

## **Yes Scotland**

Yes Scotland Limited is a company limited by guarantee set up to campaign for a “Yes” vote in the Scottish independence referendum in Autumn 2014.

Our comments all deal with the broadcasting implications of the independence referendum, which represents the most important electoral event in Scotland’s democratic history.

## **Questions 1-3 & 5**

Our submission is restricted to issues relating to Referendum Campaign Broadcasts. We offer no view on the issues raised in these questions as they touch on other aspects of the review. These issues are for political parties, broadcasters and other stakeholders.

## **Question 4**

We welcome the confirmation that the two recently awarded local television licences in Glasgow and Edinburgh will require to carry the broadcasts for the independence referendum.

## **Question 6**

The amendment to Rule 17 dealing with Party Election Broadcasts and referendums is a helpful addition – although we appreciate that there are no scheduled elections in Autumn 2014. It would be useful if “purpose” could be tightened up by making a complete prohibition on making references to an ongoing referendum in a PEB.

## **Question 7**

We support Option (C1) – the status quo option for television. We see the technical merit in Option (E2) in relation to radio broadcasts and we therefore support this option.

The argument for Option (C2) appears to be largely based on the practice described in paragraph 3.85 of the review. We note that there have only ever been eight Referendum Campaign Broadcasts on television under PPERA – four at the North East Regional Assembly referendum in 2004 and four at the AV referendum in 2011.<sup>1</sup>

The designated organisations for the AV referendum in 2011 were allocated two broadcasts each. The “No” Campaign used a broadcast of 3’40” for their second broadcast. This broadcast, which featured

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<sup>1</sup> There were no designated organisations at the referendum on the law-making powers of the National Assembly for Wales in 2011, which meant that there were no bodies entitled to RCBs.

the well-known fictional politician Alan B'Stard, is widely regarded as the most effective broadcast of the four.<sup>2</sup>

Although we can see the superficial attraction of removing a little exercised option in relation to PPBs and PEBs, there have simply not been enough referendums with eligible organisations to justify removal of the option for RCBs. The broadcasters do not appear to be arguing particularly forcibly for a change, but simply pointing out the existence of a practice. The case falls squarely into the “not proven” category.

The position at the 1975 referendum on continuing membership of the European Communities is worth noting. This was the only pre-PPERA referendum with referendum broadcasts.<sup>3</sup> The broadcasts were 10 minutes long. We do not think that there would be public appetite to revert to 10 minute broadcasts and appreciate that this was the normal allocation for political broadcasts at the time. We do feel, however, that the total likely programming duration should be looked at in the round, particularly given the proposal to remove the requirement to run a “series” of broadcasts in the review document. In 1975, each side had 40 minutes of programming. This compares very poorly with the possibility of perhaps 5'20” of programming in 2014.

Without sounding too cynical about matters, some PPBs and PEBs have been criticised for concentrating on matters of presentation over substance. For an RCB to be effective, there is no choice but to deal with the issue before it in a head on way. This is likely to take more time – making longer options more attractive to referendum campaigners than political parties.

### **Question 8**

We agree that the current rules should be retained. We do not think that scheduling inconvenience should be seen as a prime issue when it comes to such an important referendum as the independence referendum.

There has been a particular issue in the past on the scheduling of Party Election Broadcasts by the holders of the Borders and the North East England Channel 3 licences.

Invariably, the slot allocated has been very much a less than a prime slot. We consider the current rules act as a useful safeguard to ensure that an even less prime slot is not allocated by all licence holders but, in practice, by these licence holders in particular.

### **Question 9**

We agree with the proposal that there should be no Party Political Broadcasts during referendum campaign periods. We note that for the Scottish independence referendum this would effectively be

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<sup>2</sup> Broadcast is available at [http://www.youtube.com/watch?v=-obZ9OG\\_XKA](http://www.youtube.com/watch?v=-obZ9OG_XKA).

<sup>3</sup> Although there were eight referendums held in the UK before PPERA was enacted, the 1975 referendum was the only one with officially recognised campaign groups – a practical pre-requisite of being able to allocate broadcasts.

required anyway on the basis of the decision in *Wilson v IBA* 1979 SC 351, as parties are not evenly divided on the desired outcome.

## **Question 10**

### *Number of RCBs*

We do not support the proposed amendment to Rule 19, which we consider to be a regressive step.

In principle, we are uncomfortable that the question of whether a referendum is of “a lower public profile or importance” is being left to broadcasters. A referendum is important because a democratically elected parliament has decided that it is appropriate for the electorate to determine a matter which transgresses normal politics. We strongly feel that this is not a key which should be left in the broadcasters’ cupboard.

We note that in 1975 the National Referendum Committee were able to use their broadcasts to have four themed programmes (Food and Prices, Jobs and Trade, the “Regions” and, finally, Sovereignty) with Britain in Europe opting for a series of endorsements.<sup>4</sup> There will be as many issues to be debated in 2014, if not more, as there were in 1975.

The review correctly accepts the importance of the independence referendum – but making the minimum allocation one as opposed to two will probably mean that two as opposed to three or four broadcasts are allocated. We note that the minimum number of broadcasts were allocated for the AV referendum, which involved the process of election to the UK legislature – a matter we would normally think of as a high importance referendum.

We note that Section 333(2)(c) of the Communications Act 2003 allows the rules to include provision for determining “the length and frequency of such broadcasts.” The use of the word “frequency” implies an intention of the UK Parliament in enacting the legislation that more than one broadcast would be allowed. The proposed amendment is to read the requirement in the rules as providing for the determination of “the length and *number* of such broadcasts”.

