



2024 UK General Election: Rules for businesses on political engagement

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Now that we know the UK general election is set for 4 July 2024, businesses connected with the UK may look to increase their political efforts or support for a particular party over the coming weeks. While the UK's campaign finance rules are less extensive than those in the US, for example, they are still notable and there can be real legal and reputational consequences for getting it wrong.

Restrictions on campaign spending apply both to political parties and to anyone perceived to be publicly campaigning on their behalf. There are also restrictions on the donations that political parties and candidates can receive, as well as company law restrictions on making political donations or incurring political expenditure. We explore these rules further in this article.

ISSUE IN FOCUS

Campaign spending: Anyone spending over £20,000 on certain activities which, in essence, promote or influence voting for a particular party or candidate must register with the Electoral Commission and comply with the rules on “recognised third parties”.

The UK considers campaign spending over a one-year “regulated period” before an election. Although long anticipated, the short period left to 4 July 2024 means that over 10 months of past spending is now retrospectively within the regulated period and subject to campaign spending rules. As discussed below, whilst spending before the announcement of the election on 22 May 2024 is less likely to satisfy the relevant tests, that cannot be treated as a blanket rule and you should consider carefully any relevant spending since 6 July 2023 as well as anticipated spending in the coming weeks.

Donations: Donations over £500 must be reported by the recipient to the Electoral Commission and the identity of the donor will be public. Whilst most rules fall upon the recipients of donations, donors should be alive to publicity around donations. Only donations from a UK source will be accepted.

Shareholder approval: UK companies must obtain prior shareholder approval for any political expenditure or political donations over £5,000 before they are incurred or made.

Exit polls: It is an offence to publish an exit poll or any other statement or forecast of the election based on information as to how voters have actually voted before the close of polling on election day.

THE RESTRICTIONS ON CAMPAIGN SPENDING DURING THE 2024 UK GENERAL ELECTION

The Political Parties, Elections and Referendums Act 2000 (**PPERA**) regulates not only what political parties can spend on campaigning, but also how much money third parties can spend. This focuses on campaign spending and not activity – third parties can campaign as much as they like if they do not spend any money doing so. However, a third party must not incur “controlled expenditure” over £20,000 in England or £10,000 in any of Scotland, Wales or Northern Ireland during the regulated period, without registering with the Electoral Commission as a “recognised third party”. We consider each of these terms in further detail below.

The Electoral Commission is responsible for regulating campaign spending and publishes guidance on the operation of the rules. We expect that it will shortly publish specific guidance on this general election.

Once registered, recognised third parties can then incur controlled expenditure of up to £586,548 in England, £81,571 in Scotland, £54,566 in Wales, and £39,443 in Northern Ireland. However, registering with the Electoral Commission imposes a relatively onerous series of rules and reporting requirements on recognised third parties in relation to both donations and expenditure. Information reported to the Electoral Commission is public.

WHO THE RULES APPLY TO

They are relevant for all businesses and individuals considering engaging with the UK general election. A number of the rules restrict the ability to engage (e.g. to give donations over £500 or to register as a recognised third party) only to UK individuals and organisations – including companies incorporated in the UK, partnerships, charities, and trade unions – which are not registered political parties. Therefore, the restrictions on engagement apply to subsidiaries of foreign-headquartered companies that are incorporated in the UK.

SPENDING THAT COUNTS AS “CONTROLLED EXPENDITURE”

Spending that will be regulated only if it meets both a “**public test**” and a “**purpose test**”.

Public test: this is spending in one of the following categories:

- (a) the production or publication of material which is made available to the public;
- (b) canvassing, or market research seeking views or information from, members of the public;
- (c) press conferences or other media events;
- (d) transport of persons to any place or places with a view to obtaining publicity; and
- (e) public rallies or other public events, other than annual conferences.

There are some notable activities excluded from being controlled expenditure, including publications in newspapers or periodicals (other than advertisements), broadcasts made by licensed broadcasters, and the reimbursement of reasonable travelling and accommodation expenses.

Purpose test: the spending must be reasonably regarded as intended to promote or procure electoral success for:

- (a) particular political parties;
- (b) political parties who advocate or oppose particular policies or issues, or fall within a particular category; or
- (c) candidates who hold or do not hold particular opinions, advocate or do not advocate for particular policies, or otherwise fall within a particular category.

The purpose test is an objective test and turns on how a reasonable person would understand a particular activity. Importantly, activities which are not subjectively intended to influence voters may still satisfy the purpose test if a reasonable person would regard them as intended to do so. Controlled expenditure is therefore not limited to activities that expressly name a political party or candidate. For example, spending publicising a view on a particular issue or policy could be controlled expenditure if the issue or policy is so closely associated with a particular political party that a reasonable person would view the publicity as intended to influence voters for or against that party.

