

Understanding the Lobbying Act

Briefing paper



An active civil society is critical to our democracy. Bond members have a long and proud history of running impactful campaigns that have delivered positive change.

While the Lobbying Act has resulted in confusion, do not let it stop your important campaigning activity.

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Background

The Lobbying Act 2014 sets out rules for charities, NGOs and campaigning groups undertaking public-facing campaigns in the run up to national and devolved elections.

These rules have applied to several previous elections, including the 2015 and 2017 General Elections and the 2016 elections to the Scottish Parliament, Welsh Assembly and Northern Ireland Assembly. This means that many Bond members will already have experience of campaigning within the rules of the Lobbying Act.

Bond was a part of the broad coalition of organisations who campaigned against the introduction of the Act. We have and will continue to call for the Act to be revised. A government commissioned review conducted by a Conservative peer, Lord Hodgson, has also recommended that the Government make significant changes to the Act. The House of Lords Select Committee on Charities called on the Government to implement Lord Hodgson's recommendations. Whilst the government said warm words about charities having the confidence to campaign in its Civil Society Strategy (2018), it did not take the opportunity to revise the Lobbying Act.

Research shows that the Lobbying Act caused widespread confusion, which resulted in charities withdrawing from the public debate in the run up to the 2015 and 2017 general elections. Bond encourages charities to continue to speak out during the electoral period on issues that they have a history of working on. Campaigning is a normal, legitimate and vital part of what charities do, and is critical for ensuring the voices of the vulnerable and marginalised are heard at election time.

This document is designed to help Bond's members:

- **Understand the Lobbying Act and guidance documents** so that organisations avoid being unnecessarily constrained or restricted from undertaking legitimate campaigning because they misunderstand the law and/or the Electoral Commission's guidance
- **Practice good governance** by undertaking internal planning and have in place any necessary internal structures that will be helpful to call on in the case of a complaint to the Electoral Commission

This document is not legal advice: This document should be read in conjunction with the Electoral Commission's guidance for non-party campaigners. On areas of uncertainty or where greater clarity is needed, Bond recommends you seek legal advice or contact the Electoral Commission.

The important role of campaigners

Both the Charity Commission and the Electoral Commission have made statements about the importance of charity's conducting campaigns:

“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 this process... Charities may undertake a wide variety of campaigning activities as part of their work.”

– Electoral Commission, *Charities and Campaigning*

“Campaigning is a legitimate activity for charities, so long as it supports the delivery of the charity's purposes.”

– Charity Commission

Both commissions have also clarified that simply **by registering as a non-party campaigner a charity will not be in breach of charity law** or of the Charity Commission guidance on campaigning and political activities (CC9).

This does not automatically mean that if you are planning to undertake campaigning activities in the lead up to the General Election that your organisation will need to register as a non-party campaigner with the Electoral Commission. Rather, a charity needs to review their plans and make a decision as to whether any of them may fall under the provisions of the Lobbying Act.

Generally, if you continue to campaign on issues that you have worked on previously and these campaigns are in no way 'party political' campaigns it is unlikely that they will be considered regulated activity. However, problematically, some of the the definitions in the Act are vague and there are also grey areas in the Electoral Commission's guidance around the 'purpose test.' This means that there is the chance that charities undertaking legitimate campaigning on the policy issues core to their charitable objectives could be wilfully construed as 'promoting or procuring the electoral success of candidates' if one of these policies happens to align more closely to one party or candidate or become highly politicised during the election campaign. Bond encourages all members to review and monitor their campaigning plans in light of the Lobbying Act and most importantly, to keep on campaigning.

Key things to know

What is the Lobbying Act?

The Lobbying Act provides a set of rules to govern people and organisations that publicly campaign on issues in the run up to elections but are not standing as a political party or candidate. These people or organisations are referred to as “non-party campaigners”. A non-party campaigner may be a campaigning organisation, a charity, a faith group, a union, company or an individual. The rules seek to ensure that no one individual or organisation can have an undue influence over an election.

Many Bond members have a long tradition of running impactful public campaigns, including using elections as a key moment to push all parties to agree specific campaign asks. In many cases, these campaigns and activities will not be regulated by the Lobbying Act. However, where spending on certain campaigning activities could be seen as reasonably intended to influence voters to vote for or against a political party or a category of candidates, the rules will apply.

The Lobbying Act comes into force 365 days ahead of a scheduled election. The next scheduled general election is due to take place on 5 May 2022; hence the Act would come into force on 5 May 2021. If a snap general election is called before this time, the rules will apply retrospectively. When this happened in 2017, the Electoral Commission has stated that non-party campaigners who had spent money on regulated activity prior to the announcement of the 2017 General Election should determine whether that spending is close to or already in excess of the threshold for registering. Any spending on regulated activity that met the public or purpose tests at elections in England, Scotland, or Wales during the regulated period would count towards the spending limit in the relevant part of the UK. This includes any spending at by-elections in the regulated period.

How does the Lobbying Act relate to Charity Commission guidance?

