

EXPLANATORY MEMORANDUM TO

**THE CODE OF RECOMMENDED PRACTICE ON LOCAL AUTHORITY
PUBLICITY**

1. This explanatory memorandum has been prepared by the Department for Communities & Local Government and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**

2.1 The Code of Recommended Practice on Local Authority Publicity (the 'Publicity Code') is a significant restructuring of the existing Codes applicable to local authorities which it replaces for local authorities in England, updating the language of the Codes and aiming to make it easier to understand. The revised Publicity Code is also a single instrument, rather than two circulars each addressing different tiers of local Government.

2.2 The Publicity Code is now grouped into seven principles that publicity by local authorities should follow. It 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.

2.3 Like the existing Codes, the revised Publicity Code gives recommended practice on a number of aspects of publicity covering subject matter, costs, content, dissemination, advertising, recruitment advertising, publicity about individual members of an authority, timing of publicity, elections, referendums and petitions, and assistance to others for publicity.

2.4 The principle of lawfulness is that an authority's publicity should comply with statutory provisions and advises that any paid-for advertising published by a local authority should comply with the Advertising Standards Authority's Advertising Codes.

2.5 The principle of cost-effectiveness is that local authorities should be able to confirm that consideration has been given to the value for money that the publicity is achieving, while recognising that in some circumstances this will be difficult to quantify.

2.6 The principle of objectivity requires local authority publicity to be politically impartial. The Publicity Code acknowledges that a council has to be able to explain its decisions and justify its policies, but this should not be

done in a way that can be perceived as a political statement or a commentary on contentious areas of public policy.

2.7 The principle of even-handedness has the effect that local authority publicity can address matters of political controversy in a fair manner and may contain links to other political sites, or contain political logos on material hosted for third parties. But local authorities should ensure that publicity about the council does not seek to affect support for a single councillor or group. The Publicity Code does, however, recognise that at times it is acceptable to associate publicity with a single member of the council.

2.8 The principle addressing the appropriate use of publicity is that local authorities should refrain from retaining the services of lobbyists, i.e. political professionals whose job it is to bring their client's message to those in a position to influence policy. Appropriate use of publicity is also about the frequency, content and appearance of council newsletters in order to prevent unfair competition with local newspapers. It sets out that generally the frequency of council newsletters should be no more than quarterly, with parish councils being able to issue newsletters on a monthly basis.

2.9 The equality and diversity principle is that publicity by local authorities may seek to influence positively the attitudes of local people in relation to matters of health, safety and other issues where publicity can have a positive influence on the behaviour of the public.

2.10 Finally, the principle that local authority publicity should be issued with care during periods of heightened sensitivity gives guidance as to how local authority publicity should be treated during period of elections and referendums, both national and local.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The Publicity Code is issued under powers conferred on the Secretary of State under section 4(1) of the Local Government Act 1986 ('the 1986 Act'). Local authorities, defined in section 6(2) of the 1986 Act, are required by section 4(1) of the 1986 Act to have regard to the Publicity Code in coming to any decision on publicity. Publicity is defined in section 6(4) of the 1986 Act as 'any communication, in whatever form, addressed to the public at large or a section of the public'.

4.2 The Publicity Code is currently contained in two separate circulars, the original circular dates from 1988 (Department of the Environment: Circular 20/88) and applied in England, Scotland and Wales. The application of that circular was amended on 2 April 2001 in England only, by a further circular

(Department of the Environment, Transport and the Regions: Circular 06/2001) in its application to county councils, district councils and London borough councils, to take into account changes in governance arrangements, the advent of elected mayors, referendums and petitions. The 1988 circular was superseded in Wales by a revised code made by the National Assembly for Wales in October 2001 which, mirroring the changes made by the Department of the Environment, Transport and the Regions Circular 06/2001, applied to councils in Wales. The Code contained in the 1988 circular continues to apply in Scotland.

4.3 The revised Publicity Code will apply to all local authorities in England that fall within the definition in section 6(2) or have Part 2 of the 1986 Act applied to them and the two circulars from 1988 and 2001 will be withdrawn in relation to those authorities.

4.4 The Publicity Code is subject to approval, by affirmative resolution, of both Houses of Parliament. It is intended that the revised Publicity Code come into force as soon as possible following affirmative resolution.

5. Territorial Extent and Application

5.1 The Publicity Code applies to local authorities in England only.

6. European Convention on Human Rights

6.1 The Publicity Code applies only to local authorities and no issue of compatibility with Convention rights therefore arises.

