

An overview of charity campaigning & the Electoral Commission guidance

1. Introduction

- 1.1 This note explores charity law and electoral law in the context of a charity involved in campaigning, following the passing of The Transparency of Lobbying, Non-party, Campaigning and Trade Union Administration Act 2014, better known as the “Lobbying Act”. In particular, it focuses on the run up to the 2015 UK general election.
- 1.2 The Lobbying Act came into force on 19 September 2014 and amended the Political Parties, Elections and Referendums Act 2000 (the ‘2000 Act’) and charities may now need to register with the Electoral Commission (the ‘Commission’) if it undertakes certain types of campaigning.

2. Charity law and campaigning

- 2.1 Charities must have exclusively charitable purposes and exist for the public benefit. Political purposes are not charitable and therefore a charity cannot exist to fulfil political purposes and any existing charity that does so would be in breach of charity law.
- 2.2 Non-political campaigning, for example campaigning generally for greater public awareness of the challenges disabled people can face in society, is permitted. Political campaigning, for example campaigning for a change in the law to offer greater protection to disabled people in society, needs more careful consideration.
- 2.3 Charity Commission guidance CC9 (speaking out: guidance on campaigning and political activity) by charities states that “*campaigning and political activity can be legitimate and valuable activities for charities to undertake*”. However, “*it must not be the continuing and sole activity of the charity*” and “*in the political arena, a charity must stress its independence and ensure that any involvement it has with political parties is balanced*”. Furthermore, “*a charity must not give support or funding to a political party, nor to a candidate or politician*”.
- 2.4 Charities may therefore carry out campaigning as follows:
 - 2.4.1 non-political campaigning;
 - 2.4.2 political campaigning which is not party political;
 - 2.4.3 on occasion, political campaigning which straddles the fine line between legitimate political campaigning and supporting a political party – for example, where a political party supports the same change in the law that the charity is campaigning for. In these situations, the precise content and tone of the charity’s campaign will be very important and should stress independence and political neutrality.

- 2.5 As with any charity activity, the trustees must be satisfied that the campaign will be a prudent use of charity resources and the charity must have the power to undertake the campaigning as specified in their governing document. Charitable Companies will also need to consider the rules under the Companies Act 2006 that apply to campaigning.

3. Electoral law and campaigning - campaigning that requires registration

- 3.1 The Lobbying Act amended the rules in the 2000 Act relating to ‘third parties’, referred to as ‘non-party campaigners’ in the Commission Guidance. Non-party campaigners are organisations which are not political parties or candidates but are campaigning in the run up to an election. A charity can be a non-party campaigner. If a charity carries out a ‘regulated campaign activity’ and meets other conditions (the full set of conditions are covered in the appendices) it will need to register with the Commission, (i.e. be a ‘registered non-party campaigner/recognised third party’), abide by certain rules and supply certain information to the Commission.
- 3.2 Regulated campaign activity must be “general campaigns”. General campaigns are where you are campaigning for or against (i) political parties or categories of candidates or (ii) policies or issues closely associated with a particular party or category of candidates. Of course, it is general campaigns under the second strand, (ii) that is relevant to charities.
- 3.3 The following activities are regulated campaign activity if they meet the “purpose test”:
- 3.3.1 press conferences or other media events organised by the charity
 - 3.3.2 transport in connection with publicising the campaign
- 3.4 The following activities are regulated campaign activity if they meet both the “purpose test” and the “public test”:
- 3.4.1 production or publication of election material
 - 3.4.2 canvassing and market research
 - 3.4.3 public rallies and public events
- 3.5 The purpose test: the campaign activity can be reasonably regarded as intended to influence voters to vote for or against political parties or categories of candidates, including political parties or categories of candidates who support or do not support particular policies or issues.
- 3.6 The purpose test can be fulfilled even if:
- 3.6.1 a particular party/ candidate is not be named; and/or
 - 3.6.2 you intend the campaign activity to achieve something else, such as raising awareness of an issue.
- 3.7 For example, if a charity promoted or opposed a policy very closely associated with a particular party or candidate (or parties/candidates), the activity would meet the purpose test.

