

# CAMPAIGNING LEGAL GUIDE: POLITICS, ELECTIONS AND LOBBYING

2019



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# ACKNOWLEDGEMENTS

The Thomson Reuters Foundation is extremely grateful to the following authors of this Guide. This Guide would not have been possible without their expertise, time and commitment to pro bono work.



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We have supported grassroots organisations to employ their first staff members, helped vulnerable women access loans to start their first businesses and brought renewable energy lighting to slums. Free legal assistance on these small projects has had a big impact on local communities working to overcome poverty and discrimination. At a global scale, we have supported legal reform activities to protect the rights of millions of domestic workers, changed legislation to support victims of violence, produced guides to protect people who experience street harassment, and crafted tools to support the prosecution of trafficking offenders.

Legal research reports and other TrustLaw publications are legal resources that take an in-depth look at a legal issue in a number of countries. This may be in the form of a comparative analysis of laws in different countries, or a legal landscape analysis. These resources aim to help TrustLaw members advocate for legal reform, inform policy activities or propose legal amendments.

Our resource library can be found on the TrustLaw homepage at [www.trust.org](http://www.trust.org).

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# ABOUT CAMPAIGN BOOTCAMP

Campaign Bootcamp is a charity dedicated to ensuring that people most impacted by injustice are leading campaigns that affect their lives, from better housing to fairer treatment of migrants and LGBTQ+ rights. Our graduates wage important, successful campaigns, testify before Parliament, appear in the national and international press, organise demonstrations, get elected to local government, and change laws.

We do this work because we've found that today it's far too hard for ordinary people, especially those in marginalised communities, to challenge those in power. Because of this, injustices persist and millions of people do not live happy, safe and fulfilled lives.

Our programmes are designed to be accessible to anyone who wants to make change happen. If you want to learn how to run powerful campaigns go to [www.campaignbootcamp.org](http://www.campaignbootcamp.org) to find out more about our training, including how to apply. You can also check out our range of stories, free resources, and our blog about our programmes and what our graduates get up to outside of camp.

Campaign Bootcamp Residential is a week-long training programme that supports you to develop the skills, confidence, and community to run powerful campaigns.

The training brings together 35 budding campaigners and activists from across the country (and sometimes further afield) to learn and build a community together.

In the course of a week, Campaign Bootcamp will take you on a journey through planning and running an effective campaign, giving you space each day to work out how what you have learnt applies to the work that you are doing. Each day has a different theme reflecting a different part of your campaign. By the end of the week, you will come out with a campaign strategy that you can take forward to make change happen. To gain the skills, community and confidence you need to run your campaign at the Campaign Bootcamp residential, apply today at [www.campaignbootcamp.org/apply](http://www.campaignbootcamp.org/apply).

**CAMPAIGN  
BOOTCAMP**



# ABOUT BATES WELLS



Bates Wells is a leading law firm for charities and campaigning organisations. The firm's specialist politics, elections and campaigning law team helps political parties, candidates, donors, charities and issue-based campaigners navigate the complex regulatory environment that can be relevant to their electoral and policy goals. The multi-disciplinary team works across all areas of campaigning law, from election and referendum law to campaign finance, transparency of lobbying, data privacy, charity law, public law, strategic litigation, advertising and reputation-management.

Bates Wells regularly advises on the biggest political issues of our time, including Brexit, where it advised Britain Stronger in Europe – the official Remain campaign. The firm is rated for electoral law advice in both Chambers and Legal 500, which has referred to it as an "incomparably excellent" team, which 'uniquely understands the broader issues'.

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# FOREWORD

Many of the organisations TrustLaw supports engage in campaigning activities, community engagement and advocacy, with the aim of highlighting and solving social problems and encouraging systemic change.

The closing space for civil society means that campaigners are under increasing pressure to run campaigns for social change that are not only politically effective but are also run in compliance with the law. Campaigners do not always have the time or expertise to analyse and understand a complex and evolving legal landscape and, as a result, may unwittingly break the law, restrict their activities unnecessarily through defensive decision making, or be discouraged from engaging at all.

In collaboration with Bates Wells and Campaign Bootcamp, TrustLaw's goal is to support the development of a resilient and informed campaigning community by publishing this series of legal guides for campaigning and advocacy organisations in the United Kingdom.

The guides offer campaigners advice and tips on how to comply with the laws that apply to their day-to-day activities. These guides aim to arm campaigners with the legal information needed to navigate issues including: political activities, election and lobbying laws; defamation and campaigns that target companies; hacktivism and shareholder activism; the right to protest and laws relating to marches, assemblies and police powers; using social media and online campaigns; data protection and direct marketing.

We hope that these guides will ultimately empower campaigners to act with confidence and achieve the positive outcomes they seek.

**Glen Tarman**  
**Director of TrustLaw**  
**Thomson Reuters Foundation**

# INTRODUCTION



# INTRODUCTION

It is perhaps unhelpful to refer to 'political activity' as the trigger for a set of legal and regulatory considerations. What is understood to be political activity is likely to differ between organisations and individuals and a universal definition is difficult to come by.

Political activity may take a variety of forms for a variety of aims, but for the purpose of this section we refer to three different scenarios in which what may be termed 'political' activity may give rise to additional legal considerations:

- A. charities engaging in public or private activities aimed at supporting, opposing or securing a change in the law or policy of a government or public body here or abroad or which may be perceived as supporting political parties; and/or
- B. any individual or organisation engaging in activity in the run up to an election which or is could reasonably be regarded as intended to promote the electoral success of a political party or candidate, or candidates with particular views; and/or
- C. any individual or organisation making personal communications with government representatives relating to policy, legislation, certain decisions and other functions of government, for payment and in the course of a business.

Of course, it may be possible for a charity, for example, to undertake activity falling under all of (A) – (C) within one campaign. The different strands of political activity considered in this section should not, therefore, be seen as mutually exclusive, and it may be necessary to consider and contend with each strand within a single campaign.

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# CHARITIES AND POLITICAL ACTIVITY





# CHARITIES AND POLITICAL ACTIVITY

## 1. CAN A CHARITY HAVE A POLITICAL PURPOSE/BE SET UP TO ACHIEVE POLITICAL AIMS?

*In brief: No - a charity cannot be established for a political purpose or political aims, but it can undertake political activity within the context of delivery/support of its charitable purposes, provided such activity doesn't take up so much of the charity's time and resources that it essentially becomes the charity's purpose.*

- 1.1 The law provides that a charity must exist for purposes falling within thirteen categories of charitable purpose established by the courts and now set out in Charities Act 2011 and for public benefit. 'Charitable purposes' is the legal term used to refer to the aims which a charity is set up to achieve, e.g. to relieve poverty or to advance education. You will sometimes also see purposes referred to as a charity's 'objects' (although there is a technical distinction between the terms as a matter of company law).
- 1.2 Twentieth century case law established that a charity cannot be set-up or exist for political purposes<sup>i</sup> and subsequent interpretation and application of that body of law has led to restrictions on campaigning and political activity by charitable bodies. The Charity Commission, the regulator of charities in England and Wales, has produced guidance note CC9<sup>ii</sup> which reflects its view of that body of case law and its regulatory approach to campaigning and political activity by charities. Compliance with CC9<sup>ii</sup> can therefore help a charity undertake political activity in a manner which advances its charitable purposes within the law and minimises the risk of regulatory intervention by the Charity Commission.
- 1.1 A 'political purpose' is defined within CC9 as '*any purpose directed at furthering the interests of any political party, or securing or opposing a change in the law, policy or decisions either in this country or abroad*'. So, for example, an organisation that was set up solely to repeal the Investigatory Powers Act 2016 because it felt that the Act curtailed the freedoms of citizens would have a political purpose, as it is set up with the purpose of changing the law. Another example would be an organisation set up to promote the environmental policies of the Green Party – although the advancement of environmental protection is a recognised charitable purpose, this organisation would exist to further the interests of a political party, meaning that it would have a clear political purpose. Neither of these organisations would be able to register with the Charity Commission as charities.
- 1.2 The Charity Commission explains its approach to barring the registration of organisations with political purposes as charities, stating that '*in order to be a charity, an organisation must have purposes which are charitable and for the public benefit. An organisation with a political purpose, such as promoting a change in the law, legally cannot be a charity. This applies*

*even if the organisation has other purposes which are charitable. This would involve looking at 'political' questions, which neither the commission nor the courts are in a position to answer. Constitutionally, it is not possible for the commission or the Courts to make decisions about whether a change in the law or government policy would be for the public benefit'.*

- 1.3 So, if your organisation's purpose is directed at:
- (a) furthering the interests of any political party; and/or
  - (b) securing or opposing a change in the law in this country or abroad; and/or
  - (c) securing or opposing a change in the policy or decisions of central government or other public bodies in this country or abroad,
- then it cannot register as a charity.

## 2. CAN A CHARITY UNDERTAKE POLITICAL ACTIVITY AND CAMPAIGN?

**In brief:** *Yes, a charity can undertake political activity and campaign in support of its objects/purposes, provided that any political activity does not become its purpose/an end in itself.*

- 2.1 The restriction within charity law on having a political purpose does not mean that an organisation that carries out or wishes to carry out political activity cannot be a charity. The Charity Commission recognises that *'political activity, including campaigning for a change in the law, is an entirely legitimate activity and can be an effective means of supporting a charitable purpose'* within CC9. Political activity (within the Charity Commission's definition of that phrase) just cannot be a purpose or aim of the charity in itself.
- 2.2 CC9 divides campaigning into two types:

**Non-political campaigning:** This is referred to by the Charity Commission in CC9 simply as 'campaigning', but it may be helpful to think of this category of activity as non-political campaigning. This would include activity intended to raise awareness, educate or involve the public in support of a particular issue or to influence or change public attitudes or behaviour, such as a campaign encouraging people to give up smoking or drink less alcohol. Campaigning aimed at changes in the policies and behaviour of private companies will also be non-political campaigning, such as campaigning for a restaurant chain to stop stocking palm oil products. Non-political campaigning can also include calling for adherence to existing laws (but not campaigning against the retention or proposed repeal or amendment of existing laws).

Non-political campaigning activities could therefore include a wide array of activities by charities in support of their purposes, but charities should be conscious of when a campaign might cross into political activity. A wildlife charity highlighting the problems caused to marine life by household products which contain microbeads would not be political campaigning if the campaign aimed to influence the decisions made by consumers or to encourage producers to change the design of their products, as this would not constitute campaigning to secure or oppose changes to law or policy of government. However, extending this campaign to a call for the government to legislate against use of microbeads would be political campaigning/activity.

