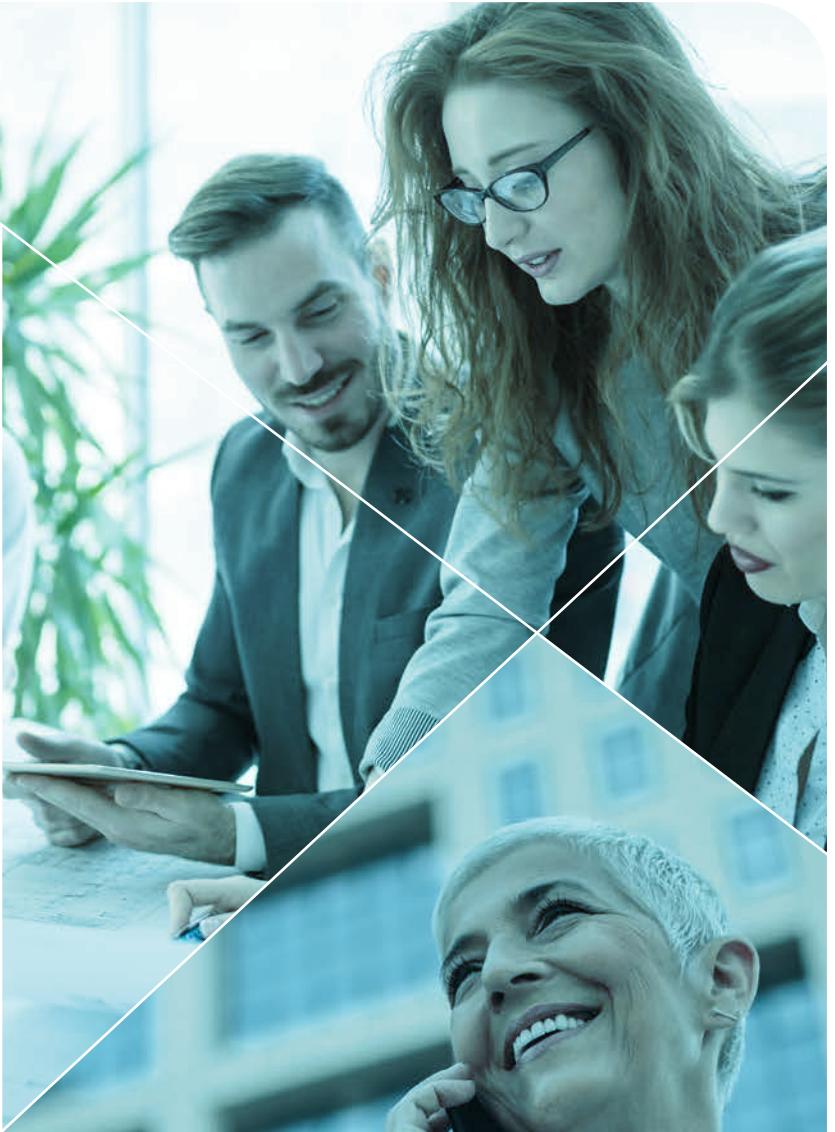




Regulation of Lobbying in

2019

Annual Report



Coimisiún um Chaighdeán in Oifigí Poiblí
Standards in Public Office Commission

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ISSN: 2009-9363

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The Standards in Public Office Commission

The Standards in Public Office Commission is an independent body, established in December 2001 by the *Standards in Public Office Act 2001*. The Commission comprises of six members and is chaired by a current or former judge of the Supreme Court or the High Court. In 2019, its members were:

- Mr Justice Daniel O'Keeffe, Chairperson;
- Seamus McCarthy, Comptroller and Auditor General;
- Peter Tyndall, Ombudsman;
- Peter Finnegan, Clerk of Dáil Éireann;
- Martin Groves, Clerk of Seanad Éireann; and
- Jim O'Keeffe, former member of Dáil Éireann.

The Secretariat to the Standards in Public Office Commission is provided by the Office of the Ombudsman.

The Commission has supervisory roles under four separate pieces of legislation:

- The *Ethics in Public Office Act 1995*, as amended by the *Standards in Public Office Act 2001*, (the Ethics Acts);
- The *Electoral Act 1997*, as amended, (the Electoral Acts);
- The *Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act 2014*; and
- The *Regulation of Lobbying Act 2015*.

The Commission also has a role in investigating potential non-compliance with Part 15 of the *Local Government Act 2001*.

The Commission issues a separate annual report covering its activities in administering the other legislation within its remit.

In February 2020, the tenures of Chairperson Mr Justice Daniel O'Keeffe and the ordinary member Mr Jim O'Keeffe ended at the conclusion of their six-year terms on the Commission.

The Commission thanks them both for their dedication and service, and wishes them well.

At the time of writing, new appointments to the Commission have not yet been made.

The Commission looks forward to welcoming a new Chairperson and ordinary member in due course.

The powers of the Commission, and its delegated staff, under the *Regulation of Lobbying Act 2015*, remain unchanged during this transition.

Foreword

On behalf of the Standards in Public Office Commission, and in accordance with the provisions of section 25(1) of the *Regulation of Lobbying Act 2015*, I am pleased to submit the Commission's Annual Report on the Regulation of Lobbying in 2019 to be laid before each House of the Oireachtas.



Sherry Perreault
Head of Ethics and Lobbying Regulation

Statement by the Head of Ethics and Lobbying Regulation

As I write this, Ireland and the global community are facing an unprecedented public health crisis, with significant and unavoidable disruptions to the delivery of public services. The Office of the Standards in Public Office Commission, along with other public sector organisations, has closed to personal callers, and staff members are working remotely in order to respect the need for physical distancing. Stakeholders have been asked to communicate with the office via email and telephone, and to bear with us as we chart this new territory.

Since its inception, the regulation of lobbying has been managed largely through online systems. This has proved to be of great benefit as we seek to maintain services in the current crisis. Registrants and staff are able to carry on much as before in terms of communicating, drafting and publishing registrations and returns. We are currently able to continue processing submissions and responding to queries within normal timelines. The work of lobbying itself also continues – and the mechanisms of lobbying have shifted, of necessity, much more toward phone calls, emails and video chats in lieu of face-to-face meetings.



Sherry Perreault
Head of Ethics and Lobbying Regulation

It is at times like this that we see in stark relief how significant a role lobbying plays in influencing public debate and decision-making: advocacy bodies seeking support for vulnerable communities, representative groups giving voice to concerns of workers or businesses, and the response of public officials who must decide when, where and how to intervene.

Lobbying continues to be a legitimate and important tool in decision-making processes. As ever, it must continue to be transparent, and those who lobby must continue to comply with the obligations to register and submit returns of their lobbying activities.

In the weeks and months to come, some members of our staff may be redeployed to other public bodies to assist in delivering vital front line services. Throughout this period of disruption and uncertainty, the Commission will work to ensure the effective delivery of its mandate, in particular timely support and guidance to stakeholders with statutory obligations, and the continued operation of the Register of Lobbying. Our website (www.lobbying.ie) and Twitter account remain the most up-to-date source for information and news.

This past year has seen the Register of Lobbying continue to grow slightly, with over 1,900 registrants and more than 40,000 returns in the system. The numbers appear to be stabilising over the past year or so, which is logical as new registrants come into the system and others cease lobbying.

We cannot be certain what full registration should look like, and so the Commission continues to analyse data on the register to ensure that we see the returns we would expect to see – with regional, sectoral and subject-matter diversification represented on the Register of Lobbying as it is in reality. We also continue our communications and outreach efforts, to ensure that those who might have obligations under the Act are aware of the Act's provisions, and to facilitate their compliance. Finally, we continue to investigate, and where necessary, enforce the Act's requirements to register and submit returns. It is safe to say, however, that those who do not comply are fast becoming outliers, and compliance appears to be becoming the norm.

