



**TRANSPARENCY
INTERNATIONAL**

Transparency International Ireland

INFLUENCE AND INTEGRITY

LOBBYING AND ITS REGULATION IN IRELAND

Transparency International Ireland (TI Ireland) is the Irish chapter of the worldwide movement against corruption. It was founded in 2004. Its vision is an Ireland that is open and fair and where entrusted power is used in the interest of everyone.

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I. EXECUTIVE SUMMARY AND RECOMMENDATIONS

INTRODUCTION

A wide range of individuals and interest groups are engaged in lobbying in Ireland. They include hundreds of trade unions, representative bodies and industry groups; thousands of community and voluntary organisations and charities; as well as professional lobbyists and private business interests.

These interest groups and individuals often play a positive and legitimate role in our democracy, offering valuable insights, expertise and feedback that inform and enrich the policy and decision-making processes.

Despite these clear benefits, lobbying is widely viewed in negative terms as a means of advancing private gains at the expense of the public interest. This perception is not without justification. As Ireland's recent economic and banking crises have shown, unchecked and secretive lobbying by powerful individuals and companies can lead to unfair competition as well as regulatory and policy 'capture'.

International Monetary Fund research has made a strong connection between lobbying by financial institutions and mortgage lending in the run-up to the global financial crisis. It noted that the 'prevention of future crises might require weakening political influence of the financial industry or closer monitoring of lobbying activities to understand the incentives better'.¹

In Ireland, a number of lobbying-related controversies have eroded public trust in the legitimacy of the political system and fuelled perceptions that policy-making is unduly influenced by a 'golden circle' of powerful and highly connected insiders.

This study, *Influence and Integrity: Lobbying and its Regulation in Ireland*, provides a detailed assessment of the lobbying landscape in Ireland. It is published at a crucial moment when Ireland's first lobbying legislation is under consideration by the Oireachtas. The research is based on a methodology created by Transparency International as part of a project involving the assessment of lobbying regulations and practices in 19 European countries.²

The report assesses Ireland's efforts to regulate the phenomenon from three critical dimensions. Firstly, we ask whether there is sufficient **transparency** in relation to how public decisions are made and who seeks to influence them. Secondly, we assess the effectiveness of current efforts to promote **integrity** in public life and also among lobbyists. Thirdly, we examine the extent to which policy formation is open and responsive to a plurality of interests through formal measures to ensure **equality of access** to the democratic decision-making process.

For each of these dimensions, this study firstly assesses the current situation. It then explores how the situation will change if the Registration of Lobbying Bill 2014 - which provides for an online register of lobbying activities - is passed in its current form.

¹ IMF Working Paper, Research Department, *A Fistful of Dollars: Lobbying and the Financial Crisis*, December 2009 www.imf.org/external/pubs/ft/wp/2009/wp09287.pdf

² The participating countries are Austria, Bulgaria, Cyprus, Czech Republic, Estonia, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, and the United Kingdom.

Our findings show that the planned register will shed welcome light in relation to who is seeking to influence government decision-making. But it is only one measure among wider reforms identified in this report that are required to open decisions up to fuller public scrutiny, promote integrity in public life in general and safeguard against lobbying-related risks in particular, including undue or improper influence.

While the political system is not the primary focus of this report, it is abundantly clear that shortcomings in Ireland's political structures, the tolerance of patronage and cronyism in politics and the concentration of power at executive level have contributed to a political environment in which power and the policy-making process have been abused for political or private gain. This environment will prosper as long as there is a lack of public understanding over how public policy is (and should be) made and while there is inadequate legislative oversight of government.

This aim of this report is to help promote better understanding of how policy is being shaped through lobbying and to recommend ways of promoting more open and accountable decision-making. To this end, we put forward a set of key recommendations and solutions suggesting how the weaknesses identified and discussed in this study could be tackled. If we are to build public trust in democratic processes, then transparency, accountability, integrity and plurality must be the defining features of all public decision-making. The ultimate goal is to achieve better public policy outcomes for society at large.

KEY FINDINGS

Lobbying in Ireland

There is vibrant interest representation in Ireland, with groups and individuals exercising their right to participate in our democratic process through lobbying decision-makers.

These include representatives of various sectors including farmers, business associations, and representative groups, as well as trade unions, faith-based groups, and civil society organisations including charities. Ireland's small size and the fact that politicians are generally accessible at both constituency and national level means that niche or local interest groups can often 'punch above their weight'. However, the diversity of lobbying activity that takes place and the general openness of the political system to a range of interests does not in itself guarantee an even playing field when it comes to the influence of various stakeholders over public decision-making. The professional lobbying industry has grown in the past several decades. These public affairs professionals – many of them former politicians or political advisers – mostly represent private interests, including large multinational corporations.

Lobbying techniques are varied and significant lobbying efforts are beyond public scrutiny.

Formal lobbying takes place through a variety channels, both open and closed. Open channels include direct communications with decision-makers, participation in public hearings and consultations, public and media campaigns and grass roots activities. Some groups carrying out grass roots activities receive funding from industry including tobacco and alcohol manufacturers. Lobbying also takes place behind the scenes – outside of formal participation channels and hidden from public scrutiny. This includes 'political insiders' using their connections to access and seek to influence decision-makers.

Lobbying from the inside by private interests through advisory or expert groups and taskforces is of particular concern.

Lobbying from the inside by private interests can take place through advisory or expert groups and taskforces set up to advise government or public bodies.³ Members appointed to such bodies often give up significant amounts of their time to these voluntary public duties. However, the fact that corporate executives and lobbyists can sit on such groups in a personal capacity poses a clear risk that concealed interests might have undue influence over policy-making. There is no statutory obligation to have a balanced composition of membership on expert or advisory groups or to ensure their work is conducted in a transparent manner. The Organisation for Economic Cooperation and Development (OECD), has identified the influence of private interests through expert or advisory groups as ‘an emerging risk to the integrity of policy-making’.⁴ The planned lobbying law provides for a ‘transparency code’ for groups established by a Minister or a public body. However, even with the planned law, corporate executives and lobbyists will be free to join expert groups without having to declare their membership of these groups.

Select interests appear to enjoy unfair advantages in terms of access to decision-makers and influence over public policy.

Corporate interests in particular wield political influence that reflects their perceived financial or economic importance. Corporations can employ teams of lawyers and professional lobbyists and are more or less guaranteed access to senior decision-makers and politicians. The case studies in this report show that the policy influence they enjoy has a real bearing on the lives of all citizens. For example, the pharmaceutical and alcohol industries appear to have significant influence over aspects of national policy. Likewise, institutional arrangements have allowed sectoral interests to be effectively co-opted into public policy-making. This includes trade unions, employers’ organisation and community and voluntary groups involved in the now-defunct Social Partnership process. Long-standing institutional arrangements have also ensured that professionals from the financial sector have regular access to regulators and decision-makers. Their influence over key aspects of economic policy is documented in this report. In particular, the Clearing House Group of the International Financial Services Sector appears to have played an important role in blocking the introduction in Ireland of a Financial Transaction Tax. Naturally, it is important for Government to take into account the needs of businesses in formulating national policies. However, this must be done in as transparent a manner as possible to ensure public confidence in decision-making. The Irish public already perceives that there is too close a relationship between business and politics.⁵

Attempts at self-regulation to date are limited in scope and have had limited impact.

An industry code developed by the Public Relations Institute of Ireland (PRII), which represents PR professionals and lobbyists, suffers from the fact that it is entirely voluntary and applies only to its 1,000 members. The code was introduced in 2003 following controversy over allegations of influence-peddling by one of the institute’s members. No complaints have been filed against PRII members since the code was introduced and the institute has not conducted any investigations for violations of the code. Notwithstanding the apparently limited impact of the PRII’s code, it is one of the few organisations to have attempted to create rules around lobbying by its members. In contrast, there is no evidence of any concerted sector-wide efforts by non-profit organisations, trade unions, the legal profession or business at large to promote ethical lobbying by their members or staff.

³ Following the OECD definition, here an advisory or expert group refers to any committee, board, commission, council, conference, panel, task force or any subcommittee set up by government (executive, legislative or judicial branch) or any of its subgroups to provide it with advice, expertise or recommendations.

⁴ OECD, *Building trust through fairer decision making: In-depth report on progress made in implementing the OECD Recommendation on Principles for Transparency and Integrity in Lobbying*, p 64, 2014 (forthcoming).

⁵ European Commission, Special Eurobarometer 397, February 2014
http://ec.europa.eu/public_opinion/archives/ebs/ebs_397_en.pdf

Regulation of Lobbying

The introduction of an online public register of lobbying activities is a welcome transparency measure, but is not a panacea.

The planned introduction of a 'register of lobbying activities' is a significant step towards increased transparency in this area. Lobbyists will be required to register with the Standards in Public Office Commission and file online returns on their lobbying activities three times a year. The register's main value lies in the fact that it could become a 'one-stop-shop' that would allow citizens to track who is seeking to influence public decision-making, and about what. If this register is to make a difference, it should aim to capture as complete a picture as possible of lobbyists' policy inputs on any particular issue. The register is only one transparency measure among many others identified in this report that are required to open decisions up to fuller public scrutiny.

Ethics in Public Office

Efforts to safeguard the public interest in decision-making are piecemeal and ineffective.

Laws and guidelines which set ethical behavioural standards for public officials are unduly complex and inadequate. Sanctions for breaches of these rules do not represent a sufficient deterrent, while oversight structures are also weak. Furthermore, there is not enough emphasis on ethics training for public officials and elected representatives. There appears to be little effort to promote understanding among officials of the importance of rules and principles around the disclosure of private interests, the managing of conflicts of interest, or interactions with lobbyists. One former junior minister interviewed for this research stated that, when it comes to official meetings with lobbyists at such senior levels, there are no guidelines or established practices — it is a case of 'anything goes'.

The largely unrestricted flow of personnel from the political world to the worlds of business and lobbying poses a risk to fairness and impartiality in public decision-making.

While the movement of personnel between the public and private sectors can help in the healthy exchange of ideas and experience, these so-called 'revolving door' practices pose particular risks of conflicts of interest. Serving public officials may be more inclined to give preferential treatment to a business or industry with an eye on future employment prospects. Likewise, former public officials who accept employment in the private sector might seek to influence their former colleagues in a way that favours their new employer or client. Even where there is no abuse, the public perception of a conflict of interest can undermine public confidence in the independence and integrity of their public officials. These risks are generally controlled by both pre-term and post-term employment restrictions, known as moratoria or 'cooling-off' periods. There are no pre-term employment restrictions in place in Ireland, a situation that allows lobbyists to move freely into the public sector, where they could allow their previous private sector experience to influence their work.⁶ It is particularly noteworthy that government Ministers are not subject to the same revolving-door restrictions that apply to civil servants and local authority officials. The Registration of Lobbying Bill 2014 introduces targeted post-term restrictions for key public officials, including Ministers and special advisers, on carrying out lobbying activities for one year after they leave public service. However, the government has yet to deliver on its Programme for Government pledge to bring in a 'cooling-off' period of at least two years for key public officials moving to paid positions in the private sector.⁷

⁶ OECD, *Building trust through fairer decision making: In-depth report on progress made in implementing the OECD Recommendation on Principles for Transparency and Integrity in Lobbying*, p 63, 2014 (forthcoming).

⁷ The Programme for Government 2011-2016 states: We will amend the rules to ensure that no senior public servant (including political appointees) or Minister can work in the private sector in any area involving a potential conflict of interest with their former *area* of public employment, until at least two years have elapsed after they have left the public service.

Consultation and public participation in decision-making

Stakeholder input is routinely facilitated across a range of decision-making bodies, but there are not sufficient structures in place to ensure equitable access to the policy-making process.

Ensuring that all stakeholders have fair and equitable access to decision-making processes can lead to balanced policy-making in the public interest. Government departments, local authorities and other public bodies often run multi-stakeholder consultations as well as public consultations. There was consensus among public affairs consultants and in-house lobbyists interviewed for this research that the Irish policy-making system is generally open to their input and expertise. However, some interviewees also noted that the extent of access varies somewhat depending on the culture of different government departments as well as the attitudes of particular senior civil servants and Ministers. While examples exist of imaginative and inclusive consultation processes, there are also examples of public consultations which amount to little more than a 'box-ticking' exercises, usually in the form of a webpage notice calling for comments to be submitted on a document by a certain deadline. Overall, there appears to be a degree of informality in relation to stakeholder consultations that gives policy-makers much needed flexibility in deciding when and how to consult. However, too much informality can in practice lead to a lack of rigour in terms of ensuring balanced stakeholder input into policy or legislation.

Proactive Transparency

There is no framework for proactive transparency across the public sector, and practices vary considerably.

Transparency in public life can help promote ethical behaviour and deter undue influence in the exercise of public power. Freedom of Information plays an important role in this area, allowing citizen and media oversight of some aspects of decision-making. However, generally this information is disclosed on an ex-post-factum basis, coming too late to change decisions that have already been taken. It is also apparent that access to information in this reactive form is not in itself sufficient to foster a culture of openness within public bodies. Currently, insufficient attention is being paid to proactive transparency across the public service. While there are some good examples of routine proactive release of information from public bodies, local authorities and government departments, there is no common standard or unified approach in this area. Practices vary in relation to proactive public disclosure of written submissions received during consultations run by government departments on legislative or policy proposals. The Freedom of Information Act 2014 will allow for more standardised proactive disclosure by public bodies of routine information outside of FOI, including official diaries, decision-making procedures and financial and procurement information.⁸

⁸ See: <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/%28indexlookupdail%29/20140408~WRL?op=endocument>

RECOMMENDATIONS

Regulation

1. Establish a mandatory two year 'cooling-off' period for senior public officials at local and national level, including special advisers and Ministers. Resigning or retiring officials should be required to receive permission from an independent, well-resourced and appropriately powerful oversight body before taking up a private sector position where a real or perceived conflict of interest could arise. Penalties including fines and publication of the decision should be imposed on any former public official who fails to comply with the body's ruling or to deliver information sought by it. This would help address conflicts of interest and the 'sale of expertise' by retiring public servants to the private sector. It should also help build public confidence in the integrity of the public policy process.⁹

2. Ensure that the planned lobbying register is carefully designed and properly implemented with sufficient resources to ensure meaningful verification and oversight of lobbying returns. The online register should be made available in a format that allows for the comprehensive capture of information. The public should be able to search under various fields including: by lobbying organisation; by policy area; by legislation; by official; and by public body lobbied. Information should be available in an open machine-readable format. Each registered lobbyist, whether an individual or an organisation, should be allocated a unique identifier code to allow their lobbying activities to be accurately tracked. The register should also allow lobbyists to upload documents shared with public officials in their online returns. The draft law does not require registered lobbyists to include supporting documents in their online returns. However, if the database design allowed for this, it would likely encourage lobbyists to make more comprehensive disclosures on a voluntary basis.

3. Strengthen the Registration of Lobbying Bill 2014 by closing off potential loopholes identified in this report. These loopholes will diminish the potential of the planned lobbying register as a comprehensive database of all significant efforts to influence key decision-makers.¹⁰ In addition, TI Ireland recommends that lobbyists also be required to disclose on the register:

- Policy submissions and any documents that they have shared with public officials aimed at influencing legislation or government decisions. These should be published on the new register. Such a measure would help inform debate on public policy.
- Financial data on sources of client or donor income should also be published. This would allow the public to better understand how money is influencing public policy and help regulatory bodies address any risks of influence-peddling.¹¹
- Any activities undertaken on behalf of political parties, elected officials or election candidates. This would include any voluntary support a registered lobbyist has given in terms of public/media relations, fundraising, strategic advice and research to parties and candidates.

4. Give the Standards in Public Office Commission (SIPO) more explicit powers in relation to proactive verification of lobbying activities reported by registered lobbyists, including the power to conduct spot checks and to 'name and shame' lobbyists who contravene the new law. SIPO should also be empowered to receive complaints against lobbyists from any member of the public.

5. Carry out sustained awareness-raising and outreach activities to generate meaningful awareness of the register among interest groups and individuals who will be required to register their lobbying

⁹ Norway's independent Quarantine Commission is a best practice example. It supervises post-term employment of politicians. It can impose liquidated damages if a politician fails to deliver information on potential transition to a new position.

