

Report by the Standards in Public Office Commission on a consultation process regarding a Code of Conduct for persons carrying on lobbying activities.

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1. Introduction

Lobbying plays an important role in promoting effective public decision making. It helps ensure that policy formulation and development is fully informed. It is important, therefore, that all parties and interests have fair and equitable opportunities to communicate their ideas and concerns and to contribute to public decision making.

Lobbying is a term that has previously had some negative connotations due to a perception that some interests were having undue access to and influence on policy makers and legislators. The Regulation of Lobbying Act (the Act) seeks to make the lobbying process more transparent by allowing the public to know who is seeking to influence whom in respect of what in relation to public policy. This is achieved through an online Register of Lobbying www.lobbying.ie. Since the Register commenced operations on 1 September 2015 over 1,750 persons have registered on the Register and over 27,000 returns of lobbying activity have been received.

While the Act and the introduction of the online Register has made lobbying more transparent, it does not address the manner in which such lobbying activities are conducted. Section 16 of the Act provides for a Code of Conduct for persons carrying on lobbying activities. The purpose of the Code is to seek to ensure that lobbying is carried out in an ethical manner that reinforces the objectives of the Act.

It is intended that the Code should complement the provisions of the Act and the effective operation of the online register. The Code aims to do this by providing a template for carrying on lobbying activities according to generally accepted principles. The Code will help to address the public's expectation that lobbying activities will be carried out ethically and transparently. It will also help to ensure that elected or appointed public officials who are approached by persons carrying on lobbying activities are able to readily establish whose interests the person represents and the outcome they are seeking to achieve.

2. Section 16 of the Act

2.1 Section 16(1) of the Act

Section 16(1) of the Act provides that the Standards in Public Office Commission (the Commission) may produce a Code of Conduct for persons carrying on lobbying activities *“with a view to promoting high professional standards and good practices”*.

Although the provisions of section 16 of the Act came into effect with the commencement of the legislation, the Commission considered it prudent to defer development of a Code of Conduct until such time as the enforcement provisions of the Act had been commenced and were working effectively. It was also considered prudent to wait until the first review of the

Act had been completed in case any proposed changes to the Act arising from the review might impact on the development of the code. It was also important for the Commission, as regulator, to gain some experience of regulating lobbying activity before attempting to produce a code of conduct for persons carrying on lobbying activities. As the Act is fully commenced and the review has been completed without any new legislative proposals the Commission considered it timely to introduce a Code of Conduct.

2.2 Section 16(2) of the Act

Section 16(2) provides that before producing a Code of Conduct the Commission shall consult with persons carrying on lobbying activities and such bodies representing them, and such other persons as the Commission considers appropriate. The Commission has consulted widely on its proposed Code of Conduct. Details of the consultation process and the submissions received are set out in sections 3 and 4 of this report.

2.3 Section 16(3) of the Act

Section 16(3) provides that the Code may contain different provisions in relation to different descriptions of persons carrying on lobbying activities. 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 provisions of the Act can apply to employers; to representative or advocacy bodies; to professional lobbyists or third parties who are being paid to communicate on behalf of another person; and significantly, to **any person** communicating about the development or zoning of land.

Given the broad scope of persons to whom the Act may apply the Commission considered that a principles based code of conduct rather than a rules based code of conduct would be more suitable. The Code is, however, rules based insofar as it refers to the requirements of the Act in relation to registering and submitting returns of lobbying activities and to the post-employment restrictions which apply to certain elected and appointed public officials.

3. Approach to consultation

In preparing the consultation paper and draft Code of Conduct the Commission drew upon its experience of administering the Act and supervising the operation of the online register. The Commission also had regard to a number of similar codes and consultation processes in other jurisdictions.

As stated above the Commission considered that a principles based code of conduct rather than a rules based code of conduct would be more suitable. The Commission considered that the following set of principles might provide a template for carrying on lobbying activities in an ethical manner that reinforces the objectives of the Act:

- 1) Demonstrating respect for institutions
- 2) Acting with honesty and integrity
- 3) Ensuring accuracy of information

- 4) Disclosure of identity and purpose of lobbying activities
- 5) Disclosure of interests
- 6) Preserving confidentiality
- 7) Avoiding improper influence
- 8) Observing the provisions of the Regulation of Lobbying Act
- 9) Having regard to the Code of Conduct

4. Consultation

The Commission considered that circulating a draft code of conduct, based on the above principles and reflecting what it considered to be the best elements of the other codes it had considered, would allow for a more meaningful and focused consultation process. A consultation paper and a draft Code of Conduct was prepared and a call for submissions on the draft Code of Conduct was published in the national newspapers (Times, Independent and Examiner) on Saturday 7 July 2018. The consultation paper, draft Code and call for submissions were also published on the Commission's website, the Regulation of Lobbying website and the Department of Public Expenditure and Reform website in early July.

