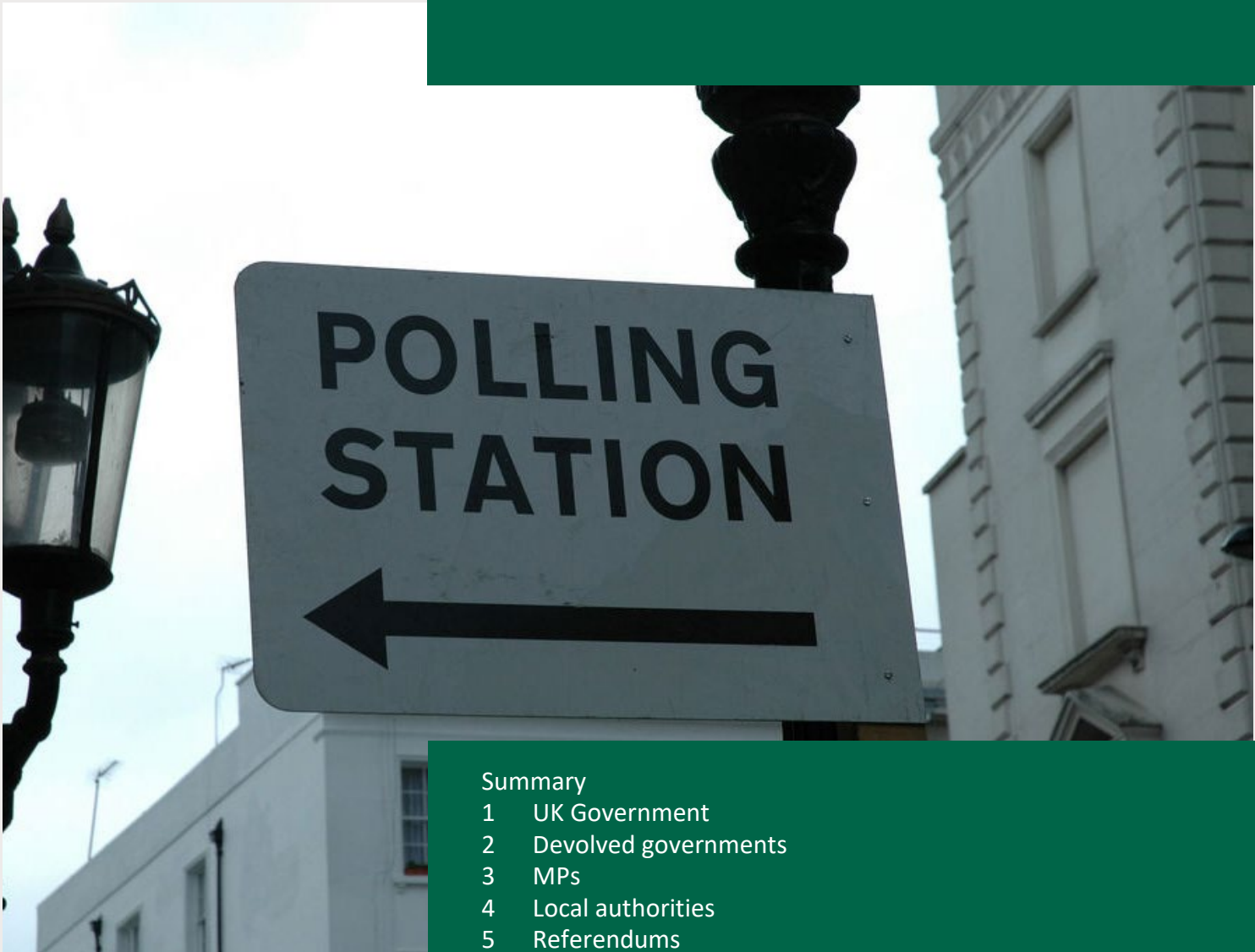


Research Briefing

By Neil Johnston

11 March 2022

Pre-election period of sensitivity



Summary

- 1 UK Government
- 2 Devolved governments
- 3 MPs
- 4 Local authorities
- 5 Referendums

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Contents

Summary	5
1 UK Government	8
1.1 Ministers	9
1.2 Civil servants	9
1.3 Special advisers	10
1.4 UK General elections	10
1.5 Devolved legislature elections	14
1.6 Local elections	14
1.7 2017 court case	15
2 Devolved governments	17
2.1 National elections	17
2.2 UK General elections	18
2.3 Local elections	19
3 MPs	21
3.1 All MPs	21
3.2 MPs who are also ministers	21
3.3 Backbenchers	22
3.4 Visits	22
4 Local authorities	24
4.1 Pre-election period	24
4.2 Code of Recommended Practice on Local Authority Publicity	25
4.3 Use of rooms	26
5 Referendums	28
5.1 The EU Referendum 2016	29
5.2 Scottish independence referendum 2014	32
5.3 The Alternative Vote referendum 2011	33

Summary

What is it?

The pre-election period of sensitivity occurs in the weeks leading up to an election or referendum. The period is also called the period of 'heightened sensitivity' and in the past was often known by the term 'purdah'.

It is a time when governments, ministers and civil servants will exercise caution in making announcements or decisions that might have an effect on the election campaign. The exact period depends on the type of election.

The pre-election period for the UK and devolved governments and their civil servants is not set out in law but is governed by conventions.

Backbench and Opposition MPs are not constrained by the pre-election period of sensitivity. However, all MPs, elected politicians and candidates will need to ensure they abide by campaign finance and election law during an election period.

Local authorities have their own set of rules that are set out in statutory guidance (see below).

When is it?

On 5 May 2022, local elections are taking place in across Scotland and Wales, in London, and some English authorities.

For UK and devolved government departments the pre-election period for local elections is not fixed to any particular date. The general convention is that special care should be taken in the three weeks preceding the elections. In 2022, that will be 14 April to 5 May.

During elections to the UK Parliament or to the Scottish and Welsh Parliaments the pre-election period usually starts 25 working days before polling day.

Elections to the Northern Ireland Assembly will take place on 5 May 2022. The elections to the Northern Ireland Assembly this year operate in slightly different circumstances, as there is currently no First or Deputy First Minister. The pre-election period will start 25 working days before polling day, 28 March 2022.

What is the guidance?

Ministers

Ministers, whether in the UK Government or in the devolved administrations, remain in office and in charge of their departments but it is customary for them to observe discretion in announcing initiatives that are new or of a long-term character in their capacity as a minister.