7. Policy background

The Government's objectives in revising the Code

7.1 For a community to be a healthy local democracy, local understanding of the operation of the democratic process is important, and effective communication is key to developing that understanding. Local authority publicity is important to transparency and to localism, as the public need to know what their local authority is doing if they are to hold it to account.

7.2 The revised Publicity Code contains specific guidance on the frequency, content and appearance of local authority newsletters, newsheets or similar publications. The Department considers that the Publicity Code, rather than competition legislation, is the right vehicle for imposing tougher rules to stop unfair competition by local authority newspapers because the issues involved go beyond the purely economic considerations of, for instance, council newspapers diverting revenue from paid advertising away from local newspapers. The Department's view is that the proliferation of council newspapers can have the effect of reducing the impact of independent local newspapers. A healthy free press is important in providing information to the public to hold their local authority to account. Council newspapers, issued frequently and designed to resemble a local newspaper can mislead members

of the public reading them that they are local newspapers covering council events and give communities a biased view of the activities of the council.

7.3 Under the revised Code local authorities should not retain lobbyists with the intention 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. It is, of course, acceptable for local authorities to retain expert help to give professional advice on technical issues, but the Publicity Code is against the retention of lobbyists for political ends.

7.4 The Department for Communities and Local Government Select Committee undertook a short inquiry into the revised Publicity Code, taking evidence from witnesses, including the Minister for Housing and Local Government, on 6 December 2010. In addition the Select Committee requested that the Department share the responses to the consultation with it. The Department has done so and these were used for information, although they were not officially treated as submissions. The Select Committee reported on 27th January 2010 and the report is available from Parliament's web-site at: <http://www.parliament.uk/business/committees/committees-a-z/commons-select/communities-and-local-government-committee/publications/>.

8. Consultation outcome

8.1 Section 4(4) of the 1986 Act requires that before issuing, revising or withdrawing a Code the Secretary of State should consult such associations of local authorities as appear to him to be concerned and any local authority with whom consultation appears to him to be desirable.

8.2 The consultation on the Publicity Code ran from 29 September 2010 to 10 November 2010. Both the Local Government Association (LGA) and National Association of Local Councils (NALC) were consulted on the proposed revisions to the Publicity Code and, in addition, the attention of each principal authority in England was drawn to the consultation exercise and a consultation paper with the proposed revisions was placed on the Department's web-site.

8.3 The consultation generated over 350 responses, broadly breaking down into the following groups:

Respondent type	Number	%
Principal authorities	130	37%
Individuals	62	18%
Parish councils	44	13%
Organisations	37	11%
Publishers	37	11%
Newspapers	34	10%
Business	7	2%

Principal authorities include councils such as district and borough councils, as well as London borough councils.

Individuals mostly constitute members of the public but also include some councillors writing in a private capacity.

Organisations include representative organisations such as the LGA, NALC and the Newspaper Society and also bodies such as Age Concern.

Businesses include, for instance, printers and distributors for local authority newspapers.

Consultation question 1: *Do the seven principles of local authority publicity as laid down in the Code encompass the full scope of the guidance required by local authorities?*

8.4 There was broad agreement from those who responded to this question that the revised Publicity Code did adequately cover the full scope of the guidance required by local authorities.

8.5 The view expressed by the majority of those who responded to the consultation, that the seven principles in the Publicity Code do encompass the full scope of guidance required by local authorities, leads the Department to conclude that the revised format of the Publicity Code is satisfactory and that no changes are required to the revised structure or the broad principles.

8.6 A common comment from councils responding to the consultation was that prescriptive guidance was not localist and that the approach taken was heavy handed. Some considered that the proposals went beyond what was required to address issues in a very few local authorities.

8.7 On the matter of guidance issued centrally from Government to local authorities about publicity being contrary to the Department for Communities and Local Government's localist policies, the Department considers that a key element of localism is giving the public the information that they need to hold their council to account. This requires that information comes not just from the local authority, but also from independent sources. Local newspapers have traditionally been instruments for both holding councils to account themselves and giving the public the information they need to hold their councils to account. Ensuring that local newspapers are not the subject of unfair competition by local authority publications is, the Department considers, in accord with localism.

8.8 Parish councils in particular raised the issue of how on-line publicity was dealt with by the proposed Publicity Code. Principal authorities also commented upon the requirement for specific guidance on specific issues, in particular that the guidance covering publicity during the period in the run up to an election could be more detailed, one authority asking if it might not be a good idea to give specific examples of what could, and could not, be issued during the period between the calling of an election and polling day.

