

Appendix 1

Pre-referendum period guidance – Midlothian Council

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1. Applicability

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Independence Referendum

These guidance notes only apply to the Independence Referendum to be held on 18th September 2014

Timescales

Although the Council's requirement to act in a politically neutral manner applies at all times, particular care should be taken in the run up to the Referendum to avoid any potential perception, of political partiality. Strict rules regarding publicity will then apply in the 28 day period prior to the poll.

'Independent' organisations

Care should be taken to ensure that projects, initiatives or organisations funded by the authority do not create the potential for allegations that public money is being used in support of a party or campaign group. This is likely to be less of an issue where funding is general, as opposed to funding for, say, communications activity by an organisation.

2. Key points

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

- Council staff must discharge their duties in a politically neutral way at all times.
- There is particular sensitivity around this political neutrality in the run-up to the Referendum.
- Particular care needs to be taken to ensure that any events, publicity or other communications are politically neutral.
- Council facilities and resources must not be used in support of a political party or a particular campaign group in the Referendum.
- Unless otherwise stated, it should be assumed that normal Council business will continue.
- Unless otherwise covered by this guidance, staff should respond positively to requests for information or advice from parties, designated organisations or campaigners.

3. Background

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General Legal and other obligations

Local authorities are prohibited by section 2 of the Local Government Act 1986 from publishing any material which appears to be designed to affect public support for a political party. Publicity is defined very widely. It includes 'any communication, in whatever form, addressed to the public at large or to a section of the public.'

The Council also has duties under common law to taxpayers which prohibit the use of public funds and the activities of Council officers where the Council is not fulfilling its statutory functions. Unless otherwise specified in this guidance, any support given to political parties or Referendum campaigners is very likely to breach this obligation.

For the avoidance of doubt, it should be noted that these duties apply at all times.

Staff and elected members also have obligations under their respective codes of conduct.

Scottish Independence Referendum Act 2013

This Act provides that Scottish public authorities, including local authorities, as well as Scottish Ministers and the Scottish Government, cannot publish in the 28 days ending with the date of the independence referendum poll any material which:-

- (a) provides general information about the referendum;
- (b) deals with any of the issues raised by the referendum question;
- (c) puts any arguments for or against any outcome, and
- (d) is designed to encourage voting at the referendum.

Exceptions to this prohibition are –

- where material is 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 Chief Counting Officer for the referendum or the Counting Officer for each council area. or
- the publication of information relating to the holding of the poll.

“Publish” is defined in the 2013 Act as meaning to make available to the public at large, or any section of the public, in whatever form and by whatever means, and “publication” is defined accordingly

The forthcoming independence referendum will be held on 18 September 2014. This means that the period of tighter rules on council publicity under the 2013 Act, i.e. during the 28 day pre-poll period, will be from Thursday 21 August 2014 to Thursday 18 September 2014.

During this 28 day pre-poll period, the council must, in effect, avoid producing or facilitating unsolicited publicity or communication to the public at large or a section of the public which deals with any aspect of the referendum or the issues raised by the independence poll, except information relating to the holding of the poll.

This prohibition on the council regarding publicity during the 28 day pre-poll period does not apply to the Chief Counting Officer, Mary Pitcaithly, or the council's Chief Executive as Counting Officer. Moreover, the Chief Counting Officer must take whatever steps she considers appropriate to encourage participation in the referendum and to facilitate co-operation among Counting Officers who are also required to take such steps in their council area.

In addition, each council must provide, or ensure the provision of, such property, staff and services as may be required by the Counting Officer for the carrying out of his counting officer functions.

The combined effect of these statutory provisions in the 2013 Act is that while the council itself cannot produce or facilitate publicity or communication directed at the public at large or a section of the public, the council can support the Counting Officer to produce publicity directed at the public at large or a section of the public to encourage participation in the referendum, e.g. targeting 16 and 17 year olds to register to vote in the referendum and the procedures to follow in casting their votes. In so doing, it will be essential for any such publicity to be clearly identified with the Counting Officer and not with the council so as to avoid any breach of the prohibition on council publicity during the 28 day pre-poll period.

