

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title: Review of PPRB Rules and Guidance for coverage of Elections

To (Ofcom contact): Adam Baxter

Name of respondent: Chris Wissun Director of Programme Compliance ITV

Representing (self or organisation/s): ITV Plc

Address (if not received by email): Sent by email

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Name Chris Wissun

Signed (if hard copy)



ITV Plc Submission to Ofcom

Review of the Party Political and Referendum Broadcasts Rules and Proposed Guidance for Broadcast Coverage of Elections - Consultation

Introduction

ITV welcomes the opportunity to comment on Ofcom's proposals to revise the PPRB Rules and the Guidance to Sections 5 & 6 of the Broadcasting Code.

Channel 3 licensees are currently the commercial public service broadcasters with the most onerous requirements in terms of party political, election and referendum broadcasts under the PPRB Rules. Whilst ITV accepts its public service obligations in this regard, we believe that Ofcom should wherever possible allow the Channel 3 broadcasters to manage the allocation and scheduling of such broadcasts by agreement with the political parties and without overly detailed and prescriptive rules.

Major Parties

Question 1:

Do you agree with amending Rule 11 of the PPRB Rules and Section Six of the Code by inserting the proposed wording set out in paragraph 3.19 above? If you do not agree with this approach, please explain why and, if appropriate, suggest alternative wording.

There are clearly arguments both for and against recognising the electoral status of certain designated parties in the Broadcasting Code and the PPRB Rules as "major", and thereby differentiating their treatment by broadcasters from other parties and individual candidates. One anomaly that this creates in the wider broadcasting landscape is that the BBC do not recognise this concept, and apply general criteria rather than giving certain parties prescribed preferential status.

We do agree however that on balance the use of this distinction has in the past broadly reflected the political realities of the United Kingdom, and has been of some practical assistance to commercial broadcasters in determining the criteria for and allocation of PPBs and PEBs. It has not however been helpful in relation to Section 6 of the Code, in enabling the fullest and most flexible editorial election news coverage in terms of constituency reporting.

Since Ofcom has already decided not to dispense with the concept of "major parties" in the Code and the Rules, we do agree that in future Ofcom will need to regularly review and potentially revise the list of 'major parties'. We therefore agree with the proposed approach, although we have no comment

on the inclusion of the Alliance Party to the list of “major parties” in Northern Ireland. We suggest that Ofcom should formally review the list in advance of each election or set of elections and confirm that the list remains unchanged (or that a change will be adopted).

Allocation of PEBs to Independent Candidates

Question 2:

Do you agree with amending Rules 10 of the PPRB Rules by inserting the proposed wording set out in paragraph 3.31 above? If you do not agree with this approach, please explain why, and, if appropriate, suggest alternative wording.

ITV's view is that the current Rules are confusing in that, whilst they state that only registered political parties can be offered PPBs or PEBs, the legal position is not so straightforward. Whilst one reading of Section 37 of the Political Parties Elections and Referendums Act 2000 appears to preclude independent candidates from receiving a PEB, the BBC and ITV have taken a different approach in the past, and indeed in practice both the BBC and ITV have been willing to offer independent candidates broadcasts in certain elections (such as the London Mayoral/Assembly elections) subject to threshold criteria being met. Neither Ofcom nor the political parties have previously taken any issue with this position in regard to independent candidates in such elections.

We have an alternative suggestion as regards redrafting the Rules generally. Since Ofcom proposes to refer throughout the Rules to independent candidates, that gives rise to the seemingly contradictory assertion that “Party Election Broadcasts” should be given to individuals as well as parties. Instead, we suggest that henceforth PEBs are referred to as Election Political Broadcasts (EPBs) which encompasses both parties and independents, and which makes clear the distinction with Party Political Broadcasts (PPBs), which are only available to political parties outside election periods.

Other than this, we agree that the allocation of broadcasts in Rule 10 should be extended to independent candidates but for clarity we consider the qualification in the proposed Rule 13A might be also referenced in Rule 10 ie it should be made clearer that independent candidates may only be allocated broadcasts in certain specified elections.

The scope of the PPRB Rules in relation to elections

Question 3:

Do you agree with amending Rule 9 of the PPRB Rules by inserting the proposed wording set out in paragraph 3.40 above? If you do not agree

with his approach, please explain why, and, if appropriate, suggest alternative wording.

