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# Regulating more? Comparing Ireland's original and amended lobbying legislation

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## Abstract

This paper compares the amendments introduced by the Regulation of Lobbying and Oireachtas (Allowances to Members) (Amendment) Act 2023 with the original regulations of the Regulation of Lobbying Act 2015. The study was conducted using the Hired Guns Method for assessing the robustness of lobbying legislation, developed by the Centre for Public Integrity (CPI), allowing findings to be compared with lobbying regulations internationally. The 2015 legislation was introduced after years of tribunals, scandals, unfulfilled political promises, and economic crisis, in an effort to increase the public's trust in politicians, representative institutions, democracy and the wider bureaucracy. The 2023 Amendment came in the wake of a 2020 lobbying scandal. The paper finds that, despite the CPI score remaining unchanged, in-depth examination of the legislation showed that the amendment introduced more rules and sanctions, particularly in relation to designated public officials, and closed off outstanding legislative loopholes.

*Keywords:* Lobbying, regulation, Ireland, legislation, Centre for Public Integrity, CPI

## Introduction

Scholars and practitioners of lobbying regard it as political participation that permits greater public access to politics beyond the act of voting (Jordan & Maloney, 2007). Lobbying seeks to influence the presence (or absence) of actions, policies, or decisions. Professional lobbyists, interest groups, charities, and private firms are all capable of providing advice on policy that decision makers may not be capable of addressing. Holman and Luneburg (2012) regard lobbying as crucial to the success of representative government. Lobbyists play a vital role in the policymaking process (Howlett & Ramesh, 2003). However, lobbying has sometimes been associated with terms like corruption and unethical practices (Kollmannová & Matušková, 2014). Scandals have helped foster a perception that lobbying is influence-peddling wherein self-serving entities exercise great sway over policy outputs (Holman & Luneburg, 2012).

Some democracies have introduced lobbying regulations to reduce the risk of corruption and foster a level playing field for interest groups in the policymaking process (Bitonti & Mariotti, 2022). Lobbying regulations are seen as part of the larger ecosystem of transparency regulations, with ethics policies and freedom of information laws and are believed to strengthen confidence in public institutions and foster accountability (Fenster, 2017). They shine a light into the black box of policymaking, as well as recognising lobbying as a legitimate activity and a beneficial part of the policymaking process (Laboutková et al., 2020). Legislative regulation of lobbying is designed to take more account of the general welfare of society and less account of private interests (Brinig et al., 1993).

Sixteen countries regulate their lobbying industries (Chari et al., 2019). In federations, such as the United States (US), Canada and Australia, there are lobbying regulations at the national, state and provincial levels. Ireland has now amended its Regulation of Lobbying Act 2015 with the Regulation of Lobbying and Oireachtas (Allowances to Members) (Amendment) Act 2023 (hereafter 2023 Amendment). This paper compares the 2023 amended legislation with the 2015 regulations using the Hired Guns Index of the Centre for Public Integrity (CPI). Although the CPI scores remained the same, in-depth examination of the legislation shows that the amendment introduced more rules and sanctions for designated public officials (DPOs) and closed certain legislative loopholes. These findings are placed within the broader context of global lobbying regulations, enabling the benchmarking of Ireland's regulations against those elsewhere. The findings also have implications in terms of the inability of the Hired Guns Index to capture certain types of regulatory change.

This paper initially discusses the literature on lobbying regulation. It subsequently traces the development of lobbying laws in Ireland and sets out the methodology used. It then examines the lobbying laws using the CPI index and the findings and conclusions round out the paper.

## Lobbying and its regulation

Lobbying regulation is the set of rules, norms, and practical frameworks that aim to shape how lobbying is conducted. These are the regulations lobbyists must follow when trying to influence policy (Chari et al., 2019), or that generally affect the interaction between policymakers and interest groups (Bitonti & Mariotti, 2022). However, defining what is meant by lobbying has proven problematic (Greenwood & Thomas, 1998; Scott, 2015), rendering definitions of lobbying for legislative purposes challenging. The US Federal Regulation of Lobbying Act (1946) failed to encompass many forms of lobbying (Greenwood & Thomas, 1998) so that by the 1990s many lobbyists in Washington, DC, operated under the radar (Wolpe & Levine, 1996).

Baumgartner and Leech (1998) see lobbying as simply an effort to influence the policy process. For Chari et al. (2019), lobbying is an activity carried out by individuals or groups to influence decisions taken at a political level for their own interests. With more detailed definitions it has been difficult to form exclusionary descriptions to properly legislate while simultaneously protecting individual's freedom to petition (Greenwood & Thomas, 1998). Ultimately, the legal definition of lobbying is at the core of any lobbying legislation and identifies who is required to register and disclose information (Opheim, 1991).

For Greenwood and Thomas (1998) regulation is about the control, direction or adjustment of a private or quasi-private activity for some public benefit. Chari et al. (2019) see lobbying regulation as the rules lobbyists are required to follow when attempting to influence public policy. Such rules regard a wide range of topics and domains, relative to policymakers, interest groups and lobbyists. These include lobbying registers (of lobbyists and stakeholders) available to all citizens, revolving doors (between public and private offices) and conflicts of interest, political financing, public procurement and anti-corruption, the disclosure of meetings between public officials and representatives of interest groups, the transparency and general openness of the policymaking processes, and the accountability of policymakers. Ideally, these regulations should be passed by parliaments, and enforceable by law.

