



A review of the Ofcom Rules
on Party Political and Referendum
Broadcasts and Proposed Ofcom
Guidance for broadcast coverage
of elections
Statement

Statement

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Section 1

Executive summary

Introduction

1.1 This Statement sets out: the responses from stakeholders to Ofcom’s consultation (“the Consultation”)¹; and our response and decisions in relation to:

- Ofcom’s rules on Party Political and Referendum Broadcasts (“the PPRB Rules”)² – see Section 3; and
- guidance relating to Section Five (due impartiality)³ and Section Six (elections)⁴ of the Ofcom Broadcasting Code (“the Code”), including minor amendments to the Code – see Section 4. This Guidance aims to help broadcasters comply with the Code when broadcasters produce their own coverage of elections and referendums⁵.

Background

1.2 In Section 2, we lay out the legislative and regulatory background to the Consultation.

1.3 During election and referendum campaigns, there are three types of broadcast content:

- party election broadcasts (“PEBs”) allocated by relevant broadcasters to registered political parties under the PPRB Rules;
- referendum campaign broadcasts (“RCBs”) granted by relevant broadcasters to designated organisations under the PPRB Rules; and
- broadcasters’ own coverage of an election (or referendum) campaign, which must comply with Sections Five and Six of the Code.

1.4 Relevant broadcasters also allocate party political broadcasts (“PPBs”) to registered political parties, under the PPRB Rules. PPBs are currently granted to the “major parties”⁶, for broadcast at certain times during the political year, outside of election periods.

1.5 The Communications Act 2003 (“the Act”) requires every licensed public service television channel and every national commercial radio service⁷ to: include “party

¹ See <http://stakeholders.ofcom.org.uk/binaries/consultations/ppbs/summary/condoc.pdf>

² See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/ppbrules.pdf>

³ The rules in Section Five can be found at <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/impartiality/>

⁴ The rules in Section Six can be found at <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/elections/>

⁵ Section 5 of the Code applies to broadcast content outside of election and referendum periods as well.

⁶ As defined under Rule 11 (see paragraph A1.11, Annex 1 of the Consultation) of the PPRB Rules.

⁷ See section 333. The television and radio channels obliged to carry PEBs, PPBs and RCBs are Channels 3, 4 and Five, Classic FM, Talksport and Absolute AM (“the Licensees”). The BBC and S4C

political broadcasts” (which includes both PEBs and PPBs) and RCBs; and observe rules made by Ofcom (i.e. the PPRB Rules) for such broadcasts. Ofcom can make rules which may include provision for determining the political parties on whose behalf PPBs, including PEBs, may be made. The PPRB Rules contain minimum requirements set by Ofcom which Licensees must abide by in deciding the allocation, length, frequency and scheduling of PEBs, PPBs and RCBs.

- 1.6 Several factors informed our review of the PPRB Rules, including that the new generation of local television services, which may launch from 2013 onwards, will be required⁸ to offer broadcasts covered by the PPRB Rules in their services⁹.
- 1.7 We have not consulted on the fundamental issue of whether particular Licensees should be required to offer such broadcasts at all, or considered the question of public engagement with PEBs, PPBs and RCBs (i.e. the public appetite for such broadcasts). As we said in the Consultation¹⁰, we consider these issues are more properly matters for the UK Parliament.

The PPRB Rules

- 1.8 Section 3 of this Statement sets out: stakeholders’ views; and our response and decisions, in relation to the limited amendments to the current PPRB Rules that we proposed in the Consultation. The finalised version of the PPRB Rules, reflecting our decisions in this Statement, is set out in Annex 1.
- 1.9 The following issues are discussed in Section 3:
- **Major parties:** The list of “major parties” in the PPRB Rules means that a small number of established political parties automatically receive PEBs. In the Consultation, we proposed removing the list of major parties from the PPRB Rules¹¹ and placing it in an annex, which would be regularly reviewed taking account of relevant evidence. The majority of respondents favoured our proposal of placing the list of major parties in an annex. Having taken account of the responses we have received, we consider that, on balance, the advantages of retaining the concept of “major parties” in both the PPRB Rules and Section Six of the Code outweighs the disadvantages. In paragraph 3.33 below, we clarify the circumstances under which we would undertake periodic reviews of the list of major parties. In particular, we make clear that we would only review the list if there were cogent reasons for doing so. We also confirm that the Alliance Party in Northern Ireland has been added to the new list of major parties. A finalised version of the list of major parties is contained in Annex 3.

also allocate party political and referendum broadcasts on a similar basis. However, neither the BBC nor S4C is regulated by Ofcom in this connection.

⁸ The Local Digital Television Programme Services Order 2012 see

http://www.legislation.gov.uk/ukxi/2012/292/pdfs/ukxi_20120292_en.pdf) amends the Act to require the new local television licences to contain a condition, requiring them to include PEBs, PPBs and RCBs in their services.

⁹ As part of our review of the PPRB Rules, we convened an open meeting of stakeholders in the local television sector to hear views as to how a new statutory obligation to carry PEBs, PPBs and RCBs on local television services might work in practice.

¹⁰ See paragraph 2.12 of the Consultation.

¹¹ We also proposed an identical amendment to the list of “major parties” contained in Section Six of the Code.

- The allocation of PEBs to independent candidates: The PPRB Rules state that the relevant broadcasters can only carry PPBs and/or PEBs produced by political parties registered with Electoral Commission. A majority of respondents agreed with our proposal to amend the PPRB Rules to make clear that independent candidates could be eligible, in principle, for PEBs in certain limited cases. However, given the ambiguity in the law in this area (and the view of the Electoral Commission¹² that under the law as it stands independent candidates, as individuals, cannot legally qualify for PEBs or PPBs), we will not be amending the PPRB Rules to include independent candidates at this time. However, we state our support for the steps being taken by the Electoral Commission to raise this issue with Government, so that a change in the law may be made at the appropriate opportunity.
- The 'scope' of the PPRB Rules in relation to elections (i.e. which elections they cover): The PPRB Rules require Channel 3 licensees to carry PEBs for a broad range of elections¹³. All the responses we received supported our proposed amendments in this area, including amending the current PPRB Rules to make clear that where a registered party which was running just for the London Mayoral Elections (and not the London Assembly Elections), a PEB in principle could be allocated.
- Local television: We have amended the PPRB Rules as follows:
 - Scope – the elections and referendums for which local digital television programme services should carry broadcasts: Given the strong concerns expressed by some broadcasters about the potential burden that our proposals would have placed on local television broadcasters, we are amending the PPRB Rules to require local digital television programme service licensees to carry PEBs¹⁴ only for two types of elections: local elections; and in London the elections for the London Assembly and Mayor of London.
 - Delivery – how local digital television programme services should carry broadcasts: In the Consultation, we acknowledged the practical difficulties with including candidates in locally-focused PEBs when there are a number of constituencies or electoral areas in the broadcast area of a given local television service. Therefore, we proposed two options: **Option (A)**, which would impose a minimum obligation on local television services to offer parties the opportunity to: retransmit their national PEBs; and transmit local PEBs featuring candidates for Mayoral and Police and Crime Commissioner (“PCC”) Elections; and **Option (B)**, which was the same as Option (A) but with the difference that local television services could, if they wanted to, offer the option to parties of transmitting locally-focused PEBs which do not feature candidates. However, several respondents, including the Electoral Commission, voiced particular concerns over the practical effect of our proposals. Therefore, to ensure that the

¹² Although we are not bound by the views of the Electoral Commission, by virtue of section 333(5) of the Act Ofcom must “have regard” to any views expressed by the Electoral Commission in this area.

¹³ These are: General Elections; European Elections; local government elections throughout the UK; Parliamentary/Assembly elections in the devolved nations; and elections for the London Assembly and Mayor of London.

¹⁴ Local digital television programme service licensees will not be required to broadcast PPBs or RCBs.

obligations on local television broadcasters are proportionate, we are requiring that in delivering PEBs for local elections, and in London, the elections for the London Assembly and Mayor of London, local digital television programme service licensees are required to carry the same PEBs in these elections as the relevant Channel 3 licensee.

- The ‘allocation’ requirements for PEBs (i.e. which parties and independent candidates must be offered PEBs): The PPRB Rules contain the rules for allocating PEBs to the parties. We have made a number of minor amendments to these rules, having taken account of responses we have received. The vast majority of respondents considered the ‘one sixth’ rule (whereby PEBs are allocated to ‘non-major’ parties if a party stands candidates in at least one sixth of seats in ‘first-past-the-post’ elections such as General Elections) remains generally fit for purpose. Some respondents considered the current threshold allows smaller political parties to ‘game’ the ‘one sixth’ rule by fielding candidates in at least one sixth of the seats in Northern Ireland and Wales during General Elections to ensure that they receive a PEB in those nations. However, we have not changed this threshold in relation to Wales and Northern Ireland because we do not consider there is sufficient evidence or reasons to justify changing the rules in this area.
- The ‘duration’ requirements for PEBs/PPBs/RCBs (i.e. lengths of broadcasts): The PPRB Rules set out the options for lengths of individual PEBs, PPBs, and RCBs: 2’40”, 3’40” or 4’40” for television broadcasts; and any length up to 2’30” for radio broadcasts. In the Consultation, we proposed various options¹⁵ for change in this area. However, after careful consideration of the responses we have received, we have decided to retain the current rules, as we consider they provide appropriate flexibility in this area.
- The ‘scheduling’ requirements for PEBs/PPBs/RCBs: The PPRB Rules set out the options for the scheduling of PEBs, PPBs and RCBs on television and radio (i.e. the times that broadcasts can be transmitted during the day). After careful consideration, we: believe that the current scheduling rules have worked effectively; and affirm the view¹⁶ stated in the Consultation that there are not sufficient arguments for change in this area.
- The ‘timing’ of PPBs (i.e. when broadcasts outside election periods should be shown during the year): Under the PPRB Rules, PPBs are offered by Channel 3 licensees to the major parties “around other key events in the political calendar, such as the Queen’s Speech, the Budget and party conferences”. There was unanimous support for our proposal to amend the PPRB Rules to require that PPBs are allocated on a seasonal basis, which would mean the rules would mirror those of the BBC Trust in this area. We have therefore amended the PPRB Rules taking into account respondents’ suggestions about the definition of ‘seasonal’ in this context.
- Referendums and Scottish elections: After taking into account concerns expressed by stakeholders, including the Electoral Commission, we are not amending the PPRB Rules in relation to the allocation of RCBs during referendums. We are also making clear that the Channel 3 licensee for the Borders region, which straddles the Scottish-English border, should be

¹⁵ As set out in paragraph 3.165 below.

¹⁶ See paragraph 3.96 of the Consultation.

required to carry: RCBs during the Scottish independence referendum; and PEBs during Scottish elections.

- **Other issues:** We received several responses on other issues not covered above. In particular, some broadcasters raised concerns that we had not undertaken a more fundamental review of the PPRB Rules. However, we consider these issues are more properly for the UK Parliament. We note that the majority of respondents did not demur from our view that the PPRB Rules in general have been fit for purpose.

Proposed Code Guidance

- 1.10 Section 4 of this Statement sets out stakeholders' views; and our response and decisions, in relation to the Proposed Code Guidance we set out in the Consultation. The Proposed Code Guidance aimed to help broadcasters comply with the Code when broadcasters produce their own coverage¹⁷ of elections and referendums.
- 1.11 There was broad support for the Proposed Code Guidance. Following suggestions from various respondents, we have decided to make minor amendments to the Proposed Code Guidance in, for example, the following areas: the reporting of contentious viewpoints in news; due impartiality in 'personal view' programmes; and types of election programming.
- 1.12 We confirm as final the Proposed Code Guidance we set out in Section 4 of the Consultation, having made amendments reflecting the responses we have received to the Consultation. This Guidance will replace the various pieces of Guidance listed in footnote 17. For reference, the finalised version of the Code Guidance, reflecting our decisions in this Statement, is set out in Annex 2.
- 1.13 In the Consultation¹⁸, we stated that Ofcom considers that the rules laid out in Sections Five and Six of the Code (and in particular Rules 6.8 to 6.13 on constituency coverage and electoral area coverage in elections) are generally fit for purpose in ensuring that broadcasters comply with the relevant standards obligations.
- 1.14 Two broadcasters argued for a more fundamental review of the constituency and electoral area reporting rules¹⁹ set out in section Six of the Code. These respondents considered these rules are over-prescriptive and inflexible. However, after very careful consideration, we do not agree with these respondents' views to replace Rules 6.8 to 6.13 with a more general requirement to preserve due impartiality during elections. In particular, we state that the constituency and electoral area reporting rules, including Rules 6.9, 6.10 and 6.11:
- strike an appropriate balance between both the broadcasters' and political candidates' right to freedom of expression, consistent with Article 10 of the European Convention on Human Rights; and

¹⁷ To assist broadcasters, Ofcom has already published guidance to Section Five (see <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section5.pdf>) and Section Six (see <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section6.pdf>). Additionally, following a recent consultation, we published bespoke guidance ("the PCC Guidance") – see <http://stakeholders.ofcom.org.uk/binaries/consultations/2012-police-elections/statement/statement.pdf> - ahead of the November 2012 elections for PCCs in England (outside London) and Wales in November 2012..

¹⁸ And as explained in Section 2 of this Statement.

¹⁹ Rules 6.8 to 6.13 of the Code.

- provide balanced and proportionate safeguards to ensure that broadcasters provide adequate coverage to candidates, as appropriate, in the sensitive area of elections.

1.15 As mentioned in paragraph 1.9 above, we have decided to remove the current set list of major parties in the PPRB Rules and place the list in an annex to those rules and the Code. We have decided to mirror this approach with regard to the list of major parties contained in Section Six of the Code. Therefore, in future, we will undertake periodic reviews of the list of major parties applicable to both the PPRB Rules and Section Six, only if there were cogent reasons for doing so, taking account of relevant evidence, such as changes in the electoral landscape, across a range of elections. The initial list, contained in Annex 3, consists of those parties which are currently listed as a “major party” in the Code, as well as the Alliance Party of Northern Ireland.

1.16 In the Consultation, as mentioned in our statement relating to the PCC Guidance²⁰, we said we would welcome evidence from broadcasters and other stakeholders as to how the PCC Guidance has worked in practice with respect to the PCC Elections. In Section 4, we state that we were not provided with relevant evidence by respondents to justify relaxing the constituency and electoral area reporting rules in relation to the PCC Elections. Given this, we are amending the definition of “elections” in Section Six of the Code to include “Police and Crime Commissioner Elections”.

²⁰ See <http://stakeholders.ofcom.org.uk/binaries/consultations/2012-police-elections/statement/statement.pdf>, paragraph 2.34.

Section 2

Background

Introduction

- 2.1 On 19 November 2012, we published our consultation (“the Consultation”)²¹ in relation to: proposed changes to Ofcom’s Rules on Party Political and Referendum Broadcasts (“the PPRB Rules”); and Proposed Ofcom Guidance for broadcast coverage of elections.
- 2.2 During election and referendum campaigns, there are three types of broadcast content:
- party election broadcasts (“PEBs”)²² granted by relevant broadcasters to registered political parties under Ofcom’s rules on Party Political and Referendum Broadcasts (“the PPRB Rules”)²³. PEBs are produced by the political parties²⁴, with no editorial input from the broadcasters (unless the broadcasters are concerned that the PEB would breach the Ofcom Broadcasting Code)²⁵;
 - referendum campaign broadcasts (“RCBs”) granted by relevant broadcasters to designated organisations under the PPRB Rules. RCBs are produced by designated referendum organisations²⁶; and
 - broadcasters’ own coverage of an election (or referendum) campaign, typically in the form of news and current affairs programmes. There is no obligation on any broadcaster to produce its own broadcast coverage of election campaigns. However, if a broadcaster chooses to do so, it must ensure that the programming complies with the Ofcom Broadcasting Code (“the Code”), and Sections Five and Six in particular.
- 2.3 This section lays out:
- the legislative and regulatory background to the PPRB Rules and Section Five (due impartiality) and Section Six (elections and referendums); and
 - a general summary of the responses that Ofcom received to the Consultation.

²¹ See <http://stakeholders.ofcom.org.uk/binaries/consultations/ppbs/summary/condoc.pdf>

²² Relevant broadcasters also allocate party political broadcasts (“PPBs”) to registered political parties, under the PPRB Rules. PPBs are currently granted to the “major parties” (as defined by under Rule 11 (see paragraph A1.11, Annex 1 of the Consultation) of the PPRB Rules) for broadcast at certain times during the political year, outside of election periods.

²³ See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/ppbrules.pdf>

²⁴ “Designated referendum organisations” are designated by the Electoral Commission.

²⁵ Rule 5 (see paragraph A1.5, Annex 1 of the Consultation) of the PPRB Rules make clear that PEBs, PPBs and RCBs must comply with the Ofcom Broadcasting Code, notwithstanding that “the content of broadcasts is normally the responsibility of the relevant political parties (or designated referendum organisations)”.

²⁶ These organisations are designated by the Electoral Commission.

- 2.4 In the rest of this Statement, we set out: detail of the responses we received from stakeholders to the proposals in our Consultation as appropriate; and our response and decisions in relation to:
- PPRB Rules (see Section 3); and
 - the proposed Guidance relating to Section Five (due impartiality) and Section Six (elections and referendum) of the Code, which we set out in the Consultation. This Guidance aims to help broadcasters comply with the Code when broadcasters produce their own coverage of elections and referendums²⁷ (see Section 4).

The PPRB Rules

- 2.5 Under section 333(1) of the Communications Act 2003 (“the Act”), every licensed public service television channel and every national commercial radio service must include: “party political broadcasts” (which includes both PEBs and PPBs); and RCBs, and must observe rules made by Ofcom (i.e. the PPRB Rules) for such broadcasts. Section 333(2) empowers Ofcom to make rules which may include provision for determining the political parties on whose behalf PPBs, including PEBs, may be made. The PPRB Rules contain minimum requirements set by Ofcom which Licensees must abide by in deciding the allocation, length, frequency and scheduling of PEBs, PPBs and RCBs. Ofcom applies the PPRB Rules in determining any disputes referred to it by a political party or Licensee, in relation to PEBs, PPBs and RCBs.
- 2.6 Under Section 333(5) of the Act, Ofcom must have regard to any views expressed by the Electoral Commission before making (or changing) its rules on this subject.
- 2.7 Up to now, the television and radio channels obliged to carry PEBs, PPBs and RCBs are Channels 3, 4 and 5, Classic FM, Talksport and Absolute AM (“the Licensees”). The BBC and S4C also allocate party political and referendum broadcasts on a similar basis. However, neither the BBC nor S4C is regulated by Ofcom in this connection.
- 2.8 The PPRB Rules were first put in place in October 2004, after a public consultation. Following issues with the application of the PPRB Rules in advance of the European Parliamentary Elections in June 2009, and further consultation, we revised the PPRB Rules on 25 February 2010²⁸. At that time, we committed to reviewing the PPRB Rules following the 2010 General Election. We have therefore undertaken the current review of the PPRB Rules, which Ofcom has designated as one of its work priorities during 2012/13²⁹.
- 2.9 Our proposed changes to the PPRB Rules were informed by:

²⁷ Section 5 of the Code applies to broadcast content outside of election and referendum periods as well.

²⁸ See Annex 1 of the Consultation.

²⁹ See paragraph 4.51 of Ofcom’s Annual Plan 2012/13 (http://www.ofcom.org.uk/files/2012/03/Annual_Plan_2012-13.pdf).

- Local television: The Government made clear its policy preference for the new local television services to carry PEBs, PPBs and RCBs³⁰, as reflected in the Local Digital Television Programme Services Order 2012³¹. The latter requires the new local television licences to contain a condition, requiring them to include PEBs, PPBs and RCBs in their services;
- Scheduling of PPBs: On 7 February 2012, following a short consultation, the BBC Trust published the BBC's Criteria for the Allocation of PPBs ("the BBC PPB Criteria")³² on BBC public services. We proposed an amendment to the PPRB Rules to ensure consistency between the PPRB Rules and the BBC Trust's rules around the timing of PPBs; and
- Pre-consultation meetings: Our Consultation proposals were drawn up following extensive pre-consultation meetings with various stakeholders including: the main national political parties, including those in the devolved nations; independent non-party affiliated politicians; Licensees covered by the PPRB Rules; the Broadcasters' Liaison Group ("BLG")³³; the Electoral Commission; stakeholders in the local television sector; and polling organisations³⁴.

2.10 In the Consultation, we stated our view that Ofcom's Procedures³⁵ for determination of disputes under the PPRB Rules remain fit for purpose and, as a consequence, they were not included within the scope of this consultation. No stakeholders raised this as an issue in response to the Consultation.

2.11 By way of background to the Consultation, we:

- stated our view that the rules laid out in Sections Five and Six of the Code (and in particular Rules 6.8 to 6.13 on constituency coverage and electoral area coverage in elections) are generally fit for purpose in ensuring that broadcasters comply with the relevant standards obligations; but
- proposed removing the current set list of major parties in the PPRB Rules (and also Section Six of the Code) and placing the list in an annex to the PPRB Rules and the Code, which would be regularly reviewed across a range of elections. The initial list would consist of those parties currently listed as a "major party" in the Code, and we proposed that the Alliance Party of Northern Ireland should be added.

2.12 We note that in response to the Consultation, a small number of stakeholders expressed the view that the rules in Section Six impose onerous obligations on broadcasters when reporting elections and referendums; and that during elections and referendums, broadcasters should be required to comply solely with the due impartiality requirements in Section Five. Furthermore, in response to our proposal concerning the "major parties" outlined in paragraph 2.11 above, some stakeholders

³⁰ See paragraph 20, page 16 of *Local TV: Making the vision happen*

(<https://www.gov.uk/government/publications/local-tv-making-the-vision-happen>).

³¹ See http://www.legislation.gov.uk/ukxi/2012/292/pdfs/ukxi_20120292_en.pdf (made 13 February 2012).

³² See http://www.bbc.co.uk/bbctrust/assets/files/pdf/consult/ppb/ppb_criteria.pdf

³³ The BLG comprises the broadcasters who make airtime available for PEBs, PPBs and RCBs. The BLG meets from time to time to coordinate the criteria which each broadcaster applies in determining the amount of airtime to be made available.

³⁴ to discuss criteria for measuring support for independent candidates.

³⁵ See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/disputes.pdf>

argued for the removal of the concept of major parties in the PPRB Rules (and also Section Six of the Code).

2.13 In Sections 3 and 4 of this Statement, we explain why:

- we have decided to proceed with our proposed approach in relation to the list of major parties applicable to the PPRB Rules and Section Six of the Code as outlined above, subject to some amendments concerning how we review the list of major parties going forward (see paragraph 3.33 below); and
- we consider that the rules laid out in Sections Five and Six of the Code (and in particular Rules 6.8 to 6.13 on constituency coverage and electoral area coverage) continue to be fit for purpose. In particular, we respond to the arguments made by some respondents for relaxing or disapplying the rules relating to constituency coverage and electoral area coverage), as contained in Section Six of the Code (see paragraphs 4.55 to 4.68 below).

2.14 In Section 3, we lay out: the stakeholder responses we received on our proposed amendments to the PPRB Rules; and Ofcom's response and decisions in relation to the PPRB Rules.

2.15 The final version of the revised PPRB Rules, which contains all the amendments discussed in Section 3, is set out in Annex 1.

Proposed Code Guidance

2.16 Apart from PEBs, PPBs and RCBs, the other form of broadcast output during election and referendum periods is the broadcaster's own editorial coverage of the particular election or referendum. Such coverage has to comply with the rules in Section Five (due impartiality)³⁶ and Section Six (elections)³⁷ of the Code. To assist broadcasters Ofcom has already published guidance to Section Five³⁸ and Section Six³⁹. Additionally, following a recent consultation, we published bespoke guidance ("the PCC Guidance")⁴⁰ ahead of the elections for Police and Crime Commissioners ("PCCs") in England (outside London) and Wales in November 2012.

2.17 The rules in Sections Five and Six of the Code on due impartiality and elections have remained unchanged since the Code was introduced in 2005 (whereas other parts of the Code have been periodically reviewed and substantially revised). In paragraph 2.17 of the Consultation, we stated that when considering election coverage produced by broadcasters, it is not possible to consider the rules and guidance relating to Section Six of the Code (elections and referendums), without also considering the rules and guidance relating to Section Five (due impartiality). This is because the rules in Section Six are very closely linked with the due impartiality rules set out in Section Five.

2.18 In paragraph 2.18 of the Consultation we laid out the reasons why we considered that the rules laid out in Sections Five and Six of the Code (and in particular Rules

³⁶ See <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/impartiality/>

³⁷ See <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/elections/>

³⁸ See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section5.pdf>

³⁹ See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section6.pdf>

⁴⁰ The PCC Guidance is contained in Annex 1 of Ofcom's Statement, *Guidance for broadcast coverage of the 2012 Police and Crime Commissioner Elections* ("the PCC Guidance Statement") <http://stakeholders.ofcom.org.uk/binaries/consultations/2012-police-elections/statement/statement.pdf>

6.8 to 6.13 on constituency coverage and electoral area coverage in elections) remain generally fit for purpose in ensuring that broadcasters comply with the relevant standards obligations.

2.19 However, in the Consultation we also made clear that, in parallel with our review of the PPRB Rules, it was an appropriate time to update the guidance which supports compliance with the Code in relation to election programming (i.e. Sections Five and Six of the Code). This is principally because:

- the guidance to Sections Five and Six of the Code has (with the exception of the PCC Guidance) not been reviewed since first published in 2005; and
- there is a need to provide enhanced guidance to the new generation of local television licensees. This is because the Government has stated⁴¹ its belief that local television services could contribute to local democracy (for example, with programming which reflects the changes that are happening around local democracy, such as debates on future local government elections including elected mayors and PCCs). Furthermore, mindful that some of the winners of licences are companies without previous broadcasting experience, it is appropriate to provide more detailed guidance to help them comply with the due impartiality and elections provisions of the Code.

2.20 In consulting on our Proposed Code Guidance, we have been mindful of our obligations under section 93 of the Representation of the People Act 1983 (as amended) (“the RPA”). Under this provision, Ofcom is required to adopt a code of practice with respect to the participation of candidates at a parliamentary or local government election in broadcast items about the constituency or electoral area in question. This obligation is repeated in a number of statutory instruments with respect to broadcast items covering elections to the Scottish Parliament, the Welsh Assembly, the Northern Irish Assembly, the European Parliament and the post of PCC⁴². In each case, before drawing up such a code of practice, we must have regard to any views expressed by the Electoral Commission.

2.21 We have met these obligations by preparing rules in Sections Five and Six of the Code (and in particular Rules 6.8 to 6.13 on constituency coverage and electoral area coverage in elections) and associated Guidance. We have consulted on the Proposed Code Guidance to ensure that it remains fit for purpose and that we continue to meet this statutory obligation. The updated Guidance has taken account of recent changes in the electoral landscape and, in particular, of recent decisions of the Ofcom Election Committee.

⁴¹ The Government believes that local television services “could contribute to local democracy...through programmes which offer local leadership debates similar to those shown during the last general election. These would be programmes (not party political broadcasts) and might for example, reflect the changes that are happening around local democracy, such as debates on future local elections including elected mayors and police and crime commissioners”. See *Local TV: Making the Vision Happen* (<https://www.gov.uk/government/publications/local-tv-making-the-vision-happen>), paragraph 21, page 16.

⁴² See SI 2007/236 National Assembly for Wales (Representation of the People) Order 2007 regulation 67; SI 2010/2999 Scottish Parliament (Elections etc) Order 2010 regulation 64; SI 2004/1267 European Parliamentary Elections (Northern Ireland) Regulations 2004 regulation 60; SI 2004/293 European Parliamentary Elections Regulations 2004 regulation 65; Northern Ireland Assembly (Elections) (Amendment) Order 2009 regulation 3.

- 2.22 In paragraph 2.22 of the Consultation, we made clear that all Section Six Guidance would be contained in the same place. Therefore our Proposed Code Guidance incorporated the PCC Guidance, which was published on 28 September 2012.
- 2.23 In the Consultation we asked for the views of all stakeholders (including the Electoral Commission) on the Proposed Code Guidance.
- 2.24 In Section 4 of this Statement, we summarise: stakeholder responses; and Ofcom's response and decisions in relation to the Proposed Code Guidance.
- 2.25 The final version of the revised Code Guidance, which contains all the amendments we confirm in Section 4, is set out in Annex 2.

General summary of responses

- 2.26 Ofcom received 23 responses to the Consultation. Three requested confidentiality and are not therefore identified when their responses are referred to in this Statement.
- 2.27 The responses from those organisations who did not request anonymity have been published on Ofcom's website⁴³. These were from the following organisations: the Broadcasters' Liaison Group ("BLG"); Channel 4; Channel 5 Broadcasting Limited ("Channel 5"); Classic FM; the Electoral Commission; ITN; ITV Plc ("ITV"); Information TV Ltd ("Information TV"); the Liberal Democrats; LBC; Plaid Cymru; S4C; the Social Democratic and Labour Party ("SDLP"); the Scottish National Party ("SNP"); STV; UTV Television ("UTV TV"); UTV Media (GB) ("UTV Media"); the Ulster Unionist Party ("UUP"); and Yes Scotland Limited ("Yes Scotland")⁴⁴. A response was also received from George Eustice MP⁴⁵.

⁴³ See <http://stakeholders.ofcom.org.uk/consultations/party-political-referendum-rules/?showResponses=true>

⁴⁴ Yes Scotland is a company limited by guarantee set up to campaign for a 'Yes' vote in the Scottish Independence Referendum in Autumn 2014.

⁴⁵ On 15 January 2013, George Eustice MP had used the opportunity of a Westminster Hall Debate to raise the issue of PEBs and PPBs (see <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm130115/halltext/130115h0001.htm#1301154900001>).

Section 3

The proposed new PPRB Rules

Introduction

- 3.1 In this section, we lay out: the stakeholder responses we received on our proposed amendments to the PPRB Rules, which we laid out in Section 3 of the Consultation; and Ofcom's response and decisions in relation to the PPRB Rules, having taken account of responses we have received from stakeholders to the Consultation. We consider that these revisions strike the appropriate balance between both the broadcasters' and political candidates' right to freedom of expression, consistent with the European Convention on Human Rights ("ECHR").
- 3.2 The final version of the revised PPRB Rules is set out in Annex 1.

The PPRB Rules

Major parties

- 3.3 In paragraphs 3.7 to 3.19 of the Consultation we laid out our proposals in relation to the list of major parties, as contained in the PPRB Rules (and Section Six of the Code).
- 3.4 The PPRB Rules currently afford a special status to the "major parties" in terms of allocation of PEBs and PPBs. This reflects the fact that some political parties have a significant level of electoral support, and elected representatives, across a range of elections within the UK or the devolved nations. They can therefore be considered 'national parties' (across, for example, Great Britain, or in any of the devolved nations) which would merit being afforded a special status in terms of access to PEBs and PPBs.
- 3.5 In the Consultation we analysed why, in our view, it would not be appropriate to propose replacing the list of major parties in Rule 11 of the PPRB Rules (see paragraph A1.11, Annex 1 of the Consultation) by a list of criteria against which each broadcaster should be individually judged at each election, and for each year whether a given party should be allocated PEBs or PPBs. We noted that if the present wording about major parties was to be altered along these lines, it would create a potential inconsistency with Section Six of the Code, where the definition of major parties is also set out and affects the application of certain Code rules in that Section. Such an inconsistency could create difficulties for broadcasters given that, in one type of electoral programming (PEBs) they would be allocating broadcasts under the PPRB Rules according to more flexible criteria, but at the same time the editorial content of services would be required to comply with the rules in Section Six⁴⁶ of the Code including references to the definition of major parties (e.g. Rules 6.2 and 6.9).
- 3.6 In paragraph 3.12 of the Consultation, we laid out a number of advantages that supported the retention of the current list of major parties in the PPRB Rules and the Code. For example, it could be argued that the current list is simple and

⁴⁶ Rule 5 of the PPRB Rules states that: "Section 6 of Ofcom's Broadcasting Code ('the Code') provides that broadcasts under these Rules are required to comply with relevant provisions of the Code...".

straightforward recognising that certain parties have a ‘national’ status (for example, across Great Britain, or in any of the devolved nations) across a range of elections, that merits them being afforded a special status in the democratic process and hence, for example, access to PEBs and PPBs; and the list provides certainty in framing decisions concerning allocations of PEBs, as well as editorial decisions under the Code; and the current list ensures that parties with a true national profile (for example, across Great Britain, or in any of the devolved nations) gain an automatic right to articulate their views within all broadcast areas – however small – at all elections.

3.7 Given this analysis we stated that:

- we would not consult on removing the list of major parties, because we considered this option to be unworkable, notably through the possibility of a number of divergent views and applications of the definition of a “major party”, and views on the way in which such a party should be defined;
- however, to respond to concerns that under the status quo there is not sufficient flexibility, we proposed removing of the current set list of major parties in the PPRB Rules (and also Section Six of the Code) and placing the list in an annex to the PPRB Rules and the Code, which would be regularly reviewed. In undertaking any such review we would take into account factors such as the electoral performance of parties (including the numbers of elected candidates and overall percentage of vote received) over a range of elections, over at least two electoral cycles (including elections prior to the Consultation) for the different types of elections, and levels of current support. Furthermore, we proposed that, if a party’s performance over several elections of the same type were of such a magnitude, but was not reflected in other types of election, we would also consider drawing up a specific list of major parties for that specific type of election;
- the Alliance Party of Northern Ireland should be added to any new list; and
- we proposed correcting an inconsistency between the definition of major parties in the PPRB Rules and the Code, whereby going forward, for the purposes of the PPRB Rules, the Conservative Party, the Labour Party and the Liberal Democrats are major parties in “Great Britain”, whereas in the Code, it states that these parties are “UK major parties”.

3.8 In Annex 3 of the Consultation, we set out in draft form what the Ofcom list of major parties, as an annex to the PPRB Rules and Section Six of the Code, might look like. In Question 1 of the Consultation, we asked stakeholders for their views on the following proposed amendments to the PPRB Rules and the Code:

Rule 11 of the PPRB Rules as follows (amendment shown in bold):

11. The “major parties” for each nation in the United Kingdom are defined in the Ofcom List of Major Parties [see URL link].

Section Six of the Code as follows (amendment shown in bold):

“Meaning of ‘major party’: At present, the major parties for each nation in the United Kingdom are defined in the Ofcom List of Major Parties [see URL link].”

Stakeholder responses

- 3.9 We received 14 responses on the issue of major parties. Two of these respondents requested confidentiality and one of these is identified as "a political party" below.
- 3.10 The Electoral Commission said that "'Major parties' is not a definition which is used elsewhere in the electoral process. The existence of such a list appears anachronistic and it is difficult to see what purpose it serves". However, this respondent said that if the proposal were to be adopted, it recommended a commitment is made to review the list "in advance of every major set of elections" so that the particular circumstances of each set of elections are considered when "determining the criteria for receiving broadcasts". In this regard, the Electoral Commission pointed to the fact that the BBC Trust reviews its criteria ahead of each set of elections and "this suggests that the issue of 'inflexibility' referred to in the consultation document can be overcome". This respondent added that "it is not entirely clear why, as the consultation document states, such a proposal would lead to greater uncertainty".
- 3.11 Responses from broadcasters indicated a range of views as to whether the list of major parties should continue to exist. However, there was a consistent call for more detail and certainty in relation to Ofcom's proposal for a regular review of this list. For example, respondents suggested that:
- Ofcom be clearer about the nature, timescale and frequency of any reviews;
 - the list be formally reviewed in advance of every set of elections;
 - when appropriate Ofcom should confirm that the list would remain unchanged;
 - broadcasters could carry out periodic reviews regarding who should be defined as a major party and if political parties took exception to any listing decision taken by a broadcaster then they could ask Ofcom to review that decision. In that way the primary decision maker is the broadcaster whose airtime is being utilised rather than the regulator who cannot review its own decisions⁴⁷;
 - if reviews of the major parties list were not annual, they would need to be flexible, open and transparent;
 - the timing of reviews should take account of the fact that broadcasters have to plan their election coverage well before an election period begins; and
 - the current list of major parties be retained within, for example, the Code and a "top-up" list could be included in an additional annex⁴⁸.
- 3.12 ITV commented that: "There are clearly arguments both for and against recognising the electoral status of certain designated parties" in the Code and the PPRB Rules. This respondent went on to express its agreement that "on balance the use of this distinction has in the past broadly reflected the political realities of the [UK] and has been of some practical assistance to commercial broadcasters in determining" allocation criteria under the PPRB Rules. However, ITV said that the list has not been "helpful" in relation to the constituency reporting and electoral area reporting rules set out in Section Six of the Code.

⁴⁷ This suggestion was made by Channel 4.

⁴⁸ This suggestion was made by the Liberal Democrats.