This part of the Consultation appears to ITV to begin from a mistaken premise, namely that there is a gap in the current PPRB Rules in relation to London.

The consultation makes a distinction between Greater London Authority elections and the London Mayoral Election. But the Greater London Authority is comprised of the Mayor and the London Assembly. The Mayor is the “executive arm” of the GLA and the Assembly is the “scrutiny arm” of the GLA, holding the Mayor to account.

We therefore disagree with the suggestion in the Consultation that that the Channel 3 licensee in London currently is not required under the Rules to offer PEBs in respect of the London Mayoral Election. Since the London Mayoral election is a GLA election, the current Rules have always required this of the Channel 3 licensee in any event, and such PEBs have always been offered, subject to threshold criteria (including whether the candidate was representing a “major party” as defined by the Rules).

We would also note that independent candidates have also been explicitly included in the criteria for being offered PEBs for the London Mayoral Elections in the past, including in 2012, subject to demonstrating evidence of substantial current electoral support.

Therefore we consider the proposed amendment to the Rules to include the words “London Mayoral Elections” after “Greater London Authority Elections” is strictly unnecessary, since the former is a subset of the latter.

We propose that, should any clarification be considered necessary on this point, the better wording would be to replace Greater London Authority Elections with the two types of election comprised in this description, namely with the words “**London Assembly Elections, London Mayoral Elections,**” in the list in Rule 9 of the Rules.

The Channel 3 licensees have always been clear about the elections for which they are obliged to offer election broadcasts under the Rules. That said, we have no objection to the proposed new footnote to the Rules listing the various elections for which the relevant Channel 3 licensees are not obliged to carry election broadcasts,

As regards the list of relevant Channel 3 licensees obliged to carry Scottish election and referendum broadcasts, we agree that this list should include Borders, but we do not agree that the North East England licensee should also be obliged to carry Scottish election or referendum broadcasts. The Borders licensee has traditionally carried both English and Scottish PPBs and PEBs, but there is no rationale whatever for imposing Scottish broadcasts on viewers in the North East licence area, which has not (contrary to para 3.103 of the Consultation) previously carried these broadcasts. As far as we are

aware all Scottish viewers who could receive the North East England signal could also receive the Border licence signal, and therefore do not require access to all relevant Scottish PPBs and PEBs via the North East England signal. It would also be unfair and simply alienate the vast majority of English viewers receiving the North East England signal.

Local Television

Question 4:

Do you agree with amending Rules 7 to 9 of the PPRB Rules by inserting the proposed wording, including new Rule 9A, set out in paragraph 3.51 above? If you do not agree with this approach, please explain why, and, if appropriate, suggest alternative wording.

We refer Ofcom to the submissions by the Broadcasters Liaison Group, of which ITV is a member, in relation to this question.

Question 5:

Do you agree with either Option (A) or Option (B) in relation to inserting new Rules 17A and 17B, as set out in paragraph 3.68 above? If you do not agree with either of the proposed options, please explain why and, if appropriate, suggest alternative wording.

We refer Ofcom to the submissions by the Broadcasters Liaison Group, of which ITV is a member, in relation to this question.

The allocation requirement for PEBs (ie which parties and independent candidates must be offered PEBs)

Question 6:

a) Do you agree with the 'one sixth' threshold set out in Rule 13 of the PPRB Rules? If you do not agree with the threshold, please explain why, and, if appropriate, suggest an alternative.

b) Do you agree with amending Rules 12, 14 and 17 of the PPRB Rules by inserting the proposed wording, including new Rule 13A, set out in paragraph 3.83 above? If you do not agree with this approach, please explain why, and, if appropriate, suggest alternative wording.

We agree that the one-sixth threshold for "non-major" parties set out in Rule 13 should be retained in relation to elections in England.

We do not agree that the one-sixth threshold remains appropriate for elections in Wales, and we consider that there is no compelling reason offered by Ofcom in the Consultation for retaining the rule in relation to that nation. We

note that the figures in the Consultation show that increasing the threshold to one-quarter of contested seats would not disadvantage any of the parties likely to have any chance of securing seats in relation to their past or current support, but would prevent much smaller parties using the one-sixth rule to secure a broadcast simply by standing in a relatively small number of seats. We therefore submit that the threshold should be raised to one-quarter in Wales.

ITV makes no comment in relation to the rule's appropriateness in Scotland or Northern Ireland.