***Rationale for lobbying regulations***

The objective of lobbying regulation is transparency, as well as a level of ethical standards and behaviours, with which lobbyists are expected to comply (Organisation for Economic Co-Operation and Development (OECD), 2009). Transparency constitutes the ease with which members of the public can monitor the government on its commitments (Broz, 2002). According to Dinan (2021), lobbying transparency assists public understanding of politics and the scrutiny of legislative processes, and thereby improves political accountability. Proponents of lobbying regulations argue that they produce transparency in decision-making, which means the public can see how offered views are reflected in the final decision and which views were considered and why (Šimral & Laboutková, 2021). In a democracy, for an effective administration, elected officials should be accountable for their decisions (Moncrieffe, 1998).

Deliberative democratic theory argues that for quality and legitimacy within the policy decision-making process, it should be the result of an exchange of reasonable arguments between equal participants (Crespy, 2014). Hence, one of the purposes of lobbying regulations is to level the playing field for all participants (OECD, 2021).

***Rationale against lobbying regulations***

Most jurisdictions have only fragmented regulations or have left the lobbying industry to self-regulate (OECD, 2021), but with voluntary guidelines there are no legal repercussions should actors fail to abide by them (Asimow, 1985). The reason for such inactivity may be that lobbying regulations are perceived as barriers to entry (Brinig et al., 1993). According to Ainsworth (1993), regulations in the form of more registration requirements would be particularly burdensome for small groups and organisations. In Scotland, Dinan (2006) found that some lobbyists opposed regulations on the grounds that increased transparency infringes a firm's ability to operate effectively. Brandt and Svendsen (2016) also point to the cost to the state of regulating the lobbying industry.

## Context: the evolution of lobbying regulations in Ireland

Lobbying regulation came to prominence when the Mahon Tribunal alleged bribery of public representatives by lobbyists (Kennedy, 2012). Its findings, and those of the Moriarty and McCracken tribunals, showed that policymaking was not transparent, but open to corruption (Byrne, 2012). Also, policy decisions on banking were often taken in secret after lobbying by banks (Murphy et al., 2011). As Murphy (2010) points out, an examination of the decisions to rescue Allied Irish Banks' insurance arm in 1985, through to the bank guarantee scheme in autumn 2008, shows these were made by different governments (consisting of all the major parties), in secret, following lobbying by the banks. This cannot be that surprising when considered in the context of a revolving door of officials moving between the banks and regulatory agencies (Chari & Bernhagen, 2011).

When the public is concerned with the integrity of government decision-making, procedures to ensure transparency and accountability are crucial. The Labour Party attempted to introduce lobbying legislation after 1999. At the 2007 general election a register of lobbyists was mentioned in the Green Party's manifesto (Green Party, 2007). While in 2010, Fine Gael, as part of its New Politics reform agenda, set out its Registration of Lobbyists Bill. The 31st Dáil, convened in March 2011, was led by a Fine Gael–Labour coalition with the largest majority in the country's history. Part of its mandate, in addition to resuscitating the economy, concerned Oireachtas reforms, including lobbying regulation (McGrath, 2011).

Overt lobbying by Fine Gael advisor Frank Flannery reinforced the need for lobbying regulations with a cooling-off period (O'Regan, 2014). The Labour Party's Brendan Howlin, Minister for Public Expenditure and Reform (2011–2016), led this drive. After extensive engagement between government and all sectors of society, the Regulation of Lobbying Bill became law on 11 March 2015. According to Howlin, this marked an important step in helping to 'rebuild public trust in the political system by throwing light on its interaction with those who seek to shape and influence policy' (Howlin, 2014).

The act was reviewed in 2016 and 2019. The first review was positive, concluding that strengthening the regulations would unnecessarily increase the administrative burden on lobbyists and that more time was needed for lobbyists and DPOs to familiarise themselves with the legislation (Department of Public Expenditure and Reform (DPER), 2017). The second review found no need to amend the legislation, recommending that the Standards in Public Office Commission (SIPO) provide greater guidance/education on the regulations (DPER, 2020).

However, in September 2020 junior finance minister Michael D'Arcy quit the Seanad to become chief executive of the Irish Association of Investment Management, the representative body for the funds and investment industry. D'Arcy worked on policy related to the funds sector in his ministerial role (Taylor, 2020). Murray (2022) points out that one week before his resignation, D'Arcy had spoken in the Seanad in support of a bill for which funds had been lobbying. The concern, in a situation like this, is that a former politician will use their personal connections and insider knowledge, gained while in public service, to line their own and their employer's pockets, to the detriment of the public interest (LaPira & Thomas, 2014). Opposition parties argued that this could be in breach of SIPO regulations and the Regulation of Lobbying Act 2015 (McCrave, 2020). Section 22, subsection 1, of the act states that a former DPO shall not carry on lobbying activities, or be employed by, or provide services to, a person carrying on lobbying activities within a year of leaving office (Government of Ireland, 2015). However, SIPO had no power to investigate breaches. On 29 September 2020, Taoiseach Micheál Martin told the Dáil 'any cooling-off period should have the force of law and sanctions and penalties attached to it' (Martin, 2020).

