

**Correspondence Report  
For Decision**

**9 January 2019**

**Corporate Policy & Resources Committee Meeting**

**Linkage to Council Strategy (2015-19)**

<b>Strategic Theme</b>	Leader and Champion
<b>Outcome</b>	Establish key relationships with Government, agencies and potential strategic partners
<b>Lead Officer</b>	Director of Corporate Services
<b>Cost: (If applicable)</b>	Nil

**Copy correspondence available upon request.**

<b>1.</b>	<b>NILGA &amp; NIFHA Event Meeting Social Housing Need, Locally</b>
	<p>25 January 2019, Mossley Mill, Newtownabbey, 10.00am-12.30pm</p> <p>The objective of this event is to explore the current issues for provision of social housing in Northern Ireland including Local Development Plans, Mixed Tenure and Shared Housing policy, and working together to address the infrastructure deficit.</p> <p>This event will include a focused look at what Councils and their partners can do collaboratively to overcome barriers and blockages to development.</p>
<b>2.</b>	<b>NILGA Performance Improvement for Transforming Councils Councillor Masterclass</b>
	<p>Antrim Civic Centre Monday 28 January 10.30-1.00pm.</p> <p>NILGA in association with the Department for Communities and Northern Ireland Audit Office invites Elected Members to the Performance Improvement for Transforming Council's 'Masterclass' which will give councillors a greater understanding and confidence about:</p> <ul style="list-style-type: none"> <li>• The Legislative Requirements</li> <li>• The elected member role in Performance improvement</li> <li>• The role of the Department and the NIAO</li> <li>• Using the Performance Improvement Duty to benefit council / opportunities</li> </ul>

	<ul style="list-style-type: none"> <li>• Benchmarking and best practice to drive success</li> </ul>
<b>3.</b>	<b>Donegal County Council, 17 December 2018</b>
	<p>The member of Donegal County at their recent meeting resolved to adopt the following resolution:</p> <p>"Molaim go dtugann Comhairle Chontae Dhún na nGall tacaíocht do na héilimh ón phobal fá choinne Acht Gaeilge sna Sé Chontae agus, má éiríonn leis an rún, go scaipfear an t-eolas sin ar na páirtithe poliatíochta uilig sna Sé Chontae agus ar na Comhairlí Contae agus Cathrach uilig fríd an tír".</p> <p>"I propose that Donegal County Council support the demands from the public for an Irish Language Act in the Six Counties and if the motion is carried, that this information is circulated to all the political parties in the Six Counties and to all the City and County Councils throughout the country".</p> <p>They asked that it be forwarded to you for your attention and consideration.</p>
<b>4.</b>	<b>Derry City and Strabane District Council, Rachel Craig, Strategic Business Manager, 20 December 2018</b>
	<p>Writing following discussions with DFI at SOLACE.</p> <p>Following a recent request from the Chair, please find attached a link to the NI (Executive Formation and Exercise of Functions) Act 2018.</p> <ul style="list-style-type: none"> <li>• <a href="http://www.legislation.gov.uk/ukpga/2018/28/enacted/data.htm">http://www.legislation.gov.uk/ukpga/2018/28/enacted/data.htm</a></li> </ul> <p>Please also find <b>attached</b> the guidance issued by the Secretary of State to assist Permanent Secretaries in the implementation of the legislation.</p>
<b>5.</b>	<b>NILGA Policy &amp; Communication Guidance Note 'Purdah' Local Government Elections 2 May 2019</b>
	<p>On Thursday 2 May 2019, elections are due to be held for the 11 district councils in Northern Ireland, contesting all 462 seats.</p> <p>There is currently no legislation in Northern Ireland like the English Local Government Act 1986, formally governing publicity and council activity during the pre-election (or 'Purdah') period for local government elections. Similarly, there is no directly comparable, formal Code of Practice for councils to the Code of Practice published by the English Department of Communities and Local Government in 2011.</p> <p>NILGA is keen to ensure that there is guidance to support a 'good practice' approach by councils and the wider public sector in Northern Ireland in relation to the period of sensitivity prior to the election.</p>

