



BRIEFING PAPER

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'Purdah' before elections and referendums

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Summary

The term “purdah” is in use across central and local government to describe the period of time immediately before elections or referendums when specific restrictions on the activity of civil servants are in place. The term ‘pre-election period’ is also used.

The purdah before referendums is regulated by the *Political Parties, Elections and Referendums Act 2000*. The purdah before general elections is not regulated by statute, but governed by conventions based largely on the Civil Service Code.

The Cabinet Office issues guidance for civil servants in UK departments on their role and conduct during election and referendum campaigns. This is available on the Cabinet office website.¹

For general elections in the past the purdah period commenced with the announcement of the election by the Prime Minister. Under the *Fixed-term Parliaments Act 2011*, elections now take place every five years, unless an early election is triggered. The Act provided that the 2015 general election would be held on 7 May 2015 and Parliament had to be dissolved on 30 March 2015.

The Government announced that the pre-election period before the general election commenced on 30 March 2015, the same day as the dissolution of Parliament.

Guidance is issued to civil servants on the principles that they should observe in relation to the conduct of Government business in the period before elections and referendums; the [guidance](#) for the pre-election period in 2015 was issued on 30 March 2015.

There is statutory guidance for local authorities about publicity during the period just before local elections. The pre-election period is defined as beginning with the publication of notice of the election. In 2015 the latest date for the publication of the notice of election was 30 March 2015. The [Code of Recommended Practice on Local Authority Publicity](#) is issued under section 4 of the *Local Government Act 1986*. The Local Government Association has published [Purdah: a short guide to publicity during the pre-election period](#) which gives further information.

¹ [Election guidance for civil servants](#), GOV.UK, accessed on 10 July 2015

1. Referendums

1.1 Section 125

The purdah period before referendums is regulated by [Section 125](#) of the *Political Parties, Elections and Referendums Act 2000* (PPERA). PERA was passed following a review into political party funding in the UK by the Committee on Standards in Public Life, published in 1998. The Committee had noted the difficulty of preparing impartial information:

We believe that it is extraordinarily difficult, if not impossible, for the government of the day to offer purely objective and factual information in the course of a referendum campaign, especially when, as will usually be the case, itself it is a party to the campaign. We believe governments should not participate in referendum campaigns in this manner, just as it would be thought to be wholly inappropriate during a general election campaign for the government to print and distribute, at the taxpayers' expense, literature setting out government policy.²

The Committee also stated that:

We believe it is perfectly appropriate for the government of the day to state its views and for members of the Government to campaign vigorously during referendum campaigns, just as they do during general election campaigns. But we also believe that, just as in general election campaigns, neither taxpayers' money nor the permanent government machine – civil servants, official cars, the Government Information Service, and so forth – should be used to promote the interests of the Government side of the argument.³

The Labour Government responded in July 1999 by stating that:

The Government accepts that there ought to be a period leading up to the referendum poll in which the government of the day, as a government, stands aside and the campaigning is left to the political parties and other organisations, with Ministers taking part in their political capacity if they wish... the government of the day is not to publish material relating to the referendum issue within the period of 28 days leading up to the poll.⁴

During the passage of PERA, Nigel Evans MP (for the Opposition) argued at report stage that Section 125 (then Clause 118) was not restrictive enough.⁵

Section 125 provides:

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

(1) This section applies to any material which—

- a) provides general information about a referendum to which this Part applies;

² Committee on Standards in Public Life, [The Funding of Political Parties in the United Kingdom](#), 1998, Cm 4057, para 12.44

³ *Ibid*, para 12.41

⁴ Quoted in Electoral Commission, [The 2004 North East regional assembly local government referendums](#), November 2005, para 4.37

⁵ HC Deb 14 March 2000, cc249-251

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- b) deals with any of the issues raised by any question on which such a referendum is being held;
- c) puts any arguments for or against any particular answer to any such question; or
- d) 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—

- a) any Minister of the Crown, government department or local authority; or
- b) 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—

