

Campaigning & the Lobbying Act: Electoral Commission amendments guidance

In our [June bulletin](#), we published an update setting out when charities must register with the Electoral Commission under Political Parties, Elections and Referendums Act 2000 (the '2000 Act') which was amended by the Lobbying Act ('the Act'). The Electoral Commission's guidance, which attempted to clarify the rules under the 2000 Act, was criticised for being confusing. In response to this, the Electoral Commission has published several amendments, in an attempt to eradicate this uncertainty. This is particularly important as 19 September 2014 marked the start of the regulated period for the General Election 2015, which is when a charity must register with the Electoral Commission if it is carrying out regulated campaign activity.

Charity law and campaigning

As we are nearing the 2015 General Election, it is useful to reconsider the relationship between charities and political activity. Charities must have exclusively charitable purposes and exist for the public benefit; they cannot be set up to fulfil political purposes. A charity can campaign where it assists in fulfilling its charitable purpose. A distinction must be drawn between non-political campaigning and political campaigning. The former entails campaigning for greater public awareness on an issue or cause, whilst the latter involves attempting to bring about a change in the law.

Whilst charities are entitled to undertake non-political campaigning, if they choose to engage in political campaigning they must not support political parties, candidates or politicians. Additionally, the political campaigning must not be the "*continuing and sole activity of the charity*".

Charities now also need to consider the 2000 Act when it undertakes campaigning around an election.

The new rules

The Lobbying Act amended the 2000 Act, so that charities and other organisations must register with the Electoral Commission if they carry out regulated campaign activity during a regulated period and plan to spend more than £20,000 on those activities in England or more than £10,000 in Northern Ireland, Scotland or Wales. The regulated period for the 2015 General Election runs from 19 September 2014 until 7 May 2015.

The following campaign activities will be regulated if they satisfy the 'purpose test':

- press conferences or other media events organised by the charity
- transport in connection with publicising the campaign

Under the 'purpose test', it must be established that the campaign activity 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.

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

- one or more particular registered parties; or
- 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
- 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

The following campaign activities will be regulated if they satisfy the 'purpose test' and the 'public test':

- production or publication of election material
- canvassing and market research
- public rallies and public events

To satisfy the 'public test', the campaign activity must be aimed at, seen or heard by, or involves the public or a section of the public. Campaigns aimed at members or committed supporters of a charity are not considered the public or a section of the public.

The amendments to the guidance

Most of the amendments have been to clarify that 'intention' is also required in determining whether campaign activities fall within the 'purpose test' and are, therefore, regulated. Previously, it was unclear whether campaign activities would be regulated if it could just be reasonably regarded that they promoted or procured electoral success, despite the charity not intending to have this effect.

Another amendment is to clarify that the relevant factors, which are considered under the 'purpose test', should be considered as a whole and not individually. Given that the relevant factors are only meant to aid the application of the test and do not form part of the law, this amendment adds very little by way of certainty. How much weight should be given to each factor? When does the balance tip in favour of registration? These points remain unaddressed.

The Electoral Commission has also deleted reference to registration being straightforward and quick. This appears to be an acknowledgement by the Electoral Commission that the process may be more time-consuming than initially predicted.

Although the amendments have helped to eradicate some of the uncertainty in relation to campaigning, they do not address all of the concerns raised. One of the biggest criticisms of the guidance was that the definition of 'committed supporter' is far too restrictive, considering that most charities would not view their social network followers as being part of the public. It is also unclear what the level of activity a person will have to undertake to be a committed supporter.

It is clear the guidance can only offer an insight into the approach likely to be taken by the Electoral Commission and cannot alter the law, which is complex and vague and lacks a wealth of case law that would aid its interpretation.

Conclusion

Given that the Electoral Commission has the power to impose sanctions, we would welcome further clarification from the Electoral Commission so that charities do not stop or limit their campaigning, in fear of falling foul of the Act.

For an overview of the guidance please click [here](#).

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