	NILGA has provided the <b>attached</b> Guidance Note, without prejudice, as informal practical advice for councillors, local government officers and partner organisations in the run up to the May 2019 election.
<b>6</b>	<b>Use of Council Chamber</b>
	<p>The Mayor will host a group of approximately 60 participants of the Limavady Community Development Initiative (LCDI) Peace IV Culture &amp; Language programme on Tuesday 29<sup>th</sup> January in the Bann Gallery, Cloonavin at 7 pm.</p> <p>The group would like to start the evening with a powerpoint presentation of photographs/videos of events held throughout the duration of the programme. Given that the Bann Gallery will be set up for a seated supper to be followed by dance, music, poetry and song, logistically with would be helpful if the presentation and speeches could be facilitated in the Council Chamber.</p> <p>It is anticipated that the group would be in the Chamber from 7-7.30 pm and would move to the Bann Gallery when the formalities have concluded.</p> <p>An invitation will be extended to all elected members to attend this showcase event in due course.</p> <p><b>Recommendation</b> – Council is asked to consider the request.</p>



# **Guidance on decision-making for Northern Ireland Departments during the period for Northern Ireland Executive formation**

Presented to Parliament  
by the Secretary of State for Northern Ireland  
by Command of Her Majesty

November 2018



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# **Guidance on decision-making for Northern Ireland Departments during the period for Northern Ireland Executive formation**

*Issued by the Northern Ireland Secretary of State on 05 November 2018*

## **Introduction**

1. This guidance is published by the Secretary of State for Northern Ireland in exercise of the duty imposed by section 3(2) of the Act. Before publishing this guidance the Secretary of State has, in accordance with section 3(9) of the Act, had regard to representations made to her by the members of the Northern Ireland Assembly.
2. This guidance was published in draft alongside introduction of the Act on the 18<sup>th</sup> of October. The Act received Royal Assent on the 1<sup>st</sup> November.
3. In addition to the duty imposed on the Secretary of State in section 3(2) of the Act, section 4 requires that the Secretary of State issues guidance specifying how departmental functions are exercised in relation to “the incompatibility of the continued enforcement of sections 58 and 59 of the Offences against the Person Act 1861 and Article 13(e) of the Matrimonial Causes (Northern Ireland) Order 1978 with human rights”. The Secretary of State is carefully considering how best to discharge her functions under section 4 and will issue guidance in accordance with that section in due course.

## **Context**

4. The UK Government is committed to the principles, obligations and institutions established under the Belfast Agreement and subsequent agreements. In accordance with these, the UK Government will continue to work to restore the Northern Ireland Executive. In the meantime, the UK Government will take the necessary steps to maintain the delivery of public services and protect the interests of the people of Northern Ireland.
5. The UK Government recognises that, in the absence of an Executive, there will be some decisions that it should take, such as setting out departmental budget allocations in legislation. In the absence of a functioning Northern Ireland Assembly, the UK Government will keep under review the need for any additional necessary Northern Ireland legislation that may need to be brought before Parliament.
6. In this context, the UK Government recognises that, while efforts to restore the Executive continue, Northern Ireland Departments will need to take decisions and exercise functions in order to uphold good governance and protect the public interest. This guidance is intended to support NI Departments when considering taking and exercising those decisions and functions.

## **Framework for decision-making**

7. The Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 extends the time-limited period during which an Executive can be formed (section 1). Section 3 of the Act provides clarity that the absence of Northern Ireland Ministers does not prevent a senior officer of a NI Department from exercising a function of the

department if the officer is satisfied that it is in the public interest to exercise the function during that period.

8. Alongside the Act, and other relevant legislation and procedures governing NI Departments, including the values and behaviours set out in the NICS Code of Ethics<sup>1</sup>, this guidance sets out the principles to which NI Departments must, in accordance with section 3(3) of the Act, have regard when taking decisions on matters which, ordinarily, would have been presented to Ministers to decide or agree.