- a) material made available to persons in response to specific requests for information or to persons specifically seeking access to it;
- b) 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);
- c) the publication of information relating to the holding of the poll; or
- d) 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—

- a) “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);
- b) “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 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, and on each occasion commented on Section 125. In summary, the Commission has held that public awareness activities by Counting Officers should be exempt from the purdah provision; that other government activity should be restricted for the entire duration of the referendum period (during which campaign activities are regulated); and that sanctions for breaches of Section 125 should be clarified.⁶

⁶ 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](#),

The Alternative Vote referendum (2011)

In 2011, the Cabinet Office published one set of [guidance](#) for civil servants in UK departments on their role and conduct during the campaigns for the elections to the Scottish Parliament, the National Assembly for Wales, the Northern Ireland Assembly and to local authorities in England and Northern Ireland, and the referendum on the voting system for the UK parliament (which all took place on 5 May 2011). Civil servants were instructed to act impartially and to avoid announcements, ministerial visits and other activities that could potentially affect the election and referendum campaigns.

With particular reference to the referendum, the guidance stated:

14. In relation to the referendum, during the period between the announcement of the referendum and the start of the 28 day campaign period, the Political Parties, Elections and Referendums Act imposes restrictions on expenditure of the political parties or others campaigning on the referendum. It is important therefore that during this period, civil servants take particular care relating to ministerial announcements and paid publicity to avoid any criticism that official resources are being used for party political purposes. [...]

17. In relation to the referendum, there are very tight restrictions on Government publicity during this period – see Annex A (also see paragraph 14 above). 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.⁷

1.2 Scottish independence referendum

The Scottish independence referendum was not regulated by PPERA, but by the *Scottish Independence Referendum Act 2013*. This Act made provision for a statutory purdah period in Scotland for the 28 days before the referendum. The explanatory notes to the Act gave further details:

Part 4: Publications

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,

October 2011; Electoral Commission, [Scottish independence referendum](#), December 2014

⁷ [Guidance on Conduct](#), Cabinet Office, March 2011

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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:

2. Both governments agree that the principles underpinning the existing framework for referendums held under Acts of the UK Parliament – which aim to guarantee fairness – should apply to the Scottish independence referendum. Part 7 of the Political Parties, Elections and Referendums Act 2000 (PPERA), provides a framework for referendums delivered through Acts of Parliament, including rules about campaign finance, referendum regulation, oversight and conduct.

3. Both governments agree that the referendum rules should be based on PERA, with particular Scottish circumstances, such as the establishment of the Electoral Management Board and subsequent role of the Electoral Commission, reflected in the Referendum Bill.

Government activity during the 28 days before the referendum

29. It is customary for there to be a period before elections in the UK, during which Ministers and other public bodies refrain from publishing material that would have a bearing on the election. Section 125 of PERA sets out the restrictions that apply to Ministers and public bodies in the 28 days preceding referendums held under that Act. Both governments recognise the importance of respecting the 28-day period prior to a referendum, in the same way that both governments already respect each other's pre-election period for Parliamentary elections. The Scottish Government will set out details of restricted behaviour for Scottish Ministers and devolved public bodies in the Referendum Bill to be introduced into the Scottish Parliament. These details will be based on the restrictions set out in PERA. The UK Government has committed to act according to the same PERA-based rules during the 28-day period.⁸

The Scottish Government published [guidance](#) 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](#).

⁸ [Edinburgh Agreement](#), 15 October 2012

The report recommended including provisions about referendum campaigns in the Civil Service Code.⁹

The European Union Referendum Bill 2015-16

The *European Union Referendum Bill* 2015-16 (Schedule 1, paragraph 25) provides that the restrictions of section 125 of PPERA do not apply to the referendum on EU membership that will be held before the end of 2017.

This provision met with opposition from MPs during the Second Reading debate and the Committee stage of the Bill (see Briefing paper 07249 [European Union Referendum Bill 2015-16: Progress of the Bill](#)).

