

## Pre-election period guidance – Midlothian Council

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## **1. Applicability**

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### *Elections / referendums*

These guidance notes apply to all elections: local government, Scottish parliament and UK parliament . Some provisions also apply to by-elections (discussed in section 5). The guidance will also apply to referendums (and, in particular, any possible forthcoming Scottish Independence Referendum) In the case of Referendums, references in this guidance to political parties and candidates should be interpreted as referring to Designated Organisations, Permitted Participants and campaigners as appropriate.

Where there may be specific issues relating to particular elections these are covered in the notes.

### *Timescales*

Although the formal pre-election period begins with the issuing of the notice of election, care should be taken in the few days immediately before this to avoid any potential perception of political partiality.

### *'Independent' organisations*

Care should be taken to ensure that projects, initiatives or organisations funded by an authority do not create the potential for allegations that public money is being used in support of a party or candidate. 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 an election.
- 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 election candidate.
- Councillors, if standing as a candidate in any election, are still entitled to use Council facilities and resources whilst acting on constituency business.
- 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 or candidates.

### **3. Background and timing**

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#### **What is the pre-election period?**

It is the period between the announcement of an election and the date of the election. It is generally taken to be from the publication of the notice of election until polling day, inclusive of both days. This is the definition referred to in the Code of Recommended Practice on Local Government Publicity, which guides local authorities on fulfilling the requirements of section 2 of the Local Government Act 1986.

In respect of a Referendum, the period will run from the announcement of the date of the Referendum with specific, more onerous rules operating in the period from 28 days before the day of poll.

The main significance of the pre-election period is in the need for heightened sensitivity, to ensure that public resources are not used in any way that might influence the result of an election.

The pre-election period has commonly been known as ‘purdah’. However, this is felt by some to be an inappropriate term because of its cultural and religious origins in referring to the separation of women from men.

#### **Timing of the pre-election period**

Local authorities have some discretion on the exact timing of the publication of the notice of election, although it needs to be within a timeframe which is set out in legislation according to individual elections.

The section of a local authority responsible for elections management should communicate to its elected members and staff the date of the pre-election period. It is usually helpful if this is done several months in advance to help with event and other planning.

In some authorities, convention – although not law – means that the pre-election period is effectively observed a few days before it officially begins.

It is worth noting that the civil service tends to use the date of dissolution of parliament as the beginning of its pre-election period, as opposed to the notice of election. This convention derives from UK parliament election dates previously not being fixed. However, all elections now follow a timetable which is set out in legislation in advance. This can lead to the UK and Scottish governments, and their agencies, using different pre-election period dates however.

#### **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 election candidates is very likely to breach this obligation.

For the avoidance of doubt, it should be noted that these duties apply at all times but the implementation is particularly sensitive during the pre-election period.

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

Between the time of publication of a notice of an election and polling day, publicity should not be issued which deals with controversial issues, or which reports views or policies in a way that identifies them with individual members and groups of members.

The following publicity activities should therefore not take place during the formal election campaign period -

- Any proactive media releases/ media activity, including photocalls, involving cabinet portfolio holders, election candidates or elected members or mentioning any political party.
- The publication of any Council material (with the exception of election-related materials) that identifies, in any way, an election candidate or a political party.

Reactive media inquiries are business as usual and, in some circumstances, may involve the relevant cabinet portfolio holder (see section 5 for further details).

Any other activities will require to be considered in terms of the legislation and the relevant Code of Conduct.

#### **4. 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. However, there are some exceptions.

An authority may allow political parties 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 Representation of the People Act 1983 parties or candidates are entitled to use a school room for a public meeting in a Council run school within the candidate's constituency. 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.

Candidates or their agents 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 Representation of the People Act 1983, the Council must also prepare and keep for each constituency which is wholly or partly in its area, a list of rooms in school premises and a list of "meeting rooms" which candidates are entitled to use. Candidates are also entitled to inspect a list of these rooms. The list of such premises within Midlothian is attached as an appendix to this guidance.

During a referendum, "Designated Organisations" may also use these rooms on the same basis as above during the 28 day period prior to the Referendum in terms of schedule 12 of the Political Parties, Elections and Referendums Act 2000

##### **Visits to Council premises by candidates**

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As the election approaches, candidates 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 such visits subject to management rules but it has now been decided that, subject to the exceptions listed below, no candidate shall be allowed to visit Council premises from the date of nomination 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 candidates in terms of the Representation of the People Act 1983
- 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 her nominee).
- Visits to Council premises by an elected member whilst acting in that capacity

### **Use of Council premises for publicity**

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#### *Visits by candidates*

The media may request the use of a council establishment to highlight a general aspect of the election. This may or may not involve election candidates or parties. The decision on whether to agree or not to such media requests will be taken by the relevant Executive Director in consultation with Communications.

In reaching their decision, the Executive Director should consider if such use by the media will favour one particular candidate or party, 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 candidates.

If the media is involved in a visit, employees must not be photographed, recorded or televised with prospective candidates. 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 Executive Director(s) will be advised on this aspect by Communications.

