

**Submission to the Standards in Public Office Commission**

**on the Code of Conduct for persons carrying out lobbying activities**

**from**

**The Public Relations Institute of Ireland (PRII)**

26 July 2018



**PRII**

PUBLIC  
RELATIONS  
INSTITUTE  
OF IRELAND

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## Background to this Submission

Established in 1953, the Public Relations Institute of Ireland (PRII) is dedicated to promoting the highest professional practice of public relations and communications in Ireland, and to serving the best interests of people working in the profession.

The Institute seeks:

- wider recognition of the role of public relations in business;
- higher standards of professionalism;
- better qualifications for public relations and communications practitioners; and
- to be an effective forum for members to share common interests and experiences.

Membership of the Institute is voluntary and there are currently just under 900 PRII members. They comprise of public relations and communication professionals drawn from consultancies, industry, government, semi-state, voluntary and business organisations.

All members subscribe to the following Codes:

- The European Code of Professional Practice adopted by the European Public Relations Confederation (CERP) in 1978 and commonly known as the Code of Lisbon;
- The International Code of Ethics commonly known as the Code of Athens; and
- The PRII Code of Practice for Public Affairs and Lobbying.

These Codes promote professional integrity in the implementation of public relations programmes. There is a disciplinary process attached to compliance. Adherence to these Codes is the major differentiating factor between members of the PRII and non-members.

Professional public affairs practice and lobbying are legitimate and important activities that are essential within any democratic system. These activities ensure an open dialogue between national and local government (including the Oireachtas, the entire public service, as well as other bodies funded wholly or mainly from public funds), the institutions of the European Union (EU) and bodies whose activities and interests are governed, regulated, impacted or otherwise influenced by such institutions.

Public relations practitioners, from time to time, make representations to public representatives of all types, whether elected, co-opted, appointed, public servants, those employed in the public service, or those appointed to public bodies (henceforth to be referred to as public officials).

However, there are relatively few PRII members, or practitioners, in Ireland whose main role could be defined as lobbying.

According to a survey of PRII members in 2015, 71% cited public affairs as part of their work. For most PRII members that engagement is limited and occasional: 82% of the 71% said it took up a quarter or less of their time; 13% said it took up about half of their time; and just 5% of the 71% said it comprised more than half of their time.

## The PRII and The Regulation of Lobbying Legislation

The Public Relations Institute of Ireland (PRII) supports the Regulation of Lobbying Act 2015.

Since lobbying regulation in Ireland was first proposed by way of a Private Members Bill in the Seanad in 1999 the PRII has sought to play a constructive role in this policy area. In 2012, the PRII made a detailed contribution to the Department of Public Expenditure and Reform's consultation on the proposed lobbying regulation, and subsequently participated in further engagements with the Department, politicians and other stakeholders to ensure that the perspectives of the public relations and communications profession were understood in the drafting of the legislation.

Since 2015, the PRII has played a leading role promoting compliance with the Regulation of Lobbying Act among its membership. This has been achieved by holding training workshops, briefing events and providing updates on the Act to members.

No other professional body or association has engaged in a comparable level of activity in promoting compliance with the Act. The results of these efforts are demonstrated in the returns published on [www.lobbying.ie](http://www.lobbying.ie). Indeed, a survey carried out in 2016 among senior management of Irish public relations consultancies found 100% compliance with the legislation.

These first years of the Act's implementation have been successful. During 2017 almost 10,000 returns were submitted to the online Register of Lobbying and at the end of that year there were 1,648 persons registered on the Register of Lobbying. The lobbying regulator, the Standards Commission, engaged in this new area of legislation in a positive fashion, communicating with stakeholders including outreach programmes to increase compliance in under-represented sectors and regions outside Dublin, and this approach is to be commended and, the PRII submits, continued.

The PRII recommend that this outreach be resourced and broadened to reach as many sectors, professions and geographical regions as possible.

The Report of the First Review of the Regulation of Lobbying Act made by the Minister for Public Expenditure and Reform, based on the experience it had acquired over the first year, was published in 2017. While the Report did not recommend any amendments be made to the Act the PRII note that The Commission has identified some further areas where legislative provisions might be clarified or strengthened and the next review, scheduled for 2019, provides further opportunity to explore those issues.