### **Guiding principles for decision-making**

9. Some decisions should not be taken in the absence of Ministers. NI Departments should therefore first consider the public interest of having locally elected, accountable Ministers taking decisions. Any major policy decisions, such as the initiation of a new policy, programme or scheme, including new major public expenditure commitments, or a major change of an existing policy, programme or scheme, should normally be left for Ministers to decide or agree.
10. NI departments should then consider whether there is a public interest in taking a decision rather than deferring a decision during the period for Executive formation<sup>2</sup>.
11. When considering whether there is a public interest in taking a decision in the absence of Ministers, principles to be taken into account by senior officers in NI Departments include:
  - (a) the principle that it is a priority to maintain the delivery of public services as sustainably and efficiently as possible, working towards the previous Executive's stated objective of improving wellbeing for all - by tackling disadvantage and driving economic growth.
  - (b) the principle that the priorities and commitments of the former Executive and Minister(s) should be followed unless there is an exceptional circumstance such as a significant emerging challenge, new strong objective evidence, or significant changing circumstances which lead senior officials to conclude that it is no longer in the public interest to do so.
  - (c) the principle that opportunities should be taken to work towards the 12 outcomes published in the 2018-19 Outcomes Delivery Plan, which is based on the draft Programme for Government developed in conjunction with the political parties of the previous Executive:

**Outcome 1:** We prosper through a strong, competitive, regionally balanced economy

**Outcome 2:** We live and work sustainably – protecting the environment

**Outcome 3:** We have a more equal society

**Outcome 4:** We enjoy long, healthy, active lives

**Outcome 5:** We are an innovative, creative, society, where people can fulfil their potential

**Outcome 6:** We have more people working in better jobs

**Outcome 7:** We have a safe community where we respect the law, and each other

**Outcome 8:** We care for others and we help those in need

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<sup>1</sup> Excluding those aspects of the Code that expressly refer to serving Ministers.

<sup>2</sup> The period for forming an Executive is prescribed in the [Act] and ends on 26 March 2019. It may be extended for a further period of up to 5 months.

- Outcome 9:** We are a shared, welcoming and confident society that respects diversity  
**Outcome 10:** We have created a place where people want to live and work, to visit and invest  
**Outcome 11:** We connect people and opportunities through our infrastructure  
**Outcome 12:** We give our children and young people the best start in life.

Opportunities should also be taken to continue to deliver previously agreed investment programmes such as those in the Investment Strategy for Northern Ireland 2011-2021.

- (d) the principle that the consequences of deferring decisions, particularly in terms of the financial, economic, environmental, legal or social impact should be considered and significant detriment avoided.

Particular weight may be given in cases where a delay or deferral could result in:

- significant financial costs to the public purse; or
- serious detriment to the public interest, public health and wellbeing, public safety or the NI economy; or
- the loss of an opportunity to realise a significant public advantage for:
  - public finances; or
  - the NI economy; or
  - inward investment: or
  - job creation; or
  - tackling disadvantage.

12. In taking decisions, senior officers should also take into account the following principles:

- (a) the principle that where decisions to be taken materially cut across or impact upon the responsibilities of another NI Department, discussions with the relevant Department(s) should take place and due regard should be given to the views of the relevant Department(s).
- (b) the principle that where decisions are deferred, the public interest consequences of a deferral should be kept under review. This recognises that, with the passage of time, there may be the need to take decisions on matters previously deferred.
- (c) the principle that where decisions are not taken, NI Departments may, however, continue to advance preparatory work as far as possible until such time as decisions can be taken by Ministers.

## **Reporting and accountability measures**

13. Decisions must continue to comply with relevant statutory guidance and requirements and all existing legislative obligations, including but not limited to, ensuring that functions are exercised in a way that is consistent with sections 75 and 76 of the NI Act 1998, the Human Rights Act 1998 and the Public Records Act (NI) 1923. Departments must also continue to have regard to all other relevant guidance and policy requirements that may be relevant to departmental decision making, including but not limited to Regulatory Impact Assessments, Privacy Impact

Assessments (GDPR), rural proofing, economic appraisals (NIGEAE) and Managing Public Money (NI).

