify their client in their return of lobbying activities. There is no exemption from the application of the Act for any particular profession.

Some have expressed the concern about whether registering and submitting returns breaches client confidentiality. Compliance with the Act should not necessitate a breach of client confidentiality. The level of information required in a return should not require the disclosure of confidential discussions. If such a situation arose, it would have to be assessed based on its particular facts.

Role of designated public officials in supporting the Act

The Act does not set out any requirements for designated public officials to register, submit returns or validate information contained in the returns submitted by lobbyists. There have been suggestions, including from some designated public officials, that having the requirement for public officials to validate returns in which they are named as being lobbied would provide added assurance of the accuracy of information submitted.

Designated public officials may seek correction of any inaccurate information, and the register has a reporting function built in to enable this. They may also choose to register for an RSS (Really Simple Syndication) feed to receive updates whenever they are named in a return.

While designated public officials have no formal obligations under the Act, the Standards in Public Office Commission has identified a number of best practices, which are outlined in the *Guidelines for Designated Public Officials*, *Guidelines for TDs, Senators and MEPS*, and *Guidelines for Local Authority Members*, which are all available on www.lobbying.ie.

Role of public bodies in supporting the Act

Public bodies are required by the Act to publish and maintain their list of designated public officials on the public body's website. Each body has been asked to identify a compliance officer to assist in this regard. This has proven very useful as the Commission liaises with public bodies to ensure websites are regularly updated and to allow the Commission to keep its own register database up to date.

Public bodies may also support the effective implementation of the Act by identifying advisory bodies or working groups that may operate under the *Transparency Code*.

6

Summary and next steps

Chapter 6
Summary and next steps

The response to the Act and its obligations has been largely positive among those who have the obligation to register. The register is seen as user-friendly and easy to navigate, and most have had little difficulty in registering and submitting returns. Many have noted their support for increased transparency in lobbying, and a desire to see widespread compliance. Likewise, there has been a high level of engagement by designated public officials at all levels of government.

While the Commission will report next year on activities undertaken in 2016 in support of the *Regulation of Lobbying Act* (the Act), we would like to briefly comment on the early results in the first return period.

Results of first returns period

The Act sets out three prescribed reporting periods per year. The first reporting period extended from 1 September – 31 December 2015. Anyone lobbying within that four-month period had to register and submit their first returns within 21 days after the end of that reporting period (that is, by 21 January 2016).

More than 1,100 persons and organisations registered and over 2,500 returns were posted in the online Register of Lobbying by the end of the deadline date (see **Appendix 3)**. As noted by the Chairman of the Commission in a press release marking the milestone, "the overall level of compliance is a very positive indicator that there is an acceptance of the need for openness and transparency in lobbying".

Analysis of the first returns will allow the Commission to identify any areas or sectors where further outreach is required to build awareness of the Act, and to revise or enhance information tools to ensure clearer understanding of registration and return requirements. Already the Commission has enhanced the Frequently Asked Questions section of the website, has revised the sample return form, and produced a document identifying common mistakes made in the first returns.

While the Commission does not have a statutory advisory role for registrants, in this first returns period it is seeking to assist registrants who may have incorrectly registered or submitted inaccurate returns. It is, however, the responsibility of the person submitting the return to ensure that the information contained therein is accurate.

Next steps

A high level of activity is expected in the current year, with three distinct returns periods scheduled, the anticipated commencement of the investigation and enforcement provisions contained in Part IV of the Act, and a planned legislative review of the Act.

The Commission is undertaking further systems development to the register to assist with the introduction of fixed payment notices for certain contraventions of the Act.

In addition, the Commission will put in place the necessary resources and processes to appropriately administer the Act's investigations provisions.

Section 16 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 with a view to promoting high professional standards and good practice". The Commission does not intend to undertake the development of such a code in the first year of the Act's commencement, to allow the legislation time to become established. The Commission will, in due course, undertake all appropriate consultations and research in order to develop a code.

Howlin announces online register of lobbyists

HARRY McGEE
Political Staff

Up to 20,000 individuals, companies and organisations may declare on an online register of lobbying announced by Minister for Public Expenditure and Reform Brendan Howlin.