- 3.13 Channel 4 also stated that: “the current list has helped to provide predictability and certainty to both political parties and broadcasters when allocating political broadcasts”. However, this respondent expressed concern that Ofcom had not consulted on whether or not to remove the list from the PPRB Rules. Channel 4 stated its view that: “It is possible to comply with” section 333 of the Act without a list of major parties; and that broadcasters do review electoral fortunes of the parties and “are capable of assessing how to fairly offer broadcasting time to political parties in a way which reflects their previous electoral and current support”. Channel 4 did state it was content for the major parties list to be placed in an annex to the PPRB Rules, but it requested more clarity on how any reviews of the major party list would take place. In this regard, the respondent did express a fear that “Ofcom could be politically pressured into changing the composition of the list and then stipulating that broadcasters must provide broadcast time to political parties that broadcasters themselves would not have assessed as major parties using all the available evidence”. Furthermore, Channel 4 said that whilst: “It is appropriate for the regulator to set down rules and criteria commensurate with Article 10 of ECHR to ensure that political messages are conveyed in a democracy...such regulation should be as narrow as possible to restrict as far as possible any interference with the broadcaster’s right to editorial independence and its rights to freedom of expression”.
- 3.14 Channel 5 stated its belief that: the concept of major parties does not have “continuing relevance at a time of increasing political flux and fragmentation within the electorate”; and “the clear distinctions of 15 years ago no longer exist”. In particular, this respondent pointed to what it believed to be several problems with the concept of major parties:
- any attempt “to draw a line between ‘major’ and ‘non-major’ parties is likely to become increasingly hazardous, especially when in some elections parties that are not ‘major’ consistently outpoll those that are”;
 - a risk that new parties are only ever added to and none are removed. In this regard, Channel 5 cited the example of Ofcom’s proposal to add the Alliance Party in Northern Ireland to the list of major parties, when an argument could be mounted that there should be just two major parties (the Democratic Unionist Party and Sinn Fein) in Northern Ireland⁴⁹;
 - just because the list of major parties has worked well in the past, as Ofcom argued in the Consultation, does not mean it will necessarily continue to work well in future as “the political landscape is changing and the ground on which the ‘major parties’ Rule was built is not as solid as it once was”;
 - Channel 5 stated that it did not accept that removing the list of major parties would be ‘unworkable’, as Ofcom had stated in the Consultation, and said that “We find such a statement insulting”. In addition, Channel 5 said that “broadcasters are used to making fine and balanced judgements, and we do not see why we would not be able to in the absence of such a list”;
 - although there would be an inconsistency if the list of major if a list of major parties existed in Section Six of the Code and not in the PPRB Rules, Channel said that such an inconsistency “would be the result of Ofcom’s decision to review the Rules independently of the Code – it is an argument about process, not substance”;

⁴⁹ Channel 5 made clear it had no view on whether there should be five or two major parties in Northern Ireland.

- the BBC “has no list rule and makes fair and balanced allocations of PEBs”; and
 - Ofcom should allow “public service broadcasters the space to make mature and informed decisions, rather than seeking to micro-regulate their choices”.
- 3.15 UTV TV criticised the list of major parties, saying that the current list is “inflexible”. This stakeholder said it supported the concept of providing “broadcasters with a list of criteria by which they can individually judge at each election whether a party should be allocated PEBs”. However, UTV TV did welcome Ofcom’s proposal to remove the list of major parties and place in an annex “for reference”. According to this respondent, the list should provide “flexibility and ‘accommodate future political developments including the growth of new parties or the demise of established parties; and give greater flexibility to broadcasters to ‘allocate broadcasts on the basis of parties’ actual support in different nations of the UK’ as stated by Ofcom in its Consultation”.
- 3.16 Amongst other broadcasters, S4C agreed with Ofcom that, in terms of governing allocations of PEBs and PPBs and editorial decisions under Section Six of the Code, a list of major parties “would be preferable to a set of flexible criteria”. This is because the latter would “create too much uncertainty and risk of challenge for broadcasters”.
- 3.17 All six political parties which responded to the Consultation supported Ofcom’s proposals to place the list of major parties in an annex, which would be formally reviewed. For example, the Liberal Democrats said that the list is “simple and straightforward, it has worked well and proved effective in reflecting the political system”.
- 3.18 A political party supported the retention of the list of major parties because the list recognises the national status of the main political parties as well as providing certainty. This stakeholder said it would not support any attempt to allocate local broadcasts to national political parties based on regional support.
- 3.19 In addition to the above, stakeholders either expressed agreement or no objection to our proposal to add the Alliance Party to the list of major parties in both the PPRB Rules and the Code. The UUP noted that this would formalise the current arrangements whereby, for example, “broadcasters already carry Alliance PEBs and PPBs from that party”.

Ofcom response and decision

- 3.20 We note that all six political parties who responded to the Consultation supported Ofcom’s proposal to place the list of major parties in an annex, which would be formally reviewed. These respondents viewed the list as: being straightforward; providing certainty; and recognising the national status of parties. Some broadcasters also supported the proposal.
- 3.21 However, we do not agree with the Liberal Democrats’ suggestion of: retaining the current list of major parties within, for example, the Code; and having a ‘top-up’ list included in an additional annex. In our view, such an approach does not appear to countenance the possibility that in future any of the existing major parties might be removed from the list. We consider this would be inflexible and would entrench the status quo, potentially giving certain parties an unfair electoral advantage.

- 3.22 We recognise that whilst ITV said that the list of major parties has been “of some practical assistance” in relation to the PPRB Rules, the list had not been “helpful” in relation to constituency and electoral area reporting rules set out in Section Six of the Code. We deal further with criticisms of the constituency and electoral area reporting rules in paragraphs 4.55 to 4.68 below.
- 3.23 In reaching our decision in this area, we note that several other stakeholders were critical or questioned our proposal to retain the concept of “major parties” in the PPRB Rules and Section Six of the Code. In particular, we note that the Electoral Commission said that: the concept of major parties is not used elsewhere in the electoral process; and “the existence of such a list appears anachronistic and it is difficult to see what purpose it serves”. However, the fact that this concept is not used elsewhere in the electoral process does not, in our view, make the concept anachronistic. Rather, the concept of major parties is designed to facilitate election broadcasting. In this regard, as noted in paragraph 3.6 above, the list of major parties provides certainty in framing decisions concerning allocations of PEBs, as well as editorial decisions under the Code. In addition the list recognises that certain parties have a ‘national’ status (for example, across Great Britain, or in any of the devolved nations) across a range of elections, that merits them being afforded a special status in the democratic process and hence, for example, have access to PEBs and PPBs.
- 3.24 The Electoral Commission said that it was “not entirely clear why” removing the list of major parties “would lead to greater uncertainty”. However, in our view, without the list, broadcasters’ decisions about allocations of PEBs (or editorial decisions about, for example, which candidates to cover automatically in constituency or electoral area reports or discussions) would necessarily be more uncertain: broadcasters would not have available at all times a clear list of “major parties” which they could rely on in allocating PEBs or making consistent editorial decisions related to elections under Rules 6.2⁵⁰ and 6.9⁵¹ of the Code. Furthermore, the broadcasters’ decisions could be more open to challenge from political parties to the extent that it might have a chilling effect on broadcast coverage of elections.
- 3.25 Both Channel 4 and Channel 5 said broadcasters are used to making fine editorial judgements as to which parties to include in their coverage. We recognise that certain broadcasters will have extensive editorial expertise in relation to electoral broadcasting. However, we are also conscious that the Code has to apply to a large range of television and radio broadcasters many of whom will not have the same level of compliance expertise as some national broadcasters. We therefore consider it prudent to retain the current list of major parties to help all broadcasters have certainty in framing their electoral decisions in the important area of electoral broadcasting.
- 3.26 Channel 4 raised concerns that in reviewing the list of major parties, Ofcom could be politically pressured into changing the composition of the list. However, Ofcom, as an established independent regulator, considers itself experienced in taking decisions independent of all stakeholders, and not just political parties. On a related point, we note Channel 4’s proposal for *broadcasters* to carry out periodic reviews regarding

⁵⁰ Rule 6.2 of the Code states: “Due weight must be given to the coverage of major parties during the election period. Broadcasters must also consider giving appropriate coverage to other parties and independent candidates with significant views and perspectives”.

⁵¹ Rule 6.9 of the Code states: “If a candidate takes part in an item about his/her particular constituency, or electoral area, then candidates of each of the major parties must be offered the opportunity to take part. (However, if they refuse or are unable to participate, the item may nevertheless go ahead.)”

who should be defined as a major party, with political parties being able to ask Ofcom to review the broadcasters' decisions. We do not consider this proposal to be practicable, as given the large number of potential broadcasters undertaking election broadcasting (and not just the Licensees who broadcast PEBs and PPBs), there might be variations between broadcasters as to what constitutes major parties. This, in our view, could serve to increase uncertainty for some broadcasters making editorial decisions during elections; and therefore might disincentivise such broadcasters from covering elections.

- 3.27 We acknowledge that, as expressed by Channel 5, there has been increasing "political flux and fragmentation within the electorate". However, we do not agree with this respondent that the process of defining major parties will become "increasingly hazardous" because in some elections non-major parties outpoll major parties. As we noted in paragraph 3.12 of the Consultation, a key argument for the retention of the major party list is that it recognises that certain parties have a true national profile which means they should be afforded an automatic right to articulate their views within all broadcast areas during all elections. Our commitment to review the list will ensure it reflects as appropriate material changes in the electoral landscape, and will continue to work well for the foreseeable future. In reaching this view, we are conscious that this view was shared by most of those who responded in this area, including some broadcasters.
- 3.28 We do not agree with Channel 5's argument that there is a risk that parties will only ever be added rather than removed from the list of major parties. Our commitment to review the list, by means of a public consultation, does not mean that parties will always be added. If in future the evidence (including the views of stakeholders) merits the removal of a party from the list, we would remove that party. In relation to Channel 5's specific suggestion that an argument could be mounted that there might be just two major parties in Northern Ireland, we note that no other respondent, and importantly no stakeholder in Northern Ireland, made this point.
- 3.29 We note Channel 5's argument that any inconsistency arising if a list of major parties existed in Section Six of the Code and not in the PPRB Rules, "would be the result of Ofcom's decision to review the Rules independently of the Code – it is an argument about process, not substance". However, in reviewing the PPRB Rules, we have recognised that these rules do not exist in isolation from the Code. As we discussed in paragraph 3.11 of the Consultation, Licensees will be making allocation of PEBs under the PPRB Rules and editorial decisions during election periods, under Section Six of the Code. We consider that are strong arguments that there should be, as appropriate, consistency between these two sets of rules.
- 3.30 Finally, we have taken account of Channel 5's argument that the BBC has no concept of major parties when allocating PEBs. The fact that, in this respondent's view, the BBC does not use the concept of major parties in determining allocations of PEBs should not have undue influence on Ofcom's PPRB Rules. The BBC's rules for allocation of PEBs are subject to different regulation to that of the Licensees covered by the PPRB Rules. We are not required to have regard to the BBC's internal rules in the same way as we are required by statute to have regard to the views of, for example, the Electoral Commission. In this regard, despite the Electoral Commission's reservations about the list of major parties, this stakeholder did not object in principle to the concept of the list continuing to exist. We note that this respondent referred to the BBC reviewing its PEB criteria ahead of each set of elections. The fact that we have committed to reviews of the major parties list, in our view, will ensure that there is appropriate consistency between the regulatory approaches of Ofcom and the BBC Trust.

- 3.31 On balance, we consider that the advantages of retaining the concept of “major parties” in both the PPRB Rules and Section Six of the Code outweighs the disadvantages. However, we noted that the majority of respondents, including those stakeholders who were critical or questioned the retention of the list of major parties, called for more detail and certainty in relation to Ofcom’s proposal for regular reviews of the list.
- 3.32 We do not think it is necessary or proportionate to commit to an automatic annual review and consultation on changes to the list of major parties, as suggested by the Electoral Commission. This is because there may well be particular years when there would not be cogent reasons for reviewing the list. However, we anticipate that the first review would probably take place ahead of the European Elections in 2014. If we do carry out this review, we would intend to conduct a consultation in Autumn 2013.
- 3.33 Having taken account of views from respondents, we have decided that future reviews of the list of major parties should be held in accordance with the following principles:
- we will consider whether it is appropriate to review the list on a periodic basis i.e. we would only review the list if there were cogent reasons for doing so;
 - mindful of the need for continuity and certainty in this area so that both political parties and broadcasters can plan ahead for elections, we would commence any reviews in the autumn preceding the relevant election(s) happening in the following May/June.
 - in any review of the list we might carry out, we would take into account factors such as the electoral performance of parties (including the numbers of elected candidates and overall percentage of vote received) over a range of elections, over at least two electoral cycles (including elections prior to the Consultation) for the different types of elections, and levels of current support;
 - if a party’s performance over several elections of the same type was significant but not reflected in other types of election, we would consider drawing up a specific list of major parties for that specific type of election;
 - whenever we decide to review the list, we would publicly consult on any proposed changes, including obtaining input from the Electoral Commission on any proposed changes; and
 - as appropriate, we would publicly consult only in relation to the relevant election or particular elections, rather than all possible types of elections.
- 3.34 We note that respondents either expressed agreement or no objection to our proposal to add the Alliance Party to the list of major parties in both the PPRB Rules and the Code. We therefore confirm that the Alliance Party in Northern Ireland will be added to the list of “major parties” going forward. We are also confirming that, going forward, for the purposes of both the Code and the PPRB Rules, the Conservative Party, the Labour Party and the Liberal Democrats are major parties in “Great Britain”.
- 3.35 Given the above, we confirm the following amendments to the PPRB Rules and the Code:
- Rule 11 of the PPRB Rules shall read as follows (amendment shown in bold):

11. ***“The ‘major parties’ for each nation in the United Kingdom are defined in the Ofcom list of major parties”.***

Section Six of the Code will be amended as follows (amendment shown in bold):

“Meaning of ‘major party’: At present, the major parties for each nation in the United Kingdom are defined in the Ofcom list of major parties”.

3.36 In Annex 3, we set out the revised Ofcom list of major parties, which will appear as an annex to the PPRB Rules and Section Six of the Code going forwards.

The allocation of PEBs to independent candidates

- 3.37 In paragraphs 3.20 to 3.31 of the Consultation we made proposals in relation to the allocation of PEBs to independent candidates.
- 3.38 The PPRB Rules state that the relevant broadcasters can only carry PPBs and/or PEBs produced by political parties registered with the Electoral Commission. This reflects section 333 of the Act, and section 37(a) of the Political Parties, Elections and Referendums Act 2000 (“PPERA”) ⁵², which states that: “A broadcaster shall not include in its broadcasting services any party political broadcast made on behalf of a party which is not a registered party”.
- 3.39 The statute and Ofcom’s rules are silent, however, with regards to the specific question of whether independent candidates could qualify for PEBs. In paragraphs 3.22 and 3.23 of the Consultation we said the following:
- the BBC Trust had considered the issue of whether PEBs can be allocated to independent candidates in April 2012, and found that on the proper application of the law, an independent can be allocated a PEB ⁵³;
 - Ofcom’s duties in relation to the PPRB Rules flow in part from the same legislative provisions as those considered by the BBC Trust. Therefore, we stated: our wish to interpret our obligations in a consistent way with other regulators; and that we agreed with the BBC Trust that there is ambiguity in the wording of the legislation such that more than one construction is possible;
 - it is important to strike the appropriate balance between both the broadcasters’ and political candidates’ rights to freedom of expression, consistent with the ECHR; and
 - our view, therefore, was that: the PPRB Rules should make clear that independent candidates should in principle be eligible for PEBs in certain circumstances; and to take the opposite view (i.e. confirm that only parties registered with the Electoral Commission can in principle qualify for PEBs) could result in potential unfairness to independent candidates.
- 3.40 Having suggested that independent candidates should in principle be eligible for PEBs, in the Consultation we also discussed: the elections independents should be eligible to receive a PEB for; when broadcasters should be *required* to allocate PEBs to independents; and which broadcasters should be required to do so.
- 3.41 In summary, in paragraphs 3.26 and 3.27 of the Consultation we said that it would be a disproportionate and impracticable obligation to impose on Licensees a requirement that any candidate contesting any election be allocated a PEB, irrespective of their level of support. For example, due to the number of elections and candidates, it would be impractical and potentially unfair to require national and regional broadcasters to offer PEBs to all independent candidates in all elections.
- 3.42 However, we stated that there are certain elections which relate to a single electoral area returning a single candidate and where a Licensee’s broadcast footprint is broadly and sufficiently coterminous with the electoral area, which means that it

⁵² See http://www.legislation.gov.uk/ukpga/2000/41/pdfs/ukpga_20000041_en.pdf

⁵³ See http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2012/peb_finding.pdf

would be appropriate to require PEBs to be offered to independent candidates⁵⁴, where they can demonstrate a certain level of support. These elections are: Mayoral Elections and PCC Elections. Therefore, we proposed that certain broadcasters should be required to allocate PEBs to independent candidates who can demonstrate certain levels of support, in those elections.

- 3.43 In Question 2 of the Consultation, we asked stakeholders for their views on the following proposed amendments to the PPRB Rules:

Rule 10 as follows (amendments shown in bold):

10. ***“PPBs may only be allocated to political parties registered by the Electoral Commission. Party election broadcasts may only be allocated to: (i) political parties registered by the Electoral Commission, and (ii) independent candidates as set out in Rule 13A. RCBs may...”***

We also proposed inserting a new Rule 13A to make clear when we propose independent candidates be required to be offered a PEB. In addition, where appropriate, we said we would make various consequential amendments.

Stakeholder responses

- 3.44 We received 11 responses on the issue the allocation of PEBs to independent candidates. One of these respondents requested confidentiality and is identified as “a political party” below.
- 3.45 The Electoral Commission said it agreed with Ofcom that “independent candidates should in principle be eligible for a PEB if they meet the qualification criteria”. However, the Electoral Commission added that its understanding is that under section 37 of the PPERA “independent candidates are not eligible to qualify for ‘party political broadcasts’ (which presumably includes ‘PEBs’, as defined by Ofcom...)”. Therefore, in this respondent’s view, the “clear intention” in the legislation is that “no entities except registered political parties should be permitted” to be allocated PEBs or PPBs. The Electoral Commission went on to state that: “We see no reason why an independent candidate should be treated differently from a party candidate and feel that the current situation is potentially exclusionary and that the law presents a barrier to participation in elections”. Furthermore, it said that it: is recommending a “change to the law to enable independent candidates to be eligible to qualify for a PEB”; and will raise this issue with the Government “recommending that a change in the law is made at the appropriate opportunity”. The Electoral Commission added that during 2013 it would be conducting a review looking into the rules around candidates standing for elections, and that its recommendations from this review might touch on the issue of independent candidates. This respondent therefore suggested that its recommendations might have some bearing on “the qualification criteria for candidates’ eligibility for a PEB”. The Electoral Commission went on to suggest that if Ofcom “were to review the allocation criteria ahead of each set of elections as we suggest, and as the BBC Trust do, this could provide sufficient flexibility to ensure that the criteria are kept up to date with this, and any other, potential developments”.
- 3.46 Of other responses we received on this issue, the majority of stakeholders were in favour of the PPRBs Rules being amended to allow the possibility for independent

⁵⁴ We stressed that our proposals would not mean that independent candidates would automatically qualify for PEBs, as the relevant broadcasters would still have to assess whether such candidates should be allocated PEBs according to the allocation criteria laid out in the PPRB Rules.

candidates to qualify in principle for PEBs in certain circumstances. For example, the Liberal Democrats said that it would only be practicable to offer independent candidates PEBs where “a single electoral area matches a Licensee’s broadcast footprint”. In addition, STV said it is necessary to “ensure that it is not difficult for a credible independent candidate [to be allocated a PEB] but at the same time broadcaster discretion is required where inappropriate inclusion causes harm and offence to viewers”.

- 3.47 ITV said that despite the lack of clarity in the legislation it has "been willing to offer independent candidates broadcasts in certain elections".
- 3.48 Only two respondents objected to Ofcom’s proposal to extend the applicability of the PPRB Rules in principle to independent candidates in certain circumstances. Plaid Cymru said it could not “imagine a situation in Wales where the criteria would be met i.e. particularly with regards to where the Licensee's broadcast footprint would be sufficiently coterminous with the electoral area; or that an independent candidate could demonstrate a significant level of previous and/or current support”. This respondent therefore suggested that independent candidates should be deemed eligible for PEBs in the case of London Mayoral Elections only. Another political party said it did not support the awarding of PEBs to independent candidates because, in its view, there are no accurate measures of previous support and allocation of PEBs would therefore be based on guesswork.

Ofcom response and decision

- 3.49 We note that the majority of responses we received on the issue of independent candidates were in favour of the PPRB Rules being amended to allow the possibility for independent candidates to qualify in principle for PEBs in certain circumstances. Only two respondents, Plaid Cymru and a political party seemed to express scepticism about our proposals, on grounds of practicality rather than on the grounds of principle. For example, both these respondents raised issues as to whether broadcasters would be able to ascertain levels of current support for independent candidates for the purposes of determining allocations of PEBs.
- 3.50 We are mindful of the explicit statement from the Electoral Commission that under the law as it stands, independent candidates, as individuals, cannot legally qualify for PEBs or PPBs. Although we are not bound by any view expressed by the Electoral Commission, we must “have regard” to its views according to section 333(5) of the Act. We consider that the Electoral Commission has given a very clear statement on the legal framework concerning independent candidates in PEBs. We have therefore decided that, taking into account the views of the specialist regulator for elections, and given that section 37 of the PPERA acts as a prohibition on broadcasters, as a precautionary approach, we will not be amending the PPRB Rules to include independent candidates at this time. However, we underline our support for the idea that independent candidates should be eligible, in principle, as individuals for PEBs (in certain circumstances), and would welcome further clarification of the law. In this context, we support the steps being taken by the Electoral Commission to raise this issue with the Government so that a change in the law may be made at the appropriate opportunity.

The 'scope' of the PPRB Rules in relation to elections (i.e. which elections they cover)

- 3.51 In paragraphs 3.32 to 3.40 of the Consultation we laid out our proposals in relation to the 'scope' of the PPRB Rules in relation to elections (i.e. which elections they cover).
- 3.52 The PPRB Rules set out which Licensees must carry which PEBs. In summary, the rules state that: all Licensees must carry PEBs for UK General Elections and RCBs for UK referendums; Channel 3 licensees and Five must carry PEBs for European Parliamentary Elections; and Channel 3 licensees must carry PEBs for local government elections throughout the UK, Parliamentary/Assembly Elections in the devolved nations, and Greater London Authority Elections.
- 3.53 In the Consultation, we discussed the scope of the PPRB Rules in relation to the Channel 3 licensees in relation to the Greater London Authority Elections, which consist of the London Mayoral Elections and the London Assembly Elections⁵⁵. We noted that this is the only example of a Mayoral electoral area which is broadly coterminous with a Channel 3 licence area, and traditionally, Channel 3 has broadcast PEBs by candidates standing for the position of Mayor, whose parties are also standing in the London Assembly Elections. Under Rule 9⁵⁶ of the PPRB Rules, the Channel 3 licensee in London is required to offer PEBs in respect of the Greater London Authority Elections.
- 3.54 We considered that there might be exceptional circumstances where a registered party was putting up a candidate solely for the London Mayoral Election and not the London Assembly Elections. Under the current rules, in our view, it was unclear whether in such circumstances, the candidate standing solely for the London Mayoral Election for the registered party would be offered a PEB at all. We considered that it would be potentially unfair if such candidates were not, in principle eligible for PEBs. We therefore asked stakeholders for their views on this point.
- 3.55 We stated that if the relevant Channel 3 licensee were to be required to carry a PEB for candidates from registered parties standing solely in the London Mayoral Election (subject to the allocation rules in Rules 13 and 14 of the PPRB Rules), this should not mean that registered parties which are running in both the London Mayoral Election and the London Assembly Elections should be allocated separate PEBs for each of the two types of London election.
- 3.56 Ofcom further proposed that, given what we proposed in relation to independent candidates, as discussed in paragraphs 3.37 to 3.43 above, we would amend the PPRB Rules to make clear that independent candidates could in principle qualify for PEBs in Mayoral Elections. This would mean that independent candidates for London Mayor could in principle qualify for a PEB on in respect of the regional Channel 3 licensee for London⁵⁷ (subject to meeting the proposed allocation criteria).
- 3.57 We also proposed clarifying the types of election for which the Channel 3 licensees would not be required to carry PEBs. These elections consist of those where the broadcast area of the relevant Channel 3 licensee is significantly greater than the area which is covered by the election in question, and where it is more appropriate for local television services to carry such PEBs:

⁵⁵ Due to a typographical error, the Consultation wrongly referred to the London Assembly Elections as the "Greater London Authority Elections".

⁵⁶ See paragraph A1.9, Annex 1 of the Consultation.

⁵⁷ As well as the local digital television programme service licensee for London.

- Mayoral Elections (other than the London Mayoral Election); and
- PCC Elections.

3.58 In addition, we proposed making clear that Channel 3 licensees would not be required to carry PEBs for the following other elections:

- by-elections for any type of election for which Channel 3 licensees are required to carry PEBs;
- English Parish Council Elections;
- Scottish Community Council Elections; and
- Welsh Community Council Elections.

3.59 In Question 3 of the Consultation, we asked stakeholders for their views on the following proposed amendments to the PPRB Rules:

Rule 9, with a footnote after “Greater London Authority elections” as follows (amendments shown in bold):

9: “The regional Channel 3 licensee will additionally carry: local election broadcasts in those UK nations/regions where such elections are taking place; broadcasts in the relevant nations/regions for Scottish Parliament, Welsh Assembly, Northern Ireland Assembly, Greater London Authority Elections, **London Mayoral Elections**; and...”*

“The relevant Channel 3 licensee will not be obliged to carry election broadcasts in respect of: Mayoral Elections (other than the London Mayoral Election where candidates qualify for a broadcast by virtue of Rule 13A); Police and Crime Commissioner Elections; by-elections of any kind; English Parish Council Elections; Scottish Community Council Elections; and Welsh Community Council Elections**”.*

Stakeholder responses

3.60 We received nine responses on the issue of the ‘scope’ of the PPRB Rules in relation to elections (i.e. which elections they cover). Two of these respondents requested confidentiality and one of these is identified as “an individual” below.

Greater London Authority Elections

3.61 All the responses we received supported our amendments in this area. However, ITV, Channel 5 and an individual suggested alternative wording to that suggested by the Consultation in relation to the Greater London Authority Elections. ITV said it disagreed with the suggestion in the Consultation that the Channel 3 licensee in London is currently not required under the Rules to offer PEBs in respect of the London Mayoral Election. This respondent said that since the London Mayoral election is a type of Greater London Authority Election, under the current Rules, PEBs have “always been offered, subject to threshold criteria”. ITV proposed 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”.

3.62 The individual response agreed that clarification on the same point was necessary.

Elections not covered by the PPRB Rules

3.63 Two respondents gave views on the proposal to clarify which elections for which Channel 3 licensees would not be required to carry PEBs. ITV raised no objections to this proposal. The SNP agreed with the proposal to state that Scottish Community Council elections should not fall within the scope of the PPRB Rules. However, this respondent suggested that: "If the intention is to set out a comprehensive list of statutory public elections, then other public statutory elections which are not mentioned in the proposed rule changes are elections to the Crofting Commission and to Cairngorms National Park Authority and to Loch Lomond and the Trossachs National Park. There were also pilot health board elections held in Fife as well as in Dumfries and Galloway in 2010".

Ofcom response and decision

Greater London Authority Elections

3.64 Given that all responses supported Ofcom's proposed amendments, we will amend the PPRB Rules accordingly. However, in relation to PEBs relating to the Greater London Authority, although the latter include both the London Assembly Elections and London Mayoral Elections, we consider it prudent to amend the rules. This is because, as is shown by the responses, the PPRB Rules are not sufficiently clear whether – in the event that a registered party fielded a candidate just for the London Mayoral Election and not the London Assembly Elections at the same time – a PEB would in principle be allocated. We therefore propose to amend the wording in Rule 9. We will change the wording "*Greater London Authority elections*" to "*elections for the London Assembly and Mayor of London*" in Rule 9 of the PPRB Rules. This would mean that registered parties which are running in both the London Mayoral Election and the London Assembly Elections should not be allocated separate PEBs for each of the two types of London Authority election. However, given our decision in relation to independent candidates, outlined in paragraph 3.50 above, we are not amending the PPRB Rules to refer to independent candidates.

Elections not covered by the PPRB Rules

3.65 We noted that no respondents objected to the proposal to clarify the elections for which Channel 3 licensees would not be required to carry PEBs. However, we do not consider it necessary as suggested by the SNP to make reference to other Scottish statutory bodies with an elected element, such as the Crofting Commission and Cairngorms National Park Authority.

3.66 Given the above, we confirm the following amendments to the PPRB Rules:

Rule 9 of the PPRB Rules, with a footnote after "Mayor of London", shall read as follows (amendment shown in bold):

*9: "The regional Channel 3 licensee will additionally carry: local election broadcasts in those UK nations/regions where such elections are taking place; broadcasts in the relevant nations/regions for Scottish Parliament, Welsh Assembly, Northern Ireland Assembly **elections; broadcasts for the elections for the London Assembly and Mayor of London***; and..."*

****‘The relevant Channel 3 licensee will not be obliged to carry PEBs in respect of: Mayoral elections (other than London); Police and Crime Commissioner elections; by-elections of any kind; English Parish Council elections; Scottish Community Council elections; and Welsh Community Council elections’.***

Local television

- 3.67 In paragraphs 3.41 to 3.68 of the Consultation we made proposals for the application of the PPRB Rules to local television.
- 3.68 The Local Digital Television Programme Services Order⁵⁸ amended the Act to require Ofcom to set rules relating to the broadcast of PEBs, PPBs and RCBs by local television broadcasters. To date PEBs and PPBs have been essentially national in character, concentrating on the political parties' national positions. This will change when local television services start broadcasting in the UK – which could be from late 2013 onwards.
- 3.69 In the Consultation, we stated our intention to require local digital television programme service licensees to comply with the PPRB Rules. We then set out proposals relating to: the scope of the obligations on local television services under the PPRB Rules (i.e. the elections and referendums for which local television services should carry broadcasts); and options as to the delivery of these obligations (i.e. to which parties/candidates should they be offered).

Scope - the elections and referendums for which local digital television programme services should carry broadcasts

- 3.70 We took account of the wish expressed by Government that “as part of their public service role, the local television services will be required to carry party political broadcasts and this will be regulated in accordance with specific Ofcom guidance”⁵⁹ and that the Government expects local television services to “contribute to local democracy”⁶⁰.

• PEBs

- 3.71 In relation to PEBs, we proposed that local television services must carry PEBs for all elections of significance taking place within an area which falls within their broadcast coverage area (i.e. General Elections; European Parliamentary Elections; local government elections; elections to devolved Assemblies and the Scottish Parliament; and elections to the Greater London Authority which take place within their coverage area). In addition, we proposed that local digital television programme service licensees should be required to offer to broadcast PEBs for the following types of election where they fall within their broadcast coverage area, if any were produced by the relevant political parties:
- Mayoral Elections (where these exist); and
 - PCC Elections (where these exist).
- 3.72 So as not to impose a disproportionate burden on local television licensees we proposed making clear that local television services would not be required to carry PEBs for certain other elections:
- by-elections for any type of election for which local television licensees are required to carry PEBs;

⁵⁸ See http://www.legislation.gov.uk/ukxi/2012/292/pdfs/ukxi_20120292_en.pdf

⁵⁹ *Local TV: Making the vision happen*, second bullet-point, page 9 (see <https://www.gov.uk/government/publications/local-tv-making-the-vision-happen>).

⁶⁰ *Ibid*, paragraph 21, page 16.

- English Parish Council Elections;
- Scottish Community Council Elections; and
- Welsh Community Council Elections.

- **PPBs**

3.73 In relation to PPBs, we considered that it would be proportionate to oblige local television licensees to carry PPBs. In any case, we recognised that, in addition to their obligations under the PPRB Rules, local television licensees would probably want to cover political parties' perspectives on local or national policy issues on an ongoing basis in editorial output.

- **RCBs**

3.74 In relation to RCBs, we proposed that local digital television programme service licensees should be obliged to carry RCBs related to all UK, national and regional referendums which take place in their broadcast coverage area, where there are organisations designated by the Electoral Commission. However, we did not consider that local digital television programme service licensees should be obliged to carry RCBs for local referendums, because in these referendums there are no organisations designated by the Electoral Commission, and therefore broadcasters are prevented from showing local RCBs by section 127 of the PPERA⁶¹.

3.75 In Question 4 of the Consultation, we asked stakeholders for their views on the following proposed amendments to the PPRB Rules:

Rule 7; Rule 8, with a footnote at the end of the rule; Rule 9; and inserting new Rule 9A with a footnote at the end of the rule, after Rule 9, as follows (amendments shown in bold):

7. *“General Election broadcasts will be carried by all of the Licensees named above. Broadcasts for European Parliamentary Elections will be carried by regional Channel 3 services, **Channel 5 and local digital television programme service licensees**”.*

8. *“Referendum campaign broadcasts (**“RCBs”**) will be carried by all of the Licensees named above in the case of a UK referendum, or by the relevant regional Channel 3 licensee **and local digital television programme service licensee** in the case of nations/regions referendums”**.

9. *“The regional Channel 3 licensee **and local digital television programme service licensees** will additionally carry:.. and Greater London Authority **Elections**; and **party political** broadcasts (**“PPBs”**) for...”.*

New Rule 9A. “Local digital television programme service licensees will also carry election broadcasts for: Mayoral Elections and Police and Crime Commissioner Elections”*.

⁶¹ Section 127 of the PPERA states: “a broadcaster shall not include in its broadcasting services any referendum campaign broadcast made on behalf of any person or body other than one designated in respect of the referendum in question under section 108”. Section 108 sets out that the Electoral Commission is responsible for the designation of organisations.

*****“Local digital television programme service licensees are not required to carry election broadcasts for: by-elections; English Parish Council Elections; Scottish Community Council Elections; and Welsh Community Council Elections”.***

Stakeholder responses

- 3.76 We received 12 responses on the issue of ‘scope’ (i.e. the elections and referendums for which local digital television programme services should carry broadcasts). One was from a winner of a local digital television programme service licence (Edinburgh Television and Glasgow Television, the local digital television programme service licence winners in Edinburgh and Glasgow respectively, are part of the STV group).
- 3.77 The five political parties which responded on this issue all agreed with Ofcom’s proposed approach. In particular, the SNP (and Yes Scotland in its response also) welcomed “the confirmation that the two recently awarded local television licences in Glasgow and Edinburgh” would carry RCBs for the Scottish Independence Referendum.
- 3.78 Amongst broadcasters, only STV agreed with Ofcom’s proposals with regard to the scope of PEBs, PPBs and RCBs on local digital television programme services.
- 3.79 Information TV said that whilst “Ofcom’s proposals for PPRB rules for ‘Local TV’ are laudable, they present a range of challenges for new Local TV Licensees which will often be impracticable, and not necessarily help Local TV provide what viewers want or expect”. Channel 5 wanted to be assured that Ofcom’s proposals “do not place an undue burden on fledgling businesses” in the local television sector. Channel 4 echoed this point by stating its belief that the proposals in this area “would impose very onerous and frequent obligations” for local television services. This stakeholder suggested that given that the first tranche of local digital television programme services are yet to commence broadcasting “these obligations should not be decided until local licensees can discuss with Ofcom their readiness and ability to take on political broadcasting of this scope and frequency”.
- 3.80 Both Channel 4 and ITV endorsed the submission of the BLG, which was strongly critical of Ofcom’s proposals on the scope of PEBs, PPBs and RCBs on local digital television programme services. In particular, the BLG said that Ofcom’s proposals were unrealistic and that the regulator had not “thought all the possible ramifications of what it is proposing”. The BLG made various points, including the following:
- under the proposals, local digital television programme services would be required to broadcast more PEBs, PPBs and RCBs than any other channels. The BLG said that this would mean that for local television services “in their start-up years and operating on very limited resources [such a requirement] could pose a disproportionate regulatory burden on them that might bring the whole PPRB system into disrepute”;
 - the BLG (and this point was echoed by Channel 4 in its response) raised its members’ experience of dealing with the political parties and in particular “logistical problems caused by late delivery and non-compliant content [in PEBs and PPBs]”. In the BLG’s view, this issue would be likely to be worse for local television services who “will have fewer resources and potentially more broadcasts than current BLG members”. The BLG therefore warned against the “administrative burden” involved with the Consultation proposals in this area; and

- the BLG considered that Ofcom had “over interpreted government policy” and that the legislative change to section 333 of the Act “simply adds local television services to the existing list of services” subject to the PPRB Rules. This stakeholder added that Ofcom has “considerable flexibility” to decide which services are obliged to carry which types of PEBs, PPBs and RCBs.