14. Where practicable, an appropriate level of engagement should take place with those individuals and organisations that are likely to be most affected by the decision.
15. In order to ensure transparency, NI Departments should publish a full report on progress on the Outcomes Delivery Plan (referred to in principle 11c). This guidance recognises the agreement of NI Departments to present it to the NI Assembly and share it with the Secretary of State who will in turn lay it in Parliament. The Secretary of State will also promptly share this with the NI political parties.
16. Permanent Secretaries remain ultimately responsible for decisions that are taken by senior officers. In line with normal practice and line management processes, Permanent Secretaries should ensure there is appropriate guidance and a process in place to govern how, and at what level, functions are exercised by senior officers in their Department.
17. In maintaining records NI Departments should consider how best to maintain records on decisions that have been taken in the absence of Ministers using this Guidance. Such records should be made available to incoming Ministers when an Executive is appointed. A monthly summary report of decisions taken using the Guidance should be prepared by NI Departments and shared with the Secretary of State. The Secretary of State will promptly make these reports available to Parliament and to the NI political parties.
18. This guidance also recognises the importance of the continuing role of the Comptroller and Auditor General for Northern Ireland and the Northern Ireland Audit Office. As part of enhanced accountability measures the C&AG will share all NIAO reports and recommendations with the Secretary of State. NI Departments should lay their departmental responses to the NIAO recommendations in the Assembly and share these responses with the Secretary of State who will lay copies in Parliament and promptly share them with the NI political parties.

## **Review**

19. This guidance remains extant until such time as it is reviewed and superseded by further guidance from the Secretary of State, or the period for forming an Executive set out in the Act has ended (whichever is earlier).

# ‘Purdah’



Local Government Elections  
2<sup>nd</sup> May 2019

20 December 2018

## WHAT IS ‘PURDAH’

### What is ‘Purdah’

The term ‘Purdah’ has come into popular use across government in the UK to describe the period immediately before elections or referendums when restrictions on communications activity are in place. The terms ‘pre-election period’ and ‘heightened sensitivity’ are also used.

### ‘Purdah’ in Councils in Northern Ireland

On Thursday 2<sup>nd</sup> May 2019, elections are due to be held for the 11 district councils in Northern Ireland, contesting all 462 seats.

There is currently no legislation in Northern Ireland like the English Local Government Act 1986, formally governing publicity and council activity during the pre-election (or ‘Purdah’) period for local government elections. Similarly, there is no directly comparable, formal Code of Practice for councils to the Code of Practice published by the English Department of Communities and Local Government in 2011.

NILGA has received several approaches for relevant advice and is keen to ensure that there is guidance to support a ‘good practice’ approach by councils and the wider public sector in Northern Ireland in relation to the period of sensitivity prior to the election.

The following is therefore provided, without prejudice, as informal practical advice for councillors, local government officers and partner organisations in the run up to the May 2019 election.

**It is important to note that good pre-election practice suggests that activity is restricted wider than just publicity.** Use of council facilities and resources; application of and adherence to the member’s code of conduct, developing new policies and holding of events - including some meetings - featuring elected members should all be carefully considered during the period of heightened sensitivity or Purdah.

### When do we need to start considering pre-election sensitivities?

For the election in May 2019, it is recommended that council members and officers should commence a Purdah period at the latest, by **Tuesday 26<sup>th</sup> March**.

The 2014 OFMDFM guidance for civil servants and special advisers also focussed on a suggested five-week period prior to what was a European election, held on the same day as a local government election.

UK Cabinet Office guidance for the civil service and wider public sector notes that the general convention preceding local elections in England is that particular care should be taken *in the three weeks* preceding the elections.

## What does 'Purdah' mean in practice?

Sometimes this period is viewed as a time when external communication must shut down completely. This is *not the case*, and the ordinary functions of councils should continue, but some restrictions are recommended, for all councillors and council officers.

**Publicity**, i.e. any communication, in whatever form, addressed to the public at large or to a large section of the public, should be given particular consideration. The question should be asked; "Could a reasonable person conclude that you were spending public money to influence the outcome of the election?" In other words, publicity must pass the 'is it reasonable and corporately robust?' test.

