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Using Your Voice in an Election Year

for the *Directory of Social Change*

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April 2024

Summary of relevant Charity Commission Guidance for charities



- Charity Commission Guidance CC9
- Charity Commission Supplementary Election and Referendum Guidance
- Charity Commission 5-Minute Guide (October 2022)
- Annual Return Question (2023) on whether a charity has a *Policy on ‘Campaigns and Political Activity and Procedures’*.
- Charity Commission Social Media Guidance, September 2023
- Where charities have cross border registration with OSCR in Scotland and/or Charity Commission Northern Ireland, the requirements for these jurisdictions will need to be considered.
- Charity Commission Guidance for charities with a connection to a non-charity

Elections: Can Organizations Continue to Campaign in the Run Up to an Election?

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- Charities and other organizations can continue to campaign subject to the Charity Commission's '*Charities, Elections and Referendums*' supplementary guidance, election law, specific requirements in an organization's constitution or restrictions laid down by funders and other regulatory bodies.
- The Charity Commission's supplementary guidance does not cover election law (as opposed to the charity law requirements) and depending on the content, tone and timing, some of the permitted activities may have regulated electoral consequences



Charity Commission Supplementary Advice on Elections

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Where an organization's policy position coincides with or is similar to a political party, it can continue campaigning on this issue, as long as it maintains its independence.

The Charity Commission gives this example:

'If a housing charity or an organization focused on housing crisis supports the building of 100,000 new homes, they can outline the housing policies of each party, including how many new homes each party is committed to building, but they must not explicitly call on people to vote for one party or another.'

It should be noted that publicly comparing policy positions may be regulated activity for election law (but see later) as follows:

Electoral Commission

- In relation to electoral law, it is likely that comparing policy positions of parties against policies which are expressly approved by your charity or organization could be reasonably be intended (at least in part) to promote the electoral success of parties advocating the charity's approved policies.



Charity Commission Supplementary Guidance on Elections (Continued)

- Organizations cannot appear in a political party's manifesto. However, they can publish their own manifesto to persuade political parties to adopt their policies.
- Organizations can ask a candidate for their views on their organisation's policies
e.g. to seek a pledge regarding a particular issue, such as foreign aid, building new houses, climate change.
 - *If the pledge is publicised prior to the election, this may be regulated activity under election law*
- You can invite candidates to an event or hustings:



- The Charity Commission guidance says you may be able to exclude a candidate if their policies contravene the non-party campaigner's policy. However, the organisation may be caught by election law and must take care regarding any exclusions, so as not to inadvertently give support to or prejudice a candidate.



Risk assess if your employee is a candidate and to make sure that your organisation's channels are not used to promote personal political views or to support or retweet party political content.

Election Law

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Political Parties, Elections and Referendums Act 2000 ('PPERA'), as amended by the 'Lobbying Act' 2014 and the Election Act 2022. Statutory Code of Practice now in force.

- Applies during the regulated period before an election, regulated by the **Electoral Commission** and concerns '*non-party campaigns [for or against a political party], policy, issue or a particular type of candidate*'.
- Regulated period for a General Election (retrospective) is **12 months**. (4 months for Scottish Parliament, Welsh and NI Assembly).

-Representation of the People Act 1983 - campaigns for or against one or more candidates in constituency, ward or other electoral area. Applies from dissolution of Parliament. £700 limit at UKPGEs, regulated by the police (but EC provides guidance on both).

Election Act 2022 - voter identification, postal and proxy voting, accessibility and introduced 'digital imprints'.

As the election has to be held by 28 January 2025, we now know that we are in a regulated period for non-party campaigning

Spending Thresholds

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Organisations can avoid registering by ensuring that their campaign spending remains below the relevant thresholds:

- Up to £700: Any organization can spend this amount on regulated activity.
- Up to £10,000: Only organizations with a sufficient UK connection can spend above £700. They must register with the Electoral Commission if they want to spend £10,000 or above.
- Up to £20,000 in England or £10,000 in Scotland, Wales, and Northern Ireland: Registered non-party campaigners can spend up to these limits, known as 'reporting thresholds'.
- Constituency Limit of £17,553
- Up to around £700,000 for UK-wide regulated activity: Registered non-party campaigners, except those committed to spending only up to the reporting thresholds, can now spend this amount

How is expenditure caught by PPERA?

