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Comments on the (Draft) Transparency Code prepared in accordance with section 5 (7) of the Regulation of Lobbying Act 2015

Context

A range of expert groups, working groups and taskforces routinely provide valuable advice and recommendations to Ministers and public bodies.

These groups are generally made up of experts and stakeholders from outside the public service, as well as public servants. Their input into policy formulation is often sought in areas where public sector expertise is absent and/or external views on complex positions are sought.

Some groups are established on a temporary basis while others are permanent in nature. As TASC's research has highlighted, the opinions of such groups can carry considerable weight, shaping government policy in areas of vital importance to citizens.¹

The OECD recently identified the influence of private interests through expert or advisory groups as 'an emerging risk to the integrity of policy-making'.²

In this context, the planned introduction of a mandatory Transparency Code for such groups – defined as "relevant bodies" considering "relevant matters" under the Regulation of Lobbying Act – will help mitigate some of these risks.

TASC offers the following observations and suggestions in relation to the Draft Transparency Code prepared in accordance with section 5 (7) of the Regulation of Lobbying Act 2015 by the Department of Public Expenditure and Reform:

¹ Clancy Paula, and Murphy Grainne, *Outsourcing Government: public bodies and accountability*, p.18, New Island Press, 2006. This research counted 85 advisory bodies and 14 task forces.

² [Lobbyists, Governments and Public Trust, Volume 3: Implementing the OECD Principles for Transparency and Integrity in Lobbying](http://www.oecd-ilibrary.org/governance/lobbyists-governments-and-public-trust-volume-3_9789264214224-en;jsessionid=3duqso4ie09gf.x-oecd-live-01), p 76 http://www.oecd-ilibrary.org/governance/lobbyists-governments-and-public-trust-volume-3_9789264214224-en;jsessionid=3duqso4ie09gf.x-oecd-live-01

1. Consider expanding the Code's transparency criteria

The draft Transparency Code specifies the type of information that groups subject to it must publish in order to be regarded as a "relevant body" under the Act. These 'transparency criteria' consist of the following:

1. Name and employing organisation of the chairperson;
2. Name and employing organisation of group members;
3. Whether any non-public servant members were previously designated public officials;
4. The group's terms of reference;
5. Agenda of each meeting;
6. Minutes of each meeting;
7. Expected timeframe for the group to conclude its work;
8. Reporting arrangements.

It is entirely appropriate that this type information be routinely published. However, the draft Code's focus on disclosure of the 'employing organisation' of group members is too narrow to capture all the possible interests that a member of a group could bring to the table.

For example, it does not take into account the fact that individuals may be appointed to groups in a personal capacity, acting independently and expressing their own personal views rather than those of their employer. In such circumstances, an individual's expertise (which may include past but not present employment) is much more relevant than the name of his or her employer.

Likewise, an individual may be invited to take part in a group as a representative from a particular common interest shared by a range of stakeholders. For example, an appointee's membership of a community sector alliance, a Public Participation Network, or a voluntary body might be much more relevant than the name of their employer.

Finally, the focus on asking group members to disclose their employing organisation does nothing to mitigate the risk that they may have other interests that are not disclosed by their professional position. For example, a group member may have private business or corporate ties which may pose an actual or perceived conflict of interest.

One way to address these issues would be to expand the categories of information to be disclosed as part of the Code's transparency criteria. For example, these could include:

- A short statement of the interests that group members are representing.
- Group members' CVs, or at least highlights of their professional expertise.

The publication of this additional information would bring added clarity in relation to the range of interests represented on any particular group, without operating as a disincentive to stakeholders to participate in groups.

2. Publish information about groups in as close to real time as possible

The draft Transparency Code states that “ideally information should be published in as timely a fashion as possible having regard to the public interest in safeguarding the integrity of the deliberative process”. At a minimum, it states that information on public bodies' websites must be updated at least every four months in relation to each such group.

This timeframe is in line with the transparency requirements under the Regulation of Lobbying Act, which requires those who lobby to file returns every four months.

However, there is risk that by setting four months as the minimum period for information on groups to be updated, the transparency goals of the Code will not be met. For example, a working group set up for a very specific purpose may meet intensively for three months, and complete its work within four or five months.

This was the case with a recent working group set up by the Department of the Environment Community and Local Government in mid-September 2013 to examine citizen engagement in local government.³ That group reported to the Minister after five months, in February 2014.⁴ The group made far-reaching recommendations for change in local government structures, which were promptly adopted by the Minister.

Under the current proposed timelines in the draft Transparency Code, there is a real possibility that important information about the work of such short-lived groups would only be published when it was almost complete.

One way to overcome this potential loophole would be for the Transparency Code to require all groups to publish basic information about their composition, terms of reference, expected timeframe and reporting arrangements as soon as they are established.

³ See <http://www.environ.ie/en/Community/CommunityVoluntarySupports/News/MainBody,34113,en.htm>

⁴ <http://www.environ.ie/en/Community/CommunityVoluntarySupports/News/MainBody,36780,en.htm>

Further details, such as agendas and minutes of meetings could then be published in as close to real time as possible, unless there was a strong public interest reason for delaying publication. A practical guide here could be for agendas and minutes of meetings to be published online as soon as they are approved by the group.

3. Ensure that subgroups are subject to the requirements of the Transparency Code

In some cases, working groups establish subgroups which meet to focus on particular aspects of the work of the wider group. These generally report back to the parent group, but their reports would only be briefly mentioned in the minutes of that group. To ensure full transparency in this area, the Transparency Code should state that it applies equally to groups and their subgroups.

4. Provide guidance on standards of meeting minutes

The public interest benefits of the introduction of a Transparency Code will be undermined if minutes of group meetings are not sufficiently detailed to ensure that proper account is given of their work. The Department of Public Expenditure and Reform or SIPO could issue guidance on standards expected in relation to minute-keeping, including a template, to ensure that minutes are as comprehensive as possible.

5. Publish a list of groups covered by the lobbying Transparency Code on www.lobbying.ie

For groups which come under S 7 of the Act, the draft Transparency Code states that information should be in a prominent place on the website of the relevant public body, and be easily accessible.

This approach is a sensible one, as each public body can manage its own website updates. However, it will mean that detailed information about the work of numerous working groups, committees and taskforces will be scattered across the websites of various public service bodies and government departments.

Such diffusion of information is at odds with the thrust of the lobbying regulation regime, the chief strength of which is that it provides a one-stop-shop for information on 'who is lobbying whom about what' across the public sector.

A simple way to centralise data about groups that are bound by the Transparency Code would be to list them all on the lobbying registration website, www.lobbying.ie

The list could be in the same format as the list of State Boards produced on the website www.stateboards.ie, with hyperlinks to the websites of the relevant public bodies which have established the working groups. The list would need to be regularly updated as temporary groups complete their work and disband, and new ones are established.

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