



Pre Election Periods – Guidance

Introduction

The Scottish Local Government Election will be held on Thursday 4 May 2017.

Restrictions will be placed on any publicity materials, such as press releases or newsletters issued by the Council, visits to our services/buildings and the use of Council premises by candidates, parties and campaigning organisations during the following period:-

Monday 13 March 2017 to Thursday 4 May 2017, inclusive

An explanation of the criteria governing these restrictions follows. A useful Q&A section is included at Section 7 on page 13.

Head Teachers should also have regard to specific directions or guidance issued to them by the Schools Service, Scottish Government or Education Scotland, in relation to learning and teaching activities during the pre-election period.

If you still have queries about publicity or use of Council premises during the restricted period, contact one of the following officers:

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Pre-election period guidance

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1. Applicability

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Elections / referendums

These guidance notes apply to all elections: local government, Scottish Parliament, UK Parliament and European Parliament, as well as to by-elections. The guidance can also be applied to referendums.

Where there may be specific issues relating to particular elections these are covered below.

'Independent' organisations

Care should be taken to ensure that projects, initiatives or organisations funded by the council do not create the potential for allegations that public money is being used in support of a party or candidate, as this is prohibited by statute. This is likely to be less of an issue where funding is general, as opposed to funding for e.g. specific communications activity by an organisation. [If the need arises, Senior Officers in the Council should advise officers in these organisations of the potential for concerns over political neutrality (particularly during the pre-election period) and provide this guidance as appropriate.

Timescales

Although the formal pre-election period begins with the issuing of the notice of election, care should be taken in the days before this to avoid any unnecessary concerns over political partiality.

Revisions and terminology

This guidance is subject to revision at the Chief Executive or Director of Corporate Services' discretion.

Any references to 'constituency' in this guidance shall be taken to refer to any or all of the following: a Scottish parliamentary constituency, a Scottish parliamentary region, a UK parliamentary constituency, a local electoral ward area or any other appropriate electoral area being considered in terms of a particular election, unless otherwise stated.

Any reference to 'senior council officer' throughout this guidance shall be regarded as a reference to Executive Manager level or above.



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2. Key points

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While there are some specific areas that require detailed advice, the essence of this guidance is:

- Council staff must by law act in a politically neutral way at all times.
- There is particular sensitivity around this political neutrality in the run-up to an election.
- Particular care needs to be taken to ensure that any events, publicity or other communications are politically neutral during a pre-election period.
- Council facilities and resources must not be used in support of a political party or election candidate.
- Unless otherwise stated, it should be assumed that normal council business will continue.
- Unless otherwise covered by this guidance or in relation to a particular query, staff will most likely respond positively to requests for information or advice from parties or candidates.



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3. Background and timing

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What is the pre-election period?

It is the period between the announcement of an election and the date of the election. It is generally taken to be from the publication of the notice of election until polling day, inclusive of both days. This is the timeframe referred to in the Code of Recommended Practice on Local Government Publicity¹, which guides councils on the issue of publicity.

The main significance of the pre-election period is in the need for heightened sensitivity to ensure that public resources are not used in any way that might prejudice the result of an election.

The pre-election period has in the past commonly been known as 'purdah'. However, this is felt by some to be an inappropriate term because of its cultural and religious origins and thus its usage is being phased out.

Timing of the pre-election period

Returning officers have some discretion on the exact timing of the publication of the notice of election, although it needs to be within a timeframe which is set out in legislation according to each individual election.

The section of a council responsible for elections management should communicate to its elected members and staff the date of the pre-election period. It is usually helpful if this is done several months in advance to help with event and other planning.

It is worth noting that the civil service tends to use the date of dissolution of parliament as the beginning of its pre-election period, as opposed to the notice of election. This convention results from UK parliament election dates not being fixed. However, all elections now follow a timetable which is set out in legislation in advance. However, the convention can lead to the UK and Scottish governments, and their agencies, using different pre-election period dates.