3.81 The BLG suggested an alternative “modest and manageable” proposal in relation to the scope of PEBs, PPBs and RCBs to be carried by local digital television programme services. The stakeholder suggested that obligations under the PPRB Rules should be based on a licensee’s “transmission configuration”. Therefore, under this proposal a local digital television programme service would only be required to broadcast PEBs, PPBs and RCBs “related to elections and referenda taking place in their transmission footprints”. This would compare with, for example, Channel 3 transmitting “national and regional broadcasts”, and Channel 4 and Channel 5 transmitting “UK-wide broadcasts only”. The BLG suggested that this approach “would not prevent local television services carrying more [PEBs, PPBs and RCBs] than those stipulated in Ofcom’s Rules, should they so choose”. In this regard, the BLG pointed to the fact that Sky News shows all PEBs, and Channel 4 and Channel 5 “both undertake to show PEBs from parties standing in one-sixth of the seats in Great Britain, even if they do not meet Ofcom’s qualifying criteria of standing in one-sixth of the seats in England and one-sixth of the seats in Scotland and one-sixth of the seats in Wales”.

Ofcom response and decision

3.82 We note that all the political parties, Yes Scotland and the only local television licence winner to respond, STV, all supported our proposals in relation to the scope of PEBs, PPBs and RCBs local digital television programme services should carry.

3.83 Several broadcasters (Channel 4, Channel 5, Information TV) all expressed strong concerns about the potential burden Ofcom’s proposals might impose on the new local digital television programme services. In particular, we took particular note of the arguments made by the BLG, whose membership we acknowledge to have a wealth of experience in terms of the practical application of the PPRB Rules. For example, the BLG pointed to the fact that local digital television programme services, who would be likely to be operating on limited resources, would be required to broadcast more PEBs, PPBs and RCBs than any other channels. Furthermore, the BLG pointed to its members’ experience of dealing with the political parties in terms of “late delivery and non-compliant content”.

3.84 Ofcom does not agree with the BLG that we have “over interpreted government policy” in relation to the scope of the PPRB Rules in relation to local television. Under section 333 of the Act (as amended) Ofcom is required to put in place “conditions requiring the inclusion [in local digital television programme services] of party political broadcasts⁶² and referendum campaign broadcasts”. Furthermore, and as we note in paragraph 3.70 above, the Government was clear that local television services: should carry party political broadcasts; and contribute to local democracy. We therefore put forward proposals which as far as possible sought to fulfil the Government’s stated policy preference, yet be proportionate and workable.

3.85 In the absence of responses from the majority of local digital television programme service licence winners, we considered that the BLG may have put arguments that would have been made by the local television sector, had our review taken place at a

⁶² i.e. PEBs and PPBs.

later time when the 19 licensees were more able to respond. After careful consideration, we recognised the strength of the BLG's arguments, and considered it prudent to ensure that the regulatory burden on local digital television programme services is kept at a proportionate level. We have taken into account the BLG's suggestion that the scope of broadcasts applicable to local television services should be based on a licensee's "transmission configuration". Therefore, we are amending the PPRB Rules to ensure that local digital television programme service licensees will only be required to broadcast PEBs for two types of elections: local elections; and in London the elections for the London Assembly and Mayor of London. In addition, we will make clear in the PPRB Rules: the elections for which local digital television programme service licensees are *not* required to carry PEBs; and that these services will not be required to carry RCBs of any kind⁶³. We consider that this would represent a proportionate regulatory burden in the initial period of operation of local digital television programme services.

3.86 We will not be amending the PPRB Rules to require local television services to carry PEBs for Mayoral Elections and PCC Elections, due to potential problems we discuss below (see paragraphs 3.110 to 3.124).

3.87 We agree with the BLG that the PPRB Rules set minimum obligations. Therefore, subject to complying with the requirement to maintain due impartiality, local television services would be at liberty to transmit PEBs, PPBs and/or RCBs beyond that which is required of them under the PPRB Rules.

3.88 Given the above, we confirm the following amendments to the PPRB Rules:

Rule 7; Rule 8; and insert new Rule 9A with a footnote at the end of the rule, after Rule 9 shall read as follows (amendment shown in bold):

*7. "General Election broadcasts will be carried by all of the Licensees named above **(except local digital television programme service licensees)**. Broadcasts for European Parliamentary Elections will be carried by regional Channel 3 services and **Channel 5**".*

*8. "Referendum campaign broadcasts ("**RCBs**") will be carried by all of the Licensees named above **(except local digital television programme service licensees)** in the case of a UK referendum, or by the relevant regional Channel 3 licensee in the case of nations/regions referendums".*

New Rule 9A. "Local digital television programme service licensees will carry: local election broadcasts in those UK nations/regions where such elections are taking place. The local digital television programme service licensee for London will also carry broadcasts for the elections for the London Assembly and Mayor of London"*

*****"Local digital television programme service licensees will not be obliged to carry PEBs in respect of: General Elections; European Parliamentary Elections; Scottish Parliament, Welsh Assembly and Northern Ireland Assembly Elections; Mayoral elections (other than London); Police and Crime Commissioner elections ; by-elections of any kind; English Parish Council elections; Scottish Community Council elections; and Welsh Community Council elections"***.

⁶³ Local digital television programme service licensees will not be required to carry PPBs either.

Delivery - how local digital television programme services should carry broadcasts (i.e. to which parties/candidates should they be offered)

- 3.89 In the Consultation we put forward proposals which, as far as it is possible and practicable, would oblige local digital television programme service licensees to offer parties in their localities the opportunity to broadcast PEBs focused on their localities to some degree.
- 3.90 However, in paragraph 3.54 of the Consultation, we identified a number of difficulties with requiring local television services to offer locally-focussed PEBs featuring candidates. For example:
- obliging local television licensees to offer PEBs to each and every candidate contesting an election in each and every constituency and electoral area within a local television licence area, would: impose an unreasonable burden on such broadcasters; and would risk fuelling irritation amongst those members of a local television service's audience who were not part of the electorate at which a particular PEB was aimed;
 - practical difficulties would arise if local television services were to offer 'area-wide' local television PEBs to parties, because such broadcasts would need to comply with the constituency and electoral area reporting rules, and in particular, Rules 6.9 and 6.10 of the Code⁶⁴. Given the nature of PEBs, it would be wholly unrealistic for political parties which included their candidates in 'area-wide' PEBs to include the candidates of all other parties standing in their constituency or electoral area. However, the local television broadcaster would still need to offer the other political parties the chance to broadcast their own 'area-wide' local television PEBs, which included their own respective candidates standing in the relevant constituency or electoral area; and
 - as a result, local television broadcasters would be placed under an unreasonable burden to ensure that their output complies with the Code. This is because, for example, the local television broadcaster would have no editorial control as to whether or not, and which, specific candidates would be featured in 'area-wide' local television PEBs, yet as the entity with editorial responsibility for the local television service's output the broadcaster would need to monitor the PEBs on its service to ensure compliance with the Code in this respect.
- 3.91 Given these practical difficulties, in paragraphs 3.55 to 3.57 of the Consultation we discussed whether a possible solution might be "the All Candidate Offer Proposal": a local television broadcaster whose broadcast footprint covers several constituencies might offer broadcasts to all political parties which qualified for a PEB (for example, for a General Election). It would then be up to the parties to determine which if any candidates appeared in their PEB(s). However, in the Consultation, we stated that we did not think the All Candidate Offer Proposal was workable. For example, under the

⁶⁴ Rule 6.9 states: "If a candidate takes part in an item about his/her particular constituency, or electoral area, then candidates of each of the major parties must be offered the opportunity to take part. (However, if they refuse or are unable to participate, the item may nevertheless go ahead)". Rule 6.10 states: "In addition to Rule 6.9, broadcasters must offer the opportunity to take part in constituency or electoral area reports and discussions, to all candidates within the constituency or electoral area representing parties with previous significant electoral support or where there is evidence of significant current support. This also applies to independent candidates. (However, if a candidate refuses or is unable to participate, the item may nevertheless go ahead)".

All Candidate Offer Proposal, because only some of the candidates representing a particular party could be selected to take part, inevitably some candidates in some constituencies would be favoured over others.

3.92 Given these difficulties, we proposed two options.

- Option (A): Obliging local digital television programme service licensees to retransmit national PEBs

3.93 This would oblige local digital television programme services to offer parties the opportunity to: retransmit their national PEBs for General Elections, local elections, and European Elections, and the Northern Ireland Assembly, Welsh Assembly, and Scottish Parliamentary Elections (in the relevant nations); and transmit local PEBs featuring candidates for Mayoral and PPC Elections.

3.94 Under this option, we recognised that there are certain elections, in which there is only one individual being elected to a post representing one electoral area i.e. Mayoral Elections and PCC Elections. We considered that in these specific cases, the practical issues identified above (with the All Candidate Offer Proposal) did not arise, because each political party would only be putting up one candidate in the single electoral area. Therefore, by offering each relevant registered party a PEB in relation to such elections, the local television broadcaster is effectively offering each relevant candidate the chance to take part in a linked constituency or electoral area report or discussion⁶⁵, in line with Rule 6.9 and 6.10 of the Code).

3.95 We recognised that political parties may not wish, or have the resources, to produce locally-focused PEBs for Mayoral and/or PPC Elections. In these circumstances, the parties could also produce generic nationally-based PEBs in relation to, for example, PCC Elections, which could be broadcast by different local television licensees across England and Wales, or decline to take up the PEB. Such broadcasts, however, could not focus on individual candidates discussing their electoral areas.

- Option (B): Obliging local digital television programme service licensees to either retransmit national PEBs or, if the licensee wishes, offer locally-focused PEBs which do not feature candidates

3.96 Option (B) was the same as Option (A) but with the difference that for those elections⁶⁶ which do not involve one individual being elected to a post representing one electoral area, local television services could, if they wanted to, offer the option to the parties of transmitting locally-focused PEBs which do not feature candidates. However, as we noted in paragraph 3.64 of the Consultation, because some local television services may not have the comprehensive compliance systems in place to ensure they could confidently ensure locally-focused PEBs complying with the Code, then those broadcasters could instead, under Option (B), retransmit a party's national PEB.

3.97 We recognised that the obligation on local television services to carry PEBs, PPBs and RCBs might create potential challenges to local television services in complying

⁶⁵ We consider that taken together all the relevant parties' PEBs broadcast by the local television licensee would constitute a linked a linked electoral area report or discussion, as covered by Rules 6.8 to 6.13 of the Code.

⁶⁶ The relevant elections would be: General Elections; European Parliamentary Elections; Scottish Parliamentary Elections; Welsh Assembly Elections; Northern Ireland Assembly Elections; Greater London Authority Elections; and local government elections.

with both the PPRB Rules and the Code. Therefore, in order to forestall any potential problems in this area, we stated our intention to: hold compliance workshops with local digital television programme service licensees in 2013 to explain the PPRB Rules and the Code; and hold discussions with the BLG to discuss the possibility of local television involvement in the BLG. We believed such a move would enhance communication and understanding between the local television sector and the political parties and minimise potential disputes in this area.

3.98 In Question 5 of the Consultation, we asked stakeholders for their views on the following proposed amendments to the PPRB Rules:

3.99 Option (A): inserting new Rule 17A or Option (B): inserting new Rule 17A, after Rule 17 as follows:

Option (A):

New Rule 17A. “Where a local digital television programme service licensee is required to broadcast a PEB as a result of Rule 9, local digital television programme service licensees are obliged to carry the same PEB as broadcast by the relevant Channel 3 licensee”.

New Rule 17B. “Where a local digital television programme service licensee is required to broadcast a PEB as a result of Rule 9A, they may feature candidates standing in those elections in those broadcasts”.

Option (B):

New Rule 17A. “Where a local digital television programme service licensee is required to broadcast a PEB as a result of Rule 9, local digital television programme service licensees can:

***(a) carry the same PEB as broadcast by the relevant Channel 3 licensee; or
(b) offer those parties which qualify for a PEB on a local television licensee locally-focused PEBs, which must not focus on individual candidates discussing their constituencies or electoral areas”.***

New Rule 17B. “Where a local digital television programme service licensee is required to broadcast a PEB as a result of Rule 9A, they may feature candidates standing in those elections in those broadcasts”.

Stakeholder responses

3.100 We received 13 responses on the issue of ‘delivery’ (i.e. to which parties/candidates should PEBs, PPBs and RCBs be offered on local digital television programme services). One was from a winner of a local digital television programme service licence (Edinburgh Television and Glasgow Television, the local digital television programme service licence winners in Edinburgh and Glasgow respectively, are part of the STV group). Two of these respondents requested confidentiality, and are identified respectively as “a political party” and “an individual” below.

3.101 We received several responses which were strongly critical of our proposals in this area. The Electoral Commission said that whilst it would support “any proposal to increase public trust, interest and participation in elections”, it said the Consultation’s proposals for locally-focused PEBs for Mayoral Elections and PCC Elections, including broadcasts featuring candidates, “raise concerns for us about both trust and

participation". In this stakeholder's view, the Consultation had not provided sufficient evidence as to: whether such proposals could work in practice; or, for example, to support Ofcom's view that for Mayoral and PCC Elections the broadcast footprints are "broadly and sufficiently coterminous with the electoral area". The Electoral Commission suggested that a mapping exercise should be undertaken before any final decision is taken in this area. It said that, if such an exercise showed that "broadcast footprint areas for the local television licensees are not sufficiently coterminous with police authority and mayoral electoral areas, there is a risk that large numbers of voters could be excluded from seeing broadcasts that are relevant to them and in turn this could be considered to unfairly disadvantage candidates that might expect these voters to support them". The Electoral Commission added that: "Similarly, if local television licensees were to accept locally focussed PEBs or PEBs featuring candidates, these PEBs could be shown to large numbers of voters for whom they are not relevant, which could lead to confusion". This respondent stated that "Until further evidence is presented, we are unable to assess the merits of the [Option (A) or Option (B)] and suggest Ofcom do not pursue either until further work has been done to address" the concerns expressed by the Electoral Commission.

- 3.102 The Electoral Commission also stated that it is not clear what evidence there is that local political parties and candidates have the "resources or inclination to produce local radio and television broadcasts for" Mayoral and PCC Elections. The respondent added that: "Producing broadcasts of sufficient quality for TV is time consuming and costly and it is possible that some parties will not be able to do it in the way the consultation document suggests". The Electoral Commission therefore recommended that "further consultation takes place with political parties on this point".
- 3.103 Channel 5 wanted to be assured that Ofcom's proposals "do not place an undue burden on fledgling businesses", whilst both Channel 4 and ITV endorsed the submission of the BLG, which was strongly critical of Ofcom's proposals on the scope of PEBs, PPBs and RCBs on local digital television programme services.
- 3.104 The BLG raised two key issues. Firstly, it echoed the Electoral Commission's concerns about the degree to which the broadcast footprints of local digital television programme services are coterminous with particular constituencies or electoral areas. The BLG considered that this could raise potential issues about the "balance and impartiality" of any broadcasts shown by local television broadcasters. The stakeholder considered this raised several issues:
- many local services will be available only on the digital terrestrial television platform and therefore "are likely to be present on the main TV sets of less than half the homes they cover";
 - where there is a discrepancy between the broadcast footprint of a local digital television programme service and electoral boundaries, there "might be unfairness because voters in one part of an electoral area see PEBs and others do not";
 - in General Elections, the broadcast footprint of some local television broadcasters may contain "a disproportionate number of senior politicians from one party" (e.g. Liverpool). According to the BLG, if a local digital television programme service transmitted one or more national PEBs in a General Election campaign that "featured such senior figures [this] could represent a lack of balance by that broadcaster". In this respondent's view, "Such lack of balance would not apply to a national broadcaster, as a

concentration of senior politicians of one party from one part of the UK would be balanced by other parties' deployment of political leaders from other parts of the UK"; and

- the proposal that local television services should replicate the national allocation of broadcasts may be unfair in the context of some local transmission areas. For example, the BLG said that the planned "Brighton local television service covers roughly five Westminster constituencies, four held by the Conservatives and one by the Greens. At the next election, broadcasters covering the UK and England might conceivably follow the 2010 allocations (which included five broadcasts each for the Conservatives and Labour, four for the Liberal Democrats and one for the Greens), but it is hard to see how this would be a reasonable allocation for the Brighton television service to adopt".

- 3.105 The second main issue raised by the BLG in this area was what the Consultation had proposed in relation to the role of the BLG in relation to local television broadcasters. In this regard, the BLG expressed concern that: "Ofcom may be overstating the role the BLG might play in assisting local television services to comply with the obligations it proposes". This respondent said that: it is not a legal entity and membership of it is voluntary; and that it exists "because the current broadcast members believe it provides a useful forum for exchanging views and for communicating with the political parties at national level". The BLG said that it was open to all broadcasters who are obliged, or wish, to show PEBs, PPBs and RCBs to join the BLG, and that "all local television services would be welcome to join it". However, it stressed that is not equipped to facilitate the transmission of broadcasts by local television stations. Furthermore, with regard to Mayoral Elections outside London and PCC Elections, which at present, no BLG member is obliged to transmit under the PPRB Rules "it would be for local television services to make arrangements and decide allocations, following discussions and consultations at national level".
- 3.106 The confidential response we received from an individual also pointed to practical difficulties with the Consultation's proposals on the delivery of PEBs, PPBs and RCBs by local television broadcasters. For example, this respondent pointed to practical problems around the political parties efficiently delivering copies of PEBs to broadcasters. This respondent also queried the rationale of requiring local television broadcasters to retransmit national broadcasts, which in this respondent's view seemed to go counter to the premise of local television.
- 3.107 Three stakeholders expressed support for Option (A). These were: the SDLP; STV; and a political party. The SDLP supported this option because it believed that "some parties may not wish, or have the resources to produce locally-focused PEBs alongside their regional/national PEBs".
- 3.108 Three other stakeholders expressed support for Option (B). These were: the Liberal Democrats; Plaid Cymru; and the SNP. However, the Liberal Democrats did express concern that local digital television programme service broadcast areas would be different to constituencies and electoral areas for different forms of election. This respondent said, therefore, that it may be necessary for there to be some form of "official definition of electoral areas". The SNP said that it would have preferred the 'All Candidate Offer Proposal' that was discussed in paragraphs 3.55 to 3.57 of the Consultation. However, this stakeholder said that "we appreciate the issues this involves in the current regulatory regime. It would also create practical difficulties for candidates in relation to the apportionment of the expense of producing the broadcast in their election returns as between the participating candidates and the party".

3.109 The UUP said it would be content with either Option (A) or Option (B).

Ofcom response and decision

3.110 The majority of responses we received on the issue of how local digital television programme services should carry PEBs, PPBs and RCBs supported either of the two options we proposed. We received only one response from a local television licence winner. However, we have taken particular note of the arguments made by the Electoral Commission and the BLG, who both raised concerns that about the degree to which the broadcast footprints of local digital television programme services are coterminous with particular constituencies or electoral areas.

3.111 We note the Electoral Commission's recommendation that Ofcom should consult further with the political parties as to whether they have the "resources or inclination to produce PEBs Mayoral and PCC Elections". Given the strong support for our proposals from various political parties, we consider that there appears to be a potential desire amongst political parties to produce PEBs for local television.

3.112 However, we acknowledge the strength of the arguments put forward by the Electoral Commission, the BLG and an individual concerning our proposals for delivering: Mayoral and PCC Elections; and also national elections.

3.113 In relation to Mayoral and PCC Elections, these respondents expressed fears that our proposals would mean that there could be large numbers of voters in Mayoral and PCC Electoral areas in which a local television service is located, that would not be within that service's broadcast footprint⁶⁷. The potential risk, according to the Electoral Commission would be that: "If there is a different demographic profile (and hence differential propensity to vote for one party) in the part of the electoral area where PEBs are shown, and the presence of PEBs leads to greater awareness that an election is taking place, the presence of PEBs could impact on that election's outcome". Furthermore, the Electoral Commission feared that locally focussed PEBs or PEBs featuring candidates "could be shown to large numbers of voters for whom they are not relevant, which could lead to confusion".

3.114 Our proposals in this area were built upon a wish to enable candidates at a local level to have the opportunity to broadcast PEBs tailored to particular localities. In this respect, in paragraph 3.28 of the Consultation we viewed Mayoral Elections and PCC Elections as examples of elections where a local television service's broadcast footprint is broadly and sufficiently coterminous with the relevant electoral area. Whilst we still consider this to be more likely the case for Mayoral Election electoral areas, we recognise it is a more complicated situation for PCC Election electoral areas. In this regard, as we discuss in paragraph 3.116 below, detailed analysis on this point is not yet possible.

3.115 We are mindful of the need not to impose on local television licensees any obligation under the PPRB Rules that might have unintended effects on particular elections. For example, we do not want the fact, as pointed to by the Electoral Commission, that certain voters in an electoral area will be receiving PEBs because they live within a local digital television programme service's broadcast footprint (whilst other voters in the same election do not) to have a detrimental effect on an election. At this stage, therefore, we consider it appropriate not to oblige local digital television programme

⁶⁷ The Liberal Democrats, although supporting Option (B), did express concern that local digital television programme service broadcast areas would be different to constituencies and electoral areas for different forms of election.

services to carry PEBs for Mayoral and PCC Elections, with the sole exception of PEBs for elections for the Mayor of London⁶⁸. We consider it appropriate to oblige the local digital television programme service licensee for London to carry broadcasts for elections for the Mayor of London because: this licensee will merely be rebroadcasting PEBs already shown by the Channel 3 licence for London; and as we stated in paragraph 3.34 of the Consultation, London is the only example of a Mayoral electoral area which is broadly coterminous with a Channel 3 licence area.

- 3.116 We note the Electoral Commission's suggestion that Ofcom should undertake a mapping exercise to ascertain whether, in the case of Mayoral and PCC Elections, local television broadcaster broadcast footprints are "broadly and sufficiently coterminous with the electoral area". In this regard, in May 2012 Ofcom published indicative coverage⁶⁹ for the 19 local TV services whose licences have been recently awarded. However, now that the local multiplex licence for local television has been awarded⁷⁰, the process is underway for confirming the exact coverage at each local television broadcast location. This process should conclude during 2013, with the final technical plan being written into the multiplex licence. After that point, it would be possible in future to conduct the analysis suggested by the Electoral Commission, comparing local television coverage areas to electoral areas. Therefore, pending the development of the local television sector, we will keep this issue under review.
- 3.117 In relation to PEBs for national elections broadcast on local television services, we note the BLG's concerns that, for example in General Elections, the broadcast footprint of some local television broadcasters may contain "a disproportionate number of senior politicians from one party". In the BLG's view, this might represent a lack of balance by that broadcaster. We consider this point to be debatable. For example, it is not clear what effects in terms of impartiality there would be if a local television broadcaster transmitted national PEBs, for example during a General Election, which focussed on national issues, and which featured several senior politicians from one political party which happened to be standing as candidates in constituencies within that local television service's broadcast footprint.
- 3.118 On a related point, the BLG raised concerns that if the national allocation of PEBs was mirrored at the local level by local television broadcasters, this would not reflect the relative strength of political parties locally. However, this point is also debatable. As we discuss in paragraph 3.6 above, the allocation provisions in the PPRB Rules afford a particular status to major parties, recognising their national status. Other parties will be allocated PEBs as appropriate. These rules thus ensure that at elections a variety of political parties are afforded access to PEBs, with a particular stress being put on the major parties. However, mindful of the concern of stakeholders to minimise the regulatory burden on local television services, as already discussed we will not be obliging local digital television programme services to carry PEBs for UK-wide and national elections such as General Elections.
- 3.119 After careful consideration, we have decided to amend the PPRB Rules to require local digital television programme services to carry PEBs for only: local elections, and (for the relevant London local digital television programme service only) elections for the London Assembly and Mayor of London. We do not consider that these obligations will create the potential problems that we discuss above. This is because

⁶⁸ See paragraph 3.85 above..

⁶⁹ See Annex 1, *Note for Applicants on Coverage of Local Television: Minimum coverage requirements and transmission arrangements* (<http://licensing.ofcom.org.uk/binaries/tv/local-tv/coverage-note.pdf>)

⁷⁰ See <http://licensing.ofcom.org.uk/tv-broadcast-licences/local/awards-mux/>

in relation to PEBs for local elections, such broadcasts are aimed at voters across large numbers of candidates contesting seats across particular nations in the UK. In relation to PEBs for elections for the London Assembly and Mayor of London the broadcast footprint for the local digital television programme service for London is broadly coterminous with the relevant electoral area, and such PEBs will have been broadcast by the relevant Channel 3 licensee for London. In our view, because of the latter, we consider we are not placing a disproportionate regulatory burden the local digital television programme service licensee for London.

- 3.120 We are particularly conscious that the obligations on local television broadcasters should be proportionate. Therefore, in terms of delivery of these obligations, we have decided to implement them by inserting a new Rule 17A into the PPRB Rules to require local digital television programme services to carry the same PEBs as broadcast by the relevant Channel 3 licensee, for the elections listed in paragraph 3.119 above. Therefore, we are not obliging local television broadcasters to provide any broadcasts specifically tailored for their local broadcast area.
- 3.121 However, we stress that the obligations we are placing on local television licensees are minimum obligations. Therefore, local digital television programme service licensees would be at liberty to carry PEBs, PPBs and RCBs over and above the minimum obligation of the PPRB Rules, subject to the due impartiality requirements of the Code being complied with. Furthermore, local television broadcasters remain free to cover elections (and referendums) in any way they wish, as long as such coverage complies with Sections Five and Six of the Code. There is a range of ways which broadcasters could cover candidates during election periods, including: hosting candidates' debates featuring all the relevant candidates standing in a particular constituency or electoral area; or, giving all candidates the opportunity to communicate their message to voters in broadcast 'soapbox' slots.
- 3.122 The BLG voiced concerns as to how Ofcom referred to the role of the BLG in the Consultation. We acknowledge that the BLG is not a legal entity and membership is voluntary. However, given that we are requiring local television broadcasters only to broadcast PEBs being shown by relevant Channel 3 licensees (rather than PEBs for local areas), we hope that local digital television programme service licensees will take up the BLG's offer to join the BLG. We envisage that local television services will be able to take advantage of the fact that the BLG, as this respondent itself said, "provides a useful forum for exchanging views and for communicating with the political parties at national level". We believe such a move would enhance communication and understanding between the local television sector and the political parties and minimise potential disputes in this area.
- 3.123 In conclusion, as noted above, only one local television stakeholder was able to respond to the Consultation. This may be because of the timing of the Consultation in relation to the first phase of local television licence awards, which concluded at the end of February 2013. We anticipate that these first 19 services will be broadcasting within one or two years. We therefore propose to keep the area of local television and the PPRB Rules under review.
- 3.124 Given the above, we confirm the following amendment to the PPRB Rules:

Insert new Rule 17A, after Rule 17 shall read as follows:

New Rule 17A. "Where a local digital television programme service licensee is required to broadcast a PEB as a result of Rule 9A, local digital television

programme service licensees will carry the same PEB as broadcast by the relevant Channel 3 licensee”.

The 'allocation' requirements for PEBs (i.e. which parties and independent candidates must be offered PEBs)

3.125 In paragraphs 3.69 to 3.83 of the Consultation we laid out our proposals in relation to the 'allocation' requirements for PEBs (i.e. which parties and independent candidates must be offered PEBs).

3.126 Rules 12 to 17⁷¹ of the PPRB Rules set out the allocation rules for PEBs. In particular:

- for all elections, major parties are automatically offered "two or more" PEBs;
- 'non-major' parties are offered one PEB as follows:
 - if a party stands candidates in at least one sixth of seats in 'first-past-the-post' ("FPTP") elections such as General Elections; and
 - in elections fought under forms of proportional representation ("PR"), 'non-major' parties will receive one PEB according to criteria set by the broadcaster which have regard to the particular system of voting, the number of seats available for election, the number of constituencies/regions, and the number of candidates nominated by the party;
- 'non-major' parties may be offered additional PEBs based on evidence of past electoral and/or current support; and
- for the purposes of allocations, the four nations of the UK should be considered separately.

3.127 In the Consultation, we proposed a number of amendments to the current PPRB Rules.

The 'one sixth rule'

3.128 The 'one sixth rule' laid out in Rule 13⁷² of the PPRB Rules states that parties other than the major parties should qualify for a PEB if they are contesting one sixth or more of the seats up for election in the case of FPTP, multi-constituency elections such as a General Election, in the UK, or in each separate nation of the UK. We noted that during our pre-consultation meetings, a few broadcasters argued that some smaller political parties have, on at least one occasion, effectively 'gamed' the one sixth rule by fielding candidates in at least one sixth of the seats in Northern Ireland and Wales during General Elections, so as to ensure that they receive a PEB in those countries. These broadcasters expressed concern that in their view such parties are not serious contenders in democratic elections but are merely seeking an opportunity to broadcast particular messages to the viewing public.

3.129 Currently, the one sixth threshold means a party would qualify for a PEB: in Northern Ireland if they were to field three candidates at a General Election; and in Wales if they were to field seven candidates. Stakeholders had suggested to us increasing the threshold set out in Rule 13 to: in Northern Ireland, one third or more of seats being

⁷¹ See paragraphs A1.12 to A1.17, Annex 1 of the Consultation.

⁷² See paragraph A1.13, Annex 1 of the Consultation.

contested; and in Wales, one quarter or more of seats being contested, during Westminster FPTP elections.

3.130 In response to these concerns, we analysed what the effect would be were the ‘one sixth’ threshold amended. Figure 1 on page 41 of the Consultation showed what the effect would be if the threshold for qualification was increased to one quarter and one third, in relation to ‘non-major’ parties that fielded 10 or more candidates at the 2010 General Election. We noted that the following points arose from Figure 1:

- some ‘non-major’ parties would qualify irrespective of the threshold (Alliance Party, Traditional Unionist Voice and UKIP);
- some parties have been fielding just enough candidates to obtain a PEB (such as the Scottish Socialist party and the Trades Unionist and Socialist Coalition in Scotland); and
- most ‘non-major’ parties would only start to qualify for a PEB if the threshold were to be greatly reduced, for example to 5% or below.

3.131 In the Consultation, we remarked that the ‘one sixth’ threshold appears to have worked successfully in ensuring that an appropriate and reasonable opportunity is given to non-major parties, including brand new parties with no previous electoral history, to qualify for PEBs in elections. We considered that it would be an unreasonable burden on broadcasters if there was no threshold, and broadcasters were obliged to offer PEBs to all parties standing in different nations at, for example, General Elections. Following our analysis of this area, we stated our view that the ‘one sixth’ threshold is a well-established mechanism that represents an appropriate balance between both the imposition of requirements to show PEBs on the broadcasters and the need to have a fair mechanism for determining who should be allocated broadcasts under this rule.

3.132 Ofcom therefore considered that, on balance, the ‘one sixth’ threshold remained fit for purpose, and we did not propose to changing it. However, we invited stakeholders’ views as to whether the ‘one sixth’ threshold remains appropriate or whether a different threshold would be appropriate.

Numbers of PEBs for major parties

3.133 In relation to Rule 12⁷³ of the PPRB Rules, following a suggestion from a broadcaster during our pre-consultations meetings, in the Consultation we proposed amending the requirement for the major parties to be allocated “*two or more*” PEBs to “*at least two*” PEBs, during election campaigns. It had been suggested to us that this wording would counter the expectation from some political parties that would automatically be allocated three PEBs during, for example, a General Election campaign.

Link between First Past the Post and Proportional Representation allocation rules

3.134 In the Consultation, we noted that some broadcasters, during our pre-consultation meetings, raised concerns about some other wording in Rule 13 of the PPRB Rules. This wording states [emphasis added] “...For proportional representation systems of election (such as the European Parliamentary Elections), the minimum qualifying requirement for the allocation of one PEB should be adapted appropriately, reasonably and fairly for each election...”. This emphasised wording, in these

⁷³ See paragraph A1.12, Annex 1 of the Consultation.

stakeholders' view, confusingly links the allocation criteria for FPTP elections with those for proportional representation elections. We therefore asked stakeholders for their views on removing this link.

PEBs during referendum campaigns

3.135 In the Consultation, we noted a further concern expressed by one stakeholder, during our pre-consultations meetings, of the potential unfairness if a political party were to use its PEB to make points relating to an ongoing referendum. This stakeholder suggested that PEBs should not be broadcast during referendum periods. We noted that when referendums occur, they often take place at the same time as different set of elections⁷⁴. Therefore, whilst it would be possible to reschedule PEBs to after a referendum period, this would not be possible for PEBs relating to elections taking place at the same time as a particular referendum. It would therefore be impractical to prohibit PEBs during referendum periods. Therefore, we proposed that the PPRB Rules should make clear that PEBs broadcast during a referendum period should not focus on promoting a particular outcome of a referendum. In doing so, we noted that this reflects section 127(2)⁷⁵ of the PPERA.

Allocation of PEBs to independent candidates

3.136 As we note in paragraphs 3.37 to 3.43 above, in the Consultation we proposed that independent candidates should, in principle, be eligible for PEBs for certain types of election. In terms of allocation of PEBs to independent candidates in those elections, we considered that broadcasters should be required to offer PEBs to independent candidates if evidence of their past electoral support and/or current support means it would be appropriate to do so. Under our proposals, we foresaw that the requirement to offer independent candidates PEBs on this basis would only arise in relation to Mayoral Elections and PCC Elections.

3.137 In Question 6 of the Consultation, we asked stakeholders for their views on the following proposed amendments to the PPRB Rules:

Rule 12; Rule 14; and 17; and inserting new Rule 13A after Rule 13⁷⁶, as follows (amendments shown in bold):

⁷⁴ For example the UK-wide Alternative Vote Referendum took place at the same time as elections to the Scottish Parliament and Welsh Assembly, and local elections in England.

⁷⁵ Section 127(2) of the PPERA states that an RCB is "any broadcast whose purpose (or main purpose) is or may reasonably be assumed to be –
(a) to further any campaign conducted with a view to promoting or procuring a particular outcome in relation to any question asked in a referendum to which this Part applies, or
(b) otherwise to promote or procure any such outcome". Therefore, under section 127(2) PEBs cannot, for example "further any campaign conducted with a view to promoting or procuring a particular outcome" in a referendum.

⁷⁶ As mentioned in paragraph 3.134 above, we also asked stakeholders for their views for amending the words "adapted appropriately" in Rule 13 of the PPRB Rules which states: "Other registered parties should qualify for a PEB if they are contesting one sixth or more of the seats up for election in the case of first-past-the-post, multi-constituency elections such as a General Election. For proportional representation systems of election (such as the European Parliamentary Elections), the minimum qualifying requirement for the allocation of one PEB should be adapted appropriately, reasonably and fairly for each election, according to criteria which have regard to the particular system of voting, the number of seats available for election, the number of constituencies/regions, and the number of candidates nominated by the party".

12. *“Before a General Election, and in the case of other elections where appropriate, each major party (referred to in Rule 11) should be offered a series of **at least two** PEBs...”*

New Rule 13A. “For Mayoral and Police and Crime Commissioner Elections, candidates representing registered parties which are not participating in any concurrent local elections, and independent candidates, should be offered a PEB where they can demonstrate that evidence of past electoral support and/or current support means it would be appropriate to do so”.

14. *“Licensees should consider making additional allocations of PEBs to other registered parties if evidence of their past **electoral support** and/or current support at a particular election or in a relevant nation/electoral area means it would be appropriate to do so. In this regard, Licensees should consider whether other registered parties should qualify for a series of PEBs and/or peak-time scheduling, as major parties do”.*

17. *“Parties which qualify for a PEB in all three nations of England, Scotland and Wales will additionally be offered a PEB on Channel 4 (at General Elections), **Channel 5** (at General Elections and European Elections) and the UK-wide analogue radio services (at General Elections) (provided these broadcasters are carrying the relevant series of broadcasts; see Rules 7 – 9 above). **The purpose of a PEB must not be to promote any particular outcome of a referendum”.***

Stakeholder responses

3.138 We received 14 responses on the ‘allocation’ requirements for PEBs (i.e. which parties and independent candidates must be offered PEBs). Two of these respondents requested confidentiality, and one of these is identified as “a political party” below.

The ‘one sixth rule’

3.139 The vast majority of stakeholders considered that the ‘one sixth rule’ was generally fit for purpose, in particular for elections at the UK level.

3.140 However, some respondents argued that the threshold should be increased in respect of different countries of the UK. Channel 5 said that: “Ofcom offers no arguments as to why differential qualification hurdles in those parts of the UK should not be introduced”. This respondent considered that there is a “genuine problem of parties or other organisations standing candidates in [Wales and Northern Ireland] purely to secure a broadcast”. Channel 5 suggested that Ofcom consider “raising the threshold to say one quarter throughout the UK” and allow broadcasters covering the UK or the devolved nations to “use their discretion to offer parties in those territories a PEB if they reached a lower threshold such as the existing one-sixth”. In this respondent’s view, this would be similar current practice whereby Channel 5 and Channel 4 in offer “PEBs to parties standing in one-sixth of the seats in Great Britain, even if they do not meet Ofcom’s qualifying criteria of standing in one-sixth of the seats in England and one-sixth of the seats in Scotland and one-sixth of the seats in Wales”.