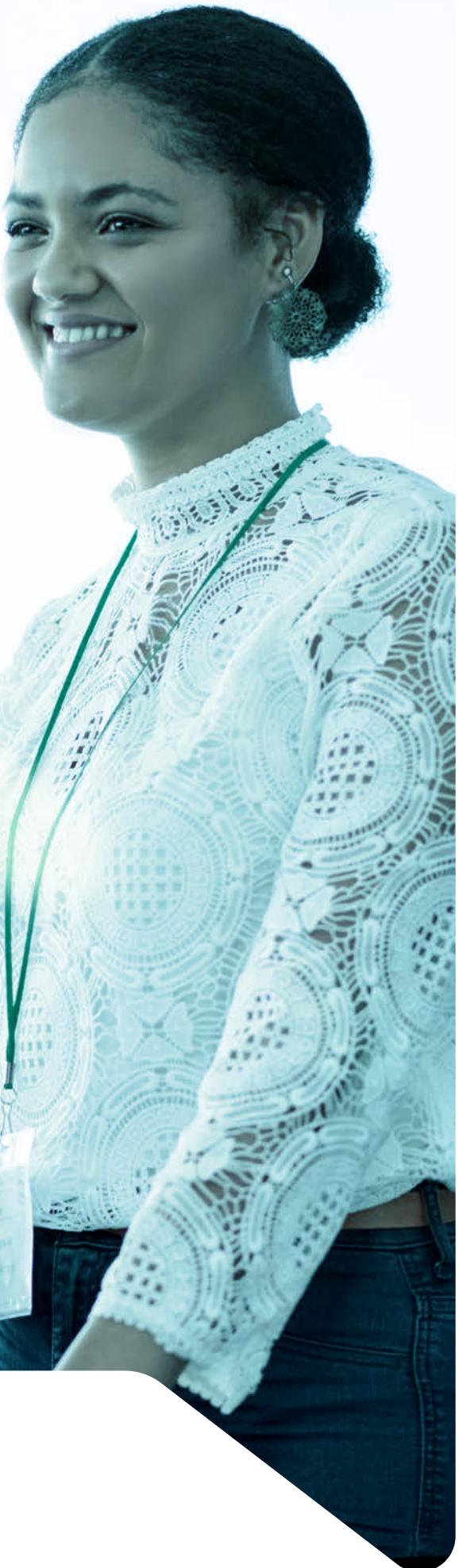
This past year, the Department for Public Expenditure and Reform launched its second legislative review of the *Regulation of Lobbying Act 2015*. As with the first review, the Commission made an extensive submission to the review, identifying areas where the Act might benefit from some amendment or clarification. The Department published its report early in 2020, and does not intend to seek to amend the Act at this time. While disappointed that its recommendations were not accepted, the Commission will continue to take a practical and common sense approach to implementation.

I would like to take this opportunity to thank the staff of the Commission Secretariat for their work over the past year, and for their dedication and perseverance during these recent challenging times.

On behalf of the Commission and our staff, may I take this opportunity to wish you and those around you safe and well.

Chapter One:

Registrations
and Returns



Chapter One

Registrations and Returns

Persons lobbying were required to register and submit returns of lobbying activity by a prescribed statutory deadline, if they were lobbying during a designated reporting period. There were three reporting periods during 2019, namely: 1 January - 30 April, 1 May - 31 August and 1 September - 31 December. The respective reporting deadlines for these periods were 21 May 2019, 21 September 2019 and 21 January 2020.

1.1 Applications to register

During 2019, there were 160 new applications to register. All applications are reviewed to ensure that the person is required to register and that they have registered correctly. Each new applicant is sent a letter which highlights the reporting period deadlines, best practices for account administration and details of enforcement provisions. 118 registrants either ceased lobbying or were removed from the register if they were outside of the scope of the Act.

1.2 Returns of lobbying activities

At the time of writing this report, more than 9,600 returns of lobbying activities have been submitted in respect of the three reporting periods in 2019. The graphs in **Appendix Three** set out the number of returns which were received in respect of each relevant period and the most popular “relevant matters” and policy areas on which lobbying activities were carried out.

All returns of lobbying submitted in 2019 were reviewed to verify that they complied with section 12 of the Act, that the information provided was clear and meaningful, and that it was provided in the manner and form that the Commission requires. Issues dealt with in respect of returns during 2019 included the following:

- Multiple returns from a registrant in respect of lobbying activities carried out in relation to the same subject matter during a relevant period. Returns in respect of the same subject matter should be compiled in a single return for that period.
- Vague information, particularly in the intended results field. Returns should contain sufficient information to be clear and transparent.

- Inclusion of former Designated Public Officials (DPOs), who might have been subject to the cooling off period provided for in section 22 of the Act, as individuals who were reported to have carried on lobbying activities. The Commission will seek information where a former DPO who may have post-employment obligations is named in a return.
- Where there is a question as to whether the subject matter of the return is a relevant matter, staff will follow up with the registrant to clarify whether a return of lobbying activities is required in relation to the particular matter.

If the Commission finds that information contained in a return of lobbying activities is incorrect, misleading or is not sufficiently detailed, the Commission may use its powers under section 13 to remove the return or request its correction, as appropriate. Generally, the Commission receives good co-operation from registrants in amending their returns or providing further information. If incorrect information is not corrected or removed the Commission may, under section 13 (3), immediately remove it from the register. The effect of this is that the registrant will be considered not to have made the return in the first instance and risks being non-compliant.

1.3 Upgrades to the register in 2019

The performance of the online register is reviewed regularly, both from a user's perspective and from the Commission's perspective as administrator, to ensure that it is operating as effectively and efficiently as possible. In 2019, a number of updates were carried out on the system to improve the usability and functionality of the register for registrants and for ease of administration.

Updates included adding the facility to communicate with registrants via subject-specific notifications on a lobbyist's account dashboard. This facility was used to encourage registrants to identify backup administrators for their accounts. Further updates may be implemented where a need arises.

Chapter Two:

Operations



Chapter Two

Operations

Section 25(2) of the Act requires that the following information be included in this report:

- any determinations under section 14 made or in force that year (delayed publication requests);
- any investigations carried out under section 19 and concluded in that year;
- any applications for consent made under section 22 (post-employment restrictions) and all decisions on such applications, made in that year;
- any convictions for offences under section 20 in that year; and
- any Fixed Payment Notices (FPNs) served under section 21 in that year.

This information must be provided in a form which does not enable the identification of the persons involved.

2.1 Determinations under section 14 of the Act

Under section 14 of the Act, a person may apply to delay publication of the information contained in the person's application to register or in their return of lobbying activities. The Commission's role in determining applications to delay publication is set out in **Appendix One** of this report.

There were no applications made to delay publication of a return to the register under section 14 of the Act in 2019.

2.2 Investigations under section 19 of the Act

Section 19 provides the Commission with the authority to conduct investigations into possible contraventions of the Act.

Unregistered lobbying activity is monitored via a number of information sources, such as media articles, social media notifications, proposed legislation, complaints, existing lobbying returns or other information received by the Commission.

In 2019, 22 investigations were launched under section 19 of the Act into possible unreported or unregistered lobbying activities. Over the course of the year, the Complaints and Investigations Unit (CIU) closed 12 investigations. Of the 12, several were discontinued where the person/organisation subsequently came into compliance with their obligations under the Act. Ten investigations were carried over into 2020.

2.3 Applications for consent under section 22 of the Act

Section 22 of the Act provides that Ministers, Ministers of State, special advisers and senior public officials who have been prescribed for the purposes of section 6(1) of the Act are subject to a one year “cooling-off” period after they leave office, during which time they cannot engage in lobbying activities in specific circumstances, or be employed by, or provide services to, a person carrying on lobbying activities in specific circumstances, except with the consent of the Commission.

A person subject to the cooling-off period may apply to the Commission for a reduction or waiver of the cooling-off period. Further information regarding the provisions of section 22 of the Act and the Commission’s role in relation to section 22 of the Act is set out in **Appendix One** of this report.

The Commission received two applications for consent under section 22 of the Act in 2019. Further details are provided in the case studies below.

Case Study 1

The applicant had been a special advisor in a government department and had taken up employment in a private firm after leaving their public office position.

The company in which the applicant had taken up employment was on the Register of Lobbying. However, it had not previously carried out lobbying activities with the applicant's former public body or former colleagues.

As the applicant was not involved in activities prohibited under section 22 of the Act, they had not engaged their obligations to seek consent of the commission prior to taking up the position. However, as the employer considered that they might in future engage in lobbying of the person's former public body, consent was required to continue in the employment.

Both the applicant and the organisation confirmed that the applicant would not be expected to participate in or advise on any lobbying activities directed at the applicant's former employer or connected DPOs during the relevant period. Suitable arrangements could be put in place to ensure the applicant was not involved in or privy to any such lobbying activities or plans.

There was no evidence the applicant had breached any obligations under section 22 of the Act by taking up this employment. Based on the information provided, the Commission agreed to grant a waiver for the final ten months of the cooling-off period. The waiver was subject, however, to a number of conditions which were designed to ensure that the person did not carry on lobbying activities in circumstances set out in section 22.

No appeal was received.

As this case illustrates, a former DPO may take up an employment where their obligations under section 22 of the Act are not initially engaged. Where circumstances change, a subsequent obligation may arise whereby the consent of the Commission is needed to continue in the position.

Case Study 2

The applicant had been a special advisor in a government department and was seeking to take up employment with a company on the lobbying register. The applicant was seeking to waive the final four months of the cooling-off period in order to take up this employment.

The Commission had regard to the fact that the company in which the applicant was seeking to take up employment had previously lobbied the Department in which they worked. The applicant had been listed on the company's previous returns, along with other DPOs, as having been lobbied by the company. However, no such lobbying took place in the year prior to the application. The Commission was informed that the applicant had been offered the role following a competitive process.

The applicant and the company each confirmed that the applicant would not be expected to participate in or advise on any prohibited lobbying activities concerning the applicant's former employer or any connected DPOs during the relevant period. The employer also confirmed they did not intend to lobby the applicant's former department during the remainder of the cooling-off period and that the person would not be involved in any lobbying activities directed at their former public body or colleagues.

