

# A step-by-step guide to the Lobbying Act

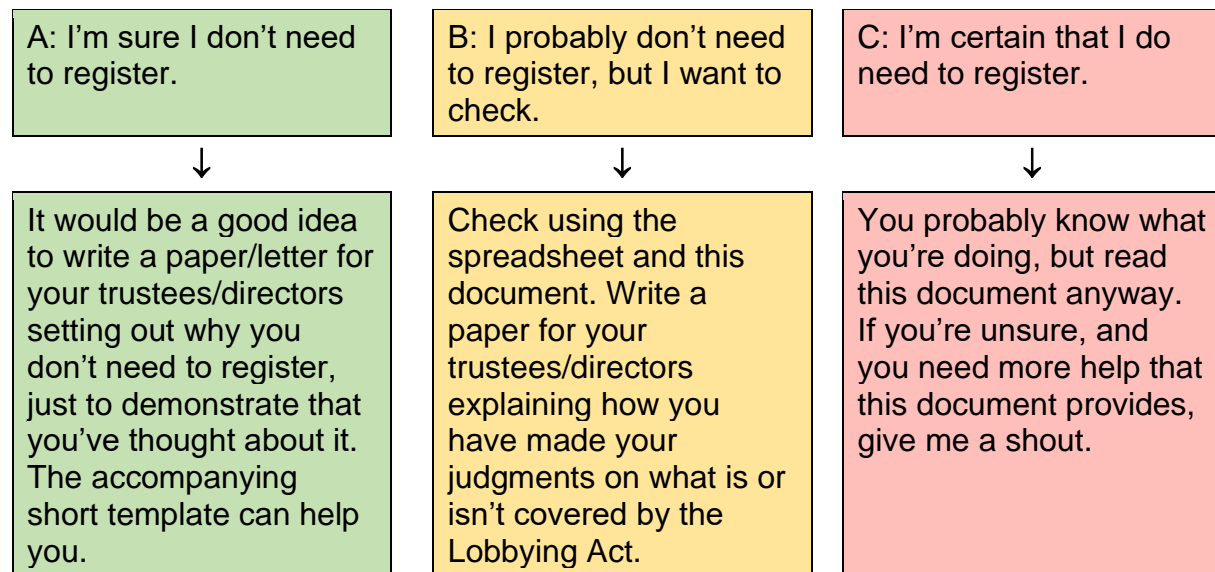
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October 2019

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## The election has just been called – what do I do?

At this stage, you almost certainly fit into one of these three different categories.



I am assuming that your organisation has in fact not tried to get round the Lobbying Act in some way – essentially, that you are approaching this in good faith.

There are two templates for trustee/director papers at the end of this document. One is a short version for those who definitely don't need to register, the other a long version for those who need or want to do the calculations.

## Why write a paper for your trustees or directors?

It is possible that the EC will ask you whether your activities are covered by the Lobbying Act. The EC does not have much experience dealing with campaigning organisations (they are primarily the regulator for political parties) and therefore they may have difficulty understanding your thought processes. A paper for your trustees or directors is a clear demonstration that you have considered the Lobbying Act and made a judgement about your work.

## Judging how much of your work is covered by the Lobbying Act

The first action you should take is to check each strand of your work and judge whether it is covered by the Lobbying Act. What you are doing is see the extent to which it passes the two tests. I suggest that you think about this in terms of percentages. While percentages are not something which are explicitly suggested in the EC's guidance, they are something which I used for both the 2015 and 2017

elections and which I had conversations with the EC about, and so I feel confident in recommending this approach.

Divide the work of the organisation up into sensible projects. Perhaps you have three projects or campaigns running – each with slightly different approaches. Look at each project and ask yourself these two questions, based on the tests:

**Public test:** to what extent is this work public? Are you writing open letters which you put online or send to newspapers? Are you sending information in newsletters to people who have “signed up” in some way?

If absolutely everything is on your website (with no password-locked sections) then you should count it as 100% public. If you are sending letters or emails to a mailing list then make a judgement about how much of the campaign that comprises and count that section as non-public. Realistically, I would expect most campaigns to end up with a value of between 30% and 80% for the public test.

**Purposes test:** would a reasonable person would believe that the campaign encourages individuals to vote for a specific candidate or to vote against a specific candidate?

