Regulation of Lobbying Act 2015:
What you need to know

17 November 2021

Presentation topics

- Overview of *Regulation of Lobbying Act 2015*
  - The Three-Step Test
  - Registration and return requirements
  - Contraventions and enforcement
- How to prepare for compliance
- Avoiding common pitfalls
- Code of Conduct
- Questions

Regulation of Lobbying: Overview of Act

- Independent lobbying registrar – Standards Commission
- Registration of lobbyists (wide ranging scope)
- Regular submission of returns (3 x/year)
- Web-based public registry (lobbyist, lobbied, subject, intended result)
- Post-employment restrictions for **some** public officials
- Investigation and enforcement provisions (compliance focus)
- Legislative review mechanism

What is lobbying? The Three-Step Test

- Communication must meet the "three step test" to be considered lobbying - communication by:

  1. Persons within the scope of the Act

  2. With Designated Public Officials

  3. On relevant matters

- Act makes no distinction regarding method, venue or formality of communication

  - Mail, telephone, in-person, electronic, social media

  - Office, social setting, casual encounter, other

Step 1: Are you within scope of the Act?

- Persons with **more than 10 employees**

- **Representative or advocacy bodies** with at least 1 employee

- **Third parties** paid to lobby on a client's behalf

- Anyone lobbying **about development or zoning** of land

But even if you meet these criteria you need to register only if the communications are with Designated Public Officials (DPOs) and relate to "relevant matters"

Step 2: Are you communicating with a DPO?

- Ministers, Ministers of State

- Members of Dáil Éireann, Seanad Éireann

- Irish Members of the European Parliament

- Members of Local Authorities

- Special Advisors

- Senior Civil and Public Servants

  - Civil service: Secretaries General, Assistant Secretaries, Director grades and equivalent

  - Local authorities: Chief Executives , Directors of Service, Heads of Finance, Head of HR (Dublin City Council)

  - The Minister may expand group in future (public bodies or levels)

Step 3: Is it about a relevant matter?

- The initiation, development or modification of any public policy or of any public programme

- The preparation of an enactment

- The award of any grant, loan or other financial support, contract or other agreement, or of any licence or other authorisation involving public funds.

Not a relevant matter: Matters relating only to the **implementation** of any such policy, programme, enactment or award **or** matters **of a technical nature**

Exemptions (section 5(5))

Several types of communications are exempt from the requirement to register:

- Private affairs

- Principal private residence

- Diplomatic context

- Between public officials

- Strictly factual information

- Trade union negotiations

- Threat to life or safety

- Security of the State

- Shareholder of State body

- Within proceedings of Oireachtas Committee

- Information requested and published by public body (Consultations)

- Groups established by Public Body where Transparency Code applies (Task forces. Working groups)

Registration requirements

- Register after first communication with DPO
- Create an account on Lobbying.ie
- Include in registration:
  - Organisation Name - option to include "trading as" name if different from legal name.
  - Business address and contact details
  - Main business activities
  - Identify person with primary responsibility for lobbying
  - Company Registration Office Number or Charitable Registration Number

Return requirements

- **3 Returns periods per year with <u>mandatory deadlines</u>**
  - 1 September–31 December: returns due 21 January
  - 1 January–30 April: returns due 21 May
  - 1 May–31 August: returns due 21 September
- **Nil returns are also required**
- **One return per subject - include following information:**
  - Who was lobbied
  - Subject matter/intended results
  - Type and extent of activity
  - Current/former DPOs lobbying for you
  - Client information (if relevant; lobbyist)

Contraventions and Enforcement

- **Contraventions of Act:**
  - Lobbying without registering
  - Failure to submit return by deadline (including nil return)
  - Providing inaccurate/misleading information
  - Failing to comply with an investigation
  - Obstructing an investigation
- **Consequences of non-compliance**
  - Fixed payment notices for late returns: €200
  - Investigation and prosecution of contraventions
  - If convicted: higher fines and/or imprisonment

Preparations for Compliance

- Review your organisation's arrangements for recording relevant communications

- Identify individual(s) responsible for registration and compilation of returns.
  - Data can be entered on the register on an ongoing basis by more than one employee and saved in draft form (on a private area of the register) prior to its formal submission.

- Nominate compliance officer
  - Single person responsible for reviewing all final returns for completeness, accuracy and consistency
  - Person can submit final return at the end of each reporting period
  - Make sure that person has a backup!