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 other than candidates*

It is likely to be permissible for a sitting politician, who is not affected by a forthcoming election, to visit Council premises and seek publicity for this. Such visits are to be discouraged during the pre-election period but may be approved if there are exceptional circumstances. However, any candidates should not have a formal role at such events and Council staff should not facilitate any publicity involving election candidates, e.g. interview requests or photo opportunities.

Please note that a visit by an elected member of the Council, even if a candidate in the election, on constituency business should always be permitted.

### *Visits to Schools*

The franchise for the Scottish Parliamentary and Local Government Elections have been extended to 16 and 17 year olds. Accordingly, unless otherwise approved by the Executive Director, Children, Young People and Partnerships, no visits by politicians, candidates or campaigners will be permitted to secondary schools during teaching time in the pre-election period for those elections.

### *Party political broadcasts*

Council premises should not be used for the filming of party political broadcasts.

## **Candidate's posters and other advertising**

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Political posters are not permitted on streetlights, other street furniture (e.g. traffic lights, railings and benches) and roads (including verges, central reservations and roundabouts). Any posters on Council property will be removed. The Council does not however have any power to remove posters from other properties.

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 Police Scotland.

Party political or campaigning material should not be placed on notice boards or displayed in Council buildings. This will include, for the avoidance of doubt, the display of materials visible in the windows of all offices in Council buildings, including those made available for use by elected members.

## **Surgery notices**

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



There is one exception to this rule: sitting politicians for a particular election who no longer hold office once the notice of election is published whose posters must be removed. For example, an MP ceases to be an MP in the pre-election period for the UK Parliament

elections and should have their posters removed. Other sitting politicians may continue to publicise their surgeries and, in particular as Councillors remain in post until the day of poll for a local government election any such posters should not be removed.

## 5. Publicity

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### General

As the definition of publicity is very broad, and any content subject to interpretation, it is not possible to be prescriptive about what publicity is permissible or otherwise and 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 to 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 candidate, or group of candidates (whether or not they are existing members).

### Specific points on local government elections

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 pre-election period. Routine publications advising on council services, such as Tonezones or the Midlothian Snowsports Centre at Hillend, may be published during the pre-election period.

It is worth noting that councillors remain as councillors until the day of poll for a local government election.

## **Opening ceremonies or other events**

Official openings or events, whether or not specifically designed to attract publicity, should not take place during the pre-election period before a local government election. Any variation on this must be agreed by the relevant Executive 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 around elections 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 party or candidate.

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.

## **By-elections**

Particular care should be taken to avoid any publicity in the ward or constituency affected by a by-election during the period after the notice of election has been issued.

Depending on the circumstances, it may also be appropriate to stop normal Council publicity on the day before and the day of polling.

## **Referendums**

The Council may not publish any promotional material relating to a referendum within a period of 28 days prior to the referendum polling date in terms of section 125 of the Political Parties, Elections and Referendums Act 2000. This restriction is on all material regardless of political content or neutrality.

In terms of that Act, publish is defined as “make available to the public at large, or any section of the public, in whatever form and by whatever means.” “Promotional Material” is also widely defined as material which:

- Provides general information about the referendum
- Deals with any of the issues on which the referendum is being held
- Puts any argument for or against any issue on the referendum or
- Is designed to encourage voting at the referendum.

Schools and other educational establishments may wish to teach pupils about the terms of the Referendum and this should not be affected by the prohibition. Head Teachers and heads of other educational establishments should however seek clearance and guidance



from the Executive Director, Children, Young People and Partnerships if they receive requests for Referendum related activities from outside bodies before agreeing to them.

## **Social Media**

The Council hosts a number of social media profiles. Nothing will be permitted on any of these pages to promote political messages, support for a particular candidate(s) or any other political content. Any such messages, whether posted by or on behalf of the Council or by third parties, will be removed.

Councillors will be entitled at all times, including during the pre-election period, to post any political content or viewpoint on their own social media accounts even if the account refers to the Councillor as an elected member. It is only the use of the Council's social media for electioneering purposes that is prohibited by this guidance.

## **6. Other issues**

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### **Staff candidature**

If a Council employee in a political restricted post wishes to stand for election (whether to the Council, Scottish parliament or UK parliament) they must resign their post.

A Council employee not in a politically restricted post may stand for election to the Council without resigning their post but must resign within one day of the declaration of the result should they be elected otherwise they cease to be an elected member and will cause a by election.

### **Staff - other political activity**

Staff in politically restricted posts should not undertake any political activity at any time.

Staff in posts that are not politically restricted may carry out political activity. However, if they are a witness for any election-related documents or otherwise personally involved in support for a particular party or candidate, they must not be involved with polling or counting.

### **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 of behalf of a candidate in the elections.

This rule applies at any time and not just during the pre-election period

### **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 elections, councillors should not issue communications 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.

## 7. 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 pre-election period. Should consideration of the item be postponed until after the election?**

No. The work of the Council should continue and the item should be considered.

2. **A school has been approached by a candidate in the forthcoming election 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 4

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-election 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 an election candidate 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 candidate/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 candidate/party know the outcome of these discussions.