- 3.8 The Commission also specifies that in “almost all” cases the purpose test will be satisfied if:
- 3.8.1 identifies party/parties or candidate(s) who do or do not support a campaign's aims;
 - 3.8.2 the activity sets out or compares the position of parties on an issue in a way that can reasonably be regarded as intended to influence voters to vote for or against a party/parties or candidate(s);
 - 3.8.3 promotes or opposes policies which are so closely/publicly associated with a party/parties or candidates it is reasonable to regard the campaign as intended to influence voters for or against a party/parties or candidate(s).
- 3.9 It appears that “reasonably regarded as intended” can be liberally interpreted and the content, tone and wider context will all be relevant when considering the purpose test. The Commission has also recently clarified that the relevant factors that affect the purpose test should be considered as a whole and not individually. Taking a holistic view and weighing up the different factor is essential when considering if the purpose test is met.
- 3.10 The Lobbying Act specifies that the campaign expenditure will be caught by the rules if it can reasonably be regarded as intended to promote or procure electoral success at any relevant election for:
- 3.10.1 one or more particular registered parties; or
 - 3.10.2 one or more registered parties who advocate (or do not advocate) particular policies or who otherwise fall within a particular category of such parties; or
 - 3.10.3 candidates who hold (or do not hold) particular opinions or who advocate (or do not advocate) particular policies or who otherwise fall within a particular category of candidates.”
- 3.11 The “public test”: the campaign activity is aimed at, seen or heard by, or involves the public or a section of the public.
- 3.11.1 Official members and “committed supporters” of the charity are not considered as the public
 - 3.11.2 The Commission gives the following as examples of “committed supporters” – regular donors by direct debit, people with an annual subscription, people who are actively involved in the charity.
 - 3.11.3 The Commission gives the following as examples of people who are not committed supporters – those who follow the charity on social networking sites, people who have signed up for email updates and people on mailing lists compiled for general commercial purposes.
- 3.12 There is still some uncertainty as to who could be described a “committed supporter”. What level of activity does a supporter have to undertake to be considered “actively involved”? Does that apply only to regular and current volunteers for instance?

- 3.13 The key point is that charities need to be aware of the wider political landscape when undertaking campaigning. Whilst they cannot explicitly support a political party or candidate, their campaign could nevertheless affect the chances of a party or candidate. Charities need to be aware of this possibility and, where necessary, register with and abide by the Commission's rules.
- 3.14 Even where a charity undertakes regulated campaign activity, they may still not have to register if they do not spend above a certain amount of money on that regulated campaign activity. The full conditions relating registration, details of how to register and the rules that apply post-registration are covered in the following appendices.

Appendix A: Full requirements for registration and how to register

1. Which elections do the rules apply to?

- 1.1 The new rules will apply to elections for the following: UK Parliament, European Parliament, Scottish Parliament, Welsh Assembly and Northern Ireland Assembly.

2. Who has to register with the Commission?

- 2.1 Where a general campaign meets the purpose (and public test where applicable) a charity will have to register with the Commission if it intends to spend more than £20,000 in England or £10,000 in Scotland, Wales or Northern Ireland within a “regulated period” on regulated campaign activity.

2.1.1 When calculating these costs, charities should take into account a reasonable amount of overheads and administrative costs associated with the campaign, along with a proportion of their staff costs based on the proportion of time staff spend on the campaign.

2.1.2 Costs may need to be “split” on occasion so that the correct amount is allocated to the campaign. For example, if a charity delivers 50% of leaflets outside the regulated period and 50% within the regulated period. Throughout the guidance, the Commission refers to the need for an honest and reasonable assessment.

2.1.3 Charities do not need take into account the following costs in the calculation:

- (a) volunteer time (including time spent by staff that they are not paid for);
- (b) translating material to English from Welsh or vice versa;
- (c) people’s reasonable travel or personal expenses if the charity does not reimburse them;
- (d) anything appearing in a newspaper (except adverts);
- (e) annual conferences;
- (f) providing security at a public rally or event;
- (g) reasonable costs incurred that are attributable to an individual’s disability; and
- (h) public processions or protest meetings in Northern Ireland where notice has been given under the Public Processions (Northern Ireland) Act 1998.

