

Codes of Practice on spending by candidates and political parties: a consultation

**The closing date for this consultation is Tuesday 4 December.
Responses should be sent to:**

Codes@electoralcommission.org.uk

September 2018

Summary

Elections legislation enables the Electoral 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.

The two Codes proposed in this consultation, one for candidate spending and the other for political party spending, will increase transparency in spending and reporting of expenses at elections. The Codes will help increase voter confidence in the system of political and election finance.

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 the Cabinet Office for approval (with or without modification) before being laid before the UK Parliament for approval. The Codes will apply to elections which the UK Parliament has legislative responsibility for.

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.

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 political party return
- To ensure that there is clarity and consistency in the reporting of spending, including digital campaigning by political parties and candidates.

The Scottish Parliament has responsibility for the law on Scottish Parliament and Scottish local government elections. The National Assembly for Wales has responsibility for the law on Assembly and Welsh local government elections. Where there is no combined regulatory period, separate Codes would be needed for any of those elections. We are currently discussing this with the Scottish Government and Welsh Government, to understand how this could work alongside their developing plans for electoral reforms. We would carry out separate consultations on those Codes.

How to respond

The consultation closes on **Tuesday 4 December**. You will find the consultation questions listed on page 7. Please send your answers and any other comments to:

Codes@electoralcommission.org.uk

Responses can also be submitted by post to:

Codes of Practice Consultation
The Electoral Commission
3 Bunhill Row
London EC1Y 8YZ

Responses can also be submitted by phone to Denise Bottom on 0207 271 0638.

1 What is this consultation for?

- 1.1 The Electoral Commission is the independent body which oversees elections and regulates political finance in the UK. We work to promote public confidence in the democratic process and ensure its integrity.
- 1.2 As part of our remit, the UK Parliament gave us the power to prepare guidance via statutory Codes of Practice on what is and isn't included in the categories of spending for candidates and political parties.
- 1.3 The power for the candidate Code is set out in Schedule 4A of the Representation of the People Act 1983 (RPA). A similar power to prepare a Code for political parties is in Schedule 8 of the Political parties, Elections and Referendum Act 2000 (PPERA).
- 1.4 Under these powers we have prepared a Code for candidates and a Code for parties which are annexed to this document.
- 1.5 This consultation on the proposed Codes seeks views to ensure they are as clear and comprehensive as possible and to promote consistency in reporting. Once the consultation process is completed and we have made any necessary changes to the Codes, these will be presented to the Minister for the Cabinet Office and then be laid before Parliament.

2 What are the Codes of Practice?

How does election spending work?

- 2.1 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.
- 2.2 After a general election, parties must report their campaign spending to us and candidates must declare their spending to Returning Officers. Campaign spending either directly or indirectly promotes the candidate or the party, however there are instances where the same campaign activity promotes both, so spending is split between the two returns.
- 2.3 There are also times when 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 and the law requires an amount to be treated as spending by the candidate. This is called notional spending. A candidate's notional spending must also be included in their spending return. A similar rule applies for political parties. A party's notional spending must be reported in the party return.
- 2.4 Parties and candidates are required to report spending that is 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 in addition have separate categories for 'party political broadcasts' and 'manifestos'.

What do the Codes do?

- 2.5 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.
- 2.6 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.
 - when and where spending on digital methods of campaigning should be reported.

- 2.7 The Codes are made within the scope of the legislative framework. We do not have the power to add extra categories of spending, only to outline what is covered by the current categories.

Why are we making Codes?

- 2.8 In writing these Codes we have drawn on our experience of regulating elections and reviewing spending returns. We have asked parties about their experiences and incorporated their views. We also want to gather more feedback through this consultation.
- 2.9 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. The results 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 political 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.
 - There is considerable 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.
- 2.10 Since the Codes will have statutory approval before being issued, they will create a clear expectation of how election spending law will be applied. This strengthens the regulatory framework of spending at elections.
- 2.11 We are only preparing Codes for political parties and candidates at this stage. Although we considered preparing a Code for non-party campaigners at this time, we have concluded that our usual way of providing guidance would be the best way to proceed in relation to the non-party campaigner rules at present.

Which elections will these Codes apply to?

- 2.12 Responsibilities for election law are either “reserved” or “devolved”. ‘Reserved’ means the UK Parliament has responsibility for making the law. These Codes will only apply to “reserved” elections. These Codes of Practice are prepared primarily in relation to United Kingdom Parliamentary general elections (UKPGE) and will also apply to a number of other elections.

