

2018 Local elections: purdah considerations for NHS providers

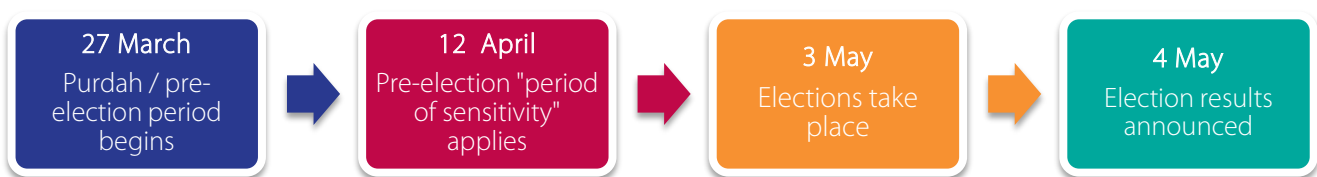
This briefing sets out considerations for NHS foundation trusts and trusts in the period of time known as the pre-election period or 'purdah' leading up to the 2018 local government elections. Local government elections will only take place in certain areas of the country; details of local authorities holding elections this year can be accessed [here](#).

This briefing highlights the practical implications around provider activities, including in relation to sustainability and transformation partnerships (STPs) and integrated care systems (ICSs), and communication during purdah.

It also covers the requirements on central and local government, the civil service and arm's length bodies during purdah to maintain political impartiality in carrying out their public duties and ensuring that public resources are not used for the purposes of political parties or campaign groups.

Should you have any questions, please contact John Coutts (john.coutts@nhsproviders.org) if your query relates organisational governance or foundation trust governors, or Ferelith Gaze (ferelith.gaze@nhsproviders.org) for all other queries.

1) Local election timetable



WHAT IS PURDAH?

The term 'purdah' is used 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 and local government officials, where appropriate, are in place. The term pre-election period is also used synonymously with purdah. Purdah prevents announcements from and activities by public bodies which could influence or be seen to influence the election. Purdah officially applies until the day following the general election, but effectively applies during any period of negotiation around the formation of a government.

2) When does purdah commence?

For 2018 local government elections in England, purdah commences upon the local publication of the notice of election; this must take place by **27 March 2018** at the latest.

3) Rules and regulations during local government election purdah

The behaviour of central government, elected officials, civil servants and arms length bodies during purdah is governed by the:

- Local Government Act 1986¹
- 2011 Code Recommended Practice on Local Authority Publicity²
- Cabinet Office guidance on conduct for the May 2018 elections for civil servants³

Details of how these are applied are set out below.

Local authorities

Although the ordinary functions of councils should continue during purdah, some restrictions do apply, by law, to all councillors and officers. The restrictions on local government during purdah are governed by Section 2 of the Local Government Act 1986.¹ Under these restrictions, councils should “not publish any material which, in whole or in part, appears to be designed to affect public support for a political party.”

The 2011 Code of Recommended Practice on Local Authority Publicity² provides guidance for local government on communications during purdah. It recommends that all communication is: lawful; cost effective; objective; even-handed, appropriate; has regard to equality and diversity; and, issued with care during periods of heightened sensitivity.

Central government, civil servants and arm’s length bodies

As the UK government will remain in office following the 2018 local elections, government ministers will continue to carry out their functions as usual during the first fortnight of purdah and civil servants will continue to support ministers in their work.

However, a “period of sensitivity” applies from three weeks prior to the local government elections; this will commence on 12 April 2018. To support civil servants in UK government departments and the staff and members of non-departmental public bodies and arm’s length bodies during purdah and the period of sensitivity in particular, the Cabinet Office has issued specific guidance³. This sets out the principles of maintaining the political impartiality of the civil service and ensuring that public resources are not used for party political purposes.

How does the NHS fit in to local government elections?

Whilst discussion of the NHS is rarely central to local government election campaigns, the delivery of public services, of which social care is a key tenet, is at the heart local government elections. As such, it is

important that NHS providers follow the custom and practice of purdah to adopt to avoid any impression of influencing the election or its outcomes.