The PRII would welcome to opportunity to make constructive submissions to that review based on our members engagement with the legislation and register.

### The PRII Code of Professional Practice for Public Affairs and Lobbying

Further evidence of the engagement and commitment of the PRII and its membership to regulation of lobbying lies in the fact that as far back as 2003, the PRII membership approved a specific Code of Professional Practice for Public Affairs and Lobbying.

Following the introduction of the Regulation of Lobbying Act 2015, the PRII conducted a review of its Code of Professional Practice.

As part of this consultation, views were sought from members and non-members alike, and submissions were sought from interested parties including the Standards Commission, Transparency International Ireland and the Department of Public Expenditure and Reform. An updated version of the PRII Code was approved at the PRII's AGM in January 2016.

This demonstrates the PRII's commitment not just to ensuring that there is compliance with the legal minimum, but moving past that and setting high ethical standards for activity in this area.

In fact, the PRII Code of Practice for Public Affairs and Lobbying, which is referenced as one of the Codes used by SIPOC in the preparation of the current draft Code of Conduct for persons carrying on lobbying activities, is the only such code in Ireland and one of the few internationally.

The PRII Code of Practice for Public Affairs and Lobbying can be seen in *Appendix 1*. It covers conduct towards the public; conduct towards clients/employers; and conduct towards the profession.

The PRII Code directs members to the acceptable and appropriate standards of behaviour in public affairs activity. It reflects the requirement of the Regulation of Lobbying Act and complements the obligations of public officials under the Ethics in Public Office Acts, Local Government Acts, Electoral Acts and standard terms of employment and other rules which also govern the activities of such officials. However, it goes beyond the basic legal minimum requirements and speaks to the high professional standards demanded by, and of, PRII members. For the purposes of the PRII Code of Professional Practice, public affairs practice is defined as:

All activity associated with representing the interests of a client or employer in relation to any matter of public policy, including:

- the provision of professional advice to clients/employers on matters relevant to public policy or law; or procurement, selection, nomination or appointment for public contract or office;
- lawful and ethical actions intended to promote a change of public policy, law or the expenditure of public funds; and
- the making of representations, or the advocacy of a point of view, to any persons or institutions, including the provision of information and advice.

**The experience of working with both the Regulation of Lobbying Act 2015 and its own Code of Professional Practice for Public Affairs and Lobbying since 2003, ensures the PRII is well placed to take part in this consultation towards the development of a SIPOC Code of Conduct for persons carrying on lobbying activities.**

Taking into consideration contributions from Institute members over the past month, find below, in the recommended format, the submission of the PRII.

## Public Consultation on Code of Conduct for persons carrying on lobbying activities

### Q. What should be included?

Inclusion of all engaged in lobbying activity

**The PRII submit the proposed SIPOC Code of Practice for those engaged in lobbying presents an opportunity to communicate the reach of the Regulation of Lobbying Act and Code across all professions and sectors regardless of size, form, or geographic location and including those lobbying and those being lobbied.**

The Regulation of Lobbying Act 2015 is a major advance on legislation in other countries, as it clearly aims to capture all remunerated lobbying activity irrespective of whether those activities were carried out by lawyers, public relations or public affairs professionals, accountants, CEOs, etc. It is imperative that this advance in transparency is not undermined by any sector or profession not engaging fully with this legislation.

While the public relations and communications sector has demonstrated strong compliance with the Regulation of Lobbying legislation, other professions and sectors have not. The Regulation of Lobbying Act applies to all those engaged in lobbying activity in return for payment and no profession or sector is or should be exempted from reporting lobbying activity. The Standards Commission and the Minister for Public Expenditure and Reform must satisfy themselves that there is a compliance culture across all professions and sectors.

The Regulation of Lobbying in 2017 Annual Report records that, during 2017, over 900 registrants identified as “other” when selecting their main business activity on their application to register. The Report of the First Review of the Regulation of Lobbying Act made by the Minister for Public Expenditure and Reform in 2016 contained a recommendation that the Commission seek to reduce the numbers categorised under “other”. The Commission has now expanded the options available to registrants for selecting their main business activity and has removed “other” as an option. The PRII commend the Commission for this action and submit that the range of options available remain under review to capture and reflect the wide range of individuals, bodies, professions, organisations that can and do engage in lobbying.

