CHURCHES' LEGISLATION ADVISORY SERVICE

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LOBBYING, CHURCHES AND CHARITIES: A BRIEFING NOTE

Introduction

The Transparency of Lobbying, Non Party Campaigning and Trade Union Administration Act 2014 does three things: Part 1 regulates commercial consultant lobbyists, Part 2 regulates campaigning and financial regulation for non-party campaigners and charities and Part 3 imposes a duty on trades unions to provide membership audit certificate. What follows is concerned with Part 2, which amends the Political Parties Elections and Referendums Act 2000 (PPERA).

The regulatory authority for PPERA is the Electoral Commission and, under PPERA, the activities of non-party campaigners are regulated between **19 September 2014** (the day after the Scottish independence referendum) the polling day for the General Election: **7 May 2015** ("the regulated period"). (The rules also apply to European, Scottish Parliament, Welsh Assembly and Northern Ireland Assembly elections: but none of those is currently an issue.) Any organisation intending to run a campaign and spend more than £20,000 in England or £10,000 in any of Scotland, Wales or Northern Ireland during the regulated period must register with the Electoral Commission as a non-party campaigner.

In brief: do you need to register with the Electoral Commission?

- You need to register if you intend to spend more than £20,000 in England or £10,000 in any of Scotland, Wales or Northern Ireland during the regulated period, provided that expenditure is "regulated campaign activity".
- If you do not undertake any "regulated campaign activity" (ie, material and efforts which can reasonably regarded as intended to influence voters for or against parties or categories of candidates) you will not need to register.

Additionally, you will not need to register if your "regulated campaign activity" is outside of the "defined electoral period".

We would have thought it highly unlikely that any Church group would spend anything like the limit for an individual constituency: however, *the national limits should be kept firmly in mind*.

And be aware that *it is a criminal offence to exceed the registration threshold before registering*!

Further information from the Electoral Commission is available here.

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Maximum expenditure

The *maximum* amount that a registered non-party campaigner can spend during the regulated period for a UK general election is as follows:

- England: **£319,800**;
- Scotland: **£55,400**;
- Wales: **£44,000**; and
- Northern Ireland: **£30,800**.

The maximum permitted expenditure in any single constituency is **£9,750**.

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What counts as a "regulated campaign activity"?

"Regulated campaign activity" covers the following types of activity:

- press conferences;
- media events;
- transport in connection with publicising campaigns;
- producing election material;
- canvassing (which could include the costs associated with publicising materials online), market research etc; and
- public rallies and other events.

This will be "regulated campaign activity" if it is:

- it is aimed at, seen or heard by the general public; and
- it could reasonably be seen as intended to influence people's voting choice.

So: if you *both* propose to spend more than £20,000 in England or £10,000 in Scotland, Wales or Northern Ireland *and* you could be regarded, by a reasonable observer, as intending to influence the public in their voting behaviour *you will have to register*.

But (and this is where it starts to get difficult) even if you do not pass the spending threshold yourself, if you are acting jointly with another campaigner you may have to register if your spending and the other campaigner's spending combined exceeds the threshold. This is discussed a little further below.

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Unregulated expenditure

Spending on certain activities is *not* regulated:

- services provided by volunteers;
- *annual* conferences of non-party campaigners (but a body that meets more than once a year will not benefit from this exception);
- public processions or protest meetings in Northern Ireland where notice has been given under the Public Processions (Northern Ireland) Act 1998;
- translations to or from Welsh from or into English;
- material, other than advertisements, in a newspaper or periodical;
- reasonable expenses incurred in relation to a disability (either by someone working on your activities or to make your activities accessible to a member of the public).

In addition, the following activities will not generally be regulated *provided you do not involve the public*:

- lobbying or influencing MPs; and
- lobbying Government or Parliament.

