

Paper M2

General secretariat

The Lobbying Act and the United Reformed Church

Church 2014
United
Church **Reformed**
Church Church 2014



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Basic Information

Contact name and email address	Francis Brienen francis.brienen@urc.org.uk
Action required	Consideration and decision
Draft resolution(s)	Mission Council resolves to register the URC with the Electoral Commission under the Lobbying Act and directs the general secretariat to ensure that this is properly done.
Alternative options to consider, if any	Not registering at all, Registering as a minor campaigner, through our work with the joint public issues team (JPIT).

Summary of Content

Subject and aim(s)	Responding to legislation, in a way that is reputationally and legally secure, and which will also allow us to continue public and prophetic witness through our own staff and through JPIT.
Main points	Outline of the Lobbying Act, and recommendation re response.
Previous relevant documents	None
Consultation has taken place with...	URC Trust. Several partner denominations, through JPIT and The Churches' Legal Advice Service.

Summary of Impact

Financial	Work required to complete paperwork and keep records can probably be done by current staff. A nuisance, but no extra cost.
External (e.g. ecumenical)	If we don't register, it may strain our partnership in JPIT.

The Lobbying Act and the United Reformed Church

The Transparency of Lobbying, Non Party Campaigning and Trade Union Administration Act was granted Royal Assent on 30 January 2014.

Its main purpose is to regulate campaigning activity in the run-up to the General Election next year – specifically during the period from 19 September 2014 until the date of the election (widely expected to be Thursday 7 May 2015).

While the Act encompasses party political campaigning, in which the United Reformed Church does not engage, it also covers some areas of campaigning about social issues. This kind of activity is something which the URC, particularly through its membership of the ecumenical Joint Public Issues Team (JPIT), is likely to engage in during the pre-election period (as it does at other times).

This paper is written from the perspective of our participation in JPIT, but it is important to remember that there are other areas of the United Reformed Church's work which may be affected by this new piece of legislation, such as, for example, Commitment for Life.

Regulated activity

The key question is whether the kind of activity we may engage in as a Church falls within the scope of the Act and therefore counts as 'regulated' activity. If we decide that it does, then the Church will need to register with the Electoral Commission as a 'non-party campaigner' in the run-up to the election, and keep an account of its total spending on its 'regulated' activities.

We do need to respond to the Act one way or the other: only by ceasing to do any work around the General Election can we avoid a response to its demands – hardly a realistic option for a Church which takes the Gospel call to be salt and light in society seriously.

So, given that the Act has now come into force, we must decide as a Church whether we are likely to be undertaking regulated activities as covered by the Act, and how much we are likely to spend on these activities (including direct costs, staff costs and overheads). If we spend under £20,000 in England, under £10,000 in Scotland and under £10,000 in Wales, we will not have reached the threshold and do not need to register with the Electoral Commission. If, however, we spend over those amounts, then registration is required and returns covering donations and expenditure will need to be made.

The Act provides for a cap on expenditure on regulated activity: £319,800 in England; £55,400 in Scotland; £44,000 in Wales; and £390,000 for the UK. If we breach these caps then we face enforcement action or prosecution.

Key questions for the Church

So to recap, the key questions we need to face as the United Reformed Church are:

- Does our planned campaigning activity fall within the scope of the Act and therefore count as 'regulated'?
- Can we faithfully fulfil our role to equip the Church, and seek to influence wider society on social and moral issues, without performing activities regulated by the Act?

- Are we likely to spend enough money on regulated activity to need to register with the Electoral Commission?

In answering these questions we need to decide whether the kind of activity we are likely to engage in before next May does count as ‘regulated’ within the terms laid down in the Act.

The Act subjects campaigning activity to two tests: a ‘purpose’ test and a ‘public’ test. For an activity to be regulated it must pass both tests.

i) The purpose test

Campaign activity will be regarded as regulated activity if it ‘can reasonably be regarded as intended to influence voters to vote for or against political parties or categories of candidates, including political parties or categories of candidates who support or do not support particular policies or issues.’ The Electoral Commission makes it clear that we do not have to name a candidate in order to be caught by this. A campaign activity may also meet the purpose test ‘even if your aim is to achieve something else such as raising awareness of an issue.’