¹⁰ For further detail, see TI Ireland's submission on the Registration of Lobbying Bill 2014 on www.transparency.ie

¹¹ The sale of influence, trading in influence or 'influence-peddling' involves 'the promising, giving or offering, directly or indirectly, of any undue advantage to anyone who asserts or confirms that he or she is able to exert an improper influence' over the decision-making of a public official. See <http://conventions.coe.int/Treaty/en/Treaties/html/173.htm> for reference to Article 12 of the Council of Europe Criminal Law Convention on Corruption.

activities. If this vital work is not adequately funded, there is a real risk that the lobbying registration system will fail to deliver on its promise.

6. Introduce a statutory code of conduct for all lobbyists aimed at establishing principles of professional conduct and good practice. The Registration of Lobbying Bill 2014 empowers, but does not oblige, SIPO to produce a code of conduct in consultation with lobbyists. SIPO should take this opportunity to establish a model code which clearly sets out specific behavioural principles expected of all those who lobby.

7. Lobbyists themselves should take responsibility for lobbying responsibly and adhere to the registration requirements in the planned law and any future code of conduct introduced under it. They should be open about their lobbying activities and voluntarily include additional information and supporting documentation in the planned lobbying register, including financial information. This kind of proactive disclosure will help to forge a cultural shift towards more transparency among those who seek to influence decision-making.

Ethics in Public Office

1. Publish and promote a clear high-level statement of principles as the basis of the ethical standards for all public officials. Based upon these principles, introduce clear tailor-made codes of conduct for different classes of public official at national and local level. These should include detailed behavioural guidance in relation to interactions with lobbyists.

2. Ensure that all public officials receive appropriate training and advice on ethical standards in public life including conflicts of interest and ethical business-government relationships. This should include clear guidance on how they are expected to engage with lobbyists, including professional lobbyists and those who are former public officials. More emphasis on prevention in general would ensure that ethical standards come to be seen as a vital and central component of sound public administration, rather than a bureaucratic formality.

3. Make declarations of interests by elected and senior appointed public officials at both national and local government level available online in a single portal and in machine-readable format (with necessary protections for individuals' private lives). The publication of declarations of interests would allow for more public scrutiny, thereby helping in the enforcement of conflict of interest rules.

4. Make it a criminal offence for public officials to fail to declare an interest under the Ethics Acts or to make false or misleading interest disclosures. In its final report in 2012, the Mahon Tribunal observed that the fact that these are not currently criminal offences has repercussions for the civil recovery of assets obtained through corrupt conduct.¹²

5. Require all public officials to make accurate records of their contacts with lobbyists and keep them for as long as they are required for accountability purposes. If records do not exist then there should be a presumption that they have been destroyed or there was negligence or maladministration. More generally, the Government should also consider introducing a statutory duty to make and keep records for all public authorities as part of its records management framework.¹³

¹² The Tribunal noted that under Part 15 of the Local Government Act 2001, it is already an offence to fail to make declarations or to make false/misleading declarations. See Mahon Justice Alan, *Final Report of the Tribunal of Inquiry into Certain Planning Matters and Payments* Vol. IV, p 2607.

¹³ The statutory basis for a requirement to keep records exists in Queensland, Australia. Section 7 of the Public Records Act 2002 states that all public authorities must 'make and keep full and accurate records' of their activities. The responsibility for ensuring compliance with this requirement falls to the executive officer of each authority. See <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/P/PublicRecA02.pdf> There is also an information standard that accompanies the legal requirement. See <http://www.qgcio.qld.gov.au/products/qgea-documents/548-information/2357-recordkeeping-is40>

Proactive Transparency

6. Information regarding meetings between lobbyists/interest groups and senior officials or Ministers should be routinely recorded and proactively published. This should include calendars and agendas. The primary responsibility for this sort of proactive transparency must rest with the public officials and representatives who have a duty to act with integrity and serve the public interest.

7. The Houses of the Oireachtas Commission, in collaboration with the Standards in Public Office Commission, should consider creating a web-based 'legislative footprint' to allow the public to see the input of different groups and individuals in shaping laws.¹⁴ This would summarise all external input, including submissions received and contact between lobbyists and public officials/representatives. It would provide an incentive for policy-makers to seek out a balanced representation of views in their decision-making processes. Ideally the legislative footprint would be updated in close to real time. It is worth noting that the government made a commitment to introduce a legislative footprint in its first Open Government Partnership National Action Plan.¹⁵

8. Establish clear rules for all expert and advisory groups to allow proper scrutiny of their work, ensure balanced composition and stakeholder diversity, and identify and control conflicts of interest. This would involve publishing open calls for nominations/candidacies for expert and advisory groups through the Public Appointments Service website. Terms of reference, agendas and minutes of meetings for all such bodies should be routinely published. Lobbyists and corporate executives should be prohibited from sitting on advisory and expert groups in their personal capacities.

Consultation and public participation in decision-making

9. Introduce statutory guidelines for government departments, public bodies and local authorities to ensure that public consultations offer meaningful opportunities for participation from as wide a cross-section of society as possible. Introduce a legal requirement on all public bodies to publish the results of consultation processes, including the views of participants in the consultations. This should include procedures to allow citizens to learn which submissions influenced the outcome of the decision-making process and why.¹⁶ This would build upon an existing government commitment in the Open Government Partnership National Action Plan to develop a code for public engagement and consultation with citizens, civil society and others by all public bodies.¹⁷ More diversity and contestability in policy-making would help diminish the power of vested interests, including elements of the political establishment and the bureaucracy itself.¹⁸

¹⁴ For more information on legislative footprints, see <http://www.aalep.eu/making-case-legislative-footprint-ep> and http://www.transparency.org/files/content/corruptionqas/legislative_footprint.pdf

¹⁵ Department of Public Expenditure and Reform, *Open Government Partnership National Action Plan 2014-2016* <http://www.per.gov.ie/minister-brendan-howlin-td-publishes-irelands-first-open-government-partnership-national-action-plan/>. The legislative footprint could be created using the Oireachtas Legislative Observatory as its primary platform. The Observatory could link to the Irish Statute Book online as well as submissions and contacts provided by the register of lobbying activities and Government department websites.

¹⁶ The Department of Public Expenditure and Reform included feedback procedures in its response to civil society proposals for open government reforms. See *Open Government Partnership National Action Plan 2014-2016*.

¹⁷ *Open Government Partnership National Action Plan 2014-2016*, Action 2.1

¹⁸ See: Barry Frank, *Towards improved policy making in Ireland: contestability and the marketplace for ideas*. Irish journal of Public Policy 2009 <http://publish.ucc.ie/ijpp/2011/02/Barry/01/en>

2. INTRODUCTION

Transparency International's European regional report 'Money, Power and Politics' (2012) found that in most European countries, the influence of lobbyists is shrouded in secrecy and a major cause for concern. When undertaken with integrity and transparency, lobbying is a legitimate avenue for interest groups to be involved in the decisions that could affect them. Problems arise when lobbying is non-transparent and unregulated and where privileged access is granted to a select few while others are excluded from decision-making processes. Corporate lobbying in particular raises concerns because it often involves companies with vast sums at their disposal developing close relationships with lawmakers and thus gaining undue and unfair influence in a country's politics and policies.¹⁹

A recent Eurobarometer report revealed that 81% of Europeans agree that overly close links between business and politics in their country have led to corruption, and more than half believe that the only way to succeed in business in their country is through political connections.²⁰ This corroborates the data from TI's Global Corruption Barometer 2013, which found that in many European countries more than 50% of people believe that their country's government is, to a large extent or entirely, run by a few big interests.²¹ This report is part of regional project involving the assessment of lobbying regulations and practices in 19 European countries.²²

Chapter III of this report maps the lobbying landscape in Ireland, giving a contextual analysis of the national historical, socio-political and legal situation with regard to lobbying. This chapter also discusses the intensity and scale of lobbying efforts, the various cultural understandings of the term 'lobbying' and perceptions of lobbying practices in Ireland. Other relevant issues such as self-regulation of lobbying activities and the role of the media and civil society as watchdogs in monitoring and reporting on lobbying activities are also discussed.

Following on from this, Chapter IV assesses the degree to which national regulation (public law and private self-regulation) adequately provides for transparency of lobbying activities and public decision-making, ethical lobbying and conduct by public officials and equality of access to public decision-making processes. The methodology involved a series of 65 assessment questions.²³

¹⁹ See TI 2012 <http://www.transparency.org/enis/report>

²⁰ See Eurobarometer, February 2014, *Special Report on Corruption*: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/index_en.htm

²¹ See TI 2013 <http://www.transparency.org/gcb2013/report>

²² The participating countries are Austria, Bulgaria, Cyprus, Czech Republic, Estonia, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, and the United Kingdom.

²³ See Chapter 5 for more details on the methodology and research approach used in this study.

3. MAPPING THE LOBBYING LANDSCAPE IN IRELAND

NATIONAL CONTEXT - POLITICAL, SOCIAL AND LEGAL

In this chapter we examine the intensity and scale of lobbying in Ireland and place it in the wider political, social and legal context. This context is overwhelmingly negative – lobbying has long been viewed as a means of advancing powerful private interests at the expense of the public interest. Allied to this has been an absence of political will to tackle the dominance of powerful sectoral interest groups over many aspects of public decision-making and to curb cronyism and patronage in political life.

Yet we find that a wide range of interest groups, large and small, are constructively contributing to public decision-making through a variety of legitimate lobbying techniques. Ireland's small size and the general accessibility of politicians and public officials to citizens means that even niche or local interest groups can often 'punch above their weight'. However, the research also highlights how particularly powerful corporate interests have had unrivalled access to decision-makers in important areas.

Lobbying in Ireland is a 'dirty word'

Ireland's lobbying practice has been described as 'opaque and curious'.²⁴ It is widely linked in the public consciousness with secrecy and with unfair advantages for vested interests, evoking images of cash-stuffed 'brown envelopes' being delivered in return for political favours. In short, lobbying in Ireland has become a dirty word.²⁵

These negative connotations are not surprising, given the pervasive context of rumours and scandals relating to secret and unorthodox lobbying, trading in influence and political corruption which have dominated Irish public life for more than three decades.

There have been many documented instances of undue influence in public decision-making, as well as evidence of regulatory 'capture' by powerful interests to the detriment of the wider public interest. Embedded networks that fostered tax evasion, theft and bribery at all levels of government and public life were exposed to widespread media scrutiny in the 1980s and 1990s.²⁶

A series of tribunals of inquiry which began in the early 1990s revealed near systemic levels of malpractice and corruption in politics, government and business.²⁷ A common theme of the tribunals was the 'unholy alliance' between politicians and big businesses, fuelled by political donations.²⁸

The specific risks associated with opaque and unregulated lobbying were highlighted in the Mahon Tribunal which inquired into planning corruption in Dublin in the decade up to the mid-1990s. One of

²⁴ Journal of Public Affairs (editorial), *The curious case of lobbying in Ireland: an introduction*, Vol. 11 Number 2, 2011.

²⁵ Howlin Brendan, *Lobbying has become a dirty word, we want to change that*, TheJournal.ie, 3 May 2014. <http://www.thejournal.ie/readme/column-brendan-howlin-lobbying-rules-893858-May2013/>

²⁶ Transparency International, *National Integrity Systems Country Study Ireland*, p 33, 2009.

²⁷ The Tribunal of Inquiry into the Beef Processing Industry (1991-1994); Tribunal of Inquiry (Dunnes Payments) (1997) (McCracken Tribunal); Tribunal of Inquiry into Payments to Politicians and Related Matters (1997-2011) (Moriarty Tribunal); and the Tribunal of Inquiry into Certain Planning Matters and Payments (1997-2012); (Mahon Tribunal).

²⁸ Higgins Imelda, *Corruption Law*, p 18. Round Hall 2012.

the country's foremost professional lobbyists, Frank Dunlop, gave evidence that he had paid bribes – in some cases in cash – to local politicians in order to influence land rezoning decisions in favour of his property developer clients.

Mr Dunlop had been a highly influential and well-connected professional. Before becoming a lobbyist he had enjoyed a long career as a journalist and media adviser, and was the first person to hold the position of Government Press Secretary. As a lobbyist, his large and well-respected client list had included University College Dublin, the Irish Stock Exchange, the Construction Industry Federation, the pharmaceutical giant MSD and the trade union Impact.²⁹

Following his public admission at the Mahon Tribunal in 2000 that he had paid bribes, Mr Dunlop faced a criminal prosecution. In May 2009, he was sentenced to two years imprisonment, with six months suspended, and fined €30,000, after pleading guilty to five sample charges.

Given that Mr Dunlop is the only professional lobbyist to be convicted of bribery, it might be tempting to dismiss him as rogue operator. However, during the years when he was using his war chest of bribes to sway planning decisions, corruption in Irish political life has been found to have been 'endemic and systemic'.³⁰ One expert has noted that while Mr Dunlop "may have been the prime exponent of a particular *modus operandi*, he did not invent a corrupt political process – he (and others yet unrevealed) operated within a political environment as it was, not as it ought to have been...."³¹

In more recent years, the country's unprecedented financial and fiscal crisis and the policy failures which gave rise to it have once more brought "the shadowy world of lobbying....to the fore of Irish public consciousness."³²

In its 2009 National Integrity Systems Study for Ireland, Transparency International drew attention to the perception of Irish business leaders who suggested that public policy in Ireland was unduly influenced to a greater degree than in many low-income countries.³³ This phenomenon, known as 'legal corruption,' is especially prevalent in jurisdictions where influence is sold or trafficked through lawful means such as lobbying or through informal networks reinforced by political donations.³⁴

Clientelism and patronage deeply ingrained in political system

Ireland is a small country, with a population of 4.6 million people. The governmental system is loosely based on the British or 'Westminster model' of parliamentary democracy, although with a written Constitution and an elected president with limited powers. Government is heavily centralised with effective executive control over the agenda of the Oireachtas (parliament) and its committees.³⁵ The cabinet is formally charged with making government decisions, although in relation to economic decision-making an even smaller inner cabinet holds sway – the four-member Economic Management Council.³⁶ In deciding policy direction, individual government ministers are 'powerfully' assisted by a small number of senior public servants.³⁷ The principal accountability link between the political and

²⁹ McGrath Conor, *The lobbyist with 'balls of iron and a spine of steel': why Ireland needs lobbying reform*, Journal of Public Affairs, Vol 9, pp 256-271, November 2009.

³⁰ Mahon Justice Alan, *Final Report of the Tribunal of Inquiry into Certain Planning Matters and Payments*, 2012.

³¹ McGrath Conor, November 2009.

³² Murphy Gary, Hogan John, and Chari Raj, *Lobbying regulation in Ireland: some thoughts from the international evidence*, Journal of Public Affairs, Vol 11, No 2, pp 111-119, 2011.

³³ Transparency International Ireland, 2009, p 38.

³⁴ See Kaufman Daniel, *Legal Corruption*, World Bank Institute, 2005, http://siteresources.worldbank.org/INTWBIGOVANTCOR/Resources/Legal_Corruption.pdf

³⁵ Litton Frank, *An Overview of the Irish System of Government*, Governing Ireland From Cabinet Government to Delegated Government, Institute of Public Administration (editors Eoin O'Malley and Muiris MacCarthaigh), 2011

³⁶ This is a cabinet sub-committee

³⁷ Chubb Basil *Government and Politics of Ireland*, 2nd edition, (Harlow, Longman 1982). See also, Suiter Jane and O'Malley Eoin, Yes, *Minister: The Impact of Decision-making Rules on Geographically Targeted Particularistic Spending*, Parliamentary Affairs, 2013.

administrative spheres is via ministerial responsibility to the lower chamber of parliament, Dáil Éireann. However, the Dáil is effectively controlled by the executive, and recent political reforms have done little to shift power to the legislature.³⁸ Local government is also elected, but has limited functions.

Ireland has a large number of elected public representatives relative to its size. Ministers and TDs (Teachta Dála or MPs) are highly accessible to citizens. There are many formal and informal opportunities for them to interact with voters as well as interest groups. These include TDs' weekly walk-in constituency 'clinics' as well as sporting, cultural and community events, including constituents' funerals. Lobbying of politicians and Ministers by interest groups and by individuals often takes place at such constituency-level events, although it may not always be recognised as such.³⁹

Clientelism and localism are deeply rooted in Irish politics, and are at least in part attributable to the peculiarities of the electoral system. The proportional representation/single transferable vote system (PR-STV) generates intra-party competition for multiple constituency seats. This in turn leads candidates, including incumbents, to place considerable emphasis on local or constituency issues instead of just national policy differences. Politicians, and particularly Ministers, are motivated to deliver 'pork' to their constituents regardless of the national interest, thereby ensuring their re-election to national office.⁴⁰

One career politician interviewed for this research said that "within the cabinet and ministerial office it seems to be accepted that different pots of money are used as slush funds... it's assumed that's why people want their local TDs to be a minister, so their constituency can benefit. That's very much part and parcel of the way politics is practised, that money is allocated on the basis of constituencies rather than on need."