Avoiding common pitfalls

1) Should you register? Do the **three-step test**

2) **Register** once you commence lobbying

3) Track your lobbying activity with an eye to returns

   - **One return per subject**, not for every communication

4) Meet the deadlines

   - 21 January, 21 May, 21 September: **mandatory deadlines**

   - **Nil returns** are also expected

   - Have organisational backups

5) Make returns **meaningful**

6) Indicate if you have **ceased lobbying**

Code of Conduct

Eight Principles of Code:
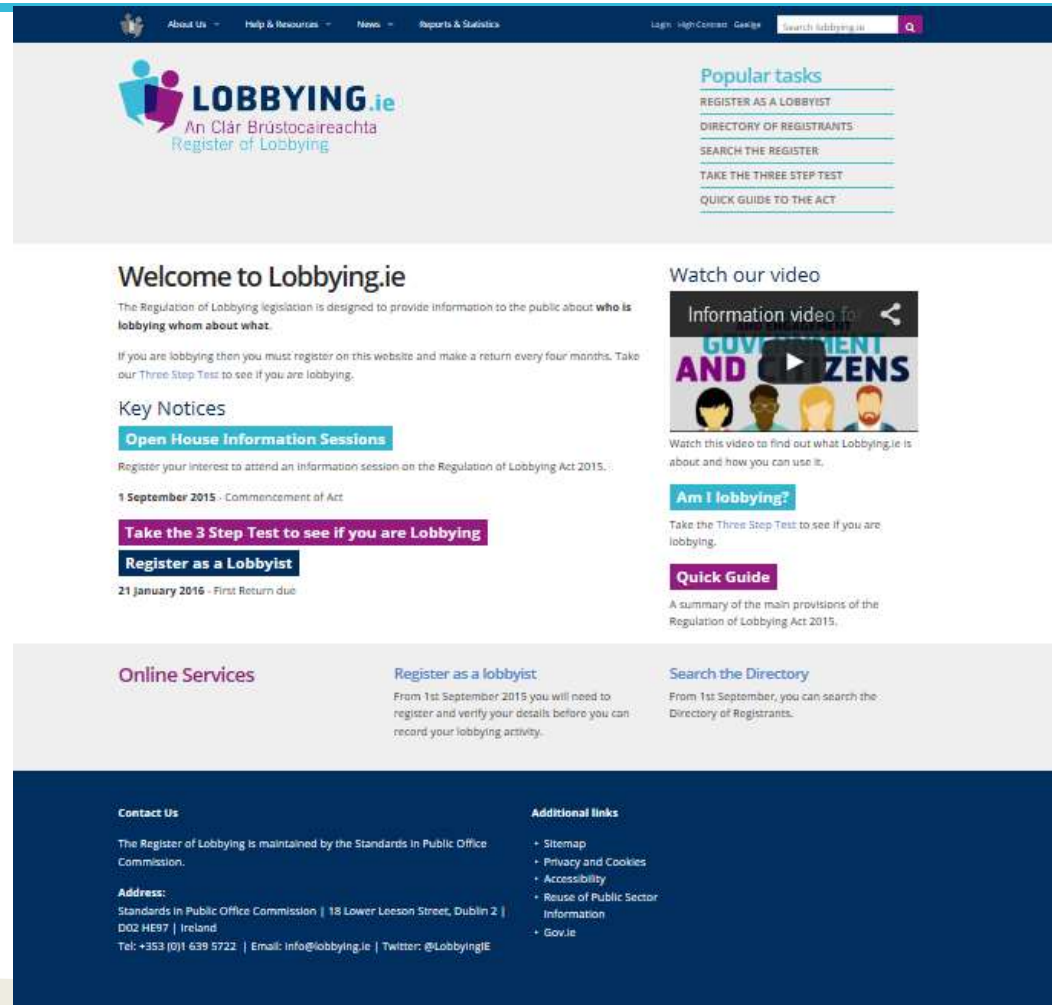
- *Came into effect 1 January 2019*
- *Purpose to govern behaviour – ensure lobbying ethical*
- *Sets out 8 key principles*
- *Persons lobbying should have regard to Code*

1) Demonstrate respect for public bodies

2) Act with honesty & integrity

3) Ensure accuracy of Information

4) Disclose identity and purpose

5) Preserve confidentiality

6) Avoid improper influence

7) Observe provisions of Act

8) Observe provisions of code

Thank you/Questions?

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www.LOBBYING.ie