



Department for
Communities and
Local Government

Protecting the independent press from unfair competition

Consultation

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Summary of the consultation

What are we proposing?

Topic of this consultation:	Protecting the independent press from unfair competition.
Scope of this consultation:	This consultation sets out the government's proposals to provide the Secretary of State with powers to make directions requiring compliance with some or all of the Publicity Code's recommendations.
Geographical scope:	England.
Impact Assessment:	The Impact Assessment for the Code of Recommended Practice on Local Authority Publicity is available at: https://www.gov.uk/government/publications/local-council-publicity-code-impact-assessment

Why are we consulting?

Getting to this stage:	<p>In March 2011, following consultation, a new Publicity Code was introduced.</p> <p>The Department's latest Structural Reform Plan states that we will 'Give greater force to the Code of Recommended Practice on Local Authority Publicity by putting compliance with the Code on a statutory basis'.</p> <p>The Code of Recommended Practice on Local Authority Publicity is attached at Annex A.</p> <p>The Department's Structural Reform Plan is available here: https://www.gov.uk/government/publications/dclg-business-plan-2012-to-2015</p> <p>The government's Mid-Term Review restated the commitment to put counties, cities, towns, villages, neighbourhoods and citizens in control of their own affairs. Accountability is a central part of that process.</p>
Previous engagement:	<p>The Department consulted on changes to the Code of Recommended Practice on Local Authority Publicity in 2010. The consultation document is available here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8534/1727384.pdf</p> <p>The government's response is available here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8535/1841152.pdf</p>

Who are we consulting and how to respond?

To:	We are consulting the Local Government Association and the National Association of Local Councils. This document is also available on the Department for Communities and Local Government web site at https://www.gov.uk/dclg and we will be drawing it to the attention of all principal councils in England, the Newspaper Society and local newspapers. It is open to all to make representations on the proposals, which will be carefully considered.
Body responsible for the consultation:	The Department for Communities and Local Government is responsible for the leading on the policy and the consultation exercise.
Duration:	4 weeks.
Enquiries and how to respond:	<p>For enquiries and to respond to this consultation, please email</p> <p>mark.coram@communities.gsi.gov.uk</p> <p>by no later than 6 May 2013.</p> <p>When responding, please ensure you use the words “Publicity Code consultation 2013” in the e mail subject line. Responses should be received by no later than 6 May 2013.</p> <p>Alternatively you can write to:</p> <p>Mark Coram Publicity Code Consultation Council Conduct and Constitutions Team Department for Communities and Local Government 3/J1 Eland House Bressenden Place London SW1E 5DU</p>
Compliance with the Code of Practice on Consultation:	This will be a 4 week consultation, from 8 April 2013 to 6 May 2013.

Introduction

1. The government is consulting on proposals to protect the independent press from unfair competition by introducing legislation providing the Secretary of State with powers to make directions requiring one or more local authorities to comply with some or all of the Code of Recommended Practice on Local Authority Publicity's (the "Publicity Code's") recommendations.

The Publicity Code

2. Section 4 of the Local Government Act 1986 provides that the Secretary of State may issue codes of recommended practice on local authority publicity. That section also provides that local authorities must have regard to any such code that is applicable to them when taking decisions on publicity.
3. On 31 March 2011 the Secretary of State issued a new Publicity Code, a copy of which is at the Annex to this paper. This Code replaced earlier Publicity Codes that were applicable to local authorities in England. It was issued after both Houses of Parliament had approved a draft of the new Code, this draft being prepared following a public consultation initiated in September 2010, and reflecting recommendations of the Communities and Local Government Select Committee's Inquiry into the Publicity Code undertaken during the first Session of this Parliament.
4. The new Publicity Code applies to all local authorities in England specified in section 6 of the 1986 Act, and to other authorities in England which have that provision applied to them by other legislation. These local and other authorities include county and district councils in England, London Borough councils, parish and town councils, national parks authorities, the Broads Authority, and the Manchester Combined Authority.
5. The origin of this new Publicity Code is the Coalition Agreement, 'Our Programme for Government', commitment for the government to "impose tougher rules to stop unfair competition by local authority newspapers" and the general election manifestoes of both Coalition parties. Such unfair competition, funded by the local taxpayer, can prove damaging to the continued sustainability of local, independent, commercial newspapers that are an important element of effective local democracy.
6. The new Publicity Code therefore, includes specific guidance about the frequency, content and appearance of local authority newspapers, including recommending that principal local authorities limit the publication of any newspaper to once a quarter and parish and town councils limit their news letters etc. to once a month. The new Code also represented a major reshaping of the earlier Codes, for clarity grouping the guidance under 7 principles. These principles are that local authority publicity should be lawful, cost effective, objective, even-handed, appropriate, have regard to equality and diversity, and be issued with care during periods of heightened sensitivity.