The influence of either constituency concerns or interest group pressure on political decision-making is not always easy to pinpoint. One recently retired Secretary General (head civil servant from government department) interviewed for this research said it was sometimes unclear who had influenced certain Ministerial decisions. "Within the system we might be left asking questions and trying to make connections. It's side chats and conversations in the Dáil bar or at a race meeting or a constituency office, and that's hard to legislate for."

Patronage remains an abiding feature of Irish politics, particularly when it comes to Ministerial appointments to the boards of State bodies. There have also been cases of public relations consultants working for politicians during their election campaigns and then going on to secure government contracts once the politicians' party gained office.⁴¹

TDs including Ministers commonly lobby their Ministerial colleagues on behalf of their constituents, and Ministers for Justice in particular have been lobbied in relation to judicial appointments. In a recent case a judge was lobbied by a TD seeking leniency for a constituent.⁴²

³⁸ : *Seventh Report of the Convention on the Constitution: Dáil Reform*, March 2014.

³⁹ See: Fallon Jonathan, *Access: insider perk or key to transparency?* Journal of Public Affairs, 2011.

⁴⁰ See: Gallagher Michael, *Ireland's PR-STV electoral system: a need for reform*.

https://www.tcd.ie/Political_Science/staff/michael_gallagher/IrishElectSys.php; and Quinn Brid, *Irish Local Government in a Comparative Context* in M Callanan and JK Keogan (eds) *Local Government in Ireland: Inside Out* Dublin, Institute of Public Administration pp 447-459 2003.

⁴¹ O'Malley Eoin, Quinlan Stephen, Mair Peter, *Party Patronage in Ireland: Limited but controversial*. Paper delivered at the 'Party Patronage Workshop', University of Leiden, The Netherlands, November 2009.

⁴² See: <http://www.independent.ie/irish-news/politics/ff-justice-spokesman-says-he-intervened-on-criminals-behalf-because-of-tragic-family-circumstances-30368071.html>

A failure to regulate lobbying – until now

During the ‘tribunal years,’ from 1991 to 2012, political parties began actively considering the issue of regulating lobbyists.⁴³ Successive attempts by the Labour Party to introduce private members’ bills while in opposition between 1999 and 2008 foundered due to lack of government support. Nor did the professional lobbying sector embrace the idea of regulation with any enthusiasm. As recently as late 2007, the industry body for professional lobbyists, the Public Relations Institute for Ireland (PRII) expressed its opinion that “regulation of the sector would be premature at this time”.⁴⁴

However in June 2014, following an extensive two-year consultation process, the Registration of Lobbying Bill was published. It will introduce some welcome transparency in this area with the setting up of a publically publicly available online register of lobbying activities.

Until now, the trend in Ireland has been to regulate the lobbied rather than the lobbyist. The two main laws aimed at safeguarding the public interest in decision-making are the Ombudsman Act 1980⁴⁵ and the more recent Ethics in Public Office Act 1995.⁴⁶ The Ethics Act, and its related codes of conduct, seek to minimise the risk of the misuse of public power by requiring disclosure of the private interests of those working in the public domain.⁴⁷ Responsibility for compliance is shared between a dedicated national agency for ethics in public life, certain parliamentary committees and local authorities.

The same wave of reforms of the mid-1990s which saw the introduction of the first ethics laws also delivered the first access to information law, the Freedom of Information Act 1997 (FOI), which has since been amended twice, most recently in October 2014. This represented a major attempt to shift the culture of the public sector away from the extreme and obsessive secrecy embodied in the Official Secrets Act 1963 (OSA). That act had provided for a blanket ban on the release of official information unless permitted, without making any distinction between whether the information was routine or sensitive.⁴⁸ Despite a commitment by the current government to amend it, the OSA remains on the statute book (the release of information under FOI is a defence against prosecution under the OSA).⁴⁹

Ireland has ratified the United Nations Convention against Corruption and the Council of Europe Criminal Convention on Corruption. A draft law to consolidate the seven overlapping anti-corruption statutes creates a set of new offences, including trading in influence and bribing through an intermediary. The Criminal Justice (Corruption) Bill 2012 also creates presumptions that public officials who have accepted gifts or undisclosed political donations have acted corruptly.

Rules on the financing of political parties were tightened with the Electoral (Amendment) (Political Funding) Act 2012, and efforts are currently being made to promote transparency in relation to political party accounts.⁵⁰ However, significant concerns remain about the lack of transparency in how political parties fund their electoral campaigns, particularly at constituency level.⁵¹ One of several significant loopholes in current political finance laws is that there is no overall limit on the amount of money that can be accepted by way of anonymous or cash donation. In addition, the long gaps between the

⁴³ Murphy Gary, Hogan John and Chari Raj, 2011.

⁴⁴ PRII Position Paper on the Regulation of Lobbyists, Dublin, 2007 (Unavailable online - cited in Mc Grath Conor, November 2009, p 262).⁴⁵ As amended in 2012.

⁴⁵ As amended in 2012.

⁴⁶ The Ethics in Public Office Acts 1995 and 2001, the Standards in Public Office Act 2001 and the Local Government Act 2001 comprise the primary ethical framework for managing conflicts of interest in the public sphere. See Higgins Imelda, 2012 p. 33.

⁴⁷ These include the Civil Service Code of Standards and Behaviour 2004, (revised 2008); the Code of Conduct for Office Holders 2003; the Code of Conduct for Members of Dáil Eireann Other Than Officeholders 2002; and the Code of Conduct for Members of Seanad Éireann 2002.

⁴⁸ Higgins Imelda, 2012, p 249.

⁴⁹ Programme for Government: Government for National Recovery 2011-2016.

⁵⁰ See: <http://www.sipo.gov.ie/en/Guidelines/Draft-Political-Party-Account-Guidelines/>

⁵¹ Mahon Tribunal, 2012, Vol. IV, pp 2611-2643.

receipt of donations and their disclosure make it difficult to identify a causal link between a political donation and a favour rendered.⁵²

INTENSITY AND SCALE OF LOBBYING

The lack of official data on the intensity and scale of lobbying in Ireland makes it impossible to calculate how much money is spent attempting to influence policy. What information is in the public domain clearly shows that a wide range of interest groups and individuals play a central and often constructive role in public life in Ireland, routinely engaging in lobbying public officials, parliamentarians, civil servants and Ministers.

Interest group activity in Ireland – insiders and outsiders

Three main kinds of interest group activity have been identified in Ireland: ‘sectional’ groups; ‘cause’ advocacy groups; and business or private interests.⁵³

Influential sectional interest groups include trade unions and well-known organisations like the Irish Business and Employers’ Confederation and the Irish Farmers’ Association. These groups are well-resourced and operate at both national and European level, undertaking research, policy analysis and lobbying. Their representatives have routine high-level access to public administrators and politicians and are appointed to the boards of State companies and public sector advisory groups and review bodies.⁵⁴ Smaller sectional groups include bodies representing various professionals such as barristers, solicitors, accountants and consultant doctors. There are some 400 trade and professional organisations in Ireland.

One particular hallmark of the Irish model of sectional interest group lobbying is the fact that it has been formalised through institutional arrangements which have seen specific groups effectively co-opted into public policy-making. These include the now defunct Social Partnership process, by which employers, trade unions, farmers’ organisations and community groups held regular meetings on policy areas from 1987 to 2009. In 2009, just before its formal demise, the Social Partnership process included 27 different interest groups.⁵⁵

Another important forum for insider lobbying is the Irish Financial Services Sector Clearing House Group which was established in 1987 and is chaired by the Department of the Taoiseach. It contains representatives of consultancies and major international financial services companies. Its influence on Irish budgetary and regulatory policy has been well documented. (See case study – *The Power of Elites*, page 35)

Ireland also has a record of strong and effective ‘cause-centred’ groups attempting to influence policy outcomes in specific areas. Some of these are ad hoc groups formed to press for a single measure, particularly in relation to referendums on matters of morality such as divorce or abortion. Others are permanent organisations, charities or non-profits with a range of funders including the State, private philanthropy or public donations.⁵⁶ The Catholic Church itself remains one of the most influential of such interest group actors.

⁵² Transparency International *National Integrity Systems Country Study Ireland Addendum*, p. 23, 2012

⁵³ Murphy Gary, McGrath Conor, *The curious case of lobbying in Ireland: an introduction*. Editorial, Journal of Public Affairs Volume 11 Number 2 pp 71-73, 2011.

⁵⁴ Murphy Gary, *Need for regulation of lobbying is clear*, The Irish Examiner, 14 March 2014 <http://www.irishexaminer.com/analysis/need-for-regulation-of-lobbying-is-clear-261958.html>

⁵⁵ Stafford Peter, *The rise and fall of social partnership; its impact on interest group lobbying in Ireland*, Journal of Public Affairs Volume 11 Number 2 pp 74-79 (2011)

⁵⁶ Murphy Gary, March 2014

The non-profit social justice and human rights sector expanded significantly during the 1990s due to a surge in funding from large private philanthropic organisations including Atlantic Philanthropies and the One Foundation. There are about 11,700 non-profit organisations, in Ireland, including 3,700 charities.⁵⁷

Some community and voluntary groups which receive State funding for service delivery have accused certain state organisations of actively working to silence their advocacy or lobbying work through control over funding, or aggressive behaviour.⁵⁸ However, the picture in this regard appears to be mixed, depending on the dynamic between particular State bodies and social justice groups which they fund. Recent research found that while some community and voluntary groups felt their advocacy efforts were largely supported by the State, others said they had to watch their words for fear of reprimand and/or a loss of funding.⁵⁹

One example of the uneasy relationship between funding and advocacy in Ireland is the inclusion in recent years of 'no advocacy' clauses in service level agreements between health authorities and voluntary agencies they fund.⁶⁰ Although there is no evidence of these clauses being invoked, they suggest an impulse within some parts of the public sector to limit dissent.

The third category of interest groups, classified as 'private', consists of "increasingly vigorous" lobbying on behalf of private or business interests in an attempt to influence specific government policy or decisions, as distinct from the sectional demands of the wider business community.⁶¹ Lobbying by powerful individuals or private organisations has been a feature of successive tribunals of inquiry and also played a part in the discredited economic policies and regulatory practices which contributed to the economic collapse of 2008.

Privileged access and influence for business interests

Businesses which bring significant investment and jobs to the country have greater access to ministers and senior decision-makers by virtue of their economic power. Important industries, with lobbying strength to match, include the international financial services sector, pharmaceutical and information technology giants. One particularly maligned symbol of the power of private interests over policy-making during Ireland's Celtic Tiger years was the annual 'Galway Tent' where business and political figures from the then ruling Fianna Fáil party mingled during an annual regional racing event.

Lobbying 'from the inside': the influence of expert and advisory groups

A host of expert or advisory groups – both temporary and permanent – exercise significant influence over policy formulation and implementation in areas of vital importance to citizens.⁶²

Permanent advisory bodies include the long-established National Economic and Social Council which advises the government on the development of the national economy. Its members are appointed by the Taoiseach and include representatives from business, agriculture, the community and voluntary sector, the trade union movement, environmental activists, key government departments and

⁵⁷ INKex, *Irish Nonprofits: What Do We Know?* Available at: <http://www.irishexaminer.com/analysis/need-for-regulation-of-lobbying-is-clear-261958.html>www.wheel.ie/news/inkex-launches-report-irish-nonprofits-ceases-trading

⁵⁸ <http://www.advocacyinitiative.ie/blog/dandelion-seed-journey-advocacy-initiative>

⁵⁹ Harvey Brian, *Government Funding and Social Justice Advocacy: Are we paying for that?* The Advocacy Initiative, 2014. <http://www.advocacyinitiative.ie/resource/are-we-paying-government-funding-and-social-justice-advocacy>

⁶⁰ Harvey Brian, *Funding Dissent: Research into the Impact on Advocacy of State Funding of Voluntary & Community Organisations*, The Advocacy Initiative, 2013

⁶¹ Murphy Gary, March 2014.

⁶² Following the OECD definition, here an advisory or expert group refers to any committee, board, commission, council, conference, panel, task force or any subcommittee set up by government (executive, legislative or judicial branch) or any of its subgroups to provide it with advice, expertise or recommendations

academia. Another important group is the National Substance Misuse Strategy Steering Group which was set up in 2009 and made recommendations to government in 2012 on tackling alcohol abuse.⁶³ Its members were drawn from government departments and agencies, medical bodies, the community and voluntary sectors, and drinks industry groups. The drinks industry groups subsequently lobbied government against the Steering Group's recommendations, which they issued minority reports on. (See case study – *Public Health versus Private Wealth*, page 25)

Other expert groups, review groups and taskforces are established on a temporary basis to advise a minister or a public body on a particular policy issue. These can range from narrow or niche issues to national issues like industrial policy. It is unclear exactly how many of these kinds of groups exist at any given time, although research from 2006 counted 85 advisory bodies and 14 task forces.⁶⁴ These groups are generally made up of external stakeholders or experts who are invited to join on an unpaid basis to formulate recommendations to a Minister or a public body on a particular area of policy.

Members of many advisory groups or bodies provide valuable expertise and experience to policy makers, giving up significant amounts of their time to these public duties. However, when private interests are advising governments as members of a taskforce or advisory group, they are no longer viewed as external actors lobbying. Instead, they become part of the decision-making process itself. There are no statutory obligations in place to ensure a balance of interests in these sorts of groups. Furthermore, lobbyists and corporate executives are allowed to sit on advisory groups or expert groups in a personal capacity.⁶⁵ The Organisation for Economic Cooperation and Development (OECD), has identified the influence of private interests through expert or advisory groups as 'an emerging risk to the integrity of policy-making'.⁶⁶

Professional lobbyist sector – a growth area

The professional lobbyist sector in Ireland has grown significantly in the past three decades.⁶⁷ It has been argued that the sector has burgeoned to fill an information vacuum caused by the fact that legislators receive relatively little funding for researchers and policy advisers.⁶⁸

All the major communications and PR firms provide lobbying services as a sub-sector of their 'public affairs' divisions. Staff and consultants in this area typically include former journalists and political advisers, former party officials or activists, ex-civil servants, parliamentarians, Ministers and government press officers. Such professionals generally have a deep understanding of the political and policy-making system, well developed contacts across various government departments and perhaps even strong personal relationships with civil servants and politicians.

One expert practitioner has estimated that there are between 100-200 consultant lobbyists in Ireland and around 500-600 in-house lobbyists.⁶⁹ Another academic expert recently estimated that there are no more than 10 influential lobbying firms in Ireland, which have "copper-fastened their position by employing former political actors to ensure access to the lobbying market".⁷⁰

⁶³ <http://www.merrionstreet.ie/index.php/2012/02/launch-of-the-report-of-the-national-substance-misuse-strategy-steering-group/>

⁶⁴ Clancy Paula, and Murphy Grainne, *Outsourcing Government: public bodies and accountability*, p.18, New Island Press, 2006.

⁶⁵ OECD, 2014 (forthcoming) p. 66.

⁶⁶ OECD, 2014, (forthcoming) p 64.

⁶⁷ See: <http://www.independent.ie/opinion/analysis/for-better-or-worse-the-mysterious-craft-of-the-political-lobbyist-is-here-to-stay-30216749.html>

⁶⁸ McGrath Conor, *Lobbying Regulation: An Irish solution to a Universal Problem?* in John Hogan, Donnelly, Paul F, and O'Rourke Brendan K, (Eds) *Irish Business and Society: Governing, Participating and Transforming in the 21st Century*. Dublin, Gill and Macmillian, 2012.

⁶⁹ McGrath Conor, 2012.

⁷⁰ Murphy Gary, March 2014.

Public affairs and public relations consultancies cater to a range of clients, from foreign business interests operating or wishing to operate in Ireland, to indigenous organisations and charities. In addition, lobbying has also emerged as a specialisation within the larger legal and accountancy services firms. Large commercial enterprises will also generally employ in-house staff whose work involves targeting decision-makers in their organisations' fields of interest.