Legal and other obligations

Councils are prohibited by section 2 of the Local Government Act 1986 from publishing any material which appears to be designed to affect public support for a political party. Publicity is defined very widely. It includes 'any communication, in whatever form, addressed to the public at large or to a section of the public.' It should be noted that these obligations apply year-round, but are particularly sensitive during a pre-election period.

The council also has duties under common law to taxpayers prohibiting the use of public funds, resources and council offices where the council is not fulfilling its statutory functions. Unless otherwise specified in this guidance, any support given to political parties or election candidates by a council during the pre-election period is very likely to breach these obligations. Staff and elected members also have obligations under their respective codes of conduct. The key points are covered in more detail below.

¹ The [version of the code that applies to Scotland is the 1988 version](#) (*without* the revisions that apply to England and Wales only which are included as an appendix to the original when republished in 2001. Note that the subsequent version of the Code published in 2011 also does not apply in Scotland).



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4. Premises

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Definition

Council premises can include schools, offices, depots, stores and care homes where access is generally controlled or limited.

It can also include other spaces which might generally be open to the public but where there is an element of control, e.g. parks.

Use as offices and for public meetings

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The Local Government Act 1986 definition of publicity prevents councils from allowing their premises and other resources to be used in a manner which could be perceived to give support to a particular political party.

However, there are some exceptions.

A council may allow political parties to use its premises as offices, where such facilities are provided on a first-come, first-served basis on normal commercial terms.

Parties or candidates may use a school room or other listed 'meeting rooms' for a public meeting, in a school within the candidate's constituency. The let will be free of charge, but a council is entitled to be reimbursed for heating, lighting and other utilities, as well for any damage caused to the room by the let.²

Candidates or their agents are required to give reasonable notice in booking a room and any booking should not interfere with existing arrangements such as prior bookings or school opening hours.

Councils must also prepare and keep for each constituency which is wholly or partly in its area, a list of rooms in school premises and a list of 'meeting rooms' which candidates are entitled to use. Candidates are also entitled to inspect a list of these rooms during working hours.

The current list of available rooms is attached as an appendix.

Visits to Council premises by candidates

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As the election approaches, candidates may wish to visit council premises to meet residents, e.g. in residential homes, or to be seen within the area, or to become more familiar with council facilities. The following procedure will apply in relation to these visits:

- The visit to any council facility must be arranged in advance with the appropriate senior council officer and, through them, with the manager of the facility or establishment.

² These provisions are contained within the Representation of the People Act 1983, and the various elections orders.



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- Visits must be of short duration, i.e. 1 – 2 hours.
- Visits must not interfere with the efficient and proper running of the service or the facility, taking into account the best interests of the residents/users at the facility.
- If, during a visit, it becomes apparent to the manager of a facility that the visit is interfering with the running of the service, then the manager has the right to immediately terminate the visit.
- It is important to take a fair and consistent approach by considering such visits on a council-wide basis. It is important that any visit is not used to signify favour for any party or candidate. Candidates from other parties within that constituency should have the same or similar opportunities, at their request.
- Should the media become involved in such a visit, the procedure immediately below should be followed.

Use of Council premises for publicity

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Visits by candidates

If it is intended that the media be involved in a visit by a candidate this must be notified to the relevant senior council officer when the visit is being arranged. Permission will only be given for the media to visit the premises if the relevant senior council officer considers it reasonable in all the circumstances to do so.

In reaching their decision, the relevant senior council officer should consider if such opportunities are equally available to other candidates, any sensitivities around the particular venue and its users, and the possible staff resource implications. Whatever decision is reached, it should be applied equally to all parties and candidates.

If the media is involved in a visit, employees and clients of the council must not be photographed, recorded or televised with prospective candidates.

However, an individual who lives in a council residential home or hostel has a right, as an elector, to invite candidates and the media into their own room and, should they wish, be photographed or recorded.