6. **A candidate 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 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 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 candidates, 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 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, if so, 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 a local government election and should be avoided before other elections. If the latter, local councillors can be invited, although this should be avoided if one of the councillors is a candidate. If the Director has agreed the event can go ahead, then all candidates for that ward should be invited.

**13. We want to highlight a new initiative. 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.



## **8. Contacts and further information** (Back to [contents](#))

### **General advice on pre-election period guidance**

Alan Turpie, Legal Services Manager, [alan.turpie@midlothian.gov.uk](mailto:alan.turpie@midlothian.gov.uk), 0131 271 3667

## APPENDIX

### (A) List of Rooms in School Premises

#### (i) Primary Schools

Bilston	Park Avenue, Bilston, Roslin
*Bonnyrigg	Cockpen Road, Bonnyrigg
Burnbrae	144 Burnbrae Road, Bonnyrigg.
Cornbank St James	34 Marchburn Drive, Penicuik
Cuiken	150 Cuiken Terrace, Penicuik
Danderhall	59 Edmonstone Road, Danderhall
Glencorse	Graham's Road, Milton Bridge, Penicuik
Gorebridge	2C Barleyknowe Lane, Gorebridge
Gore Glen	Whitehouse Way, Gorebridge
Hawthornden	Polton Avenue Road, Bonnyrigg
King's Park	20 Croft Street, Dalkeith
Lasswade	7A Pendreich Drive, Bonnyrigg
*Lawfield	26 Lawfield Road, Mayfield
Loanhead	34 Edgefield Road, Loanhead
Mauricewood	11 Muirhead Place, Greenlaw Mains, Penicuik
Mayfield	Stone Avenue, Mayfield
Moorfoot	41 Borthwick Castle Road, North Middleton
Newtongrange	Sixth Street, Newtongrange
Paradykes	Mayburn Avenue, Loanhead
Rosewell	85 Carnethie Street, Rosewell
Roslin	8 Pentland View Place, Roslin
Sacred Heart	Crockett Gardens, Penicuik
St Andrew's	Gowkshill, Gorebridge
St David's RC	Kippielaw, Lauder Road, Dalkeith
St Luke's RC	Stone Avenue, Mayfield
*St Margaret's RC	36 Edgefield Road, Loanhead
St Mary's RC	62A Polton Street, Bonnyrigg
St Matthew's RC	32 Carnethie Street, Rosewell
*Stobhill	1 Bonnybank Road,, Gorebridge
*Strathesk	4 Eastfield Farm Road, Penicuik
*Tynewater	32 Crichton Road, Pathhead
Woodburn	5 Cousland Road, Dalkeith

(ii)/

**(ii) Secondary Schools**

Beeslack Community High School	Edinburgh Road, Penicuik	01968 678060
Dalkeith Schools Community Campus	Cousland Road, Dalkeith	0131 660 0268
The Lasswade Centre (Lasswade High School)	Eskdale Drive, Bonnyrigg	0131 271 4530
Newbattle Community Campus	Easthouses Way, Dalkeith	0131 561 6740
Penicuik High School	39A Carlops Road, Penicuik	01968 674165

In respect of primary schools marked '\*\*', all enquiries regarding their availability and bookings should be made with Janice Linton – 0131 271 3713.

In respect of all other primary schools, enquiries and bookings should be made to Business Services using their email address at [Business.Services.Support@midlothian.gov.uk](mailto:Business.Services.Support@midlothian.gov.uk).

In respect of Dalkeith Schools Community Campus, all enquiries and bookings should be made with the BAM FM Office, 4 Cousland Road, Dalkeith EH22 2PS - Telephone 0131 660 0268.

In respect of other secondary schools, all enquiries regarding their availability and bookings should be made direct to the relevant school office.

**(B) List of Meeting Rooms**

*The following premises are available for meetings. The relevant booking telephone number is shown.*

Poltonhall Recreation Ground	<a href="mailto:col_mcewan@hotmail.com">col_mcewan@hotmail.com</a> (Bonnyrigg Rose FC)
Rosewell Pavilion	0131 448 0103 (Rosewell After School Club)
Waverley Park Pavilion	0131 271 4533 (Lasswade Centre)
King George V Park Pavilion, Bonnyrigg	0131 271 4533 (Lasswade Centre)
Penicuik Town Hall	01968 664 066 (Penicuik Leisure Centre)
Roslin Community Hall	0131 444 9033 (Loanhead Leisure Centre)
Loanhead Leisure Centre	0131 444 9033
	demolished
Danderhall Leisure Centre	0131 444 9100
Danderhall Pavilion	0131 663 9280
King's Park Pavilion, Dalkeith	0131 561 6740 (Newbattle Community Campus)
Pathhead Pavilion	0131 561 6740 (Newbattle Community Campus)
Newtongrange Leisure Centre	0131 561 5325
Gorebridge Leisure Centre	01875 821739
Birkenside Pavilion	01875 821739 (Gorebridge Leisure Centre)
Dalkeith Arts Centre	<a href="tel:01316636986">0131 663 6986</a>