The consultation paper and draft Code together with a covering letter was circulated to key stakeholders. It was also circulated to a number of Regulators of Lobbying in other jurisdictions for their views. The call for submissions together with links to the consultation paper and draft Code issued to each registered lobbyist through the lobbying.ie messaging system. The deadline for receipt of submissions was 31 July 2018.

A total of 40 responses were received. Three of these provided no comments or suggestions on either the Code of Conduct or Regulation of Lobbying. Comments and suggestions have been received from Government Departments and public bodies; from other regulatory bodies; from representative bodies and advocacy bodies; and from other organisations and individuals. A summary of the submissions received and the Commission's response is set out below. A list of the persons who provided comments or suggestions on either the Code of Conduct or Regulation of Lobbying is provided at Appendix A to this report. A revised Code of Conduct taking into account some of the comments and suggestions received has been approved by the Commission and is being published today.

The submissions made to the Commission are not regarded as a lobbying activity as the submissions were not made to a Designated Public Official.

5. Summary of Comments received in relation to Code of Conduct for persons carrying on lobbying activities.

5.1 General Comments about the draft code

The following general comments were received in relation to the draft Code of Conduct

- 1) The Code should be mandatory. As the code is not mandatory and there is no obligation to comply, references to “should” in the Code might be replaced with “must”.
- 2) Unlawful and unethical behaviours should be explicitly prohibited in the Code. The Code should also refer to lobbyists and organisations being accountable for their actions in trying to effect change.
- 3) The language used is not sufficiently explicit and lends itself to “wide interpretation”. The Code should be written in Plain English, or accompanied by a Plain English explanatory note. This would greatly enhance its efficacy.
- 4) A review clause should be included in the Code to allow for review and updating of the Code.
- 5) The five principles of lobbying set out in Transparency International’s guide to ethical lobbying (legitimacy, transparency, consistency, accountability and opportunity) should be included in the Code.
- 6) Aside from complying with the provisions of the Act (in principle 7A of the Code) there is no requirement to maintain consistency with an organisation’s ethos, with any governing body, representative body or membership body to which they belong.
- 7) Providing examples of professional work that qualifies as lobbying might be useful for persons who might not regard themselves as a lobbyist. The Code should provide examples of acceptable and unacceptable behaviour. The Code might be complemented by a toolkit, an online forum or a FAQ to “operationalize it and provide concrete examples.” The Code might include some “useful reading and references” for persons carrying on lobbying activities including the Ethics Acts, Transparency Code and GDPR information on lobbying.ie.
- 8) The code should be mindful of existing obligations on the charity sector and the scope of a forthcoming Governance Code to be issued by the Charities regulator. The Code should “note the distinction”, “differentiate” or “make distinctions” between different types of lobbyists.

- 9) The reference in the preamble to the Code that it might apply to all communications with persons in public office could create uncertainty with regard to what requires formal reporting.
- 10) The Code should include a requirement to comply with all applicable laws, regulations and rules i.e. data protection law, or anti-bribery and anti-corruption legislation. It should also include a requirement to avoid conflicts of interest or to disclose any such conflict.
- 11) The Code should recognise and make particular reference to the fact that some lobbyists have exceptional or preferential access by virtue of their membership of expert and advisory groups convened by the public sector and should provide for moderating how these activities occur and their representatives act.

The Commission's response to the above comments and suggestions is as follows:

- In relation to items 1 and 2 above the Act does not provide for a mandatory Code of Conduct. The Code is not, therefore, enforceable. The code is a principles based code rather than a rules based. It sets out how persons should behave ethically when carrying on lobbying activities. It is not the proper mechanism to prohibit unlawful lobbying activities. The Act provides for offences and penalties for those who contravene the Act.
- In relation to item 3 the Commission is satisfied that the Code is written in plain English. It does not consider that a Plain English explanatory note is necessary.
- In relation to item 4 the Commission agrees that the Code should be subject to regular review and has included a reference that the Code will be reviewed in line with the statutory reviews of the Act provided for in section 2 of the Act.
- In relation to item 5 the Commission is satisfied that the principles used are appropriate and relevant to this Code. It notes that some of the principles set out in Transparency International's guide are broadly reflected in the Code.
- In relation to item 6 the Commission does not consider that such a requirement is appropriate for this Code of Conduct. It is a matter for the organisation and/or its governing, representative or membership body to ensure that the organisation is behaving consistently with any relevant ethos or corporate standard.
- In relation to item 7 the Commission considers that such examples are more appropriate for inclusion in its guidelines and/or as part of its communications and outreach activities. The Commission already has a number of guidelines, guidance documents and FAQs on the requirements of the Act. The Commission anticipates that further guidance or FAQs on compliance with the Code may develop over time. The Commission has included relevant reference material in the Preamble to the Code.