The general principle for UK Government ministers, as outlined in the [Ministerial Code of Conduct](#), is that ministers may campaign during elections, but public money and departmental resources should not be used for party political purposes. Similar codes exist for ministers in the devolved governments: [Scottish Ministers](#), [Welsh Ministers](#) and [Northern Ireland Ministers](#).

Civil servants

The UK Government [issues guidance for its civil servants](#) to follow during pre-election periods. Devolved governments issue their own guidance. These are based on the Civil Service Code, which outlines the values and standards of behaviour that civil servants are expected to follow. Each government has its own code: [UK Government](#), [Scottish Government](#), [Welsh Government](#), [Northern Ireland Executive](#).

Local government

During elections local councils also observe the period of 'heightened sensitivity'.

Local authorities are required to follow statutory guidance about publicity all year round. The [Code of Recommended Practice on Local Authority Publicity](#) (England) requires that, among other things, local council communications should not use public funds to mount publicity campaigns that seek to influence voters at any time of year. Similar codes operate in [Scotland](#) and [Wales](#).

The Code says council publicity should be issued with care during periods of heightened sensitivity. During this time use of council resources, holding events or launching consultations should also be considered. There is no blanket ban, the ordinary functions of councils can continue, but councils should assess whether it could be perceived that they are spending public money to influence the outcome of the election.

The Local Government Association produces guidance for local authorities, [A short guide to publicity during the pre-election period](#).

Referendums

The period before national referendums is regulated by the Political Parties, Elections and Referendums Act 2000. Central and local government are

prohibited from publishing material that aims to influence voters to vote one way or another in the 28 calendar days before polling day.

Pre-election period or 'purdah'?

The term 'purdah' is still used by some to describe the pre-election period. According to the Oxford English Dictionary (OED), the word 'purdah' derives from Urdu and Persian, meaning 'curtain'. It is also used to describe a system of secluding women from sections of society in parts of south Asia in both Hindu and Muslim communities. The system places limitations on the interaction between women and men outside certain defined categories. These differ among Muslims and Hindus.¹

The OED notes that the word 'purdah' has been in extended use to refer to secrecy or seclusion in general.

Many find the use of a word that refers to the segregation of women from men to describe a civil service practice offensive and the use of the word 'purdah' is generally no longer used to describe the pre-election period.

The Cabinet Office's guidance for civil servants issued for the general elections in 2010 and 2017 did not use the word 'purdah' and only one mention of the word was included in the 2015 guidance. In a [civil service blog piece](#) before the 2015 General Election, Sir Jeremy Heywood, Cabinet Secretary and Head of the Civil Service, wrote:

The term 'purdah' is often used, unofficially, to describe the period immediately before an election or referendum when there are restrictions on the activity of civil servants. More literally, it is also called the 'pre-election period'

Parliamentary questions have previously referred to 'pre-election purdah' and the term 'purdah' has been used a number of times in Hansard over the years.

The rest of this briefing uses the term 'pre-election period' unless quoting from another source.

¹ Hannah Papanek, Purdah: Separate Worlds and Symbolic Shelter, *Comparative Studies in Society and History*, Vol. 15, No. 3, 1973.

1 UK Government

This section sets out the general guidance that applies to civil servants and ministers in UK Government departments at all times. It also outlines the election guidance issued to UK civil servants for each type of elections in sections 1.4 (UK general elections), 1.5 (elections to devolved Parliaments), and 1.6 (local elections).

Summary

The pre-election period of sensitivity is a time when Government ministers and their civil servants should ensure public money is not used for party political purposes or for election campaigning. These principles apply at all times, but particular care is taken during election campaigns.

The pre-election period is not regulated by statute but governed by conventions and guidance. The guidance applies to civil servants in other public bodies and agencies.

The timing of the pre-election period varies and is set out in sections 1.3 and 1.4 below.

Ministers should not use government resources for party political purposes and must uphold the political impartiality of the Civil Service. The guidance issued to civil servants during election periods, based on the principles within the Civil Service Code, reminds civil servants that they should remain politically impartial, and resources should not be used for party political purposes. Special advisers are also issued with a code of conduct.

Guidance for different elections generally follows similar principles. Generally, care should be taken in relation to controversial announcements, publicity campaigns, consultations and visits that could be seen to have an influence on an election. There is no blanket ban on activity and the Government continues to carry out many functions in the normal way.

During a UK general election, decisions in an area of policy where a potential new administration might want to take a different approach should be postponed until after the election.

The sections below set out more detail on some of the provisions.

1.1

Ministers

The [Ministerial Code](#) sets out the standards and conduct expected of ministers at all times. The general principles include the following requirements:

- Ministers in the House of Commons must keep separate their roles as Minister and constituency Member;
- Ministers must not use government resources for party political purposes;
- Ministers must uphold the political impartiality of the Civil Service and not ask civil servants to act in any way which would conflict with the Civil Service Code as set out in the Constitutional Reform and Governance Act 2010.

The Ministerial Code is guidance and is not statutory. Whether a minister has breached the Code and any sanctions are a matter for the Prime Minister to decide.²

Ministers are also party members, and it is normal for them to campaign during an election. While campaigning they should ensure they do not use official facilities and resources for the dissemination of material which is essentially party political.

The exception is where a minister has an official residence. Personal or political party events held in official residences should be paid for by the individual or the party.³

1.2

Civil servants

The Cabinet Office [issues guidance for civil servants](#) in UK departments on their role and conduct during election campaigns. This is available on the Cabinet office website.⁴

The guidance is based on the general principles set out in the [Civil Service Code](#). The Code, as required by the Constitutional Reform and Governance Act 2010, sets out the standards of behaviour expected of civil servants.

² For more information on the Code see Library briefing CBP 3750, [The Ministerial Code and the Independent Adviser on Ministers' Interests](#)

³ Cabinet Office, [Ministerial Code \(PDF\)](#), August 2019, p14

⁴ [Election guidance for civil servants](#), GOV.UK, accessed on 10 July 2015

Civil servants should carry out their duties with “integrity and honesty” and “objectivity and impartiality”.⁵

The guidance varies slightly depending on the election. More detail is given in the following sections.

1.3 Special advisers

The UK Government has issued a [code of conduct](#) for special advisers. Special advisers are temporary civil servants, employed to help Ministers on political matters where it would be inappropriate for permanent civil servants to become involved.⁶

Special advisers must not ask civil servants to do anything which is inconsistent with their obligations under the Civil Service Code.