Lobbying techniques and elite insider lobbying – the 'word in an ear' approach

In addition to direct communication with parliamentarians, ministers and civil servants, lobbying in Ireland also includes grass-roots activities by a range of interest groups including some which receive funding from the alcohol and tobacco industry.

Official information released in relation to the scale of lobbying ahead of the Finance Bill 2012 showed that submissions were made to the Department of Finance from some 700 organisations, individuals and companies.⁷¹ One former civil servant interviewed for this research described the ritualised lobbying process surrounding the annual Finance Bill as "akin to mating season".⁷²

While these kinds of lobbying activities are routine, predictable and often visible, discreet lobbying through elite networks of influence and access also takes place. By definition, the scale of these attempts at influence is impossible to gauge as they deliberately take place 'off the record' and behind the scenes.

One particular form of elite insider lobbying was highlighted in a recent public controversy involving a highly influential political party strategist for the ruling Fine Gael party, who combined this role with paid consultancy work as a lobbyist. Thanks to his role within Fine Gael, Frank Flannery had significant access to Ministers and their advisers as well as privileged access to Leinster House, the seat of parliament.⁷³ (See case study - *The Ultimate Insider*, page 20)

Formal access passes are granted to people who work in Leinster House, such as political party staff, Oireachtas employees and journalists. According to the Houses of the Oireachtas Service, the total 'Leinster House community' of pass holders during the lifetime of a Dáil is around 1,500.⁷⁴

Former TDs and Senators turned lobbyists have the added advantage of lifelong access and parking privileges in Leinster House. Some former officials also benefit from these arrangements, having served as so-called 'weekend senators'. This is a nickname given to the practice of appointing people to fill gaps in the Seanad for brief periods of time, typically towards the end of a government's term.⁷⁵

All visitors to Leinster House must be signed in by TDs or Senators and should be accompanied at all times by their host or their host's staff. However, the regime is sufficiently relaxed that individuals, once signed in, may be free to interact with other elected and unelected officials, many of whom have offices in the complex. Some interest group members interviewed for this research said they have positioned themselves in various places around the Leinster House complex, including the coffee dock and the Dáil bar, in order to 'buttonhole' various politicians. There are also dedicated meeting rooms for lobby groups and constituency groups.

⁷¹ Dáil Eireann Debate, Vol.756. PQ No. 9650/12

⁷² See also, Montague Pat, *Persuasive Influence: An assessment of how Irish Civil Society Groups Campaign around the Budget*, Political Studies Association of Ireland Conference, p 37, 19 October 2002.

⁷³ Mr Flannery had an access pass issued by Fine Gael. See: <http://www.irishtimes.com/news/politics/flannery-loses-leinster-house-access-1.1721256>

⁷⁴ Email exchange with lead researcher, 11 June 2014.

⁷⁵ <http://www.irishtimes.com/news/the-dark-arts-of-political-lobbying-1.531515>

Public affairs professionals interviewed for this research said access to senior decision-makers in the offices and bars of Leinster House is often sought by clients, who may be charged significant fees for the privilege of an encounter in the Dáil bar.⁷⁶

According to Fergus Finlay, a former political adviser and public affairs consultant who currently is head of the children's charity Barnardos, lobbying in the corridors of Leinster House is routine.

"There will be no record or minutes of meetings, and yet when an issue is discussed at the cabinet meeting, it will become apparent that eight people will have been stopped in the corridors...I don't want you to think these are bad people but nearly everyone who has worked in politics in the past and remained in the public affairs world, nearly everybody believes the best way to get stuff done is to have a word in an ear," he said.

However, another former senior political adviser turned consultant public affairs professional, Gerard Howlin, cautioned that "the idea that you can walk the corridors of power is a myth, with spectacular exceptions disproving the rule. In reality, policy is made in a very conservative defensive system defined by sclerosis. It's about persuading from inside out and from the bottom up. It's very easy to get hold of a minister - you get five minutes and you are told it's a great idea - but it's not effective on its own."

Róisín Shortall, a former junior health minister interviewed for this research said the level of success of this 'word in an ear' approach from interest groups "depends on how much importance an individual minister will attach to different interests. Obviously the rich and powerful do have that access and can afford to hire intermediaries to set up that access. Their paths cross in that intersection between business and politics. In relation to alcohol and drug prices that nexus is quite significant." (See case study Private Wealth versus Public Health on page 25)

This interviewee attributes successful lobbying by the pharmaceutical sector, which is a significant employer in Ireland, to the fact that the price the State pays for common generic and branded medicines remains significantly higher than in other European countries.

Case Study: The Ultimate Insider – Access and Influence in the Corridors of Power

Controversy surrounding the activities of a senior political advisor placed the media spotlight firmly on lobbying in early 2014. The issue hit the headlines after it emerged that Frank Flannery, a key adviser to the largest party in government, combined this role with paid consultancy work as a lobbyist for a national disability charity, Rehab.⁷⁷

As a senior and highly influential Fine Gael strategist, Mr Flannery had significant access to political leaders and their advisers. He was able to casually lobby government ministers in the corridors of the houses of parliament, Leinster House, because he had an access pass issued by Fine Gael.

One former minister said he would have occasionally seen Mr Flannery before the weekly Cabinet meetings on a particular corridor in Leinster House where ministers have their offices. Mr Ruairí Quinn, from Fine Gael's coalition partner the Labour Party, said Mr Flannery would usually be with Fine Gael advisers. He said Mr Flannery would have

⁷⁶ See also Fallon Jonathan, 2011.

⁷⁷ <http://www.irishtimes.com/news/politics/rehab-paid-frank-flannery-to-lobby-the-government-1.1717101>

spoken to him on occasion about State funding for Rehab, but that these conversations were 'not in any lobbying kind of way'.⁷⁸

Mr Flannery resigned from his unpaid position as a Fine Gael strategist in March 2014, after weeks of controversy about apparent conflicts of interest in his dual role as both a party insider and a consultant lobbyist.

This case highlights the current lack of transparency over the lobbying activities of such privileged insiders who enjoy access to key decision-makers and their political advisers in the corridors of power. It is not known whether senior Fine Gael figures were aware of Mr Flannery's public affairs work on behalf of Rehab. However, it is reasonable to expect that procedures should be in place to manage such private interests.

It has also been noted that Mr Flannery's activities in many ways define the problem of lobbying in Irish society. In particular, Mr Quinn's statement that Mr Flannery had spoken to him 'but not in any lobbying kind of way' begs the question as to what exactly constitutes lobbying.⁷⁹

CULTURAL UNDERSTANDING OF LOBBYING

Lobbying in Ireland has long been viewed as a way of advancing private interests at the expense of the common good.⁸⁰ In addition, public controversies involving lobbyists have focused on powerful and highly connected insiders who have had unrivalled access to official Ireland – creating what seems like a golden circle of power and influence.

The professional body representing public affairs practitioners, the Public Relations Institute of Ireland (PRII), has stated that: "Ireland does not have a lobbying industry. Ireland has a lobbying culture."⁸¹ One in-house lobbyist, Kathleen O'Meara from the Irish Cancer Society charity, described lobbying in Ireland "as the thing you do. Teachers do it, farmers do it. It's what the politician expects. The public would see PR and public affairs people as lobbyists, but they wouldn't necessarily see charities as lobbyists, even though clearly we are."

One former Secretary General described the "basest form of lobbying which I was constantly subjected to was groups lobbying for cash. It's systemic...it is so engrained in our system that we don't recognise it."

Another former Secretary General said: "Sometimes the most powerful lobbies are within the State system...a lot of what I call lobbying comes from State agencies and employees within those agencies."

Given the pejorative associations that come with the term lobbying, it is not surprising that many interest groups describe their work to influence policy as 'advocacy' or 'campaigning'. These terms suggest speaking in support of a cause or direct action, whereas lobbying conjures up images of people lying in wait for legislators in foyers, bars or corridors.

The negative cultural perception of lobbying in Ireland can be viewed in a wider context of the public's lack of trust in the integrity of political parties. Trust in government stood at 21% in 2014, the lowest

⁷⁸ <http://www.thejournal.ie/frank-flannery-untenable-1353704-Mar2014/>

⁷⁹ <http://www.irishexaminer.com/analysis/need-for-regulation-of-lobbying-is-clear-261958.html>

⁸⁰ O'Brien Carl, *The dark arts of political lobbying*, The Irish Times 7 July 2012. <http://www.irishtimes.com/news/the-dark-arts-of-political-lobbying-1.531515>

⁸¹ Public Relations Institute of Ireland, Response to Department of Public Expenditure & Reform's Public Consultation on the Regulation of Lobbyists, February 2012 <http://www.per.gov.ie/regulation-of-lobbyists-submissions/>

since 2011, according to the annual Edelman Trust Barometer. In that survey, only 3% of Irish people said they trusted government leaders a great deal to tell them the truth, while only 5 per cent trusted them to make ethical and moral decisions. Ireland's overall score for the Edelman Trust Barometer – the average trust across the four institutions of government, NGOs, business and media – stood at 39% in 2014, making Ireland the third least trusting country out of the 27 surveyed.⁸²

Citizens are also deeply suspicious towards business and acutely aware of the cosy relationship between business and politics. Three quarters (75%) of Irish people believe corruption is part of the business culture in Ireland, according to a recent Eurobarometer survey. And more than eight out of 10 Irish people agreed that links between business and politics in the country were too close.⁸³

SELF-REGULATION OF LOBBYISTS' ACTIVITIES

While many groups and organisations which engage in lobbying endeavour to do so in a transparent way, most institutional efforts at self-regulation have come from the professional lobbyist industry. These efforts inevitably suffer from the fact that they are entirely voluntary and apply only to lobbyists who are members of a particular association.

Industry self-regulation – well-intentioned but ineffectual

The Public Relations Institute of Ireland (PRII) has 1,000 individual members who are drawn from PR and public affairs consultancies as well as industry, government, semi-state, voluntary and business organisations. Members subscribe to three codes of professional practice; an international code; a European code; and an Irish industry code.⁸⁴ The Irish code was introduced in 2003 following a controversy over improper influence-peddling by one of the institute's members. According to the PRII, that member voluntarily resigned from the institute and left the profession.⁸⁵

Anyone inside or outside the PRII may file a complaint against a member for a breach of the lobbying code of practice. Breaches of the code are punishable under the regular disciplinary procedures of the PRII, which involve a two stage process. Sanctions can range from reprimand to expulsion from PRII. According to the PRII, no complaints have been filed against PRII members since the code was introduced in 2003, nor have there been any investigations by the disputes committee for violations of the code.⁸⁶

While compliance with the Irish code is a mandatory condition of PRII membership, lobbyists are not obliged to join the institute, so that anyone who wishes to avoid being bound by the codes is entirely free to do so.⁸⁷ The code itself also has some shortcomings. For example, it states that lobbyists will actively disclose the identity of clients. However, there is in practice no mechanism by which the public is enabled to see who is lobbying whom on whose behalf. According to one former PRII member, the code “does nothing whatever to increase general transparency or accountability in the

⁸² Edelman Ireland Trust Barometer 2014 - <http://www.edelman.ie/edelman-ireland-trust-barometer-2014/>

⁸³ European Commission, Special Eurobarometer 397, February 2014
http://ec.europa.eu/public_opinion/archives/ebs/ebs_397_en.pdf

⁸⁴ The International Code of Ethics, also known as the Code of Athens; the European Code of Professional Practice, adopted by the European Public Relations Confederation and commonly known as the Code of Lisbon; and the PRII's own Code of Professional Practice for Public Affairs and Lobbying, 2003. See:
http://prii.ie/show_content.aspx?idcategory=1&idsubcategory=1

⁸⁵ OECD, *Lobbyists, Governments and Public Trust* Volume 2, Promoting Integrity Through Self-Regulation, p 23, 2012.
<http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=gov/pgc%282009%299>

⁸⁶ PRII email exchange with lead researcher, 30 October 2014.

⁸⁷ McGrath Conor, November 2009.

lobbying process...the code, while well-intentioned, fails to enhance the public acceptability of lobbying or public trust in the policy-making process.”⁸⁸

For its part, the PRII maintains that the code and the associated disciplinary process means that its members are accountable for their adherence to the code. According to its chief executive, John Carroll, the code and the disciplinary process are “not designed to address issues of transparency which are covered by governmental initiatives such as Freedom of Information, improving the parliamentary questions system and so forth.”

“Signing up for the Code of Conduct is a requirement for membership of the PRII. It is a voluntary act that differentiates members of the PRII from non-members, who do not ascribe to any such Code. The benefit is internal and external. Individual members are conscious that they have a higher ethical requirement as a result of their membership. Furthermore, clients, employers and others who deal with PRII members are aware that members voluntarily ascribe to this higher set of standards than non-members do.”⁸⁹

The second association for professional lobbyists in Ireland is the Public Relations Consultants Association (PRCA) which represents PR and Public Affairs consultancy firms rather than individuals who affiliate to the PRII. The PRCA currently has 29 member firms, most of them based in Dublin, with an estimated combined income of €40 million and some 400 employees.⁹⁰ The PRCA and the PRII work closely with each other, as many individuals who are PRII members come from companies which are PRCA members.

The PRII’s Mr Carroll said in October 2014 that it planned to resume its training, including on ethics within the context of public affairs and engagement within the public policy arena. Laurie Mannix, the chair of the PRCA, said she believed “more time should be given to promoting the codes among new entrants to the PRII. As an industry we should be doing more to raise awareness of the codes, which are very extensive.”⁹¹

⁸⁸ McGrath Conor, November 2009, p 262.

⁸⁹ Email exchange with lead researcher, 30 October 2014.

⁹⁰ Public Relations Consultants Association, Response to the Public Consultation on the Regulation of Lobbyists (Submission to Department of Public Expenditure and Reform) February 2012. <http://www.per.gov.ie/regulation-of-lobbyists-submissions/>

⁹¹ Interview with lead researcher, 17 April 2014.

WATCHDOGS: THE ROLE OF MEDIA AND CIVIL SOCIETY IN MONITORING LOBBYING

The Irish media plays an important role in monitoring the influence and activities of both lobbyists and those they lobby. Many media exposés have revealed cases of undue influence, maladministration, political cronyism, conflicts of interest and inefficiencies in the public sector. Several successful books have detailed corruption and abuse of power and the role of vested interests in public life and policy-making.⁹²

A significant number of journalists routinely use Freedom of Information requests (FOI) to expose the political lobbying activities of significant interest groups. These include recent efforts by the drinks industry to resist Government proposals on curbing alcohol advertising. (See case study - *Public Health versus Private Wealth*, page 25)

The media has also revealed Europe-wide lobbying by the tobacco industry, which is resisting Government plans for Ireland to become the first European country to introduce plain packaging for cigarettes.

The FOI Act has also been effectively used in recent years by journalists to shine considerable light on the influence on public policy of the International Financial Services Centre Clearing House Group, a body chaired by the Government's most senior civil servant, which includes representatives from the top global legal and financial firms. (See case study – *The Power of Elites*, page 35)

In 2013, journalists accounted for one in 10 of all FOI requests made.⁹³ The Information Commissioner has recognised that journalists' use of FOI has prompted debate on many issues which, before its introduction, would not have been known about or discussed.⁹⁴ However, charges for searching and photocopying records can be extensive, with the result that only organisations or individuals with sufficient resources can use FOI effectively for detailed investigations. In addition, delays associated with appeals mean the FOI regime is not always suitable for accessing information which is time-sensitive.

Concerns have grown in recent years about the ongoing consolidation of media ownership.⁹⁵ This may have a negative impact on plurality of opinion and the investigation or analysis of corruption in Ireland. Irish libel laws are also restrictive and can impede investigative journalism and commentary on public affairs. In a 2013 report on Ireland, the United Nations Special Rapporteur on Human Rights noted the reported use of litigation and threatened litigation to intimidate journalists. She underlined "the importance of the Press Ombudsman and the Press Council, established to safeguard and promote professional and ethical standards in Irish print media".⁹⁶

Ireland has a small parliamentary press corps, access to which is restricted to accredited political correspondents who, together with sketch writers and parliamentary reporters, make up the parliamentary gallery. Briefings are held for political correspondents following the weekly Cabinet meeting.