**Political activity:** As explained above, this is defined by the Charity Commission as activity aimed at securing or opposing a change in the law or in the policy or decisions of government and other public bodies (in this country and abroad). Political campaigning can only be undertaken by a charity in support of the delivery of its charitable purposes.

Political activity is not to be confused with **party** political campaigning or activity, which a charity can never undertake.

- 2.3 Any political activity must be in support of a charity's purposes, but not a purpose in itself. For example, provided a charity's constitution did not prevent it and the charity satisfied all due diligence checks, a charity with the purpose of relieving poverty in England could spend a period of time campaigning for the removal of the under-occupancy charge (commonly referred to as the 'bedroom tax'), if the charity's trustees reasonably believed that this would result in the relief of poverty.
  - 2.4 For a charity to carry out political activity, it needs to demonstrate that the proposed campaign is a reasonable and proportionate method to achieve the charity's purposes. It is important in this analysis that the charity's trustees can demonstrate that:
    - (a) the amount of resources to be expended on the campaign are reasonable to achieve the desired outcome;
    - (b) campaign materials and messaging are factually accurate and have a legitimate evidence base, such as statistics from a reliable data source; and
    - (c) risks associated with the campaign are justified and managed, such as risk associated with a particular campaign being controversial (which is permitted, when justified) and having the potential to damage a charity's reputation and potentially its future fundraising capability.
  - 2.5 To ensure that the trustees of a charity comply with their duties (trustees being the people with overall control of the management of a charity, responsible for its legal and regulatory compliance), charities should have a clear paper trail of due diligence and analysis as to why any proposed campaign activity is considered by the trustees to be an appropriate course of action. To this end, CC9 says that it is *"important for trustees to be able to explain their charity's decision to engage in campaigning or political activity, and to set objectives for the campaign which have a reasonable likelihood of success, as well as making sure that they have monitored progress towards them during the implementation phase of the campaign"*.
  - 2.6 According to the Charity Commission's guidance note CC9, political activity/campaigning (as opposed to non-political campaigning, defined above) cannot be the sole and continuing activity of a charity, but provided the charity satisfies various due diligence obligations, it can be the sole and continuing activity for a period of time. Charity Commission guidance does not define what constitutes a period of time, but generally the charity should avoid pursuing a particular political activity exclusively for such a period of time that pursuing the activity might reasonably be seen as the charity's purpose, rather than a means of achieving an overriding charitable purpose. This can be an unclear dividing line for charities, but organisations should ensure that there is a process in place for monitoring the amount of time and resource expended on political activity, so as to ensure that there is a paper trail evidencing that such activity is only one facet of the charity's work in pursuit of its charitable purposes.
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- 2.7 Charities are free to devote all of their resources to non-political campaigning activity, provided that such activity supports delivery of their charitable purposes.

### 3. CAN A CHARITY SUPPORT OR CAMPAIGN FOR A POLITICAL PARTY?

*In brief:* No a charity can never support a political party

- 3.1 The Charity Commission states in its guidance (CC9) that a charity may never support or donate to a political party.
- 3.2 This prohibition can cause difficulties for charities in practice, particularly because the Charity Commission's regulatory work has extended to instances of charities failing (in the Charity Commission's view) to take sufficient steps to avoid being *misperceived* as supporting political parties. Although charities might argue that they should not reasonably be judged on the basis of potentially misguided third party perception, charities can mitigate risk in this area by seeking to avoid rhetoric that suggests support for a party rather than a policy, and by ensuring that when they engage with politicians they do so in a manner which involves a reasonable spread of political party representatives.

### 4. HOW CAN A CHARITY MONITOR AND MANAGE ITS CAMPAIGNING ACTIVITY?

- 4.1 A charity should have systems in place to ensure that campaign activity is appropriately authorised, managed and reviewed. In general, the charity will need to ensure that it follows appropriate approval processes in deciding to pursue any campaign and that (in particular) its trustees are satisfied that any campaigning activity is in support of the charity's objects, on the basis of a credible evidence base, and represents a reasonable commitment of charitable resources taking account of the anticipated charitable impact. This process should be documented.
- 4.2 The following approach may be helpful in formulating a general risk mitigation approach to campaign activity by charities:

#### **General risk management:**

- Is the charity acting outside its purposes?
- Is there a sound and factually accurate evidence base for the campaign objectives and the assertions made in the course of the campaign?
- Is there a risk to the charity's independence, e.g. public perception if the charity's policy coincides with that of a political party?
- Has the charity undertaken a risk/benefit analysis?

#### **Strategic control:**

- Have the trustees approved a strategic plan for campaigning?
  - Does the strategic plan for campaigning align with the charity's objects and wider strategy?
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- Do the trustees have appropriate means of approving campaigning activity, e.g. by delegated sub-committee? It can be difficult, for example, to have trustee sign-off for reactive campaigning/ social media and the charity should have a process in place to deal with this. Social media can be an area of particular risk and it can be advisable to have a specific social media policy to mitigate risk in this area.

#### Operational control:

- Are there policies and procedures in place providing for the escalation of operational issues to senior staff and or trustees in particular circumstances?
- Do the trustees regularly review campaign risks?
- Are there campaign evaluations and impact assessments in place?

4.3 Charity Commission guidance CC9 offers a checklist for charities to consider when formulating a new campaign or in planning a campaigning activity, which can be a useful tool to run through prior to finalising a proposed campaign. Retaining records showing analysis along these lines and trustee sign off can be an invaluable tool in demonstrating compliance with charity law, should the charity later face regulatory scrutiny from the Charity Commission.

4.4 The example responses provided below are not indicative of the level of detail required, but provide a guide to the type of answer to be provided. The example answers are based on the fictitious scenario of a charity set up with the purposes of relieving hardship for young carers in the UK. The charity has planned a campaign strategy revolving around a new (fictitious) law which has been passed by parliament requiring a certain number of volunteering hours to be undertaken by young people in order to receive certain out-of-work benefits through government selected programmes (the 'Working Age Act 2017'), which the charity believes will adversely impact on young carers.

CC9 checklist for campaigning and political activity <sup>1</sup>		
	Question	Response
1	What is/are the objective(s) of this campaign?	<i>E.g. to raise awareness of the impact of the out-of-work benefits regime within the Working Age Act 2017 on young carers, to promote debate on the efficacy of those provisions of the Act in terms of the policy goal of promoting benefits to society amongst out of work young people within the context of young carers and ultimately to have the Act amended so as to include the charity's proposed revisions, so that young carers will be exempted from the volunteering scheme.</i>

2	How would this campaign or political activity further or support the purposes of the charity?	<i>E.g. by contributing towards a legislative/ policy change which will relieve hardship for young carers and generally raise awareness of the issues faced by young carers in the UK today, with a view also to generating additional fundraising income in the region of a 5% increase on the financial year 2015-16 to further fund the charity's emergency fund for young carers, which is currently under-funded as against predicted beneficiary need.</i>
3	Are any of the objectives of this campaign outside the purposes of the charity?	<i>E.g. no, the trustees are satisfied that the objectives of the campaign support the purposes of the charity, both in (a) securing long-term policy/legislative change which the charity is confident, based on a credible evidence base, will relieve hardship for young carers, and (b) providing additional income for direct beneficiary support schemes.</i>
4	Are any of the activities party political?	<i>E.g. no, the trustees have a political impartiality policy and the campaign complies with that policy. Measures have been implemented to manage the risk of party political associations with the campaign, such as avoiding direct use of terminology which has been employed by some political parties in commenting on the Act and ensuring that a wide spectrum of political representation is approached in any engagement with politicians during the campaign.</i>
5	How likely is it that the campaign would achieve its objective(s)?	<i>E.g. we have tested our campaign materials with a small group of supporters who have given positive feedback. Similar campaigns have yielded concessions from the government in the last 6 months and the charity is aware of informal support for similar legislative changes to that proposed by the charity across a cross-party spectrum of MPs.</i>

<b>6</b>	Is all campaign material factually accurate?	<i>E.g. campaign staff are satisfied that all statistics and assertions used are factually accurate and the campaign materials contain links to further information and sources supporting statistics used.</i>
<b>7</b>	What evidence is there to support the answers to questions 2-5 (eg beneficiary consultation, a credible evidence base)?	<i>E.g. point to statistics/testing/consultation</i>
<b>8(a)</b>	What other activities could the charity undertake that would achieve the same objectives?	<i>e.g. the charity could work on extending its scheme to provide emergency hardship funds to lessen the impact of the Act on young carers in need.</i>
<b>8(b)</b>	In what ways would these other activities be more or less effective than campaigning?	<i>E.g. the trustees are satisfied that expending resources on calling for appropriate amendment to the volunteering scheme within the Working Age Act would provide a long-term and more sustainable impact in alleviating hardship for young carers resulting from the implementation of that Act in its current form, treating the cause as opposed to merely the effects of the policy/law. It would also mean that should the charity's funding sources reduce or the charity became unsustainable, the charity's beneficiary group would be protected in a more long-term way, without dependency on the charity's fundraising income, which is becoming more limited in the current UK fundraising environment.</i>

9(a)	What would be the duration and financial cost of the campaign?	<p><i>E.g. the campaign would be rolled out in three phases across three months, at an estimated cost of £3,000 depending on the performance of Facebook advertising, which could produce a variance of approximately £800 either side of this anticipated figure.</i></p> <p><i>The charity believes that the anticipated outlay of resources on the campaign is reasonable and proportionate taking account of the likelihood of a materially positive impact of the campaign and the contribution that such an outcome would make to advancement of the charity's purposes.</i></p>
9(b)	Would campaigning become the charity's only activity, and if so, for how long?	<p><i>E.g. The charity would continue to maintain its other activities – the campaign would amount to approximately 5% of total staff time for the financial year 16-17 and 20% of the charity's budget for campaigning for 16-17.</i></p>
10(a)	Would the campaign be undertaken in partnership with other organisations?	<p><i>E.g. no, but the charity would credit any other organisation's statistics used in campaigning and has undertaken appropriate due diligence into the credentials and reliabilities of such sources.</i></p>
10(b)	If so, how would financial and partnership arrangements be managed?	<p><i>E.g. see above</i></p>
11(a)	<p>What risks would the charity be <b>exposed to in undertaking this campaign?</b></p> <ul style="list-style-type: none"> <li>• Risk of acting outside charity's purposes/misuse of charity funds?</li> <li>• Breach of legal/good practice requirements on campaigning?</li> <li>• Costs and benefits?</li> <li>• Risk of failure to meet objectives?</li> <li>• Financial risk?</li> <li>• Reputational risk?</li> <li>• Risk to independence?</li> <li>• Unintended consequences?</li> <li>• Other?</li> </ul>	<p><i>E.g. The trustees have undertaken a risk assessment of this campaign strategy and have identified that the key risk areas are that the charity may be accused of engaging in party political campaigning, due to the centrality of the volunteering compulsion issue to political debate in recent years.</i></p>

11(b)	How could these risks be mitigated?	<i>E.g. the trustees have reminded campaign staff of the charity's political impartiality guidelines and put additional checking mechanisms in place for reactive campaigning, such as a key member of senior campaign staff having final sign off on reactive social media and social media training for staff working on the campaign arranged to take place ahead of the campaign launch.</i>
12	How would the charity monitor and evaluate the effectiveness of the campaign?	<i>E.g. the trustees have reviewed and implemented a bi-monthly monitoring plan for the campaign, with specific goals to measure performance against. For example, by week two from launch the charity anticipates Facebook analytics showing a X% conversion from advert targets to our main campaign website. We are utilising the services of an analytics firm on a pro-bono basis to provide us with insights on campaign performance at the end of this crucial first fortnight, which will be presented to the trustees and senior campaigns staff to monitor performance. At the end of the campaign, we will check progress against the outputs identified in our campaign strategy, against the key output in the short term of triggering a debate on the Act in parliament and a longer term goal of exempting young carers from the volunteering compulsion within the Working Age Act, to be measured at the end of year 2.</i>

## 5. CAN A CHARITY CAMPAIGN IN THE RUN UP TO AN ELECTION?

**In brief:** Yes, subject to compliance with additional Charity Commission guidance and election law requirements and provided such activity is not prohibited by the charity's governing document.