While communications professionals, including PRII members, have engaged proactively with the legislation, it appears that other sectors have not engaged to the same extent. Anecdotal reports suggest that there is significant lobbying activity carried out, for example, by legal firms and management consultancies. This does not appear to be reflected in the returns made on [www.lobbying.ie](http://www.lobbying.ie) nor in the proposed SIPOC Code of Conduct.

While the Standards Commission has undertaken a major body of work promoting awareness of the Act, it is important that this work continues and addresses the Act, the Register, the Enforcement Provisions and now, the Code of Conduct.

Furthermore, continuous education and communication is needed with Designated Public Officials (DPOs) so that they are aware of the implications of the Act and that they can provide appropriate information to those engaged in lobbying activity. While there is awareness of the Act among DPOs in the Civil Service, some PRII members have reported varying levels of knowledge and awareness among elected officials at local and national government level.

Notably, the first principle of the SIPOC Code reads as follows:

**Demonstrating Respect for Public Bodies**

*Persons carrying on lobbying activities should act in a manner that demonstrates respect for public bodies, including the duty of public officials to serve the public interest. A person carrying on lobbying activities should not act in a manner that shows disrespect for public bodies and should refrain from directly or indirectly exerting undue pressure on an elected or appointed public official.*

This is the only reference in the SIPOC Code to those who are lobbied, yet it is a significant body of those persons engaged in lobbying activities.

## Ongoing Communication and Training

**The PRII submit that ongoing communication and training on the terms of the Act and this Code of Conduct with DPOs is required to develop understanding that any means of communication falls under the scope of the Act (even if not all means fall under Freedom of Information provisions).**

In addition, DPOs should be discouraged from using the Act or SIPOC Code of Conduct to refuse engagement.

It is proposed that a regular programme of DPO education, with appropriate resources so that all DPOs are aware of the Act and can support the compliance of those individuals engaged in lobbying activity, is put in place. The Code of Conduct presents new and fresh material around which such training can be promoted.

Section 5.5. of the Regulation of Lobbying Act provides an exemption for communications between body corporates in which a Minister has a share-holding when the matter relates to the “ordinary course of activities” of the body corporate. The PRII has taken the view in its interpretation of the legislation that the “ordinary course of activities” would relate to standard corporate governance matters, but where an organisation engaged in lobbying activity as defined by the legislation, that would fall under the requirement to Register. If a commercial body without a state shareholding was undertaking this activity, would it be categorised as lobbying? If so, then it must register and report and adhere to the SIPOC Code of Conduct. This approach has been followed by many State Agencies. However, there have been examples of some bodies using this provision to avoid reporting activity that would otherwise require to be reported. The PRII does not believe that this provision requires legislative amendment. However, it does propose that, in addition to the Department of Public Expenditure and Reform issuing guidelines to all State Agencies, and other bodies with State shareholdings, advising them of how this provision should be utilised, this clarification could also be communicated in the SIPOC Code of Conduct.

## Compliance across the EU

**The PRII has submitted previously that the legislation itself needs to be strengthened so that it clearly applies to all lobbying activity of Irish public officials irrespective of where in the EU it is carried out. This can be addressed in the Code of Conduct.**

Currently confusion exists regarding the application of the Lobbying Act to activity that takes place overseas. In advance of the review of the Act in 2019, the publication of the SIPOC Code of Conduct could be used to communicate the importance and value of a compliance culture across the EU states.

There is ambiguity as to whether lobbying activity that occurs outside of the State or is carried out by organisations based outside of the State, is required to be reported. This ambiguity results in a loophole that is open to exploitation by the unscrupulous.

It is the PRII position that neither the location of the lobbying activity or the location of the firm doing the lobbying should impact on the requirement to make a return. The current confusion creates an incentive for the unscrupulous to either carry out lobbying activity outside of the State, or alternatively, to hire lobbyists based abroad. The purpose of the 2015 Act is to ensure that the public know who is lobbying whom, and about what. That aim is being undermined by this confusion.

In advance of the review of the Act in 2019, the publication of the SIPOC Code of Conduct could be used to communicate the importance and value of a compliance culture across all EU states.