Charities must also comply with Charity Commission guidance on campaigning and political activities. Read the Charity Commission’s ‘Speaking Out’ guidance (also referred to as CC9) [here](#).

Does the Lobbying Act apply to my organisation?

In many cases, the rules will not apply to your campaigns and activities, but it is important that you take the time to understand the rules. For some organisations it will be important for your trustees to take a decision about whether your organisation should register as a non-party campaigner or not.

The role of the Electoral Commission

The Electoral Commission is the body responsible for providing guidance and regulating compliance with the rules, including dealing with possible breaches of the rules. The Electoral Commission have produced several documents to help people understand the rules, to decide whether or not they need to register, and if they register to help them understand what the reporting requirements are. The Electoral Commission has guidance, webinars, and an advice line. Be aware when sharing information about your campaign plans that the Electoral Commission is tasked with enforcing the law as well as providing advice.

Contact the Electoral Commission

England: 020 7271 0616, pef@electoralcommission.org.uk

Scotland: 0131 225 0200, infoscotland@electoralcommission.org.uk

Wales: 029 2034 6800, infowales@electoralcommission.org.uk

Northern Ireland: 0289 089 4020, northernireland@electoralcommission.org.uk

Provisions of the Lobbying Act – Deciding if you need to register

Registration Threshold - how much are you planning to spend?

You will only need to register if you are planning to **spend more than £20,000 in England** or £10,000 in each of Scotland, Wales and Northern Ireland **on regulated activities (including on staff time associated with these activities) during the regulated period.**

Regulated activities include:

- Election material such as leaflets, posters, websites and billboard adverts that are made available to the public or a section of the public
- Canvassing, or market research seeking views or information from, members of the public
- Press conference or media events organised by you or on your behalf
- Transport used to publicise your campaign
- Public rallies or public events

Gateway Tests – what are you planning to do and who is your target audience?

In deciding if the activity you are undertaking falls within the scope of the regulations, the Electoral Commission will apply two tests. Your activity must pass both tests:

1. The Purpose Test

Spending on campaign activity during a regulated period will only be regulated if the activity can **reasonably be regarded as intended to influence voters** to vote for or against political parties or candidates, including political parties or categories of candidates who support or do not support particular policy issues.

****Important note on the purpose test****

- *Campaign activity may meet the purpose test if it is closely and publicly associated with one or more political parties, even if it does not name a particular party or candidate.*
- *Even if you intend your campaign activity to achieve something else, such as raising awareness of an issue, it may still meet the purpose test.*

2. The Public Test

Campaign activity must also communicate with the general public to meet the requirement for regulation. Your organisation's members and 'committed supporters' are **not** members of the public.

People that your organisation regularly communicates with (e.g. via email or social media) are members of the public unless they are also your members or committed supporters.

You do not need to register if you:

- Are planning to spend less than the registration threshold of £20,000 in England.
- Are not spending money on regulated campaigning activities (i.e. not spending money on activities that pass both the public and purpose tests)
- Are campaigning outside of the regulated period

See the [Electoral Commission's 'do I need to register?' flowchart](#) to help make your decision.

Applying the ‘Gateway Tests’

Applying the purpose test

The most problematic question for non-party campaigners is whether an issue-based campaign meets the purpose test. To assess whether a campaign meets the purpose test, the Electoral Commission guidance advises to consider:

- **Tone.** For example, is the tone of the campaign positive or negative 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)?
- **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 the activity.** Would a reasonable person regard your campaign as intended to influence people’s voting choices?

If the answer to these questions is yes, it is more likely that your campaigning activity will meet the purpose test.

Applying the public test

If a campaign activity is aimed at, seen or heard by the public, or a section of the public it will meet the public test. The following explanations will help you understand who is counted as a member of the public.

a) Official members and committed supporters

Your organisation’s official members or ‘committed supporters’ will not be considered part of the public. The Electoral Commission notes that the exact nature of ‘committed supporters’ will vary between organisations, but they could include:

- regular donors by direct debit
- people with an annual subscription
- people who are actively involved in your organisation

Generally, **activities aimed exclusively at your members or committed supporters will not meet the public test** and so will not be considered regulated campaign activity.

b) The public

People that your organisation regularly communicates with, such as people who:

- have signed up to social networking sites or tools (e.g. Facebook groups or Twitter feeds)
- are on mailing lists that have been compiled for general commercial purposes (for example, a business's customer records)
- have signed up for email updates

are counted as members of the public unless they are also members or committed supporters of your organisation.

c) Communicating to your committed supporters *and* members of the public

You may send emails that reach members, committed supporters and other people you regularly communicate with. The Electoral Commission states that in such cases, you should make an honest and reasonable assessment of what proportion of those on the mailing list are members of the public and what proportion are your organisation's members and committed supporters and apportion the costs that relate to communicating with members of the public to your regulated campaign.

What activities are not regulated?

