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## Transparency, Transparency: Comparing the New Lobbying Legislation in Ireland and the UK

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# **Transparency! Transparency? Comparing the new lobbying legislation in Ireland and the UK**

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## **Abstract**

This paper analyses the strength of the new laws regulating lobbying in Ireland and the United Kingdom (UK). This examination was conducted using the Centre for Public Integrity's (CPI) 'Hired Guns' quantitative method for assessing the stringency of lobbying legislation. These laws were introduced, after years of unfulfilled promises and scandals, in an effort to increase the public's trust in their representative institutions. We find that the Irish Regulation of Lobbying Act 2015 offers a slightly higher level of transparency than the UK's Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014. Additionally, using the CPI's index allows our findings to be compared with those from other jurisdictions around the world with lobbying regulations in place.

**Keywords:** Lobbying; regulation; Ireland, legislation, CPI; United Kingdom

## **Introduction**

Lobbying is considered an essential component in the creation of public policy by policy makers, lobbyists, academics and those in favour of a more open and democratic process (Chari *et al.*, 2007: 422). Professional lobbyists, interest groups, charities, and private firms are all capable of providing advice on policy matters that decision makers may not be capable of otherwise addressing, thereby helping to develop better policy outcomes. As Holman and Luneburg (2012: 74) argue “lobbying is absolutely essential to the success of representative government.”

Unfortunately, the practice of lobbying and lobbyists attract negative connotations thanks, in part, to sensational scandals highlighting deeply embedded relationships between lobbyists and policy makers (Leech, 2013). These scandals capture the public’s attention and create distrust between the public and policy makers. Scandals have helped foster a perception that lobbying is influence peddling in which self-serving entities exercise greater than normal sway over policy outputs (Holman and Luneburg, 2012; Schubert *et al.*, 2016). Because of this negative perception, demand has grown for regulations addressing the practice of lobbying and lobbyists.

The purpose of regulating lobbyists is to create a level of transparency that allows the public greater opportunity to hold policy makers to account (Murphy, 2014). Brinig *et al.* (1993: 377) highlight a public interest view that legislative regulation of lobbying “would take more account of the general welfare and less account of private interests”. Currently 17 countries regulate their lobbying industries, but many of these only introduced regulations after the turn of the century (Chari *et al.*, 2010; Holman and Luneburg, 2012; OECD, 2014, Transparency International, 2015a). In federations, such as the United States (US), Canada and Australia, there are lobbying regulations in place at the national, state and provincial levels.

This paper is the first to compare the strengths of the new lobbying regulations in Ireland and the United Kingdom (UK) using the Centre for Public Integrity's (CPI) index, as well as placing the results within the broader context of global lobbying regulations, as set out by Chari *et al.*, (2010). The Regulation of Lobbying Act 2015 was Ireland's first attempt to regulate lobbying, despite the various draft bills put forward from the 1990s onward. In the UK, efforts at regulating lobbying had for many years focused on self-regulation by public affairs bodies employing codes of conduct. However, these efforts left a lot to be desired (Nolan Committee, 1995). Eventually, the UK introduced the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014.

This paper initially discusses the literature on lobbying regulation and transparency. Following this, we set out the methodology, trace the development of the lobbying laws in Ireland and the UK, and then examine those laws using the CPI's index, comparing their strengths and weaknesses. The conclusion highlights the findings, and the significance and limitations of the paper.

### **Lobbying and its regulation**

Defining what exactly is meant by the word "lobbying" has proven problematic (Chari *et al.*, 2010: 3; Greenwood and Thomas, 1998; Nownes, 2006: 5; McGrath, 2009a: 107; Scott, 2015). This has rendered definitions of lobbying for legislative purposes under-inclusive, inappropriate, or vague. Thus, "legislative attempts to regulate [lobbying] have foundered on definitional terms" (Greenwood and Thomas, 1998: 489). Examples include the European Union (EU) legislation proposed by MEP Marc Galle which foundered on the difficulty of defining both "lobbying" and "lobbyists". Other examples include the US Federal Regulation of Lobbying Act (1946) which failed to encompass all forms of lobbying

(Greenwood and Thomas, 1998; Holman, 2009). By the 1990s this had resulted in many lobbyists in Washington, DC, operating under the radar (Wolpe and Levine, 1996).