⁹² For example, see McDonald Frank, *The Destruction of Dublin*, Gill and Macmillan 1985; Cooper Matt, *Who Really Runs Ireland? The story of the elite who led Ireland from boom to bust and back again*, Penguin Ireland 2009; and O'Toole Fintan, *Ship of Fools: How Stupidity and Corruption Sank the Celtic Tiger*, Faber and Faber 2009.

⁹³ Office of the Information Commissioner Annual Report 2013 <http://www.oic.gov.ie/en/publications/annual-reports/2013-annual-report/online/chapter4.html#s4>

⁹⁴ O'Reilly Emily, *Freedom of Information: The first decade*, in 10th Anniversary Conference of Freedom of Information in Ireland conference proceedings. Dublin: Office of the Information Commissioner.

⁹⁵ <http://www.rte.ie/news/ireland/2012/0420/317841-govt-voices-concern-over-irish-media-ownership/>

⁹⁶ Sekaggya M, *Report of the Special Rapporteur on the situation of human rights defenders*, 2013 Available from: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-47-Add-3_en.pdf

A few civil society organisations work on democratic accountability issues, including Transparency International Ireland, the think tank TASC,⁹⁷ and the Irish Council for Civil Liberties.⁹⁸ Citizens' initiatives which focus on integrity in public life include The Story, a website run by journalists which promotes transparency in public life by sharing documents and making available records it requests under FOI laws.⁹⁹ This material covers a wide range of areas and topics and sometimes includes the activities of lobbyists. In addition, the volunteer-run website kildarestreet.com is designed to allow citizens to easily find out what debates are taking place in the Oireachtas (parliament), while the non-profit website Dáilwatch allows citizens to ask questions of parliamentarians and track their voting records.¹⁰⁰

Case Study: Public Health versus Private Wealth – Lobbying by the Drinks Industry

Industry efforts to influence government policy can be seen in attempts by the drinks lobby to resist proposals for robust regulation of alcohol sponsorship of sporting events.

Documents released to The Irish Times under the Freedom of Information Act (FOI) revealed that the industry's lobbying efforts against a ban on alcohol sponsorship of sporting events had gone to the top level of the Government. It featured global and national business figures, and interventions with Ministers were made at sensitive points in the debate.

The documents also showed that representatives of the drinks industry knew when official reports were due to be published and, in one instance, claimed to know the contents of a confidential official memorandum that had not yet reached Government.¹⁰¹

The alcohol industry makes an important contribution to the Irish economy, generating employment, tax income and export income. The industry itself estimated that it contributed €2bn to the exchequer in 2013.¹⁰²

However, evidence shows that alcohol-related harm also creates economic costs for the state, including the loss of work output, the costs of healthcare, road accidents, crime and social security payments. This was estimated at €3.7 billion in 2007.¹⁰³

In a bid to address the issue of alcohol abuse, the government in 2009 established a National Substance Misuse Strategy Steering Group. Group membership was drawn from government departments and agencies, medical bodies, the community and voluntary sector, and representatives from the drinks industry itself.¹⁰⁴

The Steering Group's Report on a National Substance Misuse Strategy, published in February 2012, contained a range of recommendations, including a ban on alcohol sponsorship of sporting events by 2016. The drinks industry bodies on the group published dissenting minority reports, with one accusing the Steering Group of bias.¹⁰⁵

⁹⁷ www.tascnet.ie

⁹⁸ www.iccl.ie

⁹⁹ www.thestory.ie

¹⁰⁰ www.dailwatch.ie

¹⁰¹ <https://www.irishtimes.com/news/politics/powerful-play-by-drinks-sector-to-block-ban-on-sponsorship-of-major-sporting-events-1.1645201>

¹⁰² http://www.abfi.ie/Sectors/ABFI/ABFI.nsf/vPagesABFI/Industry_in_Ireland-economic-contribution!OpenDocument

¹⁰³ <http://health.gov.ie/blog/publications/steering-group-report-on-a-national-substance-misuse-strategy-february-2012/>

¹⁰⁴ Both the Alcohol Beverage Federation of Ireland and the industry-funded charity Mature Enjoyment of Alcohol in Society were represented http://www.dohc.ie/publications/pdf/Steering_Group_Report_NSMS.pdf?direct=1

¹⁰⁵ National Substance Misuse Strategy 2009-2016 Minority Report by Mature Enjoyment of Alcohol in Society Limited

Government efforts to deal with some of the key issues identified in the Steering Group's report have met with delays, prompting a former junior minister with responsibility for this area to accuse it of 'kicking to touch' on the issue of alcohol sponsorship. The government denies this.¹⁰⁶

However, documents obtained by The Irish Times through FOI demonstrated how in recent years the drinks industry has lobbied against a ban on alcohol sponsorship of sporting events.¹⁰⁷ Some of this lobbying came from the two alcohol industry groups which were members of the Substance Misuse Strategy Steering Group.

In May 2013 the minister with responsibility for this area reportedly circulated a proposal to government for the introduction of a ban, limited to major sporting events, by 2020. This proposal is a step back from the outright ban by 2016 recommended by the Steering Group. It was opposed by some Ministers including the then Minister for Sport who expressed concern that sports funding could be lost if a ban was introduced.¹⁰⁸

It also prompted a wave of correspondence to Ministers from national and regional Chambers of Commerce and the Alcohol Beverage Federation of Ireland. According to The Irish Times these documents revealed that a senior drinks industry figure claimed to know details of the ban proposals even though these were confidential. The lobbying took place at the highest political levels and on the international stage, with the Taoiseach reportedly made aware of industry concerns in discussions with a senior executive at the 2013 World Economic Forum.¹⁰⁹

The government subsequently decided not to immediately proceed with a sponsorship ban. Consideration of the issue was instead moved to an interdepartmental Working Group on Alcohol Sponsorship in Sport established in October 2013. This group is due to report at the end of 2014. In the meantime, more than two years after the report of the Steering Group, a Public Health Alcohol Bill has not yet been published.¹¹⁰

16 November 2011 <http://www.meas.ie/assets/Research-2012/meas-minority.pdf>

¹⁰⁶ <http://www.kildarestreet.com/debates/?id=2014-03-05a.218#g324>

¹⁰⁷ <https://www.irishtimes.com/news/politics/powerful-play-by-drinks-sector-to-block-ban-on-sponsorship-of-major-sporting-events-1.1645201>

¹⁰⁸ <http://www.rte.ie/news/2013/0611/455890-alcohol-sponsorship-ban/>

¹⁰⁹ <https://www.irishtimes.com/news/politics/powerful-play-by-drinks-sector-to-block-ban-on-sponsorship-of-major-sporting-events-1.1645201>

¹¹⁰ <http://www.irishexaminer.com/ireland/health-minister-to-take-on-drugs-and-alcohol-policy-275865.html>

4. REGULATING LOBBYING: TRANSPARENCY, INTEGRITY AND EQUALITY OF ACCESS

The public has a right to know who is trying to influence public decision-making. But for transparency in relation to lobbying to be meaningful, it must be part of a wider framework for integrity in public life that ensures that public officials and representatives act to promote the public interest. Likewise, efforts to regulate lobbying must be viewed in the broader context of the need for pluralism and equality of access to the decision-making process. This could help to ensure that a diversity of opinions are taken into account in policy-making. A more diverse and contestable 'marketplace for ideas' in policy-making would help diminish the power of vested interests, including elements of the political establishment and the bureaucracy itself.¹¹¹

In this chapter we assess the degree to which Irish law and practices adequately provide for transparency and integrity in relation to lobbying activities and public decision-making. We also examine whether a level playing field exists in terms of equality of access to decision-making processes.

TRANSPARENCY

In exploring transparency around lobbying practices, our research sought to answer the following questions: to what extent does the public have sufficient knowledge of (a) who is lobbying public representatives; (b) on what issues they are being lobbied; (c) when and how they are being lobbied; (d) how much is being spent in the process; (e) what is the result of these lobbying efforts. It also examines whether the onus for transparency is placed on both lobbyists and public officials/representatives.

We conclude that while some aspects of policy-making are open to public scrutiny, there is a general lack of proactive transparency about how government policy is made, who has sought to influence it and how much money has been spent in the process.

While a planned register of lobbying activities will introduce some welcome transparency in this area, the extent to which it will ensure meaningful disclosure in relation to how public decisions are really influenced depends on a range of factors which we explore in this chapter.

Lobbying without a trace – influence closed to external scrutiny

Government departments and public bodies routinely publish a range of information in relation to their work. However, there is little consistency in relation to the kinds of information that is proactively released. For example, the official diaries of the chief civil servants in many government departments are routinely published on their websites. However, this is not the case with ministerial diaries, although these can be accessed through the Freedom of Information regime.¹¹²

¹¹¹ See Barry Frank, *Towards improved policy making in Ireland: contestability and the marketplace for ideas*. Irish Journal of Public Policy 2009 <http://publish.ucc.ie/ijpp/2011/02/Barry/01/en>

¹¹² See <http://thestory.ie/2012/08/29/minister-for-finance-diary-2012-to-july/>

There are no detailed guidelines for public officials in relation to transparency in their dealings with lobbyists. Also, while it is standard practice for many civil servants to take notes of meetings, there is no statutory obligation for them to create these records. The only specific guidance in this area that this research found is provided in the code of conduct for holders of public office, a category which includes Ministers and Ministers of State.¹¹³ This states they should be accompanied by an official note-taker in meetings involving official business. The code advises that at a minimum, an official or adviser should attend before the conclusion of a meeting to record details of any decisions reached.¹¹⁴

Several interviewees working in the political sphere pointed to the absence of clear guidance in relation to official meetings with lobbyists.

“There were no guidelines or established practices. It was anything goes,” said one former junior minister. “I was never given any advice about having people with us in meetings. I would often request officials to be present and very often they wouldn’t be available. In practice, I’d generally have one of my own staff present. On a small number of occasions I would have, for the sake of transparency, insisted on having officials present.

“A lot of government business would be done on Tuesday and Wednesday night from Leinster House. You may not have your private secretary there late in the evening. Political advisers may play more of a role there. Those meetings aren’t always captured unless they are formally arranged and in a Minister’s diary. Even then, one Minister may bring in somebody and call other ministers to join them.”

The lack of transparency in relation to lobbying was highlighted by the Mahon Tribunal which said all senior office holders should be required to record and publish details of their contacts with professional lobbyists and outside interest groups. It also recommended that public officials be given clear guidance on how they are expected to engage with lobbyists and should keep records of their contacts with them. At a more general level the tribunal concluded “government should try to be more open and transparent about how it formulates policy and the grounds for policies ultimately adopted”.¹¹⁵

In the absence of strong institutional culture of transparency in the public sector, and robust practices to ensure proactive release of information, two other formal transparency tools are widely used to interrogate how policy is influenced. These are Parliamentary Questions (PQs) and Freedom of Information (FOI) requests. PQs, both written and oral, can be an effective means to get official information from a Minister promptly as they must be answered within three days. More than 50,000 PQs were asked in 2013. These include questions submitted by legislators at the request of or on behalf of interest groups, constituents, journalists and others.¹¹⁶

FOI too has increased transparency in relation to public decision-making. The Information Commissioner, in a review of the first decade of the FOI regime, described acceptance of it as ‘uneven’ within public bodies, with some ‘reluctant’ and others suffering ‘FOI fatigue’ due to resource constraints.¹¹⁷

¹¹³ The category ‘officeholders’ comprises: the Taoiseach; the Tánaiste; Ministers; Ministers of State; an Attorney General who is a member of the Oireachtas; the Chair and Deputy Chair of the Dáil and the Seanad; and Chairpersons of Joint Oireachtas Committees.

¹¹⁴ Code of Conduct for Office Holders 2.2.6 (2003)

¹¹⁵ Mahon Tribunal 2012, Vol IV p 2642

¹¹⁶ Houses of the Oireachtas Commission, Annual Report 2013. <http://www.oireachtas.ie/parliament/media/HOUSES-OF-THE-OIREACHTAS-ANNUAL-REPORT-2013.pdf>

¹¹⁷ Office of the Information Commissioner, *Freedom of Information; The First Decade*, 2008.

<http://www.oic.gov.ie/en/Publications/Special-Reports/10th-Anniversary-Publication-Freedom-of-Information-The-First-Decade-/Freedom-of-Information-The-First-Decade.pdf>

FOI's potential to shed light on lobbying activities in particular has been inhibited in recent years by broad exemptions for categories of information including records of meetings of the government and deliberations of public bodies.¹¹⁸ However, the Freedom of Information Act 2014 significantly improves the public's right to information by extending the application of FOI to almost all public bodies and allowing better access to government records.¹¹⁹ State-sponsored agencies which remain entirely excluded from FOI include important utility companies. A notable exception is Irish Water, which was set up in 2013 to oversee the introduction of water charges. It was brought within the scope of FOI in 2014 amid public concerns about how it was set up and reports of wasteful spending as well as a generous regime of bonuses for staff.¹²⁰

Many of the key organisations which manage the national finances, such as the Central Bank, the National Asset Management Agency and the National Treasury Management Agency, are partially excluded from the Act. One FOI expert has observed that while these bodies clearly need the space to conduct business on behalf of the State, a lack of information about their activities could be detrimental to the public interest. In addition, the Act only extends FOI to administrative records of An Garda Síochána relating to human resources, finance or procurement matters. This restriction means that law enforcement matters of significant public interest will still remain outside the scope of FOI – an approach described as 'seriously out of kilter' with other jurisdictions.¹²¹

The FOI Act 2014 abolishes application fees for FOI requests and includes a new penalty for a person convicted of the deliberate altering or destruction of records which are the subject of an FOI request. It also requires public bodies to publish more information proactively and includes a revised code of practice for public servants aimed at making the regime work more efficiently.

Some anecdotal reports have suggested that the introduction of FOI legislation has had a negative impact on policy-making by prompting officials to keep much sparser records.

"There is no doubt in my mind that a knee jerk reaction to the FOI legislation was that over and over again you'd hear the phrase, 'we'd better not write that down'," said one former Secretary General.

However, this interpretation was challenged by another serving senior civil servant, who nevertheless acknowledged the need for improvements in record-keeping and records management. No independent research has examined whether FOI has indeed led to poorer record-keeping in government departments. However, a recent survey of local government officials concluded that they "are clearly mindful of the fact that inadequate recording of the reasons why a particular course of action was pursued may make it difficult for them to defend their decisions at a later date".¹²²

Ireland invested heavily in training of civil servants prior to the introduction of the FOI Act in 1998. However, training efforts were not sustained and this has led to complaints about inconsistencies in the handling of FOI requests by some public bodies.

¹¹⁸ See Global RTI Rating, Ireland Freedom of Information Act Country Report http://www.rti-rating.org/view_country.php?country_name=Ireland

¹¹⁹ <http://www.irishstatutebook.ie/2014/en/act/pub/0030/index.html> See: McDonagh Maeve, *Freedom of Information Law* 3rd edition, Round Hall, 2015 (forthcoming).

