

Congestion Charging – Proposed Referendum

The City of Edinburgh Council

29 April 2004

1 Purpose of report

- 1.1 To provide the Council with information relating to planning for the referendum on its congestion charging proposals.

2 Main report

- 2.1 The Council on 22 January 2004, in considering arrangements for the referendum on congestion charging, agreed:
 - a) to consider financial provision for the referendum on the congestion charging scheme in the budget process for 2004/2005;
 - b) to plan for the referendum on the basis of using the edited Electoral Register available at the time, in conjunction with advertising/mail-shot to permit those persons who had removed their names from the full Register to register to vote in the referendum; and
 - c) to note that I would report further to the Council on detailed issues surrounding the referendum.
- 2.2 The Council has subsequently included a sum of £550,000 in its budget for 2003/2004 for planning and conducting the referendum.
- 2.3 A range of key issues has been identified as part of the forward planning process. It is possible for decisions to be taken on some of these now to allow for further development, although others require further work before substantive recommendations relating to the management of the referendum can be made.

- 2.4 While the referendum is not a statutory electoral event, it is intended that, as far as possible, it should be managed as one and that the principles encompassed in various election regulations will be applied.

Use of the Electoral Register

- 2.5 My report to the Council indicated that it was only possible to use the edited register for the referendum. Subsequent to the Council's decision, I have written to the Electoral Commission drawing its attention to this situation and Mark Ballard MSP has also tabled the following motion in the Scottish Parliament:

"That the Parliament considers that the full electoral roll should be made available to the City of Edinburgh Council for use exclusively in a referendum on congestion charging, in order to save Edinburgh taxpayers an estimated £100,000 in encouraging residents who have opted out of the published electoral register to participate in the referendum; notes the legal decision of R. (on the application of Robertson) v Wakefield MDC, that the use of electoral rolls for such referenda may be inappropriate under the current legislation, and therefore considers that the Scottish Executive should consult with the Secretary of State for Scotland and Her Majesty's Government to seek a legislative dispensation to use the full electoral roll for a congestion charging referendum in Edinburgh."

- 2.6 Discussions are currently taking place, nationally, on the legislation that will govern this years canvass and the form to be used in it. It may be that an elector will be required to make a fresh opt-out request rather than have a previous opt-out carried forward from last year.
- 2.7 The electoral canvass takes place during August/November each year, with a new electoral register being published on 1 December.
- 2.8 It has been reported previously that Senior Counsel's Opinion has stated that a referendum should not be held at the same time as any election which is a test of party political opinion. This is also the view of the Electoral Commission.
- 2.9 To ensure that the most up-to-date edited register is available, therefore, it is recommended that the planning assumption should be that the referendum should not take place until the new register is published. The Council has previously noted the likely timetable in respect of the introduction of congestion charging, which anticipates that the report of the Public Inquiry will be submitted to the meeting of the Council in November. Allowing for the necessary preparation to be undertaken, the use of the new register should not delay unnecessarily the holding of the referendum. In the unlikely event of the outcome of the public inquiry being reported earlier than currently anticipated it would be possible to review the planning assumption.

Publicity

- 2.10 The timing and nature of any publicity that seeks to maximise the potential referendum electorate is critical. It is vital that this activity complements the work of the Electoral Registration Officer so that it does not lead to voter

confusion which might affect the efficiency of the canvass arrangements by reducing canvass return rates and, hence, having an adverse impact on the compilation of the register of electors which shall be used at any election taking place in 2005. At the beginning of the canvass period it would be possible for the Council to encourage people to register but to highlight that the edited register must be used for the referendum. Electors could be given advice on the implications of opting out/not opting out in their canvass return or recording with the Council that they have opted out but wish to be able to vote in the congestion charging referendum if it takes place

- 2.11 Given the anticipated availability of the Public Inquiry report in November and, depending on the volume of opt-outs then envisaged by The Electoral Registration Officer, it will be necessary to consider whether to take steps to publicise the referendum and to obtain applications from registered electors, not included in the edited register, who wish to participate in the referendum. It may be possible to check subsequent applications against the full register to ensure that there is no duplication of applications nor applications by people who are not registered in that new full register.

Postal ballot

- 2.12 In my previous report to the Council, reference was made to the cost of the referendum, should it be undertaken as an all-postal vote. Experience of all-postal elections in England clearly demonstrates that they significantly improve electoral turnout. In addition to testing opinion on the issue, an all-postal referendum would be an excellent opportunity to gain further experience of new ways to deliver elections.

Guidance on setting of referendum question and promotional material

- 2.13 The Electoral Commission has published a range of recommendations about the management of referendums and all-postal voting. One of the most important of these relates to the setting of the question to be asked. The Commission provides a series of ten Guidelines for assessing the question, as at Appendix 1. I would propose that these guidelines be followed, as far as possible, in setting the question for the referendum.
- 2.14 Because this is a non-statutory event, formal advice from the Electoral Commission may not be forthcoming. If this is the case, I would recommend that the advice of Senior Counsel be obtained and that Counsel vets the proposed question to provide assurance that it is consistent with the Commission's Guidelines.
- 2.15 There are constraints on the way in which the referendum can be promoted. The Council and **tie** will be entitled to promote the referendum, provided that this is done on a factual and considered basis and not on a political basis (i.e. measured information including explanation and justification for supporting a "Yes" vote in the Referendum) in order not to contravene Section 2 of the Local Government Act 1986 (prohibition on a local authority publishing any material which appears to be designed to affect public support for a political party).

