

General Election Compliance Guidance

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Distinction and Diversity
in Higher Education

GUILDHE

in collaboration with:

 SHAKESPEAREMARTINEAU

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Introduction

A General Election will take place on 12th December 2019.

There are several regulatory frameworks to consider for higher education institutions, primarily relating to and the charitable status of most providers and requirements for registration with the Office for Students. The document is designed to act as a general guide, bringing together the various relevant pieces of information and providing links for further reading. This document has been put together by GuildHE in collaboration with Shakespeare Martineau. It covers:

- Charity Law in England and Wales
- Candidates and Political Parties and Publicity
- Facilities
- Policies
- Electoral Law
- Good Practice
- Students' Unions
- Voter Registration

Charity Law in England and Wales

Most GuildHE member institutions are either exempt charities or registered charities. This distinction is [largely immaterial](#) in this context, as the compliance burden is identical and any alleged breaches of charity law must be investigated by the Charity Commission in any case.

This section refers to charities based in England and Wales. The Office of the Scottish Charity Regulator [produced guidelines](#) in 2017 relating to this topic explaining the regulatory landscape in Scotland. The Charities Act (Northern Ireland) 2008 established the [Charity Commission for Northern Ireland](#).

Charity law obviously does not apply to institutions that are not charities, but many of the principles set out below may still represent good practice.

The guiding principle underpinning charity law and elections is that charities should be independent, and be perceived to be independent, of party politics. During the run-up to a General Election this is particularly important, not least due to the increased scrutiny there is likely to be on such matters. It is never permissible for a charity to indicate a preference for one candidate over another or to give preferential treatment to a candidate or political parties over others, or to be seen to be encouraging voters to vote in a particular way.

[Campaigning and political activity guidance](#) for charities distinguishes between 'campaigning activity' and 'political activity'. Campaigning activity is defined as 'awareness-raising and to efforts to educate or involve the public by mobilising their support on a particular issue, or to influence or change public attitudes.' This also includes activities attempting to ensure that existing laws are observed.

This is contrasted with efforts to 'secure support for, or oppose, a change in the law or in the policy or decisions of central government, local authorities or other public bodies;' such actions are considered 'political activity.' Both are permissible, but institutions should take particular care

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when engaging in political activity and ensure that such activity is always justified in the context of their charitable objectives.

[Charities, elections and referendums guidance](#) produced by the Charity Commission highlights several areas in which charitable organisations might unintentionally become embroiled in party politics. A brief explanation of each of the relevant identified areas can be found below, with examples of how these might apply in a HE context.

Candidates and Political Parties and Publicity

No assistance can be given to any candidates with their election campaigns, even if the institution were to support a range of candidates from different parties in different seats.

Institutions can approach candidates to enquire as to what their position might be on a topic as a means of promoting debate and they may even lobby candidates on specific issues, in line with the organisation's charitable objectives. While it is possible that candidates might seek to associate themselves with a university or college's position on any given issue, such support must not be reciprocated.

An effort must be made to ensure that a platform is not given to some candidates and not for others, with a full spectrum of candidates represented where possible. This applies to events, written materials and social media. This rule is not absolute, if there are legitimate security concerns, for example, it may be justifiable to exclude a candidate on such a basis.

It is permissible for charities to exclude parties or candidates from events held if it is felt that their policies specifically contradict the organisation's charitable objectives. This is unlikely to apply in the context of higher education and it is highly inadvisable to deliberately exclude any mainstream party or candidate.

It is perfectly reasonable for institutions to continue to work with local authorities during the election period, but additional care must be taken when working with elected councillors; even if they are not themselves running in the General Election, care must be taken to not be seen to be promoting any political party.

Facilities

In the circumstance that a candidate or party wishes to use an institution's facilities, for example, to use a room to host a public meeting, standard commercial charges must be applied. Importantly, this must be applied equally to all candidates.

It is possible for charities to preclude parties or candidates from using their facilities if it is felt that allowing such use might 'alienate the charity's beneficiaries, users or supporters'. In an HE context, this most obviously applies to students. As mentioned above, it might also not be possible to allow a candidate to make use of facilities because of security concerns. In any case, it is ill-advised to deliberately exclude any mainstream candidate without extremely good reason and the institution's governors or trustees should be consulted about any such decision.

Policies

Inevitably, the policy priorities of an institution will coincide more with some parties' proposals than others. It is completely permissible, in this context, to continue speaking out on issues considered important to the institution. Great care should be taken, however, when commenting on contemporary developments or announcing new policy positions. Again, the key is to not indicate, or be seen to indicate any preference for any party or candidate.

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Electoral Law

Electoral law may also apply to an institution's activities in the period running up to an election. The rules are complex and if there is concern that the institution may be engaging in regulated activities (see below), specific advice should be sought.

In summary, if contrary to the guidance set out above, an institution's activities are seen as intended to influence the public or a section of the public in supporting particular candidates or parties, candidates or parties who support particular policies, or other types of candidates (e.g. independent candidates), the institution may need to register with the Electoral Commission as a non-party campaigner.