### *Licenses for Independence Referendum*

We welcome the intention to clarify the Channel 3 licenses which are required to broadcast RCBs for the independence referendum.

We propose that Rule 8 is further amended to require Channel 4 and Channel 5 to broadcast the RCBs. The franchise at this election will include members of the services with service qualifications who are resident in service accommodation in England. These voters have received a particular attention already in relation to the referendum debate.<sup>5</sup> They will only be able to see normal transmissions of the broadcasts if they are on Channel 4 or Channel 5. These electors will not be

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<sup>4</sup> Smith, *Broadcasting* in Butler & Kitzinger, *The 1975 Referendum* (Macmillan Press, 1976).

<sup>5</sup> See, for example, *The Referendum on Separation for Scotland (sic): The proposed section 30 Order – Can a player also be the referee?*, Scottish Affairs Committee, Sixth Report of Session 2012-13, para 31-32.

receiving the same level of ordinary programming in relation to the referendum as viewers in the Central Scotland and North of Scotland Channel 3 licence areas.

In addition, from sample figures we have been provided with, it looks as if something like 1.75% of postal voters in Scotland use an address in the UK but outwith Scotland for delivery of their postal votes. There are electors who live in Scotland but commute to other parts of the UK during the week.

Naturally, both sides in the referendum debate are saying at this stage that they will win and win handsomely. However, the possibility of a close result still needs to be considered and we think this tips the balance in favour of extending the licences.<sup>6</sup>

In any event, this is a referendum which will have an ongoing effect on the relationship between the nations of the United Kingdom, whatever the result. There is already a high level of interest in this issue outwith Scotland in a way which will never apply to an election to the Scottish Parliament. It is not asking for very much to look at requiring Channel 4 and Channel 5 to carry these broadcasts.

We note that as a result of the last review of the rules both Plaid Cymru and the SNP are allocated broadcasts at General Elections on both Channel 4 and Channel 5.

#### *Technical Issue on Designation by the Electoral Commission*

As identified in Paragraph 3.107 of the consultation document, Section 4(1)(a) of the Scotland Act 1998 (Modification of Schedule 5) Order 2013, applies section 127 (referendum campaign broadcasts) of the Political Parties, Elections and Referendums Act 2000 (“PPERA”) to the independence referendum.

Section 4(2) of the Order applies these provisions with “references, however expressed, to a person or body designated under section 108... to be read as references to a person or body designated under an Act of the Scottish Parliament for the purposes of an independence referendum as representing those campaigning for a particular outcome in relation to the question in the referendum.”

The document is correct that the draft Referendum (Scotland) Bill published in January 2012 anticipates that the Electoral Commission will fulfil a designation function for the Scottish independence referendum in the same way as they do at UK Referendums held under PERA.

However, matters have moved on substantially since January 2012 in that Yes Scotland Limited and Better Together 2012 Limited have both been incorporated as companies limited by guarantee with the aim of being the lead campaign organisations for both outcomes in the referendum. Better Together 2012 Limited is supported by the political parties represented in the Scottish Parliament which support a “No” vote in the referendum and Yes Scotland Limited is similarly supported by the parties in favour of a “Yes” vote.

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<sup>6</sup> The “Yes” proposition in the 1997 Welsh devolution referendum won by only 6,721 votes (amounting to 0.6% of the share).

In view of this, we have suggested to the Electoral Commission and the Scottish Government that consideration is given to simply naming the companies in the legislation, rather than replicating the designation process in PPERA. It is noted that the two campaign groups were named for the purposes of the 1975 Referendum on continuing membership of the European Communities.<sup>7</sup> Naming the organisations would also remove certain issues identified by the Electoral Commission in their report on the AV Referendum in relation to spending by designation organisations before they have actually been designated by the Electoral Commission. It would also remove the need for a process to be set up which can only realistically come to one conclusion – the designation of Better Together 2012 Limited as the organisation for the “No” outcome and Yes Scotland Limited for the “Yes” outcome.

We therefore do think that a small technical change is needed to Rule 10 to link to specifically link into the 2013 Order to cover the possibility of an amendment to the legislation along these lines being made.

## **Question 11**

### *Intros*

We agree with all that is said in paragraph 3.111 in relation to the labelling of broadcasts. The current labelling can act as a deterrent to viewers.

Although we accept that labelling is a matter for broadcasters rather than the Code, we would use this opportunity to suggest that the broadcasters design a new intro for Referendum Broadcasts – perhaps one specifically for the independence referendum. Clearly, that would have to be an intro that both organisations were content with.

The Scottish independence referendum is not going to be like a normal election. It is not going to be the same set of politicians doing talking pieces to cameras. The intro for RCBs/PPBs/PEBs currently used by broadcasters has been in use for some time and is associated with elections and a certain amount of negativity that this implies. The line beginning “There now follows” has been the subject of satire for a number of decades.

We think that a fresh intro for the referendum would increase the likelihood that viewers would continue to watch the programme. We would be happy to discuss this with broadcasters and other stakeholders.

### *Allocation*

We appreciate that the actual allocation of broadcast remains a matter for the licence holders and in practice the lead is usually taken by the BBC working through the Broadcasting Liaison Group.

We are aware that lots were drawn in relation to previous referendum broadcasts to determine the order of allocation in 1975, 2004 and 2011. Although there could be debate over whether what is essentially a *status quo* proposition should go first or last (as was debated in 1975), we consider that lots are the least worst way of dealing with this issue.

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<sup>7</sup> Section 3(1) of the Referendum Act 1975.