- In relation to item 8 the Commission is aware that there are different types of lobbyists. The Act does not distinguish between different types of lobbyists or the purpose of their lobbying activities and the Code should not deviate from the Act in this regard. The Commission has noted in the introduction to the Code that the Act applies to a wide and differing range of lobbying activities including persons who might not ordinarily regard themselves as lobbying. The Code is a principles based code and is intended to be applicable to any person carrying on lobbying activities (as defined in the Act). The Commission considers that a principles based code should fit the broad scope of persons to whom the Act may apply and that this is preferable to having different codes for different categories of lobbyist.
- In relation to item 9 the Commission does not consider that the reference in the preamble will cause confusion. The Act sets out the formal reporting requirements in relation to relevant communications with Designated Public Officials (DPOs). The Code suggests a best practice approach which should be used when communicating with all public officials and not just those which are DPOs under the Act.
- In relation to item 10, the Commission considers that the Code should include a reference to the fact that the Code does not circumvent, supersede or replace any requirement to comply with other legislation; professional codes of conduct or industry rules and regulations.
- In relation to item 11, the Commission recognises the issue of exceptional or preferential access and has included a reference in Principle 1 of the Code on “exceptional access” and how this should not be misused. The Commission has also produced [a guidance note for individuals and organisations](#) who participate in Strategic Policy Committees, Task Forces, Advisory Groups etc. established by a public body and who may have obligations under the Act. The guidance note also refers to the issue of exceptional or preferential access.

5.2 Comments about specific principles of the draft Code

Principle 1 – Demonstrating respect for public bodies

The following comments/suggestions were received in relation to Principle 1:

- 1) This principle should refer to demonstrating respect for the democratic process / democratic institutions.
- 2) Concerns were expressed about the proposal that persons carrying on lobbying activities should not expect preferential access or treatment. One organisation stated that it expects to receive preferential access and treatment “based on objective criteria commensurate with our unique democratic mandate and the scale and importance of the economic sector that we represent”. Another organisation did not agree on a blanket provision on expecting preferential access as there may be circumstances where a person facing barriers accessing policy makers could require “preferential access appropriate to their needs.”

- 3) There were concerns with the code attempting to regulate lobbying relationships with DPOs with whom persons may have frequent contact and may have developed good working relationships. It is not uncommon to develop a working relationship with a DPO and that this can help to progress an issue. A general restriction on preferential access could be used to “undermine long-established partnership-working processes”. Persons should not, however, abuse these relationships.
- 4) There were concerns that a general restriction on preferential access might provide a “shelter” for a policymaker to avoid a representation being made.
- 5) It was suggested that a person should not expect preferential access if they have previously been a colleague of the DPO or worked on the DPOs election campaign.
- 6) Should a strong working relationship or personal relationship exist between a lobbyist and a public official, then the onus should be on the public official to avoid a conflict of interest.
- 7) The reference to “working” in the last paragraph should be removed to allow for personal relationships to also apply.

The Commission’s response to the above comments and suggestions regarding principle 1 is as follows:

- In relation to item 1, the Commission has included a reference to respect for the democratic process/democratic institutions.
- Having regard to items 2 – 5 above the Commission has revised this principle to say that a person should not look for preferential access on the basis of the person’s identity or relationship with a DPO or body and should not seek to abuse or exploit such relationships.
- In relation to item 6 it is important to note that the Code of Conduct is for persons carrying on lobbying activities and is not intended for public bodies or DPOs. DPOs have their own Code of Conduct which provides for conflicts of interests.
- In relation to item 7 the Commission has amended the Code to take account of this suggestion.

Principle 2 – Acting with Honesty and Integrity

The following comments/suggestions were received in relation to Principle 2:

- 1) The vocabulary on ‘honesty and integrity’ should be strengthened to incorporate concepts of "fabrication or falsehood" or "deliberately misleading". The last sentence of the first paragraph might state that persons make their case without manipulating or presenting information in ways that is “knowingly understood as dishonest, fabricated and/or false”.

- 2) On the issue of presenting information accurately one organisation suggested that every argument has multiple sides and that no one could be expected to present every aspect of an issue.
- 3) The Code should be silent on the matter of exerting pressure on a DPO.
- 4) The use of subjective terms such as “undue pressure” and “inappropriate behaviour” could be open to wide interpretation. Such terms could be used by DPOs to “foreclose” lobbying. Following up on complaints of “undue pressure” or “inappropriate behaviour” could be challenging due to the subjectivity or “vagueness” of such terms.

The Commission’s response to the above comments and suggestions regarding principle 2 is as follows:

- In relation to item 1, the Commission has included a reference to “misleading” in the last sentence of the first paragraph of this principle.
- In relation to items 2 – 4 the Commission does not agree that the Code should be silent on exerting pressure on a DPO. Having taken the comments/suggestions at 2 - 4 into consideration the Commission has decided to include a reference that persons should not seek to obtain information or influence decisions dishonestly or by use of “improper means or influence”.