8.9 The Publicity Code, as guidance, has to apply to principal, parish and town councils, as well as a number of other types of authority. The guidance, although clear in its principles, is drafted in general terms which allow it to be adapted not just to each type of authority, but to be applied across the variety of different models of governance that authorities operate and different formats for publicity. Detailed guidance raises the risk of inadvertently preventing an authority from communicating with its community in a legitimate way as it increases the risk of misinterpretation or incorrect application.

Consultation question 2: *Do you believe that the proposed revised Code will impose sufficiently tough rules to stop unfair competition by local authority newspapers?*

8.10 To give effect to the Government's commitment to stop unfair competition by local authority newspapers, the revised Publicity Code proposed in the consultation contained specific guidance on the frequency, content and appearance of local authority newsletters, newsheets or similar publications, advising that they must not appear more frequently than once a quarter, must only include material that is directly related to the business, services or amenities of the council or other local service providers and should be clearly marked as being published by the local authority. It was proposed that these provisions should also be extended to web-based editions of publications.

8.11 Several local authorities responded to this question by disputing that their local authority publication was in competition with local newspapers, some suggesting that council publications complemented rather than competed with local newspapers.

8.12 Several of the principal authorities that responded to this question made the point that the restrictions on the issuing of local authority newspapers in the proposed revised Publicity Code resulted from concerns over the practices of a few councils in London.

8.13 The LGA were clear in their opposition to the proposals in the Code about local authority newspapers. Although the LGA response explained that the majority of local authorities would not be affected by the proposed revision to the Publicity Code in regard to publications, as they published their newspapers or magazines quarterly (indeed the LGA's research cited in its response to the consultation shows that the most popular frequency among authorities for publishing a newsletter is quarterly) or less frequently, for the around 20% of authorities that the LGA identified as publishing monthly or more frequently, the LGA was of the opinion that these authorities should be permitted to continue to do so.

8.14 Individuals responding to this question remarked that controls on the frequency of local authority newspapers will not stop the decline of local newspaper sales.

8.15 The Department is encouraged that the most popular frequency for the publication of a newsletter is quarterly, and that by publishing to this frequency the majority of authorities already comply with the guidance in the proposed Publicity Code.

8.16 For the local authorities that do publish more frequently, the Department is not persuaded that such frequency is necessary, and is concerned that this frequency will have a detrimental impact on local newspapers, which could end up depriving the public of access to a free press and removing one of the measures by which councils may be held to account.

8.17 The Department considers that quarterly is the right frequency for the publication of local authority newsletters, as it constitutes the right balance between keeping the public informed about local authority services and any changes to those services, and avoiding unfair competition with daily or weekly local newspapers.

8.18 The view of many parish councils was that they did not believe that newsletters and leaflets published by local councils did, in practice, compete with local newspapers. The National Association of Local Councils passed on feedback from some of their members that while their community newsletters were in no way party political, they were produced more frequently than quarterly and that the proposed restrictions were unreasonable and would mean parish and town councils having to find some other way of providing vital information about, for instance, forthcoming community events. The argument was put forward that newsletters, often just a single sheet of A4 paper, could in no way be seen as unfair competition to the local newspapers and that it was important in terms of getting information out to the community that such publications should be able to issue on a monthly basis.

8.19 The Department is persuaded by the arguments put forward by parish and town councils that responded to the consultation that parish council newsletters, often a single sheet of A4 paper, do not constitute competition to local newspapers. As a result, the revised Publicity Code as proposed in the consultation paper has been revised further to advise parish and town councils that it is acceptable to publish on a monthly basis.

8.20 A number of local authorities who responded to this question expressed the view that while they acknowledged that local newspapers were valuable conduits for information about council services, there was a concern that at a time when local newspapers were restructuring to meet the challenges faced through the decline in advertising revenue and competition from new media, local newspapers were finding it difficult to cover local democratic issues with quality journalism, illustrated by the absence of their reporters from council meetings. Local authorities considered that curtailment of council publications at this time was a considerable risk to getting the public the information they need about their council and suggested support for an industry code of conduct drawn up by LGcommunications and the Chartered Institute of Public Relations local public services group.

8.21 The Department considers a voluntary code an interesting proposal, but is of the view that the issue of local authority publicity remains contentious enough to require central guidance to ensure that publicity remains value for money for the taxpayer.

8.22 The most common response from the newspaper industry to this question was to ask how the Publicity Code is to be enforced, stressing that vigorous and robust enforcement would be required if the new measures were to work. Several of the responses from the newspaper industry suggested that central Government should enforce the Publicity Code. Organisations responding to this question also raised the issue of enforcement.

