



Campaigning during elections: risks, rules and regulations



Some reassurance

“Campaigning, advocacy and political activity are all legitimate and valuable activities for charities to undertake. Many charities have strong links to their beneficiaries, and more generally to their local communities, commanding high levels of public trust and confidence, and representing a myriad of diverse causes. Because of this, they are uniquely placed to campaign and advocate on behalf of their beneficiaries.”

The Charity Commission

“Civil society has a long and proud tradition of campaigning for change and providing voice for the disempowered and disadvantaged in society... The government is determined that charities and social enterprises should be fully confident in their right to speak in public debates, and to have a strong campaigning and advocacy role.”

Department for Digital, Culture, Media and Sport



What we will cover

Risk

- Types of risk
- Risk appetite, awareness, mitigation

Rules and regulations

- Charity law
- Electoral law

Campaigning within the rules

- What you can and can't do
- Deciding whether to register or not

Risk



Types of risk

There are two kinds of risk you might encounter campaigning at elections

Regulatory risk	Political risk
<ul style="list-style-type: none">• What risk is there that our activity will breach the regulations?• What risk is there that our activity will come within scope of the regulations?	<ul style="list-style-type: none">• What risk is there that our opponents will publicly criticise or attack our activity?• What risk is there that our opponents will report our activity to the regulator?• What is the risk of not undertaking an activity?

Risk appetite, awareness and mitigation

Risk appetite

- What is the risk appetite of my organisation?
- Who decides the risk appetite – trustees, senior staff, colleagues?
- What steps can I take to improve the risk appetite of my organisation?

Risk awareness

- What are the risks that my organisation faces as a result of campaigning during an election?
- How aware are my trustees, senior staff and colleagues of these risks?
- What steps can I take to improve their awareness?

Risk mitigation

- What steps can my organisation take to reduce risks associated with campaigning?
- How can we demonstrate to trustees, senior staff and colleagues the steps we are taking?

Rules and regulations



Regulations governing campaigning during elections

	Legal framework	Regulatory Guidance	Regulator
Charity law	Charities Act (2011). Replaced most of Charities Act (2006, 1992).	<ul style="list-style-type: none">• Speaking Out: Campaigning and political activity guidance for charities (CC9) (<i>applies all the time</i>)• Charities, Elections and Referendums Guidance (<i>applies only during elections</i>)	The Charity Commission
Electoral law	Political Parties, Elections and Referendums Act (PPERA) 2000. Revised by Lobbying Act in 2014.	<ul style="list-style-type: none">• Guidance for non-party campaigners	The Electoral Commission

Charity Law / Charity Commission Guidance

1. Speaking out (CC9)
2. Charities, Elections and Referendums

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



Speaking Out (CC9)

Charities must comply with CC9 at all times, including the period between the announcement of an election and the date on which an election is held.

- CC9 states that campaigning and political activity can be legitimate and valuable actions for charities to undertake, but only when they **support the delivery of your charitable purposes**.
- Charities **can campaign to ensure that existing laws are observed or for a change in the law**, policy or decisions where this would support the delivery of your charitable purposes.
- A charity must stress its **independence from political parties and candidates**, and ensure that any involvement with political parties is **balanced**.
- Charities **cannot give support or funding** to a political party, candidate or politician.
- A charity **may give its support to specific policies** advocated by political parties if this helps the charity deliver its charitable purposes.

Charities, Elections and Referendums Guidance

This guidance only comes into force between the announcement of an election and the date on which an election is held. It can be updated for each election. The points below relate to the most recent guidance, published for the 2015 General Election.

- At elections, charities must be, and be seen to be, **independent from party politics**.
- You **can have a similar policy position** to that of a political party and can continue to campaign for this policy as long as you stress your independence from the political party and do nothing to encourage support for the party.
- A charity can publicise its views on issues that relate to its charitable purposes, and you may publicise the views of candidates on these issues to stimulate debate. However, **you cannot explicitly compare your views** with those of political parties or candidates **or encourage people to vote for or against parties that support or do not support these views**.
- You **can publish a manifesto** if you aim to encourage political parties to adopt certain policies or raise the public profile of your issues, but not if your aim is to influence voter choice.
- A charity **cannot support or oppose a political party or candidate** or donate funds to them.
- If you are inviting candidates or representatives of political parties to a public meeting, you should **try to invite candidates from across the political spectrum** if possible and practical.