If you have done joint events with a specific party, or you are in fact co-campaigning with a party, or you have a specific aim of preventing party x from taking a seat, then you almost certainly pass the purposes test and should count it as 100%. If you are campaigning on an issue which is generally associated with a specific party BUT you are carefully asking voters to consider the issues and explicitly not endorsing a party, you may wish to put a value of between 20% and 80%.

What that value might be depends on the following:

- Call to action to voters – if you carefully ask people to “help change your MP’s mind” then you might judge that it’s only 10% of the purposes test, whereas “think about this when you vote” might be considered around 90% of the purposes test.
- Tone – is it positive or negative about a political party or category of candidates? If so, it could be seen as political campaigning and you might want to give it a high percentage. If you are carefully neutral, not using any phrases which have become associated with political positions, you might go for 5% or 10%.
- Context – are you campaigning on an issue that will make a voter think of a particular party or category of candidates? Have you sent out a campaign press release just after a prominent politician has spoken about the issue? If you think it might be seen as jumping on a bandwagon, you’ll probably need to judge your campaign at more than 50%.

Overall, it’s a matter of your judgement. You could spend a long time trying to get the value of the purposes test perfect. I’d personally advise that you go with what feels right. If you have a campaign which “feels” a bit political and which you think some people just might mistake for a party political campaign, say that it passes the

purposes test to the tune of 80%. If you don't think anyone could sensibly think you're associated with a political party, consider a value like 5%.

### **Judging how much staff time costs**

Now that you have a rough percentage for the public and purposes tests for each of your projects, I suggest that you do the actual calculations by staff member.

Ask each staff member to roughly say what they spent their time working on over each month. Most will probably divide it into five or six sections, some (such as press officers) might need more. Each part of their work should have a rough percentage. You'll probably get something a bit like:

Project One 30%  
Project Two 30%  
Project Three 10%  
Line management 20%  
General admin and other stuff 10%

I would argue that things such as line management and general admin do not need to be counted. In a sense, they have a public test value of 0% and a purposes test value of 0%.

Put into the spreadsheet what each staff member costs. I would do this by month, using a general cost of that staff member's salary, plus pension contributions, plus National Insurance – everything, essentially, that the organisation pays for the staff member. If you have part-time members of staff, or people who only worked for part of the month, then you'll need to play around with the spreadsheet.

Use the spreadsheet to calculate how much time was spent on each project, and then calculate the proportion of that time which should be counted based on the percentage answers given to the public and purposes tests. The spreadsheet should guide you towards this.

The example on the spreadsheet is of a staff member earning £45,000 a year – perhaps about £4,000 a month with NI and pensions. This person spent 30% of their time on Project One. We judged Project One to be 80% public and 20% purposes. Since 80% of 20% is 16%, the overall proportion of the project which passes both tests is 16%. And 16% of the 30% of that person's time is 5%. So, the expenditure we count under the Lobbying Act is 5% of £4,000, which is £192.

Add up all staff time, over all the projects, over all the months in the regulated period. You will probably end up with quite a messy spreadsheet.

### **How much events and materials cost**

Before adding everything together, take a look at non-staff costs. These are things such as printing, postage etc. They fall under four categories:

Marketing

Rallies and events  
Election material  
Overheads.

Personally, I was never quite sure which one things such as research or newsletters should go into, but generally opted for “election material”.

Add up your printing costs etc and calculate the proportion which meets both tests. For our example Project One it was 16% (80% public, 20% purposes), so therefore you might judge that £80 of a £500 printing bill would be covered by the Lobbying Act.

However, you may instead decide that the printed material all fell into the 20% of Project One which passes the Lobbying Act. If that's the case then perhaps 80% of the bill should be declared (because 80% is the value we gave to the public test in this example). It's your call, because you know your project best.

### **A quick note about using percentages for the tests**

If you've had a look at the Electoral Commission guidance published on 23 September (published as webpages, not a PDF, unfortunately), you might be slightly confused about why I'd suggested using percentages for both the public and purposes test for staffing costs, as the guidance states that the public test should only be used for marketing, rallies, and election materials.