The register, established under the recently enacted Regulation of Lobbying Act, will show who has lobbied; the issues involved; the beneficiary of the lobbying; its intended result and the public officials or politicians lobbied.

Mr Howlin, who has long campaigned on this subject, said: "The secrecy which has characterised some of the lobbying in the past has been problematic."

Details of the online register, lobbying.ie, were announced by Mr Howlin, Mr Justice Daniel O'Keeffe, chairman of the Standards in Public Office Commission (Sipo), and the new head of lobbying regulation, Sherry Perreault.

All the speakers said lobbying was an essential part of a democratic system but that the activity should be open to public scrutiny.

"Transparency has always been the cornerstone of accountability," said Ms Perreault, who previously worked in this area in Canada.

Large numbers

Sipo secretary Paddy Walsh said it was difficult to estimate how many would register but it could be 10,000-20,000: "It will be large and there will be large numbers registering."

Mr Howlin said the law sought to achieve a balance between the obligation to disclose information and not putting too onerous an administrative burden on groups and firms.

"The information to be registered takes account of the need to minimise the administrative burden so not every meeting, phone call or email has to be listed individually," he said

"Rather, the focus is on capturing the subject matter, who was contacted and the results intended to be achieved."

A provision in the Bill that attracted some criticism was the decision to reduce from two years to one the "cooling-off" period in which senior public servants and politicians are prohibited from lobbying.

Section 2 of the Act requires that the Minister for Public Expenditure and Reform commence a review of the Act's operation before the end of the first year. In addition to broader consultation with persons lobbying and other interested parties, the Minister is required to consult the Commission. The Commission will of course be pleased to provide any input required to the review and will publish its input in due course.

Finally, 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*, the Standards in Public Office Commission will strive to support transparency and good governance in Irish public life.

Ireland ranks sixth best in lobbying standards survey

SUZANNE LYNCH
European Correspondent

Ireland has been ranked sixth best out of 19 EU member states in a survey of measures in place to guard against "undue influence" in the political system.

Transparency International's report, the first of its kind to assess lobbying practices across EU member states and European institutions, found that Ireland scored 39 per cent in terms of international lobbying standards.

Ireland was ranked behind the UK, Austria and Lithuania, among others, but scored above the average of 31 per cent. Hungary and Cyprus ranked lowest in the survey.

The study examined the systems in place in a number of areas, including the existence of a lobbying register, transparency standards in the public sector, and the definitions used to categorise lobbyists and target sectors.

Last year the Government introduced a Regulation of Lobbying Bill, which aims to increase transparency around the lobbying of Government and civil service officials. The new regulation came into effect last month, and the web-based register will go live on May 1st.

Launching the report in Brussels, Transparency International's Daniel Freund said lobbying was "part of a healthy democracy". However, he also said that "when certain interests with more money and inside contacts come to dominate political decision-making for their own benefit, the democracy cannot work the way it's supposed to".

According to Transparency International, Brussels has the second highest density of lobbyists in the world, after Washington DC. Some estimates putting the number of lobbyists in the Belgian capital at 30,000.

Speaking yesterday in Brussels, Anne Koch, Transparency International's director for Europe and Central Asia, said that lobbying was a "key corruption risk" in Europe.

"Lobbying doesn't mean corruption, but unregulated lobbying leads to high risks of corruption," she said. "This is not an abstract issue. Lobbying affects what we eat, what we drink, the mobile phone bills we pay, the medicines we take."

Ms Koch said that the profile and practices of lobbyists were changing. "Many new players are coming into the field, many new techniques are being developed to influence policy. We know from our findings that there is no level playing-field – the better-resourced and better-connected have much more ability to influence policy."

Lobbying reform, she said, is not a "simple case of establishing a lobbying register. It's often seen as a quick-fix tool, a panacea. She noted that the lobbying register in the UK covers just 1 per cent of all lobbyists.

The report noted "the presence in Brussels of large European and US-based law firms and their lobbying of the EU institutions on behalf of corporate clients". It said lawyers have been "particularly reluctant to identify themselves as lobbyists", citing confidentiality.

A lack of legislation on the "revolving door" concept, whereby lawmakers take up positions with companies after their tenure, was highlighted.

EU transparency

Of the three EU institutions surveyed for the report, the European Commission was ranked highest in terms of its commitment to transparency.