## Responsibilities of DPOs

**Under the Act, and now in the draft Code, there are few if any obligations placed on Designated Public Officials (DPOs). Yet the power in a lobbying relationship rests with the person being lobbied, not the person carrying out the lobbying activity.**

Under Section 6.4 of the Act, there is an obligation on public bodies that employ DPOs to publish on their websites listings showing “(a) the name and (where relevant) grade, and (b) brief details of the role or responsibilities”. This is the only requirement in the Act placed on public officials, and it is crucial to helping organisations comply with the Lobbying Act. Unfortunately, despite it being a straightforward task, compliance with this provision has been weak. The relevant information is not displayed in a uniform fashion across government or updated at similar intervals. This makes compliance challenging for organisations.

Considering that each Department knows who its staff are, there is little excuse for slow updates. Furthermore, when a Department’s list of DPOs has not been updated for a considerable period it can be difficult to know if that is because there have been no changes, or merely no one updated the listing.



The PRII proposes that the SIPOC Code requires frequent and timely updating by each Department and that all DPOs and not just public servants are listed i.e. include Ministers and Special Advisers. PRII propose such updates are done every four months and that each government and public-sector website homepage has a dedicated DPO 'tab' for the list.

The SIPOC Code could also direct DPOs to make reasonable efforts to inform lobbyists of their status as DPOs.

This obligation would not apply to Ministers, TDs, Senators and local authority members as it can be reasonably assumed that people engaging with them would be aware of their status.

However, knowing which public servants are, or are not, covered by the Act can be challenging particularly if the person does not identify their grade, or has an unusual job title. It is acknowledged that there have been good efforts in terms of encouraging such DPOs to identify themselves, but the PRII is concerned that this may diminish over time as it is based entirely on the goodwill of the persons involved.

## Register of Codes of Conduct

### **Allow professional bodies to register adherence to their own Codes of Conduct e.g. The PRII Code of Practice**

A useful aspect of the European Transparency Register is that it allows for organisations to state on their returns if they subscribe to a code of conduct or are members of any professional body or trade association. This could be usefully implemented as part of, or in connection with, the implementation of the SIPOC Code of Conduct for people carrying out lobbying.

This provides an additional layer of accountability, as it brings into sharp relief if a body subscribes to codes that demand behaviour beyond the legal minimum. The inclusion of such information would be optional and therefore it should not require any legislative change to achieve this.

## Compliance

### **In the absence of any penalty for person carrying out lobbying activities compliance with the SIPOC Code of Conduct as it has been drafted relies solely on goodwill.**

The 2015 Act states that a "person carrying on lobbying activities shall have regard to the code of conduct." However, there are no penalties associated with a failure to comply with the Code of Conduct unlike, for example, for PRII members who fail to comply with the PRII Code of Professional Practice for Public Affairs and Lobbying which has a disciplinary code associated with it.

Q. What should not be included?

Irrelevant or inappropriate content for a SIPOC Code

See Principle no.5: Disclosure of interests

*“A professional lobbyist or third party carrying on lobbying activities on behalf of other persons should properly inform the client, business or organisation whose interests they are representing about any potential conflicts of interest, or of any competing interests arising from their professional practice or other business, family or social associations.*

*A professional lobbyist or third party should not represent conflicting or competing interests without the informed consent of those whose interests are involved. Persons carrying on lobbying activities on behalf of a client or other person should not knowingly make misleading, exaggerated or extravagant claims about, or otherwise misrepresent, the nature or extent of their access to elected or appointed public officials”.*

a) These two paragraphs refer to two different situations.

In the first paragraph, disclosure is the issue at hand.

In the second paragraph, mis-representation of the facts is the issue at hand.

The PRII believe these should be numbered, treated, and thereby highlighted separately.

In the first instance - disclosure - the issue is one between the professional lobbyist or third party carrying on lobbying and their client/employer and, as such, is a matter for those individuals. In the case of a PRII member, such conflict of interest situations are covered in all professional Codes of Practice PRII members submit to (referred to above).

b) Reference is made in the first paragraph to “business, family or social associations”. The term and concept ‘family’ has many interpretations - and increasingly so in Irish and European society. The Lobbying.ie website predominantly refers to parents and spouses, less so to siblings. Similarly, more clarity or definition would be useful for the terms ‘business’ and ‘social associations’ in this context.