With the approval of their Minister, special advisers may undertake, or continue to undertake, all forms of local political activity. They must comply with any conditions laid down by their Minister or the Prime Minister.

In general, special advisers can undertake work for a party which does not arise out of government business. They may do this either in their own time, outside office hours, or under a separate contract with the Party, working part-time for the Government. They may not use annual or unpaid leave for this purpose.⁷

However, if they want to work at party HQs during elections to the UK or devolved Parliaments, they usually are required to resign their posts as special advisers.

1.4 UK General elections

Timing

The pre-election period for UK Government departments is not set out in law. This was confirmed by a court case in 2017 (see section 1.6).

At the 2019 General Election the pre-election period began when Parliament was dissolved, 00:01 on Wednesday 6 November 2019.⁸ The dissolution of

⁵ Library briefing CBP 6699, [The Civil Service Code](#), gives the background to the Code and the 2010 Act

⁶ Commons Library briefing CBP 3813, [Special advisers](#), paras 16-21

⁷ Cabinet Office, [Code of Conduct for Special Advisers \(PDF\)](#), December 2016, p

⁸ Cabinet Office, [General election guidance 2019 \(PDF\)](#), 4 November 2019

Parliament signifies the start of the formal election timetable (25 working days).

The date of the 2019 election had been set out in the [Early Parliamentary General Election Act 2019](#), which had received Royal Assent on 31 October 2019, and therefore required Parliament to be dissolved on 6 November.

Before the passing of the [Fixed-term Parliament Act 2011](#), the pre-election period for a general election commenced with the announcement of the election by the Prime Minister, having sought the Monarch's approval for a dissolution. For example, for the 2010 General Election, the pre-election guidance took effect on 6 April 2010, the day the election was announced (21 working-days before polling day).⁹ Parliament was not dissolved until almost a week later, on 12 April 2010. At this time the election timetable for UK Parliament elections was 19 working-days. This was changed to 25 working-days for the 2015 election.

Under the terms of the Fixed-term Parliament Act 2011, the 2015 General Election came at the end of a full fixed-term Parliament. The election had to be held on 7 May 2015 and Parliament had to be dissolved on 30 March 2015 (25 working-days before polling day). There was no need for a pre-dissolution announcement that a general election was about to be held. The Government announced that the pre-election period would commence on 30 March 2015.¹⁰

The unscheduled election of 2017 was held on 8 June, which meant Parliament dissolved on 3 May (25 working-days before polling day).¹¹ This followed Prime Minister Theresa May's announcement, on 18 April 2017, that she would seek an early election under the terms of the Fixed-term Parliament Act. A vote in Parliament the following day confirmed the early election. On 20 April 2017 the Cabinet Office issued guidance on the pre-election period for the 8 June 2017 General Election. It announced the 'election period' would start at 00:01 on Friday 21 April 2017 (32 working-days before polling day).¹²

The [Dissolution and Calling of Parliament Bill 2021-22](#) will repeal the Fixed-term Parliament Act. It has nearly completed its Parliamentary stages and will restore the power of a sitting Prime Minister to request an early election and dissolution of Parliament from the Monarch. If Parliament is not dissolved early, it will automatically dissolve after five years. This broadly restores the position between 1911 and 2011, when a provision in the Parliament Act 1911 (repealed by the Fixed-term Parliaments Act 2011) limited the length of a Parliament to five years.¹³

⁹ Cabinet Office, [General election guidance 2010 \(PDF\)](#), 6 April 2010.

¹⁰ [PQ 219064, 21 January 2015](#)

¹¹ [Commons Library Research Briefing CBP-7952, General election timetable 2017](#)

¹² Cabinet Office, [General election guidance 2017 \(PDF\)](#), 20 April 2017

¹³ Library briefing CBP 9267, [Dissolution and Calling of Parliament Bill 2021-22](#)

The Dissolution and Calling of Parliament Bill does not alter the election timetable meaning a dissolution will occur 25 working-days before polling day. The pre-election period of sensitivity was not set out in the new arrangements so remains a non-statutory provision. It remains to be seen whether the pre-election period for the next general election will start at the dissolution of Parliament or in advance of it.

General principles

During the election period, the Government retains its responsibility to govern, and Ministers remain in charge of their departments and retain their statutory powers. Essential and statutory functions continue.

By convention, Ministers observe discretion in initiating any new action of a continuing or long-term character. Announcements on policies or senior public appointments where a new Government might have a different view should be postponed unless detrimental to the national interest or wasteful of public money.¹⁴

The guidance applies to public bodies such as Non-Departmental Public Bodies (NDPBs) and other arms' length bodies.

Guidance

The Cabinet Office [guidance for civil servants](#) is usually made available on the Cabinet office website.¹⁵

It remains the basic principle of the Civil Service Code that civil servants do not undertake activity that could call into question their impartiality or give rise to criticism of using public money for party political activities.

Some of the key points are set out below, but the guidance notes that it cannot cover every eventuality and civil servants who are in doubt should contact their Permanent Secretary:

- Requests for factual information or freedom of information requests should be dealt with in accordance with the Freedom of Information Act (FOIA).
- Support for ministers in their ministerial roles can continue, including factual briefings.
- Communications activity can continue to provide factual information, but departments should avoid competing for media coverage with candidates. Regular statistical releases continue as normal.
- New advertising campaigns will in general be postponed and running campaigns closed.

¹⁴ Cabinet Office, [General election guidance 2019 \(PDF\)](#), p3

¹⁵ Cabinet Office, [Election guidance for civil servants](#),

- New consultation should not normally be launched unless it is considered essential (for example in relation to public health).

Constituency correspondence

Correspondence with their constituents is an important part of an MP's work. This often involves correspondence with a department or other public body on a constituent's behalf.

Once Parliament is dissolved, a Member of Parliament ceases to be an MP. Their constitutional right to represent their constituents' grievances to government disappears. They are a candidate like all other candidates.

The guidance advises that outstanding correspondence between MPs and departments should be cleared quickly. There may be times where replies are required to be sent to assist a constituency case, and these should avoid preferential treatment of those candidates who were MPs before dissolution. Civil servants are advised take account of the possibility of candidates making responses public and "that if they become public knowledge they will do so in the more politically-charged atmosphere of an election and are more likely to become the subject of political comment." Consideration should be given to the constituent's personal circumstances and their interests should not be prejudiced.¹⁶

Visits

Ministers, other candidates and civil servants should not visit departmental premises or other public bodies for electioneering purposes.