Principle 3 – Ensuring Accuracy of Information

The following comments/suggestions were received in relation to Principle 3:

- 1) Providing factual information is an “excepted” communication. The term “genuine representations” might better reflect the principle rather than “factual and accurate”.
- 2) The opening sentence should require lobbyists to ensure that information provided is accurate, factual and “legitimate”. Another suggestion was that there should be a requirement to provide factually correct, current and accurate information.
- 3) The emphasis should be on “wilfully” manipulating information. This might be reflected in this part of the Code.
- 4) The requirement to update information should be limited to where there has been a material change to relevant matters on which the person continues to actively lobby.
- 5) The Code should not place unreasonable requirements on lobbyists to validate research and evidence around information presented. This could create an

unnecessary burden for organisations and lead to unintended consequences (not specified).

- 6) This principle might be used by DPOs to reject a lobbying encounter if they come to the conclusion that the information provided is inaccurate, out of date or incomplete.
- 7) Lobbyists should be expected to satisfy all relevant stakeholders of the accuracy of information they use to influence public policy. The Code should encourage lobbyists to publish (with their client's consent) any information shared with public bodies or officials. The Register could facilitate this by providing a text field to allow lobbyists insert a link to the published information.

The Commission's response to the above comments and suggestions regarding principle 3 is as follows:

- In relation to items 1 – 3 above the Commission is aware that providing factual information is not in itself a lobbying activity. The Code, however, is for persons carrying out lobbying activities and the reference to providing factual information in this context means providing factual information in support of lobbying activities. The Commission is satisfied that the requirement to provide accurate and factual information meets the purpose of this principle.
- In relation to items 4 above the Commission does not agree with the suggestion. It has, however, amended the reference in the principle to "information previously provided" and on which the public body or official may still be relying.
- In relation to items 5 and 6 the Code is for person's carrying on lobbying activities. It is fitting that there should be an onus on persons to provide accurate and factual information. Ensuring that information used in support of a lobbying activity is accurate and factual should not create an "unnecessary burden". If a person is providing inaccurate, out of date or incomplete information in support of lobbying activities then a DPO should not be expected to disregard this behaviour.
- In relation to item 7 while the Commission is satisfied to include a reference in the Code which encourages lobbyists to publish any research, statistics or other information used to support their lobbying activities, it is firmly of the view that the Register should not be the vehicle or repository for such information.

Principle 4 – Disclosure of Identity and Purpose of Lobbying Activities

The following comments/suggestions were received in relation to this Principle 4:

- 1) The last sentence of the first paragraph should also refer to "organisations".
- 2) The third paragraph of this principle should refer to "direct and indirect" interests.

- 3) Principle 4 should be more closely linked to principle 5 on disclosure of interests. There needs to be greater emphasis on identifying those with commercial interests in policy decisions. Full disclosure of identity, purpose of lobbying and interests will make it easier for the public and those being lobbied to identify who is lobbying and for what purpose. This will address the issue of identifying those with commercial interests who are seeking to influence policy decisions.

The Commission's response to the above comments and suggestions regarding principle 4 is as follows:

- The Commission considers that the title of this principle would benefit from the inclusion of the words "to public bodies and officials".
- The Commission agrees that the last sentence of the first paragraph should also refer to "organisations". It also considers that this sentence should refer to the "client's interests in the matter".
- With regard to item 3 above the Commission considers that the reference to "interests" in paragraph 3 of the principle should be to "any personal interests" in the matter on which they are lobbying.

Principle 5 – Disclosure of Interests

The following comments/suggestions were received in relation to this principle:

- 1) A requirement to avoid conflicts of interest or disclose such conflicts should be included. The principle should also be broadened to incorporate concepts of "networks of pecuniary interests, direct or indirect".
- 2) In certain areas where an organisation represents interests that conflicts with the particular policy area (public health for example) it must be highlighted. Principle 5 should be strengthened to provide information around lobbyist's objectives, beneficiaries, funding sources and targets.
- 3) It may not be practicable to codify obligations regarding lobbyist-client relationship interests and confidentiality. Such provisions have been removed from other Codes of Conduct in order to focus on the lobbyist – public official relationship.
- 4) There may be difficulties with the wording used in the second paragraph of this principle.
- 5) Principle no 5 deals with two separate issues. The first paragraph concerns the disclosure of conflicts of interest or competing interests while the second paragraph relates to professional lobbyists or third party lobbyist misrepresenting their access to DPOs and public bodies. These principles should, therefore, be treated separately.

- 6) Disclosure of conflicts of interests or competing interests is an issue between the professional lobbyist and the client and are best provided for in professional Codes of Conduct.
- 7) The Code should not assume that representative bodies would have the capacity or insight to know the interests/conflict of interests of its membership bodies.
- 8) The first paragraph should say that a person can only represent competing or conflicting interests where the member is able to act for each of the clients with the same professionalism and duty of care and where reasonable efforts have been made to secure the clients' consent.
- 9) More clarity or a definition of terms such as "professional body", "family", "business" and "social associations" used in paragraph 1 of the principle.
- 10) The protections envisaged by the second paragraph of principle 5 would be enhanced by including the words "recklessly" or "negligently". This would ensure that lobbyists who ought to have known that their claims were misleading or exaggerated are not exonerated from consequences.

