



COUNCIL PUBLICITY AND PRE-ELECTION RESTRICTIONS AND RULES

OVERVIEW

- A This note covers:-
- Council publicity - rules which apply at all times and the special rules which apply in the run up to an election or referendum
 - Use of council premises and assistance to candidates
 - Employee-related issues
- B Most of the rules apply at all times, and to every election and referendum. Sometimes special rules and considerations apply. This note will be updated and re-issued before every election or referendum.
- C The next scheduled relevant election is not until 2021. It is possible though that unscheduled elections or referendums may be called.

COUNCIL PUBLICITY

1 Introduction

- 1.1 Council publicity is controlled by statutory rules and by a Code of Practice. Those controls apply at any time and not just in the run-up to an election or referendum. Tighter controls apply during those periods.
- 1.2 Those more restricted periods vary depending on the election involved. They usually cover between 6 and 8 weeks before polling day. The council does not have to stop doing its usual work during those periods. The aim should be to do business as usual as far as possible, but to be very careful about any publicity generated.
- 1.3 Some publicity is prohibited altogether, at any time.
- 1.4 Any publicity that is produced has to follow the Code of Practice.
- 1.5 "Publicity" covers any communication to the general public or a section of the public. It includes:-
- press releases
 - the council's website
 - The Bulletin
 - Newsletters

- adverts or public notices in newspapers
- posters on notice boards
- posting on social media
- public events and ceremonies

1.6 As well as straightforward publicity, there are rules which apply to the use of council facilities and premises for political purposes, and in relation to what council staff can do in relation to elections and political activity.

2 Publicity permitted at any time

- 2.1 The council is always allowed to produce information relating to council functions and services.
- 2.2 It can also do so in relation to the functions and services of some other public bodies.
- 2.3 It can also provide limited assistance to another public body or to voluntary organisations for that purpose.

3 Publicity always prohibited

- 3.1 There is a general prohibition on the council producing political publicity
- 3.2 It applies to publicity produced directly by the council, and to publicity produced by someone else but using the council's staff, facilities, assistance or support. The council cannot get round the rules by supporting someone else to do what it cannot do.
- 3.3 It applies to material which appears to be designed to affect support (positive or negative) for a political party. The actual intention or reason or motivation for the publicity does not matter. What matters is the perception or appearance of the publicity concerned. An objective test has to be used. It is an objective test and has to be judged by the likely reaction of the public.
- 3.4 The factors involved in that objective test are:-
- content
 - style
 - timing
 - reference to a political party
 - reference to a person identified with a political party (especially a candidate)
 - statement of a point of view, positive or negative, on a question of political controversy which is identifiable as the view of one party and not of

another

- likely effect on the target audience
- whether it is part of a campaign
- if so, the overall effect the campaign is aiming for
- any other relevant circumstances

4 How permitted publicity should be done

4.1 If publicity is permitted the Code of Practice says how that it to be done and delivered.

4.2 Council functions are carried out corporately and not by individual councillors or political parties or groups. So, publicity should not be used to publicise individual councillors. It is though legitimate to refer to them where they hold a position of responsibility and they are representing the council as a whole and delivering a council message. That will cover positions like the Leader of the Council or an Executive Councillor.

4.3 In terms of content:-

- it should be objective and factually accurate
- it should concentrate on facts and/or explanations
- controversial issues should be carefully handled

4.4 In terms of style:-

- it should not be used for the primary purpose of persuading the public to hold a view on a matter of policy or political controversy
- comment on the policies of other government or public bodies should be objective, balanced, informative and accurate and should reflect council policy
- comment on the policies of other government or public bodies should not look like a prejudiced, unreasoning or political attack
- it should avoid over-simplifying issues and arguments, or sloganeering

4.5 In relation to delivery:-

- whether it is solicited or unsolicited
- what is the target audience
- how it is to be delivered
- who will deliver it - it should not give prominence to an individual councillor or other politician without justification

- the timing of the publicity, in particular in relation to an election or referendum

5 The run-up to an election or referendum

5.1 The council has to be even more careful in the run-up to an election or a referendum. This period is sometimes referred to as “purdah”. Strictly speaking, that applies to restrictions on central government activities and publicity in relation to national elections, rather than local government publicity. The starting date for the central government restrictions usually comes after the starting date for local government restrictions.