The Commission agreed to grant a waiver for the final four months of the cooling-off period. The waiver was subject, however, to a number of conditions which were designed to ensure that the person did not carry on lobbying activities in circumstances set out in section 22.

No appeal was received.

2.4 Offences under section 20 of the Act

Offences under section 20(1) – Late returns

Returns must be submitted by the statutory deadline set out in the Act. Section 21 of the Act provides that the Commission may serve a Fixed Payment Notice (FPN) of €200 to a person who has submitted a late return of lobbying activities. As noted in section 2.5 below, 290 fixed payment notices were issued for late returns in 2019. Most were paid within the prescribed deadlines.

If a person fails to pay the penalty within 21 days, the Commission issues a notice of offence under section 20(1), and may proceed to prosecute the offence of submitting a late return. A person is liable on summary conviction to a Class C fine (currently €2,500).

No of S. 20(1) Notices issued	In respect of 2019 returns periods	In respect of 2018 return periods	Referred for prosecution
28	19	9	1

In most instances, individuals in receipt of a notice of offence pay the outstanding FPN. However, in June 2019, the first conviction under section 20(1) of the Act took place. The organisation in question had failed to submit returns of lobbying activity by the deadline and refused to comply with its obligations. The court imposed a fine of €1,250 and costs were awarded to the Commission.

Offences under section 20(2) – Failure to submit a return of lobbying activities

A registrant is required to make a return of lobbying activities, including a nil return, by the statutory deadline. Failure to do so is an offence, and the person is liable, on summary conviction, to a maximum fine of €2,500.

The Commission issues a notification of offence to any registrant who has failed to make a return by the deadline, and the person is afforded an additional two weeks to submit a return of lobbying activities. If the person fails to submit the return by that date, the Commission may proceed to prosecute the offence under section 20(2) of the Act.

In 2019, the Commission issued a total of 97 notices informing the registrant of their intention to prosecute if a return of lobbying activities was not submitted. In a number of instances, it was discovered that the registrant was not required to be on the register, as they or the communication were outside the scope of the Act. In all other cases, the registrant complied and prosecution was not pursued.

No of section 20(2) Notices issued.	In respect of 2019 periods.	In respect of 2018 periods.	Referred for prosecution.
97	72	25	0

Encouraging compliance

The Commission continues to encourage compliance at any early stage. Effective outreach and communication with registered lobbyists at an early stage has effectively reduced the number of files being referred for prosecution each year. Perhaps unsurprisingly, most tend to comply with their obligations once contacted by the CIU. The Commission takes a less lenient approach with lobbyists who repeatedly miss return periods and fail to comply or engage with the Commission. In such cases, the Commission may decide to pursue proceedings. Where the lobbyist engages with the Commission and compliance is achieved, the case is generally settled and proceedings are withdrawn.

The number of notices issued by the Commission continues to decline year on year, in respect of both late and non-returns. This once again reflects the time invested to encourage compliance. In addition, considerable time is given to reviewing registrants (new and existing) to ensure all registered are in fact required to be on the register. If the Commission considers that a person or organisation may not be required to register, the Commission will contact the registrant to review the Act's requirements. This approach continues to ensure that less time and resources are spent pursuing non-compliance.

2.5 Fixed Payment Notices served under section 21 of the Act

The online register is designed to ensure that a fixed payment notice (FPN) issues automatically to the person submitting a late return. The FPN informs the person that they have 21 days to pay it.

FPNs issued in 2019

No. of FPNs issued	Relating to 2019 relevant periods	Relating to other relevant periods	Paid	Cancelled	Unpaid
290	203	87	244	41	5

Enforcement activities in respect of the five unpaid FPNs are ongoing. The number of FPNs issued in respect of the three relevant periods in 2019 was 290.

This year's compliance statistics represent a marked improvement over the previous years in which FPNs were issued, as evidenced by the below table.

Enforcement year	Total number of FPNs issued
2019	290
2018	522
2017	522

While the Commission did cancel several FPNs in 2019, it generally will only do so for the following reasons:

- where a technical problem on lobbying.ie prevented the person from submitting a return on time;
- where an administrative error occurred in which the person erroneously submitted a duplicate return for the wrong period; and/or
- where the person was not required to register and had registered in error.

2.6 Information about Designated Public Officials on public body websites

The Act requires that each public body appointed under section 6(4) of the Act publish up-to-date lists of their DPOs. Lobbying.ie provides relevant links to these pages for public bodies appointed under the Act.

Prior to the end of each return period, public bodies are asked to check, and update as required, a list showing the name, grade and brief details of the role and responsibilities of each Designated Public Official prescribed within the body. They are also asked to confirm and update information relating to working groups or task forces operating under their aegis, in order to identify whether organisations were adhering to the Transparency Code, established by the Minister for Public Expenditure and Reform on commencement of the Act.

The Transparency Code provides exemptions for certain communications made by persons within scope of the Act, if the communication is made in the course of business of a working group or task force set up by a public body, and if the public body makes public the membership, terms of references, agendas and minutes of meetings of the group.

In August 2019, the Commission contacted all public bodies with DPOs to verify that information was up-to-date, including the following:

1. That each relevant body had a Regulation of Lobbying page;
2. Whether the name and position held were published on the page; and
3. That each body had relevant information on their website in relation to the Transparency Code for any group working under their aegis.

The Commission also ensured that links from its own website were accurate and operational.

The results of this survey were encouraging. The Commission found that all public bodies with DPOs had a website page with DPOs listed as well as the relevant information relating to their position. Each body that has a group operating under the Transparency Code also had the relevant information published on their website's Regulation of Lobbying page.

2.7 Registrant self-identification

In 2019, the Commission became aware of an issue regarding the self-identification of lobbyists on the register. Where a registrant is a business or charitable entity, with both a legal name and a trading identity, they may register using either name. While it is their decision which name they use for the formal registration, in the interests of transparency it is important that users can easily find the registrant and their returns.

In one particular case, an organisation had registered under their legal name, which differed from the name by which the organisation was most commonly known. This led to difficulty for users in accessing returns made by the organisation. While there was no issue in respect of compliance, it was not ideal in respect of transparency.

In response to this, the Commission **published guidance** advising registrants to register under their legal name but also include a reference in the free-text field to their most commonly known identity or trading name. The Commission further intends to introduce a new field to the registrant page, to allow registrants to include other names by which they are known/"also trading as", as is the case on the Companies Registration Office website. This will also be accessible through the search function helping ensure easier access and greater transparency. This update is expected to be implemented in 2020.

2.8 Code of Conduct

Section 16(1) of the Act provides that the Commission may produce a code of conduct for persons carrying on lobbying activities "with a view to promoting high professional standards and good

practices". As discussed in last year's annual report, the Commission launched the Code of Conduct for persons carrying on lobbying activities in November 2018, on foot of a consultation process.

The Code, which came into effect on 1 January 2019, provides eight principles by which persons carrying on lobbying activities may conduct their lobbying activities transparently and ethically. Anyone lobbying, including employers, third parties, representative or advocacy bodies and individuals alike, must have regard to the Code when communicating with public officials.

The Code has been in operation for almost a year and is operating well.

As part of its submission to the Second Statutory Review of the Act, the Commission called for the Code to be enforceable. Specifically, the Commission recommended that section 16 of the Act be modified to give the Commission authority to conduct inquiries into and report on breaches of the Code.

The Commission had previously committed to reviewing the Code on foot of the completion of the Second Statutory Review of the Act, in the event that any planned legislative changes would impact on the effective operation of the Code. As the Review has not recommended any legislative change, a review of the Code is not required at this time. However, the Commission will consider recommendations made in the context of the review in respect of additional guidance that may be required.