Electoral Commission guidance states that ‘in almost all cases, an activity will meet the purpose test if it:

- identifies political parties or candidates who support or do not support your campaign’s aims
- sets out or compares the position of political parties or candidates on a policy you are promoting in a way that can reasonably be regarded as intended to influence voters to vote for or against particular parties or candidates
- promotes or opposes policies which are so closely and publicly associated with a party or parties or with categories of candidate that it is reasonable to regard your campaign activity as influencing voters to vote for or against political parties or candidates.’

It is the third point which is likely to capture some of the work undertaken on behalf of the URC by the Joint Public Issues Team.

The guidance then goes on to give four assessments we should consider:

- tone – whether the activity is negative or positive towards a party, or towards a policy which a party does or does not support
- context and timing – are we campaigning on an issue which is prominent in public debate, or on an area which represents a difference between political parties? Are we campaigning in reaction to the position of a political party? Or if we are campaigning on a long-held view which a party newly supports, have we altered or changed our campaign plans? Are we campaigning close to an election?
- call to action – is the campaign (explicitly or implicitly) asking people to vote a particular way?
- reasonableness – would a reasonable person regard the campaign as intended to influence people’s voting choices?

ii) The public test

Even if an activity meets the purpose test, it will only be considered to be regulated if it also meets the public test.

An activity is judged to be public if it is ‘aimed at, seen or heard by, or involves the public, or a section of the public.’ If, however, the activity is aimed exclusively at members or ‘committed supporters’, then it is unlikely to be considered to be public and therefore would not be regulated.

The Electoral Commission offers some definitions of ‘committed supporters’ – these include regular donors by direct debit and those who are ‘actively involved’. It would not include those who have signed up to social networking sites or for email updates unless they are also committed supporters.

If our communications lists include both the public and active supporters, we are required to make an ‘honest and reasonable assessment’ of how to apportion the costs.

Press conferences and media events will be considered to be regulated activity if any pass the purpose test. Press releases to the media will not be considered to be regulated as they are not public. However, if we then publicise this work (e.g. by tweeting a link to it on our website) it would be public and therefore regulated (but not if the tweeting were undertaken by another person). Blogs, social media and websites are considered to be public.

The joint public issues team

In deciding whether or not to register we need to pay particular regard to the work of JPIT. The mission statement for JPIT agreed by the three Churches (Methodist, Baptist and United Reformed) is:

The Joint Public Issues Team will help our three Churches to work together in living out the gospel of Christ in the church and in society. We will promote equality and justice by influencing those in power and by energising and affirming local congregations.

JPIT carries out a range of work on behalf of the Churches:

- running campaigns on, for example, foodbanks, truth and lies about poverty, Trident and housing, which have multiple levels including publications, campaign activities, communicating directly with politicians, prayer and worship resources, study resources, media work
- representing the stated views of the Churches on a range of issues, including poverty, alcohol, gambling in the media and through meetings with decision-makers and responses to government consultations
- briefings for national and regional church leaders who will be representing the Church
- informing, encouraging and inspiring members of our churches through a range of resources, including briefings, social media, blogs, worship resources and events
- resourcing our members in advance of general, local and European elections

Many of these activities will not pass both the purpose and the public test and will therefore not be regulated. Others look certain to be regulated in their current form, and many more appear to be in a grey area where it is hard to tell if they are regulated or not – for example:

- the work on poverty – this has highlighted the misuse of statistics by (some) politicians in order to blame the poor for their poverty. Since this campaign began, it has been taken up by some commentators and politicians on the left, whilst being resisted by the right. We have continued along the same principles, but have highlighted ongoing failings by department of work and pensions ministers. It could easily be argued that these concerns can be sufficiently linked with a particular party (in a negative way) to be caught by the Act
- foodbanks – these have similarly become politicised recently (though JPIT began its work on them last year)
- Trident – the general line on Trident has been a call for the non-renewal of the weapons system. This is a position supported by the SNP, Green Party and Plaid