This led the opposition parties and the government to plan to tighten the rules preventing DPOs from lobbying former colleagues for twelve months after leaving office (Leahy & Horgan-Jones, 2022). In 2020, Labour TD Ged Nash sponsored a Regulation of Lobbying (Post-Term Employment as Lobbyist) Bill while Sinn Féin TD Mairéad Farrell brought forward a Regulation of Lobbying (Amendment) Bill. In February 2022, the Minister for Public Expenditure and Reform, Michael McGrath, published the General Scheme of the Regulation of Lobbying (Amendment) Bill. Then, in September 2022, the government introduced its Regulation of Lobbying (Amendment) Bill, seeking to give SIPO powers to sanction DPOs breaching the cooling-off period through fines and lobbying prohibitions. This is critical, as in late 2022, hundreds of returns to the Lobbying Register were uncovered in which ex-ministers, ministerial advisers and secretaries general were not listed as former DPOs (McDermott & Fitzgerald, 2022) under Section 12, subsection 4(f), of the 2015 Act. The legislation finished its journey through the Oireachtas on 17 May 2023 as the Regulation of Lobbying and Oireachtas (Allowances to Members) (Amendment) Bill 2022.

## Methodology

The objective of this paper is to assess the strength of Irish lobbying regulations, comparing the Regulation of Lobbying Act (2015) with the 2023 Amendment. A number of approaches have been developed to measure and compare the strengths of lobbying regulations. Opheim (1991), Brinig et al. (1993), and Newmark (2005 and 2017) developed indices focused upon US state-level regulations. The CPI Hired Guns Method (2003) was designed to look at US state and federal lobbying regulations. It was subsequently utilised in analysing lobbying regulations in various jurisdictions across the world, resulting in what Chari et al. (2019) refer to as CPI scores. Holman and Luneburg (2012) and Mulcahy (2015), writing for Transparency International, developed methodologies for comparing lobbying regulations in Europe. The first three approaches, and the latter two, have been applied narrowly geographically, whereas the CPI method has been broadly applied.

The CPI is a Washington, DC, based non-partisan, non-profit investigative news organisation, with a focus on transparency. Although the CPI method was designed for examining US lobbying regulations, this did not render it inapplicable elsewhere. According to Crepaz and Chari (2017) the CPI's Hired Guns Method, compared to the other indices, best captures the robustness of the legislation examined. For Chari et al. (2019), it possesses higher content validity than any of the other indices, as it asks many more questions.

The CPI index employs forty-eight questions, under eight criteria, for coding and scoring legislative texts: definition of lobbyist; individual registration; individual spending disclosure; employer spending disclosure; electronic filing; public access (to a register); revolving door provisions (cooling-off periods); and enforcement. Each item in a text is assigned a numerical value on the index according to the code. The CPI paid particular attention to 'how the state defined what a lobbyist is, what requirements it has for registration and spending disclosures, and how it regulates legislators-turned-lobbyists', it further 'factored in effective oversight, such as electronic reporting, public access to information and enforcement' (Morlino et al., 2014).

The CPI score, a measure of the robustness of a lobbying law, is calculated out of 100 points (see Table 1). The more points assigned to legislation, the more robust it is. Crepaz (2016, p. 5) defines *robustness* as 'the level of transparency and accountability that the

**Table 1: Hired Guns Method's eight areas of disclosure and the maximum points allowed**

| *Areas of disclosure* | *Maximum CPI score* |
|---|---|
| Definition of lobbyist | 7 |
| Individual registration | 19 |
| Individual spending disclosure | 29 |
| Employer spending disclosure | 5 |
| Electronic filing | 3 |
| Public access (to a registry of lobbyists) | 20 |
| Enforcement | 15 |
| Revolving door provisions | 2 |
| **Total score possible** | **100** |

*Source:* www.publicintegrity.org/2003/05/15/5914/methodology

lobbying regulation can guarantee'. The CPI index allows for the comparison of regulatory systems across countries. To enable better comparisons between CPI scores, Chari et al. (2019) set out a three-tiered classification of lobbying regulatory environments. Regulatory environments scoring above sixty points are rated as 'high' robustness systems, those scoring between thirty and fifty-nine are 'medium' robustness systems, and those scoring below twenty-nine are 'low' robustness systems (Chari et al., 2019).

## Analysis and comparison of the 2015 and 2023 lobbying laws

This section will examine and compare, using the Hired Guns Index's eight criteria, Ireland's Regulation of Lobbying Act 2015 and the 2023 Amendment. The 2015 legislation established a statutory system for regulating lobbing. Compelling those who lobby to have to register helps lobbying transparency (Dinan, 2021). The 2023 Amendment seeks to address weaknesses, loopholes and other issues that emerged in the original legislation after 2015.

Countries often amended lobbying regulations in response to scandals, as happened in Canada in 1995, 2003 and 2008, and the US in 1995 and 2007 (Dávid-Barrett, 2021; Thomas, 1998). The amended legislation resulted in higher CPI scores and regulations that were more robust (Chari et al., 2019). Of course, political interests will inevitably look for further loopholes, so there is an element of regulatory 'whack-a-mole' (Gerken, 2011).

The core issue here is measuring the rigour of the legislation and some elements of its implementation. The CPI index will allow comparison on a global scale, permitting us to categorise the legislation according to Chari et al.'s (2019) classification of high, medium or low robustness systems. This will assist in assessing the extent to which the amendment has changed the original legislation.