Thus, a clear definition of lobbying would help (OECD, 2009). For instance, Fouloy (2005) defined lobbying as “influencing political decisions via lobbyists on behalf of another person or special interest group”. However, Hogan *et al.*, (2011: 3) recognised that many definitions, such as this one, tend to be too vague for legislative purposes. A more detailed definition might be “lobbying is an activity of individuals or groups, each with varying and specific interests, attempting to influence decisions taken at a political level” (Chari *et al.*, 2010: 4). However, this may be perceived as interfering with citizens’ rights to meet with their representatives. In general, with more detailed definitions, it has been difficult to form exclusionary definitions to both properly legislate whilst at the same time protecting the individual’s freedom to petition (Greenwood and Thomas, 1998). With the US Lobbying Disclosure Act of 1995 an effort was made to provide a more objective definition of a lobbyist than set out in the earlier 1946 legislation referred to above:

The term "lobbyist" means any individual who is employed or retained by a client for financial or other compensation for services that include more than one lobbying contact, other than an individual whose lobbying activities constitute less than 20 percent of the time engaged in the services provided by such individual to that client over a six month period. (Government of the US, 1995)

Up to that point, lobbyists active in Washington, DC had been free to subjectively determine their principle purpose and most did not select lobbying (Wolpe and Levine, 1996). Overall,

the legal definition of lobbying is core to any lobbying legislation and “delineates who is required to register and disclose information” (Opheim, 1991: 407).

Greenwood and Thomas (1998: 493) define regulation as “the control, direction or adjustment of a private or quasi private activity for the purpose of some public benefit”. Moran (2003) sees regulation as an act of steering, hinting that if regulation is introduced it will be directed in a way to give a set and defined result. “In contrast to many other forms of business, the lobbying industry remains largely unregulated with the majority of jurisdictions trusting the industry to self-regulate” (Hogan *et al.*, 2011: 36). Such non-legislative rules act as guidelines, however there are no legal repercussions should actors fail to abide (Asimow, 1985). Chari *et al.*, (2010: 4) see lobbying regulation as the “idea that political systems have established ‘rules’ which lobby groups must follow when trying to influence government or public policy outputs”. These regulations should be codified formal rules passed by parliaments, and enforceable by law. Should a lobbyist fail to comply with the rules, there should be an appropriate punishment. A lobbyist register should also be available to all citizens. The OECD (2009: 4) argues that the overall objective of lobbying regulation is the “imposition of some degree of transparency” as well as a level of ethical standards and behaviours which “lobbyists are expected to comply with”.

It is imperative that lobbying regulations do not prevent citizens from approaching their representatives (OECD, 2009). But, whether a person is representing a charity, or a business, if they interact and communicate with a government, or public official, they are engaged, however ad hoc, in lobbying (McGrath, 2009a, p. 107). However, in some jurisdictions, for example under the US Lobbying Disclosure Act 1995, if individuals engaging in lobbying activities do not meet the financial, or time, thresholds for mandatory registration, then they do not have to register.

### Rationale for lobbying regulations

Proponents of lobbying regulations argue that they result in transparency in decision making, increased accountability of public officials and better decisions through discussion and reflection (Fahey, 2016). “Transparency is the ease with which the public can monitor the government with respect to its commitments” (Broz, 2002: 861). If something is more transparent, the public will be able to see how decisions are made. 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 “product of an exchange of reasonable arguments between equal individuals” (Crespy, 2014: 3). Significantly, Chari *et al.*, (2010: 129) note “there is no evidence to suggest that any lobbying legislation has inhibited ordinary citizens from going to see their representatives about ordinary issues.”

### Rationale against lobbying regulations

Regulations in the form of “increased registration requirements would be especially onerous for small groups and organisations” (Ainsworth, 1993: 53). In Denmark and Germany, for instance, public officials see the involvement of interest groups, associations or non-professional lobbyists such as “workers, farmers and industry as a legitimate part of the political system” (Rechtman and Larsen-Ledet, 1998: 583). In Scotland, Dinan (2006) found that some lobbyists (but certainly not all – see Chari *et al.*, (2010)) opposed regulations on the grounds that increased transparency infringes on a firm’s ability to operate effectively in privacy. Similarly, Stasavage (2004), looking at international organisations, argues that a fishbowl policy could impede effective problem solving due to officials being less inclined to withdraw from initial positions when confronted with persuasive counter-arguments. Brandt

and Svendsen (2016) point out that there is also the cost to the state of regulating the lobbying industry. However, Chari *et al.*, (2010: 130), when examining lobbying regulations in North America and Europe, found that improvements in information technology allowed lobbyists to register online at no cost, and permitted governments (both national and sub-national) to maintain registers at minimal cost.

## **Methodology**

We wish to assess the strength of the legislation regulating lobbying in Ireland and the UK. These jurisdictions were selected due to their recent introduction of lobbying legislation, 2014 in the case of the UK and 2015 in Ireland, along with their similar parliamentary and cabinet structures. Ireland modelled its cabinet structure upon that in the UK in its 1937 constitution. There is also the fact that despite deepening industrial connections with the US and monetary and political links with the European Union (EU), Ireland's relationship with the UK is still important in terms of geography, language, labour market and trade flows (O'Hagan and Newman, 2014). Historically, the economies of both countries were closely connected.

