

# The Lobbying Act 2014

## Introduction

This briefing provides an overview of Part 2 of the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014, which came into force on 19 September 2014.

The Act regulates more closely election campaign spending and activity by those not standing for election, or registered as political parties. Known as ‘non-party campaigners’, this group can include charities, voluntary organisations and faith groups.

## What has changed?

While charities must not be established for political purposes and must never engage in party political activity, there may be circumstances where spending on activities that are in pursuit of their purposes means that they must register with the Electoral Commission as a non-party campaigner. This was already the case under the old rules but the new law has modified them somewhat.

While the Act retains the definition of campaigning that is used in existing legislation, this new Act introduces a number of significant changes.

Namely, reducing the amount an organisation is able to spend while increasing the range of activities that count towards the spending limit; it also adds a limit on what can be spent in any one constituency.

If an organisation expects to spend more than £20,000 during 12 months prior to a General Election or four months prior to a European Parliament election on regulated activities (see page 5) then there is a requirement to be registered with the Electoral Commission.

## Implications

There is concern that these changes will deter and stop charities from campaigning and lobbying but there is a strong message from NCVO and others that it should not stop charities continuing to campaign and speak out.

Stuart Etherington, CEO of NCVO has stated:

“The reality is that the instances of charity campaigning caught by the rules will be relatively few, provided the activity is carried out responsibly, in a non-party political way and in pursuit of the organisation’s charitable objectives. It is also worth bearing in mind that we have clear commitments in the parliamentary record that it is not the intention of the legislation to impact on the ability of charities and civil society organisations to campaign on policy issues.”<sup>1</sup>

While the Electoral Commission guidance on *Charities and Campaigning* states:

“Political parties, candidates and non-party campaigners are vital to a healthy democracy and we encourage active participation by campaigners. Charities are an important part of the process and make a significant contribution. Charities may undertake a wide variety of campaigning activities as part of their work. In many cases these campaigns and activities will not be regulated under electoral law.”<sup>2</sup>

## To register or not to register?

This briefing aims to summarise extensive guidance on the Lobbying Act from the Electoral Commission.<sup>3</sup> They have produced a specific overview of the interaction between charity and election law. It covers a range of issues, including the roles of the regulators, election law and campaigning, as well as charity law and campaigning.<sup>4</sup>

A charity must firstly make sure it is in full compliance with charity law regarding campaigning. The next step is then to identify whether the charity needs to register as a non-party campaigner with the Electoral Commission.

This involves looking at the charity’s planned activities, the timing of those activities and how much money the charity plans to spend.

## Things to consider

### 1: Are You Campaigning?

As a general principle, charities may undertake campaigning and political activity provided:

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<sup>1</sup> <http://blogs.ncvo.org.uk/2014/08/18/the-lobbying-act-the-biggest-risk-now-is-staying-silent/>

<sup>2</sup> The Electoral Commission, *Charities and Campaigning*, p. 3. 2014

[http://www.electoralcommission.org.uk/\\_\\_data/assets/pdf\\_file/0010/165961/intro-campaigning-charities-npc.pdf](http://www.electoralcommission.org.uk/__data/assets/pdf_file/0010/165961/intro-campaigning-charities-npc.pdf)

<sup>3</sup> <http://www.electoralcommission.org.uk/i-am-a/party-or-campaigner/non-party-campaigners>

<sup>4</sup> Electoral Commission (2014) *Charities and Campaigning*

[http://www.electoralcommission.org.uk/\\_\\_data/assets/pdf\\_file/0010/165961/intro-campaigning-charities-npc.pdf](http://www.electoralcommission.org.uk/__data/assets/pdf_file/0010/165961/intro-campaigning-charities-npc.pdf)

- It is in furtherance of their charitable purposes
- It is permitted subject to the terms of their governing documents
- They never engage in any form of party political activity and
- They retain their independence and political neutrality.<sup>5</sup>

The two most important rules for ensuring legal campaigning are:

- Remain independent of any candidate or political party
- Do not seek to influence voter intention.

Under charity law charities should not engage in vote-seeking activities, i.e. rallies and speeches, that are intended to persuade voters to vote for a specific politician or party.