4) Practical considerations for NHS foundation trusts and trusts during purdah

a) Key principles

- **No activity should be undertaken which could be considered politically controversial or influential**, which could compete for public attention or which could be identified with a party / candidate/ designated campaign group.
- **Would you do the same for everyone?** NHS providers have discretion in their approach, but must be able to demonstrate the same approach for every political party, official candidate and designated campaign groups in order to:
 - avoid allegations of bias or pre-judging the electorate
 - ensure you will be able to form a constructive relationship with whoever wins the seat
- **The NHS may be under the media spotlight, locally and nationally.** It is advisable to have a plan in place for:
 - how the organisation will manage the purdah periods (with both its risks and its opportunities)
 - the potential for the organisation or its partners to be singled out in the media

b) Board meetings and normal regulation

Normal business and regulation needs to continue during the purdah period. NHS Improvement, for example, is not expected to alter the dates on which it expects information from foundation trusts. Where a board discussion or sign off is required, there is no problem with holding a board meeting.

Where board meetings need to take place, the agenda should be confined to those matters that need a board decision or require board oversight. Matters of future strategy or the future deployment of resources may be construed as favouring one party over another and should be avoided.

Use of the confidential part or part 2 of the agenda to discuss matters that may be politically controversial is not recommended. Such matters should be deferred until after the purdah periods.

c) Publishing information and making announcements

Care should be taken not to comment on the policies of political parties or campaign groups and websites should not be updated with any information that may be considered political. The rule of thumb should be that communications activities necessary for patient safety, quality and operational delivery purposes should continue as normal, but any other activity beyond that and not required in the pre-election period should wait until after the election.

Wherever possible, information to be published about the organisation should be factual and released in advance of purdah commencing. After purdah begins, requests for new information are best handled by applying FOI rules.

Organisations should not start long-term initiatives or undertake major publicity campaigns unless time critical (such as a public health emergency), and should instead wait until after the election. Unless strictly necessary, high-level public sector appointments should not be made.

Public consultations should not be launched during purdah. Those already in progress should continue, but it is advisable to extend the period to take account of purdah and avoid public meetings and publicity. Responses received should not be commented on and no announcements should be made until after local government elections.

We would only expect civil servants to release data (such as the regulator publishing trusts' financial returns) when a precise publication date has been pre-announced.

d) Individual NHS providers under the media spotlight

The profile of the NHS – already under intense scrutiny – will increase further as an issue of public, political and media debate during purdah. In particular, it is anticipated that there will be a significant focus on proposals for local service reconfiguration under STPs and ICSs. Each political party will be keen to demonstrate its support for the NHS, and the threat posed by its opponents. At times during local and national campaigning, the NHS will become the issue of the day – the focus may be on a particular issue, place, policy, individual or incident. In this context, it is likely that the depth of debate about particular local instances will be lessened and potentially used as an example of a particular issue facing the NHS nationally.

Any issues that can be predicted to be of interest during the campaign should be prepared for, with relevant information available and agreed spokespeople and lines. Where possible, it is usually easiest to use information for public comment that is already publically available and can be readily referred to.

Where affected, we would advise that trusts remain neutral, refraining from any commentary and providing only factual information where necessary. Normal patient confidentiality rules apply. It is also worth considering who it would be helpful to share information with (both in advance and in the event of any issues arising) in the local health economy and other NHS and regulatory organisations.

It is important to bear in mind that STPs and ICSs are not bodies corporate and have no legal standing or powers in their own right. Therefore, communications issued by STPs or ICSs are the responsibility of each of the constituent partners jointly and severally. Given the potential politicisation of service reconfiguration, with regards to STPs and ICSs we would advise:

- responding to requests with reference to materials already available in the public domain;

- pausing any consultations relating to STPs, resuming them only following the formation of the new government.

e) Political visits and engagement

The Cabinet Office guidance on purdah during local government elections offers specific advice relevant to NHS trusts and foundation trusts in respect of visits:

“Particular care” should be taken with respect to proposed visits to areas holding elections. Official support must not be given to visits and events with a party political or campaigning purpose.