- 5.1 The proximity of an election (be it a general election, PPC, devolved authority election or a local election) can make issue and policy based campaigning and advocacy higher risk for charities and subject to additional legal considerations. This is because in the run up to an election two additional legal frameworks may apply to charity campaigning: election law (primarily the Political Parties, Elections and Referendums Act 2000 and the Representation of the People Act 1983) and additional Charity

Commission guidance<sup>iii</sup>, supplementary to CC9, which applies only in the period preceding an election. This additional Charity Commission guidance calls for particular care in maintaining and stressing a charity's independence from political parties and candidates in the run up to an election, which can have an impact on the way in which charities engage with campaigning and advocacy.

- 5.2 The Charity Commission's supplementary guidance applies to all charities and generally runs from the announcement of an election to the date on which the election is held. This period is often consistent with what is commonly referred to as 'purdah', or the period prior to an election in which central and local government and other public bodies are subject to Cabinet Office guidance restricting their activities.
- 5.3 Election law generally applies to charities as it applies to other bodies, and is explored in part (B) of this section (although charities may face wider regulatory and reputational implications than non-charities in engaging in campaigning regulated by election law).
- 5.4 Sometimes public/governmental bodies may seek to prevent charities from releasing certain materials or proceeding with events funded or in some way sponsored by such public bodies during the run-up to an election, when 'purdah' is in effect. This is because the public body/governmental body will be subject to controls on the use of public money to engage in matters of political controversy or election campaign debate. Legal advice should be sought if a body seeks to restrict a charity's activities due to purdah in the run-up to an election.
- 5.5 A charity should also ensure that its governing document does not restrict it from such activity.

## 6. HOW CAN CHARITIES ENSURE THAT THEY USE THEIR VOICE EFFECTIVELY IN AN ELECTION PERIOD WITHOUT BREACHING CHARITY LAW?

- 6.1 During the pre-election period it is particularly important for a charity to be demonstrably independent from political parties and to avoid seeking to influence voter behaviour, as confirmed in the Charity Commission's supplementary guidance.
- 6.2 The Charity Commission's guidance is focused on a number of key risk areas:

### i. Policies

- A charity's policy position may be the same as, similar to or diverge from that of a political party, and it is acceptable for a charity to continue to campaign on and highlight its position in spite of this.
  - In continuing to campaign on a policy position or issue that is particularly similar to that of a political party (or indeed particularly dissimilar), a charity should take additional precautions during the pre-election period to stress and maintain its party political independence and ensure that it does not support a political party.
  - An example of this risk area in operation during the 2015 General Election was that of the Badger Trust. In the Charity Commission's report on regulatory involvement during the pre-election period, it states that concerns were raised regarding the charity's promotion of a march opposing the policy of tackling bovine TB through the culling of badgers. The march
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was called 'Stop Cameron's Cull', which the charity promoted in publicity materials. In response to the Charity Commission's contact with the charity it removed the material from its website as a matter of urgency and the charity disassociated itself from the event with a statement on its website that made clear that statements of the charity's chief executive of a political nature were made in a personal capacity and did not reflect the charity's views – the trustees also affirmed that the charity did not endorse any political party or its policies<sup>iv</sup>.

- Steps should be taken to manage risk associated with any alignment/disparity between a charity and a political party's position being so overt that public perception of the charity's independence may be affected.

## ii. Publicity

- A charity may promote its views on issues which relate to its objects and activities during a pre-election period but must avoid explicitly comparing its views with those of candidates or parties (as this may suggest endorsement or support of those parties or candidates). Charity Commission guidance states that *"the key point is that whilst charities can attempt to influence public opinion on a particular issue if it furthers or supports their objects, they must leave it to the electorate to make their own decisions about how to vote"*. It would never be acceptable to put a call to action in a charity's publicity asking voters to vote for a particular party because it shares the charity's view on an issue.
- A charity could, however, outline the views of different candidates and parties on an issue that is relevant to the charity's aims/purposes, as long as it did not do anything further to suggest direct condemnation, endorsement or a call to action to vote for certain candidates.
- A common campaigning tool for a charity is publishing a manifesto that outlines key issues for its beneficiaries/charitable purposes. It is acceptable to do this in a pre-election period, where the charity is trying to persuade parties to adopt the policies which it advocates, or is trying to raise the public profile of those issues. It is not acceptable where the intention is to influence voter behaviour and a charity must refuse any request to be mentioned by a party in its manifesto.

## iii. Parties

- Charities must not support or oppose a political party or candidate and charities cannot donate to political parties.
  - Charities can invite candidates and party representatives to public meetings about the charity's issues, i.e. to speak at a reception or debate, but cannot support or prejudice a party or candidate, and must manage the risk of being perceived to do so.
  - To combat this risk, the Charity Commission advises inviting and engaging with as broad a spectrum of candidates as possible but also accepts that this may be difficult to achieve in practice and that all parties do not have to be represented every time a charity does any work which engages with political parties.
  - Trustees should assess whether engagement with particular parties or candidates may further
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or hinder the interests of the charity, for example if there would be a risk of disorder and thus a security risk if a certain party attended a public meeting being held by the charity, or if a party's policy positions contravene the charity's objects or would alienate its supporters. It also states that a charity would have to have 'very strong reasons' for deciding not to invite a mainstream political party. This is a complex area and the Charity Commission's guidance can conflict with guidance of the regulator of elections, the Electoral Commission, on how to avoid a public meeting being held to be regulated expenditure for electoral law purposes. So, wherever parties or candidates are to be excluded from a public meeting held in the run up to an election, a charity should seek specific advice.

- A charity can engage with candidates but must be wary of becoming associated in the minds of the public with a candidate or party – it must manage the risk that candidates may think it is of benefit to their profile to publicly support the charity.

#### **iv. Candidates**

- Similar considerations apply to the previous section on political parties. The guidance states that *"charities are free to approach candidates in an election setting out the charity's concerns and asking for the candidate's opinions on them with a view to promoting debate."*
- Charities cannot assist a candidate financially or otherwise with their election campaign. If an officer, member of staff or volunteer for the charity wishes to do so they must undertake this strictly in their personal capacity and steps should be taken to ensure clear separation between that person's personal campaigning and the charity's position (such as ensuring separation of social media platforms and that personal social media channels do not suggest that the individual is speaking on behalf of the charity, e.g. by mentioning the charity in their social media bio alongside their support of a party or candidate).
- If an employee or officer has personal involvement with a party, such as standing as a candidate, then this should be considered at board level in terms of the risks to the charity's party political independence and reputation. This will be a particular risk area for senior employees or those who are so closely associated with the charity that they are inevitably seen as speaking for it and even as an extension of its brand.

#### **v. Facilities**

- Some charities such as schools may be required under electoral legislation to provide their facilities to candidates to hold public meetings free of charge. In any other circumstances, a charity should only allow a candidate/party to use its facilities where it is treated as a normal commercial hire and that rate is applied equally to bookings by all candidates (as a lower rate for one candidate may suggest that this is preferential treatment, constituting improper support).
  - However, the Charity Commission guidance states that *"it is open to a charity to refuse to hire facilities to a candidate, party or other group if the charity trustees have good reason to believe that to hire the facilities would alienate the charity's beneficiaries, users or supporters, or are advised by the police that to do so would create a risk of public disorder."*
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## 7. HOW CAN A CHARITY MITIGATE THE RISKS OF BREACHING CHARITY LAW OR BEING SUBJECT TO REGULATORY ACTION BY THE CHARITY COMMISSION IN A PRE-ELECTION PERIOD?

- 7.1 Taking heed of the Charity Commission's guidance and adhering to the principles set out above will assist charities in ensuring they do not fall foul of charity law. Considering the tone, imagery and potential public perception of campaigning material and activities will assist organisations in safeguarding their political independence in a pre-election period.
- 7.2 A charity should involve its board of trustees in assessing the risks associated with a charity's planned activities during an election period and records should be kept of decisions made and the reasons behind those, such as, for example, the link between the campaigning activity and the charity's purposes. Ideally, a risk assessment will be undertaken and documented, for which purpose the charity might take account of the Charity Commission's guidance on risk management, CC26<sup>v</sup>. Existing controls should be adhered to and the trustees should consider increasing those controls, particularly around high risk areas such as social media, in the pre-election period.
- 7.3 Trustees should ensure that they adhere to their duties, as set out in the Commission's guidance CC3 'the essential trustee'<sup>vi</sup> and CC27 'it's your decision'<sup>vii</sup>, and understand their role in decision making for the charity. In deciding whether and how to campaign in the pre-election period, trustees must:
- (i) act within their powers;
  - (ii) act in good faith;
  - (iii) make sure they are sufficiently informed;
  - (iv) take account of all relevant factors and ignore irrelevant factors;
  - (v) make sure their decision is within the range of decisions that a reasonable trustee body could make; and
  - (vi) deal appropriately with any conflicts of interest
- 7.4 The Charity Commission has released a report on regulatory issues that arose during the 2017 General Election<sup>viii</sup>, confirming that although most of the cases it dealt with related to charities with an income of more than £1 million per year the profile of charities dealt with was wide-ranging.
- 7.5 The report states that *"during [the election period] we dealt with 41 cases relating to campaigning and political activity around the General Election. Of these, 28 resulted from us either proactively identifying concerns about apparent non-compliance by charities through external sources such as mainstream media and social media, or responding to concerns raised with us. A further 13 resulted from charities contacting us to seek advice about regulation in this area"*.
- 7.6 Considering the fact that there are more than 160,000 registered charities in England and Wales<sup>ix</sup>, these figures do not represent a substantial amount of regulatory action, but it is clear that the Charity Commission does actively regulate political activity in the run-up to elections.
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## 8. THE LOCAL GOVERNMENT ACT 1986