5.2 During that period, the council must avoid publicity which could be seen as:-

- seeking to influence public opinion
- promoting the public image of a particular candidate
- promoting the public image of a particular group of candidates, for instance, a party or cross-party group associated with a particular point of view or controversial issue

5.3 This can be especially difficult where existing councillors are also candidates in the election. They may hold positions in the council of extra responsibility, and would normally be able to feature in press releases and publicity events. During the pre-election period that will almost never be possible.

5.4 The normal rules which apply all the time are changed for the period from the publication of the notice of an election or referendum, until and polling day. Publicity should not deal with controversial issues. It should not report views or activities or policies in a way which identifies them with individual members, or groups of members, or individual candidates or groups of candidates, or political parties.

5.5 This does not mean that no council business can be done – normal council business can continue during this period. Council publicity events and civic ceremonies can still take place where the timing can be justified in service delivery terms. However, there are additional problems to watch out for:-

- references to councillors, MSPs, MPs or MEPs who are or will be candidates must be carefully handled in a completely politically neutral way
- no photographs or videos of them should be used
- there should be no material that links individuals to the election
- nothing should appear to promote them as candidates, including references to political parties and political parties’ positions and policy views
- events and civic ceremonies should be organised in a politically even-handed way, e.g. including opposition representatives as well as from the

political administration

- those events must be arranged using the council's Events Guidance (available on the intranet, under Corporate Communications)
- The procedures set out in the council's Member/Officer Protocol must, as usual, be followed (available on the intranet, under Councillor/Committee Information)

6 Referendum rules

- 6.1 These general rules about election periods apply to referendums as well. They will start on the date of publication of the notice of referendum. The definition of "publicity" is the same
- 6.2 Additional rules apply which are specific only to referendums, and not to elections. They may add another layer of restrictions, or may specify a particular period for restrictions or rules which are the same for central and local government.
- 6.3 The additional rules will usually apply to any material which:-
- provides general information about the referendum
 - deals with any of the issues raised by the referendum question
 - puts arguments for or against an answer to the referendum question
 - is designed to encourage voting at the referendum
- 6.4 The additional rules therefore apply to almost anything touching on the referendum, even where under the normal rules it would be seen as balanced or objective and not party political. They apply to work which might otherwise be done to encourage participation by voting
- 6.5 There are some exceptions though, where information can still be provided or publicised:-
- The Counting Officer is separate from the council and may be allowed to publicise the referendum and encourage participation
 - Where someone makes a specific request for that type of information it can be supplied. In particular, FOISA requests can be answered as usual
 - Providing general information about the arrangements for the poll is allowed

