



In-depth Briefing

The Lobbying Act

Introduction

This briefing gives an overview of how the Lobbying Act will work in order to help housing associations to understand how the law will affect them in the run up to elections. The aim of this briefing is to enable you to decide whether or not your organisation will need to register with the Electoral Commission and how to avoid doing so where possible.

This briefing does not offer legal advice and should only be considered as guidance. If you feel uncertain about your organisation's work and its relation to the Lobbying Act, it may be worth considering employing the services of a solicitor who can provide legal advice.

This briefing relates to Wales with specific references to the 2016 National Assembly for Wales elections and to referendums, which follow different rules.

Background

The **Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014** - also commonly known as the **Lobbying Act**, the **Lobbying Bill**, or the **Gagging Bill** - amends the *Political Parties Elections and Referendums Act 2000*, both of which regulate, amongst other things, spending on certain campaign activities in the run up to an election.

Community Housing Cymru (CHC) worked within a broad coalition of organisations in Wales to campaign against the introduction of the Act. While organisations across the UK have been unsuccessful in their opposition to the Act, some asks were achieved:



- The raising of the threshold for non-party organisations to register with the Electoral Commission from the originally proposed £2,000 to £10,000 for Wales.
- The exemption of Welsh language translation costs.
- The rules for organisations 'working to a joint plan' (coalitions) were amended to exclude small-spending organisations where at least one member of the coalition registers as a lead campaigner.
- An expected UK Government review of the legislation following the 2015 General Election.

CHC continues to have concerns about some aspects of the Act and will continue to support calls for it to be repealed. You can find CHC's initial response to the passing of the Act here:

<http://chcymru.org.uk/en/view-news/reaction-to-lobbying-bill>

Non-Party Campaigners

Non-party campaigners are individuals or organisations that campaign in the run-up to elections, but are not standing as political parties or candidates.

A non-party campaigner may, for example, be a campaigning organisation, a charity, a faith group, a company or an individual who may want to campaign on particular issues, or for or against particular parties or candidates.

In electoral law, a non-party campaigner is referred to as a 'third party'.

Regulation

The first step in determining whether your organisation needs to register with the Electoral Commission is to identify whether you will be carrying out any regulated campaign activity.

i. What campaigning activity is regulated?

Campaign activity is only regulated if it meets **both** of the following two tests. If the activity meets only one of the tests, it will not be regulated.

- **The purpose test:** This applies to any activity that can reasonably be regarded as intended to influence voters to vote a certain way. This includes calls for voters to vote for or against a



particular political party or candidate, and (potentially) calls that advocate/oppose policy positions that are very closely associated with one political party (e.g. the 'bedroom tax').

- **The public test:** This applies to any activity that can be seen by, heard by or involves the general public. Your tenants are likely to count as 'the public' unless they are all members or committed supporters.

If you spend more than £10,000 on activity that meets both of these tests, then you will have to register with the Electoral Commission.

Spending that must be accounted for includes producing materials/events and the cost of the time any member(s) of staff have spent producing these materials/events. The cost of transport must also be accounted for where it has been arranged with a view to obtaining publicity. The use of social media must also be regulated if it meets the purpose test. Social media, by definition, automatically meets the public test.

Welsh translation costs are exempt from spending regulation; however, any materials/events that are distributed/held in Welsh in addition to English must be accounted for, and it is only the cost of translation that is exempt, not any materials/events that utilise Welsh. It is also important to note that it is only Welsh translation that is exempt (translating to and from Welsh) – costs incurred when translating to any other language will be regulated.

Table 1: Campaign spending limits

	England	Wales	Scotland	Northern Ireland
Spending limit before registration	£20,000	£10,000		
National spending limit after registration	£319,800	£44,00	£55,400	£30,800
Constituency spending limit after registration	£9,750			



ii. Who regulates campaigns?

The Electoral Commission identifies two different types of non-party campaigns:

- **Local campaigns:** non-party campaigns for or against one or more candidates in a particular constituency, ward or other electoral area. Local campaigns are not regulated by the Electoral Commission and complaints concerning breaches of election rules should be made to the police.
- **General campaigns:** non-party campaigns for or against a political party, or particular categories of candidates, including campaigns on policies or issues closely associated with a particular party or category of candidates. General campaigns are regulated by the Electoral Commission.

iii. When are campaigns regulated?

The regulation period for the upcoming 2016 National Assembly for Wales elections will be in place for 4 months. The regulation period will begin on Tuesday 5th January 2016 and will end on the day of the election, Thursday 5th May 2016.

The regulation period for UK general elections is 365 days; however, this was reduced to 7.5 months for the 2015 election.

In the likely event of at least two referendums being held before the next UK General Election (namely a referendum on the UK's membership of the EU and the potential income tax powers for Wales referendum), the regulation period is 112 days.

Table 2: Campaign regulation periods

365 Days (1 Year)	120 Days (4 Months)	112 Days (16 Weeks)
UK General Elections	National Assembly for Wales Elections Northern Ireland Assembly Elections Scottish Parliamentary Elections	Referendums



Joint campaigns and coalitions

If you work together with other campaigners, this may affect your spending limit and whether you need to register as a non-party campaigner.