- 2.13 The Code for political parties will apply in the following types of elections:
- UK parliamentary general elections
 - Northern Ireland Assembly elections
- 2.14 Where there is a regulated period in force for a UKPGE, this Code covers spending under s72 of PPERA at all relevant elections. This includes
- Combined Authority Mayoral elections
 - Greater London Authority elections
 - Mayoral elections in England
 - Local elections in England
 - Police and Crime Commissioner elections
 - Local elections in Scotland
 - Local elections in Wales
 - Any by-election
- 2.15 Where there is a combined regulated period in operation under Schedule 9 of PPERA the following elections will also be covered by this Code:
- Scottish Parliament
 - National Assembly for Wales
- 2.16 The Code for candidates will apply in the following types of elections:
- UK parliamentary general elections
 - Northern Ireland Assembly elections
 - Combined Authority Mayoral elections
 - Greater London Authority elections
 - Mayoral elections in England
 - Local elections in England
 - Police and Crime Commissioner elections (to be confirmed)
 - By-elections in any of the above
- 2.17 Responsibility for the law on Scottish Parliament and Scottish local government elections rests with the Scottish Parliament. The National Assembly for Wales has responsibility for the law on Assembly and Welsh local government elections. Responsibility for the rules on these elections is 'devolved'.
- 2.18 Where there is no combined regulatory period in operation under Schedule 9 of PPERA, separate Codes would be needed for any of those elections. We are currently discussing this with the Scottish Government and Welsh Government, to understand how this could work alongside their developing plans for electoral reforms. We would carry out separate consultations on those Codes, and also feed in learning from this consultation exercise.

3 Consultation questions

- 3.1 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

- 3.2 The Codes are a piece of statutory guidance. They will be laid before Parliament. This means we need to use formal language. However we also want the Codes to be easy to read and understand. We have tried to strike a balance between the formality required for a statutory document and language that is easy to understand.

Questions:

Q1. Are the Codes easy to understand? Are there any parts of the Codes that could be made easier to read?

The costs of digital campaigning

- 3.3 The legal categories of spending were made by Parliament in a time where spending on digital advertising and campaign spending happened at a much lower level. Nevertheless the current categories do cover lots of types of spending on digital campaign methods.
- 3.4 We want to provide examples in these Codes. We have used language that is descriptive rather than using terms that are popular now when we talk about spending on digital activities. This is so the Codes can adapt to future changes in language and don't need constant updating.
- 3.5 We recently published a report on the growth in spending on digital campaigning at elections and referendums. In that report¹ we said the Codes would provide clarity on the reporting of spending on digital activities.

Questions:

Q2. Do the Codes cover all the types of spending on digital campaigning at elections?

Q3. Do you have any suggestions for improving the descriptive language in the Codes so it will better cover possible future developments in technology?

¹ [Digital campaigning: Increasing transparency for voters](#), June 2018, Electoral Commission

Deciding where to account for an item of spending

What is candidate spending and what is party spending?

- 3.6 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.
- 3.7 The candidate Code covers cases and circumstances where something is candidate spending. You can find this section on pages 19-20 of the candidate Code under the heading, 'When will spending on an item be regarded as incurred for the purposes of a candidate's election?'
- 3.8 This is to assist in making a decision where there is uncertainty as to whether something is candidate or party spending. It will help with deciding which return and spending limit something should be reported against.

Questions:

Q4. Do the Codes make it clear which spending return should be used to report different items of spending?

Q5. Will the Codes have any other consequences for the candidate and party spending rules?

Q6. Can you suggest examples of cases and circumstances that should be considered for inclusion in the Codes?

Which category should be used to report an item of spending?

- 3.9 The legislation gives a list of categories of spending that must be reported. The Codes describe what should be included under each category in a spending return.
- 3.10 Sometimes an item of spending might look like it could be included within one or two categories.
- 3.11 For example, where a party has used data about voters to send them material. The costs of getting and analysing that data need to be reported. The costs could be included under either 'advertising' or 'unsolicited material'.
- 3.12 The Codes set out that this cost should be included under unsolicited material. This is intended to give clarity and consistency in reporting.

Questions:

Q7. Does the candidate Code make it clear which category of spending should be used to report an item of spending?

Q8. Does the political party Code make it clear which category of spending should be used to report an item of spending?

Q9. Do you have any comments about how the Codes advise on which category should be used in the situation where two categories are relevant?

Overheads

3.13 The Codes give examples of overhead costs that are directly connected with carrying out campaign activities, such as electricity, phone and accommodation costs.

- The candidate Code has a separate heading for accommodation and administrative costs. This mirrors the way the legislation is set out with a specific category for those costs.
- The political party Code says that a proportion of the costs should be reported under the relevant category of spending. This is because that legislation does not have a separate category for those costs.

Questions:

Q10. Do you have any comments about how the Codes deal with overhead costs?

Further comments

3.14 We welcome any further comments that you may have in relation to the Codes

Questions:

Q11. Do you have any suggestions for other kinds of spending that should be included in more depth under the category headings?

Q12. Do you have any comments on the content, structure or language used in the Codes?

Q13. Are there any further comments you would like to make about the Codes?