2.1.4 If the charity has received an item at a non-commercial discount of more than 10% and the difference in value between the commercial rate and what the charity pays is over £200, the charity must use the full commercial value of the item when calculating campaign expenditure

2.1.5 For the 2015 UK Parliamentary general election, the regulated period will run from 19 September 2014 to 7 May 2015. Thereafter, the regulated

period prior to a UK general election will be 12 months and for European Parliament elections, Scottish Parliament elections, Welsh Assembly elections and Northern Ireland Assembly elections the period will be 4 months.

2.1.6 Please note that there are other rules and maximum spending limits on regulated campaign activity, see Appendix B for details.

2.1.7 For details of what constitutes a regulated campaign activity, see section 3 above.

3. How to register with the Commission

3.1 Charities can register online or using form TP1 which is available on the Commission's website.

3.2 The Commission will confirm in writing when the charity's notification is in force.

3.3 Registration lasts for 15 months unless it is due to expire in a regulated period, in which case it is automatically extended until the end of that period.

3.4 To renew registration, organisations must send form TP3 to the Commission between 12 and 15 months from the original date of notification.

3.5 Upon registration, the organisation must provide details of a "responsible person" who is responsible for ensuring that the charity follows the rules on spending, donations and reporting.

Appendix B: Rules on spending and donations

1. Spending on campaigns

- 1.1 Only the responsible person or people authorised in writing by the responsible person can authorise campaign spending. This includes making a legal commitment to spend money, for example confirming an order.
- 1.2 The charity must have an invoice or receipt for all payments over £200. When a person other than the responsible person makes a payment of over £200 they must pass on the receipt/invoice to the responsible person as soon as possible.
- 1.3 All invoices must be received no later than 6 June 2015 and paid no later than 6 July 2015.
- 1.4 Registered campaigners will be subject to the below spending limits for the regulated period prior to the 2015 general election.
 - 1.4.1 England: £319,800
 - 1.4.2 Scotland: £55,400
 - 1.4.3 Wales: £44,000
 - 1.4.4 Northern Ireland: £30,800
- 1.5 Spending focused on a particular constituency is limited to £9,750. Charities must attribute their spending equally amongst the constituencies in the area that their campaign is designed to target. For example, if a campaign targeted 3 constituencies only, the charity would be limited to spending £29,250 (3 x £9,750) on the campaign.
- 1.6 If a charity is running a UK wide campaign, its spending is capped at £390,000 due to the way the attribution rules apply.

2. Regulated donations

- 2.1 Definition of “donations” for the purpose of the rules – money, goods or services with a value of over £500 given towards the charity’s regulated campaign spending either without charge or on non-commercial terms (“regulated donations”). Donations given for the charity’s general purposes rather than to specifically fund campaign activity are not included.
- 2.2 The charity’s nominated responsible person must ensure that the charity has in place systems to ensure donations are dealt with correctly.
- 2.3 When a charity receives a regulated donation, it has 30 days to decide whether to accept it. Regulated donations must only be accepted from a permissible source, as listed below:
 - 2.3.1 an individual registered on a UK electoral register;
 - 2.3.2 a UK registered company which is incorporated within the European Union and carries on business within the UK;
 - 2.3.3 a UK registered trade union;

- 2.3.4 a UK registered building society;
- 2.3.5 a UK registered limited liability partnership that carries on business in the UK;
- 2.3.6 a UK registered friendly society;
- 2.3.7 a UK unincorporated association that is based and carries on business or other activities in the UK;

If there is any doubt as to the permissibility of the donor, the donation must be returned within 30 days.

- 2.4 For every regulated donation that the charity accepts, the following information must be recorded:

- 2.4.1 donor's full name and address;
- 2.4.2 donor's registered company number (if applicable);
- 2.4.3 the value of the donation;
- 2.4.4 date the donation was received;
- 2.4.5 date the donation was accepted.

- 2.5 If a regulated donation is received from any of the below sources, the Commission should be contacted for further information (as there are particular recording requirements):

- 2.5.1 bequests;
- 2.5.2 Gibraltar electors;
- 2.5.3 someone with an anonymous entry in an electoral register;
- 2.5.4 public funds;
- 2.5.5 trusts.