There are four methods for the quantitative analysis of legislation regulating lobbying. These are, Opheim's (1991) stringency of US state lobby regulations; Brinig *et al*'s, (1993) ratings for the restrictiveness of US state lobbying laws; the CPI's (2003) Hired Guns Method, which looked at US state and federal lobbying regulations; and Transparency International's (2015a) methodology for comparing lobbying regulations in Europe.<sup>1</sup>

The first two approaches have been applied exclusively to American states' lobbying regulations, and are somewhat out of date, having been developed prior to the proliferation of

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<sup>1</sup> [http://media.transparency.org/eurlobby/2015\\_LobbyingEurope\\_Methodology\\_EN.pdf](http://media.transparency.org/eurlobby/2015_LobbyingEurope_Methodology_EN.pdf)



internet usage. The fourth approach has only been applied to European jurisdictions and, as a result, is like its earlier American counterparts - narrowly focused geographically.

However, the CPI's Hired Guns method has been utilised in analysing and comparing lobbying regulations, in terms of transparency and accountability, in the US (Thomas et al., 2008) and in various national and subnational jurisdictions across the world (Australia, Canada, Germany, Israel, Lithuania, Poland, Taiwan, and the European Union etc.), thus providing us with a wide range of comparators (Chari *et al.*, 2010; Crepaz and Chari, 2014; Sgueo, 2015; Veksler, 2016). The CPI is a Washington, DC, based nonpartisan, non-profit investigative news organisation, with a focus on transparency, amongst other things. Although the CPI's method was designed for examining US lobbying regulations, this did not render it inapplicable elsewhere. This was because the approach is capable of considering the different standards in lobbying regulations across the US – making it analytically encompassing. According to Crepaz and Chari (2017) the CPI's 'Hired Guns' method, compared to the three other methods, best captures the robustness of the legislation examined.

The 'Hired Guns' method is a comprehensive ranking system that assigns a score to each jurisdiction with lobbying legislation, based upon a survey of 48 questions regarding the details and components of that legislation (Chari, *et al.*, 2010: 100). "These questions address eight key areas of disclosure for lobbyists and the organisations that put them to work" (see Appendix) (CPI, 2003). The maximum possible score is 100. This methodology, with 18 of its questions focused on financial disclosures, even encompasses such issues as gift giving (questions 14 and 23) and campaign contributions (question 24) by lobbyists. Thus, the methodology places significant emphasis on financial disclosures, which are a requirement in some US states and at the federal level; at the EU level, in France, Austria,

Slovenia, the Philippines, and to some extent at the Canadian federal and provincial levels (see Chari et al, 2010; Crepaz, 2016; Crepaz and Chari, 2017).

**Table 1:** Hired guns method’s 8 areas of disclosure and maximum points

<b>Areas of disclosure</b>	<b>Maximum CPI score</b>
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
<b>Total score possible</b>	<b>100</b>

Source: <https://www.publicintegrity.org/2003/05/15/5914/methodology>

The findings can be categorised according to Chari *et al.*’s (2007) typology of lobbying regulatory environments – low, medium or highly regulated. 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 evolution of lobbying regulations in Ireland and the UK**

### Ireland

The issue of lobbying regulation rose to prominence when the Tribunal of Inquiry Into Certain Planning Matters and Payments, known as the Mahon Tribunal (1997-2012), (the longest and most expensive public inquiry in Irish history, costing between €250m and

€300m) alleged the bribery of public representatives by lobbyists (Kennedy, 2012). The most notorious lobbyist was Frank Dunlop, a former journalist and government press secretary, who was imprisoned for bribing county councillors on matters to do with land rezoning (McGrath, 2009a). Five county councillors were arrested and charged with receiving corrupt payments in 2010 (Murphy *et al.*, 2011). Senior politicians, such as Ray Burke, a former Minister for Justice, were also found to have received corrupt payments from a succession of builders and businessmen and made decisions that were deemed not in the public's interest (Murphy, 2014). Also, over the years, policy decisions on banking were taken in secret after lobbying by the banks (Murphy *et al.*, 2011). The most notorious case was when, on the night of 29 September 2008, the government provided a full guarantee for all monies lent by Irish banks (O'Rourke and Hogan, 2012).

In an environment where the public is concerned “about the integrity of government decision making, measures to ensure transparency and accountability become essential” (Bertók, 2008: 18). The Labour Party attempted to introduce lobbying legislation on a number of occasions after 1999. These efforts were innovative in seeking to define lobbyists, the practice of lobbying, and the targets of lobbyists, in order to minimize loopholes (McGrath, 2009b). The 1999 Bill also sought to include grassroots lobbying. “This appears to have been the first legislative attempt anywhere in the world which would have made the process of grassroots lobbying transparent to policymakers and the general public” (McGrath, 2009b: 259-60).