Examples of the types of publicity generated by the council and where particular care needs to be taken in the 28 day pre-poll period are:-

- council publications;
- use of photographs of persons who are associated with either of the campaigns in the referendum;
- council events e.g. project launches, opening of buildings, or ground-breaking ceremonies;
- press releases;

- mailshots by services to sections of the local community, or each household in the Council area;

These are considered in more detail below.

4. Assistance to Campaigners

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The Council is prohibited by legislation from giving any assistance in cash or in kind to campaigners in the referendum. This is because Schedule 4 to the Scottish Independence Referendum Act 2013 limits donations to permitted participants in the referendum from permissible donors only, and the council is not listed in the Act as one of the permissible donors

“Donation” for this purpose includes not only a gift or sponsorship but also provision, otherwise than on commercial terms of any property, services or facilities for the use or benefit of a permitted participant

The provision of free office accommodation (other than meeting rooms, see below) or travel passes are examples of impermissible donations. It makes no difference whether the council offers to make such facilities available to all campaigners on an equal basis. The council can however provide office accommodation on a commercial basis to a permitted participant in line with normal council letting policy.

Separate advice for campaigners has been published by the Electoral Management Board for Scotland which is available at the following link:

http://www.electionsscotland.info/emb/download/downloads/id/83/information_for_campaigners

5. Premises

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Definition

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

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

In this context, it is not taken to include public roads and pavements.

Use as offices and for public meetings

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The Local Government Act 1986 prevents local authorities from allowing Council premises to be used to promote support for a political party and the 2013 Act specifically prohibits the Council from offering assistance to campaign groups. There are however some exceptions.

The authority may allow political parties or campaign groups to rent Council owned premises for use as offices, where such facilities are provided on a first-come, first-served basis on normal commercial terms.

Under the Scottish Independence Referendum Act 2013 bodies declared by the Electoral Commission to be “designated organisations” are entitled to use a school room in a Council run school and other public meeting rooms maintained by the Council for a public meeting during the period from 21 August to 17 September 2014. The let will be free of charge, but the Council is entitled to be reimbursed for heating, lighting and other utilities, as well for any damage caused to the room by the let.

Designated organisations are required to give reasonable notice and any booking should not interfere with existing arrangements such as prior bookings or school hours.

In terms of the 2013 Act, the Council must also prepare a list of rooms in school premises and a list of “meeting rooms” which designated organisations are entitled to use. Designated organisations are also entitled to inspect a list of these rooms.

Visits to Council premises by campaigners

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As the Referendum approaches, campaigners may wish to visit Council premises to meet residents, e.g. in residential homes, or to be seen within the area, or to become more familiar with Council facilities. The Council has previously allowed similar visits during elections subject to management rules but it has now been decided that, subject to the

exceptions listed below, no campaign group shall be allowed to visit Council premises until the close of poll.

This moratorium will not apply however in the following circumstances:

- Premises rented by the Council to third parties on a commercial basis where entry shall be at the discretion of the tenant
- School rooms and other meeting rooms made available to designated organisations in terms of the Scottish Independence Referendum Act 2013
- Visits at the invitation of a resident to their room in a Council residential home or hostel
- Visits to Council premises for business and Council meetings; and
- Any activity in a Council managed public open space which has been approved by the Chief Executive (or his nominee).

Use of Council premises for publicity

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Visits by campaigners

The media may request the use of a Council establishment to highlight a general aspect of the referendum. This may or may not involve campaign groups or parties. The decision on whether to agree or not to such media requests will be taken by the relevant Director in consultation with the communications team.

In reaching their decision, the Director should consider if such use by the media will favour one particular outcome, any sensitivities around the particular venue and its users, and the possible staff resource implications. Whatever decision is reached, it should be equally applied to all parties and campaigners.

If the media is involved in a visit, employees must not be photographed, recorded or televised with campaigners. The consent of clients or service users must be sought and not assumed. The Council has media relations consent forms in place for situations where the people involved are under 16 or deemed to be vulnerable adults, and consent in these situations must be recorded and retained as per normal practice for media consents. The Director(s) will be advised on this aspect by the communications team.

An individual who lives in a Council residential home or hostel has a right, as an elector, to invite candidates and the media into their own room.