Visits by politicians other than candidates

It may be permissible for a sitting politician, who is not affected by a forthcoming election, to visit Council premises and seek publicity for this during a pre-election period. Such visits are to be discouraged but may be approved by a senior council officer if there are exceptional individual circumstances.

However, any candidates should not have a formal role at such events and council staff should not facilitate any publicity involving them, e.g. interview requests or photo opportunities.



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Party political broadcasts

Council premises must not be used for the filming of party political broadcasts.

Candidate's posters and other advertising

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Except as provided for surgery notices, party political or campaigning material should not be placed on notice boards or displayed in council buildings. Any election posters/material displayed which contravenes this rule will be removed immediately by the Council, and the Election Agent may be billed for the recovery of any costs involved.

Shetland Islands Council requires permission to be sought to display any posters on Council property.

This ruling does not apply to individuals residing in Council housing or residential care homes.

In the case of roadside posters, permission should be sought from the Roads Service, and the conditions set out in the Policy on the Placement of Posters must be met. A copy of the Policy is attached at Appendix 2.

Surgery notices

Sitting MPs, MSPs, and MEPs may continue to display surgery notices in council premises during the pre-election period provided the usual notice is being displayed.

Depending on the election in question, (for example a UK Parliament election), once the start of the pre-election period has been declared for that election, the relevant parliament will be dissolved. Thereafter, for example, MPs are no longer in office and are therefore not entitled to advertise surgeries.

Sitting elected members will still be permitted to advertise their surgeries in council premises during the pre-election period provided that the usual notices are displayed. This is because sitting elected members remain in office until the day of a local election.



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5. Publicity

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General

As the definition of publicity is very broad, and any content subject to interpretation, it is not possible to be prescriptive about what publicity is permissible or otherwise. Publicity can cover news releases, publications, events, photos and videos. It also includes online and social media communications as well as 'traditional' publicity.

The main factors to take into account are:

- The content and style of the material in question;
- The time and circumstances of the publication;
- The likely effect of the material on those to whom it is directed;
- Whether the material promotes or opposes a point of view on a question of political controversy which is specifically identifiable as the view of one political party but not the other;
- Whether or not the material contains references to any political party or to persons identified with a political party;
- Where the material is part of a campaign, the effect that the campaign appears to be designed to achieve;
- The extent to which any activity is 'business as usual' or where the timing might be beyond the reasonable control of the authority.

The key test is whether a particular act can be perceived as seeking to influence public opinion or to promote the public image of a particular candidate, or group of candidates (whether or not they are existing members).

Specific points on local government elections

Public statements (reactive and proactive) may need to be made during a local government pre-election period. Great care should be taken to ensure that any content is clearly and directly relevant to the service or issue being discussed and reflects an agreed council decision or policy. It must not be a general comment on the position or achievements of the sitting administration. If possible this should be carried out by senior employees rather than elected members during the pre-election period.

Any council newspapers or newsletters should not be published during the pre-election period. Routine publications advising on council services may be published during the pre-election period.

It is worth noting that elected members remain as such until the day of the election as per section 5 (4) of the Local Government etc. (Scotland) Act 1994.

Opening ceremonies or other events

Best practice suggests that official openings or events, whether or not specifically designed to attract publicity, should not take place during the pre-election period. However, such events can be considered business as usual, particularly if they can be justified on the grounds of exceptional, unavoidable and/or unforeseen circumstances. In such cases you MUST seek advice from Legal Services or Communications before making any arrangements.



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However, it would be better to avoid these and if they are to go ahead to take great care to maintain political neutrality. Candidates for election should not have a formal role.

Media requests

In general, media requests for general filming or photo opportunities around elections should be treated as they would be normally. The only issue that would arise is if there is any question of the media outlet taking a particular stance that may be, or may be perceived to be, in favour of one party or candidate. The possibility of council staff or facilities featuring prominently in such opportunities should also be taken into account when considering such requests.