Cymru, but not by the three largest parties. It is likely, however, that the issue to be highlighted over the coming year will be like-for-like replacement, a line which the parties may take different views on

- housing – JPIT’s work this year is likely to include a call for increased investment in affordable housing, which may form a part of the Labour Party manifesto. To stay outside regulation JPIT could fully plan its lines to take in this area in advance and stick to them regardless of what happened in the political or media world, or in research or practice. However this would restrict its ability to respond to changing circumstances and risks making it look silly
- political extremism – before elections our Churches (nationally and locally) have encouraged people to use their vote positively for community cohesion (with the implication that people should not vote for politically extreme and racist parties.) All three JPIT denominations have stated, in different terms that membership of such parties is not acceptable. Even if pre-election work is expressed in positive terms, this could still be (reasonably) understood to be us encouraging people not to vote for particular parties
- election briefings – JPIT has previously produced a summary of issues (indicating concerns and questions) on behalf of CTBI, in addition to an analysis of manifestos against those issues (for use by JPIT). CTBI will not be producing a summary of issues this year. Such voting information is not regulated if it is factual and unbiased. JPIT’s material has certainly not promoted support for a particular party, but because it highlights the choice of issues, as well as containing suggested questions, it could be argued that through it JPIT is trying to influence the way in which people vote.

Irrespective of the Lobbying Act, JPIT materials are always very careful not to advocate for political parties. At all times the content and tone of materials is carefully measured so as to speak to current debates with a distinctively Christian voice that is not party political.

However, JPIT does seek to engage with issues that are live in public debate, and that sometimes involves reacting to particular situations. To a reasonable person this might be seen as trying to influence people’s voting choices, if only by the issues that the Churches ask JPIT to talk about.

JPIT would argue that it is unashamed about seeking to influence how a person votes: not in terms of persuading them to vote for a particular party, but by encouraging them to think and pray about the issues, and then to vote.

Essentially, if we as a Church believe that the gospel message should challenge and change the way we and others think about the world around us, and then we should be helping to equip Christians in their thinking. Under one definition of the legislation, therefore, we seek, as a Church, to influence the way people vote, something of which we should be proud.

Estimating the potential costs of regulated activity

The JPIT workplan for 2014/15 includes some work which could be considered to be regulated campaign activity, and it has sought to estimate the costs of this activity by estimating the proportion of each member of staff’s time which would be spend on an area of work which could potentially be registered, and then estimating the proportion of that area of work which would form regulated activity.

A very rough calculation suggests that eight elements of JPIT’s current work plan could be considered to be regulated activity. An equally rough calculation suggests that this would

represent £54,480 of spending on regulated activity, of which the Methodists would spend £42,000, the URC £8,300, and the Baptists £4,000. (Please note that this is only based on the work in the JPIT work plan and does not include any other work that might take place at Church House and falls within the scope of the Lobbying Act. It is possible that, once we have included the cost of this other work into the costed work of the JPIT work as above, we could exceed the £20,000 threshold for minor campaigners).

However, the rules around joint campaigning would mean that, if this calculation is accepted, each denomination would therefore be required to register spending of £54,480 on regulated activity. A joint campaign is defined as when two organisations co-ordinate work together, and where each organisation has significant influence over the activity. This would be true of all of JPIT's work, unless a denomination decided to be a minor campaigner (see below). If any further work were done beyond that which is in the workplan (or if JPIT's estimates proved not to match reality), or if JPIT signed up to any coalition, then this figure could potentially increase.

Local churches

It is highly unlikely that the Act will impact upon the activities of local United Reformed churches.

Some of our churches, as members of local 'churches together' networks, will be involved in setting up hustings events in their local constituency, but the costs involved in this activity are unlikely to exceed the cap of £9,750 which the Act stipulates may be spent on regulated activity per constituency.

In any case, a hustings event is unlikely to be considered a 'regulated' activity unless not every candidate seeking election in the constituency is invited to participate. Where a hustings is operating on a 'selective' rather than inclusive basis, it will be considered a regulated activity unless there were objective reasons for certain candidates not to be invited – for example, a fear that they might pose a threat to public order.