Electoral law / Electoral Commission Guidance

1. Key things to know
2. Regulated activity
3. When and how to register

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



Key things to know

The guidance for non-party campaigners sets spending limits for regulated campaign activity and provides guidance on what constitutes regulated campaign activity. It is published and enforced by the Electoral Commission.

- **Regulated period:** The guidance comes into force **twelve months before a scheduled general election**. This is known as the regulated period. If a snap election is called, the rules come into force on the date that parliament approves the election and are **applied retrospectively** by 12 months.
- **Registration threshold:** The non-party campaigning rules require charities and other non-party campaigners to register with the Electoral Commission if you spend over **£20,000 in England or £10,000 in either Scotland, Wales or Northern Ireland** (including staff time) on regulated campaign activities during the regulated period.
- **Spending limits:** They also set overall spending limits. You cannot spend more than **£319,800 in England, £55,400 in Scotland, £44,000 in Wales or £30,800 in Northern Ireland**. You cannot spend more than **£9,750 in any constituency**.
- **Joint campaigning:** If you are part of a joint campaign, you must **record the combined spend of that campaign** on regulated activity towards your own spending totals.

What is regulated activity?

Actions must pass three tests to count as 'regulated activity'...

The **ACTIVITY** test

Printed or written
Digital content
Press and media events
Public events

The **PUBLIC** test

Directed towards or
involves communicating
with the public

The **PURPOSE** test

Activities reasonably
regarded as intended to
influence voters to vote
for or against a party,
candidate or category of
candidates that support
or do not support a
particular policy

TONE
CONTEXT & TIMING
CALL TO ACTION

Activities that can be regulated

- Printed or written materials (e.g. leaflets, adverts, scorecards)
- Digital communications (e.g. tweets, videos, blogs)
- Press conferences or media events (e.g. media stunt)
- Public events (e.g. hustings)

These activities must pass both the **PUBLIC test and the **PURPOSE** test to be regulated by the Act.**

Activities that are not regulated

Activities that are almost never regulated

- Behind the scenes political work
- Newspapers and broadcast media
- Communications with 'committed supporters'

What is a 'committed supporter'?

- Constitutional member
 - Donor with direct debit
 - Someone 'actively involved' in your organisation
- (signing up to mailing list, 2-3 actions per year not enough)

The public test

Is your activity directed towards or does it involve communicating with the public?

If **YES** then it passes the public test

Exemptions

(as long as you do not promote on social media or publicise in other ways)

- Communications with committed supporters
- Newspapers and broadcasters

The purpose test

Could your activity “reasonably be regarded as intended to influence voters to vote for or against political parties or categories of candidates, including political parties or categories of candidates that support or do not support particular policies or issues”?

If **YES**, your activity passes the purpose test.

Things to consider:

- **Call to action:** Does it ask people to vote for a particular party, parties or category of candidate at an upcoming election (either explicitly or implicitly)?
- **Tone:** Is it positive or negative towards a political party or parties, a category of candidate, or a policy closely associated with a party or category of candidate?
- **Context:** Are you campaigning on a policy that will make a voter think of a particular party or category of candidates? Does it represent an area of difference between parties? Is it prominent in public debate? Are you reacting to a policy or position of a party or candidate?
- **Timing:** Are you close to an election?

Social media

Social media can be regulated if it passes purpose test

Tips

- Staff should remove organisation handle from profile
- Avoid hashtags, colours, terminology associated with parties
- You need to be more careful if your name is synonymous with the charity

Spending on regulated activities

Included

- Non-staff activity costs (e.g. printing, transport)
- Staff costs (including reasonable overheads)

Not included

- Volunteer time
- Translating material from English to Welsh
- Reasonable costs attributable to a person's disability
- Travel that is not reimbursed

Joint campaigning

- Joint campaigning rules apply if you and another organisation are “**spending money as part of a common plan or arrangement**”.
- All joint campaign members must count the combined spend of the campaign towards their own spending limits.
- If the joint campaign spends above the threshold, **ALL** members of the campaign must register with the Electoral Commission.
- You can set up a lead/ minor campaigner relationship, where a lead campaigner registers and is responsible for reporting spend.