Requests to organise or cover hustings events would normally be permissible on the basis that they are open to all relevant candidates. In the case of broadcasters, there are strict rules that apply to maintain political neutrality and councils should assume that the broadcaster concerned will meet its own obligations in this regard.

By-elections

Particular care should be taken to avoid any publicity that might appear to be party political or deals with controversial issues in the ward or constituency affected by a by-election during the period after the notice of election has been issued. Again, in such cases you MUST seek advice from Legal Services or Communications before making any arrangements.

Depending on the circumstances and the practicalities of doing so, it may also be appropriate to stop normal council publicity during this period.



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6. Other issues

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Staff candidature

If a council employee in a politically restricted post wishes to stand for election (whether to the council, Scottish parliament, UK parliament or European parliament) they must resign their post.

A council employee not in a politically restricted post may stand for election to the council without resigning their post but must resign within one day of the declaration of the result should they be elected, otherwise they cease to be an elected member and will cause a by-election.

Staff - other political activity

Staff in politically restricted posts should not undertake any political activity at any time.

Staff in posts that are not politically restricted may carry out political activity in their own time. However, if they are a witness for any election-related documents or otherwise personally involved in support for a particular party or candidate, by law they must not be involved with polling or counting.

Working relationships between staff and elected members

It is recognised that there can be a close working relationship between the Chair of a Council Committee and the appropriate Chief Officer(s) and other senior Officers of any Service which reports to that Committee. Employees and elected Members must have regard to the Council's approved Protocol for Councillor/Officer Relations, so if an employee is asked by an elected member to provide assistance with a matter which is clearly party political or which does not have a clear link with the work of the council, they should politely refuse and inform the elected member that they are referring the matter to their line manager for guidance. This rule also applies if an elected member seeks assistance on behalf of a candidate in a particular election. This applies at any time, not just during the pre-election period. If in doubt, please seek advice from Legal Services.

Use of council facilities and resources by elected members

Facilities and resources provided by the council for elected members to help them carry out their duties must never be used for party political or campaigning activities. This includes computer equipment, telephones, stationery, secretarial support and mailing facilities. This is not an exhaustive list and elected members should check if they are not sure what is appropriate.

Communications by elected members to their constituents come within the definition of publicity detailed above, except where they are in response to particular issues initiated by constituents themselves. Use of council facilities for unsolicited mailings during this period should be made with extreme caution. To avoid any suggestion that actions may be motivated by the forthcoming elections, elected members should not issue communications to constituents in a form or style which they have not used before.

Freedom of Information requests

There are no implications for FOI or other information requests covered by legislation. These should be handled as normal.



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7. Questions and answers

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The following are examples of issues which could arise. It must be remembered that the final advice will depend on the exact circumstances and these FAQs are only given to provide an indication of the type of issues you should be considering. They are not a substitute for specific, detailed advice.

1. **A council department proposes to hold a public meeting in the pre-election period to discuss a matter of particular concern to the community. It is likely to attract interest from local politicians. Should the meeting be postponed?**

Yes. Generally it would not be appropriate to hold such a meeting in the pre-election period, nor immediately before it officially begins.

2. **A controversial item is on the agenda for a meeting of the council or a committee which will be held during the pre-election period. Should consideration of the item be postponed until after the election?**

Probably not. As a general rule, the work of the council should continue and the item should be considered. However, the Director of Corporate Services or his/her staff may consider there is too great a risk in considering the item prior to the election and it may be postponed as a result. The general rule should be in favour of business as usual.

3. **A school has been approached by a candidate in the forthcoming election who wishes to meet pupils and have a general discussion with them about topics of concern to them. Is it okay to allow the visit?**

Maybe. You have to show even-handedness towards all political parties. It would therefore be acceptable to invite all candidates to meet the pupils, for example, by holding a mock hustings meeting, but it would not be appropriate to allow only one candidate to meet the pupils. As long as all candidates have been given the opportunity to be represented, then the event can proceed.