Campaigning directed at parliamentarians is not covered by the Act.

Within this legislation, campaigning does not need to be specifically directed to an election to be potentially covered by the new law. The timing could just coincide. Any campaign that takes place during the 'regulated period', usually in the lead-up to General or European elections, can be covered.

## 2: Is campaigning taking place within the regulated period?

Campaigning only falls under the new law if it within the following periods:

- 19 September 2014 to 7 May 2015
- One year before any subsequent General Election
- Four months before any European Parliamentary Election.

Any activity outside of this period does not have a requirement to register.

## 3: What is the role of 'the public' in the campaign? (the 'public test')

To be covered by the 'public test', campaigning activity has to be *'intended to influence voters'*.

Therefore, it needs to be aimed at, seen or heard by, or involve the public or sections of the public.

Examples of what is **not** covered:

- 'Official members' of your organisation or 'committed supporters' are not 'the public' for this purpose. Neither are politicians.

Examples of what **is** covered:

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<sup>5</sup> Electoral Commission (2014) Charities and Campaigning, p. 7  
[http://www.electoralcommission.org.uk/\\_\\_data/assets/pdf\\_file/0010/165961/intro-campaigning-charities-npc.pdf](http://www.electoralcommission.org.uk/__data/assets/pdf_file/0010/165961/intro-campaigning-charities-npc.pdf)

- Campaigning material which is available to anyone who wishes to access it - for example, on a website.
- Information provided to other people who are neither members nor committed supporters - for example, those on social media lists or general mailing lists, which are publicly available.

#### **4: Could your campaigning be seen as influencing voters? (the ‘purpose test’)**

To be covered by the purpose test campaigning would have to *‘reasonably be regarded as intended to influence voters at the election to vote for or against’* one of the following:

- One or more political parties
- Parties or candidates that support or oppose particular policies
- Particular categories of candidates (for example women or young people).

Returning to ‘Consideration 1’, activity could be covered by this rule even if:

- Your intention is to raise public awareness or change public opinion around a certain issue
- You do not name political parties or candidates but you support a policy that with which particular parties are associated.

#### **Campaigning on current Government policy (for example, supporting or opposing legislation)**

Provided that the campaign activity is clearly aimed at supporting or opposing the proposed legislation campaign, activity will not fall under the purpose test.

However the campaign for or against legislation is more likely to be covered if it:

- starts to name parties or MPs or
- supports or opposes individual policies which parties are taking into the General election.

This is because these two aspects of campaigning could be seen as encouraging the support or rejection by the public of parties or individuals.<sup>6</sup>

#### **What if a party changes its policy position to match yours?**

If you were already campaigning on an issue your subsequent campaign activity, it is unlikely to become regulated campaign activity simply because a party has adopted policies you were already campaigning for. This is unless you:

- publicise the political party’s support in your subsequent campaigning or

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<sup>6</sup>Electoral Commission Overview of regulated non-party campaigning (page 17)  
[http://www.electoralcommission.org.uk/\\_\\_data/assets/pdf\\_file/0003/165963/to-activities-npc.pdf](http://www.electoralcommission.org.uk/__data/assets/pdf_file/0003/165963/to-activities-npc.pdf)

- alter or increase your campaigning activity on the policy as a result of their support.

## 5: Are you undertaking ‘regulated activities’?

If you are campaigning in ways which fit into questions 2, 3 and 4 above you will need to assess whether that campaigning involves ‘regulated activities’:

These are:

- Press conferences or other media events that you organise
- Transport in connection with publicising your campaign
- The production or publication of election material aimed at, seen or heard by, or involving the public
- Canvassing and market research (including the use of phone banks) aimed at, seen or heard by, or involving the public
- Public rallies and public events.

## Would a charity’s publication of its manifesto count as ‘election material’?

According to NCVO,<sup>7</sup> if an organisation produced a manifesto which simply outlines each party’s policies in a neutral tone, this is unlikely to be considered as election material.