Non-party campaigning by charities

Charities – which include almost all church groups – are regulated under the Charities Act 2011, the Charities and Trustee Investment (Scotland) Act 2005 and the Charities Acts (Northern Ireland) 2008 and 2013. They may not support or oppose a particular political party, candidate or group of candidates but they *are* allowed to work and campaign in order to bring about changes in the law or in government policy. Political campaigning cannot, however, be the sole or continuing activity of a charity, although provided the charity satisfies various due diligence obligations it can be the sole and continuing activity for a period of time. All three regulators publish guidance on campaigning by charities:

- *Speaking out: guidance on campaigning and political activity by charities (CC9)* [Charity Commission for England & Wales]
- *Guidance for charity trustees on the referendum on independence for Scotland* [OSCR]
- *Charities and politics* [Charity Commission for Northern Ireland]

A charity may express support for certain policies proposed or advocated by a political party *provided those policies are in accordance with the charity's charitable objects*; and if a political party endorses the policy of a charity during an election campaign, the organisation in question does not support the political party in question, since that would be totally contrary to charity law in all three jurisdictions.

Campaigning, the "public" test, the "activity" test and the "purpose" test

Whether or not campaigning by a charity falls to be regulated under PPERA is determined by two tests: the "public" test and the "purpose" test.

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Any campaigning that intends to raise awareness of an issue, even if it does not expressly mention a party or candidate can be regulated under the "purpose" test if it can be 'reasonably regarded as intended' to influence voting choices. This can include issue-based campaigns where, for example, candidates' views are set out or commentary given on policies. .

Working to a plan put in place before party policies are announced could help demonstrate that the charity should not reasonably be regarded as intending to promote the electoral success of a party which later adopts the same policy position. The Electoral Commission guidance states that an organisation's campaign activity would not have been regulated previously, it "*is unlikely to become regulated campaign activity simply because a party has changed its position*", unless the charity then publicises the party's support for its position or alters or increases its campaigning on a policy as a result of the party's support. However, this should not be seen as an absolute rule – where a policy becomes highly controversial and heavily associated with a particular party in the run-up to an election, it may be difficult in some circumstances to argue that campaigning against the policy cannot reasonably be regarded as intended (in part) to influence that party's electoral prospects.

In order to be regulated, campaign activity must pass the "public" test: in short, *is the campaign intended to be seen by the public*? If so, it is subject to regulation; but "committed supporters" (regular donors, subscribers and/or those actively involved in the organisation) are not "the general public" for the purposes of the "public test".

But:

- From the point of view of the Churches generally, distinguishing between "the general public" and "supporters" can be very difficult: some denominations have very precise membership criteria while others have very relaxed ones (or none at all).

- People who have signed up to an organisation through social media (or are on mailing lists for purely commercial reasons) fall under the definition of "the general public".

Election materials

Charities–

- are entitled to produce material during periods of campaigning to accompany their work and in order to further their charitable purposes – (so long as it does not advocate one candidate/political party); *but*

- must ensure that campaign material cannot be easily confused with the promotion or opposition to a particular candidate or political party.

Spending on material distributed to the public can be regulated if, for example, it highlights which candidates or political parties do and do not support the organisations' aims and goals.

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Spending can also be regulated if the material compares parties' or candidates' opinions in a way that could reasonably be perceived as intended to influence voters for or against particular candidates, *even if there is no actual intention to affect voting intentions.*

It is not the charity's intention that is the test, *but whether the material could reasonably be regarded as having such an intention.* .

Financial reporting

Registered non-party campaigners will need to comply with spending and donations controls and reporting requirements. To that end, they must:

- have a system in place for authorising spending on regulated campaign activity;
- keep invoices and receipts for amounts over £200;
- report to the Commission after the election your spending on regulated campaign activity;
- (though this is unlikely to affect churches) check that they can accept any donations that they receive that are specifically given for regulated spending, and that are over £500 and record them; and
- comply with the reporting requirements for donations received for spending on regulated campaign activity.

From the start of the regulated election period (19 September 2014 until the dissolution of Parliament in 2015), all relevant donations of more than £7,500 in total from the same donor must be declared every three months. From the day Parliament dissolves (30 March) until polling day (7 May) all donations received, accepted or returned must be declared weekly.

Organisations that have spent up to £250,000 have until **Friday 7 August 2015** to submit their regulated spending report. Statements of accounts must be submitted by **Sunday 7 February 2016**. The Electoral Commission's guidance on accounting is available here. (We consider it very unlikely that any member of CLAS would spend *in excess* of £250,000.)

Hustings

Local regulated selective hustings: *In principle*, a church that is holding a regulated hustings should invite every political party or independent candidate. *In practice*, a church can decide not to invite particular candidates, but if it does, *it must have a clear objective reason which it is prepared to make public and, if necessary, defend*. Possible reasons are as follows:

- that the individuals not invited are likely to obtain very few votes;
- that those invited are the candidates most likely to win in the constituency;
- that there are a very large number of candidates and it is impracticable to invite all of them;
- that a particular candidate or candidates present a public order risk.