3.141 Classic FM said it would “certainly not” advocate the removal of the one sixth threshold and “would support the raising of the threshold to ‘one third’ to ensure PEBs are only allocated to parties that are serious contenders with a genuine interest in being elected”. In this stakeholder’s view, any lowering of the threshold would lead to

an increase in PEBs overall, and "the research available for the 2001⁷⁷ and 2005⁷⁸ elections indicates there is no appetite for this from the public". Furthermore, it would also lead to an increase in PEBs being broadcast "on behalf of smaller parties that the majority of listeners won't be able to vote for in their constituency".

- 3.142 Several respondents argued for an increased of the threshold for FPTP elections in Wales. ITV, whilst agreeing with the one-sixth threshold in relation to England considered that "there is no compelling reason offered by Ofcom in the Consultation for retaining the rule in relation to" Wales. In this stakeholder's view, the data laid out in Figure 1, on page 41 of the Consultation, shows 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". ITV therefore supported raising the threshold to one quarter in Wales, but made no comment on the appropriateness of the one sixth threshold in Scotland and Northern Ireland. Plaid Cymru also suggested raising the threshold to one quarter in Wales, whilst S4C suggested raising the threshold to one quarter or one third. In the latter respondent's view: "Based on the 2010 General Election, adopting either of these thresholds would have almost no impact on the majority of parties that currently fight elections in Wales".
- 3.143 In relation to Northern Ireland, the UUP argued for the threshold to be raised to one third as under the 'one sixth rule' a party need only field three candidates at a General Election to qualify for a PEB. However, both the SDLP and UTV TV agreed with retaining the one sixth threshold for Northern Ireland. UTV TV added that it wanted the PPRB Rules to "make clear that the 'one sixth rule' only applies to 'non-major' parties...as opposed to major parties".
- 3.144 No respondents specifically commented on the application of the 'one sixth rule' to Scotland.

Other proposed amendments

- 3.145 In relation to other responses we received on the allocation requirements for PEBs, we refer to these responses, as appropriate, when we lay out our response and decision below in the area of: numbers of PEBs for major parties (see paragraph 3.151 below); the link between FPTP and PR allocation rules (see paragraph 3.152 below); evidence of electoral support (see paragraph 3.153 below); PEBs during referendum campaigns (see paragraph 3.154 to 3.156 below); and the allocation of PEBs to independent candidates (see paragraph 3.157 below)

Ofcom response and decision

The 'one sixth rule'

- 3.146 Although the vast majority of stakeholders considered that the 'one sixth rule' was generally fit for purpose, some respondents argued that the threshold should be increased in respect of Wales and Northern Ireland. We noted that no respondent raised the one sixth threshold as being an issue in Scotland.

⁷⁷ *Election 2001. Viewers' response to the Television Coverage*. An ITC Research Publication, published 2001 (See

http://www.ofcom.org.uk/static/archive/itc/research/election_2001_viewers_rspnc.pdf).

⁷⁸ *Viewers and Voters: Attitudes to television coverage of the 2005 General Election*, a Research Study conducted by ICM Research on behalf of Ofcom, published 2005 (See <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/election.pdf>).

- 3.147 Channel 5 said there is a “genuine problem of parties or other organisations standing candidates in [Wales and Northern Ireland] purely to secure a broadcast”. Similarly, ITV said we had provided a “compelling reason” for retaining the ‘one-sixth rule’ in relation to Wales. We note that several stakeholders, in suggesting an increase of the existing one sixth threshold, said that that such a move would not disadvantage, for example: what ITV termed to be “any of the parties likely to have any chance of securing seats”; and what Classic FM termed to be “serious contenders”.
- 3.148 In considering this issue, we are mindful that we must strike the appropriate balance between both the broadcasters’ and political candidates’ right to freedom of expression, consistent with the ECHR. We are concerned that increasing the threshold, even in just one or two countries of the UK, would upset that balance unduly, and potentially limit the ability of smaller parties to qualify for PEBs in, for example, Wales. We are also conscious that raising the threshold in just one or two countries of the UK would mean the PPRB Rules treating parties differently in different parts of the UK. Furthermore, to date we note that stakeholders have provided only two examples⁷⁹ of parties, which in these stakeholders’ view, were fielding only just enough candidates in a General Election in order to qualify for a PEB. We therefore consider there is not sufficient evidence or reasons to justify changing the rules in this area.
- 3.149 After very careful consideration, given the above, we are not persuaded that the ‘one sixth rule’ should be changed.

Other proposed amendments

- 3.150 We note the general support expressed by respondents to the amendments that we proposed to the allocation rules other than the ‘one sixth rule’.

Numbers of PEBs for major parties

- 3.151 Channel 5, ITV, the SDLP, UTV TV and the UUP agreed with the proposed amendment, whilst the SNP disagreed with this proposed change. Given the support from both broadcasters and political parties which expressed an opinion, we are confirming the amendment we proposed on this issue.

Link between FPTP and PR allocation rules

- 3.152 Given the support of the support of the two stakeholders who responded on this issue (Channel 5 and S4C), we will make the amendment proposed on this issue. In particular, we agree with Channel 5’s proposed amendment, whereby the words “*adapted appropriately*” in Rule 13 of the PPRB Rules should be replaced by the word “*set*”.

Evidence of electoral support

- 3.153 Whilst Channel 4 and Channel 5 agreed with this amendment to Rule 14, ITV did not, arguing that “‘past support’ clearly indicates past electoral support, which an individual or party which has not contested the election before “would obviously not

⁷⁹ In our pre-consultation meetings, some stakeholders stated the view that by fielding only seven candidates in Wales the following parties fielded only enough candidates so that they could qualify for a PEB in Wales: the Pro-Life Alliance in the 2001 General Election and the Legalise Cannabis Alliance in the 2005 General Election.

possess". We do not agree with ITV on this point. Nor do we agree with this respondent's argument that "evidence of 'significant' past and/or current support should be the appropriate test in relation such candidates, in line with the current wording in Section 6 of the Code in relation to constituency and electoral area reporting". Under Rule 14 of the PPRB Rules, broadcasters should "consider" allocating additional PEBs to 'non-major' parties informed by a broadcaster's assessment of relevant evidence of past and current support. The broadcaster is therefore at liberty to make its own judgement, based on relevant evidence, of whether a party should be allocated a PEB. There is no set threshold of support in Rule 14 which requires the broadcaster to offer a PEB. We consider the obligation in Rule 14 of the PPRB Rules to be a different requirement to that laid out in Rule 6.10⁸⁰ of the Code. In that rule, broadcasters are required to offer the opportunity to take in a constituency or electoral area report or discussion to candidates who can demonstrate previous significant electoral support or significant current support. We have therefore decided to amend Rule 14 as we had proposed in paragraph 3.83 of the Consultation. We are also amending the reference to "*past and/or current electoral support*" in Rule 12 of the PPRB Rules to match the new wording in Rule 14.

PEBs during referendum campaigns

- 3.154 Most respondents who expressed a view agreed with our proposed amendment in this area. A political party said it did not agree with the proposed amendment because, in this respondent's view, it should not be for broadcasters to dictate what political parties can discuss in PEBs. However, we disagree with this respondent, as we discuss in paragraph 3.135 above, our proposed amendment is aimed at reflecting election legislation. Section 127(2) of the PPERA states that an RCB is "any broadcast whose purpose (or main purpose) is or may reasonable assumed to be to "further any campaign conducted with a view to promoting or procuring a particular outcome" in a referendum. RCBs may only be made by designated organisations. Therefore, a PEB cannot have as its purpose, or main purpose, the furtherance of a referendum campaign.
- 3.155 Both Yes Scotland and the SNP, whilst welcoming the proposed amendment, asked for more clarification concerning the word "*purpose*" in the sentence "*The purpose of a PEB must not be to promote any particular outcome of a referendum*". In this regard, we do not consider it appropriate, as suggested by these respondents, to impose suggested a complete prohibition on making references to a forthcoming referendum. To do so would run the danger of preventing parties, within their PEBs, from making references to a policy that might be affected by the subject of a forthcoming referendum, which we think, would be disproportionate. However, given section 127 of the PPERA, we would expect that in making references to any referendum in a PEB, a party must take care to ensure that the purpose of the PEB is not the promotion of a particular outcome of that referendum.
- 3.156 In addition to the above, we did not agree with Channel 5's suggestion that this amendment should exist as a standalone rule.

⁸⁰ Rule 6.10 of the Code states: "In addition to Rule 6.9, broadcasters must offer the opportunity to take part in constituency or electoral area reports and discussions, to all candidates within the constituency or electoral area representing parties with previous significant electoral support or where there is evidence of significant current support. This also applies to independent candidates. (However, if a candidate refuses or is unable to participate, the item may nevertheless go ahead.)"

Independent candidates

3.157 Given our decision in relation to independent candidates, outlined in paragraph 3.50 above, we are not amending the PEB allocation provisions in the PPRB so as to accommodate independent candidates.

3.158 Given the above, we confirm the following amendments to the PPRB Rules:

Rule 12; Rule 13; Rule 14; and Rule 17 shall read as follows (amendment shown in bold):

12. *“Before a General Election, and in the case of other elections where appropriate, each major party (referred to in Rule 11) should be offered a series of **at least two** PEBs, the length of a series offered to a particular party being determined by the Licensee. This includes the SNP and Plaid Cymru on Channel 4 and **Channel 5**. In every case, the number of PEBs should be determined having regard to the circumstances of a particular election, the nation in which it is held, and the individual party’s past **electoral support** and/or current support in that nation (see Rule 15).*

13. *Other registered parties should qualify for a PEB if they are contesting one sixth or more of the seats up for election in the case of first-past-the-post, multi-constituency elections such as a General Election. For proportional representation systems of election (such as the European Parliamentary Elections), the minimum qualifying requirement for the allocation of one PEB should be **set**, reasonably and fairly for each election, according to criteria which have regard to the particular system of voting, the number of seats available for election, the number of constituencies/regions, and the number of candidates nominated by the party.*

14. *“Licensees should consider making additional allocations of PEBs to other registered parties if evidence of their past **electoral support** and/or current support at a particular election or in a relevant nation/electoral area means it would be appropriate to do so. In this regard, Licensees should consider whether other registered parties should qualify for a series of PEBs and/or peak-time scheduling, as major parties do”.*

17. *“Parties which qualify for a PEB in all three nations of England, Scotland and Wales will additionally be offered a PEB on Channel 4 (at General Elections), **Channel 5** (at General Elections and European Elections) and the UK-wide analogue radio services (at General Elections) (provided these broadcasters are carrying the relevant series of broadcasts; see Rules 7 – 9 above). **The purpose of a PEB must not be to promote any particular outcome of a referendum”.***

The ‘duration’ requirements for PPBs/PEBs/RCBs (i.e. length of broadcasts)

- 3.160 In paragraphs 3.84 to 3.93 of the Consultation we made proposals in relation to the ‘duration’ requirements for PPBs/PEBs/RCBs (i.e. length of broadcasts).
- 3.161 Rule 20 of the PPRB Rules sets out the options for lengths of individual PPBs, PEBs, and RCBs: 2’40”, 3’40” or 4’40” for television broadcasts; and any length up to 2’30” for radio broadcasts.
- 3.162 In the Consultation, we set out the issues that had arisen from our pre-consultation meetings on the issue of duration of PEBs, PPBs and RCBs on television, including the following:
- traditionally, PEBs, PPBs and RCBs on television have been produced at the shortest length (2’40”) most of the time, but some political parties welcomed retaining the ability to produce longer broadcasts from time to time;
 - in setting a minimum duration for PEBs, PPBs and RCBs on television, there should be no risk of confusion between PEBs, PPBs and RCBs on the one hand and on the other television spot advertisements. Stakeholders generally favoured setting a minimum length for television broadcast of two minutes. In paragraph 3.86 the Consultation, we stated our agreement with this view, mindful of the continuing UK ban on political advertising⁸¹;
 - only one stakeholder called for the PPRB Rules to permit parties to receive shorter but more broadcasts to be shown during an election period; and
 - during our pre-consultation meetings, some stakeholders from amongst broadcasters and political parties also suggested allowing parties to produce broadcasts on television of any length between 2’ and 2’40”.
- 3.163 During our pre-consultation meetings, only one political party stakeholder raised an issue about durations for PEBs, PPBs and RCBs on radio. This was to suggest that to avoid the need to edit PEBs for different formats, the prescribed maximum durations for television and radio should be the same at 2’40”.
- 3.164 The current rules seem to have worked effectively in practice, giving broadcasters reasonable certainty about the length of broadcasts, for scheduling purposes, but some corresponding flexibility for the political parties. We therefore stated we had no view on whether or not the current rules should be retained or amended. However, taking into account the above views, we proposed various options, relating to television – (C1), (C2), (D1), and (D2) – and relating to radio – (E1) and (E2), as laid out below.
- 3.165 In Question 7 of the Consultation, we asked stakeholders for their views on the following proposed amendments to the PPRB Rules:
- Rule 20 as follows (amendments shown in bold):
- Option (C1): “Parties and designated organisations may choose a length of 2’40”, 3’40” or 4’40” on TV. For radio...”; or

⁸¹ See section 319 and section 321(2) of the Act.

Option (C2): “**The length of broadcasts on TV shall be 2’40”**. For radio...”;

or

Option (D1): “Parties and designated organisations may choose a length of **between 2’ and 2’40”** on TV. For radio...”; or

Option (D2): “Parties and designated organisations may choose a length of **between 2’ and 4’40”** on TV. For radio...”;

and

Option (E1): “...For radio, parties and designated organisations may choose any length up to 2’30”; or

Option (E2): “...For radio, parties and designated organisations may choose any length up to 2’40”

Stakeholder responses

3.166 We received 17 responses on the ‘duration’ requirements for PEBs, PPBs and RCBs (i.e. length of broadcasts). Two of these respondents requested confidentiality, and one of these is identified as “an individual” below. In relation to the responses we received on the duration requirements for PEBs, PPBs and RCBs, we refer to these responses, as appropriate, when we lay out our response and decision below in the area of: television (see paragraphs 3.167 to 3.176 below); and radio (see paragraphs 3.177 to 3.183 below).

Ofcom response and decision

Television

- 3.167 Most political parties favoured either Option (D1) and Option (D2), which would introduce bands from which, for example political parties, could choose the duration of broadcast they would like. However, few of these respondents gave reasons for their choice, although the Liberal Democrats, in expressing support for Option (D2) cited its welcome for “greater flexibility”.
- 3.168 We noted the strong arguments put forward by Channel 4, Channel 5 and ITV against Option (D1) and Option (D2): the broadcasters’ experience of dealing with the political parties which, according to the broadcasters, do not deal with the broadcasters in an effective or timely manner; the fact that other suppliers of content are not able to dictate the length of content that they supply to the broadcaster; and the need for broadcasters to know durations of content so as to plan broadcast schedules.
- 3.169 Even under the current PPRB Rules, the fact that political parties are able to set the duration of, for example, PEBs reflects the special status of political parties in the democratic process, compared with other suppliers of content. However, we recognise the practical issues raised by broadcasters in relation to Option (D1) and Option (D2) and therefore do not consider these options to be appropriate. Similarly, on grounds of practicality, we do not consider that the Liberal Democrats proposal of giving political parties the option of “any length [of broadcast] from 2’ to 4’40 in 15 second increments” would be workable. Such a system, in our view, would be likely to still create uncertainty for broadcasters in terms of scheduling.

- 3.170 We do not agree with the proposal from Channel 5 that the minimum duration for PEBs, PPBs and RCBs should be 2 minutes to ensure such broadcasts are not mistaken for advertisements and “then leave it to broadcasters to set either a specific duration or a choice of durations from which parties can select”. In our view there is a potential for different Licensees taking an inconsistent approach in relation to setting the duration of broadcasts. This could mean that political parties would potentially, for example, lose the freedom to pick the same duration for the same broadcast that was being shown by different broadcasters.
- 3.171 All five broadcasters who responded on this issue supported Option (C2), setting all broadcasts at 2’40”. Arguments offered for this view included: the certainty of a single duration would assist broadcasters for scheduling purposes and would mean, as Channel 4 said, political parties would not be able to “change the length of their broadcasts close to delivery”; and a single duration would mean political parties would be able to provide the same broadcasts to each broadcaster. However, we are conscious that some political parties (the SDLP; the SNP; and the UUP and Yes Scotland) favoured retaining the status quo, Option (C1). We note that, for example, the SNP, although it had generally produced PEBs and PPBs of 2’40”, welcomed the flexibility provided by the status quo. Furthermore, Yes Scotland said there had been enough referendums with eligible organisations to justify removal of different durations for RCBs, under Option (C2).
- 3.172 An individual also raised objections to Option (C2), in particular arguing that this option might favour the major parties during elections. This respondent said that at present ‘non-major’ parties often only receive one PEB, and will use the longest possible duration (4’40”) so as to obtain maximum exposure on air. Setting all broadcasts to 2’40” could therefore be argued to favour the major parties which would receive the most PEBs.
- 3.173 In reaching our decision, we have also considered two other proposals. Firstly, George Eustice MP⁸² suggested shortening the duration of PEBs and PPBs (to one minute) on television, whilst increasing their frequency. This respondent argued that such a move would improve voter engagement with PEBs and PPBs. However, given that this was the only respondent to make this proposal in response to the Consultation, and as we said in paragraph 3.87 of the Consultation, we consider there is no consensus for the PPRB Rules to make lengths of broadcasts contingent on the number of transmissions each party receives. We consider that such matters should be a matter for the broadcasters, in discussion with the political parties.
- 3.174 On a related matter, we note that, other than George Eustice MP, other stakeholders who expressed a view, all favoured maintaining a minimum duration for PEBs, PPBs and RCBs of at least two minutes. This is to avoid the risk of confusion between PEBs, PBs and RCBs on the one hand and on the other television spot advertisements. In this regard, George Eustice MP said that “political advertising to an adult population should not be considered controversial so long as it is not linked to difficult issues of funding and ‘paid-for’ advertising that could allow political parties with more wealth considerable advantage”. However, given the current ban on political advertising contained in section 321 of the Act, we are conscious of the need

⁸² George Eustice MP’s response to the Consultation reflected the arguments he had made in a Westminster Hall Debate, held on 15 January 2013, on the issue of PEBs and PPBs (see <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm130115/halltext/130115h0001.htm#13011549000001>).

to prevent confusion between television spot advertisements and PEBs, PPBs and RCBs.

- 3.175 On a second separate point, we note that Yes Scotland's suggested that the total likely duration of RCBs in the Scottish independence referendum "should be looked at in the round" given that during the 1975 EEC referendum each side had 40 minutes of programming. However, we consider this is a matter for discussion between the broadcasters and any relevant designated organisations in the Scottish independence referendum.
- 3.176 In conclusion we have decided to leave the current duration rules for PEBs, PPBs and RCBs on television unchanged. This is because of the range of views we received on Option (C2); and the fact that Channel 4 and Channel 5 said that if Option (C2) was not to be adopted, they would favour Option (C1). Option C1 (status quo) provides: reasonable certainty about the duration of broadcasts for broadcasters, for scheduling purposes; but some corresponding flexibility for the political parties.

Radio

- 3.177 There was a clear divide in the response we received in relation to the duration rules for radio, with: the Liberal Democrats; Plaid Cymru; the SNP; the UUP; and Yes Scotland all favouring Option (E2); and the two radio broadcasters Classic FM and UTV Media strongly opposing both Option (E1) and Option (E2). As alternatives, Classic FM suggested setting the duration for radio PEBs, PPBs and RCBs at 40"⁸³, and UTV Media proposed that the maximum duration of PEBs, PPBs and RCBs on radio should be set at 1'30".
- 3.178 We note that Classic FM's and UTV Media's objections to the current duration rules are based on several points. Firstly, Classic FM cited previous ITC⁸⁴ and Ofcom⁸⁵ research referred to what Classic FM referred as the audience's "much lower audience expectation and acceptance" of PEBs on radio compared with television. However, we note that both these pieces of research referred to television and there was no assessment of audience attitudes to PEBs on radio. Classic FM cited other Ofcom research⁸⁶, which this respondent said implied that audience receive information from a range of sources and "may rely less on party political broadcasting". Therefore, Classic FM suggested that audiences are more receptive to briefer, more impactful messaging in line with that of social media". Similarly, UTV Media said shorter broadcasts would "accurately reflect the attention span and expectations of commercial radio listeners". The issue of audience attitudes to PEBs, PPBs and RCBs is a complex issue. But as we stated in paragraph 2.12 of the Consultation, in our review of the PPRB Rules, we have not considered the question

⁸³ Classic FM proposed the following wording for Rule 20: "For radio, the length of broadcasts must be 40" in length".

⁸⁴ *Election 2001. Viewers' response to the Television Coverage*. An ITC Research Publication, published 2001 (See http://www.ofcom.org.uk/static/archive/itc/research/election_2001_viewers_rspnc.pdf).

⁸⁵ *Viewers and Voters: Attitudes to television coverage of the 2005 General Election*, a Research Study conducted by ICM Research on behalf of Ofcom, published 2005 (See <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/election.pdf>).

⁸⁶ *Adults media use and attitudes report*, an Ofcom Research Document, published 2012 (See <http://stakeholders.ofcom.org.uk/binaries/research/media-literacy/media-use-attitudes/adults-media-use-2012.pdf>).

of public engagement with PEBs, PPBs and RCBs (i.e. the public appetite for such broadcasts). We consider these issues are more properly matters for the UK Parliament.

- 3.179 Second, in its response Classic FM cited an Electoral Commission report⁸⁷, which according to Classic FM said that political parties would “like the opportunity to have even shorter broadcasts. Similarly, this respondent said that under the current rules, political parties and designated organisations “will feel compelled to pick a more lengthy broadcast in order to maximize their broadcasting time against the other parties”. Therefore, the stakeholder said that the option to “maintain the impact but with shorter, cheaper to produce broadcasts will no doubt be welcomed”. However, we consider that these viewpoints has not been backed up by the responses we have received to the Consultation from the political parties.
- 3.180 On a related point, both Classic FM and UTV Media pointed to the fact that Option (E2) had been informed by a political party that to avoid the need to edit PEBs for different formats, the prescribed maximum durations for radio and television should be made the same at 2’40”. UTV Media said that the suggestion from this political party “suggests that the party in question places a sufficiently low value on radio broadcasts as to be unable to justify producing a radio-specific production”. However, we note that no response we received from political parties suggests that there is any lack of appetite from the parties to produce PEBs for radio.
- 3.181 Third, Classic FM also raised a comparison with the broadcasts of PEBs on BBC radio services, stating that the BBC is broadcasting radio PEBs at a maximum length of 1’30” and broadcast no PEBs during the 2010 General Election. This respondent said that “the apparent absence of complaint from listeners or parties following this points yet again to a lack of interest and value in political broadcasts on radio”. However, in the 2010 General Election, although there were no PEBs on BBC Network Radio, relevant PEBs were broadcast on BBC radio services in the devolved nations. Furthermore, the fact that the BBC has allowed certain of its radio services not to broadcast PEBs should not, in our opinion, have undue influence on the PPRB Rules. The BBC’s rules for allocation of PEBs are subject to separate regulation to that governing the Licensees covered by the PPRB Rules.
- 3.182 After careful consideration of the responses we have received on this issue, we consider that the present rules provide sufficient flexibility for broadcasts substantially shorter than 2’30” to be broadcast, which happens in practice⁸⁸. We are not persuaded there are sufficient reasons to increase the current maximum duration on radio. Similarly, given the strong opposition from radio broadcasters, we are not persuaded there are sufficient arguments to increase the maximum duration.
- 3.183 Given all of the above, we have therefore decided to leave the duration provisions in Rule 20 of the PPRB Rules for PEBs, PPBs and RCBs on television and radio unamended.

⁸⁷ *Party Political Broadcasting*, an Electoral Commission’s Report, published 2003 (See <http://www.electoralcommission.org.uk/about-us/roles-and-responsibilities/party-election-broadcasts>).

⁸⁸ We note that during the 2010 General Election, political parties opted for range of durations of PEB on radio. Examples included: 1’ and 1’45” (Conservative Party); Green Party (1’38”); and UK Independence Party (1’30”).

The ‘scheduling’ requirements for PEBs, PPBs and RCBs

- 3.184 In paragraphs 3.94 to 3.96 of the Consultation we laid out our proposals in relation to the ‘scheduling’ requirements for PPBs/PEBs/RCBs.
- 3.185 Rules 21 and 22⁸⁹ of the PPRB Rules set out the options for scheduling of PEBs, PPBs and RCBs on television and radio. For television, Licensees are required to carry PEBs for the major parties, and RCBs, between 6.00pm and 10.30pm. Other parties’ PEBs and PPBs have to be broadcast between 5.30pm and 11.30pm. For radio, Licensees are required to carry relevant PEBs for major parties, and relevant RCBs, between 5.00pm and 9.00pm. Other parties’ PEBs should be transmitted between 6.00am and 10.00pm. During our review of the PPRB Rules, we received representations that the above rules should be changed.
- 3.186 During our pre-consultation meetings, there was a general preference amongst broadcasters for relaxing the scheduling rules for PEBs, PPBs and RCBs, whilst political parties wanted to retain the current rules.
- 3.187 In the Consultation, we did not see sufficient arguments to merit any change. Given this and the opposing views expressed by broadcasting and political party stakeholders, we did not draw up any proposals to amend the PPRB Rules in this area.
- 3.188 In Question 8 of the Consultation, we asked stakeholders for their views on this point.

Stakeholder responses

- 3.189 We received 13 responses on the ‘scheduling’ requirements for PEBs, PPBs and RCBs. One of these respondents requested confidentiality, and is identified respectively as “a political party” below.
- 3.190 The five political parties which responded on this issue, as well as Yes Scotland, supported retaining the current rules. Plaid Cymru, the UUP and a political party said that PEBs, PPBs and RCBs should be shown at a time when they can reach the largest potential audience.
- 3.191 Yes Scotland expressed concerns as to when PEBs have been scheduled by the Borders and the North East England Channel 3 licences. This respondent contended that “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 than an even less prime slot is not allocated by all licence holders but, in practice, by these licence holders in particular”.
- 3.192 The majority of broadcasters argued for a relaxation of the current scheduling rules. For example, Channel 4 proposed the widening of the scheduling window to 5.30pm to 11.30pm so as to ensure that there be “no disruption to the scheduling of series and regular programmes on the hour throughout the evening and especially at 8pm, 9pm and 10pm”. This respondent said that: “For broadcasters who run national news followed by local news starting at 10pm we would imagine that the 10.30pm cut-off causes unnecessary difficulty”.
- 3.193 Channel 5 accepted that PEBs, PPBs and RCBs “should be shown at times when the majority of viewers are available to watch them”. However, this respondent suggested

⁸⁹ See paragraphs A1.21 and A1.22, Annex 1 of the Consultation.

that the scheduling rules could be changed so that all PEBs, PPBs and RCBs “would normally need to be shown between 5pm and midnight – providing greater flexibility for broadcasters, especially when more than one broadcast needs to be shown on the same day”. Despite its call for increased flexibility in scheduling, Channel 5 said that any change would “be unlikely to change the well-established times at which PPRBs are currently shown”. Channel 5 raised two other points: firstly, this respondent said that “the BBC does not have a peak time definition for its PPRBs and often shows them outside Ofcom’s definition of peaktime”. Second, Channel 5 pointed to what it considered to be a “perverse effect” of the scheduling present rules, namely: “PEBs by major parties cannot be shown at the end of the teatime (5pm) edition of 5 News but have to be shown at the end of our peaktime (6.30pm) news – even though the earlier programme is far more popular”. This would mean that “on those days when two PEBs have to be shown, we schedule a PEB from a major party after our less popular news and a PEB from a minor party after our more popular programme”.

- 3.194 ITV said that there was no legal or regulatory obligation on Ofcom to specify scheduling requirements in the PPRB Rules. This respondent suggested that “to assist broadcasters in accommodating the sometimes large number 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”. In this regard, ITV suggested that 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”.
- 3.195 Classic FM said that “there is no evidence to suggest that listeners are engaging in or digesting PEBs on radio”. Furthermore, PEBs broadcast at “peak time may reach a larger audience, but this is unlikely to have the required impact if viewed as an unwanted interruption in programming”. Classic FM added that: “Relaxing the rules as above will enable us to schedule PEBs appropriately to match the expectations of our audience at a particular time. It is of little benefit to either party if listeners view the PEBs at an annoyance”. This respondent therefore suggested the following scheduling rule for radio:
- “UK referendum broadcasts and PEBs before a General Election must be carried on UK-wide analogue radio services between 6am and midnight”.*
- 3.196 UTV Media also suggested amending the scheduling rules for radio so that PEBs and RCBs for all parties and organisations including major parties can be broadcast at any time between 6am - 11pm, rather than the current requirement for major party broadcasts to be carried between 5 - 9 pm. This respondent added that the present scheduling rules “raise additional logistical issues, due to the presence of live football coverage during evening output”. In this regard, UTV Media suggested reverting to a prior set of regulatory rules when “the Radio Authority placed no permanent requirements on the scheduling of PEBs, [and] instead adopting a more flexible, case-by-case approach”. As a result, Talksport, and its predecessor, Talk Radio, previously broadcast PEBs after 10pm.
- 3.197 Two other broadcasters – STV and UTV TV – supported the retention of the current scheduling rules. In particular, UTV TV said “relaxing these rules could potentially reduce or dilute audiences and/or groups of the population from viewing these. Peak time viewing at least captures a good proportion of the population and types of viewers to give a fair representation of the political parties to our audience demographic”.

Ofcom response and decision

- 3.198 The responses we received to the Consultation in general matched the views expressed to us by stakeholders during the pre-consultation. In those meetings, there was a general preference amongst broadcast stakeholders for relaxing the scheduling rules for PEBs, PPBs and RCBs, whilst political parties wanted to retain the current rules. All the political parties which responded on this issue, and Yes Scotland, favoured the status quo. Two broadcasters – STV and UTV TV – also favoured the status quo. For example, UTV TV pointed to the risk that relaxing the current rules “could potentially reduce or dilute audiences and/or groups of the population from viewing” PEBs, PPBs and RCBs.
- 3.199 Other broadcasters favoured relaxing the current scheduling rules to ensure, for example, that regular programming might not need to be rescheduled, especially, as Channel 5 said, when more than one broadcast needs to be shown on the same day. In particular ITV, Classic FM and UTV Media all argued for the relaxation of the current requirements for broadcasting major parties’ PEBs and PPBs during a certain broadcast window. Channel 5 pointed to what it believed to be a “perverse effect” of the current scheduling rules if a PEB is shown, for example at the end of the 6.30pm news rather than the more popular 5pm news. However, we do not consider this fact on its own would be sufficient argument on its own to justify changing the existing scheduling rules.
- 3.200 We note Channel 5’s observation that the BBC Trust’s rules do not contain a definition of “peaktime”. However, the fact that the BBC’s rules covering PEBs do not exactly match the PPRB Rules should not, in our opinion, have undue influence on the PPRB Rules. The BBC’s rules for allocation of PEBs are subject to separate regulation to that governing the Licensees covered by the PPRB Rules. We are not obliged to have regard to the BBC’s regulatory rules in the same way as we are required to have regard to the views of, for example, the Electoral Commission (from which we received no comments on the scheduling rules).
- 3.201 We note UTV Media’s suggestion of reverting to the Radio Authority’s rules relating to PEBs. However, in our view, the current scheduling rules would seem appropriately to reflect current circumstances and ensure that broadcasts receive the largest possible audience without at the same time being too onerous on broadcasters. This would be unlikely to be the case if there was a reversion to the situation, as mentioned by UTV Media, of, for example, PEBs been shown after 10pm.
- 3.202 After careful consideration, we reaffirm our view that there are not sufficient arguments to merit any change to the current rules in this area. We consider that the present scheduling rules have worked effectively, and whilst representing a restriction on broadcasters to a degree, ensure that PEBs, PPBs and RCBs reach a large potential audience.
- 3.203 Given the above, we have therefore decided to leave the scheduling provisions in Rules 21 and 22 of the PPRB Rules unamended.

The ‘timing’ of PPBs (i.e. when broadcasts outside election periods should be shown during the year)

- 3.204 In paragraphs 3.97 to 3.101 of the Consultation we laid out our proposals in relation to the ‘timing’ of PPBs (i.e. when broadcasts outside election periods should be shown during the year).
- 3.205 Under Rule 9⁹⁰ of the PPRB Rules, PPBs are offered by Channel 3 licensees to the major parties “around other key events in the political calendar, such as the Queen’s Speech, the Budget and party conferences”. The BBC Trust recently published the BBC PPB criteria⁹¹, which state that PPBs should be allocated on a seasonal basis (i.e. autumn, winter and spring). Therefore under the BBC rules, the main parties would receive three PPBs per year (except in Northern Ireland where they are eligible for one or two PPBs per year). There is therefore an inconsistency between the PPRB Rules and the BBC’s rules in this area.
- 3.206 During our pre-consultation meetings, there was a strong consensus among all stakeholders that the PPRB Rules should be amended to ensure consistency with the BBC PPB Criteria. Given the widespread support of stakeholders, in the Consultation we proposed revised wording to Rule 9 to base the allocation of PPBs on a seasonal basis.
- 3.207 We also considered it appropriate to make clear that the obligation for Channel 3 licensees to offer PPBs applies throughout the UK, not just Great Britain as stated in the current PPRB Rules. We considered that this change would reflect current practice, whereby the parties in Northern Ireland are currently being offered PPBs. However, in Northern Ireland we recognise that historically the major parties have been allocated one PPB per year. We therefore proposed amending Rule 18⁹² of the PPRB Rules to reflect the reality that the relevant Channel 3 licensees and political parties in different parts of the UK have agreed to different numbers of PPBs being broadcast during the year (for example, one PPB per year in Northern Ireland). Therefore, we proposed that three PPBs should be offered to major parties in Great Britain but one or two PPBs should be offered to the major parties in Northern Ireland, as reflecting current practice. In regard to the latter, we noted that this change would replicate the BBC approach with regard to allocations of PPBs in Northern Ireland.
- 3.208 In addition, we proposed to amend Rule 9 of the PPRB Rules to make clear that PPBs should not be broadcast during election or referendum periods. This is to minimise the risk of political parties using their PPBs to make points in relation to, for example, an ongoing referendum, which we consider could result in potential unfairness to the other side of a referendum debate⁹³. Further, given that relevant parties will be allocated PEBs, we stated our view that it would be disproportionate to require the Channel 3 licensees to also carry PPBs during election or referendum campaigns. For example, given that not all relevant parties would necessarily have PPBs scheduled to be shown during an election or referendum period, there could be

⁹⁰ See paragraph A1.9, Annex 1 of the Consultation.

⁹¹ See

http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/our_work/ppb/ppb_consultation_statement.pdf

⁹² See paragraph A1.18, Annex 1 of the Consultation.

⁹³ Furthermore, as mentioned in paragraph 3.155 above, section 127(2) of the PPERA implies that the purpose of a PPB should not be to “further any campaign conducted with a view to promoting or procuring a particular outcome” in a referendum.

potential unfairness if only some parties eligible for PPBs were able to have PPBs during the election or referendum period.

3.209 In Question 9 of the Consultation, we asked stakeholders for their views on the following proposed amendments to the PPRB Rules:

Rule 9 and Rule 18 as follows (amendments shown in bold):

9. "...and Greater London Authority Elections; and party political broadcasts ("PPBs") for the "major parties" in the United Kingdom (see Rule 11) on a seasonal basis (as set out in Rule 18)".

18. "Major parties in Great Britain will be offered one PPB in each of the following three periods: 1 January to 30 March; 1 April to 30 June; and 1 September to 30 November. Major parties in Northern Ireland will be offered one or two PPBs in the period 1 September to 30 March (excluding December). No PPBs should be broadcast during election or referendum periods".

Stakeholder responses

3.210 We received 14 responses on the 'timing' of PPBs. Two of these respondents requested confidentiality. In relation to the responses we received on the 'timing' of PPBs, we refer to these responses, as appropriate, when we lay out our response and decision below in this area.

Ofcom response and decision

3.211 Given the unanimous agreement of stakeholders with our proposals in this area, we have decided to change the PPRB Rules accordingly. However, we have taken account of the various points made by respondents about the dates we suggested in the Consultation to define the different seasons in which PPBs should be broadcast. We note the concerns expressed by for example Channel 5 and ITV that the proposed dates would not be practical. We also wish to ensure that any changes to rules exclude, as the Liberal Democrats suggested, the possibility of "bunching" of PPBs and PEBs in April and May. We have therefore decided, as suggested by Channel 5, to replicate the approach taken by the BBC Trust Rules, which do not define the various seasons in which PPBs must be offered.