The likelihood of it meeting the definition of election material will depend on whether it:

- identifies candidates or parties who support or oppose the campaign’s aims
- sets out or compares the positions of particular parties or candidates on a policy that the campaign is promoting in a way that can be seen as promoting or opposing parties or types of candidates
- promotes or opposes policies which are so closely and publicly associated with a party or parties that it is not reasonable to argue that the item isn’t campaign material.

There would also need to be an element of publicity targeting the general public for the manifesto to be regulated.

## 6: How much are you spending on your campaign?

If you are spending more than £20,000 in England on activities covered by 2, 3, 4 and 5 above you must register as a non-party campaigner. *This includes staffing costs spent on the campaign.*

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<sup>7</sup> NCVO (2014) Charities and the Lobbying Act: frequently asked questions  
[http://www.ncvo.org.uk/images/documents/practical\\_support/campaigning/ncvo-lobbying-act-faq-march-2014.pdf](http://www.ncvo.org.uk/images/documents/practical_support/campaigning/ncvo-lobbying-act-faq-march-2014.pdf)

## Joint campaigns

The £20,000 limit also includes the combined expenditure of non-party campaigners (including charities) *working together as part of a coordinated plan or arrangement*.

Working together is likely to mean:

- Joint advertising campaigns, leaflets or events
- Coordination of regulated campaign activity with another campaigner
- Another campaigner can approve or has significant influence over your leaflets, websites, or other campaign activity.

Working together is not likely to mean:

- Informal discussions with other campaigners that do not involve decision-making or coordinating your plans
- Speaking at an event organised by another campaigner, but not participating in any other way
- Not consulting with other campaigners about what you should say in your campaign or how you should organise it.

The Electoral Commission has produced a specific briefing covering the issue of joint campaigns.<sup>8</sup>

There are also absolute limits on how much non-party campaigners can spend even if they are registered. These are:

- £9,750 in an individual constituency
- £320,000 nationwide.

## If a charity decides to register, what does it entail?<sup>9</sup>

You will need to:

- Appoint a person responsible for making sure that the rules on spending, donations, reporting are followed
- Provide the names of governing bodies or committees

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<sup>8</sup> The Electoral Commission (2014) Introduction to the new rules on campaigning for non-party campaigners: Joint Campaigns

[http://www.electoralcommission.org.uk/\\_\\_data/assets/pdf\\_file/0004/165964/to-joint-plans-npc.pdf](http://www.electoralcommission.org.uk/__data/assets/pdf_file/0004/165964/to-joint-plans-npc.pdf)

<sup>9</sup> The Electoral Commission (2014) Registering as a non-party campaigner

[http://www.electoralcommission.org.uk/\\_\\_data/assets/pdf\\_file/0011/165962/sp-registering-npc.pdf](http://www.electoralcommission.org.uk/__data/assets/pdf_file/0011/165962/sp-registering-npc.pdf)

- Have a system in place for authorising spending on regulated campaign activity
- Keeping invoices and receipts for payments over £200 made as part of spending on regulated campaign activity
- Reporting after the election on spending on regulated campaign activity if it is over £20,000 in England
- Checking that donations over £500 can be received under the rules and recording them
- There are also additional reporting responsibilities in the regulated period leading up to an election.

## How are the changes different to the pre-September 2014 rules?

The main difference is that the list of regulated activities and the amount that can be spent before you need to register have increased.

Previously, only election material (such as leaflets, posters and billboard adverts) was covered.

Because of the smaller range of activities, the former spending limit was £10,000 before registration was necessary.

## Breaking the rules?

If a charity breaks the rules in the run up to an election they could be liable to for civil or criminal penalties.<sup>10</sup> The Commission may investigate if an allegation is made of rule-breaking or where they become aware of a potential problem through another route such as a press report.

However, the Electoral Commission state in their Guidance,

**“Wherever possible, we use advice and guidance proactively in order to secure compliance. And we regulate in a way that is effective, proportionate and fair.”**

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<sup>10</sup> The Electoral Commission (2010) Enforcement Policy (A full list of the sanctions available is on page 10)

[http://www.electoralcommission.org.uk/\\_\\_data/assets/pdf\\_file/0003/106743/Enforcement-Policy-30March11.pdf](http://www.electoralcommission.org.uk/__data/assets/pdf_file/0003/106743/Enforcement-Policy-30March11.pdf)

## Will charities register?

Most charities we have spoken to have said they will not register. Some seem unconcerned by the new rules, whereas others are more wary. The impact is still hard to assess as this will be the first General Election that the new legislation will have been in force and there are still many grey areas.