Visits by politicians

Requests from sitting politicians (MSPs, MPs and MEPs as well as Councillors) to visit Council premises, particularly schools are likely to increase in frequency as the referendum approaches. These visits will usually be permissible where they are for civic purposes rather than seeking political publicity. The key tests to determine if a visit should be permitted are:

- Whether the event is likely to give rise to references to the referendum, a political party or persons identified with a political party.
- Whether the event is likely to generate publicity directed at the public or a section of the public and which promotes or opposes a point of view on a question of political controversy which is identifiable as the view of one political party and not of another.
- Where the event is likely to appear to be part of a campaign, the effect which the campaign appears to be designed to achieve.

As stated above, stricter rules will apply during the 28 day pre referendum period and it is recommended that any visit proposed during that period should, if possible, be postponed until after 18 September.

Please note that any visit by an elected member on constituency business should always be permitted.

Referendum broadcasts

Council premises should not be used for the filming of Referendum broadcasts by either campaign.

Posters and other advertising

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Campaign posters are not permitted on streetlights, other street furniture (e.g. traffic lights, railings and benches) and roads (including verges, central reservations and roundabouts).

The Council will not object to A Boards being placed on the pavement outside polling stations on the day of poll provided these boards do not obstruct the public right of passage. The question of whether an obstruction is being caused will be a matter for Lothian and Borders Police.

Party political or campaigning material should not be placed on notice boards or displayed in Council buildings. This will include posters/stickers placed in the windows of Council offices.

Surgery notices

Sitting MPs, MSPs, MEPs and councillors may have surgery notices displayed in Council premises. These can continue to be displayed during the campaign period providing it is the usual notice which is being displayed.

6. Publicity

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Scottish Independence Referendum Act 2013

The Council may not publish any promotional material relating to the referendum within a period of 28 days prior to the referendum polling date in terms of the Scottish Independence Referendum Act 2013. This restriction is on all material regardless of political content or neutrality. Outwith this timeframe and for other Council publicity, the existing rules on publicity will apply.

General

As the definition of publicity is very broad, and any content subject to interpretation, each situation has to be discussed on its own merits. Publicity can cover news releases, publications, events, photos and videos. It also includes online and social media communications as well as 'traditional' publicity.

In determining whether publicity should be allowed, the main factors to take into account are:

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

The key test is whether a particular act can be perceived as seeking to influence public opinion or to promote the public image of a particular referendum campaign.

Press Releases

Public statements (reactive and proactive) may need to quote the relevant councillor responsible for a particular portfolio. Great care should be taken to ensure that any content is clearly and directly relevant to the service or issue being discussed and reflects an agreed Council decision or policy. It must not be a general comment on the position or achievements of the sitting administration.

Any Council newspapers or newsletters should not be published during the 28 day pre-referendum period. Routine publications advising on Council services, such as Tonezones or the Midlothian Snowsports Centre at Hillend, may be published during this period.

Opening ceremonies or other events

Official openings or events, whether or not specifically designed to attract publicity, should not take place during the 28 day period before the referendum. Any variation on this must be agreed by the relevant Director and be justified on the grounds of exceptional unavoidable and/or unforeseen circumstances.

Media requests

In general, media requests for general filming or photo opportunities should be treated as they would be normally. The only issue that would arise is if there is any question of the media outlet taking a particular stance that may be, or may be perceived to be, in favour of one outcome.

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

7. Other issues

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Staff - campaign activity

Staff in politically restricted posts should not undertake any political activity at any time. Advice given to CoSLA in 2012 is that it would not necessarily breach the requirement for political neutrality if the holder of a politically restricted post were to canvass on behalf of an outcome to the Referendum provided this does not involve any overtly political activities. Given the Referendum has become a political issue however it is difficult to understand how any such campaigning would not be overtly political and staff in politically restricted posts are advised to exercise caution.

Staff in posts that are not politically restricted may carry out political activity. However, any staff personally involved in support for a particular party or campaign should not then be employed by the Counting Officer in polling or counting duties.

Any staff wishing to campaign on behalf of either outcome must do so in their own time and cannot be granted paid leave of absence in order to do so.