When making a decision one should consider the following:

### What you are strongly recommended not to do

- Produce publicity on matters which are politically controversial
- Make references to individual politicians, parties or groups in press releases
- Arrange proactive media or events involving particular or groups of candidates
- Issue photographs which include specific or groups of candidates
- Supply council photographs or other materials to councillors or political groups including council staff unless you have verified that they will not be used for campaigning purposes
- Continue publishing / hosting third party blogs or e-communications
- Help with national political visits, as this would likely be perceived to involve using public money to support a particular candidate or party or group. These visits should be organised by political parties with no cost or resource implications for the council, including use of the council estate.

### What you need to think carefully about

You should think carefully before you:

- continue to run campaign material to support your own local (e.g. community or investment) campaigns. If the campaign is already running and is non-controversial - for example, on issues like recycling - and would be a waste of public money to cancel or postpone them, then continue. However, you should always think carefully if a campaign could be deemed likely to influence the outcome of the election and you should not use councillors in press releases and events in pre-election periods. In such cases you should stop or defer them. An example might be a campaign on an issue which has been subject of local political debate and/or disagreement (e.g. Brexit).
- launch any new consultations. Unless it is a statutory duty, don't start any new consultations or publish report findings from consultation exercises, which could be politically utilised or ideologically sensitive.

### What you can do

- Continue to discharge normal council business - including determining planning applications, even if they are controversial. **There are some caveats to this - See Appendix 1.**
- Publish factual information which identifies the names, wards and parties of all candidates at elections.
- Publish factual information to counteract misleading, controversial or extreme (for example racist/sexist) information. An example might be a media story which is critical of the council, such as a media enquiry claiming that the salaries of all the council's senior managers have increased by five per cent. If this is not true, a response such as 'none of the council's senior management team have received any increase in salary in the last 12 months' is acceptable. It is perfectly right and proper that the council responds, **if it is factual.**
- Use relevant lead officers rather than members for reactive media releases in the Purdah period.
- Use a politician who is involved in an election when the council is required to respond in particular circumstances, such as the First Citizen in an emergency situation or where there is a genuine need for a member-level but corporate response to an important event beyond the council's control. Normally this would be the Mayor or Chairperson, that is, someone holding a civic / politically neutral role. If the issue is so serious, it is worth considering asking

the council's group leaders to agree to a response which would involve all of them, respecting the totality of the political makeup of the Council.

- Take advice when in doubt from legal and compliance colleagues.

Ultimately, you must always be guided by the principle of objectivity and fairness. It is crucial that any decision you take would be seen as being fair and reasonable by the public and those standing for office.

### Advertising

Paid-for advertising must comply with the Advertising Standards Authority's Advertising Codes. In general, councils should not issue any publicity which seeks to influence voters, ensure that publicity relating to policies and proposals from the UK or NI Assembly government is balanced and factually accurate and comply with laws which prohibit political advertising on television or radio.

### Requests for Information

Official correspondence should be dealt with in the normal way, with responses issued as quickly as possible. There should be even-handedness in meeting specific requests for information from different political parties and their candidates, including independent political members. Caution must be exercised as information produced with complete impartiality and accepted as objective at other times, *may be* subject to greater scrutiny and publicity during the election period. Councils should continue to process all requests for information submitted under the Freedom of Information Act (FOIA) from members of the public including candidates in accordance with the FOIA.

### Invitations and outside visits

The normal procedures for handling outside visits and invitations should be followed. There should be no officer involvement in party political events during the election campaign. Officers receiving invitations to outside events which may involve candidates should ensure that their attendance is necessary purely for the conduct of corporate business and attendees should avoid participation in any associated publicity activity.

### Transport

Council vehicles should not be used for political party purposes.