ITV agrees with the proposal to amend Rule 12 to offer each "major" party as defined by Ofcom "at least" two broadcasts.

ITV does not agree with the drafting of the proposed new Rule 13A. We suggest that the Rules should make clear where allocation is a requirement and where it is in the discretion of the broadcaster. In the case of PEBs for independent candidates or "non-major" parties participating in Mayoral or PCC elections but not in concurrent local or London Assembly elections, we suggest the appropriate wording should be:

"For Mayoral and PCC Elections, in relation to independent candidates, and candidates representing registered parties which are not also participating in any concurrent local or London Assembly elections, Licensees should consider making an allocation of a PEB where candidates can demonstrate that evidence of significant past and/or significant current electoral support means it would be appropriate to do so."

We consider that evidence of "significant" past and/or current support should be the appropriate test in relation to such candidates, in line with the current wording in Section 6 of the Code in relation to constituency and electoral area reporting.

ITV does not agree that the amendment to Rule 14 to distinguish between past "electoral" support and current support is necessary, since "past support" clearly includes past electoral support, which an individual or party which has not contested the election before would obviously not possess.

ITV agrees in principle with the proposed amendment of Rule 17 to make clear that PEBs must not promote any particular outcome of a referendum in relation to England and Wales. We would however note this Rule might possibly create unanticipated difficulties and confusion in Scotland prior to the Scottish independence referendum.

Duration requirements

Question 7:

Do you agree with:

a) Any of Options (C1), (C2), (D1) or (D2) in relation to amending Rule 20 of the PPRB Rules in relation to television, by inserting the proposed wording as set out in paragraph 3.93 above?

b) Either Option (E1) or Option (E2) in relation to amending Rule 20 of the PPRB Rules in relation to radio, by inserting the proposed wording as set out in paragraph 3.93 above.

If you do not agree with any of the options, please explain why, and, if appropriate, suggest alternative wording.

ITV submits that there is no legal or regulatory obligation on Ofcom to specify the duration of political broadcasts in the Rules and should leave this to broadcasters to determine. We do acknowledge the need for a minimum length for such broadcasts, to ensure no risk of confusion between political broadcasts and advertising, given the existing restrictions on political advertising. We do not consider that political parties should be given a choice as to the length of PPBs, PEBs or RCBs, given no other programme supplier can dictate the length of a programme to a broadcaster. This is a particular concern given that the “major parties” as defined in the Rules have tended in recent years to opt for the shortest broadcast length, whilst the smaller parties are more likely to opt for the longest, which makes scheduling more difficult to plan (and on Channel 3 usually leads to the reduction in regional news minutage). It also throws into question why so much broadcaster time and effort and regulatory oversight has been or should continue to be devoted to the sometimes contested question of the number of broadcasts allocated to each party, if the overall airtime given to a party with one broadcast is little different to another party allotted two broadcast slots.

Options D1 and D2 are wholly unacceptable and impractical, since they would exacerbate the current scheduling difficulties created for broadcasters by political parties failing to deliver content on time or to confirm the length of broadcasts until very close to broadcast.

Therefore, ITV submits that Option C2 (all broadcasts 2'40'') is the best of the options offered in the Consultation and should be adopted for television.

Scheduling requirements

Question 8:

Do you agree with the scheduling requirements set out in Rules 21 and 22 of the PPRB Rules? Please give reasons for your response.

ITV submits that there is no legal or regulatory obligation on Ofcom to specify scheduling requirements in the Rules. To assist broadcasters in accommodating the sometimes large numbers of broadcasts within the

relatively short election period, there should be some relaxation in the scheduling requirements, namely to dispense with the peak time requirement for “major” parties. We suggest All PPBs, PEBs and RCBs should be broadcast between 6pm and 11.30pm at the discretion of the licensee, having regard to the need to maintain due impartiality between the “major” parties and the “non-major” parties respectively.

The timing of PPBs

Question 9:

Do you agree with amending Rules 9 and 18 by inserting the proposed wording set out in paragraph 3.101 above? If you do not agree with this approach, please explain why and, if appropriate, suggest alternative wording.