2.9 Account access permission

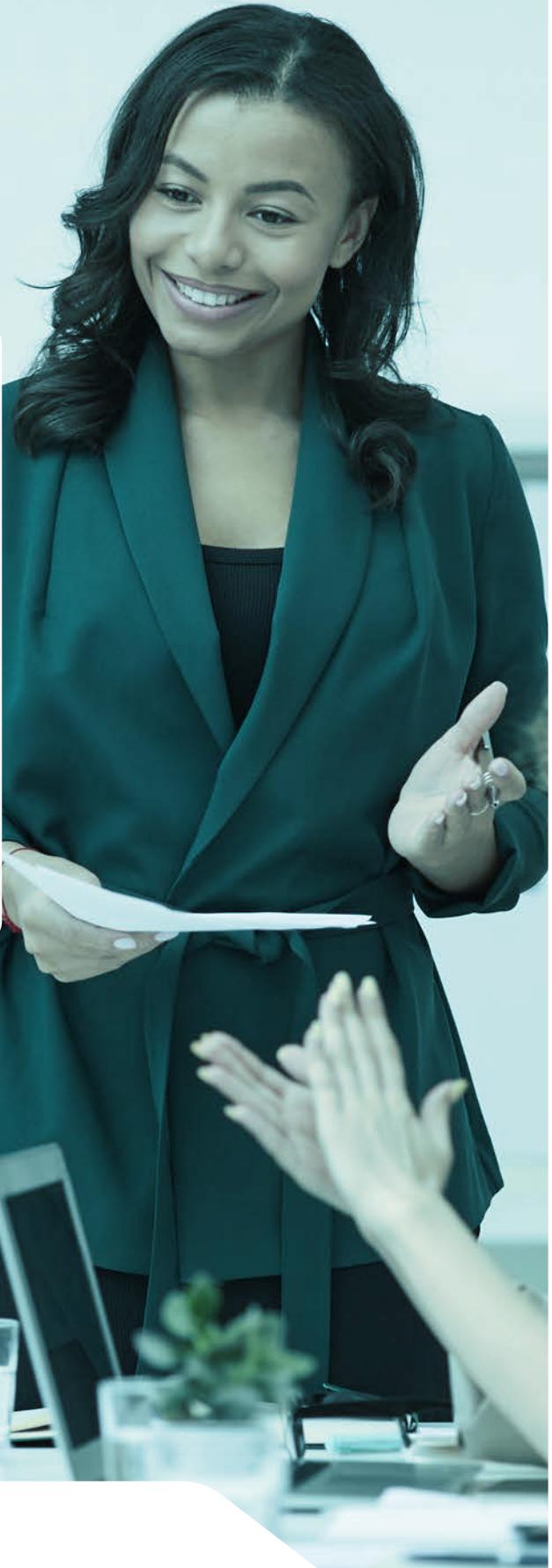
Two different levels of account access are available to registrants. The system allows persons to register as a user or an administrator, with different permissions associated with each account type. Administrators have full permissions to draft returns, review drafts submitted by users, publish returns, and add or delete users. User accounts have more limited permissions on the system whereby they can simply draft returns and submit them for review or publication by the administrator.

These different levels of access previously led to some registrants, with the incorrect levels of access, experiencing difficulty in submitting their returns. The Commission communicated with all registrants, advising them of the difference between the accounts and providing instructions on how to change access permissions. The Commission also published an information notice on this issue on its website.

The guidance provided has resulted in a number of account access revisions, which in turn has improved compliance. Publication of this information note coincided with a subsequent decrease in the number of registrants contacting the Commission concerning returns submitted incorrectly due to account access.

Chapter Three:

Communications and Outreach



Chapter Three

Communications and Outreach

3.1 Outreach activities

The Commission continues to take opportunities to promote understanding of the Act and its obligations, with a view to supporting effective compliance and sharing best practices.

In April, officials from the Lobbying Regulation Unit met with a visiting delegation from the German Ministry of the Interior to discuss the development and implementation of the lobbying system.

In May, the Public Relations Institute of Ireland (PRII) and Trinity College Dublin held a forum on the regulation of lobbying at which they presented their findings from a study on perspectives of lobbying regulation, including comparisons of lobbying regulation systems worldwide. Head of Ethics and Lobbying Regulation Sherry Perreault participated in the panel discussion, alongside panellists from IBEC, Edelman Ireland and the PRII, as well as a former DPO. The conference provided a welcome forum in which the Commission could provide further knowledge and guidance to lobbyists while also receiving some feedback on the user experience.

Later that month, the French National Assembly, in concert with the High Authority on Transparency in Public Life and the Deontologist (ethics advisor) for the National Assembly, organised a conference on lobbying and its regulation, entitled “Perspectives on Lobbying” (“Regards croisés sur le lobbying”). The seminar brought together French parliamentarians, staff and members of the academic community. The Head of Ethics and Lobbying Regulation was invited to participate in a panel discussion on the regulation of lobbying in France and in Europe to present the experience of regulation in Ireland.

Following on from the successful launch of the European Lobbying Regulators' Network in spring 2018, the second annual conference of the Network was held in Paris in May 2019. Members of the Network include regulators from various jurisdictions that regulate lobbying across Europe, including the EU. This year's conference allowed participants to exchange experience and best practices in a number of areas, including promoting compliance, re-use of data and the creation of codes of conduct.

In July, the Head of Ethics and Lobbying Regulation met with a researcher from the Independent Commission against Corruption (ICAC) in New South Wales, Australia. ICAC is currently undertaking a public inquiry into the regulation of lobbying, access and influence in the state. As part of ICAC's research into how lobbying regulation is operating in other jurisdictions, Ireland was identified as a case study, and was able to share its experience of implementation and ongoing operations of the Register of Lobbying. Information on the Irish system was subsequently presented to the public inquiry, which is ongoing.

In November, the Lobbying Unit welcomed two visitors from Transparency International Latvia who were studying the lobbying system. Secretariat staff presented the main features of the Act and answered queries regarding its operation.

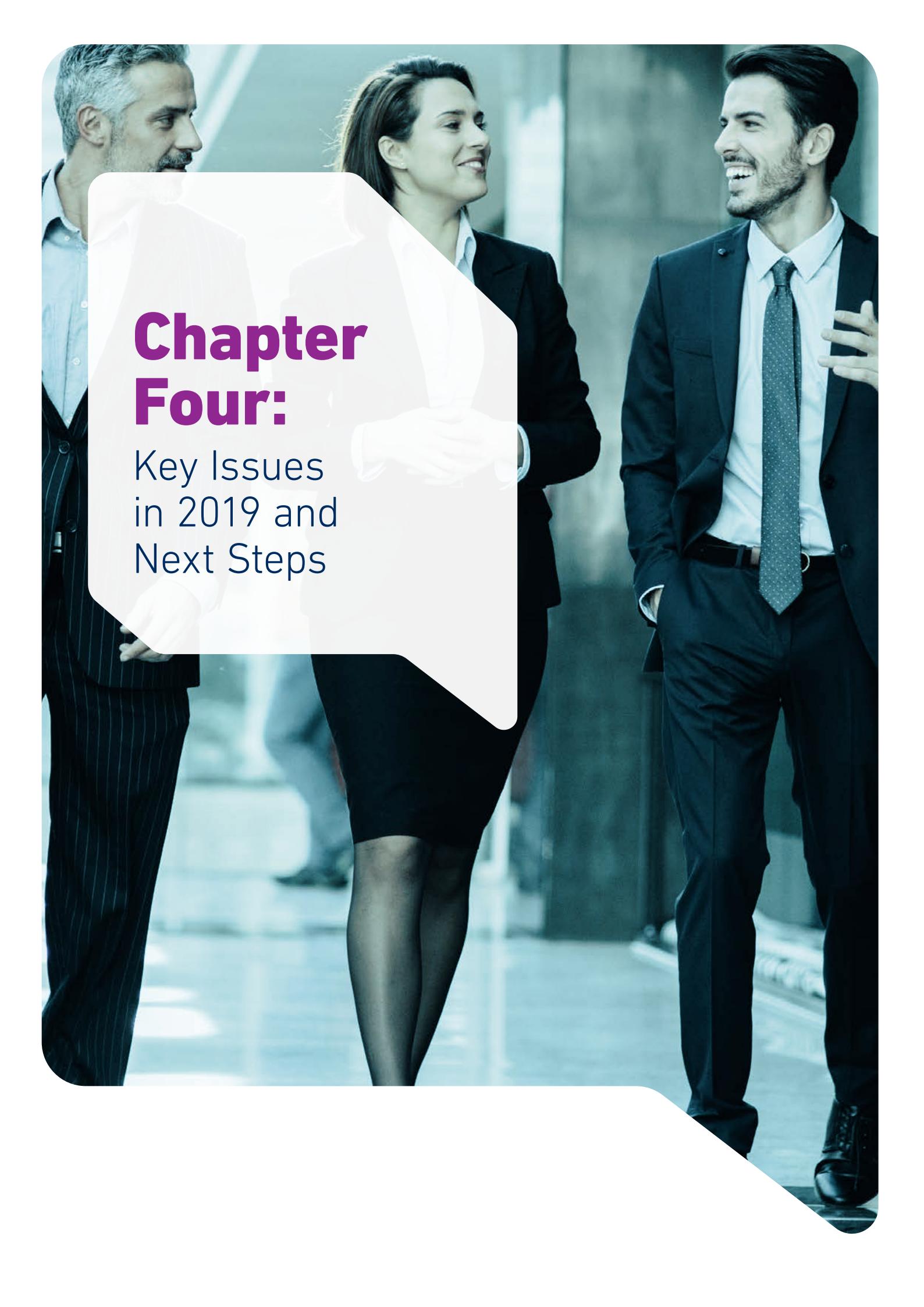
Finally, the Secretariat hosted an open house for new and prospective registrants interested in hearing more about the Act.

3.2 Sectoral analysis

In early 2019, the Commission carried out analysis of the sectors represented on the Register of Lobbying. The Commission identified three key sectors requiring further outreach, namely builders, developers and architects.

The Commission met with representatives from the Construction Industry Federation, the Royal Institute of Architects of Ireland, and Irish Institutional Property to discuss levels of registration within these sectors, and seek opportunities to improve outreach. On foot of these meetings, the Commission published tailored information notes for builders, developers and architects. The document identified ten points for potential lobbyists in these industries to consider when carrying out a communication. These were published in trade publications and websites, as well as on lobbying.ie.