Registering with the Electoral Commission

Charities can conduct regulated activity and can register with the Electoral Commission without breaching Charity Commission guidance

When to register

- You must register if you reach any of the registration thresholds (England, Scotland...)
- You should register before you spend over the registration threshold

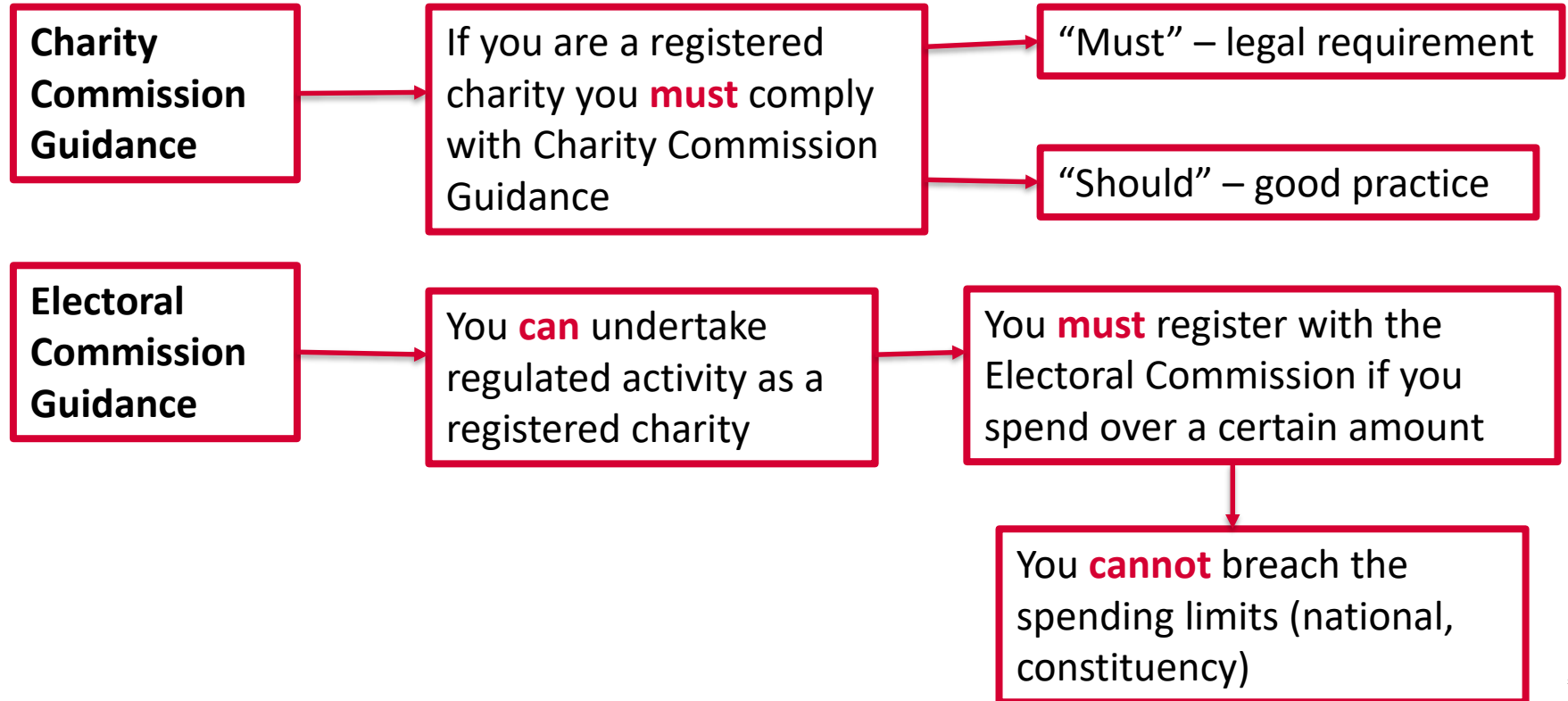
Once you have registered

- Nominate a responsible person
- Put in place system for authorising spend
- Keep invoices and receipts for payments over £200
- Report all spend on regulated activity over threshold