¹²⁰ <http://www.rte.ie/news/2014/0122/499430-water-foi/>

¹²¹ <http://www.irishexaminer.com/analysis/foi-bill-concerns-must-be-tackled-250591.html>

¹²² McDonagh Maeve, *Access to Local Government Information in Ireland: Attitudes of Decision-Makers*, in *Open Government: A Journal on Freedom of Information*, 2010. Available at SSRN: <http://ssrn.com/abstract=2153666>

Proactive disclosure of information – a mixed picture in the public sector

There does not appear to be any uniform practice in relation to proactive public disclosure of written submissions received during consultations run by government departments on legislative or policy proposals. Some departments and other public bodies routinely publish all written submissions received online. For example, the Department of Public Expenditure and Reform recently published submissions on its lobbying reform proposals,¹²³ while the Department of Agriculture published submissions on its 2010 Forestry Review.¹²⁴

Other departments invite written submissions which they only publish with express permission from the author. For example, a recent public consultation on a proposal to establish an independent policing authority sought written submissions with the caveat that they *may* be published and in any case were subject to release upon request under FOI.¹²⁵

The Freedom of Information Act 2014 makes provision for all public bodies to publish ‘publication schemes’ which the responsible Minister says are intended to lead to routine proactive disclosure of extensive information by public bodies about their work outside of FOI.¹²⁶

In terms of transparency in relation to how laws are progressed and passed, the Irish authorities say this has been achieved mainly through ‘cultural, administrative and technical changes’.¹²⁷ These changes include reforms to allow earlier scrutiny of draft laws by parliamentary committees before actual bills are introduced in parliament. In a recent report by the Council of Europe’s Group of States against corruption (GRECO), the legislative process in the Irish parliament was praised for being very transparent and providing broad public access.¹²⁸

Irish law does not require the publication of a ‘legislative footprint’ – information on laws documenting the contacts and inputs made in developing them. However, the first National Action Plan under the Open Government Partnership contains a commitment to introduce a ‘legislative footprint’ including consultation documents, meetings held with stakeholders and submissions received.¹²⁹

When it comes to open data – public sector data that is made available for anyone to use, reuse and redistribute – Ireland performs poorly compared to its western European neighbours. The 2013 Open Data Barometer examined how much and what type of official data is available and accessible, and its positive impacts. Ireland ranked 29 out of 77 in this survey, which was carried out by the non-profit organisations, the World Wide Web Foundation and the Open Data Institute. Its overall score was 36 out of 100, with particularly low scores for the availability in open, machine readable and reusable formats of its legislative, health, budget, land, map and transport data.¹³⁰ The government says it plans to release significantly more public sector data sets for reuse as part of its open data strategy.¹³¹

¹²³ <http://www.per.gov.ie/regulation-of-lobbyists-submissions/>

¹²⁴ <https://www.agriculture.gov.ie/forestryreview/submissionsreceived/>

¹²⁵ <http://www.justice.ie/en/JELR/Pages/WP14000115>

¹²⁶ The duty to publish publication schemes comes under Section 8 of the Act, which shall come into operation 12 months from enactment or earlier by Ministerial order.

<http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2013121800074#N9>

¹²⁷ Ireland, Fourth Evaluation Round, Questionnaire Part 1, Corruption prevention in respect of parliamentarians, 2014. (Irish government document prepared for GRECO, the Group of States Against Corruption.)

¹²⁸ GRECO, Fourth Evaluation Round, *Corruption prevention in respect of members of parliament, judges and prosecutors*, October 2014. http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4%282014%293_Ireland_EN.pdf

¹²⁹ Department of Public Expenditure and Reform, Open Government Partnership National Action Plan 2014-2016.

¹³⁰ Open Data Barometer 2013 Global Report <http://www.opendataresearch.org/barometer>

¹³¹ Department of Public Expenditure and Reform, *Open Government Partnership Ireland National Action Plan 2014-2016*, Action 3.2. <http://www.per.gov.ie/minister-brendan-howlin-td-publishes-irelands-first-open-government-partnership-national-action-plan/>

TOWARDS TRANSPARENCY IN LOBBYING: A PUBLIC REGISTER

Transparency in relation to lobbying will be enhanced with the planned introduction of a public register of lobbying activities in 2015. The legislation to establish this online database was being debated in parliament at the time of writing this report. Under the Registration of Lobbying Bill 2014, lobbyists will be required to register with an oversight agency, the Standards in Public Office Commission, and file online returns three times a year outlining their efforts to influence senior decision-makers.¹³²

The bill was published in June 2014 after extensive consultations with a wide range of stakeholders which informed an initial set of policy proposals and a subsequent draft bill or general scheme.¹³³

However, some of the definitions in the draft law as it stands give rise to concerns that the planned register will not sufficiently capture enough lobbying activities.¹³⁴ If this were to be the case when the bill completes its passage through parliament, it would seriously undermine the main utility of the register as single and comprehensive database or 'go-to' point for information on lobbying activity. The bill does not fully address the revolving door between the public sector and private business, including lobbying, which poses an ongoing threat to integrity in public decision-making.

Lobbying activity that will be captured in a register of lobbying

The planned register will capture lobbying by paid professional lobbyists working on behalf of clients. It will also capture lobbying by 'in-house' lobbyists from a wide range of interest groups, including businesses, professional groups, voluntary organisations, trade unions, charitable or non-profit groups and faith-based organisations.¹³⁵

The bill defines lobbying as communications with lobbying targets in relation to 'the initiation, development or modification of any public policy or of any public programme; the preparation of an enactment; or the award of any grant, loan or other financial support, contract or other agreement, or of any licence or other authorisation involving public funds'. Lobbyists are required to register if they "make or manage or direct the making of" communications with key officials. Communications are defined to include both direct and indirect communications including oral as well as written communications.¹³⁶

These provisions clearly cover policy development, the preparation of laws and the awarding of public licences. By focusing purely on the act of communicating, the bill side-steps legal problems faced in other jurisdictions where communications have to be made in an effort *to influence* policies or laws before they are considered to be lobbying. However, communications are not covered if they relate only to the 'implementation' of policy, programmes, legislation or awards, or in relation to matters of a technical nature. This wording could be problematic because lobbyists are often as concerned with shaping the implementation of policy as its formulation.

The inclusion of 'indirect communications' should allow the register to capture a particular form of lobbying known as grassroots communications. This is where groups appeal to their members or members of the public to directly contact decision makers about a particular issue. This sort of activity

¹³² Registration of Lobbying Bill 2014 <http://www.per.gov.ie/regulation-of-lobbying/>

¹³³ <http://www.per.gov.ie/regulation-of-lobbying/>

¹³⁴ For more detail on this, see TI Ireland's submission on the Registration of Lobbying Bill 2014. www.transparency.ie

¹³⁵ The bill also covers communications on matters related to land development or rezoning. The specific focus on land development is due to the particular corruption risks in this area highlighted by the Mahon Tribunal into corruption in the planning process. Department of Public Expenditure and Reform Regulation of Lobbying Legislation - Policy Proposals Information Note April 2013. Available at: <http://www.per.gov.ie/regulation-of-lobbying/>

¹³⁶ Section 5 of the Registration of Lobbying Bill 2014

would include letter-writing campaigns or orchestrated visits to TDs' clinics to press for a particular cause. It also appears that the register should capture 'astro-turfing' activities by so-called grassroots groups which are funded either entirely or in part by corporate interests to lobby on their behalf. However, the wording may need to be amended to prevent any unintended exceptions.

The bill requires the registration of lobbying activities that are carried in return for payment (in money or money's worth). This means that lobbying carried out on a *pro bono* basis for a client would not have to be recorded in the lobbying register. There is potential for abuse here in that consultant public affairs professionals could attempt to avoid the registration requirements by charging their clients increased fees for non-lobbying work, while conducting lobbying activities technically free of charge.¹³⁷

Exemptions could undermine utility of register as a one-stop shop for tracking influence

The bill contains an extensive list of types of communications which are not considered to be lobbying and do not therefore have to be recorded in the register. These include standard carve-outs for diplomatic communications or to allow citizens and trade unions to go about their normal business. However, some of these 'excepted communications' are sufficiently broadly worded to give rise to concerns that they could be exploited by lobbyists to keep their activities out of the public view. In the opinion of one expert, the exceptions are "excessively long by international standards".¹³⁸

Of particular concern is the provision that communications are exempt where they are made by or on behalf of an employer with not more than 10 employees where these relate to 'the affairs of the employer'. This clause could be interpreted to mean that many if not most in-house lobbyists, non-profit interest groups, trade associations and small businesses would be entirely excluded from the obligation to register. The Public Relations Institute of Ireland has said that this provision 'will create confusion and could be abused by subsidiary companies and brass plate operations'.¹³⁹

Communications relating to 'factual information' which have been requested by a public official are also exempt from the requirement to register. This provision allows policy-makers to seek routine information without their request automatically triggering a registration requirement. However, if the clause meant that lobbyists themselves were able to make a subjective determination of what is factual and therefore exempt from disclosure, the transparency objectives of the law could be thwarted.

A more general concern is that the extent of the listed exemptions in the bill could collectively diminish the potential utility of the register as a one-stop shop that would allow citizens to track influence. There is a risk that if the register captures only a partial picture of lobbyists' policy inputs on any particular issue, it will give a distorted impression of how policy is actually influenced.¹⁴⁰

¹³⁷ See Mc Grath Conor, *Submission on General Scheme of the Regulation of Lobbying Bill 2013*, 30 May 2013. <http://www.per.gov.ie/regulation-of-lobbying/>

¹³⁸ McGrath Conor, *Registration of Lobbying Bill 2014: A Comparison to General Scheme of Regulation of Lobbying Bill*, September 2014.

¹³⁹ <http://www.irishtimes.com/news/politics/new-rules-for-political-lobbyists-will-improve-transparency-in-decision-making-1.1971768?page=2>

¹⁴⁰ McGrath Conor, *Registration of Lobbying Bill 2014: A Comparison to General Scheme of Regulation of Lobbying Bill*, September 2014.

The lobbied – are too many lobbying targets excluded?

Lobbying targets in the bill include six categories of public officials. These ‘designated public officials’ are:

- Ministers and Ministers of State
- National legislators
- MEPs for Irish constituencies
- Members of local authorities
- Special Advisers
- Prescribed public servants

The bill allows for other categories of lobbying targets to be added in the future if this is in the public interest. While such a phased approach has some merit, it is already apparent that certain significant lobbying targets are not covered. For example, the category of prescribed public servants will initially include only Secretary Generals and Assistant Secretaries of government departments and their equivalent at local government level.¹⁴¹ Out of a civil service of 36,000 workers, there are 240 people in this very senior category. In practice, lobbyists often interact with public officials at significantly lower grades.

The bill’s definition of lobbying targets also excludes other categories of public officials who are in practice subject to lobbying, including staff of registered political parties and staff of Oireachtas members.

According to an official estimate, a total of 1,700 public officials will be designated as lobbying targets once the bill is enacted. This could be extended by future regulations to include up to 5,000 public officials.¹⁴²

Under the bill, anyone carrying out lobbying activities must apply to become a registered person and supply standard business details to SIPO. Once registered, lobbyists are obliged to file returns three times a year, at the end of April, August and December, to the Register of Lobbying.

The returns will be available online in a searchable format. They will include the following details:

- In the case of professional lobbyists, the standard business details of their clients;
- The names and positions of the public officials lobbied;
- The subject-matter of the communications and the results sought;
- The type and extent of the lobbying activities;
- The name of the person who had primary responsibility for the lobbying;
- The names of current or former designated public officials employed by or providing services to the lobbyist;
- Additional information which may be prescribed by the Minister.

While the returns will capture core information, there are many other pieces of relevant information which lobbyists are not required to disclose in the bill. For example, it does not require lobbyists to declare if they or their employers hold access passes to Leinster House or other public sector buildings. Nor will returns include any submissions made or documentation shared with public officials, any financial information about the lobbying activities carried out, any information about political donations made or work done on behalf of political parties and candidates, public funding received or memberships of boards or advisory groups.

¹⁴¹ Department of Public Expenditure and Reform, *Information note Registration of Lobbying Bill 2014*. <http://www.per.gov.ie/regulation-of-lobbying/>

¹⁴² Office of the Ombudsman, Request for Tender, Provision of Online Registration System of Lobbying, p 6, 2014. Available at: https://irl.eu-supply.com/app/rfq/publicpurchase_frameset.asp?PID=80790&B=&PS=1&PP=ctm/Supplier/PublicTenders

In addition, publication of information in a lobbying return can be delayed on what appear to be very broad grounds which SIPO will decide upon, but only after consulting with a Minister. These include where their release could have a serious adverse effect on the financial interests of the state, the national economy and business interests generally. The bill does however give the Minister the power to require additional information in returns filed at a future date, having regard to the public interest in appropriate transparency

Overall, the bill's reporting requirements seek to capture lobbying coming from outside the public sector. It specifically excludes communications between members of bodies set up at the invitation of a ministers or a public service body to review, assess or analyse public policy. The bill recognises the public interest need for transparency in relation to the activities of these kinds of groups, by requiring the Minister to publish a Transparency Code for their activities. It is not yet clear how many bodies will be covered by this code.

Powers of SIPO in relation to register of lobbying activities

The planned registration regime will be overseen by SIPO which already has a supervisory role in relation to ethics in public life and electoral laws. While SIPO has been given additional resources to establish the online registration system, it is too early to establish whether these will be sufficient to allow it to fulfil its new functions.¹⁴³

The bill gives SIPO the power to request further or corrected information and investigate possible breaches of the law. These include failure to register as a lobbyist or to file a return. Lobbyists who supply inaccurate or misleading information to SIPO may be removed from the register. Penalties include on the spot fines of €200 for late filing and up to two years in prison for more serious offences such as failing to register. However, it is unclear exactly how an investigation by SIPO would be triggered in the first place, in the absence of a public controversy. Unlike the first draft of the law, the bill does not explicitly empower SIPO to inspect records, verify information or receive complaints. Similarly, the initial draft of the bill empowered the oversight body to publish the names of anyone in breach of the law. In contrast, the bill prohibits SIPO from identifying individuals.

The bill empowers, but does not require, SIPO to develop a code of conduct aimed at promoting high professional standards and good practice. It may also issue guidance about the operation of the Act. The earlier draft law had included a wider explicit mandate for SIPO for outreach and education to raise awareness of the rationale and requirements of the law.

It is possible that concerns about the bill will be taken on board when the legislation makes its way through parliament in late 2014/early 2015. In any case, the bill requires the Minister to undertake a review of the legislation one year after it comes into force. According to an official policy note, this review will provide an opportunity to ensure that the registration exemptions in the bill do not act as a conduit for unregulated or 'secretive' lobbying lacking in transparency.¹⁴⁴

The quality of the data generated by the Irish register of lobbying activities will largely depend on the design of the database itself, which is due to go live in May 2015.¹⁴⁵

¹⁴³ The additional funding comprises: €250,000 for 2014 and the same for 2015 for pay; and €100,000 for non-pay in 2014 and €50,000 in 2015. Source: Email correspondence with DPER, 21 November 2014.

¹⁴⁴ Department of Public Expenditure and Reform Regulation of Lobbying Legislation – Policy Proposals Information Note April 2013. Available at: <http://www.per.gov.ie/regulation-of-lobbying/>

¹⁴⁵ Office of the Ombudsman, Request for Tender, Provision of Online Registration System of Lobbying, p 6, 2014. Available at: https://irl.eu-supply.com/app/rfq/publicpurchase_frameset.asp?PID=80790&B=&PS=1&PP=ctm/Supplier/PublicTenders

Case Study: The Power of Elites - The Impact of the Financial Services Sector on Public Policy

The international financial services sector plays an important role in the Irish economy, with more than 250 global financial institutions based in the country. Recent figures show that the International Financial Services Centre (IFSC) in Dublin employs 33,000 people and contributes about €1 billion annually in corporation and payroll taxes.¹⁴⁶

The sector wields considerable influence over government policy through a long-established industry forum, the IFSC Clearing House Group, which is coordinated by the Department of the Taoiseach.

The IFSC Clearing House Group consists of large private firms such as JP Morgan, Citi, State Street, IBF, Barclays, Bank of Ireland, KPMG, Bank of America, Deloitte, AIB, William Fry, Ernst & Young and PWC. It also includes senior civil servants from key government departments, major industry associations including the Irish Banking Federation and state agencies including the Central Bank, the Revenue Commissioners and the body responsible for overseas investment in Ireland, the IDA.

The fact that the group offers the financial services industry regular and direct access to policy-makers increases the risk of 'capture' of the policy-making process itself.

One member of the Clearing House Group in the early 2000s who was interviewed for this research described how some of the most powerful economic and legal players in the country provided technical expertise to the government on complex areas of finance law.

"It's all done behind closed doors and without appropriate oversight and scrutiny. The problem is the system we have would be incapable of generating that oversight and scrutiny."

The level of influence exerted by the Clearing House Group over more recent aspects of government policy has become particularly evident in recent years.