COUNCIL PREMISES AND ASSISTANCE TO CANDIDATES

7 Using council premises

- 7.1 There is a distinction between letting council premises to the general public (including political parties and politicians) and the rights given by elections legislation to use council premises:-
- lets outwith election or referendum periods are a matter of council policy. Arrangements must still abide by the rules about council publicity, or publicity generated through the use of council facilities, officers and assistance
 - lets of some council premises during an election period is a statutory right
- 7.2 Until the publicity restrictions come into place, the premises the council normally makes available for hire by the general public may also be hired by political parties or campaign groups. The let will be subject to the normal terms and conditions of use. In particular, normal letting charges will apply.
- 7.3 The let must not result in publicity which would put the council in breach of the general political publicity rules. Although the council is not organising the event and is not producing the publicity, the rules also apply to publicity generated by someone else through the use of council facilities. Information is needed about the purpose of the meeting and who will be there. For example:-
- A routine meeting of a political party attended only by branch members is unlikely to result in sensitive publicity, and so can be permitted
 - A public meeting organised by a party is by definition designed to produce publicity aimed at the general public about a political issue and so will not be allowed
 - A public meeting organised as a cross-party debate or in a way which will give equal exposure to different interests is unlikely to generate political publicity and so can be allowed
- 7.4 Since these lets are a matter of policy rather than a statutory right, they are subject to legislation which applies to how the council does its business. The council has duties under the Equality Act 2010 for example in connection with eliminating and avoiding discrimination and promoting equality, and has to make decisions which are in accordance with the Human Rights Act 1998. A meeting which promotes discriminatory political views may have to be refused permission.
- 7.5 Consistency in decision making is important.
- 7.6 The rules about lets and political publicity apply after the period of restrictions on publicity as well as before. Even greater care is needed when considering whether or not to agree to a let during this period. Again, consistency in decision making is important.
- 7.7 However, in the run up to an election candidates and agents have a statutory right to use certain council premises free of charge. The same applies to registered campaigners in a referendum. For an election, the right is given to candidates standing in the constituency in which the room is situated. For a referendum, it will cover the whole area for which the Counting Officer is

responsible, usually the whole council area.

- 7.8 The council has to keep a list of meeting rooms, mainly in school premises, which are available for these purposes (available on the intranet, under Councillor/Committee Information). The council cannot charge a letting fee but can recover expenses incurred during the meeting, such as heating, lighting and cleaning, and for any damage to the premises.
- 7.9 That right cannot be taken away whatever political views might be involved, and whatever political publicity might be generated. For example, even where it might clash with the council's equality duties the room must be made available.

8 Posters, stickers, badges and surgery notices

8.1 "Publicity" is wide enough to cover any communication in whatever form aimed at the general public or part of it. So, it catches displaying information on notice-boards or elsewhere in or on council premises. Whether that is allowed or not is a matter of council policy. It is determined on the basis of the relevance to council functions or services and the rules about avoiding political publicity set out above.

8.2 For example:-

- party political or campaigning material should not be placed on notice boards or displayed in council buildings
- putting councillor surgery notices on notice boards in council buildings is allowed so that they can perform their duties as councillors. However, they should be reasonable in size and quantity and must not contain party political material
- letting council premises is allowed, on a first come, first served, basis as campaign HQs or political offices, on normal commercial terms
- motions and amendments on document templates which contain party political messages or slogans will not be allowed where they are to be made available to the general public, through publication on the internet
- attaching political posters to lamp-posts or other street furniture is no longer permitted
- the erection of A-boards on polling day outside polling places is allowed, subject to some restrictions. A separate council policy and guidance applies

9 Assistance to candidates

9.1 The council cannot give any assistance in cash or in kind to candidates or registered campaigners for the purpose of meeting election or referendum expenses. This is partly because of specific legal rules which apply to election expenses, donations and gifts. It is also because giving assistance like that will almost certainly result in publicity which breaches the rules on political publicity.

9.2 It does not matter whether the council provides this assistance to all candidates

or groups on an equal basis.

- 9.3 The council can however provide office accommodation on a commercial basis to a political party in line with council policy so long as it is made available to all.

10 Visits by elected representatives, candidates and campaign groups

- 10.1 The rules on council publicity are very important when dealing with proposed visits by MSPs, MPs, MEPs, candidates or campaign groups. These rules apply at any time, not just in the pre-poll period in the run up to polling day when the tighter rules apply.
- 10.2 It is normal for elected representatives to visit schools in particular, usually as invited guests for an event organised by a school. They will be permitted where they are linked to the curriculum in schools or to a council organised event or occasion and are not connected to any electoral event. Where possible they should be avoided during the tighter pre-poll period.
- 10.3 The visit must be appropriate from a service perspective. The council's Events Guidance must be followed. It must also be organised in accordance with the Member/Officer Protocol. There is a difference between issues which are "political" in nature, whether party political or otherwise, and issues which are "civic" in nature with no obvious political aspect.