## Definition of lobbyist

### *2015 Act*

Despite not defining a lobbyist, the legislation addresses the CPI's first question concerning executive and legislative lobbyists (see Appendix A). Section 6, subsection 1, details DPOs – government ministers and ministers of state, members of parliament, Irish members of the European Parliament, members of local authorities, special advisors and public servants – that would be the targets of lobbyists. Furthermore, under Section 5, subsection 8, of the act, the Minister for Public Expenditure and Reform 'may prescribe descriptions of public servants under *subsection (1)(f)* by reference to their roles, levels of remuneration, grades or similar factors' (Government of Ireland, 2015). Regarding the CPI's second question, on how much an individual has to make/spend to qualify as a lobbyist, Section 8, subsection 1, of the act makes it clear that money does not matter, it is the act of lobbying that counts. Consequently, the 2015 Act receives a CPI score of seven (see Appendix A, Questions 1–2).

### *2023 Amendment*

The amended legislation also received a CPI score of seven (see Appendix A, Questions 1–2). However, this does not capture that the amended Section 5 of the act – Meaning of carrying on lobbying activities – more comprehensively defines lobbying activities. In Section 5, subsection 2, two new paragraphs (d) and (e) have been added to recognise that bodies that exist to represent the interest of their members, and who have no employees, will still be subject to lobbying regulations where one member of the body would be classified as carrying out lobbying activities if they were acting solely on their own behalf. These include informal business, or interest groups, with unremunerated directors. Section 5, subsection 3 (b), was altered to remove the stipulation that relevant communication had to come from a person who holds a post in a body for which renumeration is payable.

## Individual registration

***2015 Act***

The 2015 legislation scores ten from the maximum nineteen points available (see Appendix A, Questions 3–10). The strengths of the legislation include the need for individuals and groups to register if they engage in relevant communication with a DPO (Šimral, 2020). While the US Lobbying Disclosure Act (1995) held that a person, or group, would only have to register if they lobbied for more than a set amount of time, or in the UK that only consultant lobbyists must register (Hine & Peele, 2016), in Ireland anyone who engages in lobbying has to register. Section 8, subsection 1, of the act states 'a person shall not carry on lobbying activities unless the person is a registered person' (Government of Ireland, 2015). In Section 12, subsection 5, the legislation also requires anyone lobbying to identify, by name, their employer.

***2023 Amendment***

The 2023 Amendment also receives a CPI score of ten. The amended legislation in Section 11, subsection 1 (aa), now requires applicants provide, in the case of bodies that exist to represent the interest of their members, but have no employees, the name of every person who is a member of the body. This is also captured in the amendment to Section 12, subsection 4, paragraph (fa), to do with regular returns to the register. In Section 11, subsection 1 (b), the words 'or carries on the person's main activities' (Government of Ireland, 2023), in addition to carrying on business, have been inserted into the legislation – in recognition that lobbying might not be for business. However, none of these changes register in the CPI's index, as they are too nuanced for it.

## Individual spending disclosure and employer spending disclosure

As with many medium robust regulatory environments, as defined by Chari et al. (2019), the 2015 Act and the 2023 Amendment place no requirements on lobbyists, or their employers, to report the financial effort dedicated to a given lobbying activity (see Appendix A, Questions 11–27). The first and second statutory reviews of the legislation, echoing the policy development stage, argued that requiring financial disclosures would create significant administrative burdens for SIPO (DPER, 2017; 2020). Whereas, in the US, financial disclosures are required, with most state legislation achieving higher CPI scores than are found elsewhere in the world (Chari et al., 2019).

As Murphy et al. (2011) point out, registering lobbyists is not about regulating free speech, but about preventing undue influence, including the abuse of dominant financial positions by some interest groups.

> The interest of [businessmen] is always in some respects different from, and even opposite to, that of the public … The proposal of any new law or regulation of commerce which comes from this order ... comes from an order of men ... who have generally an interest to deceive and even oppress the public. (Smith, 1776, p. 200)

## Electronic filing

### *2015 Act*

The Register of Lobbying, part of SIPO, provides lobbyists with a means of registering online at https://www.lobbying.ie/umbraco/Surface/AccountSurface/Register. That is straightforward and free and is supported by guided online walkthroughs located on YouTube.com which explain how to register and file reports.[1] The 2015 Act scores two points in this section of the CPI index (see Appendix A, Questions 28–30).

### *2023 Amendment*

The amended legislation also scores two points – as the changes made to Sections 11 and 12 of the 2015 legislation had no impact on the CPI score. These changes required the name of every person who is a member of a body with no full-time employees, that exists primarily to represent the interest of its members, or to take up particular issues. Also required is the address where the person carries on their main activities in addition to business and where they ordinarily reside (Government of Ireland, 2023). The only way the amended legislation could have achieved a higher CPI score would have been if financial disclosures were required and provided for in Question 29 (see Appendix A).

[1] https://www.youtube.com/channel/UCYApbhCLBxLifsZF4Qre8oQ

## Public access

Section 10 of the 2015 Act – Content and public availability of Register – deals with public access. Section 10, subsection 3, states 'the Register shall be made available for inspection free of charge on a website maintained or used by the Commission [SIPO]' (Government of Ireland, 2015). The Register of Lobbying developed a website for this purpose. Registrations, and filed reports, are provided free of charge at Lobbying.ie via a searchable database, and the data can be downloaded. Sample registrations are also provided. However, no information is provided on lobbyists' spending, as none is sought. Ten points are assigned to the 2015 Act and the 2023 Amendment (see Appendix A, Questions 31–38), as it made no changes to Section 10 of the legislation. As of June 2023, there have been 78,591 returns from 2,430 registrants (SIPO, 2023).

