

Regulation of Lobbying

A guide for individuals and groups

This note is for members of The Wheel and is intended to provide them with a tool for evaluating, amongst the board of directors and management, whether their organisation need to register on www.lobbying.ie.

The information in this note is a summary only, and is not a substitute for reviewing all the relevant information on www.lobbying.ie

1. Summary of the facts

The *Regulation of Lobbying Act 2015* was signed into law by the President in March 2015. Its purpose is to provide information to the public about:

1. Who is lobbying
2. On whose behalf lobbying is being carried out
3. The issues involved in the lobbying
4. The intended result of the lobbying
5. Who is being lobbied.

If your organisation is involved in lobbying, you may need to register on the Register of Lobbying website (www.lobbying.ie) which is maintained by the Standards Commission.

To find out if your organisation is required to register, to go www.lobbying.ie. If an organisation registers on this site, then it will also need to provide reports about its lobbying activities three times a year on prescribed dates. There is no cost to register as a lobbyist and members of the public can view and search the register free of charge. The Act came into force on Sept 1st 2015. It will become a criminal offence for organisations not to register, if they should be registered¹.

2. Does your organisation need to register?

It is up to the board of directors (management committee etc.) of an organisation to come to its own determination as to whether it should register.

All the information that is necessary is provided on www.lobbying.ie and there is a three-step process that an organisation should apply to itself to come to a decision as to whether it needs to register or not. The Act states that an organisation must register if it passes each of the three tests.

¹ The Regulator of Lobbying has communicated that this element of the Act will not be enforced for a 12 month period, to enable organisations to get used to the new way of doing things.

The Wheel has developed a useful template to use in communications with boards in terms of how to use the three-step test and you can see this in the appendix to this document. Filling in the relevant rows of the tables in the template can be a useful way of both stimulating discussion, as well as recording the decision made.

In some cases, it may not be a clear-cut thing and the board will need to make a judgement call.

Once a decision has been made, either to register or not to register, the organisation's board should be willing to state publicly, e.g. annual report / appropriate place on its website / other, what the decision taken with respect to the Lobbying Act is as well as the rationale behind it.

In all cases, the information on www.lobbying.ie takes precedence over the information in this advice sheet.

3. Important Dates

The important dates are:

Jan 21st 2016:

- for actually registering on www.lobbying.ie (should your organisation decide it passes the 3-step test)
- for submitting the first report on lobbying activities between start September 2015 and end December 2015 (done on www.lobbying.ie and no additional documentation is needed). Once officially submitted as a report, all of the submitted information is immediately publicly available.

May 21st 2016 – for reporting on lobbying activities between start Jan and end April.

Oct 21st 2016 – for reporting on lobbying activities between start May and end August.

Jan 21st 2017 – for reporting on lobbying activities between start Sept and end Dec.

4. Conclusion

Fact sheets and informational videos are available on www.lobbying.ie. The table in the appendix to this document is not intended to replace the original advice and information from www.lobbying.ie, but is intended as a tool that can be used by members to evaluate with their board members as to whether they need to register or not. Once the decision is made, the filled-in table can then be used as documentary evidence of the decision made.

Remember that it is the responsibility of the board of directors of each organisation to make an assessment of whether the organisation should register in the first place.

If the board decides not to register, it should be prepared to explain why not, should it ever be asked.

If the board decides to register, then it needs to assure itself that the necessary reporting to www.lobbying.ie is adequately carried out within the organisation – in a similar way that a board of directors should satisfy itself that other regulations are complied with.

APPENDIX 1: A handy tool for applying the '3-step test'

On www.lobbying.ie, a three-step test is clearly set out for organisations to use.

If your organisation responds with a 'yes' to **any** part of **TEST 1 AND any** part of **TEST 2 AND any** part of **TEST 3**, then you have passed the three-step test and your organisation needs to register on lobbying.ie.