After the 2007 general election a register of lobbyists was mentioned in the Green Party's programme for government. In 2010, the main opposition party, Fine Gael, as part of its reform agenda, set out its registration of lobbyists bill. Murphy *et al.*, (2011) compared this bill with the Labour Party's revised 2008 bill, using the CPI's Hired Guns Method, and found that both would, if enacted, result in Ireland being rated as a low regulation

jurisdiction, according to Chari et al's (2010) criteria. The Fine Gael bill scored just 17 points, while the Labour bill scored 29. Both bills ignored cooling off periods – the interval during which former legislators are prohibited from engaging in lobbying activities.

The 31<sup>st</sup> Dáil, convened in March 2011, was led by a Fine Gael/Labour coalition with the largest majority in the country's history. A portion of this government's mandate revolved around reforms to the Oireachtas (Parliament) and Dáil (Lower House), one of which was the introduction of a lobbying register (McGrath, 2011). Brendan Howlin, Minister for Public Expenditure and Reform, acting as a political entrepreneur (Hogan and Feeney, 2012), led this drive. After “dialogue and engagement between Government and all sectors of society”<sup>2</sup>, the Regulation of Lobbying Bill was published on 20 June 2014, and signed into law by the president on 11 March 2015.

### United Kingdom

Lobbying, and its regulation, has been the subject of various parliamentary inquiries in the UK over the years. One of the most famous of these inquiries was conducted by the Committee on Standards in Public Life in 1995, often referred to as the Nolan enquiry, after its then chair Lord Michael Nolan (Zetter, 2014). The topic rose to prominence due to the access and influence legislators allowed lobbyists, such as permitting lobbyists to use Westminster function rooms for meetings. In 1992, the Select Committee on Members Interests highlighted that those members who hold consultancy positions with private organisations should ensure they do not allow their positions to be used improperly (Leach et al., 2007). Despite this, the response was that unless “something was expressly forbidden, it was possibly acceptable” (Jordan, 1998: 528). The Nolan Committee highlighted that without

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<sup>2</sup> <http://www.per.gov.ie/en/regulation-of-lobbying/>

outside employment “fulltime legislators would be less well informed and hence more reliant on lobbyists” (Jordan, 1998: 529).

In 1994, lobbying firms established the Association of Professional Political Consultants (APPC) in response to the ‘cash for questions’ scandal involving prominent lobbyist Ian Greer (Pieczka, 2006). Whilst initially encouraging legislative action, the APPC instead opted for a self-regulating scheme. The APPC required its member firms to adhere to a code of conduct, furthermore it made available, via the internet, a list of its member firms and a register of their staff and clients, as well as the minutes of its regular meetings (McGrath, 2009c; OECD, 2012). However, these provisions were ultimately found to lack enforceability and could not prevent further scandals.

In 2009, the House of Commons Public Administration Select Committee published a report “calling for a statutory register of lobbying activity to bring greater transparency to the dealings between Whitehall decision makers and outside interests” (Gay *et al.*, 2012: 1). The British government rejected this recommendation, instead favouring more time for the lobbying industry to self-regulate. But, controversies continued, and the government eventually decided to pursue the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014.

However, according to Cave and Rowell (2015: 267) “‘a dog’s breakfast’ is how one MP described the ideas the Coalition government came up with to shine a light on lobbying.” The executive director of Transparency International UK also expressed the opinion that the legislation was poor, but he was not sure if this was due to hasty drafting or deliberate muddling (Barrington, 2014). Cave and Rowell (2015) blame the problems with the legislation on the campaign waged against it by the commercial lobbyists themselves – arguing to politicians that there was no problem to solve. Zetter (2014), himself a lobbyist, comments that the legislation was virtually meaningless.

## **Analysis and comparison of the Irish and UK lobbying laws using the CPI's index**

Here we will examine and compare, using the Hired Guns Method, Ireland's Regulation of Lobbying Act 2015 and the UK's Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014. The preamble to the Irish law states that it is:

An Act to provide for establishing and maintaining a register of persons who carry on lobbying activities; to provide for a code of conduct relating to carrying on lobbying activities; to impose restrictions on involvement in lobbying by certain former designated public officials; to amend the Ethics in Public Office Act 1995; and to provide for related matters. (Government of Ireland, 2015)

Thus, the legislation is seeking to achieve a number of objectives simultaneously. The preamble to the UK's lobbying law states it is "an Act to make provision for establishing and maintaining a register of persons carrying on the business of consultant lobbying and to require those persons to be entered in the register" (Government of the UK, 2014). At first glance, this suggests that the UK law is more modest in its aims than the Irish legislation.

The texts of both Acts are readily available online at: [www.irishstatutebook.ie](http://www.irishstatutebook.ie) and [www.legislation.gov.uk](http://www.legislation.gov.uk). Furthermore, both laws resulted in the creation of registers of lobbyists that provide extra information, and supplementary notes, to aid in understanding the laws. These registers can be found at the websites: [www.lobbying.ie](http://www.lobbying.ie) and [www.Registrarofconsultantlobbyists.org.uk](http://www.Registrarofconsultantlobbyists.org.uk).