Conclusion

So, should the United Reformed Church register as a non-party campaigner? We have three options:

1. We could take a bold line and argue that our activities are not regulated (some charities will undoubtedly take this position). However, in the light of the Electoral Commission's guidance, it is doubtful that this position is sustainable. Added to this, the Church of England was told by the Electoral Commission that the activities it signed up to through CTBI alone (which were in general far less campaign-orientated than JPIT's) meant it probably should have registered at the last election.

The disadvantage of taking the position that we do not need to register is that we would still need to monitor and record our work (and our decisions as to why we believe the work is not regulated) in case we are challenged over our decision not to register. And from a reputational point of view we would be vulnerable to that accusation.

A further consequence of this position is that all work undertaken by JPIT, and other sections of the Church, would be done with one eye on avoiding the 'purpose' and/or 'public' tests set out in the Act. There is huge potential for such concerns to shape JPIT's work adversely.

2. We could scale back our activities and focus purely on our own members. This is a decision that we could take unilaterally as a denomination, although with our increasing focus on mission it is unlikely to attract widespread endorsement. Relying solely on communications channels that are for committed supporters and campaigners would close off a number of the most effective ways of communicating with our church members (as opposed to ministers and officeholders).
3. We could decide to register with the Electoral Commission as a non-party campaigner. This would have a cost for all three denominations involved in JPIT in that:
 - a) JPIT would need to monitor, record and cost its work;
 - b) one person would need to be the 'responsible person' in each denomination, who has the responsibility for agreeing expenditure and;
 - c) someone in each denomination would need to do the administrative work around submitting spending and donation records.

There would be a reputational risk in so registering with the Electoral Commission: we could be accused of being party political precisely because we have registered as non-party campaigners. But registration is arguably a better way of mitigating reputational risk: we would be demonstrating transparency in our actions, and, provided we do not breach spending limits, we would be protected from accusations that we were in breach of electoral law.

On the basis of this we recommend that the United Reformed Church seriously consider registration.

Registering as one lead campaigner with minor campaigners

Using the current estimates, and assuming the denominations involved in JPIT limit other regulated activity, it would be possible for the United Reformed Church and Baptist Union to be minor campaigners, with the Methodist Church registering as lead campaigner. Minor campaigners spend less than £20,000, with lead campaigners in the joint campaign spending over the threshold. However being a minor campaigner would still involve:

- agreeing with other parties in the joint campaign (JPIT) how much they can spend
- telling the lead campaigner how much they have spent on regulated campaign activities
- providing receipts and invoices on regulated campaign spending over £200 to the lead campaigner (this is probably true of any joint campaigns)

The appearance of the Methodist Church as the 'lead' organisation, with the URC and Baptists as 'minor' organisations, might be seen as contrary to the ethos of JPIT. As far as is practicable, JPIT is and should be seen as an equal partnership.

Again, we and the other two denominations would need to make our own individual decision. However there may be implications if one denomination decides not to register whilst the others do. The Electoral Commission will wonder why one party to a piece of work is reporting expenditure and another is not.

What are other denominations doing?

The Quakers and the Salvation Army will be registering, arguing that they probably spend over the threshold, but in any case registration offers 'belt and braces' protection.

The Church of England is looking at the situation legally, but has indicated that it is likely to register.

The Catholic Bishops Conference is undecided, things being complicated by the nature of its legal entity.

We and our partners in JPIT are suggesting to other churches intending to register with the Electoral Commission that they hold off doing so until after the URC Mission Council has met in early November. That way, should Mission Council decide that the URC will sign up, we and as many other churches as possible can register en bloc, producing at the same time a reactive (or even proactive) statement which can be issued if anyone accuses us of bias because we have registered. This will give us some protection against criticism, and will also enable us to signify our collective unhappiness with the Act.

Indeed, the idea has been mooted that as a group of churches we make our combined action more powerful by jointly issuing a statement saying that we are doing this 'because we have to' but it will in no way restrict the work we are committed to, namely speaking out against injustice and promoting Gospel values.