4. **Officers have been asked to attend an event to give advice on council services. Is this okay?**

Whether or not it would be appropriate for officers to attend would depend on the nature of the event, who was running it and when it was being held. If the event is associated with a particular political party and is being held during (or immediately before the beginning of) the pre-election period then officers should not attend. If it is being held outwith this period, then a decision would have to be made on whether or not the event was designed to affect support for one political party. If so, then again officers should not attend.

5. **Is it okay for an election candidate to take photographs outside a council office or facility?**

The taking of photographs by candidates, party officials and other staff of any part of any council building, should be discouraged, and not facilitated by council staff. Candidates and officials should be aware that photography in and around schools is strictly prohibited.

6. **What do I do if a candidate/political party refuses to accept my decision?**

Contact the appropriate senior council officer, who can discuss the issues raised with the returning officer as appropriate and let you and the candidate/party know the outcome of these discussions.



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- 7. A candidate turns up to a school on an arranged visit as part of his election campaign but there are media following them. Should they be allowed in?**
No, unless the candidate is attending a hustings event as per question 4 above. This is allowing a council facility to be used for a party political activity involving the media without arrangement and without the agreement of a senior council officer.
- 8. A public consultation meeting is scheduled during the pre-election period as part of the formal planning process for a new school. Can it go ahead?**
Yes. This is both normal business and there are significant costs attached to any delay.
- 9. A party wants to use a council-managed public space for their campaign launch. Should it be allowed?**
There is a convention that certain public spaces are used for campaign activity. It is generally acceptable for these to take place so long as the events are limited, e.g. around one hour and that there is equal opportunity for all parties or candidates to use them. The council resource/effort in facilitating these should also be minimal, e.g. enabling access to a space.
- 10. The council was intending to facilitate a debate on an important issue to our area. Should it be cancelled?**
The debate must be open to participation by all parties and candidates, and it may be advisable to limit the media participation (e.g. reactive rather than proactive). With those caveats, it could go ahead, but thought would still need to be given to whether or not the issue at hand was likely to be particularly divisive along party lines.
- 11. A partner organisation has asked to use a council venue for the launch of an initiative. A government minister will be attending and significant media presence is expected. Can we facilitate this?**
No. There may be publicly accessible spaces that can be used instead, but a council venue should not be used to facilitate media coverage for a sitting minister. A material consideration here is that other parties don't have the same opportunity to carry out such activity (which will almost inevitably be seen as campaigning).
- 12. An elected member wants to give their view on a matter debated at committee to the media. Is this allowed?**
Any elected member at any time is at liberty to do this. The tests are whether they are using council resources to do so and, if using council resources, whether the view is (or could be perceived to be) political in nature.
- 13. A charity which receives funding from the council has taken an advert in a political party's newsletter. Is this allowed?**
There are two relevant issues here: what is the council's funding for (e.g. a general grant or for a specific purpose such as communications) and what is the advert for (e.g. notice of an event or self-promotion)? Generally, this is a low-risk activity so long as there is nothing overtly political about the organisation's activity or its advert, and will be dependent on the organisation's grant conditions.



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14. There is an event scheduled for the launch of a new service. Can elected members be invited? And what about other politicians?

Such events are generally inadvisable before a local government election and should be avoided before other elections. Whether or not relevant politicians can be invited to a particular event must be considered on a case-by-case basis.

15. We want to highlight a new initiative. Can the relevant committee chair be involved?

Assuming the initiative is not particularly politically divisive or controversial, and there are genuine reasons why it is taking place during the pre-election period, then it is probably okay to go ahead with some publicity. However, it would be advisable to promote the service through a service user or manager in any publicity. If the relevant committee convenor attends and then is photographed or interviewed by someone from the media, a council officer can not (and should not) intervene.



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8. Contacts and further information

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General advice on pre-election period guidance

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