7. Underpinning this new Publicity Code is the recognition both that good, effective publicity aimed at improving public awareness of a council's activities is entirely acceptable, and that publicity is a sensitive matter because of the impact it can have and the costs associated with it. It equally reflects the government's view that local authorities should focus their resources on frontline services, reducing resources expended on publicity such as newspapers, and above all that it is wholly inappropriate for taxpayers' money to be used to pay for material that could be perceived as political or competing with the independent press and media.

What we are proposing and why

8. Where local authorities comply with the recommendations of the Publicity Code, local taxpayers can be confident that any of their money spent by their council on publicity is being used appropriately; and local independent newspapers - important contributors to sustaining a vibrant local democracy - will not be at risk through unfair, taxpayer funded, competition. Whilst the majority of local authorities comply fully with the Publicity Code's recommendations, it is a matter of concern to the government that there are still cases where this is not so - for example, continuing cases where there are weekly publications of council newspapers, or concerns about the political character of a council's publicity. Local taxpayers and electors should be able to be confident that the statutory framework for local government provides an effective safeguard against any council using taxpayers' money inappropriately or acting in a manner potentially damaging to others - the independent press - who have important roles in a democratic society.

Proposals for giving greater force to the Publicity Code

9. Accordingly, in the Structural Reform Plan for the Department for Communities and Local Government the Government has included a commitment to give greater force to the Publicity Code by putting compliance on a statutory basis. The Plan indicates the intention to introduce legislation providing the Secretary of State with a power to make a direction requiring compliance with some or all of the Publicity Code's recommendations to protect local commercial newspapers from unfair competition from municipal publications. To fulfil this commitment and intention, the government is proposing, at the next convenient legislative opportunity, to legislate as described below.
10. This legislation would provide the Secretary of State with powers to make directions requiring one or more local authorities to comply with one, some, or all of the Publicity Code's recommendations. It is proposed that a direction could apply to a single named authority, to a number of named authorities, to all authorities in a particular class, or to all authorities to which the Publicity Code applies. In this context the reference to authorities includes both local authorities and those other authorities to which the Publicity Code applies.
11. It is proposed that the Secretary of State would be able to issue any such direction whenever he considers it appropriate to do so. The Secretary of State may, for example, consider it appropriate to direct a particular council to comply with some

specific recommendation of the Publicity Code because from the information available to him he considers the authority is not, or there is a risk that it might not, comply with that recommendation, compliance which the Secretary of State considers important. Equally, the Secretary of State may for example issue a direction requiring all or a class of authorities to comply with one or more recommendations, compliance with which the Secretary of State considers to be particularly important.

12. It is envisaged that prior to issuing a direction, the Secretary of State would be required to give notice to the authority or authorities in question of his intention to issue a direction to them. This would give the authorities an opportunity to take any action they considered necessary to prepare for such a direction, or to make representations to the Secretary of State as to why in their opinion a direction should not be issued. In the case of a direction to all or a class of authorities, the notification could be given to such representatives of the authorities concerned as the Secretary of State considers appropriate.
13. A direction would be given in writing to the authority or authorities in question. The direction may, but need not, specify the time for compliance and / or the steps that the Secretary of State considers necessary for the authority or authorities to take in order to secure compliance with the Publicity Code recommendations concerned. A direction could be withdrawn by the Secretary of State. Where a direction applied to a category of authorities, the Secretary of State would take such steps as he considered necessary to bring it to the attention of the authorities concerned.
14. Once a direction had been issued, enforcement of any continued failure by an authority to comply with the recommendations concerned would be through any interested party obtaining a court order.