In 2020, the Commission will continue to analyse the register to identify regional, sectoral or other areas which may need further or tailored outreach.

A photograph of three business professionals—two men and one woman—standing outdoors. They are all dressed in professional attire, including suits and ties. The man on the left is wearing a light-colored button-down shirt and dark trousers. The woman in the center is wearing a dark blazer over a light blouse. The man on the right is wearing a dark suit, white shirt, and patterned tie. They are all smiling and appear to be engaged in a friendly conversation. The background is slightly blurred, suggesting an urban environment.

Chapter Four:

Key Issues in 2019 and Next Steps

Chapter Four

Key Issues in 2019 and Next Steps

4.1 Second Review of the Act

The *Regulation of Lobbying Act 2015* (the Act) commenced on 1 September 2015.

The Act provides for legislative review by the Minister for Finance and Public Expenditure and Reform (the Minister) after an initial period of 12 months following the introduction of the Act and then after each subsequent successive period of 3 years. As part of this review, the Minister must consult with the Commission, as well as other stakeholders.

The first review of the Act took place in 2016, with the Report published in February of the following year. No amendments were made to the Act on foot of the first review.

The Second Review was launched by the Minister in April 2019. The Department of Public Expenditure and Reform (DPER) invited submissions as part of a public consultation process. A total of 27 submissions were received by the Department from government departments, representative bodies, interest groups, and various bodies and individuals engaged in lobbying.

The Commission made a **submission to the review** in May 2019 that included 22 separate recommendations in respect of the Act's definitions, operations, post-employment obligations, enforcement and various other matters.

This submission was based on the Commission's experience over the previous four years of administering the Act. As the requirements of the Act and the process of submitting returns are by now well established, the Commission identified where the Act would benefit from amendment or clarification, as well as some areas on which the Act is silent and where an explicit provision might be useful. If adopted, the Commission is of the view that these recommendations would strengthen the operation of the Act, enhancing transparency and accountability.

Several of the recommendations contained in this submission had already been made either in the Commission's previous submission to the first review of the Act or in its annual reports.

On 25 February 2020 the Department of Public Expenditure and Reform **published its report** of the Second Review of the Regulation of Lobbying Act. The Standards Commission welcomes the publication of the report into the operation of the Act, however, the Commission is disappointed that none of its recommendations have been adopted.

The recommendations in the report suggest that most concerns about the legislation raised as part of the review process may be addressed through greater guidance and clarification by the Commission. While the Commission continues to engage in tailored outreach and regularly reviews and updates its guidance as needed, it is the Commission's view that this does not accurately reflect the range of specific issues that can only be addressed through legislative amendment. This includes, for example, introducing enforcement powers for breaches of the Act's post-employment provisions, as well as requiring public officials to decline further communications with persons who fail to comply with the Act.

The Commission will continue to identify and flag issues where the Act may benefit from amendment or clarification as they arise. The third statutory review of the Act will commence in 2022.

See Appendix Two for a summary of the recommendations made in the Commission's submission to the second statutory review.

4.2 Adherence to the Transparency Code

As noted above, the Transparency Code was published by the Minister for Public Expenditure and Reform in September 2015 in conjunction with the commencement of the Act. The Code provides for exemptions from the requirement to register a communication if it is made in the course of the work of a "relevant body" and if the "relevant body" adheres to the Code by publishing its membership, terms of reference, agendas and minutes of meetings. A "relevant body" includes any task force, working group or committee established by a public body that includes among its members at least one DPO and at least one person within scope of the Act. These relevant bodies are often set up by civil service departments and local authorities.

Where the "relevant body" adheres to the Transparency Code, the members do not have to submit returns of the communications made within the group.

During 2019, the Commission reviewed levels of adherence to the Transparency Code in all local authorities. Of the thirty-one county councils examined, just six were found to be fully adhering to the terms of the Code, meeting all eight requirements. A further 13 county councils were found to be partially adherent while 12 county councils were found to be completely not adhering to the Code.

The Commission intends to engage further with local authorities on this issue during 2020. It is likely that more relevant bodies are in operation than are being reported by many local authorities. The operation of relevant bodies outside of the Transparency Code has the serious consequence that communications made by members of the relevant body in the course of the body's activities may be registerable under the Regulation of Lobbying Act. External members of these bodies may be required to submit returns of communications made within the group but may not be aware of this requirement, and find themselves in non-compliance.

The Commission urges local authorities and civil service departments to familiarise themselves with the requirements of, and promote adherence with, the Transparency Code among its working groups and strategic policy committees.

Chapter Five:

Recommendations
for Change



Chapter Five

Recommendations for Change

The Commission has made recommendations for change as part of submissions to the Department of Public Expenditure and Reform for both the First Statutory Review of the Lobbying Act in 2016 and the Second Statutory Review of the Act in 2019. The Commission has also made recommendations in each annual report. Major outstanding proposals from each statutory review are summarised in the table below.

Recommendations applying to the Lobbying Act 2015

Recommendations	First Review	Second Review
1. The Act should be amended to provide that any business representative bodies or “coalitions” of business interests, irrespective of number or status of employees, are within scope of the Act, where one or more of the members of the body/coalition would be within scope if they were acting themselves. Members of the body/coalition should be required to be named on returns in support of increased transparency.	2016	2019
2. Section 5(3) of the Act should be amended to provide that, where a relevant communication on behalf of an organisation that falls within scope of the Act is made by either a paid employee or an office holder of the organisation, it will be regarded as a lobbying activity made by the organisation.	2016	2019

Recommendations	First Review	Second Review
3. The Act should be amended to provide a more comprehensive definition of a full-time employee in section 7.	2016	2019
4. Section 5(1)(c) of the Act should be amended to provide for the managing and directing of relevant communications about the development or zoning of land, in addition to the making of such communications.	2016	2019
5. The provisions of section 5(1)(c) of the Act should be limited to persons who have a material interest in relation to the development or zoning of land or are connected to or communicating on behalf of someone with such an interest.		2019
6. The Act should be amended to exempt communications made by political parties to their DPO members in their capacity as members of the party.	2016	2019
7. The exempt communication at section 7 of the Act should apply to negotiations on terms and conditions of employment undertaken by representatives of other employee representative bodies.		2019
8. Section 11(1)(b) of the Act should be amended to include an address where a person carries on business or their “main activities”.	2016	2019

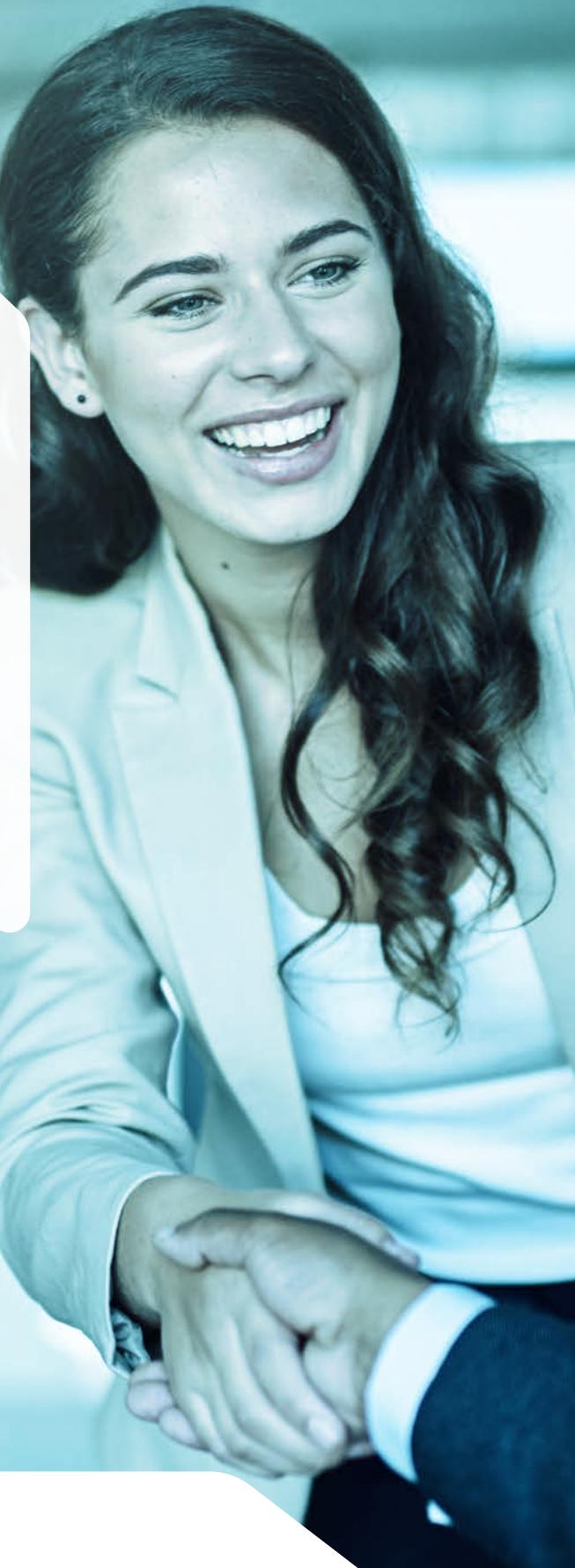
Recommendations	First Review	Second Review
9. The word “permanently” should be removed from section 11(4) of the Act.		2019
10. Section 16 of the Act should include an explicit requirement for the Commission to lay any code of conduct published under section 16 of the Act before the Houses of the Oireachtas.	2016	2019
11. The Act should be modified to give the Commission authority to conduct inquiries into and report on breaches of the Code.	2016	2019
12. Failure to comply with section 22 of the Act (either in relation to submitting an application for consent, where required, or in relation to complying with the Commission’s decision on an application for consent) should be a relevant contravention under section 18 of the Act and an offence under section 20 of the Act.	2016	2019
13. Employers of relevant DPOs should ensure that DPOs are aware of their post-employment obligations when planning to leave a post, and that they may seek advice from the Commission as needed.		2019
14. The Act should be amended to extend the scope of section 22 to include public bodies and DPOs with whom a person may have had significant involvement, influence or contacts.		2019