- 8.1 The Local Government Act 1986 (**LGA**) and what is commonly referred to as 'purdah' (the convention regulating civil servants and governmental department's actions and conduct in the period prior to an election) is outside of the scope of this guidance, but it should be noted that the Charity Commission's guidance on the pre-election period does make reference to the LGA.
- 8.2 Broadly, the LGA prohibits local authorities and some other associated public bodies from giving publicity to a political party or publishing material that appears to be designed to influence public support for or against a political party. Authorities that are subject to this restriction must ensure that they do not give assistance to an organisation to carry out activity which it would itself be prohibited from undertaking under that provision. This can have a consequential effect on charities that receive funding or assistance from such an authority (for example, in holding or organising a joint event or initiative) should the charity engage in activity which may meet this objective test.
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# ELECTION LAW





# ELECTION LAW

## 1. HOW DOES ELECTION LAW APPLY TO INDIVIDUALS AND ORGANISATIONS THAT ARE NOT CANDIDATES OR POLITICAL PARTIES?

- 1.1 Individuals and organisations that are not political parties or candidates for elected office are referred to as 'non-party campaigners'.
  - 1.2 Election law applies to non-party campaigners, if they incur expenditure over a prescribed level engaging in regulated activity in a set time period of time ahead of an election (known as the 'regulated period').
  - 1.3 What will constitute regulated activity and the length of the regulated period depends on the type of campaign and the election to which the activity relates.
  - 1.4 There are two primary pieces of electoral legislation in effect in England and Wales (and Scotland, Northern Ireland and Gibraltar (for some types of elections) with modifications). Those are the Political Parties, Elections and Referendums Act (**PPERA**) and the Representation of the People Act 1983 (**RPA**).
  - 1.5 The RPA applies to what is often referred to as 'local' campaigning, which is campaigning for or against particular candidates in an electoral ward/area (i.e. in a local constituency) and effectively imposes a variable limit on third-party campaigning which is **intended** to promote or prejudice the electoral success of local candidates during the period between which a candidate officially becomes a candidate and the date of the relevant election<sup>x</sup>.
  - 1.6 There is no regulator responsible for regulating the rules in the RPA, and complaints for breaches must be referred to the police for investigation. In practice, it is likely that the Electoral Commission will take an interest in RPA compliance and may refer investigatory issues that it identifies on to the police.
  - 1.7 PPERA applies to elections to the UK Parliament (i.e. general elections), European Parliament, Scottish Parliament, National Assembly for Wales and the Northern Ireland Assembly. Regulated activity at local elections such as PCC elections or local authority elections can also count towards the regulated spend limits under PPERA if the elections fall within the regulated period for an election for one of these region-wide elections.
  - 1.8 PPERA regulates 'general' campaigning, which, according to Electoral Commission guidance, means "non-party campaigns for or against a political party, or particular categories of candidate, including campaigns on policies or issues closely associated with a particular party or category of candidates (for example, candidates in a certain age group)." In practice the boundary between local and general campaigning may be unclear and may overlap - in
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these circumstances it will be important to seek further advice so as to ensure you are complying with the correct framework and that you are applying the correct spending limit to your activities.

- 1.9 The Electoral Commission regulates general campaigns under PPERA and offers a suite of guidance, available at this link <https://www.electoralcommission.org.uk/i-am-a/party-or-campaigner/non-party-campaigners>. New guidance is issued for each specific election, as opposed to the more generic regulatory guidance offered by the Charity Commission which typically remains in place for many years.

## 2. WHEN WILL INDIVIDUALS/ORGANISATIONS NEED TO ENGAGE WITH ELECTION LAW?

- 2.1 Broadly, an organisation will need to be mindful of election law and potentially ensure compliance with the regulatory regime and restrictions it imposes if, in the run-up to an election, it engages in or spends money on certain activities/materials which ***“can reasonably be regarded as intended to promote or procure electoral success at any relevant election” of any party, parties or candidates, including parties or candidates which advocate (or oppose) particular policies*** (often called the ***“purpose test”***).
- 2.2 The test for local campaigning under the RPA is slightly different, and looks at the intention of the campaigner in undertaking an activity or producing materials, as to whether or not it can be seen to be intending to promote or prejudice electoral success for a candidate in a certain local election area (i.e. at a local constituency level or local council elections). This is a narrower test and is less likely to catch issue-based campaign groups or charities as they will be campaigning on policy issues, rather than for or against specific individual candidates (and charities will be prohibited from directly supporting candidates or parties under charity law).
- 2.3 As such, this section focusses predominantly on the general campaign rules under PPERA, but an overview of the local rules is provided at the end of this section for reference. Organisations or individuals should seek further advice if there is a risk that they may be engaging in regulated local campaigning.

## 3. WHAT ARE THE GENERAL CAMPAIGN RULES?

- 3.1 In the period of 365 days prior to a general election (known as the ‘regulated period’) and a variable period of time (generally four months) ahead of devolved elections and referendums<sup>xi</sup>, the costs attributable to certain activities and campaign materials are subject to controls under UK electoral law. Broadly, for elections (referendums being outside of the scope of this guidance) this includes expenditure on certain activities/materials which can ‘reasonably be regarded as intended’ to promote (or prejudice) electoral success for parties, or candidates that hold or do not hold particular opinions or who advocate or do not advocate certain policies<sup>xii</sup> (or can otherwise in some way be grouped together, i.e. a campaign supporting the election of female candidates generally).
- 3.2 PPERA’s election rules apply to activity undertaken by most organisations, such as trade unions, think tanks and a range of commercial vehicles as well as charities. If such entities intend to spend more than £20,000 in England or £10,000 in any of Wales, Scotland or Northern Ireland on ***“controlled***

*expenditure*” during the regulated period before a general election then they will be required to register with the Electoral Commission as a non-party campaigner<sup>xiii</sup>. Only eligible organisations and individuals are able to register with the Electoral Commission, including (for the purposes of a UK-wide general election):

- 3.2.1 Individuals registered on UK electoral registers;
  - 3.2.2 UK Charitable Incorporated Organisations (CIOs);
  - 3.2.3 UK registered companies which are incorporated in the EU<sup>2</sup> and carry on a business in the UK (including charitable companies);
  - 3.2.4 Royal Charter bodies;
  - 3.2.5 UK registered political parties; and
  - 3.2.6 Unincorporated associations that are UK based and carry on their business or other activities in the UK;
- 3.3 Once registered, entities become subject to a range of reporting requirements and controls regulating donations made to the entity for the purpose of meeting its controlled expenditure. Registered non-party campaigners do also then generally have access to a much higher spending limit, which varies depending on the part of the United Kingdom to which the entity’s controlled expenditure can be attributed and again depending on the election to which the campaign relates. In that sense, registering with the Electoral Commission can give an entity significantly greater freedom to campaign in areas of political controversy (subject to charity law for charities).
- 3.4 As will be explored below, a charity or campaign group may incur controlled expenditure even where it does not intend to support any political party, parties or candidates (and for charities this should always be the case as this would be a breach of charity law and Charity Commission guidance).
- 3.5 It is important to recognise that whilst charity law prohibits certain campaigning conduct (i.e. party political conduct), the Electoral Commission, in enforcing PPERA, is concerned only with whether funds need to be accounted for and reported. PPERA does not prevent campaigning activities being undertaken, subject to compliance with the spending limits and the other controls it contains. This is something that is often overlooked by campaigners and charities - the Electoral Commission, as a regulatory body, is not concerned with preventing certain campaigning techniques or materials being undertaken or produced – it is concerned primarily with ensuring transparency as afforded by accurate reporting of expenses incurred in excess of a prescribed threshold which meet the purpose test under PPERA and also ensuring that other controls on (and the reporting of) donations are complied with.

## 4. WHAT IS “CONTROLLED EXPENDITURE?”

- 4.1 “Controlled expenditure” for the purposes of PPERA includes all expenditure on “qualifying expenses” which “can reasonably be regarded as intended to promote or procure electoral success at any relevant election” for:
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- 4.1.1 one or more particular political parties;
- 4.1.2 one or more political parties who advocate (or do not advocate) particular policies, or who otherwise fall within a particular category of parties; or
- 4.1.3 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
- 4.2 This test is referred to in Electoral Commission guidance as the "**purpose test**".
- 4.3 It should be noted that the purpose test will be satisfied if expenditure is incurred which can reasonably be regarded as intended to prejudice the prospects of any party/parties or candidates. It is also not necessary expressly to name a party or candidate in order to satisfy the purpose test if, for example, wording or imagery is used which is associated with particular parties or candidates.
- 4.4 This is an **objective** test, so even if an organisation does not intend for its campaign activity to promote or procure electoral success of parties/candidates, it may still be reasonably regarded, on an objective extrinsic basis, as intended to do so.

