

## 2023 local elections: 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 leading up to the 2023 local government elections. It highlights the practical implications around providers' activities, including in relation to integrated care systems (ICSs), and with regard to communication during the pre-election period. It also covers the requirements on central and local government, the civil service and arm's length bodies during the pre-election period 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.

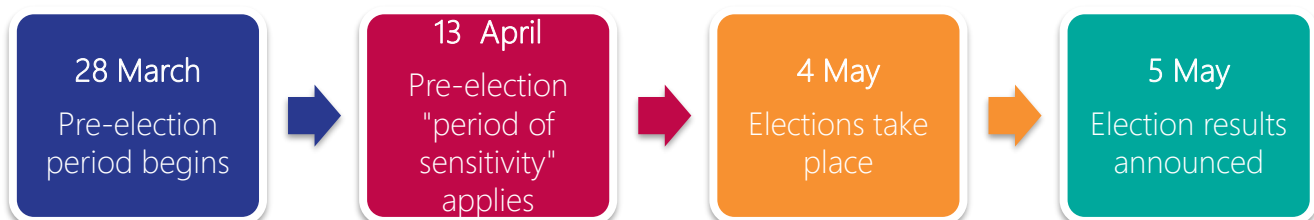
Should you have any questions, please contact Izzy Allen ([izzy.allen@nhsproviders.org](mailto:izzy.allen@nhsproviders.org)) if your query relates organisational governance or foundation trust governors, or Kerry Racher ([kerry.racher@nhsproviders.org](mailto:kerry.racher@nhsproviders.org)) for all other queries.

### 1) Elections taking place in May 2023

On 4 May 2023, local elections will take place in certain areas of the country. Details of local authorities holding elections this year can be accessed here:

<https://www.gov.uk/government/publications/election-timetable-in-england/election-timetable-in-england>

### 2) Local election timetable



### 3) What is the pre-election period?

The term 'pre-election period' is used across central and local government to describe the period of time immediately before elections or a referendum when specific restrictions on the activity of civil

servants and local government officials, where appropriate, are in place. This period prevents announcements from and activities by public bodies which could influence or be seen to influence the election. The term 'purdah' is also sometimes used to describe this time.

## 4) When does the pre-election commence?

The pre-election period applies to local authorities from the local publication of the notice of election; this must take place by **27 March 2023** at the latest. There is then a "period of sensitivity" that applies to the national government in the three weeks leading up to the local elections, that is, from **13 April**.

## 5) Rules and regulations during the pre-election period

The behaviour of central government, elected officials, civil servants and arm's length bodies during the pre-election period is governed by the:

- Local Government Act 1986<sup>1</sup>
- 2011 Code Recommended Practice on Local Authority Publicity<sup>2</sup>
- Cabinet Office guidance on conduct for civil servants<sup>3</sup>

Details of how these are applied are set out below.

### Local authorities

Although the ordinary functions of councils should continue during the pre-election period, some restrictions do apply, by law, to all councillors and officers. The restrictions on local government during the pre-election period are governed by Section 2 of the Local Government Act 1986.<sup>1</sup> 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 Publicity<sup>2</sup> provides guidance for local government on communications during the pre-election period. It recommends that all

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

<sup>2</sup>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>

<sup>3</sup> Cabinet Office: Election guidance for civil servants <https://www.gov.uk/government/publications/election-guidance-for-civil-servants/may-2023-elections-guidance-on-conduct-for-civil-servants>

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 2023 local elections, government ministers will continue to carry out their functions as usual 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 13 April 2023. To support civil servants in UK government departments and the staff and members of non-departmental public bodies and arm's length bodies during the pre-election period and the period of sensitivity in particular, the Cabinet Office has issued specific guidance.<sup>4</sup> 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 these elections?

The delivery of public services in partnership with NHS bodies, and the delivery of public health and social care services by local authorities, will often sit at the heart local debate. As such, it is important that NHS providers follow the custom and practice of the pre-election period to avoid any impression of influencing the local election process or its outcomes.

## 6) Practical considerations for NHS foundation trusts and trusts during the pre-election period

### 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 trusts 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:

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<sup>4</sup> <https://www.gov.uk/government/publications/election-guidance-for-civil-servants/may-2023-elections-guidance-on-conduct-for-civil-servants>

- 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 pre-election 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 need to continue during the pre-election period.** NHS England, for example, is not expected to alter the dates on which it expects information from providers. Where a board discussion or sign off is required, there is no problem with holding a board meeting.

Where a board meeting needs 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 pre-election 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 the pre-election period commencing. After the pre-election period 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 the pre-election period.** Those already in progress should continue, but it is advisable to extend the period to take account of the pre-election period 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 the pre-election period. 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 publicly 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 which local and national stakeholders it would be helpful to share information with (both in advance and in the event of any issues arising) in the local system and other NHS and regulatory organisations.

#### **e) Political visits and engagement**

The Cabinet Office guidance on the pre-election period 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.”

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 care.<sup>5</sup>

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 pre-election 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 any given political party, and given that foundation trusts have no control over what governors may say in their election statements, at

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<sup>5</sup> Cabinet Office: Election guidance for civil servants <https://www.gov.uk/government/publications/election-guidance-for-civil-servants/may-2023-elections-guidance-on-conduct-for-civil-servants>

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 pre-election 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 seek 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 Izzy Allen, senior policy advisor (governance): [izzy.allen@nhsproviders.org](mailto:izzy.allen@nhsproviders.org).

### **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 publicly 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 ID, voter registration, postal votes and proxy votes**

From 4 May 2023, voters in England will need to show photo ID to vote at polling stations in some elections. This will apply to:

- Local elections
- Police and Crime Commissioner elections
- UK parliamentary by-elections
- Recall petitions.

From October 2023 it will also apply to UK general elections.

Those without an accepted form of photo ID, can apply for a free voter ID document, which is known as a **Voter Authority Certificate**. Those voting by post won't need ID to do so.

It might be helpful to advise staff on the trust's provisions for postal and proxy voting to support those – whether 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>.

If someone nominates a proxy, the nominee will need to show their own photo ID to cast the vote. They will not need to show the voter's ID.

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, particularly this year with negotiations around pay ongoing and possible industrial action taking place during the pre-election period. 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**.

## **7) Sharing this briefing within your organisation**

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