The core concept addressed here is measuring the rigour of the legislation and some elements of its implementation. The method employed, the CPI's index, involves allocating a

score to the legislative provisions. These scores will allow ranking and comparison on a global scale, permitting us to categorise the legislation according to Chari *et al.*, (2010) typology of strong, medium or weak jurisdictions. This will allow us to assess the overall comprehensiveness of each Act. Finally, we discuss the similarities and differences of the laws.

### **Definition of Lobbyist**

The Irish Act in section 5, subsections 1-4, seeks to regulate lobbying, which it assumes can be performed by anyone, and does not define a lobbyist (Government of Ireland, 2015). The definition of lobbying takes into account paid lobbying, and volunteers. Furthermore, it recognises in-house and professional lobbying, as well as representational groups such as trade unions.

Despite the absence of a definition of a lobbyist, the definition of lobbying is so comprehensive, by addressing executive and legislative lobbyists, by detailing designated public officials (DPO) - government ministers and ministers of state, and members of the parliament - that would be the targets of lobbyists, that the Irish Act receives a CPI score of 7 (see Appendix). Furthermore, under section 5, subsection 8 of the Act, the minister for Public Expenditure and Reform can designate prescribed office holders, which may include high ranking civil service roles. “The Minister 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). A list of these office holders is published on departmental websites.

The British Act seeks to regulate ‘consultant lobbying’ and ‘consultant lobbyists’. Part 1, section 2, subsection 1 of the Act states “a person carries on the business of consultant lobbying if—(a) in the course of a business and in return for payment, the person makes

communications within subsection (3) on behalf of another person or persons” (Government of the UK, 2014). This subsection, along with section 2, subsection 3 suggests that the definition of consultant lobbyist only applies to those who act as full-time lobbyists and seek to communicate with ministers, or departmental permanent secretaries, for third parties (Hine and Peele, 2016). The lobbying of ordinary members of the House of Commons, or House of Lords, and local councillors, remains unregulated. This definition excludes in-house lobbyists, as lobbying may not be a core part of a business’s activities, particularly for many large firms (Baggott, 2015). We have assigned a CPI score of 4 points to this part of the legislation (see Appendix). Interestingly, the definition of lobbying in the House of Commons’ Code of Conduct encompasses a wider array of public office holders than the lobbying law.

### **Individual Registration**

In terms of individual registration, the Irish Act scores 10 from the maximum 19 points available (see Appendix). Strengths of the legislation include the need for individuals and groups to register if they engage in relevant communication with a DPO. While legislation elsewhere, as in the US, has held that a person, or group, would only have to register if they lobbied for more than a set amount of time, the Irish Act has no such requirement and 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). A lobbyist can delay registering for up to 21 days after the relevant four month period. Furthermore, it is not required to update registration information until that relevant date of a given period. In section 12, subsection 5, the legislation also requires lobbyists to identify, by name, each of their employers.



The UK Act requires individual registration, however if the person is an employee of a lobbying firm, they themselves do not have to register. Part 1, section 1, subsection 1 states “A person must not carry on the business of consultant lobbying unless the person is entered in the register of consultant lobbyists” (Government of the UK, 2014). However, schedule 1, part 1, section 1, subsection 4 provides that “an individual does not carry on the business of consultant lobbying by reason of making communications as an employee in the course of a business carried on by the individual’s employer” (Government of the UK, 2014).

Furthermore, if an individual owns a lobbying firm they can register as a company and not as an individual. While registration is required quarterly, this must take place prior to lobbying, which is somewhat different from Ireland. But, there is no requirement for the subject matter, or bill number, to be included upon registration. Registration details have to be updated within two weeks after the end of a given quarter. As with the Irish Act, a registrant is not required to submit photos. In this section, we have assigned a score of 11 points to the British legislation (see Appendix).

### **Individual and Employer spending disclosure**

As with a lot of medium regulatory environments, as defined by Chari *et al.* (2010), both Acts place no requirements on lobbyists, or their employers, to disclose expenditures in compensation, gifts, entertainment, nor the level of ‘financial effort’ dedicated to a given lobbying activity (see Appendix). Consequently, the legislation in both jurisdictions scores no points under these headings – meaning all 18 questions relating to financial disclosures are unaddressed. This is a clear deficiency in the legislation in comparison to that found in the US, where financial disclosures are often considered important and has resulted in most US state legislation achieving higher CPI scores than found elsewhere in the world.

As Murphy et al. (2011: 117) point out, “registering lobbyists is not about regulating speech, but about preventing undue influence, including abuse of dominant financial position of 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: 200). Consequently, without financial disclosures being a requirement of the Irish or British laws – a failure in terms of ensuring that the system is as transparent as possible – this aspect of lobbying will continue to pass under the radar in both countries.