Decision will be for the establishment concerned, for example a school or hospital. If visits are permitted there should be no disruption to services and the same facilities should be offered to other candidates.

Special advisers

Special Advisers who wish to take part in a general election campaign or help in a party headquarters or research unit during a general election campaign must first resign their appointments.

They no longer receive preferential access to papers and officials, and have no access to departmental resources such as phones and IT equipment.¹⁷

¹⁶ Cabinet Office, [General election guidance 2019 \(PDF\)](#), November 2019, p10

¹⁷ Cabinet Office, [General election guidance 2019](#), November 2019

1.5 Devolved legislature elections

When elections are taking place for one of the devolved legislatures the UK Government still observes the pre-election period of sensitivity. This usually starts 25 working days before polling day.¹⁸

Elections are due to take place to the Northern Ireland Assembly on 5 May 2022. The pre-election period for UK civil servants starts on 28 March 2022.¹⁹

The UK government [guidance for devolved elections](#) follows a similar format to guidance for UK elections but notes that devolved elections are different to UK Parliament elections. The UK Government will remain in office whatever the outcome of the devolved elections.

The general guidance for UK civil servants is that Government business across non-devolved UK matters can continue unaffected but that care should be taken with decisions which could have a bearing on the area where the devolved elections are taking place.

The Secretaries of State for Scotland, Wales, and Northern will continue to be in charge of their respective departments, and civil servants should continue to support them.

Care should be taken if visits to areas holding elections are planned and UK departments should consider the handling of primary legislation in Westminster that includes provisions on devolved matters during the election period.

1.6 Local elections

The period of sensitivity for UK Government civil servants preceding local and mayoral elections is not fixed to any particular date, but the general convention is that particular care should be taken in the three weeks preceding the elections.

Local election in England, Wales and Scotland take place on 5 May 2022. The three-week period will therefore start on 14 April 2022.²⁰

¹⁸ See for example the guidance, [May 2021 Elections: guidance on conduct](#), first published 18 March 2021

¹⁹ Cabinet Office, [May 2022 elections: guidance on conduct for civil servants](#), 3 March 2022

²⁰ As above

Similar [guidance is in place](#) as for other types of election. Care should be taken by UK civil servants taken on announcements or consultations that have a particular impact on a local area where elections are being held.²¹

If a consultation is ongoing during this period, it can usually continue as normal. However, departments should avoid taking action that will compete with candidates for the attention of the public. This effectively means not undertaking publicity or consultation events for those consultations that are still in progress.

Special advisers may campaign in their own time and must ensure they do not use departmental resources.

1.7 2017 court case

As noted above, the pre-election period before general elections is not regulated by statute. This was confirmed in a court ruling in April 2017.

During the 2017 General Election campaign, the Government was taken to court over its decision not to publish its clean air strategy. The date for publication had been ordered in an earlier court judgement. The deadline set by the court fell within the pre-election period for the 2017 General Election and the Government cited this as the reason not to publish.

The High Court subsequently ruled against the Government and said it could not use 'purdah' to override its legal obligation to meet the deadline.²²

In his ruling the judge concluded the pre-election period was not a principle of law and the exceptional circumstances of the threat to public health that meant that pre-election guidance could be overridden. The conclusion of the judgement stated:

(i) That Purdah is not a rule of law which overrides the duty on the Government to comply with its statutory duty and the orders of the court.

(ii) That, properly understood, the general principles set out in the Cabinet Office Guidance apply here but do not in themselves establish that the publication of the draft [Air Quality Plan] before the general election would be unacceptable.

(iii) That in any event, this case falls within the exceptions provided for by the Guidance.²³

²¹ As above

²² [Neutral Citation Number: \[2017\] EWHC B12 \(Admin\)](#)

²³ [Neutral Citation Number: \[2017\] EWHC B12 \(Admin\)](#)

Background to the case

The case was part of a legal battle between the government and ClientEarth, a UK charity which uses advocacy and litigation to protect the environment.

In 2015 the Government was ordered by the Supreme Court to submit new air quality plans to the European Commission no later than 31 December 2015. The Government had published an air quality plan in September 2011 that recognised that it would fail to meet EU air quality limits for nitrogen dioxide (NO₂) limits.

The Department for Environment, Food and Rural Affairs (Defra) launched a consultation on [draft plans to improve air quality in the UK](#) in September 2015. Defra published its final [plans](#) on 17 December 2015. These updated and replaced the previous 2011 NO₂ air quality plans.²⁴

ClientEarth again challenged the Government and was granted a judicial review on 28 April 2016. The Review took place in October 2016. [A ruling was made in against the Government](#) on 2 November 2016 that quashed the 2015 Air Quality Plan. Following the judgement, ClientEarth and Defra returned to court to decide when a new Air Quality Plan should be published. The [decision](#) was that draft modified Air Quality Plan should be produced by 16.00 on 24 April 2017 and a copy provided to ClientEarth. The new plan should then be published and sent to the European Commission by 31 July 2017.

The Government did not publish the draft plan on 24 April as required and applied to the courts for an extension. In response to an urgent question the then Secretary of State for Environment Food and Rural Affairs, Andrea Leadsom, set out that the Government had [applied to the High Court for a delay](#) until 30th June to publish the draft, because of the up-coming local and general elections, with a final publication date of 15 September :

Following long-standing precedent, we have entered the period of sensitivity that precedes elections. In accordance with the guidance covering both local and general elections, the propriety and ethics team in the Cabinet Office has told us that it would not be appropriate to launch the consultation and publish the air quality plan during this time.²⁵

The application to delay was heard by the High Court on 27 April 2017. The court ruled that the publication could be delayed until after the local elections but that it should be published by 9 May 2017 and not be delayed until after the general election.

²⁴ See: <https://uk-air.defra.gov.uk/library/no2ten/>

²⁵ HC Deb 24 April 2017 [624 c901](#)

2 Devolved governments

Each administration has its own version of the Ministerial Code,²⁶ civil service code,²⁷ and code for special advisers.²⁸ These apply at all times.

Government departments and public bodies in the devolved governments also observe pre-election periods. It follows similar themes to the UK Government guidance, but as the UK Government guidance notes, “civil servants in the devolved administrations owe their loyalty to those administrations, not to the UK Government.”²⁹

The devolved governments also issue election guidance for their civil servants. It has similar themes to the UK Government guidance. Ministers and civil servants should ensure public money and resources are not used for party political campaigning and care is taken over announcements that might have a bearing on the election.