The Commission's response to the above comments and suggestions regarding principle 5 is as follows:

- Having reviewed the comments and suggestions received in relation to this principle the Commission is satisfied that the first paragraph of this principle is not appropriate for this Code of Conduct. In that regard, therefore, the first paragraph of this principle has been removed from the Code.
- The second paragraph has been incorporated into principle 2 – Acting with Honesty & Integrity.

Principle 6 – Preserving Confidentiality

The following comments/suggestions were received in relation to this principle:

- 1) The first paragraph of this principle may be overly restrictive given that the intention of the Act is to shed more light on lobbying interactions. The principle should be developed further to make clearer the transparency obligations on those undertaking lobbying and to elaborate on the circumstances in which confidentiality obligations might arise.
- 2) The first paragraph of this principle should include the words "*when that has been explicitly agreed between the two parties in advance*".

The Commission's response to the above comments and suggestions regarding principle 6 is as follows:

- The purpose of the Act is to provide transparency with regard to persons carrying on lobbying activities. The purpose of the Act is not the disclosure or publication of information held by public bodies or officials. Having regard to the comments received, the Commission has revised this principle to state that a person should only use and disclose any confidential information received from a public body as agreed with the public body and in the manner consistent with the purpose for which it was shared.

Principle 7 – Avoiding Improper Influence

The following comments/suggestions were received in relation to this principle:

- 1) Persons carrying out lobbying activities should be fully familiar with the most up to date information on lobbying, Transparency Code requirements and DPOs on the websites of organisations being lobbied.
- 2) Different Departments and public bodies may have their own guidelines on accepting gifts etc. The principle would suggest that a lobbyist should be aware of each and every set of guidelines, some of which may not always be easily accessible. The principle should refer specifically to the Civil Service Code of Standards and Behaviour.
- 3) The wording of this principle is vague and seems to place the responsibility to ensure there is not a breach of ethics legislation, codes of conduct etc. on the lobbyist and away from the DPO. The principle should be re-drafted to place the onus on both parties not to breach any law etc. or alternatively to prohibit bestowal of gifts or hospitality to public officials where there is a "registrable relationship".
- 4) Responsibility for the behaviour of elected and public officials should not be devolved to the lobbyist. The onus should be on the elected or public official to determine whether a conflict of interest exists. A person carrying on lobbying activities should be required to "take reasonable steps" to inform themselves of DPO codes of conduct, guidelines etc.
- 5) There have been difficulties encountered in relation to using the term "avoiding improper influence".
- 6) There should be restrictions on offering gifts, including hospitality. The code should make it clear that lobbyists should avoid the offer of any gifts or entertainment to officials they are lobbying irrespective of whether it causes a real or perceived conflict of interest.

- 7) The concept of improper influence should be extended to include “indirect / secondary preferment.
- 8) Persons carrying on lobbying activities should be prohibited from influencing DPOs other than providing evidence, information, arguments and “experiences” that support an intended outcome.

The Commission’s response to the above comments and suggestions regarding principle 3 is as follows:

- Having considered the submissions received in relation to this principle the Commission is of the opinion that the principle should say that lobbyists should not make offers of gifts or hospitality and that lobbyists should have regard to appropriate Codes of Conduct for public officials. The Commission will also draw particular attention to this part of the Code of Conduct in revised guidelines for DPOs which it intends to publish in the near future.
- In relation to comment 7 above, the Commission considers that use of the word “inducement” in the second paragraph captures indirect/secondary preferment.
- In relation to comment 8 above, the Commission will incorporate this suggestion into a new paragraph 3 of the principle.

Principle 8A – Observing the provisions of the Regulation of Lobbying Act – Registrations and Returns

The following comments/suggestions were received in relation to this part of principle 8:

- 1) The code should provide for an individual to familiarise themselves with their organisation’s arrangements for recording and reporting lobbying activities.
- 2) The Commission recognise in the Code (or elsewhere) that it is appropriate for the head of a large organisation to appoint one or more responsible persons to supervise and control the organisation's lobbying activities.
- 3) The Code should require persons carrying on lobbying activities and heads of organisations to inform others of everyone's respective obligations under the Act and the Code.

The Commission’s response to the above comments and suggestions regarding principle 3 is as follows:

- The Commission considers that the above suggestions are broadly captured in the principle as drafted. There are no amendments to principle 8A

Principle 8B - "Cooling-off Period"

The following comments/suggestions were received in relation to this part of principle 8:

- 1) The "legalistic language and tone" makes this principle more difficult to follow. The term "Restrictions on DPOs when lobbying post-employment" should be used instead of "cooling off periods".
- 2) This principle should be re-drafted to place responsibility on former DPOs. (A suggested wording was provided.)