### **Electronic filing**

In Ireland, the oversight agency, the Register of Lobbying, part of the Standards in Public Office Commission (SIPO), provides lobbyists with a way of registering online at <https://www.lobbying.ie/umbraco/Surface/AccountSurface/Register> that is straightforward, and free. This is supported by guided online walkthroughs via YouTube.com which provides details on how to register and file reports.<sup>3</sup> The Irish Act gains 2 points in this section of the CPI scoring template (see Appendix).

In the UK, the website, [www.registerofconsultantlobbyists.force.com/CLR\\_Login\\_Page](http://www.registerofconsultantlobbyists.force.com/CLR_Login_Page) was set up for electronic registration, which scores 2 points (see Appendix). Interestingly, as far as the user experience goes, it is somewhat limited, especially in comparison to the voluntary websites that have been set up by the Chartered Institute of Public Relations (CIPR) and the online registration website found at [lobbying-register.uk](http://lobbying-register.uk). These publish slightly more information

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<sup>3</sup> <https://www.youtube.com/channel/UCYApbhCLBxLifsZF4Qre8oQ>

(including lists of staff names) than the official legislative register and have over 5 times more lobbyists' registrations than the official register.

As of January 2017 there are 1,540 registrants on the Irish site [www.lobbying.ie](http://www.lobbying.ie); while there are only 145 on the British site [www.registrarofconsultantlobbyists.org.uk/](http://www.registrarofconsultantlobbyists.org.uk/). This is despite the fact that the British legislation predated the Irish by over a year, and the population of Britain is almost 14 times that of Ireland. Of course, this difference has nothing to do with public access to the data, which is almost the same in both jurisdictions, but has everything to do with how lobbying and lobbyists are defined by the legislation.

### **Public Access**

The Irish legislation in section 10, subsection 3, states that “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). As a result, the Register of Lobbying has developed an effective website. Registrations, and filed reports, are provided online at Lobbying.ie via a searchable database, and all of the data can also be downloaded as an Excel file. Sample registrations are provided online to guide lobbyists and any information held in relation to the register, or filings, can be retrieved free of charge. However, there is no information provided on lobbyists' spending, as none is sought by the legislation. The register is updated almost immediately. In this section we assign 10 points to the Irish Act (see Appendix).

While details in Part 1, section 7, subsection 1 of the UK legislation as to what is required on registration forms are sparse (Government of the UK); the register is still available via a searchable database that can be downloaded in the form of an Excel spreadsheet. There is no cost for checking registrations or the returns made per quarter. Furthermore, assuming all details provided on registration are correct at the initial time, registration can take place, or is assumed to take place, within four days unless prior communication is made by the Office of the Registrar. As in Ireland, points are lost due the lack of any spending reports, or reporting on total spending, or related items, by the Office of the Registrar. We have assigned 9 points to the UK legislation under this heading (see Appendix).

### **Enforcement**

In some ways it is unfair to pass judgement on the Irish Act due to its commencement on 1 September 2015. Some enforcement powers have not yet been put in place, due to a review of the legislation commencing in September 2016. The Irish Act earns 6 out of 15 points on enforcement, scoring for the statutory power SIPO has been granted to conduct audits and compel lobbyists to comply with review requests (see Appendix). Section 19, subsection 1 of that 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). Furthermore, there is a statutory penalty of €200 (\$212) for incomplete filing of reports by lobbyists. Under section 18 of the Act this penalty can be increased to a class C fine, which can reach a maximum of €2,500 (\$2,645), or up to 2 years in prison on summary conviction for failing to register, providing false information, or obstructing an investigation.

The UK Act does moderately well, scoring 7 points. The legislation gives the Registrar the power to perform audits and reviews under part 1 sections 8 and 9, stating “The Registrar must monitor compliance with the obligations imposed by or under this Part” (Government of the UK, 2014). Furthermore, the authority has conducted reviews, with its first fine of £2,000 (\$2,440) issued on 19 December 2015. This penalty also resulted in the name of the delinquent filer being published. The fine appears to have been levied against this lobbyist firm largely due to their being confused as to the requirements of the legislation.<sup>4</sup> Under part 1, section 16, subsection 3 of the legislation, the statutory civil penalty for failing to register as a consultant lobbyist, or failing to file a return, can reach a maximum fine of £7,500 (\$9,150).

### **Revolving Door Provisions**

The Irish 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 give the legislation the maximum 2 points (see Appendix).

However, SIPO may give consent to circumvent this provision. What is of interest for proponents of more stringent lobbying rules is how many such requests will be granted to circumvent the provision. That said, this revolving door provision goes further than much of the US legislation, in that it prohibits the former DPO from not only lobbying themselves, but also from working for, and being employed by, a lobbyist during the initial 12 months from when they leave public service. This constitutes a fairly comprehensive cooling off period.

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<sup>4</sup> <http://registrarofconsultantlobbyists.org.uk/wp-content/uploads/2016/03/20160330-Press-Release-on-issuing-of-Advocate-Civil-Penalty-Notice-Final.pdf>

In the US, the former public office holder is only prohibited from actively lobbying, while effectively permitted to consult, and strategize, and work for a lobbying firm.