## 5. HOW CAN AN ORGANISATION ASSESS WHETHER SOMETHING MEETS THE PURPOSE TEST/IS CONTROLLED EXPENDITURE?

- 5.1 The Electoral Commission offers guidance (which it updates for each election) in this area, and states that campaigners should consider the following factors to assess whether a campaign material/activity meets the purpose test:

**Tone:** *For example, is the tone of your campaign negative or positive towards a political party or parties, or category of candidate, or a policy that a party or category of candidate supports or does not support?*

**Context and timing:** *For example, are you campaigning on an issue that is prominent in public debate? Are you campaigning on an issue that clearly represents an area of difference between political parties? Are you campaigning as a reaction to a policy or position of a political party? Are you campaigning close to the date of an election (campaigning very close to an election may make it more likely that you will pass the purpose test)?*

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**Call to action:** *For example, is your campaign asking people (whether explicitly or implicitly) to vote for a particular political party, parties or category of candidate at an upcoming election?*

**How a reasonable person would see your activity:** *Would a reasonable person regard your campaign as intended to influence people's voting choices?*

*These factors should be considered as a whole rather than individually. If, on balance, the answer to these questions is yes, it is more likely that your campaigning activity will meet the purpose test<sup>3</sup>.*

## 6. WHAT ARE "QUALIFYING EXPENSES"?

- 6.1 For controlled expenditure to be incurred, expenditure which satisfies the purpose test must also fall within one of the following categories of "qualifying expenses"<sup>xv</sup>:
- 6.1.1 production or publication of material which is made available to the public, or any section of the public (in any form and by any means);
  - 6.1.2 canvassing, market research, seeking views from members of the public;
  - 6.1.3 press conferences or other media events;
  - 6.1.4 transport of persons by any means to any place(s) with a view to obtaining publicity;
  - 6.1.5 public rallies or other public events other than AGMs and certain public processions/protests in Northern Ireland; and
  - 6.1.6 expenses in respect of such events including premises hire, provision of goods, services or facilities.
  - 6.1.7 **Staff time:** it is important to note that associated staff time costs will also be a qualifying expense (although outside the scope of this guidance, note that for referendums staff time is generally excepted from being counted as a qualifying expense). In many circumstances, staff time may be the only significant controlled expenditure attributable to a campaigning activity (for example, the staff time cost of writing copy for a non-paid promoted social media post).
- 6.2 There are some limited exceptions to classification as qualifying expenses, including security costs, annual conferences, publications in newspapers and periodicals (other than advertisements), BBC broadcasts and other licensed radio and television broadcasts (as distinct from on demand videos), translations from Welsh to English, reasonable non-reimbursed personal travel expenses, reasonable

expenses attributable to disability; and, importantly, **volunteer time is not a qualifying expense and will not count as controlled expenditure**<sup>xvi</sup>.

- 6.3 This can helpfully be referred to as the 'activity test'. So an activity/publication that meets the activity test and the purpose test will be qualifying expenditure (and regulated) - generally activities will only be regulated if they are public facing or intended to support public facing activity. This is sometimes referred to as the 'public test'.
- 6.4 So, if a publication, event or campaign material meets the purpose test + activity test + public test, then the costs attributable to such activity/material will count towards the non-party campaigner's spending limit (which will depend on the election and whether the campaigner is a registered non-party campaigner or not).

## 7. HOW MUCH CAN A NON-PARTY CAMPAIGNER SPEND ON CONTROLLED EXPENDITURE?

- 7.1 Where an organisation registers as a non-party campaigner with the Electoral Commission, limits apply to the amount of controlled expenditure it can incur. For general elections, these limits are calculated on the basis of a fixed amount of £20,000 plus a variable amount based on the number of seats in a region of the UK. For the purposes of the 2017 snap election, those limits were:
- 7.1.1 £319,800 in England
- 7.1.2 £55,400 in Scotland
- 7.1.3 £44,000 in Wales
- 7.1.4 £46,100 in Northern Ireland (this amount was greater than it would usually be as the spending limit for the elections to the Northern Ireland Assembly was added to the spending limit for the snap election, as the regulated periods coincided).
- 7.2 The Electoral Commission confirmed on 4 November that the spending limits for the 12 December 2019 general election will be:
- 7.2.1 £479,550 in England
- 7.2.2 £73,400 in Scotland
- 7.2.3 £55,259 in Wales
- 7.2.4 £37,550 in Northern Ireland
- 7.3 The reason for the increase in spending limits (as compared to the 2017 snap election) relates to the regulated period for this election – which runs for the 12 months preceding the election date of 12 December. Within this period there has also been a European Parliamentary election which had its own regulated period and spending limits. PPERA provides that the overall spending limit for the regulated period for the general election is combined amounts for a general election and for a European Parliamentary election, as set out in PPERA. In practice, this avoids any disadvantage to campaigners, who may already have incurred regulated expenditure campaigning in the European
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Parliamentary elections, and may therefore have had a lower spending limit available to them in the general election in the absence of the aggregation of the spending limits in this manner.

- 7.4 The limits for other types of elections are set out within PPERA and will be confirmed by the Electoral Commission in its guidance before any given election, available at <https://www.electoralcommission.org.uk/i-am-a/party-or-campaigner>.
- 7.5 Due to what are known as ‘attribution’ rules, controlled expenditure on a UK-wide campaign must be apportioned between the total number of seats across the whole of the UK (650) up to a total UK-wide spending limit of £584,817 for the 2019 general election. If you undertake a general UK-wide campaign, your total spending limit as a registered non-party campaigner will therefore be £584,817. For the 2017 snap election, this figure was £390,000.

## 8. DID THE 2017 SNAP-ELECTION CHANGE THE RULES SETTING THE LENGTHS OF REGULATED PERIODS?

- 8.1 The regulated period of 365 days prior to a general election is fixed in statute. Electoral Commission guidance prior to the 2017 snap election confirmed that was treating the regulated period as having begun “on 9 June 2016 and ending on polling day, 8 June 2017”, so a 365 day regulated period. This is in spite of the fact that the snap election was not announced until April 2017.
- 8.2 The Electoral Commission has stated in guidance that it is unlikely to consider enforcement action against non-party campaigners that took prompt steps to register with them, even if their controlled expenditure is already in excess of the registration threshold (due to the retroactivity of the regulated period).
- 8.3 However, it is BWB’s view that in many cases, it may be appropriate to take the view that spending prior to the announcement of the election could not reasonably have been regarded as intended to influence an election that was not expected to be held until 2020.
- 8.4 There may be some cases where it is appropriate to retroactively count campaign spending as controlled expenditure if a general election is announced at short notice. For example, if an organisation has been overtly campaigning throughout the last year to unseat a political party (for example, with a view to affecting the May local elections) or to directly prejudice a political party, then that activity is likely to pass the purpose test even though it was incurred prior to a snap general election being announced.

## 9. WHAT HAPPENS IF AN ORGANISATION WORKS WITH OTHER ORGANISATIONS ON REGULATED CAMPAIGNING ACTIVITIES?

- 9.1 Where an organisation works in coalition with others, all controlled expenditure of the coalition will be attributed to all coalition members, meaning each coalition member individually may be under the spending limits for registration, and yet all coalition members could nonetheless be required to register with the Electoral Commission. The language used in the legislation is whether you and one or more other campaigners are incurring controlled expenditure ‘in pursuance of a plan or other arrangement’.
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- 9.2 For general elections, there is provision in PPERA for a 'lead campaigner' to register with the Commission and take responsibility for reporting the controlled expenditure of specified 'minor campaigners' within a coalition. However, it is not clear to what extent the lead campaigner can rely in good faith upon the information provided to it by any minor campaigners (by way of defence in any enforcement proceedings), meaning this continues to be an area in which particular care should be taken. It is also likely to be a significant administrative burden for the lead campaigner as it would be responsible for the reporting of any controlled expenditure by the other minor campaigners (with such controlled expenditure counting towards its own spending limits under electoral law) and for ensuring receipts are provided for spending over £200 and compliance with any other reporting requirements.
- 9.3 Whilst in a lead/minor campaigning arrangement only the lead campaigners need to register and report to the Electoral Commission in respect of the joint campaign, it should be noted that any minor/unregistered campaigners that exceed the registration threshold in their own separate campaign activity on controlled expenditure would need to register with the Electoral Commission.
- 9.4 It is each organisation's responsibility to register where necessary and to accurately report each other's spending, as required. This can be difficult in practice and it may be helpful to have an agreement in place for any joint-campaigning setting out clearly a reporting framework between the organisations and each organisation's responsibilities.
- 9.5 It is unclear from the legislation precisely when co-operation between two or more campaigners will be sufficient to constitute joint working. The Electoral Commission's guidance<sup>4</sup> states that the guiding principle is that campaigners should make "*an honest and reasonable assessment, based on the facts, whether you and another non-party campaigner are spending money as part of a common plan or arrangement*". However, this assessment is not always straightforward and the Electoral Commission has said itself in relation to similar rules governing the 2016 EU Referendum campaign that "*to reduce complexity and allow the Commission to provide clearer advice and guidance to campaigners, the Government and Parliament should clarify what constitutes joint spending*".
- 9.6 The Electoral Commission's guidance offers some principles as to when the Commission will and will not consider organisations to be working jointly and states that you are unlikely to be engaging in joint working if:
- 9.6.1 you have informal discussions with other campaigners that doesn't involve decision making or co-ordination;
- 9.6.2 you speak at an event organised by another campaigner but do not participate in any other way;
- 9.6.3 you do not consult with other campaigners about what you should say in your campaign or how you should organise it; or
- 9.6.4 you establish a new organisation to run the campaign – but this is a controversial area and requires further thought/specific advice.
- 9.7 The guidance states that you may be joint working if:
- 9.7.1 you have joint advertising campaigns, leaflets or events;
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- 9.7.2 you coordinate your regulated campaign activity with another campaigner (i.e. apportioning areas or issues); or
- 9.7.3 another campaigner can approve or has significant influence over your leaflets, websites or other campaign activity.
- 9.8 The Electoral Commission's 2017 guidance on joint working for general elections is available here: [https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0006/225195/UKPGE-2017-Joint-campaigning.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0006/225195/UKPGE-2017-Joint-campaigning.pdf)

## 10. IF A CHARITY CANNOT SUPPORT A POLITICAL PARTY, WHY IS IT ALLOWED TO INCUR "CONTROLLED EXPENDITURE" UNDER PPERA?

- 10.1 The answer lies in the wide, objective test of "*controlled expenditure*" under PPERA, as opposed to the subjective test in the RPA which focuses on an organisation's actual intention in carrying out regulated activity. Controlled expenditure may satisfy the purpose test even if it is also intended to achieve another purpose (or if this intent is reasonably inferred). For example, expenditure on materials promoting policies or issues closely associated with a political party may constitute controlled expenditure as they could objectively be regarded as intended to support a category of candidates/parties that do or do not hold certain policy views, so satisfying the purpose test. Under PPERA, it is not necessary to expressly name a party or candidate.
- 10.2 So, expenditure by a charity on the production or publication of materials or on public events may be intended to advance the interests of its beneficiaries, by raising public awareness of issues in connection with the election. However, if a reasonable person might infer that the charity was also intending to promote the success of candidates with consistent policy positions or prejudice a candidate by highlighting the disparity between the charity's position and that of the party, then this could constitute controlled expenditure. The risk of such an inference being drawn is likely to be greater where the policy position of the charity coincides with that of one of the political parties on a polarised issue of political controversy and is a key dividing line in the discourse around the general election.

## 11. ARE THERE ANY METHODS TO MITIGATE THE RISK OF ACTIVITY COUNTING AS CONTROLLED EXPENDITURE?

- 11.1 Working to a plan put in place before party policies are announced could help demonstrate that an organisation should not reasonably be regarded as intending to promote the electoral success of a party which later adopts the same policy position. Electoral Commission guidance states that where an organisation's campaign activity would not have been regulated previously, it "*is unlikely to become regulated campaign activity simply because a party has changed its position*", unless the organisation then publicises the party's support for its position or alters or increases its campaigning on a policy as a result of the party's support. However, this should not be seen as an absolute rule; where a policy becomes highly controversial and heavily associated with a particular party in the run-up to an election, it may be difficult in some circumstances to argue that campaigning against the policy cannot reasonably be regarded as intended (in part) to influence that party's electoral prospects.