3.212 In relation to Northern Ireland, UTV TV argued that major parties in Northern Ireland should be allocated "one or more" PPBs per year, rather than "one or two" PPBs, as suggested at one place in the Consultation. We consider that to ensure consistency with the BBC Trust rules, we will amend the PPRB Rules to state that the major parties in Northern Ireland should be allocated "one or two" PPBs.

3.213 In its response, Plaid Cymru recalled that when the BBC Trust changed its own criteria for the timing of PPBs, Plaid Cymru "sought an assurance from them that they would ensure that the Plaid Cymru response to those key events would be reflected in the main news coverage". This respondent sought a similar assurance that Ofcom would reflect this assurance in Ofcom's guidance to broadcasters. We do not consider it appropriate to provide Guidance along the lines suggested by Plaid Cymru. Outside of elections, it is a matter for broadcasters as to what they report on in their news coverage, as long as they comply with Section Five of the Code.

3.214 Given the above, we confirm the following amendments to the PPRB Rules:

Rule 9 and Rule 18 shall read as follows (amendments shown in bold):

9. "...and Greater London Authority **Elections**; and **party political** broadcasts ("**PPBs**") for the "major parties" in **the United Kingdom** (see Rule 11) **on a seasonal basis (as set out in Rule 18)**".

18. "**Major parties in Great Britain will be offered one PPB in each of the following three periods: Autumn; Winter; and Spring. Major parties in Northern Ireland will be offered one or two PPBs in the period 1 September to 30 March (excluding December). No PPBs should be broadcast during election or referendum periods**".

Referendums and Scottish elections

- 3.215 In paragraphs 3.102 to 3.110 of the Consultation we laid out our proposals in relation to referendums and Scottish elections.
- 3.216 In relation to referendums, Rule 10⁹⁴ of the PPRB Rules states that RCBs “may only be allocated to organisations as designated by the Electoral Commission”. Rule 19⁹⁵ of the PPRB Rules requires that each “designated referendum organisation will be allocated a series of referendum campaign broadcasts before each referendum...”.
- 3.217 In the Consultation, we stated our understanding that in relation to Scottish elections, that 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.
- 3.218 In the Consultation, we considered three issues in relation to the above.

Numbers of RCBs

- 3.219 In the Consultation, we noted that, in our pre-consultation meetings, several broadcasters suggested an amendment to Rule 19 of the PPRB Rules relating to allocation of RCBs. They considered the present wording⁹⁶ requires that in every referendum campaign designated organisations must automatically receive at least two, if not more, RCBs during a referendum period. These stakeholders considered that this requirement is inflexible and does not allow broadcasters to grant only one RCB per designated organisation for referendums with a lower public profile and importance. We therefore proposed an amendment to Rule 19 of the PPRB Rules to change the reference to “*a series*” of RCBs being allocated to “*one or more*” such broadcasts being allocated⁹⁷.

Scottish independence referendum and Scottish elections

- 3.220 We also noted in the Consultation that agreement⁹⁸ had been reached between the UK Government and the Scottish Government concerning the framework for a forthcoming Scottish independence referendum. Paragraph 20 of the Agreement⁹⁹ (“the Edinburgh Agreement”) between the UK Government and Scottish Government makes clear that Ofcom will have the same role in relation to the Scottish independence referendum as with any, for example, UK-wide referendum. In addition, at the date of the Consultation the two governments had published a draft

⁹⁴ See paragraph A1.10, Annex 1 of the Consultation.

⁹⁵ See paragraph A1.19, Annex 1 of the Consultation.

⁹⁶ Rule 19 states: “Each designated referendum organisation will be allocated a series of referendum campaign broadcasts before each referendum...”.

⁹⁷ We recognised that this would be a change back to the wording that existed in the PPRB Rules prior to 25 February 2010. In paragraph 1.09 of the 2009 Consultation, following a suggestion from the Electoral Commission, we had suggested that designated referendum organisations should receive a “series” of broadcasts (as opposed to “one or more” broadcasts) (See <http://stakeholders.ofcom.org.uk/binaries/consultations/pprb/summary/pprb.pdf>).

⁹⁸ See <http://www.scotland.gov.uk/About/Government/concordats/Referendum-on-independence>

⁹⁹ “*Agreement between the United Kingdom Government and the Scottish Government on a referendum on independence for Scotland*”, 15 October 2012 (See <http://www.scotland.gov.uk/Resource/0040/00404789.pdf>).

Section 30 Order¹⁰⁰ setting out the enabling legislation to permit a Scottish independence referendum to be held no later than 31 December 2014¹⁰¹. In particular, regulation 4 of the draft Section 30 Order stated that designated organisations in the Scottish independence referendum will be designated by an Act of the Scottish Parliament. It is our understanding, following discussions with the Electoral Commission, and looking at the Agreement, that the Electoral Commission will be the body appointed by an Act of the Scottish Parliament to designate organisations in the Scottish independence referendum. In the Consultation, we stated that we did not think that any amendment to Rule 10 was necessary to allow RCBs to be broadcast by the relevant designated organisations in the Scottish independence referendum.

- 3.221 On a related matter, given the importance of the Scottish independence referendum, we proposed in the Consultation that the two Channel 3 licensees for the Borders and North East England regions, whose broadcast coverage areas straddle the Scottish-English border, should be required to carry RCBs during the Scottish independence referendum to ensure that Scottish viewers in those areas have access to those RCBs in advance of the referendum. We similarly proposed that these licensees should also be required to carry PEBs relating to Scottish Elections.
- 3.222 In Question 10 of the Consultation, we asked stakeholders for their views on the following proposed amendments to the PPRB Rules:

Rule 8, with a footnote after “nations/regions referendums”; Rule 9, with a footnote after “Channel 3 licensee”; and Rule 19 as follows (amendments shown in bold):

*8. Referendum campaign broadcasts (“RCBs”) will be carried by all of the Licensees named above in the case of a UK referendum, or by the relevant regional Channel 3 licensee in the case of nations/regions referendums**.*

****For the purposes of RCBs to be broadcast in relation to the Scottish independence referendum, the relevant regional Channel 3 licensees are those for the following regions: Central Scotland; the North of Scotland; Borders and the Isle of Man; and North East England”.**

9. *“The regional Channel 3 licensee*...”.*

****For the purposes of PEBs to be broadcast in relation to Scottish elections, the relevant regional Channel 3 licensees are those for the following regions: Central Scotland; the North of Scotland; Borders and the Isle of Man; and North East England”.**

19. *“Each designated referendum organisation will be allocated one or more referendum campaign broadcasts before each referendum...”.*

¹⁰⁰ A ‘Section 30 Order’ is an order under Section 30(2) of the Scotland Act 1998, which allows modifications to be made to Schedule 5 to the Scotland Act (i.e. the list of matters reserved to the Westminster Parliament) (The Draft Section 30 Order can be found at <http://www.scotland.gov.uk/Resource/0040/00404790.pdf>).

¹⁰¹ The final Section 30 Order was made on 12 February 2013 (See http://www.legislation.gov.uk/ukxi/2013/242/pdfs/ukxi_20130242_en.pdf).

Stakeholder responses

3.223 We received 10 responses on referendums and Scottish elections. One of these respondents requested confidentiality.

Numbers of RCBs

3.224 The Electoral Commission said that the numbers of RCBs to be allocated in referendum campaigns should be decided “on a case by case basis (as they are by the BBC Trust)”. However, this stakeholder added that “it is difficult to see under what circumstances the allocation of only one RCB would be appropriate”. Therefore, the Electoral Commission expressed concerns if the proposed amendment were to be adopted and led to a reduction in the number of RCBs allocated. For this reason, it stated its preference for the current wording to be retained.

3.225 Yes Scotland also opposed the proposed amendment saying that: “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”. This was because: “A referendum is important because a democratically elected parliament has decided that it is appropriate for the electorate to determine a matter which [transcends] normal politics”. Furthermore, in Yes Scotland’s view, section 333 of the Act requires Ofcom to set the “frequency” of RCBs. Therefore, 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”.

3.226 However, most stakeholders who responded on this issue agreed with the proposed amendment. For example, Channel 5 said that it recognised “that in future there may be referenda of such importance that it will be appropriate to allocate several RCBs to each of the opposing sides. But there may also be referenda covering lesser matters where a single RCB for each side will suffice. We think it sensible to retain the flexibility to allocate one, two or more RCBs depending on their relative importance at the time”.

Scottish independence referendum and Scottish elections

3.227 In general, stakeholders agreed with, or raised no objection to, our analysis in this area, including our proposed amendments to the PPRB Rules in relation to the relevant Channel 3 licensees that straddle the border between England and Scotland being required to carry: RCBs during the Scottish independence referendum; and PEBs during Scottish elections.

3.228 However, ITV confirmed that only the Borders Channel 3 licensee has shown PEBs during Scottish elections. This stakeholder said that “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 Scottish-related RCBs and PEBs via the North East England Channel 3 licensee. ITV went on to say that: “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 rational for North East England to carry such Scottish broadcasts”. Given the above, ITV said it had no objection to the PPRB 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”.

- 3.229 Plaid Cymru requested that Ofcom examine the issue whereby “a significant number of those receiving digital television through Freeview/digital terrestrial in Wales, particularly in the Wrexham area, are receiving their Channel 3 from the English Licensees”. This stakeholder suggested that this matter should be “investigated as a matter of urgency and similar remedies proposed to those outlined in Question 10 should this be necessary”.
- 3.230 Yes Scotland proposed that Channel 4 and Channel 5 be also required to broadcast RCBs for the Scottish independence referendum. This was because during the referendum there would be categories of voters (“members of the services with service qualifications who are resident in service accommodation in England”; postal voters in Scotland who use an address in other parts of the UK; and Scottish voters “who commute to other parts of the UK during the week”) who would not be receiving the same level of coverage of the Scottish independence referendum as other Scottish voters. In this regard, Yes Scotland pointed to the fact that as a result of the last review of the PPRB Rules in 2010 “both Plaid Cymru and the SNP are allocated broadcasts at General Elections on both Channel 4 and Channel 5”.
- 3.231 Yes Scotland also provided information on the process for designating any designated organisations during the Scottish independence referendum. The stakeholder considered that a small technical change is needed to Rule 10¹⁰² of the PPRB Rules to cover the possibility that the enabling legislation for the Scottish independence referendum may set out any designated organisations in the referendum, rather than the process of designation being left to the Electoral Commission.

Ofcom response and decision

Numbers of RCBs

- 3.232 Although most stakeholders who responded on this issue agreed with the proposed Ofcom amendment we have taken particular note of the Electoral Commission’s concern if the change were to be adopted. In particular, this respondent said “it is difficult to see under what circumstances the allocation of only one RCB would be appropriate”. Whilst recognising the call from respondents, like Channel 5, who called for greater flexibility in relation to the allocation of RCBs, we are conscious that we are under a specific statutory duty to have regard to the views of the Electoral Commission. Therefore, although we are not bound by the views expressed by this respondent, we do consider it prudent to carefully consider its views. Given that: the current wording was adopted following a suggestion from the Electoral Commission, when Ofcom last consulted on the PPRB Rules in 2009; and the Electoral Commission has expressed concerns if we were to amend the relevant rule, we consider it is appropriate to retain the current wording in this area.
- 3.233 In reaching this view, we have taken into account Yes Scotland’s concern that there might be referendums of “a lower public profile and importance”. This would run counter to this respondent’s view that: “A referendum is important because a democratically elected parliament has decided that it is appropriate for the electorate to determine a matter which [transcends] normal politics”. However, we do not agree with Yes Scotland’s contention that the reference in section 333 of the Act to Ofcom

¹⁰² Rule 10 of the PPRB Rules state that: “...Referendum campaign broadcasts may only be allocated to organisations as designated by the Electoral Commission”.

setting the “frequency”¹⁰³ of RCBs means implies “an intention of the UK Parliament in enacting the legislation that more than one broadcast would be allowed”. In our view, ‘frequency’ can include only one broadcast, and we note that the PPRB Rules, for example, permit the allocation of single PEBs to ‘non-major’ parties.

Scottish independence referendum and Scottish elections

3.234 We note that, in general, stakeholders agreed with, or raised no objection to, our analysis in this area, including our proposed amendments to the PPRB Rules in relation to the relevant Channel 3 licensees that straddle the border between England and Scotland being required to carry: RCBs during the Scottish independence referendum; and PEBs during Scottish elections. However, we have noted ITV’s response, and, we consider that a proportionate approach would be to amend the PPRB Rules to make clear that just the Borders Channel 3 licensee is required to carry such broadcasts.

3.235 Although Plaid Cymru raised the potential issue of Welsh viewers receiving their signal from English Channel 3 licensees, we do not consider this is an issue that should be tackled through the PPRB Rules. We consider the situation in the Borders Channel 3 licensee region is different because that licence area materially straddles the border between England and Scotland, which is not the situation on the border between England and Wales.

3.236 We do not agree with Yes Scotland’s proposal that Channel 4 and Channel 5 be required to broadcast RCBs for the Scottish independence referendum. Although, as this respondent noted, Channel 4 and Channel 5 carry PEBs for Plaid Cymru and the SNP during General Elections, these broadcasters are not required to carry PEBs for elections, which like the Scottish independence referendum, would apply to Scotland only i.e. elections to the Scottish Parliament and Scottish local elections. We therefore consider it would be inconsistent and disproportionate to implement the amendment suggested by Yes Scotland.

3.237 We also do not consider it necessary to amend Rule 10 of the PPRB Rules to cover the possibility that the enabling legislation for the Scottish independence referendum may set out designated organisations in the referendum, rather than the process of designation being left to the Electoral Commission. In this regard, we note that paragraph 14 of the Edinburgh Agreement states that: “Both [the UK and Scottish] governments agree that the Electoral Commission should fulfil...functions in respect of the independence referendum”, which includes “designating lead campaign organisations”¹⁰⁴.

3.238 Given the above, we confirm the following amendments to the PPRB Rules:

Rule 8, with a footnote after “nations/regions referendums”; Rule 9, with a footnote after “Channel 3 licensee”; and Rule 19 shall read as follows (amendments shown in bold):

*8. **RCBs** will be carried by all of the Licensees named above in the case of a UK referendum, or by the relevant regional Channel 3 licensee in the case of nations/regions referendums*”.*

¹⁰³ Under section 333 of the Act Ofcom is required to set rules covering the “frequency” of PPBs (including PEBs) as well as RCBs.

¹⁰⁴ See paragraph 12 of the Edinburgh Agreement.

“For the purposes of RCBs to be broadcast in relation to the Scottish independence referendum, the relevant regional Channel 3 licensees are those for the following regions: Central Scotland; the North of Scotland; and Borders”.

9. *“The regional Channel 3 licensee*...”.*

“For the purposes of PEBs to be broadcast in relation to Scottish elections, the relevant regional Channel 3 licensees are those for the following regions: Central Scotland; the North of Scotland; and Borders”.

19. *“Each designated referendum organisation will be allocated a series of RCBs before each referendum...”.*

Other issues

3.239 In paragraphs 3.111 and 3.112 of the Consultation we raised any other issues in relation of the PPRB Rules.

Labelling of PEBs, PPBs and RCBs

3.240 In paragraph 3.111 of the Consultation we noted that, during our pre-consultation meetings, one political party suggested that the labelling of PEBs, PPBs and RCBs could be improved¹⁰⁵. This stakeholder was of the view that the current labelling and introduction of such broadcasts acts as a deterrent to viewers. In the Consultation, we said that this point is not an issue to be dealt with in the PPRB Rules. We also noted compelling reasons for labelling of PEBs, PPBs and RCBs to be retained, such as: these broadcasts being forms of editorial content which are different from spot advertising content, which is subject to a different regulatory regime; and the need to ensure that PEBs, PPBs and RCBs are not mistaken for the broadcaster's own news and current affairs output. We considered that these concerns remain valid, and consider that the issue of labelling is ultimately a matter for the relevant broadcasters. However, we stated our hope that broadcasters would take account of any reasonable concerns expressed by parties on labelling.

Northern Ireland parties and UK PEBs

3.241 In paragraph 3.112 of the Consultation, we noted that during our pre-consultation meetings, a Northern Ireland political party had sought clarification as to how the PPRB Rules would deal with parties: from Great Britain, who receive PEBs on Channel 4 and Channel 5 during a General Election; and who field candidates in Northern Ireland. This stakeholder said the other parties in Northern Ireland would be at a disadvantage, as they would only be allocated PEBs by UTV, the Channel 3 licensee in Northern Ireland. In response, we noted that although from time to time parties based in Great Britain, such as the Conservative Party, have fielded candidates in Northern Ireland, these parties are not as regards Northern Ireland defined as a major party under the PPRB Rules, nor have they demonstrated evidence of significant previous electoral support there, to deem that they would necessarily qualify for a PEB within Northern Ireland.

3.242 In Question 11 of the Consultation, we asked stakeholders if there were any other issues arising from the PPRB Rules, not already covered in the Consultation, that they wished to raise.

Stakeholder responses

3.243 We received 14 responses on other issues in relation to PPRB Rules. One of these respondents requested confidentiality.

The scope of the review of the PPRB Rules

3.244 The Electoral Commission welcomed Ofcom's review, which it considered "timely given recent changes in the electoral landscape that have resulted in new sets of elections and referendums since Ofcom last consulted in this area".

¹⁰⁵ We flagged the issue of labelling in the summary of responses we published following the last consultation we conducted on the PPRB Rules in 2009. We published this summary of responses on 25 February 2010 (<http://stakeholders.ofcom.org.uk/binaries/consultations/pprb/Statement.pdf>), paragraph 1.8.

- 3.245 Channel 5 said that Ofcom had missed an opportunity by not undertaking a “wider-ranging review” of the PPRB Rules, given that “this is the first time the PPRB Rules have been reviewed as a whole since they were introduced in the wake of devolution legislation in the late 1990s”. In Channel 5’s view, it agreed with Ofcom that “in several respects the current Rules are indeed ‘fit for purpose’”. However, it added that “such a view should have been the conclusion of an in-depth review, not the starting point”. This respondent held that the review of the PPRB Rules should have “asked more fundamental questions” about the role of PEBs, PPBs and RCBs. Furthermore, the review should have considered issues such as: “the increasing fragmentation of political support and the growth in support for smaller parties and independent candidates”; and the “changing value” of PEBs and PPBs from the time when they were “the single major way in which political parties could be guaranteed unmediated access to millions of viewers” to the present “multi-channel age when they are watched by much smaller audiences and parties have greatly enhanced abilities to communicate directly with voters through social media”. In this regard, Channel 5 stated that for Ofcom not to consider the question of public engagement with PEBs, PPBs and RCBs “means that it runs the risk of regulating in a vacuum”.
- 3.246 On a related point, Channel 5 that it was “unfortunate” that Ofcom has been reviewing the PPRB Rules “independently of” Sections Five and Six of the Code. According to this stakeholder, this has meant that “some issues (such as the “major party” concept) cannot be addressed properly as they bridge both the PPRB Rules and the Code”.
- 3.247 ITV, supported by UTV TV, accepted its public service obligations and stated its belief 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”.
- 3.248 UTV Media said that the PPRB Rules are an example of “unnecessary regulation which should be removed”. For example, this respondent said that although the PPRB Rules although applied to a national broadcaster like Talksport are not applied to “National networks comprised of local radio licences (such as Heart, Smooth and Capital FM)”. Furthermore, UTV Media said that no PEBs were broadcast on BBC Radio services during the 2010 General Election and this had not appeared “to have been acknowledged by participants or observers in the electoral process”. Therefore, “It follows that there is little risk that the health of British democracy will be damaged if commercial radio is allowed to follow the BBC’s lead”.
- 3.249 UTV TV said that the PPRB Rules are “fit for purpose”, but agreed that it was appropriate to review the rules to accommodate “changes in the electoral landscape”. This stakeholder said: “We do not want the rules to be different for different areas or parties and it is highly important to remove any grey areas that exist”.
- 3.250 Information TV welcomed our proposed changes to the PPRB Rules and Proposed Code Guidance but added “there is still a need for Ofcom to consider and consult on the wider changes in the media landscape in respect of political and current affairs broadcasting”.

Labelling of PEBs, PPBs and RCBs

- 3.251 ITV said it is necessary “to continue to label political broadcasts clearly, to ensure viewers are aware that such broadcasts 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".

- 3.252 The Liberal Democrats said that the issue of labelling was "understandably not covered" by the PPRB Rules. However, this stakeholder considered that Licensees and political parties should discuss the issue of labelling of the broadcasts. Furthermore, it is a duty of both the political party and the Licensee "to ensure people feel the broadcasts are accessible, engaging and encourage people to get involved in the democratic process. And part of that does include looking at the way they are labelled".
- 3.253 Plaid Cymru said the PPRB Rules should be amended to ensure that the description of political parties within PEBs and PPBs "should match the way they are registered with the Electoral Commission in order to avoid any misunderstanding among the electorate i.e. a PPB from the Labour Party rather than New Labour, or a PPB from The Conservative Party rather than the Welsh Conservatives".
- 3.254 Yes Scotland considered that the current labelling of PEBs, PPBs and RCBs "can act as a deterrent to viewers". Whilst accepting that labelling "is a matter for broadcasters rather than" the PPRB Rules, Yes Scotland suggested that the broadcasters design "a new intro" for RCBs, and in particular the Scottish independence referendum, which in this stakeholder's view would "Clearly...have to be an intro that both [designated] organisations were content with". In this context, Yes Scotland said that the traditional format for the introductions broadcast prior to PEBs, PPBs and RCBs should be refreshed so as to "increase the likelihood that viewers would continue to watch the" broadcast. In this regard, the stakeholder said it "would be happy to discuss this with broadcasters and other stakeholders".

Northern Ireland parties and UK PEBs

- 3.255 We received no responses on this issue.

EU referendum

- 3.256 The SDLP noted the British Prime Minister has announced that there will be a referendum on the EU. This respondent therefore sought clarity as to "how this would be managed with regard to Referendum Broadcasts in England, Scotland, Wales and Northern Ireland with respect to designated organisations being assigned referendum broadcasts".

The order of allocation of RCBs

- 3.257 Yes Scotland acknowledged that the decision as to the order that RCBs are broadcast in the Scottish independence referendum would remain a matter for broadcasters and the BLG. The stakeholder noted that in previous referendums in 1975, 2004 and 2011 lots were drawn to determine the order in which the RCBs of designated organisations were to be broadcast. Yes Scotland said it supported this approach.

Ofcom response and decision

The scope of the review of the PPRB Rules

- 3.258 We note that some respondents raised concerns that Ofcom had not undertaken, as Channel 5 termed it “a wider-ranging review” of the PPRB Rules. For example, Channel 5 the review should have considered more fundamental issues such as: “the increasing fragmentation of political support and the growth in support for smaller parties and independent candidates”; the “changing value” of PEBs and PPBs; and public engagement with PEBs, PPBs and RCBs. Similarly, UTV Media made various points, such as: the fact that the PPRB Rules apply to national radio services but not, what it termed “National networks comprised of local radio licences (such as Heart, Smooth and Capital FM)”; the “lack of a response from listeners, indicates that radio broadcasts are an unsuitable tool for delivering electoral and referendum communications objectives”; and the Government’s “support for a transition to digital radio removes the continuing justification for singling out Independent National Radio licensees, and necessitates a reconsideration of the current rules. Furthermore, Information TV said there is still a need for Ofcom to consider and consult on the wider changes in the media landscape “in respect of political and current affairs broadcasting”.
- 3.259 However, we consider the above issues are more properly matters for the UK Parliament. We note that UTV Media acknowledged this fact. Furthermore, we note that the majority of respondents to the Consultation did not demur from our view that the PPRB Rules in general have been fit for purpose. In this regard, we note that Channel 5, although critical of Ofcom’s decision not to conduct a more wide-ranging review of the PPRB Rules did state that in several respects the current [PPRB] Rules are indeed ‘fit for purpose’”.
- 3.260 We note that Channel 5 also considered it “unfortunate” that Ofcom, in its view has reviewed the PPRB Rules “independently of” Sections Five and Six of the Code. However, we disagree with this respondent this meant we did not properly address the issue of major parties as it applies to the PPRB Rules and Section Six of the Code. We consider, as we discuss in paragraphs 3.20 to 3.34 above and paragraphs 4.55 to paragraphs 4.68 below, that we have carefully considered how the concept of “major parties” is dealt with in both the PPRB Rules and Section Six of the Code.
- 3.261 We also ITV and UTV TV’s point that Ofcom should “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”. We consider that the PPRB Rules achieves this aim by setting out minimum obligations on relevant broadcasters in relation to PEBs, PPBs and RCBs. In particular, we consider that the PPRB Rules, as appropriate, meets UTV TV’s wish for the rules not to be “different for different areas or parties”.
- 3.262 In its response. UTV Media said that no PEBs were broadcast on BBC Radio during the 2010 General Election, despite what this respondent said was the BBC’s “strong public service remit” and it broadcasting PEBs on its radio services “not appear[ing] to have been acknowledged by participants or observers in the electoral process”. In UTV Media’s view “It follows that there is little risk that the health of British democracy will be damaged if commercial radio is allowed to follow the BBC’s lead”. However, as we discuss in paragraph 3.181 above, in the 2010 General Election, although there were no PEBs on BBC Network Radio, relevant PEBs were broadcast on BBC radio services in the devolved nations. Furthermore, the fact that the BBC allowed certain

of its radio services not to broadcast PEBs should not, in our opinion, have undue influence on the PPRB Rules. The BBC's rules for allocation of PEBs are subject to different regulation to that governing Licensees covered by the PPRB Rules.

Labelling of PEBs, PPBs and RCBs

3.263 We consider that the responses we received to the Consultation supported our view that the issue of labelling of PEBs, PPBs and RCBs is ultimately a matter for the relevant broadcasters. We reiterate our hope that broadcasters would take account of any reasonable concerns expressed by parties on labelling. In this regard, we note the Liberal Democrats view that Licensees and political parties should discuss the issue of labelling. We also consider that: Plaid Cymru's suggestion re description of political parties within PEBs and PPBs; and Yes Scotland's suggestion that the introductions broadcast prior to PEBs, PPBs and RCBs should be "refreshed", are issues that might be considered by relevant broadcasters.

Northern Ireland parties and UK PEBs

3.264 We received no responses on this issue and therefore have nothing to add to what we laid out in the Consultation, and as summarised in paragraph 3.241 above.

EU referendum

3.265 We note the SDLP's query as to how any future referendum on the UK's relationship with the EU its response "with respect to designated organisations being assigned " RCBs. We consider that as with any other national referendum, the PPRB Rules are clear and fit for purpose in dealing with the issue raised by the SDLP.

The order of allocation of RCBs

3.266 We note Yes Scotland's comments on the process for allocating the order RCBs are broadcast in a referendum campaign. However, we consider this is an issue outside the scope of the PPRB Rules and is a matter for discussion between the relevant broadcasters and any designated organisations.

Conclusion

3.267 Having considered all the responses we received on our proposals to change the PPRB Rules carefully, we have amended these rules as set out in the final version appended as Annex 1.

Section 4

The Proposed Code Guidance

Introduction

- 4.1 In this section, we lay out: the stakeholder responses we received on the proposed guidance (“the Proposed Code Guidance”)¹⁰⁶ relating to Section Five (due impartiality) and Section Six (elections and referendum) of the Code, which we laid out in Section 4 of the Consultation; and Ofcom’s response and decisions in relation to the Proposed Code Guidance.
- 4.2 In Section 2, we outline the regulatory background to Section Five (due impartiality)¹⁰⁷ and Section Six (elections)¹⁰⁸ of the Code. In this section we confirm a number of revisions to the Proposed Code Guidance, having taken account of responses we have received from stakeholders to the Consultation. We consider that these revisions strike the appropriate balance between the broadcasters’ and political candidates’ right to freedom of expression, consistent with the ECHR.
- 4.3 A final and revised version of the Code Guidance for Sections Five and Six of the Code, which contains all the amendments we confirm in this section, is set out in Annex 2.
- 4.4 In Question 12 of the Consultation, we asked stakeholders for their views on the Proposed Code Guidance.

Stakeholder response and Ofcom decisions

- 4.5 We received 16 responses on the Proposed Code Guidance. Two of these respondents requested confidentiality, and are identified respectively as “a broadcaster” and “a political party” below.

General comments and the scope of Ofcom’s Consultation

- 4.6 LBC, S4C, the SDLP, STV, UTV TV, the UUP and a political party broadly welcomed the Proposed Code Guidance, without proposing any amendments. In particular, LBC welcomed “the movement to expand the existing guidance in what can be a complex and unwieldy area of the Code”. In addition, the Proposed Code Guidance “should prove to be a helpful tool in interpreting the rules, in particular by providing easily accessible examples of Ofcom’s previous rulings in each section”. UTV TV also welcomed the Proposed Code Guidance in the context that Section Five and Section Six of the Code “can become quite complex and a challenge to interpret”. In addition, the links to previous decisions “will be helpful to broadcasters”.
- 4.7 ITN said it did not object to “the relatively modest changes proposed by Ofcom in the review - which are in line with previous rules and guidance set down by Ofcom”. However, this respondent made a arguing for the relaxation of the constituency reporting rules (Rules 6.8 to 6.13 of the Code).

¹⁰⁶ This Proposed Code Guidance was drawn up to help broadcasters comply with the Code when broadcasters produce their own coverage of elections and referendums.

¹⁰⁷ See <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/impartiality/>

¹⁰⁸ See <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/elections/>

- 4.8 ITV agreed 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". However, this respondent regretted that Ofcom had not decided not to review the Code itself in this area, which ITV believed "would benefit from some revision to aid clarity". Furthermore, like ITN, ITV said a review would encourage more flexible and less formulaic news reporting, in particular around elections and constituency reports. However, ITV said it "generally supported 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".
- 4.9 As mentioned in paragraph 3.250 above, Information TV welcomed our proposed changes as laid out in the PPRB Rules and Proposed Code Guidance but added "there is still a need for Ofcom to consider and consult on the wider changes in the media landscape in respect of political and current affairs broadcasting". In this regard, this respondent made a number of points supporting its call for a wider review, including the following:
- the convergence of different media means that "media regulatory matters are becoming confused and inconsistent", with newspaper and television facing "inconsistent regulation of their output depending on the distribution medium (yet are often controlled by the same organisations)". In addition: "Politicians and commercial vested interests utilise all forms of media, and specific regulation of traditional broadcast TV is becoming impossible". Therefore, Information TV stated that: "To avoid the horrors of US-style electioneering, we argue that it is essential that it is the political parties which should be the focus of legislation and regulation, rather than the media;
 - citizens "now have a huge array of information sources available, and arguably will increasingly resent government or regulator judgement as to what 'is good for them'". Whilst viewers "do want 'good' news and information; but there is a danger that broadcast TV-specific Rules will make for bad TV production, with broadcasters alone having to abide by Rules, many of which are no longer relevant"; and
 - international rolling-news channels "require a different and specific set of rules (which they will welcome) in order to be permitted to broadcast to UK audiences". Information TV added that "the rules for such channels arguably cannot be the same in all respects as for UK national broadcasters".

Ofcom response and decision

- 4.10 We note the broad support expressed by stakeholders for the Proposed Code Guidance and in particular for the inclusion of links to relevant published Ofcom decisions. We also note the points made by ITN and ITV arguing for a more fundamental review of the constituency reporting rules set out in Section Six. We consider these issues further in paragraphs 4.55 to 4.68 below.
- 4.11 We consider that Information TV, in its response, made a number of points which go beyond the scope of our current review and raise questions about fundamental features of the current legislative approach to regulating broadcasting and other forms of media. These issues are ultimately issues for the UK Parliament. This respondent said that the rules for international rolling-news channels "arguably cannot be the same in all respects as for UK national broadcasters". In response, we would point to the fact that whilst all Ofcom-licensed channels, including international

rolling-news channels, have to abide by the Code, we consider that there is sufficient flexibility in, for instance Section Five of the Code, to accommodate the particular features of these channels. Furthermore, we note that paragraph 4.11 of the Proposed Code Guidance states:

“If a service is broadcast outside the United Kingdom, this factor may be taken into account when considering the application of due impartiality. However, the due impartiality requirements of the Code still apply to such services”.

Section Five

Talk radio and due impartiality

4.12 LBC said that “Talk radio is a unique format...[that] offers an unrivalled opportunity for listeners and presenters to express opinions on the topical issues of the day on a rolling basis”. Therefore, in this respondent’s view, given that “our focus and overall output differs so greatly to other non-talk stations and TV channels we believe the guidance should...contain a specific acknowledgement reflecting our position in the broadcasting landscape and providing any extra guidance Ofcom may be able to offer in this area”.

Ofcom response and decision

4.13 We note the point made by LBC. However, we do not consider that the Proposed Code Guidance needs further amendment on this point. In particular, we consider that that the definition of “due impartiality” contained in the Code, coupled with paragraph 4.10¹⁰⁹ of the Proposed Code Guidance, makes clear the application of Section Five, as appropriate, across all programming genres, taking account of “relevant contextual factors”.

Paragraph 4.7¹¹⁰ (General)

4.14 Channel 4 said “it undermines the strength of guidance to state that it may be adapted ‘if circumstances require ... as appropriate to the case’ [because the] Guidance is just that – guidance – but not a substitute for adjudication on the basis of

¹⁰⁹ Paragraph 4.10 of the Proposed Code Guidance stated: “Central to the application of Section Five is the concept of ‘due impartiality’. Depending on the facts in each case, due impartiality may need to be applied in all programming genres, including cinema films shown on television, comedy programmes, or televised dramas. However, in reaching a decision whether due impartiality needs to be preserved in a particular case, broadcasters should have regard to the likely expectation of the audience as to the content, and all other relevant contextual factors. For example, audience expectations would not normally expect the same approach to due impartiality to be taken in an historical drama compared with a serious documentary on a controversial and contemporary issue”.

¹⁰⁹ The Code defines “due impartiality” as follows: “‘Due’ is an important qualification to the concept of impartiality. Impartiality itself means not favouring one side over another. ‘Due’ means adequate or appropriate to the subject and nature of the programme. So ‘due impartiality’ does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented. The approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content, and the extent to which the content and approach is signalled to the audience. Context, as defined in Section Two: Harm and Offence of the Code, is important”.

¹¹⁰ Paragraph 4.7 of the Proposed Code Guidance stated: “This Guidance is provided to assist broadcasters in understanding how Ofcom will usually interpret and apply the Broadcasting Code. The Guidance to Section Five should be read in conjunction with Section Six: Elections and Referendums, and the accompanying Guidance to Section Six. However, Ofcom considers each case on its facts. If circumstances require, Ofcom may adapt its Guidance, as appropriate to the case”.

the Rules in particular facts and circumstances”. This respondent: queried what ‘circumstances’ “may require adaptation” of the Proposed Code Guidance; and requested confirmation that “further adaptation of the Guidance in this crucial area of freedom of expression will only follow on from consultation with broadcasters and other stakeholders”.

Ofcom response and decision

4.15 We note the point made by Channel 4 and agree with the suggested deletion. We do consider that the preceding sentence in paragraph 4.7 of the Proposed Code Guidance (“*However, Ofcom considers each case on its facts*”) is crucial in making clear that each Ofcom investigation under Section Five of the Code is fact-dependent.

4.16 Paragraph 4.7 of the Proposed Code Guidance would now read as follows:

“This Guidance is provided to assist broadcasters in understanding how Ofcom will usually interpret and apply the Broadcasting Code. The Guidance to Section Five should be read in conjunction with Section Six: Elections and Referendums, and the accompanying Guidance to Section Six. However, Ofcom considers each case on its facts”.

Paragraph 4.15¹¹¹ (Rule 5.1)¹¹²

4.17 Channel 4 queried the phrase “*where appropriate, alternative possible interpretations should be provided*” in paragraph 4.15 of the Proposed Code Guidance. This respondent believed that it is not always necessary to provide alternative viewpoints in order to comply with the provisions of the Code. Channel 4 added that paragraph 4.15 “as presently framed could be used to provide an expectation to all those with different interpretations or viewpoints to expect that those interpretations or viewpoints must be broadcast”. Furthermore, it added that “There are occasions where unequivocal interpretations or statements about contentious issues should be made and in Channel 4’s view Ofcom should support broadcasters’ right to do so without having to provide alternative viewpoints”. This respondent therefore suggested: either the substitution of “should” with “may” in the proposed text; or the deletion of the final sentence of paragraph 4.15.

Ofcom response and decision

4.18 In relation to the point made by Channel 4, we consider that as paragraph 4.10 of the Proposed Code Guidance that broadcasters: have to comply with the Code; and should “*take care before making any unequivocal interpretations or statements about contentious issues, which may be dependent on nuance and open to different interpretations e.g. statistical findings or ambiguous statements made by politicians*”, the last sentence of this paragraph is not necessary. We therefore agree with Channel 4’s suggestion to delete the final sentence.