Imbalance of Responsibility

**See Principle no.7:** Avoiding Improper Influence

*A person carrying on lobbying activities should inform themselves of the policies of the Government and public bodies they are communicating with in relation to restricting the acceptance of gifts or hospitality by elected or appointed public officials and should not, in the course of their lobbying activities, make any offer of gifts or hospitality which might cause an elected or appointed public official to*

*breach any law, regulation, rule or standard of conduct applicable to them in relation to the acceptance of gifts or hospitality.*

This element in the SIPOC Code is vague and open to interpretation and appears to place the responsibility on all parties other than the DPO to know what would result in the public official being in apparent breach of his/her obligations under ethics legislation or statutory codes of conduct.

The PRII suggest this is re-written to place the onus equally on both parties not to breach any law, regulation, rule or standard of conduct.

Alternatively, prohibit the bestowal of gifts or hospitality to public officials where there is a registrable relationship.

#### **See Principle no.8: “Cooling off” period Communications**

Section 22 of the Act provides that “relevant Designated Public Officials (DPOs)” (Ministers and Ministers of State, Special Advisers and Senior Public Servants) are subject to a one-year cooling-off period. During this period relevant DPOs cannot engage in lobbying activities in specific circumstances, or be employed by, or provide services to, a person carrying on lobbying activities in specific circumstances, namely the making of communications comprising the carrying on of lobbying activities (as defined in section 5 of the Act) which:

- 1. Involves any public service body with which the relevant DPO was connected, that is, employed or held an office or other position in the year prior to their leaving, or*
- 2. Is to a person who was also a DPO who was employed or held an office or other position with that public service body in the year prior to the person’s leaving.*

A person subject to the one-year cooling-off period may apply to the Standards Commission for consent to undertake such activities or be employed by a person who is undertaking such activities. The Standards Commission may decide to give consent unconditionally or to give consent with conditions attached. The Standards Commission may also decide to refuse the application for all or part of the one-year "cooling off" period.

**The PRII submit that applications for consent under section 22 and the outcome should be posted at more regular intervals, such as every four months, on lobbying.ie.**

The Annual Report 2017 records that The Commission received five applications for consent under section 22 of the Act in 2017. In four of the five cases, the Commission granted its consent subject to conditions. In the fifth case the Commission did not grant its consent for a reduction or waiver of the cooling-off period. This information, while useful and indicative of the purpose of section 22, is published – at a minimum - six months after the relevant year end and as such does not help to allay concerns in the public relations profession that section 22 is not being adhered to and/or not being adhered to consistently.

**The PRII submit that applications for consent under section 22 are the responsibility of the current/former DPO.**

The draft SIPO Code (no.8) reads:

*A person should not employ or engage a person who may be subject to the provisions of section 22 of the Act to carry on lobbying activities without first establishing whether the person must comply with section 22 of the Act and, if required to comply with section 22, has sought and received the consent of the Standards Commission to carry on such lobbying activities.*

This appears to place responsibility on the prospective employer. PRII would argue that the responsibility in this instance must rest with the current or former DPO and that this paragraph be removed or amended as follows:

*A person who is subject to section 22 of the Act should not seek employment or engagement to carry on lobbying activities without advising the prospective employer and, if required to comply with section 22, that they have sought and received, or will seek to receive, the consent of the Standards Commission to carry on such lobbying activities.*

Q. Should the Code contain different provisions for different persons carrying on lobbying?

Lobbying requires engagement and communication between at least two individuals or bodies.

The SIPOC Code should reflect the different standpoints of those engaged in lobbying. As it stands the SIPOC Code refers in only one instance to those being lobbied.

The SIPOC Code should be seen clearly to apply and be relevant to all those engaged in lobbying and PRII would contend that DPOs are engaged in the process of lobbying and as such also have ethical obligations that should be reflected in the proposed Code.

While it can never be an exhaustive list it would be useful for the SIPOC Code to list and make explicit the kinds of individuals, professions, organisations, sectors etc. that may, from time to time, be engaged in lobbying and therefore need to be aware of the legislation, the register and now, the Code of Conduct.

The Regulation of Lobbying Act is relevant to all persons and parties engaged in Lobbying, the Code should clearly be too.