- 11.2 In some cases, expenditure which passes the “*purpose test*” will not be regulated if it is not directed towards the public or a section of the public (referred to in Electoral Commission guidance as the “*public test*”). The Electoral Commission guidance suggests that this will be the case where activities are only directed at an organisation’s “*members*” or “*committed supporters*”, including regular donors by direct debit, people with an annual subscription and people “*actively involved*” in the organisation. However, people who are on the organisation’s mailing lists or have signed up to social network sites will not be considered “*actively involved*” on that basis alone.
- 11.3 The use of volunteer time is unregulated, including time spent by staff that the charity does not pay them for. However, the position may be more complicated where staff undertake unpaid work out of hours, and any expenses paid to volunteers engaging in regulated activity (or resources provided to them to carry out that activity) will count as controlled expenditure.
- 11.4 Expenditure on publications in newspapers and periodicals (other than advertisements) will not be regulated. Nor will expenditure in respect of BBC and other licensed television broadcasts (as opposed to on demand TV). This means that charity staff costs associated with interviews in print media or on BBC news programmes should not be caught.
- 11.5 The Electoral Commission’s guidance also states that expenditure on the production and distribution of a press release only to the media (such as welcoming a party’s policy pledge) will not ‘generally’ be regulated; and nor will comments or statements made in response to queries from the media. However, media events are regulated, and any press releases posted on a website or otherwise circulated more widely are, in our view, likely to be regulated.
- 11.6 The Electoral Commission takes the view that website content will only satisfy the “*public test*” and so result in controlled expenditure if it is actively advertised or promoted, such as by linking to it via other websites or communications, attempting to rank it higher in search engine result lists (e.g. Google), or advertising it on Twitter, Facebook or other organised viral marketing.
- 11.7 Expenditure on an organisation’s annual conference will also not be regulated.
- 11.8 The Electoral Commission’s factsheets from 2017 for common campaigning techniques and its view of regulated activity can be accessed below:

**Regulated non-party campaigning:**

[https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0009/224955/UKPGE-2017-Overview-of-non-party-regulated-campaign-activity.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0009/224955/UKPGE-2017-Overview-of-non-party-regulated-campaign-activity.pdf)

**Campaigns later adopted by parties or candidates at elections:**

[http://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0009/169488/fs-party-support-npc-ukpge.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0009/169488/fs-party-support-npc-ukpge.pdf)

**Manifestos**

[http://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0011/169490/fs-manifestos-npc-ukpge.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0011/169490/fs-manifestos-npc-ukpge.pdf)

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**Pledge cards**

[http://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0016/170026/factsheet-common-campaigning-techniques-pledge-card.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0016/170026/factsheet-common-campaigning-techniques-pledge-card.pdf)

**Social media**

[http://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0010/175078/fs-soc-media-npc-ukpge.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0010/175078/fs-soc-media-npc-ukpge.pdf)

## 12. WHAT ARE THE IMPLICATIONS OF BEING REGISTERED AS A NON-PARTY CAMPAIGNER UNDER PPERA?

- 12.1 Registering with the Electoral Commission results in potentially onerous additional compliance requirements, but can allow charities and other campaigning organisations greater freedom to campaign in the run up to an election. The additional requirements include that registered non-party campaigners:
- 12.1.1 Are subject to the spending limits on campaigning described above and must retain and provide receipts for controlled expenditure over £200.
  - 12.1.2 Are subject to rules regarding the timing of receipt and payment of invoices for controlled expenditure.
  - 12.1.3 Can only accept donations of £500 or more to be used for controlled expenditure if they are from an identifiable UK based source which they have to check prior to accepting the donation (a list of permissible donors is set out at appendix 1) – this can have an effect on UK organisations which incur or wish to incur controlled expenditure but receive all of their funding from an associated overseas branch/organisation. Note that a donation under electoral law includes property or services given without charge or on non-commercial terms, as well as direct cash donations. The Electoral Commission's donations guidance is available here, for 2017: [https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0010/224965/UKPGE-2017-Donations-to-non-party-campaigners.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0010/224965/UKPGE-2017-Donations-to-non-party-campaigners.pdf)
  - 12.1.4 Must report on donations over £7,500 (as a single sum or in aggregate from one source) in the run up to the election and donations over £500 after the election.
  - 12.1.5 Must submit a report on controlled expenditure after the election.
  - 12.1.6 Must present an auditor's report if the controlled expenditure exceeds £250,000.
- 12.2 Some charities or campaigning groups may be concerned that registering with the Electoral Commission might attract unwarranted criticism for acting in a partisan way. However, registration does not in itself imply that an organisation is politically partisan due to the breadth of the purpose test.

## 13. ARE THERE ANY IMPLICATIONS UNDER THE COMPANIES ACT 2006 OF ENGAGING IN POLITICAL CAMPAIGNING?

- 13.1 In the case of charitable companies and campaign groups that are registered companies, political expenditure and political donations may require a general authorisation by way of a resolution from its members under Part 14 of the Companies Act 2006.
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- 13.2 The Companies Act 2006 regulates political donations and “political expenditure” by companies. Part 14 of the 2006 Act (ss. 367 – 379) requires a company which (a) makes a donation to a political party or a “political organisation” or (b) incurs political expenditure, to obtain a general authorisation by way of a resolution from its members or from the members of its ultimate holding company. This is intended to ensure that the political activities of companies have broad-based democratic support amongst members/shareholders and are not simply directed by board level decisions.
- 13.3 In summary, a political organisation is an organisation that carries out or proposes to carry out activity that is “*capable of being reasonably regarded as intended*” to affect public support for a political party or candidate.
- 13.4 The Companies Act links the definition of a political donation to the definition of regulated donations under PPERA, which means that Companies Act authorisation would be required if a company wanted to make a donation or series of donations to another campaigner which itself met the definition of a political organisation, with a cumulative value over £5,000 in any twelve-month period.
- 13.5 Political expenditure means expenditure incurred on material or activity of any kind that is “*capable of being reasonably regarded as intended to affect public support for a political party or other political organisation*”.
- 13.6 The Companies Act makes directors personally liable for incurring such expenditure which has not been appropriately authorised, but the risk of enforcement may be low as it will typically be the members of a company that need to enforce this, absent extreme circumstances such as an insolvency situation (and members can also ratify the omission of such authorisation).

## 14. ARE THERE ANY OTHER CONSIDERATIONS FOR ORGANISATIONS/INDIVIDUALS ENGAGING IN CAMPAIGNING?

- 14.1 Under PPERA, outside of the non-party campaigning rules but relevant to non-party campaigners, is a provision that regulates printed election material.
- 14.2 The definition of election material is very similar to that of controlled expenditure and includes an objective purpose test. Essentially, if you publish or cause to be published material that can reasonably be regarded as intended to influence voters to vote for or against a political party or category of candidates including those that support or oppose particular policies, and that material is aimed at the public, then there are rules requiring text to be added to the document for transparency purposes.
- 14.3 These ‘imprint’ rules currently only apply to printed material, so may not be a relevant consideration for organisations if they are not going to be working with printed materials and will predominantly be engaging in online campaigning. The Electoral Commission’s guidance on imprints from 2017 is available here: [https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0004/166225/fs-imprints-npc.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0004/166225/fs-imprints-npc.pdf)
- 14.4 Note that it is an offence to not include a compliant imprint on election material, and the Electoral Commission have previously issued heavy fines for this easily-overlooked requirement being omitted.
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## 15. WHAT ARE THE LOCAL CAMPAIGNING RULES?

- 15.1 The RPA regulates spending on similar categories of activity to that under PPERA, incurred *“with a view to promoting or procuring the election of a candidate at an election”* which includes persuading voters not to vote for a candidate.
- 15.2 The RPA thus regulates campaigning for or against a specific candidate or candidates on a constituency level. The RPA is not regulated by the Electoral Commission and there is no formal regulator of its rules – complaints are made to the police and the CPS will enforce breaches. The Electoral Commission, in its guidance, makes a distinction between ‘general’ campaigning, which it regulates, and ‘local’ campaigning, which it does not (and is governed by the RPA). However, in practice the Electoral Commission is likely to be familiar with the RPA’s regime and have some interest in advocating its enforcement.
- 15.3 The local campaign rules will also apply to campaigning ahead of mayoral elections, local council elections, PPC elections and the Greater London Authority elections.
- 15.4 The regulated period under the RPA stretches from the date on which the candidate becomes a candidate to the date of the election. In practice, the regulated period under the RPA will generally be from dissolution of parliament – for the snap 2017 general election it applied from 3 May 2017 to 8 June 2017.
- 15.5 The spending limit on regulated campaign spending without candidate authorisation under this regime depends on the election type<sup>xx</sup>. For local campaigning at a general election, the limit is just £700 per candidate and similar rules regarding spending and donations under PPERA apply. A greater spending limit can be accessed for campaign spending that is authorised by (effectively incurred on behalf of) a candidate, which again depends on the election and would effectively come out of the candidate’s own election expense limit (which for the General Election for a county constituency was £8,700 plus 9p per person on the electoral roll for that area)<sup>xx</sup>.
- 15.6 Importantly for charities, due to the fact that the test under the RPA is subjective, i.e. whether or not an organisation incurs expenditure with the actual intention of (or *“with a view to”* using the language of the legislation) promoting or procuring the election of a candidate, it should not be possible for a charity to incur controlled expenditure without breaching its charity law obligations not to support or donate to a political party or candidate. However, charities should still be aware of the additional risk of complaints regarding local level/candidate campaigning during the RPA’s regulated period, particularly where a charity may hold a hustings-style event which does not include all candidates standing in the area – in practice, this type of activity may prompt complaints of breaches under the RPA from candidates who have been excluded.
- 15.7 It is often difficult in practice to work out when a particular campaign that has a local impact or notes local candidates is governed by the RPA and local campaign rules as opposed to the general campaign rules/PPERA (or even both). There is little guidance in this area and the distinction has not been tested by the courts.
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# LOBBYING





# LOBBYING

## INTRODUCTION

Lobbying within this guidance refers to the activity regulated by part 1 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 (“the Lobbying Act”).