CALCULATING CONTROLLED EXPENDITURE

Calculating the relevant spending is sometimes relatively straightforward and will amount to the direct costs incurred undertaking the particular activity. However, the rules were drafted with small, dedicated campaigning organisations in mind, which not easily translate to large businesses. This can involve more complicated assessments, for example, including a pro rata portion of an organisation’s overhead costs for a building in which a campaign event is held.

Special rules also apply to joint campaigns, where two organisations undertake campaign activity together. Broadly, those rules require each organisation to take into account both its own and the other party’s controlled expenditure on the joint activity when calculating their total regulated spending.

WHEN THE RESTRICTIONS APPLY

The regulated period for a UK general election is 365 days before the poll date, so it started on 6 July 2023 even though the election was not announced until 22 May 2024.

While this may appear surprising, the Electoral Commission's view is that it is possible to incur controlled expenditure before an election is announced. In practice, however, it may be more challenging to show that spending before the announcement of an election meets the purpose test. However, that is not impossible where the general election was going to happen at some point during 2024 or very early in 2025.

WHY THIS MATTERS

The consequences of getting it wrong are potentially serious. Incurring controlled expenditure in excess of the relevant limits without registering with the Electoral Commission is a criminal offence. The Electoral Commission can also impose fines for breaches of campaign spending laws.

Also, if a UK company makes a political donation or incurs political expenditure without the necessary corporate authorisation (which we discuss below), its directors are liable to make good to the company the amount of the unauthorised spending with interest and to compensate the company for any loss and/or damage.

DONATIONS TO POLITICAL PARTIES, CANDIDATES AND RECOGNISED THIRD PARTIES

PPERA regulates donations to political parties and recognised third parties whilst the Representation of the People Act 1983 (the **RPA**) contains restrictions on donations to individual candidates.

The onus of complying with the relevant rules falls on the recipient of the donation (the donee). The key point for donors is that their donation will only be accepted if their identity is known when the donation is made and the donation is from a UK source (e.g. a company incorporated in the UK and carrying on business in the UK or individuals on the UK electoral register).

Donees must report to the Electoral Commission all donations to political parties and recognised third parties over £500 and donations to election candidates over £50. The names of donors and the amounts donated are public.

The reporting limit on donations to sitting MPs is £500. Current MPs will cease to be sitting MPs and, in most cases, become candidates on the date of the dissolution of Parliament (which will be on 30 May 2024).

CORPORATE APPROVALS UNDER THE COMPANIES ACT

Part 14 of the Companies Act 2006 (the **Companies Act**) contains a number of important rules for UK companies.

- (a) Prior shareholder approval is required for:
 - (i) any amount of political expenditure; and
 - (ii) political donations over £5,000;
- (b) The inclusion in any directors' report of:
 - (i) political expenditure, over £2,000; and
 - (ii) any amount of political donations.

The Companies Act definition of political expenditure closely tracks the test for controlled expenditure in PPERA. Any company that considers it has or will incur controlled expenditure will need to ensure the necessary shareholder approvals are in place.

Political donations cover donations made by companies to political parties, to political organisations, and to independent election candidates.

ADVERTISING

As well as the spending implications above, it is also relevant to note the mandatory “imprint” requirements for the publication of an election ad, showing who is responsible for publishing it. The Electoral Commission’s [guidance](#) on imprints expressly includes pop-up ads, social media posts, and adverts that appear on websites, apps, social media platforms, and in search engine results.

POLLING DAY

It is an offence to publish an exit poll or any other statement or forecast of the election based on information as to how voters have actually voted before the close of polling at 10pm on 4 July 2024.

Given the potential market impact of the result, there are likely to be market rumours on polling day and some market counterparties may commission private exit polls.

In this context, “publish” has a very wide meaning and may cover the communication or dissemination of exit poll information in any form. Any companies or other organisations with interests directly and immediately impacted by the election result should be careful to warn employees that no exit poll information or rumours should be published before 10pm on 4 July 2024.

OTHER ELECTION OFFENCES

It is also worth noting that it is an offence to make or publish a false statement of fact (rather than merely a comment or opinion) in relation to a candidate’s personal character or conduct (as opposed to their political views or conduct), unless there are reasonable grounds for believing the statement to be true.

WHAT YOU SHOULD DO NOW

Individuals, businesses and other organisations active in the UK should carefully consider their election activities and whether they might have any potential exposure under these rules.

If you have or are at risk of exceeding the spending thresholds, you should register with the Electoral Commission. If you are concerned that your activities up to 4 July 2024 could risk triggering registration, you should establish a compliance framework for election-related activities to ensure that it does not cross the registration threshold or that you register before doing so. In practice, many companies and charities will want to ensure that their controlled expenditure does not come close to the relevant thresholds for registration.

Do not forget that prior shareholder approval is needed for any level of political expenditure or donations over £5,000, and that all political donations plus political expenditure over £2,000 should be addressed in your directors’ report.

We would be delighted to discuss any of these issues further with you.

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