## Enforcement

### *2015 Act*

The 2015 legislation scored six out of fifteen points in the CPI index for the statutory power SIPO was granted to conduct audits and compel lobbyists to comply with review requests (see Appendix A, Questions 37–49). Section 19, subsection 1, of the act states 'if the Commission reasonably believes that a person may have committed or may be committing a relevant contravention, the Commission may authorise the carrying out of an investigation under this section' (Government of Ireland, 2015). There is a statutory fixed penalty of €200 for incomplete filing of reports by lobbyists. Under Section 18 of the act this penalty can be increased to a class C fine, reaching a maximum of €2,500, or up to two years in prison on conviction for failing to register, providing false information, or obstructing an investigation. In 2022, a total of 468 fixed penalty notices were issued along with 189 notices of potential prosecution and the initiation of three prosecutions for submitting a late return, up from 399, 114 and two respectively in 2021 (SIPO, 2022; 2023).

### *2023 Amendment*

The amended legislation introduces the novel legislative provisions of minor sanction and major sanction in Section 22A, subsection 3(b) (Government of Ireland, 2023). Minor sanctions include a reprimand, caution, or advice from SIPO. Major sanctions constitute prohibition on DPOs from carrying on lobbying, or being employed by, or providing services to, a person carrying on lobbying for one year after leaving their role. A major sanction can include a financial sanction not exceeding €25,000. There is also the sanction of prohibiting a person from registering for up two years, effectively barring them from lobbying. A combination of a financial and temporal sanction is also possible.

However, the idea of civil and administrative penalties was not SIPO's preference (Murray, 2022). 'The commission's view is that it would be more appropriate to maintain a single system of criminal sanctions for all contraventions under the Lobbying Act, with fixed payment notices available as appropriate'. The concern was this sanctions regime would 'give rise to significant operational challenges for the commission and would impose unnecessary burdens' on SIPO's operations (Cassidy, 2022).

This amendment seems to be in direct response to the D'Arcy Affair. As SIPO pointed out in its submission to the first review of the legislation in 2016 'the issue of switching sides is an important one. The perception of a revolving door can serve to undermine public trust in the impartiality of public bodies just as easily as unregistered lobbying' (DPER, 2017). SIPO (2016) went on to say that it was unclear to it why contraventions of section 22(1) of the act were not included as offences. However, this amendment does not impact the CPI index, with the amended legislation also receiving a CPI score of six.

## Revolving door provisions

### *2015 Act*

Part 5, Section 22, subsections 1a and 1b, state 'a person who has been a relevant designated public official shall not – carry on lobbying activities in circumstances to which this section applies, or be employed by, or provide services to, a person carrying on lobbying activities in such circumstances' for one year (Government of Ireland, 2015). These stipulations gave the legislation the maximum two points in the CPI's index (see Appendix A, Question 48). SIPO may give consent to circumvent this cooling-off provision, should a DPO apply for a waiver. There were five waiver applications in 2021, all from special advisers, and none in 2022 (SIPO, 2022, 2023).

***2023 Amendment***

The amended legislation made no changes to the cooling-off period. Speaking to the Joint Committee on Finance, Public Expenditure and Reform, on the Bill in May 2022, John Devitt of Transparency International Ireland said

> We regard a two-year cooling-off period as a minimum. In some cases, there should be a complete ban on former officeholders moving into roles that may pose a conflict of interest or may create the public perception of a conflict of interest.

However, at the same committee meeting SIPO expressed the view that ‘having one year or two years becomes irrelevant if we do not have the teeth to enforce it in first place’ (Cassidy, 2022).

The extant revolving door provision goes further than US federal legislation, in that it prohibits former DPOs from not only lobbying, but also from working for, and being employed by, a lobbyist during the twelve months from when they leave public service. That said, there is a five-year cooling off period at the federal level in Canada via its Lobbying Act 2008 (Government of Canada, 2008).

**Table 2: Summary of changes made to lobbying regulations by the 2023 Amendment**

| | *Changes made by the 2023 Amendment* |
|---|---|
| **Definition of lobbyist** | More comprehensive in defining lobbying activities |
| **Individual registration** | More comprehensive in terms of those who have to register for carrying on lobbying activities |
| **Individual spending disclosure** | No change |
| **Employer spending disclosure** | No change |
| **Electronic filing** | A broader range of actors are now required to register and file electronic returns for carrying on lobbying activities |
| **Public access** | No change |
| **Enforcement** | Minor and major sanctions introduced |
| **Revolving door** | No change |

## Findings

The Regulation of Lobbying Act 2015 and its 2023 amended version constitute important steps in preventing undue influence over public policy. This is crucial, given the general disenchantment with public life and cynicism in relation to politicians that proceeded the introduction of the 2015 legislation (Feeney et al., 2015; Murphy, 2014). This unhappiness was born out of a decade of tribunals of inquiry, allegations of bribery of public representatives by lobbyists and others (Kennedy, 2012; Murphy, 2014), the 2008 collapse of the banks and subsequent bank guarantee, and the following years of troika bailout, austerity, negative equity, high unemployment, and net emigration (O'Rourke & Hogan, 2014).