Questions

- **Views on the proposed legislation are invited, and in particular do consultees see the proposals as fully delivering the commitment to give greater force to the Publicity Code by putting compliance on a statutory basis?**
- **If there is alternative to the power of direction, how will this meet the aim of improved enforcement of the code?**
- **This consultation invites evidence of the circumstances where the code was not met and the implications of this on competition in local media**

Who we are consulting

15. We are consulting the Local Government Association and the National Association of Local Councils. This document is also available on the Department for Communities and Local Government web site at <https://www.gov.uk/dclg> and we will be drawing it to the attention of all principal councils in England, the Newspaper

Society and local newspapers. It is open to all to make representations on the proposals, which will be carefully considered.

16. Responses to this consultation must be received by 6 May 2013. A response form is attached at the end of this consultation document and is saved separately on the DCLG web site.

You can respond by e mail to:

mark.coram@communities.gsi.gov.uk

When responding, please ensure you use the words "Publicity Code consultation 2013" in the e mail subject line

Or write to:

Mark Coram
Publicity Code consultation
Council Conduct and Constitutions Team
Department for Communities and Local Government
3/J1 Eland House
Bressenden Place
London
SW1E 5DU

When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please give a summary of the people and organisations it represents and, where relevant, who else you have consulted in reaching your conclusions.

Additional copies

17. This consultation paper is available on the Department for Communities and Local Government website at <https://www.gov.uk/dclg>.

Confidentiality and data protection

18. Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).
19. If you want the information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act 2000, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could

explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, in itself, be regarded as binding on the department.

20. DCLG will process your personal data in accordance with the Data Protection Act 1998 and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. Individual responses will not be acknowledged unless specifically requested.
21. Your opinions are valuable to us. Thank you for taking the time to read this document and respond.
22. A copy of the consultation criteria from the Code of Practice on Consultation is at <https://www.gov.uk/government/publications/consultation-principles-guidance>. Are you satisfied that this consultation has followed these criteria? If not or you have any other observations about how we can improve the process please email:

consultationcoordinator@communities.gsi.gov.uk

or write to:

DCLG Consultation Co-ordinator
Zone 8/J6
Eland House, Bressenden Place
London
SW1E 5DU

Annex A: The Publicity Code

Communities and Local Government Circular 01/2011
Department for Communities and Local Government
Eland House, Bressenden Place, London SW1E 5DU

31 March 2011

CODE OF RECOMMENDED PRACTICE ON LOCAL AUTHORITY PUBLICITY

1. I am directed by the Secretary of State for Communities and Local Government to draw the attention of your authority to the annexed code of recommended practice on local authority publicity, which has been issued under section 4 of the Local Government Act 1986. It comes into force on 31 March 2011. On the same date the codes of practice issued on 15 August 1988 (Department of the Environment circular 20/88) and 2 April 2001 (Department of the Environment, Transport and the Regions circular 06/2001) are withdrawn in relation to local authorities in England.
2. The code has been prepared following consultation with such associations of local authorities as appeared to the Secretary of State to be concerned and such local authorities with whom consultation appeared to the Secretary of State to be desirable. A draft of the code has been laid before, and approved by a resolution of, each House of Parliament.

Signed

Paul Rowsell

A senior civil servant in the Department for Communities and Local Government

The Chief Executive –
County Councils in England
District Councils in England
London Borough Councils
The Council of the Isles of Scilly
Parish Clerks of Parish Councils in
England
The Town Clerk, City of London

The Chief Officer of the –
Metropolitan Police Authority
Police authorities established under section 3 of the
Police Act 1996
The London Fire and Emergency Planning
Authority
The Broads Authority
National Parks Authorities
Joint authorities under Pt 4 of the Local
Government Act 1985
The Manchester Combined Authority

THE CODE OF RECOMMENDED PRACTICE ON LOCAL AUTHORITY PUBLICITY

Introduction

1. This code applies to all local authorities in England specified in section 6 of the Local Government Act 1986 and to other authorities in England which have that provision applied to them by other legislation. Where the term “local authorities” is used in this code it should be taken as referring to both those categories of authority. References to “the Act” are to the Local Government Act 1986.
2. Local authorities are required by section 4(1) of the Act to have regard to the contents of this code in coming to any decision on publicity. Section 6 of the Act defines publicity as “any communication in whatever form, addressed to the public at large or a section of the public”. The code therefore applies in relation to all decisions by local authorities relating to paid advertising and leaflet campaigns, publication of free newspapers and newsheets and maintenance of websites – including the hosting of material which is created by third parties.
3. Nothing in this code overrides the prohibition by section 2 of the Act on the publication by local authorities of material which in whole or in part appears to be designed to affect public support for a political party. Paragraphs 21 to 24 offer some guidance for local authorities on the management of publicity which may contain or have links to party political material.