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The **PURPOSE TEST**: Spending on activities and that can:

“reasonably be regarded as intended to promote or procure electoral success at any relevant election for:-

1. One or more particular registered parties (*A charity is **not** permitted to do this*);
2. One or more **registered parties** who **advocate [or do not advocate] particular policies**
or who otherwise fall within a particular category of such parties, or
3. **Candidates** who **hold [or do not hold] particular opinions** of who advocate [or do not advocate] particular policies or who otherwise fall within a particular category of candidates” (PPERA s85(2))
 - Includes **prejudicing electoral prospects** of one party
 - Immaterial if campaign can be seen to **reasonably achieve any other purpose as well.**

Applying the Purpose Test

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The **Electoral Commission** looks at four factors:

These factors are applied at the time the spending or activity is incurred/carried out:

- Is there a call to action to voters - explicit or implicit?
- Tone
- Context and Timing
- How a reasonable person would see the activity.

Analysing your organization's activities with charity and electoral law in mind



- **Content of your organization's campaign** – *Refer back to the Purpose Test*
- **Timing of your organization's campaign** - will a public facing campaign be run close to the election?
- **Tone** - for example, does the material use disparaging treatment or language, not aimed at developing an audience's understanding of an issue? Or does the material cast a category of candidate or type of policy in a positive light? Think carefully about language associated with particular parties, candidates or policy.
- **Consider the material from an outsider's perspective**. Would a reasonable person view the campaign content as helping or hurting the chances for election of any particular political party, candidate or groups of candidates?
- Avoid hashtags identified with a party or candidate.
- If a political party or candidate adopts your policy, make sure the organization's independence is maintained.

Public Test

Campaign material that is made available to the public or a section of the public

Campaign material will only be regulated campaign activity if the material is **made available to the public or any section of the public** by the non-party campaigner to hear or see and **if it also meets the purpose test and takes place during a regulated period**. This applies regardless of the means by which the material is distributed.

Campaign material that is only made available to **people who have chosen to receive the information in a closed group** does not pass the public test and will be caught by the Electoral Commission;

Activity Test

Material made available to **the public** by whatever means (e.g. leaflets, adverts, websites, social media, reports etc);

Canvassing, or market research seeking views or information from **members of the public**;
Press conferences, or other media events, organised by or on behalf of the non-party;
Transport (by any means) of persons to any places with a view to **obtaining publicity**;
Public rallies or other public events, other than annual conferences of the non-party.

Associated staff time and Expenses e.g. premises hire, provision of goods, services or facilities.

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Exceptions to the public test:

- Press release to media
- TV adverts
- Interview on a broadcaster



What is not regulated?

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- X Volunteer Time
- X Translation to and from Welsh
- X Personal Expenses of an individual incurred on travel, accommodation or other personal needs.
- X Costs reasonably attributable to an individual's disability.
- X Annual Conferences
- X Public Procession or protest meetings under NI Act 1988
- X Security Costs at public rallies or other public events.
- X Anything (except adverts) appearing in a newspaper, periodical or on a licensed broadcast channel.

Public and Purpose Test - Stand for Children

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Public and Purpose Test - We are Voting for Hope

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Friends of the Earth: Regulated

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Some of what we do is regulated

Friends of the Earth @friends_earth · Nov 21, 2019

The run-up to #GE2019 is our chance to secure climate commitments from as many candidates as possible.

Please ask your election candidates to make a Climate Action Pledge – and make the climate crisis a deal-breaker every time they vote in Parliament: act.friendsoftheearth.uk/target/ask-you...



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General election 2019: Labour 'beats other parties on climate change'

7 December 2019



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Friends of the Earth: Not Regulated

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We'll also do activity that's not regulated



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What risk mitigations can an organization put in place to avoid Controlled Expenditure during a Regulated Period?

