

Codes of Practice on spending by candidates and political parties at elections to the Scottish Parliament: a consultation | Electoral Commission Search

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This consultation closed on 15 July 2020. We will consider the responses we received and publish our response soon.

Introduction

Elections legislation enables us to prepare Codes of Practice about election spending for political parties and candidates. We have previously drafted and consulted on Codes of Practice for elections that fall within the remit of UK Parliament and the Senedd in Wales. The Scottish Elections (Reform) Bill, currently going through the Scottish Parliament, will after Royal Assent extend our powers to make candidate Codes for devolved Scottish elections. A Code of Practice is a statutory document that provides detailed practical guidance on how to comply with legal obligations. Our aims in preparing the Codes are: to provide guidance for candidates, their agents and political parties about what items of spending count towards the spending limits and are to be reported to provide enhanced clarity to political parties and candidates about when spending (including notional spending) should be in a candidate return and when it should be in a party return to ensure that there is clarity and consistency in the reporting of spending, including digital campaigning by parties and candidates The Codes we are consulting on will apply to elections to the Scottish Parliament. These Codes set out what is and isn't included in the categories of spending for elections that are listed in the legislation. The Codes also allow us to give guidance on the cases and circumstances when spending will be regarded as for the purposes of a candidate's election. Once finalised, the Codes will be presented to Scottish Ministers for approval (with or without modification), before being laid before the Scottish Parliament for approval. When in force, political parties and candidates must have regard to the Codes, particularly when organising their campaigns and when completing their spending returns after an election. Following the Codes will provide parties and candidates with a statutory defence. We would welcome views on the draft Codes. We invite comment in particular from those who will need to have regard to the Codes once in force.

What this consultation is for

Codes of practice for Scottish Parliament elections

We have the power under Schedule 8, paragraph 3 Political Parties, Elections and Referendums Act (PPERA) 2000, to prepare a Code for political parties on what does and does not fall in Part 1 of that Schedule. The Scottish Elections (Reform) Bill, currently going through the Scottish Parliament will, once law, provide the Commission with the power to draft a Code of Practice for candidates at devolved Scottish elections. To ensure that our aims in preparing the Codes are achieved, we are consulting with Scottish Government, political parties and other stakeholders from across the electoral community. Once the consultation process is completed and we have made any necessary changes to the Codes, they will be presented to Scottish Ministers for approval, and then will be laid before the Scottish Parliament. The Codes we are currently consulting on are for elections to the Scottish Parliament and will not apply to other elections.

Other Codes of Practice and consultations

We have previously prepared Codes of Practice for political parties and candidates for UK Parliamentary elections and other elections that fall under the remit of UK Parliament. We have also consulted on Codes for elections under the remit of the Senedd in Wales. These Scottish Codes have been drafted taking account of the

consultation responses and feedback we received from Governments, political parties and other stakeholders, in our previous consultations. Our aim is to ensure that the Codes are applied consistently, so far as possible, in elections across GB and Northern Ireland.

Explaining the Codes of Practice

How election spending works

Spending by parties and candidates in the lead up to elections is regulated. The law places separate limits on how much candidates and parties can spend on campaigning. There are also controls on who can incur and pay for spending to make sure election spending is within the legal limits. Candidates at an election to the Scottish Parliament can stand as a candidate in a constituency, or as a candidate on a regional list, or they can do both if the constituency is located within the region where they are standing. Candidates that stand in a constituency and on a regional list are known as 'dual candidates'. Campaign spending promoting the regional list candidates counts towards the party campaign spending limit and must be reported in the party return. Spending promoting the constituency candidate counts toward the separate candidate limit. There may be some instances where campaign material promotes both the regional list candidates and a constituency candidate. In these instances, campaign spending may need to be split between the candidate return and the party return. Sometimes candidates make use of items their supporters (such as their party or a non-party campaigner) have transferred or made available to them at less than market value. The law requires an amount to be treated as spending by the candidate. This is called 'notional spending'. A candidate's notional spending must be included in their spending return. A similar rule applies to parties. A party's notional spending must be reported in the party return. Parties and candidates are required to report spending within certain categories. These categories are set out in the legislation. Some of the categories for parties and candidates are the same and some are different. For example both sets of rules include categories called 'advertising' and 'unsolicited material'. However, the rules for political parties have additional separate categories for 'party political broadcasts' and 'manifestos'.