### Social Media Tips

1. It is strongly recommended that **all social media platforms** operated by staff are subject to the principles of Purdah.
2. When using Twitter, Facebook, YouTube or Flickr, explain that as a council channel of communication you are adhering to Purdah principles. It may be helpful to tweet a link to an explanation of Purdah for guidance.
3. Do not retweet or share **political opinion** or content posted by political parties or politicians.
4. Do not tweet, post images or share updates on matters which are **politically controversial**.
5. **Monitor your page** and delete any content which is **politically controversial**.
6. Do not stage a significant **social media-based campaign** unless it can be demonstrated that it was planned before the election was called.
7. Social media by and about the Mayor or Chairperson may be retweeted, shared or used if it is **not of a political nature**.
8. **Disable** the ability to download images of politicians during Purdah.
9. In exceptional circumstances **seek permission** from your communications, compliance and/or legal colleagues to tweet or retweet a comment by a politician or to use videos and images of a politician during Purdah
10. Third party social media profiles, including business partnership profiles which the council supports, should also be governed by Purdah principles. Council staff who update these profiles can either continue to add content in line with Purdah restrictions or hand over ALL admin to a non-council member of the partnership during Purdah.

### Six Golden Rules

1. No publicity should be given to matters which are **politically controversial**.

2. The general presumption should be that **no references** will be made to individual politicians in press releases (except where there is a valid emergency as set out below).
3. Great caution should be exercised before undertaking any **significant media exercise** unless it can be demonstrated that this was included in the forward diary before the election was called.
4. **No photographs** of candidates in the election should be issued.
5. Before any request for council photographs and other materials is considered, **enquiries** should be made as to the use to which they are to be put and an appropriate restriction on use imposed if supplied.
6. The position of Mayor or Chairperson as the figurehead of the authority is different and material may be issued, providing it is not of a political nature, but it should be used proportionately and reasonably.

## Frequently Asked Questions

### **Does this advice apply to councillors who are not running for re-election?**

Council business continues so all sitting councillors, whether seeking re-election or not, should have regard for the principles of Purdah.

### **Can council officers get involved in campaigning in their own time?**

Officers who hold politically restricted posts, or who are likely to be involved or employed in connection with the elections, should not take part in a political campaign or canvass on behalf of a political party or candidate.

### **Do the restrictions apply to officers who are members of a trade union?**

Trade unions themselves are not required to have regard to Purdah, but individual officers should have regard to their council policies and principles related to periods of heightened political sensitivity.

### **Can council press offices still put out press releases ahead of the election?**

Yes, but limitations are recommended. Official, factual press statements about council decisions for public information purposes may still be issued. However, it is advised that no publicity should deal with controversial issues or report views or proposals in a way which identifies them with individual councillors or groups of councillors.

### **Can a council put out a consultation, for example about changes to leisure provision, during Purdah?**

Consultations should be considered very carefully during Purdah as it is a period of heightened sensitivity and should not be put out if they could be viewed as counter to Purdah principles.

### **Can we use the chair of a council-commissioned review, who is up for re-election, as spokesperson for the report?**

The best approach could be to delay publication of the review until after the election. However, if there is an imperative to publish you should use another, non-political spokesperson.

### **Can we host a photo call for a council committee chairperson or other leading councillor to open a new council facility (such as a play park) during Purdah?**

Generally, this is not recommended; however, if the timing of the event is unavoidable and postponing it would adversely affect local residents (for example the opening of the facility has been delayed by long-running work and postponing the opening will cause the council to lose income), you might choose to have the event hosted by a non-political spokesperson.

### **Do restrictions apply to council notice boards?**

Councils are required to publicise details of the election and how to register to vote. Material relating to wider political issues should not be posted on official notice boards which may be seen by members of the public. It is advised that this includes publicity issued by, or on behalf of, a trade union.

### **Can councillors issue their own press releases or talk to the media?**

Councillors are free to talk to the media and issue press releases but should not use council resources to do so and should be mindful of the Code of Conduct at all times.

### **Can councillors write letters 'for publication' to their local newspaper?**

Yes, but they shouldn't use council resources (such as staff) to help them do it.

### **Can councillors still tweet or blog?**

Councillors can continue but should not use council resources (such as council twitter accounts, email accounts, telephones etc.) to do so.

### **Can councillors who are up for re-election refer to themselves as councillors in their public statements?**

A person remains as a councillor and can refer to themselves as such until such time as they retire shortly after the election.

### **Can councillors request to visit council establishments?**

The guidance at local level may already vary by council. Generally reasonable requests by current members who are also candidates at the election to visit council establishments in the course of their council functions should be approved in terms of diligent delivery of corporate business. Check your local arrangements - any such visits should not be supported by the council's media team or council officers.