- 2.6 For every regulated donation that the charity returns to the donor (as it is from an impermissible source), the following details should be recorded:

- 2.6.1 value of donation;
- 2.6.2 if identity of donor not established, details of how donation was made;
- 2.6.3 if identity of donor established, donor's name and address;
- 2.6.4 date donation received;
- 2.6.5 date donation returned;
- 2.6.6 action taken to return the donation.

Appendix C: Reporting information to the Commission

1. Pre-poll reporting

- 1.1 From the start of a regulated period (or the start of registration, if later), an organisation must report certain details of donations to the Commission.
- 1.2 Reports must be made quarterly from the start of regulated period until 30 March 2015 (dissolution of Parliament). From then onwards, they must be made weekly until the end of the regulated period.
- 1.3 For quarterly reports, details as specified in 2.4, 2.5, 2.6, above, relating to the following regulated donations must be reported:
 - 1.3.1 all impermissible donations;
 - 1.3.2 all accepted donations over £7,500;
 - 1.3.3 all accepted donations that total over £7,500 from the same donor;
 - 1.3.4 the total of all other accepted donations that had a value of more than £500 and less than or equal to £7,500;
 - 1.3.5 a donation or aggregate of donations of over £1,500 that come from a source previously reported to the Commission.
- 1.4 For weekly reports, details (as stated in Appendix B at 2.4.1, 2.4.3, 2.4.4 and 2.5) relating to the following regulated donations must be reported:
 - 1.4.1 all donations received from a single source that total over £7,500, regardless of whether they are accepted by the organisation or not.
- 1.5 The responsible person must make sure that the reports are accurate and submitted on time.

2. Post election spending return

- 2.1 The Commission's year specific guidance should be checked to determine when the deadline for submitting the organisation's spending return is. If the charity's total campaign spending was £250k or below, the deadline will be within 3 months of the election and if spending was above £250k, the date will be within 6 months of the election.
- 2.2 Forms for reporting this information can be found on the Commission website.
- 2.3 If the organisation has spent over £250,000 on its campaign, a qualified auditor's report will also be required.
- 2.4 General – the following information must be included in the organisation's spending return after the election:
 - 2.4.1 the election that it relates to;
 - 2.4.2 invoices and receipts for any payment over £200;
 - 2.4.3 details of any unpaid or disputed claims;

- 2.4.4 a declaration from the responsible person to confirm the return is complete and correct.
- 2.5 Spending – for each item of spending, the following information must be included in the organisation’s spending return:
 - 2.5.1 what the spending was for (e.g. leaflets, advertising, etc);
 - 2.5.2 the name and address of the supplier;
 - 2.5.3 the amount or value (for donated items or for items given at a non-commercial discount and falling within the requirements specified at 2.1.4 of Appendix A, the full value);
 - 2.5.4 the date that the spending occurred;
 - 2.5.5 the date the claim for payment was made;
 - 2.5.6 the date payment was made.
- 2.6 Donations – details of the following must be reported to the Commission after each UK general election, as part of the charity’s spending return:
 - 2.6.1 all impermissible donations;
 - 2.6.2 all accepted donations over £7,500;
 - 2.6.3 all accepted donations that total over £7,500 from the same donor;
 - 2.6.4 the total of all other accepted donations that had a value of more than £500 and less than or equal to £7,500;
 - 2.6.5 all donations reported in pre-poll donation reports along with any donations received before the start of the regulated period.
- 2.7 If an organisation uses general funds for campaign spending it will need to report this as a donation.
- 2.8 If the charity is legally required to submit accounts to the Charity Commission, it will not be required to submit a statement of accounts to the Commission.
- 2.9 Note that the Commission will publish certain details relating to donations received by the charity.

3. Falling foul of the rules

- 3.1 The Commission state that they will attempt to use advice and guidance where possible to secure compliance. The Commission does have the power, however, to impose civil and criminal sanctions.

4. Further guidance

- 4.1 This overview only covers key headline of the guidance provided by Commission. There are also other issues that charities will need to consider such as joint campaigning and arranging hustings.

- 4.2 Further information can be found in the guides on the Commission's website [here](#)
- 4.3 If you need advice on what constitutes regulated campaign activity, registration or any aspect of the rules once registered please contact:

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