ITV agrees with the adoption of seasonal allocation of PPBs in the Rules, and that no PPBs should be broadcast during election or referendum periods. We do not however agree with the dates suggested by Ofcom, which are not practical. We do not consider it necessary for Ofcom to specify dates at all in the Rules. As Ofcom is aware, ITV has already started to allocate on a seasonal basis in agreement with the BBC and the “major” parties. But if Ofcom considers it necessary to specify periods for each seasonal broadcast, we suggest the most practical allocation is November-January inclusive for the Winter broadcast, February-April for the Spring broadcast, and September-October for the Autumn broadcast (all subject to there being no PPB scheduled during any election or referendum period).

Referendums and Scottish elections

Question 10:

Do you agree with amending Rules 8, 9 and 19 by inserting the proposed wording set out in paragraph 3.110 above? If you do not agree with this approach, please explain why and, if appropriate, suggest alternative wording.

Firstly, it is not the case, as stated in paragraph 3.103, that in relation to Scottish elections as a matter of custom and practice the two Channel 3 licensees that straddle the border between England and Scotland have in general shown PEBs during Scottish elections. The Borders licensee has always done so, but the North East England licensee has not.

As we state above, as far as we are aware all Scottish viewers who could receive the North East England licence signal could also receive the Borders licence signal, and therefore do not require access to all relevant Scottish PPBs and PEBs via the North East England signal. It would also be unfair and would alienate the vast majority of English viewers receiving the North

East England signal. There is therefore no necessity or rationale for North East England to carry such Scottish broadcasts, which would be of no relevance to the vast majority of its viewers.

Therefore ITV strongly objects to the imposition of any requirement on the North East England licensee to carry Scottish PEBs or the RCBs in relation to the Scottish independence referendum.

We have no objection to the Rules stating as a requirement that which is already a matter of custom and practice, namely that the Borders Channel 3 licence is among the relevant regional Channel 3 licences that will carry the Scottish independence referendum RCBs, and PEBs in relation to Scottish elections. It should also be noted that the Isle of Man is now covered by the Granada licence, not the Borders licence.

We also have no objection to the suggested slight change of wording in relation to the allocation of RCBs.

Other issues

Question 11:

Are there any other issues arising from the PPRB Rules, not already covered, which you wish to raise?

On the issue of labelling, ITV considers it necessary to continue to label political broadcasts clearly, to ensure viewers are aware that such broadcast are not advertising and that they are not editorial content (particularly that it is not news or current affairs content) commissioned or produced by the broadcaster.

Code Guidance

Question 12:

a) Are the provisions of the Proposed Code Guidance set out above appropriate?

b) If you do not agree that any provisions of the Proposed Code Guidance are appropriate, please explain why and suggest alternative wording.

ITV agrees with Ofcom that Sections 5 and 6 of the Code are complex, and since they partly reflect language contained in statute they are not always easy for programme makers to readily understand or apply. We regret that Ofcom has decided not to review the Code itself in this area, which we believe would benefit from some revision to aid clarity, and to encourage more flexible

and less formulaic news reporting, in particular around elections and constituency reports.

Nevertheless we generally support the revisions to the Guidance that assist in interpreting these Sections, for example the summary of which types of programming are covered by which Rules in Section 5, and the references to relevant precedent adjudications.

We have some comments on the detail of the drafting as follows:

Section 5:

Para 4.15 – "...the broadcaster has the right to interpret news as it sees fit as long as it complies with the Code". There is some ambiguity in this phrase ie whether it refers to what constitutes "news" itself, or to comment on actual news events. We would suggest "the broadcaster has the right to provide comment on news events as it sees fit, as long etc".

Para 4.54 – 4.57 - we consider that this section, no doubt a response in part to flagrant breaches by minority channels, such as those referred to in Para 4.58, poses a serious risk to and fetter on the editorial discretion of broadcasters, and might even threaten the future commissioning of serious "personal view" programmes. The revised guidance appears to us to now effectively require the inclusion of alternative viewpoints in such programmes in a wholly artificial and overly schematic manner.

We consider Ofcom should therefore revert to and retain the existing guidance in this area, amplified only with reference to precedent, and to the fact that where alternative views are not adequately represented in the personal view programme itself, it may be possible to maintain due impartiality in a clearly linked further programme or series of programmes in which alternative viewpoints will be adequately represented.

Section 6:

Although Ofcom is not consulting on any change to the Code itself, we would also take this opportunity to point out that the currently stated meaning of "election period" in relation to the National Assembly of Wales is "the last date for publication of notices for an election". We consider that following the Government of Wales Act 2006, the start of the election period in this case should in fact be dissolution, as in Scotland.

ITV Plc
21 January 2013