Recommendations	First Review	Second Review
15. The Act should be amended to allow the Commission to publish certain details regarding its decisions to waive or reduce the cooling-off period under section 22 of the Act.	2016	2019
16. An anti-avoidance clause should be added to the list of relevant contraventions in section 18 of the Act.	2016	2019
17. The Commission should be allowed to publish summary details of investigations under section 19 of the Act.	2016	2019
18. The Act should be amended to introduce obligations for DPOs to decline further communications with persons where the DPO is aware that the person has failed to register previous lobbying activities by the relevant date.	2016	2019
19. The Act should be amended to provide the Commission with the authority to order any DPO to refuse to have dealings with a person who has been convicted of a relevant contravention.	2016	2019
20. The Act should be amended to provide the Commission with the authority to investigate breaches of the provisions outlined in recommendations 18 and 19 above.	2016	2019
21. An education programme led by the Department should be undertaken to inform public bodies about the exempt communication under section 5(5)(n) of the Act and the requirements of the Transparency Code.		2019

Recommendations	First Review	Second Review
22. An education programme led by the Department should be undertaken to inform relevant state agencies about the exempt communication under section 5(5)(m) of the Act and the circumstances in which it applies.		2019
23. Section 22 might be reviewed to allow the Commission to impose restrictions on lobbying activities relating to functional areas of other public service bodies or with DPOs from other public service bodies with which the applicant is not 'connected'.		

Appendix One:

Commission's
Supervisory Role
under the *Regulation
of Lobbying Act 2015*



Appendix One

Commission's Supervisory Role under the *Regulation of Lobbying Act 2015*

General overview

The Act provides that a person who falls within the scope of the Act makes a relevant communication (is lobbying) if the person communicates with a DPO about a relevant matter. Anyone lobbying must register and submit regular online returns of their lobbying activity.

Sections 5(1) and (2) of the Act set out the categories of person who are within scope of the Act, namely:

- a person with more than 10 full-time employees;
- a person which has one or more full-time employees and is a body which exists primarily to represent the interests of its members (referred to as a "representative body") and the relevant communications are made on behalf of any of the members;
- a person which has one or more full-time employees and is a body which exists primarily to take up particular issues (referred to as an "advocacy body") and the relevant communications are made in the furtherance of any of those issues;
- any person (individual or organisation) making a "relevant communication" concerning the development or zoning of land which is not their principal private residence; and
- a "professional lobbyist" or third party who is paid to carry on lobbying activities on behalf of a person who fits within one of the categories of persons above.

DPOs include Ministers and Ministers of State, Members of Dáil Éireann and Seanad Éireann, Members of the European Parliament for Irish constituencies, and Members of Local Authorities. DPOs also include special advisers and the senior-most civil and public servants who have been prescribed by Ministerial Order.

A relevant matter is one to do with 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. Matters relating to the zoning and development of land are also relevant communications.

Section 5(5) of the Act provides for a number of exemptions to what is considered a relevant communication.

The Register of Lobbying

The register itself is a web-based system. In addition to housing the online register, the website lobbying.ie includes information and guidance tools explaining the registration and return processes.

There is no cost to register, to submit returns or to access the information contained therein. While the Commission has oversight responsibility for the establishment and maintenance of the register, the content is driven by the information contained in the applications to register and returns submitted by registrants.

Anyone who is lobbying must register and submit returns three times per year, covering prescribed "relevant periods" (1 January - 30 April, 1 May - 31 August, and 1 September - 31 December). The returns must be submitted by the respective prescribed "relevant dates" (21 May, 21 September and 21 January, respectively).

The return must indicate who was lobbied, the subject matter of the lobbying activity and the results the person was seeking to secure. The returns must also indicate the type and extent of the lobbying activity. If the lobbying activity was carried out on behalf of a client, the return must provide details of the client.

Other provisions

Applications to delay publication under section 14 of the Act

Under section 14 of the Act, a person may apply to delay publication of the information contained in the person's application to register or in their return of lobbying activities if publishing the information could reasonably be expected to:

1. Have a serious adverse effect on the financial interests of the State, the national economy or business interests generally or the business interests of any description of persons (an application made under section 14(1)(a) of the Act), or
2. Cause a material financial loss to the person to whom the information relates or prejudice seriously the competitive position of that person in the conduct of the person's occupation, profession or business or the outcome of any contractual or other negotiations being conducted by that person (an application made under section 14(1)(b) of the Act).

If an application is made under section 14(1)(a), the Commission is required to consult with any relevant Minister(s) of the Government. The Commission is not required to consult with a Minister(s) if an application is made under section 14(1)(b). (The Commission may, however, consider it appropriate to consult with a Minister on a section 14(1)(b) application).

Section 14(9) of the Act provides that, when the returns are subsequently published, the Commission must publish an explanation as to why publication of the information was delayed.

Section 14(11) of the Act provides that the Commission may make a determination to delay publication on more than one occasion in relation to information contained in a return of lobbying activities.

"Cooling-off" period provided for under section 22 of the Act

Section 22 of the Act provides that Ministers, Ministers of State, special advisers and senior public officials who have been prescribed for the purposes of section 6(1) of the Act are subject to a one year "cooling-off" period, during which time they cannot engage in lobbying activities in specific circumstances, or be employed by, or provide services to, a person carrying on lobbying activities in specific circumstances. The cooling-off period is the period of one year from the date the person ceased to be a DPO.

The circumstances in which section 22 of the Act applies are the making of communications comprising the carrying on of lobbying activities which:

1. Involve any public service body with which the person was employed or held an office or other position in the year prior to his/her leaving, or
2. Are to a person who was also a DPO who was employed or held an office or other position with that public service body in the year prior to the person's leaving.

A person subject to the one-year cooling-off period may apply to the Commission for a reduction or waiver of the cooling-off period.

The Commission may decide to give consent unconditionally to a reduction or waiver of the cooling-off period or may decide to give consent with conditions attached. The Commission may decide to refuse the application for all or part of the cooling-off period.

Appeals

Under section 23 of the Act a person who is aggrieved by a decision of the Commission under sections 10(5) (relating to reports of incorrect information on the register), section 14 (delayed publication), or section 22 (cooling-off period) may appeal the Commission's decision. The Department of Public Expenditure and Reform has established panels of independent appeal officers to hear such appeals. Under section 23, the appeal is referred to an independent appeal officer who may uphold a decision of the Commission, or overturn it and replace it with another decision.

Section 24 of the Act provides that the appeal officer's decision may be appealed to the High Court.

Investigative and Enforcement provisions

The Act contains a number of investigative and enforcement provisions which were commenced on 1 January 2017.

Finally, section 2 of the Act provides for a legislative review. Following the review, the Minister may consider possible amendments to the Act. The Minister must report to the Houses of the Oireachtas on the outcome of the review and any recommendations for amendments to the Act.

Statutory instruments under the Regulation of Lobbying Act

Seven statutory instruments have been introduced under the Act, namely:

- Regulation of Lobbying Act 2015 (Designated Public Officials) Regulations (S.I. 144 of 2019);
- Regulation of Lobbying Act 2015 (Commencement) Order (S.I. 152 of 2015);
- Regulation of Lobbying Act 2015 (Appeals) Regulations 2015 (S.I. 366 of 2015);
- Regulation of Lobbying Act 2015 (Designated Public Officials) Regulations (S.I. 367 of 2015);
- Regulation of Lobbying Act 2015 (Commencement) Order 2016 (S.I. 360 of 2016);
- Regulation of Lobbying Act 2015 (Fixed Payment Notice) Regulations 2016 (S.I. 361 of 2016); and
- Regulation of Lobbying Act 2015 (Designated Public Officials) Regulations 2016 (S.I. 362 of 2016).