The Minister for Europe, David Lidington, stated on the first day of Committee stage ([16 June 2015](#)) that Section 125 goes further than the conventions that cover purdah 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.¹⁰

But the Minister also recognised that "the Government are not a campaign" and hence committed to tabling "amendments on Report to write into the Bill measures that will provide reassurance on that point." More specifically, he said:

We will ensure that there is a clear mechanism so that in the four weeks before polling day, the Government will not undertake a range of activities that most would regard as the province of the campaign, such as issuing mailshots, running commercial advertising campaigns and emailing voters in one way or another.¹¹

David Lidington noted that this could take the form of a code of conduct, or specific provisions in the Bill restricting certain Government publications and forms of communication.¹²

⁹ Public Administration Select Committee, [Lessons for Civil Service impartiality from the Scottish independence referendum](#), 17 March 2015, HC111 2014-15

¹⁰ HC Deb 16 June 2015, cc233-4

¹¹ HC Deb 16 June 2015, c235

¹² HC Deb 16 June 2015, c235

2. Elections: UK civil servants

2.1 General elections

The Government announced that the pre-election or “purdah” period before the 2015 general election would begin on 30 March 2015, the same day as the dissolution of Parliament.¹³

The term “purdah” is still in use to describe this period although the Cabinet Office’s guidance for civil servants issued in 2010 did not use it and referred to the campaign period before the general election. A PQ answered on 21 January 2015 about the forthcoming general election described this period as “pre-election purdah”.

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.¹⁴

The preface to the [guidance](#) for civil servants for the 2015 general election, which was issued on 30 March 2015, sets out the general principles:

During the Election period, the Government retains its responsibility to govern, and Ministers remain in charge of their Departments. 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.¹⁵

The guidance notes how constituency correspondence from former MPs should be answered carefully, noting that it is essential to avoid individual cases becoming party political issues.¹⁶ There is also specific advice for special advisers, which warns that advisers who wish to accompany their Ministers in the General Election campaign or help in a party headquarters or research unit must first resign their appointments.¹⁷

2.2 European Parliamentary and local elections

On 9 April 2014 guidance was issued for civil servants for the period before the European Parliamentary and local elections taking place on 22 May 2014. The Minister for the Cabinet Office and Paymaster General announced the publication of the guidance in a written statement:

Local and Mayoral Election Guidance (European Parliament)

¹³ [PO 219064, 21 January 2015](#)

¹⁴ [Election guidance for civil servants](#), GOV.UK, accessed on 10 July 2015

¹⁵ [General Election guidance 2015](#), Cabinet Office, 30 March 2015

¹⁶ [General Election guidance 2015](#), Cabinet Office, 30 March 2015, p8

¹⁷ [General Election guidance 2015](#), Cabinet Office, 30 March 2015, p10

The Minister for the Cabinet Office and Paymaster General

(Mr Francis Maude): Guidance has today been issued to civil servants in UK departments and those working in non-departmental public bodies and other arm's length bodies on the principles that they should observe in relation to the conduct of Government business in the run-up to the forthcoming elections for membership of the European Parliament, and to local authorities in England and Northern Ireland, and for five directly elected mayors. These elections will take place on Thursday 22 May 2014. The period of sensitivity preceding the elections starts on 2 May.

Copies of the guidance have been placed in the Libraries of both Houses and on the Cabinet Office website at:

<https://www.gov.uk/government/publications/election-guidance-for-civil-servants>¹⁸

The guidance set out the general principles that should be observed by all civil servants, including special advisers, during this period:

- a) Particular care should be taken over official support, and the use of public resources, including publicity, for Ministerial or official announcements which could have a bearing on matters relevant to the elections. In some cases it may be better to defer an announcement until after the elections, but this would need to be balanced carefully against any implication that deferral could itself influence the political outcome – each case should be considered on its merits;
- b) care should also be taken in relation to proposed visits;
- c) 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;
- d) there should be even-handedness in meeting information requests from the different political parties and campaigning groups.
- e) officials should not be asked to provide new arguments for use in election campaign debates.¹⁹

Earlier guidance for civil servants published before the 2013 and 2012 local elections and the 2011 local and devolved assembly elections, is on the GOV.UK website.²⁰

2.3 Special Advisers

The European Parliamentary elections are classed as national elections and Special Advisers who wanted to take part in the campaign or help in a Party capacity had to first resign their appointment. For local and mayoral elections, Special Advisers may undertake local political activity with the approval of their minister and in accordance with the terms of the [Code of Conduct for Special Advisers](#).

