

NORTH EAST REFERENDUM: LEGAL RESTRICTIONS UNDER THE POLITICAL PARTIES, ELECTIONS AND REFERENDUMS ACT

This guidance has been agreed by Cabinet Office and reflects legal advice.

When is the restricted period?

The restricted period for the North East regional and local referendums runs from 7 October until the referendums are held on 4 November 2004. It is the first time that the restricted period affecting government material under the Political Parties, Elections and Referendums Act (“PPERA”), has applied. The statutory restrictions are stricter than have applied, by convention, during previous referendums.

Normal business during restricted period

- The normal business of government continues but there are constraints on government publishing referendum-related materials, including speeches, broadcasts and printed materials.
- Purely national or international announcements are unaffected by this restricted period.

What is prevented during the restricted period?

A copy of section 125 of PERA is attached. It prohibits, amongst other things, Ministers (in their official capacity) and their departments from making available to the public at large, or any section of the public, any material which:

- provides general information about the referendum
- deals with any of the issues raised by the referendum question;
- puts any arguments for or against any particular answer to the referendum question; or
- is designed to encourage voting at the referendum.

This applies to the question about regional assemblies and to that on options for local government reorganisation.

So, for example, Ministers (in their official capacity) and their departments should not do any of the following *if these activities deal with any issue in the referendum*:

- publish new material
- make an announcement
- carry out a media interview
- make a speech.

Anything which falls within these categories must be done in a political or personal capacity, and the capacity in which the Minister is acting should be made clear.

Examples

All announcements should be handled with care.

Purely national announcement

- Acceptable to make a national announcement with no regional dimension - eg a change in National Insurance, even though that may indirectly have an impact on jobs (an assembly responsibility).

National announcements with regional dimension

- Acceptable to announce national school funding figures, given that schools will not be an assembly responsibility, even if those figures detailed spending allocations for schools in the North East.
- Acceptable to make routine, factual announcements, such as those setting out the number of benefit claimants.
- Unacceptable to make an announcement about allocations of money between regions - eg RDA budgets, which would be a matter directly related to the issues in the referendum.

Regional announcements

- Acceptable to comment on a factory closure in the North East, providing that claims were not made that the situation would be different if an elected regional assembly was in place.
- Unacceptable to announce the funding for a housing initiative in the North generally, with specific figures mentioned for the North East, as housing will be an assembly responsibility.

Statements relating to the referendum

- Acceptable to make factual remarks, such as "the referendum will be on 4 November by all-postal ballot" provided this is not done with the intention of, or as part of a campaign to, encourage voters to go out to vote on that date.
- Unacceptable to indicate which referendum outcome is favoured; or give general information about the referendum or to encourage voting.
- Unacceptable to make claims for elected assemblies or present assemblies in a favourable light - for example "the region will have a stronger voice with an elected assembly" or "an assembly will mean that key policies affecting the region are better coordinated".

What exceptions are there to these rules?

There are some important exceptions. At any time:

- Ministers can deal with normal Parliamentary business, with normal civil service support
- Ministers can speak in their political capacity, or as an MP. This must be made clear before or on the occasion - eg introduced as "MP for xxx" rather than as "Minister of State" and Ministers should say, where appropriate, that their remarks are made in a political capacity. Civil servants should only check for factual accuracy in the case of such speeches.
- Ministers and their departments can respond to requests for information - eg a request for a leaflet. This exception does not extend to questions put by interviewers during media interviews. Information already available on websites should remain there, but new material relevant to the referendum should not be added.

What happens if this approach is not followed?

If this approach is not followed, the actions of Ministers and the validity of the referendum could be subject to legal challenge and the consequences for the referendum would be for the courts to decide.

What issues are covered by the referendums?

There are three key areas:

- Aspects of an elected assembly's constitution - such as the voting system or the role of stakeholders.
- Functional responsibilities of elected assemblies (economic development, jobs and skills, regional planning, housing, fire and rescue, environment, transport, culture, tourism and sport and public health)
- Local government structure, especially in Northumberland and County Durham.

Where to find out more

Officials may wish to discuss this guidance or specific cases with:

- Jessica Matthew, Regional Assemblies Division, ODPM - tel 020 7944 4956 or jessica.matthew@odpm.gsi.gov.uk
- Sue Gray, Head of Propriety and Ethics, Cabinet Office - tel 020 7271 2470 or sue.gray@cabinet-office.x.gsi.gov.uk

Section 125 of the Political Parties, Elections and Referendums Act

Restriction on publication etc. of promotional material by central and local government etc.

(1) This section applies to any material which-

- (a) provides general information about a referendum to which this Part applies;
- (b) deals with any of the issues raised by any question on which such a referendum is being held;
- (c) puts any arguments for or against any particular answer to any such question; or
- (d) is designed to encourage voting at such a referendum.

(2) Subject to subsection (3), no material to which this section applies shall be published during the relevant period by or on behalf of-

- (a) any Minister of the Crown, government department or local authority; or
- (b) any other person or body whose expenses are defrayed wholly or mainly out of public funds or by any local authority.

(3) Subsection (2) does not apply to-

- (a) material made available to persons in response to specific requests for information or to persons specifically seeking access to it;
- (b) anything done by or on behalf of the Commission or a person or body designated under section 108 (designation of organisations to whom assistance is available);
- (c) the publication of information relating to the holding of the poll; or
- (d) the issue of press notices;

and subsection (2)(b) shall not be taken as applying to the British Broadcasting Corporation or Sianel Pedwar Cymru.

(4) In this section-

- (a) "publish" means make available to the public at large, or any section of the public, in whatever form and by whatever means (and "publication" shall be construed accordingly);
- (b) "the relevant period", in relation to a referendum, means the period of 28 days ending with the date of the poll.