

Codes of Practice on spending by candidates and political parties at elections to the National Assembly for Wales: a consultation | Electoral Commission    Search

Codes of Practice on spending by candidates and political parties at elections to the National Assembly for Wales: a consultation    You are in the Our consultations section Home   Our consultations On this page How to respond Introduction What this consultation is for Explaining the Codes of Practice Download the Codes The consultation First published: 25 October 2019 Last updated: 19 March 2020 How to respond This consultation closed on 31 January 2020. We will soon be publishing our consultation report.

Introduction Elections legislation enables the Commission to prepare Codes of Practice about election spending for political parties and candidates. 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 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. These Codes, once finalised, will be presented to the Minister for Housing and Local Government for approval (with or without modification), before being laid before the National Assembly for Wales for approval. These Codes will apply to elections to the National Assembly for Wales. 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 have previously drafted and consulted on Codes of Practice for elections that fall within the remit of UK Parliament. These Codes have been submitted to the Minister for Cabinet Office to approve and lay before Parliament. The Scottish Parliament has responsibility for the law on Scottish Parliament and Scottish local government elections, and separate Codes for those elections would be needed. The Electoral Commission will be drafting codes for elections to the Scottish Parliament and we will consult on those separately. We would welcome views on the draft Codes for National Assembly for Wales elections from candidates and political parties in Scotland. There are number of similarities between elections to both legislatures, and we would find any feedback from stakeholders in Scotland valuable. What this consultation is for We are the independent body which oversees elections and regulates political finance in the UK. . Codes of practice for National Assembly for Wales 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 Welsh Government intend to amend the National Assembly for Wales (Representation of the People) Order 2007, to provide us with the formal power to draft a Code of Practice for candidates. The purpose of this consultation is to seek views to ensure that our aims are achieved in making the Codes as clear and comprehensive as possible, and to promote consistency in reporting. As part of this work we will be consulting with 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 the Minister for Housing and Local Government, and then will be laid before the National Assembly for Wales. The Codes we are currently consulting on for National Assembly for Wales elections, will not apply to other elections. We are consulting on these Codes now to ensure that the Code of Practice for both parties and candidates can be in force for the National Assembly for Wales elections in May 2021. Other Codes of Practice and consultations We prepared Codes of Practice for parties and candidates for UK Parliamentary elections and other elections that fall under the remit of UK Parliament. We consulted on these Codes, published our response to that consultation and presented the codes to the Minister for the Constitution in July 2019. These UK Codes will apply to elections to the UK Parliament, the Northern Ireland Assembly, local elections in England and to other elections in some circumstances. Responses received during the UK Codes consultation were analysed and several suggestions incorporated into the final version of the Codes. This included feedback on: transparency of spending on digital campaigning; costs of items used at several elections and the treatment of overheads. This feedback has been reflected in the Codes for National Assembly for Wales elections, and due to the fragmented nature of electoral law, we hope this will provide some consistency for parties and candidates across the various Codes we will have made.

### 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 a National Assembly for Wales election 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 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 National Assembly for Wales, 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 below 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 National Assembly for Wales. 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

**What is candidate spending and what is 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 9-10 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 is 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 National Assembly for Wales, 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 Code

**The Codes** currently include specific examples for illustration purposes. These can be found set out in the boxes on pages 10 to 11. So we can keep these up to date with, for example, technological advances and changes to the way candidates and parties campaign, the example boxes do not form part of the Code. The examples are currently contained in the body of the Codes and, as such, in order for them to be updated, the Codes would

need to go back through the National Assembly for Wales approval process. The examples will therefore likely remain fixed, and will not be able to be updated over time. Alternatively, we could remove the examples boxes and put them in supporting guidance instead, which can be more easily updated as necessary. We intend that the text in the Codes, even without the example boxes, will give clear guidance on how to treat different types of expenditure. Further comments We welcome any further comments that you may have in relation to the Codes. Related content Consultation: Equality, Diversity and Inclusion Strategy Statutory consultation on guidance for Returning Officers: Assistance with voting for disabled people Draft guidance for Returning Officers: Assistance with voting for disabled voters (statutory consultation) Consultation response: Draft performance standards for Electoral Registration Officers Read the response to our draft performance standards for EROs consultation