What the Codes do

The Codes set out what should be included in each category of spending, as well as listing what isn't included. The Codes are designed to give illustrative examples rather than an exhaustive list. In particular, the Codes seek to address:

- the circumstances when something should be in a candidate return and when something should be reported by a political party
- how to account for spending that promotes dual candidates (a candidate standing in both a constituency and in an electoral region)

Why we are making the Codes

In writing these Codes we have drawn on our experience of regulating elections and reviewing spending returns. We learnt a lot from the feedback we received on the UK and Welsh Codes. We asked parties about their experiences and incorporated their views. We want to gather more feedback through this consultation. The aim of the Codes is to ensure that the rules are as clear and comprehensive as possible. This should make it easier for candidates and parties to comply with the law. This will improve transparency, fairness, and consistency, and therefore improve public and campaigner confidence. For example: The Codes will promote consistency in reporting, so everyone knows what to expect in a spending return of a candidate or party. Parties and candidates should find it easier to comply with the law and this should make it easier for people to compare returns and spending, and check that the rules are being followed. In turn, this will increase transparency of election spending. Given the commentary around spending on digital campaigning at elections, the Codes are one way we are able to be clear where money spent on digital campaigning at elections should be reported. Since these are statutory Codes, having been approved by the Scottish Parliament, they will create an

enforceable framework of how election spending law will be applied. This strengthens the regulatory framework of spending at elections. Download the Codes The consultation We are seeking your views on whether we have achieved our stated aims. Please answer the questions in your consultation response. You are welcome to send us any comments you may have outside of the questions we have asked. The language in the Codes The Codes are a piece of statutory guidance. They will be laid before the Scottish Parliament. This means we need to use formal language. However we also want the Codes to be easy to read and understand. Deciding where to account for an item of spending Candidate spending and party spending The political party and candidate Codes are intended to give clear guidance as to what should be in a candidate spending return and what should be in a party spending return. The candidate Code explains when something is candidate spending. You can find this section on pages 9 to 12 of the candidate Code under the heading, "When will expenses be regarded as incurred for the purposes of a candidate's election?" This will help the candidate and their agent know what counts as candidate spending. It will also help parties with knowing what is not candidate spending, and needs to be reported as party spending. This will include any spending by the party to promote regional party list candidates. In elections to the Scottish Parliament, some campaign materials will encourage voters both to vote for a constituency candidate, and to vote for a political party in the regional elections using their second vote. Therefore, while some campaign activity can be regarded as used wholly for the purposes of the candidate's election in a constituency, in other circumstances the costs of campaign material will need to be split between the candidate and the party. The Codes will provide guidance on when to apportion costs between the two spending returns. Under our powers to draft Codes of Practice, we are limited in what we are able to include in the Codes about splitting spending between the candidate and party return. So we will provide further guidance on how to split spending alongside the Codes. The candidate Code also explains how to account for spending which promotes dual candidates (where a candidate stands both in a constituency, and on a regional party list). Examples in the Codes The draft Codes currently include specific examples for illustration purposes. These can be found set out in the boxes on pages 10 to 12 of the candidate Code and pages 9 to 10 of the party Code. Further comments We welcome any further comments that you may have in relation to the Codes. Related content Donations and loans Find out about donations and loans to a political party, individual or other organisation Party registration decisions View our decisions on political party names, descriptions and emblems View current applications View the political party names, descriptions and emblems which we are currently considering as part of our assessment process Registers of unincorporated associations Download and view the registers of unincorporated associations