Use the table below as a template for setting out initial thinking, so that a board can review and amend/approve same. The same table can also be used as a record of the board's decision on this matter and saved in an appropriate place.

| Conditions for registration (A 3-Step test) | Is this true for the actions and communications your organisation makes or causes to happen? |
|---|--|
| <p>TEST 1: The Target of your communications/engagement</p> <p><i>i.e. You are communicating either directly or indirectly with a "Designated Public Official" which currently are defined as:</i></p> | <p><i>If you responded 'yes' to any of (a) through (g), then you have 'passed' the first test.</i></p> |
| a) Ministers and Ministers of State | |
| b) TDs and Senators | |
| c) MEPs for constituencies in this State | |
| d) Members of local authorities | |
| e) Special Advisers | |
| f) Secretaries General and Assistant Secretaries in the Civil Service | |
| g) Chief Executive Officers and Directors of Services in Local Authorities | |

AND

| Conditions for registration (A 3-Step test) | Is this true for the actions and communications your organisation makes or causes to happen? |
|---|--|
| <p>TEST 2: The content of your communications</p> <p><i>i.e. the communication is about "a relevant matter", which is defined as one which relates to:</i></p> | <p><i>If you responded 'yes' to any of (a) through (c), then you have 'passed' the second test.</i></p> |
| <p>a) The initiation, development or modification of any public policy or of any public programme;</p> | <p><i>In determining its response to this question, an organisation's board of directors will need to take a position on what policy/public programme initiation or development or modification is.</i></p> <p><i>Matters that might possibly be relevant in coming to a determination on this could include:</i></p> <ul style="list-style-type: none"> • <i>communications and actions that seek to shape a particular policy document;</i> • <i>communications and actions that seek to shape how a budget might be spent, in the sense where the actual allocation of a budget itself defines the shape of a policy area or the public programme.</i> • <i>Communications and actions that seek to put a problem area 'on the radar' for possible attention.</i> |
| <p>b) The preparation or amendment of any law (including secondary legislation such as statutory instruments and bye-laws) ; or</p> | <p><i>This is relatively clear-cut and an organisation should be able to easily make an assessment of this.</i></p> |
| <p>c) The award of any grant, loan or other financial support, contract or other agreement, or of any licence or other authorisation involving public funds;</p> | <p><i>In determining its response to this question, an organisation's board of directors will need to have a view as to whether a particular action / communication it took in relation to a designated official relates to influencing how public funds are spent.</i></p> |
| <p>d) other than the implementation of any such policy, programme, enactment or award or any matter of a technical nature only.</p> | <p><i>Your organisation does not have to report the type of actions/communications that correspond to a "yes" to this question.</i></p> |

| | |
|---|---|
| <u>And also</u> | |
| <p>e) That communication is not specifically exempted. Exempted matters are defined as:</p> <ul style="list-style-type: none"> • Private affairs • Diplomatic relations • Factual information • Published submissions • Trade union negotiations • Safety and security • Oireachtas committees • Communications by designated public officials or public servants • Governance of commercial State bodies • Policy working groups | <p>www.lobbying.ie has more information about exempted communications.</p> |

AND

| Conditions for registration (A 3-Step test) | Is this true for your organisation? |
|--|--|
| <p>TEST 3: Who you are</p> <p>i.e. Are you one of the following:</p> | <p><i>If you responded 'yes' to any of (a) through (e), then you have 'passed' the third test.</i></p> |
| <p>a) A professional lobbyist being paid to communicate on behalf of a client (where the client is an employer of more than 10 full time employees or is a representative body or an advocacy body which has at least one full-time employee)</p> | |
| <p>b) An employer with more than 10 employees where the communications are made on your behalf</p> | |
| <p>c) A representative body with at least one employee communicating on behalf of its members and the communication is made by a paid employee or office holder of the body.</p> | |
| <p>d) An advocacy body with at least one employee that exists primarily to take up particular issues and a paid employee or office holder of the body is communicating on such issues.</p> | |
| <p>e) Any person communicating about the development or zoning of land (<i>refer to more detailed info on www.lobbying.ie</i>)</p> | |

If you responded with a 'yes' to any part of TEST 1 **AND any part of TEST 2 **AND** any part of TEST 3, then you will need to register your organisation on www.lobbying.ie.**