

# BRITAIN STRONGER IN EUROPE

## FACTSHEET – CHARITIES AND THE EU REFERENDUM

**The Referendum on staying in Europe is the most important choice facing Britain in a generation.**

Whatever the result, it will affect many people and charities in the UK for decades to come. At Britain Stronger In Europe, we believe in encouraging debate on the issues that matter across all parts of this country, so that the individuals and organisations this decision will affect can make informed choices about what is best for them and how active they want to be in the campaign. With that in mind, we have prepared information for charities thinking about engaging with the Referendum, summarising the legal position of charities and the EU Referendum.

### 1. Can your charity engage with the EU Referendum?

Charity trustees will be aware of their overriding duty to act in the interests of the charity and use the charity's resources only to advance its charitable purposes, for public benefit.

Charity law also regulates political activity by charities (broadly, activity intended to influence law or policy), which may apply to engagement by a charity with the referendum. Whilst the law relating to political activity by charities is based on the same case law across the UK, charity regulation is devolved and each charity regulator has produced its own guidance on political activity by charities:

Charity Commission for England and Wales (guidance on political activity and campaigning):

<https://www.gov.uk/government/publications/speaking-out-guidance-on-campaigning-and-political-activity-by-charities-cc9/speaking-out-guidance-on-campaigning-and-political-activity-by-charities>

Charity Commission for England and Wales (guidance on elections and referendums):

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/346058/elect.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/346058/elect.pdf)

Charity Commission for Northern Ireland:

<https://www.charitycommissionni.org.uk/media/59585/20140814-charities-and-politics.pdf>

The Scottish Charity Regulator will be producing guidance in due course:

<http://www.oscr.org.uk/>

Whilst trustees should ensure that they are familiar with the requirements of the applicable regulator's guidance, an overriding principle in all cases is that a charity can engage in political activity in support of the charity's objects for public benefit, provided the activity is not party political and is not the sole and continuing activity of the charity, and provided the trustees have sought to identify and manage risks.

### 2. Should your charity engage with the EU Referendum?

Whilst a charity may be limited in the ways in which it can engage with the EU Referendum, this does not mean that it should ignore the referendum entirely. In acting prudently in the interests of the charity, taking account of relevant risks, the trustees may have a duty to consider how the outcome of the referendum might affect the charity, its beneficiaries and supporters and its ability to further its charitable purposes.

The referendum will result in a new constitutional settlement which may have implications for many charities. Trustees should ensure that any research undertaken or relied upon in assessing the impact of the referendum is robust.

If the trustees decide that a particular outcome of the referendum is likely to support the charity's ability to further its objects, they might reasonably decide to advocate that outcome in the referendum campaign.

During the general election and for the 2016 devolved national and local elections, the Electoral Commission and the UK charity regulators issued joint guidance for charities. The Charity Commission has provided assurances that it will discuss the production of further joint guidance for the EU Referendum with the Electoral Commission and other UK charity regulators, so further guidance may become available.

### 3. What kinds of activities can charities undertake under charity law?

If the Charity does decide to advocate a particular outcome or to support another organisation in doing so, it is clear from each UK charity regulator's guidance that the trustees will need to be satisfied that this will be in the interests of the charity, on the basis of reasonable evidence base, and that risks associated with their proposed activities have been identified and managed appropriately. Such risks could include, for example, risks associated with the impact of public perceptions arising from the charity's activities on supporters, beneficiaries and others.

In any activity in relation to the referendum, charities should not be party political, should not pursue political activity as their sole and continuing activity and should actively seek to stress and protect their political independence.

Charity Commission for England and Wales guidance also suggests that trustees must consider whether the aims of the charity are narrower than the potential impact of the referendum.

### 4. What kinds of activities can charities undertake under electoral law?

If a charity will be incurring expenditure in support of a particular outcome to the referendum, it will need to consider the Political Parties, Elections and Referendums Act 2000 ('PPERA').

In particular, if the charity spends more than £10,000 on certain activities intended to promote or procure a particular outcome during a 'Referendum Period' then it will have to register with the Electoral Commission as a 'permitted participant'.

The Referendum Period has not yet been determined but will begin no more than 6 months before the referendum.

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Once registered, the permitted participant will be required to report on its expenditure and donations and will be able to spend up to £700,000 on referendum expenses.

This is a complex area and charities which are unsure about whether they may need to register should talk to the Electoral Commission or seek legal advice. There may also be further changes in this area as a result of the EU Referendum Bill, which amends PPERA and is currently progressing through parliament.

### 5. What if a charity wants to support another campaigning organisation rather than campaign itself?

If a charity engages in any activities jointly with another organisation that are intended to influence the outcome of the referendum, then the total amount spent on such activity will count toward each organisation's spending limits.

However, if the charity engages in any activities jointly with the 'Designated Lead' organisation, then any spending will be attributed solely to the Designated Lead, and not the charity.

### 6. What, or who, is the Designated Lead?

The Designated Lead is the term used to describe the campaigning organisation that is chosen by the Electoral Commission to be the 'official' organisation leading the campaign for a vote to remain in the EU, or to leave the EU.

Where a charity undertakes regulated campaigning activity jointly with the Designated Lead, the cost of that activity will be attributed to the Designated Lead and not to the charity. Organisations wishing to do this should ensure they have agreed the approach with the Designated Lead, which will want to be careful to protect its own overall spending limit (of £7 million).

The Designated Lead for each side of the campaign has yet to be chosen, with the choice to be made after the EU Referendum Bill becomes law (the exact timing has not yet been determined).

In supporting another campaigning organisation, including the Designated Lead, the charity must continue to comply with its charity law obligations, as described above.

### 7. Is your charity incorporated?

If your charity is a charitable company then company law will apply, which introduces further considerations for engagement with the referendum. Trustees of a charitable company will be subject to the duties and controls within the Companies Act, and should consult our factsheet for businesses in conjunction with this guidance, if applicable.

### 8. Where can I go if I want more advice?

These FAQs are not legal advice – charities wishing to engage actively in the EU referendum campaign are advised to seek legal advice if you are unsure of your legal obligations.

For more advice on your charity and campaigning, we are happy to point you towards individual lawyers who can advise you on your particular circumstances.

Contact us at [stakeholders@strongerin.co.uk](mailto:stakeholders@strongerin.co.uk)