The main difference is that the main thrust is reversed. For UK General elections, the devolved governments will remain in place but should take care when making announcements that could be seen to have an influence on the election campaign. For elections to the devolved Parliaments, where a new Government might have a different view, decisions should be postponed unless detrimental to the national interest or wasteful of public money.

2.1 National elections

Elections to the Scottish and Welsh Parliaments took place in May 2021. The next scheduled elections are in May 2026.

Elections to the Northern Ireland Assembly are expected on 5 May 2022. The pre-election period for civil servants in the Northern Ireland Executive is likely to start on 28 March 2022, the day the formal notice of elections is published.

²⁶ The Ministerial codes are on each Government website: [Scotland](#), [Wales](#), and [Northern Ireland](#)

²⁷ Civil Service Codes: [Scotland](#), [Wales](#), and [Northern Ireland](#)

²⁸ Special advisers Code: [Scotland](#) and [Northern Ireland](#). In Wales special advisers are covered by the [Civil Service Code](#), except, in recognition of their specific role, the requirements for objectivity and impartiality

²⁹ Cabinet Office, [General election guidance 2017](#) (PDF), 20 April 2017, p37

Northern Ireland

The elections to the Northern Ireland Assembly this year operate in slightly different circumstances. Scheduled elections are due on 5 May 2022.

On 3 February 2022 [Paul Givan resigned](#) as First Minister of Northern Ireland, effective from midnight. This meant deputy First Minister Michelle O’Neill also relinquished her post. The Northern Ireland Executive was no longer able to meet as it is chaired jointly by the First and deputy First Ministers. Other Executive ministers remained in post, although they could not take any new decisions.³⁰

Under new arrangements the time available for the appointment of a First Minister and a deputy First Minister following the resignation is six weeks. The 6-week period is automatically renewed three times, for a total period of up to 24 weeks.³¹

The UK Government confirmed in February that early elections would not be held and the scheduled elections for 5 May 2022 would go ahead.³² The pre-election period is likely to start on 28 March 2022, the day the formal notice of elections is published.

Guidance for the 2022 elections has yet to be produced.

The Northern Ireland Executive [published guidance](#) on conduct for civil servants and special advisers during the 2017 Northern Ireland Assembly election campaign on 30 January 2017. The pre-election period started on 26 January and polling day was 2 March.³³

The guidance follows the general principles of exercising discretion on announcements and publicity.

Special advisers were required to resign if they wanted to campaign during the election or stand as a candidate.³⁴

2.2

UK General elections

The pre-UK General election period for the devolved administrations begins, by convention, with the dissolution of the Westminster Parliament. The pre-

³⁰ Library briefing CBP 9416, [Northern Ireland: Key issues](#)

³¹ Library briefing CBP 9213, [Northern Ireland \(Ministers, Elections and Petitions of Concern\) Bill 2021-22](#)

³² BBC News online, [NI political crisis: Early Stormont election ruled out by NI secretary](#), 8 February 2022

³³ Northern Ireland Executive Office, [Elections to the Northern Ireland Assembly 2017: Guidance on Conduct for Civil Servants and Special Advisers](#), 30 January 2017

³⁴ As above, section 26

election period for the 2019 General Election was 6 November to polling day, 12 December.

The devolved administrations will remain in office whatever the outcome of a UK general election. In general, it is 'business as usual' and ministers will continue to carry out their functions in the usual way and civil servants will continue to support Ministers in their work.

Civil servants in the devolved administrations should continue to conduct themselves in accordance with the Civil Service Code. However, civil servants should avoid any action which is, or could be construed as being, party political or otherwise controversial in the context of the UK general election. The general principles also apply to NHS bodies, government sponsored and other public bodies in each nation.

Generally greater care is required around cross-border issues and joint announcements with Whitehall departments should be avoided.

During the 2019 UK General Election the following guidance was issued:

- Scottish Government - [UK General Election 2019: guidance for civil servants](#), published 5 November 2019.
- Welsh Government - [UK General Election 2019: guidance for Welsh Government Officials](#)

The Northern Ireland Executive was suspended during the 2019 UK General election. The last guidance produced by Northern Ireland Executive Office was in 2017, [Elections to the United Kingdom Parliament 2017: Guidance on conduct for Civil Servants](#), published 21 April 2017.

2.3 Local elections

The devolved governments in Scotland and Wales observe the convention that the pre-election period for local elections covers the three weeks before polling day.

Local elections are taking place in Scotland and Wales on 5 May 2022. The pre-election period will therefore start on 14 April 2022.

Guidance for civil servants was published by the Scottish Government [on 10 February 2022](#) and by the Welsh Government on [3 March 2022](#).

The general principle remains that ministers should take care when taking decisions, undertaking ministerial visits or launching consultations on matters which directly affect one or more local authorities. Public health messages continue to be essential business, but departments should not

compete with candidates for the attention of the public. Civil servants will continue to support ministers in their work.

The guidance for Wales notes that the government is piloting early voting in some areas in Wales in four local authorities, Blaenau Gwent, Bridgend, Caerphilly and Torfaen. This does not change the general principles of the guidance, but officials should note early voting will take place on Saturday 30 April, Sunday 1 May, Tuesday 3 May and Wednesday 4 May (depending on the authority).³⁵

³⁵ [Local government elections 2022: guidance for Welsh Government staff, 3 March 2022](#)

3 MPs

It is normal for politicians to campaign during an election period. This includes MPs whether or not they are ministers.

MPs may campaign during any election period but they must ensure public resources provided to them in support of their role as an MP are not used for party political or election campaigning activity.

3.1 All MPs

MPs must ensure they do not use publicly funded resources for party political purposes at all times. This includes facilities provided by the House of Commons in support of their parliamentary duties. For example, House of Commons stationery or digital services must not be used for personal or party use. The same applies to support provided by Independent Parliamentary Standards Authority (IPSA) to MPs in carrying out their parliamentary functions.

During an election period MPs, other politicians, and candidates can campaign as normal. This might include writing articles, visits and photo opportunities. The pre-election period may have an impact on some activities as public bodies may restrict access to their facilities. See section 3.4 on 'Visits' for more detail.

They will also need to ensure they continue to follow campaign finance and election law during the regulated period of an election.

During UK Parliament elections MPs cease to be MPs. During the period from the dissolution of Parliament to constituency results being declared they are candidates and have no access to House of Commons or IPSA resources. There is usually some discretion for emergency casework. MPs who have chosen not to seek re-election are given additional time after dissolution to wind up their offices.