¹¹¹ Paragraph 4.15 of the Proposed Code Guidance stated: “*In accordance with a broadcaster’s right to freedom of expression, the broadcaster has the right to interpret news as it sees fit, as long as it complies with the Code. However, broadcasters should take care before making any unequivocal interpretations or statements about contentious issues, which may be dependent on nuance and open to different interpretations e.g. statistical findings or ambiguous statements made by politicians. Where appropriate, alternative possible interpretations should be provided*”.

¹¹² Rule 5.1 of the Code states: “*News, in whatever form, must be reported with due accuracy and presented with due impartiality*”.

- 4.19 Paragraph 4.10 of the Proposed Code Guidance would now read as follows (amendment in bold):

*“In accordance with a broadcaster’s right to freedom of expression, the broadcaster has the right to interpret news **events** as it sees fit, as long as it complies with the Code. However, broadcasters should take care before making any unequivocal interpretations or statements about contentious issues, which may be dependent on nuance and open to different interpretations e.g. statistical findings or ambiguous statements made by politicians”.*

Paragraph 4.16¹¹³ (Rule 5.1)

- 4.20 A broadcaster suggested the following amendment so as to “to reflect the full wording of the definition of 'due' in the Code" [proposed amendment shown in bold] :

*“...However, all news stories must be reported with due accuracy and presented with due impartiality i.e. impartiality adequate or appropriate to the subject **and nature of the programme**”.*

Ofcom response and decision

- 4.21 We do not agree with the broadcaster’s suggestion amendment, as we consider it would give a potentially unhelpful message that there are certain types of news programmes which would require a different application of Rule 5.1. In our view, Rule 5.1 applies to all news programmes equally but each case of course takes account of the individual facts.

Paragraph 4.21¹¹⁴ (Rule 5.1)

- 4.22 Channel 4 said that in this paragraph “and elsewhere in the proposed guidance of conflating the concept of preservation of due impartiality with the provision of alternative viewpoints”. In this respondent’s view, “many nation states employ public relations companies, lobbyists and diplomats to put forward views which are self serving, partial, sometimes entirely false...Channel 4 does not believe it is the function of the Communications Act provisions to require broadcasters to include these views”. However, Channel 4 added that: “It is of course normally necessary to put significant allegations to a nation state and to include their denials, explanations or other responses...[but that] is an editorial decision for the broadcaster”. Given the above, this respondent that the words “*reflect alternative views*” in paragraph 4.21 of the Proposed Code Guidance were substituted by the words “**seek a response**”.

Ofcom response and decision

- 4.23 We note the points made by Channel 4, however, we consider that compliance with Rule 5.1 will require, as appropriate, that alternative views are reflected in news programming. There may be occasions when broadcasters seek but cannot obtain

¹¹³ Paragraph 4.16 of the Proposed Code Guidance stated: “Rule 5.1 is potentially applicable to any topic included in news programming, and not just matters of political or industrial controversy and matters relating to current public policy. There is no requirement on broadcasters to provide an alternative viewpoint in all news stories or all issues in the news. However, all news stories must be reported with due accuracy and presented with due impartiality i.e. impartiality adequate or appropriate to the subject”.

¹¹⁴ Paragraph 4.21 of the Proposed Code Guidance stated: “Broadcasters can criticise or support the actions of particular nation-states in their programming, as long as they, as appropriate, reflect alternative views on such matters”.

viewpoints from particular individuals or organisations. However, as we make clear in paragraph 4.23¹¹⁵ of the Proposed Code Guidance, there are various editorial techniques by which broadcasters can reflect alternative viewpoints. We therefore consider that the current wording of paragraph 4.21 of the Proposed Code Guidance remains appropriate.

Paragraph 4.23¹¹⁶ (Rule 5.1)

4.24 Channel 4 said that due impartiality does not require “the broadcast of each and every available view” but it “usually demands a response from those against whom significant allegations are made”. This respondent added that due impartiality may require the “exposition of alternative views but that may depend on the credibility of the source of the view, the facts it is based on, [and] the cogency of the argument”. Channel 4 therefore suggested the revising of paragraph 4.23 of the Proposed Code Guidance “with these points in mind”. However, the respondent did welcome the final sentence of this paragraph which confirmed that “it is an editorial matter for the broadcaster as to how it presents news with due impartiality”.

Ofcom response and decision

4.25 Paragraph 4.23 of the Proposed Code Guidance discusses possible editorial techniques “*Where [i.e. in the event that] a broadcaster attempts to seek alternative views...*”. In our view, the paragraph is not suggesting that due impartiality requires “the broadcast of each and every available view”, as implied by Channel 4. Furthermore, although in order to comply with Rule 5.1 a broadcaster may wish to reflect responses “from those against whom significant allegations are made”, this is not the only situation when alternative viewpoints may need to be reflected. For example, more straight-forward ‘criticism’ of for example the actions or policies of particular bodies or individuals may require particular viewpoints being reflected appropriately in a news programme. Therefore, we do not consider this paragraph needs amending.

Paragraph 4.29¹¹⁷ (Meaning of “matters of political or industrial controversy and matters relating to current public policy”)¹¹⁸

¹¹⁵ Paragraph 4.23 of the Proposed Code Guidance stated: “*Where a broadcaster attempts to seek alternative views, but these are not readily available (for example, an individual or organisation declines to give an interview or give comments), there are a range of editorial techniques for maintaining due impartiality. For example, broadcasters could: seek alternative viewpoints from a range of sources; summarise with due objectivity and in context the alternative viewpoints, for example, through interviewees expressing alternative views; make clear with appropriate frequency and prominence that a broadcaster has sought alternative views from particular individuals or organisations; and/or ensure that the views expressed in a news item are challenged critically by presenters and reporters within the programmes. Broadcasters must not assume prior knowledge on the part of the audience of particular alternative views. However, overall, it is an editorial matter for the broadcaster as to how it presents news with due impartiality*”.

¹¹⁶ Ibid.

¹¹⁷ Paragraph 4.29 of the Proposed Code Guidance stated: “*Whether a ‘matter of political or industrial controversy and matter relating to current public policy’ is being dealt with in a programme will depend on a range of factors. Just because a ‘political’ or ‘policy’ matter is referred to in a programme, or broadcasters deal with particular matters that elicit strong emotions, does not mean that the special impartiality rules are engaged. Conversely, just because a number of individuals and institutions, or the majority of the audience to a service, share the same viewpoint on a contentious issue, does not necessarily mean that a matter is not, for example, a matter of political or industrial controversy, as there may be one or more alternative viewpoints on such matters*”.

4.26 Channel 4 expressed concern that the “last phrase of this paragraph could be used to suggest that the existence of alternative viewpoints in itself means that a matter is one of political or industrial controversy”. In this respondent’s view, in accordance with Article 10 of the ECHR and “the clear intention of Parliament in the Act, the rules relating to due impartiality...should be interpreted as narrowly as possible”. Channel 4 added that: “A provision imposed by Parliament to safeguard the democratic process in this country is capable of extension to all those who have different viewpoints – but that extension would be an unnecessary restriction on broadcasters’ freedom of expression and the public’s right to receive information”. The respondent therefore suggested the deletion of the phrase “*as there may be one or more alternative viewpoints on such matters*” at the end of this paragraph.

Ofcom response and decision

4.27 The rationale for the last sentence of paragraph 4.29 of the Proposed Code Guidance is to make clear that just because a certain number of people (and in particular the majority of a particular channel’s audience) share the same view on a particular contentious issue does not mean that the special impartiality rules in Section Five are not engaged. It is not the intention of this sentence, as suggested by Channel 4, to suggest “that the existence of alternative viewpoints in itself means that a matter is one of political or industrial controversy”. As the preceding sentence in paragraph 4.29 of the proposed Code Guidance makes clear: “*Just because a ‘political’ or ‘policy’ matter is referred to in a programme, or broadcasters deal with particular matters that elicit strong emotions, does not mean that the special impartiality rules are engaged*”. However, to remove any potential ambiguity we agree with Channel 4’s suggested deletion.

4.28 Paragraph 4.29 of the Proposed Code Guidance would now read as follows:

“Whether a ‘matter of political or industrial controversy and matter relating to current public policy’ is being dealt with in a programme will depend on a range of factors. Just because a ‘political’ or ‘policy’ matter is referred to in a programme, or broadcasters deal with particular matters that elicit strong emotions, does not mean that the special impartiality rules are engaged. Conversely, just because a number of individuals and institutions, or the majority of the audience to a service, share the same viewpoint on a contentious issue, does not necessarily mean that a matter is not, for example, a matter of political or industrial controversy”.

Paragraph 4.31¹¹⁹ (Meaning of “matters of political or industrial controversy and matters relating to current public policy”)

¹¹⁸ The Code defines “*matters of political or industrial controversy and matters relating to current public policy*” as follows: “*Matters of political or industrial controversy are political or industrial issues on which politicians, industry and/or the media are in debate. Matters relating to current public policy need not be the subject of debate but relate to a policy under discussion or already decided by a local, regional or national government or by bodies mandated by those public bodies to make policy on their behalf, for example non-governmental organisations, relevant European institutions, etc*”.

¹¹⁹ Paragraph 4.31 of the Proposed Code Guidance stated: “*In considering whether an issue is one of ‘political or industrial controversy’ or has been broadly settled, broadcasters should consider relevant factors, including any independent reports commissioned by Parliament and whether the issue has already been scientifically established and does not appear to be challenged by, for example, established political parties or other significant domestic or international scientific institutions. An example of an issue which Ofcom considered to be broadly settled is the scientific principles behind the theory of Anthropogenic Global Warming*”.

- 4.29 Channel 4 suggested that the word “*should*” in the second line of paragraph 4.31 of the Proposed Code Guidance should be replaced by the word “**could**”. This respondent said that it may be “editorially decided that it is prudent to refer to reports commissioned by Parliament or scientific principle but we do not think it is necessary or appropriate for the Code and Guidance to compel editors to undertake specific categories of research when exercising their editorial freedoms”.

Ofcom response and decision

- 4.30 We agree with Channel 4 that it is neither necessary nor appropriate for “the Code and Guidance to compel editors to undertake specific categories of research when exercising their editorial freedoms”. However, we do consider it appropriate to state in the Guidance that broadcasters should “consider relevant factors” when considering whether an issue is one of political or industrial controversy or has been broadly settled. Therefore, we have decided to amend paragraph 4.31 of the proposed Code Guidance to reflect these points.

- 4.31 Paragraph 4.31 of the Proposed Code Guidance would now read as follows (amendments in bold):

*“In considering whether an issue is one of ‘political or industrial controversy’ or has been broadly settled, broadcasters should consider relevant factors. **These may include, as appropriate, any independent reports commissioned by, for example, the UK Parliament** and whether the issue has already been scientifically established and does not appear to be challenged by, for example, established political parties or other significant domestic or international scientific institutions. An example of an issue which Ofcom considered to be broadly settled is the scientific principles behind the theory of Anthropogenic Global Warming”.*

Paragraph 4.32¹²⁰ (Meaning of “matters of political or industrial controversy and matters relating to current public policy”)

- 4.32 In Channel 4’s view: “The apparent rationale behind Section 5 of the Code is that the public should be able to trust broadcasters to take an impartial stance as the programmes they transmit have the power to sway the democratic process”. However, in this respondent’s view, “this applies far less in a programme...where the public do not have a direct vote or right to participation in matters relating to international comity or, indeed, the use of international law in holding governments to account for crimes against humanity”. Channel 4 expressed its concern that “the proposed guidance reinforces Ofcom’s view that even where there is no political controversy in the UK Parliament or the UK that the onerous conditions in Section 5 of the Code apply. The respondent suggested that having regard to Article 10 of the ECHR and the Act, “the broad view of what constitutes political or industrial controversy set out in this paragraph of the proposed guidance is not required”.

Ofcom response and decision

- 4.33 In response to Channel 4’s points in relation to paragraph 4.32 of the Proposed Code Guidance, Ofcom recognises that the definition of what is a matter of political or industrial controversy and matter relating to current public policy has implications for

¹²⁰ Paragraph 4.32 of the Proposed Code Guidance stated: “*There is no requirement that there should be any political controversy in the UK’s Parliament about an issue for its treatment in a broadcast to be subject to Section Five. However, a matter can still be a ‘matter or current public policy’ even if the UK Parliament has a settled policy on it*”.

freedom of expression. This is because if a broadcaster is dealing with such matters, the broadcaster must ensure alternative viewpoints are reflected as appropriate in programming, on matters of political or industrial controversy and matters relating to current public policy. However, we disagree with Channel 4's analysis that the requirement to preserve due impartiality "applies far less in a programme...where the public do not have a direct vote or right to participation in matters relating to international comity or, indeed, the use of international law in holding governments to account for crimes against humanity". Rather, we consider that the meaning of "matters of political or industrial controversy and matters relating to current public policy" set out in the Code potentially is broad. We therefore consider it appropriate to retain paragraph 4.32 of the Proposed Code Guidance.

4.34 However, to further illustrate the fact that the due impartiality rules can apply when, as Channel 4 states "there is no political controversy in the UK Parliament or the UK", we have decided to add to the list of previously published Ofcom decisions, listed under paragraph 4.33 of the Proposed Code Guidance. In summary, we are adding references to some other cases which relate to the application of Section Five matters of political and industrial controversy and matters relating to current public policy arising outside the UK.

4.35 That said, in considering whether particular programmes engage Section Five of the Code, we are conscious that, as we state in paragraph 4.29 of the Proposed Code Guidance: "*Whether a 'matter of political or industrial controversy and matter relating to current public policy' is being dealt with in a programme will depend on a range of factors*".

Paragraphs 4.41¹²¹, 4.42¹²² and 4.43¹²³ (Rule 5.5)¹²⁴

¹²¹ Paragraph 4.41 of the Proposed Code Guidance stated: "*Just because a contentious political issue is receiving little coverage within the media does not obviate the need for the broadcaster to provide alternative viewpoints on such an issue where appropriate*".

¹²² Paragraph 4.42 of the Proposed Code Guidance stated: "*Due impartiality will not be maintained merely by offering people or institutions likely to represent alternative viewpoints (for example, representatives of a foreign government) the opportunity to participate in programmes, who decline to do so. If a broadcaster cannot obtain, for example, an interview or statement laying out a particular viewpoint on a matter of political or industrial controversy or matter of current public policy, then the broadcaster must find other methods of ensuring that due impartiality is maintained. These might include some of the editorial techniques outlined in paragraph 4.43 below*".

¹²³ Paragraph 4.43 of the Proposed Code Guidance stated: "*It is an editorial matter for the broadcaster as to how it maintains due impartiality. Where programmes handle, for example, controversial policy matters and where alternative views are not readily available, broadcasters might consider employing one or more of the following editorial techniques:*

- *interviewers could challenge more critically alternative viewpoints being expressed, for example, by programme guests or audience members, so as to ensure that programme participants are not permitted to promote their opinions in a way that potentially compromises the requirement for due impartiality;*
- *where an interviewee is expressing a particular viewpoint, interviewers could reflect alternative viewpoints through questions to that interviewee;*
- *alternative viewpoints could be summarised, with due objectivity and in context, within a programme;*
- *having available interviewees to express alternative views; or*
- *if alternative viewpoints cannot be obtained from particular institutions, governments or individuals, broadcasters could refer to public statements by such institutions, governments or individuals or such viewpoints could be expressed, for example, through presenters' questions to interviewees*".

¹²⁴ Rule 5.5 of the Code states that: "*Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of any person providing a*

- 4.36 Channel 4 suggested that the Proposed Code Guidance should “accommodate...where 'alternative viewpoints' are not available”. In this regard, Channel 4 added that “our recent experience with nation states such as Syria and Sri Lanka is that they actively hinder reporting by preventing access and at best will only provide blanket denials of wrongdoing”. In such circumstances, the respondent said it would welcome “clarification that broadcasting of the denial would be sufficient to comply with the Code”.

Ofcom response and decision

- 4.37 We note the practical points raised by Channel 4 in dealing with certain institutions. However, we consider that the wording in paragraph 4.42 of the Proposed Code Guidance is appropriate. It acknowledges that there may be occasions when broadcasters seek but cannot obtain viewpoints from particular individuals or organisations yet recognises that in such circumstances broadcasters must find other methods of ensuring that due impartiality is preserved.

Paragraphs 4.54¹²⁵, 4.55¹²⁶, 4.56¹²⁷ and 4.57¹²⁸ (Rule 5.9)¹²⁹

- 4.38 ITV said that paragraphs 4.54 to 4.57 of the Proposed Code Guidance, that related to Rule 5.9 of the Code “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”. This respondent considered that these paragraphs “effectively require the inclusion of alternative viewpoints in such programmes in a wholly artificial and overly schematic manner”. ITV therefore proposed that Ofcom should “revert to

*service... *This may be achieved within a programme or over a series of programmes taken as a whole”.*

¹²⁵ Paragraph 4.54 of the Proposed Code Guidance stated: “Broadcasters are free to include ‘issued’ presenters in their programming, as long as they maintain due impartiality as appropriate. In clearly signalled ‘personal view’ programmes, many in the audience are comfortable with adjusting their expectations of due impartiality. However, in order to maintain due impartiality, alternative viewpoints should be adequately represented”.

¹²⁶ Paragraph 4.55 of the Proposed Code Guidance stated: “In audience participation programmes, where viewers and listeners are encouraged to telephone, email or text in to the programme, broadcasters do not necessarily have to ensure an equal number of points of view are featured in any one programme or even across the series as a whole”.

¹²⁷ Paragraph 4.56 of the Proposed Code Guidance stated: “Broadcasters must ensure that when alternative views are included within a ‘personal view’ programme, such views must not be included in a way that they are merely dismissed by the presenter and used as a further opportunity to put forward the presenter’s own views. For example, a presenter should not use alternative viewpoints, contrary to the presenter’s own, only in a dismissive way, and only as a means of punctuating the presenter’s own viewpoint”.

¹²⁸ Paragraph 4.57 of the Proposed Code Guidance stated: “If a presenter has strongly held views, and there are few, if any, alternative views expressed by the audience, then the broadcaster must take appropriate action and have systems in place to ensure that due impartiality is maintained. For example, if a presenter or broadcaster is aware that they are receiving few audience interventions from an alternative point of view, they could consider: summarising, within the programme, what that alternative point of view is; having available interviewees to express alternative views; or challenging those audience interventions they are receiving, more critically”.

¹²⁹ Rule 5.9 of the Code states: “Presenters and reporters (with the exception of news presenters and reporters in news programmes), presenters of “personal view” or “authored” programmes or items, and chairs of discussion programmes may express their own views on matters of political or industrial controversy or matters relating to current public policy. However, alternative viewpoints must be adequately represented either in the programme, or in a series of programmes taken as a whole. Additionally, presenters must not use the advantage of regular appearances to promote their views in a way that compromises the requirement for due impartiality. Presenter phone-ins must encourage and must not exclude alternative views”.

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".

Ofcom response and decision

4.39 The intention of paragraphs 4.54 to 4.57 of the Proposed Code Guidance is not to place a "fetter on the editorial discretion of broadcasters" or "threaten the future commissioning of serious 'personal view' programmes" as feared by ITV. We do not consider that the existing Guidance¹³⁰ to Rule 5.9 is sufficient to gloss this rule through a statement saying 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". However, we have decided to amend paragraphs 4.55 to 4.57 of the Proposed Code Guidance to accommodate ITV's concerns, for example, by referring to the fact that, for example, under Rule 5.5, due impartiality can be achieved over a series of programmes taken as a whole.

4.40 Paragraphs 4.55 to 4.57 of the Proposed Code Guidance would now read as follows (amendments in bold):

4.55: "*In audience participation programmes, **for example**, where viewers and listeners are encouraged to telephone, email or text in to the programme, broadcasters do not necessarily have to ensure an equal number of points of view are featured in any one programme or even across the series as a whole*".

4.56: "*Broadcasters must ensure that **if** alternative views are included within a 'personal view' programme **to maintain due impartiality**, such views must not be included in a way that they are merely dismissed by the presenter and used as a further opportunity to put forward the presenter's own views. For example, a presenter should not use alternative viewpoints, contrary to the presenter's own, only in a dismissive way, and only as a means of punctuating the presenter's own viewpoint*".

4.57: "*If a presenter has strongly held views, and there are few, if any, alternative views expressed by the audience, then the broadcaster must take appropriate action and have systems in place to ensure that due impartiality is maintained **in the same programme or over a series of programmes taken as a whole***".

Paragraph 4.64¹³¹ (Rule 5.12)

4.41 Channel 4 stated its belief that the "casual dismissal of views simply as a means of promoting an agenda is not correct behaviour for a responsible broadcaster but this paragraph may go further than is necessary to deal with that concern". This respondent said that there may be occasions where "it may be appropriate to dismiss or denigrate viewpoints while treating them with due weight – for example if a nation

¹³⁰ This Guidance states: "The representation of alternative viewpoints may be achieved differently in different programmes".

¹³¹ Paragraph 4.64 of the Proposed Code Guidance stated: "As part of treating viewpoints with 'due weight' a broadcaster may debate and discuss such views. However, broadcasters must not dismiss or denigrate such viewpoints and include them in a programme simply as a means to put forward their own views".

state is engaged in ethnic cleansing, torture or other atrocity and seeks to defend such actions".

Ofcom response and decision

4.42 We do not agree with Channel 4 that paragraph 4.64 of the Proposed Code Guidance should be amended to qualify the Proposed Code Guidance where it states that "*broadcasters must not dismiss or denigrate...viewpoints*". We consider that the paragraph as drafted, does not prevent broadcasters transmitting legitimate criticism of particular viewpoints, organisations or individuals.

Section Six

Paragraph 4.87¹³² (Leadership debates)

4.43 The Electoral Commission said: "The leadership debates at the 2010 UK general election were widely seen as a very significant feature of the campaign ahead of that election". This respondent said that if such debates happen in future "there will be many issues to consider, including any related coverage parties receive that are not directly part of the main debates between party leaders". The Electoral Commission said that it did have "any fixed view about how this impartiality is best achieved but given the significance likely to be attached to the debates, Ofcom might wish to discuss with the broadcasters it regulates whether or not additional guidance would help in advance of the 2015 UK general election".

Ofcom response and decision

4.44 We note the point made by the Electoral Commission about leadership debates and agree that the debates during the 2010 General Election campaign were a significant part of that campaign. We consider that paragraph 4.87 of the Proposed Code Guidance, coupled with the contents Ofcom's decisions in relation to the 2010 General Election leaders' debates¹³³, which we provide weblinks to in the Proposed Code Guidance, provide sufficient Guidance in this area. In this regard, we noted that no other stakeholder to the Consultation raised any concerns about the Proposed Code Guidance in relation to leadership debates.

¹³² Paragraph 4.87 Proposed Code Guidance stated: "*There is no obligation on broadcasters to transmit leaders' or candidates' debates. The editorial format for such debates (i.e. the manner in which a broadcaster presents a programme to the audience) is a matter for the broadcaster, and as appropriate, the relevant political parties as long as the broadcaster complies with the Code. Candidates' debates which include candidates from the same constituency or electoral area must comply with Rules 6.8 to 6.13. Broadcasters should therefore consult paragraphs 4.105 onwards of this Guidance as appropriate*".

¹³³ These decisions are:

- *First Leaders' Debate (Plaid Cymru complaint)*, ITV 1, (http://licensing.ofcom.org.uk/binaries/tv/updates/election10_pc.pdf).
- *First Leaders' Debate (Scottish National Party complaint)*, ITV 1, (http://licensing.ofcom.org.uk/binaries/tv/updates/election10_snp.pdf).
- *Sky News Leaders' Debate and other programmes*, Sky News, (<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb161/issue161.pdf>).

Paragraph 4.88¹³⁴ (Rule 6.2)¹³⁵

- 4.45 Plaid Cymru said that it “should be said explicitly in the guidance that broadcasters should ensure that Plaid Cymru is given equal prominence to other parties in programmes transmitted to Welsh audiences”. In addition, this respondent said the following sentence should be deleted:

“UK-based election programming can focus on the major parties that have a realistic prospect of forming the UK government following the election in question”.

Plaid Cymru suggested that: “It may be wiser for the inclusion of a specific paragraph here relating to the major parties in Wales, Scotland and Northern Ireland”.

Ofcom response and decision

- 4.46 We do not agree with Plaid Cymru's proposal that the Proposed Code Guidance be amended to ensure that “Plaid Cymru is given equal prominence to other parties in programmes transmitted to Welsh audiences”. We consider that it is an editorial matter for broadcasters as to what political parties they cover, as long as the Code is complied with. In any case, we note that during elections in Wales, this respondent is designated as a “major party” under Section Six of the Code. Therefore, we consider that relevant broadcasters are, for example, required to give due weight¹³⁶ to the coverage of Plaid Cymru in relation to Welsh elections.
- 4.47 We also do not agree with Plaid Cymru's suggestion that one sentence in paragraph 4.88 of the Proposed Code Guidance (“*UK-based election programming can focus on the major parties that have a realistic prospect of forming the UK government following the election in question*”.) should be deleted. In our view, this sentence refers to those scenarios, such as UK leaders' debates, which relate to the whole of the UK, as opposed to the situation in the devolved nations, which we consider is covered by the first sentence in paragraph 4.88 of the Proposed Code Guidance (“*In the case of a UK-based election, broadcasters must ensure that they give coverage, as appropriate, to major parties relevant for the type of election in question (i.e. UK-wide elections, elections in Scotland only, elections in Wales only, elections in Northern Ireland only)*”). However, we have decided to split paragraph 4.88 of the Proposed Code Guidance to keep the issues of UK-wide election programming and devolved nations programming separate. Furthermore, we have inserted an example of what we consider is UK-wide election programming.
- 4.48 Paragraph 4.88 of the Proposed Code Guidance would now read as two paragraphs as follows (amendment in bold):

¹³⁴ Paragraph 4.88 Proposed Code Guidance stated: “*In the case of coverage of a UK-based election, broadcasters must ensure that they give coverage, as appropriate, to the major parties relevant for the type of election in question (i.e. UK-wide elections, elections in Scotland only, elections in Wales only, elections in Northern Ireland only). UK-based election programming can focus on the major parties that have a realistic prospect of forming the UK Government following the election in question. However, in line with Rule 6.2, broadcasters must ensure that adequate coverage is given to other major parties as appropriate, in the same programming, or in linked programming, as appropriate*”.

¹³⁵ Rule 6.2 of the Code states: “*Due weight must be given to the coverage of major parties during the election period. Broadcasters must also consider giving appropriate coverage to other parties and independent candidates with significant views and perspectives*”.

¹³⁶ As required by Rule 6.2 of the Code which states: “*Due weight must be given to the coverage of major parties during the election period...*”.

“In the case of coverage of a UK-based election, broadcasters must ensure that they give coverage, as appropriate, to the major parties relevant for the type of election in question (i.e. UK-wide elections, elections in Scotland only, elections in Wales only, elections in Northern Ireland only)”.

“UK-based election programming (for example, UK leadership debates) can focus on the major parties that have a realistic prospect of forming the UK Government following the election in question. However, in line with Rule 6.2, broadcasters must ensure that adequate coverage is given to other major parties as appropriate, in the same programming, or in linked programming, as appropriate”.

Rule 6.6¹³⁷

4.49 LBC pointed to the fact that “several politicians” had appeared as presenters on LBC, but that “we have at times removed presenters who are standing as candidates far in advance of the specified period following feedback from other candidates that to do otherwise would compromise the general due impartiality requirements”. The respondent said it would be “extremely helpful” if the Proposed Code Guidance could “indicate how Ofcom might interpret such a challenge on the grounds of due impartiality if outside the election period”.

Ofcom response and decision

4.50 In response to LBC’s point on Rule 6.6, it is a matter for this stakeholder if it chooses to remove “presenters who are standing as candidates far in advance of the specified [election] period”, because Rules 6.6 and 6.7¹³⁸ clearly state the circumstances governing candidates appearing as presenters during election and referendum periods. In terms of the application of the due impartiality rules in Section Five outside of election and referendum periods, we would consider each case on its facts, including, to the extent that it is relevant, whether a presenter is, for example, taking part in a forthcoming election campaign. We therefore do not consider it appropriate to amend the Proposed Code Guidance in this area.

Constituency and electoral area reporting rules (in particular Rules 6.9¹³⁹, 6.10¹⁴⁰ and 6.11¹⁴¹)

¹³⁷ Rule 6.6 of the Code states: “Candidates in UK elections, and representatives of permitted participants in UK referendums, must not act as news presenters, interviewers or presenters of any type of programme during the election period”.

¹³⁸ Rule 6.7 of the Code states: “Appearances by candidates (in UK elections) or representatives (of permitted participants in UK referendums) in non-political programmes that were planned or scheduled before the election or referendum period may continue, but no new appearances should be arranged and broadcast during the period”.

¹³⁹ Rule 6.9 of the Code states: “If a candidate takes part in an item about his/her particular constituency, or electoral area, then candidates of each of the major parties must be offered the opportunity to take part. (However, if they refuse or are unable to participate, the item may nevertheless go ahead.)”

¹⁴⁰ Rule 6.10 of the Code states: “In addition to Rule 6.9, broadcasters must offer the opportunity to take part in constituency or electoral area reports and discussions, to all candidates within the constituency or electoral area representing parties with previous significant electoral support or where there is evidence of significant current support. This also applies to independent candidates. (However, if a candidate refuses or is unable to participate, the item may nevertheless go ahead.)”

¹⁴¹ Rule 6.11 of the Code states: “Any constituency or electoral area report or discussion after the close of nominations must include a list of all candidates standing, giving first names, surnames and the name of the party they represent or, if they are standing independently, the fact that they are an independent candidate. This must be conveyed in sound and/or vision. Where a constituency report

4.51 As mentioned in paragraph 4.10 above, ITN and ITV both argued for a fundamental review of the constituency reporting rules set out in Section Six. In particular, ITN recalled that it had made proposals in response to Ofcom's PCC Guidance Consultation, to relax the rules in Section Six of the Code relating to constituency and electoral area reporting, which ITN considered to be "over-regulated and over-prescriptive". However, these proposals "were not accepted by Ofcom on that occasion". This respondent added that "in light of the record low turnout of less than 15% of the electorate for the PCC Elections, we hope that Ofcom will now re-consider our recommendations as a way to facilitate and encourage compelling news reporting of elections that can engage viewers in the key issues and the democratic process". ITN made a number of points about the constituency/election area reporting rules, including the following:

- according to ITN, there is no other area of news reporting in any format - broadcast, print or online - in which "so many regulatory hurdles are placed in the way of getting a report on-air";
- the rules mean that constituency/election area reports "are severely confined to one formula and one path if one candidate is interviewed". Furthermore, the rules "largely predetermines who is or who is not included in constituency reports" and restrict certain types of reporting, making it difficult to broadcast: a profile of a candidate; constituency reports that are short in length, given the need to include a number of candidates in the report; and a report focused solely on the two leading candidates in a constituency;
- when preparing constituency reports a "disproportionate amount of time can be spent on the logistics of tracking down and arranging interviews with individuals/parties...[and] setting up, arranging, travelling to and carrying out the interviews that are stipulated by the Code";
- the rules "presume there is always time in a report to include up to five people. For news bulletins that have strict time restrictions dictated by the length of the programme, this can prove difficult". Therefore, the rules "as they presently stand are geared towards long form reports". Furthermore, the rules require the broadcaster to "shoe-horn a number of candidates into a news report regardless of editorial merit". In ITN's view, it could lead: in news reports to less discussion of relevant issues and less opportunity to hold an individual candidate to account"; and to there being the "chilling effect" that local issues are not covered as they should be ;
- the rules favour certain parties i.e. the major parties and "limit access to alternative voices by not facilitating reporting of candidates who had no previous electoral experience and/or were independent candidates";
- at the next General Election in a Liberal Democrat / Conservative party marginal seat "Labour may be an irrelevance in electoral terms for that constituency but perhaps UKIP might be among the three most popular parties". However, ITN said the current rules "dictate that Labour must be interviewed for the piece, not adding much editorial value [and] It may be

on a radio service is repeated on several occasions in the same day, the full list need only be broadcast on one occasion. If, in subsequent repeats on that day, the constituency report does not give the full list of candidates, the audience should be directed to an appropriate website or other information source listing all candidates and giving the information set out above".

unfeasible and/or unwieldy in the duration of a standard television news package to include all the four parties"; and

- from a legal perspective, "it could be argued the rules do not sufficiently reflect" the changes brought about by Article 10 of the Human Rights Act 1998. Furthermore, ITN said that the Act, whilst prescribing key aspects surrounding the concept of due impartiality, does not impose "detailed rules...on who should or who should not be interviewed" in constituency/electoral area reports. Therefore, "Ofcom can change the rules on constituency reports, providing the rules are in line with the statutory requirement of due impartiality".

4.52 As an alternative to the current rules in Section Six on constituency/electoral area reports, ITN proposed that election reporting should be governed by the principle of due impartiality and "there should not be specific regulatory requirements for reports on constituency issues". The respondent considered that such a change would: encourage more election reporting; make election reporting less formulaic; and provide greater information for the viewer. ITN added that: "If due impartiality was solely the benchmark the practical reality is likely to be that in most case the candidates of the major parties are interviewed in constituency reports and there would be a list of candidates at the end, as is the case now. However we would state that in some circumstances it may be justifiable and within the boundaries of due impartiality not to include candidates of all the major parties". ITN also raised the treatment of pre-watershed content, saying: "Ofcom doesn't prescribe how we exercise that rule, but it can adjudicate and deliver sanctions against us if we fail to comply. ITN believes that the same should be true of political and election reporting".

4.53 ITN also said there is a disparity between the constituency/election area reporting rules in the Code and the equivalent rules that apply to BBC services. In this regard, ITN said that: the BBC Editorial Guidelines do not have the concept of "major parties"; and BBC services "do not always have to display the list of candidates in every broadcast". ITN said that "The BBC should not be given an advantage over commercial broadcasters".

4.54 Given the above, ITN proposed the following amendments to Rules 6.9 to 6.11 of the Code [proposed amendments shown in bold]:

Rule 6.9: "*If a candidate takes part in an item about his/her particular constituency, or electoral area, then candidates of each of the major parties **would normally** be offered the opportunity to take part. (However, if they refuse or are unable to participate, the item may nevertheless go ahead.)*".

Rule 6.10: "*In addition to Rule 6.9, broadcasters **would normally** offer the opportunity to take part in constituency or electoral area reports and discussions, to all candidates within the constituency or electoral area representing parties with previous significant electoral support or where there is evidence of significant current support. This also applies to independent candidates. (However, if a candidate refuses or is unable to participate, the item may nevertheless go ahead.)*"

Rule 6.11: "*Any constituency or electoral area report or discussion after the close of nominations must include a list of all candidates standing, giving first names, surnames and the name of the party they represent or, if they are standing independently, the fact that they are an independent candidate. This must be conveyed in sound and/or vision. Where a constituency report ~~on a radio service~~ is repeated on several occasions in the same day, the full list need only be broadcast*

on one occasion. If, in subsequent repeats on that day, the constituency report does not give the full list of candidates, the audience should be directed to an appropriate website or other information source listing all candidates and giving the information set out above”.

Ofcom response and decision

- 4.55 We note that in relation to the Guidance to Rules 6.9, 6.10 and 6.11 ITN reiterated the arguments it had made previously in response to Ofcom’s PCC Consultation, to relax the rules in Section Six of the Code relating to these rules on constituency and electoral area reporting. In summary, this respondent considered that these rules meant that constituency and electoral area reporting was “over-regulated and over-prescriptive”. Similarly, ITV regretted that Ofcom had not decided not to review the Code itself in this area, which ITV believed “would benefit from some revision to aid clarity”. Furthermore, like ITN, ITV said a review would encourage more flexible and less formulaic news reporting, in particular around elections and constituency reports.
- 4.56 In paragraph 2.18 of the Consultation, we stated our view that the constituency and electoral area reporting rules laid out in Rules 6.8 to 6.13 of the Code remain generally fit for purpose in ensuring that broadcasters comply with the relevant standards obligations. We reached this view on the basis of, for example, our experience over a number of years of ensuring that broadcasters comply with Section Six in the various and different types of election in the UK – not only the well-established elections such as General, European and local elections, but also elections introduced into the UK in recent years including elections to: the Scottish Parliament; the National Assembly for Wales; the Northern Ireland Assembly; the London Assembly, and the post of directly-elected mayor.
- 4.57 In addition, in paragraph 2.29 of the Consultation, whilst stating that the rules laid out in Sections Five and Six are generally fit for purpose for all elections, we reiterated the statement we had made in paragraph 2.11 of the PCC Guidance Statement¹⁴², that we intended to take account of any issues arising from the PCC Elections, following the election period for these elections. Therefore, in the Consultation (and as mentioned in the PCC Guidance Statement¹⁴³), we said we would welcome evidence from broadcasters and other stakeholders as to how the PCC Guidance worked in practice with respect to the PCC Elections that took place in the Autumn of 2012.
- 4.58 In this regard, concerning the PCC Elections, ITN said “in light of the record low turnout of less than 15% of the electorate for the PCC Elections” it hoped we would reconsider our position on relaxing the constituency and election area reporting rules, and in particular Rules 6.9 to 6.11. In response, we do not consider it reasonable to attribute the exceptionally low level of turnout in the PCC Elections to the constituency/electoral area reporting rules in Section Six. In this regard, we note that the Electoral Commission’s report¹⁴⁴ on the PCC Elections stated that: “The most commonly cited reasons for not voting in the PCC elections related to a lack of awareness (37%), primarily a lack of information about the elections and not knowing

¹⁴² See <http://stakeholders.ofcom.org.uk/binaries/consultations/2012-police-elections/statement/statement.pdf>

¹⁴³ Ibid, paragraph 2.34.