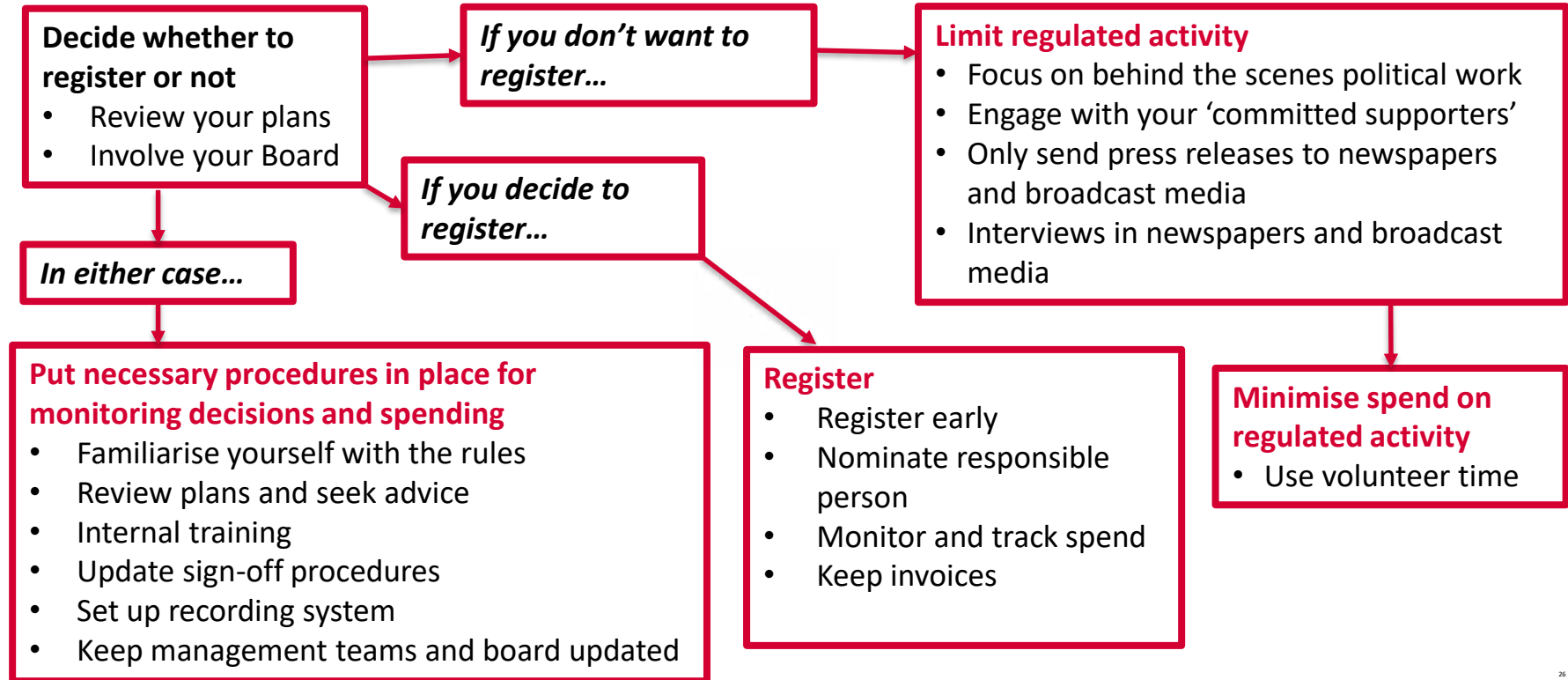
Campaigning within the rules



What you can and cannot do



Electoral Commission - To register or not to register?



Any questions?

Thank you and further information.

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Connect

