

Chairs, Chief Executives, NHS, Special and other Health Bodies



Date: 9 February 2016

Dear Colleague

## **SCOTTISH PARLIAMENT ELECTION 2016: GUIDANCE FOR NHS, SPECIAL AND OTHER HEALTH BODIES**

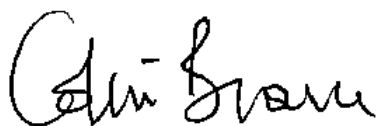
The attached annex provides guidance for NHS Bodies, Special and other Health Bodies, including the Common Services Agency (for the purposes of this note, collectively referred to as “NHS Bodies”) on the conduct of business during the Scottish Parliament Election campaign. In particular, it provides guidance on dealing with the media and candidates.

NHS Bodies should issue prompt guidance to all non-executive members and staff – taking account of the guidance contained in the annex – to enable them to take any appropriate action in relation to their personal conduct or in responding to enquiries from the media or parliamentary candidates.

General guidance on the handling of business up to and including the election period was published by the Scottish Government on 28 January (see link below). This guidance applies to Scottish Government agencies and national devolved public bodies so you and your staff will wish to familiarise yourself with it alongside the guidance enclosed here.

<http://www.gov.scot/Topics/Government/Elections/guidance/ElectionsGuidanceCS>

Yours sincerely



**COLIN BROWN**



## SCOTTISH PARLIAMENT ELECTION 2016: GUIDANCE FOR NHS, SPECIAL AND OTHER HEALTH BODIES

### Summary

1. This Annex provides guidance for NHS Bodies, Special and other Health Bodies, including the Common Services Agency (for the purposes of this note, collectively referred to as “NHS Bodies”) on the conduct of business during the Scottish Parliament Election campaign. In particular, it provides guidance on dealing with the media and candidates. The election is scheduled to take place on **Thursday 5 May 2016**. The pre-election period will begin on 24 March 2016, following the dissolution of the Scottish Parliament the previous day.
2. This guidance sets out the general principles which NHS Bodies should observe, and the arrangements which are being put in place to consider the application of those principles to particular cases in the event of any uncertainty or difficulties which may arise. As the campaign will take place across Scotland, it is particularly important that all public bodies, including NHSScotland, should take special care during this period to ensure that their conduct is above question.
3. During the election period, NHS Bodies may be faced with requests for information and views from media representatives, parliamentary candidates, and from representatives of political organisations about the activities of the NHS. They must seek to prevent any grounds for complaint that they are behaving partially towards any of the candidates or parties represented in the election.
4. It is also possible that some employees, Chairs or non-executives of NHS Bodies may be selected as potential candidates for the Scottish Parliament. This note also contains guidance on what action they should take in those circumstances.

### General Principles

5. The following general principles should be observed by all NHS Bodies:
  - i) there should be even-handedness in meeting requests for factual information from individual candidates and those from different political parties. Such requests and responses should be handled in accordance with the principles laid down in the *Standards of Conduct, Accountability and Openness of NHSScotland* and the *Freedom of Information (Scotland) Act 2002* ;
  - ii) care should be taken over announcements of decisions made by NHS Bodies to avoid accusations of political controversy or partisanship;
  - iii) special care should be taken in respect of paid publicity campaigns which should not be open to criticism that they are being undertaken for party political purposes. Care should also be taken in relation to any publications planned by any NHS organisation during the pre-election period for example, pieces of research which may be open to political interpretation;

- iv) in carrying out their day to day work NHS Bodies should ensure that they do nothing that could reasonably be construed as politically motivated;
- v) it is vital that staff of NHS Bodies exercise care in their day to day corporate activities to ensure that they do nothing that could reasonably be regarded as taking a political stance; and
- vi) public resources should **not** be used for party political purposes.