Use of NHS Property for “electioneering purposes” is a decision for the relevant NHS body to make, *“but should visits be permitted to, for example, hospitals, it should be on the basis that there is no disruption to services and that the same facilities are available to all candidates. Care should also be taken to avoid any intrusion into the lives of individuals using the services.”*³

As such, an NHS provider has the discretion to decide whether or not to allow visits by politicians during a local election campaign. When considering whether to host a visit, **safety and operational considerations must come first** and guidance states that campaign visits should not disrupt services or care³.

In addition, **the same approach must be applied to all requests from all official candidates and political parties, irrespective of their size**. All requests from candidates to visit may be declined, but if they are allowed, then all requests should be accepted. If you do not plan to permit any campaign visits, it is worth considering formally advising all candidates and campaign groups in advance at the same time to ensure clear and consistent understanding.

Organisations may wish to engage with the prospective councillors in relevant wards whilst care should be taken to ensure that current councillors are not treated any differently. Again, we would recommend that all candidates and campaign groups are treated in the same way and any invitations or opportunities for engagement are extended to all parties. For example, if one party or campaign group makes an announcement on site, it would be advisable to ensure that all parties do so.

f) Foundation trust governor elections

In law, there is nothing to prevent foundation trust governor elections from taking place during the purdah period. In practice however, **it is best to avoid holding governor elections during this period**.

Providers should avoid activities that may be seen to favour one political party or another, and given that foundation trusts have no control over what governors may say in their election statements, at hustings or elsewhere they cannot guarantee a politically neutral outcome. What might be deemed to be party political can be quite broad – outsourcing, for example, might be associated more with one party than

with others. Similarly, while governor elections have for the most part not become party political events there is nothing in law to prevent them from becoming so.

Our best advice therefore is not to hold governor elections during the purdah period. However if elections are already underway and there is no sensible opportunity to put the election 'on hold' we would suggest that they continue. In those circumstances organisations will need to ensure that candidates do nothing that could be construed as politically biased. If candidates for governor elections are also standing for election as a councillor it will not be feasible to proceed with governor elections.

For further information relating to governor elections please contact John Coutts, governance advisor: john.coutts@nhsproviders.org or 0207 304 6875.

g) Activism onsite or by individual staff or governors

NHS employees and FT governors are free to undertake political activism and public debate in a personal capacity. They should, however, avoid involving their organisation or creating any impression of their organisation's involvement. They are not permitted to use any official premises, equipment (including uniforms) or information they would only have access to through their work and which is not publically available. Naturally, patient confidentiality must be preserved at all times and normal professional conduct and contractual rules apply as usual in this respect.

Especially given the prevalence of social media and the balancing act people perform in presenting their personal and professional lives and views, it becomes easier to blur or mistake the capacity within which individuals are contributing online. At all times every effort should be made to preserve public professional neutrality while not inhibiting personal activity.

h) Voter registration, postal votes and proxy votes

It might be helpful to advise staff on the trust's provisions for postal and proxy voting to support those – both staff, patients, service users and their families – who may not be able to go to their polling station on the day. National advice is available here: <https://www.gov.uk/register-to-vote>.

We would advise that **NHS staff and trusts should not undertake any voter registration or proxy or postal voting activity for those in their care** to avoid any possible concern being raised about inappropriate influence.

i) Trade union activities and engagement

Trade unions may be active during the election campaigning on issues concerning their members. All organisations will have existing relationships, channels and protocols for working effectively with trade unions and these should be used as normal. Nevertheless, given the importance of NHS organisations preserving their neutrality, it is worth considering **itemising the local elections and referendum for discussion at an imminent meeting**.

5) Sharing this briefing within your organisation

We suggest NHS providers share this briefing and/or its specific pre-election planning with all staff and stakeholders who may find it useful to be aware of the steps you are taking.

References

¹ *Local Government Act 1986*. Available at: <http://www.legislation.gov.uk/ukpga/1986/10/section/2>

² *Recommended code of practice for local authority publicity* (2011). Available at: <https://www.gov.uk/government/publications/recommended-code-of-practice-for-local-authority-publicity>

³ *Cabinet Office: Election guidance for civil servants* (2016). Available at: <https://www.gov.uk/government/publications/election-guidance-for-civil-servants>