

## NILGA Policy & Communication Guidance Note

### Pre-election period of heightened political sensitivity

## NI Local Government Elections 18th May 2023



6<sup>th</sup> April 2023

### What is the 'Pre-election Period of Heightened Political Sensitivity'?

Formerly referred to as 'Purdah' this describes the period immediately before elections or referendums when restrictions on communications activity are in place.

### The period of heightened sensitivity in Northern Ireland

On Thursday 18th May 2023, a Local Government election is due to be held for the 11 councils in Northern Ireland.

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 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 2023 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.

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

For the election in May 2023, it is recommended that council members and officers should commence a period of heightened sensitivity at the latest, by **Thursday 6<sup>th</sup> April 2023**.

This also is the date on which the Cabinet Office guidance for Civil Servants should take effect. Although the Cabinet Office guidance relates to the Civil Service, it means local government is in a period of 'heightened sensitivity'.

## What does this 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. In such cases you should stop or defer them. An example might be a campaign on an issue which has been the 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 e.g. identifying candidate names, parties and constituencies.
- Publish factual information to counteract misleading, controversial or extreme (for example racist/sexist) information.
- Use relevant lead officers rather than members for reactive media releases in the heightened sensitivity 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 party 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 regarding heightened sensitivity.
2. When using social media, such as Twitter, Facebook, YouTube, Tiktok, Instagram, LinkedIn or Flickr, explain that as a council channel of communication you are adhering to sensitivity principles. It may be helpful to tweet a link to an explanation of heightened sensitivity 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 the period of heightened sensitivity.
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 the pre-election period.

10. Third party social media profiles, including business partnership profiles which the council supports, should also be governed by pre-election sensitivity principles. Council staff who update these profiles can either continue to add content in line with restrictions or hand over ALL admin to a non-council member of the partnership during this period.

### 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 described earlier).
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 election?**

Council business continues so all sitting councillors, whether seeking election or not, should have regard for principles regarding the pre-election period of heightened sensitivity.

#### **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 the limitations surrounding this period, 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 the pre-election period?**

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

#### **Can we use the chair of a council-commissioned review, who is up for 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 the pre-election period?**

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 always be mindful of the Code of Conduct.

### **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 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 candidates request to visit council establishments?**

The guidance at local level may already vary by council. Generally, reasonable requests by candidates at the election to visit council establishments (including current council members in the case of their council function) 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 candidates 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. Candidates 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 the pre-election period?**

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

**PRE-ELECTION SENSITIVITY AND PLANNING COMMITTEES – PLEASE SEE APPENDIX 1**



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## PRE-ELECTION SENSITIVITY 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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