The Commission's response to the above comments and suggestions regarding principle 3 is as follows:

- In relation to comment 1 above, the Commission is satisfied that the language used best captures the requirements of section 22 of the Act. The Commission is also satisfied that most people will be familiar with what the term "cooling-off period" means.
- In relation to comment 2 above (and the suggested wording provided), the provisions of section 22 of the Act already place a responsibility on DPOs to comply with the Act. The purpose of this principle is not to dilute that responsibility. The Code of Conduct is for persons carrying on lobbying activities and not DPOs. The purpose of including an observance of the cooling-off period as part of the Code is 1) to create awareness of the requirements of section 22 among lobbyists who may be prospective employers of relevant DPOs and 2) to foster a spirit of compliance by ensuring that persons seeking to employ a relevant DPO will be aware that the person is subject to a cooling-off period and will look to establish if the person has complied with his/her requirements.
- The Commission will redraft the last paragraph of this principle to state that a person seeking to employ a relevant DPO should be aware of the provisions of section 22 and establish if the person has complied.

Principle 9 – Having regard for the Code of Conduct

There were no specific observations or comments in relation to this principle.

5.3 Comments/Suggestions to do with other issues regarding Regulation of Lobbying:

The Commission also received a number of other comments and suggestions which did not specifically relate to the draft Code of Conduct. The Commission has, however, set out below some of the other issues relating to Regulation of Lobbying on which comments and suggestions were made and its response to same.

Responsibilities of DPOs and public bodies

Comments/Suggestions received in relation to the responsibilities of DPOs and public bodies were as follows:

- 1) Public bodies should record all correspondence and communication relating to lobbying activities. There should be more emphasis on record keeping for both persons covered by the Act and those staff members not covered by the Act.
- 2) Guidance that DPOs should identify themselves as DPOs is not consistently observed. Identification of DPO status should be on business cards, email signature, website listing etc.
- 3) The DPO listing on public bodies' websites may not always be up to date. Public bodies with DPOs should be required to maintain "public-facing records" of their DPOs. The Code should reference "frequent and timely" updating of public bodies' DPO page on their websites.
- 4) There is a lack of awareness of the Act among elected officials (both national and local). DPOs have "ethical obligations" which should be reflected in the code. There should be continuous education with DPOs.
- 5) DPOs should have a responsibility to be familiar with the Code and the provisions of the Act.
- 6) There is a misuse by certain commercial state bodies of the excepted communication regarding "ordinary course of activities". The Department of Public Expenditure and Reform should issue guidance on this "excepted communication" to all state agencies. The Commission should clarify this matter in the Code of Conduct.
- 7) Consideration should be given to placing some onus on DPOs to disclose instances where they may have initiated a lobbying activity with a public body.
- 8) There should be a responsibility on DPOs to disclose any relationship they may have with lobbyists and that misusing confidential information obtained from their position should not just be limited to the "cooling-off" period.
- 9) The text in the introduction to the Consultation Paper states that the Act aims to ensure that any interest in Irish society is represented fairly and transparently. DPOs in a particular government department are consistently refusing to meet with a particular organisation and this "violates" the spirit of the Act. Further education of DPOs, particularly those using the Act as a means to refuse engagement, is required.
- 10) The number or range of DPOs should not be increased.

The Commission's response to the above comments and suggestions is as follows:

- In relation to items 1 and 2 above, the Commission has produced guidance for DPOs on the Regulation of Lobbying Act. The guidelines recommend that DPOs maintain

good record-keeping habits and that they should be proactive in advising possible lobbyists when attending a meeting, participating in a conference call, etc., that they are a DPO. The guidelines also set out some best practices for DPOs and includes self-identifying as a DPO on e-mail's, business cards etc..

- In relation to item 3 above, it should be noted that section 6(4) of the Act requires public bodies to publish up to date details of their DPOs on their websites. The Commission is in regular contact with public bodies regarding the requirements of section 6(4) of the Act. Public bodies have been asked to nominate a member of staff with whom the Commission may liaise in relation to the body's DPOs. Guidance and a template for maintaining the list of DPOs has already been provided to all public bodies with DPOs appointed.
- In relation to items 4 and 5 above, it is important to note that the Code of Conduct is for persons carrying on lobbying activities and is not intended for public bodies or DPOs. DPOs have their own Codes of Conduct. The Civil Service Code of Standards and Behaviour for example sets out the ethical behaviour for Civil Servants while the Code of Conduct for Local Authority employees has been designed to promote the core values of honesty, impartiality, integrity and serving the common good. The Commission has produced guidance for DPOs on the Regulation of Lobbying Act. The guidance recommends that DPOs should be familiar with the provisions of the Act.
- In relation to item 6 above the Code of Conduct is for persons carrying on lobbying activities and is not intended for public bodies or DPOs. It is not the appropriate mechanism, therefore, to address the misuse of an excepted communication. The Commission notes that a similar suggestion was made in the context of consultations on the first review of the Act carried out by the Department of Public Expenditure and Reform (Dept. PER). The report of the first review of the Act referred to the fact that the Commission was developing an FAQ on the matter. The Commission subsequently published [Frequently Asked Questions document](#) (No 23). While the Commission is not in a position to specify what might constitute the ordinary course of business of each public body it has provided some general examples of what might and might not be regarded as a communication made in the "ordinary course of business". The Commission will, however, bring this matter again to the attention of the Dept. PER.
- In relation to item 7 above Section 5(5)(j) of the Act specifically provides that communications made by a DPO in their capacity as a DPO is an excepted communication and is not a lobbying activity. If, however, the communication is made in some other capacity e.g. as a company director then the exemption would not apply and it could be regarded as a lobbying activity.
- In relation to item 8 above the misuse of confidential information is already provided for in the Official Secrets Acts and in the Civil Service Code of Standards and Behaviour. The Civil Service Code of Standards and Behaviour and the Code of Conduct for Local Authority employees both deal with the issues of improper influence and conflicts of interests.