The reason is you're doing something slightly different. For the non-staff costs you're trying to work out how much of the material produced is public. For the staff time it's a two-step process – you're not working out how much of your time was public, because that is slightly nonsensical. Instead, you're working out whether the time was spent towards election material or rallies or marketing which met the public test. The reason I think this is the correct way of accounting for expenditure is that the Electoral Commission say quite clearly that if something is for your members or committed supporters then it doesn't count. In previous conversations with the Electoral Commission I have confirmed that this includes the research you undertake – which is what I'm counting staff time as. Therefore, the calculation on the public test should surely be a calculation on the proportion of staff time which is allocated to working on election material or rallies or marketing which met the public test.

For overhead costs, the Electoral Commission guidance suggests you simply ignore the public test entirely. The easiest way to calculate overhead costs would be to work out the proportion of your overall expenditure which falls under the remit of the Lobbying Act, and then to use that. In many cases, this will be so small a proportion (less than 1%, for example) that I would personally suggest that no overhead costs at all be recorded.

### **What you need to know**

If you have followed this so far, you'll be getting a good sense of how much of your expenditure might be covered by the Lobbying Act.

You need to keep a record of what you've done and why. If there are questions, the Electoral Commission will wish to see how you came to your final judgement.

On the final sheet on my examples spreadsheet is a sheet from the Electoral Commission. (It is actually from the 2015 election, and so it may be out of date now.) Enter your total amount in there, along with the countries in which you are operating, and it will tell you if you need to register.

### **What the Electoral Commission need to know**

If you don't need to register with the Electoral Commission, then they don't need to know anything. However, it is possible that you may be asked a question about registering later, and so keeping your workings out is a very good idea.

If you do need to register with the Electoral Commission, they will want all the information broken down by month and by type (staff time, marketing, election material etc etc).

### **Next steps**

Write a paper for your trustees or directors, using one of the templates below.

## **LONG TEMPLATE**

### **Paper or letter to the Trustees or Directors**

Organisations and individuals which campaign and call for political change could potentially be covered by the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 (generally known as “the Lobbying Act”). Under the Lobbying Act, those carrying out such activities are required to register expenditure with the Electoral Commission.

This paper sets out how we have made the judgement that we did not need to register as a Third Party Campaigner with the Electoral Commission.

#### **The tests**

The public test asks whether our campaigning work is for our own supporters (those who have clearly indicated, by membership or by ticking a box to ask us to send them information) or for the general public. If information is accessible online (on our website or on others) then it is deemed to be public.

The purposes test asks whether a reasonable person would believe that the campaign encourages individuals to vote for a specific candidate or to vote against a specific candidate. This applies locally as well as nationally.

#### **The risk**

The risk is that an unsuccessful parliamentary candidate complains to the Electoral Commission that their opponent had an unfair advantage, and cites our campaign as a factor. The Electoral Commission has a poor understanding of non-party political campaigning. There is a significant risk of reputation damaging assumptions being made and unjustified bad press. It is also likely that charities would also be expected to inform the Charity Commission of any Electoral Commission investigation.

This paper mitigates such risks, as it clearly demonstrates that we have considered the Lobbying Act and made reasonable judgements on whether our campaigning work is covered.

#### **The regulated period**

We have divided the year into three accounting periods. They are:

- 1. Pre-expectation**

DD MM 2018 (one year before the election) to 4 September 2019

Much uncertainty and conflicting press speculation means that there is little reasonable expectation than an election would be held in the next year.

- 2. Post-expectation**

5 September 2019 to DD MM 2019 (election called)

Prime Minister asks the House of Commons to approve a General Election. It is therefore reasonable to expect an election in the near future.

### 3. **Purdah**

DD MM 2019 (election called) to DD MM 2019 (election held)

Election date has been set.

We consider that actions taken during the first period were undertaken with little reasonable expectation that there would be a general election. Nonetheless, we have made a calculation of expenditure which may have been covered under the Lobbying Act for all three periods.

#### **Our expenditure**

We have carefully looked at each of our projects/campaigns. We consider that overall, we have incurred the following spending as covered by the Lobbying Act:

	<b>Staff time cost</b>	<b>Other cost</b>	<b>Total</b>
<b>Pre-expectation</b>			
<b>Post-expectation</b>			
<b>Purdah</b>			
<b>Total</b>			

We have calculated these amounts by carefully considering each project which was worked on during the regulated period. Each project was given a percentage for the public test and a percentage for the purposes test. As an example, a project where every single aspect was on our website would be judged at 100% public, whereas a project which had some information shared online and some contained in letters to our supporters might be considered to be 50% public.

