

Code for the Conduct of Lobbying Investigations ("Investigations Code")

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1. Introduction

- 1.1. The Standards in Public Office Commission (the “**Standards Commission**”) is an independent statutory body with responsibility for oversight of the obligations under the Regulation of Lobbying Act 2015¹ (the “**Lobbying Act**”). One of the functions of the Standards Commission is authorise the carrying out of investigations into contraventions of the obligations under the Lobbying Act.
- 1.2. This Code for the Conduct of Lobbying Investigations (the “**Investigations Code**”) has been prepared in accordance with section 22F(1)(a) of the Lobbying Act. It summarises how investigations under the Lobbying Act will be conducted in practice.
- 1.3. The Investigations Code has been approved by the Standards Commission and will be reviewed from time to time.

A: The Standards Commission

- 1.4. The Standards Commission is established under the Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001.
- 1.5. The Standards Commission is made up of six Commissioners:
 - the Chairperson, who is a judge or former judge of the Superior Courts,
 - the Comptroller and Auditor General
 - the Ombudsman
 - the Clerk of the Dáil
 - the Clerk of the Seanad
 - a former member of one of the Houses of the Oireachtas

¹ The Regulation of Lobbying Act 2015 was substantially amended by the Regulation of Lobbying and Oireachtas (Allowances to Members) (Amendment) Act 2023, as well as minor and consequential amendments by other Acts (the Data Protection Act 2018, the Water Services (Amendment) Act 2022, the Greyhound Racing Act 2019 and the Roads Act 2015). Regulations have also been made under the Lobbying Act, namely S.I. 152/2015, S.I. 366/2015, S.I. 367/2015, S.I. 360/2016, S.I. 361/2016, S.I. 362/2016, S.I. 144/2019 and S.I. 531/2023.

- 1.6. More information about the Standards Commission is available at www.sipo.ie/about/our-members/. The Standards Commission is supported in its work by a secretariat, who are civil servants of the State.

B: The lobbying regime

- 1.7. The Lobbying Act regulates lobbying activities in the State, including the creation of a register of lobbying and an obligation on registrants to submit returns of lobbying three times per year. In addition, the Lobbying Act places restrictions the ability of certain public officials to engage in lobbying activities in the year after they leave office. The regime is overseen by the Standards Commission, which is responsible for the maintenance of the register and oversight of compliance with the obligations under the Lobbying Act. Further information about the lobbying regime is available at www.lobbying.ie.
- 1.8. The Standards Commission's principal objective is to promote understanding of the lobbying regime and its obligations, with a view to supporting effective compliance and encouraging best practice. The majority of the Standards Commission's oversight work is focused on supporting compliance with the regime, rather than investigating non-compliance. However, the Standards Commission does have specific functions in dealing with non-compliance with the regime.
- 1.9. Section 18 of the Lobbying Act provides for "relevant contraventions" of the legislation, all of which attract a sanction of some kind. Most of these contraventions may be dealt with as an offence. Summary proceedings may be brought by the Standards Commission or proceedings on indictment may be brought by the Director of Public Prosecutions (the DPP). The late submission of a lobbying return may be dealt with by the issuing and payment of a fixed payment notice instead of through proceedings for an offence.
- 1.10. One of the relevant contraventions in the Lobbying Act – non-compliance with the rules relating to the 'cooling-off period' after leaving certain public offices – does not attract criminal liability, but may instead be dealt with by the Standards Commission through the imposition of an administrative sanction. Another relevant contravention – taking action intended to avoid or circumvent lobbying obligations – may be dealt with either by the Courts as an offence or by the Standards Commission through the imposition of an administrative sanction.

C: Application and effect of the Investigations Code

- 1.11. The duty on the Standards Commission to publish a code for investigations was brought into force on 1 June 2024².
- 1.12. Any investigation under the Lobbying Act that takes place after that date will be conducted having regard to the provisions of this Code.
- 1.13. The Investigations Code is not an exhaustive guide to how the Commission conducts investigations, which is set out in the Lobbying Act. In the event of a conflict between the Investigations Code and the legislation, the legislation will prevail.
- 1.14. The Standards Commission may depart from the procedures set out in the Investigations Code where they are not appropriate in the circumstances of a particular case.

² S.I. 531/2023.