¹⁴⁴ *Police and Crime Commissioner elections in England and Wales: Report on the administration of the elections held on 15 November 2012*, published 19 March 2013 (http://www.electoralcommission.org.uk/_data/assets/pdf_file/0003/154353/PCC-Elections-Report.pdf).

who the candidates were or where to find information about them”¹⁴⁵. Furthermore, we note that the Electoral Reform Society’s report on the PCC Elections¹⁴⁶ stated that: “It is clear that voters were suspicious about the nature of the post, confused about the reasons for conferring election upon it and in the dark about those standing for it. A failure to engage voters in this election meant that many simply chose not to participate”¹⁴⁷. In particular, the Electoral Reform Society said that the low level of voter awareness concerning the PCC Elections “was further depressed by a lack of information. Information on candidates was not sent out to voters in the post”¹⁴⁸. We therefore consider that, as a result of the PCC Elections, we were not provided with relevant evidence by stakeholders, to justify relaxing the constituency and electoral area reporting rules in relation to these elections.

- 4.59 In addition to what we say above, in paragraph 2.29 of the Consultation we stated that subject to any evidence from broadcasters and other stakeholders as to how the PCC Guidance worked in practice during the PCC Elections that took place in Autumn 2012, we would amend the definition of “elections” in Section Six of the Code to include “Police and Crime Commissioner Elections”. Given that we were not provided with relevant evidence by stakeholders, to justify relaxing the constituency and electoral area reporting rules in relation to these elections, we have therefore decided to include “Police and Crime Commissioner Elections” in the definition of “elections” in Section Six of the Code.
- 4.60 More widely, we do not consider that ITN and ITV’s arguments are such as to justify replacing Rules 6.8 to 6.13 with a more general requirement to preserve due impartiality.
- 4.61 We note the various points that ITN made which indicated, in its view, that constituency and electoral area reporting is “over-regulated”. For example, this respondent said that these rules set up “regulatory hurdles” for broadcasters compared with, for example, print and online media, which in ITN’s view, means election reporting is formulaic. ITN also pointed to what it termed the various logistical issues created by the constituency and electoral area reporting rules. We recognise that, to a degree, the constituency and electoral reporting rules limit the editorial freedom of broadcasters. We consider these limits are proportionate and reasonable to ensure that in the important area of election broadcasting, political candidates, receive appropriate levels of broadcast coverage. We consider that Rules 6.8 to 6.13 of the Code strike an appropriate balance between both the broadcasters’ and political candidates’ right to freedom of expression, consistent with Article 10 of the ECHR. In particular, we consider that Rules 6.9 and 6.10 of the Code provide a necessary safeguard to ensure fair and reasonable treatment of candidates, as appropriate, when broadcasters focus on particular electoral areas.
- 4.62 We also noted that ITN considered the constituency/electoral area reporting rules favour the major parties. Furthermore, this respondent cited an example of a marginal Conservative Party/Liberal Democrat seat in which ““Labour may be an irrelevance in electoral terms for that constituency but perhaps UKIP might be among the three most popular parties”. ITN said that “It may be unfeasible and/or unwieldy in the duration of a standard television news package to include all the four parties”. In

¹⁴⁵ Ibid, paragraph 1.16.

¹⁴⁶ *How not to run an election: The Police and Crime Commissioner Elections*, published 25 February 2013 (<http://www.electoral-reform.org.uk/images/dynamicImages/How%20not%20to%20run%20an%20election.pdf>).

¹⁴⁷ Ibid, page 9.

¹⁴⁸ Ibid, page 9.

response, we have carefully considered the issue of major parties. On balance, and after very careful consideration, we consider that the advantages of retaining the concept of major parties outweighs the disadvantages. In particular, we recognise that the list of major parties in Section Six of the Code: provides certainty in framing editorial decisions under the Code; and recognises that certain parties have a 'national' status (for example, across Great Britain, or in any of the devolved nations) across a range of elections, that merits them being afforded a special status in the democratic process and hence, for example, access to PEBs and PPBs. Furthermore, whilst noting ITN and ITV's arguments, we are aware that not all broadcasters have the same compliance expertise as these broadcasters. Therefore, replacing the requirement for broadcasters, for example, to offer the candidates of the major parties the opportunity to take part in reports and discussions about constituencies and electoral areas with more flexible criteria, could make election programming more challenging for small-scale broadcasters to produce.

- 4.63 ITN also questioned whether the constituency/electoral area reporting rules "sufficiently reflect" the changes brought about by Article 10 of the Human Rights Act 1998. We disagree. As the Legislative Background¹⁴⁹ to the Code makes clear, the Code was drafted in light of the Human Rights Act 1998 and the European Convention on Human Rights, and in particular Article 10, but also Article 14.
- 4.64 ITN also said that it was open to Ofcom to change the constituency/electoral area reporting rules, given that the Act, whilst prescribing key aspects surrounding the concept of due impartiality, does not impose "detailed rules...on who should or who should not be interviewed" in constituency/electoral area reports. As mentioned in paragraph 2.20, under section 93 of the RPA, Ofcom is required to adopt a code of practice with respect to the participation of candidates at a parliamentary or local government election in broadcast items about the constituency or electoral area in question¹⁵⁰. In each case, before drawing up such a code of practice, we must have regard to any views expressed by the Electoral Commission. We note that the Electoral Commission, as well as most stakeholders who responded to the Consultation, did not raise concerns about the constituency and electoral area reporting rule as laid out in Rules 6.8 to 6.13 of the Code.
- 4.65 ITN also cited what it viewed as a disparity between the constituency and electoral area reporting rules in the Code and the equivalent rules that apply to BBC services. ITN said that: the BBC Editorial Guidelines do not have the concept of "major parties"; and BBC services "do not always have to display the list of candidates in every broadcast". As we have mentioned in other places in this Statement, the fact that the BBC Editorial Guidelines, for example, makes no reference to the concept of major parties in relation to constituency and electoral area reporting¹⁵¹, should not

¹⁴⁹ See <http://stakeholders.ofcom.org.uk/binaries/broadcast/831190/background-code.pdf>

¹⁵⁰ This obligation is repeated in a number of statutory instruments with respect to broadcast items covering elections to the Scottish Parliament, the Welsh Assembly, the Northern Irish Assembly, the European Parliament and the post of PCC.

¹⁵¹ We note that in terms of overall coverage to be given to the parties, the BBC Election Guidelines for the 2012 Elections (See See <http://www.bbc.co.uk/guidelines/editorialguidelines/page/pcc-election-guidelines>) required that BBC services had to, for example, "give due weight to candidates of parties which have demonstrated substantial electoral support" in an area. However, in doing so, the Appendices to the Election Guidelines differentiate between "Larger Parties" and "Smaller Parties" in different types of election and state that, for example, the 'Larger Parties' "should receive broadly similar levels of coverage where it is directly related to" the relevant type of election that took place in 2012 (See paragraph 1.3 for the 2012 Local Government Elections in Scotland; paragraph 2.3 for the 2012 Local Government Elections in 2012; paragraph 3.3 for the Local Government Elections in

have undue influence on the drafting of the Code and the Proposed Code Guidance. The BBC licence-fee funded services are subject to separate regulation by the BBC Trust, and contains bespoke Guidelines for a single broadcaster, whereas Ofcom's Guidance applies the principles laid out in the Code, and in particular Section Six, including the definition of major parties, and applies to a large number of broadcasters.

- 4.66 In justifying its suggestion that the constituency and electoral area reporting rules should be replaced with a general requirement to maintain due impartiality, we note that ITN mentioned what it termed Ofcom's requirement that television news broadcasters "take special care of pre-watershed content". The respondent therefore implied that in requiring broadcasters to comply with the rules in the Code in relation to protecting under-eighteens in the context of the watershed, "Ofcom doesn't prescribe how we exercise that rule, but it can adjudicate and deliver sanctions against us if we fail to comply". We disagree. We consider that Section One of the Code does include provisions which directly prescribe how broadcasters should behave. For example, Rule 1.14 of the Code states that: "The most offensive language must not be broadcast before the watershed...".
- 4.67 Taking into consideration the above, we therefore do not agree with the proposed amendments to Rules 6.9, 6.10 and 6.11 of the Code, as suggested by ITN. In our view, Rules 6.9 and 6.10 of the Code provide balanced and proportionate safeguards to ensure that broadcasters provide adequate coverage to candidates, as appropriate, in the sensitive area of elections.
- 4.68 In relation Rule 6.11 of the Code, we consider that it would not be appropriate to modify the requirement on television broadcasters having to include a full list of candidates standing in a PCC Election each time an electoral area report is broadcast. The requirement in Rule 6.11 aims to act as a safeguard to the democratic process, by ensuring that whenever a broadcaster covers a particular electoral area, the audience is informed about all candidates standing in that electoral area. The requirement under Rule 6.11 for radio broadcasters (only including the list of candidates once a day) is a recognition of the fact that it would be disproportionate to require radio broadcasters to read out a list every time an electoral area report is broadcast. The situation for television broadcasters is different, because they can show a list of candidates in vision only. We consider this requirement: is less intrusive to broadcast output; and does not represent a disproportionate burden on television broadcasters.

Paragraph 4.112¹⁵² (Rule 6.10)

England (outside the Greater London Authority); and paragraph 4.3 for the Elections to the Greater London Authority - <http://www.bbc.co.uk/guidelines/editorialguidelines/page/guidance-election-guidelines-2012appendices>).

¹⁵² Paragraph 4.112 of the proposed Code Guidance stated: "*In considering the degree to which opinion polling data constitutes evidence of significant current support, broadcasters may take account of for example:*

- *the number of polls (if more than one);*
- *the degree by which a candidate is polling above the margin of error for a particular poll;*
- *the degree to which a range of polls (if more than one) by the same polling organisation demonstrate a consistent level of support for a candidate both leading up to and during an election period (i.e. less weight should be given to: 'one-off' stand alone polls; or a single poll that shows a candidate's support is materially different to other poll ratings for that candidate); and*
- *whether or not a particular poll has been conducted by a member organisation of the British Polling Council ('BPC').*

4.69 In relation to assessing “significant current support” in Rule 6.10, LBC requested further clarification as to “the type of polls that would be considered relevant, given that the political landscape in the devolved nations may be different to that of the UK as a whole”. For example the respondent posed the question: “[F]or a Westminster election should we still look to UK-wide polls or look at evidence within each nation individually?”

Ofcom response and decision

4.70 In relation to the point made by LBC concerning opinion polls in paragraph 4.112 of the Proposed Code Guidance, we note that the context of Rule 6.10 is that broadcasters have to assess significant current support of candidates in particular constituencies or electoral areas rather than, for example “UK-wide”, as stated by LBC. In addition, we recognise that there are a range of different opinion polls that might be available to broadcasters, in different parts of the UK, to help them consider what may constitute significant current support. Therefore, we consider that the wording in paragraph 1.112 of the Proposed Code Guidance provides adequate guidance to broadcasters about possible factors that broadcasters might take into account when considering opinion polls, without being overly prescriptive.

Conclusion

4.71 In addition to what we discuss above, respondents raised a number of suggestions for more minor amendments to the Proposed Code Guidance, which we have also reflected in the finalised version of the Code Guidance, where appropriate. Therefore, having considered the responses we received on the Proposed Code Guidance, we have finalised amendments to the Ofcom Code Guidance for Section Five and Section Six of the Code. The final version is set out at Annex 2.

Annex 1

Finalised version of the PPRB Rules

[Amendments shown in bold]

Introduction

- A1.1 Section 333 of the Communications Act 2003 (“the Act”) requires Ofcom to ensure that Party Political Broadcasts (“**PPBs**”) (including Party Election Broadcasts (“**PEBs**”) and Referendum Campaign Broadcasts (“**RCBs**”) on behalf of registered political parties and designated referendum organisations¹⁵³ are included in every licensed public service television channel (regional Channel 3¹⁵⁴, Channel 4, **Channel 5**), **every local digital television programme service**, and every national (i.e. UK-wide, commercial) analogue radio service, and their digital simulcast services (Classic FM, **Talksport** and Absolute Radio AM)(“the Licensees”).
- A1.2 This document contains the Rules which Ofcom has made in accordance with section 333 of the Act. The Rules reflect minimum requirements which Licensees are required to follow in determining the length, frequency, allocation and/or scheduling of party political or referendum campaign broadcasts. They are not intended to fetter the discretion of Licensees to exceed these minimum requirements.
- A1.3 Within the terms of these Rules, decisions as to the precise length, frequency, allocation and/or scheduling of broadcasts offered to political parties/designated organisations are the responsibility of Licensees in the first place. When Licensees make such decisions, they should notify the relevant political party/designated organisation promptly in writing, setting out the basis of the relevant decision, and enabling that party/organisation to make further representations to the Licensee if they choose to dispute any part of the decision.
- A1.4 If any dispute remains unresolved between any Licensee and any political party/designated organisation, as to the length, frequency, allocation and/or scheduling of broadcasts it may be referred by the party/designated organisation or the Licensee to Ofcom for determination under these Rules. For this purpose, Licensees and political parties/designated organisations should follow Ofcom’s Procedures on the referral and determination of disputes under these Rules.
- A1.5 Section 6 of Ofcom’s Broadcasting Code¹⁵⁵ (“the Code”) provides that broadcasts under these Rules are required to comply with the relevant provisions of the Code (for example, the provisions regarding harm and offence) notwithstanding that the content of broadcasts is normally the responsibility of the relevant political parties (or designated referendum organisations). Licensees should apply these Rules in accordance with relevant provisions of the Code.
- A1.6 Licensees are advised to issue guidance on the acceptability of content and technical matters. Broadcasters are advised to seek legal indemnities from parties

¹⁵³ See section 333(3) of the Act, and sections 37 and 127 of the Parties, Elections and Referendums Act 2000.

¹⁵⁴ Excluding Channel TV; this section of the Act does not apply to the Channel Islands.

¹⁵⁵ The Broadcasting Code can be found at <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>

against defamation, copyright and similar legal risks. Any use of Parliamentary footage should abide by Parliament's rules on such use.

Services carrying broadcasts

- A1.7 General election broadcasts will be carried by all of the Licensees named above **(except local digital television programme service licensees)**. Broadcasts for European Parliamentary elections will be carried by regional Channel 3 services and **Channel 5**.
- A1.8 **RCBs** will be carried by all of the Licensees named above **(except local digital television programme service licensees)** in the case of a UK referendum, or by the relevant regional Channel 3 licensee in the case of nations/regions referendums¹⁵⁶.
- A1.9 The regional Channel 3 licensee¹⁵⁷ will additionally carry: local election broadcasts in those UK nations/regions where such elections are taking place; broadcasts in the relevant nations/regions for Scottish Parliament, Welsh Assembly, Northern Ireland Assembly **elections; broadcasts for the elections for the London Assembly and Mayor of London**¹⁵⁸; and **PPBs** for the "major parties" in the **United Kingdom (see Rule 11) on a seasonal basis (as set out in Rule 18)**.

9A. Local digital television programme service licensees will carry: local election broadcasts in those UK nations/regions where such elections are taking place. The local digital television programme service licensee for London will also carry broadcasts for the elections for the London Assembly and Mayor of London¹⁵⁹.

Political parties / Designated Referendum Organisations

- A1.10 **PEBs and PPBs** may only be allocated to political parties registered by the Electoral Commission. **RCBs** may only be allocated to organisations as designated by the Electoral Commission.
- A1.11 **The "major parties" for each nation in the United Kingdom are defined in the Ofcom list of Major Parties**¹⁶⁰.

¹⁵⁶ For the purposes of RCBs to be broadcast in relation to the Scottish independence referendum, the relevant regional Channel 3 licensees are those for the following regions: Central Scotland; the North of Scotland; and Borders.

¹⁵⁷ For the purposes of PEBs to be broadcast in relation to Scottish elections, the relevant regional Channel 3 licensees are those for the following regions: Central Scotland; the North of Scotland; and Borders.

¹⁵⁸ The relevant Channel 3 licensee will not be obliged to carry PEBs in respect of: Mayoral elections (other than London); Police and Crime Commissioner elections; by-elections of any kind; English Parish Council elections; Scottish Community Council elections; and Welsh Community Council elections.

¹⁵⁹ Local digital television programme service licensees will not be obliged to carry PEBs in respect of: General Elections; European Parliamentary Elections; Scottish Parliament, Welsh Assembly and Northern Ireland Assembly elections; Mayoral elections (other than London); Police and Crime Commissioner elections; by-elections of any kind; English Parish Council elections; Scottish Community Council elections; and Welsh Community Council elections.

¹⁶⁰ See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/major-parties.pdf>

Allocation of broadcasts

PEBs

- A1.12 Before a General Election, and in the case of other elections where appropriate, each major party (referred to in Rule 11) should be offered **at least** two PEBs, the length of a series offered to a particular party being determined by the Licensee. This includes the SNP and Plaid Cymru on Channel 4 and **Channel 5**. In every case, the number of PEBs should be determined having regard to the circumstances of a particular election, the nation in which it is held, and the individual party's past **electoral support** and/or current support in that nation (see Rule 15).
- A1.13 Other registered parties should qualify for a PEB if they are contesting one sixth or more of the seats up for election in the case of first-past-the-post, multi-constituency elections such as a General Election. For proportional representation systems of election (such as the European Parliamentary Elections), the minimum qualifying requirement for the allocation of one PEB should be **set**, reasonably and fairly for each election, according to criteria which have regard to the particular system of voting, the number of seats available for election, the number of constituencies/regions, and the number of candidates nominated by the party.
- A1.14 Licensees should consider making additional allocations of PEBs to other registered parties (which satisfy the criteria at Rule 13) if evidence of their past **electoral support** and/or current support at a particular election or in a relevant nation/electoral area means it would be appropriate to do so. In this regard, Licensees should consider whether other registered parties should qualify for a series of PEBs and/or peak-time scheduling, as major parties do.
- A1.15 In determining allocations of PEBs at elections, the four nations of the UK should be considered separately.
- A1.16 In accordance with Rules 7 to 9 above, parties which qualify for at least one PEB in one of the nations of England, Scotland, Wales or Northern Ireland will be offered PEBs on the Channel 3 licensee in the appropriate regions of those nations.
- A1.17 Parties which qualify for a PEB in all three nations of England, Scotland and Wales will additionally be offered a PEB on Channel 4 (at General Elections), **Channel 5** (at General Elections and European Elections) and the UK-wide analogue radio services (at General Elections) (provided these broadcasters are carrying the relevant series of broadcasts; see Rules 7 to 9 above). **The purpose of a PEB must not be to promote any particular outcome of a referendum.**

17A. Where a local digital television programme service licensee is required to broadcast a PEB as a result of Rule 9A, local digital television programme service licensees will carry the same PEB as broadcast by the relevant Channel 3 licensee.

PPBs / RCBs

- A1.18 Major parties in **Great Britain** will be offered one **PPB** in each of the following three periods: **Autumn; Winter; and Spring**. Major parties in Northern Ireland will be offered one or two PPBs in the period 1 September to 30 March (excluding December). No PPBs should be broadcast during election or referendum periods.

- A1.19 Each designated referendum organisation will be allocated a series of **RCBs** before each referendum. The allocation should be equal for each referendum organisation.

Length of broadcasts

- A1.20 Parties and designated organisations may choose a length of 2'40", 3'40" or 4'40" on TV. For radio, parties and designated organisations may choose any length up to 2'30".

Scheduling of broadcasts

- A1.21 PEBs on television on behalf of 'major parties' throughout Great Britain must be carried in peak time (6.00pm to 10.30pm), as must PEBs on Channel 3 in the relevant nations on behalf of the SNP, Plaid Cymru and the major Northern Ireland parties. **RCBs** on behalf of designated organisations must also be scheduled in peak time. Other broadcasts should normally be carried in the period 5.30pm to 11.30pm.
- A1.22 UK **RCBs** and PEBs for major parties before a General Election must be carried on UK-wide analogue radio services between 5.00pm and 9.00pm. Other broadcasts must be transmitted between 6.00am and 10.00pm.

Annex 2

Finalised Code Guidance to Section Five and Section Six of the Code

[Amendments shown in bold or bold underline]

Introduction

- A2.1 This Guidance is provided to assist broadcasters in interpreting and applying the Broadcasting Code (“the Code”).
- A2.2 For ease of reference, the proposed Guidance sets out the principal Code rules which broadcasters should take account of when covering elections and referendums (i.e. the rules set out in Section Five (Due Impartiality and Due Accuracy and Undue Prominence of Views and Opinions)¹⁶¹ and Section Six (Elections and Referendums)¹⁶² of the Code) before laying out the guidance itself on those rules.
- A2.3 Broadcast material covering elections and referendums must of course comply with all relevant Code rules – not just those in Sections Five and Six. When considering coverage of elections and referendums, Sections Five and Six of the Code are closely linked. Section Five also applies to: programming broadcast outside election and referendum periods; and/or programming which deals with, for example, matters of political or industrial controversy and matters relating to current public policy outside of an electoral context. The Guidance sets out information and guidance on individual rules. Where relevant, weblinks are provided to illustrative cases (already published by Ofcom) which broadcasters may find helpful when considering how to interpret and apply a particular Code rule in relation to elections and referendums.
- A2.4 Sections Five and Six of the Code apply to all Ofcom licensed services. However, there is no obligation on broadcasters to provide any election or referendum coverage beyond that required by the PPRB Rules. Sections Five and Six are quite complex and be challenging to interpret.

Ofcom Guidance to Section Five (Due Impartiality and Due Accuracy and Undue Prominence of Views and Opinions) of the Broadcasting Code

General

- A2.5 This Guidance is provided to assist broadcasters in understanding how Ofcom will usually interpret and apply the Broadcasting Code. The Guidance to Section Five should be read in conjunction with Section Six: Elections and Referendums, and the accompanying Guidance to Section Six. However, Ofcom considers each case on its facts.
- A2.6 Where relevant, weblinks are provided to cases (already published by Ofcom) which broadcasters may find helpful when considering how to interpret the Code.

¹⁶¹ See <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/impartiality/>

¹⁶² See <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/elections/>

A2.7 Different rules **within** Section Five apply to different Ofcom licensed services as follows:

Relevant Rules	Which types of programming are potentially covered?	Which types of licensed services are covered?
Rules 5.1 to 5.3 inclusive	News programming	<ul style="list-style-type: none"> • All licensed radio services. • All licensed television services.
Rule 5.4	News programming and other programmes	<ul style="list-style-type: none"> • Licensed radio services (other than Restricted Service Licenses – “RSLs”). • All licensed television services.
Rules 5.5 to 5.12 inclusive	News programming and other programmes	<ul style="list-style-type: none"> • All licensed television services. • All licensed national analogue radio services (i.e. national radio services) and digital radio services (i.e. national digital sound programme services) – but does not apply to non-national radio services.
Rule 5.13	News programming and other programmes	<ul style="list-style-type: none"> • All local licensed radio services (including community radio services). • All local digital sound programme services (including community digital sound programme services). • All radio licensable content services. • Does not apply to Restricted Service Licenses (“RSLs”). • Does not apply to licensed national analogue radio services (i.e. national radio services) and digital radio services (i.e. national digital sound programme services). • Does not apply to licensed television services.

Meaning of "due impartiality":

"Due" is an important qualification to the concept of impartiality. Impartiality itself means not favouring one side over another. "Due" means adequate or appropriate to the subject and nature of the programme. So "due impartiality" does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented. The approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content, and the extent to which the content and approach is signalled to the audience. Context, as defined in Section Two: Harm and Offence of the Code, is important.

Guidance

- A2.8 Central to the application of Section Five is the concept of "due impartiality". Depending on the facts in each case, due impartiality **may** need to be applied in all programming genres, including cinema films shown on television, comedy programmes, or televised dramas. However, in reaching a decision whether due impartiality needs to be preserved in a particular case, broadcasters should have regard to the likely expectation of the audience as to the content, and all other relevant contextual factors. For example, audience expectations would not normally expect the same approach to due impartiality to be taken in an historical drama compared with a serious documentary on a controversial and contemporary issue.
- A2.9 If a service is broadcast outside the United Kingdom, this fact may be taken into account when considering the application of due impartiality. However, the due impartiality requirements of the Code still apply to such services.
- A2.10 It is an editorial matter for the broadcaster how due impartiality is preserved, as long as the Code is complied with.

Rules relating to due impartiality and due accuracy in news

Rule 5.1

News, in whatever form, must be reported with due accuracy and presented with due impartiality.

Guidance

- A2.11 Accuracy entails getting the facts right. In complying with the requirement to report news with 'due accuracy', broadcasters should refer to the clarification of 'due' set out in the meaning of 'due impartiality', as laid out above. For example, where a matter is of particular public interest, the requirement to present that matter with due accuracy will be correspondingly higher.
- A2.12 In terms of this section of the Code (i.e. the requirement for 'due impartiality' and 'due accuracy'), news in whatever form would include news bulletins, news flashes and daily news magazine programmes. Just because material is broadcast on a 'rolling news' channel does not necessarily mean that the material would be characterised as 'news' content.
- A2.13 In accordance with a broadcaster's right to freedom of expression, the broadcaster has the right to interpret news **events** as it sees fit, as long as it complies with the Code. However, broadcasters should take care before making any unequivocal

interpretations or statements about contentious issues, which may be dependent on nuance and open to different interpretations e.g. statistical findings or ambiguous statements made by politicians.

- A2.14 Rule 5.1 is potentially applicable to any topic included in news programming, and not just matters of political or industrial controversy and matters relating to current public policy. There is no requirement on broadcasters to provide an alternative viewpoint in all news stories or all issues in the news. However, all news stories must be reported with due accuracy and presented with due impartiality i.e. impartiality adequate or appropriate to the subject.
- A2.15 Due impartiality in news might be achieved through broadcasting different viewpoints on a particular issue on successive days in a series of explicitly linked 'special' news reports which each separately focus on one particular viewpoint on a particular subject. Depending on the circumstances in each case, such an editorial approach might ensure compliance with Rule 5.1, as long as it was clearly signposted to the audience, in line with Rule 5.6 of the Code.
- A2.16 In reporting on particular news items, the broadcasters should take account of all relevant facts, including the nature of the coverage and whether there are varying viewpoints on a particular item. For example, if a news item includes criticism of individuals or organisations, then broadcasters should consider whether they need to reflect the viewpoints of the individuals or organisations being criticised, within their news output as appropriate and in a proportionate way and/or reflect any refusal to comment of that individual or organisation. Whether news is presented with due impartiality will depend on all the relevant circumstances.
- A2.17 In its research, Ofcom has consistently found that audiences say that impartiality and accuracy in broadcast news is important to them. For example, Ofcom's 2011 Media Tracker survey¹⁶³ found that 94% of all respondents considered it important that television news is impartial, with the corresponding figure for radio news being 88%. Ofcom research has found that audiences consider it equally important that television and radio news is accurate.
- A2.18 Ofcom research has also demonstrated that there are greater expectations for news channels that are perceived to be aimed at a UK audience than there are for channels with a global audience.
- A2.19 Broadcasters can criticise or support the actions of particular nation-states in their programming, as long as they, as appropriate, reflect alternative views on such matters.
- A2.20 Broadcasters should take care to report surveys and statistics in context.
- A2.21 Where a broadcaster attempts to seek alternative views, but these are not readily available (for example, an individual or organisation declines to give an interview or give comments), there are a range of editorial techniques for maintaining due impartiality. For example, broadcasters could: seek alternative viewpoints from a range of sources; summarise with due objectivity and in context the alternative viewpoints, for example, through interviewees expressing alternative views; make clear with appropriate frequency and prominence that a broadcaster has sought

¹⁶³ See <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/uk-audience-attitudes.pdf>, published August 2012.

alternative views from particular individuals or organisations; and/or ensure that the views expressed in a news item are challenged critically by presenters and reporters within the programmes. Broadcasters must not assume prior knowledge on the part of the audience of particular alternative views. However, overall, it is an editorial matter for the broadcaster as to how it presents news with due impartiality.

A2.22 When reporting the news, presenters and reporters employed by a broadcaster must take care that they present the news with due impartiality and maintain the editorial independence of the channel they represent.

A2.23 Ofcom's previous decisions on these issues include:

ITV News, ITV 1:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb79/issue79.pdf>

News, Radio Ikhlas:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb1941/obb195.pdf> .

Channel S News, Channel S:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb203/obb203.pdf>

News, IBC Tamil:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb206/obb206.pdf>

Channel S News, Channel S:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb208/obb208.pdf>

News and The Diplomacy of Defence, Russia Today:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb213/obb213.pdf>

News, Russia Today:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb217/obb217.pdf>

News, Islam Channel

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb220/obb220.pdf>

Rule 5.2

Significant mistakes in news should normally be acknowledged and corrected on air quickly. Corrections should be appropriately scheduled.

Rule 5.3

No politician may be used as a newsreader, interviewer or reporter in any news programmes unless, exceptionally, it is editorially justified. In that case, the political allegiance of that person must be made clear to the audience.

Guidance

A2.24 The use of politicians as reporters or presenters in news programmes could be problematic in the context of the requirement for due impartiality. A politician is likely to include an elected representative e.g. an MP or councillor, a candidate, an applicant to be a candidate or a prospective candidate (that is a candidate for election who knows they have been chosen to represent a party at an election), an employee of a political party or an activist.

A2.25 A previous Ofcom decision in this area is:

News, London Greek Radio:

http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/pcb30/Issue_65.pdf

Rules relating to special impartiality requirements: news and other programmes

General

A2.26 The 'special impartiality' rules (Rules 5.4 to 5.13 inclusive) apply to national and international matters, although the impartiality due to a non-national matter may be less. To give an example, broadcasters are expected to apply impartiality rules to a subject such as the American Presidential Elections. For those Ofcom licensees who are not broadcasting to the United Kingdom, the impartiality requirements still apply but the amount due may be less depending on the subject matter and the original country of reception.

Matters of political or industrial controversy and matters relating to current public policy

Meaning of "matters of political or industrial controversy and matters relating to current public policy":

Matters of political or industrial controversy are political or industrial issues on which politicians, industry and/or the media are in debate. Matters relating to current public policy need not be the subject of debate but relate to a policy under discussion or already decided by a local, regional or national government or by bodies mandated by those public bodies to make policy on their behalf, for example non-governmental organisations, relevant European institutions, etc.

Guidance

A2.27 Whether a "matter of political or industrial controversy and matter relating to current public policy" is being dealt with in a programme will depend on a range of factors. Just because a 'political' or 'policy' matter is referred to in a programme, or broadcasters deal with particular matters that elicit strong emotions, does not mean that the special impartiality rules are engaged. Conversely, just because a number of individuals and institutions, or the majority of the audience to a service, share the same viewpoint on a contentious issue, does not necessarily mean that a matter is not, for example, a matter of political or industrial controversy.

A2.28 There may be a range of instances where a programme would not necessarily be deemed to be dealing with a matter of political or industrial controversy or a matter relating to current public policy, including:

- where references to a political matter or policy is essentially descriptive and incidental to the main editorial premise for a programme, and where the programme does not include views or opinions on the merits of a particular political matter or policy;
- where references to political disputes and conflicts are used as descriptive backdrop to a historical drama; and
- ‘personal view’ testimony on particular matters included within factual programming.

A2.29 In considering whether an issue is one of “political or industrial controversy” or has been broadly settled, broadcasters should consider relevant factors. **These may include, as appropriate,** independent reports commissioned by, **for example, the UK Parliament** and whether the issue has already been scientifically established and does not appear to be challenged by, for example, established political parties or other significant domestic or international scientific institutions. An example of an issue which Ofcom considered to be broadly settled is the scientific principles behind the theory of Anthropogenic Global Warming.

A2.30 There is no requirement that there should be any political controversy in the UK’s Parliament about an issue for its treatment in a broadcast to be subject to Section Five. However, a matter can still be a “matter or current public policy” even if the UK Parliament has a settled policy on it.

A2.31 Ofcom’s previous decisions on these issues include:

The Great Global Warming Swindle, Channel 4:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb114/issue114.pdf>

An Inconvenient Truth, Channel 4:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb165/issue165.pdf>

Ummah Talk and Politics and Beyond, Islam Channel:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb169/issue169.pdf>

Sri Lanka’s Killing Fields, Channel 4

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb192/obb192.pdf>

Sri Lanka’s Killing Fields: War Crimes Unpunished, Channel 4

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb217/obb217.pdf>

POAF Complaints Cell, DM Digital

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb218/obb218.pdf>

I Focus, Channel i

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb224/obb224.pdf>

The exclusion of views or opinions

Rule 5.4

Programmes in the services...must exclude all expressions of the views and opinions of the person providing the service on matters of political and industrial controversy and matters relating to current public policy (unless that person is speaking in a legislative forum or in a court of law). Views and opinions relating to the provision of programme services are also excluded from this requirement.

Guidance

- A2.32 'The person providing the service' is a concept used in connection with the legal requirements for the licensing and compliance of broadcasting services. In this rule, it refers to the licensee, the company officers and those persons with an editorial responsibility for the service or part of the service rather than, for example, the programme presenter.
- A2.33 In considering programming under Rule 5.4, Ofcom will consider the available evidence and circumstances to ascertain what the views and opinions of the person providing the service could reasonably be held to be.
- A2.34 If a programme contributor, whom Ofcom deems to be a 'provider of a service', expresses a view on a matter of political or industrial controversy or a matter relating to current public policy within that service, there will be a breach of Rule 5.4 (unless that person is speaking in a legislative forum or in a court of law, or the view or opinion relates to the provision of the programme services themselves). This will be the case whether or not the programme contributor characterises their views on that matter as being a personal opinion, and as not being expressed on behalf of the licensed service.
- A2.35 Ofcom's previous decisions on these issues include:

Various programmes, Aden Live:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb191/obb191.pdf>

Arab Dream, Al Mustakillah Television:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb204/obb204.pdf>

POAF Conference, DM Digital:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb205/obb205.pdf>

Russian language referendum item, REN TV Baltic and Mir Baltic:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb214/obb214.pdf>

The preservation of due impartiality

Rule 5.5

Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of any person providing a

service...This may be achieved within a programme or over a series of programmes taken as a whole.

Guidance

- A2.36 Broadcasters must ensure due impartiality is maintained in any programme or section of a programme that deals with matters of political or industrial controversy or matters relating to current public policy. However, the preservation of due impartiality does not require a broadcaster to include every argument on a particular subject or to provide, in each case, a directly opposing argument to the one presented in the programme.
- A2.37 It will not always be necessary to present an opposing view which is at odds with the established view of the majority or inconsistent with established fact in order to preserve due impartiality. Further, whether or not due impartiality has been preserved will also be dependent on a range of other factors such as: the nature of the programme; the programme's presentation of its argument; the transparency of its agenda; the audience it is aimed at, and what the audience's expectations are.
- A2.38 It is important to note that the broadcasting of highly critical comments concerning the policies and actions of, for example, any one state or institution, is not in itself a breach of due impartiality. It is, in fact, essential that current affairs programmes are able to explore and examine issues and take a position even if that is highly critical. However, a broadcaster must maintain an adequate and appropriate level of impartiality in its presentation of matters of political controversy. Depending on the specifics of the issue, it may be necessary, in order to fulfil the due impartiality requirements, that alternative viewpoints are broadcast.
- A2.39 Just because a contentious political issue is receiving little coverage within the media does not obviate the need for the broadcaster to provide alternative viewpoints on such an issue where appropriate.
- A2.40 Due impartiality will not be maintained merely by offering people or institutions likely to represent alternative viewpoints (for example, representatives of a foreign government) the opportunity to participate in programmes, who decline to do so. If a broadcaster cannot obtain, for example, an interview or statement laying out a particular viewpoint on a matter of political or industrial controversy or matter of current public policy, then the broadcaster must find other methods of ensuring that due impartiality is maintained. These might include some of the editorial techniques outlined in paragraph A2.41 below.
- A2.41 It is an editorial matter for the broadcaster as to how it maintains due impartiality. Where programmes handle, for example, controversial policy matters and where alternative views are not readily available, broadcasters might consider employing one or more of the following editorial techniques:
- interviewers could challenge more critically alternative viewpoints being expressed, for example, by programme guests or audience members, so as to ensure that programme participants are not permitted to promote their opinions in a way that potentially compromises the requirement for due impartiality;
 - where an interviewee is expressing a particular viewpoint, interviewers could reflect alternative viewpoints through questions to that interviewee;

- alternative viewpoints could be summarised, with due objectivity and in context, within a programme;
- having available interviewees to express alternative views; or
- if alternative viewpoints cannot be obtained from particular institutions, governments or individuals, broadcasters could refer to public statements by such institutions, governments or individuals or such viewpoints could be expressed, for example, through presenters' questions to interviewees.