Mere disagreement with the political views of one or other of the parties or candidates (however repulsive) is not a sufficient reason not to invite them to the hustings.

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Moreover, if you do not invite every political party or independent candidate and you cannot demonstrate what the Electoral Commission judges to be "an objective reason for not doing so", your event may count as a donation to towards those parties or candidates who *were* invited. If the cost is above £50 it would then need to be recorded by the invited candidates as a political donation – *and you would then have fallen foul of charity law because it is axiomatic that charities may not make political donations*.

In short: before arranging a hustings, *think very carefully about whom you are inviting and why*.

Selective hustings: It is also possible lawfully to hold a selective hustings outside the regulation, even though the candidates invited are chosen for reasons which are not objective as described by the Electoral Commission. That is, provided that *the cost of such a meeting was less than £50.* However, although such a meeting would fall outside of the PPERA regulation, it would not be lawful where under Charity Commission guidance the party advocates policies in contravention of the charity's objects. Regarding the cost of a hustings for the purpose of assessing whether it is regulated and whether it gives rise to a donation, you therefore need to take into account:

- the cost of the venue (the church itself would not, presumably, be hired to outside organisations – but do you make a letting charge for the church hall?);
- costs of any advertising or flyers;
- staff costs (if any); and
- refreshment costs (if any).

Joint campaigns

Under PPERA, a joint campaign occurs where there is a common plan or arrangement between one or more non-party campaigners during a regulated period to incur controlled spending. The Electoral Commission guidance advises organisations to make an "honest assessment" as to whether or not two or more organisations are working together and spending money as part of a common plan.

Joint campaigning includes:

- combined advertising, leafleting or events;
- coordinated campaign activity; and
- situations where more than one organisation has significance influence over strategy.

Joint campaigning does *not* include:

- events where the organisers invite a representative from a different group to speak and
- informal discussions where no decisions are made and no co-ordination between campaigns is agreed.

The overall spending limits are the same for joint campaigns as they are for single organisation campaigns. This means that *joint campaigners do not have double the spending limits*. In addition, where an organisation campaigns *both* as part of a coalition *and* as an individual organisation, the

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total combined spend on focused constituency campaigning must not exceed the £9,750 constituency limit.

If two or more organisations, as part of a coalition, plan to spend more than £20,000 in England or more than £10,000 in any of Scotland, Wales or Northern Ireland, *each of them* must register with the Electoral Commission.

The joint campaign spending limit counts towards *each* group's limit: so if organisation A contributes £10,000 to a campaign and organisations B and C each contribute £2,500, *all three* must keep a record of their the combined spending of £15,000 against their overall limit. In addition, all joint campaign spending over £200 must be recorded and receipts and invoices logged.

It is not always the case that all parties involved in joint campaigning will need to register. However, a joint campaign can choose to have a "lead campaigner" and a "minor campaigner" (or campaigners). In this case, the lead campaigner is responsible for registering and reporting financial activity to the Electoral Commission on behalf of all minor campaigners in the coalition. Where this happens, provided the minor campaigner's own spending does not exceed the registration threshold, they do not need to register.

Sermons

When RADAR members met the Electoral Commission in July I specifically asked about the situation where a bishop (eg) is preaching in his cathedral on a Sunday and says something which could be regarded as supportive (or derogatory) of one or other candidate or party and someone from the media reports it. The response was that that situation was not covered by Part 2 of the Act

In conclusion

The mood-music coming from the Electoral Commission seems to be that it is unlikely to take a tough approach where campaigners do not register at exactly the right time: for example, where a charity simply gets it wrong through inadvertence and ends up within the registration requirements without having registered. An Electoral Commission official told *Civil Society News* that

> "Where necessary, we can use our powers to ensure compliance with the law where it is fair and proportionate to do so. If it came to light that an organisation had not registered and it appears that they should have, then we would contact them for further information in order to assess the reasons for this in line with our enforcement policy. We will continue to work with charities to provide help and guidance as they plan their campaigning activities".

But, in the final analysis, *ignorance of the law is no excuse; and CLAS members should proceed cautiously.*

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