In the UK Act there are no provisions dealing with the ‘revolving door’ issue, thereby allowing former representatives and public officials to freely join lobbying organisations after their government service has ended. The result is that the UK’s legislation receives no points under this aspect of the CPI scoring system. However, on leaving a ministerial position, former ministers are prohibited from lobbying government for a period of two years under the UK’s Ministerial Code from October 2015 (Cabinet Office, 2015). This is a long cooling off period. Additionally, under this code former ministers must clear any employments they wish to take up with an independent advisory committee.

## **Findings**

Both laws, despite all of their defects, constitute important steps in preventing undue influence over public policy, and governance. This is crucial, given the general disenchantment with public life and cynicism for politicians in both countries (Feeney et al., 2015; Norton, 2014: 326). This cynicism is part of a broader trend in the wealthier European economies of distrust in governmental authorities (Holman and Luneburg, 2012).

In terms of what constitutes lobbying, both laws are similar in their definitions; their differences being to whom the legislation applies. Upon analysis, utilising the CPI’s ‘Hired Guns’ method, we assign the Irish Act a score of 37, and the British legislation a score of 33 (see Appendix). These CPI scores (see Table 2 for synopses), according to Chari *et al.* (2010), constitute medium regulatory environments, where medium ranges from 30-59 points.

**Table 2:** The legislative scores synopsis

<b>Areas of disclosure</b>	<b>Maximum CPI scores</b>	<b>Irish Act CPI scores</b>	<b>UK Act CPI scores</b>
Definition of Lobbyist	7	7	4
Individual Registration	19	10	11
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	9
Enforcement	15	6	7
Revolving Door Provisions	2	2	0
	<b>100</b>	<b>37</b>	<b>33</b>
<b>Regulatory Environment</b>		<b>Medium</b>	<b>Medium</b>

Source: <https://www.publicintegrity.org/2003/05/15/5914/methodology>; and Appendix for detailed calculations

The Irish Act represents 5 out of 7 of the ideal components required to be considered a medium regulated jurisdiction, as set out by Chari *et al.* (2010: 106), losing out on both aspects of expenditure reporting. However, the British Act contains only 3 of the 7 components – lacking spending disclosures, legislative lobbying and a cooling off period (See Table 3). These absences account for most of the 4 points difference between the two laws.

**Table 3:** Characteristics of medium regulated jurisdictions

<b>Characteristics</b>	<b>Irish Act</b>	<b>UK Act</b>
Legislative and executive lobbyists	√	X
Disclosure of individual spending	X	X
No employer spending reports	X	X

Online registration	√	√
Register accessible to all	√	√
Mandatory reviews/audits	√	√
Cooling-off period	√	X

**Source:** Chari *et al.* (2010: 106)

The findings place both laws at the lower end of the list of medium regulated jurisdictions (30-59 points). In fact, the British Act is closer to the top of the lowly regulated jurisdictions (1-29 points). Of the 70 jurisdictions examined by Chari *et al.* (2010), including countries, states, and provinces, a CPI score of 37 would place Ireland between Western Australia and New Hampshire, while 33 would place the UK between Australia and Poland (see Table 4).

**Table 4:** Selected jurisdictions' CPI scores.

<b>Jurisdiction</b>	<b>Score</b>	<b>Jurisdiction</b>	<b>Score</b>
Washington	87	Quebec	40
Kentucky	79	Western Australia	38
New Jersey	65	<b>Ireland</b>	<b>37</b>
US Federal 2007	62	New Hampshire	36
Maine	59	Australia (Fed)	33
Pennsylvania	50	<b>United Kingdom</b>	<b>33</b>
Newfoundland	48	Austria	32
Illinois	45	France	30
Lithuania	44	Poland	27

**Source:** Chari *et al.*, 2010; Crepaz and Chari, 2017.



The Irish Act's CPI score of 37, a piece of legislation enacted by a Fine Gael/Labour coalition government, is higher than the Bills presented by Labour in 2008 (scoring 29) and Fine Gael in 2010 (scoring 17). In fact, the legislation shows significant steps towards a more transparent lobbying environment, in that it takes into account paid individuals who may sometimes engage in lobbying. It therefore recognises specific moments when people engage in behaviour that would be considered lobbying.

The UK Act, with its CPI score of 33, appears to focus on only some aspects of lobbying – applying to consultant lobbyists, or organisations whose main purpose is lobbying. This excludes in-house lobbyists and consultant lobbyists where lobbying is only a minor part of the work they do. The Act's bypassing of businesses that conduct mainly non-lobbying activities is a problem, as there is an absence of information in the legislation as to what constitutes 'mainly' in terms of time, money, or other factors. It is this kind of opacity that the US government sought to resolve in 1995 with the Lobbying Disclosure Act.