3.2 MPs who are also ministers

As noted in section 1, Members of Parliament who are ministers in Government are required to follow the Ministerial Code.

This means they must not use official departmental facilities and resources when campaigning during an election period.

During a UK Parliament general election ministers remain ministers even though they cease to be MPs for the election period.

3.3 Backbenchers

MPs who are not ministers, backbenchers of the governing party and opposition MPs, are not covered by the pre-election guidance at any election.

3.4 Visits

The pre-election period of sensitivity during all types of elections may impact visits by MPs and other candidates. For example, some visits may be postponed or cancelled. This is particularly where council or NHS facilities and resources may be used.

There is no definitive guidance on visits. There are no blanket bans on visits but the final decision would rest with the host. Hosts will ask themselves ‘could a reasonable person conclude that public resources are being used to influence the outcome of the election?’

Councils should not help with national political visits (as this would involve using public money to support a particular candidate or party). These should be organised by political parties with no cost or resource implications for the council. This decision on visits may be influenced if the media are accompanying the visit.

Schools may undertake activities during the pre-election period to raise pupils’ awareness and understanding of the political process. These include hustings events and visits by local candidates or political party representatives. Schools should avoid activity that could be construed as promoting a particular partisan political view and should take reasonable steps to ensure pupils are offered a balanced presentation of opposing views as part of these activities.³⁶ There are separate rules around candidates having a right to use certain local authority and school rooms ‘free of charge’ – see section 4.3.

³⁶ Department for Education, [Pre-election guidance for schools and multi-academy trusts](#), 17 February 2022

The NHS Confederation provided [some guidance for NHS](#) organisations in advance of elections in 2021. It advised that an organisation's policy around visits consistent and impartial. If invites are sent out to candidates they should not be selective – all candidates should get an invite or none should.

Any visits should not interrupt services or care for patients.³⁷

³⁷ NHS Confederation, [Pre-election period: dos and don'ts for the NHS](#), 31 March 2021

4 Local authorities

Local authorities also observe a pre-election period of sensitivity. In local authorities the phrase 'heightened sensitivity' is also commonly used.

In most cases this will be the 25 working-day period of the election.

Unlike national governments, local authorities have a statutory responsibility not to publish any material which appears to be designed to affect public support for a political party. The Code of Recommended Practice on Local Authority Publicity is issued under [section 4](#) of the Local Government Act 1986, as amended, and local authorities must have regard to it.

Publicity is "any communication, in whatever form, addressed to the public at large or to a section of the public".

This guidance applies at all times but during the pre-election period greater care is generally taken and goes beyond just publicity. Use of council facilities and resources should not be used for party political campaigning.

There is no restriction on the Council's undertaking their normal statutory duties. Many functions, including taking decisions may continue, but councils may delay decisions and consultation that could be seen as contentious and will generally avoid new action of a continuing or long-term character.

The Local Government Association (LGA) has published [A short guide to publicity during the pre-election period](#) which gives further information. More detail on the Code is given in Section 4.2.

4.1 Pre-election period

For local authorities the pre-election period for local election starts from the issuing of the notice of election.

In most cases this will be 25 working days before polling day. This is the last possible day for the notice of election. However, some authorities will publish their notice of elections earlier.

Scottish local elections and elections to the Greater London Authority (Assembly Members and the Mayor) have different statutory timetables and will start earlier than other elections.

For May 2022 elections the last day notice of elections for local elections in England (including London boroughs) and Wales is Monday 28 March. In

Scotland the Election Management Board for Scotland has directed local authorities to issue the notice of election on Monday 14 March.

Elections to the Northern Ireland Assembly will start with the publication of the notice of election on Monday 28 March 2022.

For UK General elections the pre-election period usually starts from the dissolution of Parliament. However, as noted in section 1.4, the timing of general elections may change when provisions in the Dissolution and Calling of Parliament Bill are enacted.

The pre-election period for local authorities for elections to the Scottish and Welsh Parliaments follows the 25 working-day pattern.

As noted above, local authorities are required to observe statutory guidance on council publicity at all times not just during the pre-election period.

4.2 Code of Recommended Practice on Local Authority Publicity

There is statutory guidance for local authorities regarding publicity. Local authorities must have regard to it and it applies at all times. It also applies to schools.

The Code of Recommended Practice on Local Authority Publicity is issued under section 4 of the Local Government Act 1986, as amended.

Publicity is defined in [section 6](#) Local Government Act 1986 as “any communication, in whatever form, addressed to the public at large or to a section of the public.” Councils are also forbidden to give financial or other assistance to other bodies to enable them to publish material which the authority itself may not publish.

The [original code](#) was published in 1988 and applied to the whole of Great Britain.

The Code was [revised in 2011](#) for English local authorities. Responsibility for the code is now devolved. The original code applies for Scottish authorities. In Wales it was superseded by a revised but similar code made by the then National Assembly for Wales (now the Senedd Cymru) in 2001. The [latest version](#) was published in January 2022.

The LGA has summarised the essential points of the Code as follows:

- In general you should not issue any publicity which seeks to influence voters (an exception being situations covered by legislation or regulations directing publication of information for explanatory purposes).

- Particular care should be taken between the time of publication of a notice of an election and polling day.
- Consider suspending the hosting of third-party material or closing public forums if these are likely to breach the code of practice.
- Do not publish any publicity on controversial issues or report views on proposals in a way which identifies them with candidates or parties.
- Publicity relating to individuals involved directly in the election should not be published unless expressly authorised by statute.
- You are allowed to publish factual information which identifies the names, constituencies and parties of candidates at elections.³⁸

There are no legal restrictions on councils' decision making during the pre-election period but generally councils will follow Cabinet Office guidance for civil servants and will not start consultations, take decisions on contentious issues or enter into large procurement contracts during the election period.³⁹

Councils should also consider whether to hold events (including some meetings) featuring elected officials during an election period. The Code of Practice does not place a blanket ban on all activity, but councils will need to consider whether any activity is appropriate during an election period. This will apply to hosting of third-party material and events.

Nothing in the publicity code prevents local authorities fulfilling other statutory functions and responsibilities, for example their public sector equality duties. Councils are also allowed to provide factual information, for example on registering to vote, and are permitted to correct misinformation published by third parties. This applies even if the third party is intending to influence voters.⁴⁰

4.3

Use of rooms

Under the Representation of the People Act 1983, candidates have a right to use certain local authority and school rooms 'free of charge'. This does not apply in Northern Ireland.