We asked each staff member to judge the amount of time they had spent on each project per month during the regulated periods.

“Other costs” relate to printing, postage, advertising, hiring space at events, and a number of other non-staff costs.

The proportion of the campaign which met both tests (the percentage for the public test times the percentage for the purposes test) was then applied to the costs. This results in the table above.

#### **Judging our campaign against the tests**

With regards to the public test, we have judged that a significant proportion of our work is with committed supporters. We send emails only to those who have confirmed that they support our declaration and wish to be part of our network of supporters. While some social media content is public, our groups require similar confirmation of support. Because we ask individuals to support our organisation before providing them with leaflets, we judge that **around x% of our printed material costs and x% of something else costs [FOR EXAMPLE]** could be considered to fall under the remit of the Lobbying Act.

We have also considered whether our campaign passes the purposes test, and specifically whether a reasonable person would assume that we were calling for the

general public to vote a specific way due to a specific policy. While we share some broad policies and aims with some political parties, there is considerable disagreement about the methods or actions needed to achieve these policies. Furthermore, our campaigns clearly ask for elected representatives to change their minds, not for members of the public to change their elected representatives.

Overall, we judge that the tone of our campaigns, and the context in which they have been delivered, makes it clear that our campaign is not intended to influence the general public at the ballot box. We consider that a reasonable person would easily be able to understand that our campaign is part of a wider civic engagement.

### **Our conclusion**

Having considered activities we have undertaken during this regulated period, including rallies, printed material, overheads and staff time, we consider that only a very small part of these activities passes both tests and so falls under the remit of the Lobbying Act. The combined cost of these activities is below the registration threshold of £20,000 in England, £10,000 each in Northern Ireland, Scotland and Wales.

We have therefore not registered with the Electoral Commission as a non-party campaigner.



## SHORT TEMPLATE

### Paper or letter to the Trustees or Directors

Organisations and individuals which campaign and call for political change could potentially be covered by the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 (generally known as “the Lobbying Act”). Under the Lobbying Act, those carrying out such activities are required to register expenditure with the Electoral Commission.

This paper sets out how we have made the judgement that we did not need to register as a Third Party Campaigner with the Electoral Commission. We have carefully considered the campaigning work that we have undertaken during all three of these periods. We recognise that the total regulated period is from **DD MM 2018 to DD MM 2019**.

We have considered the two tests outlined in the Lobbying Act.

The public test asks whether our campaigning work is for our own supporters (those who have clearly indicated, by membership or by ticking a box to ask us to send them information) or for the general public. If information is accessible online (on our website or on others) then it is deemed to be public.

The purposes test asks whether a reasonable person would believe that the campaign encourages individuals to vote for a specific candidate or to vote against a specific candidate. This applies locally as well as nationally.

With regards to the public test, we have judged that a significant proportion of our work is with committed supporters. We send emails only to those who have confirmed that they support our declaration and wish to be part of our network of supporters. While some social media content is public, our groups require similar confirmation of support. Because we ask individuals to support our organisation before providing them with leaflets, we judge that **around x% of our printed material costs and x% of something else costs [FOR EXAMPLE]** could be considered to fall under the remit of the Lobbying Act.

We have also considered whether our campaign passes the purposes test, and specifically whether a reasonable person would assume that we were calling for the general public to vote a specific way due to a specific policy. While we share some broad policies and aims with some political parties, there is considerable disagreement about the methods or actions needed to achieve these policies. Furthermore, our campaigns clearly ask for elected representatives to change their minds, not for members of the public to change their elected representatives.

Overall, we judge that the tone of our campaigns, and the context in which they have been delivered, makes it clear that our campaign is not intended to influence the general public at the ballot box. We consider that a reasonable person would easily be able to understand that our campaign is part of a wider civic engagement.

Having considered activities we have undertaken during this regulated period, including rallies, printed material, overheads and staff time, we consider that only a

very small part of these activities passes both tests and so falls under the remit of the Lobbying Act. The combined cost of these activities is well below the registration threshold of £20,000 in England, £10,000 each in Northern Ireland, Scotland and Wales.

We have therefore not registered with the Electoral Commission as a non-party campaigner.