Since 2011, the commission and the European Parliament have operated a voluntary register of lobbyists. In addition, last December the commission introduced new rules obliging commissioners, cabinet members and director-generals to publish information about meetings held with lobbyists.

This includes information on the dates, locations, and the names of the organisations and individuals they met, as well as the topics of discussion, a development that was welcomed by Transparency International.

The European Council, which represents member states, was found to have the weakest safeguards in place of the three institutions. Transparency International noted that much of the lobbying ahead of council meetings took place in national capitals.

Citing a recent EU law on car emissions, Mr Freund said that the German car industry had concentrated its lobbying efforts in Berlin.

"When the European Commission put forward the regulation on the CO2 emissions of cars, the German car industry basically made the German government their chief lobbyists," he said.

30,000

Estimated number of lobbyists working in Brussels, second highest density in the world

Appendix 1: List of Publications of the Standards Commission, 2015

Appendix 1
List of Publications of the Standards Commission, 2015

- *Quick Guide to the Act*
- *Regulation of Lobbying Act 2015: Guidelines for people carrying on lobbying activities*
- *Regulation of Lobbying Act 2015: Guidelines on lobbying in relation to development and zoning of land*
- *Regulation of Lobbying Act 2015: Guidance for Designated Public Officials*
- *Regulation of Lobbying Act 2015: Guidance for TDs, Senators and MEPs*
- *Regulation of Lobbying Act 2015: Guidance for Local Authority Members*

*Note: All publications are available online at www.lobbying.ie

Appendix 2: Members of the Advisory Group on the Regulation of Lobbying

Appendix 2
Members of the Advisory Group on the Regulation of Lobbying

Bar Council of Ireland
Shirley Coulter
Director of Communications & Policy

Chambers Ireland
Ian Talbot
Chief Executive

Consultative Committee of Accountancy bodies - Ireland
Pat Costello
Chief Executive

Eircom Ltd
Pat Galvin
Director of Public Affairs

Irish Charities Tax Reform Group (ICTR)
Sheila Nordon
Executive Director

IMPACT Trade Union
Niall Shanahan
Communications Officer

Ibec
Siobhán Masterson
Head of Corporate Affairs

Irish Cancer Society
Kathleen O'Meara
Head of Advocacy and Communications

Irish Farmers Association
Elaine Farrell
Oireachtas/Retail Executive

Irish Planning Institute
Seán O'Leary
Executive Director

Irish Tax Institute
Martin Lambe
Chief Executive

The Law Society of Ireland
Cormac O Culáin
Solicitor/Public Affairs Executive

County and City Management Association
Joan Martin
Chief Executive, Louth County Council

Public Relations Institute of Ireland
John Carroll
Chief Executive

Revenue Commissioners
Denis Barry
Principal Officer

The Wheel
Ivan Cooper
Director of Advocacy

Dept. Public Expenditure & Reform
Áine Stapleton
Principal Officer (member of group to March 2016)

Joyce Nolan
Assistant Principal
(member of group from March 2016)

Standards in Public Office Commission
Jim O'Keeffe
Member of Standards in Public Office Commission

Sherry Perreault
Head of Lobbying Regulation (Chair of Advisory Group)