EMPLOYEE-RELATED ISSUES

11 Politically restricted posts

- 11.1 A number of council employees hold posts which are politically restricted. That should be stated in their appointment letter or terms and conditions of service. They will receive written notice from the Head of Corporate Services if that restriction applies. It applies to elections and to referendums.
- 11.2 It applies automatically to the Chief Executive; Depute Chief Executives; Heads of Service; the four statutory officers; and officers who hold specific powers delegated through the Scheme of Delegations to Officers.
- 11.3 It also applies to officers regularly advising the council or its committees and officers dealing regularly with the media. Officers in those categories have a right to follow an appeals procedure if they do not consider they should be included. Teachers are not affected.
- 11.4 The regulations set out in detail what cannot be done, but in summary the activities which are prohibited are:-
- announcing an intention to be a candidate for election
 - acting as an election agent or sub-agent for a candidate for election
 - being an officer of a political party or a committee member of a party or branch, if this involves the general management of, or acting on behalf of, the party or branch

- canvassing on behalf of a political party or candidate
 - public speaking with the apparent intention of affecting public support for a political party
 - publishing anything which appears to be intended to affect public support for a political party
- 11.5 Officers who wish to do these things must resign from their post with immediate effect. There is no guarantee of returning if not elected.
- 11.6 Nothing in the regulations prevents an officer from engaging in these activities where it is necessary for the proper performance of their official duties.
- 11.7 Officers who are not in politically restricted posts and who wish to stand for election to the council which employs them do not need to resign from their job. They may apply for special leave for campaigning purposes. Applications will be dealt with through the council's special leave policy. If elected, they must give notice of their resignation from their job. If they do not do so, they are disqualified from continuing to be a councillor, and a by-election must be called.

12 Time off for election work

- 12.1 The council has a legal duty provide the Returning Officer or Counting Officer with the services of officers employed by the council to assist in the discharge of the election or referendum functions. It is council policy to allow council employees, without loss of pay, to be employed by for elections or referendums to assist with the conduct of the poll.
- 12.2 Officers, whether or not they hold a politically restricted post, will not be granted paid leave of absence for the purpose of electioneering or otherwise assisting the campaign of any candidate. To do that would mean the council was facilitating the promotion or support for a political party or an individual candidate.
- 12.3 Where an employee wishes to undertake such activity otherwise than in their own time, requests should be dealt with under the normal council policy for granting annual leave or unpaid leave of absence.

13 Political neutrality

- 13.1 The council's Employee Code of Conduct says that officers must be politically neutral in the way they perform the duties of their employment (available on the intranet, in My Toolkit). That applies in any dealings with elected members or political parties or political groups, and it applies to general conduct at work and in council premises.
- 13.2 Officers share the council's duty to follow the rules about political publicity, both before and during the run-up to an election or referendum. "Publicity" covers all communication with and to the public, in any form. The impact of any such communication and the perception of it as contravening the rules about political publicity should be kept in mind. It can apply to very straightforward things like the clothes worn to work or wearing badges or displaying posters or stickers

which indicate political preference or allegiance.

- 13.3 These considerations only apply when at work. Unless officers hold a politically restricted post they are entitled to take part in politics and party politics in their own time.

14 Awareness raising

- 14.1 The council and the Returning Officer and Counting Officer have duties in relation to raising awareness of elections or referendums, and of voter registration and participation. So long as they are carried out in a neutral way, carrying out tasks related to those duties is permitted and will not breach the rules about political activity or political publicity.
- 14.2 Officers engaged in those duties must be careful in relation to specific statutory restrictions on when and how those activities can be carried out.
- 14.3 Activities in schools designed to promote political literacy are slightly different. They are still subject to the general rules about political publicity but there is additional guidance and council guidelines about what can be done in schools before and during the pre-election or pre-referendum periods. Education Services have produced a comprehensive note for those involved in that process, which can be accessed on the council intranet (under Education Services).

FURTHER INFORMATION AND ADVICE

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