## Further electoral commission advice

Think about the following four things:

### 1) Tone

How are policy recommendations presented in the report? Are they negative or positive towards a particular party or category of candidates? Do the recommendations or does the report itself provide a comparison between the different positions of the parties or a category of candidate, or how those positions coincide or differ with the report's policy recommendations?

### 2) Context and timing

Is the subject matter of the report a prominent electoral issue? Is there a political party or category of candidates that are strongly and publicly associated with the policy recommendations in the report?

### 3) Is it a call to action? If so, to whom?

Are the recommendations aimed at what Government should do, or are they explicitly or implicitly asking voters to vote for particular parties or categories of candidates? Most reports and policy documents on existing law are unlikely to influencing voters.

### 4) How would a reasonable person see the activity?

Consider how all of the other factors above would affect how a reasonable person would see the report or its policy recommendations. Would a reasonable person consider that the report or its recommendations is intending to influence voting choice?

## References and resources

### Electoral Commission

Links to the relevant briefings and webinars:

- <http://www.electoralcommission.org.uk/i-am-a/party-or-campaigner/non-party-campaigners>

### Charity Commission

Additional guidance on charity involvement in campaigning and political activity:

- <http://www.charitycommission.gov.uk/detailed-guidance/managing-your-charity/speaking-out-guidance-on-campaigning-and-political-activity-by-charities-cc9/>
- <http://www.charitycommission.gov.uk/detailed-guidance/managing-your-charity/speaking-out-guidance-on-campaigning-and-political-activity-by-charities-cc9/charities-and-elections/>

### NCVO

Includes FAQs:

- [http://www.ncvo.org.uk/images/documents/practical\\_support/campaigning/ncvo-lobbying-act-faq-march-2014.pdf](http://www.ncvo.org.uk/images/documents/practical_support/campaigning/ncvo-lobbying-act-faq-march-2014.pdf)

### Further advice

For further advice about the Lobbying Act and how it may impact your organisation do contact the Electoral Commission:

- <http://www.electoralcommission.org.uk/>

**September 2014**

## Appendix 1 - table of penalties for breaching the rules

Outcome	Description	Likely use
No sanction	No sanction. The Electoral Commission may however offer advice on good practice, where appropriate to encourage future compliance	Where a breach is clearly trivial and unlikely to be repeated or there is public interest reason to take no action, such as the ill health of an individual, or the effect of a sanction would be disproportionately detrimental on an individual or organisation
Fixed monetary penalty	A £200 fine	Where a breach is a first instance of low level non-compliance where there is potential for a repeat breach, such as the late delivery of a statutory report.
Variable monetary penalty (discretionary requirement)	A fine ranging between £250-£5,000 for prescribed contraventions and for offences triable in a magistrates court.  £250-£20,000 for offences triable in either a magistrates or crown court.	Where a breach is more serious than the kind giving rise to a fixed penalty. The value of the fine will be set at a level aggravating and mitigating circumstances (see section 9.4 of this guidance).  A variable monetary penalty may be used on its own, or together with a compliance notice and /or restoration notice.
Compliance notice (discretionary requirement)	A notice setting out actions that must be taken by the person or organisation that has breached the law, so that the breach does not continue or recur.	Where it is identified that a regulated organisation or individual needs to improve its capacity to comply, for example, by training staff or changing its systems.  A compliance notice may be used on its own or together