Part 1 of the Lobbying Act imposes requirements to register with the ‘Registrar of Consultant Lobbyists’ where an organisation or individual, in the course of a business and in return for payment, makes communications on behalf of another person to government ministers or senior civil servants (permanent secretaries or equivalents). An obvious example of lobbying falling within the regulation of Part 1 of the Lobbying Act would be a company paying an external consultant specialising in government liaison to lobby the Secretary of State to stand against corporation tax rises.

## 1. WHAT DOES THE LOBBYING ACT DO?

The Lobbying Act created a statutory register of lobbyists, called the Register of Consultant Lobbyists (the ‘Register’). It prohibits what it terms ‘consultant lobbying’ without being registered on the Register<sup>xxi</sup>. Registration attracts a fee and gives rise to reporting requirements, such as provision of quarterly information detailing the names of clients on whose behalf consultant lobbying was undertaken<sup>xxii</sup>.

The Act makes it an offence to carry on the business of consultant lobbying without being registered or providing materially inaccurate registration or return details<sup>xxiii</sup>.

## 2. WHAT IS CONSULTANT LOBBYING?

2.1 The Lobbying Act states that a person will be carrying on the business of consultant lobbying if:

- (a) in the course of a business and in return for payment
- (b) the person makes oral or written communications personally
- (c) to a Minister of the Crown or permanent secretary (referred to in the Registrar’s guidance as ‘government representatives’, defined below)
- (d) on behalf of another person(s)
- (e) relating to:
  - (i) the development, adoption or modification of any proposal of the government to make or amend primary or subordinate legislation
  - (ii) the development, adoption or modification of any other policy of the government

(iii) the making, giving or issuing by the government of, or the taking of any other steps by the government in relation to any contract or other agreement, any grant or other financial assistance or any licence or other authorisation; or

(iv) the exercise of any other function of the government.

2.2 This will be consultant lobbying under the Act provided that the person/business making the communications is registered for VAT and none of the statutory exceptions apply.<sup>xxiv</sup>

2.3 The registrar has issued guidance, available here: <http://registrarofconsultantlobbyists.org.uk/guidance/requirements-to-register/introduction/>

### 3. WHAT ARE 'GOVERNMENT REPRESENTATIVES'?

3.1 The Registrar's guidance states that "*government Representatives are Ministers of the Crown, Permanent Secretaries (and any equivalents as specified by the Act) of Her Majesty's Government, in post at the time when an act of consultant lobbying is carried out. Any communications made to Government Representatives prior to accepting this post, or made after they have left their post, will not trigger the need for registration*". Equivalent positions are listed on the Registrar's website: <http://registrarofconsultantlobbyists.org.uk/guidance/requirements-to-register/requirements-to-register/>

### 4. WHAT ARE THE STATUTORY EXCEPTIONS?

4.1 The key exceptions for many organisations/individuals are as follows:

4.2 There is an exception for persons making communications that would otherwise fall within the definition of consultant lobbying above if the person carries on a business consisting of mainly non-lobbying activities and the making of any such communication is incidental to the carrying on of those activities.<sup>xxv</sup>

4.2.1 There is also an exception for membership bodies and representative bodies – a person will not be deemed to carry on the business of consultant lobbying if the person acts generally as a representative of persons of a particular class or description, and

(i) the income of the person derives wholly or mainly from persons of that class or description, and

(ii) the making of communications on behalf of those persons is no more than an incidental part of that general activity.<sup>xxvi</sup>

4.3 The registrar's guidance states that 'incidental means ancillary to the main focus of a business (which is not lobbying). The making of the communication is connected with the business, but is secondary to its main concern'.

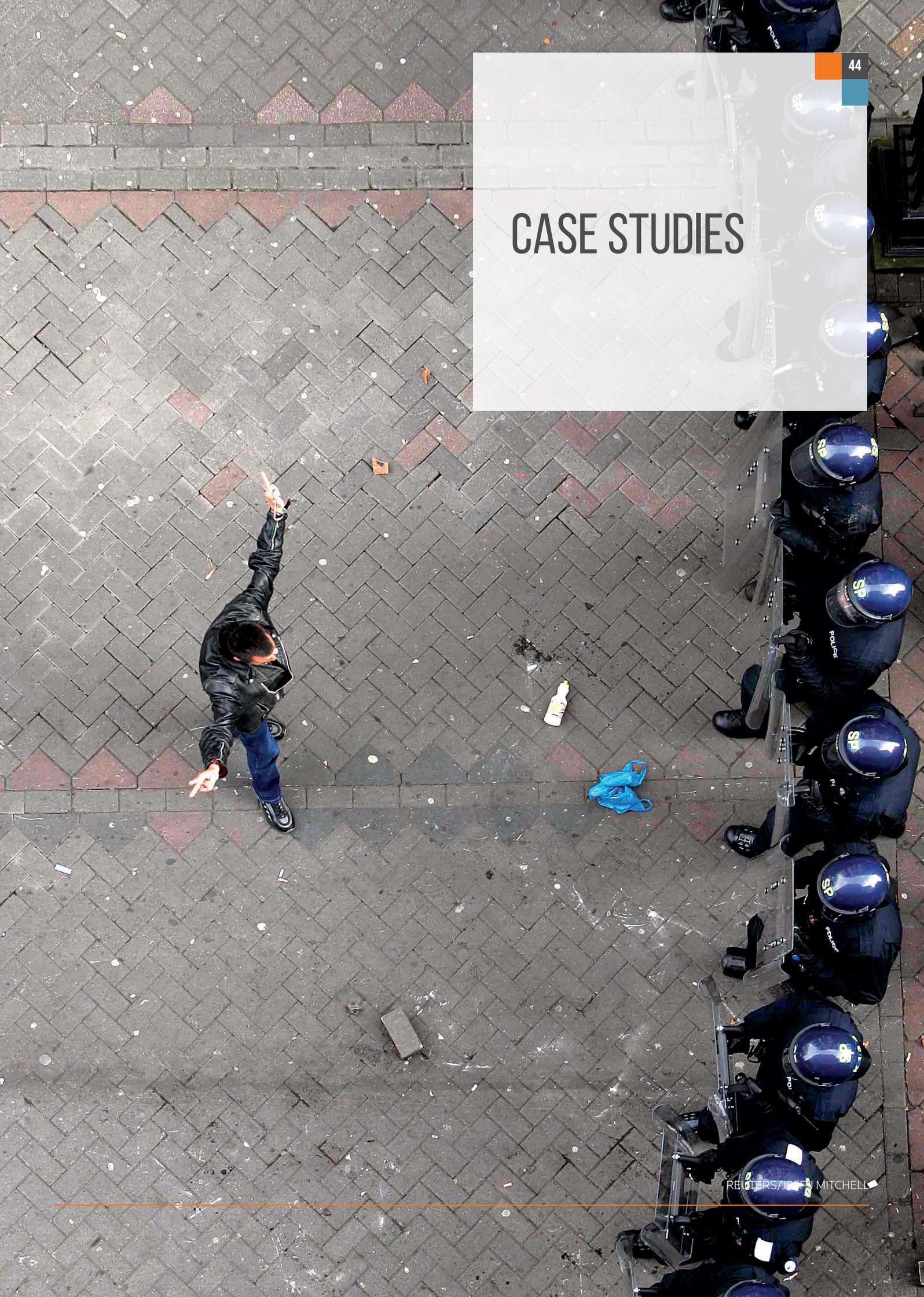
4.4 The registrar's guidance specifically states that "*charities are exempt from registering as long as they do not receive payment for making communications from the person upon whose behalf they are made*" (although this is not an explicit exception in the legislation).

4.5 Other exceptions apply and are explained in more detail here: <http://registrarofconsultantlobbyists.org.uk/guidance/requirements-to-register/exemptions-from-registration/>

## 5. HOW MIGHT THE LEGISLATION APPLY TO CAMPAIGNING GROUPS AND CHARITIES?

- 5.1 It is likely that in many cases campaign groups and charities, even those that do engage in lobbying activities with government representatives as part of campaigns, will be able to rely on the 'incidental activity' exception in the legislation (and, for charities, rely on the registrar's guidance assertion that they do not have to register unless they receive payment for making the communication).
  - 5.2 For example, you might at times seek to advocate with senior government officials on behalf of your beneficiaries, but for this to be regulated it would also be necessary for it to be shown that the organisation was in some manner being paid to provide such a service by those beneficiaries.
  - 5.3 The Act has been criticised as being too narrow in scope, and prior to the calling of the snap election in 2017, a bill was passing through the House of Lords to reform the law in this area, and would, if restarted and passed, significantly widen the scope of what types of work and organisations would be caught under lobbying rules – so this is an area to monitor.
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# CASE STUDIES





## CASE STUDIES

1. **A local campaign group (which is not a charity) has been running a campaign aimed at all political parties, encouraging them to stop reducing welfare benefits. Just as they're about to launch the next phase of the campaign, a snap election is called. The group now wonders whether they have to stop campaigning because of election law. As they carried out some of their campaigning activities in the year before the election was called, they're also concerned that they might have to pay a fine. Would they be able to continue with some of the activities related to the campaign? Would they have to pay a fine?**

The campaign group would not need to stop its campaign simply because of the announcement of a snap election, but it would need to assess whether the next phase of its planned campaign might be regulated under election law.

This would involve applying the purpose, activity and public tests to the campaign, i.e:

**Purpose test:** could a reasonable person view the campaign as reasonably regarded as intended to promote or procure electoral success for a political party or category of candidates?

**Activity test:** is the campaign activity a regulated activity, i.e. is it a publication (including leaflets, adverts, websites and social media), event, canvassing and/or market research?

**Public test:** Will the activity be aimed at the public or a section of the public? Note that press conferences and other media events do not need to be themselves made available to the public to be regulated.

The factors that are likely to impact on whether or not a campaign to stop reduction of welfare benefits is regulated or not will be context-driven. For example, this will depend on the language and tone of the campaign (and whether there is any call to vote or language aimed at voters rather than at the parties themselves) and whether welfare benefits are a key part of electoral debate/can be clearly divided on party lines (i.e. if there is one party that is very clearly committed to increasing benefits and some that are not). Pre-manifesto, it is less likely that such activity would be regulated as the campaign group may be seen to be attempting to influence the contents of said manifestos/commitments of the parties, rather than being attempting to influence the public on who to vote for. The key question is whether within the context of the election and political discourse at the time, could a reasonable person regard the campaign as intended to influence people's voting choices?

Even if the campaign group did decide that the campaign activity was regulated by election law, this would not necessarily mean that it wouldn't be able to proceed with the campaign, it

would just mean that it would have to evaluate the costs associated with the campaign and potentially register with the Electoral Commission.

The regulated period for a general election is 365 days (unless there is less than 365 days between elections, in which case it is the length of that lessened period between elections). If the snap election meant that the election was less than 365 days away, then the campaign group would also have to consider whether its previous campaigning activity within the now retrospective regulated period might be regulated.