Overall, the changes made to the lobbying regulations, by the amendment of the 2015 legislation (see Table 2), fail to register on the CPI index, as the original and amended legislation both score thirty-seven points. This CPI score (see Table 3 for synopses), according to Chari et al. (2019), constitutes a medium robustness system, where medium ranges from thirty to fifty-nine points. Hogan and Bitonti (2024) found that when lobbying legislation is amended the regulations tend to become more robust and this is reflected in higher CPI scores – American federal lobbying regulations increased from thirty-six in 1995 to sixty-two in 2007 and Lithuanian regulations increased from forty-four in 2003 to forty-seven in 2021. However, this was not the case in Ireland.

**Table 3: The legislative scores synopsis**

| *Areas of disclosure* | *Maximum CPI scores* | *2015 Act CPI scores* | *2023 (amended) Act CPI scores* |
|---|---|---|---|
| Definition of lobbyist | 7 | 7 | 7 |
| Individual registration | 19 | 10 | 10 |
| Individual spending disclosure | 29 | 0 | 0 |
| Employer spending disclosure | 5 | 0 | 0 |
| Electronic filing | 3 | 2 | 2 |
| Public access (to a registry of lobbyists) | 20 | 10 | 10 |
| Enforcement | 15 | 6 | 6 |
| Revolving door provisions | 2 | 2 | 2 |
| | **100** | **37** | **37** |
| **Regulatory environment** | | **Medium robustness** | **Medium robustness** |

*Source:* www.publicintegrity.org/2003/05/15/5914/methodology. See Appendix A for detailed calculations.

Changes were made to lobbying regulations to address issues arising out of the D'Arcy Affair. But, the CPI index was not sufficiently nuanced to capture the nature of these changes as they were designed to enhance regulations that in many cases were already captured by the index, and where the index did not provide criteria for enhanced regulations, or stronger penalties. This was despite Chari et al. (2019) finding the CPI index to have good content validation compared to the other indices. It is important to recognise that, when designing an index to capture the essential elements of a lobbying law, there is inevitably going to be a trade-off between parsimony and comprehensiveness to ensure it has sufficient content validity without becoming overly cumbersome (Adcock & Collier, 2001).

For instance, extending the regulations in the amended act to include bodies with no employees, which primarily exist to represent the interests of their members, or advocate for particular issues, and requiring the name of every person who is a member of such a body comes under the definition of a lobbyist in the CPI index, for which seven points are available (see Appendix A). However, the original act acquired all seven points on account of the comprehensive nature of its Section 5. It might be possible in future to add more questions to the forty-eight already in the index, to make it more comprehensive, but this will have to be undertaken judiciously so as not to render the index unwieldy.

The new requirement, in Section 11, subsection 1(b), of the 2023 Amendment, that people applying for inclusion in the register will have to provide the address where they conduct their main activities, in addition to their business, is again a development that cannot be captured in the CPI index (Government of Ireland, 2023). The amended legislation is designed to improve compliance with the cooling-off provisions in the 2015 Act, while not extending those provisions. The result is that the amended legislation continues to acquire the two available points under the CPI index's revolving door provisions (see Appendix A, Question 48). While the new sanctions regime, encompassing investigations and civil/administrative sanctions, with penalties of up to €25,000 and prohibitions from lobbying of up to two years, is to be welcomed, these changes are not something the CPI index is capable of capturing. The 2023 amendments would constitute a first order policy change according to Hall (1993) – mostly alterations to the settings of the policy instrument – as opposed to alteration of the policy instrument or policy goal.

The 2023 amended legislation is more comprehensive than the original 2015 Act, irrespective of the CPI index. That aside, the reforms introduced could have been stronger. For instance, the cooling-off period could have been extended to two years and financial reporting, in the form of individual and employer spending disclosures, could have been introduced. The legislation in 2015, and as amended in 2023, contains six of the seven ideal components for a jurisdiction considered a medium-robustness system (see Table 4) according to Chari et al. (2019).

**Table 4: Characteristics of medium-robustness systems**

| *Characteristics* | *2015 Act* | *2023 Amendment* |
|---|---|---|
| Legislative and executive lobbyists | ✓ | ✓ |
| Disclosure of individual spending | ✗ | ✗ |
| No employer spending reports | ✓ | ✓ |
| Online registration | ✓ | ✓ |
| Register accessible to all | ✓ | ✓ |
| Mandatory reviews/audits | ✓ | ✓ |
| Cooling-off period | ✓ | ✓ |

*Source:* Chari et al. (2019, p. 180).

The findings place Irish regulations at the lower end of the list of medium robust jurisdictions (thirty to fifty-nine points). Of the sixteen national jurisdictions examined by Chari et al. (2019) and Hogan and Bitonti (2024), a CPI score of thirty-seven locates Ireland between Taiwan and the UK (see Table 5).