- In relation to item 9 above. The purpose of the Act is not to prevent or inhibit lobbying activity. Public bodies should continue to actively facilitate and encourage such communications to the greatest extent possible. The Act has a number of checks and balances to ensure that it doesn't have a "chilling" effect on lobbying activity. Public bodies should not be using the Act as a reason to refuse engagement. The Commission will reiterate this point in its guidelines for DPOs and will also bring this matter to the attention of the Dept. PER.
- In relation to 10 above it is a matter for the Minister for Finance and Public Expenditure and Reform to prescribe which public servants will be regarded as DPOs for the purposes of the Act.
- The Commission will be reviewing its Guidance for Designated Public Officials in the near future. The comments and suggestions it has received in relation to public servants and public bodies responsibilities will be taken into consideration and reflected, where relevant in the guidelines. A reference to DPOs becoming familiar with the Code of Conduct will be included in the revised guidelines.

Role of Commission

Comments/Suggestions received in relation to the role of the Commission were as follows:

- 1) The role of the Commission should primarily be one of supporting positive compliance with the Act, with a purposive interpretation of the Act. Good faith attempts to comply with the Act should not lead to the application of penalties. In the context of the State's obligations to promote and facilitate involvement in public life by the general community it may be necessary to consider whether reporting obligations and penalties be applied in the same manner to civil society and non-profit as such systems are applied to lobbyists acting for or on behalf of commercial interests.
- 2) The Commission should address the misleading practice of persons submitting multiple returns on the same subject matter as this may be a deliberate practice by some organisations to skew the level of their lobbying activity.
- 3) The Commission should provide greater guidance and specificity on what does and does not constitute a lobbying activity.

The Commission's response to the above comments and suggestions is as follows:

- In relation to 1 above, the Commission's focus is on ensuring compliance with the Act. It tries to ensure that only those who are required to be on the Register of Lobbying are registered. The Act, however, does not distinguish between different types of lobbyists or the purpose of their lobbying activities and in terms of contraventions, offences and penalties does not provide for different treatment for different categories of lobbyists. There is no scope, therefore, for the Commission to decide that a person who has committed an offence should not be subject to the

relevant penalty on the basis that the person is a not for profit organisation as opposed to a commercial lobbyist.

- In relation to 2 above, the Commission is proactively trying to ensure that all lobbying activities on the same subject matter during the reporting period are included on a single return. Where it becomes aware that a person has submitted multiple returns in respect of the same subject matter it will ask the person to amend and consolidate their return.
- In relation to 3 above, the Commission has produced a suite of guidelines, guidance notes and Frequently Asked Questions on what constitutes lobbying under the Act. While the Commission can provide some general examples of what may, or may not, constitute a lobbying activity, it does not provide specific advice as to whether a particular communication constitutes a lobbying activity. It is a matter for the person making the communication to consider whether they are within scope of the Act and whether the communication is a “relevant communication” as defined in the Act and is not an “excepted communication”.

Cooling off period

Comments/Suggestions received in relation to the “cooling-off” period provided for in section 22 of the Act were as follows:

- 1) Applications for consent under Section 22 of the Act (to waive or reduce the cooling-off period) and the Commission’s decision making process regarding same should be published. Anonymous historical reporting of section 22 applications and decisions is not sufficient and does not allay concerns that Section 22 of the Act is not being adhered to consistently. Section 22 applications and decisions should be posted every 4 months on lobbying.ie.
- 2) The appeal process for section 22 decisions should be outside of the Commission.

The Commission’s response to the above comments and suggestions is as follows:

- In relation to item 1 above, the Act does not provide for reporting of section 22 applications and decisions. Reports by the Commission are provided for in section 24 of the Act. Section 24 provides that the Commission shall produce an annual report. The annual report shall contain details of any applications for consent under section 22 of the Act and all decisions on such applications during the year to which the report refers. Section 24 provides, however, that the information contained in the report must be “in a form which does not enable the identification of the persons involved...”
- With regard to item 2 above, section 23 of the Act provides for the appointment by the Minister for Finance and Public Expenditure and Reform of a panel of independent and impartial appeal officers. Section 23(5) of the Act provides that where the Commission receives notice of an appeal the Commission shall nominate

an appeal officer to consider the appeal. Section 23(7) of the Act provides that the Minister may prescribe the procedure to be followed in the conduct of appeals. This procedure is prescribed in the Regulation of Lobbying Act (Appeals) Regulations 2015. The procedures state that the Commission will notify an appellant of the name and contact details of the nominated appeal officer.