Provided that the previous campaign activity did not relate to any other election (such as a local election, devolved election or PPC election), then it is unlikely to be regulated if it was an issue based campaign aimed at all political parties generally. This is because the test for regulation is whether the activity could be reasonably regarded as intended to promote or procure electoral success for a party or category of candidates at an election, and it is difficult to see how activity undertaken without an election on the horizon could be intended to promote electoral success (as opposed to just a policy change commitment). The position may be complicated if a snap election had been widely anticipated prior to its formal announcement, as campaign activity could then be seen as intended to promote or procure electoral success if it is reasonable to assume that the campaign group focused the campaign around the possibility of an imminent election.

Even if the campaign group did decide that its previous campaign activity within the regulated period was regulated, then the next step would be to evaluate the costs attributable to the total of the likely-regulated campaign activity already undertaken and planned for the next phase, to see if this figure (together with any other regulated activity the group may undertake) would exceed the registration thresholds (i.e. £10,000 in Wales, Northern Ireland and Scotland and £20,000 in England).

If the total regulated campaign activity did not exceed the relevant registration threshold, then the campaign group could continue with the campaign as planned (monitoring its actual spend to ensure that it did not exceed projections and retaining records of its evaluations of regulated activity in case of any challenge or enquiry from the Electoral Commission or other party).

If the total regulated campaign activity did exceed the relevant registration threshold, then the campaign group would need to register with the Electoral Commission as a non-party campaigner (assuming that it was eligible to register – which it would be if it was a UK based unincorporated association or company undertaking activities in the UK). The campaign group would then have access to the higher registered campaigner spending limits for the election, giving it significantly greater room to campaign as it liked, but being subject to various regulatory and compliance requirements such as ensuring that donations came from permissible donors and were reported as required by the Commission, that invoices were retained for all regulated expenditure over £200 and that all regulated expenditure was authorized by a specific person at the organisation in charge of compliance with the electoral commission's framework/ election law (the 'responsible person' who has to be named when the organisation registers) or someone authorised by them in writing.

If the organisation exceeded the registration threshold because of earlier activity already undertaken then the Electoral Commission confirmed for the 2017 snap election that it would be unlikely to impose

finer for those that had already breached the unregistered regulated activity spend threshold, as long as organisations took prompt steps to register.

Note that if the campaign group's campaign was going to be focused on specific local candidates and restricted to the local area, as opposed to political parties generally, then it may need to consider the local campaign rules/the RPA and would face a significantly lower spending limit of £700 (unless its campaign expenditure was authorized by candidates).

- 2. An environmental charity working on a clean air campaign in London has learned that a certain political party has just made an election promise to reduce CO2 levels. The trustees of the charity don't want to stop campaigning because if they choose not to speak out about the risks of polluted air, they will not achieve their charitable mission. They don't want to let down their supporters and donors or fail in their duties as trustees. Other measures will be less effective and more expensive than their existing campaign. Increased costs would also mean that they would have to start limiting their services. Would they be permitted to continue campaigning? Would they be obliged to continue because of their charitable duties?**

The environmental charity would not have to stop campaigning because a political party took on one of its policy objectives as an election promise. It would need to undertake a risk assessment, to ensure that the trustees of the charity continued to comply with their duties and taking into account the change to the risk profile of the campaign from such an event, though ideally this risk would already be factored into a campaign risk assessment and a risk mitigation plan already considered. The charity would need to ensure that its campaigning was not party political and that it was careful not to be seen to be promoting or supporting the party that had committed to the CO2 level reduction (for example by refusing to be quoted in the party's manifesto and being alive to the risk of the political party attempting to use the charity's campaign as a tool of self-endorsement), but the charity would not need to stop campaigning. It may need to reconsider some of its campaign phrasing if it could be seen to meet the purpose test under electoral law (if the charity did not want to register or have to monitor regulated spending to ensure it stayed under the registration threshold) and to ensure that it did not breach charity commission guidance, and should continue to ensure that political impartiality was maintained.

- 3. Three NGOs working to protect the rights of refugees and asylum seekers are collaborating on a joint campaign to generate public awareness around the plight of asylum seekers who are refused entry into the UK. One of the NGOs is providing all the funding for the campaign. Politicians have been debating migration issues for a long time as it is an inherently political issue. The NGOs are concerned about inadvertently campaigning for a particular party position.**

**(a) What steps should the NGOs take to ensure that they don't somehow align themselves with a particular party?**

The NGOs would only need to ensure that they did not align themselves with a particular political party if they were:

a) charities; or

b) trying not to incur any regulated expenditure under electoral law (or had already used up their unregistered spending limit for regulated activity and did not want to register with the Electoral Commission).

Otherwise, it would be open to the NGOs to register with the Electoral Commission and to incur regulated expenditure, even if that was directly aligned with/supporting a political party (subject to any constitutional or reputational restrictions on the NGOs).

If the NGOs did not want to incur regulated expenditure on the campaign by passing the purpose test, then the NGOs should monitor political discourse around its core campaign issues during the election campaign to ensure that they do not, for example, inadvertently use a particular party's rhetoric or slogans around the asylum issue (for example, 'bedroom tax' was seen as a Labour propagated phrase/terminology during the 2015 general election and so using alternative phrasing, such as 'under-occupancy charge', would help to mitigate the risk of being seen to align with a particular party in that example). They should have a reactive campaigning policy in place, particularly for social media, to ensure that staff and volunteers were aware of the importance of remaining partisan.

It would not just be a matter of ensuring that they were not aligned with a particular political party, as the purpose test could be passed without implicitly or explicitly supporting one party – the test also applies to campaigning which could be reasonably regarded as intended to promote (or prejudice) electoral success for categories of candidates, i.e. those that support asylum seekers.

The key to avoiding passing the purpose test with the campaign would thus be to also ensure that the tone, context and timing and language of the campaign material did not meet this test and was not aimed at influencing voter behaviour.

**(b) If the campaign only involved a few positive stories about refugees living in the UK, would that be acceptable under election law?**

Again, this would depend on the context of the campaign, but provided that the campaign was clearly about the positive impact of refugees to society and the messaging/accompanying material supported this, then it may not be regulated or pass the purpose test.

**(c) In what circumstances would the NGOs have to register and would each one of them have to register under election law?**

Due to the fact that the NGOs are working on a joint campaign, the joint campaigning rules under election law would apply to the campaign if it was regulated/met the purpose test. That means the total of the cost of any regulated activity under the campaign would be attributed to each of the three NGOs. So even though only one NGO will be funding the campaign, all three of the NGOs will be deemed to have spent however much money is either spent or can be attributed to any regulated activity under the campaign, even if that funding only comes from one of the NGOs, or only one of the NGOs actually undertakes the activity (where the campaign is planned/co-ordinated between the three NGOs). So, if one of the three NGOs spends £5,000 on regulated activity within the joint campaign, then all three of the NGOs will be deemed to have spent £5,000 each on the campaign. Whilst this would be under the registration threshold of £10,000 in Scotland, Wales and Northern

Ireland or £20,000 in England, each NGO would have to ensure that it had not separately spent any other money on regulated activity which would need to be added to its £5,000 deemed spend on the joint campaign that could take it over the relevant spending threshold.

The NGOs would need to register with the Electoral Commission before their regulated spend exceeded the relevant registration threshold, whether this be due to any one (or a combination of them) spending over £20,000 on regulated campaigning or due to their individual regulated activity combined with their deemed spend on joint campaigning exceeding the threshold.

For general elections, there are options for registering joint campaigns in a way that means that only one (or a few) of joint campaigning bodies have to register with the Electoral Commission and report all of the NGOs/members of the joint campaign's spending, but this can be a complex area and further advice should be sought. The Electoral Commission's guidance for the 2017 general election on joint working is available here, which explains the ways of structuring registration and reporting for joint campaigns in further detail: [https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0006/225195/UKPGE-2017-Joint-campaigning.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0006/225195/UKPGE-2017-Joint-campaigning.pdf)

i. E.g. *McGovern v Attorney-General* [1982] Ch 321

ii. <https://www.gov.uk/government/publications/speaking-out-guidance-on-campaigning-and-political-activity-by-charities-cc9/speaking-out-campaigning-and-political-activity-by-charities>

1. Questions taken from the following source: [https://www.gov.uk/government/publications/campaigning-and-political-activity-by-charities-system/uploads/attachment\\_data/file/591355/Charities\\_Elections\\_and\\_Referendums\\_new.pdf](https://www.gov.uk/government/publications/campaigning-and-political-activity-by-charities-system/uploads/attachment_data/file/591355/Charities_Elections_and_Referendums_new.pdf)
2. Only organisations incorporated in the UK will be eligible from Exit Day (i.e. the day from which the UK ceases to be a member of the European Union) and references to organisations incorporated within the EU will be removed from the legislation
3. [https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0006/224955/UKPGE-2017-Overview-of-non-party-regulated-campaign-activity.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0006/224955/UKPGE-2017-Overview-of-non-party-regulated-campaign-activity.pdf)
4. [https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0006/225195/UKPGE-2017-Joint-campaigning.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0006/225195/UKPGE-2017-Joint-campaigning.pdf)
- v. <https://www.gov.uk/government/publications/campaigning-and-political-activity-by-charities-prior-to-the-2017-general-election-case-report/campaigning-and-political-activity-by-charities-prior-to-the-2017-general-election>
- vi. <https://www.gov.uk/government/publications/charity-register-statistics/recent-charity-register-statistics-charity-commission>
- vii. Set out at section 75 Representation of the People Act 1983
- viii. See section 102 PPERA for the regulated period for referendums (the 'referendum period') and section 94(10)(a) which refers to schedule 10 sets out variable regulated periods for elections (subject to 94(11) for elections affecting Gibraltar non-party campaigners). Part II of Schedule 10 sets out lengths of regulated periods.
- ix. For elections, the test is set out at section 85 PPERA – note that the test for referendums is slightly different and not covered within this guidance.
- x. Registration limits are set out at 94(5) PPERA
- xi. Section 85 PPERA
- xii. Schedule 8A(1) PPERA
- xiii. Schedule 8A(2) PPERA
- xiv. At Schedule 10 PPERA
- xv. <https://www.bce2018.org.uk/faq>
- xvi. See sections 75 and 76 RPA
- xvii. RPA section 76 (2)(a)
- xviii. Part 1, Section 1(1), Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014
- xix. Section 5 of the same
- xx. Section 12 of the same
- xxi. Part 1, Section 2 of the same
- xxii. Schedule 1, part 1, para 1 of the same
- xxiii. Schedule 1 part 1 para 2 of the same



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