Principles

4. Publicity by local authorities should:-
 - be lawful
 - be cost effective
 - be objective
 - be even-handed
 - be appropriate
 - have regard to equality and diversity
 - be issued with care during periods of heightened sensitivity

Lawfulness

5. Local authorities should ensure that publicity complies with all applicable statutory provisions. Paid-for advertising must comply with the Advertising Standards Authority’s Advertising Codes.

6. Part 3 of the Communications Act 2003 prohibits political advertising on television or radio. Local authorities must ensure that their publicity does not breach these restrictions.
7. Section 125 of the Political Parties, Elections and Referendums Act 2000 places a specific restriction on the publication by a local authority of material relating to a referendum under Part 7 of that Act, during the period of 28 days immediately before the referendum is held.
8. Regulation 5 of the Local Authorities (Conduct of Referendums) (England) Regulations 2007 (S.I. 2007/2089) prohibits local authorities from publishing material in the 28 days immediately before a referendum which expresses support for, or opposition to a particular answer to a referendum question relating to the constitutional arrangements of the authority.
9. Regulation 15 of the Local Authorities (Referendums, Petitions and Directions) (England) Regulations 2000 (S.I. 2000/2852) prohibits local authorities from incurring expenditure to publish material which appears designed to influence people in deciding whether or not to sign a petition relating to the constitutional arrangements of the authority, or to assist others to publish such material.

Cost effectiveness

10. In relation to all publicity, local authorities should be able to confirm that consideration has been given to the value for money that is being achieved, including taking into account any loss of potential revenue arising from the use of local authority-owned facilities to host authority publicity.
11. In some circumstances it will be difficult to quantify value for money, for example where the publicity promotes a local amenity which is free to use. In such a case authorities should be able to show that they have given thought to alternative means of promoting the amenity and satisfied themselves that the means of publicity chosen is the most appropriate.
12. If another public authority, such as central government, has issued publicity on a particular topic, local authorities should incur expenditure on issuing publicity on the same matter only if they consider that additional value is achieved by the duplication of that publicity. Additional value might be achieved if locally produced publicity gives a local context to national issues.
13. The purchase of advertising space should not be used as a method of subsidising voluntary, public or commercial organisations.
14. Local authorities should consider whether it is appropriate to seek advice from economic analysts, public relations experts or other sources of expert advice before embarking on a publicity campaign involving very large expenditure.

Objectivity

15. Local authorities should ensure that publicity relating to policies and proposals from central government is balanced and factually accurate. Such publicity may set out the local authority's views and reasons for holding those views, but should avoid anything likely to be perceived by readers as constituting a political statement, or being a commentary on contentious areas of public policy.
16. Any publicity describing the council's policies and aims should be as objective as possible, concentrating on the facts or explanation or both. Local authorities should not use public funds to mount publicity campaigns whose primary purpose is to persuade the public to hold a particular view on a question of policy. It is acceptable for local authority publicity to correct erroneous material which has been published by other parties, despite the fact that the material being corrected may have been published with the intention of influencing the public's opinions about the policies of the authority. Such publicity should seek to explain the facts in an objective manner.
17. Where paid-for advertising is used by local authorities, it should be clearly identified as being advertising. Paid-for advertising, including advertisements for the recruitment of staff, should not be used in any publication owned or controlled by a political party.
18. Advertisements for the recruitment of staff should reflect the tradition of political impartiality of local authority employees and should not (except in the case of advertisements relating to the appointment of staff pursuant to section 9 of the Local Government and Housing Act 1989 (assistants for political groups)) refer to any political activities or affiliations of candidates.