8.23 The Department's view is that there is no power in the 1986 Act to provide for any enforcement mechanism in response to any purported breach of the Publicity Code. If members of the public consider that an authority has failed to have regard to the Publicity Code, they should raise their concern with the local authority directly, or contact the authority's auditor.

8.24 Other responses from the newspaper sector made it clear that they did not consider that the proposed revised Publicity Code went far enough. Additional principles were suggested, such as local authorities having to ensure that any publicity they issued was in no way in competition with local businesses, and that there should be a prohibition on authorities taking any third party advertising in their publications.

8.25 The Department is of the view that regulating the frequency, content and appearance of local authority publications will prevent them competing with local newspapers and businesses and further changes to the principles of the Publicity Code are not required.

Consultation question 3: *Does the proposed Code enable local authorities to provide their communities with the information local people need at any time?*

8.26 The proposed Publicity Code is not intended to be an impediment to local authorities communicating effectively with their communities. The Department understands that local authorities have to communicate a wide variety of information, on both a planned and reactive basis. Further, the Department recognises that local authority publicity such as raising awareness of local authority services or local amenities will not always easily be demonstrably value for money.

8.27 In particular, the Department recognises that local authorities need to continue to issue publicity during the period in the run up to an election or referendum. However, the Department realises that this is a time where there can be particular concern about the use of local authority publicity. The principle of issuing local authority publicity with care during periods of heightened sensitivity, such as elections and referendums, addresses this.

8.28 There was no overall consensus among local authorities over whether the proposed revised Publicity Code would enable local authorities to provide their communities with the information they need. Many felt that it would and, where a local authority felt it would not be able to communicate effectively as a result of the revised Publicity Code, opinion varied between the Code having a slight effect to it being far too prescriptive.

8.29 Some local authorities responding to this question raised the concern that restricting council publications to quarterly was a too extreme reaction to a very small problem. They also expressed concern that restricting their publication frequency would have a negative impact on their ability to communicate with their communities, in particular harming engagement with harder to reach groups.

8.30 Individuals responding to this question came forward with a variety of views about how effective local authority publicity is. One response remarked that local authority newsletters were, in effect, junk mail and like in the case of junk mail, members of the public should be given the option of opting out of receiving printed newsletters.

8.31 The majority of local authorities publish newsletters or magazines quarterly or less frequently, which is in line with the revised Publicity Code. The Department's view is that these authorities presumably consider that with this frequency they are able to provide the public with the information they need about the council. The Department is not persuaded that if the remaining minority of authorities adopt this approach it will inhibit their ability to communicate with the public.

8.32 In addition, the Department considers that the way in which the public gets information about its local authority is changing with, for instance, increasing use of the internet. Councils should not restrict themselves to blanket leafleting to communicate matters to the public but should take an innovative approach to getting information to those that need it, placing information where users of a service have access to it and focusing resource where it will do the most good. It is not credible for instance that information about a road closure would need to be distributed to every household in the authority.

8.33 Local authorities also expressed concern that, as drafted, the proposed Code would prevent local authorities from communicating their decisions and justifying their policies to the public. This view was also expressed by the Association of Council Secretaries and Solicitors who were concerned that part of the section on 'Objectivity' in the proposed Publicity Code rendered the Code unworkable. They contended that the section advising local authorities that their publicity should not be, or be perceived to be, aimed at influencing the public's opinions about the policies of the authority, should be removed, giving the illustration that a national park authority may well wish to promote the need for affordable housing.

8.34 The Department acknowledges that the Publicity Code proposed in the consultation paper could have been perceived as a disincentive to councils communicating their policies and the reasons for their actions to the public. This is an important function of local authority publicity; the public should be informed not only about what action their authority is taking, but why the authority is taking that action. As a result, the Publicity Code proposed in the consultation document has been revised to remove the possibility of confusion over this issue and is now clear that authorities may communicate, explain and justify their policies and actions to the public.

Consultation question 4: *Is the proposed Code sufficiently clear to ensure that any inappropriate use of lobbyists, or stalls at party conferences, is clearly ruled out?*

8.35 The proposals for a revised Publicity Code included a prohibition on the use of private specialists, contractors or consultants (in short, 'lobbyists') with the intention 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.

8.36 The Department considers that the use of lobbyists is related to the use of publicity, in that it is one of the methods by which authorities might spend taxpayers' money to influence people one way or another in relation to political issues and is therefore within the ambit of the Publicity Code.

