

LITIGATION, DISPUTE RESOLUTION AND INVESTIGATIONS

COVID-19: Seeking to Influence Policy during the Pandemic? Lobbying Returns Deadline 21 May 2020

18 May 2020

During the COVID-19 pandemic, significant resources have been expended by individuals and organisations in response to various issues arising. Many of these issues relate to public policy, grant aid and public funding. During this time of economic turbulence, when many businesses are under threat, contending with competing interests and getting to grips with new ways of working, it is important that individuals and organisations do not lose sight of their obligations under the Regulation of Lobbying Act 2015 (the “Act”).

Individuals or organisations who have lobbied or even spoken to certain designated public officials during the period 1 January – 30 April 2020 (the “Relevant Period”) about the various measures introduced in response to the COVID-19 pandemic should be aware that they may have reporting obligations under the Act. The deadline for filing returns with the Standards in Public Office Commission (“SIPO”) in relation to any lobbying activities during the relevant period is **Thursday, 21 May 2020**.

What is Lobbying?

Lobbying, under the Act, means the making of a “relevant communication” to a “designated public official” in relation to a “relevant matter”.

What is a Relevant Communication?

A relevant communication is a

communication (oral, written or otherwise) made personally, either directly or indirectly, to a designated public official. This can include, for example, approaches made in meetings, phone calls, correspondence and even casual exchanges in person.

Individuals and organisations should ensure that they identify any and all instances of relevant communications with a designated public official that have occurred, whether relating to the COVID-19 pandemic or otherwise. The unique and pressing nature of current circumstances means being particularly mindful of:

- meetings constituting a relevant communication that may have taken place via video-conference rather than in-person;
- letters, often considered and drafted over time, that may have been issued without considering the potential of being a relevant communication; or
- phone calls or exchanges that have taken place and failed to be recorded in workplace diaries or records (where individuals are working remotely).

Who are Designated Public Officials?

A designated public official under the legislation includes:

- Government Ministers and Ministers of State;

- members of Dáil Éireann (“TDs”) and Seanad Éireann (“Senators”);
- members of European Parliament (“MEPs”) for Irish constituencies;
- members of local authorities;
- certain public servants (including, for example, the Secretary General of the Department of Health and the Chief Medical Officer); and
- senior officers in other prescribed bodies (such as, for example, the Office of the Data Protection Commissioner and the State Examinations Commission).

Public bodies, including local authorities, must publish a list of designated public officials within their organisation on their individual organisation websites.

If you are concerned that you or someone in your organisation may have lobbied a public official but are unclear as to whether that official is a designated public official as defined in the Act, it is important to consult the lists provided by the relevant public body (to include those listed above) to identify whether the particular official is a designated public official.

The National Public Health Emergency Team for COVID-19 (“NPHE”), is the body established on 27 January 2020 to provide direction, guidance, support and expert advice on the development and implementation of a strategy to contain the virus in Ireland. The NPHE is exempt

from the provisions of the Act.¹

What is a Relevant Matter?

A relevant matter for the purposes of the Act includes any matter relating to the:

- initiation, development or modification of any public policy or of any public programme;
- preparation of an enactment; or
- award of any grant, loan or other financial support, contract or other agreement, or of any licence or other authorisation involving public funds.

Are There Any Exceptions?

Yes. There are a number of specified types of communications which do not have to be disclosed under the Act. Communications: by or on behalf of an individual relating to his or her private

affairs (about any matter other than development or zoning); relating to the *implementation* of any policy, programme, enactment or award; relating to matters of a *technical* nature; and requests for factual information (such as the date of implementation of a policy or programme) are classified as excepted communications that do not have to be disclosed.

Conclusion

A considerable amount of policy, legislation and regulation has been introduced in Ireland since March 2020 in response to the COVID-19 pandemic which has been considered, drafted and given effect in a relatively short period of time.

Given the scale of the impact of the pandemic and the speed with which

public health measures have been introduced, many individuals, industries and sectors may have engaged in lobbying activity which may otherwise not have taken place without considering their obligations under the Act.

If you or your organisation have been engaged in communications with public officials, it is advisable to review and consider carefully the nature of the communications. If they are such that they may fall within those envisaged by the Act, you should ensure that the requisite lobbying return is filed on or before 21 May 2020. And remember: failure to comply is a contravention under the Act which may result in criminal prosecution.

The authors wish to thank James Ringland for his contribution to this briefing.

¹ "The requirement of the Regulation of Lobbying Act 2015 was discussed. It was agreed that the Department would document and note the exemption of this group under the regulations of this act." Minutes of a meeting of the National Public Health Emergency Team – COVID-19 (NPHET) on 11 February 2020 <https://www.gov.ie/en/collection/691330-national-public-health-emergency-team-covid-19-coronavirus/>

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