

2019 General Election: pre election period considerations for NHS trusts and foundation trusts

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 2019 UK general election on 12 December. 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.

We suggest NHS foundation trusts and trusts 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.

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

1. General election timetable



2. What is purdah?

The term 'purdah' is used across central and local governments 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. So if no party gets an overall majority, purdah restrictions remain in place until a government is formed.

3. Rules and regulations covering this period

3.1 For the government

The Cabinet Office issues guidance for civil servants in UK departments on their role and conduct during election campaigns. The 2019 guidance is expected to be available shortly on the [Cabinet Office website](#), but the 2017 guidance sets out general principles:

- “The government retains its responsibility to govern, and ministers remain in charge of their departments. Essential business must be carried on. 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.”
- Civil servants should answer constituency correspondence from former MPs, avoiding individual cases becoming party political issues.
- Special advisers who will be involved in the campaign must first resign their appointments.

3.2 For NHS foundation trusts and trusts

There has been no recent official guidance for the NHS, but you might find the [2010 guidance from the Department of Health](#) useful. The NHS is central to a general election campaign, and this means that the custom and practice of *purdah* will be essential for NHS providers to adopt to avoid any impression of influencing the election or its outcomes.

In addition, the Lobbying Act 2014¹ sets out new rules for how charities and other civil society organisations can campaign in the lead up to national elections. These are designed to avoid campaign activity influencing voters, directly or indirectly. If a political party adopts policies that an organisation is already campaigning for, the organisation should not publicise the party’s or candidate’s support and should not alter or increase its campaigning activity as a result of that support.

¹ Full title: Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014

4. Practical considerations for NHS trusts and foundation trusts during the pre-election period

4.1 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 foundation trusts and 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:
 - 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

4.2 Board meetings and normal regulation

Normal business and regulation needs to continue during the purdah period. Routine reporting to regulators and stakeholders needs to continue. Where a board discussion or sign off is required, there is no problem with holding a board meeting. Indeed, if the purdah period is extended by post-election negotiations, good governance practice would dictate that board meetings take place.

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.

4.3 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.

4.4 Individual trusts 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. 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.

4.5 Local system working

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

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

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

4.6 Political visits and engagement

An NHS provider has the discretion to decide whether or not to allow visits by politicians during the election campaign. When considering whether to host a visit, **safety and operational considerations must come first** and previous guidance has said that campaign visits should not disrupt services or care.

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 in advance at the same time to ensure clear and consistent understanding.

Organisations may wish to engage with the prospective parliamentary candidates (PPCs) in relevant constituencies. It is important to remember that there are no MPs – care should be taken to ensure that former MPs are not treated any differently from PPCs. Again, we would recommend that all PPCs are treated in the same way and any invitations are extended to all parties. If one party makes an announcement on site, it would be advisable to ensure that all parties do so.

4.7 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 if possible**.

NHS foundation trusts and trusts 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.

We would therefore suggest that governor elections are not held during the purdah period, noting that the period only ends when a new government is formed (rather than after election day). It is therefore important not to schedule governor elections in the immediate aftermath of the general election.

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

4.8 Activism onsite or by individual staff

NHS employees 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.

4.9 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.

4.10 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 general election for discussion at an imminent meeting.**