¹⁸ HC Deb 9 April 2014 [c11WS](#)

¹⁹ May 2014 elections to the European Parliament and to local authorities in England and Northern Ireland: guidance on conduct, Cabinet Office, April 2014

²⁰ [Election guidance for civil servants](#), GOV.UK, accessed on 10 July 2015

3. Local elections: local authorities

The pre-election period just before local elections, when there are restrictions on local authority publicity and rules concerning media reporting of the election campaign, is defined as beginning with the publication of the notice of the election. In 2015 the last date for the publication of notice of election for the local elections on 7 May 2015 was 30 March 2015.

There is statutory guidance for local authorities about publicity during the pre-election period just before local elections. The [Code of Recommended Practice on Local Authority Publicity](#) is issued under section 4 of the *Local Government Act 1986* and local authorities must have regard to it. The Code was revised in 2011.

The following section is of particular relevance:-

Care during periods of heightened sensitivity

33. Local authorities should pay particular regard to the legislation governing publicity during the period of heightened sensitivity before elections and referendums – see paragraphs 7 to 9 of this code. 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.

34. 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.

35. In general, local authorities should not issue any publicity which seeks to influence voters. However this general principle is subject to any statutory provision which authorises expenditure being incurred on the publication of material designed to influence the public as to whether to support or oppose a question put at a referendum. 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.²¹

The Local Government Association has published [Purdah: a short guide to publicity during the pre-election period](#) which gives further information.

²¹ [Code of Recommended Practice on Local Authority Publicity](#), DCLG

4. Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly civil servants

4.1 European Parliament election 2014

Before the European Parliament election in 2014, the Scottish Government published [guidance](#) for Scottish Government civil servants on conduct during the election period; the Welsh Government published [guidance](#) for its civil servants; and the Northern Ireland Government published [guidance](#) for its civil servants.

4.2 Guidance for other elections

The Scottish Government issued [guidance](#) about the role and conduct of people working in the Scottish Government, its agencies and national devolved public bodies during the election period beginning 23 March 2011 before the Scottish Parliament elections on 5 May 2011. The general principles were as follows:

During the election period, the Scottish Government retains its responsibility to govern and Ministers remain Ministers and in charge of their portfolios. Essential business must be carried on. However, you can expect Ministers to observe discretion in initiating any new action of a continuing or long-term character.

Decisions on matters of policy on which the next administration might wish to take a different view from the current administration are expected to be postponed until after the election, provided that such postponement would not be detrimental to Scotland's interest or wasteful of public resources. You can also expect Ministers to be largely engaged in the election campaign and therefore not want to be asked to make decisions on issues during the election period unless it is essential that they should do so.²²

The Welsh Assembly Government published guidance for civil servants for the pre-election period before the 2011 elections for the National Assembly for Wales which ran from 1 April 2011 to 5 May 2011.²³

²² [Guidance on the role and conduct of people working in the Scottish Government, its agencies and national devolved public bodies during the election period beginning March 23 2011](#), Scottish Government, 2011

²³ [Welsh Assembly Government guidance for civil servants 2011](#)

5. EU referendum purdah inquiry

The Public Administration and Constitutional Affairs Select Committee is conducting a short [inquiry into the purdah before the EU referendum](#), to be held before the end of 2017.

The Committee accepts written evidence until 17 July and scheduled evidence sessions on 14 and 16 July. Speakers included Jack Straw, Lord Owen, Peter Riddle and Lord Bew.

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