2. Promoting compliance with the lobbying regime

- 2.1 The Standards Commission has discretion in relation to its oversight of the lobbying regime. With the Standards Commission's broad mandate, it is not possible to pursue every issue. By prioritising its work, the Standards Commission focuses on taking action in areas that will have the greatest impact on the maintenance and transparency of the lobbying register.
- 2.2 There are formal mechanisms under the Lobbying Act through which the Standards Commission may receive information and evidence regarding the accuracy, currency and completeness of the information on the lobbying register. The Standards Commission may also monitor compliance with the lobbying regime in other ways, including through engagement with registrants and other stakeholders, as well as through open-source material.
- 2.3 The legislation does not provide for a complaints mechanism regarding potential contraventions of the lobbying regime. Reporters of information will not be provided with the outcome of the Standards Commission's considerations. However, the Standards Commission will take into account information received from members of the public when deciding whether it is appropriate to make further inquiries or to conduct a lobbying investigation.
- 2.4 If the Standards Commission becomes aware of information that suggests that a person may not be in compliance with their obligations, the secretariat may contact the person directly to seek further information. Depending on any response received, such inquiries may or may not lead to a lobbying investigation.
- 2.5 The Standards Commission has statutory powers to ensure that the lobbying register, and any returns made by registrants, are not inaccurate or misleading. These powers include powers to require further or corrected information from registrants or persons making returns and to remove information from the register in the event of non-compliance. The exercise of these statutory powers is without prejudice to the Standards Commission's discretion to authorise a lobbying investigation in appropriate cases.

3. Lobbying investigations

- 3.1 Formal investigations into whether a person has committed a “relevant contravention” under section 18 of the Lobbying Act are carried out in accordance with section 19 of the Lobbying Act.
- 3.2 A person who is the subject of a lobbying investigation is referred to in this Code as the “respondent”.

A: Authorising a lobbying investigation

- 3.3 The Standards Commission may authorise the carrying out of a lobbying investigation if it “reasonably believes that a person may have committed or may be committing a relevant contravention”. In considering whether to authorise a lobbying investigation, the Standards Commission will take into account all of the information available to it, including:
- any evidence or information which tends to show that there may have been a contravention;
 - the nature and seriousness of the potential contravention;
 - any evidence of previous compliance by the respondent with obligations under the Lobbying Act;
 - the extent and content of any response received to any initial inquiries made by the secretariat.

B: Authorised officers

- 3.4 Lobbying investigations are carried out by “**authorised officers**”, who have been appointed by the Standards Commission for the purpose of carrying out investigations. Authorised officers are usually members of staff of the secretariat, but the Standards Commission may, if appropriate, appoint persons who are not members of staff to be authorised officers. The Standards Commission is required to provide each authorised officer with a formal authorisation. Any person who is affected by an investigation may request to see a copy of an authorised officer’s authorisation, together with a form of personal identification.

3.5 An investigation may be carried out by one or more authorised officers working together. However, in each investigation one authorised officer will usually be designated as the “**responsible authorised officer**”, to be primarily responsible for the conduct of the investigation and to prepare the investigation report for the Standards Commission.

C: Conduct of the investigation

3.6 The conduct of a lobbying investigation may vary depending on the nature and seriousness of the suspected contravention and all of the circumstances of the case. The aim of an investigation is to seek out, obtain and preserve evidence relating to a matter under investigation.

3.7 The responsible authorised officer will inform the respondent as soon as practicable that a lobbying investigation has been authorised by the Standards Commission, as long as to do so is not likely to prejudice the conduct of the investigation.

3.8 Authorised officers may make inquiries and request information or other material from any person during the course of a lobbying investigation without recourse to its statutory powers.

3.9 Authorised officers also have various statutory powers under the Lobbying Act³ which may be used during the course of a lobbying investigation. These powers may apply to the respondent, or to any other person, who is in possession or control of, or who has access to, information or other material relevant to the investigation. The powers may be used to:

- require the provision of information or an explanation;
- require the production of a document or other thing;
- require a person to attend to answer questions;
- enter and search a premises (if the premises is a dwelling, this must be with consent or pursuant to a warrant);
- inspect and take copies of or extracts from a document or other thing;

³ See section 19(4)-(8) of the Lobbying Act for further details.

- require a person to make documents available in a legible form;
 - require a person to provide assistance or make available facilities.
- 3.10 When entering and searching a premises, authorised officers may be accompanied by members of An Garda Síochána who may use their normal policing powers.
- 3.11 An authorised officer's statutory powers cannot be used to require a person to provide any information, explanation, document or other thing that is protected by legal professional privilege. Where a person wishes to rely on legal professional privilege to refuse to provide any information, explanation, document or other thing, the authorised officer will seek a detailed explanation as to the basis on which the person is asserting privilege so that the validity of reliance on privilege can be properly evaluated. Authorised officers will take steps to ensure that any information provided by a person about legally privileged material will be effectively protected. The disclosure of legally privileged information voluntarily for the purpose of assessing the validity of a claim of privilege will not amount to a waiver of legal privilege.
- 3.12 Where an authorised officer uses their statutory powers to require a person to make a statement or an admission, that statement or admission will only be admissible against that person in proceedings for lobbying offences and not for any other offence.
- 3.13 Failure to comply with a requirement imposed by an authorised officer using their statutory powers, or obstruction of a lobbying investigation, is a contravention of the Lobbying Act and a criminal offence, punishable by up to two years in prison.
- 3.14 Authorised officers will use their statutory powers in line with the following principles:
- **Legality:** Lobbying investigations will be conducted lawfully, in a manner consistent with the legal rights of persons affected by an investigation, including the right to privacy.
 - **Proportionality:** Authorised officers will exercise their powers in a proportionate manner, having regard to the duty to seek out, obtain and

preserve evidence and having regard to the legal rights of persons affected by an investigation.