A2.42 In audience participation programmes where viewers or listeners are encouraged to telephone in to a programme, while broadcasters can encourage callers from different perspectives, it should not 'manufacture' them. However, whether or not viewers or listeners make calls, it is the responsibility of the broadcaster to ensure that due impartiality is maintained. Therefore, in the situation where, for example, a matter of political controversy is being covered in an audience participation programme and there are no views being expressed in opposition to the viewpoint being featured, broadcasters must have systems in place to ensure that due impartiality is maintained. For example, if a presenter or broadcaster is aware that they are receiving few audience interventions with an alternative point of view, they could consider some of the editorial techniques listed in paragraph A2.41 above.

A2.43 Ofcom's previous decisions on these issues include:

The Land Cries Out for the Blood that Was Shed, Revelation TV:
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb141/Issue141.pdf>

Dispatches: Inside Britain's Israel Lobby, Channel 4:
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb154/Issue154.pdf>

Remember Palestine, Press TV:
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb163/issue163.pdf>

Bahrain Special, Ahlulbayt TV:
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb185/obb185.pdf>

Coverage of the Baishakhi Mela, Channel S:
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb188/obb188.pdf>

Sikh Channel Youth Show, Sikh Channel:
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb211/obb211.pdf>

News and The Diplomacy of Defence, Russia Today:
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb213/obb213.pdf>

Meaning of "series of programmes taken as a whole":

This means more than one programme in the same service, editorially linked, dealing with the same or related issues within an appropriate period and aimed at a like audience. A series can include, for example, a strand, or two programmes (such as a drama and a debate about the drama) or a 'cluster' or 'season' of programmes on the same subject.

Guidance

A2.44 The expression 'aimed at a like audience' means that the linked programmes that make up a 'series' should be broadcast when it is likely that those who watched or listened to the first programme can choose to watch or listen to the second programme. In other words, if the first programme goes out at 20:00 it is most unlikely that it would be acceptable for a single linked 'balancing' programme to go out at 03:00. The broadcaster is not expected, however, to predict the audience make-up and try to achieve a similar audience for the second or subsequent programmes.

A2.45 In applying due impartiality over editorially linked programmes, broadcasters should comply with Rule 5.6 (see below), concerning the signalling of editorially linked programming.

A2.46 A previous Ofcom decision in this area is:

Ummah Talk and Politics and Beyond, Islam Channel:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb196/obb196.pdf> (and also

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb169/issue169.pdf>)

Eyewitness, Ahlulbayt TV:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb199/obb199.pdf>

Rule 5.6

The broadcast of editorially linked programmes dealing with the same subject matter (as part of a series in which the broadcaster aims to achieve due impartiality) should normally be made clear to the audience on air.

Guidance

A2.47 A previous Ofcom decision in this area is:

Location, Location, Location, Channel 4:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb116/issue116.pdf>

Rule 5.7

Views and facts must not be misrepresented. Views must also be presented with due weight over appropriate timeframes.

Rule 5.8

Any personal interest of a reporter or presenter, which would call into question the due impartiality of the programme, must be made clear to the audience.

Guidance

- A2.48 In understanding what is meant by 'due weight', it is useful to refer to the discussion of 'due' in the meaning of 'due impartiality'.
- A2.49 Broadcasters must ensure that they are articulating alternative viewpoints in a duly objective manner. Programme content should not be skewed (e.g. through the editing of views) in a manner that undermines impartiality.
- A2.50 Ofcom would expect that, when dealing with matters covered by special impartiality requirements, broadcasters have put in place procedures so that reporters and presenters are at least aware of this rule and have an opportunity to make a declaration to the broadcaster. If the broadcaster could not reasonably have known of such an interest, then Ofcom would take that into account in the event of a case or complaint. It is not expected that presenters or reporters should make known personal and private medical matters to the public.
- A2.51 Previous Ofcom decisions in this area are:

Location, Location, Location, Channel 4:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb116/issue116.pdf>

Dispatches: The Court of Ken, Channel 4:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb111/issue111.pdf>

Meaning of "personal view" and "authored":

"Personal view" programmes are programmes presenting a particular view or perspective. Personal view programmes can range from the outright expression of highly partial views, for example by a person who is a member of a lobby group and is campaigning on the subject, to the considered "authored" opinion of a journalist, commentator or academic, with professional expertise or a specialism in an area which enables her or him to express opinions which are not necessarily mainstream.

Rule 5.9

Presenters and reporters (with the exception of news presenters and reporters in news programmes), presenters of "personal view" or "authored" programmes or items, and chairs of discussion programmes may express their own views on matters of political or industrial controversy or matters relating to current public policy. However, alternative viewpoints must be adequately represented either in the programme, or in a series of programmes taken as a whole. Additionally, presenters must not use the advantage of regular appearances to promote their views in a way that compromises the requirement for due impartiality. Presenter phone-ins must encourage and must not exclude alternative views.

Guidance

- A2.52 Broadcasters are free to include 'issue-led' presenters in their programming, as long as they maintain due impartiality as appropriate. In clearly signalled 'personal view' programmes, many in the audience are comfortable with adjusting their expectations of due impartiality. However, in order to maintain due impartiality, alternative viewpoints should be adequately represented.
- A2.53 In audience participation programmes, **for example**, where viewers and listeners are encouraged to telephone, email or text in to the programme, broadcasters do not necessarily have to ensure an equal number of points of view are featured in any one programme or even across the series as a whole.
- A2.54 Broadcasters must ensure that **if** alternative views are included within a 'personal view' programme **to maintain due impartiality**, such views must not be included in a way that they are merely dismissed by the presenter and used as a further opportunity to put forward the presenter's own views. For example, a presenter should not use alternative viewpoints, contrary to the presenter's own, only in a dismissive way, and only as a means of punctuating the presenter's own viewpoint.
- A2.55 If a presenter has strongly held views, and there are few, if any, alternative views expressed by the audience, then the broadcaster must take appropriate action and have systems in place to ensure that due impartiality is maintained **in the same programme or over a series of programmes taken as a whole**.
- A2.56 Previous Ofcom decisions in this area include:

George Galloway, Talksport:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb97/issue97.pdf>

Comment, Press TV:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb170/issue170.pdf>

Rule 5.10

A personal view or authored programme or item must be clearly signalled to the audience at the outset. This is a minimum requirement and may not be sufficient in all circumstances. (Personality phone-in hosts on radio are exempted from this provision unless their personal view status is unclear.)

Guidance

- A2.57 The signalling of an item or programme as a personal view or authored is a matter for the broadcaster.
- A2.58 Broadcasters should be aware that complying with Rule 5.10 on its own does not mean that a broadcaster has preserved due impartiality.

Matters of major political or industrial controversy and major matters relating to current public policy

Meaning of "matters of major political or industrial controversy and major matters relating to current public policy":

These will vary according to events but are generally matters of political or industrial controversy or matters of current public policy which are of national, and often international, importance, or are of similar significance within a smaller broadcast area.

Rule 5.11:

In addition to the rules above, due impartiality must be preserved on matters of major political and industrial controversy and major matters relating to current public policy by the person providing a service...in each programme or in clearly linked and timely programmes.

Rule 5.12:

In dealing with matters of major political and industrial controversy and major matters relating to current public policy an appropriately wide range of significant views must be included and given due weight in each programme or in clearly linked and timely programmes. Views and facts must not be misrepresented.

Guidance

- A2.59 **These additional rules are necessary because of the nature of the subject matter concerned: a matter of major political and industrial controversy or major matter relating to current public policy is of a significant level of importance and is likely to be of the moment.**
- A2.60 As Rule 5.11 makes clear, if a programme is dealing with a matter of major political or industrial controversy and major matter relating to current public policy, broadcasters should be aware that Rules 5.4 to 5.10 still apply.
- A2.61 Rule 5.12 makes clear that if matters of major political or industrial controversy and major matters relating to current public policy are being dealt with then, firstly, an appropriately wide range of significant views must be included in the programme (or in clearly linked and timely programmes), and second, such views must be given due weight.
- A2.62 'Significant views' could include the viewpoint of nation states whose policies are considered to be matters of major political and industrial **controversy and** major matters relating to current public policy.
- A2.63 As part of treating viewpoints with 'due weight' a broadcaster may debate and discuss such views. However, broadcasters must not dismiss or denigrate such viewpoints and include them in a programme simply as a means to put forward their own views.
- A2.64 Where programmes handle matters of major political or industrial controversy and major matters relating to current public policy, and where alternative views are not readily available, broadcasters might consider employing one or more of the editorial techniques listed in paragraph A2.41 above.
- A2.65 Previous Ofcom decisions in this area include:

Insider, TV3:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb85/issue85.pdf>

The Great Global Warming Swindle, Channel 4:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb114/issue114.pdf>

George Galloway, Talksport:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb136/Issue136.pdf>

Comment and Real Deal, Press TV:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb139/Issue139.pdf>

First Leaders' Debate (Plaid Cymru complaint), ITV 1:

http://licensing.ofcom.org.uk/binaries/tv/updates/election10_pc.pdf

First Leaders' Debate (Scottish National Party complaint), ITV 1:

http://licensing.ofcom.org.uk/binaries/tv/updates/election10_snp.pdf

Sky News Leader's Debate and other programmes, Sky News:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb161/issue161.pdf>

Various programmes, Aden Live:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb191/obb191.pdf>

Russian language referendum item, REN TV Baltic Mir Baltic:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb214/obb214.pdf>

The prevention of undue prominence of views and opinions on matters of political or industrial controversy and matters relating to current public policy

Meaning of "undue prominence of views and opinions":

Undue prominence is a significant imbalance of views aired within coverage of matters of political or industrial controversy or matters relating to current public policy.

Meaning of "programmes included in any service...taken as a whole":

Programmes included in any service taken as a whole means all programming on a service dealing with the same or related issues within an appropriate period.

Rule 5.13

Broadcasters should not give undue prominence to the views and opinions of particular persons or bodies on matters of political or industrial controversy and matters relating to current public policy in all the programmes included in any service...taken as a whole.

Guidance

- A2.66 Rule 5.13 applies only to local radio services (including community radio services), local digital sound programme services (including community digital sound programme services) and radio licensable content services.
- A2.67 Just because a broadcaster covered by Rule 5.13 includes only a single viewpoint on a matter of political or industrial controversy and matter relating to current public policy does not mean that there has been undue prominence given to that viewpoint on such matters. For Rule 5.13 to be breached there would have to have been a significant imbalance of views aired across all programming on a relevant radio service dealing with a matter of political or industrial controversy or matters relating to current public policy within an appropriate period. By contrast, national radio services, for example, are required to maintain due impartiality within a programme or more than one programme of the same series.
- A2.68 In judging whether there has been a significant imbalance of views by particular persons or bodies aired on a service, Ofcom will consider how often a particular viewpoint is included across all programming.
- A2.69 A previous Ofcom decision in this area is:

Jeni Burnett, LBC 97.3

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb136/Issue136.pdf>

Proposed Ofcom Guidance to Section Six (Elections and Referendums) of the Code

General

- A2.70 This Guidance is provided to assist broadcasters in understanding how Ofcom will usually interpret and apply the Broadcasting Code. The Guidance to Section Six should be read in conjunction with Section Five: Due Impartiality and Due Accuracy and Undue Prominence of Views and Opinions, and the accompanying Guidance to Section Five. However, Ofcom considers each case on its facts. If circumstances require, Ofcom may adapt its Guidance, as appropriate to the case.
- A2.71 Section Six applies to all Ofcom licensed services. However, there is no obligation on broadcasters to provide any election or referendum coverage (beyond that required on certain licensees by the Ofcom rules on Party Political and Referendum Broadcasts¹⁶⁴). Section Six is a technical and complicated area of the Code. However, broadcasters should note that Ofcom does not make compliance decisions for broadcasters. The responsibility for compliance with the Code remains with the broadcaster.
- A2.72 Where relevant weblinks are provided to illustrative and precedent cases (already published by Ofcom) which broadcasters may find helpful when considering how to interpret the Code.

Programmes at the time of elections and referendums

Rule 6.1:

The rules in Section Five, in particular the rules relating to matters of major political or industrial controversy and major matters relating to current public policy, apply to the coverage of elections and referendums.

Guidance

- A2.73 Rule 6.1 applies to the coverage of elections or referendums both inside and outside the UK.
- A2.74 Broadcasters should be aware that the Rules in Section Five, and in particular Rules 5.11 and 5.12, apply to the coverage of elections and referendums.
- A2.75 Rules 6.2 to 6.13 of Section Six do not apply to Parish Council Elections in England and Community Council Elections in Scotland and Wales. However, the Rules in Section Five, and in particular Rules 5.11 and 5.12, apply to the coverage of these elections.
- A2.76 Due impartiality can be achieved over a period, for instance a General Election period in “clearly linked and timely programmes”. Furthermore, due impartiality during election campaigns does not mean that balance is required in any simple mathematical sense. In their coverage of elections, broadcasters – in fulfilling their obligations to preserve due impartiality – should take a consistent approach to the assessment of the level of coverage given to all the candidates. Broadcasters may have regard to any measurable and objective evidence of the likely level of electoral

¹⁶⁴ See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/ppbrules.pdf>

support for particular candidates, and the relevant political context, in deciding relative levels of coverage for different candidates in the same election.

A2.77 It is not acceptable for presenters to use their position to encourage and urge voters to support political parties or candidates.

A2.78 The existence of a coalition government (e.g. at Westminster) has no effect on the meaning of “major party” or the application of Section Six, if the constituent parties of a coalition contest any election as separate parties.

A2.79 Previous Ofcom decisions in this area include:

Insider, TV3:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb85/issue85.pdf>

Sunday Night with Jason Donovan, Invicta FM:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb113/Issue113.pdf>

The James Whale Show, Talksport:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/talksport.pdf>

Arab Dream, Al Mustakillah Television:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb204/obb204.pdf>

Focus Nigeria, AIT International:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb207/obb207.pdf>

Rules relating to programmes at the time of elections and referendums in the UK

A2.80 Rules 6.2 to 6.13 apply only to those elections and referendums in the UK, as defined in the Code.

Meaning of "election":

For the purpose of this section elections include a parliamentary general election, parliamentary by-election, local government election, mayoral election, Police and Crime Commissioner election, Scottish Parliament election, Welsh, Northern Ireland and London Assembly elections, and European parliamentary election.

Guidance

A2.81 Section Six also applies to Mayoral Elections and Police and Crime Commissioner Elections.

Meaning of “referendum”:

For the purpose of this section a referendum (to which the Political Parties, Elections and Referendums Act 2000 applies) includes a UK-wide, national or regional referendum but does not extend to a local referendum.

Meaning of “major party”:

At present, major parties for each nation in the United Kingdom are defined in the Ofcom list of major parties¹⁶⁵.

Guidance

A2.82 The existence of a coalition government (e.g. at Westminster) has no effect on the meaning of “major party” or the application of Section Six, if the constituent parties of a coalition contest an election as separate parties.

Meaning of “election period”:

For a parliamentary general election, this period begins with the announcement of the dissolution of Parliament. For a parliamentary by-election, this period begins with the issuing of a writ or on such earlier date as is notified in the London Gazette. For the Scottish Parliament elections and National Assembly for Wales elections, the period begins with the dissolution of the Scottish Parliament or the National Assembly for Wales as appropriate or, in the case of a by-election, with the date of the occurrence of a vacancy. For the Northern Ireland Assembly, the London Assembly and for local government elections, it is the last date for publication of notices of the election. For European parliamentary elections, it is the last date for publication of the notice of election, which is 25 days before the election. In all cases the period ends with the close of the poll.

Guidance

A2.83 For information on particular election and referendum periods, broadcasters should consult the Electoral Commission website (www.electoralcommission.org.uk). If undertaking election programming, broadcasters should ensure they familiarise themselves with the dates of the relevant election period(s).

Meaning of “candidate”

Candidate has the meaning given to it in section 93 of the Representation of the People Act 1983 (as amended) and means a candidate standing nominated at the election or included in a list of candidates submitted in connection with it.

Rule 6.2:

Due weight must be given to the coverage of major parties during the election period. Broadcasters must also consider giving appropriate coverage to other parties and independent candidates with significant views and perspectives.

Guidance

A2.84 Rule 6.2 concerns the coverage parties and candidates receive over an election period. Broadcasters should note that Rule 6.8 (see below) requires that due impartiality is strictly maintained within a constituency report or discussion and an electoral area report or discussion.

A2.85 There is no obligation on broadcasters to transmit leaders’ or candidates’ debates. The editorial format for such debates (i.e. the manner in which a broadcaster

¹⁶⁵ See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/major-parties.pdf>

presents a programme to the audience) is a matter for the broadcaster, and as appropriate, the relevant political parties as long as the broadcaster complies with the Code. Candidates' debates which include candidates from the same constituency or electoral area must comply with Rules 6.8 to 6.13. Broadcasters should therefore consult paragraphs A2.104 onwards of this Guidance as appropriate.

- A2.86 In the case of coverage of a UK-based election, broadcasters must ensure that they give coverage, as appropriate, to the major parties relevant for the type of election in question (i.e. UK-wide elections, elections in Scotland only, elections in Wales only, elections in Northern Ireland only).
- A2.87 UK-based election programming (**for example, UK leadership debates**) can focus on the major parties that have a realistic prospect of forming the UK Government following the election in question. However, in line with Rule 6.2, broadcasters must ensure that adequate coverage is given to other major parties as appropriate, in the same programming, or in linked programming, as appropriate.
- A2.88 Broadcasters are required to *consider* giving "appropriate coverage" to non-major parties and independent candidates with "significant views and perspectives". It is an editorial decision for the broadcaster as to what constitutes "appropriate coverage" and "significant views and perspectives".
- A2.89 The concept of giving "due weight" to the major parties, as required by Rule 6.2, is flexible. Its application depends on the electoral context. Rule 6.2 does not mean that broadcasters automatically have to accord more coverage to the major parties, compared with other parties and independent candidates with "significant views and perspectives".
- A2.90 Broadcasters can transmit items considering a party's or parties' policies concerning particular elections in general, and care should be taken if a party's candidate for a particular constituency or election area contest is included in such a programme. Then, depending on the circumstances of that candidate's inclusion in a programme, Rules 6.8 to 6.13 may apply (see below).
- A2.91 Previous Ofcom decisions in the area of Rules 6.1 and 6.2 are:

Coverage of EU Elections, Radio Asian Fever:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb139/issue139.pdf>

Community Affairs, Spice FM:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb162/issue162.pdf>

First Leaders' Debate (Plaid Cymru complaint), ITV 1:

http://licensing.ofcom.org.uk/binaries/tv/updates/election10_pc.pdf

First Leaders' Debate (Scottish National Party complaint), ITV 1:

http://licensing.ofcom.org.uk/binaries/tv/updates/election10_snp.pdf

Sky News Leaders' Debate and other programmes, Sky News:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb161/issue161.pdf>

Meaning of “designated organisation” and “permitted participants”:

Designated organisations and permitted participants are those that are designated by the Electoral Commission.

Meaning of “referendum period”:

For referendums different periods may apply. A referendum held under the Northern Ireland Act 1998 (as amended) begins when the draft of an Order is laid before Parliament for approval by each House. In the case of a referendum held under other Acts, the time at which a referendum period commences is given in the individual Acts. In the case of an Order before Parliament, the time will be given in that Order. In all cases the period ends with the close of the poll.

Guidance

A2.92 For information on ‘designated organisations’, ‘permitted participants’ and ‘referendum periods’, broadcasters should consult the Electoral Commission website (www.electoralcommission.org.uk).

Rule 6.3

Due weight must be given to designated organisations in coverage during the referendum period. Broadcasters must also consider giving appropriate coverage to other permitted participants with significant views and perspectives.

Guidance

A2.93 Whilst there typically might be just two designated organisations in most referendums, depending on the structure of the referendum question(s), there might be more than two designated organisations in a given referendum. In such circumstances, broadcasters must ensure they give due weight to all designated organisations.

A2.94 Broadcasters should take account of the fact that there may be a number of permitted participants in a given referendum.

Rule 6.4

Discussion and analysis of election and referendum issues must finish when the poll opens. (This refers to the opening of actual polling stations. This rule does not apply to any poll conducted entirely by post.)

Guidance

A2.95 The purpose of Rule 6.4 is to ensure that broadcast coverage on the day of an election does not directly affect voters’ decision.

A2.96 A previous Ofcom decision in this area is:

Superscoreboard, Clyde 1:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb162/issue162.pdf>

Rule 6.5

Broadcasters may not publish the results of any opinion poll on polling day itself until the election or referendum poll closes. (For European Parliamentary elections, this applies until all polls throughout the European Union have closed.)

Guidance

A2.97 In the case of European Parliamentary Elections, where different EU Member States hold polling days on different days, broadcasters should not publish the results of any opinion poll until the polls have closed in the case of the final EU Member State where polling is taking place.

Rule 6.6

Candidates in UK elections, and representatives of permitted participants in UK referendums, must not act as news presenters, interviewers or presenters of any type of programme during the election period.

Guidance

A2.98 This Guidance should be read in conjunction with the Guidance in paragraphs A2.24 and A2.25 of the Guidance to Section Five: Due Impartiality and Due Accuracy and Undue Prominence of Views and Opinions.

A2.99 Rule 6.6 is concerned not just with preventing electoral issues from being reported in a partial manner. The rule is designed to help secure the integrity of the democratic process, and the public's trust in that integrity, through preventing any unfair electoral advantage being afforded to a particular candidate, through their appearance on licensed services. Reading the news may unfairly confer authority and gravitas upon a candidate. Importantly, newsreading may give the candidate many hours of exposure to the electorate which are not matched by equivalent exposure given to other candidates.

A2.100 Previous Ofcom decisions in this area are:

News, London Greek Radio:

http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/pcb30/Issue_65.pdf

The Agenda with Yvonne Ridley and Politics and the Media, Islam Channel:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/islamchannel.pdf>

Rule 6.7

Appearances by candidates (in UK elections) or representatives (of permitted participants in UK referendums) in non-political programmes that were planned or scheduled before the election or referendum period may continue, but no new appearances should be arranged and broadcast during the period.

Guidance

A2.101 The purpose of Rule 6.7 is to ensure that candidates or representatives of permitted participants in UK referendums do not appear in non-political programmes to try to gain political advantages.

Rules relating to constituency coverage and electoral area coverage in elections

General

A2.102 Previous restrictions concerning constituency reporting placed on broadcasters by the Representation of the People Act 1983 (“RPA”) before it was amended have been removed. Put simply, under the old rules if a broadcaster wished to interview a candidate about his/her constituency then the broadcaster was obliged to offer an opportunity to all the candidates standing (whether or not they wanted to take part). In effect this meant that one candidate from any party could veto the whole report. The result was that broadcasters rarely actually interviewed any of the candidates. Instead they used natural sound of some of the candidates and/or interviewed representatives of the relevant parties (e.g. the party Chairman).

A2.103 Before repealing this part of the RPA, Government (and political parties) wanted to be satisfied that the broadcasters and regulators would agree on new guidelines aimed at creating a more workable set of rules but ensuring that due impartiality (as required by statute) was maintained. A specific role for the Electoral Commission was introduced, whereby its views must be taken account of before any rules are introduced or amended.

Rule 6.8

Due impartiality must be strictly maintained in a constituency report or discussion and in an electoral area report or discussion.

Rule 6.9

If a candidate takes part in an item about his/her particular constituency, or electoral area, then candidates of each of the major parties must be offered the opportunity to take part. (However, if they refuse or are unable to participate, the item may nevertheless go ahead.)

Rule 6.10

In addition to Rule 6.9, broadcasters must offer the opportunity to take part in constituency or electoral area reports and discussions, to all candidates within the constituency or electoral area representing parties with previous significant electoral support or where there is evidence of significant current support. This also applies to independent candidates. (However, if a candidate refuses or is unable to participate, the item may nevertheless go ahead.)

Rule 6.11

Any constituency or electoral area report or discussion after the close of nominations must include a list of all candidates standing, giving first names, surnames and the name of the party they represent or, if they are standing independently, the fact that they are an independent candidate. This must be conveyed in sound and/or vision. Where a constituency report on a radio service is repeated on several occasions in

the same day, the full list need only be broadcast on one occasion. If, in subsequent repeats on that day, the constituency report does not give the full list of candidates, the audience should be directed to an appropriate website or other information source listing all candidates and giving the information set out above.

Guidance

- A2.104 During election periods, if a broadcaster transmits a report or discussion featuring candidates standing in a constituency or electoral area, this may qualify as a “constituency report or discussion” or “electoral area report or discussion” (see Rule 6.8 of the Code). Rules 6.8 to 6.13 then apply. A constituency/electoral area report or discussion might be in the form of: a programme; programme item or segment; report; or interview, which raises or covers issues about a candidate’s electoral area, or raises the profile of the candidate in connection with his/her electoral area. A useful test for broadcasters is to ask whether a report or discussion could be seen as promotional for a candidate within his/her electoral area.
- A2.105 In cases where a broadcaster is not intending to broadcast a constituency/electoral area report or discussion, broadcasters should take care that whenever a candidate is featured in programming, that by virtue of that candidate’s contribution, the content does not unintentionally become an electoral area report or discussion.
- A2.106 There is a range of editorial techniques by which broadcasters can comply with Rule 6.8, but broadcasters should ensure that they reflect the viewpoints of candidates, as appropriate and in accordance with Rules 6.9 and 6.10 in particular.
- A2.107 As mentioned in paragraph A2.105, a report can unintentionally focus on a constituency/electoral area, merely by promoting a candidate in a certain manner. Whether programmes or broadcast items which profile particular candidates are constituency/electoral area reports may on occasions be difficult to judge and depends on the type of profile and how the report was scripted. A report in the 2010 UK general election period on David Cameron or Nick Clegg, and what sort of Prime Minister they would be, would have been acceptable. But a profile which examines a candidate simply because they or their constituency may be of interest and raises their profile in connection with their constituency (e.g. Esther Rantzen in Luton South in the 2010 General Election) could be problematic, if other candidates were not given a chance to take part in that broadcast item, or in closely linked and timely programmes (see paragraph A2.116 below).
- A2.108 Overall, the principal point for broadcasters is to ensure that when interviewing candidates in reports that either raise issues about their constituency/electoral area or raise the profile of the candidate in connection with their constituency/electoral area, other candidates in the constituency/electoral area (as described in Rules 6.9 and 6.10) have an opportunity to take part as appropriate. As mentioned in paragraph A2.104 above, a useful test for broadcasters is to ask whether a report could be seen as promotional for a candidate within his/her constituency/electoral area. If it is, then it requires input from, at least, the other main parties and potentially others depending on the constituency/electoral area.
- A2.109 When considering whether to offer to include non-major party or independent candidates in an electoral area report or discussion, broadcasters must give particular regard to whether there is evidence such candidates have “significant current support”.

A2.110 In interpreting Rule 6.10, “evidence of significant current support” should be interpreted in a straightforward way, and should take account of all relevant factors, and not only electoral support. However, in deciding whether there is evidence of a candidate having “significant current support”, broadcasters should clearly place more reliance on objective and measurable evidence of the level of support for a candidate. Where this evidence exists, it helps ensure that a broadcaster treats all candidates in an election reasonably and fairly, and with the due impartiality required by the Code, and that a broadcaster can demonstrate it has done so when applying Rule 6.10. One obvious objective and measurable evidence of “significant current support” for a candidate is opinion poll evidence, where it is available.

A2.111 In considering the degree to which opinion polling data constitutes evidence of significant current support, broadcasters may take account of for example:

- the number of polls (if more than one);
- the degree by which a candidate is polling above the margin of error for a particular poll;
- the degree to which a range of polls (if more than one) by the same polling organisation¹⁶⁶ demonstrate a consistent level of support for a candidate both leading up to and during an election period (i.e. less weight should be given to: ‘one-off’ stand alone polls; or a single poll that shows a candidate’s support is materially different to other poll ratings for that candidate); and
- whether or not a particular poll has been conducted by a member organisation of the British Polling Council (“BPC”)¹⁶⁷.

A2.112 Broadcasters should consider all relevant evidence in judging significant current support. In addition to opinion polls (if available), there may be other factors which broadcasters can consider in assessing current levels of support. However, broadcasters should be mindful of the degree of consistency and objectivity of each type of evidence.

A2.113 If no polls are conducted in relation to a particular election, broadcasters should use what evidence that is available to them, when making any decisions as to whether particular candidates should be invited to take part in a given constituency/electoral area discussion or report. For example, candidates with “previous significant electoral support” may include individuals occupying an elected office or position that is being contested in the election in question, or a comparable elected office.

A2.114 Some elections may see a significant number of independent candidates. In considering constituency/electoral area reports and discussions about these elections, broadcasters – in fulfilling their obligations to comply with Rules 6.8 to

¹⁶⁶ Broadcasters can also ascertain a candidate’s level of support by comparing a candidate’s poll rating across a range of polls by different organisations. However, due to the different methodologies used by different polling organisations, broadcasters should give less weight to a candidate’s polling performance over a range of polls by different polling organisations to that candidate’s polling performance over a range of polls conducted by the same polling organisation.

¹⁶⁷ The British Polling Council (BPC) is an association of polling organisations that publishes opinion polls, and consists of all the leading polling organisations in the UK. The BPC states that it “aims to encourage the highest professional standards in public opinion polling and to advance the understanding, among politicians, the media and general public, of how polls are conducted and how to interpret poll results” (see <http://www.britishpollingcouncil.org/>).

6.13 – should take a consistent approach to the assessment of the level of coverage given to candidates. Broadcasters should note that the Code allows broadcasters to include *all* candidates standing in a particular election in constituency/electoral area reports and discussions about that particular constituency or electoral area.

- A2.115 Where candidates have been offered a chance to take part in a constituency/ electoral area report or discussion, and have declined to take part, this should normally be made clear to the audience.
- A2.116 Broadcasters may structure a constituency/electoral area report or discussion over a series of broadcasts, for example in the form of a series of candidate interviews in different programmes. However, in line with Rule 5.6¹⁶⁸, the broadcaster should ensure that the fact that a constituency/electoral area report or discussion is being split over several programmes is clearly signalled to the audience, and that Rule 6.11 is complied with (i.e. a list of all candidates is included) in each separate programme as required.
- A2.117 With the advent of locally-elected posts, such as directly-elected mayors and Police and Crime Commissioners, some broadcasters may wish to conduct candidates' debates in relation to such posts. As mentioned above, there is no obligation on broadcasters to transmit candidates' debates. However, if they do so they must comply with all the rules relating to electoral area reports or discussions (Rules 6.8 onwards). The editorial format for such debates is a matter for the broadcaster, and as appropriate, the relevant political parties. However, the broadcasters must ensure that they comply with the Code.
- A2.118 Broadcasters should ensure, even if they have complied with Rules 6.8 to 6.10 inclusive, they include a list of candidates in each constituency/electoral area report or discussion.
- A2.119 Previous decisions which broadcasters may find useful in the area of Rules 6.9 to 6.11 are:

Local Election Output, 102.4 Radio Hartlepool; and
Election 2010, Bangla TV:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb162/issue162.pdf>

Special Live With Jassi Khangura, The Sikh Channel:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb164/issue164.pdf>

News, Channel S;

News and Jonotar Moncho, Bangla TV; and
ATN Bangla Europe News, ATN Bangla:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb177/issue177.pdf>

Matt Forde, Talksport:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb185/obb185.pdf>

¹⁶⁸ Rule 5.6 states that: "The broadcast of editorially linked programmes dealing with the same subject matter (as part of a series in which the broadcaster aims to achieve due impartiality) should normally be made clear to the audience on air".

Decision of the Election Committee on a Due Impartiality Complaint Brought by Siobhan Benita in relation to *The Battle for London – The Mayoral Debate*, ITV1, 24 April 2012
<http://stakeholders.ofcom.org.uk/binaries/enforcement/election-committee/siobhan-benita-itv.pdf>

Decision of the Election Committee on a Due Impartiality Complaint Brought by Siobhan Benita in relation to *The London Debate*, Sky News, 19 April 2012
<http://stakeholders.ofcom.org.uk/binaries/enforcement/election-committee/siobhan-benita-sky.pdf>

Rule 6.12

Where a candidate is taking part in a programme on any matter, after the election has been called, s/he must not be given the opportunity to make constituency points, or electoral area points about the constituency or electoral area in which s/he is standing, when no other candidates will be given a similar opportunity.

Guidance

- A2.120 After an election period has commenced, a broadcaster can include comments from a candidate about wider political or policy matters (not directly connected with his/her electoral area). For instance, a report about an internal political party issue could interview a number of candidates from that party from different electoral areas. However, these reports should not touch on matters relating to particular constituencies/electoral areas (for example, local schools or hospitals) unless other candidates in the same constituency or electoral area, as appropriate, are offered the opportunity to take part in the programme.
- A2.121 Another potential regulatory issue for such reports is that broadcasters should ensure due impartiality is maintained over the service during election periods (Rule 6.1). So similar opportunities to explore policy matters should be given to other parties i.e. if one party is given the opportunity to put their views, other relevant parties should be given similar opportunities within the election period. A broadcaster may of course, as appropriate and taking account of the context, take a party-wide approach to discussing a particular issue, involving a number of candidates from different parties in one report or discussion.
- A2.122 There is, in principle, no problem in interviewing candidates in the round about policy issues – provided Rule 6.12 is complied with (i.e. such candidates must not be permitted to make points so as to promote their candidacy in respect of his/her constituency/electoral area). For example, a report which examined health policy around the country, and included candidates standing in different constituencies/electoral areas, could be acceptable, as long as there was no promotion of any candidate in any constituency/electoral area.

Rule 6.13

If coverage is given to wider election regions, for example in elections to the Scottish Parliament, Welsh Assembly, Northern Ireland Assembly, London Assembly or European Parliament, then Rules 6.8 to 6.12 apply in offering participation to candidates. In these instances, all parties who have a candidate in the appropriate region should be listed in sound and/or vision, but it is not necessary to list candidates individually. However, any independent candidate who is not standing on a party list must be named. Where a report on a radio service is repeated on several

occasions in the same day, the full list need only be broadcast on one occasion. If, in subsequent repeats on that day, the constituency report does not give the full list of candidates, the audience should be directed to an appropriate website or other information source listing all candidates and giving the information set out above.

Guidance

A2.123 In elections where candidates are being elected from multi-member constituencies or electoral areas, there are likely to be a number of candidates being fielded by each individual party. In each electoral contest, for each party that would qualify for inclusion in constituency/electoral area report or discussion by virtue of Rules 6.9 and 6.10, there is no obligation on broadcasters to offer every candidate representing a single party the opportunity to take part in that constituency/electoral area report or discussion. However, at a minimum, broadcasters should ensure that they do offer the chance to take part in that constituency/electoral area report or discussion to each party that would qualify by virtue of Rules 6.9 and 6.10.

A2.124 Where more than one candidate from the same party is being featured in the same constituency/electoral area report or discussion in a multi-member constituency or electoral area, it is an editorial decision for the broadcaster as to how much time to give each candidate from the same party. However, broadcasters must ensure that due impartiality is strictly maintained in a constituency/electoral area report or discussion (as required by Rule 6.8) and that due weight is given to the major parties (as required by Rule 6.2).

A2.125 A previous Ofcom decision in this area is:

UTV Live Tonight, UTV:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb141/Issue141.pdf>

Annex 3

Finalised Ofcom list of major parties

- A3.1 This document sets out the definition of “major parties” as applies to Section Six of the Ofcom Broadcasting Code¹⁶⁹ and the Ofcom rules on Party Political and Referendum Broadcast¹⁷⁰.
- A3.2 Ofcom will periodically review the definition of “major parties”, taking account of relevant evidence, such as changes in the electoral landscape, across a range of elections.
- A3.3 At present in Great Britain, major parties are defined as: the Conservative Party; the Labour Party; and the Liberal Democrats.
- A3.4 In addition, major parties in Scotland and Wales respectively are the Scottish National Party and Plaid Cymru.
- A3.5 The major parties in Northern Ireland are: the Alliance Party; the Democratic Unionist Party; Sinn Fein; the Social Democratic and Labour Party; and the Ulster Unionist Party.

¹⁶⁹ See <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/elections/>

¹⁷⁰ See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/ppbrules.pdf>