Where the Irish Act focuses on legislative and executive branch lobbying, which includes lobbying directed at ministers, *Teachtaí Dála*<sup>5</sup> (TDs), senior civil servant, special advisors and local councillors, the British legislation only applies to communication with the executive. The Irish law also requires more information to be provided on lobbyists' returns. The British Act regulates the activities of only some lobbyists. Transparency International (2015b) said the current UK definition leaves 96 percent of lobbyists unaccounted for. There is also the issue in the UK that lobbyists have to pay a £950 (\$1,160) fee to register. This fee was put in place to negate arguments against the costs to the public of regulating lobbyists.

Utilising the data in Chari *et al.*, (2010: 103), we determined an average CPI score of 52.4 for the 72 regulated jurisdictions (national and subnational) that they analysed (see Table

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<sup>5</sup> Members of the Irish parliament.

5). This shows that the Irish Act is within a standard deviation of the mean, whereas the British law is outside of this.

**Table 5:** Mean, median and standard deviation for 72 jurisdictions

N	Valid	72
	Missing	0
Mean		52.4085
Median		54.0000
Std. Deviation		15.01958
Range		72.00
Minimum		15.00
Maximum		87.00

## Conclusion

This is the first study to comparatively examine the new lobbying regulations in Ireland and the UK. Our aim was to use the CPI's Hired Guns index, which has been employed in other jurisdictions by the CPI, Chari *et al.*, (2010), Crepaz and Chari (2014), Sgueo (2015) and Veksler (2016) to measure the strength of the regulations in both countries. Taking Chari *et al.*'s, (2010) threefold classification of regulatory systems, the CPI scores assigned to the Irish and UK legislation makes them both medium regulatory environments.

The Irish legislation does a more comprehensive job in defining lobbying, and by extension, what lobbyists do. It asks for the subject matter being lobbied on and the results being sought, the exact type of lobbying engaged in, and the name of the DPO who was lobbied. This law also provides for a cooling off period. The British Act does not provide a rounded picture of what lobbyists are doing in UK, as it seeks to regulate only a small part of

that industry. As neither law deals with the issue of financial disclosures, this ensures that they cannot be considered strong regulations. While both laws set out provisions for investigation, enforcement and penalties to dissuade lobbyists from misbehaving, confusion may arise in relation to the British legislation, due to the high number of lobbyists who do not have to register and the absence of a cooling off period. From this we can see that, even within systems with similar CPI scores, there can be very different approaches to regulating lobbyists.

Whilst both laws are not comprehensive, they mark a starting point in both countries' attempts to regulate lobbying through the legislative process. What has to happen now is a strengthening of the enforcement of the enacted legislation. Later, when the laws are reviewed, and as future scandals occur – as is inevitable (Morris and Goldsworthy, 2016) – they will likely be amended and become gradually stronger. This was what Chari *et al.*, (2010) found when examining succeeding US and Canadian federal lobbying legislation. The crucial issue at this stage for Ireland and the UK is to ensure that their new laws create a level of transparency that benefits all parties - the lobbyists, legislators and most especially the citizens.

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## Appendix

### CPI Hired guns answers

Question		Ireland Answer	Ireland Point Value of Answer	UK Answer	UK Point Value of Answer
<b>Definition of Lobbyist</b>					
1	In addition to legislative lobbyists, does the definition recognize executive branch lobbyists?	Yes	3	No	0
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
<b>Individual Registration</b>					
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	0	4
5	Is subject matter or bill number to be addressed by a lobbyist required on registration forms?	Bill	3	no	0
6	How often is registration by a lobbyist required?	Annually	2	Quarterly	2
7	Within how many days must a lobbyist notify the oversight agency of changes in registration?	16+ days	0	11-15 days	1
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 (ie, compensated or non-compensated/contract or salaried)?	Yes	1	No	0

<b>Individual Spending Disclosure</b>					
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 (ie, gifts, entertainment, postage, etc.)?	N/A	0	N/A	0
15	What spending must be itemized?	N/A	0	N/A	0
16	Is the lobbyist employer/principal on whose behalf the itemized expenditure was made required to be identified?	N/A	0	N/A	0
17	Is the recipient of the itemized expenditure required to be identified?	N/A	0	N/A	0
18	Is the date of the itemized expenditure required to be reported?	N/A	0	N/A	0
19	Is a description of the itemized 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
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

<b>Employer Spending Disclosure</b>					
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
<b>Electronic Filing</b>					
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
<b>Public Access</b>					
31	Location/format of registration or active lobbyist directory:	Download	4	Download	4
32	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 the Web?	Yes	1	No	0
35	Does the agency provide an overall lobbying spending total by year?	N/A	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
<b>Enforcement</b>					
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	Yes	1	Yes	1

	registration form?				
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	Yes	1
Revolving Door Provision					
48	Is there a "cooling off" period required before legislators can register as lobbyists?	Yes	2	No	0
			<b>37</b>		<b>33</b>