Working relationships between staff and councillors

Some employees may have a close working relationship with councillors. It is important that this close working relationship is not compromised in any way. If an employee is asked by a councillor to provide assistance with a matter which is clearly party political or which does not have a clear link with the work of the Council, they should politely refuse and inform the councillor that they are referring the matter to their line manager for guidance. This rule also applies if a councillor seeks assistance on behalf of a campaign group.

Use of Council facilities and resources by councillors

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

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

Freedom of Information requests

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

8. Questions and answers

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

1. **A controversial item is on the agenda for a meeting of the Council or a Committee which will be held during the 28 day pre-election period. Should consideration of the item be postponed until after the election?**

Probably not. As a general rule, the work of the Council should continue and the item should be considered. However, the Chief Executive may consider that there is too great a risk in considering the item prior to the referendum and it may be postponed as a result.

2. **A school has been approached by an elected representative who wishes to meet pupils and have a general discussion with them about topics of concern to them. Is it okay to allow the visit?**

No, this does not constitute “business as usual” and as such the visit will come under the moratorium in terms of section 5

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

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

4. **Is it okay for a campaigner to take photographs outside a Council office or facility?**

This should not be encouraged but cannot be prevented. Candidates and officials should be aware that photography in and around schools is controlled, as any existing parental consent, whether express or implied, in relation to photographs taken for school purposes cannot be regarded as extending to the use of photographs in connection with any political campaigning.

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

Contact your Director, who can discuss the issues raised with the Chief Executive and let you and the campaigner/party know the outcome of these discussions.

6. **A campaigner turns up at Council premises for a pre-arranged business meeting but there are media following them. Should the media be allowed in?**

No. This is allowing a Council facility to be used for a party political activity.

7. A public consultation meeting is scheduled during the 28 day pre-election period as part of the formal planning process for a new school. Can it go ahead?

Yes. This is both normal business and there are significant costs attached to any delay.

8. A campaigner or political party wants to use a Council-managed public space for their campaign launch. Should it be allowed?

There is a convention that certain public spaces are used for campaign activity. It is generally acceptable for these to take place so long as the events are limited, e.g. around 1 hour and that there is equal opportunity for all parties or candidates to use them. The Council resource/effort in facilitating these should also be minimal, e.g. enabling access to a space.

9. The Council was intending to facilitate a debate on an important issue to our area. Should it be cancelled?

The debate must be open to participation by all parties and it may be advisable to limit the media participation (e.g. reactive rather than proactive). With those caveats, it could go ahead, but thought would still need to be given to whether or not the issue at hand was likely to be particularly divisive along political party lines.

10. A councillor wants to give their view on a matter debated at committee to the media. Is this allowed?

Any councillor at any time is at liberty to do this. The tests are whether they are using Council resources to do so and whether the view is (or could be perceived to be) political in nature.

11. A charity which receives funding from the Council has taken an advert in a political party's newsletter. Is this allowed?

There are two relevant issues here: what is the Council's funding for (e.g. a general grant or for a specific purpose such as communications) and what is the advert for (e.g. notice of an event or self-promotion)? Generally, this is a low-risk activity so long as there is nothing overtly political about the organisation's activity or its advert.

12. There is an event scheduled for the launch of a new service. Can local councillors be invited? And what about other politicians?

Such events are generally very inadvisable before an election and should be avoided unless it is essential for the purposes of service delivery to have the launch during this period. The same applies to the independence referendum. If the Director has agreed the event can go ahead, then all councillors for that ward should be invited.

13. We want to highlight a new initiative during the 28 day pre-referendum period. Can the relevant cabinet member be involved?

No. Proactive publicity of this kind can go ahead without elected member involvement. We will use a service user or manager in these circumstances.

- 14 A partner organisation has asked to use a council venue for the launch of an initiative. A minister will be attending and significant media presence is expected. Can we facilitate this?**

Yes. Hiring of Council venues is business as usual.

General advice on pre-election period guidance

Stephen Fraser, Communications and Marketing Manager,
stephen.fraser@midlothian.gov.uk, 0131 271 3425

Alan Turpie, Principal Solicitor, alan.turpie@midlothian.gov.uk, 0131 271 3667