2.16 Again, I would propose that advice is sought from Senior Counsel on the content of any promotional materials, prior to their publication.

Other relevant considerations

2.17 With increasing experience of all postal pilots in England, there is now a range of suppliers who can offer services to support these elections. As costs are likely to be substantial, it will be necessary to take account of EU Procurement Directives in identifying possible contractors. These companies are currently involved in the preparation for the all-postal pilot regions at the forthcoming European Elections. Once those arrangements are finalised, it will be possible to seek costed proposals from the companies as to how the referendum might be conducted. An analysis of the proposals will be reported to the Council to allow a preferred supplier to be contracted and formal plans made for the referendum. It may be necessary to commit to some expenditure in planning and preparation in advance of knowing the outcome of the public inquiry. Such costs will be kept to a minimum but potential suppliers will be asked to identify them.

2.18 In my capacity as Returning Officer I have established an Elections Consultative Group, comprising representatives from the major political parties which regularly contest elections in Edinburgh. It would be appropriate to use that cross-party group as a sounding board for any proposals relating to the referendum prior to final reports being submitted to the Council.

2.19 Media reports suggest that a number of neighbouring Councils may also be contemplating holding local referendums on the proposals. In these circumstances I would propose to seek to discuss the issue with colleagues in those authorities with a view to ascertaining their likely stances.

3 Recommendations

3.1 The Council is asked to:

- a) note the developments in relation to legislation on the use of the electoral register;
- b) agree that the planning assumption should be that the referendum should not take place until after the publication of the new Electoral Register;
- c) note the advice in relation to publicity relating to any referendum;
- d) agree that proposals be sought from suppliers on the basis of an all-postal referendum;
- e) agree that the current cross-party Elections Consultative Group be used as a sounding board in relation to arrangements for the holding of the referendum; and
- f) agree that I should contact neighbouring Councils with a view to ascertaining their positions in relation to the holding of local referendums.

Tom Aitchison

Tom Aitchison
Chief Executive

22/09/09.

Appendices	Appendix1	Electoral Commission Guidelines on the holding of a referendum
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Wards affected	All	
Background Papers		

Under the Political Parties, Elections and Referendums Act 2000, The Electoral Commission (the Commission) has a statutory obligation to comment on the intelligibility of UK, national and regional referendum questions.

In assessing intelligibility, the Commission will have regard to the question's effectiveness in presenting the options clearly, simply and neutrally. In the Commission's view, the failure to meet these requirements would mean that it would not be possible to regard the question as intelligible.

The Commission has developed these guidelines to facilitate the assessment of referendum questions and intends to keep them under review in order to ensure they remain relevant and applicable.

Question assessment guidelines

Guideline one

The question should prompt an immediate response

It should be clear what decision the voter is being asked to make.

Voters should not have to work out, or try to interpret the question; the voter's preferred answer should be immediately identifiable.

Voters should not have to re-read the question several times to understand its content.

The question should be written in a way that encourages each reader to interpret it in the same way. To achieve this, clear and unambiguous language should be used.

The response options should be phrased in terms that are consistent with those used in the question. For example, if the question contains the words 'agree' and 'disagree' the possible answers should also be 'agree' and 'disagree'.

Guideline two

Words and phrases used in the question should not have positive or negative connotations

Certain words or phrases may encourage support for one particular outcome. For example, words such as 'new' and 'approve' may in some instances imply that something is a positive concept.

Equally, negative words and phrases should be avoided. For example, 'abolish', 'old' and 'reject' may in some instances imply that something is a negative concept.

Unbiased descriptive words should be found to replace such terms.

Consideration should be given to perceptions that voters may have about the subject matter and potential negative or positive connotations associated with particular words.

Guideline three

Words and phrases used in the question should not be leading

The question should not be phrased so as to guide the voter towards one particular outcome.

Guideline four

Words and phrases used in the question should not be loaded

The question should be balanced and should not contain words or phrases intended to prompt one particular answer.

Words and phrases that are, or could be perceived as, false or misleading should be avoided.

Guideline five

The question should not contain 'jargon'

Words, phrases and acronyms that are only commonly used and understood by specialist groups should be avoided.

Guideline six

The language used in the question should be consistent

If certain words or concepts are referred to once in a question or preamble, their use should be consistent throughout the entire text.

Guideline seven

Words and phrases used in the question should reflect the language used and understood by the voter

Consideration should be given to the language used during any informal campaigning that may have taken place prior to the referendum period commencing, providing this could not be perceived as potentially influencing the outcome.

Guideline eight

The question should not provide too much information

The question should not contain unnecessary detail about the options or subject matter.

The question should focus on the main issue(s), rather than less important consequences or implications.

Policy alternatives that are not directly related to the referendum question should not be mentioned, as they will only make it less clear what the voter is being asked to do.

Guideline nine

The question should not be too long

The question should be sensitive to the level of public awareness surrounding the referendum issue. If there is limited public awareness of the subject, it may be appropriate to include more detail about the choices.

Where the referendum issue is a complex one or unfamiliar one, it may be appropriate to use a preamble to explain the context and/or provide additional information to the voter, rather than have a long question.

Guideline ten

The question should be well structured

The text of any question should be carefully structured and easy for the voter to read. Questions should present the issues and key words in a logical and rational sequence.

This may involve the use of several short sentences and/or a preamble.

Reverse wording or 'double negatives' should be avoided as they can make it difficult for the voter to understand the question.