### **Can councillors speak/canvas at a student union (which is a registered charity) during the pre-election?**

Yes, they can; in fact, it is to be expected. Councillors and those potentially standing for election can arrange to speak and canvass if these activities are neither funded nor arranged by local authorities. The fact that the union is a charity has no bearing – the guidance applies to local authorities, not to other organisations.

### **Can the council still publish its newsletter/magazine during Purdah?**

Yes, if it is done in the ordinary course of business and meets all other Purdah recommendations.

**PURDAH AND PLANNING COMMITTEES – PLEASE SEE APPENDIX 1**



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## PURDAH AND PLANNING COMMITTEES – APPENDIX 1

**THE FOLLOWING ADVICE WAS PROVIDED BY THE LEGAL TEAM AT LGA, AT NILGA'S REQUEST.**

There is no statutory restriction on a council's decision-making, meetings, or political debate during the pre-election period. It is "business as normal". However, given the restrictions on publicity, it may be that while the council's decision-making can carry on other factors may well limit it. Also, there will be practical issues if members are involved in elections.

Consideration must be given as to whether the matter is politically contentious creating a risk that the decision will be made on party political grounds rather than on its merits thereby making the decision challengeable.

In addition, bringing matters forward for decision during an election campaign could be seen as an attempt to gain political advantage. Council officers will need to be alert to the publicity, making sure it could not be perceived as seeking to influence public opinion in an election area or promote a candidate or group of candidates. There will be enhanced scrutiny during the pre-election period.

The reference to planning is to the case:

**Persimmon Homes Teesside Ltd v Lewis, R (on the application of) [2008]  
EWCA Civ 746 (01 July 2008)**

The case considered whether the grant of a planning permission during the pre-election period involved actual or apparent bias or predetermination on the part of the planning committee. The court found that a decision made during a pre-election period does not, merely by virtue of its timing, become unlawful. All elected officials have a normal, and legitimate, political predisposition, and there is no reason (without further evidence) for concluding that during a pre-election period this is more likely to lead to a closing of minds than would otherwise be the case. (Section 25 of the Localism Act 2011 now deals with predetermination).

**NB: The Localism Act 2011 is not applicable to NI, and restrictions are placed on councillors in Northern Ireland within Section 9 of the NI Local Government Code of Conduct for Councillors.**

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The following article was published in *Local Government Lawyer* in 2015 and is reproduced here for background information only.

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## Going into 'purdah'

'Local Government Lawyer' article Thursday, 05 March 2015 19:21

*Olwen Dutton sets out some of the key issues in relation to local authority decision-making during the pre-election period.*

The 2015 elections are now just two months away. Once Parliament has dissolved on 30 March 2015 then the pre-election period (informally known as "purdah") officially starts, when government ministers and civil servants are subject to restrictions on their conduct and role during the election campaign. But what does this mean for local authorities and what action should councils be taking now to ensure that decisions and action taken during the run up to the local elections are not challenged?

## Cabinet Office guidance

The pre-election restrictions are a parliamentary convention, outlined in Cabinet Office guidance for civil servants on their role and conduct during election campaigns.

The guidance for the 2015 General Election has not yet been issued but the guidance issued in 2010 sets out the general principles of avoiding active engagement on politically sensitive matters: "During an election campaign ... essential business must be carried on. However, it is customary for Ministers to observe discretion in initiating any new action of a continuing or long-term character. Decisions on matters of policy on which a new Government might be expected to want the opportunity to take a different view from the present Government should be postponed until after the election, provided that such postponement would not be detrimental to the national interest or wasteful of public money."

"Action of a continuing or long-term character" includes activity such as:

- taking or announcing major policy decisions;
- entering into large/contentious procurement contracts or significant long-term commitments; and
- making some senior public appointments and approving Senior Civil Service appointments, provided that such postponement would not be detrimental to the national interest or wasteful of public money.

Further guidance issued for the 2014 European and local elections makes it clear that civil servants are under an obligation to ensure that public resources are not used for party political purposes and not to undertake any activity which could call into question their political impartiality. This applies to all forms of communication, including websites and social media.