Appendix Two:

Recommendations to the Second Statutory Review of the Act

The image shows a computer monitor displaying the website for the Register of Lobbying (Lobbying.ie). The website has a blue header with navigation links for 'About us', 'Help & Resources', 'News', 'Reports & Statistics', 'Move', 'Login', and 'Help'. The main content area features the 'LOBBYING.ie' logo with the text 'An Chúr Brústócalreachta' and 'Register of Lobbying'. Below the logo, there's a section titled 'Welcome to Lobbying.ie' with a sub-section about COVID-19. To the right, there are links for 'Watch our COMMU POLIC SENIOR POLI', 'Am I lobbying? Take the 3 Step Test', 'Register as a Lobbyist', and 'Quick Guide: Lobbying'. At the bottom of the page, there's a list of dates and events.

Welcome to Lobbying.ie

The Regulation of Lobbying legislation is designed to provide information to the public about who is lobbying whom about what.

If you are lobbying then you must register on this website and make a return every four months. Take our [Three Step Test](#) to see if you are lobbying.

Please feel free to [read this welcome letter](#), which is sent to all new registrants, advising them of their obligations and best administrative practices for managing their account on Lobbying.ie.

Announcements

COVID-19: The office is closed to all personal callers. Please correspond with us by email or online if possible. This will help us to maximise our staff resources, following current guidance on limiting the spread of coronavirus. Our contact details are [here](#).

Notice: Due to the current public health emergency, there are considerable and unavoidable disruptions to the delivery of public services, as well to the work of our own Office. Our staff are continuing to work during this time in all areas of the Commission's remit. However, some may be redeployed in the coming days to vital front line services.

We ask for your patience and cooperation in respect of any unavoidable delays that may result.

We would further ask that any non urgent queries or complaints be deferred at this time. Thank you for your understanding.

- 25 February 2020 - Standards In Public Office Commission [comments on Second Review of the Regulator of Lobbying Act 2015](#)
- 27 June 2019 - Standards Commission publishes [Annual Report 2018 under Regulation of Lobbying Act](#)
- 71 June 2019 - Revised [best practice](#) for persons carrying on lobbying activities published
- 10 May 2019 - Standards Commission publishes its [submission to the second legislative review of the](#)

Appendix Two

Recommendations to the Second Statutory Review of the Act

Recommendation 1: The Act should be amended to provide that any business representative bodies or “coalitions” of business interests, irrespective of number or status of employees, are within scope of the Act, where one or more of the members of the body/coalition would be within scope if they were acting themselves. Members of the body/coalition should be required to be named on returns in support of increased transparency.

Recommendation 2: Section 5(3) of the Act should be amended to provide that, where a relevant communication on behalf of an organisation that falls within scope of the Act is made by either a paid employee or an office holder of the organisation, it will be regarded as a lobbying activity made by the organisation.

Recommendation 3: The Act should be amended to provide a more comprehensive definition of a full-time employee in section 7.

Recommendation 4: Section 5(1)(c) of the Act should be amended to provide for the managing and directing of relevant communications about the development or zoning of land, in addition to the making of such communications.

Recommendation 5: The provisions of section 5(1)(c) of the Act should be limited to persons who have a material interest in relation to the development or zoning of land or are connected to or communicating on behalf of someone with such an interest.

Recommendation 6: The Act should be amended to exempt communications made by political parties to their DPO members in their capacity as members of the party.

Recommendation 7: The exempt communication at section 7 of the Act should apply to negotiations on terms and conditions of employment undertaken by representatives of other employee representative bodies.

Recommendation 8: Section 11(1)(b) of the Act should be amended to include an address where a person carries on business or their “main activities”.

Recommendation 9: The word “permanently” should be removed from section 11(4) of the Act.

Recommendation 10: Section 16 of the Act should include an explicit requirement for the Commission to lay any code of conduct published under section 16 of the Act before the Houses of the Oireachtas.

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Recommendation 12: Failure to comply with section 22 of the Act (either in relation to submitting an application for consent, where required, or in relation to complying with the Commission’s decision on an application for consent) should be a relevant contravention under section 18 of the Act and an offence under section 20 of the Act.

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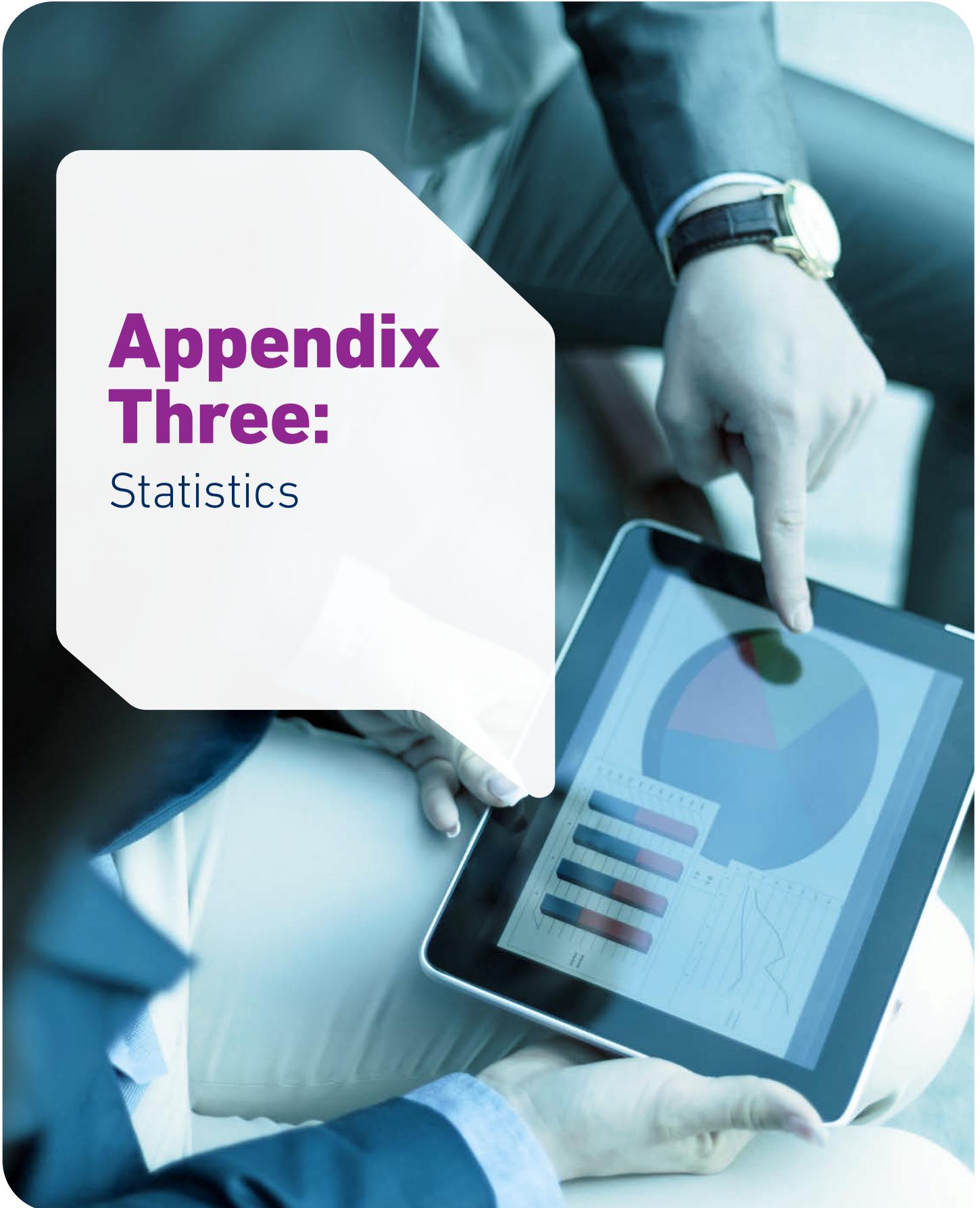
Recommendation 20: The Act should be amended to provide the Commission with the authority to investigate breaches of the provisions outlined in recommendations 18 and 19 above.

Recommendation 21: An education programme led by the Department should be undertaken to inform public bodies about the exempt communication under section 5(5)(n) of the Act and the requirements of the Transparency Code.

Recommendation 22: An education programme led by the Department should be undertaken to inform relevant state agencies about the exempt communication under section 5(5)(m) of the Act and the circumstances in which it applies.