## APPENDIX 1: The PRII Code of Professional Practice for Public Affairs and Lobbying

Last revised 2016

All members of the Public Relations Institute of Ireland:

### **A. Conduct towards the public.**

1. Shall at all times be familiar with and observe all relevant EU, local, national and international law in force, with particular regard to the Regulation of Lobbying Act 2015; shall have due regard for the public interest and shall not seek to improperly influence the decision-making processes of government, whether local or national, or the E.U. Institutions.
2. Shall take reasonable steps to ensure that all information supplied, and representations made, by them to third parties is factually accurate and honest.
3. Will actively disclose, at the earliest possible opportunity, the identity of clients on whose behalf they are making representations on matters of public policy or decision-making, current or proposed legislation, or in respect of the business of the Oireachtas, Northern Ireland Assembly, local authorities, the European Parliament or any other parliament or legislative assembly.
4. Shall ensure that any financial relationships involved in their professional dealings are legal and ethical. Members shall not act in such a way as to place public officials in a real or potential conflict of interest, or to make any offer, inducement, reward (direct or in-direct) that would result in the public official being in apparent breach of his/her obligations under ethics legislation or statutory codes of conduct.
5. Shall act at all times in a professional, ethical and reasonable manner and shall not bring unreasonable or undue pressure or influence to bear in their activities as public affairs practitioners. All public officials should, at all times, be treated with courtesy and respect.
6. Where he/she is a member of a local authority or is appointed by the government to any state or semi-state body, or is engaged by such organisations on a consultancy basis, shall not offer public affairs consultancy services to third parties in respect of the business or related activities of that authority, body or organisation as well as to related, linked or subsidiary organisations.

7. Shall not offer public affairs consultancy services and simultaneously be a member of the Oireachtas, Northern Ireland Assembly, UK Parliament, European Parliament, or other parliaments or legislative assemblies.
8. Shall not offer public affairs consultancy services for financial reward or other inducements and simultaneously be employed in the Public Service or engaged as a full-time adviser to government.
9. Shall, while attending any parliamentary or other representative assembly, national or local government building, observe the rules and procedures of that institution.

#### **B. Conduct towards clients / employers**

10. Recognise their duty of professional care to their clients and/or employers.
11. Shall make their clients/employers aware of their obligations under the Regulation of Lobbying Act 2015 if relevant.
12. Shall take all necessary steps to ensure that they are properly informed of their clients' or employers' relevant concerns and interests and shall at all times properly and honestly represent these interests.
13. Shall properly inform clients about any potential conflicts of interest, or of any competing interests arising from their professional practice or other business, family or social associations. If it should emerge that an actual conflict of interest exists and it cannot be resolved, the member must cease to act for that client. A member may represent such competing interests only:
  - a. where he/she has obtained the explicit and informed consent of all the parties involved, and;
  - b. where the member is enabled to act for each of the parties with an equal professionalism and duty of care.
14. Shall, in all cases where any conflict of interest or potential conflict arises between their professional duties and their personal activities, give precedence to their professional responsibilities and where necessary either cease the relevant personal activity or withdraw from their professional duty.
15. Have a positive duty in all their professional dealings to maintain full and proper client confidentiality.

16. Where he/she forms the opinion that the objectives or activities of his or her client/employer may be unethical, illegal or contrary to good professional practice, including this code of conduct, are required to so advise the client/employer. In circumstances where this advice is not acted upon in the appropriate manner, the member shall forthwith cease to act on behalf of the client/employer in such matters.
17. Shall not make improper claims regarding their access to, or influence over any institution of the European Union, national or local government, public official or member of the media.
18. Shall not knowingly guarantee the achievement of results nor undertake assignments which are beyond the member's capabilities.

### **C. Conduct towards the profession**

19. Reaffirm their commitment to the European Code of Professional Practice (Code of Lisbon) and the International Code of Ethics (Code of Athens) and their successors.
20. Shall not bring professional public affairs and public relations practice into disrepute.

### **Breaches of the PRII Code**

Breaches of this Code of Conduct shall be treated as breaches of the Disciplinary Code of the Public Relations Institute of Ireland and shall be subject to such procedures and sanctions as provided for in the Disciplinary Code.