**Table 5: National jurisdictions' CPI scores**

| *Jurisdiction* | *Score* | *Jurisdiction* | *Score* |
|---|---|---|---|
| US Federal (2007) | 62 | UK (2014) | 33 |
| Canada Federal (2008) | 50 | Australia (2008) | 33 |
| Slovenia (2010) | 47 | Austria (2012) | 32 |
| Lithuania (2021) | 47 | Mexico (2010) | 29 |
| Chile (2014) | 42 | Israel (2008) | 28 |
| France (2016) | 42 | Poland (2005) | 27 |
| Taiwan (2007) | 38 | Netherlands (2022) | 24 |
| Ireland (2023) | 37 | Germany (1951) | 17 |

*Source:* Chari et al. (2019); Hogan & Bitonti (2024).

The 2023 Amendment, despite the CPI score remaining static, shows additional steps towards a more transparent lobbying environment.

Utilising the data in Chari et al. (2019) and Hogan and Bitonti (2024), an average CPI score of 36.75 for the sixteen regulated national jurisdictions was determined (see Table 6). The table shows that Irish regulations are 0.25 points above the mean, and 1 point above the median, of those jurisdictions.

**Table 6: Mean, median and standard deviation for the sixteen countries with lobbying regulations in place at the national level**

| | |
|---|---|
| Valid | 16 |
| Mean | 36.75 |
| Median | 35 |
| Standard deviation | 11.3 |
| Range | 45 |
| Maximum | 17 |
| Minimum | 62 |

*Source:* Chari et al. (2019); Hogan & Bitonti (2024).

## Conclusion

This study used the CPI's Hired Guns Index to examine lobbying regulations in Ireland. Taking Chari et al.'s (2019) threefold classification of regulatory systems, the CPI scores assigned to the Irish legislation in 2015 and 2023 of thirty-seven make it a medium robust regulatory system. The fact that the CPI score did not change conceals meaningful regulatory reforms introduced in response to the 2020 D'Arcy Affair. Whereas the first and second reviews of the 2015 Act did not recommend changes, as elsewhere, it was ultimately a scandal that impelled the process.

Overall, the legislation does a fairly comprehensive job in defining lobbying, and by extension, what lobbyists do. It asks for the subject matter being lobbied on, the results being sought, the exact type of lobbying engaged in, and the name of the DPO who was lobbied. This law provides for a cooling-off period of one year – a contentious issue, in that a two-year period was suggested in the Fine Gael and Labour Party's 2011 Programme for Government[2] and has more recently been recommended by Transparency International Ireland.

An omission from the amended legislation is the requirement of financial disclosure – ensuring the legislation cannot reach the level of

[2] https://www.socialjustice.ie/system/files/file-uploads/2021-09/2011-03-06-programmeforgovernment2011-2016.pdf

high robustness regulations. After all, as Murphy et al. (2011) point out, regulating lobbying aims to prevent the abuse of a dominant financial position to achieve excessive influence in a polity. In the US, France, Austria, and Slovenia, financial disclosure is required by lobbying regulations, allowing the public to know what is spent on lobbying efforts.

While the 2015 and 2023 regulations have the same CPI scores, the amended legislation takes a harder line on the lobbying of specific actors in order to improve transparency and accountability. To be praised is the introduction of sanctions of up to €25,000, and/or a two-year ban from lobbying, for DPOs who breach the twelve-month cooling-off period. Although the CPI index has the highest content validity of the indices used to measure lobbying regulations and best captures the robustness of lobbying legislation (Chari et al., 2019), in this case, it did not identify the changes made to Irish regulations. Additional questions may need to be added to the CPI index to ensure that in future it can capture more subtle changes to lobbying regulations.

The 2023 Amendment builds upon the 2015 Act. While the CPI's Hired Guns Index does not capture the amendments made, in-depth examination of the legislation shows that those changes involved closing off certain loopholes and recognition of the need to provide SIPO with more and stronger enforcement capabilities. Nine years into regulating the lobbying industry here, the Irish polity is still getting used to the concept, as is SIPO in the context of an expanding administrative remit and resource constraints.

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## Appendix A:

### Centre for Public Integrity's Hired Guns answers

| | | *2015 answer* | *2015 point value* | *2023 answer* | *2023 point value* |
|---|---|---|---|---|---|
| **Definition of lobbyist** | | | | | |
| 1 | In addition to legislative lobbyists, does the definition recognise executive branch lobbyists? | Yes | 3 | Yes | 3 |
| 2 | How much does an individual have to make/spend to qualify as a lobbyist or to prompt registration as a lobbyist, according to the definition? | 0 | 4 | 0 | 4 |
| **Individual registration** | | | | | |
| 3 | Is a lobbyist required to file a registration form? | Yes | 3 | Yes | 3 |
| 4 | How many days can lobbying take place before registration is required? | 16+ | 0 | 16+ | 0 |
| 5 | Is subject matter or bill number to be addressed by a lobbyist required on registration forms? | Bill | 3 | Bill | 3 |
| 6 | How often is registration by a lobbyist required? | Every 4 months | 2 | Every 4 months | 2 |
| 7 | Within how many days must a lobbyist notify the oversight agency of changes in registration? | 16+ days | 0 | 16+ days | 0 |
| 8 | Is a lobbyist required to submit a photograph with registration? | No | 0 | No | 0 |
| 9 | Is a lobbyist required to identify by name each of employer on the registration form? | Yes | 1 | Yes | 1 |
| 10 | Is a lobbyist required to clearly identify on the registration form any additional information about the type of their lobbying work (i.e., compensated or non-compensated/contract or salaried)? | Yes | 1 | Yes | 1 |