Appendix Three:

Statistics



Appendix Three

Statistics

Figure 1 – Total registrants by year

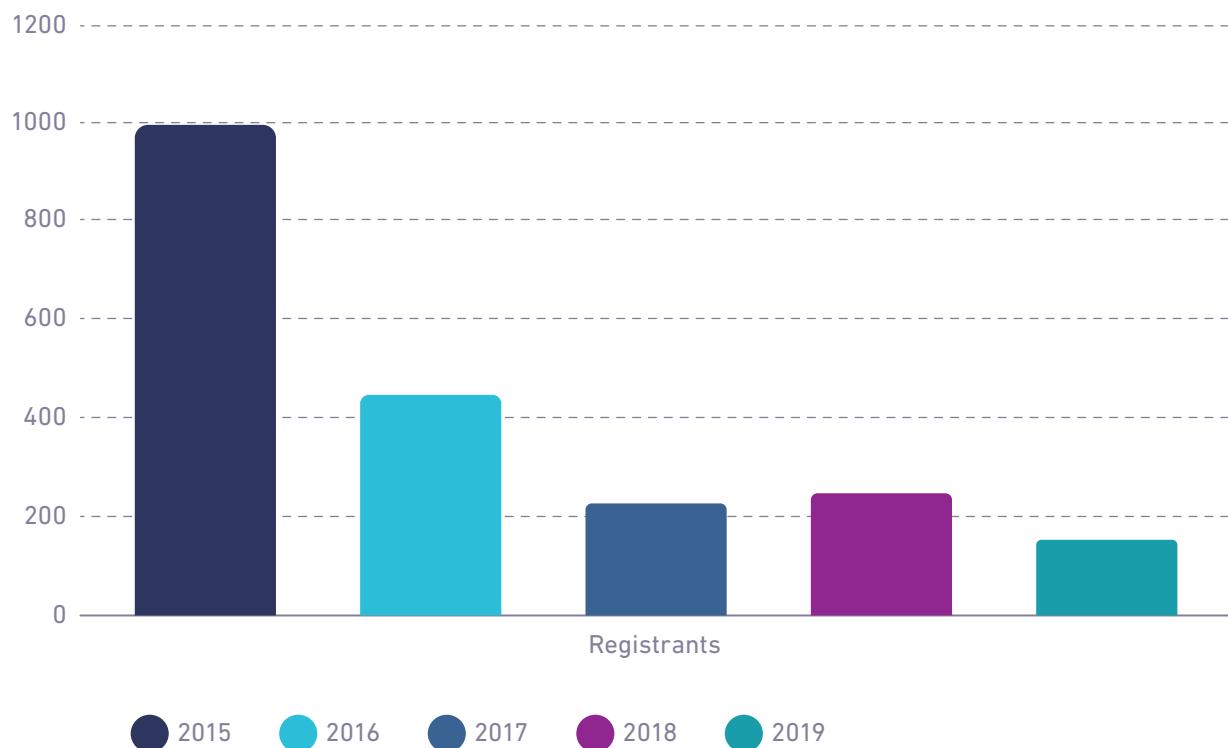


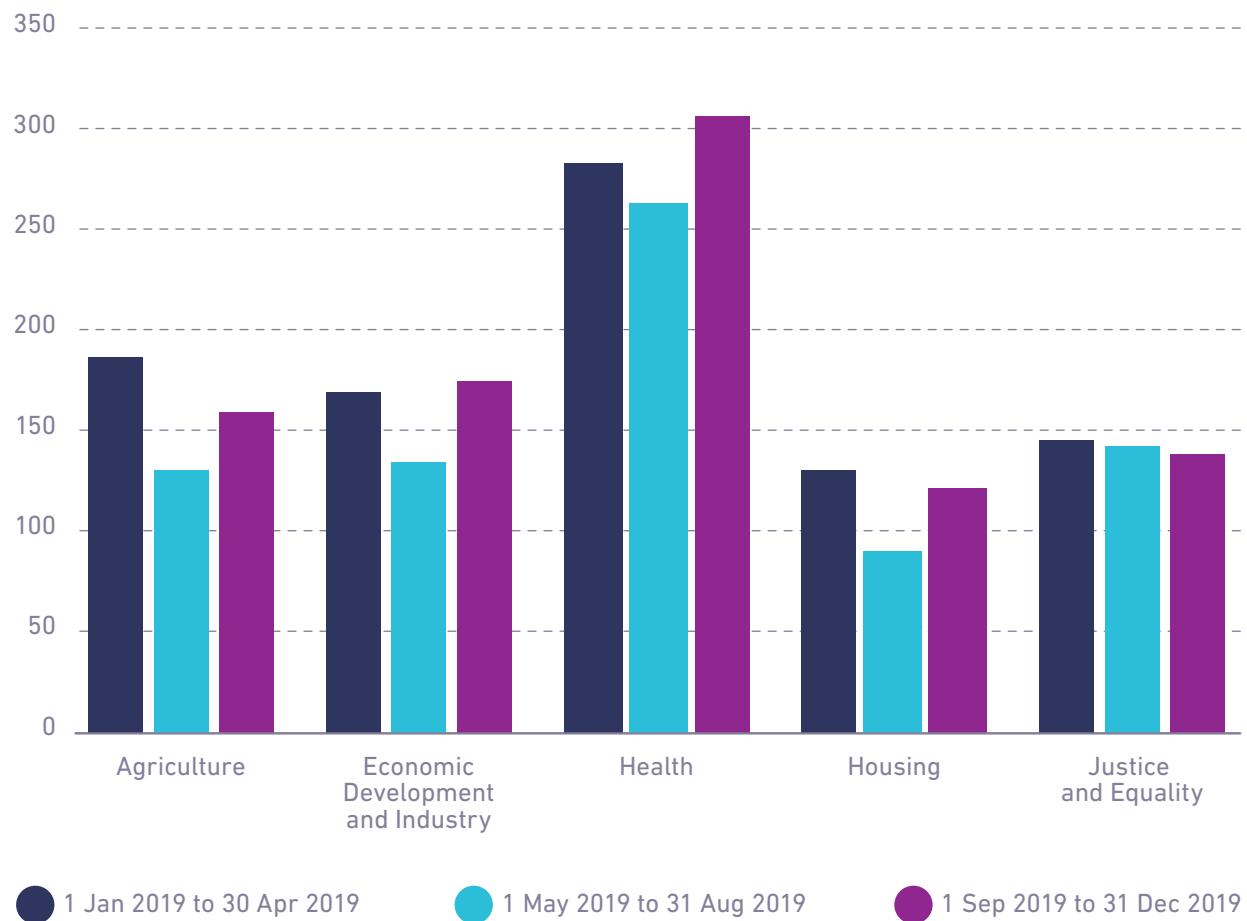
Figure 2 – Public policy area of return

Figure 3 – Number of returns by reporting period



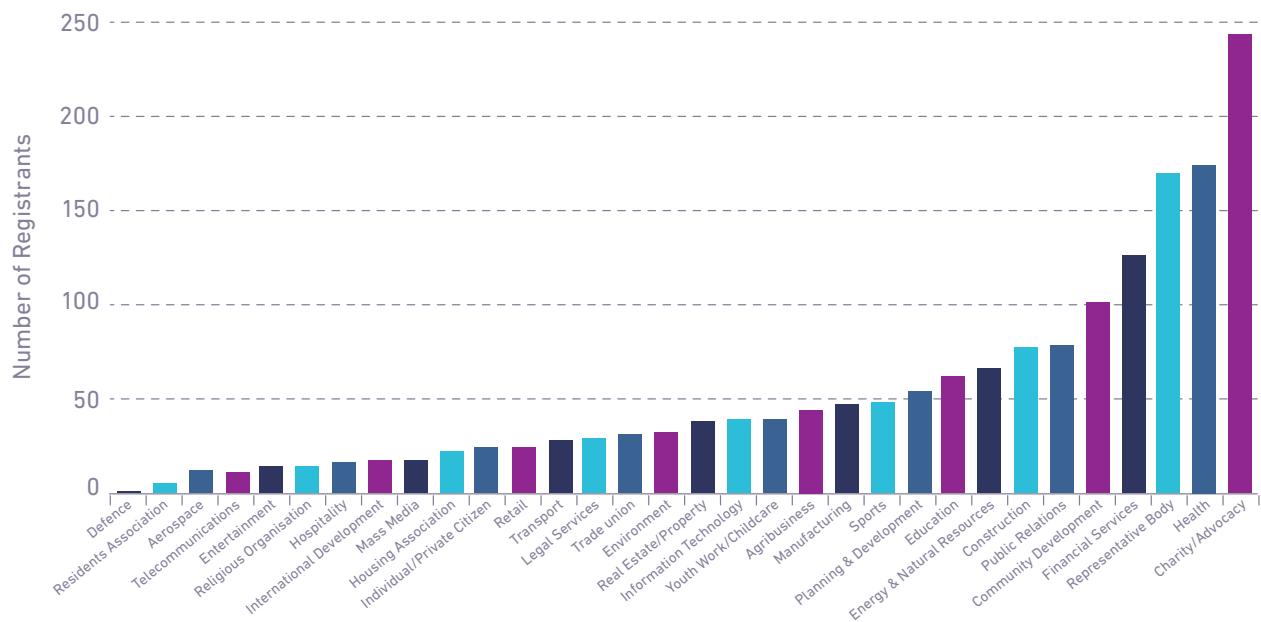
Figure 4 – Registrants' main business activities

Figure 5 - Regional location of registrants

Great Britain: 60
Rest of Europe: 19
Rest of the World: 9

Total: 1909