Spending on the following activities is **not covered** by the rules on non-party campaigning:

- material that you send to your members or committed supporters
- volunteer time, including time spent by your staff that you do not pay them for
- people's travel or personal expenses linked to the campaign if you do not reimburse them
- anything (except adverts) appearing in a newspaper or on a licensed broadcast channel
- annual conferences
- public processions or protest meetings in Northern Ireland, where notice has been given under the Public Processions (Northern Ireland) Act 1998
- providing security at a public rally or public event
- translating material from English to Welsh or vice versa
- reasonable costs incurred that are attributable to an individual's disability

Coalition campaigning / joint working

There are specific rules for coalition campaigning. If you are working with other organisations and spending money on regulated campaign activities during the regulated period, you will need to consider these rules. In the Electoral Commission's view:

You are not working together if:

- you have informal discussions with other campaigners that do not involve decision-making or coordinating your plans
- you speak at an event organised by another campaigner, but do not participate in any other way
- you do not consult with other campaigners about what you should say in your campaign or how you should organise it

You are very likely to be working together if:

- you have joint advertising campaigns, leaflets or events
- you coordinate your regulated campaign activity with another campaigner – for example, if you agree that you should each cover particular areas, arguments or voters
- another campaigner can approve or has significant influence over your leaflets, websites, or other campaign activity.

If you are planning to undertake coalition work that you think may pass both the public and purpose tests, please read the Electoral Commission's guidance document 'Joint Campaigning for non-party campaigners.'

Registration

If you decide to register as a non-party campaigner:

- You can register at any point during the regulated period.
- You only need to register when you are approaching the registration threshold (£20,000 in England)
- You register with the Electoral Commission online (no link at the moment as no election scheduled in the near future)
- You can find out more information about registering [here](#).
- Once registered you will need to adhere to the reporting requirements.

Spending limits

Once registered, you need to keep spending on regulated activity within the below spending limits:

1. National spending:

- England: £319,800
- Scotland: £55,000
- Wales: £44,00
- Northern Ireland: £30,800

2. Constituency spending:

Up to £9,750 of the national spending limit can be spent on campaigning targeted at a particular constituency. However, reporting requirement stipulates **that all national spending needs to be spread evenly across all constituencies.**

Compliance

The Electoral Commission's stated approach to compliance is first and foremost to help non-party campaigners to understand the rules. If an organisation doesn't follow the rules their first step will be to help the organisation understand and operate within the rules.

If an organisation repeatedly fails to register and is clearly trying to influence the election outcomes then they will be issued with compliance notices and, if not implemented, monetary penalties. In April 2017, the Electoral Commission fined Greenpeace and Friends of the Earth for failing to comply with campaigning rules at the 2015 general election.

Preparing your organisation

Below are measures that some organisations are putting in place so that they can actively make decisions about regulated spending, and to equip themselves in case of complaint.

Review your plans and seek advice

- Review your campaign plans to identify if they will pass the ‘gateway tests’ and be seen as regulated activity. If you have outstanding questions, seek legal advice from charity or election lawyers.
- The Electoral Commission has guidance, webinars, and an advice line. Be aware when sharing information about your campaign plans that the Electoral Commission is tasked with enforcing the law as well as providing advice.

Involve your Board

- Seek Board approval of your organisation’s approach to the Lobbying Act, including endorsement of your decision to register or not. NCVO have a [template for Board decision making](#) on their website (free for NCVO members, £6.98 for non-members).

Internal Training

- Run internal sessions to ensure that all relevant staff understand the Lobbying Act, what does and doesn’t count as regulated spending, and your organisation’s approach.
- Bond is happy to share our internal training resources, contact advocacy@bond.org.uk.

Update your sign-off procedures

- Review your sign-off procedures to ensure that relevant staff are empowered to make decisions about whether communications or activities could pass the ‘purpose’ test.

Set up a recording system

- If needed, set up a system to record all staff time and campaign costs of regulated activity – broken down by constituencies as well as nations. The Electoral Commission has produced a [template spreadsheet](#) (click on the “resources” link at the bottom). Alternatively see templates from Bond and Quakers in Britain on our website.
- Agree one person, or a small number of people, who can authorise spending on regulated activity to ensure that any spending is well managed.

Keep Management Teams and Boards Updated

- Share monthly reports with your management team of actual and projected regulated spending.
- Flag any concerns and risks as they arise and develop a plan to respond to them.

Staff and political parties

- Review any existing policies around your staff and their engagement in political parties and ensure that staff understand them. Further guidance can be found in [CC9](#).

Be ready to manage complaints

- Decide in advance who in your organisation needs to be involved in fielding any problems.
- Prepare key messages for the media and your supporters in advance.
- Have records of spending up to date and document key decisions so you can demonstrate transparency and due process.

Support each other

- Bond is here to provide support to our members so please don't hesitate to get in touch.
- Please also support one another, share your approach and advice, ask questions.
- Be ready to respond to unfair or wrongful complaints levelled at other organisations with a collective voice.

Bond
Society Building
8 All Saints Street
London
N1 9RL, UK

+44 (0)20 7837 8344
bond.org.uk

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Email: advocacy@bond.org.uk

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