

SL(5)704 – The Political Parties Campaign Expenditure (Senedd Elections) Code of Practice 2020

Background and Purpose

This Code of Practice gives guidance as to what does or does not fall within paragraphs 1 and 2 of Schedule 8 of the Political Parties, Elections and Referendums Act 2000 (PPERA). Those paragraphs are relevant to the definition of 'campaign expenditure' and therefore, in particular, to what expenses a political party is required to report.

The Electoral Commission has power under paragraph 3 of Schedule 8 to PERA to prepare a Code of Practice giving guidance as to the kinds of expenses which do or do not fall within paragraphs 1 and 2 of Schedule 8 to PERA.

The Code was prepared by the Electoral Commission and submitted to the Welsh Ministers for approval. The Code will be issued by the Minister for Housing and Local Government under paragraph 3 of Schedule 8 to PERA.

Procedure

Draft Negative.

The Welsh Ministers have laid a draft of the Code before the Senedd. If, within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the draft being laid, the Senedd resolves not to approve the draft Code then the Welsh Ministers must not issue the Code.

If no such resolution is made, the Welsh Ministers must issue the Code (in the form of the draft) and the Code comes into force on a day specified in an order made by the Welsh Ministers.

Scrutiny under Standing Order 21.7

Three points are identified for reporting under Standing Order 21.7 in respect of the Code.

1. The Code will come into force after the regulated period has commenced. It is noted that the Explanatory Note states:

"The regulated period for political parties commences on 6 January 2021.

"Although the Political Parties Campaign Expenditure (Senedd Elections) Code of Practice 2020 will not be in force by 6 January the Electoral Commission will issue guidance prior to the Code of Practice being in force to ensure information is available."



2. Paragraphs 1.24 and 1.25 of the Code summarise the provisions of PPERA concerning notional expenditure, as set out in section 73 of PPERA. The first bullet point of paragraph 1.24 seeks to summarise one of the conditions which determines when notional campaign expenditure is treated as campaign expenditure incurred by the party. Specifically paragraph 1.24 refers to *"when property, services or facilities ... are transferred or provided free of charge or at a discount of more than 10 per cent for the use or benefit of the party"*. Similarly, paragraph 1.25 refers to *"its market value (where it is transferred free of charge), or the value of the discount"*.

However, section 73 of PPERA distinguishes between the treatment of a transfer of property and the provision of property, services and facilities. The summaries may, therefore, be considered an oversimplification.

Although the Code would not override the obligations of PPERA, it may lead to a misunderstanding of the position if a person reads only the Code.

3. It is noted that the consultation draft of the Code differs from the Code laid before the Senedd. Although some of the modifications are minor in nature, for example reflecting the name change from the National Assembly for Wales to the Senedd, others are points of substance.

The origin of the modifications is not clear. Specifically it is not clear whether the modifications were made by the Electoral Commission following conclusion of their consultation or whether they were made by the Welsh Ministers. It is noted that if the draft now laid before the Senedd incorporates modifications determined by the Welsh Ministers, that the Code must be accompanied by a statement of the reasons for making the modifications in accordance with paragraph 3(5) of Schedule 8 to PPERA. As a statement has not been laid, it is assumed that the modifications were made by the Electoral Commission. The Welsh Government is asked to confirm the source of the modifications.

Government response

A Government response has been invited in respect of the second and third point, a response to which are set out below.

2. We are grateful for the comments in respect of paragraphs 1.24 and 1.25 of the Code which address notional campaign expenditure as set out in section 73 of the Political Parties, Elections and Referendums Act 2000 (PPERA). Whilst we appreciate those comments, the Code has been drafted to assist the reader in determining notional campaign expenditure and the Code is clear that the law on spending by political parties is set out in PPERA. We are satisfied that the Code provides sufficient guidance to the reader.

Further, we would add that the rules around "provide" and "transfer" are covered in two separate lines in the legislation and we are satisfied that the manner in which it has been paraphrased in the Code covers the exact same rules that are set out in S.73 PPERA, and as a result should not cause confusion.



3. We can confirm that the modifications were made by the Electoral Commission following consultation.

We have been advised by the Electoral Commission that the Code was amended following feedback from the consultation in Wales, but they also took into account feedback that was received from political parties and other stakeholders following the consultations in both Scotland and England, as they wanted to make all the Codes consistent where possible.

Committee Consideration

The Committee considered the Code of Practice and Government response at its meeting on 18 January 2021 and reports to the Senedd in line with the reporting points above.