They must also be even-handed in meeting information requests from the different political parties and campaigning groups. Special care should be taken in respect of paid publicity campaigns and to ensure that publicity is not open to the criticism that it is being undertaken for party political purposes.

## Local Authorities

There is no equivalent guidance for local authorities and no legal restrictions on councils' decision making during the pre-election period; however, most councils take heed of the Cabinet Office advice and operate on the basis that decisions will not be taken nor policies announced that may be significant in their effects and politically contentious.

There is some guidance in the Department for Communities and Local Government's [Code of Recommended Practice on Local Authority Publicity](#), which includes a section on "Care during periods of heightened sensitivity":

Local authorities should pay particular regard to the legislation governing publicity during the period of heightened sensitivity before elections and referendums. It may be necessary to suspend the hosting of material produced by third parties, or to close public forums during this period to avoid breaching any legal restrictions.

During the period between the notice of an election and the election itself, local authorities should not publish any publicity on controversial issues or report views or proposals in such a way that identifies them with any individual members or groups of members. Publicity relating to individuals involved directly in the election should not be published by local authorities during this period unless expressly authorised by or under statute. It is permissible for local authorities to publish factual information which identifies the names, wards and parties of candidates at elections.

In general, local authorities should not issue any publicity which seeks to influence voters. ... It is acceptable to publish material relating to the subject matter of a referendum, for example to correct any factual inaccuracies which have appeared in publicity produced by third parties, so long as this is even-handed and objective and does not support or oppose any of the options which are the subject of the vote.

## Decision making during "purdah"

The most significant case on decisions during the purdah period is [R \(Lewis\) v Persimmon Homes Teesside Ltd \[2008\] EWCA Civ 746](#). In this case the Court of Appeal overturned the High Court's quashing of Redcar & Cleveland BC's grant of planning permission for a controversial mixed residential and leisure development on land owned by the local authority. The judge at first instance had held that a fair minded and informed observer would conclude there was real possibility of bias and predetermination, particularly as the planning committee meeting was held during the run up to a local authority election.

The Court of Appeal held, allowing the developers' appeal, that little evidence had been produced that members of the committee were any more politically motivated than would normally be expected from elected policy makers, and the notion that a planning decision was suspect because all members of a single political group had voted for it was an unwarranted interference with the democratic process.

Lord Justice Pill said that "The members of the Committee had long experience of [the project], its merits, demerits and problems... I am far from persuaded that the imminence of the local elections at the time of decision, on the evidence, demonstrated that those who voted in favour of this planning application had minds closed to the planning merits of the proposal. In my judgment ... a decision to quash the planning permission is not justified. It would be damaging to the democratic

process if the decisions of elected councillors are to be quashed on the basis of the additional and unusual circumstances thought to have been decisive in this case."

The case is also useful in emphasising the policy role of local councillors and how this does not normally bar them from decision making.

Since that decision, s.25 of the Localism Act 2011 has been enacted, which clarifies that it is proper for councillors to play an active part in local discussions and that the expression of a view on a particular local issue, or campaigning for election on a particular platform, should not be treated as evidence of a closed mind on the particular issue, which should prevent them from participating in council business relating to such an issue.

This in effect is saying that a predisposition to a particular view is acceptable, which is the position the courts had reached some years previous with the *Persimmon Homes* decision and the *Island Farm Development* case ([R \(Island Farm Development Ltd\) v Bridgend CBC \[2006\] EWHC Admin 2189](#)).

### **Business as usual?**

Although local authorities are not under any legal restrictions on activity in the pre-election period, they should act with caution to reduce the risk of a challenge that a decision has been made on party political grounds rather than on its merits.

### **There are some actions that you can take now to avoid such claims:**

- **review all up and coming Key Decisions and re-schedule any particularly sensitive ones to a date outside the pre-election period (bearing in mind the Persimmon Homes case);**
- **make sure that no major consultations start or finish during this period;**
- **check that major procurement contracts are signed by the end of March;**
- **ensure that your members and officers are aware of the guidance on what they can and can't publicise.**

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