Documents released through FOI in April 2012 to Nessa Childers MEP revealed how sub-groups of the clearing group met 10 times between October 2011 and February 2012 in order to discuss the European Commission's proposed introduction of a Financial Transaction Tax (FTT).¹⁴⁷ Ms Childers commented that she made her FOI request "after hearing the exact same false arguments against EU policy areas like the Financial Transaction Tax from government spokespersons as I heard from the financial industry lobby in Brussels".¹⁴⁸ The documents released record the view of the Department of Finance that "input from the International Financial Services sector will be crucial to informing our views on this proposal [FTT]".¹⁴⁹

Discussion on the FTT by the Clearing House Group is recorded in minutes released to The Irish Times under FOI and subsequently viewed by TI Ireland. These documents show that the Department of Finance had consulted with the financial services industry on the tax and was "fully aware of industry concerns that the proposal may lead to loss of business and employment". The major Irish trade union grouping, ICTU, was in favour of a FTT.¹⁵⁰ It has been estimated that the implementation of an EU-wide FTT would provide Ireland with a net tax gain of €300-550 million per annum. At the time of writing

¹⁴⁶ <http://www.ifsc.ie/page.aspx?idpage=6>

¹⁴⁷ <http://www.independent.ie/opinion/analysis/elaine-byrne-ifsc-living-by-its-own-rules-and-not-in-the-real-world-26850576.html> [Accessed 5 June 2014]

¹⁴⁸ <http://www.labour.ie/press/2012/10/08/childers-transparency-needed-now-on-ifsc-govt-lobb/> [Accessed 5 June 2014]

¹⁴⁹ <http://www.scribd.com/doc/91354148/FOI-DeptFinance-Childers>; <http://www.independent.ie/opinion/analysis/elaine-byrne-ifsc-living-by-its-own-rules-and-not-in-the-real-world-26850576.html> [Accessed 5 June 2014]

¹⁵⁰ http://www.ictu.ie/download/pdf/the_case_for_the_ftt.pdf

Ireland remains outside the group of European Union states that have said they will start taxing some financial transactions.

The influence of the Clearing House Group on the domestic budget has also been revealed in documents released to The Irish Times under FOI. The Irish Times reported that the group had successfully secured 21 changes to the Finance Bill 2012. These changes included the introduction of tax breaks for foreign executives with companies based in Ireland through the Special Assignee Relief Programme (SARP).¹⁵¹

A September 2011 pre-budget submission to the Department of Finance by a sub-group of the Clearing House Banking and Treasury Working Group recommended the introduction of SARP regulation with a 100 per cent tax break for foreign executives' earnings over €100,000.¹⁵² SARP was subsequently included in the 2012 Finance Bill and provided a 30 per cent tax break on earnings for certain employees. This did not satisfy organisations that sit on the Clearing House group. Following the publication of the Finance Bill a number of emails were sent by staff at KPMG, a member of the Clearing House Group, to the Department of Finance. One of the emails referred to a general sense of disappointment amongst the members of the International Asset Financing sub-group of the Clearing House Group. The Department of Finance response, published in the Irish Times, stated 'that 21 other targeted measures for the IFSC' had been introduced. The Finance member of staff asks in one email 'I'm assuming they're ok?'¹⁵³

Suggestions were subsequently forwarded to the Department of Finance from KPMG about how the SARP regulations might be amended. These included the removal of a clause specifying a limit of 30 days to business activity taking place outside Ireland. This change was subsequently adopted in the bill.¹⁵⁴

The changes made to SARP regulations in the 2012 Finance Bill demonstrate the influence of the IFSC lobby on government policy and the particularly close level of collaboration between government departments and the banking sector.

The Taoiseach, Enda Kenny, has insisted the Government dictates public policies and that the Clearing House Group is a forum in which to share ideas and research. In the wake of substantial ongoing criticism of the group, its structure was reformed in 2013 and three-year term limits were introduced for private sector representatives.¹⁵⁵ Since 2012, minutes of its meetings are published online three months after they have taken place.¹⁵⁶ However, minutes of the numerous working groups and sub groups are still not published.

¹⁵¹ <http://www.irishtimes.com/news/ifsc-lobby-group-powerful-in-shaping-policy-1.549066> [Accessed 5 June 2014]

¹⁵² Banking and Treasury Group International Asset Financing Sub-group, *Pre-Budget Submission to the Department of Finance*, Budget 2012.

¹⁵³ The Irish Times Weekend Review, Saturday July 7, 2012, Anatomy of a decision: How multinationals influence our tax laws. [Graphic only available in hard copy of newspaper]

¹⁵⁴ <http://www.irishtimes.com/news/the-dark-arts-of-political-lobbying-1.531515> [Anatomy of a Decision graphic – only available in hard copy paper]; FOI record 32.

¹⁵⁵ IFSC Clearing House Group minutes, 24 October 2013.

http://www.taoiseach.gov.ie/eng/Work_Of_The_Department/Economic_International_Northern_Ireland/International/International_Financial_Services/_IFSC_Clearing_House_Group_minutes_from_October_2013.pdf

¹⁵⁶ Department of the Taoiseach, IFSC Clearing House Group Annual Report 2013.

http://www.taoiseach.gov.ie/eng/Work_Of_The_Department/Economic_International_Northern_Ireland/International/International_Financial_Services/IFSC_Clearing_House_Group_Annual_Report_20131.pdf

FOSTERING INTEGRITY

There is a general consensus that while it takes two to lobby, the ultimate responsibility for promoting integrity in public decision-making rests with those who are lobbied. For this reason, efforts to regulate lobbying must be embedded within a broader integrity framework in the public sector aimed at ensuring transparency and accountability in the exercise of public power.

Our research examined existing integrity mechanisms in an effort to answer the following questions: Is there a robust ethical framework for lobbyists and lobbying targets in the country and to what extent is it working? Is the onus for integrity placed on both lobbyists and public officials/representatives? The findings show that when it comes to mitigating lobbying-related risks, Ireland's integrity framework is manifestly not fit for purpose.

Substandard safeguards to prevent private interests interfering with public duties

Integrity in Irish public life is promoted through a combination of rules and principles which aim to minimise the risk of abuse of power. The primary framework is the Ethics Acts, which are founded on a presumption that officials will behave with integrity, while recognising that specific measures should exist to underpin compliance.¹⁵⁷

The main thrust of the Ethics Acts and their related codes of conduct is to regulate conflicts of interest. They compel certain categories of public officials to disclose private interests that might conflict with their public duties. Interests must be disclosed in advance every year, as well as on an ad hoc basis if an apparent conflict arises.

Supervision and enforcement of ethics rules at national level is in the hands of SIPO, as well as dedicated Oireachtas committees on members' interests. At local government level, local authority staff are primarily responsible for supervising and enforcing conflict of interest provisions as part of their ethics frameworks.

Generally, conflict of interest provisions are stricter at local level than national level. This disparity was criticised by the Mahon Tribunal, on the basis that the more senior a public official, the more significant the existence of a conflict is from a corruption perspective.¹⁵⁸

At national level, the main disclosure rules apply to: Oireachtas members; holders of public office;¹⁵⁹ and certain public servants including ministerial special advisers and directors and employees of designated public bodies. At local level, the rules apply to elected councillors and certain local authority employees. In addition to these disclosure rules, there is a proliferation of separate and additional disclosure obligations in other public bodies, including for directors of State Boards.¹⁶⁰

The types of interests that must be disclosed annually include: gifts; certain assets; interests in land; remunerated occupations; company directorships; paid work as a political or public affairs lobbyist, consultant or adviser; and public contracts in which the public official has a direct or indirect interest.

A key weakness of these disclosure provisions is that they are too narrow, and fail to require disclosure of certain types of interest that are likely to give rise to conflict, be it actual, apparent or

¹⁵⁷ The Ethics in Public Office Act 1995 and 2001, the Standards in Public Office Act 2001 and the Local Government Act 2001 comprise the primary ethical framework for managing conflicts of interest in public life. Pt 15 of the Local Government Act 2001 also provides for the investigative and reporting functions of SIPO under the Ethics Acts to be applied to local authority members and employees.

¹⁵⁸ Mahon Tribunal, 2012, Vol. IV, p. 2571.

¹⁵⁹ The category 'officeholders' comprises: the Taoiseach; the Tánaiste; Ministers; Ministers of State; an Attorney General who is a member of the Oireachtas; the Chair and Deputy Chair of the Dáil and the Seanad; and Chairpersons of Joint Oireachtas Committees. The offices of chairman of a committee or joint committee are not currently designated as office holders.

¹⁶⁰ Standards in Public Office Commission, *Annual Report 2009*, p. 22.

potential.¹⁶¹ For example, they do not require the disclosure of liabilities, including loans from financial institutions or individuals, which are a clear source of conflicts of interests.¹⁶² In addition, some but not all public officials are obliged to disclose interests held by their spouses or children.

Another weakness in the current regime is that not all the interest declarations are made available for public viewing. For example, while the annual declarations of Oireachtas members are available online, the interest declarations of other public officials at national level are not routinely published. At local government level, employees' and councillors' periodic interest declarations are maintained in registers which are available for public inspection. Only a small number of county councils have taken the progressive step of routinely publishing councillors' interest declarations on their websites.¹⁶³

Inadequacies of existing codes of conduct for managing conflicts of interest

Codes of conduct drawn up under the Ethics Acts aim to supplement the statutory provisions on conflicts of interest.¹⁶⁴ Their existence is a recognition of the fact that disclosure in itself does not eliminate a conflict of interest, it just makes it known.

The six separate codes set out the overall ethical standards expected from public officials, including upholding the public interest and acting with transparency, fairness and impartiality and integrity. They also regulate conflicts of interest in general, as well as specific types of conflicts of interest which present heightened risks, including gifts, inside information, ancillary and post-termination employment. The requirements of these codes vary depending on the category of public official they apply to. (See Table 1, page 40)

While there are no sanctions for breaches of these codes *per se*, both the courts and SIPO can consider breaches of the codes in any proceedings or investigations for alleged breaches of the Ethics Acts.

The only code of conduct that refers explicitly to interactions with lobbyists is that for 'office holders,' a category which includes the Taoiseach (Prime Minister), Tánaiste (Deputy Prime Minister), Ministers, Ministers of State and other senior figures. This states that contact between officeholders and lobbyists is to be expected as an integral part of a functioning democracy and that "as guidance, such dealings should be conducted so that they do not give rise to a conflict between a public duty and a private interest".¹⁶⁵

In relation to gifts, a range of standards apply depending on the status of the public official. For example, Oireachtas members are forbidden from accepting gifts where they may pose a conflict of interest while civil servants are prohibited from receiving benefits of any kind which might be reasonably seen to compromise their integrity. Local authority employees and councillors are not allowed to accept any gift other than a modest token. The Mahon Tribunal said existing measures in relation to gifts and benefits are inadequate in view of the dangers they pose from a corruption perspective. It recommended that all gifts/benefits be banned.¹⁶⁶

Only some of the codes deal with the use or abuse of official confidential information. Oireachtas members and councillors are effectively prohibited from using inside or confidential information for

¹⁶¹ Mahon Tribunal 2012, Vol. IV, p. 2520.

¹⁶² Mahon Tribunal 2012, Vol. IV, p. 2576.

¹⁶³ Research by TI Ireland in July 2012 found that five local authorities published interest registers on their websites.

¹⁶⁴ These are Civil Service Code of Standards and Behaviour (2008); the Code of Conduct for Office Holders (2003); the Code of Conduct for Members of Dáil Éireann other than Officeholders (2002); the Code of Conduct for Members of Seanad Éireann other than Officeholder (2002); the Code of Conduct for Councillors (2004); and the Code of Conduct for Employees (2007). There are also other statutory codes under other legislation.

¹⁶⁵ Code of Conduct for Officeholders, 2.2.5.

¹⁶⁶ Mahon Tribunal, 2012, Vol. IV, p 2594.

their own personal gain or that of others. However, there is no guidance in the code for office holders regarding the use of inside information, despite the fact that such senior public officials routinely have access to confidential, valuable and privileged information.¹⁶⁷

Finally, no statutory code of conduct exists for the wider civil and public service under the ethics laws, although state boards are required to introduce non-statutory codes under the Code of Practice for the Governance of State Bodies, which is published by the Department of Finance.¹⁶⁸

SIPO has voiced concerns about the low level of awareness of the codes.¹⁶⁹ For its part, the Mahon Tribunal recommended increased emphasis on prevention through not only training, but also education and research both locally and nationally.¹⁷⁰ In addition, a recent evaluation by the Council of Europe concluded that the current regulatory structure for ethical standards and conduct of members of parliament is a rather complex patchwork, including constitutional principles, legislative norms, soft law provisions and guidelines. It recommended that the “existing ethics framework be replaced with a uniform and consolidated values-based normative framework encompassing the ethical conduct of members of parliament - including their staff as appropriate - covering various situations of conflicts of interest (gifts and other advantages, third party contacts including lobbyists, accessory activities and post-employment situations etc.) with the aim of providing clear rules concerning their expected conduct.”¹⁷¹

More fundamentally in relation to the various codes for all public officials, SIPO has criticised them as “an inadequate expression of the standards by which all public servants and public representatives should abide.” It says they should be replaced by a clear high level statement of ethical principles which should be incorporated into the Ethics Acts as public service values. Any failure to abide by them should be something that could be cited in complaints under the Ethics Acts.¹⁷²

¹⁶⁷ Mahon Tribunal, 2012, Vol. IV, p 2594.

¹⁶⁸ http://www.stateboards.ie/stateboards/code_of_practice.htm

¹⁶⁹ Standards in Public Office Commission, *Annual Report 2006*, p 6.

¹⁷⁰ Mahon Tribunal, 2012, Vol. IV, p 2606.

¹⁷¹ GRECO, Fourth Evaluation Round, *Corruption prevention in respect of members of parliament, judges and prosecutors, October 2014*. http://www.coe.int/t/dghl/monitoring/greco/default_en.asp

¹⁷² Standards in Public Office Commission, *Annual Report 2009*, p 23.

Table 1: Categories of risks to integrity in public decision-making that are regulated in the main codes of conduct for public life¹⁷³

OFFICIAL TYPE	GIFTS	INSIDE INFORMATION	PRE-TERM EMPLOYMENT	POST-TERM EMPLOYMENT	SIMULTANEOUS EMPLOYMENT ¹⁷⁴
Office holders	✓	✗ ¹⁷⁵	✗	✗ ¹⁷⁶	✓
Parliamentarians	✓	✓	✗	✗	✗
Civil Servants ¹⁷⁷	✓	✓	✗	✓	✓
Special Advisers	✓	✓	✗	✓	✓ ¹⁷⁸
Local Government Employees	✓	✗	✗	✓ ¹⁷⁹	✓ ¹⁸⁰
Local Government Councillors	✓	✓	✗	✗	✗

¹⁷³ This table highlights the key interests regulated in the six codes of conduct published under the Standards in Public Office Act 2001 the Local Government Act 2001.

¹⁷⁴ None of the codes for public officials specifically mentions simultaneous employment as a lobbyist and a public official. However, this is covered by the general prohibitions in the codes against ancillary employment.

¹⁷⁵ Office holders are told to give regard as appropriate to the Codes of Conduct for members of Dáil Éireann and Seanad Éireann.

¹⁷⁶ Office holders are cautioned to avoid any real or apparent conflict of interest with the office they formerly occupied when taking up appointments on leaving office.

¹⁷⁷ Civil servants occupying 'designated positions'.

¹⁷⁸ Barred from holding positions that are 'incompatible' with their role as a special adviser: <http://www.sipo.gov.ie/en/Codes-of-Conduct/Office-Holders/Code-of-Conduct-for-Office-Holders-.pdf> (appendix 5)

¹⁷⁹ Applies to 'designated positions'.

¹⁸⁰ Provision that they must not hold a position that could be regarded by a member of the public as undermining public confidence in local government or engage in a gainful occupation which might conflict with the interests of the local authority, or be inconsistent with the discharge of his or her duties as a local authority employee <http://www.viron.ie/en/Publications/LocalGovernment/Administration/FileDownload,8776,en.pdf>

Shortcomings in supervision and enforcement of ethics rules

Several serious shortcomings with the system for investigating breaches of the rules under the Ethics Acts make it easier for individuals who do not register their interests to evade detection or sanction.

For example, the fact that complaints against Oireachtas members are investigated by committees made up of fellow members is inherently problematic. At local level the enforcement regime is even more inadequate, with no formal complaints or investigative procedure.¹⁸¹

For its part, SIPO lacks a number of powers which would increase its effectiveness. A particularly acute criticism of the current system is that SIPO must receive a written complaint before its full investigative powers under the Ethics Acts are activated. In the absence of a complaint, SIPO is unable to appoint an inquiry officer to gather evidence and conduct interviews that would help it to decide whether an investigation is warranted.

This may explain SIPO's formal reluctance to use its powers to investigate on its own initiative, save in the case of 'last resort'.¹⁸² Even when an investigation is activated, SIPO is hampered by the fact that all six of its members – most of whom already have full-time jobs – must participate in every investigation.