Appendix 3: Returns made in advance of 21 January 2016 deadline

Appendix 3
Returns made in advance of 21 January 2016 deadline

Figure 1: Breakdown by public policy area

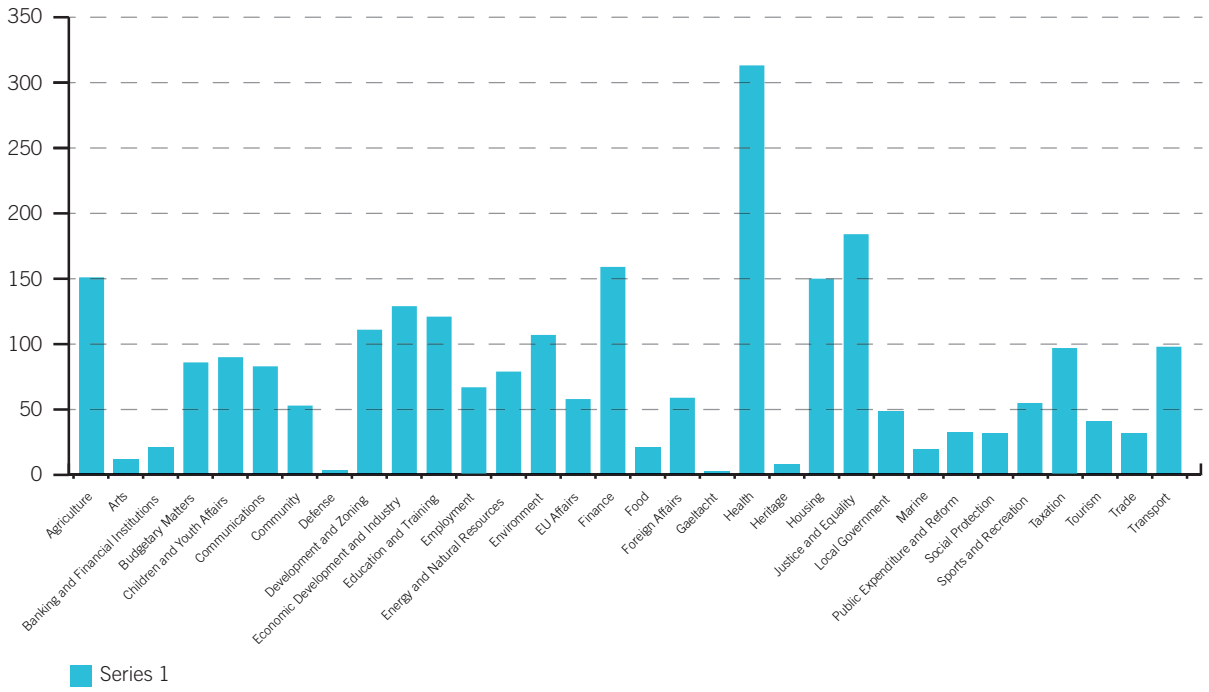
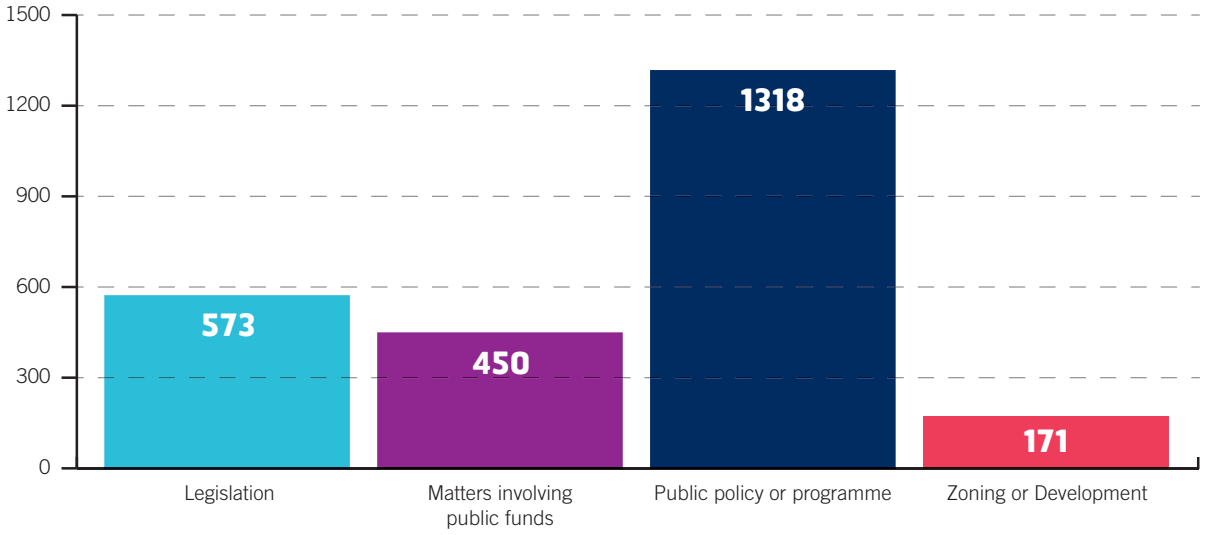


Figure 2: Breakdown by relevant matter



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