

# Purdah: publicity considerations for public bodies, including the health service in the pre-election period

What is Purdah? 'Purdah' is a term which refers to the pre-election period when specific restrictions apply principally around the activity of those working in central and local government.

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## What is purdah?

'Purdah' is a term which refers to the pre-election period when specific restrictions apply principally around the activity of those working in central and local government. Its purpose is to prevent announcements and activities by public bodies which could influence or be seen to influence the election.

Purdah is not regulated by statute but governed by conventions based largely on the Civil Service Code. The Civil Service Code is a code of conduct published by the Minister for the Civil Service under section 5 of the Constitutional Reform and Governance Act 2010. It commits civil servants to upholding the core Civil Service values of integrity, honesty, objectivity and impartiality and forms part of their terms and conditions of service.

## When is purdah?

The Fixed Term Parliament Act 2011 removed the prerogative power of the Queen (on the advice of the Prime Minister) to dissolve parliament and trigger a general election. The Act set the date of the first general election under the new fixed term arrangements on 7 May 2015 and thereafter on the first Thursday in May in every fifth year. The next election was therefore scheduled to take place on 7 May 2020.

However, parliament has voted to dis-apply those provisions and to call an early general election. The Early Parliamentary General Election Act 2019, which achieved royal assent on 31 October 2019 and came into force the same day, provides for an early parliamentary general election to take place on 12 December 2019.

Purdah commenced when Parliament was dissolved at 00:01 on 6 November 2019 and will run until the end of polling day. However, in the event that the public return a hung parliament, with no party enjoying an overall majority in the House of Commons, then Purdah will likely continue until a new government is formed.

## Who is caught by it?

Primarily, it applies to civil servants, ministers and MPs (note that in this context, executive agencies like Public Health England are treated as part of Central Government).

Whilst it does not apply directly to non-departmental public bodies (like Clinical Commissioning Groups (CCGs)) [General Election Guidance](#) published by the Cabinet Office earlier this week provides that:

*“NDPBs and other arm’s length public sector bodies do spend public money and make public announcements, use government property and some employ civil servants. The general principles and conventions set out in [the] guidance apply to the board members and staff of all NDPBs and similar public bodies.*

*... Decisions on individual matters are for the bodies concerned in consultation with their sponsor department who will wish to consider whether proposed activities could reflect adversely on the work or reputation of the NDPB or public body in question.”*

Guidance issued by NHS Improvement and NHS England in the run up to the 2018 local elections confirms that Cabinet Office guidance to civil servants:

*“will also apply to NHS Improvement, NHS England and other ALBs. The guidance does not formally apply directly to local NHS organisation, but you are strongly encouraged to abide by its general principles.”*

## What can and can’t happen in purdah?

Unfortunately, what is and is not permitted within purdah is nowhere exhaustively defined. In essence, for Central Government, ministers and civil servants will continue to take decisions on a 'business as usual' basis. However, decisions will not be taken, or new policies announced, if they are, or may be, politically contentious.

The Cabinet Office General Election Guidance describes the remit of purdah:

*“During the election period, the Government retains its responsibility to govern, and Ministers remain in charge of their departments. Essential business (which includes routine business necessary to ensure the continued smooth functioning of government and public services) must be allowed to continue. However, it is customary for Ministers to observe discretion in initiating any new action of a continuing or long term character. Decisions on matters of policy on which a new government might be expected to want the opportunity to take a different view from the present government should be postponed until after the election, provided that such postponement would not be detrimental to the national interest or wasteful of public money.”*

Where there is any doubt about whether purdah applies, it will generally be resolved in favour of delaying that action until after the election.

## What does it mean for the wider public sector?

The Cabinet Office General Election Guidance makes the rules for Central Government, ministers and civil servants clear.

In the run up to the local and EU elections earlier this year both NHS England and NHS Providers published guidance for NHS bodies including CCGs, trusts and other NHS organisations. We expect similar guidance to be issued shortly and that any such guidance will follow the principles set down by the Cabinet Office.

The main considerations for central government and for bodies across the wider public sector are:

- Avoid undertaking any activity that could be considered politically controversial or influential, or that could give rise to criticism that public resources are being used for party political / campaigning purposes.
- Defer announcements of significant expenditure unless such postponement would be detrimental to the public interest or wasteful of public money.
- Respond to requests for information from candidate MPs in accordance with the Freedom of Information Act 2000 (FOIA). When dealing with other FOIA requests, or the publication of information required in the public interest, requests should continue to be considered and responded to but no press release or similar should be published and any public comment should be purely factual.
- Consider whether you will allow visits from all your local prospective candidates / local political parties / campaign groups and what format such visits will take. It is your decision whether to invite them or not. If you do, remember to keep your policy around visits consistent and impartial.
- Letters from MPs should be answered in the normal way, but be aware that letters are more likely to be published / politicised. Keep responses as factual as possible.
- Media questions should be responded to in a factual way, and where possible with reference to already published information.
- Regular, planned meetings (i.e. board meetings) can continue, but avoid discussing politically contentious issues.
- Public consultations should not be launched, unless it is essential, and any existing processes should have meetings deferred wherever possible, unless deferral would be detrimental to the public interest or a waste of public money.

- If a consultation has already begun, consider extending the period for responses until after polling day, and avoid publicising it in the meantime.
- Public talks can continue, but avoid covering politically contentious issues and avoid Q&A sessions for that reason.
- Discontinue news tickers, blogs and similar publications for the duration of the election period.

Essentially, during these periods, communications either in the form of announcements or activities should be avoided if they could influence, or be regarded as influencing, the outcome of the General Election.

## Next steps and how we can help

Public bodies should identify any projects or planned activities which could be affected by purdah and make plans now for dealing with these issues.

Once organisations have identified which projects or planned activity might be affected, and where there are genuine arguments that the activity should continue notwithstanding purdah restrictions, we would recommend that guidance is sought from the Cabinet Office / relevant parent government department / NHS England as appropriate. Alternatively, the team at Browne Jacobson are experts in advising bodies across the public sector and would be happy to provide advice.

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