Candidates may use a school room or other listed public 'meeting rooms' for a public meeting. The term 'public meeting' is not defined in the legislation but Parker's Law and Conduct of Elections, the standard work on electoral law, notes it "would seem proper to construe the words narrowly". The

³⁸ Local Government Association, [A short guide to publicity during the pre-election period](#)

³⁹ *Local Government Lawyer*, [Going into 'purdah'](#), 5 March 2015

⁴⁰ [HL Deb, 15 July 2013, c602](#)

meeting should be genuinely open to the public, not just party members or limited to ticket-holders.

Candidates' right to use rooms does not include hours during which a school is used for educational purposes. Any prior letting of a meeting room must also take precedence and councils may include terms and conditions.

Candidates must give reasonable notice to the local authority or governing body of the school.

Candidates must pay for any expenses incurred, such as heating, lighting and cleaning and for any damage to the premises.

The Electoral Registration Officer of each council in England and Wales, and the Proper Officer of each council in Scotland, keep a list of the location and availability of meeting rooms in their area. They will make this list available for inspection by candidates and election agents (and persons authorised by them) from the dissolution of Parliament.

Councils may allow political parties to use its premises as offices, on a first-come, first-served basis on normal commercial terms. Outside of election periods hire of premises is a matter for the local authority.

5 Referendums

The period before referendums is regulated by [Section 125](#) of the Political Parties, Elections and Referendums Act 2000 (PPERA).

Section 125 refers to “restriction on publication etc. of promotional material by central and local government etc.” PPERA was passed following a review into political party funding in the UK by the Committee on Standards in Public Life, published in 1998.

Section 125 restricts what publicity government departments, public bodies and councils can publish in the run up to a referendum. The period covered is 28 calendar days before polling day.

Material should not cover issues or subjects related to the question being asked, nor should it put forward arguments for and against the referendum issue. The purpose is to remove any advantage the Government might gain by using its resources to influence voters. PPERA makes provisions for the Electoral Commission to appoint lead campaign groups for and against the issue being considered to inform and influence voters.

The restrictions do not apply to information designed to inform voters about the administration of the poll, such as polling cards, how to register to vote, or apply for a postal vote.

Section 125 is set out in the legislation as follows:

Restriction on publication etc. of promotional material by central and local government etc.

(1) This section applies to any material which—

- provides general information about a referendum to which this Part applies;
- deals with any of the issues raised by any question on which such a referendum is being held;
- puts any arguments for or against any particular answer to any such question; or
- is designed to encourage voting at such a referendum.

(2) Subject to subsection (3), no material to which this section applies shall be published during the relevant period by or on behalf of—

- any Minister of the Crown, government department or local authority; or
- any other person or body whose expenses are defrayed wholly or mainly out of public funds or by any local authority.

(3) Subsection (2) does not apply to—

- material made available to persons in response to specific requests for information or to persons specifically seeking access to it;
- anything done by or on behalf of the Commission or a person or body designated under section 108 (designation of organisations to whom assistance is available);
- the publication of information relating to the holding of the poll; or
- the issue of press notices;

and subsection (2)(b) shall not be taken as applying to the British Broadcasting Corporation or Sianel Pedwar Cymru.

(4) In this section—

- “publish” means make available to the public at large, or any section of the public, in whatever form and by whatever means (and “publication” shall be construed accordingly);
- “the relevant period”, in relation to a referendum, means the period of 28 days ending with the date of the poll.

A [question in the House of Lords](#) in 2004 had clarified that, under Section 125, Ministers are free to campaign as long as they do so in a personal or political (i.e. not official) capacity.

The Electoral Commission has reviewed the conduct of the referendums that have been held since PPERA was passed in 2000, and on each occasion commented on Section 125. In summary, the Commission has argued that:

- Public awareness activities by Counting Officers should be exempt from the period of sensitivity provision;
- Other government activity should be restricted for the entire duration of the referendum period (during which campaign activities are regulated);
- Sanctions for breaches of Section 125 should be clarified.⁴¹

5.1

The EU Referendum 2016

The pre-referendum period before the EU referendum began on 27 May 2016 which was 4 weeks before the poll on 23 June 2016.

⁴¹ Electoral Commission, [The 2004 North East regional assembly local government referendums](#), November 2005; Electoral Commission, [Report on the referendum on the law-making powers of the National Assembly for Wales](#), March 2011; Electoral Commission, [Referendum on the voting system for UK parliamentary elections](#), October 2011; Electoral Commission, [Scottish independence referendum](#), December 2014

When it was introduced, the [European Union Referendum Bill 2015-16](#) (Schedule 1, paragraph 25) provided that the restrictions of section 125 of PPERA would not apply to the referendum on EU membership. The Government argued Section 125 went further than the conventions that cover the pre-election periods prior to general elections. It could affect the Government's ability to conduct "ordinary day-to-day EU business"; and it could:

... make it impossible to explain to the public what the outcome of the renegotiation was and what the Governments' view of that result was.⁴²

The provision to disapply section 125 of PPERA met with opposition from MPs during the Second Reading debate and the Committee stage of the Bill. It was removed at Report stage (see Library Briefing paper 07249 [European Union Referendum Bill 2015-16: Progress of the Bill](#)).

The Government had attempted to introduce a power to amend section 125 of PPERA by secondary legislation to exclude certain types of material, to be defined in the secondary legislation, from the pre-referendum period restrictions.⁴³

This new clause was amended by a manuscript amendment moved by Bernard Jenkin (Conservative). The Jenkin amendment made provision that changes to the pre-election period of sensitivity could only be made four months before the referendum. . Bernard Jenkin was chair of Public Administration and Constitutional Affairs (PACAC) Select Committee at the time. The Committee wrote to the Government and expressed the concern that:

...we are unanimously of the view that, whatever additional exemptions are made, the Government should not be allowed to use the machinery of Government (i.e. the resources of the Government) for campaigning purposes during the purdah period⁴⁴

David Lidington said that he had concluded that the Government should accept the amendment "largely in the interests of trying to secure as great a consensus as possible".