8.37 In addition, the proposed Publicity Code advised that local authorities should not pay to have stands or displays at conferences of political parties to issue publicity designed to influence members of political parties to take a particular view on an issue.

8.38 The general view expressed by those who replied to this question was that the proposed Code was sufficiently clear to ensure that any inappropriate use of lobbyists, or stalls at party conferences, is clearly ruled out.

8.39 While many of the local authorities that replied explained that the advice about lobbyists in the Publicity Code did not apply to them because they did not employ lobbyists, some did feel that it was inconsistent with the principles of localism for Government to seek to discourage the use of lobbyists.

8.40 It was also remarked upon that clearly it would be inappropriate for councils to spend money on lobbyists when their in-house communication staff could do a similar job, but that bringing in expertise to work on a particular project, for instance to campaign for local transport improvement, can result in significant economic benefits for an area and is often cheaper than employing staff directly.

8.41 The Department acknowledges that the revised Publicity Code as drafted in the consultation document was ambiguous about what sort of

specialist assistance it was legitimate for a local authority to employ where that skill did not exist inside the authority itself.

8.42 It is not the Department's intention to prevent local authorities from employing, for instance, specialist researchers or scientific advisers where necessary. The final version of the revised Publicity Code has been amended to simplify the language of the section giving advice about the retention of lobbyists by using the plain English term 'lobbyists'.

8.43 The Department's concern about local authorities having stands or displays at the conferences of political parties to issue publicity designed to influence members of political parties to take a particular view on an issue is that taxpayers are funding the process. Moreover, they are funding a process that the Department considers is not needed. It is quite legitimate for a councillor to make representations directly to a Minister either in writing, over the telephone or in person, it does not require a taxpayer funded stall at a party conference.

8.44 Following the consultation, the Department also considered that the principles of objectivity and cost-effectiveness in the Code needed strengthening, and the final version of the principle of cost-effectiveness now includes guidance that local authorities should, as part of their consideration of cost-effectiveness of publicity, take into account the loss in potential revenue arising from using authority-owned facilities for municipal rather than commercial use. The principle of objectivity has been amended to include a reference to publicity that might be considered a commentary on contentious areas of public policy.

8.45 It is the Department's policy to encourage appropriate, effective publicity, aimed at improving public awareness of councils' activities. However, publicity can be a sensitive matter because of the impact it can have and because of the costs associated with it. It must also operate within certain legal constraints.

8.46 The purpose of the Publicity Code is not to discourage publicity, but rather to ensure that local authority publicity is effective, efficient and appropriate. The revised Publicity Code is intended to achieve this.

8.47 It is intended that the revised Publicity Code is clearer, more understandable and easier to use by both local authority officials and members of the public than the existing version, combining as it does two Codes into a single instrument.

9. Guidance

9.1 No guidance has been issued.

10. Impact

10.1 There is an impact on business – that is, on local newspapers and on firms providing lobbying services, some of which may be small firms, but not on charities or voluntary bodies. The impacts on business are reduced income for those companies currently providing lobbying services to local authorities of approximately £0.7 million per annum; reduced income to local newspaper groups that produce local authority newspapers of approximately £0.3 million. There will be reduced income to companies providing printing and distribution services for local authority newspapers, but this is expected to be marginal. Advertising revenue for local newspaper groups is expected to increase by approximately £2.5 million per annum.

10.2 The impact on the public sector is increased expenditure by local authorities on statutory notices of approximately £1.3 million per annum and reduced revenue from advertising of approximately £1.2 million per annum. The estimated total savings to local authorities in the cost of producing newspapers is approximately £2.9 million per year and in the cost of hiring lobbyists is approximately £0.7 million per year.

10.3 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The Publicity Code does not apply to small business.

12. Monitoring & review

12.1 There will be a post implementation review of the Publicity Code in 3 to 5 years after it comes into effect to check that the Code is operating as intended and with the intended effects, which are to address the problem of unfair competition to local newspapers by local authority newsletters. The baselines against which the revisions to the Publicity Code will be measured will include evidence on the current state of the local newspaper industry and evidence on the current extent to which local authorities use lobbying services. While it is intended that the review would make maximum use of existing data, some degree of primary research may be necessary to generate accurate baselines. An assessment will be made through a focused monitoring exercise of the extent to which local newspapers remain subject to unfair competition from local authority newsletters; and the extent to which there is evidence of continued use of lobbying services by local authorities compared with the baselines. Further details of proposed research and analysis will be developed over the coming months.

13. Contact

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