Spending (including staff and overhead costs) on the following activities may be regulated:

- Election material
- Canvassing and market research
- Public rallies or public events
- Press conferences or other media events
- Transport in connection with publicising a campaign

Students' Unions

Some Students' Unions are themselves charities. Consequently, they must be compliant with charity law and spend resources only in furtherance of their charitable objectives; namely to represent students 'as students.' It is advisable for institutions to work with their Students' Unions to help ensure that they are aware of the requirements set out by charity law, in this regard.

Institutions have a legal responsibility, (section 22) of the [1994 Education Act](#), to take such steps as are reasonably practicable to ensure that Students' Unions operate in a fair and democratic manner and are, crucially, accountable for their finances. This is potentially an important additional consideration for institutions in the run up to the General Election.

Good Practice

None of the above means that institution's charitable status should prevent it from speaking out on important relevant issues, so long as this is in furtherance of the organisation's charitable objectives.

This leaves a great deal of scope for comment on contemporary political issues, given that the charitable objectives of most provider institutions are decidedly broad; given that education is central to all GuildHE members objectives, activities on campus designed to engage students in the political process will be easily justifiable on that basis. For example, GuildHE will be publishing a manifesto with our key policy asks for the next government, focusing on a range of higher education topics.

Below is a case study detailing an event held at the University of Worcester, as an example of how institutions can effectively engage in the political process with their students.

Case Study: Democracy day at the University of Worcester

In the second week of this academic year, the University held a special Democracy Day, on September 27th – a full day of talks and discussions aimed at encouraging students to engage

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with the issues of the day and ultimately to register to vote. Panel discussions involved the University's own academics and external speakers covering topics including how the current political situation is impacting on health and education, exploring constitutional law and a session on psychology and how we make decisions. In addition, the University invited politicians from five of the main parties to take part in a question and answer discussion.

Throughout the day, the University hosted a voter registration stand, and the campaign group For Futures Sake held a stand in the venue, which was in the Students' Union building. Students were actively encouraged to attend sessions throughout the day to learn more and inform themselves of the issues. All students received an email from the Pro Vice Chancellor, explaining the day, encouraging them to attend and stressing the importance of registering to vote. Academics were also reminding students of the event during lectures and seminars. The University, along with the Students' Union, used social media extensively to promote the day, as well as continuing to promote voter registration. Digital screens across the University's campuses were utilised to share messages, and traditional posters were printed and placed at key venues where students gather. Talks were live streamed from the Students' Union so that those unable to attend in person could watch online and the event was also streamed live into the University's main cafeteria. Recordings of all the links were then made available online so that people can go [back and watch](#) at their leisure.

Voter Registration

Promoting electoral registration is a requirement for continued registration with the Office for Students. Paragraph 473 of the [Ofs Regulatory Framework](#) for higher education in England lists the below non-exhaustive examples of behaviours that may indicate non-compliance with this condition:

- An electoral registration officer reports a lack of cooperation from the provider
- The provider's students are not aware of how they should register to vote.

If there is a question as to a provider's compliance with this requirement, they will be asked to demonstrate:

- When required by an Electoral Registration Officer under regulation 23 of the Representation of the People (England and Wales) Regulations 2001 to give information, the provider has complied with the requirement, taking into account its obligations under data protection legislation.
- The provider has cooperated with the relevant ERO or EROs in such a way as to develop a good working partnership, and can demonstrate how that operates and what steps it has taken to achieve this.

It is also recommended that institutions acquaint themselves with the OfS [Regulatory Advice](#) relating to this. It helpfully lists several case studies as examples of good practice; unfortunately these all relate to relatively large universities and it is likely to be the case that some of the steps detailed are not practicable for small and specialist institutions. Where possible, it is preferable for electoral registration to be imbedded in digital platforms, be that through a Virtual Learning Environment or perhaps university halls online platforms.

The National Union of Students has recently produced a [toolkit](#) suggesting different actions that can be taken to this end. Examples of these are listed below:

- Run a registration varsity
- Involve local radio

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- Promote registration on campus
- Have a business drive (engage local businesses)
- Promote registration online
- Engage students with a PR stunt/ photo opportunity
- Flood your social media channels with messages about why students should register

Importantly, the toolkit was devised in partnership with the Electoral Commission. The OfS also recommends working with Students' Unions as an effective way of promoting student electoral registration. This is potentially a very useful tool, as it includes a great of material that can be used for publicity.

There are also some key points to note around [eligibility to vote](#), that should be communicated to students:

- Students are entitled to register in more than one place, but only to vote in one, unlike in local elections
- Be 18 or over on polling day
- Be a British, Irish or qualifying Commonwealth citizen. Whilst EU citizens can vote in the UK in European Elections, they cannot in General Elections
- Not be legally excluded from voting

[Further guidance](#) on this topic has been produced by the Electoral Commission.

Contact us

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