However, following a defeat on a Government amendment to schedule 1 (amendment 53 to apply section 125 but with modifications to allow the Government to undertake ongoing EU business without legal risk of breaching section 125), the House accepted without division an Opposition amendment (amendment 4). This removed the paragraph in schedule 1 that referred to disapplying section 125, which had the effect of leaving the section 125 pre-referendum period in place.⁴⁵

⁴² HC Deb 16 June 2015, cc233-4

⁴³ Proposed New clause 10, see [amendment papers 7 September 2015](#) (PDF), NC10, p1

⁴⁴ [Letter to Rt Hon David Lidington MP, Minister for Europe relating to EU Referendum Bill: Purdah and impartiality of the Civil Service](#) (PDF), 21 July 2015

⁴⁵ [HC Deb 7 September 2015](#)

Amendments made at Committee stage in the House of Lords applied the restrictions on the publication of information specified in Section 125 of PPERA to Gibraltar public bodies and exempted the Gibraltar Broadcasting Corporation.

Section 125 of PPERA therefore applied to the EU referendum with some modifications.⁴⁶

Guidance

Guidance for the Civil Service and special advisers for the pre-referendum period was contained in Sir Jeremy Heywood's (the Cabinet Secretary's) [letter](#) of 23 February 2016. This guidance applied until the start of the statutory 28-day pre-referendum period. [Further guidance](#) for the 28-day period beginning on 27 May 2016 was published in May 2016.⁴⁷

Public Administration and Constitutional Affairs report

PACAC considered the operation of Section 125 more after the 2016 referendum. In April 2017, it published its report [Lessons learned from the EU Referendum](#).⁴⁸

One of its conclusions was:

The provisions of section 125, while imperfect, have been successfully applied in numerous referendums since 2000. There is no evidence that section 125 created any of the threats to good governance that the Cabinet Secretary feared during his appearance before PACAC in July 2015. The purdah provisions of section 125 of PPERA play a key role in the fair conduct of referendums and must continue to do so in future referendums.⁴⁹

In its recommendations the Committee questioned whether the four-week pre-election period is sufficient.

In its evidence to the Committee, the Electoral Commission said the pre-referendum period should be extended. It has recommended that the Government should consult on redrafting Section 125. In particular, in relation to what constitutes 'publishing' material in a digital age:

PACAC, the Electoral Commission and the Government all had different legal advice and interpretations as to: a) whether the [eureferendum.gov.uk](#) website represented publishing for the purposes of section 125; and b) whether the steps taken to remove links to the website satisfied the exception provided in section 125(3)(a). This underlines the need for section

⁴⁶ Library Briefing paper 07249 [European Union Referendum Bill 2015-16: Progress of the Bill](#)

⁴⁷ [EU Referendum: guidance for UK Government Departments on activities during the period 27 May 2016 to 23 June 2016](#), Cabinet Office, May 2016

⁴⁸ PACAC, [Lesson learned from the EU referendum](#), HC Paper 496, 12 April 2017.

⁴⁹ As above, paragraph 60

125 to be reviewed and amended so as to better reflect the increasingly digital nature of our democracy.⁵⁰

The Government rejected the Committee's recommendations. In its response to the report, the Government said it considered the 28-day pre-referendum period was appropriate:

There needs to be a balance between the restriction on any government activity that might influence voters and the need for day-to-day government business to take place.⁵¹

The Government also rejected a wider review of the application of Section 125. It noted that any changes would require primary legislation saying that there was little chance of Parliamentary time soon:

There is a risk that any changes identified by the review would need to be updated due to changes in technology before legislation could be introduced.⁵²

5.2 Scottish independence referendum 2014

The Scottish independence referendum was not regulated by PPERA, but by the [Scottish Independence Referendum Act 2013](#). This Act made provision for a statutory pre-referendum period in Scotland for the 28 days before the referendum.

The explanatory notes to the Act gave further details:

183. Paragraph 25 provides that, for the 28-day period before the date of the referendum, the Scottish Ministers and certain public authorities in Scotland cannot publish any material providing general information about the referendum, dealing with issues raised by the question to be voted on in the referendum, putting any arguments for or against a particular answer to the question to be voted on, or which is designed to encourage voting in the referendum. However, this rule does not apply to information made available following a specific request; specified material published by or under the auspices of the Scottish Parliament Corporate Body; any information from the Electoral Commission, a designated organisation or the Chief Counting Officer or any other counting officer; or to any published information about how the poll is to be held.

The UK Government gave an undertaking to respect the 28-day period in the Edinburgh Agreement.⁵³ It issued [guidance to civil servants](#) which followed similar general principles to its general election guidance.

⁵⁰ As above, paragraph 68

⁵¹ Cabinet Office, [Government Response to the Public Administration and Constitutional Affairs Committee Report on Lessons Learned from the EU Referendum](#), Cm 9553, December 2017, p2

⁵² Ibid, p2-3

⁵³ [Edinburgh Agreement](#) (PDF), 15 October 2012

The Scottish Government [published guidance \(PDF\)](#) on the publication restrictions in the 28 days prior to the independence referendum. It recognised that [their emphasis]:

A wide range of Scottish Government activity has the potential to be caught by these statutory restrictions. Each case will need to be considered on its merits. [...]

Restrictions are, however, much less likely to apply to activity such as marketing campaigns on child flu vaccination, Homecoming or the Ryder Cup. Even in such cases, however, **care must be taken to avoid issues being cast in the frame of the independence debate.**

Nevertheless, there was some controversy over certain government activities in the run-up to the referendum. These are discussed in last Parliament's Public Administration Select Committee report [Lessons for Civil Service impartiality from the Scottish independence referendum](#). The report recommended including provisions about referendum campaigns in the Civil Service Code.⁵⁴

5.3 The Alternative Vote referendum 2011

In 2011, the Cabinet Office published [guidance \(PDF\)](#) for civil servants in UK departments. It covered the general principles for the referendum, elections to the Scottish Parliament, the National Assembly for Wales, the Northern Ireland Assembly and to local authorities in England and Northern Ireland, (which all took place on 5 May 2011).

It was the first national referendum since the passing of PPERA to apply the 28-day campaign period. Restrictions applied on campaign finance during this period on organisations campaigning for or against the introduction of the alternative vote method of electing MPs. Restrictions on Government publicity required by section 125 also applied:

Essentially, Government Departments, local authorities and NDPBs are prohibited from publishing material about a referendum in the 28-day period ending with the date of the poll. During this period the Electoral Commission will be running a campaign to encourage people to vote. Political parties will have to observe financial limits imposed on their total referendum campaigning expenditure, and of course the usual rules about not using official resources for party political purposes apply.⁵⁵

⁵⁴ Public Administration Select Committee, [Lessons for Civil Service impartiality from the Scottish independence referendum](#), 17 March 2015, HC111 2014-15

⁵⁵ [Guidance on Conduct](#), Cabinet Office, March 2011

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