6. In particular, any announcements which are made should meet the following criteria:

- i) be relevant to the responsibilities of NHS Scotland;
- ii) be objective and explanatory;
- iii) not be, or be liable to misrepresentation as being, party political;
- iv) be conducted in an economic and appropriate way, having regard to the need to be able to justify the costs as expenditure of public funds.

### Official Support to Scottish Ministers

7. The Scottish Government Health and Social Care Directorates will continue to provide normal support to Ministers in all their official functions. In doing so, they may call on the assistance of NHS Bodies, as they do under normal circumstances. It is also in order for officials to check statements for factual accuracy and consistency with established Government policy. Officials should not, however, be asked to provide new arguments for use as part of the election campaign.

### Freedom of Information (Scotland) Act 2002

8. The Freedom of Information (Scotland) Act 2002 remains in full force during the election period. NHS Bodies should continue to respond to FOI requests in accordance with the procedures established for such requests. As always, care is needed to ensure that FOI procedures have been followed appropriately.

### Dealing with Enquiries and Correspondence from Political Parties and Candidates

- 9. NHS Bodies should provide any candidate, organisation or any member of the public with **purely factual information** in accordance with the *Standards of Conduct, Accountability and Openness of NHSScotland*.
- 10. There may be cases where the correspondence or enquiry concerns policies newly announced by a party or individual. There may also be calls for a comparison with the policies of different parties / individuals. It will be appropriate to refer all such correspondence or callers immediately to the relevant party official or individual.
- 11. All candidates should have access to the same information, but it is not necessary to circulate information every time a query is answered.

## Media Enquiries

12. Media enquiries about the operation of health services should be answered only to the extent of providing factual explanation of current NHS body policy, statements and decisions in accordance with the *Standards of Conduct, Accountability and Openness of NHSScotland*. Particular care must be taken not to become involved in a partisan way in election issues.
13. It is important that NHS Bodies establish clear procedures locally so that a consistent approach is taken on questions from media representatives. Those answering media enquiries should limit their comments to their own areas of responsibility. Enquiries about national policy should be referred to the Scottish Government Communications Team (telephone: 0131 244 2642) and questions relating to health proposals of political parties or individuals should be referred to the party office or individual.
14. There is no objection to issuing routine news releases, figures which are published on a monthly or regular basis, or drawing attention to and as necessary summarising reports of specific committees or bodies which NHS Bodies are required to publish. These releases should be prepared in non-controversial language.

## Campaigning and Canvassing on NHS Premises

15. NHS Bodies should consider carefully whether to allow:
  - visits by candidates;
  - personal canvassing; and
  - filming or photography by independent candidates or political parties on NHS premises.
16. It is for individual NHS Bodies to decide on whether candidates' requests for visits to hospitals or other establishments for electioneering or campaign purposes should be agreed to. Should visits be permitted, there should be no disruption to patients' treatment or services, with special regard to maintaining confidentiality. Care should also be taken to avoid any intrusion into the lives of individuals using the services. If such a request for a visit by a candidate is agreed to, the NHS Body must then notify all other candidates that similar facilities are available to them as well.
17. Political posters or material should not be displayed on NHS premises. Other posters and advertising material purporting to be apolitical and published by other groups should be carefully scrutinised to ensure that it cannot be regarded as favouring a particular candidate or party.
18. Election or other political meetings should not be held on NHS premises.

## CONTINUING CONDUCT OF BUSINESS

### Use of the Media

19. The normal business of NHS Bodies requires many public contacts, and much of this can proceed in the normal way. For example, existing localised health promotion campaigns may not need to be interrupted, but care should be taken in launching any new initiatives, documents, mail drops or display advertising in the period up to the election, in order to avoid possible misrepresentation.
20. NHS Bodies should also take care with their pages on social media sites. Any changes during the election period should be scrutinised to ensure they cannot be regarded as favouring a particular candidate or party.
21. Similarly, NHSScotland employees' participation in a professional capacity in social networks (e.g. Facebook, Twitter, LinkedIn etc.) as well as in forums, online communities and other public online discussions should be limited during the election period to:
- Commenting on operational matters relating to services such as notifying users of technical problems with a website or digital service; and
  - Responding to factual queries by signposting existing content.
22. Care should be taken when establishing new public facing blogs during the election period. NHS Bodies may continue to respond to comments on existing blog posts, to provide routine and factual responses to queries and to moderate for inappropriate comments.
23. NHS Bodies' use of Twitter may continue for publishing factual information only.