You may decide to work together with other non-party campaigners on regulated campaigning as part of a coordinated plan or arrangement that is intended to achieve a common purpose. This is known as a 'joint campaign'.

Organisations can work together in a joint campaign in the following ways:

- You can be a non-party campaigner working with other campaigners
- You can be involved in a 'lead campaign' as either a 'lead campaigner' or a 'minor campaigner'

If non-party campaigners work together as part of a joint campaign, their combined regulated campaign spending will count towards the spending limit of each non-party campaigner involved.

If their combined regulated campaign spending on the joint campaign is more than £10,000 (in Wales), all of the non-party campaigners involved in the joint campaign must register, even if their individual regulated campaign spending is below the registration limits.

If you are a 'minor campaigner', you do not need to register and report the details of your spending as long as you spend less than £10,000 on regulated campaign spending. Your 'lead campaigner' will be responsible for reporting your regulated campaign spending as part of the joint campaign to the Electoral Commission.

Registering with the Electoral Commission

If you find that you will be carrying out regulated activity, and that you will be spending over £10,000 on this activity (including staff costs), then you will need to register with the Electoral Commission.

To do this, you can either make an online application by visiting PEF online (<https://pefonline.electoralcommission.org.uk/Default.aspx>) or by filling in Form TP1 (http://www.electoralcommission.org.uk/_data/assets/pdf_file/0010/169453/form-tp1-ukpge.pdf) and posting or emailing it to the Electoral Commission (<http://www.electoralcommission.org.uk/contact-us/our-offices>). Further details on registration can be found on page 10 of the Electoral Commission's 'Registering as a non-party campaigner' guidance



document: http://www.electoralcommission.org.uk/_data/assets/pdf_file/0011/165962/sp-registering-npc.pdf

Once you have registered, you will have spending caps to comply with during the regulated period (from 5 January 2016 to 5 May 2016).

Deciding not to register

Should you decide that you do not want to register with the Electoral Commission, these are some things you should consider:

- Develop a process to check that anything you send out to the public (including tenants) does not meet the purpose test. This will include written materials such as briefings or newsletters, press notices that you put on your website, anything on any social media channels and events that the public have access to. You will need to be particularly careful when referring to politically partisan issues like the 'bedroom tax' (even though this is not devolved) and the Right to Buy.
- Check on the proposed activity of any joint campaigns or coalitions with which you are involved – anything where you are working with others on a co-ordinated plan or arrangement. If this plan involves carrying out regulated activity between 5 January 2016 and 5 May 2016, you should ask whether the spending on this activity will mean that you have to register with the Electoral Commission. If, under the agreed plan, you are contributing very little money/staff time (under £10,000, or £9,750 in any constituency, when aggregated with your own non-joint campaign spend) it may be that you would be classed as a 'minor campaigner' which would mean that spending on regulated activity would only count towards the 'lead campaigner's' spend. In this case, the lead campaigner itself must be registered.
- Be extra careful when publicly responding to any political party's announcements or commitments to implement policies if elected. If you have been campaigning on a particular issue and a political party commits to do it, you must be careful not to show any bias towards that party when you publicly respond to their announcement. Similarly, care should be taken when asking politicians to 'endorse' your campaign to ensure that the endorsement does not relate to any matters on which there are divisions between parties or candidates. You also must not change or scale up your campaigning activity based on that announcement – in this light, it would be helpful for you to set out your campaigning plans before the regulated



period begins as you may have to prove that you have not changed your campaigning on a particular issue.

- It's worth remembering that seeking to influence politicians or Prospective Assembly Candidates in private is out of the scope of the Lobbying Act. Your organisation can continue to meet with and seek to influence politicians and local candidates without having to worry about the Act.

Conclusions

In conclusion, before registering with the Electoral Commission you should:

- Check whether you will be carrying out any regulated activity. Housing associations are politically neutral organisations (as is CHC), so it's likely that your organisation won't be. However, you need to keep your publications under review, particularly if parties or candidates take opposing positions on housing issues.
- Check that your board agrees with your decision, and that the decision is documented.
- Develop a process to ensure that you do not inadvertently carry out any regulated activity which could put you at risk of registration.
- Check whether any campaigns you are involved in will be carrying out regulated activity. If they will be, investigate how this might impact on your organisation.

If you find that you need to register, you will need to put processes in place to ensure that you collect all the necessary information. The Electoral Commission has committed to answering organisations' questions about the Act as quickly as possible. You can contact them on pef@electoralcommission.org.uk. If you have any questions relating to this in-depth briefing, please contact Liam Townsend, CHC's Research Assistant, on liam-townsend@chcymru.org.uk or 029 2067 4822.

Further information

- Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 (<http://www.legislation.gov.uk/ukpga/2014/4/contents/enacted/data.htm>)
- Electoral Commission Guidance for Non-Party campaigners (<http://www.electoralcommission.org.uk/i-am-a/party-or-campaigner/non-party-campaigners>)