**Centre for Public Integrity's Hired Guns answers (Contd.)**

| | | *2015 answer* | *2015 point value* | *2023 answer* | *2023 point value* |
|---|---|---|---|---|---|
| **Individual spending disclosure** | | | | | |
| 11 | Is a lobbyist required to file a spending report? | No | 0 | No | 0 |
| 12 | How often during each two-year cycle is a lobbyist required to report spending? | N/A | 0 | N/A | 0 |
| 13 | Is compensation/salary required to be reported by a lobbyist on spending reports? | N/A | 0 | N/A | 0 |
| 14 | Are summaries (totals) of spending classified by category types (i.e. gifts, entertainment, postage, etc.)? | N/A | 0 | N/A | 0 |
| 15 | What spending must be itemised? | N/A | 0 | N/A | 0 |
| 16 | Is the lobbyist employer/principal on whose behalf the itemised expenditure was made required to be identified? | N/A | 0 | N/A | 0 |
| 17 | Is the recipient of the itemised expenditure required to be identified? | N/A | 0 | N/A | 0 |
| 18 | Is the date of the itemised expenditure required to be reported? | N/A | 0 | N/A | 0 |
| 19 | Is a description of the itemised expenditure required to be reported? | N/A | 0 | N/A | 0 |
| 20 | Is subject matter or bill number to be addressed by a lobbyist required on spending reports? | N/A | 0 | N/A | 0 |
| 21 | Is spending on household members of public officials by a lobbyist required to be reported? | N/A | 0 | N/A | 0 |
| 22 | Is a lobbyist required to disclose direct business associations with public officials, candidates or members of their households? | N/A | 0 | N/A | 0 |
| 23 | What is the statutory provision for a lobbyist giving/reporting gifts? | N/A | 0 | N/A | 0 |

**Centre for Public Integrity's Hired Guns answers (Contd.)**

| | | *2015 answer* | *2015 point value* | *2023 answer* | *2023 point value* |
|---|---|---|---|---|---|
| 24 | What is the statutory provision for a lobbyist giving/reporting campaign contributions? | N/A | 0 | N/A | 0 |
| 25 | Is a lobbyist who has done no spending during a filing period required to make a report of no activity? | N/A | 0 | N/A | 0 |
| **Employer spending disclosure** | | | | | |
| 26 | Is an employer/principal of a lobbyist required to file a spending report? | No | 0 | No | 0 |
| 27 | Is compensation/salary required to be reported on employer/ principal spending reports? | No | 0 | No | 0 |
| **Electronic filing** | | | | | |
| 28 | Does the oversight agency provide lobbyists/employers with electronic/online registration? | Yes | 1 | Yes | 1 |
| 29 | Does the oversight agency provide lobbyists/employers with electronic/online spending reporting? | N/A | 0 | N/A | 0 |
| 30 | Does the oversight agency provide training about how to file registrations/spending reports electronically? | Yes | 1 | Yes | 1 |
| **Public access** | | | | | |
| 31 | Location/format of registration or active lobbyist directory: | Download | 4 | Download | 4 |
| 31 | Location/format of spending reports: | N/A | 0 | N/A | 0 |
| 33 | Cost of copies: | Free | 1 | Free | 1 |
| 34 | Are sample registration forms/ spending reports available on the Web? | Yes | 1 | Yes | 1 |

**Centre for Public Integrity's Hired Guns answers (Contd.)**

| | | *2015 answer* | *2015 point value* | *2023 answer* | *2023 point value* |
|---|---|---|---|---|---|
| 35 | Does the agency provide an N/A overall lobbying spending total by year? | 0 | N/A | 0 | |
| 36 | Does the agency provide an overall lobbying spending total by spending report deadlines? | N/A | 0 | N/A | 0 |
| 37 | Does the agency provide an overall lobbying spending total by industries lobbyists represent? | N/A | 0 | N/A | 0 |
| 38 | How often are lobby lists updated? | Daily | 4 | Daily | 4 |
| **Enforcement** | | | | | |
| 39 | Does the agency have statutory auditing authority? | Yes | 2 | Yes | 2 |
| 40 | Does the agency conduct mandatory reviews or audits? | Yes | 2 | Yes | 2 |
| 41 | Is there a statutory penalty for late filing of lobby registration form? | Yes | 1 | Yes | 1 |
| 42 | Is there a statutory penalty for late filing of lobby spending report? | N/A | 0 | N/A | 0 |
| 43 | When was a penalty for late filing of a lobby spending report last levied? | N/A | 0 | N/A | 0 |
| 44 | Is there a statutory penalty for incomplete filing of a lobby registration form? | Yes | 1 | Yes | 1 |
| 45 | Is there a statutory penalty for incomplete filing of a lobby spending report? | No | 0 | No | 0 |
| 46 | When was a penalty for incomplete filing of a lobby spending report last levied? | N/A | 0 | N/A | 0 |
| 47 | Does the state publish a list of delinquent filers either on the Web or in a printed document? | No | 0 | No | 0 |

**Centre for Public Integrity's Hired Guns answers (Contd.)**

| | | *2015 answer* | *2015 point value* | *2023 answer* | *2023 point value* |
|---|---|---|---|---|---|
| **Revolving door provision** | | | | | |
| 48 | Is there a 'cooling off' period required before legislators can register as lobbyists? | Yes | 2 | Yes | 2 |
| | | | **37** | | **37** |