### Appointments to NHS Bodies

24. Ministerial participation in the public appointments process – whether appointment rounds are regulated by the Commissioner for Ethical Standards in Public Life in Scotland or not – ceases until Parliament reconvenes and Scottish Ministers are appointed. This does not preclude staff from continuing preparatory action in support of the process, but no significant decisions should be taken or offers made, whether formal or informal. In particular, no action will be taken that might bind an incoming administration to a commitment made during this period.
25. Although this guidance applies to non-executive appointments, the principles are also applicable to those executive appointments to public bodies which require Ministerial approval.

## Candidacy of Employees of NHS Bodies in the Scottish Parliamentary Elections

26. Time off during working hours is governed by the provisions of section 50 of the Employment Rights Act 1996 and as required by other legislation. Section 50(2)(e) of the 1996 Act provides that an employer must permit an employee of a relevant health body to take time off during the employee's working hours for the purposes specified in subsection (3). Subsection (3) lists the purposes for which time off is permitted. Time off to stand as an MSP is not listed in subsection (3) and so the NHS Body is not bound to give an employee time off to take part in parliamentary candidacy duties. Any employee considering candidacy should consider their individual contractual position in relation to their employment, and consider potential implications in dialogue with their employer.

## Other Employees of NHS Bodies

27. Employees of NHS Bodies are free to engage in public debate or comment during the election period. However, they should not use their official premises, uniforms or equipment and should not make comments based on information not generally available to the public. It must be clearly stated in any communication that the views expressed are those of the individual and not of any NHS Body.

## Volunteers

28. Volunteers of NHS Bodies have a unique status as members of the public who are engaged in roles with NHS Bodies. It is imperative that volunteers are made aware of Election Guidance and supported to continue to pass on any media enquiries to the Communications Department of the NHS Body.

29. Volunteers should also be made aware that anything they publish on social media in relation to their volunteer roles can be misused, regardless of any positive intent. In keeping with existing guidance, volunteers should never post anything that could lead to the identification of a patient and should refrain from commenting publicly on any interactions with patients. If in doubt, advice should be sought from local Communications Departments.

## Chair and other Non-Executive Board Members

30. A Chair or Member who is considering standing for election should consider the relevant election rules in good time before nomination. Guidance on the rules is available from the Electoral Commission in Scotland. If a Chair or Member is in any doubt about the election rules they should seek independent legal advice. A Chair or Member of a Board, is disqualified from being a Member of the Scottish Parliament in accordance with the Scottish Parliament (Disqualification) Order 2015.

## Board Meetings

31. Board meetings of NHS Bodies should continue in the normal way, however care should be taken to ensure that Board Meetings do not introduce agenda items likely to be the subject of controversy during the election period. As a whole, it is important that proceedings at Board Meetings are not open to criticism on the grounds of actual and perceived bias.

## **Contacts with the Scottish Government Health and Social Care Directorates**

32. During the election period, NHS Bodies should maintain close contact with the Scottish Government Health and Social Care Directorates about any developments of potential political or media interest as they arise.
33. Should you require any advice or assistance or to transmit information on any of the issues covered by this Guidance Note, please contact in the first instance, the sponsor lead for your NHS Body.
34. If your enquiry relates to media handling issues, please contact the Scottish Government Communications Team on 0131 244 2642.

**Scottish Government**  
**Health and Social Care Directorates**  
9 February 2016