Role of the Register

Comments/Suggestions received in relation to the role of the Register were as follows:

- 1) All new registrants must verify through the online registration process that they have read and will have regard to the Code of Conduct before the registration process can be completed. Those already registered must verify same through the online return system before they can submit their next return.
- 2) The amount of money spent on lobbying should be declared and included in returns to the Register. SIPO should publish an annual report of the top 50 lobbyists and their lobbying budget.
- 3) The register should allow organisations to declare membership of trade associations, professional bodies and professional Codes to which they adhere.

The Commission's response to the above comments and suggestions is as follows:

- In relation to item 1 above, the Commission does not agree with this suggestion. The Code of Conduct is neither mandatory nor enforceable. Requiring persons to verify that they have read and will have regard to the Code might cause operational difficulties in terms of persons being unable to register or submit their returns of lobbying activities on time and possibly contravening the legislation and incurring penalties. The Commission will, however, ensure that the Code is prominent on the register and that links to the Code are available throughout the registration and returns processes.
- In relation to item 2 above, the Act makes no provision in relation to expenditure on lobbying activities. Information in relation to lobbyists lobbying budget is not, therefore, available to the Commission.
- In relation to item 3 above, section 11 of the Act sets out the information which must be provided by a person who wishes to be included on the Register of Lobbying. Section 12 of the Act sets out the information which must be included in a return of lobbying activities. Neither section 11 or 12 of the Act provide for the inclusion of the information relating to trade associations, professional bodies and professional Codes to which particular organisations may adhere. The purpose of the register is to provide information as to who is lobbying whom about what. The Commission is of the view that information relating to trade associations, professional bodies and professional Codes to which a particular organisation might adhere is more appropriate for the organisation's own website.

6. Correspondence with the Dept. of Public Expenditure and Reform

The Commission considers that a number of the comments and suggestions it has received as part of the consultation process on the Code of Conduct may be of interest to the Dept. of PER in the context of the next statutory review of the Act. This is scheduled to take place in September 2019. The Commission has written to the Department and has brought some of the relevant comments and suggestions to its attention.

7. Publication of Report and Outreach

A number of organisations have stressed the importance of circulating the final code extensively and ensuring that people know about it and appreciate its importance. It has also been suggested that the Code should be made available in a number of languages and accessible formats. It is suggested that all DPOs should receive a copy of the Code via their Departments. It has also been suggested that the Code presents an opportunity to “re-emphasise” the reach of the legislation and could be used to communicate the importance and value of a “compliance culture” across the EU states.

The Commission intends to use the publication of the Code of Conduct as an opportunity to undertake further outreach on the Regulation of Lobbying. The Code will feature prominently on lobbying.ie. It will be available in Irish and English in an accessible format. Links to the Code will be available throughout the registration and returns processes. The Code will be provided to all Government Departments and public bodies with DPOs prescribed. The Departments/Public Bodies will be asked to bring the Code to the attention of their DPOs and to confirm that they have done so.

Appendix A - Persons who provided comments or suggestions

- 1) Alcohol Action Ireland.
- 2) American Chamber of Commerce Ireland.
- 3) Banking & Payments Federation Ireland.
- 4) Mr Declan Carty.
- 5) Chambers Ireland.
- 6) Department of Communications, Climate Action and Environment.
- 7) Department of Employment Affairs and Social Protection.
- 8) Department of Housing, Planning and Local Government.
- 9) Department of Public Expenditure and Reform.
- 10) Department of Rural and Community Development.
- 11) Department of Transport, Tourism and Sport.
- 12) Disability Federation of Ireland.
- 13) Ervia.
- 14) European Parliament – Joint Transparency Register Secretariat.
- 15) Mr J. Flood, Co Dublin.
- 16) Mr Michael Healy-Rae TD.
- 17) High Authority for Transparency in Public Life.
- 18) Dr John Hogan, Center for Business, Society & Sustainability, Dublin Institute of Technology.
- 19) Irish Business and Employers Confederation (IBEC).
- 20) Irish Council for Civil Liberties.
- 21) Irish Farmers Association.
- 22) Irish Heart Foundation.
- 23) Irish Mortgage Holders Organisation.
- 24) Irish Society for the Prevention of Cruelty to Animals (ISPCA).
- 25) Irish South and West Fishermen's Producer Organisation.
- 26) Irish Tobacco Manufacturers' Advisory Committee (ITMAC).
- 27) Killybeg's Fishermen's Organisation Ltd.
- 28) Mr Matt Moran, Cork.
- 29) National Federation of Retail Newsagents.
- 30) Office of the Commissioner of Lobbying of Canada.
- 31) Public Relations Consultants Association (PRCA).
- 32) Public Relations Institute of Ireland (PRII).
- 33) Social Justice Ireland.
- 34) SSE Ireland.
- 35) The Wheel.
- 36) Transparency International.
- 37) Wicklow Public Participation Network.