Outcome	Description	Likely use
		with a variable monetary penalty and/or a restoration notice.
Restoration notice (discretionary requirement)	A notice setting out actions that must be undertaken to restore the position, as far as possible, to what it would have been had no breach occurred.	<p>Where a need is identified to ensure that a non-compliant organisation or individual makes good a breach, for example by giving up benefits received as a result of the breach.</p> <p>A restoration notice may be used on its own, or together with a variable monetary penalty and/or a compliance notice</p>
Stop notice	A notice which prohibits a person or organisation carrying on or beginning a specified activity until the steps set out in the notice are met.	Where it is considered a person is carrying out, an activity which will breach the law and which is seriously damaging or poses significant risk of seriously damaging, public confidence in the effectiveness of the PPERA controls on the income and expenditure of registered parties and others
Enforcement undertaking	An agreement proposed by a regulated organisation or individual to undertake specified actions which will bring it into compliance or restore the position, as far as possible, to what it would have been had no breach occurred.	Where a regulated organisation or individual is aware it is non-compliant and proposes an undertaking involving appropriate action, which the Commission agrees to accept. The factors the Electoral Commission will take into account when considering an enforcement undertaking are set out in section 15.3 of this

Outcome	Description	Likely use
Forfeiture (court ordered)	A civil process enabling the Commission to apply to a court for the forfeiture of an amount of money equal to the value of a donation a regulated organisation or individual has accepted from an impermissible or unidentifiable source, or the value of a donation that has been concealed in a statutory report.	<p>guidance)</p> <p>Where a registered organisation or individual accepts a donation of more than £500 from an impermissible or unidentifiable source, or</p> <p>A regulated organisation or individual seeks to conceal the existence or true amount of a donation in a statutory report.</p> <p>In these circumstances the Commission will seek forfeiture (court ordered) if (i) it is in the public interest to do so in all the circumstances, and (ii) it cannot agree voluntary settlement. The courts have discretion in some circumstances to order forfeiture of an amount less than the value of the donation concerned, and the Commission will take this into account.</p> <p>Where the action giving rise to forfeiture has given rise to a criminal offence, the Commission may also seek an appropriate criminal sanction, or a civil sanction, arising from the criminal offence.</p>
Restoration (court ordered)	A civil process enabling the Commission to apply to a court for an order aimed at restoring the parties to a regulated financial transaction to the position they would have been	Where a registered organisation or individual enters into a regulated transaction with an unauthorised participant, and money it receives is not repaid,

Outcome	Description	Likely use
	<p>in if the transaction had not been entered into.</p>	<p>or</p> <p>A regulated organisation or individual is seeking to conceal the existence or true value of a transaction in a statutory report.</p> <p>In these circumstances, the Commission will seek restoration (court ordered) if (i) it is in the public interest to do so in all circumstances, and (ii) voluntary settlement cannot be agreed. The courts have discretion to make such an order as they see fit.</p> <p>Where the action giving rise to restoration has given rise to a criminal offence, the Commission may also seek an appropriate criminal sanction, or a civil sanction arising from the criminal offence.</p>
<p>Summary offences – offences with a penalty under Schedule 20, PPERA on summary conviction of:</p> <p>A level 5 fine (5,000 max)</p> <p>A level 5 fine , or 6 months imprisonment</p> <p>A statutory max fine, (5,000)</p> <p>A statutory maximum fine (35,000) or 12 months imprisonment.</p>	<p>The commission does not have powers to impose criminal sanctions, but may breach for criminal investigation or seek prosecution in cases which it judges to have significantly impact on confidence in the transparency and integrity of party and election finance such as those involving large amounts of money, repeated material failure to comply, or deliberate intent.</p>	
<p>Indictable offences – offences with a penalty under Schedule</p>	<p>Where the commission imposes a fixed monetary penalty or</p>	

Outcome	Description	Likely use
<p>20, PPERA on indictment of either:</p> <p>An (unlimited) fine</p> <p>An (unlimited) fine or 12 months imprisonment</p>	<p>variable monetary penalty in respect of a criminal offence, a person cannot subsequently be convicted of that offence.</p> <p>The Commission may refer the case for criminal investigation or seek prosecution in cases where it has imposed a non-financial sanction ( a compliance or restoration notice) in respect of a criminal offence without an associated monetary penalty , or where it accepts an enforcement undertaking in respect of a criminal offence and the person or organisation giving the undertaking has not complied with it.</p>	