There are also substantial restrictions on who can actually make complaints to the various bodies for breaches of Ethics Acts. For example, while anyone may submit a complaint about an officeholder, only Oireachtas members or Ministers can complain about civil servants.

The number of complaints received by SIPO alleging breaches of the Ethics Acts has been traditionally very low. SIPO received 488 valid complaints since the laws were introduced almost 20 years ago, and has completed only nine investigations. (See Table 2, page 42)

A number of factors may contribute to the low level of complaints, including:

- a cultural reluctance to 'inform';
- a lack of public confidence in the system to handle complaints effectively;
- low levels of awareness of the interest disclosure rules;
- the complexity of the ethics laws, in particular in relation to complaints about 'specified acts'.

In addition, the fact that only declarations of interest by some categories of public officials are published means that in practical terms it is often impossible to even identify whether conflicts of interests could arise.

Concerns have also been expressed that SIPO itself, burdened by complex legislation that is difficult if not impossible to implement, is doing little to restore public confidence in the system.¹⁸³

For its part, SIPO has repeatedly sought enhanced statutory powers and organisational reforms to allow it to operate more efficiently. It has also called for an impact analysis to assess how the ethics laws and other integrity measures have impacted on the behaviour of public representatives and public servants.¹⁸⁴

The Mahon Tribunal made extensive recommendations aimed at strengthening both interest disclosure rules and the powers of the various oversight bodies at both national and local level. It has

¹⁸¹ Mahon Tribunal 2012, Vol. IV, pp 2599 – 2607

¹⁸² SIPO Annual Report 2007,

¹⁸³ Hughes Ian, Clancy Paula, Harris Clodagh, Beetham David, *Power to the People? Assessing Democracy in Ireland*, 2007, p 380.

¹⁸⁴ Standards in Public Office Commission, Annual Report 2004.

also called for all disclosures by elected and senior appointed public officials to be published. The government says it is considering the Mahon Tribunal's recommendations as part of a wholesale review of the ethics framework. Draft legislation is due to be published in late 2014/early 2015.

Sanctions for breaches of rules failing to deter unethical behaviour?

The most serious sanction facing Oireachtas members including 'officeholders' are motions of censure or suspension by either house of the Oireachtas. The Mahon Tribunal expressed 'deep concern' about this situation, judging it 'highly unlikely' that the Dáil would ever agree to impose a sanction on a Minister or the Taoiseach. It concluded that the sanctions for elected representatives do not act as a sufficient deterrent.¹⁸⁵

There are no specific sanctions in the Ethics Acts for civil or public servants, although disciplinary actions may be taken if the officials have also breached their contracts. In addition, the Director of Public Prosecutions may bring criminal charges under the Ethics Acts on grounds including failure to cooperate with SIPO or hindering its work.

At the moment, only local councillors can face criminal charges for failing to disclose an interest or making a false or misleading declaration. The Mahon Tribunal has expressed concern about this lacuna in the law. It recommended that failure to make an interest disclosure, as well as the making of a false or misleading disclosure, should also be a criminal offence for all public officials under the Ethics Acts.¹⁸⁶

Table 2: Complaints to SIPO and Own-Initiative Enquiries under the Ethics Acts from 1995 to 2013¹⁸⁷

RECEIVED COMPLAINTS	VALID COMPLAINTS	ENQUIRIES (SELF-INITIATED IN ABSENCE OF COMPLAINT)	INVESTIGATIONS COMPLETED	FILES SENT TO DIRECTOR OF PUBLIC PROSECUTIONS
761	488	29	9	2

Source: SIPO correspondence, 2014

Failure to control the 'revolving door' phenomenon

While the movement of personnel between the public and private sectors can have positive outcomes, these so-called 'revolving door' practices pose a risk to fairness and impartiality in public decision-making. Most of these risks are related to conflicts of interests. For example, public officials might use their power while in office to give preferential treatment to a business in consideration of future employment. Likewise, public officials who move directly into private business might misuse their privileged access to and influence over their former colleagues to benefit that business. These

¹⁸⁵ Mahon Tribunal 2012, Vol. IV, p 2606.

¹⁸⁶ Mahon Tribunal, 2012, Vol. IV p. 2607.

¹⁸⁷ Complaints received by SIPO and its predecessor the Public Office Commission under the Ethics Acts. Source: SIPO correspondence with lead researcher, October 2014.

risks are generally controlled by both pre-term and post-term employment restrictions, known as moratoria or 'cooling-off' periods.

There are no pre-term employment restrictions in place in Ireland, a situation that allows lobbyists to move freely into the public sector, where they could allow their previous private sector interests or contacts to influence their work.¹⁸⁸

When it comes to post-term employment, the picture is more mixed. The issue is dealt with in the codes of conduct for office holders, civil servants and local authority employees. Post-term employment by Oireachtas members and local councillors is not regulated in their codes of conduct.

It is particularly striking that office holders - a category which includes Ministers - are subject to less regulation than certain civil servants and local authority officials in this area. Office holders are advised in their code of conduct only to be careful to avoid any real or apparent conflict of interest with their former public office in taking up employment on leaving office.¹⁸⁹ (See Table 2)

In contrast, designated civil servants and local authority officials are required to seek approval before taking jobs in the private sector for a 12-month period following their retirement or resignation where this might cause a conflict of interest.¹⁹⁰

The Mahon Tribunal highlighted the inherent weakness in the existing approach to regulating post-term employment by way of codes of conduct. This is because the codes cease to have effect once an individual leaves public office – the very moment when their provisions become relevant.¹⁹¹

It is quite common for former Ministers, TDs, senior public servants and special advisers to move into business as well as the professional lobbying sector. As lobbyists, they bring with them their insider knowledge of how politics works as well as their personal contacts.

Those who have turned to professional lobbying include former Fianna Fáil minister Noel Dempsey who has set up his own public affairs consultancy and former Fine Gael leader and government minister Alan Dukes, a longstanding consultant on public affairs for Wilson Hartnell PR.

Among others are former Progressive Democrats junior minister Liz O'Donnell, who has worked as an occasional public affairs consultant; and former Fianna Fáil TD Jim Glennon who currently works for Edelman PR. Most notably, former junior minister, Tom Parlon, ceased to work as Minister of State responsible for public building projects in June 2007 and was appointed Director General of the Construction Industry Federation (CIF) the following month. The CIF is a significant interest group whose members benefitted from an unprecedented property boom during the previous decade.

Former political party officials who have left public service and gone on to provide public affairs advice to clients include Martin Mackin, former general secretary of Fianna Fáil, and Jackie Gallagher, former special adviser to former Taoiseach Bertie Ahern and a founder of Q4 Public Relations.

¹⁸⁸ OECD, 2014, p. 63 (forthcoming).

¹⁸⁹ Code of Conduct for Officeholders 2003, par 2.2.4

¹⁹⁰ Civil Servants' Code of Standards and Behaviour (2004) par 20.02 and Code of Conduct for Employees 2007 10.05

¹⁹¹ Mahon Tribunal, 2012, Vol. IV, p 2598

Revolving door restrictions not robust enough

The Registration of Lobbying Bill 2014 introduces limited post-term employment restrictions for senior public officials wishing to take up lobbying work within a year of leaving the public service.

During this period they must obtain approval from SIPO before lobbying the public body where they worked, including lobbying their former colleagues, even if these individuals have moved to a different public body. These restrictions apply to Ministers and Ministers of State, special advisers and prescribed civil servants.

The limited nature of the post-employment restrictions for public officials represents in the bill stands in contrast to the earlier policy proposal in this area which had provided for a two-year cooling-off period. However, the government has said it intends to introduce general post-term employment restrictions as part of planned reforms of the ethics laws.

EQUALITY OF ACCESS: LEVELLING THE PLAYING FIELD

Ensuring that all stakeholders have fair and equitable access to decision-making processes can lead to balanced policy-making in the public interest. Our research explored whether there are sufficient opportunities for diverse participation and contribution of ideas and evidence by a broad range of interests that lead to policies, laws, and decisions which best serve wider society. The findings in this area are mixed.

It is clear that in practice stakeholder input is routinely provided for across a range of public bodies. There was considerable consensus among public affairs consultants and in-house lobbyists interviewed for this research that the Irish policy-making system is generally open to their input and expertise. However, many interviewees also noted that the extent of access varies somewhat depending on the culture of different government departments as well as the attitudes of particular senior civil servants and Ministers.

A set of guidelines for public bodies on how to conduct better public consultations was issued in 2005.¹⁹² These are a practical tool setting out various options for consultations, rather than a prescriptive framework. As part of this research, standard questions were submitted to all 16 government departments on their policies and practices in relation to consultations and the establishment and operation of expert and advisory groups. Of the four departments which replied, two cited the government's consultation guidelines.¹⁹³

Many government departmental websites advertise opportunities for stakeholder consultation and provide details on how to participate.¹⁹⁴ The types of participation techniques routinely used in drafting primary laws include informal consultations with selected groups; public notices calling for comment; the setting up of advisory groups; public meetings and the broad circulation of proposals for comment.¹⁹⁵

Those departments that are involved in service delivery are particularly experienced in running complex multi-stakeholder consultations. These include the Department of Social Welfare which

¹⁹² Reaching Out – Guidelines for Public Sector Bodies. Available at http://www.taoiseach.gov.ie/eng/Publications/Publications_Archive/Publications_2011/?pageNumber=2

¹⁹³ These were the Department of Social Protection and the Department of Foreign Affairs and Trade. The other departments which replied to TI Ireland's queries were the Department of Defence and the Department of Education and Skills. All government press departments were contacted by phone and emailed the questions in June 2014. A further round of follow up inquiries by telephone and email were made in July 2014.

¹⁹⁴ OECD, 2014, p. 20 (forthcoming).

¹⁹⁵ OECD, 2014, p. 20, (forthcoming).

conducts roadshows, customer panels and budget forums, and the Department of Education and Skills which has established dedicated telephone lines to handle feedback on strategy proposals.

At local government level, consultations are also routine, and there are examples of local authorities running innovative online consultation and civic engagement platforms.¹⁹⁶ At both national and local level, mandatory consultations are required under environmental and planning laws.

While examples exist of imaginative and inclusive consultation processes, there are also examples of public consultations which amount to little more than a 'box-ticking' exercise; these are usually in the form of a webpage notice calling for comments to be submitted on a document by a certain deadline.

Overall, there appears to be a degree of informality in relation to stakeholder consultations that gives policy-makers considerable flexibility. However, too much informality can in practice lead to a lack of rigor in terms of ensuring balanced stakeholder input into policy or legislation.

In terms of the stakeholder input once a draft law goes before parliament, Oireachtas committees have considerable discretion. It is up to each committee to decide whether to seek submissions on a particular bill. Committees may publish on the Oireachtas website a general request for written and/or oral submissions or may directly invite individuals or groups. As part of their wider non-legislative work programmes, they may also invite evidence from interest groups, meet witnesses, or invite government officials in on specific issues.

Parliamentary rules were recently changed to allow legislators to consider early proposals for legislation – these are preliminary texts which are referred to as General Schemes of bills. These can now be forwarded to relevant committees for consideration on either a mandatory or discretionary basis. The government says it intends that this pre-legislative scrutiny process will 'become more the norm'.¹⁹⁷

It is too early to assess whether this new system has led to enhanced parliamentary scrutiny of laws. Certainly, it provides interest groups with a chance to have input into laws at an earlier stage.

There are no statutory rules or guidelines to ensure that the composition of advisory or expert groups is balanced, including maintaining a balance between civil society and private sector representatives where this is appropriate. In addition, lobbyists as well as corporate executives can freely sit on such groups in a personal capacity. Some expert and advisory groups make information about their meetings, including agendas and minutes, available proactively. Much of this sort of information would be available under the Freedom of Information Act.¹⁹⁸

¹⁹⁶ See <http://consult.fingal.ie/home> and <http://www.yourdublinyourvoice.ie>

¹⁹⁷ Ireland, Fourth Evaluation Round, Questionnaire Part 1, Corruption prevention in respect of parliamentarians, 2014. (Irish government document prepared for the Group of States Against Corruption)

¹⁹⁸ OECD 2014, p 66 (forthcoming).

5. METHODOLOGY NOTE

This report is part of the European Commission funded ‘Lifting the Lid on Lobbying’ project, which sees 19 European countries assess the situation with regard to lobbying and its regulation in their country.¹⁹⁹ The report aims to:

- Assess existing lobbying regulations, policies and practices in Ireland
- Compile evidence about corruption risks and incidences related to lack of lobbying control
- Highlight promising practice around lobbying found in Ireland
- Provide recommendations and solutions for decision-makers and interest representatives in the public and private sector

Definitions

The definition of lobbying for this project is “Any direct or indirect communication with public officials, political decision-makers or representatives for the purposes of influencing public decision-making carried out by or on behalf of any organised group.”²⁰⁰

‘Lobbyists’ can include not only professional lobbyists, but private sector representatives (in-house lobbyists), public affairs consultancies, representatives from NGOs, corporations, industry/professional associations, trade unions, think tanks, law firms, faith-based organisations and academics.²⁰¹

We believe that regulation should capture all who lobby professionally and our definition purposefully excludes individual citizens lobbying on their own behalf as this is considered part of a normal healthy democratic process and not something which should be unduly regulated.

Data Collection and Validation

This research was carried out by Transparency International Ireland during the period from March to October 2014. The researchers drew on numerous secondary sources including: academic journals; reports of tribunals of inquiry; documents and reports from oversight agencies and governmental and international bodies; research by non-governmental organisations and individuals; and submissions made by a range of organisations on the government’s proposals for a system of lobbying registration in Ireland.

This secondary data was complemented by primary data obtained from 18 in-depth interviews with civil servants and former civil servants, politicians and professional and in-house lobbyists and experts in the field of lobbying. Interviews were particularly useful for finding out additional information not on the public record, and for gathering evidence more generally on what is happening in practice. In a number of cases, anonymity was requested by interviewees because of the sensitivity of the

¹⁹⁹ The participating countries are Austria, Bulgaria, Cyprus, Czech Republic, Estonia, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, and the United Kingdom.

²⁰⁰ This definition draws heavily on the Sunlight Foundation Lobbying Guidelines (<http://sunlightfoundation.com/blog/2013/12/03/announcing-sunlights-international-lobbying-guidelines/>), the OECD *Draft Report on Progress made in implementing the OECD Principles for Transparency and Integrity in Lobbying* (2014, forthcoming) and Council of Europe Parliamentary Assembly Recommendation 1908 (2010) on lobbying in a democratic society.

²⁰¹ See Transparency International (2012) Regional Policy Paper ‘*Lobbying in the European Union: Levelling the Playing Field*’, accessible online at http://www.transparency.de/fileadmin/pdfs/Themen/Politik/ENIS_Regional_Policy_Paper_Lobbying.pdf

information and this was granted. A small expert group was established to assist TI in carrying out this research. The members of this group are listed in the acknowledgements.

The research was primarily qualitative; however a quantitative element was also included in order to evaluate the robustness and efficacy of national regulations and self-regulation mechanisms around lobbying and to allow for some comparison across the countries.²⁰² To this end, a set of 65 indicators were scored by the researcher, based on the qualitative information gathered through the research.

A 3-point scale was used to score the indicators, with a minimum score of 0 and a maximum score of 2.²⁰³ In order to calculate the overall scores for the country, and for the three dimensions of Transparency, Integrity and Equality of Access, a simple aggregation was performed. Specifically, a total score (as a percentage) was calculated for 10 sub-dimensions (access to information; lobbying registration systems; verification and oversight mechanisms; legislative footprint; pre- and post-employment restrictions; codes of conduct/ethics for policymakers; codes of conduct/ethics for lobbyists; self-regulation of the industry; consultation and participation mechanisms in public-decision-making; and expert and advisory group composition). A simple average was then calculated to provide an overall score for the three key dimensions of Transparency, Integrity and Equality of Access. The overall country score was calculated by averaging these three dimensions.

Given that the timing of this research coincided with the publication of the Registration of Lobbying Bill 2014, the scoring exercise was calculated twice – both with and without the draft bill. The completed questionnaire and scores are included as an annex on the online version of this report, which is available at www.transparency.ie.

²⁰² A regional report compiling and comparing the national results is foreseen for publication in early 2015.

²⁰³ In a limited number of cases, where no logical intermediary position exists, only a minimum value of 0 and a maximum value of 2 are offered.

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