Influencing activities that exclusively and privately target:

- MPs, PPCs
- National press offices of political parties
- Private meetings with key influencers

are **not caught** provided they remain private.



Commenting on legislation as it goes through Parliament or a policy proposal or strategic litigation:

Focus on why the Bill should become law/views on the policy, rather than on whether particular parties or candidates support or do not support the Bill or policy.

Asking members to lobby to support the Bill, and not imply support for a party or candidate.

Timing activity to co-inside with Parliamentary debates on the Bill, rather than continuing to campaign after the Bill has passed into law.



Joint Campaigning

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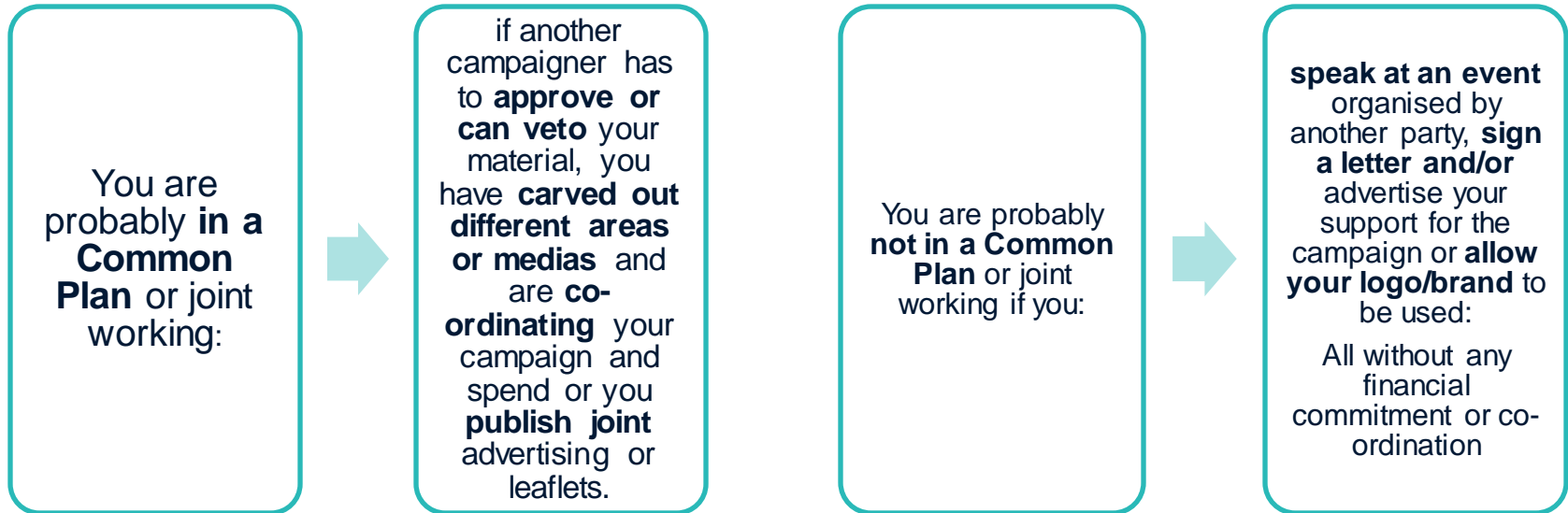
Spending as part of a co-ordinated plan or arrangement

- More than one campaigner
- Agreed intention to incur regulated spending
- Agreement that regulated spending will be incurred by, or on behalf of, all campaigners.
- Spending is for a common purpose/plan

Joint Campaigning

If you have a '**common plan**' with another campaigner, then regulated spending by each campaigner counts towards the regulated spending total for both campaigners.

- For example, if organisation A is in a common plan with organisation B and organisation A spends £20,001, organisation B is also deemed to have spent £20,001. Organisation A could register as the Lead Campaigner with the Electoral Commission, but is then responsible for reporting the minor campaigner's spending.



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