- **Necessity:** Authorised officers will take steps to ensure that the scope of each lobbying investigation is as focused as practicable in light of the particular circumstances of the matter, bearing in mind that extraneous material may nevertheless be obtained. In planning and carrying out lobbying investigations, authorised officers will seek to limit the scope to what is necessary to achieve its lawful objective in the circumstances.
- **Fairness:** Authorised officers recognise the right to fair procedures enjoyed by those under investigation, while also recognising the legitimate interest of the Standards Commission in detecting and investigating potential breaches of the Lobbying Act.
- **Transparency:** The procedures of the Standards Commission are documented and authorised officers will demonstrate due regard for the rights of persons affected by an investigation. However, in the interest of detecting and investigating breaches of the law, and having regard to the duty to seek out, obtain and preserve evidence and to protect the legal rights of persons affected by an investigation, the Standards Commission may be prevented from releasing information in relation to investigations.

3.15 Any information, documents or other material obtained during the course of a lobbying investigation will be held in electronic form on a secure ICT system. Any hard copy documents or materials will be kept securely on the Standards Commission's premises. Further information on how the Standards Commission holds information and processes personal data is available in its [Privacy Notice](#) and in its [Corporate Governance Framework](#).

3.16 Any material obtained during the course of an investigation will be retained by the Standards Commission until the conclusion of any criminal or administrative sanction proceedings. Material may be retained for a longer period in accordance with the records retention policies of the Standards Commission and the requirements of data protection legislation.

D: Reports to the Standards Commission

- 3.17 The Standards Commission may request interim reports on the progress of a lobbying investigation at any time during the investigation. Interim reports will not be provided to the respondent, as to do so may prejudice the conduct of the investigation.
- 3.18 Once an investigation has concluded, the responsible authorised officer will prepare an investigation report, which must include:
- the factual findings of the investigation;
 - the authorised officer's conclusions on the findings; and
 - the reasons for the authorised officer's conclusions.
- 3.19 A copy of the investigation report will be provided to the Standards Commission and to the respondent.

E: Confidentiality of investigations

- 3.20 The Lobbying Act places a duty on each authorised officer not to disclose information obtained during the course of a lobbying investigation otherwise than in an investigation report. The members and staff of the Standards Commission are also under a duty not to disclose information obtained by them under the Lobbying Act otherwise than in the performance of their functions and in other limited circumstances.
- 3.21 The confidentiality obligations that apply to lobbying investigations and inquiries protect the integrity of the investigation process as well as protecting the legal rights of persons affected by an investigation.
- 3.22 The Standards Commission is committed to ensuring the transparency of its investigations by documenting its procedures, publishing information about its investigations in its annual reports and demonstrating due regard for the rights of persons affected by an investigation.

4. Possible outcomes of an investigation

- 4.1 The Standards Commission will usually consider the investigation report, together with a briefing note from the secretariat, at one of its regular meetings. The meetings of the Standards Commission are held in private.
- 4.2 The decisions available to the Standards Commission at this stage will depend on whether the contraventions which are the subject of the investigation are subject to a criminal sanction or an administrative sanction or both (see Part 1B above). The following decisions may be made by the Standards Commission following consideration of an investigation report, depending on the contravention:
- take no further action;
 - begin administrative sanction proceedings
 - begin criminal proceedings or refer the matter to the DPP to consider beginning criminal proceedings; or
- 4.3 Where an investigation relates in part to a contravention that attracts criminal liability and a contravention that attracts an administrative sanction, the Standards Commission will first consider whether criminal proceedings should be brought. The Standards Commission will suspend consideration of whether to impose any administrative sanction until a decision on whether to bring criminal proceedings has been made.
- 4.4 The Standards Commission will have regard to the [Guidelines for Prosecutors](#) prepared by the Office of the Director of Public Prosecutions when considering whether criminal proceedings are appropriate. If the Standards Commission considers that criminal proceedings are appropriate, the Standards Commission may bring and prosecute summary proceedings itself or may refer the matter to the Director of Public Prosecutions to consider prosecution on indictment.
- 4.5 Where the relevant contravention may be subject to an administrative sanction, the [Code for the Conduct of Administrative Sanction Proceedings](#) (the “ASP Code”) will apply.

- 4.6 The Standards Commission may be in a position to make a decision on the first occasion that it considers an investigation report, but further information or deliberation may be required before a decision can be made. The secretariat will keep the respondent informed of the Standards Commission's progress.