Even-handedness

19. Where local authority publicity addresses matters of political controversy it should seek to present the different positions in relation to the issue in question in a fair manner.
20. Other than in the circumstances described in paragraph 34 of this code, it is acceptable for local authorities to publicise the work done by individual members of the authority, and to present the views of those individuals on local issues. This might be appropriate, for example, when one councillor has been the "face" of a particular campaign. If views expressed by or attributed to individual councillors do not reflect the views of the local authority itself, such publicity should make this fact clear.
21. It is acceptable for local authorities to host publicity prepared by third parties – for example an authority may host a blog authored by members of the authority or a public forum on which members of the public may leave comments. Maintenance by a local authority of a website permitting the posting of material by third parties constitutes a continuing act of publication by that local authority which must accordingly have a system for moderating and removing any unacceptable material.

22. It is generally acceptable for local authorities to host publicity, such as a blog, which itself contains links to external sites over which the local authority has no control where the content of those sites would not itself comply with this code. This does not amount to giving assistance to any person for the publication of material which local authorities are not permitted to publish. However, particular care must be taken by local authorities during the period before elections and referendums to ensure that no breach of any legal restriction takes place. It may be necessary to suspend the hosting of material produced by third parties or public forums which contain links to impermissible material during such periods.
23. It is acceptable for publicity containing material prepared by third parties and hosted by local authorities to include logos of political parties or other organisations with which the third parties are associated.
24. It is acceptable for publicity produced or hosted by local authorities to include a logo associated with a particular member of the authority, such as a directly elected mayor, or leader of the authority. Publicity material produced by local authorities relating to a particular member must not seek to affect public support for that individual.
25. Where local authorities provide assistance to third parties to issue publicity they should ensure that the principles in this code are adhered to by the recipients of that assistance.

Appropriate use of publicity

26. Local authorities should not incur any expenditure in retaining the services of lobbyists for the purpose of the publication of any material designed to influence public officials, Members of Parliament, political parties or the Government to take a particular view on any issue.
27. Local authorities should not incur expenditure on providing stands or displays at conferences of political parties for the purpose of publicity designed to influence members of political parties to take a particular view on any issue.
28. Local authorities should not publish or incur expenditure in commissioning in hard copy or on any website, newsletters, newsheets or similar communications which seek to emulate commercial newspapers in style or content. Where local authorities do commission or publish newsletters, newsheets or similar communications, they should not issue them more frequently than quarterly, apart from parish councils which should not issue them more frequently than monthly. Such communications should not include material other than information for the public about the business, services and amenities of the council or other local service providers.
29. Publicity about local authorities and the services they provide should be freely available to anyone who wishes to receive such information in a format readily accessible and understandable by the person making the request or by any particular group for which services are provided.
30. All local authority publicity should clearly and unambiguously identify itself as a product of the local authority. Printed material, including any newsletters, newsheets or similar publications published by the local authority, should do this on the front page of the publication.

Equality and diversity etc

31. Publicity by local authorities may seek to influence (in accordance with the relevant law and in a way which they consider positive) the attitudes of local people or public behaviour in relation to matters of health, safety, crime prevention, race relations, equality, diversity and community issues.
32. Local authorities should consider how any publicity they issue can contribute to the promotion of any duties applicable to them in relation to the elimination of discrimination, the advancement of equality and the fostering of good relations.

Care during periods of heightened sensitivity

33. Local authorities should pay particular regard to the legislation governing publicity during the period of heightened sensitivity before elections and referendums – see paragraphs 7 to 9 of this code. It may be necessary to suspend the hosting of material produced by third parties, or to close public forums during this period to avoid breaching any legal restrictions.
34. During the period between the notice of an election and the election itself, local authorities should not publish any publicity on controversial issues or report views or proposals in such a way that identifies them with any individual members or groups of members. Publicity relating to individuals involved directly in the election should not be published by local authorities during this period unless expressly authorised by or under statute. It is permissible for local authorities to publish factual information which identifies the names, wards and parties of candidates at elections.
35. In general, local authorities should not issue any publicity which seeks to influence voters. However this general principle is subject to any statutory provision which authorises expenditure being incurred on the publication of material designed to influence the public as to whether to support or oppose a question put at a referendum. It is acceptable to publish material relating to the subject matter of a referendum, for example to correct any factual inaccuracies which have appeared in publicity produced by third parties, so long as this is even-handed and objective and does not support or oppose any of the options which are the subject of the vote.